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# **RIGHT TO LIFE AND RIGHT TO DIE:** **AN ANALYSIS**

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## **ABSTRACT**

*Life and death are inseparable. The right to life is a natural right and a basic requirement for every person enshrined under Article 21 of the Constitution Of India which states that “No person shall be deprived of life and liberty except as per the procedure established by Law.” The right to life is not just about the right to survive rather it entails being able to live with a complete life of dignity and meaning. As per Article 21, the State should take away one’s right to life and personal liberty only according to the prescribed procedure of law. On the other hand, the Right to die means to intentionally end the life of a person. The term “right to die” can be used to refer mainly to the concept of Euthanasia or mercy killing. It is a situation in which a doctor causes the death of a patient by lethal injection administered to a patient suffering from intractable pain. Euthanasia can be in various forms ranging from active to passive euthanasia, voluntary and involuntary euthanasia, and physician-assisted. In active euthanasia, something is done to end one’s life which becomes a crime in India under Section 302 or Section 304 Indian Penal Code, 1860, whereas in passive euthanasia something is not done that preserves or supports one’s life. In India active euthanasia was not recognized rather passive euthanasia got legalised by the Hon’ble Supreme Court Of India in the 2018 landmark judgement by following certain guidelines. The question of the Right to die is discussed under some of the important Indian Judgements determining its legality. Through this paper, a basic analysis is made of the concept of the right to life and the right to die from Indian perspectives including Indian laws and judgements.*

## RIGHT TO LIFE AND RIGHT TO DIE

The right to life is a basic requirement for every person. The right to life is a natural right. The aim of a civilised society cannot be fulfilled without recognizing this basic right. The requirement of the right to life is enshrined under the Constitution Of India and dealt with under Article 21 of Part III i.e. the fundamental rights. The right to life can be considered the most important one among other rights. The Hon'ble Supreme Court Of India describes it as "*the Heart of Fundamental Rights*". According to Article 21 of the Indian Constitution, "*No person shall be deprived of life and liberty except as per the procedure established by Law*". The right to life is not just about the right to survive rather it entails being able to live with a complete life of dignity and meaning. As per Article 21, the State should take away one's right to life and personal liberty only according to the prescribed procedure of law. According to Article 21 of the Constitution, "life" refers to more than just breathing. It does not imply continual hardship or a life of simple animal existence. It encompasses a far broader range of rights, such as the right to a livelihood, the right to health, the right to a pollution-free environment, etc. In the case of the *National Human Rights Commission v. State of Arunachal Pradesh*<sup>1</sup>, the Hon'ble Supreme Court of India held that the Right to Life and Personal Liberty is given not only to the citizens but also to non-citizens.

In the opinion of D.Y Chandrachud, J. "*Life and death are inseparable. Every moment our bodies undergo change life is not disconnected from death. Dying is a part of the process of living.*" Life and death are inseparable. The right to die has quietly gained relevance in recent years and has been an important topic of discussion in society. Literally, the Right to die means to intentionally end the life of a person. It can be interpreted as the decision to continue or stop medical treatment or life support systems for a person who is terminally ill at the end of their life or who is in a comatose or persistent vegetative state due to a tragic accident. The validity of the right to die under Article 21 of the Indian Constitution can be seen through various judgements. In the case of the *State of Maharashtra v. Maruti Sripati Dubal*<sup>2</sup>, where the petitioner who was a police constable, became mentally sick as a result of a car accident. He had schizophrenia, as well as several instances of mental instability and depression. He once poured himself into kerosene and set himself on fire before being apprehended by authorities. He was charged with attempting suicide under section 309 of the IPC. The legality of the clause was contested in the case before the Bombay High Court. The Hon'ble High Court struck down Section 309 IPC unconstitutional

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<sup>1</sup> 1996 AIR 1234

<sup>2</sup> AIR 1997 SC 411

and held that the right to life includes the right to die. On the other hand, the Andhra Pradesh High Court in the case of *Chenna Jagadeeswar v. State of Andhra Pradesh*<sup>3</sup>, where the accused doctor killed his four children before attempting suicide with his wife. He was found guilty of murder<sup>4</sup> and attempted suicide<sup>5</sup>, and held that the right to die is not a fundamental right under the scope of Article 21 of the Indian Constitution. Therefore Section 309 cannot be unconstitutional.

