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RIGHT TO DIE: LAW AND LEGISLATIVE

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ABSTRACT

There has long been a debate as to whether our Constitution should be called "Constitution of India" or "Constitution of India". Although the Constitution has adopted provisions on fundamental rights from other constitutions, we should not hesitate to call our Constitution ours in the truest sense of the word. The Golden Triangle of the Constitution of India, consisting of Articles 14, 19 and 21, has always been an instrument in the hands of the Supreme Court of India when a fundamental rights issue was raised. Where the constitution guarantees everyone the right to life and personal liberty itself. The question arose whether the individual has the right to decide on the complete termination of life. For a long time, the question was answered in the negative and the primacy of the constitution was argued.

The following research article addresses the same issue considering recent developments in the country's constitutional and criminal justice systems. After decades of debate, the Supreme Court has finally decided to break its silence in the historic Aruna Shanbaug case, in which the court recognized that the right to die is an integral part of the right to life. In the following research article, the author offers an in-depth examination of the topic and explains its historical background and constitutional philosophy. The author went a step further and expanded the research field to include a critical analysis of the judgment of Arun Shanbaug and conducted a comparative analysis of the legality of euthanasia in countries such as India, the United States, Great Britain, the Netherlands, and Switzerland. As the concept of euthanasia is a young concept in the Indian legal system, the author has also highlighted its advantages and disadvantages which will help the reader to better understand the argument.

Keywords: Constitution, Golden Triangle, Supreme Court, Philosophy, Criminal Justice

INTRODUCTION

The right to die is a concept based on the belief that a person has the right to make any decision about the end of their life. Possession of this right is often understood to mean that a terminally ill or unwilling person should be able to take their own life or refuse life-prolonging treatment. The fundamental question that arises is whether human beings should have the right to die and what principle might justify that right. The right to life is a fundamental and natural human right. Our democracy is a democracy, that is, by the people, by the people and for the people. The constitution establishes the power that belongs to the people. It is the power of the people for their own good. The constitution creates rights and duties. All our desires turn into rights - even our feelings, our emotions determine the rights and responsibilities we have. Just as we have the right to live with dignity, we should also have the right to die when the law requires it in a particular situation. On May 11, 2005, the Court of Appeal asked the two ministries whether a terminally ill person should have the right to refuse ventilator support after medical experts concluded that they had reached the point of no return. Whether the right to life can include the right to non-life or the right to die is disputed in several cases. Death can be defined as the end of life. Death can be divided into two types: (i) natural death and (ii) unnatural death. It can be caused by both action and inaction of a person. Bringing about the extinction of life

unnaturally, by harming yourself or someone else, is morally reprehensible and punishable. Every living being in the Lawyers world desires to live long lives and prolong their lives by any means possible, and promoting the cessation of such lives is not the intended result of this law. Constitution is a social document. It is the society in its political aspect. We cannot understand its nature without understanding the chief characteristics of the society. If the constitution is such that it has taken into its consideration, the social set up, then only will it stand the test of time. constitution and society grow, develops together, and gets intertwined in each other. The constitution considers change and developments in the society. They are:

- a) Right to education
- b) Right to clean environment
- c) Right to life
- d) Right to go abroad.
- e) Right to privacy.
- f) Right against solitary confinement

MEANING OF RIGHT TO DIE

The right to die refers to the concept that a person has the right to choose whether to end their life when faced with an incurable disease, unbearable condition, or other circumstances that seriously affect their quality of life. The right to die is often associated with euthanasia or assisted suicide when a person enlists the help of a doctor or loved one to end their life peacefully and with dignity. However, the right to die is a hotly debated topic with differing views on the ethical, moral, and legal implications of allowing a person to choose to end their life. The notion of the right to die is often associated with euthanasia or assisted suicide, which is the deliberate intervention of a third party to end the life of a person who wishes to die. However, there are different forms of the right to die, including the right to refuse life-sustaining treatment or to have that treatment terminated. In some countries the right to die has been recognized by law and regulated by laws and policies, while in others it remains a highly contentious issue with no clear legal framework. The debate about the right to die is complex and involves legal, ethical, moral, and religious considerations.

