

RIGHT TO DIE WITH DIGNITY IN INDIA

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Abstract

All human life is valuable. Every measure must be taken to safeguard a person's life. Whether a person should be given the choice to end his¹ own life is, not a question of simple rationale. In recent years the right to die² is becoming an important topic of public debate and slowly gaining importance. Right to die or Right to end life in own terms, is the choice of individuals over their decision making, to continue or to stop, medical treatment or life support system of a person³, who is terminally ill at the end of their life or because of some tragic accident in comatose or in persistent vegetative state. In India, we do not recognise active euthanasia as it should be. Supreme court of India recently recognised right to die with dignity or passive euthanasia as a fundamental right. In the present paper, the author tries to examine the present law relating to the right to die with dignity in India. The author analyses the Indian law on the contemporary judicial pronouncements relating to the right to die with dignity in India.

Introduction

Earth stand out very different from other planets of the solar system. Earth has water, air, sunlight and all other elements which makes her different from other planets. What makes earth most special is 'life'. Life is the most important gift of Mother Nature.

¹ Include both male, female and the LGBT community.

² Also includes terms like assisted suicide, euthanasia and so on.

³ Himself or as a person next to kin or as next friend.

It's a puzzle how life blossomed on earth. Mankind from ancient times, till now, combining different fields of human knowledge (like science, philosophy, theology) striving to solve the mystery surrounding life.

But life is a cycle and in order to continue the rotation, death is preordained. Death is part and parcel of life. We, humans, are in constant denial of this fundamental fact of life.

We seek to avoid death. With the recent development in science particularly in the medicinal field, we have accomplished in, increasing the human life beyond the traditional limits.

There was a time when a person dies in their own home surrounded by their family members. Now because of the vast advancement of medical technology, patients, who otherwise have died, can be succour almost indefinitely with the application of life support system and procedures.

Modern Medical Technology created new legal and ethical problems in determining when and how and to which extent it can be used to save or prolong a patient life and when a patient should be permitted to go free.⁴

Meaning of Euthanasia

The word euthanasia in its most basic translation simply means a “good death” or “dying well”.⁵ 'Euthanasia' is a compound of two Greek words - eu and Thanatos.⁶ Today, 'euthanasia' is generally understood to mean the bringing about of a good death - 'mercy killing,' where one person, ends the life of another person because there is no other way to provide relief to that person in pain. This understanding of euthanasia emphasizes two important features of acts of euthanasia. First, that euthanasia involves the deliberate taking of a person's life; and, second, that life is taken for the sake of the person whose life it is - typically because she or he is suffering from an incurable or terminal disease. This distinguishes euthanasia from most other forms of taking life.⁷

⁴ Margaret Otlowski, Voluntary Euthanasia, and the Common Law, page 1; google books; accessed on 12/01/2019.

⁵ Jennifer M. Scherer, Rita James Simon, Euthanasia and the Right to Die: A Comparative View; chapter 2 page 13. Google books; accessed on 12/01/2019.

⁶ Meaning, literally, 'a good death'; Robert N. Wennberg, Terminal Choices: Euthanasia, Suicide, and the Right to Die page 3; Peter Singer, A Companion to Ethics; google books; accessed on 12/01/2019.

⁷ <https://www.worldrtd.net/euthanasia-fact-sheet>

Classification of euthanasia⁸

Euthanasia may be classified into three types, according to whether a person gives informed consent: voluntary, non-voluntary and involuntary. Voluntary euthanasia is conducted with the consent of the patient. When the patient brings about his or her own death with the assistance of a physician, the term assisted suicide is often used instead. Assisted suicide is legal in Switzerland and the U.S. states of California, Oregon, Washington, Montana, and Vermont.

