A Right For The Rich

You choose your spouse (like Hadiya), you choose your profession, you choose your religion, you choose your food and you choose your political representatives. But should how to die and when to die be a matter of choice? The Supreme Court (SC) has given a landmark judgment on the "right to die". But it is not actually a clear recognition of such a "right". The verdict is limited in the sense it recognises passive euthanasia. Chief Justice Dipak Misra rightly flagged the central issue: Does the law permit accelerating the process of dying, sans suffering, when life is on the path of inevitable decay? If so, at what stage and to what extent?

In the past 24 years, the SC has delivered four judgments on this subject. The March 9 verdict is the court's latest intervention on the issue. In the P Ratinam (1994) case, a two-judge bench held that the right to life includes the right to die as every fundamental right has both positive and negative connotations: Just as the right to "free speech" includes the "right to silence", the right to life includes the "right to die". But the Ratinam verdict was overruled within two years by a two-judge bench in the Gian Kaur case (1996). Though the case did not specifically deal with euthanasia, it did recognise the importance of dying with dignity.

In 2011, a two-judge bench headed by Justice Markandey Katju validated passive euthanasia in the Aruna Shanbaug case. But in 2014, a three-judge bench noted the inconsistencies in Justice Katju's verdict and made a reference to a constitution bench, leading to the latest verdict.

The latest judgment has taken human dignity, autonomy, and self-determination to such a high pedestal that the government should start worrying about the Aadhaar verdict as the same five judges are hearing that matter as well. The court has said that, at times, the interest of the state has to make way for the choices made by an individual.
The SC has ruled that Justice Katju's judgment was based on a flawed reading of the Gian Kaur verdict. It reiterates what was held in the 1996 judgment on the technical issue of the need for legislation to legalise euthanasia. But the judges agreed with Justice Katju that autonomy means self-determination and the informed patient should have the right to decide the manner of his treatment. It has admitted that the right to live with dignity includes easing the process of dying for the terminally ill.

Justice A K Sikri's observation that with Section 115 of the Mental Healthcare Act (2017) attempt to suicide is no more punishable, is controversial. The section merely creates a presumption that every person attempting suicide is under "severe stress" and shall not be tried and punished. If this presumption is rebutted, a trial may take place.
Euthanasia has been justified due to the high cost of medical treatment. But the harsh reality is euthanasia is a problem of the elite. The court overlooked the fact that poor people are never put on a life-support system. In fact, there is a possibility of poor people being declared "brain-dead" and their organs being made available to the rich. The detailed guidelines laid down by the court may meet the same fate as the guidelines under the Organ Transplantation Act.

Both P Ratinam as well as the latest judgment give unnecessary prominence to religious views on suicide with examples like Jal Samadhi by Lord Ram or Brahmins bringing their end by drowning. If we really want people to adopt a Uniform Civil Code, we need to liberate ourselves from religious discourse.

The Aruna Shanbaug verdict brought out the distinction between active and passive euthanasia. In the current verdict, too, Justice Chandrachud has accepted that the distinction between an "act" and "omission" gets blurred at times and in fact, an "omission" may amount to an "act". He also pointed out that unlike active euthanasia, there is no intent to cause death (mens rea) in passive

euthanasia.

Passive euthanasia is legal in many countries but active euthanasia is legal only in Canada, the Netherlands, Switzerland and a few states in the US. The SC has now accepted Living Will as part of the right to live with dignity. However, the Mental Healthcare Act, 2017, recognised such a will.

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