

Autonomy at the End of Life: The Role of Advance Medical Directives in Realising the Right to Die

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Abstract- Euthanasia or assisted dying has been a matter of debate since decades. It has received mixed responses from legal experts and jurists on account of the ethical considerations involved. Consequently, several states do not recognize the Right to Die citing the principles of inviolability and sanctity of human life. The states that recognize the Right to Die, India for one, rely on principles of individual bodily autonomy and right to refuse medical treatment. Indian courts, after a series of differing judicial pronouncements, have recognized the Right to Die and have issued Advanced Medical Directives through which the right can be exercised. However, documents of international law (UDHR, ICCPR etc.) do not recognize the Right to Die as a facet of Right to Life. With an evolving society that emphasizes individual autonomy and right to self-determination, it is imperative that Right to Die is classified as a human right on international level.

Keywords - Euthanasia, Right to Die, Advanced Medical Directives, Terminally Ill, Aruna Shanbaug.

I. INTRODUCTION

The idea of euthanasia introduced a merciful death which is found beyond natural death. The word euthanasia is originated from the Greek word 'euthantos'. English philosopher and statesman Sir Francis Bacon founded the word 'euthanasia' in early 17th Century, which literally means 'good death' and decoded as 'mercy killing or a good death'.

It depicts the practice of ending life in a way that does not cause pain and suffering at all. According to the House of Lords Select Committee on Medical Ethics, the definition of euthanasia is "a deliberate interference undertaken with the express intention of ending a life, to relieve intractable pains and agonies". Euthanasia is basically "an intentional premature ending of a person's life through direct interruption (which is called active euthanasia) or by interdiction life-averting actions and resources (which is called passive euthanasia) either at the express or implied request of that person (voluntary euthanasia) or in the absence of such approval/consent (non-voluntary euthanasia)." There exists a distinction between euthanasia and physician assisted dying. The difference lies in the fact as to who administers the lethal medication. It has been observed that in euthanasia, a physician or third party administers it while in physician assisted suicide, it is the patient who does it though on the advice of the doctor.

The concept of euthanasia originates through right to live the life with dignity in a dignified way. The origin of the concept of euthanasia as well as giving the legality to it, has been a topic of debate all over the world. Countries have framed no consensus in this regard. Though euthanasia and physician assisted suicide is prohibited in different countries all over the world, some countries do allow it. This research aims to study and analyze the forms, ethical considerations and judicial pronouncements relating to Euthanasia. It also aims to advocate the premise that Euthanasia should be internationally recognized as a human right.

Rouf Ahmed Bhat in his research study titled "*Legal and ethical consideration of euthanasia in India: a choice between life and death*" rightly points out that "Euthanasia has always been in glare of publicity and as a subject of debate in the field of medicine and law. It is one of the most baffling issue which the world face today when it comes to the life of a patient with terminal illness and acute pain, who is in a vegetate state and cannot support life with dignity. Severely handicapped or terminally ill people are supposed to have the right to choose between life and death. Euthanasia has been much debated subject throughout the world and India entered into the arena for debate since the case of Aruna Ramchandra Shanbaug."

Vinod K. Sinha opines that medical science is progressing in India as in the rest of the world, and hence currently we are having devises that can prolong life by artificial means. This may indirectly prolong terminal suffering and may also prove to be very costly for the families of the subject in question. Hence, end-of-life issues are becoming major ethical considerations in the modern-day medical science in India. The proponents and the opponents of euthanasia and PAS are as active in India as in the rest of the world. However, the Indian legislature does not seem to be sensitive to these. The landmark Supreme Court judgment has provided a major boost to pro-euthanasia activists though it is a long way to go before it becomes a law in the parliament.

The **Law Commission** in its 241st report titled "*Passive Euthanasia – A Relook*" under the chairmanship of P.V. Reddi had said that "withdrawing life support for certain categories of people—such as those in persistent vegetative state (PVS) or in irreversible coma or of unsound mind, who lack mental faculties to make decisions for themselves—should be allowed."

