4.1 Overview:

The present chapter deals with rights given to a person for protection of his life and live with dignity, in Indian Constitution. Status of provisions related to right to life in constitution in starting stage and how personal liberty took place as right to life. Stretch out the right to liberty and importance of life is an indication of improvement and advance.

Some section of a country's civilization can be estimated by the overall state of freedom. All events, Fixture and flourishing of the core, prompt individual human freedom, that is winning in the territory. The cores of all events, safeguarding and flourishing of the individual human freedom. It is affixed, so cribbed, cabined or accepted autonomy plant ends up noticeably lifeless. The Indian Right to life and individual liberty proviso was appeared by the establishing fathers when drafting the tension and fears. Article 21 of the Constitution in the accompanying pages contemplate inspects and checks out the signs of the Magna Carta 'We the people of India."

To understand the wider prospective we can't stay in a well like a frog and think that is the reality and truth. Vasudhaiva kutumbakam (worldwide group) Being a part, we can't ignore advancements at the universal level and, specifically, the right to life and individual liberty under global law. We go inside worldwide wavelength with the goal that this examination can influence the segment to will expand our vision.
The investigation of these Provisions; we should read world constitutions in order to get guidelines and ends up confusions. The Constituent Assembly while drafting The Right to life and individual liberty; reference were taken from constitution of the USA, Japan and Ireland were included.

The fundamental rights were framed against the carnage of fundamental wrongs:

The responsibility of drafting the Fundamental Rights was on an Advisory committee to the Constituent Assembly, comprising of members like B.R. Ambedkar, Diwan Bahadur, Acharya J. B. Kripalani, Rajkumari Amrit Kaur, K.M. Panikkar, Dr. S. P. Mookerjee, and vs. B. Patel.

The committee began discussions while keeping in reference the constitution of Ireland and USA. The biggest issue was dividing the Rights in two groups – justifiable and non-justifiable which was later taken up by the Constituent Assembly itself. Justifiable rights are those which can be enforced in the court of law. It was understood that these rights applied not just to the prevalent scenario but were guidelines to a position where the country as a whole hopes to reach. Right to property, movement and profession throughout the country where the first few rights unanimously accepted by the Advisory Committee.

To stress on importance on each and every word of the constitution, the word ‘citizen’ was changed to ‘person’ with respect to equality of law. The reasoning was simple – a court of law must not differentiate between individual on the basis on their nationality or citizenship.

Reminiscing on the callousness of British Government, the gravity of Right to Freedom was stressed. To this Diwan Bahadur expounded that an independence of nation does directly connote independence of society from untoward activities, because of which even a concept as crucial as freedom must be limited to certain restriction, keeping in mind the welfare of society. But to ensure that this provision doesn’t meddle with the right to livelihood of an individual, the concept of ‘illegal detention’ was introduced.
The intent of the Advisory committee was to provide as much freedom to individuals as it was possible in the light of circumstance of the country. In doing so, they limited a few rights to a certain extent. For instance right of freedom of expression, given its wide ambit, was one of the most controversial rights. To ensure its applicability in positive direction, Dr. Ambedkar explicitly stated that any publication or utterance of slanderous, seditious, obscene or defamatory matter shall be against the law and the Right shall issue no defence.

The importance of these provisions can be seen by observing that some of these were actually against the law in force but the foundation of Fundamental Rights is so strong that the laws were changed to ensure Fundamental Rights of individuals is upheld.

After discussions in the Advisory Committee, these proposals were then deliberated in the Constituent assembly. The biggest test in front of the committee was defining the borders of Fundamental Rights between justifiable & non-justifiable.

With time these rights have evolved to become the heart of the Constitution. In the Kesavananda Bharati vs State of Kerala1 Supreme Court recognized this bundle of rights to be the Basic Structure of Indian Constitution. Further it was declared that Parliament via Art 368 was powerless to abrogate these rights in any form.

Fundamental Rights are indeed essential for the growth and development of individual and thus the nation. Following which the Constituent committee and Advisory committee outdid itself in forming a bundle of rights that one way or another reinforces every other right that the constitution confers. These rights have acted as a guarantor of justice, equity and civil freedom. From a broader perspective, fundamental rights are the cornerstone on which the civil society is established.

In India the principal right to life and individual liberty that is deserving of an intensive investigation of the British Raj to Swaraj has a long history. Investigation of pull of war between two contending premiums: American and English models, inspirations and life and individual liberty of the Constituent Assembly guidelines area will give an

1. Kesavananda Bharati Sripadagalvaru and Ors. vs. State of Kerala and Anr. (1973) 4 SCC 225
unmistakable picture. It is on this premise we can construct a fruitful model for tomorrow on the grounds that the chronicled foundation, it can be called attention to, is critical.

**A constitutional arrangement can work in segregation and can be perused as an independent code.**

As a piece of the fundamental structure of the separate rights, mandate standards, rights implementation, suspension of requirement of rights, including the right to alter and different arrangements of the Constitution, it is important to discover and interrelate.

Governing bodies in India right to life and individual liberty is a critical commitment to the field, yet ordinarily they have tightened their advancement Group. Flow in legal approach, and in addition activism more on a few events, were there.

The law cannot be examined in separation, says Professor Dennis Lloyd. We test a multidisciplinary approach in the cutting edge times; an effective report in any branch of law is conceivable. Inspect the constitutional issue, while the present work explores the issues of other sociologies.

The present examination, judges, law and different subjects of articles and books composed by scholastics brings out different shades of assessment. Article 21 of the Indian life and individual liberty and the directions segment will feature the desires of specialists.

Besides, an investigation of its basic assessment and proposals and recommendations is finished without Life and Freedom is reinforced, and once prosperous India can exceed expectations in the worldwide group. In that capacity, the present and it isn't conceivable to cover its aggregate generation. A humble endeavour to contact the chose regions are utilized as a part of this work.

**4.2 Right to Life:**

Right means a claim, a privilege and right to life connotes a claim to one's life. The right to life is assumed by each other right of a human self and that is the thing that makes it a
basic of every single Fundamental Right. Different rights stated in Part-III of the Constitution, despite the fact that basic, without right to life implies numerous things in nothing. The case to one's life is inalienable in each man by uprightness of law of Nature.

To keep up the physical respectability each individual has certain essential necessities like a machine, which needs fuel for its working. A person, to keep his physical presence, has necessity of sustenance, attire, protect and so on. This implies right to life, which is principal Fundamental Right, surmises numerous different rights.²

The development of the idea of right to life by the Supreme Court of India turns out to be obviously evident when we investigate its a portion of the choices. In Kharak Singh case the Supreme Court depending on the perception of Stephen J. Field in Munn vs. Illinois³ held out of the blue that by the expression "life' as utilized as a part of Article 21 of the Constitution, something more is implied than unimportant creature presence.⁴ The restraint against its hardship reaches out to each one of those appendages and resources by which life is appreciated. The arrangement similarly denies the mutilation of the body by the removal of an arm or leg or the putting out of an eye or the decimation of some other organ of the body through which the spirit interact with the external world.

The Supreme Court did not stay content with the above development of the idea of right to life. In Francis Coralie⁵ case the court did not consent to keep the right to life restricted just to insurance of appendage or workforce however went further and held that the right to life incorporates the right to live with human pride and all that accompanies it, in particular, the essential necessities of life, for example, satisfactory nourishment, attire and haven, and offices for perusing, composing and communicating in assorted structures, unreservedly moving about and blending and coexisting with kindred human creatures.

The above perception says a lot about legal activism and substantiates the prior dispute that the right to life pre-assumes numerous different rights. It is a direct result of this that

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3. Munn vs. Illinois 94 U.S. 113 (1876)
5. Francis Coralie Mullin vs. The Administrator, Union AIR 746, 1981 SCR (2) 516
right to life has been portrayed as most "crucial of every single Fundamental Right. Right to life, along these lines, no more means just the holiness of life. It incorporates right to live nicely as an individual from acculturated society and have every one of the freedoms and points of interest that would go to make life agreeable and living guaranteed in a sensible standard of solace and respectability. Right to life incorporates right to occupation, right to training, right to work, right to least wages, right against monetary misuse, right to ecological insurance, right to least loveable solid condition free from risk of sickness and contamination and numerous different rights.\(^\text{6}\) The Supreme Court of India by deciphering right to life in the light of the Preamble of the Constitution and different arrangements of Directive Principles of State Policy is finding an ever increasing number of segments of the right to life as will be obvious from the exchanges in the significant sections of this work.\(^\text{7}\)

Life and individual liberty are between related ideas. They are so intently between related that they can’t, by any extend of creative energy, be totally separated from each other. Where there is life there must likewise be close to home liberty. On the off chance that a man is denied of individual liberty, consequently his right to life ends up plainly well for nothing. Life dispossessed of individual liberty would be without respect and nobility and it would lose all noteworthiness and importance. That is the reason life and individual liberty have been assembled as basic parts of Article 21 of the Constitution of India.

The beginning of the idea of Fundamental Rights, which are otherwise called Natural Rights or Human Rights or Basic Rights or Inalienable Rights, depends on the hypothesis of Natural Law. The possibility that people have certain rights, which can't be taken away, started with the hypothesis of Natural Law. This hypothesis states that normal request exists in the universe since everything is made by Nature or God. Everything has its own particular qualities and is liable to the guidelines of Nature to accomplish its maximum capacity. As per this hypothesis, anything that diminishes man's human qualities, or prevents their full accomplishment, damages the law of Nature. This thought prompted the conviction that men and governments wherever are bound by Natural Law,

it being higher than man's law.\textsuperscript{8} The Roman Philosopher Cicero held the view that this Natural Law could be found from human reason. This hypothesis of Natural Law made an attention to Natural Rights and different scholars and logicians began recognizing the Inherent and Sacred Rights of men in the Divine Law. Characteristic Rights along these lines prompted the detailing of Human Rights and the impact of Natural Rights can be found not just in the English Bill of Rights (1689), the French Declaration of Rights of Man (1789), the United States' Bill of Rights (1791), the Universal Declaration of Human Rights (1948), yet in addition in the Part III of the Constitution of India which manages Fundamental Rights.\textsuperscript{9}

The Part III of the Constitution of India, wherein has been fused an extensive rundown of Fundamental Rights, is portrayed as the Magna Carta of India. The incorporation of a section on Fundamental Rights in the Constitution of India is as per the pattern of present day law based idea. The point of having a presentation of Fundamental Rights is to pull back certain basic rights from the changes of political contention, to put them past the range of moving dominant part in governing body of the Country and to view them as sacred under all conditions. Certain rudimentary rights, for example, right to life, liberty, freedom of discourse, freedom of confidence et cetera, ought not to be submitted to vote, they being not relied upon result of any decision.

