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# **CONSTITUTIONAL VALIDITY OF** **RIGHT TO DIE IN INDIA: A** **LEGAL STUDY**

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## **ABSTRACT**

*The fundamental Right to life is regarded as the one of the most important fundamental right, a right which cannot be compromised with except according to the procedure established by law.<sup>1</sup> Right to life and personal liberty is an article which has been interpreted widely by the Supreme Court and many other rights are included within this article and one of them is right to die, this right is totally opposite of right to life but right to die is a facet of right to life with dignity. The concept of right to die in India is still evolving, especially with regard to concept of right to die. The present research focuses on the development of aspect of right to die in India and to study the constitutional status of the controversial right to die in India.*

## **MEANING OF RIGHT TO LIFE WITH RELATION TO RIGHT TO DIE**

Death is termination of life which can be categorized into two kinds that is natural and unnatural death. Natural death occurs from natural causes such as age or disease whereas unnatural death may include accident, murder etc, basically death can be caused by the action as well as inaction of a person. Human life is valued foremost and therefore the law has Indian Penal Code which prescribes punishment for harming or ending the life of human being and Article 21 of the Constitution considers Right to life and Liberty as the most important fundamental right under the Indian Constitution which states that “No person shall be deprived of his life and liberty except according to the procedure established by law”. Right to life is a Natural Right which are inherent from the time of birth. The polar opposite of the right is right to die. There has always been controversy between the two rights and

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<sup>1</sup> The Constitution of India, art. 21.

whenever the question of constitutional validity of right to die has been raised in the court of law, there had always been different views of different court.

## RELIGIOUS ASPECT

Right to die has historical significance to it, each religion has its own views on the concept of right to die. Under Christianity euthanasia is not a good thing, they are mostly against euthanasia. The belief is that life is given by God, it is a gift from God therefore it must be well protected and if one thinks of euthanasia, it means the person is questioning the gift of God, no one cannot permit killing of an innocent human being.<sup>2</sup> The Islamic religious philosophy does not recognize person's right to die voluntarily, it can be interpreted from the verses in the Holy Koran which supports the fact that Life is sacred and euthanasia and suicide are not included among the reasons allowed for killing in Islam, secondly Koran states Allah decides how long each of us will live.<sup>3</sup> Therefore the Islamic religious beliefs are against the concept of Euthanasia.

Under Hinduism there are some instances where some believe that it breaches the teachings of ahimsa and some believe that helping to end painful life a person is taking a good decision and therefore fulfilling their moral obligations, the best example is the Sati system, it was an act of self-immolation. Prayopavesa, which means fasting to death is an accepted way for a Hindu to end their life in certain circumstances.<sup>4</sup> It is not considered as a suicide because in Hindu religious belief Prayopavesa is a nonviolent way of dying by use of natural means. The views about euthanasia in Buddhism is also similar to that in Hindu religion, some people states that compassion is one of the main teaching in Buddhism which justifies euthanasia because the person suffering from pain is relieved but the other view in Buddhism is that it is immoral to destroy a human life, irrespective of the quality of the individual's motive.

When it comes to euthanasia, belief of Shinto religious organization in Japan should be mentioned. Under the religious belief in Shinto most of the people agree with the act of

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<sup>2</sup> General Christian View, "Religious Perspective on Euthanasia", *Institute of Clinical Bioethics*, March 14, 2011. Available at <<https://sites.sju.edu/icb/religious-perspectives-on-euthanasia/>> (last visited on May 10, 2021).

<sup>3</sup> Kiarash Aramesh and Heydar Shadi, "Euthanasia, An Islamic Ethical Perspective", 6 *Iran J Allergy Asthma Immunol* 35-38, (2007).

