

Legalizing *Euthanasia* in India: A pro choice argument for dignified death

Sharmila Ghuge*

Abstract

In the contemporary epoch, the world has contemplated its focus towards the emergence of globalization, industrialization, internet revolution, technological developments, etc. India is not an exception to the accelerated development across the globe. However, despite India's immense augmentation in several fields, the country has not substantiated desired achievements in providing a required legislation for protecting and safeguarding the rights of terminally ill patients which leads to a pro-choice argument with a pressing need to legalize euthanasia. In fact, the advances in medical science have made the determination of time of a person's death complicated and controversial as never before. This medical intervention of prolonging death has revived the debate of right to die with dignity. The modern era hosts several factors reinforcing the debate of euthanasia, such as, the emergence of various diseases leading to terminal illness, artificial life support systems, pain and suffering borne by the patients, legalization of various forms of euthanasia in few countries, etc. Additionally, gamut of landmark judgments of different courts across the globe has indeed added tremendous momentum to the movement of legalization of euthanasia.

In the present research paper an attempt is made to shed vivid light on the fact that though right to life is celebrated has a glorious aspect of Article 21 of the Indian Constitution; it fails to bestow right to dignity to terminally ill patients in their last phase of life by forcing them to live a life which is not worth living as it encompasses enormous pain and agony. The prevailing plight of terminally ill patients is analysed in the light on Indian Constitutional law and the recent Bill for terminally patients. It is recommended that, for indifferent approach

* Asst. Professor, Jitendra Chauhan College of Law, Ville Parle (W), Mumbai. The present article is based on the author's book "Legalizing *Euthanasia*: A pedagogues Perspective".

towards recognition of terminally ill patient's right to have euthanasia legalized would be fatalistic for a vibrant country like India. There is an immediate need of enacting an independent, self-contained and well equipped legislation to provide right to die with dignity to terminally ill patients in India.

Keywords: Euthanasia and Right to die with dignity.

Introduction

Life and death are two most imperative facts of human life. Birth, is rejoiced as it introduces life whereas death is the most poignant reality which takes away human life. In the contemporary era, the advances in medical science have made the determination of the time of a person's death complicated and controversial as never before. This medical intervention of prolonging death has revived the debate of right to die with dignity *i.e.*, *euthanasia*.¹ The debate of *euthanasia* has augmented at an accelerating stride across the globe. Though *euthanasia* has gained revived prominence, it has been debated since centuries.

The current illustriousness of *euthanasia* can be attributed to a number of interrelated factors, such as, emergence of various diseases leading to terminal illness, artificial life support systems, pain and suffering borne by the patients, legalization of various forms of *euthanasia* in few countries, *etc.* Additionally, gamut of landmark judgments of different courts has indeed added tremendous momentum to the movement of legalization of *euthanasia*.²

As every coin has two sides, the advancement of health care technology is not an exception to it. Some patients are benefited by the modern medical technology whereas some are forced to live by medical intervention. This unnecessary prolongation of dying process due to tremendous advances in sustaining human life results as a negative consequence of the highly advanced medical technology. In fact, for many people, it is not death that they fear, but the possibility of dying in a painful and undignified manner. Thus, the concern

1 'Right to die with dignity' and the term '*euthanasia*'/ 'physician assisted suicide' have been used interchangeably in the present article.

2 Airedale NHS Trust v. Anthony Bland (1993) 1 All ER 321 (HL) at 860, Bush v. Schiavo, 885 So 2d 321(Fla 2004), Chabot case, Netherlands Jurisprudentie, District Court Groningen, 1995 March, Cruzan v Director, Missouri Department of Health, 497 U.S. 261 (1980), Washington v. Glucksberg 521 U.S. 702 (1997), Vacca v. Quill 138 L.Ed.2 d 834, In Re Quinlan 355 A.2d 647 (N.J. 1976), Postma Netherlands Jurisprudentie, No. 183, District Court of leeuwarden, Feb, 1973.

about the quality of life for the dying has prompted renewed interest in *euthanasia*. Seneca, the Roman Stoic philosopher, who lived from 4 BC to 65 AD, has endorsed the importance of a good and dignified death which forms the root of the *euthanasia* debate. According to Seneca, quality of life should prevail over the quantity of life.³

The right to die issues have been debated widely in Canada, Germany, England, Australia, Japan, France, Michigan, California, Montana, Albania, Mexico, *etc.*⁴ According to public opinion polls, an overwhelming majority of people believe that doctors should be legally allowed to comply with a patient's request for assistance in dying in certain exceptional circumstances.⁵

In this civilized society, law is extremely essential for appropriate conduct of individuals and good governance in the State. As law has become indispensable for human beings, it is pertinent to understand the limitation of law for issues related to life and death. Both life and death have immense importance in human life. The enormous progress in medical science and the enactment of a few legislations⁶ have resulted in control over the birth of human beings. Life today can be said to be under the dominance of law and medical technology. Likewise, can death also be controlled by law at least in some exceptional cases is a moot question to be pondered upon. The pro *euthanasia* debate focuses on the right to die with dignity in rarest of the rare cases. Etymologically, the word *euthanasia* means 'good death' from the Greek *eu* for good, and *thanatos* for death.⁷ In common usage, it means a painless or peaceful death of a patient who is in severe pain and distress as a result of a terminal or incurable illness.⁸ In the interest of clarity, it is also necessary to deal with

3 SENECA, LETTERS TO LUCILLIUS , excerpts from Letter 70, in THE STOIC PHILOSOPHY OF SENECA, (ed.), and Trans. Moses Hadas, New York: Norton, 1958; *See also*, <http://www.meaningsoflife.com/philosophy> ; <http://www.en.wikisource.org> ; <http://www.jesusneverexisted> ; <http://www.amazon.com> , [accessed on 22/4/2010].

