



“From Right To Life To Right To Die: A Critical Examination Of Indian Constitutional Law”

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ABSTRACT

Right to life is one of the basic as well as fundamental right without which all rights cannot be enjoyed. Right to life means a human being has an essential right to live, particularly that such human being has the right not to be killed by another human being. But the question arises that if a person has a right to live, whether he has a right not to live i.e., whether he has a right to die? While giving this answer, the Indian courts expressed different opinions.

The "Right to Die" has emerged as a significant constitutional and ethical issue, particularly in the context of Article 21 of the Indian Constitution, which guarantees the fundamental right to life and personal liberty. The interpretation of this right in relation to the "Right to Die" has been the subject of intense legal and moral debate in India. While Article 21 ensures the protection of life, it does not explicitly address the right to end one's life or seek euthanasia. Over time, judicial pronouncements, especially in landmark cases like Aruna Shanbaug and Common Cause, have gradually shaped the contours of the right to die, acknowledging that in certain circumstances, such as in cases of terminal illness or an individual's desire to avoid prolonged suffering, this right may be recognized under the broad ambit of personal liberty.

Keywords: active euthanasia, passive euthanasia, suicide, right to die, personal liberty, dignity

INTRODUCTION

The "Right to Die" debate is one of the most controversial and complex issues in contemporary constitutional law. In India, the Constitution, under Article 21, guarantees the right to life and personal liberty, but the scope of this right concerning the termination of life remains contested. The principle of life as an inviolable right has long been upheld by the judiciary, but cases of euthanasia, assisted suicide, and the recognition of individual autonomy over one's life have brought forth new challenges in the legal realm. This paper explores the evolving legal framework surrounding the Right to Die, its intersection with the constitutional right to life and dignity, and the implications of such rights on ethics, healthcare, and the legal system in India. Through an examination of legal precedents and contemporary debates, this study seeks to provide an understanding of the complexities surrounding the recognition of the Right to Die within the framework of the Indian Constitution.

The concept of right to life is central to the debate on the issue of Euthanasia. One of the controversial issues in the recent past had been the question of legalizing the **Right to Die** or Euthanasia. Euthanasia was controversial since it involves the deliberate termination of human life. Patient suffering from terminal diseases is often faced with great deal of pain as the diseases gradually worsens until it kills them and this may be so frightening for them that they would rather end their life than suffering it.

OBSERVATION

The concept of Life and Death has invited many a thinker, philosopher, writer and physician to define or describe them. Swami Vivekananda expects one to understand that **life is the lamp that is constantly burning out** and further suggests that if one wants to have life, one has to die every moment for it. To meet the changing situations, the Court has been endorsed with a duty to interpret Article 21 in a further dynamic manner and it has to be stated without any trace of doubt that the right to life with dignity has to include the smothering of the process of dying when the person is in a vegetative state.

Article 21: Right to Life and Personal Liberty

Article 21 of the Indian Constitution guarantees:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

This provision, though seemingly straightforward, has been the subject of numerous judicial interpretations. Initially, the scope of Article 21 was confined to the physical existence of an individual. However, over time, the Supreme Court broadened its scope to include the right to live with dignity, which encompasses a range of rights such as the right to livelihood, health, privacy, and a clean environment.

In *Maneka Gandhi v. Union of India* (1978), the Supreme Court significantly expanded the interpretation of Article 21 to ensure that life includes all elements necessary for the fulfilment of a dignified existence. The Court recognized that a person's life should not merely be defined as survival but as a life with dignity, which is critical to understanding the subsequent developments regarding the right to die.

Legal status of right to die:

Right to die with dignity As a Fundamental Right

Right to Life Under Part-III (Article 21) of the Indian Constitution is one of the most basic natural Right of the human beings. Article 21 prohibits person from deprivation of his life or liberty except according to the process established by law. It ensures upon the state the obligation to provide every person a good quality of life and a dignified life. This Right has been interpreted by the judiciary in a very elaborate way to included new rights within its purview. Earlier to the Common Cause judgement, right to die was not considered as a fundamental right. But the Court in its judgement declared Right to Die with Dignity as fundamental right.

The main question raised in this judgment was:

Has a person residing in India a Right to die?

