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Right to Life include Right to Die with Dignity, extend to Euthanasia: Need for Legislative Reforms

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Right to Life include Right to Die with Dignity, extend to Euthanasia: Need for Legislative Reforms

ABSTRACT

For decades, the Indian courts have wrestled with human dilemma that's what happened when the modern medicine keeps a body breathing longer than the dignity die. This article primarily deal with the interpretation of "Right to life" enshrined under article 21 to include "right to die with human dignity". Which expand to include passive euthanasia. From early total prohibition of cell determination to landmark ruling like common cause and Harish Rana where judiciary steadily carved out that right to die with dignity is integral part of Article 21. Despite the profound legal shift, the parliament has yet remain largely silent and not enacted any legislation to regulate and govern the euthanasia. This article critically examines the widening gap between the progressive constitutional jurisprudence and its stagnant legislative reality. Along with it also deals with the need for the evolution of scope of medical jurisprudence of advance medical directives and euthanasia toward the active euthanasia. By analysing comparative framework from Nations where assisted dying is safely regulated and permitted, such as Netherland, Canada and Austria alongside the legend concern regarding the were vulnerable population. The ultimate cool of this article is to ensure that the law finally catches of with medical reality, honouring a persons final movement at the time of his death in forced endurance but with genuine human dignity.

KEYWORDS

Right to Life, Right to Die, Human Dignity, Active Euthanasia, Passive Euthanasia, ADM (Advance Medical Directive).

1. INTRODUCTION

The legal jurisprudence surrounding the end-of-Life Care in India has evolved dramatically over the past to few decades from *P. Rathinam v. Union of India* [1]to *Harish Rana v. Union of India.*[2] From total prohibition of self-determination of medical care to advance medical directive and constitutional recognition of passive euthanasia in rare of the rare case

[1] *P.Rathinam vs Union Of India*,1994 AIR 1844.
[2] *Harish Rana vs Union Of India* ,2026 INSC 222.

under strict judicial and medical supervision.

1.1 Contemporary Significance

However, the current society have advanced far more then it can be imagined in field of medical technology. Such as invention of medical ventilators, artificial nutrition and hydration, cardio respiratory support system, an advance organ support system which can sustain basic biological function long after the patients cognitive capacity body integrity and quality of life has detreated permanently.

While medical technology have significantly advanced to expand human survival, but the mere survival does not mean and animal like existence in the cage. Through the advance medical systems the natural that process has been frequently converted into a prolong artificial and agony ridden experience. Especially in the case of advanced stage- IV metastatic cancer, autotrophic lateral sclerosis, Neurodegenerative disorder. Where the patient laws his cognitive thinking and law in many instances fail to provide him the adequate relief of end of life.

1.2 Legal Relevance

The "right to life" in compasses under article 21 [3]of the constitution of India also include the "right to a dignified life". Where a person who is terminally ill, but mentally competent to declare in curable by doctors and find out that sustaining a dignified life is not possible by any means, he should not be forced to continue and undignified life which can be altered. It also include the right to refuse the life prolong in medical treatment when suffering from incurable condition like ALS, to continue suffering against his will is a violation which personal autonomy, bodily integrity, and his personal liberty to uphold the principal of a dignified life in this to form a terminally Ill, sound mind person must be a lot to and his reversible suffering peacefully at his own will necessary for longing it against his will.

1.3 Present Legal Gap

This article deals with legal gap in the current legal and legislative system where, even after decades and numerous case laws have been passed by honourable supreme court there has been no legislative enactment have taken place on the basis of euthanasia guidelines lay down under *Harish Rana v. Union of India*.

[3] Constitution of India, 1950, Article 21.

1.4 Objective of Research

The key object is of this article are:

1. To critically evaluate the constitutional jurisprudence of right to die with dignity under article 21.
2. To evaluate the distinction between passive and active euthanasia.
3. To analyse the international legal framework in the countries where active euthanasia is practised.
4. To propose a comprehensive statuary framework that established statutory enactment for procedure and safeguard for euthanasia in India.

2.LITERATURE REVIEW

This academic article basically deals with the evolution of euthanasia in India under article 21 of constitution of India. It contains the judicial pronouncement of series of cases from *P. Rathinam v. Union of India* to *Harsh Rana v. Union of India*. The legal cap which despite the judicial development exist in the present legislative system. Along with a trajectory which can be opted for insuring right to die with human dignity in India.

3. RESEARCH METHODOLOGY

This article employees a normative, comparative, and empirical social legal research design.

