
RIGHT TO DIE EQUALS TO RIGHT TO LIFE?

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ABSTRACT

The article explores on the intricacies of 'right to life' and 'right to die' under article 21 of the Indian Constitution. It clarifies on the contemporary ambit of article 21 and seeks to construe on the argument that like article 19 allows for both right to speak and right to not speak, right to life also includes right to die as fundamental right under part III of the Indian Constitution. The article in good conscience and consideration of imperative and substantial condition of life, seeks to interpret on the scope of article 21 guaranteed to all individuals living in the territory of India.

Keywords: Euthanasia, Terminal illness, Advance medical directives, Surrogate decision making.

INTRODUCTION

The title implies a straight question that whether death equals to life and whether an individual enjoys such extent of liberty to choose options in life including 'right to death'. Different scholars have different thoughts and their own ideologies. Some stand in favour whereas others oppose it. But law cannot be made subject to people's perspective. It is one and common for all. It must be drafted in consideration of all imperative and substantial questions of law.

Here, the matter raises pivotal question regarding conditions of life. Like a coin has two faces, life can also mean different to different people. For better understanding, we must understand what is life and death. Life is the difference between birth and death and 'Right to life' is one of the most common and the most basic human right to be recognised and guaranteed to all individuals over the world. Article 21 of the Indian Constitution interprets this right as "No person shall be deprived of his life or personal liberty except according to procedure established by law", in which it secures all its people a free life and liberty, implying people to be their own kings of their lives. Whereas death is a natural process that comes after birth and where life ends. 'Right to die' is a concept which is rooted in the beliefs that individuals have the ultimate autonomy to decide on how and when to end one's own life voluntarily. Where some people see death as negative aspect of life, many see it as point of liberation and peace. But the main question of law raises is that can an individual be granted the right to choose on one's own death? If yes then under what circumstances and if no then why.

Many scholars debate that right to die and right to life cannot move parallelly, they observe and state that life protected under law cannot embrace death as it hinders the sanctity of life and deviates law from its objectives. Also it is true that if death does not occur naturally, then it cannot be termed as death. It must be kept natural for retaining its originality. But also it is correct to sanction the right to die in certain circumstances, like patients in PVS(persistent vegetative state), or any other terminally ill condition from where the recovery is impossible. Under such circumstances, withdrawing from life is no wrong and hence concludes to a meaningful life. In a famous case pertaining to right to death, "Aruna Shanbaug V. Union of India", supreme Court of India recognised right to die as fundamental right under article 21 of the Indian Constitution. The court allowed for its enforcement in form of 'passive euthanasia'. In this case, Aruna was brutally attacked and sexually assaulted by the sweeper in the hospital which resulted her to fall in PVS in 1973. Initially the court rejected her petitions for euthanasia,

but eventually in 2011 the court granted for its enforcement stating that right to die is an fundamental right, and any individual in terminally ill conditions can claim this right under article 21 of the Indian Constitution.

EUTHANASIA

Euthanasia, also referred to as mercy killing, is a medical practice of intentionally ending the life of a person suffering from terminal illness or an irretrievable condition of good health by using medical tools like injections or suspending the regular treatment. It is derived from two ancient Greek words : 'EU' meaning good and 'THANTOS' meaning death, which together means good death.

It a process that is distinct from suicide. In suicide a person ends his life by his own hands and there is no involvement of any second party, whereas in euthanasia a person is authorised to end the life of the deceased person, there is involvement of other parties.

Euthanasia is a complex matter which can be divided into different types mainly on two basis. First on the basis of death and second on the basis of consent.

Classification on the basis of consent : voluntary euthanasia, which means causing death with the affirmation and consent of the deceased patients. Second Non-voluntary euthanasia which means causing death without taking consent, as the patient is state of not giving(incapable) a consent. Last is involuntary euthanasia which means causing death in contravention of the patient's wish or consent. It is highly debatable among the medical and legal practitioners that does performing euthanasia contrary to consent, or without consent amounts to euthanasia only? It is referred to as murder. Hence only voluntary euthanasia is legitimate.

Classification on the basis of death : active euthanasia, where there is direct intervention of the authorised person to end the life of deceased patient. It is also known as aggressive and positive euthanasia. Eg, giving injections of medical poison. Whereas passive euthanasia also referred to as negative or non aggressive euthanasia, is process of ending deceased patient's life indirectly. There is no direct involvement of the authorised person and death is occurred indirectly. Eg, withdrawal of treatment.