<sup>4</sup> Religions, "Euthanasia, assisted dying, and suicide", BBC, Aug 25, 2009. Available at <<https://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml>> (Last visited on May 10, 2021)

voluntary euthanasia. The practise called as Seppuku was a ritual suicide by disembowelment, this form of suicide practised in ancient time in Japan has been nurtured in Japan's sociocultural tradition as one of the socially and culturally prescribed and positively sanctioned role-behaviour in hierarchical organization as well as in highly formal and tightly knit human group and classes.<sup>5</sup> Whether it is Seppuku, Sati or Prayopavesa, the concepts related to right to die and euthanasia highly depend on the morals and religious belief. These religious beliefs are also reflected on how the court today interpret the concept of right to die and euthanasia in India.

## RIGHT TO DIE: LEGAL INTERVENTIONS

The first time ever question for right to die was raised in the Bombay High Court in the case of State of Maharashtra v Maruty Sripati Dubal<sup>6</sup> where the petitioner, (a constable) in Bombay City Police Force met with a road accident and suffered head injuries where he recovered from the head injuries but remain mentally ill. Afterwards during his treatment, he was diagnosed with ailments such as schizophrenia. The methods of his treatment also included electric shock treatment and also heavy dosage of tranquilizers. The case is a result of criminal prosecution on account of attempted suicide by the petitioner outside office of Municipal Commissioner, Greater Bombay. Section 309<sup>7</sup> of Indian Penal Code was questioned and its constitutional validity was challenged in this case. The case referred to the judgements like Munn v Illinois<sup>8</sup> where it was stated that the term life is meant more than mere animal existence and by the term liberty under right to freedom of life and liberty is meant more than mere freedom from physical restraint or the bonds of prison. The similar lines were reiterated in the case of Kharak Singh v State of U. P<sup>9</sup>. The jurisprudence applied by the court was that like freedom of business and occupation includes right not to do business and right to freedom of speech includes right to remain silent on the similar front it should follow that right to live as recognised under article 21 will also include right not to live that is right to die or terminate one's life. Consequently, the court struck down the section 309 of IPC which provided punishment for attempt to commit suicide by a person as unconstitutional. The judges felt that the desire to die is not unnatural but merely abnormal

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<sup>5</sup> Toyomasa Fuse, "Suicide and culture in Japan: A study of Seppuku as an institutionalized form of suicide", 15 Soc Psychiatry 57-63 (1980).

<sup>6</sup> AIR 1997 SC 411

<sup>7</sup> Attempt to commit suicide.

<sup>8</sup> (1877) 94 US 133

<sup>9</sup> 1963 AIR 1295.

and uncommon. They held that everyone should have the freedom to dispose his lives as and when he desires. The Bombay High Court was of the view that right to life should also include right to die however the view on right to die of Bombay High Court was not shared by Andhra Pradesh High Court.

In the case of *Chenna Jagadeeswara v. State of A.* P<sup>10</sup> held that right to die is not a fundamental right within the meaning of Article 21 and hence Section 309 of Indian Penal Code is not unconstitutional. The court in this case explained right to life and suicide by giving explanation that many thefts committed due to unhealthy co-existence of the rich but on the social ground offence against property cannot be pardoned. In relation to section 309 of Indian Penal Code it held that there are incidents of hunger strikes, threatening self-immolations for which this very section exist and if this section is declared as a ultra vires then no action can be taken against the people who threatens for such acts, the court further stated that section 309 of Indian Penal Code does not mandate the court to punish attempt suicide, it just lays down the upper limit of such punishments and stated that right to life does not include right to die and upheld the validity of section 309 Indian Penal Code.

The first major intervention by the Supreme Court was in the case of *P. Rathinam v. Union of India*<sup>11</sup>. In this case again the constitutional validity of Section 309 Indian Penal Code was challenged and the court conferred with the opinion of Bombay High Court in *Maruty Sripati Dubal* case, though the case discussed on whether attempted suicide and suicide should be considered as a crime or not but suicide and euthanasia are the two discussions important to analyse the right to die under Indian Constitution, the judgement tried to justify that attempted suicide as not a crime and also stated that person has a right to die citing various case laws, jurist opinion, historical perspective of suicide to give reasoning to their judgements. The judges observed that:

“Morality has no defined contours and it would be too hazardous to make a bold statement that commission of suicide is per se an immoral act. If human beings can be treated inhumanly, as a very larger segment of our population is, which in a significant measure may be due to wrong acts of others, charge of immorality cannot be, and in any case should not be, levied, if such human beings or likes of them, feel and think it would be better to end the

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<sup>10</sup> 1988 Cr. LJ 549

<sup>11</sup> 1994 AIR 1844.

wretched life instead of allowing further humiliation or torture.”<sup>12</sup>

The court held section 309 of Indian Penal Code as violative of Article 21 and hence void explain the reasoning that “Section 309 I.P.C. deserves to be effaced from the Statute Book to humanise our penal laws. It is a cruel and irrational provision and may result in punishing a person again who has suffered agony and would be undergoing with more problems because of his failure to commit suicide.”<sup>13</sup> Through the above discussion it is clear that right to die is as tricky as it gets, the decisions are based on the moral principle and are also somewhat influenced by the personal thinking of the judges. The discussion on right to die is based on historical and religious perspective on dying and less of the legal arguments.

The P. Rathinam’s case was overruled by the judgement in Gian Kaur v. State of Punjab<sup>14</sup> in which again the validity of right to die came into question and the discussion on euthanasia started.

## EUTHANASIA

The word Euthanasia has been derived from the Greek word ‘Eu’ meaning good and ‘Thanatos’ means death combining and creating meaning that is ‘good death’. According to definition in Britannica Euthanasia also called as mercy killing, is an act of practise of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life support measures.<sup>15</sup>

It is a gentle, easy and painless death. It implies the procuring of an individual’s death, so as to avoid or end pain or suffering, especially of individuals suffering from incurable diseases. Oxford dictionary defines it as the painless killing of a person who has an incurable disease or who is in an irreversible coma. According to the House of Lords select Committee on Medical Ethics, it is “a deliberate intervention under taken with the express intention of ending life to relieve intractable suffering”. Thus, it can be said that Euthanasia is the

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<sup>12</sup> *Ibid.*, para 88

<sup>13</sup> *ibid*

<sup>14</sup> (1962) 2 SCC 648

<sup>15</sup> Euthanasia, Defined by Britannica. Available at < <https://www.britannica.com/topic/euthanasia> > (Last visited on May 12, 2021).

deliberated and intentional killing of a human being by a direct action, such as lethal injection, or by the failure to perform even the most basic medical care or by withdrawing life support system in order to release that human being from painful life. It is basically to bring about the death of a terminally ill patient or a disabled. It is resorted to so that the last days of a patient who has been suffering from such an illness which is terminal in nature or which has disabled him can peacefully end up his life and which can also prove to be less painful for him.

Thus, the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. Euthanasia is practiced so that a person can live as well as die with dignity. In brief, it means putting a person to painless death in case of incurable diseases or when life become purposeless or hopeless as a result of mental or physical handicap.

## **TYPES OF EUTHANASIA**

On the basis of procedural decision euthanasia can be of two kinds one is active euthanasia and another is passive euthanasia, further on the basis of consent it is Voluntary euthanasia, Non- Voluntary Euthanasia and Involuntary Euthanasia.

- Active Euthanasia

Active Euthanasia is killing a patient by active means for example injecting a patient with a lethal dose of drugs. Active Euthanasia is very controversial and, in many countries, active euthanasia is not allowed or is illegal. Active euthanasia if allowed can happen only upon the request of the patient and following conditions are necessary for active euthanasia: Patient must be suffering from unbearable pain and incurable disease, in other sense all the other measures must be have been exhausted which could have been used to save the patient's life.

- Passive Euthanasia

Passive Euthanasia is the intentional ending of one person's life by another, motivated solely by the best interest of the person who dies, through the deliberate withholding of a life-

preserving substance or procedure.<sup>16</sup> It occurs when an action that could have prevented death is not taken or an intervention that is keeping death at bay is withdrawn. It can involve turning off respirators, halting medications, discontinuing food and water so the patient dies because of dehydration or starvation, it can also give large doses of morphine to control pain of the likelihood that the painkiller can cause fatal respiratory problems. Generally, the procedure for passive euthanasia is adopted for person who is terminally ill patient further the method can also be applied for patients who are in a persistent vegetative state of mind.