Gabriel Peter Udoh in his research study titled “*Human Rights Considerations of Euthanasia*” says that “the fact that the right to life, as a fundamental right, is inalienable, cannot be over-emphasized. This position has been severally codified and re-enacted internationally, regionally and municipally in almost all corners of the universe. In some jurisdictions, like Nigeria, the prima lex of the land houses this right and guards it jealously, as the bedrock upon which all other rights thrive.”

II. INTERNATIONAL LAW AND THE “RIGHT TO DIE”

“Everyone has the right to life, liberty and security of person.” - Article 3, Universal Declaration of Human Rights, 1948

There is not a “right to die” under international law. Such a “right” cannot be inferred from the ordinary meaning of any human rights document. On the contrary, human rights documents call upon states to protect life. Of the 193 members of the United Nations, only four have legalized euthanasia (the Netherlands, Belgium, Luxembourg, and Canada). The issue continues to be fiercely debated but has been rejected by legislatures in many jurisdictions. Euthanasia is not legal in *China and Hong Kong*. It is against the Chinese concepts of morality. According to the existing law of the China it is equivalent to murder.

INTERNATIONAL DOCUMENTS AND RIGHT TO DIE

- Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”
- Article 6(1) of the Convention on the Rights of the Child (CRC) states that “every child has the inherent right to life,” and makes no mention of a right to death.
- Article 10 of the Convention on the Rights of Persons with Disabilities (CRPD) safeguards against, rather than recognizes, a right to death by stating, “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.” Rather than recognizing a “right to die”, UN treaties implicitly reject this notion by including strong protections for the sick, disabled, and elderly – the people most often affected by the legalization of euthanasia and assisted suicide. For example, Article 23 of the CRC recognizes that “a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.”
- Numerous regional human rights treaties recognize the right to life, including Article 2 of the European Convention on Human Rights, Article 2 of the European Charter of Fundamental Rights, Article 4 of the American Convention on Human Rights, and Article 4 of the African Charter of Human and Peoples’ Rights – none of which mention or even hint at a “right to die.”
- According to the European Court of Human Rights, “Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life. The Court accordingly finds that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention.” (*Pretty v. United Kingdom (2002)* 35 E.H.R.R. 1 §§ 39-40).
- Claims to read a “right to die” into privacy rights under Article 8 of the Convention have also failed (see *Gross v. Switzerland*, Application no. 67810/10, 2014 and *Haas v. Switzerland*, Application no. 31322/07, 2011.)
- In 1999 the Parliamentary Assembly of the Council of Europe recommended that member states “respect and protect the dignity of terminally ill or dying persons in all respects [...] by upholding the prohibition against intentionally taking the life of terminally ill or dying persons.” (Recommendation 1418 (1999) § 9). In Resolution 1859 (2012) § 5, the Assembly stated, “Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.”

UN DOCUMENTS

- Not only is there no mention of a “right to die” within UN treaties, the interpretation of these treaties over the course of several decades has not resulted in a single piece of support for euthanasia or assisted suicide.
- On the contrary, UN treaty bodies have expressed concern regarding the practice of euthanasia in the small minority of countries where it is legal. For example, the Concluding Observations of the Human Rights Committee on the Netherlands state, “The Committee remains concerned at the extent of euthanasia and assisted suicides in the State party[.] The Committee reiterates its previous recommendations in this regard and urges that this legislation be reviewed in light of the Covenant’s recognition of the right to life.” (96th session, 5 August 2009, at § 7.)

FURTHER SOURCES

- The World Medical Association (WMA) has consistently and categorically rejected the practice of euthanasia and assisted suicide as being unethical.

- In its Declaration on Euthanasia, adopted by the 38th World Medical Assembly, Madrid, Spain, October 1987, the WMA stated, “Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient's own request or at the request of close relatives, is unethical.”
- In its Statement on Physician-Assisted Suicide, adopted by the 44th World Medical Assembly, Marbella, Spain, September 1992, the WMA stated, “Physicians-assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession.”