4. WHAT IS EUTHANASIA?

Euthanasia is a medical practice of ending patients' life performed by expert medical practitioner in order to alleviate there suffering. It's comes from the ancient Greek word "EU" which means "Good" and "Thanatos" which means "Death", it literally means good death. It's objective is that rather than subjecting someone to a slow, painful and in human death, the euthanasia should be administer to that patient, to provide him a rather considerably better, dignified, and peaceful death.

4.1 Kinds of Euthanasia

The euthanasia is a critical concept in a medical jurisprudence. Which can be categorised into two broad categories:

(i) **Passive Euthanasia:** According to Justice A.K Sikri "*passive euthanasia occurs when medical practitioner do not provide life*

> *sustaining treatment i.e treatment necessary to keep a patient alive or remove patient from Life sustaining treatment. This could include discontinuing treatment, disconnect life-support machines or feeding tubes or not caring out lifesaving operation or providing life extending drugs.*"[4]

(ii) **Active Euthanasia**: whereas, According to Justice Dipak Misra "the active euthanasia refers to the act specific overt act done to end the patience life"[5] it can be referred as an act done by a medical practitioner which hasten the dying process of the patient or which terminate the life of the patient before the end of its natural span.

But the euthanasia in nature is of two kinds, first voluntary and secondly non voluntary euthanasia.

(a) **Voluntary Euthanasia:** where a patient with competent cognitive mind authorised the practitioner to to kill him either from administering any active substances which fasten the death or him to withdraw or with whole the life sustaining measure to allow him to pass away by end of natural life.

But where a patient has loss his cognitive thinking or is unable to communicate with medical practitioner, in those situations non voluntary euthanasia comes into role.

(b) **Non-voluntary Euthanasia**: as it name suggest it is unlike voluntary euthanasia, administered without the direct consent of the patient. It is generally administered on the consent of family, friends, or legal practitioner authorised to act on patient 's behalf.

The involuntary euthanasia is generally considered murder in many part of the world.

4.2 India's Stand of Euthanasia

In India there is not any substantive legislative provision which expressly bar or allows euthanasia. All the present legal jurisprudence has been developed to judicial pronouncement and interpretation of article 21 of constitution of India, through a series of cases.

5. EVOLUTION OF JURISPRUDENCE OF RIGHT TO DIE

The jurisprudence of euthanasia in India begins from the landmark is a *State v. Sanjay Kumar*[6] (1985) in which the honourable quote highlights

[4] Harish Rana vs Union Of India ,2026 INSC 222.
[5] Ibid
[6] State vs Sanjay Kumar on 6 October, 2025.

the harshness of criminalizing the suicide attempts under IPC 309.

Later in 1994 in *P. Rathinam vs Union of India* the honourable supreme court struck down the section 309 IPC, and held that right to life includes right to die. But this pronouncement was later over rule in the landmark case of *Gian Kaur v State of Punjab* [7]were justice *Jagdish Saran Verma* differentiated between the right to die with dignity and right to die and held that article 21 of constitution of India does not include right to die the previous pronouncement of *P. Rathinam*.

5.1 Judicial development of Passive euthanasia

The concept of passive euthanasia was first time arose in the landmark case of *Aruna Shanbaug v Union of India*[8], a 2-judge bench case. In which the first time the demand of passive euthanasia was arose in India. In which justice *Markandey Katju*, sadly dismissed up petition by the night to Grand passive euthanasia to Aruna on the basis of medical report and observe that *"one is dead, when one's brain is dead"*.

But lay down the guideline which can be followed in the rare of their cases to allow passive euthanasia in India. That is;

a) To file a writ petition under article 226 of constitution before honourable High court.

b) Such petition must be filed after giving due notice or getting consent from patient's family, friends and legal hiers

c) passive euthanasia shall only be administered to patients in vegetative states, suffering from an incurable disease or conditions.

d) Upon writ High court sale a point a three member doctor committee to give there opinion on this matter in form of report.

The honourable supreme court also directed the legislature to enact a law of euthanasia, until then the guidelines late down under this case law will be followed. (As happen in *Vishaka v. State of Rajasthan)*[9]

5.2 Further Advancement of Scope Euthanasian

This was not end, it was further develop and reaffirm by the supreme

[7] Smt. Gian Kaur vs The State Of Punjab, 1996 AIR 946.
[8] Aruna Ramchandra Shanbaug vs Union Of India & Ors, AIR 2011 SUPREME COURT 1290.
[9] Vishaka & Ors vs State of Rajasthan,AIR 1997 SUPREME COURT 3011.

court in the landmark case of *Common cause v. Union of India*[10] in which supreme court recognise the right to die with dignity and the radical 21 as a integral part of the constitution and permit the active euthanasia through an advance medical directive or a living will.

