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Euthanasia & Article 21: "Right to die with dignity"

Ananya Singh

TABLE OF CONTENTS

INTRODUCTION

"Marte hain aarzoo mein marne ki Maut aati hai par nahin aati"

- Mirza Ghalib

For several years debate has been going on whether euthanasia is ethical or not, whether it should be included within the meaning and purview of Article 21 of the Constitution of India, gradually over the time the decisions taken by the hon'ble courts have changed and it will be discussed further ahead in this paper.

WHAT IS EUTHANASIA?

It basically means a good death, when a patient is suffering from an irreversible medical condition or coma, killing of such a patient to end their misery is known as euthanasia. Thus, the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. Euthanasia is also popularly known as 'mercy death' as it is given to lessen the pain of the patient.

Euthanasia is further classified into active euthanasia and passive euthanasia, voluntary euthanasia and involuntary euthanasia.

Active euthanasia:
Active euthanasia or assisted suicide entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony. Passive euthanasia entails withholding of medical treatment for continuance of life, e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma.[1]

Passive euthanasia:
Passive euthanasia is when omission of an act takes place, when an act vital for patient's survival is not done. For e.g. Switching of a ventilator which results in death of the patient. if a patient requires kidney dialysis to survive, not giving dialysis although the machine is available, is passive euthanasia. Similarly, if a patient is in coma or on a heart lung machine, withdrawing of the machine will ordinarily result in passive euthanasia. Denying food to a person in coma or PVS may also amount to passive euthanasia[2].

[1] Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.
[2] Ibid.

Active euthanasia generally refers to positive steps taken to deliberately induce death, whereas passive euthanasia infers withdrawing life support and treatment, and letting nature take its course. This active/passive distinction is couched in terms of a dichotomy between "killing" and "letting die", which stipulates that it is morally wrong to intentionally take a life, but permissible to allow the in evitable to happen by withdrawing or withholding treatment. Thus, active euthanasia was deemed illegal and a crime in India by the Court, punishable as murder under Section 302 of the Indian Penal Code; or at the very least as culpable homicide not amounting to murder under Section 304 of the IPC. On the other hand, passively permitting nature to take its course by withdrawing life support was an "omission", and hence not a crime.[3]

Voluntary euthanasia is where the consent is taken from the patient, whereas non voluntary euthanasia is where the consent is unavailable e.g. when the patient is in coma, or is otherwise unable to give consent.

HISTORICAL, ETHICAL AND RELIGIOUS BACKGROUND OF EUTHANASIA

In Greece, the term meant the good death and referred primarily to the mode of dying, and easy or painless death associated with drinking hemlock. In Greek-Roman antiquity, there was a generally recognised 'freedom to leave' that permitted the sick and desperate to terminate their lives sometimes with outside help[4].

Whereas in Christianity some, argue that while human life is a fundamental value and is to be protected, considerations of the quality of life also are to be entertained, the definition of murder as the "killing of the innocent" and argue that murder is unjust killing; in this way scope is created for euthanasia as just or mercy killing. Even then, there are ethicists who challenge authority to forbid euthanasia by arguing that each individual is the absolute master of decisions regarding his/her own destiny. We can observe that a single religious text can have multiple interpretations and there is no concrete view regarding the ethical aspect of euthanasia.

Jainism was likely the first religion to accept the practice of a religiously nominated, self-willed death; it was called ‘sallekhana’ and involved a fast to death.

[3] Economic and Political Weekly, Vol. 46, No. 18 (APRIL 30-MAY 6, 2011), pp. 13-16.
[4] Subhash Chandra Singh, EUTHANASIA AND ASSISTED SUICIDE: REVISITING THE SANCTITY OF LIFE PRINCIPLE Journal of the Indian Law Institute, Vol. 54, No. 2 (APRIL-JUNE 2012), pp. 196-231.

Buddha tried to avoid acceptance of the heroic (self-willed) death so common in Ksatŕja circles, he did allow self-willed death for the extremely ill persons as an act of compassion, that can be interpreted as he endorsed euthanasia[5].

In Hinduism, Brahamanical willingness to ritualise the withdrawal by the king (and his wife) into the forest as a way of abdicating the throne in old age may have set the stage for religious self-sacrifice and self-willed death as a way to attain heaven. Apart from this, when one can no longer perform daily dharmic duties for oneself, such as bodily purification, euthanasia is then allowed by means such as jumping from a cliff into water or jumping into fire or walking unto death etc. In the Hindu context, euthanasia belonged to the category of religious self-willed death[6].

