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LAWS PERTAINING TO THE RIGHT TO DIE, ESPECIALLY
EUTHANASIA IN INDIA

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ABSTRACT

In India, the issue of the "Right to Die" is still deeply entwined with moral and legal difficulties. This study explores how the law has changed in relation to this delicate subject. To provide a nuanced understanding of the present legal status of the "Right to Die", particularly with regard to Euthanasia in India, the paper carefully examines arguments made by supporters and opponents and judicial precedents, drawing upon significant Supreme Court rulings such as Aruna Shanbaug and Common Cause. It also highlights the difficulties in navigating this complex issue.

KEYWORDS

Right to die, Indian penal code, Section 306, Section 309, Article 21, Euthanasia, Suicide, Living will, Right to life, Abetment to suicide, Mercy killing.

INTRODUCTION

Human rights are universal rights that every human is entitled to without any discrimination. The right to life is one of the significant human rights. The right to life is protected by Article 21 of the Indian Constitution as one of the fundamental rights. It reads as follows “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This right is applicable to every person including foreigners and it cannot be suspended even during the emergency period. The Court through its judgements concluded that the Right to life comprises the right to a clean environment, right to privacy, right to shelter etc and expanded the scope of Article 21. However, there has always been a difference of opinion when it comes to adding the right to suicide and the right to Euthanasia under the right to life.

DIFFERENCE BETWEEN SUICIDE, MAID, AND EUTHANASIA

Suicide means deliberately taking one's own life by various methods. The common methods of suicide are hanging and poisoning. Suicidal thoughts can arise because of psychological stress or physical illness. Notably, many of the attempted suicides were a quick reaction to the negative happenings or situations in life. It is distressing that these impulsive suicide attempts might have been averted if the individuals had taken some time, as most of the problems cited as the reason for suicide are resolvable.

Section 309 of the Indian Penal Code

Section 309 of the Indian Penal Code, 1860 continues to be one of the controversial provisions of IPC. Anyone found guilty of attempting suicide faces a simple imprisonment sentence of up to one year, a fine, or both.

However, Section 115 of the Mental Healthcare Act of 2017 provides an exception to section 309 of IPC by insisting the government not to punish but provide care, treatment and rehabilitation to the person to reduce the risk of recurrence of attempt to commit suicide. Bharatiya Nyaya Sanhita (BNS), the new criminal bill passed as a replacement for IPC implies that attempting

suicide with the intent to compel or restrain any public servant from discharging his official duty is punishable under Section 226.

Medical Assistance in Dying (MAID) involves consuming or injecting lethal drugs by oneself with the assistance of someone, usually a medical professional, to end one's life. Another name for it is physician-assisted suicide. In India, it is illegal and punishable under Section 306 of the IPC as abetment of suicide with fine and imprisonment which may extend to 10 years. In order to constitute abetment under this section, the accused must have intended to aid, instigate, or abet the deceased to commit suicide.

Euthanasia means 'mercy killing'. The term owes its origin to Greek words 'Eu' (good) and 'thanatos' (death). Euthanasia is taking the life of a person or hastening their death in order to put an end to the pain and suffering caused by terminal illnesses.

TYPES OF EUTHANASIA

- Active Euthanasia – A fatal drug is injected into the body of a person in this type, resulting in their death
- Passive Euthanasia - In the case of a patient on artificial life support, the support will be withdrawn, resulting in death
- Voluntary Euthanasia - When a patient chooses to end their life, they do it voluntarily at their will
- Non-voluntary Euthanasia - If the patient is unable to give consent, Euthanasia is performed with the family's or relatives' approval.
- Indirect Euthanasia - Medications that reduce unbearable pain but shorten the patient's lifespan will be administered to the patient

JUDICIAL PRECEDENTS REGARDING 'RIGHT TO DIE'

*State vs. Sanjay Kumar Bhatia, 1985*¹ - Due to excessive emotionalism, a young man made an attempt at suicide. The Delhi High Court said that, 'in this age of votaries of Euthanasia, the continuance of punishing attempt to suicide is an anachronism unworthy of a human society like us' and held Section 309 constitutionally invalid.

