DOCTRINAL REINTERPRETATION OF THE RIGHT TO DIE WITH DIGNITY - ADVANCING RECOGNITION FOR PHYSICIAN-ASSISTED DYING FOR TERMINALLY ILL PEOPLE NOT ON LIFE SUPPORT

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ABSTRACT

In Common Cause v. Union of India, the Supreme Court of India expanded the contours of Article 21 of the Constitution to read the right to die with dignity into the right to life, thereby legalising passive euthanasia. However, the jurisprudence left a critical fracture by restricting this right exclusively to terminally ill patients on life support, a stance recently reinforced by the Court in Harish Rana v. Union of India. This paper presents a doctrinal critique of this judicial limitation, advocating for the constitutional recognition of physician-assisted dying (PAD) for competent, terminally ill individuals who are not dependent on life-sustaining medical intervention.

Introduction

Where life is blighted at the face of misery and suffering so great that death is preferable over living even for a reasonable psychologically competent person, the Courts have disallowed the deeply personal decision of dying by assistance based on one's choice, while allowing the decision of dying by omission, which has all the characteristics of assistance, for patients who are terminally ill. The recent decision of the Supreme Court in *Harish Rana v Union of India*[1] is a missed opportunity in recognising these rights.

There are three rights involved at the core of the debate on the right to die with dignity, the right to self-determination, the right to dignity and the preservation of the sanctity of life, all encompassed under Article 21 of the Constitution of India[2] and recognised and listed by the Courts in the Common Cause case.[3] This essay relooks into the reinterpretation of the following

[1] Harish Rana v. Union of India, 2026 INSC 222.
[2] INDIA CONST. art. 21.
[3] Common Cause v. Union of India, (2018) 6 S.C.R. 1.

questions:

First, when the right of self-determination and dignity is at war with preserving the sanctity of life, what is to be made central to one's person?

Second, whether the different standards of allowing terminally ill patients on life support, the right to die with dignity, and disallowing the terminally ill patients not on life support the same right, violative of Article 14 of the Constitution[4] for being arbitrary and unreasonable in its scheme and classification?

Third, is the distinction between passive euthanasia and physician-assisted dying, or as the Court has put it, artificial/ natural distinction, arbitrary and unreasonable?

Fourth, can physician-assisted dying be put in the same category as 'suicide' in BNS Section 108[5], and will such inclusion be arbitrary?

There are various moral and legal dilemmas to the jurisprudence of the right to die with dignity envisaged under Article 21. The limitation of this essay is that it does not provide a conclusive answer to the aforementioned questions and only seeks to provide a different lens and perspective, which the Courts have failed to consider. This essay also is not a policy prescription and does not delve into the questions of advantages and disadvantages of allowing physician-assisted dying.

As Gandhi observed, in some situations, death is a friend and relieves us of our agony, which is better than dying a defeated man. Perhaps protection from this defeat of dignity is what we owe to all who come before the Court, as protection from this defeat of dignity is protection of dignity itself.

Part I

In the *Common cause (a regd. Society) v. Union of India case*[6], Justice D.Y. Chandrachud went in depth in explaining the debate of the sanctity of life versus the dignity of individuals and the agency and self-determination of individuals over their own life[7]. He concluded that the

[4] INDIA CONST. art. 14.
[5] BHARATIYA NYAYA SANHITA, 2023, § 108.
[6] Common Cause v. Union of India, (2018) 6 S.C.R. 1.
[7] Id. at 47–65.

understanding of the sanctity of life should encompass dignity and self-determination, as according to the Constitutional provisions, all Fundamental Rights have inherent in them the categorical imperative of dignity inalienable from individuals.

Diving into the doctrinal interpretation of these principles, it cannot be ignored that these interpretations by the Hon'ble Court are outward-looking rather than inward-looking as it bases its decision on the sanctity of life as 'the end' which is the aim of the state, rather than the 'means to the end' that is having a 'dignified life'. The latter interpretation would have made 'sanctity of life' as secondary to 'dignified life' and would have covered a range of patients who need the choice to die a dignified death. The decision aims to protect the sanctity of life by classifying 'natural death' and differentiating it from 'artificial death', thus defining what can be termed as 'natural life' and 'artificial life', and the state's impermissibility to give a choice in ending one's natural life by artificial death; thus relegating dignity to a backseat for the category of patients who are terminally ill and not on life support. This leads to his conclusion that the right to die with dignity can be read into Article 21 for patients who are terminally ill only for the cases of passive euthanasia where the physicians (the third party) can allow the disease or ailment to naturally take its course, differentiating it from a deliberate action of the physicians to assist in dying for the terminally ill patients.