Non-voluntary euthanasia is conducted when the consent of the patient is unavailable. In the Indian context, we must understand passive and active euthanasia. Passive euthanasia means the withholding treatment necessary for the continuance of life. In Active euthanasia, the use of lethal substances or forces (such as administering a lethal injection), and is more controversial. Passive euthanasia is often described as letting someone die. In practical terms, this might mean ceasing or not starting medical treatment that keeps a person alive, such as attachment to a respirator or provision of food and water through a tube.⁹

Evolution of Right to die with dignity or passive euthanasia in India

Indian judiciary evolved after the denouement of British rule. From the beginning, the judiciary has been given major role under the Constitution of India to safeguard of basic rights. Which is obviously necessary for prevention of tyrant rule. With the passage of time, Indian judiciary became one of the strongest in the world. Courts in India with help of judicial review and judicial activism carved new legal regime in India as we know today.

The concept of the right to die or euthanasia came first before the supreme court of India in 1994 through the case *P. Rathinam v. Union of India*¹⁰. Section 309 of the Indian Penal Code was held unconstitutional and hence declared void. According to the court section, 309 is a cruel and

⁸ <https://en.wikipedia.org/wiki/Euthanasia>

⁹ Jennifer Fecio McDougall, Martha Gorman, *Euthanasia: A Reference Handbook*, page 2. Google books; accessed on 12/01/2019.

¹⁰ *P. Rathinam v. Union of India*, (1994) 3 SCC 394.

irrational provision. It results in punishing a person twice who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. An act of suicide cannot be said to be against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for. This decision is not correct as people because of different life pressure and struggles often took the decision to end their life. They found it, as an easy way to escape from the situation. Allowing suicide legal as the law of land is dangerous because people often found mirror others. Punish those who attempt suicide and fail is necessary because it gives the authorities the opportunity to take steps for the welfare of the person, who attempted such bad decision because of surrounding pressures. Removing it as illegal may result, not reporting of such cases.

Next case in this issue came in 1996, *Gian Kaur v. State of Punjab*¹¹. A dam was opened on the debate of Right to die mainly on passive euthanasia in *P. Rathinam* was closed in *Gian Kaur v. State of Punjab* case. The main reason is that apex court did not want to make suicide decriminalize in India as because it may also lead to economic injustice, which we will discuss in later part.

In *Gian Kaur* case, the Court was primarily concerned with the question of constitutional validity of Sections 306 and 309 of IPC. The debate on euthanasia was not relevant for deciding the question under consideration. The Court also found that word "life" in Article 21 also include a life with human dignity and it takes within its ambit the "right to die with dignity" being part of the "right to live with dignity". Further, the "right to live with human dignity" would mean the existence of such a right upto the end of natural life which would include the right to live a dignified life to the point of death including the dignified procedure of death. Only passive euthanasia would come within the ambit of Article 21 and not the one which would fall within the description of active euthanasia in which positive steps are taken either by the treating physician or some other person.

¹¹ *Gian Kaur v. State of Punjab*, (1996) AIR 946, 1996 SCC (2) 648.

The judgement overruled the previous decision and sec 306 and 309 of Indian penal code were held constitutionally valid. Court held that the right to life under article 21 of the constitution of India does not include 'right to die'. 'Right to life' and 'Right to die' are opposite to each other like death with life. Though death is a fundamental fact of life but is not the only true meaning of life. Right to life is a natural right embodied under article 21 but suicide is unnatural termination or ending of life and inconsistent with the concept of the right to life. Court also held right to die with dignity at end of life is not to be confused with the right to die an unnatural death curtailing the natural span of life.¹²

Hence, we can say Apex court did not want to go into details of euthanasia but was not against the passive way of euthanasia. Next important case in this issue is Aruna Ramachandra Shanbaug v. Union of India¹³, two-judge bench of J. Markandey Katju and J. Gyan Sudha Mishra laid down the first steps towards the law of passive euthanasia. It was held by the court that, to remove the life support system of a patient, such decision can be made by parents or the spouse or others close relatives or in absence of any of them such a decision can be taken even by a person or body of persons or even doctors attending the patient acting as next friend. However, such a decision should be taken bonafide in the best interest of the patient.

Before applying such decision requires approval from the high court concerned as there is always the risk of misuse in making such decisions.¹⁴ Under Article 226 of the Constitution of India, High Court concerned can issue order or direction for granting approval for withdrawal of life support system in appropriate cases.