III. RIGHT TO DIE AND JUDICIAL PRONOUNCEMENTS IN INDIA

The issue that whether right to life under Article 21 includes the right to die first came up before the hon'ble Supreme Court in the landmark case of **P. Rathinam v. Union of India**, AIR 1994 SC 1844, wherein the central issue of law was the constitutional validity of Section 309 of the Indian Penal Code, 1860 which criminalizes an attempt to commit suicide. In the case of **Maruti Shripati Dubal v. State of Maharashtra**, (1986) 88 BOMLR 589, the apex court held that Section 309 is unconstitutional and that Right to Life includes the Right to die. The court reasoned its decision by stating that every fundamental right has a positive and negative aspect.

Thereafter, the question came up before the apex court once again in the case of **Gian Kaur v. State of Punjab**, (1996) 2 SCC 648, wherein the constitutional validity of Section 306, IPC (abetment to suicide) was questioned. It was argued that Section 306 is constitutional as the abettor was only aiding the enforcement of a fundamental right i.e. Right to Die. However, the apex court overruled P. Rathinam and stated that all fundamental rights cannot be treated alike and the same analogy cannot be applied to all of them. Therefore, although the right to express (Article 19(1)(a)) includes the right to remain silent but Article 21 cannot be treated in the same manner. Suicide involves an overt act of killing oneself. Hence, an unnatural termination of life caused through an overt act cannot be considered as a part of Right to life. The infamous case of **Airedale N.H.S. v. Anthony Bland**, [1993] A.C. 789, carved out a distinction between the right to die and right to die with dignity and has been extensively referred by Indian courts. It stated as under:

“When a person is in permanent vegetative state or in a terminally ill state, the natural progression of death has already begun and death, without life support technology, is inevitable.” The question regarding Euthanasia and whether it can be permitted was first discussed in India in **Aruna Ramchandra Shanbaug v. Union of India**, (2011) 4 SCC 454. Relying on **Airedale**, the court held that passive euthanasia can be permitted for terminally ill patients who are in a persistent vegetative state. But certain safeguards have to be put in place before crystallizing the concept. In furtherance of the same, the court opined that patient's autonomy must be respected and if the patient is capable of giving consent regarding withdrawal of medical treatment/life support services, his/her consent should be taken. If the patient is not fit to consent, his family/next friend must be consulted. Thereafter, a division bench of the High Court would constitute a panel consisting of three doctors who would examine the patient. The court suggested that these guidelines be followed until the legislature comes up with a law on the matter. Later on, in the case of **Common Cause (A Regd. Society) v. Union of India**, Writ petition (Civil) No. 215 of 2005, the apex court laid down detailed guidelines regarding living wills/advanced medical directives. AMD are directions signifying “a person's decision to discontinue care if they are in a terminally ill or permanent vegetative state.”

CONSIDERATIONS FAVORING THE RIGHT TO DIE

- Every individual has a right to a dignified existence and self-determination. Each person has individual autonomy and the right to choose their own destiny. Modern medical science has developed and invented several procedures/medications that can sustain life and prolong it. But when a person is terminally ill or in a persistent vegetative state, such life sustaining procedures/medications cause unwarranted pain and suffering to the patient. In several cases wherein there is no hope for revival, mere sustenance violates human dignity.
- Such sustenance without a dignified existence involves constant pain and suffering and a person who doesn't want to lead such a life shouldn't be forced to live. Doing so would violate their right to self-determination. Hence, they should be allowed to die a dignified death if they so desire and consent.
- The petitioners further submitted that when a patient is in a degenerative and incurable condition since years and there is no hope for revival, the emotional and physical strain on the family and the patient is taxing and exhausting. A lot of families face financial hardships as well.
- The right to health and medical care has already been recognized and acknowledged by the apex court. The patients should also be given the right to refuse care and choose passive euthanasia. This right to refuse care is a facet of their individual autonomy, right to a dignified death and right to self-determination under Article 21.
- Euthanasia facilitates volunteering for organ donations. This can benefit many individuals who need transplantations and have chances of living a prosperous life thereafter. Passive euthanasia, therefore, reinforces not only a terminally ill patient's “Right to Die with Dignity” (considering that the patient doesn't want to live and wishes to end his/her constant suffering) but also the “right to life” of patients who need transplantations in order to survive. Forcing a person to live a life that only brings suffering and trauma and no element of dignity is violate of “Right to Life” under Article 21 of The Constitution of India.

