

Right to Die – A Blessing or A Curse

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Abstract

Our Indian Constitution provides a long list of various fundamental rights under Part-III. Article 21 is considered as one of the most important fundamental rights dealing with the Protection of Life and Personal Liberty. According to Article 21, “No person shall be deprived of his life or personal liberty except according to the procedure establish by the law”

Keyword: Life, personal liberty Supreme Court, Indian Constitution

INTRODUCTION

Every individual has the right to live his/her life in the most meaningful, complete and dignified manner and has the right to take decision related to one owns life. Life is about quality not quantity and with no quality the quantity no longer matters. It is the right of every individual to spend his life in whatever way they want. They can choose their own principles and can take decisions of their own life. It is believed a “major” has this ability to judge what is benefited for his life and thus can choose what is best suited for him. The privilege to bite the dust is an idea in light of the conviction that an individual is qualified to end his/her own life or to experience willful killing. Ownership of this privilege is usually comprehended to imply that a person with a terminal sickness ought to be permitted to end his/her own life or to utilize assisted suicide or to decay life-drawing out treatment. The cancer patient who has already been in the last stage of cancer has to suffer a lot till their death.

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In such cases active euthanasia is the only option, getting relief from the pain of cancer a person who is already bedridden and is dependent on other for each and everything in that case how we can say that he is living with dignity? In cancer (last stage), most of the pathetic condition, where neither they can bear the pain of the diseases nor the family can watch their loved ones in such a intolerable pain for a such a long time. In such cases death with dignity is the last option for the family members as well as for the patients to finally get relieved from the ultimate pain. Physician assisted suicide and euthanasia are the movements associated with the right to die.

Christopher Docker defines physician assisted suicide as, “the provision by a doctor, consciously and legally, to a patient to end his or her own life. It is up to the patient whether he wants to opt for physician assisted suicide or not. If yes then the physician will provide everything necessary and will perform accordingly. Through this the patient doesn’t feel that he is held out of the situation. Also, the family members must not resist the patient for opting for physician assisted suicide. They must not force the patient to suffer the pain just because it’ll be difficult for them to cope with the fact that they will lose a close one. If the patient is at that stage of life where he is terminally ill and they can’t distinguish a member of the family from a doctor, they have the right to be put out their misery.

The word euthanasia is derived from the Greek word “eu” means “well or good” and “thantos” means “death” means “good death”. Euthanasia is the practice of ending one’s life in order to put them out of misery caused by a disease or unbearable suffering. This method usually involves the use of the physician and is much quicker than the physician assisted method. When a physician is asked to use euthanasia many people look down on the doctor because they feel as if that is murder and is morally wrong. A lot of people argue that when god is ready for someone he will take them, and that there is no need for euthanasia or physician assisted suicide. Nothing in this matter is new, studies have shown that 56% of the doctors practice this matter and has been asked to use this as pain free method for death.

Rights related to one’s life and personal liberty is explained in the Article 21 of the Constitution of India. According to this article, *"Nobody shall be deprived of his life or personal liberty except according to procedure established by law."* Right to life means the right to live and enjoy in the most peaceful and comprehensive manner. This does not have a circumscribed meaning. Its main objective is to prevent the state from depriving any person from his/her personal liberty and deprivation of life except according to the procedure establish by the law. The expression personal liberty is a wider concept, covering various rights which constitute the personal liberty, raising the standard of the living and also the distinct fundamental rights of a person. It applies to every person, citizen or alien. Thus, even a foreigner can claim this right but this doesn’t grant him the right to settle and reside in the territory as mentioned in article 19(1) (e). The word “life” in Article 21 of the Constitution doesn’t merely means the physical act of the Breathing. It does not connote mere animal existence or continued drudgery through life. It has a wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is a necessary to our existence which we cannot live as a human being and includes al those aspects of life, which make a life

meaningful, complete and worth living. It is the only article in our constitution which has gain the widest possible interpretation. The umbrellas of Article 21 various right have gain shelter, growth and nourishment.

In the case of *Kharak Singh v. State of Uttar Pradesh*,¹ the Supreme Court quoted and held that:

By the term “life” as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armored leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

In *Sunil Batra v. Delhi Administration*², the Supreme Court reiterated with the approval the above observations and held that the “right to life” included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person’s tradition, culture, heritage and all that gives meaning to a man’s life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

RIGHT TO DIE WITH DIGNITY

According to the Cambridge dictionary, the belief that a person should be allowed to die naturally rather than being kept alive by medical methods when they are suffering and unlikely to get well. This concept believes that a person has the right to end up his own life or to undergo voluntary euthanasia. The Right to die means, “Every person has the right to end up his life with dignity; one can choose his/her own time of death and to receive medical and physical assistance to die painlessly. The person assisting another person in exercising his right whether nurse, physician, doctor and pharmacist shall not be held civilly or criminally liable.” Right to die simply means the right of terminally ill person to refuse for life sustains treatment and end up his life.