Answering this question, the court referred to the decision of the Bombay High Court in the case of **Maruti Shripati Dubal v. State of Maharashtra**[16] which placed reliance on *R.C. Cooper v. Union of India*[17] wherein it was held that:

what was true of one fundamental right was also true of another fundamental right and on the said premise, the Bombay High Court had opined that it cannot be seriously disputed that fundamental rights had their positive as well as negative aspects. The court held that, in any case, a person cannot be forced to enjoy the right to life to his detriment, disadvantage or disliking. Eventually, it came to conclusion that the right to live of which Article 21 speaks of can be said to bring in its trail the **right not to live a**

forced life. Answering all the questions, the Apex Court declared Section 309 of IPC ultra vires and held that it deserved to be effaced from the statute book to humanize our penal laws.

Aruna Shanbaug Case (2011):

Aruna Shanbaug was a nurse who was left in a persistent vegetative state after being sexually assaulted in 1973. She remained in this state for nearly 40 years, unable to speak, move, or care for herself.

In 2011, the Supreme Court of India heard a petition seeking passive euthanasia (allowing her to die) filed by a social activist, Pinki Virani.

The Supreme Court ruled that passive euthanasia (withholding life-sustaining treatment) could be allowed in exceptional cases, but it did not establish the right to die as a fundamental right. Instead, it laid out guidelines for euthanasia, which included the need for the decision to be made by a medical board and judicial oversight.

Aruna Shanbaug eventually passed away in 2015 due to natural causes, but her case sparked a national debate about the right to die and euthanasia.

The Right to Die Debate (2014-2018):

The Supreme Court in 2014 acknowledged that while the right to life includes the right to live with dignity, it does not necessarily include the right to die.

In 2018, the Court recognized living will as a part of passive euthanasia under specific conditions, allowing individuals to request the withdrawal of life support if they are in an irreversible state. However, it did not go as far as recognizing active euthanasia or physician-assisted suicide as a fundamental right.

These judgments continue to leave individuals suffering from incurable diseases or in a persistent vegetative state in a limbo, unable to die by choice, unless certain legal conditions are met.

Other Cases of Suffering and the Right to Die:

There have been numerous instances where people suffering from terminal illnesses or severe pain have requested to be allowed to die, but were denied the right to do so due to the lack of a clear, comprehensive law on euthanasia or assisted suicide.

Some individuals who suffer from debilitating conditions like quadriplegia or terminal cancer have sought legal routes to end their lives, but without the right to die being explicitly recognized in the Constitution, they have had no legal recourse.

The Right to Die and the Role of Personal Autonomy

Personal autonomy, which is central to the concept of individual liberty, has played an instrumental role in the development of the right to die. The Supreme Court's recognition of the right to live with dignity, as seen in *Maneka Gandhi*, laid the foundation for allowing individuals the freedom to make decisions about their own lives, including the choice to refuse life-saving treatment or opt for euthanasia. However, the Court has been cautious in balancing individual autonomy with societal and ethical concerns about the sanctity of life.

Evolution of the Right to Die:

The Indian judiciary has had to confront the question of whether the right to die can be deduced from Article 21. Key cases that shaped this evolving legal discourse include:

3.1. Gian Kaur v. State of Punjab (1996):

In this case, the Supreme Court addressed the issue of euthanasia and suicide, holding that the "right to life" under Article 21 does not include the "right to die." The Court ruled that the right to life is a fundamental right, but it does not encompass the right to terminate one's life, thereby reaffirming the sanctity of life. However, the Court acknowledged that passive euthanasia could be allowed under certain circumstances if the individual is terminally ill and unable to communicate their wishes.

3.2. Aruna Shanbaug v. Union of India (2011):

The Aruna Shanbaug case was a landmark judgment where the Supreme Court allowed passive euthanasia under stringent guidelines. Aruna Shanbaug, a nurse who had been in a vegetative state for over 40 years after being sexually assaulted, became the subject of a legal battle for mercy killing. The Court allowed for passive euthanasia under strict conditions, provided that the decision to withdraw life support is made by a medical board and approved by the High Court. The judgment, however, did not recognize active euthanasia or assisted suicide.

3.3. Common Cause v. Union of India (2018):

The Supreme Court, in a landmark ruling, legalized passive euthanasia and allowed individuals to make advance medical directives, also known as living wills, regarding their end-of-life decisions. The Court held that the right to refuse medical treatment, including the right to die with dignity, is a part of the right to life under Article 21. The ruling paved the way for legal safeguards around euthanasia, granting individuals autonomy over their end-of-life choices.

