EUTHANASIA IN INDIA-PROCEDURAL FRAMEWORK AND THE CASE FOR LEGISLATIVE ACTION

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ABSTRACT

The right to life is one of the core tenets of the Constitution of India and is enshrined in Article 21 of the Constitution of India, wherein it is provided that no individual shall be deprived of his life or personal liberty, except by due procedure of law. It is a well-settled principle that this right to life envisaged in the Constitution of India is not indicative of a mere animal-like existence, but a life that is not devoid of dignity and other essential faculties. The Apex Court of India has promulgated this principle through numerous judicial pronouncements, and this right to life, through the aforesaid position of dignity being quintessential to its existence, has been interpreted to include under its umbrella various other rights that are inalienable in the pursuit of quality of life. The inclusion of euthanasia in this umbrella has been the subject of debate in India and almost every jurisdiction, with some advocating that the right to die has to be considered to come under the purview of the right to live with dignity, while some arguing that it is in stark contrast to the right to life. The law pertaining to euthanasia in India is largely characterized by judicial decisions, which seek to examine the legality of euthanasia in the context of the existing legal framework and implement guidelines for its limited applicability. The Supreme Court of India has restricted the legality of euthanasia to passive euthanasia, which involves withholding medical treatment that would otherwise lead to artificially prolonging the life of a terminally ailing individual. There is, however, no legislative framework governing euthanasia, and a lacuna is *prima facie* visible, in as much as judicial pronouncements fail to provide a consolidated framework governing euthanasia, and an implementation of legislation governing the same would accord democratic legitimacy to the framework for euthanasia, and ensure uniformity in procedures and safeguards to ensure compliance. This article does not aim to determine the legality and justifiability to euthanasia, and whether the active euthanasia is something that is legally justified in our statutory framework. Rather, it aims to perform a brief analysis of the law pertaining to euthanasia in India determine whether a separate legislation regarding the same is necessary or would be redundant in light of the various decisions of the Supreme Court of India.

The Current Procedural Framework

The governing law regarding euthanasia in India is through a series of judicial decisions, which have all dealt with the question whether euthanasia could fit into the existing legal framework of the country. The following judgements of the Supreme Court provide guidelines and principles governing euthanasia in India:-

i. Aruna Ramachandra Shanbaug v Union of India[1]

ii. Common Cause v. Union of India (2018)[2]

iii. Common Cause v. Union of India[3]

iv. Harish Rana v. Union of India[4]

The latest of these decisions, i.e., Harish Rana v. Union of India (supra) is the definitive judgement governing the principles of euthanasia in India. The Supreme Court in the aforesaid case, while relying on the decision in Common Cause (2018) (supra) and Common Cause had recognized that the right to life under Article 21 of the Constitution of India also includes within its ambit the right to die with dignity. The Court had held that passive euthanasia and Advance Medical Directives (AMD) were both legally permissible within the framework of Article 21 of the Constitution of India. The Apex Court, while examining passive euthanasia and the right to die with dignity through the prism of self-determination, individual autonomy and privacy, had held that individuals competent to make the choice regarding withholding medical treatment for themselves had no obligations for providing reasons behind their choice, and that their decision to reject treatment is protected by the right to autonomy enshrined under Article 21 of the Constitution of India. In the context of individuals who are not competent to make the decision regarding withholding treatment, the Court had held that in such instances the doctors and the courts must act in a way that ensures the safeguarding of the respect for life, values of human dignity, and the bodily integrity of the individual. The Court further held that in instances where the prognosis of recovery decreases, the individual's dignity supersedes the State's obligation to preserve life. The Court had however, declined to rule active euthanasia

[1] *Aruna Ramachandra Shanbaug v Union of India* (2011) 4 SCC 454.
[2] *Common Cause v. Union of India* (2018) 5 SCC 1.
[3] *Common Cause v. Union of India* (2023) 14 SCC 131.
[4] *Harish Rana v. Union of India* 2026 SCC OnLine SC 358

as legally permissible, in light of the fact that it involved an act that would extinguish life, which by itself would be in violation of Article 21. The Court stated that the same could be declared legally permissible only through a legislation, and that it was the Parliament's prerogative to decide legality of active euthanasia.