¹ Citation 1986(10)DRJ31

State of Maharashtra vs. Maruti Shripati Dubal, 1986²- A police officer attempted to self immolate by pouring petrol on himself and lighting matchstick. Prior to this he met with an accident that caused him a head injury and made him mentally unstable. The High Court of Bombay held the Section 309 of IPC is discriminatory, arbitrary, and unconstitutional and quashed the criminal proceedings against him.

Chenna Jagadeeshwar vs. State of Andhra Pradesh, 1988³ – A doctor murdered his four children and attempted suicide along with his wife. The provision punishing attempt to suicide was challenged and argued that Article 21 includes ‘Right to die’. The High Court of Andhra Pradesh rejected the argument and upheld the constitutional validity of the provision in issue.

Naresh Marotrao Sakhre vs. Union of India, 1994⁴ – A writ petition was filed before the High Court of Bombay requesting declaration of Section 306 as unconstitutional. The Court stated that, since suicide or suicide attempt is not an offence, a person who has committed suicide or attempted to commit suicide is not considered to be a principal offender and the analogy that if a 'Principal Offender' is not convicted, the 'abettor' also cannot be considered to have committed any offence is inapplicable. In addition to that, the Court added the difference between suicide and Euthanasia. Suicide is self destruction and does not involve any other person, whereas Euthanasia /mercy killing imply the intervention of humans to end life. Euthanasia does not attract Section 309 because it is nothing but homicide.

Rathinam vs. Union of India, 1994⁵ - In this case the petitioner challenged the validity of Section 309 of IPC by arguing that it is against Article 14 and Article 21 of the Indian Constitution. The judgement was delivered by Supreme Court Justice B.L.Hansaria and R.M. Sahai wherein the bench stated three decisions of different High Courts (Bombay, Delhi and Andhra Pradesh) dealt with the aforesaid aspect. They agreed with the Delhi High Court's judgement and Bombay High Court's judgement declaring Article 309 as unconstitutional and overruled the decision of Andhra Pradesh High Court upholding the same. The bench also quoted that Article 19 i.e. Freedom of speech includes right to not speak. In the same way, the positive right to life granted by Article 21 encompasses the right to die as well. The Court in its

² Citation AIR 1997 SUPREME COURT 411, 1996 (6) SCC 42

³ Citation 1988 CrL.J.549

⁴ Citation 1996(1)BOMCR92

⁵ Citation 1994 SCC (3) 394

judgement did not provide anything on Euthanasia as it was beyond the scope of the petition but cited a foreign precedent of Supreme Court of Nevada in the case McKay vs. Bergstedt which allowed voluntary Euthanasia affirming it as a constitutional and common right. However, this judgement was overruled in the case Gian Kaur vs. State of Punjab, 1996.

Gian Kaur vs. State of Punjab, 1996⁶ - The appellants argued that Section 306 of Indian Penal Code is unconstitutional as it was held by the Supreme Court that Section 309 of the IPC is unconstitutional and Section 306 only aids in executing the fundamental right of Right to life given in the Constitution. For this purpose, the SC had to reconsider the decision given in Rathinam vs. Union of India. The Court observed that, the right to life is an inherent right but the right to die is not. It thus dismissed the petition and upheld the constitutional validity of Section 309 of IPC overruling the decision given in Rathinam vs. Union of India.

C.A. Thomas Master vs. Union of India, 2000⁷ – A petition was filed by a retired teacher to allow setting up Mahaprasthana Kendra (voluntary death clinics) as death is the only certain thing. He brought up the fact that voluntary death was accepted in ancient Chinese and Indian civilizations. He argued that suicide and voluntary termination of life are different. However, the Court rejected the petitioner's contention and dismissed the writ petition.

