

Judicial Response on Euthanasia or Mercy Killing in India

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Abstract

One of the controversial issues in the recent past has been the question of legalizing the right to die or euthanasia. Euthanasia is controversial since it involves the deliberation termination of human life. Patient suffering from terminal disease are often faced with great deal of the pain as the disease gradually worsens until it kill them and this way may be so frightening for them that they would rather end their life than suffering . So, the question is whether people should be given assistance in killing themselves or whether should be left to suffer the pain caused by terminally illness.¹ In this research paper I am discussing the judicial response on euthanasia as there is no legislation regarding mercy killing in India as well as analysis of 'Aruna and common cause case.'

Keywords: Euthanasia, Mercy killing, Fundamental right, Passive, Constitution, right to life. Right to die, Aruna and Common Cause.



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Introduction

Euthanasia is a broad term for mercy killing- taking the life of a hopelessly ill or injured individual in order to end his or her life suffering. Mercy killing represents a serious ethical dilemma. People do not always die well. Some afflictions cause people to suffer through extreme physical pain in their last days, and euthanasia may seem like a compassionate way of ending this pain. Other patients may request euthanasia to avoid the weakness and loss of mental faculties that some disease cause and many feel these wishes should be respected. But euthanasia also seems to contradict one of the most basic principles of morality, which is that killing is wrong. Viewed from a traditional Judeo-Christian point of view, euthanasia is murder and a blatant violation of the biblical command "*Thou shall not kill*". This moral dilemma is not new. The term euthanasia is derived from ancient from Greek, and means "Good Death". But while the debate over mercy killing has ancient origins, many observe believe that it is harder today to achieve a good death than ever before. Advance in medicine have increased peoples health and life span, but they have also greatly affected the dying process. The debate has become increasingly significant because of the recent developments in Netherlands and England euthanasia has been allowed. As a result many of the nations across the world are now hotly debating whether or not to follow the Dutch example. Recently our Supreme Court in Aruna Shanbaug² case has already given its decision on this point and allowed passive euthanasia in India with guidelines as well as in common causes case living will is also allow with certain conditions and guidelines.

Aim of the Study

The aim of my research paper is to analysis the judicial decisions of court on euthanasia in India as well as anatomy of landmark judgment of Supreme Court in Aruna case and Common Cause case with the effects of condition relating to Living Will on society.

Judiciary on Euthanasia in India

In our day to day life we often come across terminally ill patients that are bedridden and are totally dependent on others. It actually hurts their sentiments. Looking at them one must say death would b a better option for them rather living such a painful life; which is painful physically as well as psychologically. But if one look at the Netherlands where euthanasia is made legal, one can see that how it is abused there. So, following its example, no one wants euthanasia to be legalized in India. From the moment of his birth, a person is clothed with basic human rights. Right to life means a human being has an essential right to live, particularly that such human being has the right not to be killed by another human

being. But this question arise that if a person has a right to live, whether he has right not to live i.e. whether he has right to die? While giving answer, the Indian courts expressed different opinions.³

Section 309, Ipc Right to Life Vis-A-Vis Right Not To Die –A Constructional Dilemma

The state power under section 309⁴ IPC to punish a man for having failed in his attempt to commit suicide is questioned not only on grounds of morality, but also on the constitutionality of the said provision.

In 1987 the Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*⁵, Struck down the section 309 IPC as ultra vires vide article 21 of the constitution of India which guarantee 'right to life and liberty'. The court said the 'right to life' includes the 'right to live' as well as 'right to end one's life' if one desires. Justice P.B. Sawant Said:

"If the purpose of the prescribe punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the attempts. Those who make the suicide attempt on account of mental disorders require psychiatric treatment and not confinement in the prison cell where their condition is bound to worsen leading to further mental derangement. Those on the other hand, who make a suicide attempt on account of acute physical ailments, incurable disease, torture, decrepit physical state induced by old age or disablement, need nursing homes and not prison to prevent them from making the attempts again. No deterrence is further going to hold back those who want to die for a special or political cause or to leave the world either because of the loss of interest in life or self deliverance. Thus is no case does punishment serve the purpose and in some cases it is bound to prove self defeating and counter-productive."⁶