- When an individual is suffering from an incurable disease and is in a persistent vegetative state, his wish to die a peaceful and dignified death must be respected. This freedom of choice must be given due regard. Allowing a person to refuse care and choose passive euthanasia is not against the principles of human rights as passive euthanasia does not involve an active overt action to cause death. It rather involves withdrawal of life supporting care and cessation of any procedure that was prolonging death. Prolonging death and forcing a person to undergo suffering, with no hope for revival, is a dent in his dignity.

CONSIDERATIONS AGAINST THE RIGHT TO DIE

- Euthanasia amounts to causing the death of a person artificially and interfering with natural course of life. It is not inherent in Article 21 and the right to life does not include the right to die.
- Euthanasia is against the sanctity and inviolability of human life. It is a doctor's responsibility to treat patients and save lives, hence Euthanasia is against medical ethics. Furthermore, the state is obligated to protect lives of its citizens.
- "Causing death" of a person by any act or omission would attract Section 299 and 302 of the Indian Penal Code and the person causing death shall be liable.
- Allowing Euthanasia would pave a "slippery slope" and individuals who go through pain or suffering would want to end their lives. This undermines the value attached to human life and is a dent on its sanctity. Alternatively, pain relieving medications can be administered to patients to relieve their suffering.
- A patient might be incurable at a particular point of time but medical science is an ever-evolving field. Euthanasia would undermine the "quest for discovery of new therapies and treatments". Cures can always be found in a contemporary scientific society and no state of being can be termed as "incurable".

DIFFERENCE BETWEEN ACTIVE AND PASSIVE EUTHANASIA

- Active Euthanasia is when a person actively does an overt act deliberately causing the death of the patient. For instance, administering a lethal drug that could result in death of the patient. Hence, in Active Euthanasia, active procedures/steps are undertaken to cause death, unlike Passive Euthanasia. Active Euthanasia is a crime in most of the countries including India as per Sections 309 and 302 of the Indian Penal Code.
- On the other hand, Passive Euthanasia implies withdrawal of life sustaining procedures and cessation of medical treatment which is essential for continuance of life. For instance, removing a life support system. Hence, there is no overt act to cause death. There is an omission to do something which is imperative to sustain life and death flows as a consequence of such omission. Death is not caused by an immediate deliberate act, unlike Active Euthanasia. The judgment in ***Aruna Ramchandra Shanbaug vs Union Of India & Ors (2011)*** legalized passive euthanasia in India provided certain conditions are met and guidelines are cautiously laid down.

ETHICAL CONSIDERATIONS RELATING TO RIGHT TO DIE

➤ DOCTRINE OF SANCTITY OF LIFE

The court in the Common Cause judgment, while allowing Passive Euthanasia elaborated upon the Doctrine of Sanctity of Life to underline the importance and value attached to human life and why extinguishing it is an action of great consequence. The court replied upon several religious texts to highlight how human life is considered "sacred" and "inviolable". It opined that life is considered so precious due to moral considerations. Being alive exposes a person to plethora of opportunities to contribute to the betterment of this world and if everyone thinks of avoiding suffering, the pursuit called life would become futile. Life involves distinct experiences and every experience is destined, as per theological interpretation of "sanctity of life". Hence, killing a person is considered a sin and immoral in theology. Natural law also attaches immense value to human life and terms it as "inviolable" and "sacrosanct". The court cites: "Human life is sacred, that is inviolable, so one should never aim to cause an innocent person's death by act or omission".

Thus, the court analyzed the consequences of recognizing the "Right to die with dignity" from all viewpoints, namely, the dignity of euthanasia, the moral justification, theological jurisprudence etc. However, the mere existence of life is not an assurance of a quality life. And forcing a person to live a life of suffering and torture would mean disregarding and downgrading the sanctity attached to human life. Hence, sanctity of life does not merely mean the existence of life, it also connoted an enriched life.

