

RIGHT TO LIFE AND PERSONAL LIBERTY AND EUTHANASIA: A CRITICAL ANALYSIS**DR SHAIKH SAHANWAZ ISLAM****Assistant Professor, Uttaranchal University, Dehradun,UK****ABSTRACT**

While deciding the debate on Euthanasia, the conflict between the principle of sanctity of life and the rights of self determination and dignity of a human being needs to be resolved. Rather than allowing right to die as a general rule by legalizing euthanasia, it may be allowed as necessary exception only in rarest of rare cases, in passive form in appropriate cases where the individual is dying and gives informed consent or where he or she cannot give consent and as per the genuine medical opinion, the death is near and certain and, to withdraw the life support system is in the best interest of the patient. Here the researcher try to explain the meaning and concept of euthanasia and its legal pros and cons.

INTRODUCTION:

Euthanasia is the termination of a very sick person's life in order to relieve them of their suffering. A person who undergoes euthanasia usually has an incurable condition. But there are other instances where some people want their life to be ended. In many cases, it is carried out at the person's request but there are times when they may be too ill and the decision is made by relatives, medics or, in some instances, the courts.

The term is derived from the Greek word "*euthanatos*" which means easy death. Euthanasia is against the law in the UK where it is illegal to help anyone kill themselves. Voluntary euthanasia or assisted suicide can lead to imprisonment of up to 14 years.

Life is a gift and even a painful one, it is a life at least. Some people feel that we should not give the right to choose when to die. However, some feel that painful life is an imposition and we should be allowed to end it in a dignified and peaceful manner. This was termed as the 'right to die'. As gradually time passed it took its own pace and as a result of that a quest for right to die emerged.

The right to die is sometimes associated with the idea that one's body and one's life are one's own, to dispose of as one sees fit. However, there is sometimes deemed to be a legitimate state interest in preventing irrational suicides. Pilpel and Amsel write, "Contemporary proponents of 'rational suicide' or the 'right to die' usually demand by 'rationality' that the decision to kill oneself be both the autonomous choice of the agent (i.e., not due to the physician or the family pressuring them to 'do the right thing' and suicide) desired by liberals, and a 'best option under the circumstances' choice desired

by the stoics or utilitarians, as well as other natural conditions such as the choice being stable, not an impulsive decision, not due to mental illness, achieved after due deliberation, etc."^[1]

Hinduism accept the right to die for man who has no desire or ambition left, and no responsibilities remaining; and allows to die through the non-violent practice of fasting to death, termed *Prayopavesa*. Most often, the idea of the right to die is related to a person's wish that caregivers allow death—for example, by not providing life support or vital medication—under certain conditions when recovery is highly unlikely or impossible. It may also refer to issues regarding physician-assisted suicide. It may be called “passive euthanasia” in cases where the patient is unable to make decisions about treatment.

In my project I do not intend to give only the legal side of the right to die but also want to probe into the emotional side too. Because that is what it actually is. All the fundamental rights guaranteed to the citizens of India reflects our needs, our aspirations, our right to be able to do something and by defining its boundaries this right is curtailed which in turn curtails our desires.

The ethics of euthanasia

Euthanasia raises a number of agonising moral dilemmas:

- is it ever right to end the life of a terminally ill patient who is undergoing severe pain and suffering?
- under what circumstances can euthanasia be justifiable, if at all?
- is there a moral difference between killing someone and letting them die?¹

Objectives

- To survey whether the fundamental right enshrined under Article 21 of Indian Constitution is self –inclusive of Right to die.
- To find out whether Sec.309 of the Indian Penal Code is violative of the constitutional provisions of Art.14 and 21.

RESEARCH METHODOLOGY

The research is mainly of based on doctrinal research. The resources and materials collected for the reason has been derived from books, articles and internet search as well as case laws

¹ Ethics of euthanasia, BBC

RIGHT TO LIFE UNDER ARTICLE 21 OF INDIAN CONSTITUTION:

Article 21 of Indian constitution reads right to life as like this that “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

Prior to Maneka Gandhi’s decision, Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The state could interfere with the liberty of the citizens if it could support its action by a valid law.