¹² J.N.Pandey: Constitutional Law of India, Central Law Agency, Allahabad.49th edition.

¹³ Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

¹⁴ Here the doctrine of parens patriae was applied. Parens patriae is Latin for "parent of the nation" (lit., "parent of the fatherland"). In law, it refers to the public policy power of the state to intervene against an abusive or negligent parent, legal guardian, or informal caretaker, and to act as the parent of any child or individual who is in need of protection. For example, some children, incapacitated individuals, and disabled individuals lack parents who are able and willing to render adequate care, thus requiring state intervention.;https://en.wikipedia.org/wiki/Parens_patriae; accessed on 12/01/2019.

Finally, on 9th March 2018 A five-Judge of the Constitution Bench comprising Chief Justice Dipak Misra and Justices A K Sikri, A. M. Khanvilkar, D Y Chandrachud, and Ashok Bhushan observed that the right to die with dignity is a fundamental right and could not be separated from Right to Life under Article 21 of the Constitution. Common Cause, a registered society had been working, on the issue of the right to die with dignity. In 2005, Common Cause approached the Supreme Court under Article 32, praying for the declaration that the right to die with dignity is a fundamental right under Article 21. It also prayed the Court to issue directions to the Union Government to allow terminally ill patients to execute 'living wills' for appropriate action in the event that they are admitted to hospitals. As an alternative, Common Cause sought guidelines from the Court on this issue, and the appointment of an expert committee comprising lawyers, doctors, and social scientists to determine the aspect of executing living wills. Common Cause argued that terminally ill persons or those suffering from chronic diseases must not be subjected to cruel treatments. Denying them the right to die in a dignified manner extends their suffering.¹⁵

The Apex Court held That The two-Judge bench in Aruna Shanbaug has erred in holding that in Gian Kaur case it has been approved the decision in Airedale case and that euthanasia could be made lawful only by legislation. There is an eminent difference between active euthanasia and passive euthanasia¹⁶.

In active euthanasia, a specific overt act is done to end the patient's life whereas, in passive euthanasia, something is not done which is necessary for preserving a patient's life. It is due to this difference that most of the countries across the world have legalised passive euthanasia either by legislation or by judicial interpretation with certain conditions and safeguards.

Supreme Court of India also observed that Post Aruna Shanbaug case, the 241st report of the Law Commission of India on Passive Euthanasia has also recognized passive euthanasia, but no law

¹⁵ <http://scobserver.clpr.org.in/court-case/euthanasia-living-wills-and-the-right-to-die-with-dignity>; accessed on 04/02/2019.

¹⁶ Common Cause (A Registered Society) v. Union of India, Writ Petition (Civil) No. 215 of 2005; https://www.sci.gov.in/supremecourt/2005/9123/9123_2005_Judgement_09-Mar-2018.pdf; accessed on 04/02/2019.

has been enacted. All adults with the capacity to consent have the right of self-determination and autonomy. The right of self-determination can be utilized to take right to refuse treatment.¹⁷

And a near similar view was taken by Justice Cardozo in *Schloendorff v. Society of New York Hospital*¹⁸,

“Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs the operation without his patient’s consent commits an assault for which he is liable in damages.”

In the Indian context, one can say that the interpretation of the Constitution, especially fundamental rights, has to be dynamic and it is only such interpretative dynamism that breathes life into the written words.¹⁹ The word dignity played the principal role in the incorporation of passive euthanasia under article 21 of the constitution of India. *In K.S. Puttaswamy and another v. Union of India and others*²⁰, dignity was found to be a key component under article 21. Supreme Court of India held that human dignity is beyond definition. Dignity speaks, it has its sound, it is natural and human. It is a combination of thought and feeling, and it deserves respect even when the person is dead and described as a ‘body’.

Again in *M. Nagaraj*²¹, it has been held that the duty of the State, not only to protect human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. Every human being has dignity by virtue of his existence. The essence of dignity and erodes the fact of eventual choice which is pivotal to privacy.

¹⁷ Supra note 16.