The right to die in India, especially for people suffering from severe pain or terminal illness, is a complex and sensitive issue that revolves around legal, ethical, and moral considerations. While India does not have a broad right to die law like some countries, there are certain provisions that address end-of-life decisions, particularly in the form of "Passive Euthanasia" and "Living Wills."

Legal Context in India:

1. *Passive Euthanasia:*

The Supreme Court of India, in 2018, legalized passive euthanasia, which involves withholding or withdrawing medical treatment to allow a person to die naturally when they are terminally ill or in a persistent vegetative state. This was a landmark decision but came with strict guidelines. A person's request for euthanasia must be reviewed by a medical board and courts, making the process lengthy and complicated.

2. *Living Will *

The concept of a living will, where an individual expresses their desire to not be kept alive by artificial means in case of terminal illness, was also recognized by the Supreme Court. However, the creation of a living will is not a straightforward process and is subject to judicial scrutiny.

EUTHANASIA

The term **Euthanasia** comes from two ancient Greek words: 'Eu' which means 'Good' and 'thantos' which means 'death' and it pertains to the practice of ending a life to relieve pain and suffering. But, the issue of euthanasia is not as simple as its literal translation of the term. The termination of life may either be by Direct intervention (Active Euthanasia) or by may be by withholding life prolonging measures and resources (passive euthanasia).

Active Euthanasia:

Also known as **positive euthanasia** or **aggressive euthanasia**. This type of euthanasia entails a positive act or affirmative action or an act of commission entailing the use of lethal substances or forces to cause the intentional death of a person by direct intervention. This type of euthanasia involves taking specific steps to cause the patient's death such as injecting the patient with some lethal substance.

Passive Euthanasia:

Also known as **negative euthanasia** or **non-aggressive euthanasia**. This type of Euthanasia entails withdrawing of life support measures or withholding of medical treatment for continuance of life. In active euthanasia a specific act is done to end the patient's life while passive euthanasia is a situation where something is not done which is necessary in preserving the patient's life. The two Judge Bench in the case of Aruna Shanbaug had observed that the legal position across the world seems to be that while active euthanasia is illegal unless there is a legislation which permits it, passive euthanasia is legal even without any legislation, provided certain conditions and safeguards are maintained.

Legal position in other countries

1. In the Netherlands, both assisted suicide and passive Euthanasia are legal since 2001.
2. In Belgium also these have been legal since 2002.
3. In the USA passive Euthanasia is legal.

In England also passive Euthanasia is legal.

Medical Treatment of Terminally Ill Patient (Protection of Patients and Medical Practitioners) Bill, 2016

In 241st Law Commission Report it was stated that passive euthanasia should be allowed with certain safeguards. A law was proposed as Medical Treatment of Terminally Ill Patient (Protection of Patients and Medical Practitioners) Bill, 2016.

A brief on 196th Report by Law Commission

The report dealt with the withholding of the life support system of terminally ill patients which is legal in most of the countries. The bill had made recommendations that if the patients were incompetent, the doctor should obtain the consent of 3 other experts in the same field and from the patient and other close relatives about the same. The name of the experts would be given on a panellist. Then a period of 15 days would be given to the about file a case in the high court seeking whether the act was lawful or unlawful in the eyes of the court. The decision of the high court shall be binding on all the people. The letter filed would not require any formalities as in the normal process of filing a complaint with the high court require. The letter would be treated as an original petition and will directly be placed in front of the magistrate for decision. Here, the terminally ill patient if competent has the right to refuse treatment. "In our view where a medical practitioner is under a duty at common law to obey refusal of a patient who is an adult and who

is competent, to take medical treatment, he cannot be accused of gross negligence resulting in the death of a person within the above parameters.

Limitations of the BILL:

There are some issues where the bill has failed to incorporate strict laws and execution of which can create problems. The patient needs to give an informed decision if he is competent to do so. However, issues were raised about the validity of these and the authenticity of such consent. Audiovisual recording of obtaining consent and the medical trail could be helpful in such cases, but the bill does not address any of such problems. The bill does not differentiate between patients who were competent while giving the decision of informed consent or those who expressed their view earlier in the form of a directive.

