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## **A GLOBAL PERSPECTIVE ON THE RIGHT TO DIE**

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### **ABSTRACT**

The legal fraternity has always been concerned with protecting and enforcing the right to life, but recently the trend shows that voices have come up in favour of having a right to die as well. This right to die is mainly associated with Euthanasia or Physician Assisted Suicides- the right of a terminally ill patient to choose the time and manner of their death. The incredible advancement in technology has ensured that life can be prolonged till a very long time- mostly unnaturally. This where debates of patient autonomy and arguments of rights-based approach to physician assisted suicide have come up. This article talks about the international perspective of the right to life as well as the right to die and how the facets of right to life could be interpreted to give birth to a right to die with dignity. The rights based approach to the right to die mainly argues on three prongs- the right of human self-determination (human autonomy), the right to a dignified death and the right against discrimination. This article explores how these rights have been interpreted or can be interpreted to support a right to die with dignity, and how right to die could actually not be diametrically opposite to the right to life, but might even be a part of it.

## I. INTRODUCTION

The impact of improved medical technology on the quality of life has precipitated into an international quest for patient autonomy in health care decision-making. The advancement in technology has ensured that even people who have lost all bodily function and are essentially not living, have the possibility of being kept alive through medical interference. The right to die movement has resulted in providing a continuum of choice in patient autonomy, a choice that has many facets such as palliative care, withdrawal of treatment and also, physician assisted suicide.<sup>1</sup> This desire to provide the full continuum of choice has fueled an international movement to recognize the greatest level of patient autonomy - the right to make the permanent and positive decision; and also to have the power to; end one's own life. The right to die, however, should not demean the coexisting right to choose life. Many competing interests challenge the right to die. However, protecting the right to live while granting the right to die is the greatest challenge<sup>2</sup>, along with others such as treating right to die with a rights-based approach, wherein human beings are considered to be autonomous beings who can decide when they want to live or die. But is it that simple?

In the work "The New Organon", Francis Bacon (1620), talks about death and its types and considers death from a philosophical perspective. He is considered to be the person who coined the term 'Euthanasia'.<sup>3</sup> Euthanasia is the practice of ending one's life in a way, usually one that is suffering greatly physically, that does not cause pain and suffering to the person. The "House of Lords Select Committee on Medical Ethics" considered euthanasia a practice which was undertaken by a person intentionally to put a conscious end to relieve intractable pain and agony.<sup>4</sup> Medically assisted suicide, or as it's commonly known as- euthanasia- has been given legal sanction in many countries, some of them being Netherlands, Belgium, Luxembourg. Due to this, the extent to which the right to life shall be protected has been called into question. Right to life is the essential principle, the principle which allows people to exercise and enjoy other rights granted to them. However, paradoxically, the right to life itself does not enjoy well defined boundaries. MAS or Euthanasia, because of its very paradoxical nature has always attracted controversy in the legal as well as the healthcare circles. Because of the complex

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<sup>1</sup> Traci R. Little, "Protecting The Right To Live: International Comparison of Physician-Assisted Suicide Systems", 7(2) *Indiana International & Comparative Law Review* 433 (1997)

<sup>2</sup> *Ibid.* at 434

<sup>3</sup> Gabriela Nemtoi, "The Right to Life versus the Right to Die", 8(1) *Logos University Mentality Education Novelty: Law* 4 (2020)

<sup>4</sup> House of Lords, "Report of the Select Committee on Medical Ethics" (1994)

nature of the act itself, one might say it is suicide when done by oneself and murder if done by someone else.<sup>5</sup> This minute difference in perception was recognized by the Supreme Court of India in the landmark case of **Common Cause v. Union of India**.<sup>6</sup> In this case the court distinguished between active euthanasia and passive euthanasia. While active euthanasia is deliberately helping the patient in performing the act of suicide, passive euthanasia is merely taking away the life support systems so that the patient dies. The court only legalized the latter.