4 BATTIN, MARGARET, ENDING LIFE: ETHICS AND THE WAY WE DIE 6 (Oxford University Press, 2005).

5 OTLOWSKI, MARGARET , VOLUNTARY EUTHANASIA AND THE COMMON LAW 2 (New York: Oxford University Press, 1997).

6 For *e.g.*, THE ASSISTED REPRODUCTIVE TREATMENT ACT, 2008, Australia; THE ASSISTED HUMAN REPRODUCTIVE ACT, 2004, Canada; HUMAN FERTILIZATION AND EMBRYOLOGY ACT, 1990, UK.

7 WILLIAM, THOMSON, A.R., DICTIONARY OF MEDICAL ETHICS & PRACTICE 119, Bristol: John Wright & Sons Ltd, 1977. *See*, HENRY, CAMPBELL, BLACK, (ed.), BLACK'S LAW DICTIONARY 554, 6th edn., ST. Paul, USA: West Publishing Co, 1990. *See also*, ONIONS, C. T., (ed.), THE SHORTER OXFORD ENGLISH DICTIONARY 689, Vol. I, Oxford: Clarendon Press, 1973, David, Walker, THE OXFORD COMPANION TO LAW 441, Oxford: Clarendon Press, 1980.

8 SKYES, J.B., (ED.), THE CONCISE OXFORD DICTIONARY 332, 7th edn., Bombay: Oxford University Press, 1982.

the ‘death with dignity’⁹, ‘physician assisted suicide’¹⁰ and ‘right to die’¹¹ terminology as they are used interchangeably. Physician assisted dying should also be distinguished from ‘mercy-killing’.¹² There is a widespread agreement that these are ambiguous phrases as there can never be right to die because it violates the sanctity of life principle. But the proponents of *euthanasia* disagree with this, as the law should not force to live a life which is not worth living.

Countries, such as, Netherlands, Switzerland, Belgium, Luxemburg, and State Oregon, Washington, California, and Vermont in the United States have legalized *euthanasia* in different form as it suits. These countries and States have enacted laws in accordance to include within their legal structure the concept of self-determination, autonomy, and dignity to the patients who are suffering from terminal or incurable illness, by allowing them to die a dignified death.

Likewise, the debate for legalization of *euthanasia* in India is sparked after the case of *Aruna Ramchandra Shanbaug v. Union of India and others*¹³. Recently, the Union government has published the ‘The Medical treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill 2016’ on website and had invited suggestions form the public till 19th June 2016.¹⁴ The said Bill proposes legalization of passive *euthanasia* in India. In the light of this Bill a few questions emerge, such as, would the terminally ill patients be benefitted by allowing only passive *euthanasia* and not active *euthanasia*, would be its effect on the fundamental right to life with human dignity conferred upon every individual under the Indian Constitution? Does proper respect for principles of autonomy and self-determination compel legalization of *euthanasia*? And would legalization, in purely utilitarian calculus,¹⁵ represent the legal rule or solution that would provide the

9 The proponents of *euthanasia* emphasise the legalization of *euthanasia* to protect the dignity of terminally ill patients during the last phase of life. Hence term it as ‘death with dignity’.

10 Physician assisted suicide means allowing a terminally ill patient die with the assistance of the physician.

11 Right to die is a demand for terminally ill patients on par with right to life guaranteed and protected by law.

12 Mercy killing is an act of intentionally killing a person by a family member or a friend of the victim for reason of pity or mercy. This involves not only terminally ill patients but also differently abled individuals or person suffering from any other diseases. Hence mercy killing should not be confused with physician assisted suicide only because both have a common element of sympathy. Mercy killing is a gross violation of human rights as the differently able people have a well equipped set of laws enacted in India. For *e.g.*, THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995, MENTAL HEALTH ACT, 1987, REHABILITATION COUNCIL OF INDIA ACT, 1992, NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999.

13 2011 Indlaw SC 148.

14 Draft Bill available at <http://www.mohfw.nic.in/index1> site accessed on 10/06/2016

15 JEREMY, BENTHAM, A FRAGMENT ON GOVERNMENT AND AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATIONS 125, 1st edn., Oxford: BASIL BLACKWELL, 1948. *See*, JEREMY, BENTHAM, BENTHAM’S THEORY OF LEGISLATION 3, vol. II, 1st edn., London: Oxford University Press, 1914.

greatest good for the greatest number of persons? Both our social and personal choices in life and death matters reflect timeless philosophical and conceptual problem solving challenges, often in topical new contexts because of advances in medical science and human technology.¹⁶ In fact, “in many countries more people are directly affected by the radical change...of technology and science”.¹⁷ The significance of exploring the immediate need of *euthanasia* in the society is an important question to be contemplated at this point.

