

AN APPOINTMENT TO DIE - EUTHANASIA A LEGAL PERSPECTIVE

Author- Isha Sharma & Bhavya Sharma

ABSTRACT

A natural death is not always the best option. Ending a life full of an incurable and prolonged illness is a natural right of every living being in the world—human or animal. But do our laws grant us a right to die? Article 21 of the of the Indian Constitution guarantees the right to life to the citizens of the country as well as to the foreigners. It follows the principle that an individual, by the virtue of being human alone, enjoys a right to live with dignity. But the question arises that, whether these natural rights provide the liberty to an individual to die by his choice?

Euthanasia is a concept which can be traced back to ancient times. It is the practice of ending the life of one, who is suffering from painful, incurable disease or is in irrecoverable coma, in a painless manner. Various nations have diverse euthanasia laws.

After a prolonged debate, The Apex Court of India, in 2018, issued a landmark judgement stating that citizens have the right to die with dignity under strict conditions, thereby, legalising passive euthanasia in India.

INTRODUCTION

By the definition, euthanasia is a performance or system of painlessly setting to death individuals undergoing from fatal and terminal disease as a deed of benevolence.¹ It is the tactic of ending one's life during a painless manner who is affected by distressing, incurable disease or is in irrecoverable coma.

Euthanasia is comprehended as "termination of life by a specialist with patient's consent". The rationale behind the same is a realization that the passing of a person would be in a perfect situation, in light of the very fact that, the condition of that individual is terrible to such an extent that his terminal illness has become unbearable, which further means of relieving pain are not any longer reasonable. It is performed by doctors emitting a fatal portion of an inexpensive medication to the patient on their express consent.

CLASSIFICATION OF EUTHANASIA

Euthanasia is often classified into three categories, supported the consent of the patient. It varies upon whether he has given an informed consent—voluntary, non-voluntary and involuntary.

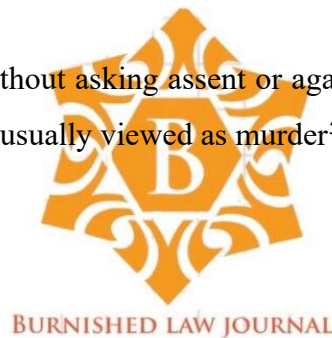
- Voluntary euthanasia is permissible in certain nations. In the countries like Netherland and Belgium. [In Netherland Euthanasia and assisted suicide are legal only if the criteria laid down in the Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act are fully observed. Only then is the physician concerned immune from criminal prosecution. Requests for euthanasia often come from patients experiencing unbearable suffering with no prospect of improvement. Their request must be made earnestly and with full conviction. They see euthanasia as the only escape from the situation. However, patients have no absolute right to euthanasia and doctors no absolute duty to perform it.]²

¹ See: http://blacks_law.enacademic.com(Aug 3,2020, 13:00 hrs).

² See: <https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request> (Aug 3, 2020, 17:00 hrs).

[In Belgium, there is legalized euthanasia by lethal injection for children. By a vote of 86 to 44 with 12 abstentions, the lower house of Parliament approved the law which had previously been passed by the country's Senate. Young children will be allowed to end their lives with the help of a doctor in the world's most radical extension of a euthanasia law. Under the law there is no age limit to minors who can seek a lethal injection. Parents must agree with the decision, however, there are serious questions about how much pressure will be placed on parents and/or their children. In anticipation of the law's passage, some Belgian parents, such as Professor Jutte van den Werff Ten Bosch, had already talked with a child, expressing support if the child should ever request euthanasia.]³

- Non- Voluntary euthanasia (patient's assent inaccessible) is unlawful altogether nations⁴.
- Involuntary euthanasia (without asking assent or against the patient's will) is likewise unlawful altogether nations and is usually viewed as murder⁵.
- Active Euthanasia.
- Passive Euthanasia.



ACTIVE EUTHANASIA

Active euthanasia is when the doctors, experts, or someone legally authorised, intentionally accomplish something that creates the patient dead⁶.

PASSIVE EUTHANASIA

Passive euthanasia happens when the patient dies due to the non-performance of any necessary medical process which was necessary to stay the patient alive or stopped any such process which was necessary to stay the patient alive⁷.

Some of these processes involve:

- Turning life network

³ See: <http://www.patientsrightscouncil.org/site/belgium/> (Aug 3, 2020, 17:00 hrs).

⁴ See: <https://www.jstor.com/stable/43953537> (Aug 3, 2020, 17:00 hrs).

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

- Detaching a feeding tube
- Not providing lifesaving drugs, etc.

