

Right to life: Does it include Right to Death?

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Abstract - The Constitution of India provides for Right to life as the fundamental right under Article 21. This paper shall bring in picture whether it includes right to death through the legal means. The various verdicts provided by courts from time to time are discussed in detail and finally the conclusion is made whether euthanasia, as mentioned in the medical terminology is a right way for seeking death under the Article 21. This paper shall also discuss other methodologies that can be adopted by seekers of death as a part of fundamental right under “Right to death.” It also discussed the decision given by Supreme Court on 9.03.2018 to provide for Passive euthanasia by means of withdrawal of life support to patients in a permanent vegetative state. The paper deals with certain case studies that brings out the different perceptives of society regarding the “right to die with dignity,” in special reference to euthanasia. It also discusses whether active euthanasia be also considered by courts in future and be included under Art. 21, (Indian Constitution), “Right to Life.” Below is the study made on people in village, town and city on 100 people at each place:



Keywords: legal; euthanasia; passive; vegetative state

I. INTRODUCTION

The International Herald Tribune stated that every person shall have the right to die with dignity as the person shall the right to live with equal dignity. He is supposed to die painlessly with the assistance of nurses or any other person concerned. It also described that no person (nurses or doctors) shall be liable to criminal proceedings in assisting the person in euthanasia. The word euthanasia is derived from the Greek word that means “a good death.”

The Constitution of India is a living document and it should pass the test of the time, which in the case of die with

dignity is one of those tests. There have been various cases both, nationally and internationally, which have arrived at their respective courts to define what the “right to die,” means and how it shall deal as the time passes. It also includes the will of the person as determined by him in the process of dying. It shall prevent any crime that may undergo in the name of euthanasia.

The democratic framework of our nation is embedded on the core structure of people’s will and it shall thoroughly be based on it. The will of people does not correspond to the “tyrannical,” rule of the mob rather a perceptive behavior that moves along with the societal structure based on

equality and fraternity of all the living beings. This means that right to live and right to die coherently are based on the will of the people, looking upon this exact structure that our society is based on and respecting the very ideals and “basic doctrine structure” of the Constitution.

The question of premature death “as the case of euthanasia,” may bring into perspectives an open debate on several dimensions such as legal, ethical, human health, society, economical, spiritual and cultural.

The ethical aspects of “right to die,” should always be based on the fact whether it should be universal or it should be upheld in extra ordinary circumstances. The American Court of Montana upheld that right to die should be based on the circumstances when the condition is life threatening and not always when the person wishes to die. Various suicide advocates argue that every person shall have the right to die and hence should end their lives whenever they wish to. Assisted suicides is a means through which any person who is incapable of committing suicide himself is given assistance through medicine or instrument to die or commit suicide so that he may die with dignity. The condition of euthanasia is different in this aspect as it does not correspond to the suicide, and involves other than the patient in dying and involves use of lethal substances or forces to end the life of a patient.

Historically, Hinduism and Buddhism believes in “prayopaveshan” in which one can starve to end his life in the most non-violent form once a person has achieved his aims in life and completed his duties and responsibilities. It is also believed that right to die was in the custom of Rome and Greece and people would choose to die with dignity rather than living with pain. However, with the beginning of Christianity and belief that every life is a gift of God, led to the controversy in deciding whether the right to die should be legalized or not. In the modern world, Francis Bacon stated that physicians duty involves alleviating the pain of the person even it involves dying. It means that if the will of the person is to remove pain in his life (mainly in physical sense) then he has complete right to do that and a physician shall help him to do that. Samuel Williams introduced the use of anesthetics and morphine to end the

life of a person during his address in the Birmingham Speculative Club.