Euthanasia in India is allowed in its passive form. Any patient in terminally ill condition can claim euthanasia and practice it in compliance of guidelines stated by supreme court of India.

The latest guidelines were reaffirmed by the court as :

- Terminal illness – the patient must be suffering from terminal illness from where there's no hope for recovery, like PVS (persistent vegetative state). Only then euthanasia shall be legalised.
- Informed consent – as discussed, only voluntary euthanasia is legal. Euthanasia performed against will Or in informed manner is against the law, hence void and criminal.
- Medical prognostication – it means taking doctors assent on prior notice that patient is in terminal illness and recovery is impossible. It is an crucial step and part of passive euthanasia.
- Medical Board Review – a board established for considering the concurrent consent of patient and his family and sanctioning the right under judicial oversight.
- Advance Medical Directive – AMDs or living will are the statement issued by the patient in advance in which the patient expresses his intention and persons authorised to take decision for him.
- Surrogate Decision Making – persons authorised to make decisions mentioned in AMDs, can take decision for him when the patient gets insolvent. Also his joint consent shall be considered when patient withdraws from the treatment.

Hence India allows for passive euthanasia and recognises it as fundamental right under article 21 of the Constitution. Such right if practised in accordance and compliance of guidelines laid above, their right to die shall be protected under law.

EVOLUTION OF THE RIGHT

The current legal position and sanction of the right to euthanasia in India, is the result of bunch of landmark cases and pivotal law commission reports that have sought to determine and construe the real meaning of life and extent of liberty an individual enjoys under article 21 of the Indian Constitution. It begins with :

- **P. Rathinam V Union of India (1994)**

This case sought to challenge the constitutional validity of section 309 of IPC, which penalised suicide, and consequently was struck down for being violative to article 21 of Indian Constitution. The court in this case drew a parallel between fundamental rights and stated that just as right to freedom of speech give freedom to speak and also includes right to not speak, article 21 also embraces right to die with right to life as part of life.

- **Gian Kaur V State of Punjab {1996}**

Here the husband and wife were convicted under section 306 of IPC which penalised abetment to suicide and were sentenced to an Imprisonment of 6 years with fine of 2000rs. The petitioner challenged the constitutional validity of section 306 of IPC. Eventually court also ordered in petitioners favour and held that abetment to suicide is mere aid in execution of fundamental right under article 21 of the Constitution. The Constitution bench in this case overruled P. Rathinam judgment.

- **Law Commission Report {2006}**

The 196th law commission report laid down that the right of terminally ill patients to claim right to die under article 21 must be protected from section 306 or section 299 of IPC. The report clarified that this protection can only be availed by terminally ill patients.

- **Law Commission Report {2008}**

The 210th report of the commission clearly stated section 309 of IPC to be unconstitutional. It laid down that attempt to suicide is manifestation of deceased condition of mind. Inflicting additional punishment on that person would be unjust and unfair.

- **Aruna Ramachandra Shanbaug V Union of India {2011}**

This was a landmark judgment and a turning point in the history of right to die cases. In this case supreme court on agreement to law commission reports and past cases, held

right to die to be a fundamental right under article 21 of the Constitution. Here Aruna, the deceased patient who in PVS since 1973 was allowed to withdraw from treatment, hence execute passive euthanasia. The apex court invoking the principle of 'parent of the nation' stated courts to be the ultimate decider for right o death of patients. It was held that court are the guardians of the deceased patients.

- **Common Cause [Registered society] V Union of India {2018}**

Another landmark case in the history of right to die cases, here the court reaffirmed and stipulated that right to die in undoubtedly a fundamental right guaranteed to all people living in this country. The court held that terminally ill patients can claim their right to seek death by writing a 'living will'. Living wills are the statement issued by the patients in advance, in which they express their intention and future will of treatment and also authorise a person to surrogate decision making. Hence this cases paved the way for the recognition of right to die under article 21 of the Constitution without being subject to any condition.

CONCLUSION

Indian allows for passive euthanasia and stands for terminally ill patients emphatically. Right to die is now a fundamental right under article 21 of the Constitution, and sanctions its execution in compliance to the guidelines laid under "Common cause V Union of India" case of 2018. The court renewed it's guidelines in 2023 and made it more contemporary.

But the debate still persists. Embracing this right was not less than a challenge, but the rights which come naturally cannot be dominated or dissolved for not matching the society's approach. Where one chooses to live, he is also guaranteed with the right to not live.

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