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Right to life with dignity also includes Right to die with dignity.

- Abhinav Rana (Author)¹
Madhuri Pilonia (Co-Author)²

Abstract

The concept of Right to die is based upon the fact that a human being has full control over his life. He should own the decision of his life, whether it is right to life or right to die. Article 21 of the Constitution states that no person shall be deprived of his life or personal liberty except the procedure which is established by law. The court in many leading cases has interpreted the right to life and personal liberty as the right to live with human dignity, right to shelter, right to privacy, right to food, right to education etc. So the question which comes is whether Right to Die comes within the ambit of Article 21? The medical panel should be formed to deal with such kind of cases as per the guidelines framed up by the Hon'ble Supreme Court of India in case of Aruna Ramchandra Shanbaug Vs Union of India.³ This research paper contains the landmark judgments of the Hon'ble Court on the question of law that whether the right to die with dignity comes within Article 21 or not. For a person whose life is totally on the bed, with ultimate pain and with no scope for improvement, it is better to desire for death. This mercy/voluntary killing is termed as euthanasia. Euthanasia is the intentional killing of a person either by way of passive euthanasia or active euthanasia. This paper will help to know about the difference between Active Euthanasia and Passive Euthanasia. So this paper will further help us to know the judicial and religious point of view on Right to die.

¹ 2nd Year Student, B.A. LL.B. University School of Law and Legal Studies, GGSIPU, Dwarka, Delhi-110078

² 1st Year Student, BBA LL.B. Symbiosis Law School, Noida.

³ [2011 (4) SCC 454]

Introduction :

“For those who are facing a terminal illness, who are in irremediable pain and suffering, and wish to exercise their right to die with dignity, a system should be available to them”

- Dr Jack Kevorkian⁴

Right to die with dignity is a notion which says a human being is entitled to decide whether he or she wants to end his or her life or not. The question is whether a person is entitled to end his life under Article 21? As the right to life includes right to live dignity, right to livelihood, right to shelter, right to privacy, right to education, right to food, right to pollution-free environment and many other rights interpreted by the Judiciary.

In *Naresh Marotrao v. Union of India*⁵, the court held that there is a difference between Euthanasia and suicide. Euthanasia is mercy killing of oneself because no hope of survival if left whereas suicide is an act of self-destruction or terminating one's own life without any assistance. It was said by the former Chief Justice of India that “Life and Death are inseparable.

Is Right to die a fundamental right? :

Under Article 21 right to life is a basic right of all human beings. Death is of two types - natural and unnatural. Ending a life either by one's own actions or someone else does any action is morally wrong as well as it is punishable by the law. But like everything has an exception this also has an exception. If a person is suffering from an illness which is painful and unbearable for a long period of time, it becomes normal for that person to desire death rather than to be in pain. This voluntary desire for death is termed as euthanasia or mercy killing. “Dayamaran” is another term for mercy killing. Under Article 21, the right to life does not include the right to die, right to live with dignity includes the availability of food, shelter and health and it does not include the right to die.

Constitutional Validity of right to die:

In India, unlike Britain, the constitution is the supreme law of the land. Article 21, states that no person shall be deprived of his life except the procedure established by law. The most famous question that arises is whether Right to Life includes Right to die? This question was first came in case of *Maruti Shripati Dubal vs State Of Maharashtra*⁶, in this case, the court held that Right to life includes right to die and struck down the Section 309 IPC, 1860. Section 309 talks about Attempt to commit suicide. It punishes anyone who attempts to commit suicide or takes any action or step towards its commission. The same judgment was upheld by a Division bench in case *P. Rathinam vs Union of India*⁷.