Constitutions across the globe protect and promote the right to life and liberty. This right also assures a right to life with dignity. The same is guaranteed under Article 21 of the Indian Constitution. The proponents of *euthanasia* advocate a right to die with dignity to uphold the right to life with dignity even in the last phase of life. A patient suffering from terminal illness is deprived of a dignified life as he is forced to bear the pain and suffering during his last phase. It is relevant to evaluate the status of right to die under the Indian Constitution.

Right to Die and the Indian Constitution:

The Indian Constitution is presumed to be a self-contained *Supreme lex* of the land. The Constitution of India is the guarantor, protector, and promoter of Fundamental Rights for citizens and in certain circumstances even for non citizens in India.¹⁸ The Fundamental Right to equality is guaranteed under Article 14 enumerated in Part III of the Constitution and is of great relevance in the right to die debate.¹⁹ The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. The equality principle emphasizes that the “like should be treated alike and not that unlike should be treated alike.”²⁰ In the light of this rule of equality, the terminally ill patients should not be considered as equal to other individuals. Health condition of a person without any terminal illness should not be equated with the health condition of a terminally ill patient. The health condition of terminally ill patients should be considered for reasonable

16 HARRIGAN, BRYAN, ADVENTURES IN LAW & JUSTICE 119, 1st Indian Reprint, Delhi: Universal Law Publishing Co. Pvt. Ltd, 2005.

17 MADDEX, ROBERT. L., CONSTITUTIONS OF THE WORLD viii, 2nd edn., Washington D.C: Congressional Quarterly Inc., 2001.

18 For *e.g.*, Article 15, 16, 19 are available only for Indian citizens, whereas Article 14 and 21 provide constitutional protection to non-citizens along with citizens, *see*, Jain, M.P., *Indian Constitutional Law* 856-857, 1079, 5th edn., Nagpur: Wadhwa & Co., 2007. *See also*, *Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988.

19 Article 14 provides- “State shall not deny to any person equality before the law or equal protection of laws within the territory of India.” For detail discussion, *see*, *Sujata, Manohar, T.K.Tope’s Constitutional Law of India* 73-77, 3rd edn., Lucknow: Eastern Book Company, 2010.

20 Singh, Mahendra, P., (ed.), *V. N. Shukla Constitution of India* 44-47, 11th edn., Lucknow: Eastern Book Company, 2010.

classification. When one follows the ratio of reasonable classification in *euthanasia* debate it can be observed that the equality provision is grossly violated in case of terminally ill patients. Terminally ill patients are considered equal to other individuals whose health condition is normal or a person suffering from any diseases other than terminal illness.²¹ Whereas the equal protection of laws guaranteed under Article 14 does not indicate that the same laws should apply to all persons situated in different circumstances. It is quite emphatic that Article 14 unequivocally permits reasonable classification but forbids class legislation. Reasonable classification is based on an intelligible *differentia*²² which distinguishes persons. This *differentia* for reasonable classification should have a rational relation to the object to be achieved by the law.²³ The Apex Court has laid down a few propositions in *Ramkrishna Dalmia v. Justice Tendolkar*,²⁴ which exemplify that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by itself. The rational distinction must be based not on mathematical calculations or geometric equations, but should be considered on human characteristics of different groups.²⁵

At this juncture it is pertinent to analyse whether the terminally ill patients can be considered for reasonable classification. Undoubtedly, the deteriorating health condition in terminal illness ought to be considered as the intelligible *differentia* that paves way for reasonable classification in favour of terminally ill patients. In terminal illness it is not only the suffering tolerated by the patient but also the death awaiting phase which is burdensome. Indisputably, death in any case is a poignant fact but at least in case of sudden or natural death there is no additional distress of prolonged suffering. Whereas a person suffering from terminal illness dies every moment with severe pain and agony, bearing it for number of days, months or years.

Further, examining *euthanasia* debate in the light of right to abortion, unquestionably targets right to equality. When there is a right to abort foetus in exceptional circumstances,

21 Terminal illness means active and progressive illness for which there is no cure and the prognosis is fatal. Terminal illness is also defined as illness in which the application of life-support procedures serves only to postpone death of the patient. Mason, J.K., & McCall, Smith, *Medico-Legal Encyclopaedia* 552, London: Butterworth's, 1987. See, http://www.articlealley.com/article_81253_17.html, [accessed on 29/1/2010].

22 *Supra* note 20 at 47.

23 *K. Thimmappa v. Chairman Central Board of Directors SBI*, AIR 2001 SC 467. See, *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 314 (1976). See also, *County Board of Arlington v. Richards*, 434 U.S. 5, 7 (1977), *Reed v. Reed*, 404 U.S. 71, 75-76 (1971).

24 AIR 1958 SC 538.

25 Compare *Bain Peanut Co. v. Pinson*, 282 U.S. 499, 501 (1931). See, *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

homogenously there should be a right to *euthanasia* in incomparable conditions.