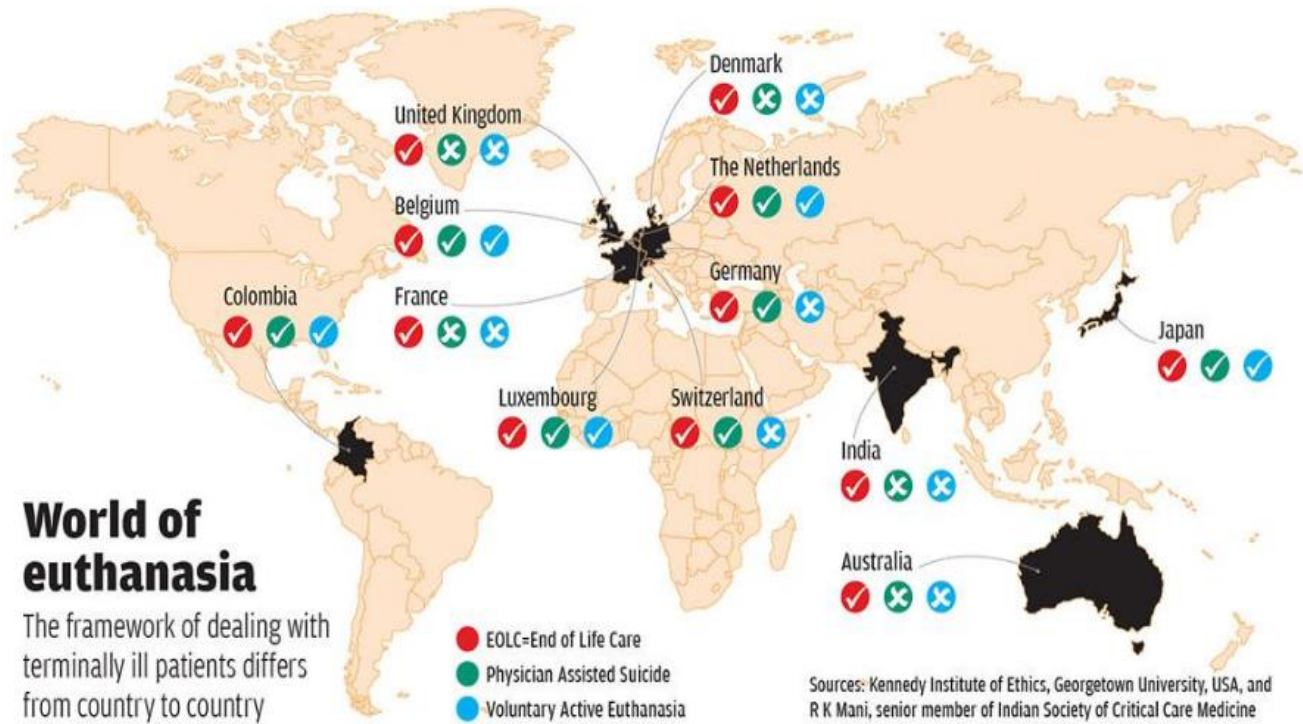
A very important case of euthanasia came in USA when a mother assisted his son in dying and was arrested, and later acquitted. The case began Vincent Humbert met with an accident and lost his vision, sense of smell, taste etc and with the only movement of his right thumb he wrote a book “I Ask the Right to die,” and appealed to die legally. But his appeal was denied and his mother assisted him in dying. This controversy brought a new legal framework that provided that medicine is considered a means of assisting life that can be suspended in the desired scenario.

In India the first case that appeared before Supreme Court was in Sanjay Kumar case in which Delhi High Court called section 309 as an “anachronism and a paradox.” The decision made by Bombay High Court in Maruti Sripati Dubal case was considered against Article 21, right to life. Wherein, in the decision made by Andhra Pradesh High Court in Chenna Jagadeeswar was contrary to the above decision and held section 309 as constitutionally valid. In Smt. Gian Kaur case the court held that right to life does not include right to die. In the famous Aruna Shanbag case the apex court upheld that active euthanasia is illegal whereas passive euthanasia is legal but there should be the supervision of High Court in performing it.

Variou verdicts of Courts on “Right to life,” in understanding “Right to die”

The honorary Supreme Court gave a landmark judgement on March 9, 2018, while it declared the right to die with dignity as the fundamental right. The bench quoted that ‘Life and death are inseparable and life cannot be separated from death. Dying is a part of process of living.’ The bench has issued guidelines regarding the “living will” of the patient in order to provide him with active euthanasia. The living will would need the signatures in the presence of two attesting witnesses and counter-signed by Judicial Magistrate of the First Class.

The End of Life Care basically traces its history to Aruna Shanbaug’s case in 2011. The SC in this case permitted for passive euthanasia and allowed for the withdrawal of medical treatment that sustains life who is not supposed to make informed decisions.