➤ DOCTRINE OF DOUBLE EFFECT

The distinction between active and passive euthanasia is often understood by referring to the Doctrine of Double Effect. The Stanford Encyclopedia of Philosophy elaborates upon the doctrine of double effect as follows:

"The doctrine (or principle) of double effect is often invoked to explain the permissibility of an action that causes a serious harm, such as the death of a human being, as a side effect of promoting some good end. According to the principle of double effect,

sometimes it is permissible to cause a harm as a side effect (or “double effect”) of bringing about a good result even though it would not be permissible to cause such a harm as a means to bringing about the same good end.”

When a person is in a permanent vegetative state or is terminally ill, the intent of the doctor behind withholding treatment or withdrawing life prolonging drugs is not to cause death of the person but to allow the life of the patient to end naturally. Administering life saving drugs to that patient or placing him on a life support system would mean interfering with his natural death. Mere cessation of life sustaining drugs cannot amount to “causing death” of a person in view of Section 299 of the Indian Penal Code which uses the term “causes death”. In the cases of Euthanasia:

- (A) Firstly, there is no intention on part of the doctor to cause death.
- (B) Secondly, the apex court opined that “the affliction of the patient is not brought about either by an act or omission of the doctor. The creation of the condition of the patient is outside the volition of the doctor and has come about without a covert or overt act by the doctor. The decision to withhold medical intervention is not intended to cause death but to prevent pain, suffering and indignity to a human being who is in the end stage of a terminal illness or of a vegetative state with no reasonable prospect of cure. Placing a patient on artificial life support would, in such a situation, merely prolong the agony of the patient. Hence, a decision by the doctor based on what is in the best interest of the patient precludes an intent to cause death. Similarly, withdrawal of artificial life support is not motivated by an intent to cause death. What a withdrawal of life support does is not to artificially prolong life. The end of life is brought about by the inherent condition of the patient. Thus, both in a case of a withdrawal of life supporting intervention and withholding it, the law protects a bona fide assessment of a medical professional. There being no intent to cause death, the act does not constitute either culpable homicide or murder.”

➤ DOCTRINE OF INFORMED CONSENT

The Doctrine of Informed Consent is often seen not merely as a legal requirement but also as an ethical obligation. An individual has complete autonomy over his/her body and the right to choose the medical treatment/procedures he wishes to undergo. Right to Informed Consent entails that an individual must be informed of all the procedures, risks, benefits, fallouts involved in a medical treatment and he must freely consent to undergo such treatment.

The patient must be given all necessary information that he might need in order to make an informed and voluntary decision. His consent must be vitiated by coercion, undue influence or misrepresentation. The Doctrine of Informed Consent was invoked by courts to explain the importance of free consent in Passive Euthanasia. A person, if he is fit to do must expressly consent to withdrawal of medical treatment. If he is unfit to consent, his surrogates/next friend/family

ADVANCE DIRECTIVE/ADVANCE CARE DIRECTIVE/ADVANCE MEDICAL DIRECTIVE

Advance Medical Directives or Advance Directives (Ads) are documents that clearly specify an individual’s decisions and choices relating to his health care and medical treatment. The document also specifies that in case a patient is unable to communicate his consent, which persons are authorized to act in his behalf. The bench, in the common cause case, refused to use the term “living wills” and instead used the term “Advance Directives”. It held the following:

