

RIGHT TO LIFE AND OXYGEN DURING COVID-19- Abhijeet Nandi¹**Abstract**

We shall be able to establish a connection between Article 21 and the ongoing covid problems through this article. We will be looking at a brief analysis of the First as well as the second wave of Covid-19 pandemic which scourged India. In this essay, we will highlight the government's lack of action and indolent behaviour, which resulted in a violation of the right to life, as well as cite excerpts from relevant judgments issued by various courts across the country. Finally, we will discuss who is to blame for this scenario and how we can go ahead.

Introduction

Covid-19 first started to appear in the country mostly around the beginning of 2020 and since then the country witnessed waves of this disease. During the first wave, the government had to face slew of issues i.e., disruptions in the medical supply chain, migration of laborers over state boundaries, vaccination shortages for various age groups, loss of jobs, and lack of livelihood options for the lower and middle income classes. All of the aforementioned issues have led to questions about the very legitimacy and meaning of a very basic right, the right to life, which is enshrined in Article 21 of the constitution of India.

Basic essence of Article 21 is that everyone has the right to life, liberty, and personal security.' The right to live is without a doubt the most basic of all rights. All other rights enhance the quality of life in question and rely on the presence of life itself to function. Given that human rights can only be attached to living beings, one might anticipate the right to life to be primary in some way. If Article 21 had really been understood in its proper sense, then there would be no Fundamental Rights worth noting. This section will look at how the Supreme Court of India

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interprets and applies the right to life. “No individual shall be deprived of his life or personal liberty except according to procedure provided by law,”² says Article 21 of the Indian Constitution of 1950. Article 21 of the Constitution defines ‘life’ as more than just the act of breathing or existing. It does not imply a purely animal existence or a life of misery. It has a much broader definition that encompasses the right to live with others.

In the case of *Kharak Singh v. State of Uttar Pradesh*³, the Supreme Court held that when the term "life" is used in this context, it refers to more than only animal existence. The resistance to its deprivation spreads to all of the limbs and abilities that allow us to enjoy life. The provision also forbids the amputation of an armored leg or the removal of an eye, as well as the destruction of any other part of the body through which the soul connects with the outside world. The Supreme Court of India has said unequivocally in *Parmananda Katara v. Union of India*⁴ that “the preservation of life is of utmost significance”. The Supreme Court ruled that once a life has been lost, the status quo ante cannot be restored. It was decided that all doctors, whether government or private, had a professional obligation to provide urgent medical help in order to save patients lives. In the case of *Sunil Batra v. Delhi Administration*⁵ The Supreme Court held that the "right to life" includes the right to live a healthy life in which all of the human body's faculties were in peak physical condition. It would also include the right to protect a person's tradition, culture, and heritage, as well as anything else that gives significance to his existence. It involves the right to live in peace, among other things.

The first wave itself revealed that the government lacked a well-developed and functional health care system. It is possible that the government and health care system were overburdened during the first wave of Covid-19, and were given the benefit of doubt by the courts and citizens. However, the government’s lackadaisical and incompetent approach resulted in an even more deadly second wave of Covid. This aptly demonstrated that, despite having ample time after the first wave, the government failed to take preventive actions, consequently it led to thousands of deaths violating the right to life of individuals. In the landmark case of *Paschim Banga Khet mazdoor Samity v. State of West Bengal & Anr*, court held that “failure of state to

² The Constitution of India, 1949

(https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2021)

³ 1963 AIR 1295, 1964 SCR (1) 332 (<https://indiankanoon.org/doc/619152/>)

⁴ 1989 AIR 2039

⁵ AIR 1978 SC 1675

provide timely medical care is violative of Article 21". Similarly, as a result of this decision, the court ruled in the case of *Consumer Education and Research Center v. Union of India*⁶, *Union of India v. Mool chand Khairati Ram Trust*⁷; "*right to health, inclusive of medical care, is a part of Article 21*".