In which court also observed and relax the guideline laid down under *Aruna Sangbhag v. Union of India*[11], by:

1. Legalising the with holding or withdrawal of life support system like went to listen for terminally in patient

2. Allowing and other bad mental capacity to voluntary draft and advance medical directive to specify the treatment of the preference which they want to be administered if the loss there decision making capacity.

3. Could also relax the attestation requirement of advance medical director by judicial magistrate first class. Now it can be attested by a notary and gazetted officer.

4. The court also reduce the medical experience required for the primary and secondary medical board from 20 years to minimum of 5 years.

In the case of *Harish Rana v. Union of India* [12] the honourable court in his landmark verdict mark the first practical judicial implementation of passive euthanasia and right to die with dignity framework established under the common cause ruling.

In this 2 judge bench case the honourable code permitted the withdrawal of life support system of Harish Rana, who was in a permanent vegetative state since 2013. In which the court held at the clinically assisted nutrition and hydration are part of medical treatment rather than a basic care and allowed there withdrawal if it only prolong the existence and enhance the suffering of patient. And providing there the family and doctors were received the unity from criminal liability upon the act done under the best interest test.

The Learned court specially *Chief Justice Dipak Misra* (of that time) directed that the guideline provided under *Harish Rana v. Union of India* would be deemed as law of the land until the legislature has enacted the competent legislation.

However, even after decades of judicial development, and years after

[10] *Common Cause (A Regd. Society) v. Union of India*, AIR 2018 SC 1665.
[11] Ibid.
[12] Ibid.

laying down the judicial pronouncement and guideline on the passive euthanasia, No adequate legislation was ever enacted in parliament to address these medical challenges related to fundamental right to life.

Hon'ble Supreme Court, in the landmark case of *Anwar Ali Sarkar v. State of West Bengal*[13], provided a famous twin-test of Intelligible Differentia, as follows:

a) The basis for distinction must be based on intelligible differentia, i.e., a logical And understandable distinction.

b) It must have a rational nexus to the object sought.

This test applies in situations where any statutory or legal distinction is operating as a Permissible classification under the purview of Article 14[14], to check whether such classification is based on logical, understandable facts, and does have a proper relation to the objective such distinction aims to achieve. It is important for all such legal distinctions to satisfy this test, in order to be considered in Consistence with the Right to Equality under Article 14. If we put the legal distinction made between the active mode of euthanasia, i.e., Administration of a lethal substance, and passive mode of euthanasia, i.e., withholding or Withdrawing life-sustaining treatment, it is evident that this distinction fails this important Test.

The basis for distinction often provided is that the passive mode of euthanasia is a process That allows the person to naturally pass away, whereas active mode of euthanasia involves Actively assisting in ending a person's life against the natural process. However, passive Mode is not a completely painless and dignified process, for it leaves the patient to Struggle and succumb to his condition in whatever amount of time it takes, and in case Where the patient is struggling in too much pain, he is sedated with drugs and passes away In an unconscious state of mind. On the other hand, active euthanasia provides for a quicker, more peaceful way of Ending life, where a person does not have to suffer from prolonged pain and can spend his Final moments with his loved ones in full conscience.

Upon observance carefully, we can see in both ways, an act, whether commission or omission, Leads to death. In such case, calling one act permissible and other non-permissible, when both are performed with same intent and result the same, makes the difference line purely Semantic in nature. It also creates an arbitrary classification, where

[13] The State Of West Bengal vs Anwar All Sarkarhabib Mohamed,1952 AIR 75.
[14] Constitution of India, 1950, Article 14.

terminal patients on machines can chose for passive withdrawal, while similar patients not on machines are denied relief as active Method is prohibited. The distinction makes it so that a patient is forced to slowly die a painful death by an Omission, just to avoid label of active assistance in death. It creates prolonged agony Instead of protecting the dignity of life of the patient. The distinction also fails to show rational nexus. It fails to explain clearly why Withdrawing life support is viewed as a dignified way to end of life while active mode Which serves the same purpose and is done with same intent, in less time and with less pain Involved, is prohibited.