In the case of *Gian Kaur v. State of Punjab*⁸, a five-judge bench of Supreme Court overruled the judgement in *P. Rathinam vs UOI* and held that right to life does not include right to die. In this

⁴ American pathologist and euthanasia proponent

⁵ 1996 (1) BomCR 92, 1995 CriLJ 96, 1994 (2) MhLj 1850

⁶ 1987 (1) BomCR 499, (1986) 88 BOMLR 589

⁷ 1994 AIR 1844, 1994 SCC (3) 394

⁸ 1996 AIR 946, 1996 SCC (2) 648

case, Gian Kaur and her husband Harban Singh were convicted by the High Court under Section 306 IPC, 1860 which punishes anyone who abets any person to commit suicide. It was argued in the as in case of P. Rathinam court held right to die as a part of the right to life under Article 21 of the constitution of India so abetment to commit suicide is merely enforcement of a fundamental right. The court upheld the constitutional validity of Section 306 and 309 of IPC, 1860.

After, in case of Aruna Ramchandra Shanbaug vs Union Of India & Ors⁹ the Hon'ble court differentiated between active and passive euthanasia and permitted passive euthanasia only in exceptional cases. In the case of Common Cause (A Regd. Society) v. Union of India the court laid down the concept of living will. The terms active and passive euthanasia and living will are further discussed in this paper.

Active euthanasia v. passive euthanasia :

Euthanasia is defined as the intentional killing by an act of a person for the person's benefit.

Active euthanasia is the positive merciful act to end a person's life and release him or her from the sufferings and an existence which does not have any meaning. When the person is not able to move, speak, and is surviving on mashed food and is on the ventilator for a long term and there is no chance of betterment how can we say that he is living his life with dignity? At this stage death with dignity is the last resort for the person and the family members as well so that the person gets relieved from the unbearable pain. Active euthanasia differs from passive euthanasia as in case of active euthanasia something is done to end up the person's life such as giving him lethal injections, whereas in the case of passive euthanasia something is omitted which has to be done such as withhold from giving antibiotics or taking off the life support machines. The most accepted legal position all around the globe is that active euthanasia cannot be permitted without the prior legislation but passive euthanasia can be done in cases where it is deemed necessary to do so and all the safeguards measures are taken.

Case Laws:

• Gian Kaur Vs. State of Punjab

In this case Gian kaur and her husband were the appellants. They had committed the offence of suicide of daughter in law. The Trial Court convicted both of them under Section 306 of the Indian Penal Code. They were sentenced to rigorous imprisonment for six years and also liable for fine. However, Gian Kaur reduced her conviction to three years by special leave petition. The petitioners contended that there was no abetment to suicide by Kulwant Kaur (Gian Kuar's husband). Their argument was that Section 306 under IPC should be held constitutionally invalid referring to the case of P. Rathinam v. Union of India. In this case Section 309 under IPC was unconstitutional as it violates Article 21 of the Indian Constitution. In this case it was held that the right to die falls under Article 21. Any person who assists the enforcement of this is merely assisting Article 21 and it is a fundamental right hence cannot be penal.

⁹ [2011 (4) SCC 454]

The Respondents contended that Section 306 under IPC is different and independent provision as it talks about attempt to suicide.

The judges said that Right to die is not included in Right to life under Article 21. The court held that attempt to commit suicide and abetment to suicide does not violaten Article 14 or Artilce 21 under Indian Constitution. The Court overruled the previous judgement on the case of P. Rathinam v. Union of India. They said that Section 306 and Section 309 of IPC is constitutionally valid.