The Fundamental Rights speak to the essential esteems treasured by the people of India and they are ascertained to ensure the nobility of the individual and make conditions in which each human being can build up his identity without limitations extent. The Fundamental Rights force an antagonistic commitment on the State not to infringe on singular liberty in its different measurements. The presentation of Fundamental Rights in the Constitution accordingly effectively reminds the Government in energy to regard those rights and constraining the scope of movement of the State in suitable ways.\textsuperscript{10} The idea of Fundamental Rights has been given a more concrete and all-inclusive surface by the Charter of Human Rights instituted by the United Nations Organization.

\textsuperscript{8} Ibid, Pg. 146-47. Sir Alfred Denning, Freedom under the Law, 1949, Pg. 5.
\textsuperscript{9} Earnest Barker, Principles of Social and Political Theory, 1952, Pg. 146.
\textsuperscript{10} A.v.s. Keith, Constitutional Law, 1939, Pg. 434
Another reason behind the consideration of the part on Fundamental Rights in the Constitution is to set up "a legislature of law and not of man", that is, an administrative framework where the ruler can't abuse the ruled by infringing on resident's essential rights and freedoms. The joining of the Fundamental Rights in the Constitution vests them with sacredness which the rulers set out not abuse them so effortlessly. In a parliamentary arrangement of government the individuals who frame the administration are likewise pioneers of the dominant part party in the council and can get laws made effortlessly. In this way, the peril of infringement on national's liberty can't be precluded without remedy of impediment of expert of the state by presentation of Fundamental Rights in the constitution. Thus, the joining of Fundamental Right in the constitutions of present day majority rule nations has been a pattern.\textsuperscript{11}

The Fundamental Rights as consolidated in The Constitution of India can be characterized under six gatherings. They are stated bellow as:

- Right to correspondence (Articles 14 – 18),
- Right to freedom (Articles 19 – 22),
- Right against abuse (Articles 23 – 24),
- Right to freedom of religion (Articles 25 – 28),
- Cultural and instructive rights (Articles 29 – 30), and
- Right to constitutional cures (Articles 32 – 35).\textsuperscript{12}

The right guaranteed in Article 21 is available to ‘citizens' as well as ‘non-citizens’.

4.3 Changing Dimension of Right To Life:

“No person shall de deprived of his life or personal liberty except according to procedure established by law.”\textsuperscript{13}

The Term "Life" as specified in the Article has been given an expansive significance by the Supreme Court. Prior to Maneka Gandhi's decision, Article 21 guaranteed the right

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{11} Naz Foundation \textit{vs.} Government of NCT and others W.P. (C) 7455, 2001
\item \textsuperscript{13} \textit{The Constitution of India: Article 21.}
\end{itemize}
\end{footnotesize}
to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi's decision Article 21 now protects the right of life and personal liberty of citizen not only from the Executive action but from the Legislative action also. A person can be deprived of his life and personal liberty if the following two conditions are complied with:

First: There must be a law, and

Second: There must be a procedure prescribed by that law (provided that the procedure is just, fair and reasonable). \(^\text{14}\)

- **Status Prior To Maneka Gandhi's Case:**

The meaning of the words “personal liberty came up for consideration of the Supreme Court for the first time in A.K. Gopalan vs. The State of Madras\(^\text{15}\). In that case the petitioner, A. K. Gopalan, a communist leader was detained under the Preventive Detention Act, 1950. The petitioner challenged the validity of his detention under the Act on the ground that it was violative of his right to freedom of movement under Article 19 (1) (d) which is the very essence of personal liberty guaranteed by Article 21 of the Constitution. He argued that the words “personal liberty” includes the freedom of movement also and therefore the Preventive Detection Act, 1950 must also satisfy the requirement of Article 19 (5). In other words, the restrictions imposed by the detention law on the freedom of movement must be reasonable under Article 19 (5) of the Constitution. It was argued that Article 19 (1) and Article 21 should be read together because Article 19 (1) deal with substantive rights and Article 21 dealt with procedural rights. It was also said that reference in Article 21 to “procedure established by law” meant “due process of law” of the American Constitution which includes the principles of natural justice and since the impugned law does not satisfy the requirement of due process it is invalid. Rejecting both the contentions, the Supreme Court by the majority held that the ‘personal liberty’ in Article 21 means nothing more than the liberty of the

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\(^{14}\) Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

\(^{15}\) A.K. Gopalan vs. The State of Madras 1950 AIR 27, 1950 SCR 88
physical body, that is, freedom from arrest and detention without the authority of law. This was the definition of the phrase ‘personal liberty’ given by Prof. Dicey, according to whom personal liberty means freedom from physical restraint and coercion which is not authorised by law. The word ‘liberty’ is a very comprehensive word and if interpreted it is capable of including the rights mentioned in Article 19. But by qualifying the word ‘liberty’ the Court said, the import of the word ‘personal liberty’ is narrowed down to the meaning given in English law to the expression ‘liberty of the person’. The majority took the view that Articles 19 and 21 deal with different aspects of ‘liberty’. Article 21 is guarantee against deprivation (total loss) of personal liberty while Article 19 affords protection against unreasonable restrictions (which is only partial control) on the right of movement. Freedom guaranteed by Article 19 can be enjoyed by a citizen only when he is a freeman and not if his personal liberty is deprived under a valid law.

In Gopalan the Supreme Court interpreted the ‘law’ as “state made law" and rejected the plea that by the term ‘law’ in Article 21 meant not the slate made law but *jus naturale* or the principles of natural justice. Fazal Ali, J., however, in his dissenting judgment held that the Act was liable to be challenged as violating the provisions of Article 19. He gave a wide and comprehensive meaning to the words ‘personal liberty’ as consisting of freedom of movement and locomotion. Therefore, any law which deprives a person of his personal liberty must satisfy the requirements of Articles 19 and 21 both.

But this restrictive interpretation of the expression personal liberty’ in Gopalan’s case has not been followed by the Supreme Court in its later decisions. In Kharak Singh's case, it was held that ‘personal liberty’ was not only limited to bodily restraint or confinement to prisons only, but was used as a compendious term including within itself all the varieties of rights which go to make up the personal liberty of a man other than those dealt within Article 19(1). In other words, while Article 19 (1) deals with particular species or attributes of that freedom, 'personal liberty’ in Article 21 takes in and comprises the residue.

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In *Kharak Singh vs. Stare of UP*¹⁷, it was held that the expression ‘life’ was not limited to bodily restraint or confinement to prison only but something more than mere animal existence. In that case the petitioner, Kharak Singh, had been charged in a dacoity case but was released as there was no evidence against him. Under the U.P. Police Regulations, the Police opened a history-sheet for him and he was kept under police surveillance which included secret picketing of his house by the police, domiciliary visits at nights and verification of his movements and activities. ‘Domiciliary visits' mean visits by the police in the night to the private house for the purpose of making sure that the suspect is staying home or whether he has gone out. The Supreme Court held that the domiciliary visits of the policemen were an invasion on the petitioner's personal liberty. By the term ‘life’ as used here something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg. It is true that in Article 21 the word ‘liberty’ is qualified by a word ‘personal’ but this qualification is employed in order to avoid overlapping between those incidents of liberty which are mentioned in Article 19. An unauthorized intrusion into a person’s home and the disturbance caused to him is the violation of the personal liberty of the individual. Hence the Police Regulation authorizing domiciliary visits was plainly violative of Article 21 as there was no law on which it could be justified and it must be struck down as unconstitutional.

But in *Govind vs. State of M. P.*¹⁸, the Supreme Court held that M.P. Police Regulations 855 and 856 authorizing domiciliary visits were constitutional as they have the force of law. These Regulations were framed by the Government under Section 46 (2) (e) of the Police Act. The petitioner challenged the validity of those Regulations on the ground that they were violation of his fundamental right guaranteed in Article 21 which also includes the 'right of privacy'. The Supreme Court held that Regulations 855 and 856 have the force of law and, therefore, they were valid. As regards the ‘right of

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¹⁷. *IBID*
¹⁸. *Govind vs. State of Madhya Pradesh, 1975 AIR 1378 1975 SCR (3) 946 1975 SCC (2) 148*
privacy' the Court said that the right to privacy would necessarily have to go through a process of case by case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an examination from them which can be characterized as a fundamental right, the right is not absolute. Depending upon the character and antecedents of the person subject to surveillance and the object and limitations under which surveillance is made, it cannot be said that surveillance by domiciliary visits would always be unreasonable restriction upon the right of privacy. The impugned Regulation 855 empowers surveillance only of persons against whom reasonable material exists to include the opinion that they show 'a determination to lead a criminal life'. The petitioner was shown to be a dangerous criminal whose conduct showed that he was determined to lead a criminal life. The Regulations imposed reasonable restrictions on the fundamental right of petitioner guaranteed in Article 21 and therefore, they are valid.

4.4 Turning Point for Expansion of Right To Life:

In *Maneka Gandhi vs. Union of India*\(^{19}\), the Supreme Court gave a new dimension to Article 21 and held that the right to live the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in *Francis Coralie Mullin vs. Union Territory of Delhi*\(^{20}\), observed that:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare 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 mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

\(^{19}\). *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597  
\(^{20}\). *Francis Coralie Mullin vs. Union Territory of Delhi and others*, 1981 AIR 746 1981 SCR (2) 516
Another broad formulation of the theme of life to dignity is to be found in Bandhua Mukti Morcha vs. Union of India\textsuperscript{21}. Characterizing Article 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

“It is the fundamental right of everyone in this country… to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

- **New Dimension of “Right To Life” Via Maneka Gandhi’s Case:**

On the fourth of July, 1977, Smt. Maneka Gandhi got a letter from the Regional Passport Office, Delhi, requesting that her present her international ID (No. K-869668) inside seven days from the day on which she had gotten such letter, i.e. before eleventh July 1977. The letter stated that it had been the choice of the Government of India to seize her visa under Section 10(3) (c) of the Passport Act 1967. The reason for such an appropriating, as advised to her, was "open intrigue."

Smt. Maneka Gandhi quickly sent a letter to the Regional Passport Officer, asking about the grounds on which her international ID had been appropriated. She additionally asked for him to give a duplicate of the 'Statement of Reasons' for making of such a request. The answer sent by the Ministry of External Affairs was that it was the choice of the

\textsuperscript{21} Bandhua Mukti Morcha vs Union Of India & Others, 1984 AIR 802 1984 SCR (2) 67. 1984 SCC (3) 161 1983 SCALE (2)1151
Government of India to appropriate the international ID in light of a legitimate concern for the overall population. Additionally, there were requests to not issue her a duplicate of the Statement of Reasons. Smt. Maneka Gandhi in this way recorded an appeal to with respect to the issue.