Another aspect to consider is Medical ethics which calls for nursing, care giving and healing and not ending the life of the patient. With medical science advancing at such a fast pace, there is cure found for most incurable diseases as well. Many contend that the medical practitioner should encourage the patient to have a strong will and he should not give up even if it means living a painful life. A counter view to this could be that the modern medical technology has found out so many drugs and medicines that unnecessarily prolong life causing a lot of distress and agony to the patients and his/her relatives thereof. It is better to die rather than being under persistent pain and suffering using medication that does not cure but prolongs the life of patients and the medical practitioner's opinion and involvement is very crucial.

After considering both religious and nonreligious grounds, and the principles of autonomy, virtue and the common good, Richard Gula says that individual cases cannot be converted into a public policy. He thinks that the burdens of the individual should be compared to the burdens and benefits to society and to the medical profession.[7]

There is not one religion that has a firm believe towards ethicalness of euthanasia, every one of them have evolved and changed over time, the concept of mercy killing whether ethical or not is subjective, allowed in some scenarios and considered as murder in another. Keeping religions aside an individual's perspective on the subject of euthanasia will vary and common consensus among people can't be formed, which in a way is a good thing that, every aspect of it is considered and not one rigid meaning of it is accepted, as every case of euthanasia will differ from each other and it wouldn't be fair to look at a every case from a single yardstick.

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[5] Ibid.
[6] Ibid.
[7] . Richard M. Gula, "Moral Principles Shaping Public Policy on Euthanasia" 14 Second Opinion 73-83 (1999).

A family may not desire to go ahead with the process of treatment but is compelled to do so under social pressure especially in a different milieu, and in the case of an individual, there remains a fear of being branded that he/she, in spite of being able to provide the necessary treatment to the patient, has chosen not to do so. The social psyche constantly makes him/her feel guilty. The collective puts him at the crossroads between socially carved out meaningful guilt and his constant sense of rationality and individual responsibility. There has to be a legalistic approach which is essential to clear the maze and instil awareness that gradually melts the idea of —meaningful guilt and ushers in an act of —affirmative human purpose that puts humanness on a high pedestal[8].

COMPARATIVE STUDY OF LAWS IN DIFFERENT COUNTRIES WITH REGARDS TO EUTHANASIA:

NETHERLANDS:

Euthanasia in the Netherlands is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002. It states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. These criteria include- patients request, the degree of suffering, the present alternatives to be considered, consultation from another physicist and the method applied for ending life. The euthanasia before performed have to be presented in front of a review committee. Legislation also validates a written declaration of the will of the patient, such declaration can be used if the patient is in a coma or otherwise unable to state if they wish to be euthanized. They felt the need to draft a legislation after the Postma case, where a doctor had facilitated the death of his mother after several request and in this case the court set out criteria in cases where the doctor was allowed to not keep the patient alive contrary to their request.

SWITZERLAND:

In Switzerland, euthanasia has been legalised since 1942, where not only a physician assisted but also non-physician assisted euthanasia is allowed, usage of lethal drugs – active euthanasia is not legal unlike Holland. Switzerland also allows not the a swiss national but also outsiders to come and be recipient of Euthanasia.

[8] Common Cause (A Regd Society) v Union of India and Anr, 2018 5 SCC 1: 2018 SCC OnLine SC 208.

BELGIUM:

Belgium became the second country in Europe after Netherlands to legalize the practice of euthanasia in September 2002. The Belgian law sets out conditions under which suicide can be practised without giving doctors a licence to kill. Patients wishing to end their own lives must, be conscious when the demand is made and repeat their request for euthanasia. They have to be under "constant and unbearable physical or psychological pain" resulting from an accident or incurable illness. Unlike the Dutch legislation, euthanasia for minors will only be allowed in case of terminal illness.

UNITED STATES OF AMERICA:

Active Euthanasia is illegal in all states in U.S.A., but physician assisted dying is legal in the states of Oregon, Washington and Montana. The difference between euthanasia and physician assisted suicide lies in who administers the lethal medication. In the former, the physician or someone else administers it, while in the latter the patient himself does so, though on the advice of the doctor. Oregon was the first state to legalise euthanasia and they enacted an Oregon death with dignity act, 1997, which lays down certain criteria for physician assisted death, like the patient shouldn't be below the age of 18 and a permanent resident of the sates and should have complete decision-making capacity.