While in some countries, Right to Die v. Right to life is still an ongoing debate, others have already realized the truth of physician assisted suicide and are in-fact making strides in the arena. Spain, for example, legalized it in 2021. Netherlands expanded the scope of PAS to include patients at an advanced stage of dementia provided they had requested the same in written before. While legalizing PAS in Spain, the Health Minister Carolina Darias remarked how ‘we are moving towards a more humane and fair society’.<sup>7</sup> This clearly shows that while some thinkers might think right to die to be barbaric and hail the right to life, the tide of the society is turning in such a manner that providing the masses a right to die in certain circumstances is now considered a humane practice.

## II. RIGHT TO LIFE AND ITS IMPLICATIONS

There are many spirituality-based and morality-based arguments that could be made in the pros and cons of the right to die. Even though before the Common Cause judgment, the right to die was largely frowned upon in our country, euthanasia as a practice is not new to our land. In a study carried out in Arunachal Pradesh it was found that the Idu Mishmi tribe of Arunachal Pradesh carried out euthanasia by asphyxiation since times immemorial.<sup>8</sup>

But when one has to argue on legal grounds, impetus falls onto the human rights which are given in and protected by the “International Covenant on Civil and Political Rights” (ICCPR) and the “European Convention on Human Rights” (ECHR). There is no express right to die in any of these instruments; they only confer an express right to life. The supporters of right to die searching for legal arguments in favour, seek an interpretation of the instruments that will

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<sup>5</sup> Akanksha Surana and Pooja Kothari, “A Comparative Study of Euthanasia in India and Canada: A Critique”, 4 (2) *International Journal of Law Management and Humanities* 757-733 (2021)

<sup>6</sup> 2014 SCC 5 338

<sup>7</sup> “The Potential Role of Technology in Euthanasia and Assisted Death”, *The Medical Futurist*, 18 January 2022, available at : <https://medicalfuturist.com/technology-and-euthanasia/> (last visited on July 4, 2022)

<sup>8</sup> Naresh Mitra, “Arunachal tribe practised euthanasia, reveals study”, *The Times of India*, December 13, 2017, available at: <https://timesofindia.indiatimes.com/city/guwahati/arunachal-tribe-practised-euthanasia-reveals-study/articleshow/62048369.cms> (last visited on July 4, 2022)

render state interference into the choice to exercise right to die unjust. Art. 3, Universal Declaration of Human Rights lays down: “Everyone has the right to life, liberty and security of person”.<sup>9</sup> Art. 6 of the International Covenant on Civil and Political Rights lays down: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.<sup>10</sup>

The death of a human being is inevitable, hence it can be inferred that these provisions do not give an absolute protection against death. However, they protect humans against unfair, unjust and tyrannical deprivation of life in which the individual has no choice or will.<sup>11</sup> This begs the question, what about a death than an individual takes on with complete choice and will. This hence, begs the question of an individual’s autonomy vis-à-vis the right to live or die.

Modern medicine has given birth to numerous ways to prolong life, which in turn prolong pain and suffering of a terminally ill patient. This is what gave birth to the right to die debate, as the rights-based contenders argue that an individual shall have the personal autonomy to decide life or death- even if it is only confined to specialized circumstances.<sup>12</sup>

The word ‘arbitrarily’ in the text of the “International Covenant on Civil and Political Rights” does not allow deprivation of life done without keeping in mind the special facts forming a particular situation. Hence, if right of choice and autonomy can be inferred into these rights, that would mean assisted suicide would not actually infringe the rights enshrined in these articles. This can be supported by the fact that Article 7 of ICCPR provides absolute protection from torture and inhumane treatment.<sup>13</sup> It can be argued that medical technology and invasive treatments might be torturous for a person in the sense they might be forced to lead a painful life that is not worth living. And all right to live interpretations advocate not only being alive, but living a life of worth and dignity.