As held in *E.P. Royappa v. State of Tamil Nadu,*[15] equality is a dynamic concept and cannot Be limited to traditional boundaries. It was also stated that equality and arbitrariness are Sworn enemies and state action must be valent, not based on extraneous, irrelevant Principles. The distinction between active and passive mode of euthanasia fails the test of Intelligible differentia, and also is arbitrarily favouring one over the other. It is therefore, Inconsistent and violate of Article 14.It is well-known that Article 21 encompasses the Right to Personal Liberty, and also Encompasses the Right to Bodily Autonomy and Integrity, as held in the case of K.S. Puttaswamy. The Right to Bodily Autonomy and Integrity allow a competent adult control over their Own physical body, and life choices which affect them. As such, when a person faces an inevitable, painful death, he must get to decide life choices Regarding the manner in which his life ends with dignity and comfort.

The act of prohibiting active relief to a terminally ill patient an making him undergo a Forced passive withdrawal makes it appear that the law is trying to treat a dying person's Body like a state-controlled property, by making them serve as unwilling subjects to a Painful, prolonged method of end of life which also violates their dignity.

Which clearly seen that the distinction between medical Assistance in dying, and letting the patient slowly and painfully die on their own, is based on an unrealistic perception, that letting the patient struggle and die on their own by not doing anything is somehow more humane than medically assisting them to end their Suffering peacefully and quickly.

The basis for distinction is clearly static, and not as ethical as it is portrayed before us. It Cannot be stated that one method is humane and other is not, when in fact the former Involves much more pain and prolonged suffering. Both methods involve the same intent And deliver the same result. In the present case, Late Mr. Rao was suffering from ALS. His entire body was slowly and Painfully giving up on him, and he had

[15] E. P. Royappa vs State Of Tamil Nadu & Anr,1974 AIR 555.

to helplessly suffer the agony for a long period .Before he could finally pass away. A vibrant, lively person, who was forced to spend the Remainder of his life in his painful bodily confinement, would definitely want a dignified End to his life, in a dignified manner. To put him in deep sedation, or to let him struggle Painfully, in the name of dignified end of life, is not dignified at all, and is morally wrong.

The late former President of India, *Dr. Pranab Mukherjee, famously and correctly Described the constitution as a living document, not a relic cast in stone. The constitution Is indeed alive and dynamic in nature.*[16]

Former Minister of Law of India, and the chairman of Constitution Drafting Committee, *Dr. Ambedkar, also called the Constitution as a "Vehicle of Life whose spirit is the 'Spirit of Age."*[17]

As a living document, Constitution must constantly adapt to the need of the hour and must Not stay bound to principles out of time. While there has been work on legalization of passive mode of euthanasia, there has not Been significant progress towards providing a better alternative for a true dignified end of Life. Hence, a strict legal distinction between withdrawing treatment, and administration of Lethal substance to end suffering cannot be upheld under evolving dimensions of law and Progressive society.

6. DEVELOPMENT OF LEGISLATION OF EUTHANASIA IN FOREIGN COUNTRIES

One of the biggest key features of our Constitution has been taking inspiration and Observations from sources all around the world, and developing a better legal framework Based on their study and application of the finest minds of our country towards law-making. Global legal framework on active euthanasia as a means to dignified end of life is rapidly Evolving. Around the globe, the concept of euthanasia is not limited to passive one in their judicial pronouncement or guidelines. But, they have enacted them into their legislation and even further interpretation of it, by including active euthanasia in some of rare of the rare cases.

i. Netherlands: the Netherlands have legalised euthanasia since 2002 under the specific circumstances. Which includes physician assisted suicide. This was developed to allow the person suffering

[16] President of India, Constitution of India a Living Document, Not Relic Cast in Stone, Says President, Press Release, Rashtrapati Bhavan (Apr. 16, 2016)
[17] B.R. Ambedkar, 13 Dr. Babasaheb Ambedkar: Writings and Speeches 1210 (Vasant Moon ed., Education Department, Government of Maharashtra, Mumbai, 1994).

from incurable disease who after receiving every possible relative care to die with a human dignity.

1. **Belgium**: The Belgium Parliament though "Belgium Euthanasia Act 2002[18]" adopted the medical practice of euthanasia within their country.

2. **United States**: even in several states of USA such as Oregon, Washington, Vermont, California, Hawaii and other the medical practice of active euthanasia is permissible, without any punitive consequences.

3. **Canada**: in 2016 *Carter v. Canada*[19] the supreme court of Canada legalise medically assisted death for terminal illness without any cure. As a consequence of which the Canadian parliament as enacted a legislation to regulate and legalise the euthanasia.

4. **Australia**: in all six states of Australia, the voluntary physician assisted suicide world legalise and permissible. But such practices where only limited to advanced, incurable, irreversible, intolerable suffering causing disease and illness.

5. **Portugal and Uruguay**: even the Portugal and Uruguay have passed the legislation legalising euthanasia, but which are still in the implementation period.

