THE RELATIONSHIP BETWEEN RIGHTS TO LIFE & RIGHT TO DIE UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

Rajdeep Bhattacharjee*

ABSTRACT

Right to die that is also known as euthanasia has been a widely debated topic and has been under scrutiny for a very long time now. Therefore, the constitutional validity of the same is what this paper seeks to test and also the relation of the right to die with Article 21 of the Indian Constitution as Article 21 guarantees the citizens of India the right to life with dignity and under the same article, the autonomy over one's bodily integrity is granted to them. Hence, this paper delves into the deeper convolutions and interpretations of Article 21 and tries to draw a relation between the right to life and the right to die specifically in the Indian context.

Keywords: Life, Die, Article 21.

INTRODUCTION

At the very onset of this discourse, it is imperative for us to understand what we essentially mean by the Right to Life as is enshrined under Article 21 of the Indian Constitution. Part-III of the Indian Constitution contains a lengthy list of fundamental rights that are protected by the law. Indian Constitution's Article 21 protects one of the most important fundamental rights among those protected by the Constitution. Article 21 of India's constitution deals with the protection of human life and personal liberty.

Article 21 of the Indian Constitution mentions in very clear words that no person shall be deprived of his life or personal liberty except according to procedure established by law. As stated in this article, the right to life entails the ability to live a life that is purposeful, complete, and dignified. It does not have a limited range of meaning. It is the purpose of the fundamental right protected by Article 21 to prevent any restriction by the state on a person's personal liberty or deprivation of life unless such restriction or deprivation is permitted under the applicable law. In the case of A.K. Gopalan v. Union of India[1], the Supreme Court of India was asked to consider the meaning of the words "personal liberty" and "individual liberty" for the first time.

* FIRST YEAR, BBA LLB, SYMBIOSIS LAW SCHOOL, PUNE.
[1] (1950) S.C.R. 88, ('50) A.S.C. 27

At the time, the scope of Article 21 was a little limited in scope. This case was heard by the Supreme Court, which ruled that the word "deprivation" was construed in a narrow sense and that the deprivation did not restrict the right to move freely, which was protected by Article 19 (1)(d) of the Constitution. After this, the Supreme Court in the case of Maneka Gandhi v. Union of India[2]overruled the judgement given in the case of A.K Gopalan v Union of India[3]and broadened the scope of the words "personal liberty," which is defined as the following:

According to Article 21, the term "personal liberty" refers to a collection of rights that together make up a person's individual liberty, some of which have been elevated to the status of distinct fundamental rights and are thus afforded additional protection under Article 19 of the Constitution of India[4]. The reason for delving into the dimensions of personal liberty is to provide a ground for examining the correlation, if any, between the facets of personal liberty and the right to die. At this juncture it is quintessential to comprehend what 'Right to Die' essentially is. The right to die is a concept that is based on the belief that a human being has the right to make any decisions regarding the termination of his or her existence (this also includes undergoing voluntary euthanasia)[5]. Ownership of this right is frequently interpreted to mean that a person suffering from a terminal illness or who lacks the will to live should be permitted to end their own life or refuse life-prolonging treatment. The most important dilemma that arises is whether people should have the right to die and, if so, what principle might be used to justify such a right.

This abovementioned question shall be answered further in the analysis part of this paper.

RESEARCH QUESTION

- Whether People should have the right to die and, if so, what principle might be used to justify such a right?
- Whether the Right to die come within the ambit of the Right to Life and Personal Liberty?

[2] (1978) 2 S.C.R. 621, ('78) A.S.C. 597
[3] (1950) S.C.R. 88, ('50) A.S.C. 27
[4] Nath, N.K., Article 21 and constitutional validity of right to die. *Legal Service India.* Available at: https://www.legalserviceindia.com/article/l374-Article-21-and-Constitutional-validity-of-Right-to-Die.html [Accessed March 20, 2022].
[5] Sunstein, C.R., 1997. The right to die - JSTOR. *JSTOR*. Available at: https://www.jstor.org/stable/797150 [Accessed March 22, 2022].

RESEARCH OBJECTIVE

- To understand the ethical and legal standpoint of the Right to Die in India through qualitative and empirical analysis and literature review and hence answer the research questions.

CRITICAL ANALYSIS

ETHICAL ANALYSIS

It is necessary to first understand the moral and ethical part of the argument before examining the legal standpoint of the right to die question. To better understand and hence examine the ethical standpoint and morality behind euthanasia, it is imperative to take a glance at the debates that have been persisting since ancient eras, and also several stalwarts of the world of philosophy have given their learned opinions on euthanasia which shall be discussed in the following paragraphs. Plato, who was one of the greatest philosophers to have walked on the face of the earth, believed in the harmony of life and he was explicitly against what nowadays we consider to be active euthanasia. In one of his greatest works named the 'Laws[6]', he mentions that doctors who terminate or even try to terminate the life of any person who is under his care and vigilance by administering substances actively that might be detrimental to the overall health of the patient and which might cause his death, then that doctor shall be punished by death. This view of his clear points coincides with the modern-day approach of the society towards active euthanasia and hence we can conclude that active euthanasia is morally and ethically incorrect.

Plato further mentions that suicide is the result of 'a spirit of slothful and abject cowardice'[7] and whosoever commits suicide shall be buried in unmarked and solitary graves but nonetheless he is considerate of the people who suffer from insurmountable pain to end their lives because he is of the opinion that one who has no ability left in him anymore to live a dignified life, then at his own request, he shall be allowed to terminate his life as there is no pint in living life in a vegetative state. This opinion of Plato also coincides with the reasoning cited by the modern day jurists for supporting passive euthanasia[8].