Taking into consideration, the fact that the concept of equality cannot be “cribbed, cabined and confined within traditional and doctrinaire limits,”²⁶ the request for reasonably classifying terminally ill patients needs a fresh consideration. Law should always be understood as a realist conception, in order to improve it as an efficient technology of regulation as per the changing time.²⁷

In fact Justice Rehnquist in his dissenting judgment had opined that the very purpose of legislation should be to draw lines in such a manner that different people are treated differently.²⁸ Though principle of equality should prevail, there is no doctrinaire requirement that the legislation must be couched in such extreme situations.²⁹ A similar view has been held by the Indian Apex Court in *Aruna Ramchandra Shanbaug v. Union of India and others*,³⁰ which has positively opened up the discussion for passive *euthanasia* in India for the first time.

Most of the opponents of *euthanasia* reject legalization on the grounds that it is immoral to allow or assist a person to die. However, morality is a relative concept which differs from person to person, time to time and place to place. Apart from morality, life has always been considered as sacred, inviolable, valuable and worthy of respect and protection. Destruction of life is equated not only to an ethical, moral wrong but is punished as a legal wrong all over the world. All the democratic States protect right to life of individuals. Similarly, the Indian Constitution provides that “[n]o person shall be deprived of his life or liberty except according to the procedure established by law.”³¹ The right to life is guaranteed under Article 21.

The right to life has been incorporated in the Indian Constitution as one of the most important rights in the Chapter of Fundamental Rights. The right to life under Article 21 of the Indian Constitution does not mean mere animal existence but it guarantees a life full of honour and dignity.³² The transformation of a right to life into the right to life with human

26 E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 583 at 555. For opinion on this issue refer, H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 437, vol. 1, 4th edn., New Delhi: Universal Law Publication CO. Pvt. Ltd.

27 COTTERREL, ROGER, THE POLITICS OF JURISPRUDENCE 185, London: Butterworths, 1989.

28 Trimble v. Gordan, 430 U.S., 762, 779 (1977).

29 West Coast Hotel Co. v. Parrish, 300 U.S. 379, 400 (1937).

30 *Supra* Note 13

31 Art. 21, THE CONSTITUTION OF INDIA, 1950. For detail discussion *see*, H. M. SEERVAI, CONSTITUTIONAL LAW OF INDIA..., *supra* note 26 at 1232, vol. 2, 4th edn.,

32 Maneka Gandhi v. Union of India, AIR 1978 SC 597; Keshvanand Bharti v. State of Kerala, AIR 1973 SC 1461; Sunil Batra v. Delhi Administration, AIR 1978 SC 1675; Francis Coralie v. Union of India, AIR 1978 SC 597; People’s Union for Civil Liberties v. Union of India, AIR 1997 SC 568.

dignity is a result of the commendable interpretation by the judiciary in a few landmark judgments.³³ The judiciary through a plethora of cases has not only protected the right to life but has also expanded the horizon of life within the constitutional frontier. Such dignified life includes independence and participation in decision making, self-fulfilment and self-respect. Unfortunately this is not witnessed in practical life. For *e.g.*, if a person is suffering from degenerative muscular dystrophy, a disease which leads to terminal illness and is incurable, the person loses all his rights in the real sense as he is no more able to carry on his daily functions independently. He is left in a miserable condition facing pain, agony and suffering, which shows no sign of self-respect and dignity. Such a phase in life of terminally ill patients makes it inevitable to rethink about active *euthanasia*, as it provides a painless death to those who desperately await their death for number of days and months and years full of pain and suffering.

Under Article 21, assorted facets of life, such as, right to privacy,³⁴ right to livelihood,³⁵ right to pollution free environment,³⁶ right to education,³⁷ right to shelter,³⁸ right to speedy trial,³⁹ right to free legal aid,⁴⁰ *etc.*, have been included within the ambit of right life. However, the right to die with dignity has not been included as a facet of right to life.

The first case which came before the judiciary for right to die discussion was *Maruti Sripati Dubal v. State of Maharashtra*.⁴¹ The petitioner was arrested for an attempt to commit suicide under Section 309 of the *Indian Penal Code*. The constitutionality of Section 309 was challenged as violative of Articles 14, 19 and 21. It was contended that Fundamental Rights have their positive as well as negative aspects. For *e.g.*, the freedom of speech and expression includes freedom of silence,⁴² freedom of association includes freedom not to join association.⁴³ Likewise, freedom of trade and occupation

33 Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295, Chandra Raja Kumari v. Police Commissioner Hyderabad, AIR 1998 AP 302, People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568, Consumer Education and Research Centre v. Union of India, (1995) 3 SCC 42, M.C. Mehta v. Union of India, (1985) 4 SCC 463, *et. al.*

34 Mr. X v. Hospital 'Z,' AIR 1995 SC 495.

35 Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.

36 Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.

37 Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SC 645.

38 Chameli Singh v. State of Uttar Pradesh, (1996) 2 SCC 549.

39 Aktari Bi v. State of M.P., AIR 2001 SC 1528.

40 Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1360.

41 1987 Cri LJ 549.

