

Right to Die Vis-à-vis Passive Euthanasia

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ABSTRACT: *The right to die is a term founded on the opinion that human beings are entitled to end their life or undergo voluntary euthanasia. Possession of this right is also understood that a person with a terminal disease, or without the ability to continue living, should be able to end their own life, use assisted suicide, or to refuse life-prolonging care. The issue of who should be empowered to make this decision, if anyone, is often central to the debate. In their view of the quality of their lives and their view of the balance between the positive and the negative aspects of living, some scholars and philosophers, like David Benatar, consider people to be overly optimistic. This concept can be considered in terms of antinatalism and the lack of agency over one's birth and who should have control over one's decision to live or die. Proponents usually equate the right to die with the belief that one's body and one's soul are one's own, to dispose of as one sees fit. A legitimate state interest in preventing irrational suicides, however, is often up for discussion. Religious views on suicide differ, as in Catholicism, from the Hindu and Jain traditions of non-violent suicide by fasting (Prayopavesa and Santhara, respectively) to calling it a serious sin. On the other side, recently in a landmark decision extending the right to life to include the right to die with dignity, Supreme Court legalizes passive euthanasia. In this context right to die under certain circumstances were allowed by the Supreme Court. This paper will analyze all the right to die in reference to passive euthanasia, relevant judicial pronouncement and status in other countries.*

KEYWORDS: *Life; Passive euthanasia; Right to die; Suicide; and Voluntary Euthanasia.*

INTRODUCTION

Under Article 21 of the Indian Constitution, the right to life is enshrined as a constitutional right that is guaranteed to each and every Indian citizen. The courts have openly interpreted this right to mean something beyond mere survival and life, and the Supreme Court has further argued that this right is at the core of the constitutional rights enshrined in Section III of the Constitution. In India, through the courts, the Right to Life has earned the broadest and widest possible meaning. Not only does it entail preserving the life of an individual, but it also gives people the right to live a dignified life[1]. It takes some of the "finer graces of human civilization that make life worth living" within its scope and has extended its scope to include the culture, tradition and language of the individual concerned. Now the question that arises is, does the right to end life with dignity also fall under this right if the right to life requires living with dignity? Many have claimed that Article 21 gives a person the right to live with dignity and the "right to die" should also be given to individuals.

However, the right to die contravenes the rules of section 306 of the Indian Penal Code and section 309 of the IPC, which deal with suicide and suicide attempts, respectively. Those in support of these sectors claim that it is founded on the idea that men's lives are important not only to them, but also to the state that protects them. However, this clause has been challenged not only by human rights groups, but also by the courts of law on moral and constitutional grounds[2].

The Indian judiciary has interpreted this right to life in different ways in order to add many new rights within its purview, such as the right to live with human dignity, the right to live, the right to shelter, the right to privacy, the right to food, the right to education, etc. The question of whether the right to life should include the right not to live or the right to die within its framework is one that has been addressed in many instances[3].

Every living being in this world wants to live a long life and wants to maximize the longevity of their lives by every possible means, and it is not the intended outcome of this right to encourage the end of those lives. However, when life becomes even more difficult and intolerable than death for a common man, then it is very natural for him to wish for death. Euthanasia or mercy killing is known as this voluntary accepting of death.

Classification of Euthanasia

(i) Classification Based on Consent

1. Voluntary: When euthanasia is done with the patient's consent. In Luxembourg, Belgium, the Netherlands, Switzerland, Washington, the USA, and the States of Oregon, this Act is legal.
2. Non-Voluntary: Where the euthanasia practice is done without the patient's consent in situation in which the patient is unable to consent due to declining health conditions. In certain cases, consent is given by another suitable person on behalf of the patient. There is a need to acknowledge the quality of life and pain.

(ii) Classification Based on Procedure

1. Passive euthanasia: The termination of life-sustaining drugs is called passive euthanasia. For example, whether a doctor may administer a high dose of pain killing drugs that could be dangerous to the patient, such as opioids, or by removing a life-support device.
2. Active euthanasia: since it appears to derogate legal, ethical, religious and humane principles, active euthanasia is relatively more contentious. When anyone uses a poisonous drug or coercion to end the patient's life.

Debates on Right to Die

It is said to be our life, and we ought to have charge of it. We should have the right to terminate it if the circumstances need us. It is necessary to grant us extreme longevity in this era of globalization and of potential technologies. Some recent cases of few people seeking assisted suicide from incurable diseases have raised the question of dying seriously as a matter of person or state. Many religions believe it to be a sin because they look at the moral side of death. If it's suicide or suicide[4].