But after Maneka Gandhi’s decision Article 21 now protects the right of life and personal liberty not only from executive action but also from legislative action also. A person can be deprived of his right to life and personal liberty if two conditions get fulfilled, (i) there must be a law and (ii) there must be a procedure prescribed by law and the procedure must be just and fair.

CRIMINAL JUSTICE AFTER MANEKA GANDHI’S CASE

Maneka Gandhi v Union of India² is a landmark case of the post emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting fundamental rights, particularly article 21. A great transformation has come about in the judicial attitude towards protection of personal liberty. The Supreme Court has given a very broader and wider interpretation to article 21 so as to imply many more fundamental rights. In course of time article 21 has proved to be a very fruitful source of rights of the people. The expression ‘personal liberty’ was given expansive interpretation that it has the widest amplitude covering a variety of rights which constitute the personal liberty of man. The expression personal liberty ought not to be read in a narrow and restricted sense. According to Justice Krishna Iyer, “the spirit of man is at the root of article 21”; “personal liberty makes for the worth of the human person.”

The most significant and creative aspect of this case is the re interpretation by the court of the expression procedure established by law used in Article 21. Court now gave a new orientation to this expression. The case has been exerting multidimensional impact on development of constitutional law in India. It has brought the fundamental right of life and personal liberty into prominence thus regarding it as the heart of the fundamental rights. The case of Maneka Gandhi has deeply influenced the administration of criminal justice and prison administration. In a number of cases, the Supreme Court has expounded several propositions with a view to humanize the administration of criminal justice in all

² AIR 1978 SC 1507 : (1967) 3 SCR 114.

its aspects. It was laid down that the procedure has to be fair, just and reasonable and not fanciful, oppressive or arbitrary. It is having a beneficial impact on the criminal justice in India and conditions prevailing in prisons which for long have been extremely deplorable and sub human, prisoners were maltreated, trials were inordinately delayed and police brutality was legendary. It has helped in humanizing and liberalizing prison administration. The key to judicial activism is the ruling in this case that the phrase procedure established by law in Article 21 does not mean any procedure laid down in a statute but just, fair and reasonable procedure and the term law envisages not any law but a law which is right, just and fair and not arbitrary, fanciful or oppressive. Any arbitrary procedure would not amount to any kind of law and provisions of Article 21 would not be complied with.

FROM 'PROCEDURE ESTABLISHED BY LAW' TO 'DUE PROCESS OF LAW':

When Bhagawati J. in *Maneka Gandhi* case, established the requirement of reasonableness of procedure in Art.21 through article 14, some of the judges in that case and in some other cases have read it in Art.21 itself and particularly in the word 'law' leading to the conversion of 'procedure established by law' to 'due process of law' in the model of American constitution. Thus, in *Maneka Gandhi case*, Chandrachud J. said that the procedure in Art.21 'must be just and fair' and Krishna Iyer J. said that 'law' in Article 21 'is reasonable law and not enacted piece'. Again in "**Sunil Batra v. Delhi Administration**"³, Krishna Iyer J. held that there is no 'due process' but 'procedure established by law'

So, it is an established law in India that no one should be deprived of his right to life without the due procedure established by law.

SECTION 309 OF INDIAN PENAL CODE AND RIGHT TO LIFE VIS-A-VIS RIGHT NOT TO DIE- A CONSTITUTIONAL DILEMMA:

The States power under Section 309 of IPC to punish a man for having failed in his attempt to commit suicide which questioned not only on grounds of morality but also on the Constitutionality of the said provision.

In **Sanjay Kumar vs. State**⁴ the Delhi High Court while acquitting a young boy who attempted to commit suicide by consuming "Tik Twenty" strongly advocated for deletion of Section 309 from the statute book and said that the continuance of section 309 is an anachronism unworthy of a human society like ours.