Various situations listed by Lindgren where a presumption of non-treatment by the doctor would apply, were

1. Permanently unconscious patients;
2. Terminally ill but conscious patients;
3. Patient suffering a great deal of physical pain; and
4. Patients with an illness that makes them totally dependent on a family member or other person for their care.³

The word Right to Die can be used to denote the concept of Euthanasia, mercy killing, physically-Assisted Suicide and Suicide.

¹ AIR 1963 SC 1295

² AIR 1978 SC 1675

RIGHT TO DIE (ARTICLE 21) AND SUICIDE (SECTION 309 IPC)

In India, Abetment to suicide is considered a criminal offence. It is the only crime where commission is not punishable but attempt is. There are instances where the reason for suicide is either own will or any pressure. The will might include depression, or no motivation, reason or hope to stay alive. Right to die does not include suicide due to depression instead it includes the situation where the patient is terminally ill and there is no chances to reach the natural death in that case this can be used as an option to wrap up life. The Supreme Court has held, “the right to live with dignity cannot be construed to include within its ambit the right to terminate natural life, at least before the commencement of the natural process of certain death.”

The constitutional validity of Section 309 has been challenged in various cases. Supreme Court in case of *Gian Kaur v. State of Punjab*⁴ reevaluate and reexamine the interpretation of Article 21 and held that there is no rational grounds to declare Section 309 as constitutionally invalid. The bench said that the privilege of life under Article 21 does include the right to die.

In case of *P.Rthathinam v. Union of India*⁵ Supreme Court held that Section 309 is unlawful, and should be annihilating from the statue of our penal laws. It attempts in twofold punishing the man who is in tremendous pain and would be opprobrium because of failure of suicide.

With reference, the Supreme Court reweighs its choice on suicide. Abetment to suicide and travail to suicide are two offences therefore Section 306 is independent of Section 309. It has been probable specified that a man drudge suicide is sadness and this could be assisted not disciplined. The Supreme Court also prescribes the parliament to consider the practicality of erasing Section 309 from the Indian Penal Code.

CONSTITUTIONAL VALIDITY OF RIGHT TO DIE

The Constitution of India is considered to be supreme body. It covenants various fundamental rights out of which right to life is considered to be the most important. Here comes the important question that whether right to die is included in Article 21.

It was first discussed in the case of *State of Maharashtra v. M.S.Dubal* ⁶, the court held that the right to die is included in right to life. Also the courts nullify the Section 309 of IPC, providing the punishment for the attempt to suicide as unconstitutional. The judge felt that there is desire to die is not unnatural but uncommon and abnormal.

³ James Lindgren, a professor of law at Northwestern University, *Death by Default* 56 *Law and Contemporary Problems* 185-254 (Summer 1993).

⁴1996 (2) SCC 648

In *P. Rathinam v. Union of India*⁷, a Divisional Bench of Supreme Court upheld the decision of the Bombay High Court but a five judge bench of Supreme Court overruled this decision in the case of *Gian Kaur v. State of Punjab*⁸. In this case the court said that “right to life” does include “right to die” and there is no evident grounds that prove that the Section 309 is constitutionally invalid. The right to life is a natural right which means Right to live with dignity.

In case of *Aruna Shanbaug v. Union of India*⁹, Euthanasia in its passive form has taken legal root in India. The Supreme Court on 7th March 2011 broke new ground with a judgment in this case, sanctioning the passive Euthanasia or withdrawal of life support systems on patients who are brain dead or in a permanent vegetative state (PVS).

Supreme Court on 9th March 2018, in a writ petition filed by Common Cause congenially held that the right to die with dignity is a component of right to life under Article 21. In doing so, there is no need of a legislation to legalise passive euthanasia. The judgment was the consequence of the reference of a three-bench judge which referred to the matter to the Constitution bench to determine the correctness of the two previous judgments of the Supreme Court.

The operative judgment, written by the Chief Justice Dipak Mishra and Justice A.M. Khanwilkar, has legalized living wills or, as they chose to call it, advance directives. It is a set of written instructions given by people to provide for a situation where the person is in a vegetative state or terminally ill with no chance of recovery or revival. The living will, or advance directive, would specifically instruct next of kin and medical professionals to not revive or allow for passive euthanasia in such situations. Doctors allowing passive euthanasia on the basis of advance directives no longer need to live in fear of legal action against them. Advance directives derive their sanctity from the fact that they are executed at a time when the person is mentally competent to issue such instructions, which they would otherwise be unable to in a vegetative or terminal state.