RIGHT TO DIE- LAW AND LEGISLATION

The right to death or euthanasia has been debated in India for many years. Euthanasia is the intentional termination of a person's life to relieve them of suffering. In India, euthanasia is illegal under Section 309 of the Indian Penal Code, which criminalizes attempted suicide. However, the Supreme Court of India has recognized the right to die with dignity as a fundamental right within the framework of the right to life and personal liberty enshrined in the Constitution of India. In India, the right to die has been a controversial issue with conflicting opinions from different sections of society. On the one hand there are those who argue that individuals should have the right to choose when to end their suffering, on the other hand opponents argue that this right is at odds with the sanctity of life and is easily abused can. However, in 2011 the Supreme Court of India legalized passive euthanasia under certain conditions. Passive euthanasia is the denial of treatment or life support that can artificially prolong a person's life. The court ruled that a person can give an advance or "will to live" by expressing a willingness to withhold treatment if they become ill or are in a vegetative state. The Supreme Court has also established guidelines for the passive euthanasia process and

appoints a Medical Committee to determine a person's medical condition and whether withholding treatment is in their best interests. In addition, the court stated that the decision to discontinue treatment should be made by a close relative or guardian if the person is unable to make such a decision. In 2018, a bill entitled the Treatment of Terminally Ill Patients (Protection of Patients and Doctors) Act was introduced in the Indian Parliament, which aims to legalize passive and active euthanasia. However, the project met resistance and was eventually withdrawn. There have been several attempts to legalize euthanasia in India, including the introduction of the Treatment of Terminally Ill Patients (Protection of Patients and Physicians) Act 2021, which aims to legalize passive and active euthanasia in certain circumstances. However, the law has not yet been passed.

FUTURE PERCEPTION OF RIGHT TO DIE

The prospects for the right to die in India remain uncertain as the issue continues to be hotly debated and controversial. While the Supreme Court of India has recognized the right to a dignified death and upheld the constitutional validity of passive euthanasia, active euthanasia and assisted suicide remain illegal in India. One direction for the future of the right to die in India is the development of clearer legal and political guidelines related to end-of-life decisions. This may include further clarification of the legal status of passive euthanasia and the development of a legal and ethical framework to guide decisions regarding euthanasia and assisted suicide. Another direction is the development of greater public awareness and education on end-of-life issues, including discussion of palliative care, pain management and the importance of living wills. This can help individuals and their families make informed decisions about end-of-life care and ensure their wishes are respected. Attempts have been made to introduce legislation to provide legal protection for those who choose to end their lives, but these efforts have so far been unsuccessful. There is also a need to increase public discourse and education on this issue, as many people in India are still unaware of the concept of the right to die and its implications for end-of-life care. The COVID-19 pandemic has also highlighted the importance of the right to die and end-of-life decisions, as many people have had to make tough decisions about their own care or that of their loved ones. This could lead to more awareness and discussion in India and pave the way for future changes to the legal framework. The future of India's right to die will depend on many factors, including changing societal attitudes, legal and ethical issues, and advances in medical technology and palliative care.

SENSITIZATION ON RIGHT TO DIE

The Right to Die is a complex and sensitive issue that involves legal, ethical, and moral considerations. Supporters argue that individuals have the right to choose when and how they die, particularly when they are facing unbearable suffering and inferior quality of life due to terminal illness or chronic pain. They contend that allowing individuals to end their lives through assisted suicide or euthanasia can provide a humane and dignified way of dealing with their suffering. Proponents of the Right to Die argue that individuals have the right to make decisions about their own lives, including the decision to end their suffering and pain when faced with a terminal illness or an inferior quality of life. They argue that allowing individuals

to choose when and how they will die is a matter of personal autonomy and dignity, and that denying this right is a violation of basic human rights.

Opponents of the Right to Die argue that it goes against the sanctity of life and that taking the life of another person, even with their consent, is morally and ethically wrong. They also argue that allowing euthanasia or assisted suicide can be easily abused and may lead to the wrongful death of vulnerable individuals, such as the elderly or disabled. The issue of the Right to Die is a complex and multifaceted one that requires careful consideration of legal, ethical, and moral implications. While some countries have recognized this right and have legalized assisted suicide or euthanasia under certain circumstances, others have chosen to prohibit such practices.

CONSTITUTIONAL VALIDITY OF RIGHT TO DIE

The *Aruna Shanbaug v. Union of India*: Case is a landmark judgment by the Indian Supreme Court that laid down guidelines for passive euthanasia in India. The case involved a nurse, Aruna Shanbaug, who had been in a persistent vegetative state for over 40 years after being sexually assaulted and strangled by a hospital ward boy. The hospital staff who had been taking care of her had approached the court seeking permission to withdraw life support systems and allow her to die peacefully.