LANDMARK JUDGEMENTS IN INDIA ON EUTHANASIA

Aruna Ramachandra Shanbaug vs. Union of India, 2011⁸ – Aruna was working as a staff nurse in a hospital. A sweeper who worked in the same hospital in an attempt to rape her, he strangulated her with a dog chain. When he noticed that Aruna was menstruating he involved in sodomy. Due to strangulation, the oxygen supply to the brain stopped, causing severe damage to the cortex of the brain. She was found lying unconscious on the floor with blood all over her by one of the cleaners the next day. Because of this incident, Aruna has been in a 'Permanent vegetative state' for almost 36 years and a petition was filed by her journalist friend under Article 32 seeking Euthanasia for Aruna to put an end to the agony and suffering endured by her. In its ruling, the Supreme Court outlined the distinction between active and passive Euthanasia and declared that the former is a clear violation of Sections 302 and 304 of the Indian Penal

⁶ Citation 1996 AIR 946, 1996 SCC (2) 648

⁷ Citation 2000CRILJ3729

⁸ Citation AIR 2011 SUPREME COURT 1290

Code. The apex Court also asserted that the High Courts will be entitled to make decisions with respect to passive Euthanasia under Article 226. As per the guidelines issued by the Supreme Court

1. a bench must be constituted by the Chief Justice High Court if an application is received for the above mentioned purpose and the bench must seek the opinion of a committee of three reputed doctors as it deems appropriate, preferably a psychiatrist, a neurologist and a physician before pronouncing judgements.
2. The patient's current state must be thoroughly examined and considered in making decisions.
3. The bench must issue notice to the state and the patient's family/relatives or in the absence of them their next friends. Until a new legislation is passed by the parliament on this issue, these guidelines shall be followed throughout India.

Common Cause vs. Union of India, 2014⁹ - Common Cause, a registered society advocating for human rights, filed a petition seeking declaration of right to die with dignity free from unnecessary suffering inclusive of Article 21. They sought to legalize the use of "living wills," where individuals could express their preferences regarding medical treatment in advance. The right to a dignified death was unanimously acknowledged by the five judges as a fundamental component of Article 21. They acknowledged the individual's autonomy and right to make informed choices about their own body, even in the face of terminal illness. However, they clarified that this right did not extend to active Euthanasia, which remains illegal in India. Few guidelines were laid down in the judgement and were updated in 2023 while entertaining the application filed requesting clarifications of the judgement by Indian society of critical care medicine.

Eligibility:

- Only competent adults who are of sound mind and understand the implications of their decision can create an advance directive.
- There are provisions for guardians to make decisions for mentally incapable individuals in specific situations.

⁹ Citation - AIR 2018 SUPREME COURT 1665

Formalities:

- Directives must be written, dated, and signed by the maker.
- Two independent witnesses, preferably not beneficiaries of the estate, must be present and sign the document.

Verification:

Originally, countersignature by a jurisdictional Judicial Magistrate of First Class was required.

2023 Update: Verification can now be done by a notary in some cases. Verification by a designated medical officer remains an option.

Content:

- Directives can specify the withdrawal or withholding of specific medical treatments, including artificial life support, in case of terminal illness or a vegetative state.
- Active Euthanasia is strictly prohibited.
- Directives can be specific about the circumstances, desired care, and even preferred places of care.

Safeguards:

- To prevent coercion or undue influence, mental health assessments or family consultations might be required in some instances.
- Directives can be revoked or modified at any time by the maker while competent.
- Two independent medical boards, one at the hospital and another at the state level (formerly required), review the directive and the patient's condition before authorizing its implementation.

2023 Update: The number of required medical board approvals for passive Euthanasia has been reduced.

THE CONCEPT OF LIVING WILL/ ADVANCE DIRECTIVE

It is a legal document that allows people expressing their wishes about medical care in situations where they cannot make decisions for themselves, typically due to terminal illness or incapacitation. The "will" part refers to the expressed wishes, not a testament of property like a traditional will. Living wills include interventions like artificial respiration, tube feeding, and dialysis. One can specify if they want them continued or withheld under certain conditions and can indicate whether they consent to specific procedures like CPR or blood transfusions. A person can also include his/her philosophical or religious beliefs that might influence their medical treatment decisions in case they could not decide/ provide consent themselves.

LEGAL STATUS OF EUTHANASIA IN OTHER STATES

Netherlands: Established the first legal Euthanasia program in 2002, permitting terminally ill persons who were in excruciating pain and had no other means of escape to take their own choice end of life with medical assistance. It is notable that the country's former president recently (February 5, 2024) died hand in hand with his wife in Duo-Euthanasia at the age of 93 due to deteriorating health.

