



## A CHOICE BETWEEN LIFE AND DEATH – RIGHT TO LIFE INCLUDES RIGHT TO DIE

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**Abstract:** Euthanasia and physician-assisted suicide refer to deliberate action taken with the intention of ending a life, in order to relieve persistent suffering. Due to scientific and technological advancements that took place in the last century the ideas pertaining to life and death have changed drastically. A person's life can be prolonged with the help of ventilation and artificial nutrition. Nevertheless, is making euthanasia legal still a chimeric idea? Right to Life is a significant right enshrined in the Constitution of India. Article 21 ensures the Right to Life in India. It is contended that the right to life under Article 21 incorporates the Right to Die. Along these lines, mercy killing is the legitimate right of an individual. Recently, there has been a development in this issue owing to Aruna Shaunbag's case which opened the door for legalization of passive euthanasia. With regards to this, Section 309, IPC has been brought under the scanner with regard to its constitutionality and has been declared void. An absolute refutation of autonomy over one's body is gross violation of natural rights. One should have the last word in the matter of his life. Right to Life is more than just physical existence, it should be chaperoned with quality. If that said quality is non-existent then a person should have the Right to Die.

Ought not the legislators formulate a law that shields the terminally debilitated from not well calculated sabotage while perceiving

their right to interpret rationally to die with dignity? This matter is being widely debated all around the world as emanating issue of human rights. This paper provides some a legal view. It analyzes the judicial precedents that lead to its development in India. It also puts forth some arguments of vital importance for legalizing euthanasia. Another aim is to examine and analyze relevant factors to provide a deeper insight in conjunction with the Indian legal system and the Constitutional dispensation.

**Keywords:** Right to Die, Right to Life, Euthanasia, Criminalization of Suicide.

### Introduction

Endurance is, without a doubt, significant yet some times and in certain condition life gets agonizing and incomprehensible or intolerable, in that stage survival appears, similar to a revile or curse. Here, enters the concept of Euthanasia and Right to Die. Euthanasia, simply speaking, Euthanasia is nothing else except for a grant or permit to the clinical expert for consummation the life of an individual being referred to.

Antipathy isn't a word, but it is the position or it is an inclination on account of which Law has been generated. No doubt, father of Law, Bentham, not just portrays antipathy as the central factor of law and enactment yet additionally as an activity which cause an amazing impact over the ethics of man. As Bentham characterized antipathy in six particular parts as repulsiveness of sense, injured pride, singular obstruction and force, trust in future, want of unanimity and to wrap things up envy. Bentham portrays it as a reason that offers ascend to the sentiment of compassion in the society. The hypothesis of



joy and torment is depicted as a test through which authorizations might be shaped. Without a doubt joy and agonies are relating to one another yet now and again the agony is too extreme to even think about explaining not exclusively to a specific yet in addition for their precious alongside the connected piece of society, this sort of torment is extremely sketchy that whether it very well may be superbly relieved by any law before the finish of topic or to left the topic in its situation to battle with its torment. Truth be told agony and sufferings in the method for kicking the bucket is a more horrible ruler of humankind than even demise itself. Here, it very well may be said "It isn't demise one feelings of dread to confront, but dying". It implies that one doesn't dread to confront the dimness of death yet fears to go through the sufferings in passing on when everybody knows the outcome that is, at last the finish of subject matter. To give the conclusion to the topic in a resentment of terrible sufferings and agony where demise is sure, is demonstration of consummation the life of an individual from empathetic thought processes, when he is now in critical condition or, when his enduring has gotten agonizing.