CANADA:

In Canada, physician assisted suicide is illegal vide Section 241(b) of the Criminal Code of Canada.

The Canadian Supreme Court was deeply divided. By a 5 to 4 majority her plea was rejected. Justice Sopinka, speaking for the majority (which included Justices La Forest, Gonthier, Iacobucci and Major) observed:

"Sanctity of life has been understood historically as excluding freedom of choice in the self-infliction of death, and certainly in the involvement of others in carrying out that choice. At the very least, no new consensus has emerged in society opposing the right of the State to regulate the involvement of others in exercising power over individuals ending their lives." The minority, consisting of Chief Justice Lamer and Justices L'Heureux-Dube, Cory and McLachlin, dissented[9].

UNITED KINGDOM

There is no legal provision or legislation in place in accordance to Euthanasia, the suicide Act 1961, makes assisting another in commission of suicide and criminal offence, it has been long

[9] Supra Note 1.

debated in UK to bring 'right to die' within the meaning of 'right to life' but still there is no jurisprudence recognizing this parallel. But through case laws, UK has allowed passive euthanasia, physician assisted death is permitted in UK. In Airedale NHS Trust v. Bland[10] which is cited in the Landmark judgement of Aruna Shanbaug:

The house of lords is dealing with the case of a Anthony Bland, a young boy of the age of 17, on 15th April 1989 went to Hillsborough ground to support Liverpool football club, In the course of the disaster which occurred on that day, his lungs were crushed and punctured and the supply to his brain was interrupted. As a result, he suffered catastrophic and irreversible damage to the higher centres of the brain. For three years, he was in a condition known as persistent vegetative state (PVS). In order to keep him alive food and nutrition was provided through artificial means; the medical professionals were of the opinion that there would be no useful purpose of continuing the medical care and it will only prolong his death and cause a great deal of metal agony to his family.

"In what circumstances, if ever, can those having a duty to feed an invalid lawfully stop doing so?" was the main issue before the house of lords:

Their observations were as followed:

- When an adult man is under such medical condition and is in the state to give consent to withdraw further medical treatment he should be allowed even if as the result of decaling treatment would result in his death, not a crime.
- A medical practitioner is under no compulsion whatsoever to continue with the treatment if that treatment being provided is bringing no to the patient.
- Why is it that the doctor who gives his patient a lethal injection which kills him commits an unlawful act and indeed is guilty of murder, whereas a doctor who, by discontinuing life support, allows his patient to die, may not act unlawfully and will not do so, if he commits no breach of duty to his patient? Professor Glanville Williams[11] has suggested that the reason is that what the doctor does when he switches off a life support machine 'is in substance not an act but an omission to struggle, and that 'the omission is not a breach of duty by the doctor because he is not obliged to continue in a hopeless case'.
- In case of a Patient in vegetative condition, the opinions of family, close relatives, Friends and medical practitioners have to be taken into account before making a decision.

[10] (1993) All E.R. 82) (H.L.).
[11] (see his Textbook of Criminal Law, 2nd ed., p. 282).

- Hence, after this judgement Physician assisted death is permissible in United Kingdom.

POSITION OF EUTHANASIA OR ASSISTED DEATH IN INDIA:

India had no law or legislation in place for the longest time which provided any clarity or opinion in matters of euthanasia. In India, abetment of suicide (section 306, IPC) and attempt to commit suicide (section 309, IPC) are both criminal offences under the Indian Penal code, Although, section 309 is still in effect, the Mental Healthcare Act, 2017 (enacted July 2018) has restricted its application. The relevant provision of the new act states:

Notwithstanding anything contained in section 309 of the Indian Penal Code, anyone who attempts to commit suicide shall be deemed to be under severe stress unless it is proved otherwise and shall not be tried and punished under the said Code.

Euthanasia would be considered to be parallel to committing suicide hence, making it a criminal act as well, until the recent judgements and interpretations of the Hon'ble court.

But even prior to this, there have been matters with the Supreme court of India, raising the issue that 306 and 309 of the Indian Penal Code is violative of Article 21 of our constitution, and these case laws provide an insight towards how courts came to a conclusive decision on euthanasia.

IN P.RATHINAM V. UNION OF INDIA, 26TH APRIL, 1994[12]:

The issue that court was considering that, whether attempt to commit suicide is violative of Article 21 of COI.