(Image Source: Down to Earth)

To begin with, in India both suicide and an attempt to suicide are considered criminal offence under IPC. In 1994, section 309 was challenged in the SC where SC declared it unconstitutional in a landmark judgment. In 1996, an abetment of suicide case came before the SC where the plea makers appealed to make suicide as fundamental under Article 21 (Right to Life). Finally the court held that right to life does not contain right to die.

The verdict of the Supreme Court, that finally declared “Right to die with dignity”, as the fundamental right is accompanied by series of chronological events that began back in 2005. The NGO “Common Cause” had brought an issue before SC asking for terminally-ill person to provide for euthanasia according to the living will. In the year 2006, SC asked Delhi Medical Council to intervene in the matter and asked it follow the file procedure in containing this provision. The Law Commission in this regard has asked to bring a law in reference to the passive euthanasia. In 2011, a separate plea was filed before SC that asked for the passive euthanasia for the nurse that was lying in the vegetative state (Aruna Shanbaug case). Finally, under the CJI Deepak Misra, SC recognized the living will made by terminally ill patient for passive euthanasia and the procedures to be followed thereby.

In the courts around the world, from Karen Quinlan [1976] to Lee Carter [2005], several pronouncements came that determined the death through assistance due to the vegetative state has provided for the human rights provisions in several countries in USA, UK, Canada, France, Italy, etc.

II. CASE STUDY

The study has been made on nearly twenty people in a village “Hakimpur,” (name changed) in Uttar Pradesh, India. The study is made to evaluate what people understand through the meaning of the right,” Right to Life,” and whether they consider it in reference to right to die with dignity. While few people stated that they have less understanding about the meaning and scope of right to life, and right to die with dignity as they know that life and death are “decided by heaven.”

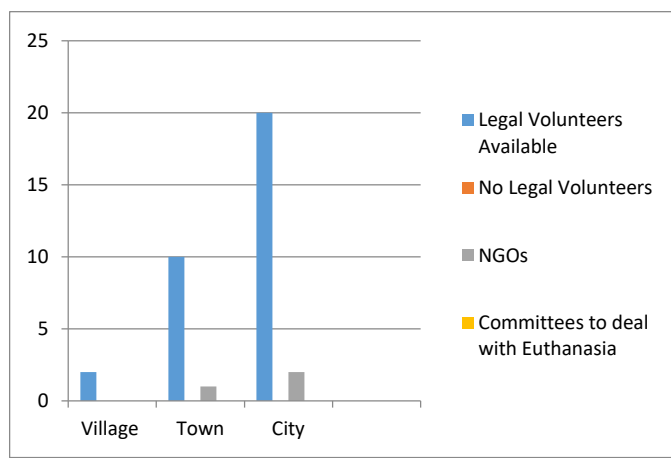
III. FINDINGS

When explained through the notion of constitutionality some discussed about the severe health conditions of some people in the village who are left aside and are made to die till the heaven brings death on them. Such patients are not taken care of by their family members due to ill condition

and poverty stricken situation hence taking such patients to courts are not in their purview. The unawareness regarding the “Passive euthanasia,” describes the lack of knowledge penetration some pockets of the country.

Another such case study is made on people residing in town where there is some knowledge regarding this condition but taking any such vegetative patient to the court and fighting for his death to dignity is “out of pocket,” expenditure for daily wage workers and other such people.

NGOs fighting for such cause are some last resort option for bringing awareness among the definition of “passive euthanasia.”



IV. CONCLUSION

Through the series of cases described above it can be concluded that passive euthanasia is important in the verge of incidents that arise for several patients in vegetative state. Their life has no meaning and so dying with dignity is the responsibility of the judiciary for such people. It is important for courts to relook at situation when people get “right to die,” as the fundamental right due to the emerging cases of suicides and other such deaths hat become uncontrollable due to different circumstances. The reasons that evoke suicidal tendencies are many and may be due to the mental health conditions or any other situations that do not find support from the society. The enhanced discussion must be laid before the courts to discuss each situation in separation and bring out legal solutions to these problems. The courts are not enabling on the cases of active euthanasia that may find several differentiating views. The person lying on bed and is begging for death is the painful

journey of his life as his body does not allow him to live with dignity, besides dying with dignity.

The courts need interference in all such cases that include suicides, vegetative state of person, or incurable disease etc that demands death as the only solution for the peace of the person and his family.

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