The Court had, aside from providing the rationale behind legality of passive euthanasia, also polished the procedure to be adopted while withholding medical treatment for a terminally ill individual, which had already been provided by the decision rendered in Common Cause v. (2018) (supra) and Common Cause (supra). The procedure has been streamlined through Harish Rana v. Union of India (supra) and provides for permissibility of euthanasia through AMDs. The procedure involves examination by the treating physician as to the authenticity of the AMD and the constitution of a Primary and Secondary Board to provide certifications that passive euthanasia/ withholding of treatment should be allowed. Both of the aforesaid Boards are to be constituted by experienced practitioners, who can made an informed decision as to the requirement of passive euthanasia. Further, in instances where the Boards refuse to certify that passive euthanasia can be carried out, the patient, the treating physician, or the person nominated by the patient has the alternative of approaching the jurisdictional High Court under Article 226 of the Constitution of India for approval of the request for passive euthanasia. The decision has also taken into account instances where AMDs are not available or have been rendered illegal, wherein the procedure remains the same, with a few additional requirements. Both the Primary Medical Board and the Secondary Medical Board are required to certify the procedure, and the PMB is required to consult the patient's physician and their next of kin to determine whether certification is warranted. The Secondary Medical Board is then required to visit the patient and certify the procedure based on their findings. The alternative of approaching the jurisdictional High Court in instances where the PMB or the Secondary Medical Board is also available in the absence of an AMD.

The Need for Legislative Action

The absence of a comprehensive and robust legislative framework governing euthanasia in India has compelled the judiciary to establish a framework through its inherent powers under the Constitution of India. This exercise of power was driven by constitutional necessity, as the vacuum created by the lack of a legislative source is ignorant of obligation of the State to protect the right of citizens under Article 21 of the Constitution of India of the right to live and

die with dignity. The Supreme Court in Harish Rana v. Union of India (supra) admitted that the guidelines and procedure laid down through the decision was merely a bridge until the Parliament discharged its role to introduce legislation pertaining to euthanasia. In fact, the Law Commission of India in its 196th Report in 2006 had emphasized on the need for legislative action in this regard, and through an extensive analysis of the jurisprudence and statutory provisions surrounding euthanasia in various other jurisdictions had come to the conclusion that despite the exercise of the judiciary of its inherent powers to frame regulations and guidelines, effective implementation could only be enforced through appropriate legislation. The Law Commission in its aforesaid report had observed that the Parliament was not precluded from enforcing legislation surrounding euthanasia, and was in fact empowered through Entry 26 in List III of the Seventh Schedule of the Constitution of India. Article 246(2) of the Constitution of India stipulates that the Parliament, and even the State Legislature, subject to the provisions of Article 246(1), are empowered to make laws in respect of all matters that come under the purview of List III of the Seventh Schedule appended to the Constitution of India.[5] List III of the Seventh Schedule provides the Concurrent List, i.e., matters upon which both the Central and State Legislatures can frame laws. Entry 26 of List III therefore provides that the Central and the State Legislature can frame laws in respect of the legal, medical, and other professions. The Law Commission further observed that numerous senior medical practitioners believed that legislation surrounding euthanasia was essential, as there was a common apprehension that facilitating euthanasia for terminally ill patients might lead to them being persecuted for abetment of suicide under Section 306 of the Indian Penal Code, 1860. Although this report of the Law Commission was published before the judicial pronouncement in Harish Rana v. Union of India, the concerns raised in the report still hold ground today, because only through legislation can a comprehensive legal framework be formed, taking into account all stakeholders. Pursuant to the decision in Aruna Ramachandra Shanbaug v. Union of India (supra), the Law Commission in its 241st Report had once again recognized the need for legislative action. The Law Commission recognized the efficacy of the guidelines and principles enumerated in the aforesaid decision but had also stated that legislation in this regard was desirable. The report also provides that the Legislature, while framing laws in this regard ,would not be depriving citizens of the Right to Life under Article 21 of the Constitution of India, and would operate in respect of induvial whose living was devoid of volitional capacity and wholesome attributes of life in the physical as well as