- Voluntary Euthanasia

Voluntary Euthanasia is that instance of euthanasia in which a clearly competent person makes a voluntary and enduring request to be helped to die (or by extension, when an authorised proxy makes a substituted judgment by choosing in the manner the no longer competent person would have chosen had he remained competent), a second key value is the competence of the person requesting assistance with dying.<sup>17</sup> Simply voluntary euthanasia refers to the circumstances wherein the patient himself request for his death either by way of Active Euthanasia or passive Euthanasia.

- Non- Voluntary Euthanasia

It occurs when the person is unconscious or otherwise unable to make a meaningful choice between living and dying, and an appropriate person take decision on their behalf, the absence of consent of the patient upon whom Euthanasia is being conducted refers to Non-Voluntary Euthanasia.

## POSITION OF EUTHANASIA GLOBALLY

Right to die has not been mentioned expressly into any of international humanitarian laws, but right to live with dignity is the right which has been mentioned under the international law under covenants which protects and secure the life of everyone. Hence taking into account right to live with dignity, countries have incorporated euthanasia in their laws. It is currently legal in seven countries. First country to legalise Euthanasia was Netherlands in the

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<sup>16</sup> Brassington, I, "What passive euthanasia is", 21 BMC Med Ethics 41 (2020). Available at <<https://bmcmedethics.biomedcentral.com/articles/10.1186/s12910-020-00481-7>>

<sup>17</sup> Voluntary Euthanasia, Stanford Encyclopaedia of Philosophy. Available at <<https://plato.stanford.edu/entries/euthanasia-voluntary/>>

year 2002, afterwards it was Belgium, Luxemburg (2009), Columbia (2015), Canada (2016), Victoria (2017), Western Australia (2019). In a recent February 2020 the Spanish legislature is debating a bill that would legalize euthanasia and assisted suicide and similar legislation is also being discussed in Portugal.<sup>18</sup>

### **Netherlands**

It became first country to legalise euthanasia and assisted suicide. It imposed a strict set of conditions that the patient must be suffering unbearable pain, their illness must be incurable and the demand must be made in full consciousness by the patient. Lethal cocktail, palliative sedation has become common practise in hospitals. Patients with a life expectancy of two weeks or less are put in a medically induced coma and all nutrition and hydration is withdrawn.

### **United States**

Euthanasia in US remains illegal however doctors are allowed to prescribe lethal dose of medicine to terminally ill patients in five US states. Oregon, Washington, Vermont, Montana New Mexico, California, Colorado, New Jersey, Maine and Montana are the states which offer legally assisted suicide.

### **Germany and Switzerland**

The law in Germany in relation to suicide tends to distinguish between assisted suicide and active assisted suicide. In Germany and Switzerland, active assisted suicide that is doctor prescribing and handling over a lethal dose of drug is illegal. But in certain circumstances it allows assisted suicide as long as there are no ulterior motives.

### **Belgium**

Belgium legalised Euthanasia in 2002 and passed legislation for the same. According to the law doctors can help patients to end their lives when they freely express wish to die because they are suffering unbearable pain. Secondly a patient can also receive euthanasia if they have clearly stated it before entering a coma or similar vegetative state. Belgium is the first country to legalise euthanasia for children.

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<sup>18</sup> Sarah Mroz, Sigrid Dierickx, luc Deliens, et.al., “Assisted dying around the world: a status questionis”, 10 Annals of Palliative Medicine (2021).

### **Canada**

It allows euthanasia and assisted suicide for adults suffering from grievous and irremediable conditions whose death is reasonably foreseeable.

### **Australia**

The State of Victoria in Australia passed voluntary euthanasia laws in November 2017 after 20 years and 50 failed attempts. Under the law to qualify for legal framework one have to be adult with decision making capacity and one have to be resident of Victoria and have intolerable suffering due to illness that gives a lie expectancy of less than six months and in case suffering from neurodegenerative illness, it will be 12 months.