42 Article 19 (1) (a) of the Constitution guarantees to the citizens a fundamental freedom of speech and expression. Freedom of speech and expression includes freedom of silence which has been established by the Supreme Court in *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

43 Article 19 (1) (c) of the Constitution guarantees to the citizens a fundamental freedom to form association.

includes freedom not to trade.⁴⁴ The Court held that logically it must follow that right to live as recognised under Article 21 will include right not to live or a right to die at least in compelling situations.⁴⁵ The Court observed that when a person is a victim of unbearable physical ailments, or decrepit physical condition disabling the person from taking normal chores, the loss of all senses, extremely cruel or unbearable conditions of life making it painful to live, should have a right to die. The Court finally concluded that Section 309 is *ultra vires* the Constitution being violative of Articles 14 and 21 and thereof must be struck down.⁴⁶ But, earlier, the Andhra Pradesh High Court in *Chenna Jagdeeswar v. State of Andhra Pradesh*,⁴⁷ held that the right to die is not a Fundamental Right encompassed within right to life under Article 21 of the Constitution and hence Section 309 of the *IPC* is not unconstitutional.

However, in *P. Rathinam v. Union of India*,⁴⁸ the decision in *Maruti's case* was upheld by the Supreme Court. In this case the petitioners had challenged the validity of Section 309 of *IPC* on the grounds that it violates Articles 14 and 21 of the Constitution. The petitioner had made an attempt to commit suicide. The issues before the Court were whether Section 309 was unconstitutional and whether right to die was included under right to life. The Court held that Section 309 of *IPC* was violative of Article 21 and hence declared unconstitutional. The Court held that it is a cruel and irrational provision to punish a person for his failure to commit suicide who makes an attempt out of pain, distress and agony. The Court also held that right to life under Article 21 includes right not to live a forced life or a right to die. However, the Court rejected the plea for legalization of *euthanasia*.

Nevertheless, later, in *Gian Kaur v. State of Punjab*,⁴⁹ a five judge Constitution Bench of the Supreme Court overruled the *P. Rathinam* judgment. Accordingly it has been held in *Gian Kaur v. State of Punjab*,⁵⁰ that extinguishing life by physician's assistance cannot be read as a part of right to life. A five judge Constitution Bench of the Supreme Court held that right to life under Article 21 of the Constitution does not include right to die. The Court made it very clear that right to live with human dignity would mean the

The freedom to form association implies also the freedom not to form, or not to join association has been established by the Supreme Court in *Sarya Pal Singh v. State of Uttar Pradesh*, AIR 1951 All. 674. See, *V. G. Row v State of Madras*, AIR 1951 Mad. 147.

44 Article 19 (1) (g) of the Constitution guarantees that all citizens shall have “the right to practice any profession, or to carry on any occupation, trade or business.” The right to carry on a business includes a right to close it. The State cannot compel a citizen to carry on business against his will. *Hathising Mfg. Co. v. Union of India*, AIR 1960, SC 923. See, *Excel Wear v. Union of India*, AIR 1979 SC 25.

45 *Supra* note 41 at 748.

46 *Id.*, at 755.

47 1988 Cr L J 549.

48 (1994) 3 SCC 394.

49 AIR 1996, SC 1257.

50 *Ibid.*

existence of such right up to the end of natural life. The Court accordingly held that Section 309 of the *IPC* is not violative of Article 21 of the Constitution. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination of life and hence is incompatible and inconsistent to be robed within the scope of Article 21.⁵¹ The Court also discussed the context of a dying person, who is terminally ill or is in a persistent vegetative state.⁵² In such cases the person may be permitted to terminate life by premature extinction of his life in those circumstances. This category of cases may fall within the ambit of right to die with dignity as a part of right to live with dignity. In such cases the process of natural death has already commenced. These are not cases of extinguishing life but only accelerating conclusion of the process of natural death which has already commenced. However, the Court rejected physician assisted suicide and unnatural termination of life.

In all these three cases though right to die with dignity and assistance in dying has been discussed and decided by the judiciary, the issue did not focus on the *euthanasia* or death with dignity for terminally ill patients. Undoubtedly, right to die juxtaposes the right to life. But, right to die with dignity in case of terminal illness should not be considered on par with a right to die in normal circumstances. The law does not accept *euthanasia* as a part of right to life because it seems to be contrary to Article 21 which protects life. It should be noted that capital punishment though extinguishes life has not been held violative of Article 21.⁵³ In fact it has been held that the death penalty should be awarded in rarest of the rare cases.⁵⁴ The State, thus, has a right to take away life of individual by following the procedure established by law in compelling situations. On the similar grounds *euthanasia* should be considered in rarest of the rare cases. Moreover, it has been held by the Supreme Court that delay in execution of death sentence exceeding two years would be a sufficient ground to invoke the protection of Article 21.⁵⁵ It was observed that the prolonged detention to await the execution of a death sentence is unfair and unreasonable. This issue raises a pertinent question, that the phase of awaiting death for a criminal who has been awarded death penalty is unfair and unreasonable, then why are the terminally ill patients forced to await their death? Just because of lack of legislative will and judicial grit! Terminally ill patients are not criminals, they are innocent individuals who are the victims of certain diseases, yet, ironically, the law does not allow them to end their lives peacefully.

The expansive interpretation of Article 21 by the judiciary has lead to the inclusion of several rights within the right to life and their elevation to the status of a fundamental

51 *Id.*, at 953.