Judgement of The Case:

It was held that Section 10(3) (c) of the Passport Act gives unclear and indistinct power on the international ID experts; it is abuse of Article 14 of the Constitution since it doesn't accommodate an open door for the oppressed party to be heard. It was additionally held disregard of Article 21 since it doesn't certify to "strategy" as specified in the statement, and the present methodology performed was the most noticeably awful conceivable one. The Court, be that as it may, abstained from passing any formal answer on the issue, and decided that the international ID would stay with the experts till they esteem fit.

Ratio Decidendi of The Case:

Proportion Decided is usually characterized as the explanations behind the judgment. It essentially alludes to the material piece of the judgment without which the judge would have been not able reach to the present finish of the case.

Before expressing the proportion of the case and the purposes behind the same, allows first take a gander at Section 10 (3) (c) of the Passports Act 1967 – "if the international ID expert regards it essential so to do in light of a legitimate concern for the sway and respectability of India, the security of India, neighborly relations of India with any remote country, or in light of a legitimate concern for the overall population;

Following is the proportion of the case, with an examination of the same……

Section 10 (3) (c) of the Passport Act is violation of Article 14 of the Indian Constitution:

Article 14 of the Constitution discusses equity under the watchful eye of law. This arrangement is totally against assertion or ambiguity of any kind to the extent the
activities of the official are concerned. Section 10 (3) (c) of the Passports Act gives boundless powers on the travel permit specialists. Since it is ambiguous in its wordings, the use of such an arrangement has not been plainly characterized in the Act. Accordingly, this leaves a ton of degree for the official to decipher it in whichever way they need, and subsequently escape with a ton of activities under the pretense of shifted understanding.

The arrangement likewise prompts intervention in the activities of the official. The assertion originates from the way that it is totally in the hands of the visa experts to choose whether or not, and how to continue in a specific case. The words 'esteems it important' give the visa specialists finish freedom to act in whichever way they need, and in whichever cases they need. Along these lines there is no consistency or sensibility in the activities of the identification specialists, and their activities could contrast from case to case.

_E.P Royappa vs. State of Tamil Nadu and Another_ [1974] 2 SCR 348, was the judgment connected by the Supreme Court to additionally legitimate their perspectives. It was held for this situation that Article 14 is one of the mainstays of the Indian Constitution and thus can't be bound by a thin and firm translation. Article 14 should consequently be given the most extensive elucidation conceivable, which additionally incorporates sensibility and discretion of specific arrangements of the enactments.

In light of these perceptions the Court held Section 10 (3) (c) of The Passport Act violative of Article 14 of the Constitution.

**Violation of the Principle of Natural Justice: The Audi Alteram Partem Rule:**

The audi alteram partem administer is one of the three standards of normal equity, and structures an essential part in characterizing the constitutionality and reasonableness of any technique. The exacting interpretation of audi alteram partem is "hear the opposite side". In a layman's dialect it essentially implies that both the sides ought to be given the chance to introduce their case before a choice is planned for the case. In the present case, Maneka Gandhi was denied purposes behind the seizing of her identification, which is
out of line since each individual has the right to know the grounds on which any official move is being made against him/her. Additionally, she was never allowed to display her own particular case before the specialists.

The guideline of audi alteram partem requires that before the last request for the seizing of her international ID was passed, Smt. Maneka Gandhi ought to have been allowed to approach the experts and to expose her piece of the story with the goal that the request for appropriating of the identification would have been simply. There is dependably the likelihood of landing at an uneven conclusion when just a single gathering has been heard and the other is denied that open door. In this way to keep the requests totally goal and free from inclination, it is completely basic that the two gatherings to a circumstance must be allowed to advance their side of the story.

In the present case, amid the Court procedures itself, the identification experts at last surrendered to the way that they had been off-base in not giving Smt. Maneka Gandhi an opportunity to introduce her case. In this way, they at last consented to withhold the request and allow her to exhibit her case before the concerned specialists. In any case, what is critical to note is that the experts had been held wrong in any case, and just to moderate the fault had they acknowledged to give her present her a chance to case. The last difference in events prevented them from being held obligated. Else, they were unquestionably in the wrong and even the Court had held that their activity had been discretionary and as opposed to the standards of regular equity.

Section 10 (3) (c) not Violate of Article 19(1) (A) and Article 19 (1) (g) of the Constitution:

Article 19 (1) (a) of the Constitution discusses the freedom of discourse and articulation ensured to all natives of the country. Article 19 (1) (g), then again, discusses freedom to do any exchange and calling. Smt. Maneka Gandhi had claimed that the request to appropriate her international ID likewise damages these two rights of hers. She claimed that the freedom of discourse and articulation additionally incorporates into its ambit the right to head out abroad to convey what needs be among the people of different countries. Along these lines as indicated by her, the freedom of discourse and articulation
additionally incorporated the right to travel to another country to blend with people, to do a trade of thoughts, to have the capacity to banter with the people of different countries, and subsequently to have the capacity to unreservedly talk and communicate outside India also. Presently since she had been denied the right to movement out of India because of the appropriating of her travel permit, she affirmed that her right to freedom of discourse and articulation had been disregarded. A similar way, she said that since she was a writer, it was a piece of her calling to movement to various parts of the world, to cover news issues. In this manner by denying her chance to movement abroad, the travel permit specialists had abused her right of exchange and calling.

It was held by the Court that despite the fact that the previously mentioned conflicts were right and that such a request would in certainty add up to infringement of Article 19 (1) (a) and 19 (1) (g), there was nothing to demonstrate that Ms. Gandhi was booked to movement on an official visit at the time the denounced arrange was passed and her international ID was seized. Nor was there anything to demonstrate that she had some sincere need to movement abroad towards acknowledgment of her right of articulation under article 19 (1), for e.g. Open talking, moving, writing, craftsmanship, etc. Thus this contention was rejected and the request was not held to be damage of Articles 19 (1) (a) and 19 (1) (g).

Be that as it may, the Court went on to illuminate that if anytime of time later on on she was denied her international ID from the administration when she required or needed to make a trip abroad to practice both of the two rights under 19 (1) (a) and 19 (1) (g) and the administration denied such rights it is thought to be an encroachment of these two principal rights.

The order is violation of Article 21 of the Indian Constitution.

In the case of Satwant Singh Sawhney vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Ors, the Supreme Court held by a dominant part judgment that the articulation 'individual liberty' in Article 21 takes morally justified of

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movement and travel abroad, and under Article 21 no individual can be denied of his right to travel to another country aside from as per the methodology built up by law. This choice was acknowledged by the Parliament and the ailment called attention to by it was set right by the institution of the Passports Act, 1967.

Remembering this right, Smt. Maneka Gandhi affirmed that her right to movement abroad had been damaged by the travel permit specialists. Likewise, the condition discussing 'strategy set up by law' was battled in that the methodology received for this situation was self-assertive and uncalled for. Maneka Gandhi challenged that the system in this specific case was abuse of the audi alteram partem rule; it was discretionary in that she was precluded the statement from securing purposes behind the appropriating of her international ID; and it was additionally disregard of her essential rights since she was being denied the right to movement abroad under Article 21, without being given legitimate explanations behind the same.

To the extent the procedural disparity was concerned, the lawyer for the administration acknowledged the way that the activities had been self-assertive and subsequently she was allowed to advance her disputes. Consequently that oddity was dealt with. To the extent the topic of her major rights was concerned, it was held that genuine her basic right had been damaged; however it was in light of a legitimate concern for the overall population. The Court has received a liberal translation of Article 21 for the situation, and extended its ambit significantly. Be that as it may, the Court has avoided out rightly remarking on this issue in this specific case.

☞ Obiter Dicta of The Case:

**Freedom of Speech and Expression {Article 19 (1) (a)} is not bound only to the national territories of India.....**

This was a historic point assessment of the Court and one that was profoundly celebrated by the whole country. The Court throughout this case opined that the right to freedom of
discourse and articulation, as ensured to every one of the natives of the country, was boundless in that it had given to the nationals countless independent of whether they were in India or abroad. The Court held that if the Constitution creators had planned this right to be bound by the domains of the country, at that point they would have explicitly said so as they have improved the situation different rights, for example, the right to settle down unreservedly, or the right to collect openly. In any case, since no such words had been included toward the finish of this arrangement, the Court felt that it was its obligation to give it the most extensive translation conceivable.

Additionally, supporting this view was the way that the Universal Declaration of Human Rights was embraced by the General Assembly of the United Nations on tenth December, 1948 and the vast majority of the crucial rights which we find incorporated into Part III were perceived and received by the United Nations as the basic rights of man in the Universal Declaration of Human Rights. This further upheld the perspective of the Court in that despite the fact that Indian Courts might not have ward outside the region of India, but rather these rights as ensured by the Indian Constitution would even now be kept up since they were presently braced by the Universal Declaration of Human Rights which was embraced by every one of the nations around the world.

Giving this sort of a supposition was a point of interest judgment and despite the fact that it might not have the estimation of a point of reference (since it is an obiter), Courts everywhere throughout the country have embraced this perspective of the Supreme Court, and utilized it in their judgements.

**Article 21 is not to be read in isolation; all violations and procedural requirement under Article 21 are to be tested for Article 14 and Article 19 also.**

The Supreme Court in the present case had received the most extensive conceivable understanding of the right to life and individual liberty, ensured under Article 21 of the Constitution. Bhagwati, J. watched:

24. Article 3 of Universal Declaration of human Rights 1948
"The articulation 'individual liberty' in Article 21 is of vastest sufficiency and it covers an assortment of rights which go to constitute the individual liberty of man and some of them have raised to the status of unmistakable central rights and given extra security under Article 19." 25

Additionally, as for the connection between Article 19 and Article 21, the Court held that Article 21 is controlled by Article 19, i.e., it must fulfil the necessity of Article 19. The Court watched: "The law should in this manner now be settled that Article 21 does not reject Article 19 and that regardless of whether there is a law recommending a method for denying a man of individual liberty, and there is subsequently no encroachment of the basic right presented by Article 21 such a law in so far as it condenses or takes away any crucial right under Article 19 would need to address the difficulties of that Article.” Along these lines a law "denying a man of 'individual liberty' has not exclusively to stand the test" of Article 21, yet it must stand the trial of Article 19 and Article 14 of the Constitution also.

**Summary:**

The case is viewed as a historic point case in that it gave another and profoundly fluctuated elucidation to the significance of 'life and individual liberty' under Article 21 of the Constitution. Additionally, it extended the skyliness of freedom of discourse and articulation such that the right is never again confined by the regional limits of the country. Truth be told, it stretches out to nearly the whole world. In this way the case saw a high level of legal activism, and introduced another time of growing skyliness of major rights as a rule, and Article 21 specifically.

4.5 Rights Included in Article 21:

The Term "life" as specified in the Article has been given an expansive significance by the Supreme Court. Article 21, which gives that; "No individual should be denied of his life or individual liberty aside from as indicated by method built up by law”, falls under

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the gathering of "right to freedom." But what is "life" or "individual liberty" isn't characterized by the Constitution any place.  