There are many other countries considering to deal with dignity in laws like Utah, Arizona, Minnesota, Indiana, Kentucky etc.

## **EUTHANASIA ANS ITS LEGAL POSITION IN INDIA**

The concept of euthanasia was discussed in famous case of Aruna Ramchandran Shanbaugh v. Union of India<sup>19</sup> where the case started with the writ petition filed by Ms. Pinki Virani of Mumbai claiming that to be the next friend of the victim with a prayer to stop feeding the victim and let her die peacefully. The summary of the fact of the case were that the victim was a staff nurse at King Edward memorial hospital, Mumbai where she was sexually assaulted by a worker working in the same hospital, she was strangled by a chain during her assault which stopped the oxygen supply to her brain and she was left brain dead. The incident happened when she was about 36 years of age and the time of the judgement of the court, she was 60 years of age.

After studying about her medical condition, she met most of the criteria of being in a persistent vegetative state. Her parents were dead and her close relatives has no interest in her. Regarding withdrawal of life support to a person in PVS or who was unable to take decision on their own, The Supreme Court in two judge Bench decision, Justice Markandey Katju and Justice Gyan Sudha Misra, laid down passive euthanasia to continue till the law made by parliament on the subject, the guideline were:

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<sup>19</sup> AIR 2011 SC 1290.

- A decision has to be taken to discontinue life support either by parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can be taken by the doctors attending the patient. However, the decision must be taken in a Bona fide manner in the best interest of patient.
- It was hospital staff taking care of the victim for long, they were her friends who could take such decisions but they clearly expressed their wish that the victim to be allowed to live.
- Even if decision taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from High Court concerned as there is always a risk that the provision may be misused by some unscrupulous persons with the help of some doctors by fabricating material to show that it was terminal case with no chance of recovery. This is in the interest of the protection of the patient, protection of the doctors, relative and next friend, and for reassurance of the patient's family as well as the public. This is also in consonance with the doctrine of *Parens Patriae*<sup>20</sup>. The High Court under Article 226 of Constitution can grant approval for withdrawal of life support to such an incompetent person.
- A petition can be made to the High Court to pass suitable orders under Article 226 of the Constitution praying for an order or direction and not for any writ. Hence, Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctor or hospital staff praying for permission to withdraw the life support to an incompetent person.

After Aruna Shaunbaugh case another landmark judgement on euthanasia was Common Cause (A Regd. Society) v. Union of India<sup>21</sup> where 'Common Cause', registered society filed a writ petition for the common welfare of the people, filed a writ petition under Art. 32 of The Indian Constitution to legalize passive Euthanasia and to legally validate living wills. The petitioner contended that it was not claiming the right to die as a part of right to life but asserting the claim that the right to die with dignity is an inseparable part of right to live with dignity. The petitioner further contended that execution of a living will and or Advance Directive has become a necessity. Chief Justice Deepak Misra gave judgement for himself

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<sup>20</sup> The doctrine implies that the king is the father of the State and is under the obligation to look after the interest of those who are unable to look after themselves, it means if a citizen is in need of someone who can act as parents and make decisions, sometimes it is the State who is best suited for that role.

<sup>21</sup> AIR 2018 SC 1665.

and Justice A.M. Khanwilkar, Justice A.K. Sikri, Justice Dr D.Y. Chandrachud and Justice Ashok Bhushan gave separate judgements but concurred with the judgement of Chief Justice. In case of living will, the court used the word “Advanced Medical Directive” in their judgement. The court referred the law in foreign jurisdictions and Indian cases. The court laid down the procedure for execution of Advanced Medical Directive and provided the guidelines to give effect to passive euthanasia where there are advance directives and where there are none which would remain in force till the legislation by the parliament in the field. The court stated the previous decided cases on right to die, the Gian Kaur<sup>22</sup> reflects the right of a dying man to die with dignity when on the verge of death and in case of terminally ill patient or a person in Persistent Vegetative State where there is no hope of recovery, making the process of death come faster and reducing the period of suffering constitutes a right to live with dignity.