52 *Ibid.*

53 Jagmohan Singh v. Uttar Pradesh, AIR 1973 SC 947.

54 Bachan Singh v. State of Punjab, AIR 1982 SC 1325.

55 T. V. Vatheeswaran v. State of Tamil Nadu, AIR 1981 SC 643, Sher Singh v. State of Punjab, AIR 1983 SC 465, Javed Ahmed v. State of Maharashtra, AIR 1985 SC 231, Triveni Ben v. State of Gujarat, AIR 1989 SC 142.

right.⁵⁶ Apart from other facets, even right to electricity has also been declared as a part of right to life. In *M.K. Acharaya v. C. M. D.W. B. S. E. Distribution C. Ltd.*,⁵⁷ the Court has held that the right to electricity is right to life and liberty in terms of Article 21 of the Constitution. It was held that in the modern days with the rise in the temperature no person can live comfortably without electricity, hence it is a part of right to life. Thus in this case the Court has considered the comfort of life as an integral part of right to life, then why the law turns a blind eye to the comfort of an ailing terminally ill patient? What an irony that craves for quick attention of all concerned!

It is quite evident that Constitution safeguards individual's life from all dangers and inhuman treatment. But, the right to die or *euthanasia* states about taking away of such constitutionally protected life of individual. Right to life guarantees right to live with human dignity and in case of terminally ill patients there is complete loss of dignity. In fact, the demand for legalization of *euthanasia* should be considered as a request that prompts for Constitutional protection. The law may include a provision to avoid humiliation and disgrace to the terminally ill patients by allowing *euthanasia*.

At the stake are a few extremely important ethical, legal and social issues, such as, the extent of our right to control our bodies⁵⁸- right to self-determination and autonomy, the distinction between killing and allowing dying, the potential consequence of legal and medical change, and how one understands the meaning and value of life and death. Thus, this debate of right to die focuses on a crucial aspect: whether it is lawful and ethical at least in certain conditions to allow a person to die or help another person die a dignified death. The nations which have legalised any form of *euthanasia* whether have done it with great courage, humanity and legal skill need to be verified.

Moreover, India may also consider enactment of law legalizing *euthanasia* as a progressive step towards true democracy in the present millennium. Demand for legalizing *euthanasia prima facie* targets the emotions towards life and death. However, the right to die debate should be resolved by appropriate legislations. If Statute is not enacted at the time when it is most required, the legal system would be ineffective as it would fail to take

56 For e.g., Right to privacy, *R Rajgopal v. State of Tamil Nadu*, (1994) 6 SCC 632, *Mr. X v. Hospital 'Z'*, AIR 1995 SC 495. Right to health, *Parmananda Katara v. Union of India*, AIR 1989 SC 2039, *Paschim Bangal Khet Mazdoor Samiti v. State of W. B.*, (1996) 4 SCC 37. Right to livelihood, *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180. Right to pollution free environment *M. C. Mehta v. Union of India*, (1987) 4 SCC 463, *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715. Right to water, *Mrs. Susetha v. State of Tamil Nadu*, AIR 2006 SC 2893. Right to travel abroad, *Satwant Singh v. Asst. A.P.O.*, AIR 1967 SC 1836. Right to education, *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858, *Unni Krishnan v. State of Andhra Pradesh*, (1993) 1 SC 645. Right to shelter, *L.I.C of India v. Consumer Education and Research Centre*, AIR 1995 SC 1811. Right to free legal aid, *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1360. Right to speedy trial, *Aktari Bi v. State of M.P.*, AIR 2001 SC 1528.

57 AIR 2008 Cal. 47.

58 *Schlendroff v. Society of New York Hospital*, (1914), 105 N.E. 9s2 (N.Y.C.A)

account of factual diversity in the society.⁵⁹ In fact the legal change on physician assisted suicide may be achieved by challenging the present criminal prohibitions in India and by amending constitutional rights.⁶⁰

Similarly, consideration should be given not only to the existing constitutional provisions but also to the interpretation of these provisions. The constitutional interpretation should be given the widest possible amplitude for the beneficial construction. This should be taken into consideration especially when the social conditions keep changing from time to time. If the Constitution is interpreted by the standards laid down 50 years ago in certain cases it may prove completely outdated and unrealistic in the present scenario.⁶¹

Presently, apart from the Constitution the *Indian Penal Code*⁶² also prohibits *euthanasia*.

A Need for Reform for the Right to die with Dignity in India:

The problems faced by the aging population were never dreamt in the past. In India, the senior citizens in the family were treated with due respect, care and love in the past. They were not looked upon as a burden on the family. Whereas toady in the materialistic world the moral values have undergone drastic changes.⁶³ Family members suffering from terminal illness are not treated with respect and dignity.

Furthermore, diseases like advanced cancer, chronic pulmonary diseases, neurological disorders, degenerative muscular dystrophy, AIDS, multiple sclerosis, *etc.*, are some diseases which make death difficult and painful, a growing fear of long lingering death, the consequence of changes in the way people die occasioned by more chronic illness, have added to the immediate demand for legalisation of active *euthanasia*.