In the case of *P. Rathinam v. Union Of India*,<sup>6</sup> the Hon'ble Supreme Court Of India agreed with the Bombay High Court in the case of *State of Maharashtra v. Maruti Sripati Dubal*<sup>7</sup> held that a person has the right to die and Section 309 IPC unconstitutional making it a penal offence. The right to live under Article 21 of the Constitution of India includes the right not to live i.e. right to die or to terminate one's life, Section 309 is void as it is violative of Article 21 of the Constitution of India. The right to life cannot include the right not to have forced life.

Later in the case *Gian Kaur v. State Of Punjab*<sup>8</sup>, where Harbans Singh and his wife Gian Kaur were accused of abetting the suicide of their daughter-in-law for which they poured kerosene with the evident intent of killing her, a five Judge Constitution Bench of Hon'ble Supreme Court overruled the case of P.Rathinam and held that the right to life guaranteed under Article 21 does not include right to die or right not to be killed. The right to die is inherently inconsistent with the right to life. The Court set aside the judgement of the Bombay High Court in *Maruti Sripati Dubal v. State Of Maharashtra*<sup>9</sup> and the decision in *P. Rathinam v. Union Of India*<sup>10</sup> and upheld the judgement of Andhra Pradesh High Court in *Chenna Jagadeeshwar v. State Of Andhra Pradesh*<sup>11</sup> holding that Section 309 of Indian Penal Code, 1960 was not violative of Article 14 and Article 21 of the Constitution Of India.

## Concept of Euthanasia and its validity in India

Euthanasia can be considered as one of the components of the right to die. The term "right to die" can be used to refer mainly to the concept of Euthanasia. The word Euthanasia is derived from the Greek word "eu" meaning *good or well* and "Thanatos" meaning *death*. It is a situation in which

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<sup>3</sup> 1988 CrLJ 549

<sup>4</sup> Section 302, Indian Penal Code, 1860

<sup>5</sup> Section 309, Indian Penal Code, 1860

<sup>6</sup> (1994) 3 SCC 394

<sup>7</sup> 1987 Cr LJ 743

<sup>8</sup> (1996) 2 SCC 648

<sup>9</sup> 1987 Cr LJ 743

<sup>10</sup> (1994) 3 SCC 394

<sup>11</sup> 1988 CrLJ 549

a doctor causes the death of a patient by lethal injection administered to a patient suffering from intractable pain. Euthanasia is the practice or act of bringing about the death of a person or killing who is suffering from an incurable disease especially from painful incurable disease for the reason of mercy<sup>12</sup>. Butterworth's Medical Dictionary defines euthanasia as 'The process of dying easily, quietly and painlessly; the act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and intractable painful and distressing disease'. Oxford Concise Medical Dictionary terms it as 'the act of taking life to relieve suffering'. In common parlance, it means 'mercy killing'. Euthanasia can be in various forms ranging from active to passive euthanasia, voluntary and involuntary euthanasia, and physician-assisted.

The Constitution Of India guarantees certain fundamental rights to ensure a civilised society giving more importance to the concept of Human Dignity. This may include the Right to Life with Dignity and the Right to Die with Dignity. Article 21 of the Indian Constitution guarantees the Right to Life with Dignity. The right to die can be included under the Right to life. As mentioned before the concept of Euthanasia is mainly treated under Right to Die. The court noted the distinction between euthanasia and suicide in the case of *Naresh Marotrao Sakhre v. Union of India*<sup>13</sup>. It was mentioned that euthanasia differed from suicide in that it involved a human agency's intervention to end a person's life. Suicide was described as an act of self-destruction, where someone ends their own life without the aid or support of any other human agency. Thus mercy killing or euthanasia would not come under the purview of Section 309 Of the Indian Penal Code, 1860<sup>14</sup> which states that "*Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both]*".