Similarly, in 1985 Delhi High Court in *Sanjaya Kmar*⁷ while acquitting a young boy who attempted to commit suicide by consuming 'Tik Twenty' strongly advocated for deletion of section 309, IPC from the statute Book and said that :

The continuance of section 309 of the IPC is an anachronism unworthy of a human society like ours. Instead of sending the young boy to a psychiatric clinic society, gleeful send him to mingle with criminals. Medical clinic are needed for such social misfits; but police and prison never.⁸

However, The Andhra High Court in *Chenna Jadeshwar*⁹ of upheld the constitutionality of section 309, IPC and remarked that right to life does not necessarily signify a right to die which an offence.

In 1994 a Division Bench of SC comprising Justice R.M. Sahai and B.L. Hansia in *P. Rathinam/ Nagbhusan Patnaik*¹⁰, while allowing the petition upheld the Bombay and Delhi High Court's verdict and overruled Andhra ruling. The two Petitioners

assailed the validity of section 309 of IPC by contending that the same is violating of article 21 of the Constitution.

While striking down section 309 IPC, the apex court said that 'it is cruel and irrational provision violate of article 21 of the constitution'. Expanding the scope of article, the court upheld that, 'right to life' include 'right to not live a forced life, to end one's life' if one so desire. The court went on to say that:

"it may result in punishing a person again who has suffered agony and would be undergoing ignominy (humiliation) because of his failure to commit suicide...An act suicide cannot be said to against religion, morality or public policy and an act of attempted suicide has not baneful effects on society. Further, suicide or attempt to commit it causes no harm to others, because of which state intervention with the personal liberty of the concerned persons is not called for."¹¹

The court further said a person who attempts to commit suicide does not deserve prosecution because he has failed. There can be no justification to prosecute sacrifices of their lives.

However in 1996 a five member Constitution Bench of the apex court comprising of Justice J.S.Verma . G.N.Ray , N.P.Singh , faizuddin and G.T. Nanawati in *Gyan Kaur*¹², over ruled its decision of 1994 in *P.Rathinam* . in the impinged case the appellant and her husband were convicted by the trial court under section 306 IPC for abetting the commission of suicide by kulwant kaur. In special leave before the apex court the conviction of the appellants has been assailed (challenged) , inter alia on the ground that section 306, IPC is unconstitutional in the view of the judgement in *P. Rathinam*, wherein section 309 has been held to be unconstitutional as violate of the article 21 of the constitution.¹³

It was urged that right to die being include in article 21 of the constitution declaring section 309, IPC to be unconstitutional, any person abetting in the enforcement of fundamental right to die under article 21 and therefore section 306 IPC penalizing assisted suicide is equally violated the article 21 of the constitution.¹⁴

Dismissing the petition , the apex court held that section 306 IPC as constitutional and said that *right to life does not include right to die. Extinction of life is not including in protection of life.* The court further said that section 306 constitute a distinct offence and can exists independently of section 309 IPC. There is no correlation between the two sections.¹⁵

As regards section 309 IPC is concerned, the court said that the right to life guarantee under article 21 of the Constitution did not include the right to die or right to be killed and therefore an attempt to commit suicide under section 309, IPC or even an abetment of suicide under section 306, IPC re well within the constitutional parameters and are not void

or ultra vires. The right to die with human dignity cannot be construed to include within its ambit the right to terminate natural life at least before the natural process of certain death. The right to die if any is inherently inconsistent with the right to life as is death with life.¹⁶ The court said:

“Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in protection of life. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, it is difficult to construe article 21 to include within the right to die as a part of the fundamental right guaranteed therein. Right to life is a natural right embodied in article 21, but suicide is an unnatural termination or extinction of life and therefore incompatible and inconsistent with the concept of right to life”.