In the following case, the supreme court also touched upon the topic as an Obiter Dicta, to make euthanasia legal, as right to die with dignity is very much a part of right to life and liberty.

A section like 309 continues to be in IPC baffles many, in the age of euthanasia being legalised and practiced in several countries we're still punishing our sufferers, the very idea of putting a person behind bars who is already suffering through mental distress is revolting.

"A section like 309 IPC has no justification to continue to remain on the statue book.[13]"

Justice R.A. Jahagirdar of Bombay High Court in the Illustrated Weekly of India (September 29, 1985) in which the learned Judge took the view that Section 309 was unconstitutional for four reasons: (1) neither academicians nor jurists are agreed on what constitutes suicide, much less attempted suicide; (2) mens rea, without which no offence can be sustained, is not clearly

[12] P.Rathinam vs Union Of India, 1994 SCC (3) 394.
[13] 1985 Cri LJ 931: (1985) 2 DMC 153 (Del).

discernible in such acts; (3) temporary insanity is the ultimate reason of such acts which is a valid defence even in homicides; and (4) individuals driven to suicide require psychiatric care[14]. These grounds were accepted by the Supreme Court.

Law Commission of India in its 42nd Report (1971) recommended repeal of Section 309 being of the view that this penal provision is "harsh and unjustifiable". The following was accepted by the Government of India and Indian Penal Code Amendment bill,1972 was introduced regarding decriminalization of 309, it was referred to the joint committee of both the houses, and it was passed with some changes made by Rajya Sabha to in 1978 and it was pending with the Lok Sabha in 1979, which was lapsed because the Lok Sabha was dissolved.

The final judgement given by the Supreme Court was the Section 309 does violative of Article 21 of the constitution of India. The Supreme Court held that fundamental rights guaranteed under the Constitution have positive as well as negative aspects. It observed that the fundamental right to freedom of speech and expression can be said to include the right not to speak. Similarly, freedom of movement and association includes the freedom not to move or join association. On a parity of reasoning, the freedom to live could be held to include the freedom not to live. The judgment observed that suicide prone persons need soft words and wise counselling, not stony dealing by a jailor following harsh treatment meted out by a headrest[15].

But this judgement was overruled in *Smt. Gian Kaur vs The State of Punjab*[16] on 21 March, 1996

Where the Supreme court held that, both euthanasia and assisted suicide were not lawfully valid in India.

Supreme court stated that, it may be argued that death is a natural process and there should be no laws to prevent it. However, taking one's life on his own is prima facie, not a natural process. Moreover, it can be construed that India being a welfare state is more concentrated and ambitious to protect the lives of its citizens. Making a statute that promotes dead of its citizens is against the framework of the nation. Thus, whatever the decision of the judiciary, it is for the welfare of the nation and to the orderly living of its citizens. Henceforth, the instant case signifies the importance of an individual's life and emphasis more about leading a life in a dignified manner, and most importantly validating Section 309 of The Indian Penal Code.

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[15] Supra Note 12.
[16] 1996 SCC (2) 648.

Through obiter Dicta, the court opined in the context of a terminally ill patient or one in the PVS, the right to die is accelerating the process of death that has already begun and not concluding ones live prematurely, it was also opined that the right to live with human dignity can also include right to die with human dignity but this is only applicable in cases of life-ending through natural causes and not to be confused with unnatural extinction of life curtailing natural span of life.

The five judge Constitutional Bench held that the "right to life" is inherently inconsistent with the "right to die" as is "death" with "life". In furtherance, the right to life, which includes right to live with human dignity, would mean the existence of such a right up to the natural end of life. It may further include "death with dignity" but such existence should not be confused with unnatural extinction of life curtailing natural span of life. In progression of the above, the constitutionality of Section 309 of the I.P.C, which makes "attempt to suicide" an offence, was upheld.

The issue of Euthanasia in its entirety was dealt with in the case of

ARUNA RAMCHANDRA SHANBAUG VS UNION OF INDIA & ORS

on 7 March, 2011

The Hon'ble Supreme Court of India, in the present matter, was approached under Article 32 of the Indian Constitution to allow for the termination of the life of Aruna Ramchandra Shanbaug, who was in a permanent vegetative state. The petition was filed by Ms. Pinki Virani, claiming to be the next friend of the petitioner. The Court in earlier cases has clearly denied the right to die and thus legally, there was no fundamental right violation that would enable the petitioner to approach the court under Article 32. Nonetheless, the Supreme Court taking cognizance of the gravity of the matter involved and the allied public interest in deciding about the legality of euthanasia accepted the petition.

