

LAW RELATING TO “RIGHT TO DIE”

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ABSTRACT: Euthanasia has risen as the most puzzling issues which the courts and the legislatures are confronting everywhere throughout the world. The resolute discussion about the sanctioning of the legalization of euthanasia in the world has been stretched out for a considerable length of time. The conversations about legitimization of ‘right to die’ in the world have been wandered from multiple points of view, rivals refer to for the ‘sacredness of life’ being damaged and supporters, then again, demand that a ‘right to life’ must incorporate a related option to pick when that life gets not worth living. Presently, the fuss of euthanasia has been taking a shape in India. The question of whether a person should have a right to opt for euthanasia has provoked vigorous debates in many countries, in the courts, in legislatures, in referenda, and in academic literature. This article examines what is the scenario of right to die in international level and how the Indian courts have construed this right to die.

KEY WORDS: euthanasia, suicide, right to die, criminal law, human rights

I. INTRODUCTION

“You matter because you are you. You matter to the last moment of your life, and we will do all we can, not only to help you die peacefully, but also to live until you die.”- Michael Coren

The ‘right to die’ is a motto intended to advertise euthanasia. Historically, however, it is life that has been measured as an undeniable right: death is a natural truth. One could with equal or more justification speak of legalization as establishing the doctor’s right to kill. What the ‘right to die’ really means is a command for a right to choose the time and method of death. The first point about this ‘right to die’ is that it is in direct conflict with the right to life. As per the definition is given by the Black’s Law Dictionary (8th edition) Euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, especially a painful one, for a reason of mercy. With regard to mercy killing (“euthanasia”), in some jurisdictions, “physician- assisted suicide” is legal; while some prohibit even this practice. This disparity in the law of various jurisdictions itself has negative consequences. For instance, this has paved way for a new phenomenon- “suicide tourism” or “euthanasia tourism” wherein potential suicide aspirants travel to a jurisdiction to commit assisted suicide or suicide.¹

II. OBJECTIVE

The present article attempts an analysis of the concept of ‘right to die’ under international and regional human rights instruments. It also critically evaluates the present Indian law relating to “right to die” in the context of “attempted suicides” and “euthanasia.” The judicial trend in this regard has also been portrayed.

III. METHODOLOGY

For the purpose of research the Researcher will take the help of doctrinal method to come to the conclusion. So, the Researcher would depend on both primary sources and secondary sources as authorities to illustrate the principles as well as justify her arguments. Primary sources relied on would be statutes and case laws. Secondary sources relied upon would be books, journals and articles as well as information from internet.

Right to Die-International and Regional Norms

At the outset itself it has be reminded that, not even a single international law document recognizes the “right to die.” Even a casual perusal of the provisions of the international human rights documents makes it clear that it is impossible to derive such a right. All human rights instruments provide for the recognition of “right to life” and call upon the State parties to protect this inalienable right. However, as discussed earlier, euthanasia is legal in Belgium, Colombia, Netherlands and Luxembourg. Similarly, assisted suicide is legal in Canada, Japan, Germany, and Switzerland; and in some US states. On the other hand, majority of the members of the United Nations adhere to norms relating to the protection of ‘right to life’ envisaged under the basic human rights instruments.²

Article 3 The Universal Declaration of Human Rights (UDHR), 1948 declares in unequivocal terms that, “everyone has the right to life, liberty and security of person.” The UDHR is reinforced by several other legally binding UN treaties including the International Covenant on Civil and Political Rights (ICCPR), 1966, the UN Convention on the Rights of the Child (UNCRC), 1989 and Convention on the Rights of Persons with Disabilities (CRPD), 2008.