The most serious problem in the second wave was oxygen and hospital beds, there was stockpiling, black marketing, and stocking, and prices for oxygen cylinders and concentrators reached to exorbitant limits, making them out of reach for at least 90% of the population. Getting a hospital bed was also a pipe dream, as just a few people were able to receive one. Even admission to a hospital did not guarantee that the patient would be alright because the hospitals lacked the necessary facilities, most notably medical oxygen and concentrators. Private as well as state run hospitals across several states flagged shortage of medical oxygen while hundreds died due to the shortage, people pleaded for oxygen cylinders in order to save their loved ones' lives. And recent government elections conducted during a pandemic were the most irresponsible and careless decision, with covid protocols being flouted by mass gatherings and rallies, finally leading to an substantial increase in the number of covid-19 cases. Around 3.05 million people were infected with Covid-19 in the second wave, with around 4 lakh deaths⁸. Whilst all of this was going on, the Central and State governments chose to remain silent.

In a recent judgement, High Court of Delhi observed as following; "*State has not provided for the Covid-19 disease by creating infrastructure and deploying sufficient doctors and paramedics, and providing the required medication and other essential resources such as oxygen, equipment and accessories*". In this same judgement Hon'ble Justices Mr. Vipin Sanghi and Ms. Reekha Palli expressed as following; "*State has failed in protecting basic right to life under Article 21*".⁹ In this judgement the court made it absolutely clear that the government has failed to provide the essential infrastructure, manpower, and equipment to protect people's lives. As a result, the state has failed to defend the fundamental right to life guaranteed by Article 21.

Allahabad High Court in a order dated 05.05.2021, observed as following, "*Death of covid*

⁶ (1995) 3 SCC 42 @ Para 24.

⁷ (2018) 8 SCC 321 @ Para 65.

⁸ Covid-19 Data Repository by the Centre for Systems and Engineering (CSSE) at John Hopkins University.

⁹ High Court of Delhi, W.P.(C) 5066/2021 @ Para 6.

patients just for non supplying of oxygen to the hospitals is a criminal act and not less than a genocide” by those responsible for ensuring the continuous procurement and supply of medical oxygen”. Through this judgement, the court has attempted to say, It is a criminal offence to cause patients' deaths due to a lack of oxygen and the court has also stated unequivocally that in the current scenario, the government is responsible for the procurement and supply of oxygen, but it is clear that the government has failed to do its duty and thus committed a criminal act, possibly genocide.

Somebody will have to accept responsibility for the deaths caused by the lack of medical facilities during the covid waves sooner or later and it is apparent that governments have failed to fulfill their commitments and duties, and as a result, they are obliged to offer some form of compensation to the families of those who have died due to government's lack of action. In a number of decisions, the Supreme Court has ordered governments to compensate victims of government negligence, such as in the case of *Nilabati Behera v. State of Orissa*¹⁰, apex court directed the respondent-state to pay the petitioner Rs.1,50,000 in damages. Similarly in the cases of *Khatri v. State of Bihar*¹¹, court in its discretion awarded compensation to the victim, *Rudal Shah v. State of Bihar*¹², the Supreme Court awarded Rs. 3500/- to the petitioner who was kept in jail for 14 years despite acquittal order, *Railway board v. Chandrima Das*¹³, court awarded compensation to a rape victim under Article 21 of the constitution. In all these cases courts ordered government to compensate victims.

As explained above, the state was negligent since they had adequate time after the initial wave of covid to properly structure the medical facilities, but instead chose to prioritize organizing elections under the pretense of democracy, which resulted in violations of covid norms and hundreds' of deaths. The disregard of the government was clear to see, and the people of this country were forced to deal with prejudice. All we can do now is hope that the government will be more efficient in its efforts and will be able to prepare for the impending waves of covid.

¹⁰ 1993 AIR 1960

¹¹ 1981 SCC (1) 627

¹² 1983 AIR 1086

¹³ (2000) 2 SCC 465