Facts of the case:

It was stated that the petitioner Aruna Ramachandra Shanbaug was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. On the evening of 27th November, 1973. she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day, a cleaner found her in an unconscious condition lying on the floor with blood all over. It was alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged.

Thirty-six years had lapsed since the said incident. She had been surviving on mashed food and could not move her hands or legs. It was alleged that there is no possibility of any improvement in the condition and that she was entirely dependent on KEM Hospital, Mumbai. It was prayed to direct the Respondents to stop feeding Aruna and let her die in peace.

The court further decided to appoint a team of three eminent doctors to investigate and report on the exact physical and mental conditions of Aruna Shanbaug. They studied Aruna Shanbaug's medical history in detail and opined that she is not brain dead. She reacts to certain situations in her own way. For example, she likes light, devotional music and prefers fish soups. She is uncomfortable if a lot of people are in the room and she gets distraught. She is calm when there are fewer people around her. The staff of KEM Hospital was taking sufficient care of her. She was kept clean all the time. Also, they did not find any suggestion from the body language of Aruna as to the willingness to terminate her life. Further, the nursing staff at KEM Hospital was more than willing to take care of her. Thus, the doctors opined that that euthanasia in the instant matter is not necessary.

The issues before the court were:

1. When a person is in a permanent vegetative state (PVS), should withholding or withdrawal of life sustaining therapies be permissible or `not unlawful'?

2. If the patient has previously expressed a wish not to have life-sustaining treatments in case of futile care or a PVS, should his/ her wishes be respected when the situation arises?

3. In case a person has not previously expressed such a wish, if his family or close relatives makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?

Analysis:

1. The supreme court relied on Cruzan v. Director[17], decided by the U.S. Supreme Court for the meaning and definition of PVS

In that case, the petitioner Nancy Cruzan sustained injuries in an automobile accident and lay in a Missouri State hospital in what has been referred to as a persistent vegetative state (PVS), a condition in which a person exhibits motor reflexes but evinces no indication of significant cognitive function.

[17] MDH, 497 U.S. 261(1990).

The stated that once a person has to rely on machinery for breathing, digestion of food, cardiac functions without such aid the person wouldn't be able to survive can be said to be brain dead or in a vegetative state.

2. Relying on Airedale case[18], court has held if a patient voluntarily with complete consciousness and consent wants to withdraw from a medical treatment they can even if this results in death of the patient, he/she is allowed to take this call and doing this won't be considered as an attempt to commit suicide.

An adult human being of conscious mind is fully entitled to refuse medical treatment or to decide not to take medical treatment and may decide to embrace the death in natural way.[19] A person of competent mental faculty is entitled to execute a medical directive as to what he desires if in future he is a vegetative state and unable to give consent.

3. The biggest dilemma in front of the court was, what about the cases where the patient has no consciousness of their own and is in no way capable of taking such a decision, the supreme court arrived on a conclusion that in such a case the decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient and avoid any misuse and rule out all the mischief that could be done by the relatives the court stated that in this situation where a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale's case and court also stated that such a rule is in consonance with the doctrine of parens patriae which is a well-known principle of law.

However, Aruna Shanbaug was denied euthanasia as the court opined that the matter was not fit for the same. If at any time in the future, the staff of KEM hospital or the management felt a need for the same, they could approach the High Court under the procedure prescribed.

This case clarified the issues revolving around euthanasia and also laid down guidelines with regard to massive euthanasia. Alongside, the court also made a recommendation to repeal Section 309 of the Indian Penal Code. This case is a landmark case as it prescribed the procedure to be followed in an area that has not been legislated upon.

[18] Supra Note 10.
[19] Supra Note 8.

The said case is a landmark judgement in the matters of euthanasia but the court didn't give a conclusive opinion on Right to die is a part of right to life or not.

IN, COMMON CAUSE VS. UNION OF INDIA[20],

the Hon'ble Supreme Court gives a conclusive judgement on whether or not Right to die is a part of Right to life.