EUTHANASIA LAWS AROUND THE WORLD

Various nations have diverse euthanasia laws. The Advisory Board on medical morals nominated by the British House of Lords characterizes euthanasia as a conscious mediation attempted with the express goal of homicide, to diminish persistent illness.⁸ In the Netherlands and Belgium, euthanasia is comprehended as an end of life by a specialist in line with a patient⁹. [The Dutch law, in any case, does not utilize the term 'euthanasia'. However, it incorporates the thought under the more extensive meaning of suicide and end of life on demand.]¹⁰



EUTHANASIA LAW IN INDIA

Article 21 of the Indian Constitution lays down:

“No person shall be bereft of his life or personal liberty except consistent with the procedure established by law.”¹¹

[The term life enshrined within the Constitution cannot be restricted merely as a difference between human and animal existence, their capacity to grow, and reproduce.]¹² It signifies something quite physical existence. It includes all the aspects that are necessary for human existence and overall growth of the individual. This includes adequate food, nutrition, shelter, clothing, freely moving, living with dignity, etc. It covers all the aspects that creates the lifetime of a person's worth living and meaningful.

It thus includes:

(A) Right to livelihood

⁸ See: www.parliament.uk (Aug. 1, 2020, 16:23 hrs.), <https://publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/5020324.htm>.

⁹ *Supra 2 and Supra 3*

¹⁰ See: <https://www.eubios.info/EJ131/ej131j.htm> (Aug 3, 2020, 17:30 hrs).

¹¹ The Constitution of India, 1950, art. 21

¹² See: <https://indiankanoon.org/doc/91938676/> (Aug 3, 2020, 18:00 hrs). at page 85-86 of the judgement.

- (B) Right to decent environment
- (C) Right to an inexpensive accommodation
- (D) Facilities for reading, writing, interviews, with member of his family and friends, subjected to course, to prison regulations, if any.¹³, etc.

In the milestone case of *Kharak Singh vs. The State of U.P. and Ors.*, it had been state that:

“By the term "life" as here used something more is supposed than mere animal existence. The inhibition against its deprivation extends to all or any these limits and faculties by which life is enjoyed. the supply equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye fixed or the destruction of the other organ of the body through which the soul communicates with the outer world..... by the term liberty, as utilized in the supply something more is supposed than mere freedom from physical restraint or the bonds of a jail.”¹⁴

It also includes all the sorts of rights which helps to form up an individual’s liberties aside from those which are already included in several clauses on Article 19. The question stands that does this right to life includes right to not live a force life?

RIGHT TO DIE—NOT A FUNDAMENTAL RIGHT UNDER INDIAN CONSTITUTION

BURNISHED LAW JOURNAL

The question of inclusion of right to die within the ambit of Article 21¹⁵ caught the eye inchoately of the Honorable High Court of Bombay within the year 1997 through *State of Maharashtra vs. Maruty Sripati Dubal*.¹⁶

State of Maharashtra vs. Maruty Sripati Dubal

In this case, a mentally psychopathic constable of Maharashtra Police was denied permission by the Municipal Corporation to earn a living by fixing a vegetable shop. Out of exasperation and frustration, he attempted to kill himself by setting himself afire within the office of the Corporation. His wife filed a petition stating Section 309 of the Indian Penal Code (“IPC”) is violative of Articles 21 and 19 of the Indian Constitution.

¹³ Common cause vs. union of India and ors. A.I.R.2018 S.C. 0232

¹⁴Kharak Singh Vs. The State of U.P. and Ors. A.I.R.1962 S.C.0085

¹⁵The Constitution of India, 1950, art. 21.

¹⁶State of Maharashtra v. Maruty Sripati Dubal, MANU/SC/0115/1997 Para 10 of the judgement

The Court held that Article 21 includes right to die. It upheld the contention that 'right to life' also includes 'right to finish one's life'.¹⁷ The Bench subsequently struck down Section 309 which stated:

Whoever attempts to kill and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which can reach one year [or with fine, or with both].¹⁸

The Court declared this provision unconstitutional and violative of right to die under Article 21¹⁹. The bench felt that the will to finish one's life is natural and solely uncommon and abnormal. They listed few conditions under which a private might need to die, including some disease, unbearable and merciless conditions of life, a sense of shame or disenchantment and disillusion with life. It had been also held that each individual has right to eliminate his life as a natural right, as and when he desires to try to so.²⁰

Chenna Jagadeeswar vs. State of Andhra Pradesh²¹

Here, the accused no. 1. was charged under Section 302 of the IPC for murdering his four children and under Section 307 for attempting to murder his wife. He was also charged under Section 309 of the IPC for attempting to kill. The second accused was also charged under Sections 302 and 309 of the IPC.