Moreover, questions of constitutional essentials and matters of basic justice should be settled by a public political conception.⁶⁴ And the task should be to resolve the issue of constitutional measurement, free of emotion and predilection.⁶⁵ Consider the example of Family planning, birth control, and abortion which were once condemned, are now accepted worldwide as inevitabilities conferring rights and imposing responsibilities

59 Dissenting judgment by Justice Black in *Morey v. Doud*, 354 U.S 471, (1957).

60 LEWIS, PENNEY, *ASSISTED SUICIDE AND LEGAL CHANGE 1*, Oxford: Oxford University Press, 2007.

61 BINDRA, N. S., *INTERPRETATION OF STATUTES 1281*, 10th edn., New Delhi: Lexis Nexis, 2007.

62 Section 299, Section 300 of the IPC.

63 The enactment of The Maintenance and welfare of Parents and Senior Citizens Act, 2007, proves the fact that the moral responsibility of taking care of elderly members of the family has now become a legal provision.

64 RAWLS, JOHN, *THE LAW OF PEOPLE 122*, Delhi: Universal Law Publishing Co. Pvt. Ltd, 2008.

65 WALLACE, MENDELSON, *THE AMERICAN CONSTITUTION AND THE JUDICIAL PROCESS 229*, USA: The Dorsey Press, 1980.

upon the concerned in the welfare States. Due to the potential power resulting from biomedical research in such areas as genetic engineering, test tube babies, cloning, and artificial insemination man appears completely under the control of technology. It should be noted that all these developments are legally accepted. Unfortunately, a long tradition of humanistic thinking from the ancient Greek concept of “the good death”, commonly known as *euthanasia* has not been legally accepted in a few countries. The question which arises is why cannot *euthanasia* be legalised when abortion is gloriously legally accepted?⁶⁶ Both involve extinction of life, in fact, in abortion a mother decides for the foetus’s life⁶⁷ whereas for *euthanasia* the patient himself makes a request, a much stronger argument!⁶⁸ The suffering and pain a person undergoes during his last phase of prolonged illness is not shared by the society, in fact, it is the person alone who bears the agony. Why does law compel such a person to live? Only because State is duty bound to protect the life of individuals? It is a fair expectation that, in normal circumstances the State by all means has a duty to protect the life of individuals, but in rarest of rare cases where the life is miserable than death, there has to be an exception to the rule.⁶⁹ Cases where a patient is in a persistent vegetative state with no hope of recovery, should he be kept alive or should the treatment be stopped and assist to relieve him from the burden of a painful life? In such cases, there is need to find out whether the patient should be left free to choose his death, especially, when there is rise in number of patients requesting physician assisted suicide in India.⁷⁰

Though there are no legal provisions on *euthanasia* at present, there should be a continuous creative adaptation of the law to changing social conditions.⁷¹ And as an

66 Roe v. Wade, 410, U.S. 113, (1973). This landmark judgment stands as a historic precedent for proponents of *euthanasia* which is argued on similar lines for legalizing abortion.

67 In fact in India there are innumerable cases of not only illegal abortions but also cases where a mother is forced by her family members to abort the pregnancy. See, Stephen, Kent, “Forced abortions” <http://www.en.wikipedia.org> , [accessed on 30/12/2010]

68 DEREK, HUMPHRY, *DEATH WITH DIGNITY 70*, New Jersey: Coral Publishing Co,1995.

69 Death penalty also extinguishes life but it is a lawful provision. Death penalty can be awarded only in the rarest of the rare cases, Bachan Singh v. State of Punjab, AIR1980, SC 898.

70 Requests of Physician assisted suicide made in India- In November 2004, Mr. Saroj Singh from Orissa had fractured his limbs and spinal cord, he was bedridden for months together in crucial pain, sought permission for right to die. In December 2004, Chess Champion K. Venkatesh had appealed to the Supreme Court for death with dignity as he was suffering from degenerative muscular Duchenne’s muscular dystrophy for 20 years. In 2001, The Patna High Court dismissed Tarakeshwar’s plea for *euthanasia* for his wife who was comatose for 16 months. 79 year old Giriraj Prasad Gupta petitioned the Rajasthan High Court for death with dignity as he was suffering from poor vision, high diabetes, heart disorders and complex prostate problems. See, Sinha, Kounteya, “Is it okay to pull the plug” THE TIMES OF INDIA, Mumbai, Friday, June 16, 2006, p. 12. A few death petitions were put before the former President of India, Dr. A. P.J. Abdul Kalam. An impoverished 70 year old Hakimuddin’s three sons were suffering from a rare genetic ailment that weakens the limbs, he had requested for death with dignity for all his three sons who were above 30 years of age. Mohammed Yunus from Orissa had pleaded for *euthanasia* for his four children who were victims of limb girdle muscular disorder. Ashok Kumar had requested for right to die for his 12 year old son who was suffering from aplastic anaemia. See also, *Mumbai Mirror*, Sunday, May 6, 2007, p. 15.

71 STONE, JULIUS, *LEGAL SYSTEM AND LAWYER’S REASONING’S 323*, Sydney: Maitland Publications Pvt. Ltd,

outcome of transformation not only the *Constitution* but also other laws have undergone certain changes in India.⁷² Especially in the right to die debate, the law has remained unchanged whereas the medical technology has progressed at an accelerating pace. The modern medical technology makes its deliberations over the right to life and right to die issues even more agonizing.⁷³ Hence to relieve the patients suffering from terminal illness there should be a law to include right to die for terminally ill patients.