Right to Life does not only mean the duration of a person’s presence but also his personal satisfaction. On account of *Kharak Singh vs. State of Uttar Pradesh* the Supreme Court cited with endorsement by Justices Stephen J. Field perception in *Munn vs. Illinois* and held: By the expression "life" as here utilized something more is implied than unimportant creature presence.

The obstacle against its hardship reaches out to each one of those bonding and resources by which life is enjoyed. The arrangement similarly prevent the mutilation of the body by removal of a protective layer of skin, leg or the hauling out of an eye, or the pulverization of some other organ of the body through which the spirit interacts with the external world.

In *Sunil Batra vs. Delhi Administration* the Supreme Court repeated with the endorsement the above perceptions and held that the "right to life" incorporated the right to have a sound existence in order to appreciate all resources of the human body in their prime conditions. It would even incorporate the right to assurance of a person’s custom, culture, legacy and every one of that offers importance to a man's life. It incorporates the right to live in peace, to rest in peace and the right to rest and wellbeing.

For the convenience of further study, we are going to divide this article into two main categories:

- **Expanded Form of Right To Life:**

The Apex court has expanded the circumference of the Right to Life by its leading judgments. Some of those are here as:

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Right To Life With Human Dignity:

As of now examined Right to Life isn't just limited to physical presence but includes inside its ambit the right to live with human dignity. In the Supreme Court struck down Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as infringement of Article 14 and 21. The censured Section 3 furnished that a detenu could have meet with his lawful guide just a single time in a month and that too just after obtaining earlier authorization of the area judge, Delhi and to happen in the presence of traditions officer.  

In Peoples Union for Democratic Rights vs. Union of India, it was held that: non-instalment of least wages to the specialists utilized in different Asiad Projects in Delhi was a denial to them of their right to live with essential human nobility and unstable of Article 21 of the Constitution. Bhagwati J., representing the lion's share held that the rights and advantages presented on the labourers utilized by a contractual worker under different work laws are "plainly expected to guarantee the essential human nobility to workers and of the workers damage are denied of any of these rights and advantages, that would unmistakably by an infringement of Article 21."

Court held that the non-usage by the private contractual workers and non-authorization by the State Authorities of the arrangements of different work laws damaged the basic right of the labourers’ "to live with human respect."

In Chandra Raja Kumar vs. Police Commissioner Hyderabad, it has been held that the right to life incorporates right to life with human respect and fairness and, in this manner, holding of magnificence challenge is disgusting to pride or respectability of ladies and affronts Article 21 of the Constitution just if the same is horribly revolting, indecent, foul or expected for extorting. The administration is enabled to preclude the challenge as

31. Peoples Union for Democratic Rights vs. Union of India, 1982 AIR 1473, 1983 SCR (1) 456
32. Chandra Raja Kumar vs. Police Commissioner Hyderabad, 1998 (1) ALD 810, 1998 (1) ALD Cri 298, 1998 (1) ALT 329
offensive execution under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

In *State of Maharashtra vs. Chandrabhan* 33, The Court struck down an arrangement of Bombay Civil Service Rules, 1959, which given to instalment of just a nominal subsistence recompense of Re. 1 every month to a suspended Government Servant upon his conviction amid the pendency of his allure as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

In *D.F. Marion vs. Minnie Davis Smt. Kiran Bedi Committee of Inquiry* 34, The Supreme Court alluding to held that great notoriety was a component of individual security and was defensive by the Constitution, similarly with the right to the satisfaction in life, liberty and property. The court certified that the right to happiness regarding life, liberty and prosperity. The court certified that the right to pleasure in private notoriety was of antiquated birthplace and was necessary to human society. A similar American Decision has likewise been alluded to on account of where the court held that great notoriety was a component of individual security and was ensured by the constitution, similarly with the right to the happiness regarding life, liberty and prosperity.

**Right to Shelter:**

In *Chameli Singh vs. State of U.P.* 35, 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 ambit, the right to shelter to make the right to life more meaningful. The Court observed that:

“Shelter for a human being, therefore, is not a mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes

adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being.36"

*Right To Livelihood:*

To begin with, the Supreme Court took the view that the right to life in Article 21 would not include right to livelihood. In Re Sant Ram37, a case which arose before Maneka Gandhi case38, where the Supreme Court ruled that the right to livelihood would not fall within the expression “life” in Article 21. The court said curtly:

“The right to livelihood would be included in the freedoms enumerated in Art.19, or even in Art.16, in a limited sense. But the language of Art.21 cannot be pressed into aid of argument that the word ‘life’ in Art. 21 includes ‘livelihood’ also.”

But then the view underwent a change. With the defining of the word “life” in Article 21 in broad and expansive manner, the court in Board of Trustees of the *Port of Bombay vs. Dilip Kumar Raghavendra Nath Nandkarni*39, came to hold that “the right to life” guaranteed by Article 21 includes “the right to livelihood”. The Supreme Court in *Olga Tellis vs. Bombay Municipal Corporation*40, popularly known as the “Pavement Dwellers Case” a five judge bench of the Court now implied that ‘right to livelihood’ is borne out of the ‘right to life’, as no person can live without the means of living, that is, the means of Livelihood. That the court in this case observed that:

36. IBID
37. AIR 1960 SC 932
38. AIR 1978 SC 597
40. AIR 1986 SC 180
“The sweep of right to life conferred by Art. 21 is wide and far reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect if the right to life. An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood.”

If the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.\(^\text{41}\)

In the instant case, the court further opined:

“...The state may not by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge the deprivation as offending the right to life conferred in Article 21."

Emphasizing upon the close relationship of life and livelihood, the court Stated: “...That, which alone makes it impossible to live, leave aside what makes life livable, must be deemed to be an integral part of right to life. Deprive a person from his right to livelihood and you shall have deprived him of his life.\(^\text{42}\)"

Article 21 does not place an absolute embargo on the deprivation of life or personal liberty and for that matter on right to livelihood. What Article 21 insists is that such deprivation ought to be according to procedure established by law which must be fair, just and reasonable. Therefore anyone who is deprived of right to livelihood without a just and fair procedure established by law can challenge such deprivation as being against Art. 21 and get it declared void.\(^\text{43}\)

\(^{41}\) IBID
\(^{42}\) IBID
\(^{43}\) M.P. Jain, Indian Constitutional Law, Wadhwa, 5th Ed. (2003), p. 1315
Right To Health & Medical Aid:

In *State of Punjab vs. M.S. Chawla*\(^44\), it has been held that the right to life guaranteed under Article 21 includes within its ambit the right to health and medical care.

The *Supreme Court in Vincent vs. Union of India*\(^45\) emphasized that a healthy body is the very foundation of all human activities. Article 47, a directive Principle of State Policy in this regard lays stress note on improvement of public health and prohibition of drugs injurious to health as one of primary duties of the state.

In *Consumer Education and Research Centre vs. Union of India*\(^46\), The Supreme Court laid down that:

“Social justice which is device to ensure life to be meaningful and liveable with human dignity requires the State to provide to workmen facilities and opportunities to reach at least minimum standard of health, economic security and civilized living. The health and strength of worker, the court said, was an important facet of right to life. Denial thereof denudes the workmen the finer facets of life violating Art. 21.”

Obligation to Preserve Life, The Right to Life ensured under Article 21 incorporates inside its ambit the Right to Wellbeing and Therapeutic care, to secure the wellbeing and force of a specialist while in administration or post-retirement.

In *Parmananda Katara vs. Union of India*\(^47\), it was held that it is the expert commitment of all specialists (government or private) to degree restorative guide to the harmed quickly to protect life without legitimate conventions to be agreed to the police. Article 21 throws the commitment on the state to save life. It is the commitment of the individuals who are responsible for the wellbeing of the group to safeguard life with the goal that the pure might be ensured and the liable might be rebuffed. No law or state activity can intercede to defer and release this fundamental commitment of the individuals from the restorative calling.

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\(^{44}\) (1996) 113 PLR 499
\(^{45}\) 1987 AIR 990 : 1987 SCR (2) 468

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Right To Education:

The Supreme Court in Bandhu Mukti Morcha vs. Union of India\(^48\) while translating the extent of the "right to life" under article 21 held that it included "instructive offices". In Mohini Jain\(^49\) the court alluded to Bandhu Mukti Morcha Case and held that "right to life" was the succinct articulation for each one of those rights which the courts must authorize in light of the fact that they are fundamental to the noble delight in life.\(^50\) The court additionally watched that the right to life under article 21 and the nobility of an individual couldn't be guaranteed unless it was joined by the right to instruction. The court in this manner announced:

“The right to education flows directly from right to life”.

The Supreme Court in Unni Krishnan vs. State of Andhra Pradesh\(^51\) held that the right to education was a fundamental right under Article 21 and that “it directly flows from the right to life.”

Right To Social Security & Protection of Family:

Right to life ensured under Article 21 incorporates inside its ambit "The Right to Social Security and Protection of Family."

K. Ramaswamy J., in Calcutta Electricity Supply Corporation (India) Ltd. vs. Subhash Chandra Bose\(^52\), held that right to social and economic justice is a fundamental right under Art. 21. The learned judge explained that:

“Right to Life and Dignity of a person and status without means, were cosmetic rights. Socio-economic rights were, therefore, basic aspirations for meaning right to life and that Right to Social Security and Protection of Family were integral part of right to life.”

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49. Miss Mohini Jain vs. State of Karnataka and Others 1992 AIR 1858
50. Francis Coralie Mullin vs. Administrator, Union Territory of Delhi (1081) 1 SCC 608
In *N.H.R.C. vs. State of Arunachal Pradesh*\(^53\), (Chakmas Case), the supreme court said that the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit anybody or group of persons to threaten other person or group of persons. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations.

*Murlidhar Dayandeo Kesekar vs. Vishwanath Pande Barde*\(^54\), it was held that right to economic empowerment of poor, disadvantaged and oppressed dalits was a fundamental right to make their right of life and dignity of person meaningful.

### Right Against Sexual Harassment At Workplace:

Article 21 guarantees 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 facets of gender equality including prevention of sexual harassment or abuse.”

Sexual Harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the Right to Life contained in Article 21.

In *Vishakha vs. State of Rajasthan*\(^55\), the Supreme Court has declared sexual harassment of a working woman at her work as amounting to violation of rights of gender equality and rights to life and liberty which is clear violation of Articles 14, 15 and 21 of the Constitution. In the landmark judgment, Supreme Court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the following guidelines:

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55. AIR 1997 SC 3011 : (1997) 6 SCC 241
1. All employers or persons in charge of work place 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:

   a). Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
   b). The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
   c). 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.
   d). Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. Where such conduct amounts to specific offences under I.P.C, or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with appropriate authority.

