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## RIGHT TO DIE: LAW AND LEGISLATION

Aayush Kumar<sup>1</sup>

### ABSTRACT

*In India, the concept of "right to die" is still evolving. The Indian Constitution guarantees the right to life only in the Article 21. "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law," says Article 21. The right to existence covered in article 21 does not consist of death right. The right to existence is an inalienable right. In Maharashtra v. Maruti S. Dubal, 1987 Cri LJ 743, Bombay high court escalated the subject of death right for the primary time. Moreover, the court in this example decided that the right to life encompasses the right to dying, making phase 309 of the Indian criminal Code, 1860, which makes tried suicide a criminal offense, unconstitutional. Although the Apex Court ruled in Gian Kaur v. State of Punjab 1996 that the "right to life" doesn't encompass the "right to die". No one has the right to put an end to their life in a way that is not natural, even though the right to existence is a god given right. Only in the case of Aruna Shanbaug versus Union of India (2011) 4 SCC 454 did the Apex Court decided that death by passive euthanasia is acceptable.*

*I want to know if the right to die with dignity is included in the right to live with dignity. If so, why must patients of cancer in later stages endure such excruciating pain before passing away? The only method for reducing cancer pain in such circumstances is active euthanasia. How can we define someone as living with dignity if he is already bedridden and dependent on others for everything? In the final stages of cancer, the majority of patients died in pitiful conditions in which neither they nor their families could bear the pain of the diseases for such a long time. The only thing left for both family members and patient in these situations is a dignified death*

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*seeking relief from the ultimate pain. Active Euthanasia is needed for such patients.*

**KEYWORDS** - *Right to Die, Euthanasia, Terminally Ill Patient, Assisted Suicide, Passive euthanasia.*

## I. INTRODUCTION

A Constitution Bench ruled in *Common Cause v. Union of India*<sup>2</sup> that right to lead a dignified and fulfilling life guaranteed by Indian Constitution includes the right to pass away with respect. This refers to a situation where a patient is suffering from any incurable disease or any unrelievable pain due to which his life becomes miserable and terrible than death and where there is absence of any hope for life. So often in such situation the patient finds it better to die than to continue living in said miserable conditions. But he is not permitted to do so as “suicide is a crime” and is a punishable offence in law. Furthermore, because "abetment to suicide" is a crime that carries a penalty, even the doctors are powerless in these situations. As a result, "Euthanasia" as a notion enters the picture. The Netherlands (since 2001), Belgium (since 2002), Luxembourg (since 2009), Switzerland, Germany, the United States, Japan, Colombia, Albania, and Canada (since 2016) have been identified as the Top Ten Countries where euthanasia and assisted suicide are legal and valid.

On the other hand, when it comes to our own country, India, there was no such thing before March 10, 2018. There was no express law on the subject, and the situation was governed solely by a few judicial decisions.<sup>3</sup>

## II. INDIA'S CONSTITUTIONAL VALIDITY OF RIGHT TO DIE

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<sup>2</sup> (2018) 5 SCC 1.

<sup>3</sup> 'Important Judgment of the Supreme Court of India' (NHRC) <<https://nhrc.nic.in/press-release/important-judgment-supreme-court-india>> (last visited on March 22, 2023).

"No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law," as stated in Indian Constitution, Article 21.

The right to death /pass away is not inculcated in Indian Constitution, Article 21. It is an unalienable right to have a life. *Maharashtra v. Maruty S. Dubal* 1987 is the case to bring the right to death before the Bombay High Court. In this instance, the court decides that Section 309 of Indian Penal Code, is against the provisions of Constitution because it violates the right to live a dignified and fulfilling life, which includes the right to death. The Superior Court, however, adhered that "right to life" omits the "right to die" / the "right to be slain" in the case of *Smt. Gian Kaur v. State of Punjab*<sup>4</sup>. No one has the right to put an artificial end to their existence; whereas the right to existence is a god given right.

The Apex Court ruled in Aruna Shanbaug case that only passive form of euthanasia is permitted in India; in other words, a patient can only be taken off from ventilation in the event that a petition for euthanasia is filed. Even in India, euthanasia—whether voluntary, involuntary, or non-voluntary—is unacceptable, illegal, and punishable by law, with the exception of passive euthanasia.

### III. RIGHT TO LIFE WITH DIGNITY

Right to death is not included in Article 21 of the Indian constitution. But should the claim of dignified death apply to a terminally ill patient, such as a cancer patient, who is aware that he has only a few days left to live? That is, a death free from agony or suffering. He can escape the embarrassment and loss of respect and self-esteem. A person with a fatal illness must be given the right to pass away in those circumstances with dignity. Dependency on others is one thing when one is elderly, but no one ever wants to be dependent on others because of fatal diseases.

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<sup>4</sup> *Smt. Gian Kaur vs The State of Punjab*, 1996 AIR 946.

When someone who has lived independently for the most of his life is suddenly forced to depend on others for basic requirements, he or she loses self-confidence, respect for others, independence, and so on, which suggests that they are living indecently. We are also aware that privacy right is the part of the Article 21 right to personal liberty and lead a fulfilling. When a person is bedridden and unable to dress or change themselves, what kind of privacy right is that? Some situations I feel are the most basic and important things that each individual carries out in their daily life and no one wants to rely on others for these basic necessities.<sup>5</sup>

#### IV. JUDICIAL RECEPTION

In the Gian Kaur case, the Supreme Court ruled that euthanasia was only permissible under express legislation. In Aruna Shanbaug Case, Superior Court of India held that Passive form of Euthanasia can be permitted only for terminally ill patients who cannot recover and for them every efforts have been made to protect them. Now, in the case of Common Cause case, the Superior Court has recognised the Right to dignified death a fundamental component of the Right to existence by legalising Passive form of euthanasia.

