


Subject: LAW

Production of Courseware

 - Content for Post Graduate Courses



Paper : Advanced Constitutional Law

Module : Protection of Life and Personal Liberty (Article 21)



Component - I - Personal Details

Role	Name	Affiliation
Principal Investigator	Prof(Dr) Ranbir Singh	Vice Chancellor National Law University Delhi
Principal Co-investigator	Prof(Dr) G S Bajpai	Registrar National Law University Delhi
Paper Coordinator	Dr. Anupama Goel	Associate Professor National Law University Delhi
Content Writer/Author	Dr. Lakhwinder Singh	Assistant Professor, Department of Laws, Panjab University, Chandigarh.
Content Reviewer	Prof. P.S. Jaswal	Vice Chancellor Rajiv Gandhi National University of Law, Patiala

Component - I (B) Description of Module

Subject Name	Law
Paper Name	Constitutional Law
Module/ Name/Title	Protection of Life and Liberty (Article 21)
Module Id	17
Pre-requisites	Basic Knowledge of State and fundamental Rights
Objectives	To understand the concept of life and liberty in the modern welfare state
Keywords	Right to life; personal liberty; Article 21 of the Indian Constitution;



Component - II

Module II: **Protection of Life and Liberty (Article 21)**

**Structure:**

1. **Introduction**
2. **Learning Outcomes**
3. **Right to Life**
4. **Right to Personal Liberty and Reasonable 'procedure established by law'**
5. **Right to Live in Healthy Environment is part of Right to Life and Personal Liberty**
6. **Right to Education is Part of Right to Life and Personal Liberty**
7. **Right to Privacy is Part of Right to Life and Personal Liberty**
8. **Right to Die and Right to Life**
9. **Right to Marry**
10. **Interesting Facts**
11. **Points to Ponder**
12. **Summary**

### **1. Introduction**

Right to life and personal liberty is an essential part of human life. In its wider connotation, it includes all the basic necessities of life without which one could not even survive. In this module, the meaning and significance of life and personal liberty has been explained. Indian judiciary's concern towards the liberal interpretation of right to life and personal liberty has also been discussed in the present module. By doing so, the landmark judgments declaring right to live healthy environment, right to privacy, right to marry, etc. as part of right to life and personal liberty have been analyzed in detail in the module.

### **2. Learning Outcomes**

- 2.1 Learners would be able to understand the scope of right to life and personal liberty in India.
- 2.2 Learners would get to know the recent trend among the Indian courts regarding the interpretation of right to life and personal liberty.

### **3. Right to Life**

The expression 'human rights' embraces the rights of man both as individual and as a member of society. Human rights promote individual welfare as well as social welfare. Right to life has been considered as the most fundamental of all human rights. Denial of the right to



life means refutation of all other human rights because none of other rights would have any existence without it. Because of its great value it has been recognized in various international, national, and regional documents. Similarly, 'right to life' under Article 21 of the Indian Constitution is supreme amongst all fundamental rights, enshrined in Part III of the Constitution of India.<sup>1</sup>

In its true sense, Right to life means a way of living which empowers every individual to enlighten his or her inner and outer contents, to enjoy dignified and humane life, to get pleasure of fundamental freedoms, etc. Every civilized state is bound to protect individuals' right to life.

Indian judiciary has played an active role in enforcing the true spirit of right to life mentioned under Article 21 of the Indian Constitution. It has been observed that the courts assumed the role of poor man's court after the *Maneka Gandhi's* landmark judgment and, started protecting the interests of the poor section of the society.<sup>2</sup> During 1980s, the Supreme Court of India promoted public interest litigations by allowing public interest advocates and non government organizations to file petitions on behalf of traditionally powerless persons, including bonded labourers, rickshaw drivers, pavement dwellers, inmates of mental infirmaries and workhouses and victims of environmental damage.<sup>3</sup>

By doing so, the courts recognized even those fundamental rights which were not explicitly mentioned in the Constitution of India. The Indian judiciary widely interpreted and gave progressive meanings to the words of 'life', 'personal liberty', and 'procedure established by law' for protecting individuals' fundamental rights. Hence, the right to life under Article 21 of the Indian Constitution includes Right to education, Right to clean environment, Right to reputation, Right to food, Right to shelter, Right against exploitation, Right to dignified living, right to release and rehabilitation of bonded labourers, right to legal aid, and the right to know, Right to go abroad, Right to privacy, Right against solitary confinement etc.