3. The victims of Sexual harassment should have the option to seek transfer of perpetrator or their own transfer.

Sentence of death – Rarest of rare cases:

The issue of abolition or retention of capital punishment was dealt with by the law commission of India. After collecting as much available material as possible and assessing the views expressed by western scholars, the commission recommended the retention of the capital punishment in the present state of the country. The commission held the opinion that having regard to the conditions of India, to the variety of the social
upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country, India could not risk the experiment of abolition of capital punishment.

In *Jagmohan vs. State of U.P*\(^5^6\), the Supreme Court had held that death penalty was not violation of articles 14, 19 and 21. It was said that the judge was to make the choice between death penalty and imprisonment for life on the basis of circumstances, facts and nature of crime brought on record during trial. Therefore, the choice of awarding death sentence was done in accordance with the procedure established by law as required under article 21.

But, in *Rajinder Parsad vs. State of U.P*\(^5^7\), Krishna Iyer J., speaking for the majority, held that capital punishment would not be justified unless it was shown that the criminal was dangerous to the society. The learned judge plead for the abolition of death penalty and said that it should retained only for “white collar crimes”.

However, in *Bachan Singh vs. State of Punjab*\(^5^8\), the leading case of on the question, a constitution bench of the supreme court explained that article 21 recognized the right of the state to deprive a person of his life in accordance with just, fair and reasonable procedure established by a valid law. It was further held that death penalty for the offence of murder awarded under section 302 of I.P.C did not violate the basic feature of the constitution.

**Right to Clean Environment:**

The “Right to Life” under Article 21 means a life of dignity to live in a proper environment free from the dangers of diseases and infection. Maintenance of health, preservation of the sanitation and environment have been held to fall within the purview of Article 21 as it adversely affects the life of the citizens and it amounts to slow

\(^5^6\) AIR 1973 SC 947
\(^5^7\) AIR 1979 SC 916
\(^5^8\) AIR 1980 SC 898
poisoning and reducing the life of the citizens because of the hazards created if not checked.

Right To Know or The Right To Be Informed:

The Supreme Court held that Article 21 had achieved another measurement and in R.P. Ltd. vs. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.\(^\text{59}\), observed that if vote based system needed to work viably, people must have the right to know and to get the direct of undertakings of the State.

- Right To Personal Liberty:

Liberty of the person is one of the oldest concepts to be protected by national courts. As long as 1215, the English Magna Carta provided that:

> “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”\(^\text{60}\)

The smallest Article of eighteen words has the greatest significance for those who cherish the ideals of liberty. What can be more important than liberty? In India the concept of ‘liberty’ has received a far more expansive interpretation. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint; and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men. The meaning of the term ‘personal liberty’ was considered by the Supreme Court in the Kharak Singh’s case\(^\text{61}\), which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing. Oddly enough both the majority and minority on the bench relied on the meaning given to the

\(^{59}\) 1989 AIR 190 1988
\(^{60}\) Magna Carta – Clause 39
\(^{61}\) Kharak Singh vs. State of UP. AIR 1963 SC 1295
term “personal liberty” by an American judgment (per Field, J.,) in *Munn vs. Illinois*\(^{62}\), which held the term ‘life’ meant something more than mere animal existence. The prohibition against its deprivation extended to all those limits and faculties by which the life was enjoyed. This provision equally prohibited the mutilation of the body or the amputation of an arm or leg or the putting of an eye or the destruction of any other organ of the body through which the soul communicated with the outer world. The majority held that the U. P. Police Regulations authorizing domiciliary visits [at night by police officers as a form of surveillance, constituted a deprivation of liberty and thus] unconstitutional. The Court observed that the right to personal liberty in the Indian Constitution is the right of an individual to be free from restrictions or encroachments on his person, whether they are directly imposed or indirectly brought about by calculated measures.

The Supreme Court has held that even lawful imprisonment does not spell farewell to all fundamental rights. A prisoner retains all the rights enjoyed by a free citizen except only those ‘necessarily’ lost as an incident of imprisonment

**Right To Privacy:**

"Privacy" has been characterized as "the state of being free shape interruption or unsettling influence articulates private life and in issues."

In *R. Sukanya vs. R. Sridhar*\(^ {63}\) Court held production of wedding procedures, intended to be directed in camera, as attack of right of protection and all the more significantly the Court likewise held that:

"The Rightful case of a person to decide to which he wishes to impart himself to others and control over the time, place and conditions to speak with others."

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63.  AIR 2008 Mad 244 61
In *Malak Singh vs. State of Punjab* the inquiry identified with regarding when reconnaissance of a man would be encroachment of his "right to protection". For this situation, the name of the solicitor was incorporated into the observation enroll by the police under segment 23 of the Punjab Police Act, he not being given a chance of being heard. Since he was not heard and incorporating his name in the enroll, he contended, had encroached his right to security under Article 21. The Court held that:

"Composed wrongdoing can't be effectively battled without close watch of suspects. Yet, reconnaissance might be meddling and it might so truly infringe on the security of a national as to encroach his major right to individual liberty ensured by Article 21 of the Constitution and the freedom of development ensured by Article 19(1) (d). That can't be allowed."

In *R. Rajagopal vs. State of Tamil Nadu* the Supreme Court has affirmed as of late the right to security has procured constitutional Status; it is "verifiable morally justified to life and liberty ensured to the residents" by Article 21.

Right to Privacy and Telephone Tapping In *People's Union for Civil Liberties vs. Union of India* the Supreme Court disclosed that the right to hold a phone discussion in protection from one's home or office, without impedence, could surely be asserted as right to security, a piece of the right to life and individual liberty under Article 21. This right however may not be supreme.

Right to Privacy and Disclosure of Dreadful Disease In, Mr. 'X' Hospital 'Z', the inquiry under the watchful eye of the Supreme Court was whether the exposure by the specialist that his patient, who was to get hitched had tried HIV positive, would be unstable of the patient's right to security

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64. 1981 AIR 760 1981 SCR (2) 311 1981 SCC (1) 420
66. AIR 1995 SC 264, 1994(6) SCC 632
67. AIR 1997 SC 568
The Supreme Court decided that the right to security was not outright and may be legitimately limited for the prevention of wrongdoing, issue or assurance of wellbeing or ethics or insurance of rights and freedom of others. The court disclosed that the right to life of a woman with whom the patient was to wed would emphatically incorporate the right to be informed that a man, with whom she was proposed to be hitched, was the casualty of a lethal ailment, which was sexually transmittable. Since the right to life included right to solid life in order to appreciate every one of the offices of the human body in the prime condition it was held that the specialists had not abused the right to privacy. In another case, *Mr. 'X' vs. Healing facility ‘Z’*, the Court decided that there no infringement of the right to protection tests directed on prematurely ended embryo. Right to travel to another country for the situation of *Satwant Singh vs. Partner Passport Officer*[^68^], New Delhi, The Supreme Court has included Right to movement abroad contained in by the articulation "individual liberty" inside the importance of Article 21.

The same was likewise resounded on account of *Maneka Gandhi vs. Union of India*[^69^]; the court held that a method built up by law was required in denying a man of his own liberty which incorporated the right to movement abroad. The method said in this ought not to be discretionary, uncalled for or absurd.

**Right against Illegal Detention:**

In *Joginder Kumar vs. State of Uttar Pradesh*[^70^], the petitioner was detained by the police officers and his whereabouts were not told to his family members for a period of five days. Taking the serous note of the police high headedness and illegal detention of a free citizen, the Su’reme Court laid down the guidelines governing arrest of a person during investigation:

- An arrested person being held in custody is entitled, if he so requests to have a friend, relative or other person told as far as is practicable that he has been arrested and where he is being detained.

[^68^]: AIR 1967 SC 1170
[^69^]: Maneka Gandhi vs. Union of India, AIR 1978 SC 597.
[^70^]: AIR 1994 SC 1349
The police officer shall inform the arrested person when he is brought to the police station of this right.

An entry shall be required to be made in the diary as to who was informed of the arrest. In the case of *D.K. Basu vs. State of West Bengal*\(^{71}\), The Supreme Court laid down detailed guidelines to be followed by the central and state investigating agencies in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures and held that any form of torture or cruel inhuman or degrading treatment, whether it occurs during interrogation, investigation or otherwise, falls within the ambit of Article 21.

Right Against Custodial Violence:

The occurrences of fierce police conduct towards people kept on doubt of having carried out violations are a standard issue. There has been a considerable measure of open clamor every now and then against custodial passing. The Supreme Court has taken an extremely positive remain against the abominations, terrorizing, badgering and utilization of third-degree techniques to coerce admissions. The Court has characterized these as being against human respect. The rights under Article 21 secure life with human respect and the same are accessible against torment. In *Sheela Barve vs. State of Maharashtra*\(^{72}\), the Supreme Court censured viciousness submitted on ladies detainees bound in the police secure up in the city of Bombay. This was trailed by *D.K. Basu vs. State of West Bengal*\(^{73}\), the Supreme Court held that torment by police struck a blow at the Rule of Law, custodial savagery has been held figured ambush on human respect, maybe one of the most noticeably bad violations in a cultivated society represented by manage of law. The Court held that any such demonstrations would fall inside the hindrance of Article 21.

Demise by hanging not Violate of Article 21 In *Deena vs. Union of India*\(^{74}\), the constitutional legitimacy of capital punishment by hanging was tested as being

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71. AIR 1997. SC 610
72. AIR 1983 SC 378
73. AIR 1997. SC 610
74. 1983 AIR 1155 1984 SCR (1) 1 1983 SCC (4)
"primitive, inhuman, and corrupting" and along these lines unpredictable of Article 21. Alluding to the Report of the UK Royal Commission, 1949; the conclusion of the Director General of Health Services of India, the 35th Report of the Law Commission; and the assessment of the Prison Advisers and Forensic Medicine Experts, the Court held that passing by hanging was the best and minimum agonizing strategy for doing capital punishment, and in this way not unstable of Article 21.

**Right To Fair and Speedy Trial:**

Free and fair trial has been said to be the *sine qua non* of Article 21. The *Supreme Court in Zahira Habibullah Sheikh vs. State of Gujarat*\(^75\) said that right to free and fair trial not only to the accused but also to the victims, their family members and relatives, as also, the society at large.

As stated in *Moses Wilson vs. Kasturiba*\(^76\), a methodology can't be sensible, reasonable and simply unless it guarantees a rapid trial for assurance of the blame of the individual denied of his liberty. It was seen in *Maneka Gandhi vs. Union*\(^77\) of India that "No strategy which does not guarantee a sensibly fast trial can be viewed as sensible, reasonable and it would fall foul on Article 21."