Under clause 3 of the bill, the decision of the patients competent to give their consent can give informed consent; their decision would be considered to be binding on the medical practitioners of the patient. However, the clause 9 states that the decision of the medical practitioner or the close relatives of the patient will not be binding on the medical experts. The decision has to go to the high court within 15 days. Then the verdict given by high court would be binding on the doctors and the relatives.

The definition of "terminal illness" can also include even mental health issues. Section 2 clause m that defines terminal illness such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or (ii) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient. This definition can also include acute mental illness and agony. The choice of the High Court as a forum to obtain permission for the withdrawal of treatment from incompetent patients imposes a lot of burden on medical practitioners and the relatives and does not take into account that High Courts will not be able to deliver judgment in such cases.

If the bill gets approved, the medical council of India will have an active part to play. The medical council will have to prepare guidelines for the medical practitioners to see when they can withhold the medical treatment being given to the patient. The NGO common cause played an important role in the framing of the bill as the PIL filed in the Supreme Court mentioned that when a patient has reached a stage from where he cannot recover back, it is essential that he should be given the right to refuse any support material to die with dignity. The bill would restore the dignity of the patients.

UNFAIR PROCESS:

- **Bureaucratic Hurdles:**

One of the main criticisms of the legal process surrounding euthanasia in India is the bureaucratic complexity and delays involved. Since decisions related to end-of-life care need to go through multiple legal and medical reviews, it often leads to unnecessary suffering for individuals and their families.

- **Lack of Clear Framework:**

While the Supreme Court has laid down guidelines, there is no comprehensive law governing euthanasia. This has led to ambiguity in its application. There is also a lack of clear regulations on who can make the decision on behalf of a patient, leading to potential legal and familial conflicts.

- Social and Religious Opposition:

India has diverse cultural and religious beliefs, and the right to die remains a contentious issue for many. Some argue that taking a life, even with consent, goes against religious and moral principles, creating societal friction.

- Access to Healthcare and Compassionate Care:

In many cases, people suffering from severe pain or terminal illnesses may not have access to proper palliative care or sufficient pain relief. Inadequate healthcare systems, particularly in rural areas, worsen the situation, making euthanasia seem like a quicker alternative for those enduring unmanageable suffering.

NEED FOR REFORM:

There is a strong call for reform in India's approach to euthanasia and the right to die. Advocates argue for:

- **Clearer and simpler processes** for euthanasia, making it more accessible to those suffering from pain, especially in the context of terminal illness.
- **Stronger palliative care systems** and better access to pain relief medication to ensure that people don't feel the need to opt for euthanasia.
- **Public awareness and education** to bridge the gap between religious beliefs, societal norms, and individual rights.

CONCLUSION

The right to die raises numerous ethical dilemmas, particularly regarding the value of human life, the potential for abuse, and the role of medical practitioners. The sanctity of life is a deeply ingrained moral principle in Indian society, and any move towards legalizing euthanasia or assisted suicide is fraught with concerns about the protection of vulnerable individuals.

Moreover, the application of the right to die in practice involves significant moral considerations for medical professionals, who may be asked to act in ways that conflict with their ethical duty to preserve life. Therefore, while passive euthanasia has been legalized under strict conditions, active euthanasia remains a contentious issue.

In conclusion, while there is some recognition of the right to die in India, the current process is overly complicated and can lead to further suffering. There is a pressing need for clearer, fairer, and more compassionate legal frameworks for those suffering from severe pain and terminal illnesses.

References:

Maneka Gandhi v. Union of India (1978) 1 SCC 248

Gian Kaur v. State of Punjab (1996) 2 SCC 648

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

Common Cause v. Union of India (2018) 5 SCC 1

Shreyas S. (2018), "Right to Die: Legal and Ethical Implications," Indian Journal of Constitutional Law.

BIBLIOGRAPHY

1. <https://www.scobserver.in/cases/common-cause-euthanasia-and-the-right-to-die-with-dignity-case-background/>
2. <https://blog.ipleaders.in/right-to-die-with-dignity/>
3. <https://indiankanoon.org/doc/1199182/>
4. <https://www.legalserviceindia.com/legal/article-5024-right-to-die-with-dignity-as-a-fundamental-right-under-article-21.html>

