



## TRANSCENDING LEGAL POSITION OF RIGHT TO DIE WITH DIGNITY IN INDIA

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### Abstract

This article addresses the right to die with dignity in India and elucidates upon the concept of euthanasia. It draws a jurisprudential outlook upon the juxtaposition of euthanasia under the Indian Constitution, 1950. The legal controversy of whether a person who has the right to live as per Article 21 of the Indian Constitution also has the right to die or not has further been discussed in this article. The article further specifies about the 241<sup>st</sup> Report of the Law Commission of India wherein the utmost importance is placed upon the process of considering the individual autonomy of the patient in matters of passive euthanasia.

The rational choice of enabling an individual to decide about the end of their life is concatenated with the claims of medical assistance and other support that is adequate enough to assure a dignified as well as a humane procedure of dying. With respect to the application, criticism and reasoning of the right to die with dignity, certain landmark judgements have been passed by the Indian Courts for accommodating circumstantial and policy-based decision-making. This article further explains why the right to die with dignity is not an absolute right in the Indian legal system. It can be understood from this article that the right to die with dignity is a boon to the individuals who suffer

from excruciating pain in merely living their lives however, the same right can also be a bane as it gives a chance to the unscrupulous people related in any way to such individuals to take undue advantage concerning the assets belonging to such an individual.

### Keywords

Die with dignity, rational choice, death, dignity, freedom, human dignity, life, human right, right to die.

### Introduction

*"We have no control over how we arrive in the world but at the end of life, we should have legal control over how we leave it."* - Sir Patrick Stewart.

The Constitution of India<sup>1</sup> acts like an armour when it comes to protecting the rights of people. Right from the time when a person is born, he is protected with basic human rights among which the 'Right to Life' finds its place. The Constitution of India recognizes the right to life as a fundamental right as every human being has the basic right to live and not be killed by another human being. However, the dilemma here is whether a person who has the right to live as per the Indian Constitution also has the right to die or not. For any human being, when life becomes an experience that is far more excruciating and unbearable than death, then he/she might desire death over life. Such voluntary preference to death over life is known as 'Euthanasia'. However, it is pertinent to note that the right to die with dignity is not the same as the right to die an unnatural death which truncates the natural span of life of a person.

<sup>1</sup> The Constitution of India, 1950.



## Concept of Dignity under the Indian Constitution

The Indian Constitution guarantees the right to life under Article 21.<sup>2</sup> The Hon'ble Supreme Court through a catena of judgements has explained and expanded the scope of Article 21 to establish that the right to live with dignity is a part and parcel of the right to life and liberty.

In the case of *K.S. Puttaswamy and Anr v. Union of India and Ors*,<sup>3</sup> a nine-judge bench reiterated that 'dignity' is a component under Article 21 of the Indian Constitution. It was further held that human dignity cannot be restricted to a particular definition or description.

Further, Dr. Chandrachud J., while speaking about life and dignity, has observed that to live is to live with dignity. He has opined dignity as the core which integrates the Fundamental Rights. It has been rightly taken into cognizance by law that the 'Dignity' of a man is his sacred possession. Such sacred possession does not lose its sanctity with the process of death nor does it evaporate when death occurs.

In the case of *M. Nagaraj and others v. Union of India and others*,<sup>4</sup> it was held that it is the duty of the State to not only protect human dignity but to facilitate it by taking necessary steps in that direction. In *National Legal Services Authority v. Union of India and others*<sup>5</sup>, the Hon'ble Supreme Court opined that there is a growing recognition that the true measure of the development of a nation

is not economic growth but human dignity. In the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>6</sup> it was held that the Right to Life includes the right to live with human dignity and everything that goes along with it.

The U.N. Charter, 1945<sup>7</sup> was adopted after the Second World War. The said charter introduced the 'Dignity of the Individuals' as its principal value. The Universal Declaration of Human Rights (1948)<sup>8</sup> further emphasized on the same matter. Article 3<sup>9</sup> of the Geneva Conventions also outrightly prohibits assaults upon personal dignity.

## Understanding Euthanasia

The term Euthanasia originates from the Greek words 'Eu' meaning 'Good' and 'Thanatos' meaning 'Death'. Euthanasia refers to the practice of terminating life to relieve pain and suffering. Such termination of life may either be by Direct intervention, also known as Active Euthanasia or by withholding life-aiding measures and resources also known as Passive Euthanasia.