GUIDELINES FOR ADVANCE MEDICAL DIRECTIVES IN CASE OF TERMINALLY ILL PATIENTS AS LAID DOWN IN THE COMMON CAUSE JUDGMENT

- “ADs can be executed only by an adult who is of sound mind and in a position to communicate and comprehend the purpose and consequences of the AD. It must be voluntarily executed and without any coercion, inducement or compulsion. It must be in writing, clearly stating as to when and under what circumstances the medical treatment may be withheld or withdrawn.
- It should mention that the executor (i.e. the patient) may revoke the instructions at any time. It should specify the name of a guardian or close relative who will be authorized to give consent to refuse or withdraw medical treatment as per the AD. If there is more than one valid AD, the most recently signed AD will be considered.
- The AD must be signed by the executor in the presence of two attesting witnesses the jurisdictional Judicial Magistrate of First Class (JMFC), who must record that the AD was executed voluntarily and without any coercion.
- A preliminary opinion must be given by a Medical Board constituted by the Hospital comprising at least three experts in the medical field with at least 20 years of experience in the medical profession. The board will visit the patient and decide whether to certify AD. The certification of the Hospital Medical Board will be looked at by a second Medical Board constituted by the District Collector. The decision of the Board must be then conveyed to the JMFC who will visit the patient and authorize the patient’s decision.
- If the Medical Board does not permit the AD to be carried out, the patient, his family members, his doctor, or the hospital staff can approach the High Court under Article 226. A division bench constituted by the Chief Justice of the High Court will then decide whether to grant or refuse approval of the AD.

- The AD can be withdrawn or altered at any time, in writing. The instructions in the document must be given due weight by the doctors, only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness is incurable. In those cases where there are no advance directives, the procedure is different only in the aspect of the first step, which is the execution of the advance directive.
- These directions will remain in force till the Parliament makes a law.”

SHORTCOMINGS OF ADVANCE MEDICAL DIRECTIVES

The guidelines that follow after the advance directive has been executed for the purposes of enforcing the advance medical directive are simply too cumbersome and cannot be implemented in real life, especially in the current Indian scenario. It is understandable that the court aimed at preventing the misuse by unscrupulous family members and unethical doctors but such an elaborate procedure might just end up making sure that the provision is not used at all. The procedure has mandatorily three stages of decision-making boards and authorities before the living will can be enforced, this is absolutely impractical given the situation of the patient and his well-wishers. The process is lengthy beyond explanation especially considering the timeline they are operating against. Constitution of boards in the hospital, formulation of another medical board by the jurisdictional magistrate and asking the already overburdened JFMC to visit and analyse the matter before the living will is implemented, might seem very good on paper and as a scheme to check nefarious practices, but what good is a scheme if it cannot be implemented. The judgement fortifies the concept of individual bodily autonomy and exemplifies the doctrine of proportionality.

The court has undertaken an exhaustive and measured analysis of several factors surrounding Euthanasia and underlined the social, legal, moral, ethical and philosophical aspects pertaining to “Right to die with dignity”. In the words of legal scholar Gautam Bhatia:

“The court has carved out an exception to the principle of sanctity of life in cases where a person’s life has lost any meaning and the prolongation of life is no longer in his best interest. Comparative jurisprudence has also been of much assistance to the Court while undertaking this exercise, an exhaustive examination of the international jurisprudence having been conducted by the members of the bench.

Taking cue from the judgment in Visakha v. State of Rajasthan, (1997) 6 SCC 241, the Court has not only affirmed the right to die with dignity and to issue advance directives but has also provided detailed guidelines regarding the same.”

SUGGESTIONS FOR EFFECTIVE IMPLEMENTATION OF AMDS IN INDIA

In order to appreciate the verdict of the hon’ble court in **Common Cause**, it is imperative to appreciate the fact that although the judgement is a landmark step towards strengthening right to self-determination, however, the implementation of these directives can face certain challenges. Suggestions that can be effective for effective implementation of the guidelines have been listed hereunder:

- (A) The guidelines, as laid down by the apex court, stipulate that the attesting witness must “preferably” be independent. The researcher believes that this condition should be made mandatory considering malpractices, selfish motives and conflicts of interest.
- (B) It is a humble suggestion of the researcher that since AMDs are significant documents, a database should be maintained and the document should be linked to a person’s identity cards so that in case of an emergency the health care providers are aware of whether the person has an advance directive or not.
- (C) Any directive or policy is a dead letter without awareness and implementation. The masses should be educated and made aware about their “Right to die with dignity”. Especially so, because this new evolving fundamental right has nuances and intricacies and is susceptible to misuse. Furthermore, not just the population but also the officials who have a role to play in the procedure, as per the guidelines, also need to be trained and made aware of their significant role in the process such as jurisdictional magistrates and judicial magistrates.