Article 21 of the Constitution of India provides:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

<sup>1</sup> Shailja Chander, *Justice V. R. Krishna Iyer on Fundamental Rights and Directive Principles* (Deep & Deep Publications 2003)

<sup>2</sup> Mohammed Ghouse, 'The Two Faces of Judicial Activism' in K.L. Bhatia (ed), *Judicial Activism and Social Change* (Deep & Deep Publications 1990)

<sup>3</sup> Burt Neuborne, 'The Supreme Court of India' [2003] 1 International Journal of Constitutional Law 476, 503



Right to life is not an absolute right. State can impose reasonable restrictions by adopting some procedure. But the expression ‘procedure established by law’ in Article 21 does not mean any arbitrary law rather it should be reasonable, fair and just.<sup>4</sup>

Justice H.R. Khanna rightly observed that sanctity of life and liberty was existed and was prevailing in the civilized societies even before the commencement of the Indian Constitution. In that sense, the Indian Constitution adopted the idea and spirit of life and liberty, and freedom from arbitrary authority of law.<sup>5</sup>

Despite of it being most precious fundamental right, it is submitted that, the term ‘life’ has not been defined anywhere in the Constitution of India. Therefore, we will have to analyse various Indian judicial pronouncements for its interpretation. Furthermore, it is pertinent to mention here that the United States’ judicial decisions also guided Indian courts at many fronts for defining the term ‘life’ and ‘personal liberty’.

Amendment XIV to the U.S. Constitution, section 1

It provides:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

While referring the Fourteenth Amendment of the U.S. Constitution, Mr. Justice Field explained the meaning of ‘life’ and ‘personal liberty’ in *Munn v Illinois*.<sup>6</sup> He said that the meaning of the term ‘life’ is very wide and, is more than mere animal existence. Similarly, the term ‘liberty’ is something more than mere freedom from physical restraint or the bounds of a prison.<sup>7</sup>

In *Kharak Singh v State of UP*,<sup>8</sup> both the majority and minority quoted Mr. Justice Field’s observations with approval and acknowledged that the observation rightly explained the meaning of right to life and personal liberty. Such observations were again approved by the Hon’ble Supreme Court of India in *Sunil Batra v Delhi Administration*.<sup>9</sup>

<sup>4</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597.

<sup>5</sup> *A.D.M. Jabalpur v. S. Shukla*, AIR 1976 SC 1207, 1254.

<sup>6</sup> 94 U.S. 113 (1876).

<sup>7</sup> *ibid.*, p. 142.

<sup>8</sup> AIR 1963 SC 1295.

<sup>9</sup> AIR 1978 SC 1675.





It has been observed that the inspired courts started giving new dimensions to the 'right to life' under Article 21 of the Indian Constitution. The Supreme Court of India in *Francis Coralie Mullin v Union Territory of Delhi*<sup>10</sup> observed Right to life includes the right to live with human dignity. It further includes the basic necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.<sup>11</sup>

Therefore, this was the time in India when the real soul of 'right to life' took re-birth in the form of 'right to live with human dignity'. The Hon'ble Supreme Court again in *Samatha v State of U.P.*<sup>12</sup> endorsed an individual's right to live with human dignity, and observed that the life becomes meaningful only when an individual enjoys the social, cultural and intellectual life.

#### **4. Right to Personal Liberty and Reasonable 'procedure established by law'**

According to Blackstone, "Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct."<sup>13</sup> It is submitted that Blackstone's main emphasis on the freedom of movement.

Another view is of Dicey who says, "The right to personal liberty means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification."<sup>14</sup> It is submitted that Dicey's definition is primarily concerned with the negative aspect of personal liberty which prohibits the State from taking any unjustified action against an individual.

Lord Denning has also given broader expression to the 'liberty' of a person. He observed:<sup>15</sup>

By personal freedom I mean the freedom of every law abiding citizen to think what he will, to say what he will and to go where he will on his occasions without let or hindrance from any other person.

Another significant case is of *Allgeyer v Louisiana*,<sup>16</sup> in which the United States Supreme Court observed that the term 'liberty' in the Fourteenth Amendment means not only freedom from mere physical restraint but the term 'liberty' means:<sup>17</sup>

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<sup>10</sup> AIR 1981 SC 746.

<sup>11</sup> *ibid.*, p. 619.