[The Andhra Pradesh High Court, on appeal, held that if the people have the proper to eliminate themselves, then no actions are often taken against them. The elemental rights enshrined under Article 21 does not include the right to die and hence, Section 309 of the IPC is valid and not unconstitutional.]²²

P. Rathinam v. Union of India, 1994²³

¹⁷*Ibid*

¹⁸Indian Penal Code, 1860, Section 309

¹⁹ See: Para 10, 11 of the judgement State of Maharashtra v. Maruty Sripati Dubal, MANU/SC/0115/1997

²⁰ See: <https://iep.utm.edu/hobmeth/> Point 4. Science of Politics, line 20.

²¹ Chenna Jagadeeswar and Ors. vs. State of Andhra Pradesh, APHC 1987 MANU/AP/0016/1987.

²² See: Para 36, Judgement Chenna Jagadeeswar and Ors. vs. State of Andhra Pradesh, APHC 1987 MANU/AP/0016/1987.

²³P. Rathinam and Ors. vs. Union of India (UOI) and Ors. A.I.R.1994. MANU/SC/0433/1994.

Here, it was held that Article 21 also includes right to die and that Section 309 of the IPC unconstitutional. The bench concluded that right to life under Article 21 includes right to not live or to terminate one's life.

The petitioner herein challenged the validity of Section 309 of the IPC, which makes "attempt to commit suicide" a penal offence, for the rationale that it infringes upon Article 21 of the Indian Constitution.

The Court delivers that "an act of suicide can't be said to be against religion, morality or public policy, and an act of attempted suicide has not baneful effect on society. Further, suicide or plan to commit it causes no harm to others, due to which State's interference with the private liberty of the concerned persons isn't involved."²⁴

Explaining the choice, the Court said that a private can't be forced to enjoy the proper to life to his disadvantage of disliking. The 309 provision of IPC is irrational and cruel and will be removed, because it may end in doubly punishing an individual who is already suffering, by punishing him for a failed plan to kill.

The judgment of effacing Section 309, and declaring it unconstitutional, brought a way of liberalization for the people of depressed and irreversible state of mind and body. But the very fact that the consequences of this judgment on young immature minds were ignored. This judgment justified and promoted the desperate and haste decisions, actions and reactions of such immature minds owing to failure in examination, relationships, jobs, promotions etc. it's also criticized for creating a defense for the dowry deaths, wherein the accused takes the plea that the deceased has committed suicide, while it's otherwise.

Gian Kaur v. State of Punjab²⁵

A Constitutional Bench of five of the Supreme Court overruled the judgment of P. Rathinam's case and rightly held that the right to die doesn't falls under the ambit of "right to life" provided under Article 21 of the Indian Constitution. In other words, the Constitution doesn't provide right to terminate one's life. The Court accordingly said that Section 309 of IPC violative of Article 21, Therefore unconstitutional²⁶.

Through a unanimous judgment of the Court, Mr. Justice J.S. Verma said:

²⁴ *supra* note 13 para 109 P. Rathinam and Ors. vs. Union of India (UOI) and Ors. A.I.R.1994. MANU/SC/0433/1994.

²⁵ Gian Kaur vs. State of Punjab, A.I.R.1996, SC. MANU/SC/0335/1996.

²⁶ See: Para 110, P. Rathinam and Ors. vs. Union of India (UOI) and Ors. A.I.R.1994.

“Any aspect of life which makes it dignified could also be read into article 21 of the Constitution but not that which extinguish it and is, therefore inconsistent with the continued existence of life leading to effacing the proper itself.”

Right to life, being a natural right, is out there to each individual by the virtue of being human itself. Whereas right to die promotes unnatural death through unnatural termination of life, and hence it's inconsistency with the concept of right to life.

The concept of right to measure with dignity continues even after the death of an individual, because it includes right to possess a dignified death and procedure of death. But right to die with dignity shouldn't to be confused with right to die.²⁷

Aruna Ramchandra Shanbaugh v. Union of India²⁸

The milestone case which brought revolution during this field. In this case, the Petitioner Aruna Ramachandra Shanbaug was a staff nurse working in King Edward Memorial Hospital, Parel, Mumbai where she was attacked by a sweeper within the hospital who wrapped a dog chain round her neck and yanked her back with it. He raped her even she was menstruating. On the subsequent day, a cleaner found her lying on the ground with blood everywhere in an unconscious condition.

It is alleged that due to strangulation, the availability of oxygen to the brain stopped and therefore, her brain got damaged. A neurologist within the hospital found that she had planter's extensor, which indicates damage to the cortex or another a part of the brain. She also had brain stem contusion injury with associated cervical cord injury.