We can see in most countries that euthanasia is legalized in the West. Doctors do voluntary euthanasia, but doctors have the right to determine who is important in the life of the patient and who is not? Speaking on the religious side today, religious claims are believed to be true only for religious adherents. We can't place limitations on all persons. But, on the other hand, it is believed that life can only be taken by God.

It is said to make it a tradition to think it a felony to make people live with those who do not want to proceed with excuse. Some people believe that when we are especially considering taking life, it was a slippery slope to legalized murder, but there is still a lack of evidence to clearly prove this fact.

Status of the Euthanasia in different jurisdictions

- i. *United States of America*: Throughout the USA, successful euthanasia is illegal. Patients are allowed, at their request, to reject medical care and to obtain proper pain medication (passive euthanasia), even though the decisions of the patients speed up their deaths. Furthermore, under some cases and under federal law and certain state legislation, futile or useless burdensome procedures, such as life-support devices, can be removed only with the informed consent of the patient or with the informed consent of the legal surrogate in the event of the patient's incompetence[5].
- ii. *Australia*: For a time in Australia, assisted suicide was made legal, but now it is not. It was the first euthanasia law in the world back in 1995. In the Northern part of Australia, the Protection of the Terminally Ill Act 1995 was passed. Under the Act, four patients died. In 1997, Australia's Federal Parliament repealed the law. Again, assisted suicide will be made legal by passing a bill in parliament in 2019[6].
- iii. *Canada*: 'Physician Assisted Suicide' in Canada is legal in Canada. Physician Assisted Suicide is a type of euthanasia in which the patient who is over the age of 18 is granted voluntary active euthanasia and suffers from such a chronic condition that death is foreseeable. Euthanasia in Canada

is pre-conditioned that mercy killing can only be applied to those patients who can demand Canadian Health Insurance in order to avoid the rise in suicide tourism.

Judicial Pronouncement

This question of law first arose before the High Court of Bombay in Maharashtra State v. Maruti Sripati Dubai[7]. According to Article 21, the court held that the right to life included the right to die and ruled that section 309 of the Indian Penal Code was unconstitutional. The Division Bench of the Supreme Court further held in P Rathinam v. Union of India[8], supporting the decision of the Bombay High Court in Maruti Sripati Dubai, that the right to die was included in Article 21 and also found Section 309 of the Indian Penal Code to be unconstitutional.

The case of Gian Kaur v. the State of Punjab[9] came to the Supreme Court in 1996, where the reduction of the suicide commission pursuant to section 306 of the Indian Penal Code was at issue. The accused argued that any person who encouraged another to commit suicide merely supported them in enforcing their fundamental right under Article 21. Nevertheless, the Supreme Court's Constitution Bench held that the right to die is not included under Article 21 or the "right to be killed." Every part of life that renders it worthy can be included, but none that extinguishes it. "And that the "right to die, if any, is fundamentally incompatible with the right to life, as is "death" with "life."

In the case of Naresh Marotrao Sakhre v. Union of India[10], the court acknowledged the distinction between suicide and euthanasia. It was debated that suicide was an act of self-destruction, without the support or assistance of any other human agency, to end one's own life, whereas euthanasia was distinct as it requires the involvement of a human agency to end one's life.

Section 309 was found unreasonable in P. Rathinam v. Union of India[8], the court, granting relief to the misers attempting suicide, and deserves to be excluded from the statute book to humanize our penal laws. It seeks to doubly threaten the man with immense suffering and ignominy because of his unwillingness to commit suicide.

Thus, before the case of Aruna Shanbaug and the recent case filed by the NGO common cause in which the legality of the issue was re-discussed and on 9 March 2018 a five-judge bench of the Supreme Court recognized and permitted passive euthanasia in the case of Common Cause (A Registered Society) v. Union of India[11], any method involving unnatural termination of life was deemed illegal. The consequence of this is that it is a human right to die with dignity from now on.

CONCLUSION

The sanctity of human life in pain and suffering does not mean the coerced continuation of nature. Since a person has the right to lead a dignified life, he cannot be compelled to live to his detriment. If a person suffers from an incurable condition, forcing him to live a miserable life would be inhumane. By deciding to do so, a terminally ill person should be allowed to end his pain and suffering.

The primary aim behind the practice of euthanasia, therefore, is not to take a person's life but to revive him from all causes of pain and misery, which can also be considered 'healthy death.' In all nations of the world, 'Right to Life' is granted while 'Right to Die' is known only in few nations of the world, and the nations that have denied their people the 'Right to Die' fear that because this age is shifting minds, there will be more murders in the name of euthanasia that will inevitably lead to human rights abuses. While other nations that embrace the euthanasia culture agree that a patient must not suffer and that the 'right to life' requires the 'right to die with dignity' in itself. Both points of view are right in their position, but it is important to build some middle way in order to achieve common good.

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