In its judgment, the Supreme Court upheld the constitutional validity of passive euthanasia and laid down the following guidelines and procedures for the same:

1. Passive euthanasia may be permissible in certain circumstances, such as when a person is in a prolonged vegetative state with no hope of recovery.
2. The decision to turn off life support systems must be made by the Supreme Court after reviewing the medical reports and the opinion of the medical team.
3. The decision to remove life support systems should be made in the best interest of the patient and with due regard to the patient's wishes and preferences.
4. The decision to remove life support systems should be made considering the views of the patient's family and relatives.
5. The decision to phase out life support systems should be made in a transparent and accountable manner, with appropriate safeguards to prevent abuse.
6. The deactivation of life support systems should be performed by qualified healthcare professionals with dignity and with respect for the rights and dignity of the patient.

IMPORTANCE OF RIGHT TO DIE UNDER INDIAN CONSTITUTION

The right to life is an important aspect of individual autonomy and self-determination and is considered a fundamental human right. Although the Indian Constitution does not specifically mention the right to die, it has been interpreted by the Supreme Court of India to include the right to die with dignity as a fundamental right. The constitutional recognition of the right to die is important because it recognizes the individual's right to make choices about his own body and life, including at the end of his life. It also ensures that government and society have a responsibility to respect and protect these rights. In addition, the constitutional right to die is important in addressing the issue of end-of-life care. The right to die with dignity enables people to make informed decisions about treatment in the event of terminal illness or permanent

loss of consciousness, which can help alleviate suffering and ensure that medical care is used in the most appropriate, ethical, and compassionate way becomes. In addition, the right to die with dignity can also help to combat societal prejudice and discrimination against terminally ill and disabled people and ensure that they are treated with dignity and respect. Incorporating the right to die into the Indian Constitution is important to affirming the autonomy and self-determination of individuals, protecting their rights, and ensuring ethical and compassionate end-of-life care.

LANDMARK CASES RELATING TO RIGHT TO DIE IN INDIAN CONSTITUTION

There have been several landmark cases in India that have dealt with the issue of the right to die and euthanasia. Some of the most notable cases include:

Gian Kaur v. State of Punjab 1969 AIR 946, 1996 SCC (2) 648: This was one of the first major cases in India to consider the issue of euthanasia. The Indian Supreme Court ruled that the right to life does not include the right to die, and that euthanasia is not legally permissible in India.

Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC (2011) 2 SCC (Civ) 280: This case involved a nurse who had been in a vegetative state for over 40 years. The Indian Supreme Court ruled that passive euthanasia, in the form of withholding or withdrawing life support, is permissible under certain circumstances.

Common Cause v Union of India (2017) 10 SCC 1: The Indian Supreme Court ruled that individuals have the right to make a living will, which allows them to specify their end-of-life medical treatment if they become terminally ill or permanently unconscious. The court also held that passive euthanasia is legal under certain circumstances, such as when the patient is in a vegetative state with no hope of recovery.

Rajagopal v. State of Tamil Nadu 1994 SCC (6) 632: The Indian Supreme Court in this case, upheld the validity of the Advance Medical Directive of a patient suffering from cancer, and ordered the hospital to follow the directive.

Shanta Devi v. Union of India 2019: In this case, the Indian Supreme Court rejected the plea for passive euthanasia filed by a patient suffering from Acute Myeloid Leukaemia.

CONCLUSION

In summary, the right to die in India is a complex issue that involves legal, ethical, and moral considerations. While the Constitution of India recognizes the right to life and personal liberty, the interpretation of this right in the context of end-of-life care is subject to legal interpretation and debate. The Supreme Court of India recognized the right to die with dignity as part of the right to life under Article 21 of the Constitution and, in the case of 'Aruna Shanbaug, established guidelines for passive euthanasia. However, the issue of euthanasia and assisted suicide remains illegal and continues to be the subject of legal and ethical debates in the country. The future of the right to die in India will depend on how the legal, ethical, and moral debates on this issue evolve over time and how the Indian legal and judicial system responds to these debates. It is important that stakeholders continue to engage in constructive discussions and debates on this issue to ensure that the rights and dignity of people at the end of life are respected and protected, while ensuring that the sanctity of life is preserved. The right to die is an overly sensitive and emotional issue in India and requires a balance between individual autonomy and the sanctity of life. Greater legal and ethical clarity is needed on this issue to ensure end-of-life support that respects the dignity and autonomy of the person, consistent with

the principles of equity and justice. While the right to die in India remains a contentious and contentious issue, overall, it is important that discussions and debates continue to find a solution that respects the rights of individuals while providing adequate safeguards against abuse and misapplication of the law.

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