In *Hussainara Khatoon vs. Home Secretary, State of Bihar*\(^78\), it was conveyed to the notice of the Supreme Court that a disturbing number of men, ladies and youngsters were kept in jails for quite a long time anticipating trial in official courtrooms. The Court took a genuine note of the circumstance and watched that it was conveying a disgrace on the legal framework which allowed detainment of men and ladies for such drawn out stretches of time without trials.\(^79\) In *Hussainara Khatoon vs. Home Secretary, State of Bihar*\(^80\) the Court held that confinement of under-trial detainees, in jail for period longer than what they would have been condemned if indicted, was illicit as being infringing

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75. (2004) 4 SCC 158
76. AIR 2008 SC 379 56
77. AIR 1978 SC 597
78. 1979 AIR 1819 1979 SCR (3)1276 1980 SCC (1)
79. Confederation of Ex-servicemen and others vs. Union of India SC 210, 1999
80. 1979 AIR 1819 1979 SCR (3)1276 1980 SCC (1)
upon Article of 21. The Court, thus, ordered the discharge from jail of every one of those under-trial detainees, who had been in jail for longer period than what they could have been condemned had they been indicted.

**Right To Bail:**

The Supreme Court has analyzed the main driver for long pre-trial imprisonment to bathe display day inadmissible and unreasonable principles for safeguard which demands only on money related security from the blamed and their sureties. A large number of the under trials being poor and poverty stricken can't give any budgetary security. Thus they need to mull in detainment facilities anticipating their trials.

Yet, imprisonment of people accused of non-boilable offences amid pendency of trial can't be addressed as unstable of Article 21 since the same is approved law.

On account of *Babu Singh vs. State of Uttar Pradesh* 81, the Court held that right to safeguard was incorporated into the individual liberty under Article 21 and its refusal would be hardship of that liberty which could be approved as per the method set up by law. Expectant safeguard is a statutory right and it doesn't emerge out of Article 21. Anticipatory safeguard can't be conceded as an issue of right as it can't be allowed as an issue of right as it can't be considered as a basic element of Article 21.

**Article 21 and Prisoners Right:**

The security of Article 21 is accessible even to convicts in jail. The convicts are not by insignificant reason of their conviction denied of all their major rights which they generally have. Following the conviction of a convict is put into a jail he might be denied of essential freedoms like the right to move uninhibitedly all through the domain of India. Be that as it may, convict is qualified for the valuable right ensured under Article 21 and he might not be denied of his life and individual liberty with the exception of by a method built up by law.

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81. 1978 AIR 527 1978 SCR (2) 777 1978 SCC (1) 579
In *Maneka Gandhi vs. Union of India*\(^82\) the Supreme Court gave another measurement to Article 21. The Court has translated Article 21 to have largest conceivable sufficiency. On being sentenced wrongdoing and denied of their liberty as per the system set up by law. Article 21, has set out another constitutional and jail law.

The rights and securities perceived to be given in the points to take after. Right to Free Legal Aid and Right to Appeal In *M.H. Haskot vs. State of Maharashtra*\(^83\) the Supreme Court said while holding free lawful guide as a necessary piece of reasonable strategy the Court clarified that "the two critical elements of the right of claim are; initially, administration of a duplicate of a judgment to the detainee so as to empower him to record an interest and also, arrangement of free legitimate support of the detainee who is poverty stricken or generally crippled from securing lawful help. This right to free legitimate guide is the obligation of the legislature and is a verifiable part of Article 21 in guaranteeing decency and sensibility; this can't be named as government philanthropy.\(^84\)

At the end of the day, a blamed individual at rent where the charge is of an offense culpable with detention is qualified for be offered legitimate guide, in the event that he is excessively poor, making it impossible to bear the cost of insight. Advice for the blamed must be given adequate time and office for getting ready his defence. Break of these protections of reasonable trial would negate the trial and conviction.

\(\text{☞ Right Against Handcuffing:}\)

Cuffing has been held to be prima facie inhuman and along these lines outlandish, over-forgiving and at first flush, self-assertive. It has been held to be baseless and unpredictable of Article 21. In *Prem Shankar vs. Delhi Administration*\(^85\), the Supreme Court struck down the Rules which gave that each under-trial who was blamed for a non-bailable offense culpable with over three years jail term would be routinely bound. The

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82. AIR 1978 SC 597
83. 1978 AIR 1548 1979 SCR (1) 192 1978 SCC (3) 544
85. 1980 AIR 1535 1980 SCR (3) 855 1980 SCC (3) 526
Court decided that binding ought to be depended on just when there was "undeniable peril of escape" of the charged under - trial, breaking out of police control.

**Right Against Solitary Confinement:**

In *Sunil Batra vs. Delhi Administration*[^86], the solicitor was condemned to death by the Delhi session court and his allure against the choice was pending under the steady gaze of the high court. He was kept in Tihar Jail amid the pendency of the interest. He griped that since the date of conviction by the session court, he was kept in isolation. It was battled that Section 30 of Prisoners Act does not approve jail experts to send him to isolation, which without anyone else was a substantive discipline under Sections 73 and 74of the Indian Penal Code, 1860 and could be forced by an official courtroom and it couldn't be left to the impulse and eccentricity of the jail specialists. The Supreme Court acknowledged the contention of the candidate and held that inconvenience of isolation on the solicitor was unpredictable of Article 21.

**Right against Delayed Execution:**

In *T.V. Vatheeswaram vs. State of Tamil Nadu*[^87], the Supreme Court held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke protection under Article 21 and the death sentence would be commuted to life imprisonment. The cause of the delay is immaterial, the accused himself may be the cause of the delay.

In *Sher Singh vs. State of Punjab*[^88], the Supreme Court said that prolonged wait for execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo that is through Article 21. But the Court held that this cannot be taken as the rule of law and applied to each case and each case should be decided upon its own faces.

Apart from these there were so many other rights such as: Right Against Rape, Right to Reputation, Right Against Honour Killing, Right to get Pollution Free Water and Air.

[^86]: 1980 AIR 1579 1980 SCR (2) 557 1980 SCC (3) 488
[^87]: AIR 1981 SC 643
[^88]: AIR 1983 SC 465
Right Against Noise Pollution, Right against Public Hanging, Right to Write a Book, Right against Bar Fetters and many more right are included after The Maneka Gandhi Judgment.

Now we are going to discuss whether or not "Right to Die" is also included in the range of Article 21.

4.6 Should 'Right to Die' or Euthanasia be a Part of 'Right to Life'?

Resolving the dispute between the rival claims of a society's (or care-giver's) right to impose a particular medical treatment on an individual and the right of the individual to refuse the treatment would ultimately depend upon the answer to the question - in what direction does the larger interests of the society lie?

Generally, the claims of the society prevail when public health concerns are involved, e.g., there can be compulsory vaccination to prevent out-break of an epidemic. However, the claims of the individual should prevail where the treatment in question affects the individual and his family members alone. In such cases, the individual has an undoubted right to refuse treatment.

This right springs from the duty of the society to respect, preserve, and not trample upon the freedom of the individual to have his own opinion and decisions in matters that essentially concern only himself. Individual liberty is the hallmark of any free society.

Article 21 of the Constitution of India enshrines an important fundamental right. It reads: 'Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.'

Though the Article appears to be negative in grammatical form, it has been in reality given a positive content by judicial interpretation. Under the canopy of Article 21 of the Constitution, many rights have found shelter, growth and nourishment. The rights to die with dignity and to refuse treatment have to be seen in this article of the Constitution of India. It is also well settled that any provision of law which comes in conflict with or

which is in derogation of the Fundamental Rights guaranteed under the Constitution of India will be invalid.

- **Constitutional Aspects of Euthanasia in India:**

The Indian Constitution says that the right to die is not a fundamental right under Article 21. Whether the right to die is included in Article 21 of the Constitution came for consideration for the first time before the *Bombay High Court in the State of Maharashtra vs. M.S. Dubal*\(^90\). The Court held that the “Right to life includes the right to die. Consequently, the Court struck down section 309 of IPC, which provides punishment for the attempt to commit suicide as unconstitutional. The judges felt that the desire to die is not unnatural, but merely abnormal and uncommon.

In this Case, the Court has attempted to make a distinction between suicide and euthanasia or mercy killing. According to the court the suicide by its very nature is an act of self killing or termination of one’s own life by one’s act without assistance from others. But euthanasia means the intervention of others human agency to end the life. Mercy killing therefore, cannot be considered in the same footing as on suicide. Mercy killing is nothing but a homicide, whatever is the circumstance in which it is committed.

In another case\(^91\) the Bombay High Court also observed that suicide by its very nature is an act of self killing or self destruction, an act of terminating one’s own act and without the aid and assistance of any other human agency. Euthanasia or mercy killing on the other hand means and implies the intervention of other human agency to end the life. Mercy killing is thus not suicide. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.

On the question as to whether an attempt to commit suicide should be punishable or not (validity of Section 309 of IPC) different judges of the Supreme Court of India have

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\(^90\) AIR 1977 SC 411  
\(^91\) Naresh Marotrao Sakhre vs. Union of India; 1995 Cri.LJ 95 (Bomb)
expressed divergent views. A bench of two judges of the Supreme Court in the case of *P. Rathinam vs. Union of India*, The Court held section 309 of IPC as violative of the individual's Fundamental Rights guaranteed under the Constitution of India. This view, however, was short-lived. In *Gian Kaur vs. State of Punjab*, a larger Bench of Supreme Court over-ruled the aforesaid earlier decision. The court, however, referred to the principles laid down by the House of Lords in *Airedale* case, where the House of Lords accepted that withdrawal of life supporting systems on the basis of informed medical opinion, would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a normal death, where there is no longer any duty to prolong life.

This judgment contains an observation in paragraph 24 that sheds light on the distinction between suicide on the one hand and the exercise of a right resulting in what the Supreme Court has termed as a 'dignified procedure of death,' on the other. This important observation of the Supreme Court reads as follows: '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. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the "right to die" with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life.' It is clear that the honorable judges only disallowed an intentional act curtailing life and they did not pronounce the act of stopping futile treatments as unlawful. Thus according to the Supreme Court, the 'right to life' (a Fundamental Right guaranteed under Article 21 of the Constitution of India) includes the 'right of a dying man to also die with dignity when his life is ebbing out.'

The above observation is the earliest obscure attempt to distinguish between the 'right' and the 'wrong' in cases of withholding and withdrawal of life support. The judgment

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92. P. Rathinum vs. Union of India 1994 (3) SCC 394.
93. *IBID*
94. Gian Kaur vs. State of Punjab 1996 (2) SCC 648
95. Airdale NHS Trust vs. Bland, 1993(1) All ER 821 (HL)
96. Gian Kaur vs. State of Punjab 1996 (2) SCC 648
cannot be used to interpret all acts of withdrawal and withholding of life support as 'suicide' and therefore illegal.