<sup>12</sup> AIR 1997 SC 3297

<sup>13</sup> Blackstone, *Commentaries on the Laws of England* (Dawsons of Pall Mall 1966)

<sup>14</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10<sup>th</sup> edn, Macmillan 1959)

<sup>15</sup> Alfred Denning, *Freedom Under the Law* (Stevens & Sons Limited 1949)

<sup>16</sup> 165 U.S. 578 (1897).

<sup>17</sup> *ibid.*, p. 589.



[R]ight of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

This broader definition of liberty, as it was observed, is not only important for economic matters, but is capable of principled expansion into a range of other issues as well.<sup>18</sup> The expansive definition of 'liberty' was followed in two important cases i.e. *Meyer v Nebraska*<sup>19</sup> and *Pierce v Society of Sisters*.<sup>20</sup> The former case reversed a conviction for teaching the German language to school children.<sup>21</sup> The latter decision invalidated a rule that prohibited the education of children in parochial schools.<sup>22</sup> While explaining the concept of 'liberty', Justice McReynolds wrote that it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, etc.<sup>23</sup>

For defining 'personal liberty' in India, we have to again rely on the judicial interpretations. However, it is believed that the Supreme Court of India began as a positivist court and strictly followed the traditions of the British courts.<sup>24</sup> In *A.K. Gopalan v State of Madras*,<sup>25</sup> the Court refused to accept the liberal interpretation of Constitutional provisions. In that sense, it is believed that the Court gave a narrow construction to words such as 'personal liberty' and 'procedure established by law' used in Article 21 of the Constitution. The Court legitimated the State's action in the name of welfare state.<sup>26</sup>

However, in *Kharak Singh v State of UP*, the Supreme Court of India refused to accept the narrowest interpretation of the term 'personal liberty'. The court held that the term 'personal liberty' under Article 21 of the Indian Constitution included not only mere freedom

<sup>18</sup> Richard A. Epstein, 'The "Necessary" History of Property and Liberty,' (2003) Chicago John M. Olin law & economics working paper no. 183 (2d series), The Law School University of Chicago 1, 22 <<http://www.dklevine.com/archive/epstein.pdf>> accessed 2 August 2013

<sup>19</sup> 262 U.S. 390 (1923).

<sup>20</sup> 268 U.S. 510 (1925).

<sup>21</sup> 262 U.S. 403 (1923).

<sup>22</sup> 268 U.S. 536 (1925).

<sup>23</sup> 262 U.S. 399 (1923).

<sup>24</sup> S.P. Sathe, 'Judicial Activism: The Indian Experience' (2001) Vol. 6:29 Journal of Law & Policy 29, 40 <[http://law.wustl.edu/journal/6/p\\_29\\_sathe.pdf](http://law.wustl.edu/journal/6/p_29_sathe.pdf)> accessed 31 July 2013

<sup>25</sup> AIR 1950 SC 27.

<sup>26</sup> *ibid.*, p. 41.



from physical restraint but all other aspects of liberty not covered by Article 19 of the Indian Constitution.<sup>27</sup>

In *Satwant Singh v Assistant Passport Officer*,<sup>28</sup> the Court held that the right to personal liberty included the right to go abroad. The Court insisted the Passport authorities to adopt some fair procedure for regulating the grant or denial of passports. Consequently, the Indian Parliament enacted the Passport Act of 1967, specifying who is eligible for a passport, under what circumstances a passport is refused, and the procedure for applying a passport.

A major breakthrough came in *Maneka Gandhi v Union of India*.<sup>29</sup> In this case, the action of impounding Maneka Gandhi's passport was challenged on the ground that it violated her personal liberty. The authorities did not provide her any hearing before impounding her passport. The Supreme Court not only broadened the meaning of the words 'personal liberty,' but also adopted the concept of procedural due process within the words 'procedure established by law.' The Court rejected the earlier view that 'personal liberty' included all attributes of liberty except those mentioned in Article 19. It was recognized that when a law restricts personal liberty, a court should examine whether the restriction on personal liberty also imposed restrictions on any of the rights given by Article 19. The Court held that personal liberty includes a variety of rights which go to constitute the personal liberty of man,<sup>30</sup> in addition to those mentioned in Article 19, and that one such right included in "personal liberty" is the right to go abroad.

It is to be noted that while in *Kharak Singh v State of UP*,<sup>31</sup> the freedoms of Article 19(1) were excluded from the scope of 'personal liberty' of Article 21, the Supreme Court in *Maneka Gandhi v Union of India*<sup>32</sup> made them part of 'personal liberty'. It means that a law depriving an individual of his 'personal liberty' has to stand the test of Article 21 and of Article 19.