³ 1978 4 SCC494: AIR 1978 SC 1675

⁴ 1985 CRLJ 931

Instead of sending the young boy to a psychiatric clinic society, the system, gleefully sends him to mingle with criminals. Medical clinics are needed for such social misfits, but police and prison never.

In "**Maruti Sripati Dubbal Vs State of Maharashtra**"⁵ case the petitioner, a police constable, who became mentally ill after a road accident, was prosecuted under section 309 of IPC for attempting to commit suicide on 27th April 1985 at 10 am outside the office of the municipal commissioner, by pouring kerosene on himself and by trying to light his clothes was prevented and prosecuted under section 309 IPC.

The Court struck down section 309 of IPC as ultra vires vide Article 21 of the Constitution. The Court said that the Right to Life includes the Right to live as well as the Right to end one's life if one so desires. P.B Sawant, J., said "if the purpose of the prescribed punishment is to prevent the respective 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 cells where the conditions are 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 attempt 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 for self-deliverance. Thus, in no case does the punishment serve the purpose in some cases it is bound to prove self-defeating and counterproductive."⁶

So the Court held that the right to life guaranteed by Article 21 includes a right to die and the court struck down Section 309 of IPC which provides punishment for attempt to commit suicides as unconstitutional it said that the desire to die is not unnatural merely abnormal and uncommon. They listed several circumstances to end the life. It held that everyone should have the freedom to dispose of his life as and when he desires.

In "**ChennaJagdishwarVs State of A.P**"⁷, the State High Court upheld the constitutionality of Section 309 IPC and remarked that the Right to Life does not Necessarily signify which is an offence. So, the Court holds that Right to die is not a Fundamental Right within the meaning of Article 21.

⁵(1987) CrLJ 743 Bombay

⁶ 1987 CRLJ743(755) para 20.

⁷ 1988 CRLJ 549 A.P

In "**P. Rathinam vs. Union of India**"⁸, case a division bench of the SC comprising of Justice Sahay and Hansarya, while allowing the petitions upheld the Bombay and the Delhi High Courts verdict and overruled Andhra ruling. The two petitioners assailed the validity of Section 309 of penal code by contending that the same is violative of article 14 and 21 of the Constitution.

While striking down, Section 309 the apex Court said it is a cruel and irrational provision violative of Article 21 of the Constitution. Expanding the scope of Article 21, the Court upheld that Right to Life includes Right Not to live a forced Life. The Court went on to say that "it may result in punishing a person again who has suffered agony and undergoing humiliation because of his failure to commit suicide. An Act of cannot be said to be against religion, morality or public policy and an act of attempted suicide banefuleffect of society. Further suicide or attempt to commit it causes no harm to others because of which States interference with the personal liberty of the concerned persons is not called for. The Court further said a person who attempts to commit suicide does not deserve prosecution because he has failed so he does not deserve punishment rather soft words, wise counseling of a psychiatrist and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor. However, the Court rejected the plea that "euthanasia" must be permitted by the law. The judges said they would not decide this point as > it is beyond the scope of the present petition and > also because in euthanasia a third person either is actively or passively involved about whom it may be said that he adds or abets the killing of another person. There is a distinction between an attempt of a person to take life and action of some others to bring an end to life of a third person. Such a distinction can be made on a principal and is conceptually permissible.

The Court who rejected the contention that Section 309 was violative of Article 14 on the ground that attempt suicide is undefined and unguided. In Indian tradition escapism has never been accepted as a philosophy of life so, MarutiSripatiDubbal's case is unfulfilled decision.

