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CONSTITUTIONAL ASPECT OF EUTHANASIA WITH RESPECT TO RIGHT TO LIFE AND RIGHT TO DIE

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Abstract: Euthanasia has been made legal in India fully in March 2018 by the Supreme Court of India while deciding the Common Cause Case. It has also allowed living wills and has even formulated guidelines on this behalf. But this journey of the Indian Judiciary for making euthanasia legal in India was marked with several controversies and even now also there are opinions for and against this legality. There has been much debate on the issue that whether the Right to Life includes the Right to Die or not. In such a situation it becomes very necessary to review the opinions of various scholars to determine the validity of the Supreme Court's action especially due to the unique system of Rule of Law in India. In the absence of a clear law on this behalf in the country, it may become very difficult to enforce this rule adequately. Further, in India, it is alleged to have a weak Rule of Law. As such euthanasia which deals with the life of human beings may exploit the vulnerable section of the society, for which an understanding of the concept of euthanasia in the Indian context attains much prominence. This article will focus on the various arguments for and against euthanasia in India to understand the validity of euthanasia laws in India.

Index Terms

Constitutional Validity, Euthanasia, Right to Die, and Right to Life

The word euthanasia, originated in Greece means a good death. Euthanasia encompasses various dimensions, from active (introducing something to cause death) to passive (withholding treatment or supportive measures); voluntary (consent) to involuntary (consent from guardian) and physician assisted (where physician's prescribe the medicine and patient or the third party administers the medication to cause death). Request for premature ending of life has contributed to the debate about the role of such practices in contemporary health care. This debate cuts across complex and dynamic aspects such as, legal, ethical, human rights, health, religious, economic, spiritual, social and cultural aspects of the civilised society. Here we argue this complex issue from both the supporters and opponents' perspectives, and also attempts to present the plight of the sufferers and their caregivers. The objective is to discuss the subject of euthanasia from the medical and human rights perspective given the background of the recent Supreme Court judgement in this context.

In India abetment of suicide and attempt to suicide are both criminal offences. In 1994, constitutional validity of Indian Penal Code Section (IPC Sec) 309 was challenged in the Supreme Court. The Supreme Court declared that IPC Sec 309 is unconstitutional, under Article 21 (Right to Life) of the constitution in a landmark judgement⁴. In 1996, an interesting case of abetment of commission of suicide (IPC Sec 306) came to Supreme Court. The accused were convicted in the trial court and later the conviction was upheld by the High Court. They appealed to the Supreme Court and contended that 'right to die' be included in Article 21 of the Constitution and any person abetting the commission of suicide by anyone is merely assisting in the enforcement of the fundamental right under Article 21; hence their punishment

is violation of Article 21. This made the Supreme Court to rethink and to reconsider the decision of right to die. Immediately the matter was referred to a Constitution Bench of the Indian Supreme Court. The Court held that the right to life under Article 21 of the Constitution does not include the right to die⁵.

Regarding suicide, the Supreme Court reconsidered its decision on suicide. Abetment of suicide (IPC Sec 306) and attempt to suicide (IPC Sec 309) are two distinct offences, hence Section 306 can survive independent of Section 309. It has also clearly stated that a person attempts suicide in a depression, and hence he needs help, rather than punishment. Therefore, the Supreme Court has recommended to Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code.

Constitutionality of the right to die - a brief analysis

Right to life is a basic natural right of the human beings. It is a fundamental right guaranteed under Part-III (Article 21) of the Indian Constitution. Article 21 of the Indian Constitution states that – ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’. The phraseology may be negative, but it has conferred an obligation on the state to ensure good quality of life and a dignified life to the people, which is the positive aspect of the article. The foreigners are also as much entitled to the right as the citizens.

Now this right to life has been interpreted by the Indian judiciary in various ways so as to include within its purview several new rights such as the right to live with human dignity, right to livelihood, right to shelter, right to privacy, right to food, right to education, right to get pollution free air and water and some other rights which are quite essential to improve the condition of the life of the people, i.e. - for the true enjoyment of the right to life.

But can this right to life be interpreted to such an extent which leads to its self destruction or self opposition? That is, can it include within its ambit the right not to live or the right to die? This is the crucial point where the debate arises involving moral, legal, medical and even political issues.