REPORTS OF THE LAW COMMISSION RELATING TO EUTHANASIA

- In 2006, the Law Commission of India submitted its **196th Report titled “Treatment of Terminally Ill Patients (Protection of Patients, Medical Practitioners)**. It was also referred by the court to emphasize that once a terminally ill patient decides to refuse treatment, a doctor executing this decision will not be committing an offense and will not be considered guilty under Section 299 of the Indian Penal Code. **(Para 435)**
- After the Aruna Shanbaug case, the Law Commission submitted its **241st Report of Passive Euthanasia titled: “Passive Euthanasia - A Relook”**. The court referred to this report to underline the definition of Passive Euthanasia. The report highlighted that the right to die is being recognized in several jurisdictions and it should be legalized in India as well along with safeguards.

IV. CONCLUSION AND SUGGESTION

Due regard must be given to individual autonomy and a person's right to self-determination. Each person of sound mind has freedom to make choices about their life and determine their destiny. This autonomy has to be respected and the right to refuse medical care flows from the same. However, such decision might be bad in law if it not borne out of free consent, if the terms are clearly ambiguous or the decision is vitiated due to undue influence. Also, a person who is incompetent in law to take such decision cannot be allowed to do the same.

As per the Principle of Necessity, invoked in the Common Cause judgement, certain actions such as executions of AMDs/Passive Euthanasia are necessary in the face of aggravating circumstances. Sometimes a person is not fit to give express consent or choose the medical treatment he wishes to go through. In such circumstances, it is the doctors who must look after the best interest of the patients. Doctors decision to choose the treatment or course of action (might involve withdrawal of treatment) is essential in such scenario (patient's inability to communicate and choose for himself) to look after the best interest of the patient.

Article 21 underlines individual autonomy, dignity and right to self-determination. Forcing a patient to undergo suffering and pain when there is no scope for revival/cure is a dent in individual dignity. Hence, a terminally ill patient should be allowed to end his life and he has a right to do so under Article 21. Th Indian court have allowed only Passive Euthanasia under Article 21 and not Active Euthanasia.

The principle of patient autonomy coupled with the right to self-determination entail that a person is free to choose his/her medical treatment and procedures that he wishes to undergo.

It was held in **Aruna Shanbaug case** that a person is free to choose his mode and manner of treatment and if he's unfit to do so, his living will is a manifestation of his choices. If he's unfit to consent to withdrawal of medical care, his surrogates/next friend/family must be consulted and they should act in the best interest of the patient and free of pre conceived notions, malice or personal motives/considerations. Doctors must respect and abide by the choice of the patient if the former is satisfied that the patient is terminally ill and incurable. Refusing to treat a patient is different from withdrawing treatment being given to a terminally ill patient. Hence, passive euthanasia does not violate medical ethics. Neither does it make a doctor guilty under Indian Penal Code.

In the **Common cause judgement** in relation to Sections 299 and 300 of the Indian Penal Code, Justice Chandrachud has rightly remarked that:

"After weighing the various potential intolerable conditions that a patient would have to undergo if there was no probable cure and painful and non-effective treatments that a patient could have to endure, the decision by a doctor to withhold or withdraw medical intervention for a terminally ill patient is not with the intent to cause death. Thus, the act does not constitute culpable homicide or murder." He, therefore, held that allowing Passive Euthanasia and execution of AMDs is legally viable.

Euthanasia or the Right to Die is a significant facet of Right to Life and individual autonomy. International documents do not recognize the Right to Die. The reasons provided in the course of this research support the premise that Euthanasia should be considered a human right internationally and should be given recognition in international documents. The sanctity of human life is fortified by the existence of a quality life.

Many argue that Euthanasia is a slippery slope. The researcher believes that adequate safeguards and measures must be put in place to avoid any rule out the scope of abuse. Municipal laws cannot be alike. Legal recognition of Euthanasia depends, largely, on the socio-cultural circumstances of each independent state. However, recognizing it as a human right internationally might provide the needed push to underdeveloped and traditionally backward countries which are reluctant to brainstorm the idea of Right to Die.

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