The nuances of the principle of sanctity of life

The doctrine of the sanctity of life is also termed as the 'inviolability of life'. According to Dworkin[8], the inviolability is read into the principle not because it is incrementally valuable but simply because it exists, making it sacred and inviolable due to what it represents, life itself. Justice D.Y. Chandrachud also brings into the debate various other scholars, one of them being John Keown, who distinguished the principle of sanctity of life from 'vitalism' on one hand and qualitative approach to life on the other. He proposes that vitalism as a doctrine regards *"human life as the supreme good and one should do everything possible to preserve it."*[9] The core principle of this approach is to *"try to maintain the life of each patient at all costs."*[10] This principle disregards other aspects of life, such as dignity and autonomy. The 'quality of life' approach, as per Keown, posits that *"there is nothing supremely or even inherently valuable*

[8] Ronald Dworkin, Life's Dominion: An Argument about Abortion and Euthanasia 73–74 (1993).
[9] John Keown, The Law and Ethics of Medicine: Essays on the Inviolability of Human Life (2012).
[10] Id.

about life of a human being"[11] and that this value would depend on the 'quality' of life one lives. Keown differentiates the two approaches from the 'sanctity of life' principle, recognising that the sanctity of life proposes an inalienable dignity, grounded in the right to life and that this dignity is not dependent on our intellectual or physical abilities or having it to any particular degree.

The outlook, though reasonable, is based on an outward-looking perception of life. They read 'right of preservation of one's life' and the 'inviolability of life' into right to life, protecting individuals from horizontal and vertical threats to their lives. The inward-looking approach to these principles would take into account agency over one's own life and the indignity faced by an individual who has to live with the cruel incapacities, knowing definite death awaits in the end and has no prospect other than suffering while awaiting their death. Justice D.Y. Chandrachud further relies on Keown to hold that there are limitations of autonomy under its contribution to the sanctity of life principle, as one cannot exercise autonomy to destroy their own life. This interpretation of autonomy as an aspect of dignity is viable in cases where the sanctity of life is in consonance with the dignity of individuals but ignores the cases where these principles are at war with each other. For example, exercising of autonomy to the extent of commission of suicide costs one's dignity and therefore this autonomy should be well restricted, but facing definite death, incapacitated by one's own disease to the extent that a dignified life is not possible, choosing death does not cost one's dignity rather protects oneself from indignities. Therefore, it is also required to differentiate between such cases and cases of suicide, which I will elaborate in Part IV of the essay.

The sanctity of life, therefore, when interpreted, cannot hold inviolability and dignity at an equal pedestal as done by Keown. Inviolability of life is a derivative based on the principle of dignity, and cruelties are indignities on the individual. The inviolability principle has to bow to dignity in the cases where they stand opposite to each other and not together.

Justice D. Y. Chandrachud also brings in the interpretation of 'life' to determine the question of what is the 'core' of life that is to be protected by the State. A distinction is drawn between the 'biographical life' and the 'biological life' deriving from James Rachel, who argued that 'life' should be protected in its 'biographical' sense and not 'biological sense'.[12] This again

[11] Id.
[12] James Rachels, End of Life: Euthanasia and Morality (1986).

points to the debate between the sanctity of life and quality of life, where, as per Signer,[13] the sanctity of life that is protected usually works to the detriment of those who have no other prospect than suffering. While the Court allows a balance in preserving the sanctity of life and preserving the dignity of life, it does so by creating a distinction between natural death and artificial death, holding only the natural death via passive euthanasia as permissible.

According to my reading of the principles, this does not solve the key question of what is it in 'life' that is to be protected. While the Court reads the dignity of individuals as the core of the right to life, it shies away from interpreting the 'sanctity of life' with dignity in its absolute sense. The resultant artificial distinction created between natural and artificial death is again mythical and showcases the troubled attempt of the Court to balance the sanctity principle with the dignity and agency principle.

The resultant consequence of the interpretation of the Court

Compelling an individual to live through indignities of a disease that renders him/her terminally ill, while not on life support, is as much an attack on the dignity of the individual as is a voluntary attack on an individual that renders him surrendered to the only prospect of suffering via force and coercion. The Hon'ble Court, in failing to protect these individuals from suffering by omitting a choice to end their suffering, violates their Fundamental Right under Article 21 and arbitrarily excludes them from the category of terminally ill patients on life support who have the choice.

Part II

The other limb of reading Right to die with dignity of terminally ill patients on life support and the terminally ill patients who choose by their own competent volition to not be put on life support and die a natural death, is via interpreting the Constitutional provisions in consonance with what the statutes in India penalizes.