Euthanasia literally means putting a person to painless death especially in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap.<sup>1</sup> Euthanasia or Mercy Killing is the practice of killing a person for giving relief from

incurable pain or suffering or allowing or causing painless death when life has become meaningless and disagreeable.<sup>2</sup> 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 depression.<sup>3</sup>

Dilemmas relating to ending life have come to the forefront of interest in many parts of the world in recent decades. The right to die with dignity and the right to euthanasia and assisted suicide entailed by it are emerging issues of human rights concern. The right to human dignity requires that the physician gives assistance to his patient to avoid unbearable physical and spiritual suffering. Although it is unlawful for a doctor to do a positive act to bring about a patient's death, the discontinuance of life support treatment is lawful when such treatment is futile and discontinuance is in accordance with responsible medical opinion. As a result of development in modern medical technology, doctors no longer associate death exclusively with breathing and heartbeat, and it has come to be accepted that death occurs when the brain, and in particular the brain stem, has been destroyed.<sup>4</sup>

### Legal Perspective on Right to Die

The law, though active in some countries has been a sleeping giant in India,

<sup>1</sup> Dr. Parikh, C.K. (2006). *Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology*. 6<sup>th</sup> Edition, Page 155. New Delhi, CBS Publishers & Distributors.

<sup>2</sup> Nandy, Apurba. (1995). *Principles of Forensic Medicine*, 1<sup>st</sup> Edition, Page 38. Kolkata, New Central Book Agency (P) Ltd.

<sup>3</sup> Chochinov HM, Wilson KG, Enns M. *Desire for death in the terminally ill*. Am J Psychiatry, 1995.

<sup>4</sup> Ian M. Kennedy, "Switching off Life Support Machines: The Legal Implications" Criminal Law Review 443-452 (1



as euthanasia and physician-assisted suicide are both absolutely illegal in India. A physician who provides lethal drugs so that another person can end his life will be liable as abettor of helping him commit suicide. In India, abetment of suicide (section 306, IPC) and attempt to commit suicide (section 309, IPC) are both criminal offences. This is in contrast to many countries such as the US and UK where attempted suicide is not a crime. However, a doctor who tries to kill a patient at his request will fall under the exception 5 to section 300 of the Indian Penal Code and the doctor will be held liable under section 304,

IPC for culpable homicide not amounting to murder. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to section 92 of the IPC and thus be rendered illegal. The Law Commission of India in its 42nd report had recommended the repeal of the provision as far back as 1971.<sup>5</sup> The commission had declared the section harsh and unjustifiable.

The Court held that Article 21 is a provision guaranteeing “protection of life and personal liberty” and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33(m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners. Exercising these powers, the Medical Council of India has amended the code of medical ethics for medical

practitioners. There under the act of euthanasia has been classified as unethical except in cases where the life support system is used only to continue the cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of doctors, life support system may be removed.

In *Gian Kaur's*<sup>6</sup> case section 309 of Indian Penal Code has been held to be constitutionally valid but the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in a depression, and hence he needs help, rather than punishment.

The Delhi High Court in *State v. Sanjay Kumar Anantia*<sup>7</sup>, in dealing with a case under section 309 of IPC observed that section 309 of I.P.C. has no justification to continue remain on the statute book.

The Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*<sup>8</sup> examined the constitutional validity of section 309 and held that the section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14. Article 21 was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article 21.

Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India*<sup>9</sup> opened the gateway for legalization of passive euthanasia. In this case a petition was filed before the Supreme Court for seeking

<sup>5</sup> Law Commission of India, Forty Second Report, 1971.

<sup>6</sup> 1996 (2) SCC 648 : AIR 1996 SC 946

<sup>7</sup> 1985 Cri.L.J 931 (Del.).

<sup>8</sup> 1987 Cri.L.J 743 (Bom.)

<sup>9</sup> 2011(3) SCALE 298 : MANU/SC/0176/2011



permission for euthanasia for one Aruna Ramchandra Shanbaug as she is in a Persistent Vegetative State (P.V.S.) and virtually a dead person and has no state of awareness and her brain is virtually dead. Supreme Court established a committee for medical examination of the patient for ascertaining the issue. Lastly the Court dismissed the petition filed on behalf Shanbaug and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. The court also recommended to decriminalized attempt to suicide by erasing the punishment provided in Indian Penal Code.

The Court in this connection has laid down the guidelines which will continue to be the law until Parliament makes a law on this point.

