Should euthanasia be allowed?

Article 21 of the Constitution gives me the right to life, but I also interpret it as giving me the right to take away my life. The right to life includes the right to live with dignity. When you are in pain, that dignity is lost and you are forced to rely on your kith and kin for support.

Section 309 of the Indian Penal Code prescribes punishment for attempting suicide. It is an offence, but it should not be one. You could die, but if you survive, you should get counselling, not go to jail.

Narayan Lavate (88) and Iravati Lavate (78) from Maharashtra say that they do not wish to be a burden on society in their old age. They don't have children and their siblings are no more, they say. They argue that spending the country's scarce resources on keeping them alive, the old and ailing alive, is a criminal waste. This is simple logic. They also ask: What is the point in wasting money in treating old-age ailments when one has to eventually die?

A demand driven by logic

The couple sees the aversion to euthanasia in India as a sign of the country's "cultural backwardness". According to Iravati, their desire to die is driven by logic, not spirituality. There is no point in living only because a legal system demands it, she says. At the same time, they are averse to the idea of committing suicide, which is an offence in India. What if something goes wrong, they wonder. The Lavates are fit. They worry for themselves and other old couples like them who want to die.

But no one is ready to pay attention to their request. After writing letters to various Chief Ministers, legal experts like Ram Jethmalani, and Members of Parliament, all of which did not yield results, they have now written to President Ram Nath Kovind, hoping for a favourable response to their plea of "mercy death" or physician-assisted suicide.

But it is highly unlikely that the state will listen to their request. We are still not comfortable with the concept of euthanasia. The path-breaking judgment in *Aruna Shanbaug v. Union of India* (2011) brought the issue of euthanasia into the public domain. But unlike the Lavates, Aruna was in a permanently vegetative state since the brutal sexual attack on her in 1973 by a ward boy in Mumbai's King Edward Memorial Hospital where she worked as a staff nurse.

The 2011 judgment helped to push the debate to the extent of permitting passive euthanasia for terminally ill patients under the strict supervision of the High Court, in consultation with a team of doctors treating the terminally ill patient. Passive euthanasia means withdrawing life support to induce death in a natural way. In contrast, active euthanasia means injecting legal drugs to induce death. This is not permitted in India and so the Lavates' request is unlikely to be heeded.

Should we allow living wills?

But their letter to the President has opened up a new debate in this area. So far, the debate has been confined only to people who are terminally ill. Countries like Canada have given legal recognition to the concept of a "living will", where people lay down directives in advance on how they should be treated if they end up in a vegetative state. Now an important question before the courts is whether the law should allow living wills.

The Supreme Court is likely to take a decision on living wills in 2018, even as a draft Bill on withdrawal of life support to patients with terminal illness is under consideration.

The Bill, however, deals only with terminal illness.

Flavia Agnes is an activist and women's rights lawyer

I don't think India is ready for this. Euthanasia is allowed in some countries of the European Union — Luxembourg, the Netherlands, and Belgium. In Belgium, euthanasia is allowed in the case of terminally ill children. In Switzerland, it is allowed only in the case of advanced malignancy or in the case of intractable pain and suffering. Clearly, even there, euthanasia is not for everybody.

This is a complex issue in every society and the chances of its misuse are high. That's why it is not accepted as a way of ending the lives of mentally alert and reasonably healthy persons.

A big no for the mentally alert

In the Aruna Shanbaug case, which generated a lot of debate, we have to bear in mind that Shanbaug was not in a position to take any decisions herself. In the case of terminally ill patients who are provided with expensive health care, whose families know that the patients are unlikely to return to normalcy or near-normalcy, and given the economic burden on the family and on society to treat these patients, euthanasia could be debated. But euthanasia for those who are mentally alert, though physically disabled, is a big no.

Euthanasia in that form cannot be allowed or legalised because the probability of its misuse — whether it is demanded for property, money, or because of animosity among family members — is very high. Usually such killings are classified as homicide, and if the perpetrators are caught, they are punished. Imagine the consequences of legalising this. There will be no limits to its abuse in India and elsewhere.