In doing the above, the Supreme Court has held that the right of the individual to die with dignity takes precedence over the interest of the State in preserving the sanctity of life.

“The right of the individual to die with dignity takes precedence over the interest of the State in preserving the sanctity of life.”

⁵ 1994 (3) SCC 394

⁶ AIR 1977 SC 411

⁷ 1994 (3) SCC 394

⁸ 1996 (2) SCC 648

⁹ 2011 (4) SCC 454

The judgment has overruled the aspect of the famous Aruna Shanbaug judgment where it found that the mechanism of passive euthanasia can only be provided for through legislation. However, the Supreme Court itself has provided guidelines for advance directives and passive euthanasia. The Court held that advance directives can only be issued by adults of sound minds with informed consent which should be free of coercion. It further provides that the advance directives must be clear, specific and unambiguous. It also allows for a person to nominate a next of kin to provide consent for passive euthanasia in case the persons themselves are incapable of doing so.

As a further safeguard, the Court has mandated that the written document must be signed and witnessed by at least two persons. The advance directive would also require the signature of a Judicial Magistrate (First Class) who has to satisfy himself that all the requirements of executing the advance directive have been fulfilled.

The Supreme Court has extended the above mechanism even to cases where there are no advance directives, thus providing for passive euthanasia in the absence of a living will, with similar safeguards as provided above.

In doing so, the Court has rejected the finding in Aruna Shanbaug's case that mandated legislation to provide for passive euthanasia. The basis for this finding is the individual's right to self determination and autonomy, which includes a right to a life with dignity. To live with dignity also includes a right to die with dignity, held the Supreme Court. The Court has left the door open for an appropriate legislation for passive euthanasia, with the judgment to hold forth in the interim.

“To live with dignity also includes a right to die with dignity, held the Supreme Court.”

The Supreme Court has judged the question whether right to life includes right to a dignified death based on both legal as well as moral tests. Also, the Court has relied extensively of the recent judgment on the right to privacy on the aspect of right to dignity.

Justice A.K. Sikri in his concurring opinion says, "The opportunity to die unencumbered by the intrusion of medical technology and before experiencing loss of independence and control appears to many to extend the promise of a dignified death. When medical technology intervenes to prolong dying like this it does not do so unobtrusively." He further says, "Dreadful, painful deaths on a rational but incapacitated terminally ill patient are an affront to human dignity". Justice Sikri has also discussed the 'economics of euthanasia' and held that "...under certain circumstances, i.e. when the patient is in a PVS or brain-dead/clinically dead, at least passive euthanasia would even be ethically acceptable, on the application of doctrine of dignity. In such a situation, the economic considerations would strengthen the aforesaid conclusion".

According to Justice D.Y. Chandrachud, "Dignity is the core value of life and personal liberty which infuses every stage of human existence. Dignity in the process of dying as well as dignity in death reflects a long yearning through the ages that the passage away from life should be bereft of suffering". In relying on the judgment on the right to privacy, the Court held that, "The right to privacy protects autonomy in making decisions related to the intimate domain of death

as well as bodily integrity."

CONCLUSION AND SUGGESTIONS

Life is the most precious gifts of god to the lucky ones. Every human being in this universe has a right to live with dignity. The right to life is the first among human rights. The right of life does not depend, and must not be contingent, on the pleasure of anyone else, not even a sovereign or parent. Every individual has the right to enjoy every fundamental right. Nobody has the right to take away the option of dying from someone who is terminally ill.

Suicide does not come within the ambit of Right to Die. People attempting the same must be sent to Rehabilitation Centers rather than penalizing him. Hence, it is rightly said that right to die is associated with the idea that one's body and one's life are one's own, to dispose of as one sees fit. If we spend money on the patient, being very well aware that this will not in any circumstances keep him alive then it is purely a waste of expenditure of the family. And knowing the high expenses incurred in medical will it not deteriorate the financial condition of the family?

Hinduism accepts the right to die for those who are tormented by terminal diseases or those who have no desire, ambition or no responsibilities remaining; and allows death through the non-violent practice of fasting to the point of starvation (Prayopavesa). Jainism has a similar practice named Santhara. Other religious views on suicide vary in their tolerance and include denial of the right as well as condemnation of the act. In the Catholic faith, suicide is considered a grave sin.

Instead of legalizing the right to die and allowing it generally it can be allowed in rarest of rare cases. It can also be allowed in appropriate cases of passive euthanasia by taking the consent of the patient or by the information and consent provided by the doctors.