In the year 2005, Common Cause a registered society for the common welfare of people filed a writ petition under Article 32 of the Indian Constitution to legalize Passive Euthanasia and to legally validate living wills. In this regard, the Supreme Court of India held that the right to die with dignity is a fundamental right and a part of Article 21. The Bench further held that passive euthanasia and a living will are legally valid. The Court issued detailed guidelines in this regard.

A nongovernmental organisation, has in a writ petition filed under Article 32, asked the Court to declare that the "right to die with dignity" be recognised as an aspect of the "right to life with dignity" and in furtherance of this, pass orders to allow for the execution of "living wills". In the alternative, the writ petition seeks the setting up of an expert committee consisting of "doctors, social scientists and lawyers" to study the aspects of the issue of "living wills" and frame guidelines in this respect[21].

Those suffering from chronic diseases are often subjected to persistent pain and suffering and the treatments where there is no cure but only medication and treatment that only prolongs life. Denying them the right to die in a dignified manner extends their suffering. Hence, the court is declared *Right to Die with Dignity as a Fundamental Right* as it would help in reducing the pains of those suffering from chronic treatments and they will be able to die in a dignified manner.

The court laid down certain rules and procedure that the High Court needs to follow when such a petition is filled[22]:

- A committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench
- High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor's committee to them as soon as it is available.

[20] Supra Note 8.
[21] ALOK PRASANNA KUMAR Economic and Political Weekly, Vol. 49, No. 34 (AUGUST 23, 2014), pp. 10-12.
[22] Supra Note 1 at para 138.

- After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.
- The High Court should give its decision speedily at the earliest, since delay in the matter may result in causing great mental agony to the relatives and persons close to the patient.

Article 21 of the Constitution guarantees that no person shall be deprived of his life or personal liberty, except according to the procedure established by law, but as we can observe a procedure has not yet been established by legislature on the other hand Judiciary has gone beyond its power to give guidelines whereas they should have just confined themselves to the interpretive part of right to die with dignity within the ambit of Article 21.

CONCLUSION

Euthanasia is still not accepted worldwide, India has taken some step forward through case laws and made passive euthanasia not a crime and it is allowed to be performed in relevant and necessary cases as per Supreme court guidelines provided in the Common cause judgement where they followed the approach of Vishaka[23] Judgement and took a step to make guidelines which needs to be followed till there isn't any legislation in place.

The major argument made against legalising physician assisted euthanasia was that doctors or the relatives will misuse this and it will not benefit the patient and will cause only further harm, keeping this in mind supreme court have provided guidelines and The Hon'ble Supreme Court have also said that "the contention that here could be misuse of the statute cannot be a ground for not legislating on euthanasia[24]." Article 21 of the Constitution guarantees that no person shall be deprived of his life or personal liberty, except according to procedure established by.

From the text of the article several case laws have interpreted that a person has the right to live with dignity within the meaning of Article 21[25], when such an individual has been going through years of constant physical pain and mental agony and the process of death have already begun, the person is able to survive only through external force which is just prolonging the individuals death, he/she is not able to continue to live their lives with dignity due to unavoidable circumstances they should be given the right to die with dignity within the natural course of their life, whether such decision has been taken on their own or on the common consciousness of the patients Doctors, family, close friends and relatives taking the decision in good faith for the benefit of the patient. The said cases do not amount to extinguishing the life but only amount to accelerating the process of natural death which has already commenced.

In respecting a person's death, we are also respecting their life - giving it sanctity... A view that life must be preserved at all costs does not sanctify life... To care for the dying, to love and cherish them, and to free them from suffering rather than simply to post pone death is to have fundamental respect for the sanctity of life and its end.[26] Living with dignity also includes dying with dignity – "A good death certifies a good life"[27]

[23] Vishaka v State of Rajasthan, AIR 1997 SC 3011.
[24] Sanjeet Bagcchi , India's Supreme Court consults on right to die for terminally ill people, BMJ: British Medical Journal , Vol. 349 (28 Jul 2014 - 03 Aug 2014).
[25] Case laws which have interpreted that right to life includes a right to live with human dignity: Board of Trustees v.Dilip: AIR 1983 SC 109. Bandhu MuktiMorcha v. Union of India: (1989)4 SSC, 62. Naz Foundation v. Government of NCT and others w.p. (c)7455, 2001.
[26] Master vs Union of India, 2000 CriLJ 3729 (Ker.).
[27] T N Madan, "Dying with Dignity" (1992) 35 (4) Social Science and Medicine 425–32.