A careful perusal of the above conflicting ruling of the apex court-one holding section 309 IPC valid, while the other striking it down being violative of article 21 of the constitution, which guarantee right to life would reveal that there is a ample force in both the contentions. Perhaps the entire matter of retention or abolition of section 309 IPC from the statute book needs a careful study in the light of legal provision in different countries so as to strike a balance between the two propositions.¹⁷

Adverting to the concept of euthanasia, the Court observed that protagonist of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of terminal illness being unrelated to the principle of —sanctity of life or the —right to live with dignity is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of —right to life therein includes the —right to die. The —right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life. The Constitution Bench further explained that the said conception also includes the right to a dignified life up to the point of death including a dignified procedure of death or, in other words, it may include the right of a dying man to also die with dignity when his life is ebbing out. It has been clarified that the right to die with dignity at the end of life is not to be confused or equated with the —right to die an unnatural death curtailing the natural span of life. Thereafter, the Court proceeded to state¹⁸ -

“A question may arise, in the context of a dying man who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the —right to die with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural

death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician-assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life”. [Emphasis supplied]

In view of the aforesaid analysis and taking into consideration various other aspects, the Constitution Bench declared Section 309 IPC as constitutional.

The Court held that the "right to live with human dignity" cannot be construed to include within its ambit the right to terminate natural life, at least before the commencement of the process of certain natural death. It then examined the question of validity of Section 306 IPC. It accepted the submission that Section 306 is constitutional. While adverting to the decision in *Airedale N.H.S. Trust v. Bland*¹¹, the Court at the outset made it clear that it was not called upon to deal with the issue of physician-assisted suicide or euthanasia cases. The decision in *Airedale's case (supra)*, was relating to the withdrawal of artificial measures for continuance of life by a physician. In the context of existence in the persistent vegetative state of no benefit to the patient, the principle of sanctity of life, which is the concern of the State, was stated to be not an absolute one. To bring home the distinction between active and passive euthanasia, an illustration was noted in the context of administering lethal drug actively to bring the patient's life to an end. The significant dictum in that decision has been extracted in *Gian Kaur (supra)* wherein it is observed that it is not lawful for a doctor to administer a drug to his patient to bring about his death even though that course is promoted by a humanitarian desire to end his suffering and however great that suffering may be. Further, to act so is to cross the rubicon which runs between the care of the living patient on one hand and euthanasia - actively causing his death to avoid or to end his suffering on the other hand. It has been noticed in *Airedale* that euthanasia is not lawful at common law. In the light of the demand of responsible members of the society who believe that euthanasia should be made lawful, it has been observed in that decision that the same can be achieved by legislation. The Constitution Bench has merely noted this aspect in paragraph 41 with reference to the dictum in *Airedale case*.²⁴ Proceeding to deal with physician assisted suicide, the Constitution Bench observed¹⁹:-

“The decision of the United States Court of Appeals for the Ninth Circuit in *Compassion in Dying v. State of Washington*¹², which

reversed the decision of United States District Court, W.D. Washington reported in 850 Federal Supplement 1454, has also relevance. The constitutional validity of the State statute that banned physician-assisted suicide by mentally competent, terminally ill adults was in question. The District Court held unconstitutional the provision punishing for promoting a suicide attempt. On appeal, that judgment was reversed and the constitutional validity of the provision was upheld.”

And again:-

“This caution even in cases of physician assisted suicide is sufficient to indicate that assisted suicides outside that category have no rational basis to claim exclusion of the fundamental principles of sanctity of life. The reasons assigned for attacking a provision which penalises attempted suicide are not available to the abettor of suicide or attempted suicide. Abetment of suicide or attempted suicide is a distinct offence which is found enacted even in the law of the countries where attempted suicide is not made punishable. Section 306 IPC enacts a distinct offence which can survive independent of Section 309 in the IPC. The learned Attorney General as well as both the learned amicus curiae rightly supported the constitutional validity of Section 306 IPC.”