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
2. Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in *Airedale's* case as this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

In this case question comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person. Then the Court held that it is the High Court under Article 226 of the Constitution which can grant approval for withdrawal of life support to such an incompetent person. The High Court under Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders.

According to the instant case, when such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the hospital staff and submit its report to the High Court Bench.

After hearing the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.

The High Court should give its decision assigning specific reasons in accordance with the principle of 'best interest of the patient'



laid down by the House of Lords in *Airedale's case*.<sup>10</sup>

### Arguments for Legalising Euthanasia

From Ram's Jalasamadhi to Mahatma Gandhi and Vinoba Bhave's fast till death (wherein Bhave passed away), euthanasia existed in Indian culture. The Judiciary has likewise seen euthanasia from a thoughtful point, which is apparent from the perception of the different judges in cases managing right to suicide.

Euthanasia implies executing an individual rather finishing the existence an individual who is experiencing some terminal disease which is making his life agonizing just as hopeless or at the end of the day finishing an actual existence which does not merit living. In any case, the issue lies that in what manner should one choose whether the life is any longer worth living or not. In this manner, the term euthanasia is fairly and excessively equivocal. This has been a point for debate since quite a while for example regardless of, whether euthanasia ought to be permitted or not. The conflict is with respect to the irreconcilable situations: the interests of the general public and that of the person.

- One way of thinking contends that it ought to be permitted keeping in mind that the life of an individual is removed by his own assent. The choice of the patients ought to be acknowledged. On the off chance, that then again we gauge the social qualities with the individual intrigue then we will plainly observe that here the enthusiasm of the individual will exceed the enthusiasm of the general public. The general public focuses on

enthusiasm of the people rather it is made to guarantee a noble and a tranquil life to all. Presently if the person who is under unendurable agony can't choose for himself then it clearly will hamper his advantage. All things considered it will most likely be a refutation of his nobility and human rights. As to debate according to lawful perspective, Article 21 plainly provides for living with dignity. An individual has an option to carry on with an existence with in any event least respect and on the off chance that that standard is falling beneath that base level, at that point an individual ought to be given a right to take his life.

Another significant point is that a great deal of clinical facilities where a ton of money is being spent on these patients which are regardless going to die. Our obligation isn't just towards the patient yet additionally to the families who seek us for emotional support and balanced choices to keep away from superfluous passionate and budgetary weights. In the event that one can end his life to spare others, a hopelessly sick individual ought to be ethically legitimised in ending his life to maintain a strategic distance from unnecessary agony. In the event that an individual has no obligations to perform, either to himself or to others when he is in critical condition, he may choose to take his life and assuage himself from the agony of living and others from the weight of caring for him. Section 309 Of IPC couldn't have been proposed to include this sort of death as 'Suicide' inside it.

- The society is committed to recognise the rights of patients and to regard the choices of

<sup>10</sup> *Airedale National Health Service Trust v Bland* (1993) AC 789.



the individuals who choose euthanasia. It is contended that euthanasia regards the person's right to self-assurance or his right to privacy. Obstruction with that right must be advocated on the off chance that it is to secure fundamental social qualities, which isn't where patients enduring horrendously toward the finish of their lives demand euthanasia when no options exist. Not permitting euthanasia would come down to constraining individuals to endure without wanting to, which would be unfeeling and a nullification of their human rights and dignity.

- Euthanasia gives an a way to assuage the grievous pain and enduring of a person. It soothes the in critical condition individuals from a waiting demise. It not just remembers the unendurable torment of a patient yet additionally mitigates the family members of a patient from the psychological anguish. Its point is philanthropic and valuable as it is a demonstration of easily executing to those people who are experiencing excruciating and serious illnesses. Along these lines, the intention behind this is to help instead of mischief.
- Article 21 of our Constitution unmistakably provides for living with dignity. An individual has a privilege to carry on with an existence with in any event least dignity and on the off chance that that standard is falling beneath that base level, at that point an individual ought to be given a right to take his life. A patient will wish to take his life just in instances of exorbitant distress and would like to bite the dust an effortless passing instead of carrying on with a hopeless existence with that desolation and languishing. Along these lines, from an ethical perspective it will be smarter to permit the patient kick the bucket effortlessly when

regardless he realizes that he is going to die because of that terminal ailment.