From above, it is clear that the expression 'personal liberty' received its full meaning in *Maneka Gandhi v Union of India*.<sup>33</sup> It is submitted that the Court gave the widest possible interpretation to the term 'personal liberty'. After this decision, the courts started interpreting 'fundamental rights' in their true spirit. This decision suggested new wordings to Article 21,

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<sup>27</sup> AIR 1963 SC 1295.

<sup>28</sup> AIR 1967 SC 1836.

<sup>29</sup> AIR 1978 SC 597.

<sup>30</sup> *ibid.*, p. 622.

<sup>31</sup> AIR 1963 SC 1295.

<sup>32</sup> AIR 1978 SC 597.

<sup>33</sup> *ibid.*





which would be like, no person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.<sup>34</sup>

The decision of *Maneka Gandhi v Union of India*<sup>35</sup> also incorporated the concept of reasonableness into the procedure established by law in Article 21. In other words, the Court liberally construed the words “procedure established by law” to include within it all those essential aspects of procedure that constitute due process of law.<sup>36</sup>

The Hon’ble Supreme Court of India in *Kartar Singh v State of Punjab*,<sup>37</sup> again reiterated that the term ‘procedure’ under Article 21 means a procedure which is right, just and fair, and not arbitrary, fanciful or oppressive. The procedure should conform to the principles of natural justice which is ‘fair play in action’.<sup>38</sup>

It is submitted, therefore, that the decision of *Maneka Gandhi v Union of India*<sup>39</sup> inspired the later decisions and made the courts realized to adopt new vistas of personal freedoms like right to privacy, right to education, right to health, right to speedy trial, right to bail, right to appeal, right to humane treatment inside prison, right against torture, right to live with basic human dignity, right to compensation to the victims, etc.

### **5. Right to Live in Healthy Environment is part of Right to Life and Personal Liberty**

Courts in India have recognised sustainable development and environmental rights by liberally interpreting Articles 21, 48, 48A and 51A of the Constitution. Directions have been issued from time to time to foster an effective administrative set up for preventing environmental degradation resulting from developmental activities.<sup>40</sup> The apex court of India applied the doctrine of ‘Sustainable Development’ in *Vellore Citizen Welfare Forum v Union of India*.<sup>41</sup> The Court considered various constitutional provisions including Articles 47, 48-A, 51-A(g). The court concluded that the State is bound to protect and preserve the ecology, as every person has a right to live in a pollution free atmosphere. The court further held that the doctrines like precautionary principle and polluter pays principle are indispensable parts of the environmental law of India. The court also held that reparation of the damaged environment is a part of ‘Sustainable Development’ and, binds the polluter to pay the cost to the sufferers as well as the cost of reversing the damaged environment.

<sup>34</sup> *Bachan Singh v State of Punjab* AIR 1980 SC 898.

<sup>35</sup> AIR 1978 SC 597.

<sup>36</sup> S.P. Sathe, ‘Judicial Activism: The Indian Experience’ (2001) Vol. 6:29 Journal of Law & Policy 29,

<sup>40</sup> <[http://law.wustl.edu/journal/6/p\\_29\\_sathe.pdf](http://law.wustl.edu/journal/6/p_29_sathe.pdf)> accessed 31 July 2013

<sup>37</sup> (1994) 3 SCC 569.

<sup>38</sup> *ibid.*, p. 671.

<sup>39</sup> AIR 1978 SC 597.

<sup>40</sup> *Gram Panchayat Navlakh Umbre v Union of India*, PNP 1/38 PIL115-28.6.sxw

<<http://indiankanoon.org/doc/48535789/>> accessed 19 November 2013

<sup>41</sup> AIR 1996 SC 2715.



The Supreme Court, in many other cases, endeavoured to keep the balance between ecology and development. In *Rural Litigation and Entitlement Kendra Dehradun v. State of Uttar Pradesh*,<sup>42</sup> also known as Doon valley case, the Supreme Court had to deal with a dispute involving mining in the hilly areas. After proper investigation, the Supreme Court ordered to stop the mining work. The court also ordered to pay the price to the sufferers in order to protect and safeguard the right of the people to live in healthy environment. The court also showed its great concern to the local inhabitants' cattle, homes and agricultural land.