7. CRITICS FOR LEGALIZATION OF EUTHANASIA

Every coin has two sides, even the medical practice of euthanasia is not free from it.

i. **Expansion of criteria**: there are high chances that the euthanasia which were enacted in its only passive form limited to terminally ill patient will expand to cover the active euthanasia, and may be used as a tool of suicide by a healthy individual rather than a patient.

ii. **Risk to vulnerable section**: legalisation of euthanasia can be used as a weapon against the vulnerable section of society. Specially against those elderly, disable, chronically ill, women family members, whose family want to avoid the financial burden and palliative care.

iii. **End of Hope**: legalisation of euthanasia will also be equivalent of closing of that last door of hope which the patient or their family

[18] The Belgian Act on Euthanasia of May, 28th 2002.
[19] Citation: Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331.

member had for recovery. It will indirectly influence them to off to die rather than being alive as burden on their family.

iv. **Social and Religious drawback**: in many social and religious practices the life is deemed to be sacred, and consider as the ultimate gift of the god. And ending it prematurely is considered as greatest taboo.

8. RECOMMENDATION

While the judiciary has collectively through which landmark ruling have expanded the scope of article 21 to encompass "right to die with dignity" is an integral part of" right to life". Which include passive euthanasia, advance medical directives etc.

Nonetheless, the absence of adequate parliamentary inacment create a administrative ambiguity, medical hesitation and uneven access of this right. So according to my my analysis and legal understanding of the present scenario which were built after studying various legal jurist, judgement and comparing where is foreign enactments, the following recommendation should be adopted within India to a bridge this legal gap.

1. **Codification of National Law**: India should established a centralised national legislation legalising the euthanasia, under strict medical and legal observance.

2. **Medical Board**: the central government with collaboration of state government should quantity one or more permanent medical board dedicated for the cases related to euthanasia. Ensuring that everyone should be given equal opportunity even in the matter of life and death.

3. **Digital Registry**: the government with collaboration with various institution should establish a digital platform where the competent other can register the advance medical directive insuring that the hospital nationwide can instantly verify the peace in pre express wish during the medical crisis.

4. **Penalized invalid Euthanasia:** the government so the strictly penalise the invalid in euthanasia conducted under threat, coercion, or undue influence, equivalent to culpable homicide and humongous fine.

5. **Speedy Procedure**: they should through enactment empower the district level or hospital level primary and secondary medical board comprising of specialist to review the cases with him 48 to

72 are eliminating the need for many Terry High court intervention unless a dispute arises among family members.

6. **Safeguard against Abuse**: the government should in an adequate safeguards against the euthanasia performed in abuse of their authority and power, for causing the patients that for a monetary and financial benefits.

9. CONCLUSION

India has taken a long journey in the road of evolution of medical jurisprudence of euthanasia. From decades it's have evolved from P. Rathinam case to Harish Rana. With due process of time it has expanded the scope of article 21 from mere interpretation as "right to life" to "right to die with a human dignity". From P. Rathinam all the way to Harish Rana, supreme court has repeatedly stepped up by doing the heavy legislative work with the parliament has avoided, by refusing to establish that the individual has a right to refuse cruel and animal like life. When facing terminal illness like ALS or last stage cancer.

The judiciary by aligning with human empty has interpreted article 21 broadly by including the right to die with human dignity as a integral part of it. And establishing the guidelines for adoption of passive euthanasia in rare of the rare cases where there is no chance of recovery by withholding a withdrawing the medical treatment so that the patient could pass on by natural end of his life.

Yet the judicial guideline without any legislative back in does not result in a smooth functioning in a practical world. the lack of a clear unified parliamentary stand you leave the doctors anxious and families confused and even close the door for patients who are eager to opt it. While the countries in abroad have successfully adopted this model of passive euthanasia and further advanced into the practice of physician assisted death also called active euthanasia, along with the safeguard to fight against any negative impact of it. However, India stills like behind decades in legislative enactment and parliamentary reforms by neglecting from performing there duties.

To a bridge this decade of legal gap the parliament needs to take reformative actions by codifying the judicial guidelines by building a strong and detailed National legislation, legalizing and regulating the Euthanasia, Advance medical directives, Living Will, Constitution of tribunals and medical board and punishment for non-contravention. So that this right so not remain only to the privileged once but can also be exercise by the citizens khud do not have adequate access to financial means all lawyers to institute writs in high courts and Supreme Court.

Therefore, achieving the objectives lay down under article 14 and 21 of the constitution of India by providing equality and just this and right to life to all its citizens without any discrimination.