From the aforesaid it is clear that the SC accepted the statement of law made by the House of lord in Airdale tat euthanasia is unlawful and can be permitted only be legislature means act of killing a patient painlessly for reliving his suffering from incurable illness. Otherwise it is not legal. Assisted suicide is where a doctor is requested by a patient suffering from pain and he help the patient by medicine to put an end his life .This is also not permissible in law.²⁰

But where a patient is terminally ill or in persistent vegetative state , a premature extinction of his life in those circumstance, by withdrawing of life support is a part of the right to live with dignity and is permissible, when death due to the natural termination of life is certain and imminent and the process of natural death has commenced.²¹

The Approach in Aruna Shanbaug Qua Passive Euthanasia Vis-À-Vis India

Although the controversy relating to attempt to suicide or abetment of suicide was put to rest, yet the issue of euthanasia remained alive. It arose for consideration almost after a span of eleven years in Aruna Shanbaug²². A writ petition was filed by the next friend of the petitioner pleading, inter alia, that the petitioner was suffering immensely because of an incident that took place thirty six years back on

27.11.1973 and was in a Persistent Vegetative State (PVS) and in no state of awareness and her brain was virtually dead. The prayer of the next friend was that the respondent be directed to stop feeding the petitioner and to allow her to die peacefully. The Court noticed that there was some variance in the allegation made in the writ petition and the counter affidavit filed by the Professor and Head of the hospital where the petitioner was availing treatment. The Court appointed a team of three very distinguished doctors to examine the petitioner thoroughly and to submit a report about her physical and mental condition. The team submitted a joint report. The Court asked the team of doctors to submit a supplementary report by which the meaning of the technical terms in the first report could be explained. Various other aspects were also made clear. It is also worth noting that the KEM Hospital where the petitioner was admitted was appointed as the next friend by the Court because of its services rendered to the petitioner and the emotional bonding and attachment with the petitioner.²³

In Aruna Shanbaug after referring to the authority in Vikram Deo Singh Tomar v. State of Bihar, this Court reproduced paragraphs 24 and 25 from Gian Kaur's case and opined that the said paragraphs simply mean that the view taken in Rathinam's case to the effect that the right to life 'includes the right to die' is not correct and para 25 specifically mentions that the debate even in such cases to permit physician-assisted termination of life is inconclusive. The Court further observed that it was held in Gian Kaur that there is no right to die 'under Article 21 of the Constitution and the right to life includes the right to live with human dignity but in the case of a dying person who is terminally ill or in permanent vegetative state, he may be allowed a premature extinction of his life and it would not amount to a crime. Thereafter, the Court took note of the submissions of the learned amicus curiae to the effect that the decision to withdraw life support is taken in the best interests of the patient by a body of medical persons. The Court observed that it is not the function of the Court to evaluate the situation and form an opinion on its own. The Court further noted that in England, the parens patriae jurisdiction over adult mentally incompetent persons was abolished by statute and the Court has no power now to give its consent and in such a situation, the Court only gives a declaration that the proposed omission By doctors is not unlawful.²⁴

It is clear that the three-Judge Bench expressed the view that the opinion of the House of Lords in Airedale has not been approved in Gian Kaur (supra) and to that extent, the observation in Aruna Shanbaug (supra) is incorrect. After so stating, the three-Judge Bench opined that Aruna Shanbaug (supra) upholds the authority of passive euthanasia and lays down an elaborate procedure for executing the same on the wrong premise that the Constitution Bench in Gian Kaur (supra) had upheld the same. Thereafter, considering the important question of law involved which needs to be reflected in the light of social, legal, medical and constitutional perspectives,

in order to have a clear enunciation of law, it referred the matter for consideration by the Constitution Bench of this Court for the benefit of humanity as a whole. The three-Judge bench further observed that it was refraining from framing any specific questions for consideration by the Constitution Bench as it would like the Constitution Bench to go into all the aspects of the matter and lay down exhaustive guidelines. That is how the matter has been placed before us²⁵.