In the case of *P. Rathinam v. Union Of India*<sup>15</sup>, the Hon'ble Supreme Court Of India rejected the plea to permit euthanasia by law and held that euthanasia involves a third person who acts actively or passively by aiding or abetting the killing of another person. Later in the case of *Gian Kaur v. State Of Punjab*,<sup>16</sup> the Hon'ble Supreme Court Of India held that the right to life including the right to live with human dignity implies the presence of such right up to the end of natural life. This may include the right of a dying man to also die with dignity when his life is ebbing out. Euthanasia is deemed a wholly unethical and illegal act under the Indian Medical Council

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<sup>12</sup> Black's Law Dictionary of 6th edition, 1990

<sup>13</sup> 1995 Cri L J 96 (Bom)

<sup>14</sup> Attempt to commit suicide

<sup>15</sup> (1994) 3 SCC 394

<sup>16</sup> (1996) 2 SCC 648

(Professional Conduct, Etiquette and Ethics) Regulations Act, 2002, which also grants legal recognition to the conduct. Later on, The Euthanasia (Permission and Regulation) Bill, 2007, a bill that would legalise euthanasia, was also presented to the Lok Sabha. However, the bill eventually lapsed. However, the 196<sup>th</sup> Law Commission Report dealing with Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), 2006 adopted a different stance. The report reiterated the acceptance of the practice of "passive Euthanasia" while concentrating on the withdrawal or withholding of medical treatment by doctors. It approved the "passive euthanasia" of terminally sick people, so long as the safety precautions outlined in the document were followed. This report upholds the long-standing opposition to active euthanasia, which is a "comparatively quick and a less painful method of relieving a terminally ill patient from his ongoing pain". The Government of India has still not recognized this report<sup>17</sup>.

In the case of *Aruna Ramachandra Shanbaugh v. Union Of India*<sup>18</sup>, The petitioner in this case, Aruna Ramchandra Shanbaug, worked as a nurse at King Edward Memorial Hospital in Parel, Mumbai. On the evening of November 27, 1973, a hospital caretaker attacked her and grabbed her by the neck with a dog chain. She was also the target of the sweeper's attempted rape, but when he noticed she was menstruating, he anally assaulted her instead. To prevent her from moving or wreaking any damage, he tightened the chain around her neck. She was found dead and bloodied on the floor the next morning by a cleaner. It's been 36 years since the aforementioned incident. She had been subsisting on mashed food and was unable to move her hands or legs. It was said that there was no chance for her health to get any better and that she was totally reliant on KEM Hospital in Mumbai. Later, journalist and activist Pinki Virani petitioned the Hon'ble Supreme Court Of India under Article 32 of the constitution, claiming there was little chance of her reviving and recovering. The Respondents were prayed for to cease feeding Aruna and allow her to pass away peacefully. The petition asks the respondent to cease feeding Aruna and allow her to pass away quietly. It was said that she had little hope of improving and was entirely dependent on the KEM Hospital in Mumbai. Later, journalist and activist Pinki Virani filed a petition with the Hon'ble Supreme Court following Article 32 of the constitution, asserting that there was little hope of her survival and recovery. The petition requests that the respondent stop feeding Aruna so that she can die peacefully. In this landmark judgement, the Hon'ble Supreme Court Of India legalised passive euthanasia by providing certain guidelines such as:

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<sup>17</sup> Souradeep Rakshit and Arpita Mitra, *Euthanasia vis-à-vis Right to die with dignity: An Analysis of Article 21 of the Constitution of India and Approach of the Indian Judiciary*, 11JLJ 99 109-110.

<sup>18</sup> (2011) 4 SCC 454

- The victim's parents, spouse, other close relatives, friends, or medical professionals caring for the victim may request passive euthanasia.
- The request must be addressed to the chief justice of that High court, who will review the applicant's credibility and create a committee made up of two active high court judges.
- Three reputable medical professionals will be consulted by the committee, and only after conducting a thorough investigation and receiving input from these team members' opinions would the committee approve the mercy killing. The medical professionals will state that the victim cannot survive and is suffering needlessly.