In *Intellectuals Forum, Tirupathi v. State of A.P.*,<sup>43</sup> the Supreme Court made the government responsible for protecting the historical tanks while expanding the scope of concept of 'sustainable development' and the 'public trust doctrine'. The principle of 'Inter-Generational Equity' was also recognised as part of sustainable development. The same principle was reiterated in several cases including *A.P. Pollution Control Board v Prof. M.V. Nayudu*,<sup>44</sup> where it was held that the State cannot infringe the right of the community and alienate their property to others. In *T. N. Godavaraman Thirumulpad v Union of India*,<sup>45</sup> the Supreme Court again reminded the governments to make coherent policies on inter-generational equity.

Recently in *M.C. Mehta v Union of India*, I.A. No. 1967 in I.A. No. 1785, Decided on 8 May, 2009, the Supreme Court has suspended all mining operations in the Aravalli Hill Range falling in the State of Haryana till Reclamation Plan. The said Plan has to take initiatives for the rehabilitation of the area.

## **6. Right to Education is Part of Right to Life and Personal Liberty**

In *Bandhua Mukti Morcha v Union of India*,<sup>46</sup> the Supreme Court held that right to life under Article 21 of the Indian Constitution includes right to education. The Hon'ble Supreme Court of India in *Mohini Jain v State of Karnataka*<sup>47</sup> discussed the scope of fundamental right to education in detail. The Supreme Court said that the cumulative effect of Articles 21, 38, Articles 39 (a) and (b), 41 and 45 bind the State to provide educational facilities to its citizens at all levels of the education system.<sup>48</sup> The Supreme Court said that right to education assures dignified life to the individuals<sup>49</sup>

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<sup>42</sup> AIR 1989 SC 594.

<sup>43</sup> AIR 2006 SC 1352.

<sup>44</sup> (1999) 1 SCR 235.

<sup>45</sup> (2008) 2 SCC 222.

<sup>46</sup> AIR 1984 SC 802.

<sup>47</sup> AIR 1992 SC 1858.

<sup>48</sup> *ibid.*, p. 1863.

<sup>49</sup> *ibid.*, p. 1864.



The Constitutional validity of right to education was again discussed by the Supreme Court in *J.P. Unnikrishnan v State of A.P.*<sup>50</sup> The Supreme Court in this case limited the impact of *Mohini Jain's* judgment. The court held that the content and parameters of the right to education have to be determined in the light of directive principles of state policy. The court held that Right to education under Articles 45 and 41 means every child up to the age of fourteen years has a right to free education. But after completing the age of 14 years, his right to education becomes subject to the economic capacity of the State.<sup>51</sup>

In consequence to these significant pronouncements, by 86<sup>th</sup> Constitutional Amendment Act of 2002, three new provisions i.e. Article 21A, new Article 45 and 51-A(k) were incorporated to the Indian Constitution. However, the matter again left with the government to determine the law on fundamental right to education in India. Furthermore, the amendment did not implement Supreme Court's judgment fully and the right to education under Article 21A was given to those citizens who are in the age group of 6 to 14 years. It means that the children below the age of 6 years cannot enforce their fundamental right to education.

Currently, Right of Children to Free and Compulsory Education Act, 2009 enforces fundamental right to education to children in the age group of 6 to 14 years in India. The Act provides that every child who is of the age of six to fourteen years will be entitled to get free and compulsory elementary education.

### **7. Right to Privacy is Part of Right to Life and Personal Liberty**

It is settled that right to privacy is a fundamental right under Article 21 of the Indian Constitution and can be enforced against the government. In *Govind v State of M.P.*,<sup>52</sup> the Supreme Court laid down that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that acclaimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test.<sup>53</sup> Similarly, the Hon'ble Supreme Court of India again ruled in *Malak Singh v State of Punjab*<sup>54</sup>, that police should not violate privacy of a citizen while exercising surveillance over him.<sup>55</sup>

It was the Indian judiciary which considered phone tapping as a serious violation of one's right to privacy. Such argument is based on the principle that the 'State' cannot impose

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<sup>50</sup> AIR 1993 SC 2178.

<sup>51</sup> *ibid.*, p. 2232.

<sup>52</sup> 1975 SCR (3) 946.

<sup>53</sup> *ibid.*, p. 953.

<sup>54</sup> AIR 1981 SC 760.

<sup>55</sup> *ibid.*, p. 323.



unreasonable restrictions on one's right to life or personal liberty. In *People's Union for Civil Liberties v Union of India*,<sup>56</sup> the Supreme Court held that wiretapping is a violation of an individual's privacy. The court said that telephonic conversation is a man's intimate and private affair. Telephone tapping under S. 5(2) of Telegraph Act, 1885 would violate an individual's right to privacy if it has been conducted without adopting any reasonable procedure established by law.