Our Analysis of Aruna Shanbaug Qua Legislation

"Having said this, we shall focus in detail what has been stated in Aruna Shanbaug. In paragraph 101 which has been reproduced hereinbefore, the two-Judge Bench noted that Gian Kaur has approved the decision of the House of Lords in Airedale and observed that euthanasia could be made lawful only by legislation. This perception, according to us, is not correct. As already stated, Gian Kaur does not lay down that passive euthanasia could be made lawful only by legislation. In paragraph 41 of the said judgment, the Constitution Bench was only advertent to what has been stated by Lord Goff of Chieveley in Airedale's case. However, this expression of view of Aruna Shanbaug which has not been accepted by the referral Bench makes no difference to our present analysis. We unequivocally express the opinion that Gian Kaur is not a binding precedent for the purpose of laying down the principle that passive euthanasia can be made lawful —only by legislation.²⁶"

On 7th march 2011, the SC turned down the mercy killing petition. However allowed passive euthanasia India. According to guidelines passive euthanasia involve the withdrawing of treatment or food that would allow the patient to live.

Guidelines Laid Down By Apex Court²⁷

1. A decision has to be taken to discontinue life support either by the 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 also be taken by the doctor attending the patient .however; the decision should be taken bonfide in the best interest of the patient.²⁸
2. Even if a decisions taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from high court concerned. When such an application is filled the chief justice of the high court should forthwith constitute a bench of at least two judges who should decide to grant approval or not.²⁹
3. A committee of three reputed doctors to be nominated by the bench, who will give report regarding the condition of the patient. Before giving the verdict a notice regarding the report should be given to the close relatives and the state. After hearing the parties, the high court can give its verdict.³⁰

Landmark Judgement In Common Causes V. Union of India³¹

The ruling stems from a petition filed by an NGO Common Cause, who had approached the court seeking a direction for recognition of Living will and

contented that when a medical expert said that a person afflicted with terminal disease had reached point of no return, then she should be given the right to refuse being put on life support.

Chronology of events that led to SC recognizing living will³²

May 11, 2005

Sc takes note of PIL of NGO Common Cause seeking nod to allow terminally ill persons to execute a living will for passive euthanasia. It seeks the centre's response on the plea which seeks declaration of the right to die with dignity as a fundamental right under Article 21 of the constitution.

Jan 16, 2006

Sc allows Delhi Medical Council to intervene and ask it to file documents on passive euthanasia.

April 28, 2006

Law commission suggests s draft bill on passive euthanasia and says that such pleas be made to HCs which should decide after taking experts views.

January 31, 2007

SC asks parties to file documents.

May 7, 2011

SC, on a separate plea on the behalf of Aruba Shanbug, allow passive euthanasia for the nurse lying vegetative state at a hospital.

Jan 23, 2014

A three judge bench led by then CJI P Sathasivam starts final hearing in the case.

February 25, 2014

SC cites inconsistencies in earlier verdicts on passive euthanasia including the one given in the shanbang case and refers the PIL to a constitution bench.

July 15

A five judge bench commences on the plea, issues notice to all states and UTs and appoint senior advocate T R Andhyarujina as an Amicus curiae. He dies during the pendency of the case.

October 11, 2017

Five judge benches led by CJI Dipak Misra hear arguments and reserve the verdict.

March 9, 2018: In a landmark verdict SC ruled that under specific circumstance, a person has the right to decide against artificial life support by creating a living will. The Apex court held that the right to life and liberty enshrined under the Article 21 of the constitution, also include right to die peacefully and with dignity.³³

A five judge constitutional bench led by CJI Dipak misra upheld a person right to chose passive euthanasia by creating an advance medical directive commonly referred to as a living will-in the eventually of a terminal illness with no hope of the recovery , an irreversible coma or a permanent vegetative state. By contrast, active euthanasia in which death is medically administrated using a lethal injection continues to be illegal in India³⁴.

The central government, the respondent in this matter opposed recognition of a living will and said patients may not be aware of medical advancement that could cure them.SC lawyer Prasahnt Bhusan who argued on the behalf of

common cause said that “everybody will breathe a sigh of relief, because people were earlier apprehension that if they withdraw life support, they could be prosecuted for culpable homicide”.³⁵

The apex court found that refusal to take treatment and allowing disease to take its natural course is not suicide. It addressed the concerns of doctors who find it difficult to take a decision to withdraw life support in terminal case, as it goes against their Hippocratic Oath. “When the sanctity of life is destroyed should we not allow them to cross the door and meet death with dignity .for some even their death could be a moment of celebration,” Justice Misra judgment stated. The bench laid down strict conditions for creating and executing a living will.³⁶

Living Will

It is a document to decide on ending life in case the person becomes terminally ill, gets into vegetative state and has no hope of recovery. Living will is now a legal document.