The Court first demolishes the 'omission' versus 'act' distinction that *Aruna Ramchandra Shanbaug v Union of India* [14] uses that relied on *Airedale NHS Trust v Bland*[15], to hold that passive euthanasia, as well as respecting an individual's choice to be not put on life support,

[13] Peter Singer, *Sanctity of Life or Quality of Life*, 72 Pediatrics 128, 128–29 (1983).
[14] Aruna Ramchandra Shanbaug v. Union of India, A.I.R. 2011 S.C. 1290.
[15] Airedale NHS Trust v. Bland, [1993] 2 W.L.R. 316 (H.L.).

neither qualifies as an act nor omission. Further, the Court uses three distinct interpretations to make the case of passive euthanasia, which this essay questions as arbitrary and failing the reasonable classification test under Article 14.

The doctrine of double effect

Justice D.Y. Chandrachud elucidates on the concept of the doctrine of double effect,[16] holding that the doctrine of double effect allows an impermissible act by law that causes serious harm, such as the death of a human being, if it is a side effect of promoting some good end, as permissible. By this interpretation, though, both active and passive euthanasia will be held permissible, as both aim to promote and achieve some good end.

The Court then goes forward with distinguishing between active and passive euthanasia via statutory interpretation.

Passive Euthanasia neither has the *mens rea* nor the *actus reus* to cause death, unlike active euthanasia, which suffers from both.

Going further, the Court holds that the distinction between passive and active euthanasia in light of the penal provisions, holding that while the former has no *mens rea* of causing harm to the patient, the latter has a clear *mens rea*.[17] The Court here looks into two cases of *withholding* life support and *withdrawing* life support and holds that both lack the intent and the animus of causing harm to the patient, failing to distinguish between them.

Going by the interpretation of the Court, while it is agreeable that withholding life support would lead to the patient dying of the natural cause of their own ailment, the Court in the latter case holds that withdrawing life support is not motivated by the intention to cause death and all it does is not to artificially prolong the life of the patient. The end of life in both cases, as the Court holds, is brought about by the inherent condition of the patient rather than an external act. This interpretation suffers from arbitrarily classifying two different acts of *withholding* life support and *withdrawing* life support into the same category and justifying them to have the same consequence.

Going into the nuances of the two categories, while the first category of withholding life

[16] Common Cause v. Union of India, (2018) 6 S.C.R. 1, ¶ 97.
[17] Id. at ¶ 98.

support can't be considered either an act or omission, the second category of taking off a patient from life support is an act, which, even if it does not, as per Section 100 of BNS 'cause death',[18] foresees the resultant consequence, which is death, and is an action based on the knowledge that it is likely to cause death.

The Court further uses the artificial and natural death distinction to uphold its interpretation, saying that the intention of both actions of withdrawing and withholding life support is 'not to artificially prolong the life of the patient'. This interpretation is based on a distinct formulation of the question, which was used in *Aruna Ramchandra Shanbaug v Union of India*,[19] where the right question was not whether it was in the best interests of the patient that he should die. The question was formulated as whether it is in the best interests of the patient that his life should be prolonged by the continuance of this form of medical treatment or care.[20] This approach completely obliterates the resultant consequence of the said decision, inevitable death, which is common in both active and passive euthanasia, and the decision to withdraw involves a physical action that results in death, that is, physically removing a person from life support resulting in their death. Therefore, the withdrawal of life support cannot be placed in the same category of withholding life support.

The interpretation also raises the question of what can be termed as natural and artificial death, for example, whether an omission of surgery of a patient without which the patient would die would be an omission that is simply a decision not to artificially prolong the life of a patient, and if such is the interpretation, the complete class of cases of medical negligence by omission would be obsolete at the face of this categorisation.

Passive Euthanasia does not inflict any bodily injury while active euthanasia does

The next interpretation that the Court holds is that the *"doctor does not inflict bodily injury"*[21] and that the *"condition of a patient is on account of a factor independent of the doctor and is not the outcome of his/her actions."*[22] This interpretation seeks to bail out the physician from the results of his decision to withdraw life support. In *Reg v. Cox*,[23] the Court used an analogy

[18] Bharatiya Nyaya Sanhita, 2023, § 100.
[19] Aruna Ramchandra Shanbaug v. Union of India, A.I.R. 2011 S.C. 1290.
[20] Ian Kennedy, Treat Me Right: Essays in Medical Law and Ethics 21–22 (1988)
[21] Common Cause v. Union of India, (2018) 6 S.C.R. 1, ¶ 98.
[22] Id.
[23] Regina v. Cox, Winchester Crown Court (Sept. 18, 1992) (unreported).

of an interloper, which remains unanswered in the present case. Therein, the Court differentiated between the interloper who maliciously switches off the life support and a physician who, in exercise of his medical opinion and the consent of the patient, switches off the life support. If seen by the present interpretation of Justice D.Y. Chandrachud, when an interloper switches off the life support, they cannot be held liable for inflicting bodily injury, hence, the *actus reus* would itself is absent even though *mens rea* of causing malicious harm is present. As it will be the condition of the patient that will lead to his/her death, independent of the *mens rea* of the interloper and the conduct of the interloper. It is only the *mens rea* of the physician to provide the best care to his/her patients and his authority to switch off the life support that differentiates his conduct from that of the interloper. Therefore, the holding of the Court solely on the basis of the action of the physician, that it would not cause bodily harm to the patient and that the condition of the patient is independent of the doctor, is questionable.