Recently in *Selvi v State of Karnataka*<sup>57</sup>, the Supreme Court held that compulsory administration of any of the techniques, like narcoanalysis, polygraph examination and brain Electrical Activation Profile (BEAP) test, is an unjustified intrusion into the mental privacy of an individual.<sup>58</sup> It was also recognized that forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences.<sup>59</sup> This is for the first time when the court recognized an individual's mental privacy in India.

Again, the Supreme Court in *Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v Home Secretary, Union of India and others*, decided on 23 February, 2012, noted that even if an assembly was illegal, the action of police under Section 144 of Code of Criminal Procedure (Cr PC) without giving any hearing to the sleeping individuals was not reasonable. Therefore, the court declared that right of privacy of sleeping individuals was immodestly and brutally outraged by the State police action.

### **8. Right to Die and Right to Life**

The debate on right to die vis-à-vis right to life got ignited when the Supreme Court in *P. Rathinam v Union of India*,<sup>60</sup> for the first time, declared Section 309 of the Indian Penal Code 1860 as unconstitutional. For the court, suicide or attempt to commit it causes no harm to others.

However, the larger bench of the Supreme Court in *Smt Gian Kaur v State of Punjab*,<sup>61</sup> overruled *P. Rathinam*'s case and established that the 'right to life' does not include 'right to die'. Verma, J. (as he then was) speaking for the Constitution Bench of the Supreme Court observed that the right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life.<sup>62</sup>

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<sup>56</sup> AIR 1997 SC 568.

<sup>57</sup> 2010(4) SCALE 690.

<sup>58</sup> *ibid.*, p. 783.

<sup>59</sup> *ibid.*, p. 778.

<sup>60</sup> AIR 1994 SC 1844.

<sup>61</sup> AIR 1996 SC 946.

<sup>62</sup> *ibid.*, p. 952.



In *Aruna Ramchandra Shanbaug v Union of India*, decided on 7 March, 2011, the Supreme Court has legalized passive euthanasia and clarified that it would remain in force until the enactment of a relevant law by Parliament in this regard. Considering some foreign judgments, the Supreme Court held that Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support devices of a patient who is in permanent vegetative state and is incompetent to give any consent.

## 9. Right to Marry

The Supreme Court in *Lata Singh v State of Uttar Pradesh*,<sup>63</sup> recognized the right to marry as a fundamental part of right to life under Article 21 of the Indian Constitution. The court said that a major person can marry any person of his own choice in the free and democratic world. Furthermore, the Supreme Court of India in the case of *Arumugam Servai v State of Tamil Nadu*,<sup>64</sup> said that the institutions who encourage honour killings or other atrocities on the boys and girls, belong to different castes or religions and wish to get married, are illegal. Increasingly, in *Bhagwan Dass v State (NCT of Delhi)*,<sup>65</sup> the Supreme Court held that the so called 'Honour Killings' fall within the ambit of 'rarest of rare cases', as these are barbaric and feudal practices. Therefore, the court held that the perpetrators of such killings deserve death punishment.

However, the Supreme Court of India has refused to give recognition to same-sex marriages. The Supreme Court of India in the case of *Suresh Kumar Koushal v NAZ Foundation and others*,<sup>66</sup> held that Section 377 IPC is not unconstitutional. However, the court said that the competent legislature is free to discuss on the deletion of Section 377.

## 12. Summary

The right to life under Article 21 of the Indian Constitution includes Right to education, Right to clean environment, Right to reputation, Right to food, Right to shelter, Right against exploitation, Right to dignified living, right to release and rehabilitation of bonded labourers, right to legal aid, and the right to know, Right to go abroad, Right to privacy, Right against solitary confinement, right to marry, etc. Indian judiciary has considered phone tapping as a serious violation of one's right to privacy. It amounts to unreasonable restrictions on one's right to life or personal

<sup>63</sup> AIR 2006 SC 2522.

<sup>64</sup> 2011 STPL(Web) 403 SC 1.

<sup>65</sup> (2011) 6 SCC 396.

<sup>66</sup> Civil Appeal No.10972 Of 2013,decided on December 11, 2013

<<http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070.>> accessed 21 December 2013





liberty. Recently, the Hon'ble Supreme Court of India has also recognised an individual's mental privacy as part of right to life and personal liberty in India. The Supreme Court of India has shown its deep concern over the issues of Honour Killings by recognizing one's fundamental right to marry.