When to Make it.³⁷

1. Person is of sound mind and can comprehend the consequences of executing the document.
2. Voluntarily and under no duress
3. Persons should be an adult.
4. If there is more than one living, he most recently signed one will be valid.

Essential Elements:³⁸

1. State the frame to withdraw medical treatment.
2. State the circumstance: permanent vegetative state, terminally illness, and incurable conditions.
3. State that the persons may revoke the will at any time.
4. State that the person has understood the consequences of executing these documents.
5. Name of the guardian (kin or friend) who is authorized to consents/refuse treatment.

Requirements

1. Signed by the person, two witnesses and a judicial magistrate.
2. A copy should be forwarded to the district court registry.
3. A copy should be handed over to a municipal corporation, municipalities or panchayat.
4. At the time of hospitalization, a judicial magistrate should send a copy to the treating physician.

Execution of Will.³⁹

1. The hospital will constitute a medical board to form a preliminary opinion on whether or not to put instructions as per the will.
2. After certification by the medical board, the hospital will inform the district collector.
3. The collector will constitute another medical board to give a final opinion on whether or not to withdraw treatment.
4. The judicial magistrate is informed of the second board decisions, and must visit the patient. He authorizes the decision of the medical board.
5. If the permission to withdraw medical treatment is refused by any of the medical boards, the person’s families or guardian can approach the High Court.

Unwarranted Support:⁴⁰

Dipak Misra, CJI (For Himself and A.M. Khanwilkar, J.):⁴¹

Life and death as concepts have invited many a thinker, philosopher, writer and physician to define or describe them. Sometimes attempts have been made or efforts have been undertaken to gloriously paint the pictures of both in many a color and shade. Swami Vivekananda expects one to understand that life is the lamp that is constantly burning out and further suggests that if one wants to have life, one has to die every moment for it. John Dryden, an illustrious English author, considers life a cheat and says that men favor the deceit. No one considers that the goal of life is the grave. Léon Montenaeken would like to describe life as short, a little hoping, a little dreaming and then good night. The famous poet Dylan Thomas would state —do not go gentle into that good night. One may like to compare life with constant restless moment spent in fear of extinction of a valued vapor; and another may sincerely believe that it is beyond any conceivable metaphor. A metaphysical poet like John Donne, in his inimitable manner, says⁴³:

“One short sleep past, we wake eternally, and death shall be no more; death, thou shalt die”.

Some would say with profound wisdom that life is to be lived only for pleasure and others with equal wise pragmatism would proclaim that life is meant for the realization of divinity within one because that is where one feels the —selfill, the individuality and one’s own real identity.

“Dignity is the lost if a man is allowed or forced to undergo pain and suffering because of unwarranted support.

“The right of dying man to die with dignity when life is ebbing out and in the case of terminally ill patient or a person vegetative state, where there is no hope of recovery, accelerating the process of death for reducing the period of suffering constitutes a right to live with dignity.”

The court describes the exact stage at which suffering robs a dying person of his dignity. “A state where the treating physician and the family members know full well that the treatment is administered only to procrastinate the continuation of breath and the patient is not aware that he is breathing”.⁴⁴

Justice D.Y. Chandrachud

Life and death are inseparable. Every moment of our lives, our bodies are involved in a process of continuous change. Millions of our cells perish as nature regenerates new ones. Our minds are rarely, if ever, constant. Our thoughts are fleeting. In a physiological sense, our being is in a state of flux, change being the norm. Life is not disconnected from death. To be is to die. From a philosophical

perspective, there is no antithesis between life and death. Both constitute essential elements in the inexorable cycle of existence.⁴⁴

Living in the present, we are conscious of our own mortality. Biblical teaching reminds us that:

“There is a time for everything, and a season for every activity under the heavens: a time to be born and a time to die, a time to plant, and a time to uproot, a time to kill and a time to heal, a time to wear down and a time to build, a time to weep and a time to laugh, a time to mourn and a time to dance.” (Ecclesiastes 3)