Conclusion:

Due to the ever-increasing medical skills, pharmaceutical and technological advances, on one hand and on the other, rise in more number of acute incurable diseases, it has become unavoidable to think about an easy and dignified exit from life. Allowing an easy death does not mean that every person will be in need of *euthanasia*. If it is legalized it shall be applicable only on a voluntary request of the patient and in exceptional circumstances such as incurable diseases, prolonged illness, unbearable pain and deteriorating condition of the patient. It can be fairly averred that the right to die a painless and easy death is equally important to the right to life and right to health. It is the duty of the doctor not only to take care of the patients' health but also to relieve the patient from pain and suffering, and while doing so the doctor may help the patient to die, as in certain cases death is the only mode of relieving a patient from his unbearable pain. While expressing a similar view Francis Bacon has stated that the office of the physician is not only to restore the health but to alleviate pains and not only reducing pain but when it may serve to make a fair and easy passage.⁷⁴ For the very reason that no person would prefer to spend one's last days hooked up to a dozen of equipments, number of tubes inserted through the nose for breathing, through throat for feeding and through natural orifices or surgical slits, it shall be in the interest of terminally ill patients to legalize *euthanasia*. No one would either prefer their dear ones make fruitless efforts financially, physically and emotionally, draining themselves only to await death of the patient. The most important and pressing aspect for speaking in favour of *euthanasia* is the fear of losing control of one's life and body, loosing the personal autonomy, becoming dependant for daily courses, and compromising with an unacceptable quality of life on the death bed. To save a person from being forced to undergo all this, there should be a skilfully drafted safe legalisation for right to die or physician assisted

1968. See, JAIN, M.P., *OUTLINES OF INDIAN LEGAL HISTORY* 493, 4th edn., Bombay: N.M. Tripathi Private Ltd, 1987. See also, Robert. A. Sedler, "Abortion, Physician-Assisted-Suicide and the Constitution: The view from without and within" 12 NOTRE DANE J. L. ETHICS & PUB. POL'Y. 533. (1998).

72 Amendments to the Indian Constitution, see, 1st Amendment Act in the year 1951 and the recent one, the 95th Amendment Act of 2009. See also, The Hindu Succession (Amendment) Act, 2005. The Hindu Succession Act, 1956, S. 6 has been amended to include the daughter in the coparcenary ownership. DAS, P.K., *HINDU SUCCESSION* 27, 2nd edn., Delhi: Universal Law Publishing Co., 2007.

73 FRED, FRIENDLY, W., ET. AL., *THE CONSTITUTION* 208, New Delhi: Arnold Heinemann Publishers, 1984.

74 WEATHERALL, D.J., ET. AL., (ED.), *OXFORD TEXTBOOK OF MEDICINE* 4349, Vol. 3, 3rd edn., Oxford: Oxford Medical Publications, 1996.

suicide which shall definitely provide relief and comfort to a number of sufferers, and shall also relieve prosecution worries for those physicians who perform the act covertly. It would provide assurance to people that their last phase of life shall end comfortably without the fear of agonizing death. Undoubtedly there is considerable scope for abuse of such legislation leading to the misuse of *euthanasia*, but laws well crafted after adequate homework would definitely help in avoiding such misuse to a greater extent.

If one is forced to live a life which is not worth living not because of financial problems, love frustration, family relations or failure in life but because of unbearable pain which cannot be alleviated by any medicine, a country cannot claim to be free and democratic in the real sense. Thus, releasing a terminally ill patient from the burdensome hopeless medical treatment and helping him die peacefully, definitely will be a step towards fulfilment of democracy in letter and spirit. The democratic welfare States provide various freedoms to its citizens, but if a person cannot control his crucial phase of existence, what real freedom is there in this life? It is humbly submitted that the modern cultures are now sufficiently educated and socially balanced to permit legislation for accelerated death for only those who request it on grounds of terminal illness. Hence the concept of *euthanasia* needs to be defined properly. Before *euthanasia* is made a law in India there is need for in depth research of different types of *euthanasia* so as to identify which form suits our country. There is also a need to distinguish *euthanasia* from suicide and mercy killing. Law governing *euthanasia* will withstand the test of Constitutional validity on all relevant aspects. By legalising *euthanasia*, human rights of several stake holders, for *e.g.*, patients, doctors and relatives will be protected and promoted. There is need to have a law governing *euthanasia* for terminally ill patients as they comprise of one of the most vulnerable class whose interests are not as yet protected adequately. Considering the torment faced by the terminally ill patients, if the law provides physician assisted suicide to them it would be a most needed step taken in the right direction. For indifferent approach towards recognition of terminally ill patient's right to *euthanasia* would be fatalistic for a vibrant country like India.

There is an immediate need of enacting an independent, self-contained and well equipped legislation to provide right to die with dignity for terminally ill patients in India. Thus, it is high time to divert from the past and understand the intensity of problems faced by terminally ill people in the society in the present era and find a solution which will bring relief in the future to the agonised patients, their relatives, and the doctors who treat such patients by legalizing right to die in rarest of the rare cases.