- **Aruna Ramchandra Shanbaug vs. Union of India:**

Coming specifically to the case of *Aruna Shanbaug vs. Union of India*, Euthanasia in its passive form has taken legal root in India. The Supreme Court recently on 7th March, 2011 broke new ground with a judgment in the Aruna Shangbaug’s case, sanctioning passive Euthanasia or withdrawal of life support systems on patients who are brain dead or in a permanent vegetative state (PVS). Aruna Shanbaug is a former nurse from Haldipur, Karnataka in India. In 1973, while working as a junior nurse at King Edward Memorial Hospital, Parel, Mumbai, she was sexually assaulted by a ward boy and has been in a vegetative state since the assault. On 24 January, 2011, after she had been in this state for 37 years, the Supreme Court of India responded to the plea for Euthanasia filed by Aruna’s friend journalist, Pinki Virani, by setting up a medical panel to examine her.

The Court turned down the mercy killing petition on 7th March, 2011. However, in its landmark judgment, it allowed passive Euthanasia in India. The Court clarified that active Euthanasia, involving injecting lethal injection to advance the death of such a patient, was a crime under law and would continue to remain so. The Hon’ble Court laid down certain guide lines which will continue to be law until Parliament makes a law on this subject. Those are as under:

1. A decision to discontinue life support should be taken either by the parents or the spouse or other close relatives. In the absence of any of them, such a decision can be taken by a person or a body of persons acting as a next friend. Also, the decision taken by the doctor attending the patient should be bonafide one and in the best interest of the patient.

2. The Supreme Court made it mandatory to take approval from the High Court concerned, even if the decision is taken by near relatives or doctors or next friend

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to withdraw life support, because in India the possibility of mischief being done by relatives or others for inheriting the property of patient cannot be ruled out.

3. The Court also prescribed the procedure to be adopted by the High Court when such an application is filed. The Court propounded that a Bench of at least two judges should decide this application, after taking opinion from a committee of three reputed doctors to be nominated by the Bench after careful examination of the patient by those doctors. The Court also directed that notice should be issued to the state and close relative, next friend, after hearing them; the High Court should decide this application.

The same judgement-law also asked for the scrapping of 309, the code which penalises those who survive suicide-attempts. In December 2014, government of India declared its intention to do so.

Although, the Supreme Court dismissed the petition of Euthanasia and did not allow Euthanasia in the present case because of the noble spirit, outstanding and unprecedented dedication of Hospital staff in taking care of Aruna, but it cleared the way for many suffering who want to die with dignity. With respect to social, legal, medical and constitutional perspectives, the Court said, that the question of law involved requires careful consideration by a constitution Bench of the Court for the benefit of humanity as a whole. In the current context, the contentious issue of Euthanasia once again came to the fore recently, when the Supreme Court on July 15, 2014 issued notices to all the states and Union Territories on legalizing passive Euthanasia. The Court also appointed former solicitor General Mr. T.R. And hyarujina as amicus curie to assist it on the issue. The Attorney General Mukul Rohatgi said that the Government doesn’t accept Euthanasia as a principle. The Court has no jurisdiction to decide the issue. It’s for the Legislature to take a call after a thorough debate and taking into account multifarious views.

However, on 25 February 2014, a three-judge bench of Supreme Court of India had termed the judgment in the Aruna Shanbaug case to be 'Inconsistent in itself' and has referred the issue of euthanasia to its Five-judge Constitution bench.98

• **Legal Aspects of Euthanasia in India:**

The legal position of India cannot and should not be studied in isolation. India has drawn its constitution from the constitutions of various countries and the courts have time and again referred to various foreign decisions.

In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to Section 92 of the IPC and thus be rendered illegal.

The law in India is also very clear on the aspect of assisted suicide. Right to suicide is not an available “right” in India – it is punishable under the India Penal Code, 1860. Provision of punishing suicide is contained in sections 305 (Abetment of suicide of child or insane person), 306 (Abetment of suicide) and 309 (Attempt to commit suicide) of the said Code. Section 309, IPC has been brought under the scanner with regard to its constitutionality. Right to life is an important right enshrined in Constitution of India. Article 21 guarantees the right to life in India. It is argued that the right to life under Article 21 includes the right to die. Therefore the mercy killing is the legal right of a person. After the decision of a five judge bench of the Supreme Court in *Gian Kaur vs. State of Punjab* 99 it is well settled that the “right to life” guaranteed by Article 21 of the Constitution does not include the “right to die”. The Court held that Article 21 is a provision guaranteeing “protection of life and personal liberty” and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33(m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical

99. 1996 (2) SCC 648 : AIR 1996 SC 946
practitioners. Exercising these powers, the Medical Council of India has amended the code of medical ethics for medical practitioners. There under the act of euthanasia has been classified as unethical except in cases where the life support system is used only to continue the cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of doctors, life support system may be removed.

However there are certain defenses available to the doctors under some of the existing sections of the IPC Sections 76, 81, and 88 are relevant in this connection\(^{100}\) there is ample scope in these sections to protect the actions of well meaning doctors. The applicability of these sections of the Indian Penal Code deserves to be explored in the context of charges arising from end of life cases.

Section 76: Act done by a person bound, or by mistake of fact believing himself bound by law:

'Nothing is an offence which is done by a person who is, or who by reason of mistake of fact and not by reason of mistake of law in good faith believes himself to be, bound by law to do it.'

Section 81: Act likely to cause harm, but done without criminal intent, and to prevent other harm:

'Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose preventing or avoiding other harm to person or property.'

On December 23, 2014, Government of India endorsed and re-validated the Passive Euthanasia judgement-law in a Press Release, after stating in the Rajya Sabha as follows:

"That The Hon'ble Supreme Court of India in its judgment dated 7.3.2011 [WP (Criminal) No. 115 of 2009], while dismissing the plea for mercy killing in a particular case, laid down comprehensive guidelines to process cases relating to passive euthanasia. Thereafter, the matter of mercy killing was examined in consultation with the Ministry of Law and Justice and it has been decided that since the Hon'ble Supreme Court has already laid

\(^{100}\) Indian Penal Code: Sections 309; 306; 76; 81; 88.
down the guidelines, these should be followed and treated as law in such cases. At present, there is no proposal to enact legislation on this subject and the judgment of the Hon'ble Supreme Court is binding on all.¹⁰¹

**Law Commission Report on Euthanasia:**

The Law Commission in its 42nd Report¹⁰² recommended the repeal of section 309 of India Penal Code. The Indian Penal Code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed. The Commission submitted its 156th Report¹⁰³ after the pronouncement of the judgment in *Gian Kaur vs. State of Punjab*¹⁰⁴, recommending retention of section 309.

Later the Law Commission in its 210th Report¹⁰⁵ submitted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment. The Supreme Court in *Gian Kaur* focused on constitutionality of section 309. It did not go into the wisdom of retaining or continuing the same in the statute. The Commission has resolved to recommend to the Government to initiate steps for repeal of the anachronistic law contained in section 309, IPC, which would relieve the distressed of his suffering.

This 196th Report¹⁰⁶ of the Law Commission on ‘Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)’ is one of the most important subjects ever undertaken by the Law Commission of India for a comprehensive study. This Report is relating to the law applicable to terminally ill patients (including patients in persistent vegetative state) who desire to die a natural death without going through modern Life Support Measures like artificial ventilation and artificial supply of food.

¹⁰⁴. 1996 (2) SCC 648 : AIR 1996 SC 946
The Commission has given the following recommendations:

1. Obviously, the first thing that is to be declared is that every ‘competent patient’, who is suffering from terminal illness has a right to refuse medical treatment (as defined i.e. including artificial nutrition and respiration) or the starting or continuation of such treatment which has already been started. If such informed decision is taken by the competent patient, it is binding on the doctor. At the same time, the doctor must be satisfied that the decision is made by a competent patient and that it is an informed decision. Such informed decision must be one taken by the competent patient independently, all by himself i.e. without undue pressure or influence from others.

2. It must also be made clear that the doctor, notwithstanding the withholding or withdrawal of treatment, is entitled to administer palliative care i.e. to relieve pain or suffering or discomfort or emotional and psychological suffering to the incompetent patient (who is conscious) and also to the competent patient who has refused medical treatment.

3. We propose to provide that the doctor shall not withhold or withdraw treatment unless he has obtained opinion of a body of three expert medical practitioners from a panel prepared by high ranking Authority. We also propose another important caution, namely, that the decision to withhold or withdraw must be based on guidelines issued by the Medical Council of India as to the circumstances under which medical treatment in regard to the particular illness or disease, could be withdrawn or withheld. In addition, it is proposed that, in the case of competent as well as incompetent patients, a Register must be maintained by doctors who propose withholding or withdrawing treatment. The decision as well as the decision-making process must be noted in the Register. The Register to be maintained by the doctor must contain the reasons as to why the doctor thinks the patient is competent or incompetent, as to why he thinks that the patient’s decision in an informed decision or not, as to the view of the experts the doctor has consulted in the case of incompetent patients and competent patients who have not taken an informed decision, what is in their best interests, the name,
sex, age etc. of the patient. He must keep the identity of the patient and other particulars confidential. Once the above Register is duly maintained, the doctor must inform the patient (if he is conscious), or his or her parents or relatives before withdrawing or withholding medical treatment. If the above procedures are followed, the medical practitioner can withhold or withdraw medical treatment to a terminally ill patient. Otherwise, he cannot withhold or withdraw the treatment.

4. A patient who takes a decision for withdrawal or withholding medical treatment has to be protected from prosecution for the offence of ‘attempt to commit suicide’ under sec. 309 of the Indian Penal Code, 1860. This provision is by way of abundant caution because it is our view that the very provisions are not attracted and the common law also says that a patient is entitled to allow nature to take its own course and if he does so, he commits no offence. Likewise, the doctors have to be protected if they are prosecuted for ‘abetment of suicide’ under sections 305, 306 of the Penal Code, 1860 or of culpable homicide not amounting to murder under sec. 299 read with sec. 304 of the Penal Code, 1860 when they take decisions to withhold or withdraw life support and in the best interests of incompetent patients and also in the case of competent patients who have not taken an informed decision. The hospital authorities should also get the protection. This provision is also by way of abundant caution and in fact the doctors are not guilty of any of these offences under the above sections read with sections 76 and 79 of the Indian Penal Code as of today. Their action clearly falls under the exceptions in the Indian Penal Code, 1860.

5. We are also of the view that the doctors must be protected if civil and criminal actions are instituted against them. We, therefore, propose that if the medical practitioner acts in accordance with the provisions of the Act while withholding or withdrawing medical treatment, his action shall be deemed to be ‘lawful’.

6. We have therefore thought it fit to provide an enabling provision under which the patients, parents, relatives, next friend or doctors or hospitals can move a Division Bench of the High Court for a declaration that the proposed action of continuing or withholding or withdrawing medical treatment be declared ‘lawful’ or
‘unlawful’. As time is essence, the High Court must decide such cases at the earliest and within thirty days. Once the High Court gives a declaration that the action of withholding or withdrawing medical treatment proposed by the doctors is ‘lawful’, it will be binding in subsequent civil or criminal proceedings between same parties in relation to the same patient. We made it clear that it is not necessary to move the High Court in every case. Where the action to withhold or withdraw treatment is taken without resort to Court, it will be deemed ‘lawful’ if the provisions of the Act have been followed and it will be a good defence in subsequent civil or criminal proceedings to rely on the provisions of the Act.