¹⁸ *Schloendorff v. Society of New York Hospital* (1914) 105 NE 92; (1914) 211 NY 125; cited in *Common Cause (A Registered Society) v. Union of India, Writ Petition (Civil) No. 215 of 2005*.

¹⁹ Ibid note 17.

²⁰ *K.S. Puttaswamy and another v. Union of India and others*, (2017) 10 SCC 1.

²¹ *M. Nagaraj and others v. Union of India and others*, (2006) 8 SCC 212

In *K.S. Puttaswamy*²² case privacy was the main issue in consideration but, while speaking about life and dignity, it has been observed that Life is precious in itself and is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to make decisions, with the autonomy of the individual and not to dictate those decisions. Further, Life within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Dignity is the most sacred possession of a man. And the said possession neither lost by the process of dying or after the occurrence of death.

A dying man who is terminally ill or in a persistent vegetative state, the said category of cases may fall within the ambit of "right to die with dignity" as a part of the right to live with dignity. That choice is guaranteed to be part of Article 21, there is no necessity of any legislation for effectuating that fundamental right and more so his natural human right. Indeed, that right cannot be an absolute right but subject to regulatory measures to be prescribed by suitable legislation which, however, must be reasonable restrictions and in the interests of the general public. In the context of the issue under consideration, the court made it clear that, as part of the right to die with dignity in case of a dying man who is terminally ill or in a persistent vegetative state, only passive euthanasia would come within the ambit of Article 21 and not the one which would fall within the description of active euthanasia in which positive steps are taken either by the treating physician or some other person. That is because the right to die with dignity is an intrinsic facet of Article 21. The right to

²² Supra note 17; relevant portion cited from *K.S. Puttaswamy and another v. Union of India and others*, (2017) 10 SCC 1;

live with dignity also includes the smoothening of the process of dying in case of a terminally ill patient or a person in PVS with no hope of recovery.²³

Supreme Court in the above case also allowed living will. A living will be a written document by a person who is terminally ill because of incurable disease or in a vegetative state to make a statement, which will determine when an unfortunate person can be taken off from his life support system which may keep him alive against usual way of the process of perishing. Only in cases of passive euthanasia such advance medical directives are allowed subject to necessary safeguards against misuse.

In this part, the author wants to mention about some motivating stories beyond all hopes like Terry Wallis²⁴, who at the age 19 went into a coma in the crash in 1984, but almost after 24 years, he can back from living prison. Michael Schumacher²⁵ spent the next six months in a coma and his miraculous recovery from that state. There are many more cases where there was no hope of recovery but still somehow life succeeded²⁶.

Conclusion

We, Humans, are the dominant species on earth. The reason is that we all fight to survive beyond all hopes. We all fight till the end of your life. Pain and suffering are part of the experience of life and hence no one can escape them. We have to help each other whenever possible to save someone from agony. In India, we have limited resources. Complete euthanasia may lead to injustice because of inequality in prevailing economic condition. Youth with a terminal disease may take drastic decisions because of the financial burden on their families. Old parents may also take a similar path instead of becoming a burden on their children. The patient who is in incurable pain,

²³ Supra note 17.

²⁴ https://en.wikipedia.org/wiki/Terry_Wallis; <https://www.cbsnews.com/news/man-awakes-after-19-years-in-coma/>; accessed on 12/01/2019.

²⁵ https://en.wikipedia.org/wiki/Michael_Schumacher#2013_skiing_accident; accessed on 12/01/2019.

²⁶ <https://www.everydayhealth.com/healthy-living-pictures/waking-up-famous-coma-survivors.aspx#jan-grzebski-19-year-coma>; accessed on 04/02/2019.

day and night must be given the option to take the plea of passive euthanasia or right to die with dignity, but not because families and society cannot bear the cost of treatment of their fellow members.

To stop the phenomenon of the end of life is beyond the purview of life itself. The conversation on right to die does not mean choosing death over life. Court and Doctors have always valued life and will continue to do so. Ever individual seek to live a life of dignity for their entire life. Life of dignity continues to right to a dignified death. The debate and discussion on 'Right to Die' will continue and only intensify, as it is a debate between traditions /customs and individual choices.