Now, recently in 2018 The Hon'ble Supreme Court in the case of *Common Cause (A registered Society) v. Union of India*<sup>19</sup> with five judges of Constitution Bench comprising Chief Justice Dipak Misra and Justices A K Sikri, A. M. Khanvilkar, D Y Chandrachud, and Ashok Bhushan have recognized the Right to Die with dignity and have held it to be the basic part of Right to Life by legalised Passive Euthanasia. In this case, the concept of 'living wills' or 'Advanced Directives' was introduced through which terminally ill individuals or those with declining health might decide not to be kept alive artificially if they enter a state in which they will be unable to communicate their preferences. The court referred instances involving foreign cases and Indian law. The court established the principles relating to the process for carrying out Advance Medical Directives and provided the guidelines to give effect to passive euthanasia in cases of Advance Medical Directives as well as in cases of absence of Advance Medical Directives, which would remain in force until the legislation by the Parliament in the area. This was done in the exercise of the court's authority under Article 142 and the law as stated in the case *Vishaka v. State of Rajasthan*<sup>20</sup>. The two Judge Bench has erred in holding that this Court in the *Gian Kaur case* approved the decision in *Airedale N.H.S. Trust v. Blend*<sup>21</sup> and that euthanasia could be made lawful only by legislation. In *Gian Kaur's case* the Court did not lay down that passive euthanasia can be introduced only by legislation. There is an inherent difference between active and passive euthanasia due to which most of countries across the world have legalised passive euthanasia either by legislation or by judicial interpretation with certain conditions and safeguards. After the case of *Aruna Ramachandra Shanbaugh v. Union Of India*<sup>22</sup>, the 241<sup>st</sup> Report of the Law Commission of India has also recognized passive euthanasia however no law has been enacted. In the instance of a patient who is terminally sick or someone who is in PVS and has no chance of

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<sup>19</sup> AIR 2018 SC 1665

<sup>20</sup> (1997) 6 SCC 241)

<sup>21</sup> (1993) AC 789

<sup>22</sup> (2011) 4 SCC 454

recovery, the right to live with dignity also includes the facilitation of the dying process. The right to a pain-free death and the right to live with dignity may be denied if prior medical wishes are not legally recognized. The right to self-determination and the Advance Directive should be given preference in circumstances of terminally sick patients or PVS patients when there is no chance of revival, notwithstanding the need to uphold the sanctity of life. The method outlined in the instructions and guidelines issued by this court in this matter shall be applicable in the absence of an Advance Directive. The best interest of the patient must be given preference over the interest of the State when passive euthanasia as a situational palliative involvement becomes appropriate.

## CONCLUSION

According to Article 21, as Indian citizens, we have the right to life and personal liberty. However, the provision as such does not grant us the right to die. One could argue that the right to die is closely related to the rights to life and personal liberty. If a person experiences severe discomfort and knows there is no chance of recovery, that person can be granted the freedom to die naturally simply by removing access to medical care, which is seen as mercy killing. Suicide cannot be considered a right since it can lead to absurd suicide attempts, particularly from teenagers and young people when they begin to experience problems from society, their families, or friends. In 2018, five bench judges in the Hon'ble Supreme Court Of India ruled that the right to a dignified death is a basic freedom that is not subject to governmental regulation or recognition. Indian Society for Critical Care recommended a modification to the 2018 judgment's recommendations in 2019. They noted how complicated and inefficient the right to die for seriously ill patients is. The Supreme Court revised the rules in 2023, making it easier to exercise one's right to a dignified death<sup>23</sup>.

Euthanasia or mercy killing is still illegal in India. There is a need to create an effective law outlining exactly when euthanasia is acceptable. The basic problem is that the majority of arguments made for and against the right to die are somewhat valid. Given the potential for numerous problems, the right to die in this manner cannot be granted. Therefore, it is necessary to create a law that specifies exactly when euthanasia is allowed as well as any relevant exceptions. Additionally, anyone who breaches the law and uses it as a weapon will face harsh penalties. The difficult topics that are being questioned in the current situation should be taken into account while drafting the law.

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<sup>23</sup> Common Cause (A registered Society) v. Union of India [AIR 2018 SC 1665]