[5] Constitution of India 1950, art 246

philosophical sense.[6] The decision in Harish Rana v. Union of India (supra) took cognizance of these reports of the Law Commission and reiterated the need for legislative action. Thereafter, flowing the decision in Common Cause (2018), the Directorate General of Health Service, Ministry of Family Health and Welfare (MoFHW) had published a draft bill titled "Protection of Patients and Medical Practitioners Bill, 2016", however, same could not be taken farther than the consultative stage and was not even introduced in the Parliament for debate. In both its reports, the Law Commission had devised recommendations for legislations, but the same have not been acted upon as of yet. Further, various private member bills have been introduced in Parliament, however, the general consensus, as observable, has been contrary to the need for legislative action.

The subject of euthanasia is one that one that is vastly complex and is required to take into consideration not only the terminally ill patient, but also medical practitioners and wider ramifications of such a policy. There is no doubt that all legislation is framed for the welfare of the citizens of a country, but it cannot be disputed that any and all legislations are at a risk of being abused. The primary reason behind the reluctance of Parliament to enact laws pertaining to euthanasia is that it would defeat the unassailable right to life under Article 21 of the Constitution of India, wherein euthanasia could be carried out deceptively in order to further dishonest intentions. That is why it is essential that adequate safeguards be incorporated in the legislation, not only to ensure that the provisions are not misused, but also to ensure that the facility of euthanasia is not seen as undesirable to due to the possible risks of deception. The decision of the Supreme Court in the case of Gian Kaur v. State of Punjab[7] had elaborated upon the need for a legislation regarding euthanasia in India through an analysis of various jurisprudences which had emphasized that a sensitive aspect like euthanasia required a comprehensive framework that provides all required guidelines and provisions pertaining to euthanasia in one statute. The House of Lords in the United Kingdom, which also operated through a common law framework, in the case of Airedale N.H.S. Trust v. Bland[8] has recognized that euthanasia was not legally valid in common law, but the same could be enforced through legislation. Framing of a legislation in this regard would in fact be indicative of a democratic will to bring about such a change. Legislation is framed through elected representatives of citizens, so it would follow that laws made by the Legislature would in fact

[6] Law Commission of India, *Passive Euthanasia – A Relook* (Report No 241, 2012).
[7] *Gian Kaur v. State of Punjab* (1996) 2 SCC 648.
[8] *Airedale N.H.S. Trust v. Bland* (1993) 2 WLR 316

be an extension of citizens' wish to bring about change. Although this interpretation may appear to be far too literal, it is however the interpretation on the basis of which the Legislature has been granted the power of framing laws, as it is the embodiment of the citizens' will.

While putting forward the notion that guidelines by the Supreme Court are not adequate to govern by themselves the laws pertaining to euthanasia, it is not to be confused with the fallacious belief that one institution is superior to the other. Both are in fact complementary in their functions. If a statue is to be considered as a river, the judicial decisions in respect of the statute are to be considered as the topography that guides the flow of the river. The enactment of a statute is characterized by obstructions in various forms, which includes difficulties to be mitigated, ambiguities to be eliminated, and interpretation of the statute itself. However, what is indisputable is the fact that in a common law framework the rule governing a case is provided by a statute or the Constitution of that jurisdiction, and if it observable by the judiciary that the statute is to be applied strictly without any interpretation or deliberation, the same is effected in accordance. The constitution overrides a statute, but a statute, if consistent with the constitution, overrides the law of judges.[9] It is, in this strict sense, that the notion is sought to be put forward that a legislation regarding euthanasia would be preferable instead of being governed only by judicial decisions, in as much as it would be in accordance with the common law framework followed in India and compliant of the principes that form the core of the Constitution of India. In the common law framework, it is therefore clear that legislation or judicial decisions by themselves cannot ensure effective and sound application, and it is only when the two work in tandem that the objectives behind their inception are fulfilled. Statute and case-law are not to be viewed as having separate, or parallel, existences. The former is not simply an echo of the latter, sometimes deviating from it. Both are emanations of the one common law.[10]