In contrast to the above situation of the ICCPR text, Article 2 of the “European Convention on Human Rights” does not leave any space for an additional “right to die” to be conferred, unlike the “Universal Declaration of Human Rights” or the ICCPR because it explicitly states “No

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<sup>9</sup> UN General Assembly, *Universal Declaration of Human Rights* (10 December, 1948), art. 3

<sup>10</sup> UN General Assembly, *International Covenant on Civil and Political Rights* (16 December, 1966), art. 6

<sup>11</sup> Sam Holford, “There is a Right to live; is there a Right to Die?”, 16 *New Zealand Medical Student Journal* 24 (2012)

<sup>12</sup> Violeta Beširevic, “The Discourses of Autonomy in the International Human Rights Law: Has the Age of a Right to Die Arrived?”, 62/63 *Constitutional Notebooks of the Fadrique Furió Ceriol Chair* 19-34

<sup>13</sup> *Supra* note 11, art. 7.

one shall be deprived of his life intentionally”.<sup>14</sup> However, it was argued in **Pretty v United Kingdom**<sup>15</sup>, that it might still be inferred that a right to life also includes a right to choose not to continue living. However, this argument was not accepted by the European Court of Human Rights, which said Art. 2 cannot be interpreted to confer a diametrically opposite right.

### III. RIGHTS BASED APPROACH- A BASIS FOR THE RIGHT TO DIE

The “principle of human self-determination” or in other words the autonomy of an individual is one of the most prevalent arguments used in favour of PAS. It is the general contention in law that the self-determination of individuals is not derived from the law of the state, and the state does not have the right to interfere in the same. The right to privacy, the right to gender and sexual orientation and the right to choose one’s own life partner are the examples of the same. Such rights usually form a part of the Right to Life and Liberty and the self-determination of individuals finds protection under the same.

The principle of human self-determination does not find explicit mention in the ECHR but does so in the ICCPR. In the General Comment of Art. 1, ICCPR states that:

*“The right to self-determination is very important because its realization is an essential condition for effective guarantees and observance, human rights and for the promotion and strengthening of human rights”*.<sup>16</sup>

Usually the exception to the right of self-determination is the interest of the larger society, in which case state interference is excused. However, this is the case when there needs to be a balance of interests. However, in cases of terminal illnesses or similar circumstances where patients have no other option but to suffer, denying the right to die will clearly take away from their autonomy without any balancing interest to justify it.

Right to privacy is also an argument that can be put forward in favour of PAS. In the international perspective, this right is enshrined in Article 17 of the ICCPR<sup>17</sup> and Article 8 of the European Convention<sup>18</sup>. The manner in which a person dies and the timing of a person’s

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<sup>14</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (4 November, 1950), art. 2

<sup>15</sup> (2346/02) [2002] ECHR 423

<sup>16</sup> United Nations General Comment on Article 1, International Human Rights Instruments 1994, UNdoc. HRI/GEN /1/ Rev.1 nr. 12. pg. 12 - 14.

<sup>17</sup> *Supra* note 11, art. 17

<sup>18</sup> *Supra* note 14, art. 8

death, both are extremely private affairs. Hence, it may be argued that protecting a person's choice to seek assistance in ending their life is actually protecting that person's right to privacy. This respect for the decision to choose goes hand in hand with the concepts of "security, dignity, liberty and autonomy", which are fundamental principles underlying human rights. International human rights standards such as dignity, privacy, and autonomy, among others, could be interpreted to provide for a "right to die". Yet the "Parliamentary Assembly of the Council of Europe", while opposing this ideal, recommends that states "respect and protect the dignity of terminally ill or dying persons in all respects" by upholding prohibitions against intentionally taking the life of people who are terminally ill or dying.<sup>19</sup>

It is settled law that Right to Life and Liberty includes the Right to not *merely* live, but to also live a life of dignity. But does it then follow, that such a right could also provide for a dignified death? Bioethicists have expressed their support in favour of a right to dignified death. UNESCO's "Universal Declaration on Bioethics and Human Rights" (UDBHR) lays down provisions for autonomy as well as dignity, and both of these have been used in support of a right to dignified death. Article 5<sup>20</sup> of this Declaration speaks about autonomy and individual responsibility specifically providing that "the autonomy of persons to make decisions, while taking responsibility for those decisions and respecting the autonomy of others, is to be respected".