Death can be defined as the termination of life. Death can be categorized basically into two kinds – (i) natural and (ii) unnatural death. It can be caused by the action as well as the inaction of a person. Causing the extinction of a life unnaturally by the action of oneself over his own self or over someone else is morally bad as well as legally punishable. But there are exceptions too. In certain circumstances death is allowed when it is with the full and real consent of the person who is going to die. It is a very true fact that we fear death, atleast a premature death. Every living being in this world wants to live a long life and by every possible means wants to increase the longevity of their lives. Even recent advancements in medical technology can help prolong death which is done by providing artificial respiration and nutrition to the patient who is terminally ill or in a vegetative state for years together. So why is there a need felt for the right to die???

For a common man, when life becomes far more painful and unbearable than death, then it is very normal for him to desire death. This voluntary embracing of death is known as euthanasia or mercy killing. Euthanasia is also termed as ‘dayamaran’. Some people as the great saints or heroic persons embrace ‘echchamaran’ or willful death, when they feel that they have achieved the purpose of their lives. There are different types of voluntary deaths in our country like the ‘sati’, ‘johars’, ‘samadhi’, ‘prayopaveshan’ (starving to death) etc.

Arguments against euthanasia

Eliminating the invalid: Euthanasia opposers argue that if we embrace ‘the right to death with dignity’, people with incurable and debilitating illnesses will be disposed from our civilised society. The practice of palliative care counters this view, as palliative care would provide relief from distressing symptoms and pain, and support to the patient as well as the care giver. Palliative care is an active, compassionate and creative care for the dying⁶.

Constitution of India: ‘Right to life’ is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of ‘right to life’. It is the duty of the State to protect life and the physician's duty to provide care and not to harm patients. If euthanasia is legalised, then there is a grave apprehension that the State may refuse to invest in health (working towards Right to life). Legalised euthanasia has led to a severe decline in the quality of care for terminally-ill patients in Holland. Hence, in a welfare state there should not be any role of euthanasia in any form.

Symptom of mental illness: Attempts to suicide or completed suicide are commonly seen in patients suffering from depression⁸, schizophrenia and substance users. It is also documented in patients suffering from obsessive compulsive disorder. Hence, it is essential to assess the mental status of the individual seeking for euthanasia. In classical teaching, attempt to suicide is a psychiatric emergency and it is considered as a desperate call for help or assistance. Several guidelines have been formulated for management of suicidal patients in psychiatry. Hence, attempted suicide is considered as a sign of mental illness.

Malafide intention: In the era of declining morality and justice, there is a possibility of misusing euthanasia by family members or relatives for inheriting the property of the patient. The Supreme Court has also raised this issue in the recent judgement. ‘Mercy killing’ should not lead to ‘killing mercy’ in the hands of the noble medical professionals. Hence, to keep control over the medical professionals, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 discusses euthanasia briefly in Chapter 6, Section 6.7 and it is in accordance with the provisions of the Transplantation of Human Organ Act, 1994. There is an urgent need to protect patients and also medical practitioners caring the terminally ill patients from unnecessary lawsuit. Law commission had submitted a report (no-196) to the government on this issue.

Emphasis on care: Earlier majority of them died before they reached the hospital but now it is converse. Now sciences had advanced to the extent, life can be prolonged but not to that extent of bringing back the dead one. This phenomenon has raised a complex situation. Earlier diseases outcome was discussed in terms of 'CURE' but in the contemporary world of diseases such as cancer, Aids, diabetes, hypertension and mental illness are debated in terms best 'CARE', since cure is distant. The principle is to add life to years rather than years to life with a good quality palliative care. The intention is to provide care when cure is not possible by low cost methods. The expectation of society is, 'cure' from the health professionals, but the role of medical professionals is to provide 'care'. Hence, euthanasia for no cure illness does not have a logical argument. Whenever, there is no cure, the society and medical professionals become frustrated and the fellow citizen take extreme measures such as suicide, euthanasia or substance use. In such situations, palliative and rehabilitative care comes to the rescue of the patient and the family. At times, doctors do suggest to the family members to have the patient discharged from the hospital wait for death to come, if the family or patient so desires. Various reasons are quoted for such decisions, such as poverty, non-availability of bed, futile intervention, resources can be utilised for other patients where cure is possible and unfortunately majority of our patient's family do accordingly. Many of the terminally ill patients prefer to die at home, with or without any proper terminal health care. The societal perception needs to be altered and also the medical professionals need to focus on care rather in addition to just cure. The motive for many euthanasia requests is unawareness of alternatives. Patients hear from their doctors that 'nothing can be done anymore'. However, when patients hear that a lot can be done through palliative care, that the symptoms can be controlled, now and in the future, many do not want euthanasia anymore

Commercialisation of health care: Passive euthanasia occurs in majority of the hospitals across the county, where poor patients and their family members refuse or withdraw treatment because of the huge cost involved in keeping them alive. If euthanasia is legalised, then commercial health sector will serve death sentence to many disabled and elderly citizens of India for meagre amount of money. This has been highlighted in the Supreme Court Judgement.