• **Aruna Ramchandra Shanbaug vs Union Of India¹⁰ :**

In the case of Aruna Ramchandra Shanbaug, Mrs Pinki Virani one of her friends filed a writ petition under Article 32 of the Constitution on behalf of Aruna Shanbaug. She contended that the hospital should stop feeding her and let her die peacefully and with dignity. Aruna was a staff nurse working at King Edward Memorial Hospital. On 27th November 1973, she was attacked by a sweeper who wrapped a chain in her neck and also tried to rape her but he found that she was menstruating so he sodomized her. Next day a cleaner found her lying in the pool of blood in a very immoral condition. Due to the chain, the oxygen flow stopped and oxygen could not reach the brain. After 36 years of the incident now Aruna was 60 years old and in a Persistent Vegetative Stage. She was not able to speak, was surviving on mashed food, not able to swallow anything also her excreta and urine were discharged from the bed itself. The Hon'ble court appointed a team of 3 doctors and asked them to submit a report of Aruna's mental and physical condition. Although the court denied euthanasia to Aruna but discussed passive euthanasia in detail and contended that in near future if the staff or management of KME hospital deemed it necessary they can approach High Court under the procedure established by the court. The Chief Justice of the High court in which such application is filed should with two more judges appoint a panel of three doctors who more specifically should be a neurologist, psychiatrist, and a physician. This panel should be created in each city by the High Court with reference to the State government or union territory and their fees should also be fixed by the respected High Court. In the end, the court also stated that the views of the family members or any near relative or friend and the doctor should be given weightage before the High Court pronounces its final verdict.

• **Common Cause (A Regd. Society) v. Union of India¹¹ :**

This is a landmark case held in the year 2005. A registered society known as common cause filed a writ petition under Article 32 of the Indian Constitution. The writ petition was to legalize passive euthanasia and to validate living wills.

The society wrote letters to the ministry of law and justice and prayed that the matter is heard by the court. However, there was no response from the government to the petitioner. After that a Public Interest Litigation (PIL) was filed. In this case, a comparison was made between the rights of the State and the rights of an individual. The State interest focuses on sanctity as well as the quality of life of individuals.

¹⁰ [2011 (4) SCC 454]

¹¹ (1978) 1 SCC 248

Laws of many countries were referred to like the United Kingdom, Australia, Denmark, Canada etc. the liberty of any patient has stressed upon the right to die with dignity without any suffering or pain. As this prolongs because of the artificial continuance of life. This is done through methods which do not really assist or cure or improve the living conditions of the patients.

Another aspect was also seen in this case, beneficiaries who want that patient's heart should stop and they inherit all the property would want him or her to die. It was asserted that every person is entitled to make decisions about his or her life. Several meetings were held with Ministry of Health and Family welfare for the creation of legislation on passive euthanasia. A person who is in a vegetative state for long and has no hope of recovery should be given the right to die with dignity. This was the main contention of the petitioner to file the petition. The petitioner also wanted that the right to die with dignity should be included in the fundamental right Article 21 along with the right to live with dignity. The respondent contended that families can misuse this concept to inherit property. However, the principle of passive euthanasia was agreed upon. The Bench of Supreme Court held that the right to life under Article 21 also includes right to die which includes peaceful death of a person who is terminally ill and has no hope of recovery.

Religious Views about Right to Die with Dignity :

Different religions have different opinions about Euthanasia. Some disapprove, some totally forbids it, and some do not have any objection. If we talk about religion, Hinduism allows the right to die for those who are prolonged by terminal diseases, who are in a vegetative state and do not have the desire to live. Some Hindus say that living a painful life is more dreadful than death. However, some say that it breaches the teaching of ahimsa (doing no harm). In Jainism, it is known as Santhara. Jains have a belief that human beings have souls which cannot be destroyed like this. They believe that death is not evil but reflects well lived. In Jainism, if a person dies because of fasting it is no harm as it has religious aspect.

Sikhs do not like the idea of euthanasia or even suicide. They think it is an interference in God's plan. Whatever, the patient is suffering, it is their karma and they are expected to accept it without complaint. They believe that life is a gift of God but it is our duty to live life in a responsible and correct way. So, they think that a person's death depends upon the circumstances.

In Buddhism, teachings of Buddha includes stories of suicide by monks. It says that the ending of a life makes a profound impact on the new life. So in which state the person is, more important. Many traditions adhere to ancient beliefs of a person's journey of life while the modern medical technology has carved a door for them to reconsider their beliefs about Euthanasia.