In this case the bench laid down that Euthanasia could be made lawful only by legislation, in Gian Kaur case it did not lay down the passive euthanasia can be introduced only by legislation. Further the court laid down difference between active and passive euthanasia where it stated that active euthanasia entails a positive affirmative act while passive euthanasia relates to withdrawal of life support measures or withholding of medical treatment for artificially prolonging of life, simply in active euthanasia a specific overt act is done to end patient's life whereas in passive euthanasia something is not done which is necessary for preserving a patient's life. Giving right to die with dignity importance, it was states that a competent person, an adult has the right to refuse specific treatment or opt for an alternative treatment. The emergency principle will only come into effect when it is in no way possible to obtain the consent of the patient. But if the patient has already made an Advanced Directive which is free from any kind of doubt in relation to his state that whether he wishes to be treated further or not then such directive will be taken into account. Article 21 is not about right to life and liberty; it includes within its facet right to live with dignity.

As right to life includes right to live with dignity, the right to live with dignity also includes smoothening the process of dying in case of a terminally ill patient or person in a persistent vegetative state who shows no sign of recovery. Even though the right to life is kept on the highest pedestal but in vase of terminally ill patient or person in persistent vegetative state the

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<sup>22</sup> Gian Kaur v. State of Punjab, (1996) 2 SCC 648

importance shall be given to Advanced Medical Directive and self-determination.

It was stated in the judgement that when passive euthanasia as a situational palliative measure becomes applicable, best interest of the patient shall override the State interest. The judgement makes it clear that in India the right to live with dignity includes in itself right to die also. The court issued directions enumerating safeguards in execution of advance directive, the content of advance directive of recording and preservation of it, its effect, and refusal of permission to withdraw medical treatment by Medical Board, revocation or inapplicability of advance directive when there is no advance directive.

## CRITICISM

The judgement given by the court is more than 500 pages long, it covers examples from throughout the world, covers the historical aspects and even use the reference of a Hindi song in its judgement. In an article by Faizan Mustaffa that the problem of euthanasia is an elite problem.<sup>23</sup> It is surely a problem for the rich because the poor person does not even reach a State where he can afford himself a life support system. The judgement not so important yet received a lot of media attention as well as the judges went on to write a long judgement over the subject matter. The judgement was also cased on mythological examples and instances as mentioned. Therefore, the religious and mythological aspects also played important role in the judgement. The two-concept discussed in judgement were right to die with dignity and living will, Advanced directives will not affect the society in India in majority, it will be the law made only for certain class of people.

## CONCLUSION

The legislation on passive euthanasia is still pending. The legislation titled Treatment of Terminally Ill patient Bill, 2016 is still pending in the Parliament. The objective of the Bill is to assist for the right of a dignified death. Law Commission of India report in 2012 has also dealt with the issue earlier. The concept of right to die in India has been very confusing as studied by the case laws. Some courts have stated right to die as not a part of right to life under the Constitution of India while some argues that it is part of right to life mentioned under Article 21. As of now through Common Cause judgment the Supreme Court has

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<sup>23</sup> Faizan Mustafa, "Is the right to Die an Issue for the Poor?", The Wire, March 23, 2018. Available at <<https://thewire.in/law/is-the-right-to-die-an-issue-for-the-poor>> (Last visited on May 15, 2021).

established that Right to live with dignity within its facet include right to die. However, this right must not be confused with permission to do suicide, the right has a lot of conditions applied to it. It is only for the patients who are in persistent vegetative state with no chance of recovery.

The concept of death cannot be ruled by law and therefore a lot of mythological aspects are touched by the courts when deciding on the issue of Euthanasia. The concept of taking one's life is also connected with morality, therefore the judge's personal opinion also influenced the judgements in which right to die was concerned as it could be observed one judgement was overruled by another till it was finally decided in Common Cause case. Right to live with dignity has been given much importance in the judgement related to right to die, therefore it can be concluded by saying that Right to die has been accepted as part and parcel of Right to live with Dignity in India.

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