

RIGHT TO DIE: A CONSTITUTIONAL PERSPECTIVE

RITIKA RANKA- NUALS, Cochin

Batch -April'19

ABSTRACT

One should die proudly when it is not possible to live proudly.¹ All of us have to die someday, and it is better if we die with dignity. Right to die with dignity being included in the facet of Article 21 of the Constitution after a long-standing discussion is a great feat. This paper focuses on the definition of Euthanasia and its distinction with suicide and the constitutional and penal provisions about the same. Right to die with dignity has evolved around the globe in different forms and ways encompassing various countries and their legislation and judicial decisions. Lastly, the paper tries to analyze the *Common Cause* judgment and provide for suitable suggestions.

KEYWORDS: Right to Die, Euthanasia, Suicide, Assisted Suicide, Article 21.

* Student, National University of Advanced Legal Studies (NUALS), Kochi-683503.

¹ Friedrich Nietzsche, German Philosopher (1844-1900).

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RITIKA RANKA*

1. INTRODUCTION

All of us have, at some point in time, claimed Right to Life as our most basic Fundamental Right and learned that it should not be taken away under any circumstance. One has a Right to Life even in the case of National Emergency. However, what about our Right to life with dignity and Right to die with dignity, we do not usually discuss enforcement of these questions in detail.

The Supreme Court also recognised Right to Life with dignity as a fundamental right eventually, but any discussion about self-destruction or self-harm had always been unacceptable. Thus, Right to die had its fate yet to be discussed until on a historic day, in the Writ Petition filed by *Common Cause*², the Supreme Court recognised Right to die with dignity as a Fundamental Right in India. This Article discusses the journey encompassing the enforcement of Right to die with dignity and its constitutional validity.

2. ARTICLE 21 AND INDIAN PENAL CODE: PERSPECTIVE W.R.T. RIGHT TO DIE

Article 21 is enshrined in Part III of the Constitution, and it states that- ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law.’

It all started with US Supreme Court, in the case of *Munn v Illinois*³, where it held that Life means something more than mere animal existence. Supreme Court accepted this in a constitutional bench decision of *Kharak Singh*⁴.

The Bombay High Court in the case of *Maruti Shripathi Dubal*⁵ for the first time discussed whether Right to Die forms part of Article 21 and held that ‘Right to Life’ includes ‘Right to Die’ and struck down Section 309 of Indian Penal Code.

* Student, National University of Advanced Legal Studies (NUALS), Kochi-683503.

² *Common Cause v Union of India*, Writ Petition (Civil) No. 215 of 2005.

³ *Munn v Illinois*, 94 U.S. 113 (1876).

⁴ *Kharak Singh v State of U.P.*, AIR 1963 SC 1295; 1964 SCR (1) 332.

309. Attempt to commit suicide.—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 I[or with fine, or with both].

Even the Supreme Court upheld the Dubal's case in *P. Rathinam's case*⁶ by holding section 309 as unlawful and unconstitutional. However, when the issue was raised before the Supreme Court in the case of *Gian Kaur*⁷, it was held by the constitutional bench that 'Right to Life' does not include 'Right to Die' and the complete judgment of *P. Rathinam* was overruled.

3. SUICIDE, ASSISTED SUICIDE AND EUTHANASIA: DEFINITIONAL ANALYSIS

Suicide is a way through which a person plans to end his own life owing to various factors such as emotional and mental distress. Assisted suicide is when someone else helps the other person willing to commit suicide with all the guidance and assistance so that the end could be achieved. In India, both suicide and assisted suicide are punishable under sections 305 and 306 of the Indian Penal Code.

Euthanasia can be described as the intentional killing of a human being for an easy death by his dependent. There are two types of euthanasia, namely active and passive. Active Euthanasia means that you actively commit the act of causing death to a person so that they do not suffer the pain anymore. Passive Euthanasia, you leave the person to die by removing the life-sustaining equipment.

Have you ever asked a cancer patient as to whether he can enjoy his right to life with dignity? Alternatively, he would choose his Right to die with dignity over any other right owing to the circumstances, pain, suffering, affordability of medicines, availability of cure etc. There were and still are several debates as to whether Euthanasia should be legalised? What about its misuse? What if the patient is unable to give his consent?

⁵ Maruti Shripati Dubal v State of Maharashtra, 1987 (1) BomCR 499, (1986) 88 BOMLR 589.

⁶ P. Rathinam v Union of India, AIR 1994 SC 1844, (1994) 3 SCC 394.

⁷ Gian Kaur v State of Punjab, AIR 1996 SC 946, (1996) 2 SCC 648.

The decision of *Common Cause*⁸ puts an end to all of these questions by legalizing Passive Euthanasia and Living Will for terminally ill patients or those in a permanent vegetative state.

