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Right to Die: Laws and Legislation

Thina Mukhopadhyay^a

^aSymbiosis Law School, Hyderabad, India

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Our Indian constitution guarantees us some basic fundamental rights that are essential for the citizens of a free country. One of the basic fundamental human rights is the right to live. The right to life and personal liberty¹ in the Indian constitution is guaranteed under art 21² and is preserved at all costs. Over the years as the Indian constitution has evolved so far after the independence of our country, several interpretations have been made regarding this particular right as it does not only allow a person to live a life but also covers a lot of aspects of life under its ambit. But the question arises whether the right to live also allows a person the right to die. The researcher of this paper aims to analyse the concept of the right to die in regards to the aspects of the right to commit suicide, that is, whether a person has the right to end his life and whether it is made punishable, is valid in terms of legislations and personal rights. Apart from this aspect, the researcher of this paper also aims to analyse the legalities revolving around, active euthanasia and passive euthanasia and the recent legislation regarding it.

Keywords: *euthanasia, right to die, suicide, right to life.*

INTRODUCTION

Life is the most precious on this earth and without a doubt no matter how much science and technology have improved, the mysteries of life and death won't be ever easily solved by

¹ Constitution of India 1950, art 21

² *Ibid*

humankind. Since life is not a man-made thing and cannot be created easily, it is identified as a legal offence by the state to end it. However, there are times when there have been debates and conflicts regarding the ending of one's own life. The prime instance regards this is Euthanasia popularly known as mercy killing.³

Euthanasia is commonly associated with someone who is terminally ill and is going through a lot of suffering or is handicapped and has very less chance of getting better. Also, patient especially those who are in their old age and situation is when there is no scope for recovery and are constantly suffering or is under the ventilator and the doctor has approved that the patient won't be able to get back to normal daily course of life the concept of Euthanasia emerges here. Considering the pain and suffering that the person goes through the person should have a right to end his life to escape the terminal sickness and irresistible pain and suffering and should have the option of living or dying.

Euthanasia is a very sensitive issue that brings out debates and contentions in society overall as it directly attacks the morals and ethics of society at large. Not only in India but also there have been active discussions and debates on Euthanasia across the world. For example recently after the recent legalisation of Euthanasia in the Netherlands and England, euthanasia got a different aspect and scope of light for debate and discussion. The recent development of stance in India regarding Euthanasia is that the Supreme court in the case of Aruna Shanbaug⁴ has allowed passive Euthanasia.

Apart from Euthanasia, the researcher of this paper also aims to analyse the right to commit suicide which is the right of a person to end one's own life. Every year a lot of people die due to suicide and a lot of countries consider an attempt to suicide as punishable and unlawful. However, there are a lot of countries that have recently decriminalised the attempt to commit suicide except for India. In India, Indian Penal Code under section 309⁵ still attempts to suicide punishable under the law.

³ Diwakar Shukla, 'Euthanasia (Mercy Killing): A Comparative Analysis of U.K. and Indian Position'

⁴ *Aruna Ramachandra Shanbaug v Union of India* (2011) 4 SCC 454

⁵ Indian Penal Code 1860, s 309

THE LEGAL POSITION IN INDIA

In India, there has also been a discussion on whether euthanasia should be legalised. The Law Commission has suggested that euthanasia for terminally ill people be legalised.⁶ Currently, however, euthanasia is unquestionably unlawful in India since the doctor intends to kill the patient which in turn invites the violation and the crime committed will fall under the provision of the penal code of India, under Section 300.⁷ Though, the deceased has died of mercy killing in hands of the doctor or the appointed killer by the deceased, the persons liable would still be tried for culpable homicide not amounting to murder since there has been an agreement existing and exception under the same would apply.⁸

The right to life is the most basic and natural human right. Article 21 of the Indian Constitution states, "No person shall be deprived of his life or personal liberty except by the procedure established by law."⁹ The text of Article 21 has remained unchanged over the years, but the context has already been academically interpreted by the Indian judiciary, to read in a variety of many other related rights so necessary for true the enjoyment of the right to life.¹⁰ However, the Supreme Court's recent judgement in the Aruna Shanbaug case¹¹ created new ground. In this judgement, the Supreme Court authorised passive euthanasia or the withdrawal of life-sustaining systems from patients who are unconscious or in a chronic vegetative condition.¹² However, it was noted that only passive euthanasia was allowed and active euthanasia would not be allowed and will still be considered a crime.