Article 6, the International Covenant on Civil and Political Rights (ICCPR), 1966 The ICCPR, 1966 does not mention a “right to die;” instead specifically states that, “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 6, the UN Convention on the Rights of the Child (UNCRC), 1989 Similarly, the UNCRC, 1989 says that “every child has the inherent right to life.” Article 10, the Convention on the Rights of Persons with Disabilities (CRPD), 2008 The CRPD, 2008 is more explicit in this regard. It provides thus: “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”

This particular concern for persons with disabilities is further underlined by the UNCRC providing that “a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” These documents are highly significant in the context of the present discussion on the “right to die” because they highlight the legal protections offered by the international instruments for the vulnerable groups like aged persons and persons with disabilities, who are more likely to be affected by euthanasia laws.³

In the regional level also, trends similar to that of international conventions are visible. “Right to life” is expressly recognized under various regional human rights instruments. Article 2, the European Charter of Fundamental Rights, 2000 The European Charter of Fundamental Rights, 2000, the European Convention on Human Rights, 1950, Article 4, the African Charter of Human and Peoples’ Rights, 1981 the African Charter of Human and Peoples’ Rights (also known as the Banjul Charter), 1981 and Article 4, the American Convention on Human Rights, 1978 the American Convention on Human Rights, 1978 are glaring examples. Thus, neither international nor regional human rights instruments mention about the “right to die.”

In Europe, the Parliamentary Assembly of the Council of Europe (PACE) categorically declares: “euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.” This PACE Resolution was brought “to the attention of member States, with a request for implementation.”

The significance of the aforesaid PACE resolutions lies in the fact that they are considered to be “valuable guides” as far as the European Court of Human Rights (ECHR) is concerned. In *Pretty v. United Kingdom*, [Application no 2346/02 (25th April 2002) 35 EHRR 1, [2002] ECHR 427, (2002)] a PACE Recommendation was quoted with approval to declare that Article 2 of the European Convention on Human Rights, 1950 cannot be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.

Similarly, in *Sanles v. Spain*, [Application no. 1024/2001 (UN Doc. A/59/40, Vol. II), at 505 (HRC 2004)] the Court considered the issue regarding the “right to die” and dismissed the application. When the case was later brought to the Human Rights Committee, it was again dismissed. In another decision in 2011 in *Haas v. Switzerland* [Application no. 31322/07] [2011] ECHR 2422] also, the claim to the “right to die” was clearly rejected. The ECHR reiterated that, “Article 2 guarantees no right to die, whether with the assistance of a third party or of the State” and that “the right to life has no corresponding negative freedom.” Two years later, in *Gross v. Switzerland* (2013) [Application no. 67810/10 Strasbourg (14 May 2013)] also a similar futile attempt to establish “right to die” as a “privacy right” under Article 8 of the Convention was made.

However, the fact that there is no provision relating to “right to die” under the international and regional human rights instrument does not mean that there is no solution for the suffering patients. Even though, PACE imposes prohibition against intentionally taking the life of terminally ill or dying persons, it recognizes an

alternative by requiring the States “to provide equitable access to appropriate palliative care for all terminally ill or dying persons.”⁵

IV. RIGHT TO DIE UNDER THE INDIAN LAW

The word euthanasia originates from a Greek word, *euthanatos*, which means good death. It is a practice of painless killing of a patient from an incurable disease or an irreversible coma. Therefore, death has to be the result of the act done for easing the death and it should be a good one too. There has also been a confusion regarding the difference between suicide & euthanasia.⁴ It has been distinguished in the case *Naresh Marotrao Sakhre v. Union of India*, [(1996) 1 BomCR 92.] J. Lodha clearly said in this case “Euthanasia or mercy killing means & implies the intervention of other human agency to end the life. Thus, euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.”

Types of Euthanasia-

Active Euthanasia entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony. Here in active euthanasia it is taking specific steps to cause the patient’s death, such as injecting the patient with some lethal substance, e.g. sodium pentothal which causes a person deep sleep in a few seconds, and the person instantaneously and painlessly dies in this deep sleep.⁶

Passive Euthanasia entails withholding of medical treatment for continuance of life, e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma. In this the doctors are not actively killing anyone; they are simply not saving him. Letting die (i.e. Passive euthanasia) can be a slow process. It’s not sure how many days, weeks, months or years a patient will take to die.

A further categorization of euthanasia is between voluntary euthanasia and non voluntary euthanasia. Voluntary euthanasia is where the consent is taken from the patient, whereas non voluntary euthanasia is where the consent is unavailable e.g. when the patient is in coma, or is otherwise unable to give consent.

In *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42 answering the question concerning and regarding the expanding horizons of “right to life,” the apex court of India has held that the term “life” under Article 21 of the Indian Constitution does not connote “mere animal existence on continued drudgery through life.”