On page 11 of the writ petition filed by Ms. Pinki Virani, claiming to be victim's agent, it is pointed out that that 36 years have expired since the incident and now, Aruna Ramachandra Shanbaug is about 60 years aged. Her teeth had decayed causing her immense pain. She will only tend mashed food, on which she survives. It was found that Aruna Ramachandra Shanbaug suffers a persistent negative state (“PVS”) and is virtually a dead soul with no state of awareness. She will neither see, nor hear anything nor can she express herself or communicate, in any manner whatsoever. Her body lies on the bed within the KEM Hospital, Mumbai sort of

²⁷ <https://main.mohfw.gov.in> (See also:

<https://main.mohfw.gov.in/sites/default/files/70091570991462535057.pdf>).

²⁸ Aruna Ramchandra Shanbaugh vs. Union of India (UOI) and Ors, 2011.SC. MANU/SC/0176/2011.

an animal. The prayer of the Petitioner is that the Respondents be directed to prevent feeding Aruna, and let her die peacefully.

Regarding the withdrawal of life support to an individual in PVS or who was otherwise in component to require a choice during this connection, the Supreme Court during a division bench decision, Justice Marmande Katja and Justice Gyan Sudha Misran disappointed the law of passive euthanasia to continue till the law made by the Parliament on subject as follows:²⁹

1. The choice has got to be taken to discontinue life support either by parents or by spouse or the other close relative or in absence of any of them such decision are often taken even by an individual or a body of an individual acting as an agent .It also can be taken by the doctors attending the patient however the choices should be taken real within the best interest of the patient.
2. Albeit a choice is taken by a near relative or a doctor or agent to withdraw life support such a choice requires approval from supreme court concerned as there's always a risk that the supply could also be misused by some dishonest person with the assistance of some deceitful doctor by fabricating material to point out that it had been a terminal case with no chance of recovery.
3. The Supreme Court under Article 226 of the Constitution can grant approval for withdrawal of life support to such an in competent person.
4. A petition is often made to the Supreme Court to pass suitable orders under Article 226 of the Constitution praying for an order reaction or not for any writ. Hence, Article 226 provides a bonded power to the Supreme Court to pass suitable orders on application file by near relative on agent for doctor hospital staff playing for permission to withdraw the life support to a competent person of the type above mentioned.³⁰
5. The deed should be authorized by the initiator within the presence of two verifying witnesses and attested by the jurisdictional Judicial Magistrate of first-class (“JMFC”). The countersigned and JMFC shall confirm that the document has been furnished voluntarily. The JMFC shall reserve one copy of the record in his function and shall forward another to the registry of the jurisdictional district court for being reserved.

²⁹ See: <https://www.indiatoday.in/india/north/story/sc-turns-down-mercy-killing-plea-of-aruna-shanbaug-129839-2011-03-07> (Aug 1, 2020, 17:30 hrs)

³⁰The Constitution of India, 1950, art. 226.

6. The JMFC shall notify the relations of the executor, if not present at the time of execution. a replica shall be handed over to the competent officer of the government.

24st REPORT OF LAW COMMISSION³¹

Under the chairmanship of Mr. P.V. Reddy, the Law Commission stated that withdrawing life support surely categories of people—such as those in PVS or in irreversible coma or of unsound mind, who lack mental faculties to form decisions for themselves—should be allowed³².

The Law Commission Report followed a March 2011 decision by the Supreme Court which differentiated between active and passive euthanasia within the case of a nurse, Aruna Shanbaug. Shanbaug was in PVS for several decades following a brutal rape. She died on 18 May 2015.

CONCLUSION

The debate of legalizing euthanasia has been consistent throughout and remains in its infancy. The juxtaposition drawn between Sections 309, 302 of the IPC and Article 21 of the Constitution of India with regard with right to die has now concluded through legalizing passive euthanasia in India. It is the lone human option that permits a private who is suffering to finish its life by choice. albeit the uncertainties and complexities of system, still leave the doctors, family and therefore, the sufferer hanging and unprotected.

³¹ See: <http://lawcommissionofindia.nic.in> (July 29, 2020, 22:45 hrs.).
<http://lawcommissionofindia.nic.in/reports/report241.pdf>.

See also: Shreeja Sen, *Considering Law Commission report on passive euthanasia: Government tells Supreme Court*, LIMEMINT (July 28, 2020, 20:30 hrs.)
<https://www.livemint.com/Politics/ZmtHn0QBQnKhSOJhAWKpFP/Considering-Law-Commission-report-on-passive-euthanasia-Gov.html>.

³² See: <http://lawcommissionofindia.nic.in/1-50/Report24.pdf> (Aug 3, 2020, 21:30 hrs).