The Superior Court of India has upheld passive form of euthanasia as part of the Fundamental Right to Live with Dignity. Passive Euthanasia is defined as withholding machine support from a critical patient who has no hope of being revived or cared for.

In four separate and concurrent opinions, Constitutional Bench led by Chief Justice of India Dipak Kumar Mishra, commanded that Article 21 of the Constitution, which guarantees right to life and quality, similarly includes the right to expire with quality, and that quality is mislaid if an

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<sup>5</sup> Riya Jain, 'Article 21: Understanding The Right to Life and Personal Liberty from Case Laws-Academike Explainer' (*Lawctopus*, 12 Aug. 2021) <<https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>> (last visited on March 22, 2023).

existent is pressured to sustain ache due to unnecessary medical mounting. In a different judgment, Judge D.Y. Chandrachud had adhered that abating a person of quality at the expiration of life amounts to abating him of eloquent reality.

## V. KINDS OF EUTHANASIA<sup>6</sup>

Euthanasia can be broadly categorized in the following two heads i.e. on basis of Procedural Decisions; and on basis of consent. Further, to explore these two kinds of heads in the following manner:

### a) On the basis of Procedural Decisions.

Any action that intentionally reduces a person's life expectancy is referred to as active form of euthanasia. Active form of euthanasia is the process of cessation of a patient's life without pain. Only when the patient requests it will this kind of death be performed. The following are the three requirements for active euthanasia: the patient must be in excruciating pain and have an incurable illness; the patient must have made a request in this regard; and the patient must have used all other options that might have been available to save the patient's life.

**Passive Euthanasia** is a situation in which a patient dies because either the medical practitioner does nothing to keep the patient alive or fails to perform the act that could have kept the patient alive, which most commonly includes turning off the Life-support machines (Ventilators, etc.); disconnecting the Feeding Tube; and discontinuing the administration of extraordinary drugs, among other things. In general, the aforementioned procedure is used for terminally ill patients in order to hasten their death.

### b) Based on Permission

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<sup>6</sup> 'Euthanasia' (*Legal Service India*) available at <https://www.legalserviceindia.com/legal/article-7518-euthanasia.html> (last visited on March 22, 2023).

**Voluntary Euthanasia** is a situation in which the patient requests his or her own death, either through Active or Passive Euthanasia. As a result, this type of Euthanasia requires a request from either the patient or his Legal Representatives.

**Non-Voluntary Euthanasia** is defined as the absence of consent from the patient being euthanized. Child Euthanasia is the most prominent example of this type of Euthanasia, which is prohibited worldwide.<sup>7</sup>

## VI. CONCLUSION

The suggested research focuses on actuality that India's "Right to Life" is an unfulfilled right and that Western trends have given rise to a development for "Right to Die," which is antonym of the earlier right. Thus, it is urgently necessary to pass suitable and workable legislation on the crucial topic of the Right to Die. Last but not least, in May 2016 the Union Health Ministry forwarded a draught bill on the withholding and pullout of treatment from terminally ill cases. This bill was modified and recommended by the Law Commission of India in its report of 2012 in order to protect both terminally ill patients and medical professionals. In order to fill any holes in the proposed law and make it more practical and comprehensive to meet the expectations of the Indian people it is imperative to critically assay the vittles of the aforesaid Bill. This conclusion was reached after a protracted legal battle that included numerous cases and was ultimately won by the decision in Aruna's case. So, in order to draw a meaningful conclusion, it is essential to consider the complete circumstance. Moreover, Section 302 of the Indian Criminal Code holds that if an individual under medical care begs fodeath and the doctor has granted it so to the patient it, the doctor has committed murder. According to Section 309 of the Indian Penal Code, the conduct

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<sup>7</sup> 'The Treatment of Terminally ill Patients Bill' (*IAS Parliament*, 01 April 2017) available at <https://www.iasparliament.com/current-affairs/govt-policies-interventions/the-treatment-of-terminally-ill-patients-bill> (last visited on March 22, 2023).

is seen as a clear attempt at suicide if the patient ceases employing life-saving techniques.

To summarise, study on the right to die must start with an in-depth examination of the idea of life and its different facets, including the importance of life, its sanctity, its protection, and its value. It has been noted that the quality of life is equally as significant as value. In the process of legalising euthanasia, the intrinsic value of life was assessed, and the quality of life was assessed clinically and legally. The value of life protection has been emphasised by moral philosophers, and it is widely acknowledged in a civilised society.

They believe that life has intrinsic value and should be preserved regardless of its condition. In the Indian Constitution, among other things, the rights to life, personal liberty, and privacy are guaranteed. By giving Article 21 the broadest meaning conceivable to cover all facets of life covered by this rule, the Indian judiciary has magnificently expanded its horizons. Sadly, the judiciary has the guts to recognise the freedom of dignified death as an essential part of the right to existence.<sup>8</sup>

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<sup>8</sup> 'Article 21 Of Indian Constitution- Right To Life And Personal Liberty' (*Legal Study Material*) <<https://legalstudymaterial.com/article-21-right-to-life-and-personal-liberty/>> (last visited on March 22, 2023).