### Active Euthanasia

Active euthanasia is also known as aggressive euthanasia or positive euthanasia. In the case of active euthanasia, an affirmative act or a positive act requiring the use of lethal force or substance is done to cause the death of a person by direct intervention and with intention. This kind of euthanasia includes patient-specific methods to cause the intentional death of such a

<sup>2</sup> The Constitution of India, 1950, art 21.

<sup>3</sup> *K.S. Puttaswamy and Another v. Union of India and Others* (2017) 10 SCC 1.

<sup>4</sup> *M. Nagaraj and others v. Union of India and others* (2006) 8 SCC 212.

<sup>5</sup> *National Legal Services Authority v. Union of India and others* (2014) 5 SCC 438.

<sup>6</sup> *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

<sup>7</sup> Charter of the United Nations, 1945.

<sup>8</sup> Universal Declaration of Human Rights, 1948.

<sup>9</sup> Geneva Conventions, 1949, art 3.



person. For example, injecting a patient with a deadly substance to cause his intentional death would be considered as active euthanasia.

### Passive Euthanasia

Passive euthanasia is also known as non-aggressive euthanasia or negative euthanasia. In the case of passive euthanasia, there is a withdrawal of life aiding measures or medical treatment for continuance of life. In passive euthanasia, a procedure that is essential to preserve the patient's life is not followed leading to the death of such person. For example, not providing the required medicine to a patient and thereby causing his death would be considered as passive euthanasia.

### Right to Die – Its Legal Position in India

The Constitution of India talks about the 'Right to Life' under Part III through Article 21. The right to life is recognized as a fundamental right by the Constitution as it is one of the most basic human rights. Article 21, prima facies appears to be a negative right, it restricts deprivation of life and liberty of a person except according to the process established by law. According to the fundamental right to life, it is the duty of the State to ensure that every individual does not just enjoy the right to life but the right to a dignified life. Let us understand more about the legality of the 'Right to Die' through a few landmark judgements.

### *P. Rathinam v. Union of India*

The Hon'ble Supreme Court came across the question of whether the Right to Die was an intrinsic part of Right to Life under Article 21 of the Indian Constitution through the case of *P. Rathinam v. Union of India*<sup>10</sup> for the first time. The issue raised in this case was regarding the constitutional validity of Section 309<sup>11</sup> of the Indian Penal Code, 1860<sup>12</sup> (IPC), stating that the said section violates Article 14<sup>13</sup> and Article 21 of the Indian Constitution.

While addressing the said issue, the Apex court referred to the case of *Maruti Shripati Dubal v. State of Maharashtra*<sup>14</sup> wherein it was held that a person cannot be forced to exercise the right to life to his detriment, disadvantage or disliking. Further, the right to life can be said to bring in its trail the right not to live a forced life. The Apex Court held that Section 309 deserved to be erased from IPC as it is ultra vires.

### *Gian Kaur v. State of Punjab*

The precedent laid down by the Apex Court in the case of *P. Rathinam v Union of India*<sup>15</sup> was brought up in the case of *Gian Kaur v. State of Punjab*.<sup>16</sup> In this case, the question of the unconstitutionality of Section 306 of the Indian Penal Code was raised. Section 306<sup>17</sup> of the IPC is related to abetment of suicide and makes abetment a punishable offence.

The Court in this case held that the right to life including the right to live with dignity would mean that such a right exists up to the end of the natural life of a human being. It also includes the right of a man to die with dignity when he is on the verge of death. The

<sup>10</sup> *P. Rathinam v. Union of India* (1994) 3 SCC 394.

<sup>11</sup> Indian Penal Code, 1860, sec 309.

<sup>12</sup> Indian Penal Code, 1860.

<sup>13</sup> The Constitution of India, 1950, art 14.

<sup>14</sup> *Maruti Shripati Dubal v. State of Maharashtra* 1987 Cri LJ 473 : (1986) 88 Bom LR 589.

<sup>15</sup> *P. Rathinam (n 10)*.

<sup>16</sup> *Gian Kaur v. State of Punjab* (1996) 2 SCC 648.