Board of Trustees of the Port of Bombay v. Dileep kumar (1983) 1 SCC 124 It has been interpreted to include within its ambit, “some finer graces of human civilizations which make life worth living; which in the expanded form would mean the tradition, culture and heritage” of the concerned person. Further, “physical and mental health has been treated as an integral part of the right to life, because without good health, the civil and political rights assured by our Constitution cannot be enjoyed.”

question whether ‘right to die’ is included in Article 21 came up for consideration for the first time before the Bombay High Court in *State of Maharashtra v. Maruti Sripati Dubal* (1986) 88 Bom L R 589 The Bombay High Court observed that ‘right to life’ is wide enough to encompass the ‘right to die’ also. It was held that every individual should have the freedom to dispose of his life as and when he decides. The challenge in this case was based on the constitutionality of Section 309 of the Indian Penal Code, which makes attempted suicide any offence. It was held that the provision being an arbitrary one ultra vires of the Constitution... being violative of Articles 14 and 21 of the Constitution and must be struck down.⁷

In this case, the judges observed that the desire to die is not unnatural; but merely abnormal and uncommon. The judges also listed several circumstances (for instance, disease, cruel or unbearable conditions of life, a sense of shame or disenchantment with life) in which individuals may wish to end their lives,. On the other hand, the Andhra Pradesh High Court in *Chenna Jagadeeswar v. State of AP* (1988) CRLJ 549 held that the ‘right to die’ is not a fundamental right within the meaning of Article 21; and hence Section 309 IPC is not unconstitutional.

These opposing views of various High Courts were set at rest by a division bench of the Supreme Court in *P. Rathinam v. Union of India* (1994) 3 SCC 394 The apex court endorsed the view of the Bombay High Court expressed in *Maruthi*, and upheld the contention that Section 309, IPC violates Article 21; and hence void. Further, it was held that this provision should be erased from the statute not only to keep abreast with the global developments on the treatment to be meted out to those attempting suicide but also to humanize the penal laws.

The following guidelines were established in the *Aruna Shanbaug* case[*Aruna Ramachandra Shanbaug v Union of India and Ors.* {(2011)4 SCC 454}] -

□□To discontinue life support, a decision has to be taken either by parents or spouse or close relatives or in the absence of any of them such a decision can be taken by a person or a body of persons who are their next friend. It can also be the doctors who were taking care of the patients.

□□Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval under Art. 226 from the High Court concerned.

When such an application is filled, 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. A commission of three doctors to be nominated by the Bench, who will give a report regarding the condition of the patient. Before giving the verdict, a notice regarding the report should be given to the close relatives & the State. After hearing the parties, the High Court can give its judgment.

In Common Cause case [Common Cause (registered society) v Union of India & Anr {W.P. (Civil) 215 of 2005}] the following guidelines for the execution of the living will be established-

□□The living will should be made by an adult.

□□The adult must execute it in a normal state of mind & health.

□□The document should indicate circumstances that treatment will only delay the process of death that may otherwise cause him or her pain, anguish, suffering & have the executor in a state of indignity.

□□Unclear unambiguous living wills would not be executed.

□□The living will should be given by the guardian or friend, whose name has been already given in the consent form for stopping the treatment. It should be discussed with the judicial magistrate.

□□Execution of the will includes setting up of two medical boards & certification by the judicial magistrate.

□□High Court should maintain a record of all living wills prepared within the State.

In both Aruna Shanbaug & Common Cause case, only judicial aspects of executing euthanasia have been highlighted omitting the medical aspect.⁸

V. CONCLUSION

There are few issues more divisive than what has become known as ‘the right to die.’ One camp upholds ‘death with dignity’, regarding the terminally ill as autonomous beings capable of forming their own judgment on the timing and process of dying. The other camp advocates ‘sanctity of life’ regarding life as intrinsically valuable, and that should be sustained as long as possible. It takes a balanced approach in analyzing this emotionally charged debate, viewing the dispute from public policy and international perspectives. It also offers an interdisciplinary study covering medicine, law, religion, and ethics. Euthanasia and the right to die need to be examined in the context of the social, legal, and religious settings of a wide range of countries.

Ethical Clearance: Not required, as the article is based on aspects which are doctrinally taken.

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