⁶ Nimisha Jha, 'Right to Die: A detailed Analysis of Euthanasia in India' (*Academia*) <https://www.academia.edu/15529125/Right_to_Die_A_detailed_Analysis_of_Euthanasia_in_India> accessed 25 January 2023

⁷ Indian Penal Code 1860, s 300

⁸ Indian Penal Code 1860, s 304

⁹ Constitution of India 1950, art 21

¹⁰ *Ibid*

¹¹ *Aruna Ramachandra Shanbaug v Union of India* (2011) 4 SCC 454

¹² *Ibid*

ANALYSIS

India's legal status cannot and should not be analysed in isolation. India based its constitution on the constitutions of other nations, and the courts have frequently referenced international judgements. Euthanasia is unquestionably banned in India. Because there is an intent on the part of the doctor to murder the patient in cases of euthanasia or mercy killing, such cases come within clause first of Section 300 of the Indian Penal Code, 1860.¹³ Though, the deceased has died of mercy killing in hands of the doctor or the appointed killer by the deceased, the persons liable would still be tried for culpable homicide not amounting to murder since there has been an agreement existing and exception under the same would apply.¹⁴

In India, the law on assisted suicide is likewise extremely clear. Suicide is not a legal "right" in India;¹⁵ it is a crime under the India Penal Code, 1860.¹⁶ Sections 305 (Abetting suicide of a juvenile or mad person),¹⁷ 306 (Abetting suicide),¹⁸ and 309 (Attempt to commit suicide)¹⁹ of the aforementioned Code contain provisions for punishing suicide. The constitutionality of Section 309 of the IPC has been called into question.²⁰

*"The right to life is a fundamental right recognised in the Indian Constitution. In India, Article 21 ensures the right to life."*²¹

The facet took a turn after a five-judge bench judgement of the Supreme Court, in the case of *Gian Kaur v State of Punjab*²² it was well decided that "the "right to life" protected by Article 21 of the Constitution does not include the "right to die".²³ The Court ruled that Article 21 is a clause that guarantees "protection of life and personal liberty,"²⁴ and that extinction of life cannot

¹³ Indian Penal Code 1860, s 300

¹⁴ Indian Penal Code 1860, s 304

¹⁵ Nimisha Jha (n 6)

¹⁶ Indian Penal Code 1860

¹⁷ Indian Penal Code 1860, s 305

¹⁸ Indian Penal Code 1860, s 306

¹⁹ Indian Penal Code 1860, s 309

²⁰ *Ibid*

²¹ Constitution of India 1950, art 21

²² *Gian Kaur v State of Punjab* AIR (1996) SC 946

²³ *Ibid*

²⁴ Constitution of India 1950, art 21

be put into it. Also in regards to the punishment for an attempt to suicide that is under section 309 of IPC,²⁵ it was held in the same case, that it is arbitrary to punish a person who is attempting suicide. That is because a person committing or trying to commit suicide is under depression and needs help rather than punishment. In the case of *Maruti Shripati Dubal v State of Maharashtra*²⁶ held that section 309 of the said code was discriminatory and arbitrary. It was held that it violates “article 14 and article 21 of the Indian constitution” as it says under article 21 guarantees the right to life²⁷ which in turn has the right to die under its ambit.²⁸

The major argument in support of Euthanasia is that it is done to eliminate extremely unbearable pain that the patient has to unusually suffer. Also, in the case, that a person chooses to die in the case of terminal illness, the family saves up to a lot of unnecessary medical expenses which are incurred for a person who is in a vegetative state and where no cure is going to take place. And providing health care incurs a lot of expenses that a person may not be willing to incur for someone who is not going to cure and is suffering and consents to die in place of suffering. In other words, exercising Euthanasia frees an individual from experiencing unbearable pain and suffering and also saves the family of the same from unnecessary medical expenses.

But there are also arguments against it. Religious groups violently oppose Euthanasia as it is ethically and morally wrong and taking the life of a person is, what they believe must completely rest in the hands of the almighty and not a decision of humankind. Further, if Euthanasia is very frequently used then there are high chances of misuse of the same and there arise specific instances where the doctor can murder his patients in terms of personal rivalry or even the family members can misuse it against a particular patient as a result of some personal rivalry or conflict.

²⁵ Indian Penal Code 1860, s 309

²⁶ *Maruti Shripati Dubal v State of Maharashtra* (1987) CriLJ 743 (Bom.)

²⁷ Constitution of India 1950, art 21

²⁸ *Maruti Shripati Dubal* (n 26)

CONCLUSION AND RECOMMENDATION

Like the two sides of the coin, Euthanasia has both its negative and its positive and it has active arguments both in support of legalisation and against its legalisation. The researcher after doing this thorough analysis has come to the point that passive Euthanasia as the country has come up with its decision of legalising the same, is a positive decision and should be implemented but at the same time to prevent it from being misused, proper guidelines from the court and the medical officer must be laid down. In regards to the right to suicide or right to die for a person who is committing suicide, the researcher thinks that the right to die should not be a right vested under article 21 of the Indian Constitution, but at the same time punishing a person who has been trying to attempt to commit suicide should also be criminalised. The person must be given government help to get him back to his original self.