The decision in favour of euthanasia is far more complex when a person is mentally alert. This brings to my mind a Hindi film about a quadriplegic who seeks death. The court denies his wish. I think that was the right decision.

Debating passive euthanasia

We doctors encounter this dilemma when we are faced with terminally ill patients, when we know that it is an exercise in futility to use resources to keep the person alive. In such cases, we talk about passive euthanasia with the concurrence of family members. Passive euthanasia is partly permitted and implies withdrawing life support when a person is not mentally alert. Mental alertness is assessed by the Glasgow Coma Scale (GCS) score, which tells us the level of consciousness. In normal individuals, the score is 15, and for those who are brain dead, it is three. A GCS score of less than eight means that the patient is not conscious, her airway is threatened, and her chances of recovery are less. But if the GCS score is three, the possibility of recovery is practically zero unless there is a miracle. I have not seen such miracles happening in clinical practice.

In some developed countries, donations after cardiac deaths are increasing. Seventy percent of organ donations come from such patients. They are done in a fully controlled environment where some patients could also be mentally alert. The question is the cost of care and who should bear the cost. If the condition is such that survival is impossible, then passive euthanasia is allowed.

The Lavates are physically fit. Nobody should or can allow them to die. They can help society in many ways. As a doctor, I can debate this only in the context of those suffering from terminal diseases, in critical care units, facing multiple organ problems — where the courts have ruled that life support can be withdrawn only when the chances of return to life are negligible.

As told to Anuradha Raman

M.C. Misra is former director of the All India Institute of Medical Sciences

The right to life is an old debate. When the Supreme Court heard the challenge to the imposition of Emergency, it rejected the argument that in India, the right to life available to a citizen flows from Article 21 of the Constitution, and that if such an Article were to be deleted or suspended, the citizen would have no right to his life under law.

The right to life

The right to life was made more sacrosanct and, over the years, has been seen as a basic feature of the Constitution, thereby making it both fundamental and permanent.

The significance of this is that if one relinquishes the right, one can do so only in accordance with procedure established by law. Imposing death by way of capital punishment is an example of the right to life being terminated in accordance with the procedure established by law. To terminate life, even one's own life, were it to be done without the authority of law, would amount to an unlawful act. In certain cases, it may even be a criminal act. In fact, an attempt to commit suicide is a crime under the IPC.

No procedure

At the heart of the legal problem is the fact that there exists no legislation laying down the procedure to permit a person to take her own life. The absence of any law governing the subject results in people taking recourse to courts to seek 'permission' to end their own lives, or the lives of others over whom they have some control. These would include petitions for euthanasia filed by persons who do not wish to live, or by relatives on behalf of those who suffer extreme pain or incurable affliction. Petitions also extend to asking for permission to terminate unwanted, accidental or dangerous pregnancies which, interestingly, relate to the rights of an unborn person to enter life itself. The courts become arbiters of the fate of such people. What happens now is that the courts are called upon to decide, without having the benefit of legislation to guide their decision-making. They rely on facts and the call of their conscience. Such ad hoc decisions suffer from arbitrariness and uncertainty — two qualities that make for bad law.

The right to choice

There is another legal dimension to this debate. Taking away life is often related to the inability of the affected or concerned individual to live with dignity. For instance, thousands of farmers in Vidarbha took their lives when faced with a dehumanising existence. The right to life under Article 21 has been interpreted by the Supreme Court as the right to live with dignity.

When a person chooses to end her life because she can no longer live with dignity, the question to be asked is not whether she can waive her constitutional right to life, but whether she has a right to choice. The debate extends to whether the fundamental right to life extends to the right to choice, because, after all, there is no overt act required to be performed to live life. The more abstract jurisprudence content that arises is whether there is a right to choose at all, and if there is, will it govern the right to life or be subservient to it.

The courts are yet to come up with an answer.

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Marriage is a civil contract — adultery or divorce should have only civil consequences

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