Similarly, in "**Gyan Kaur v State of Punjab**"⁹, a five number Constitution bench of the apex Court comprising of justices J. S Verma, G. N Ray, N.P. Singh, Faizuddin and G.T Nanavati. In this case the Court overruled it's decision of 1994 in P. Rathinam's Case. In this case the Appellant and her husband were convicted by the Trial Court under Section 306 for awaiting the commission of Suicide by KulwantKaur. In special Leave before the SC the conviction of the Appelant has been challenged, *inter alia* on the ground that Section 306 of IPC is unconstitutional in the view of the judgement in P. Rathinam, wherein Section 309 has been held to be unconstitutional as violative of Article 21 of the Constitution.

⁸ AIR 1994 SC 1844

⁹(1996) 2 SCC 648

It was argued that Right to die being included in Article 21 declaring Section 309 IPC as unconstitutional, any person abetting the commission of suicide of another person in merely assisting in the enforcement of fundamental Right to die under Article 21 and therefore section 306 IPC penalizing assisted suicide is equally violative of Constitution.

However, dismissing the petition the SC held Section 306 IPC as Constitutional and said that Right to Life does not include Right to die. Extinction of life is not included in protection of life. The Court further held that section 306 constitutes a distinct offence and can exist independently of Section 309 IPC. There is no correlation between the two sections.

As regards Section 309 IPC is concerned the Court said that the right to life guaranteed under Article 21 of the constitution does not include the right to die or the Right to get killed and therefore an attempt to commit suicide under Section 309 IPC or even abetment of Suicide under Section 306 IPC are well within the constitutional parameters and are 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. The Court said "Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imaginations 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 his life it is difficult to construe Article 21 to include within it's ambit. The right to die as a part of fundamental right as 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.

As regards the contention that treating different circumstances leading to attempt to commit suicide by the same measure is violative of Article 14 of constitution, the court said it does not hold good in as much as the nature gravity and extent of attempt may be taken care of by tailoring the sentence appropriately. Section 309 IPC has only provided the maximum sentence which is up to one year, it also provided for imposition of fine only as a punishment in this respect which is important and reported decisions show that even on conviction under Section 309 IPC in practice the persons have been dealt with compassion by invoking the provisions of Section 360 of Cr.P.C and Probation of Offenders Act 1958.

A careful perusal of the above conflicting rulings of the apex Court one holding Section 309 IPC constitutional valid while the other striking it down being violative of Article 21 of the Const. Which guarantees right to life will reveal that there is ample force in both the contention perhaps the entire

matter of contention is the abolition of Section 309 IPC from the statute book needs a careful study in the light of legal provisions in different countries so as to strike a balance between the two propositions.

Referring to patanogists of euthanasia's view that is existence in persistent vegetative state was not a benefit to the patient of terminal illness being unrelated to the principal of sanctity of life or right to live with dignity, the court said that this augment was of no assistance to determine the scope of Article 212 of the constitution for deciding whether the guarantee of right to life therein includes the right to die.

So, finally the court set aside the judgment of the Bombay High court in MarutiSripati and the Rathinam Cases wherein Section 309 of IPC was held to be constitutional and upheld the judgment of the Andhra Pradesh High Court holding that Section 309 of IPC was not violative of Article 14 and 21 of the constitution.

CONCLUSION AND SUGGESTION:

If the State takes the responsibility of providing reasonable degree of health care, then majority of the euthanasia supporters will definitely reconsider their argument. We do endorse the Supreme Court Judgement that our contemporary society and public health system is not matured enough to handle this sensitive issue, hence it needs to be withheld. However, this issue needs to be re-examined again after few years depending upon the evolution of the society with regard to providing health care to the disabled and public health sector with regard to providing health care to poor people.

The Supreme Court judgement to withhold decision on this sensitive issue is a first step towards a new era of health care in terminally ill patients. The Judgment laid down is to preserve harmony within a society, when faced with a complex medical, social and legal dilemma. There is a need to enact a legislation to protect terminally ill patients and also medical practitioners caring for them as per the recommendation of Law Commission Report-196. There is also an urgent need to invest in our health care system, so that poor people suffering from ill health can access free health care. Investment in health care is not a charity; 'Right to Health' is bestowed under 'Right to Life' of our constitution.

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