[6] Plato. *Laws VI. The Greeks*. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 80-81; line 993d
[7] Plato. *Laws V. The Greeks*. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 80-3; line 873c,d.
[8] Plato. *Gorgias. The Greeks*. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 266-7; line 512a

ancient ethical codes it can also be found that people suffering from enormous pain and with no hope to recover, could make prayers to the monks for granting them death, and then the monks would give them the permission to end their lives peacefully by going to a sacred place and resting there in peace, waiting gracefully for death to come upon them. The moot reasoning mechanism behind the advocacy of passive euthanasia which is a very well-reasoned and precise form of liberation of unrecoverable people from insufferable amounts of pain is consequentialism. The theory of consequentialism when applied to the case of euthanasia says that the end consequence of pulling the plug of a person who is in a vegetative state and on life support is to relieve him from an object like existence without any hope or senses (in case of coma wherein the conscience is not there but the body is alive; also known as brain dead) and hence is a desirable consequence for that person and because the end consequence is desirable, then the process is ethically viable as well.

LEGAL ANALYSIS

If the Right to Die were to be subjected to an analysis namely the Hohfeldian Analysis, then it would come to light that the legal correlatives to this right would boil down to both rights and duties. In this very context, according to the aforementioned analysis, it would essentially mean that if someone has the right to die then another person would have the right to kill him/her. This mode of interpretation of the right is blatantly farcical given the modern state of passive euthanasia as is understood in this epoch.

So when the Indian judiciary looked into this issue, it discovered a slew of instances involving Section 309 of the Indian Penal Code, which deals with the abetment of suicide. Following the logic of the above analysis, if the right to die implies that a person has the right to commit suicide, then another person will be obligated to assist him in doing so; this is not the correct conclusion to reach. The origin of the legality of the right to die in India begins with the case of State v. Sanjay Kumar Bhatia[9], in which the Delhi High Court criticized section 309 of the Indian Penal Code as an

"Anachronism and a paradox," is followed by a variety of views on section 309 of the IPC from various High Courts. The court noted the distinction between Euthanasia and suicide in the case of Naresh Marotrao Sakhre v. Union of India[10]. Suicide was defined as an act of self-

[9] 1986 (10) DRJ 31
[10] 1996 (1) BomCR 92, 1995 CriLJ 96, 1994 (2) MhLj 1850

destruction in which a person ends their own life without the aid or support of any other human agency, but euthanasia is distinct in that it includes the involvement of a human agency in order to end one's life. In India, the right to die exclusively applies to terminally ill patients and their families, allowing them to choose when to remove life support and die with dignity. Even though section 309 of the IPC was recently found to be arbitrary, and the state abolished the previous penalties for people who tried suicide, the state still does not support suicide. The state simply refrains from criminalizing it, recognizing that it is a mental health issue.

Persons have the right to their life, liberty, and property, according to John Locke and other philosophers, and by that logic, if one has the ultimate right to life, then one must also have the right to choose whether or not to die or end one's life in the case of terminal illnesses. The question now is whether the principle of the right to life as is enshrined under Article 21 of the Indian Constitution includes the right to die. In State of Maharashtra v. Maruti Sripati Dubal[11], the High Court of Bombay considered this subject for the first time. The Bombay High Court concluded that the right to life provided under Article 21 includes the right to die and that section 309 of the Indian Penal Code, which punishes a person for attempting suicide, is unconstitutional.

A Division Bench of the Supreme Court, in P Rathinam v. Union[12] of India, upheld the decision of the High Court of Bombay in the Maruti Sripati Dubal[13] case, holding that under Article 21, the right to life includes the right to die, and that section 309 of the Indian Penal Code, which deals with "attempt to commit suicide is a penal offence," is unconstitutional. In Gian Kaur v. State of Punjab[14], the court addressed this issue once more. In this case, a five-judge Supreme Court Constitutional Bench overruled P. Ratinam's case, ruling that the right to life guaranteed by Article 21 of the Constitution does not include the right to die or be killed and that there is no reason to believe that section 309 of the IPC is unconstitutional. In Article 21, the actual meaning of the word "life" is "life with human dignity." Any part of life that makes life more dignified may be included in it, but not the aspect that makes life less dignified. If there is a 'Right to Die,' it is essentially incompatible with the Right to Life, just as death is incompatible with Life.

[11] 1987 (1) BomCR 499, (1986) 88 BOMLR 589
[12] 1994 AIR 1844, 1994 SCC (3) 394
[13] 1987 (1) BomCR 499, (1986) 88 BOMLR 589
[14] 1996 AIR 946, 1996 SCC (2) 648

In the landmark case of Aruna Shaunbag v Union of India[15], the Supreme Court of India allowed passive euthanasia citing the reasons for the permanent vegetative state (PVS), and the judges reiterated that the morality in this case of PVS and brain deadness of any person, passive euthanasia is not in contravention with any set legal and moral principle and laid down a due process to ascertain whether or not the person who is to be euthanized has no hope left of recovery. After the due diligence is done, then the person can be euthanized as the right to die with dignity also comes under the purview of the right to live a dignified life.

CONCLUSION

The momentous Supreme Court decision in 2018 has given pro-euthanasia supporters a big boost, albeit there is still a long way to go before it becomes legislation in the parliament. Furthermore, fears of its abuse remain a key concern that must be addressed before it becomes law in our country. The debate's outcome is still up in the air. It must be recalled, however, that an acrobatic argument that accepts technological advancements while dismissing increasing ethical difficulties that raise uncomfortable and distressing questions is unjust to the patient population. Therefore, whether the right to die comes into the ambit of article 21 explicitly or not is still not clear; however, the debate is expected to be settled in the near future.

[15] (2011) 4 SCC 454