Research has revealed that many terminally ill patients requesting euthanasia, have major depression, and that the desire for death in terminal patients is correlated with the depression¹⁸. In Indian setting also, strong desire for death was reported by 3 of the 191 advanced cancer patients, and these had severe depression. They need palliative and rehabilitative care. They want to be looked after by enthusiastic, compassionate and humanistic team of health professionals and the complete expenses need to be borne by the State so that 'Right to life' becomes a reality and succeeds before 'Right to death with dignity'. Palliative care actually provides death with dignity and a death considered good by the patient and the care givers.

Counterargument of euthanasia supporters

Caregivers burden: 'Right-to-die' supporters argue that people who have an incurable, degenerative, disabling or debilitating condition should be allowed to die in dignity. This argument is further defended for those, who have chronic debilitating illness even though it is not terminal such as severe mental illness. Majority of such petitions are filed by the sufferers or family members or their caretakers. The caregiver's burden is huge and cuts across various domains such as financial, emotional, time, physical, mental and social. Hence, it is uncommon to hear requests from the family members of the person with psychiatric illness to give some poison either to patient or else to them. Coupled with the States inefficiency, apathy and no investment on health is mockery of the 'Right to life'.

Refusing care: Right to refuse medical treatment is well recognised in law, including medical treatment that sustains or prolongs life. For example, a patient suffering from blood cancer can refuse treatment or deny feeds through nasogastric tube. Recognition of right to refuse treatment gives a way for passive euthanasia. Many do argue that allowing medical termination of pregnancy before 16 week is also a form of active involuntary euthanasia. This issue of mercy killing of deformed babies has already been in discussion in Holland

Right to die: Many patients in a persistent vegetative state or else in chronic illness, do not want to be a burden on their family members. Euthanasia can be considered as a way to upheld the 'Right to life' by honouring 'Right to die' with dignity.

Encouraging the organ transplantation: Euthanasia in terminally ill patients provides an opportunity to advocate for organ donation. This in turn will help many patients with organ failure waiting for transplantation. Not only euthanasia gives 'Right to die' for the terminally ill, but also 'Right to life' for the organ needy patients.

Constitution of India reads 'right to life' is in positive direction of protecting life. Hence, there is an urgent need to fulfil this obligation of 'Right to life' by providing 'food, safe drinking water and health care'. On the contrary, the state does not own the responsibility of promoting, protecting and fulfilling the socio-economic rights such as right to food, right to water, right to education and right to health care, which are basic essential ingredients of right to life. Till date, most of the States has not done anything to support the terminally ill people by providing for hospice care.

If the State takes the responsibility of providing reasonable degree of health care, then majority of the euthanasia supporters will definitely reconsider their argument. We do endorse the Supreme Court Judgement that our contemporary society and public health system is not matured enough to handle this sensitive issue, hence it needs to be withheld. However, this issue needs to be re-examined again after few years depending upon the evolution of the society with regard to providing health care to the disabled and public health sector with regard to providing health care to poor people.

The Supreme Court judgement to withhold decision on this sensitive issue is a first step towards a new era of health care in terminally ill patients. The Judgment laid down is to preserve harmony within a society, when faced with a complex medical, social and legal dilemma. There is a need to enact a legislation to protect terminally ill patients and also medical practitioners caring for them as per the

recommendation of Law Commission Report-1960.. There is also an urgent need to invest in our health care system, so that poor people suffering from ill health can access free health care. Investment in health care is not a charity; 'Right to Health' is bestowed under 'Right to Life' of our constitution.

Right to Die vis-à-vis Right not to Die – A Constitutional Dilemma

Article 21 of the Constitution: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Section 309 of I.P.C.: Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both].

Section 309 of I.P.C. has been questioned not only on the grounds of morality but also on the ground of constitutionality of the said provision. There have been many cases dealing with the question of whether S.309 is constitutionally valid or not. There have been conflicting opinions expressed in these cases regarding the constitutional validity of the section – one holding section constitutionally valid, while the other striking it down being violative of Article 21 of the Constitution which guarantees 'right to life,' which would reveal that there is ample force in both the contentions. Now, let's make a careful perusal of these conflicting rulings of the apex court.