UK: In the UK, aiding suicide and active Euthanasia are prohibited practices. Lord Joffe made attempts to authorize voluntary Euthanasia, but the UK parliament rejected his bills each time.

Australia: Tasmania, Western Australia, Victoria and New South Wales have all approved voluntary assisted suicide. Euthanasia and assisted suicide, however, remain illegal in Australia's Northern Territory and Capital Cities.

Belgium: Assisted suicide and Euthanasia for people with repeated, deliberate requests due to severe and incurable physical or mental pain were authorized in 2002.

Canada: 2016 saw the legalization of medical assistance in dying (MAiD) for eligible persons who have terminal illnesses that would likely result in death and unbearable pain.

Spain: Euthanasia was approved in 2021 for those who are terminally sick and those who have severe, incurable diseases that are causing them great agony.

New Zealand: Enacted in 2019, the End of Life Choice Act authorized assisted dying for terminally ill individuals who possess the mental capacity to make informed decisions and are in excruciating pain.

Colombia: The Constitutional Court decriminalized Euthanasia in 2015 for terminally ill patients who willingly want it and are in excruciating pain.

Luxembourg: Introduced Euthanasia laws in 2008, using a strategy akin to Belgium's.

ARGUMENTS SUPPORTING EUTHANASIA

- a) Respecting one's own autonomy over one's body and life is important in democracies. This idea is upheld when people are given the freedom to choose how they pass away, especially when they are in excruciating pain.
- b) For terminally ill patients, Euthanasia provides a compassionate way to end their agonizing suffering and provide a dignified death.
- c) It can be difficult for families to watch a loved one suffer for an extended period of time. Euthanasia can ease their burden and provide closure.
- d) The healthcare system in India is beset by resource shortages. Euthanasia could improve access to healthcare overall by freeing up important medical resources for those with treatable diseases.
- e) India supports the "Right to Life", but it also emphasizes the importance of the "Right to Die with Dignity". Euthanasia guarantees a dignified and peaceful death devoid of undue pain.
- f) Some contend that Euthanasia legalization can offer a controlled substitute for impulsive and desperate suicides.

ARGUMENTS AGAINST EUTHANASIA

- a) It takes a lot of labor and resources to set up a solid legal structure with precise rules, strict safeguards, and supervision procedures.
- b) Since many Indian faiths regard life as precious, Euthanasia is viewed as immoral and an infringement on the will of the divine.
- c) The medical fraternity believes Euthanasia is against medical ethics

- d) Legalizing Euthanasia could cause it to gradually spread beyond its original goals, which could result in misuse and put pressure on those who are already vulnerable.
- e) There is fear that those who are weaker, such as the old or the people with disabilities, could be forced to end their lives by relatives or other people who are after money or inheritance.

The above-listed arguments are the main challenges in the implementation of Euthanasia.

SUGGESTIONS

- The parliament should make separate legislation relating to Euthanasia in order to eliminate the legal vacuum.
- The concept of living will/ advance directives should be strengthened. A legal framework should be developed which addresses everything about living wills, from their form to their enforceability.
- It is essential for religious communities to have open dialogue and interpretations because some religious perspectives are against Euthanasia while others see it as a compassionate act that respects the requests of suffering people. This would assist in dispelling the stigma.
- Educational campaigns can be organized to create awareness among the people and medical fraternity about Euthanasia , that would help them know its legality and aid the public in exercising their rights
- Tight protections against exploitation and abuse are crucial. For Euthanasia to be carried out in an ethical and responsible manner, strict legal frameworks, precise guidelines, and effective ethical review procedures are required.

CONCLUSION

In India, the legal landscape pertaining to the right to die is still complicated and dynamic. In order to examine the existing situation and possible directions for development, this study has analyzed historical judgments, international comparisons, and ethical considerations. A balanced strategy is necessary to navigate the legal and ethical minefield around Euthanasia and the "right

to die" in India. The legal framework must respect life, but it must also recognize each person's right to autonomy and the need for dignified end-of-life care.

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