But the question that needs to be answered now is, even when one grants right to die, how does one balance it against the right to life? A good example is studying the Dutch law on the same. Article 293 of the Dutch Penal Code prohibits voluntary taking of someone's life, which would include active voluntary suicide and physician assisted suicide. However, an exception is made under the special law called "**Termination of Life on Request and Assisted Suicide (Review Procedures) Act**" and Section 2(1) of the same provides comprehensive criteria for when physician assisted suicide might be legal.<sup>21</sup> In Netherlands, Article 293 of the Dutch Penal Code<sup>22</sup> punishes voluntarily causing death at a person's express request with 12 years of imprisonment. "Active voluntary Euthanasia" is covered under the same. Assisting or inciting suicide is also punishable with 3 years of imprisonment. "Physician assisted suicide" would fall under this category. However, the exception under Section 2 of the Termination of Life on

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<sup>19</sup> Parliamentary Assembly of the European Council (PACE), "Resolution 1859" (2012), para 5

<sup>20</sup> UNESCO's Universal Declaration on Bioethics and Human Rights ( 19 October, 2005), art. 5

<sup>21</sup> Termination of Life on Request and Assisted Suicide (Review Procedures) Act, (April 1, 2002), s. 2(1)

<sup>22</sup> Dutch Penal Code, 1881, art. 293

Request and Assisted Suicide (Review Procedures) Act will apply if the physician or doctor meets the due care standard put forth in the legislation, and the same will not be an offence.

There is a general notion that a person might be able to choose how they die, and they shall not be prevented from exercising this choice. The same notion is illustrated and supported by the legality of suicide and provisions such as “DNR” (Do Not Resuscitate). At times where a patient enduring unending pain wants to take their life, and are prevented from exercising a choice of dignified and painless death, starving or suffocation might be their only option. It is unfortunate yet safe to say that at times natural death, especially in terminally ill patients, is not a peaceful one, and in patients of diseases such as schizophrenia it might even be violent for the patient as well as their caretakers. Hence, natural death could be considerably more uncomfortable and less humane than death by administration of a lethal dose by a cooperating and advising physician. The individuals disabled by their disease so as to not do what an able-bodied could, might look towards Non-discrimination rights to call for reasonable assistance to be provided to a disabled patient in order to exercise their liberty and it is a breach of these rights to withhold such an option. In the case of **Rodriguez v British Columbia**, Lamer CJ of the Canada Supreme Court held that:

*“...persons with disabilities who are or will become unable to end their lives without assistance are discriminated against by that provision since, unlike persons capable of causing their own deaths, they are deprived of the option of choosing suicide.”*<sup>23</sup>

It might be accepted that if we lay a universal prohibition on a right to seek assisted suicide, it might not be considered to be directly discriminatory. However, it is the mandate of non-discrimination rights to extend further to ease the burden placed on those people that are placed in an unfair situation due to a disability. The purpose of non-discrimination rights:

*“...is not to punish the discriminator, but rather to provide relief for the victims of discrimination...if its effect is to impose on one person or group of persons obligations, penalties or restrictive conditions not imposed on other members of the community, it is discriminatory”*.<sup>24</sup>

The counter argument raised in **Pretty v United Kingdom** was that “the option of suicide was not a right. Furthermore, the legality of suicide does not intend to condone the act, but is

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<sup>23</sup> Rodriguez v British Columbia (Attorney-General) 1993 SCR

<sup>24</sup> *Supra* note 15.

because a suicide victim cannot be charged and penalty for attempted suicide does not act as a deterrent”:

*“The law confers no right to commit suicide. Suicide was always, as a crime, anomalous, since it was the only crime with which no defendant could ever be charged.”<sup>25</sup>*

#### **IV. CONCLUSION**

The debate of right to die v. right to live is as old as life, ironically. The movement of legalizing PAS is unfortunately something that the entire world cannot experience together because of the mammoth divisions based on beliefs, religious, moral as well as legal. While some countries might think granting the people a right to die with dignity is actually moving forward in the social and legal spectrum, others might oppose the idea vehemently, sighting the Right to life to be the end all and be all. At the end of the day, one must make an effort to leave behind their religious practices and their morals and look to the un-ending and undying agony faced by millions of people. One should then realize, that the right to die is not at all about death, but rather giving someone a choice of how they would like to put a stop to the life already lived.

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<sup>25</sup> *Ibid.*