Part III

This part of the essay focuses on whether the classification made by the Court between the terminally ill patients on life support, allowing them passive euthanasia, and the terminally ill patients without life support, denying them the right to die with dignity by obliterating the choice of physician-assisted dying holds true to the test of reasonable classification under Article 14 of the Indian Constitution.

The reasonable classification test upheld in *Anwar Ali Sarkar v. State of West Bengal*[24] are based on two pillars –

i. That the classification must be founded on intelligible differentia which distinguishes those that are grouped together against others who are excluded.

ii. The differentia must have a rational relation to the object sought to be achieved by the Act. The differentia, which is the basis of classification, is different from the object of the Act, and the differentia and the object should have a nexus between them.

Further, in *State of Punjab v. Devinder Singh*,[25] the Court laid out the jurisprudence of 'intelligible differentia' and how it is to be determined. It held that the 'intelligible differentia'

[24] State of West Bengal v. Anwar Ali Sarkar, (1952) 1 S.C.C. 1.
[25] State of Punjab v. Davinder Singh, 2024 INSC 562.

needs to distinguish persons grouped, from others who are left out of the group, which needs a 'yardstick', in the absence of which the difference would be without basis and hence unreasonable. The Court further held that the classification need not be mathematically precise, but there must be some difference between the aforementioned group of people. The classification will be held unreasonable if there is little or no difference.

The classification of the terminally ill people on life support from the excluded terminally ill people without life support showcases little or no difference. The Court has laid out the classification on the grounds of artificial and natural death distinction, which again stands questionable as pointed out in Part II of this essay. The yardstick used by the Court itself is weak and based on a mythical distinction.

The second problem with the Court's interpretation is that its classification has no reasonable nexus with the object of the right to die with dignity. The indignities suffered by the group of patients who are terminally ill with no prospect of cure are to be held at the same measure, without distinctions and further classifications. One can further argue, at the risk of being insensitive, that the patients who are terminally ill and without life support are suffering more, if not the same, indignity of cruelty due to their condition, given that in most cases, these patients are conscious to the pain and suffering with no prospect of cure or a dignified life. In contrast, the terminally ill patients on life support are usually cases of brain death, permanent vegetative states, and comatose patients, who are not in their conscious state and at best are only minimally conscious to their surroundings.

If the right to die with dignity is to be a right under Article 21 of the Constitution, it has to be a right for the whole category of terminally ill patients who have no prospect for cure and are suffering in pain with only death to look forward to. Whether any further classification of this group can stand the test of Article 14 is questionable.

Part IV

This segment of the essay focuses on the interpretation of the Court of the choice of terminally ill patients without life support exercising their volition of death by physician assisted dying as synonymous and within the category of people who take their own lives by suicide. The difference between the former, hereinafter called 'category I' and the latter, hereinafter called 'category II', is based on the exercise of one's agency and self-determination to choose a life

without indignity distinguished from the exercise of a distressed choice that chooses death and indignity.

My argument does not dismiss the indignities faced by the people who fall in category II and recognises that both people in category I and category II can make a personal and profound decision and that these decisions require a positive act from them. The difference, though, lies in the resultant consequence of the act. The positive act in category I patients leads to hastening of the process of death that was definite and therefore here the principle of self-determination upholds dignity individuals. In contrast, the positive act by people who fall in category II does not hasten the process of death but leads to an unnatural death . Keeping in mind the state's interest in preventing and discouraging unnatural deaths, the right to die with dignity should be interpreted at the final stage of dying for all individuals in that stage, differentiating it from category II people who are not in the stage of dying.

Conclusion

The jurisprudence on the Right to die with dignity developed in India has seen a significant development. This development, though, includes giving some the Right to die with dignity, but it also excludes many from making the choice of ending an undignified life. While further inclusion is necessary, it is to be kept in mind that the right to die is a very personal, intimate choice, and the sufferance of indignity and the threshold after which it becomes intolerable is very subjective. Deprivation of the right to life by 'procedure established by law' and the due process of law is acceptable, but deprivation of death itself, as opined by Nietzsche is mere cruelty.

"There is a certain right by which we may deprive a man of life, but none by which we may deprive him of death; this is mere cruelty."[26]

[26] Friedrich Nietzsche, *Human, All Too Human: A Book for Free Spirits*.