The quest of each individual to find meaning in life reflects a human urge to find fulfillment in the pursuit of happiness. The pursuit of happiness is nurtured in creative pleasures and is grounded in things as fundamental as the freedom to think, express and believe the right to self-determination, the liberty to follow a distinctive way of life, the ability to decide whether or not to conform and the expression of identity.⁴⁵

Human beings through the ages have been concerned with death as much as with dying. Death represents a culmination, the terminal point of life. Dying is part of a process: the process of living, which eventually leads to death. The fear of death is a universal feature of human existence. The fear is associated as much with the uncertainty of when death will occur as it is, with the suffering that may precede it. The fear lies in the uncertainty of when an event which is certain will occur. Our fears are enhanced by the experience of dying that we share with those who were a part of our lives but have gone before us. As human beings, we are concerned with the dignity of our existence. The process through which we die bears upon that dignity. A dignified existence requires that the days of our lives which lead up to death must be lived in dignity; that the stages through which life leads to death should be free of suffering; and that the integrity of our minds and bodies should survive so long as life subsists. The fear of an uncertain future confronts these aspirations of a dignified life. The fear is compounded by the fact that as we age, we lose control over our faculties and over our ability to take decisions on the course of our future. Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives. Ageing leaves individuals with a dilution of the ability to decide. The fear of that loss is ultimately, a fear of the loss of freedom. Freedom and liberty are the core of a meaningful life. Ageing brings dependency and a loss of control over our ability to shape what we wish to happen to us.

The sanctity of life, a meaningful existence and the pursuit of happiness include the exercise of free will. Free will includes the right to refuse medical treatment.⁴⁶

Justice Ashok Bhushan

Right to dignified life includes a dignified procedure of death. The constitution bench in Gian kaur case held that right to life include right to, live with dignity would mean the existence of such right up to the end of natural life which also include the right to dignified life up to the point including the dignified procedure of death. The above right was held to be a part of Fundamental right enshrined under article 21 of the constitution which was also reiterated.⁴⁷

Justice Sikri

“I am the master of my fate; I am the captain of my soul”

William Ernest Henley²³

“Death is our friend ... he delivers us from agony. I do not want to die of a creeping paralysis of my faculties – a defeated man.” - Mahatma Gandhi²⁴

“When a man’s circumstances contain a preponderance of things in accordance with nature, it is appropriate for him to remain alive; when possess or sees in prospect a majority of contrary, it is appropriate for him to depart from life.”

Marcus Tullius Cicero

“Euthanasia, and especially physician-assisted suicide, appears as the ultimate post-modern demand for dignity in an era of technologically-mediated death.”

- Dr. Jonathan Moreno

The afore-quoted sayings of some great persons bring out a fundamental truth with universal applicability. Every person wants to lead life with good health and all kinds of happiness. At the same time, nobody wants any pain, agony or sufferings when his or her life span comes to an end and that person has to meet death. The following opening stanza from a song in a film captures this message beautifully:

रोते हुए आते हैं सब, हसता हुआ जो जाएगा
वे मुकदर का सिकन्दर जानेमन कहलाएगा

“Every person in this world comes crying. However, that person who leaves the world laughing/smiling will be the luckiest of all” (Hindi Film – Muqaddar Ka Sikandar)

It became unbearable for young prince Siddharth when he, for the first time, saw an old crippled man in agony and a dead body being taken away. He did not want to encounter such a situation in his old life and desired to attain Nirvana which prompted him to renounce the world so that he could find the real purpose of life; could lead a life which is worth living; and depart this world peacefully. He successfully achieved this purpose of life and became Gautama Buddha. There are many such similar examples.⁴⁸

Life is mortal. It is transitory. It is as fragile as any other object. It is a harsh reality that no human being, or for that matter, no living being, can live forever. Every creature who takes

Birth on this planet earth has to die one day. Life has a limited shelf age. In fact, unlike the objects

and articles which are produced by human beings and may carry almost same life span,