Maruti Shripati Dubal v. State of Maharashtra, 1987 Cri LJ 743 (Bom.)

In 1987, the Bombay High Court struck down S.309, IPC as ultra vires vide Article 21 of the Constitution which guarantees 'right to life and liberty'. The Court said that the 'right to life' includes the 'right to live' as well as 'right to end one's life' if one so desires. Justice P. B. Sawant

said: "who make suicide attempt on account of acute physical ailments, incurable disease, torture, decrepit physical state induced by old age or disablement, need nursing homes and not prison to prevent them from making the attempts again."

P. Rathinam / Naghbhusan Patnaik v. Union of India, AIR 1994 SC 1844

In 1994, a Division Bench of the Supreme Court comprising of Justices R. M. Sahai and B. L. Hansaria, while allowing petitions upheld the Bombay and Delhi High Courts' decisions (in Maruti Shripati Dubal's case and Sanjaya Kumar's case) and overruled Andhra ruling (in Chenna Jagdeshwar's case). The two petitioners assailed the validity of S. 309 of the IPC by contending that the same is violative of Articles 14 and 21 of the Constitution

While striking down S.309, IPC, the apex court said 'it is a cruel and irrational provision violative of Article 21 of the Constitution'. Expanding the scope of Article 21, the Court upheld that, 'right to life' includes 'right not to live a forced life'; i.e., to end one's life if one so desires.

Gian Kaur v. State of Punjab, (1996) 2 SCC 648: 1996 Cr LJ 1660

However in 1996, a five member Constitution Bench of the apex court overruled its decisions of 1994 in P. Rathinam / Naghbhusan Patnaik. Dismissing the petition challenging the constitutionality of S.306 on the ground that it punished an act which was nothing but assistance to a person in the enforcement of his fundamental 'right to die' under Article 21 as S.309 was held unconstitutional, the apex Court held S.306, IPC as constitutional and said that the 'right to life' doesn't include 'right to die'. Extinction of life is not included in protection of life. The Court further held that S.306 constitutes a distinct offence and can exist independently of S. 309, IPC. There is no correlation between the two sections.

As regards S.309, IPC is concerned, the Court said that the 'right to life' guaranteed under Article 21 of the Constitution did not include the 'right to die' or 'right to be killed', and therefore, an attempt to commit suicide under S.309, IPC or even abetment of suicide under S.306, IPC are well within the constitutional parameters, and are not void or ultra vires. The 'right to death', if any, is inherently inconsistent with the 'right to life', as is death with life.

Is S.306, IPC Constitutionally Valid?

Section 306 of IPC: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The question of constitutionality of S.306, IPC has been aptly answered by the Supreme Court in Gian Kaur's case, as discussed above.

Conclusion:

First of all, we need to ask ourselves a question - "Does Article 21 of the Constitution guarantee a 'right to life' or a 'liability of life'?" Now if it is 'right to life', let's ask another question - "Is a right to be enjoyed or to be forced upon? i.e., can a person be forced to 'enjoy' a right

to his detriment?" According to me, with all due respect to the honourable courts and their decisions, the answer to the second question is "A right is to be 'enjoyed' and not 'forced upon'. A person can't be forced to 'enjoy' a right to his detriment".

But while making euthanasia illegal, we are doing nothing but forcing the 'right of life' upon a person for whom life is nothing but a burden, he no longer wishes to endure. We are forcing him to live a 'cursed life' which is full of mental and physical torture, pain and agony; a life which we already know is not going to subsist for long.

In cases like K. Venkatesh's case, by denying euthanasia, not only is that person forced to suffer a pain which he need not have suffered if euthanasia was allowed but also extinguishes the hope of life in another person who could have lived and 'enjoyed' his 'right to life' by getting the organs which former would have been able to donate. When we talk of euthanasia, we talk of side-effects. But there are hardly any medicines which don't have any side-effects. Do we stop using medicines? There are hardly any scientific inventions without side-effects. Side-effects of using cell phones, computers etc. are well known. But have we stopped using them?

I believe, instead of wasting time, effort and energy in finding ways to stop euthanasia being legalised, we should utilise this time, effort and energy to find out and put into place mechanisms to check and control the abuse and misuse of euthanasia. In conclusion, it can be said that to resolve this debate, the conflict between the principle of sanctity of life and the rights of self determination and dignity of an individual is to be resolved first and right to die should not be generalized but should be exercised as an exception in the rarest of rare cases.

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