It further needs to be understood that aside from guidelines for safeguarding interests of terminally ill patients, clarity needs to be achieved in respect of what is actually permissible under euthanasia, what are the methods that can be permissible for euthanasia, keeping in mind the provisions of the Constitution of India and other enactments, who is required to carry out euthanasia, what recourse is there for medical practitioners who do not want to be involved in euthanasia requests, compliance mechanisms, establishment of regulatory authorities, etc. For

[9] Benjamin N Cardozo, *The Nature of the Judicial Process* (Courier Corporation 2005)
[10] Grant Lamond, 'Analogical Reasoning in the Common Law' (2014) 34(3) *Oxford Journal of Legal Studies* 567.

effective implementation, it is only prudent that all these aspects are covered under one comprehensive statute. The position as of now is that in order to get a complete outlook of the mechanism governing euthanasia in India, one has to peruse the judgements of the Supreme Court in Common Cause (2018) (supra), Common Cause (supra), and Harish Rana v. Union of India (supra). Therefore, getting a complete understanding would mean referring to 3 different sources, which is not only tedious for future references, even before the Courts, but also carries a risk of misinterpretation. Further, there are certain aspects, which, for obvious reasons, have not been incorporated in the aforesaid judgements, and require careful consideration and deliberation, along with representation by stakeholders from all spheres, which might be a little difficult in a judicial setting considering the huge scale and impact this issue has. It would further be pertinent to note that access to justice in rural India is impeded by barriers such as geographical distance, low legal awareness and literacy, financial constraints, social and cultural barriers and language and complex procedural laws.[11] Therefore, the effective implementation of a policy based around euthanasia requires ensuring that people in remote and rural areas can access the facilities for the same. The framework as developed right now is largely centric to urban centres. Therefore, legislation with respect to euthanasia might help to fill this lacuna, which will however require ensuring that people in such remote and rural areas are made aware of their right to euthanasia, and will further require the establishment and upgradation of infrastructure to allow euthanasia in such areas. If these tenets are not taken into consideration while framing laws relating to euthanasia, it will remain centric to urban areas, and the objective behind the statute would remain largely unfulfilled.

Conclusion

A perusal of the above discussion makes it is evident that the decisions of the Supreme Court in Common Cause (2018) (supra), Common Cause (supra), and Harish Rana v. Union of India (supra) were pronounced due to the lacuna in the legislative policy of India with respect to euthanasia. There have been numerous instances of the Parliament trying to frame laws in that regard, but the same has not yielded any results. Therefore, it was the prerogative of the Supreme Court to step in and provide guidelines pertaining to Euthanasia. Although the Supreme Court has through its jurisprudence not made active euthanasia legal valid, it has been recognized that the same can be enforced through appropriate legislation, and the same would

[11] Sunil Chauhan, 'Legal Needs in Rural India: Challenges and Response of Legal Aid Authorities' (Harvard Law School Center on the Legal Profession 2023) https://clp.law.harvard.edu/wp-content/uploads/2023/06/Legal-needs-in-Rural-India-conference-paper-Sunil-Chauhan.pdf

not be in contravention of the right to life under Article 21 of the Constitution of India. In fact, the action of the Supreme Court from refraining to declare active euthanasia as legally valid is driven by the fact that a comprehensive statute with appropriate safeguards, classifications, definitions, and penalties is required to ensure that the legality obtained by active euthanasia is not misused. The Supreme Court has further provided a procedure in its judicial pronouncements which can be used as a blueprint for the statute. The recommendations of the Law Commission in its reports and lessons from other jurisdictions which have implemented active euthanasia can be used by the Legislature of India to frame/draft a comprehensive statute. It is further clear that the Legislature has the power to frame laws surrounding euthanasia under Entry 27 of the Seventh Schedule of the Constitution of India. Although this falls within the Concurrent List, it is desirable that on comprehensive statute is enacted, with minor state amendments where absolutely necessary, and having too many variations might make defeat the very purpose of a comprehensive and uniform statute. The absence of a legislation in this regard has citizens, particularly those situated at the most vulnerable threshold of life, exposed to serious and systemic risk.