Insofar as humans themselves are concerned, span of life is also uncertain. Nobody knows how long he/she will be able to live. The gospel truth is that everybody has to die one day, notwithstanding the pious wish of a man to live forever. As Woody Allen said once: '*I do not want to achieve immortality through my work. I want to achieve it through not dying*'. At the same time, nobody wants to have a tragic end to life. We all want to leave the world in a peaceful manner. In this sense, the term 'euthanasia' which has its origin in Greek language signifies 'an easy and gentle death'.⁴⁹

Justice A.K.Sikri, in his separate opinion, said though religion, morality, philosophy, law and society have conflicting opinions about whether right to life include the right to die, they all agree that a person should die with dignity.⁵⁰

Conclusion

In 2018 SC recognize the right to die with dignity and allowed an individual to execute a living will authorizing someone to withdraw his/her life support, if she/he went into a vegetative state because of an incurable and irreversible medical condition, which is laid down guidelines for this purpose. Right to die with dignity a facet of right to life and liberty guaranteed under article 21 of the constitution. 538 pages verdict also provide for mechanism to effect passive euthanasia where there are no advance directives in the form of living will. Chief Justice Dipak Misra said this judgment clears the maze by removing the social stigma against passive euthanasia and legalizing it, the court has put humaneness on the high pedestal. A dying man choice to end his life is a fundamental right, and more so, his natural human right. He does not require a legislation to exercise this right.

Endnotes

1. *Ritika Bansal "Euthanasia Appeal & Plea for mercy Killing" 74 (universal law publishing.co, New Delhi, Edn. 2013).*
2. *Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011*
3. *Supra note 1 at 75*
4. *India Penal Code, 1860 S. 309 , 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.*
5. *1987 Cr LJ 743 (Bom)*
6. *ibid*
7. *State v. Sanjaya Kumar, 1985 Cr Jj 931.*
8. *ibid*
9. *Chenna Jadeshwar v. state of Andhra Pradesh, AIR 1988 Cr LJ 549.*
10. *P. Rathinam v. union of India, AIR 1994 SC 1844*

11. *Ibid*
12. *AIR 1996 SC 1257: 1996 2 SCC 648: 1996 Cr LJ 1660.*
13. *Ibid.*
14. *ibid*
15. *Id at 601*
16. *ibid*
17. *Ibid.*
18. *Id at 27*
19. *Id at 28*
20. *Ritika. Bnasal, Euthanasia Appeal & Plea for mercy killing 80 (Universal law publishing, new Delhi 2013)*
21. *Ibid.*
22. *Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011.*
23. *Ibid.*
24. *Ibid.*
25. *Id at 43*
26. *Ibid.*
27. <https://www.google/amp/s/eduindexnews.com/2020/07/30/euthanasia-law-india/amp/>
28. *ibid*
29. *ibid*
30. *Ibid.*
31. *Writ Petition (Civil) No. 215 of 2005.*
32. http://www.google.com/amp/s/m.economictimes.com/news/politics-and-nation/landmark-ruling-supreme-court-says-passive-euthanasia-is-permissible-with-riders/amp_articleshow/633228770.cms.
33. *Bhadra Sinha "Dying with Dignity a right", Hindustan Times, Aug.23,2017.*
34. *Ibid.*
35. *Ibid.*
36. *Dhananjaya mahapatra & amit anand, "Sc legalise passive euthanasia and living will", The Times of India, Aug.23,2017.*
37. *Ibid.*
38. *ibid*
39. *Ibid.*
40. *Krishnands Rajgopa, "Sc upholds passive Euthanasia", The Hindu, Aug.23, 2017.*
41. *Common Cause (A Regd. Society) v. Union of India and Another writ petition (civil) NO. 215 OF 2005*
42. *Ibid.*
43. *Ibid.*
44. *Satya Parkash, "Rght to die with Dignity", the tribune, Aug 23,2017.*
45. *Supra note 34 at 304*
46. *Ibid.*
47. *Shyam lal. "Right to Life include Right to Die", The Indian Express, Aug. 23.2017.*
48. *Supra note 43 at 237*
49. *Supra note 34 at 238*
50. *Ibid.*