4. RIGHT TO DIE: A COMPARATIVE ANALYSIS WITH DIFFERENT COUNTRIES

Netherlands was the first country to legalise euthanasia back in 2002 stating that the illness must be incurable and the demand must be made only by the patient in “full consciousness”. After this, in the same year, Belgium recognised this concept by stating that Doctors can be allowed to assist patients if they have a free will to die. Then there are a lot of other countries around the globe such as Ireland, Colombia, Luxembourg, Switzerland, Japan, Canada, France and Germany where Euthanasia and Assisted Suicide is legal.

USA

Euthanasia and Assisted Suicide is not entirely recognised in the United States of America. Active Euthanasia is completely illegal throughout, but Assisted Suicide is recognised in Oregon, Vermont, and California and the country of Mexico.

Euthanasia became a topic of discussion because of Brittany Maynard, resident of California who had brain cancer and wanted to move to Oregon to take advantage of the law there as she could not pursue the same here. After this, California passed the bill legalizing Assisted Euthanasia.⁹

AUSTRALIA

It was the first country to have legalised Euthanasia in 1995, but it was taken back in 1997 due to the death of four patients. Australia still awaits reconsideration on this decision as Euthanasia is illegal there at present. However, Australian state Victoria has recently legalised assisted dying and became the first state to do so in the world. The Bill was passed in 2018 and came into effect from 2019 onwards where a patient can opt for voluntary assisted dying.

⁸ *Ibid* at 2.

⁹ Pyali Chatterjee, *Right to Life with dignity also includes Right to die with dignity: Time to amend Article 21 and Law of Euthanasia*, Vol. 1, Issue 5, International Journal of Scientific Research in Science and Technology (2015).

UK

Euthanasia is still illegal and is a criminal offence punishable with 14 years of Imprisonment to assist aid or counsel somebody about taking their own life. However, declaring suicide on one's own is legal under the Suicide Act, 1961.

5. INDIA: PRESENT LEGAL POSITION

It was the landmark case of *Aruna Shanbaug*¹⁰ which let the stones rolling for the Supreme Court to differentiate between Active and Passive Euthanasia. It held that Active Euthanasia is utterly illegal as providing medication to a person so that he dies attracts provisions of murder as there is the killing of a human being. However, passive euthanasia can be availed in exceptional circumstances and is a concept which is religiously promoted in Hinduism and Jainism especially.

Moreover, then a 538 lengthy page judgment was delivered on the historic day of 09 March 2018 legalizing passive euthanasia in the country. It was held in the case of *Common Cause (A Regd. Society) v Union of India*¹¹, that “The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere dignity.” The bench also held that Right to Life with dignity involves smoothening of the process of dying for a patient who is in PVS (Permanent Vegetative State) or is terminally ill for a prolonged duration.

The Judgment introduced the concept of the Living Will and Advanced Directive. An advance medical directive is defined as "a legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate."¹² A living will, on the other hand, is a document prescribing a person's wishes regarding the medical treatment the person would want if he were unable to share his wishes with the health care provider.

There can be a misuse of these directives, but that should not stop the judiciary from bringing in new and positive changes. To prevent possible misuse, there have been strict and stringent regulations for giving effect to a living will or administering passive euthanasia such as consent of relatives, various medical boards and even judicial officers.

¹⁰ *Aruna Ramachandra Shanbaug v Union of India*, (2011) 4 SCC 454.

¹¹ *Ibid at 2*.

¹² *Black's Law Dictionary*.

Former CJI has started the judgment with few lines providing the essence of pronouncing such a decision, which are

“There comes a phase in life when the spring of life is frozen, the rain of circulation becomes dry, the movement of body becomes motionless, the rainbow of life becomes colourless and the word ‘life’ which one calls a dance in space and time becomes still and blurred and the inevitable death comes near to hold it as an octopus gripping firmly with its tentacles so that the person “shall rise up never”.”

6. CONCLUSION AND SUGGESTIONS

If one is asked to compare the journey of legalizing euthanasia in India from *P. Rathinam* to *Gian Kaur* to *Aruna Shanbaug* to finally, *Common Cause*, anyone would say that it is commendable. It is commendable that we have a system where there are no water-tight compartments, but all the organs of the state are dependent as well as independent of each other. It is commendable that the Judiciary of India is independent and can take decisions freely without any pressure or influence from the Government. Passive Euthanasia would have to take a detour if Judiciary in India was non-existent. There is still a hope that one day, even Active Euthanasia will be legalised and the day is not too far as it is the need of the hour. Because it is not possible for any patient to always have a ‘living will’ and the consent of family is all that matters for exercising active euthanasia. There are guidelines and procedures given in the decision, but they lack practical foresight.

In the end, there is this hope that other countries may get inspired by this decision and legalise euthanasia in their respective jurisdictional limits as well so that everyone and anyone can choose to live and also die.

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