Countries where Right to life includes the right to die:

In 2002, the **Netherlands** a northwestern Europe country became the first-ever country to legalise euthanasia and assisted suicide. Although it imposed a high set of rules and conditions that must be fulfilled before performing euthanasia, such as the illness must be incurable, the person should be suffering from the unbearable pain and the demand for killing must be made by

the patient in full consciousness. It was made legalised as a defence of necessity in the prosecution of doctors for providing euthanasia.

After the Netherlands in the year 2002, **Belgium** became the second country to legalise euthanasia. The laws over there state that the doctors can help a person to give up his life if he is in ultimate pain that cannot be cured. Right after the declaration of the law, the euthanasia cases rose up to 1807 in the year 2013 as compared to 1432 in the year 2012. Also, Belgium became the first country to legalise the euthanasia for the minors, they just need to be in ultimate pain, not a curable disease and assent their consent to their parents to end up their life.

In 2016, the **California** government also signed the bill of right to die. It allows extremely ill citizens to end their own life. This bill was passed due to Brittany Maynard, 29 years girl who moved to Oregon to end her life as being the citizen of California should she could not do it over there in her own country. This created a huge disturbance in the country and massive cry so the government ended up signing the bill and enforced the act (End of life option Act, 2015 enforced in the year 2016).

In **Germany and Switzerland**: In Germany, the term euthanasia is avoided as its association with the eugenicist policies of the Nazi era. In Germany and Switzerland, there is a concept of assisted suicide and actively assisted suicide. Actively assisted suicide is prohibited as it directly involves doctors into it and giving them a dose which will take up their life. On the other hand, assisted suicide is allowed as long as it is taken by the patient on his own without other's help. But in Switzerland, the law is somewhere relaxed as compared to Germany as it allows assisted suicide as long as there is no self motive. In a survey conducted by the German government about 2/3rd population supported assisted suicide. But the government did not allow it.

As of now, **Australia** the state of Victoria has become the first-ever state to legalize assisted suicide in the world. The bill has been passed in the parliament and was implemented and came into force from the year 2019. This bill is especially dedicated to those people who are adversely ill or having a living expectancy of fewer than 6 months. After this landmark decision of Victoria's state other countries too have adapted this feature through the court of law or through a referendum.

Conclusion :

The universal truth is "one who comes has to go" no one can be here forever. No one can escape this truth. But one thing which each and every person is entitled to be is Right to Life and Right to Die with Dignity. No man should be deprived of this right. It's been a long time and now the time has come to amend the Article 21 of the Constitution of India and include in it Right to Die with Dignity. The Hon'ble Supreme Court of India has also upheld the Right to Privacy as the Fundamental Right in the case of Justice K.S. Puttuswamy (Retd) V. Union Of India and when the person is not able to move, speak, eat and also not able to excrete himself and is done with the help of another person it violates his fundamental right of privacy. The landmark decision of the Supreme Court in the year 2018 has led to a massive boost to the rules and regulation prescribing for the euthanasia but the same is yet to come as legislation in the books of the statute. The outcome of this major debate over euthanasia remains uncertain as the terminally ill

cases haven't been identified also there is no specified legislation for the same. Although the Supreme Court has laid down the procedure to be followed by the High Court if any application has been filed by any person in that Court. It must be made clear that Suicide does not come within the ambit of Right to Die and the person committing suicide should be sent to the Rehabilitation centre as prescribed by the Section 135 of Mental Health Act, 2017. The concept of Living Will has been given by the Supreme Court in Common Cause (A Regd. Society) v. Union of India 2018.

The concept of the Darwin theory "Survival of the fittest" says that for the rich people the world is beautiful and they can live a healthy life but for the poor, it is not that enthusiastic. But death is the stage of life that does not see whose rich or poor, so this last phase of life should be free from pain and suffering.

So, lastly, it is correct to say that Right to life under Article 21 of the Constitution of India should be amended and should include Right to die with dignity.

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