### **A new approach to life and death**

The desire for control over how one dies marks a sharp turning away from the sanctity of life ethic. It will not be satisfied by the concessions to patient autonomy within the framework of that ethic - a right to refuse extraordinary means of medical treatment, or to employ drugs like morphine that are 'intended' to relieve pain, but have the 'unintended' but foreseen side effect of shortening life. The right to refuse medical treatment can help only in the limited number of cases in which it leads to a swift and painless death. Most cancer patients, for example, are not in this situation. They are more likely to be helped by liberal injections of morphine. For most people, who are very ill, the desire for control over death is best satisfied with the assistance of a medical practitioner. That is why the traditional ethic will be unable to accommodate the present demand for how we die.

The centuries-old Hippocratic oath relating to sanctity of life ethic needs to be re-evaluated because it is too absolutist to deal all the circumstances that can arise. It is noted, a civilized society does not offer inadequate care to any of its members, however damaged or disadvantaged, nor does it neglect them by failing to offer care or treatment which could be of any benefit. In the same way, a civilized society should not condemn one of its members for not to be a Victim of medical technology. It is in this context to say that prolonging life by the use of medical technology is greater burdens than benefits on terminally ill patients.



If an individual suddenly become unable to breathe on his/her own, it would have been quite in accordance with the law and the traditional ethical view not to put him/her on a respirator or if he/she was already on one, to take it away. It is not clear how much weight the traditional ethic places on the fine line between ending life by withdrawing treatment, and ending it by a lethal injection. The prohibition on physician-assisted suicide was one element of a general view that the state should enforce morality and act paternalistically towards its citizens. This view of the proper role of the state was first powerfully challenged by the nineteenth century British philosopher John Stuart Mill, who wrote in his classic *On Liberty*, 'The only purpose for which power can be rightfully exercised over any member of civilised community, against his will, is to prevent harm to others. His own good either physical or moral is not a sufficient warrant'.<sup>11</sup> Incurably ill people who ask their doctors to help them die at a time of their own choosing are not harming others. The state has no grounds for interfering, once it is satisfied that no one is getting harmed and the decision has been freely made on relevant information by a competent person.

The new ethical approach allows us to acknowledge that life consciousness is of no worth at all. One should treat human being in a with their ethically relevant characteristics. They include conscious capacity to physical, social and mental interaction with other being conscious preferences for continued life, and having enjoyable Can doctors who remove the feeding tubes and ventilators from

persistent vegetative state really believe that there is a huge gulf bet and giving the same patients an injection that will stop their hear Doctors may be trained in such a way that it is psychologically easier to do the one and not the other, but both are equally certain ways about the death of the patient. As far as the second assumption, that it is not rationally defensible.<sup>12</sup>

### Conclusion

People are given the gift of free will, and that means the freedom to choose. If a person chooses to die because of their diagnosis, they are free to choose whether they should continue on, especially if their quality of life is severely diminished. By choosing to die, they can free themselves from the misery of what little life they have left.

Every suicidal person should not be allowed to legally commit suicide on a whim, they should instead be put in therapy and given help. However, there are many for whom death is a good option. Those with terminal illnesses or who have a very low quality of life due to medical issues should be given the option to legally die to end their pain and suffering.

Similarly as individuals can pick whether to have babies or adjust their bodies, they ought to reserve the option to decide to die. Individuals can reject clinical treatment that would forestall demise, and they ought to have the option to decide to rush passing too. The state shouldn't have the lawful option to deny individuals of decision about their own bodies or lives.

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<sup>11</sup> John Stuart Mill, *On Liberty* 72-3 (London : J. N. Dent & Sons, 1960)

<sup>12</sup> Gerald J. Gruman, "Death and Dying : Euthanasia and Sustaining life" in *Encyclopaedia of Bioethics* 261 (New York : Free Press, 1978).