7. It is internationally recognized that the identity of the patient, doctors, hospitals, experts be kept confidential. Hence, we have proposed that in the Court proceedings, these persons or bodies will be described by letters drawn from the English alphabet and none, including the media, can disclose or publish their names. Disclosure of identity is not permitted even after the case is disposed of.

8. The Medical Council of India must prepare and publish Guidelines in respect of withholding or withdrawing medical treatment. The said Council may consult other expert bodies in critical care medicine and publish their guidelines in the Central Gazette or on the website of the Medical Council of India.

4.7 Summary and Outcome:

Euthanasia is a highly emotive and sensitive subject, causing disputes and misunderstandings. Despite its frequent exposure in public media and in academic literature, it does not reflect a clear set of concepts and definitions. Euthanasia debates often wind up inadequately formed and ineffectual, causing more frustration than solutions. One can expect that the controversy surrounding good death as an existential, emotionally sensitive and morally contentious discourse will continue to be a serious social and legal challenge.

For both proponents and opponents alike, it, therefore becomes a matter of principle to decriminalize Euthanasia on one hand and to halt its encroachment through restrictive legislation on the other hand.
No such law could be guaranteed to be free to the possibility, if not the likelihood, of abuse, chiefly centered on the lives of other sick persons who did not want their lives taken. An especially dangerous aspect is that such abuse may be easily made undetectable. Thus although mercy killing appears to be morally justifiable, its fool-proof practicability seems near to impossible.

In a recent development, The Supreme Court, referred a plea for voluntary passive euthanasia to the constitution bench in the case of Common Causes vs. Union of India\textsuperscript{107}, in which a person who is in terminal illness and in medical opinion there is no chance of revival and recovery.

The decision of a bench headed by Justice P Sathasivam came on a plea by an NGO Common Cause that a person, who is affected with a terminal disease, should be given relief from agony by withdrawing artificial medical support provided to him which is medically referred to as passive euthanasia. A five Judge Bench of Supreme Court in \textit{Gian Kaur vs. State of Punjab}\textsuperscript{108} held both euthanasia and assisted suicide not lawful in India and overruled the two Judge Bench decision in \textit{P. Rathinam vs. Union of India}\textsuperscript{109}. The Court held that the right to life under Article 21 of the Constitution does not include the right to die. But later in \textit{Aruna Ramchandra Shanbaug vs. Union of India}\textsuperscript{110} the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict 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 preserved the patient’s life.

This case\textsuperscript{111} is related to “Living Will”. A living will is a concept associated with passive euthanasia. It is a legal document which allows you to express your wishes to doctors in

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\textsuperscript{107} Common Cause (A Regd. Society) vs. Union of India on 25 February, 2014 https://indiankanoon.org/docfragment/126434345/?big=3\&formInput=euthanasia
\textsuperscript{108} 1996 (2) SCC 648 : AIR 1996 SC 946
\textsuperscript{109} P.Rathinum vs. Union of India 1994 (3) SCC 394.
\textsuperscript{110} Aruna Ramchandra Shanbaug vs. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011
\textsuperscript{111} Common Cause (A REGISTERED SOCIETY) vs. Union of India, (2014) 5 SCC 338
\end{flushleft}
case you become incapacitated. In a living will, you can outline whether or not you want your life to be artificially prolonged in the event of a devastating illness or injury.

The government expressed its opposition to the concept of living will. It told the Supreme Court that a living will could be misused and may not be viable as a part of public policy.

Arguing before a five-judge constitution bench of the apex court, Additional Solicitor General PS Narasimha said that that a draft bill based on the guidelines for passive euthanasia in the Aruna Shanbaug case and the recommendations of the Law Commission was under its consideration. However, he added that "if a person is not of sound mind, then he is a not a competent person to make a living will and in that case, it is a medical board which will have to look into the affairs and not the individual. Safeguards have to be there and nothing more could be done."

Narasimha further said that the Centre had already accepted the court's Aruna Shanbaug ruling where a specific category of relatives were allowed to move the high court to seek permission for passive euthanasia, reported The Times of India. Such a request would be vetted by a board of medical experts and thereafter the high court would grant or refuse permission for passive euthanasia.

At least one of the judges, Justice Chandrachud, seemed inclined to the government's stance as he said that a living will could be misused in the case of elderly people. He said that in the case of a rich elderly person, the chance of misuse is real.

On the other side of the debate, Petitioner's Counsel said: “That in India, where resources are so limited, living wills should be legally acceptable in order to avoid creating a hopeless situation for the middle-class.” Under Article 21 of Constitution, a person has the right to die peacefully without any suffering and therefore he has right to create a living will that when he can't recover from illness, his life should not be prolonged".

Petitioner's Counsel went as far as to justify even active euthanasia as he said that a person facing the only option of leading a life with suffering and pain, should have the right decide that he wanted to put an end to life without dignity. He said it is
contradictory that the court allows passive euthanasia but does not recognize execution of a living will.

A Newspaper’s Report has also quoted in the court as saying, "To die peacefully without suffering is a right under Article 21. But one cannot commit suicide. However, one has a right to say while dying let me not suffer." Chief Justice Dipak Misra further added that a living will would relieve the relatives of taking the painful decision of advising doctors to withdraw life support from the patient.

The present case has sought the enactment of a law along the lines of the Patient Autonomy and Self-determination Act of the USA, which allow the practice of a living will, according to Live Law. When it was first listed in 2014, the Supreme Court did not pronounce any order but referred the matter to a Constitutional bench. This was to resolve the inconsistencies between the Aruna Shanbaug\textsuperscript{112} case (which allowed passive euthanasia under certain safeguards), and the Gian Kaur\textsuperscript{113} case (which held that the right to life does not include the right to die).

Euthanasia and assisted suicide are acceptable in 10 nations across the world, including US, Canada, Germany, Switzerland and Belgium. When the patient decides to end life and is assisted by a doctor, it is assisted suicide. Euthanasia on the other hand is when the call is taken by the patient's family and friends.

- **The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill**

The government's bill was accessed by Television News Channel. The bill recognizes the concept of living will but does not make it binding on medical practitioners and says that I cannot be executed by any patient since it would be considered void.

However the bill does recognize the difference between a competent and an incompetent patient and states that if a person above 16 years of age understands the consequences of

\begin{itemize}
\item Aruna Ramchandra Shanbaug vs. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011
\item 1996 (2) SCC 648 : AIR 1996 SC 946
\end{itemize}
their decision and makes an informed call about the denial of medical treatment, then such a decision would be binding on the doctor. If the patient is above 16 years of age, then consent with regard to such a decision has to also be obtained from their parents or major spouse.

The root of the dilemma is that autonomy and individual rights have to be promoted so that an individual can make the choice about his or her own life and death, while the right to life has to be strongly protected. The answer to a lot many questions which are left unanswered resulting in ambiguity needs to be pondered over. A full fledged law on this sensitive issue is of dire need today, taking all sorts of caution and care keeping in mind the eternal philosophy, culture and natural and physical sensibility of our country where religion is the integral and inevitable source of life.

Due to development of Science and Technology the concepts of life and death has been changed. Advances in medical Science now allow both, living and dying to be prolonged, a fact which has raised awareness of issue relating to death and dying in the community at large, popular fiction and the Medical Professions. Modern medicine can compel people to endure life beyond what they perceive to be dignified bounds. Statistical evidence also supports the popular perception that some doctors do sometimes engage in excessive treatment to prolong the lives of the terminally ill. Whether the decision is to cease or continue medical treatment, doctors may need to be “tactfully resistant” in order to avoid sacrificing the interests of the patient “to the emotional distress of the relatives”. The dilemma for the Doctors lies in attempting to respect the wishes of patient and family while maintaining legal and ethical standards of care.114 Here at this juncture, the time is ripe for appropriate legislation to be enacted regarding Euthanasia, at the same time an Act should be passed, in which proper safeguard should be taken to save such patients who want to live in spite of their sufferings, and such patients do not die for the want of medical support. In case the relatives cannot afford the costly medicines, the state should take the responsibility of such patients to provide proper health care.

The state should own the responsibility to decide the appropriate case in which the permission can be granted, as, the high courts are already flooded with cases, and, it will take a long time to decide, whether Euthanasia should be granted, instead, a statutory body should be constituted of doctors and retired Judges, who after examining the relatives, close friends, case history of the patient, recommendation of the treating doctors, should decide such application. Also, proper procedure should be incorporated by law to check the misuse of euthanasia which is still going on in society due to high cost of treatment. If the relatives find it difficult to meet the cost of treatment they take home the patient against medical advice. For want of medical support the patient succumbs eventually.

The proponents of Euthanasia argues unbearable pain, right to commit suicide – a private affair and people should not be forced to stay alive and above all proper safeguards can minimize misuse of the right are sufficient reason for permitting Euthanasia. On the other hand, opponents of Euthanasia treat it as a euphemism for murder and maintain that Euthanasia is not about the right to die but about the right to kill. According to opponents advanced research is constantly being made in the treatment of pain, and with every progressive achievement, the case for Euthanasia is proportionally weakened. Many diseases which had no cure in the past are curable and controllable in medical field.

The proponents are of the view that without Euthanasia, the only way to control unbearable suffering today is through sedation to the point of unconsciousness or terminal sedation. Patients are given a combination of narcotics, and anaesthetics to induce coma. Death comes slowly from either the progressing disease or starvation if artificial nutrition is withheld.¹¹⁵

According to them these are not the cases of extinguishing life but only of accelerating the process of natural death, which has already commenced.

Of the two contradictory views, one view is that Euthanasia is contrary to human dignity, humaneness and compassion because the conduct of Euthanasia would violate human dignity.

dignity, on the other hand, the other view is that dying under horrible suffering would violate humaneness, and therefore, a request for Euthanasia and its fulfillment are an expression of respect for human dignity and for a dignified death.

In view of the discussion above I believe that voluntary euthanasia should also be allowed in India and that the legislature should step in and make a special law dealing with all the aspects of euthanasia. So we need a law to legalize euthanasia with adequate safeguards. The recommendations laid down in the Reports of Law Commission of India and guidelines given in the Aruna’s\textsuperscript{116} case are to be taken into consideration when any law on that point is to be framed to prevent the mal practices and misuse of euthanasia. Besides, if the suggestions laid down above are implemented then the chances of misuse of euthanasia would be greatly reduced.

\textsuperscript{116} Aruna Ramchandra Shanbaug \textit{vs.} Union of India, 2011(3) SCALE 298