<sup>17</sup> Indian Penal Code, 1860, sec 306.



court further explained that the right to die with dignity at the end of life is not the same as the right to die an unnatural death reducing the natural span of life. As a result, the Court declared Section 306 and Section 309 of IPC as constitutional. The case of *P. Rathinam v. Union of India*<sup>18</sup> was thus overruled by the judgement in *Gian Kaur v. State of Punjab*<sup>19</sup>.

### ***Aruna Ramachandra Shanbaug v. Union of India and others***

The concept of Passive Euthanasia was brought before the Apex Court for the first time through the case of *Aruna Ramachandra Shanbaug v. Union of India and others*.<sup>20</sup> Referring to the case of *Airedale N.H.S. Trust v. Bland*<sup>21</sup> the Court held that passive euthanasia may be applied for terminally ill patients or patients in a permanent vegetative state provided that certain safeguards are considered. The Court held that if the patient was conscious and capable of giving consent then his or her opinion must be taken, otherwise, at least the opinion of a next friend was required. After this procedure, the matter would then go to the respective High Court where a Division Bench would be required to constitute a Board of three competent doctors to fully examine the patient. The court further held that these guidelines need to be followed till the Parliament brings a valid legislation on this matter.

### ***Common Cause (A Regd. Society) v. Union of India***

The Hon'ble Supreme Court of India in the case of *Common Cause (A Regd. Society) v. Union of India*<sup>22</sup> held that 'death with

dignity' is a Fundamental Right included under Article 21 of the Indian Constitution. The Hon'ble Court also legalized Living Wills and gave effect to Medical Attorney Authorisation. This enabled people to draw living wills and attorney authorisation which means that a person can discontinue his treatment if he is in a permanent vegetative state or is terminally ill. This decision of the Apex Court thus answered the controversial question of whether Passive euthanasia is legal in India or not by recognizing individual autonomy.

### **Report of the Law Commission of India**

After the dictum laid down by the Apex Court in the case of *Aruna Ramachandra Shanbaug v. Union of India and others*,<sup>23</sup> the Law Commission of India released its 241<sup>st</sup> report called Passive Euthanasia – A Relook.<sup>24</sup> In many countries, it is an established law that a terminally ill patient who is conscious and is competent, can take an informed decision to die a natural death and reject any medical treatment which may merely prolong life or postpone death. However, in such cases, the doctors need to act in the best interest of the patient.

Further, the said report also emphasized on how the individual autonomy of the patient must be taken into consideration in matters of passive euthanasia. Though the 241<sup>st</sup> Report of the Law Commission has recognised passive euthanasia in India, no law has been enacted for the same yet.

<sup>18</sup> *P. Rathinam (n 10)*.

<sup>19</sup> *Gian Kaur (n 16)*.

<sup>20</sup> *Aruna Ramachandra Shanbaug v. Union of India and others* (2011) 4 SCC 454.

<sup>21</sup> *Airedale N.H.S. Trust v. Bland* (1993) 2 WLR 316: (1993) 1 All ER 821, HL.

<sup>22</sup> *Common Cause (A Regd. Society) v. Union of India* (1994) 3 SCC 394.

<sup>23</sup> *Aruna (n 20)*.

<sup>24</sup> Law Commission of India, 241st Report on Passive Euthanasia - A Relook (August, 2012).



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**Conclusion**

The Right to Die with dignity is part and parcel of the Right to Life under Article 21 of the Indian Constitution. Euthanasia allows a terminally ill patient to end his or her life on his or her own choice to avoid the excruciating pain and suffering resulting from their illness. Passive Euthanasia was legalized after the case of *Aruna Ramchandra Shanbaug v. Union of India*.<sup>25</sup> Through the case of *Common Cause (A Regd. Society) v. Union of India & Anr*<sup>26</sup> the right to die with dignity was recognized as a fundamental right. Further, the court also created a fine balance between the two aspects of the same right, i.e, the right to life under Article 21 of the Indian Constitution. While one aspect creates a duty on the State to preserve human life, the other aspect ensures individual autonomy to make decisions regarding one's own life and body.

It is pertinent to note that the right to die with dignity or euthanasia may also be abused by the greedy and unscrupulous relatives of the patients. Therefore, the right to die is not an absolute right. While it is the duty of the Courts to protect the law relating to euthanasia from being misused, the government must take steps to enact specific laws regarding euthanasia.

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<sup>25</sup> *Aruna (n 20)*.

<sup>26</sup> *Common Cause (n 22)*.