



Right to Life and Right to Die with reference to Mill's Liberty

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Abstract : *Liberty is the most cherished idea of civil society but ironically the most debated too. The notion of Mill regarding liberty in his monumental work 'On Liberty' has been most talked about. Either people vehemently criticize his ideas or blindly support his positive liberty. Without being judgmental, this work made an effort to critically analyze Mill's liberty with relation to Article 21 of the Indian Constitution which says everyone has right over his life and liberty except by procedure established by law or due process of law which is implied after judicial pronouncements post Maneka Gandhi case. And with several judgments of the court, its scope has been broadened*

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which now includes right to die with dignity. In a democratic set up everyone has a right to dissent. Questions arise whether right to life with dignity includes right to die with dignity? Originally Constitution denied it but with general judicial pronouncements it was held that right to life includes right to death and then it was realized that the Mill's notion of liberty with the least interference of state and autonomy over his mind and body seems so relevant. Is the Court promoting Mill's idea of liberty by making euthanasia or mercy killing legal and by decriminalizing suicide? Is it trying to say that the living will is a reality and should be practised?

This paper aims to elucidate implications of Mill's liberty with the help of a focused group discussion of doctor, patient, social activist, political thinker, advocate, etc. It led to an interesting finding that a man must be free to choose the right to live and right to a dignified death. It was found that in case of irreversible disease, vital organs failure and fathomless pain a person must be given liberty to die voluntarily without any fear or coercion, or even 'otherwise.' This 'otherwise' term is very complex term which would be understood in the years to come. The grey areas were broadly discussed and the theory of self-preservation was magnified, in providing generalisation. Our humble submission is that this work tried to strike a balance between self preservation and right to die with dignity in the perspective of Mill's contention.

Keywords: *Article 21, Right to life, judicial pronouncement, Mill's liberty, autonomy, euthanasia, suicide, self-preservation, dignity of life.*

Introduction :

पश्येमशरदःशतम् ॥१॥ जीवेमशरदःशतम् ॥२॥ बुध्येमशरदःशतम् ॥३॥ रोहेमशरदःशतम् ॥४॥ पूषेम शरदःशतम् ॥५॥ भवेमशरदःशतम् ॥६॥ भूयेमशरदः शतम् ॥७॥ भूयसीःशरदःशतात् ॥८॥ [अथर्ववेद, काण्ड १९, सूक्त ६७]

Purport: The above shloka defines a dignified life. An individual who wants to live for 100 years with good eyesight, sound wisdom, with active mind and body, healthy and wealthy life, prosperous and rewarded life. Blessed are those who lead a long healthy life. Life should end without agony Lord! And with dignity Oh! Lord. This shloka and its purport are self explanatory. The wholeness of life lies at its core.

Mill's definition of liberty is "pursuing our own good in our way" and he believed it to be one of the most important "elements of well-being". Mill's conviction was that it was better that a man chooses to live his life the wrong way than be forced to live the right way. Mill argues that society and the government are too stringent regarding people's behaviour. To rectify this, Mill believes that as long as one's behaviour does not pose any direct threat to another, it should not be limited. At first glance, right to die appears to fit J.S. Mill's examples of behaviour not to be constrained as it does not directly harm others. Mill sets the example of crossing the bridge. If you see someone crossing an unsafe bridge, you may stop them and warn. If they continue anyways you must step aside and let them cross the bridge and die if they so desire. It's their life after all. However it is pertinent to analyse here what if family members stop? They will be at loss with the death of a person. Can this be not the case of emotionally or financially harming others? Keeping aside the ethical implications, an effort was also made to draw legal sanctity of right to die.

Where there is life, there is death, it is a universal truth and nobody can escape from death but one thing which every man deserves in his life is right to live as well as right to die with dignity and no one should be deprived of his right.

The Indian Constitution says that the 'Right to die is not a fundamental right under Article 21. The question arises whether right to die is included in Article 21 of the Constitution which came for consideration for the first time before the Bombay High Court in 'The State of Maharashtra Vs. Maruti Shripathi Dubal'. The High Court

held that right to life under Article 21 includes right to die. The court also struck down Section 309 of IPC which earlier punished the person who attempted to commit suicide. The judges felt that the desire to die is not unnatural rather abnormal & uncommon. In the year 1994, Supreme Court in P. Rathinam v. Union of India, upheld the decision of Bombay High Court but the same court in Gian Kaur v. State of Punjab, a five judge Constitution bench of the court overruled the P. Rathinam case and held that 'Right to Life' under Article 21 of the Indian Constitution does not include 'Right to Die'. This right is inherently inconsistent as is death to life.

But Aruna Shanbaug's case gave a new legal dimension to discuss right to die and opened the gateway for legalization of passive euthanasia. While deciding the debate on right to die, the conflict between the principle of sanctity of life and the rights of self-preservation and dignity of a human being needs to be resolved. Although no such law could guarantee to be free of the possibility of abuse and one dangerous aspect is that such abuse may be easily made undetectable.

Executing voluntary death is neither an easy task nor widely accepted thought and a self-preserved life does not only mean mere existence of life and if one is not enjoying it then he must have the right to end his life.

Objectives :

1. To examine the relevance of Article 21 with reference to Mill's perspective.
2. To comprehend the extent of individual's right to life and right to die in Indian society.
3. To answer whether life without dignity can be voluntarily ended as per Mill's contention.

Hypotheses :

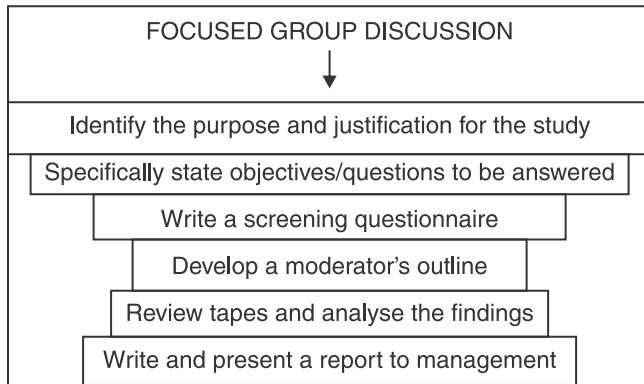
Keeping in mind the objective of the present study, following hypotheses were formulated for testing.

1. Right to die will negate right to self-preservation
2. Right to die can open Pandora's box of rampant misuses.

Methodology :

It is a qualitative and analogous study aiming to gather an in-depth understanding of Mill's liberty connecting it with article 21 of the Indian Constitution. Information required for this research work has been

gathered from book, journals and a number of judicial cases and judgements or government reports which have been taken into consideration in accordance with article 21 of the Constitution as the primary source.



Result and Discussion :

“To bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind is a moral crime, both against the unfortunate offspring and against society” – J.S. Mill (www.goodreads.com retrieved on 23/09/2018).

How would a person want to live his life? One would definitely want to live his life with wisdom and a healthy body. No matter how long he lives, he should have a dignified life. And if he has not having this life one should be given freedom of choice which is very subjective of course and therefore this concept should not be generalized as a fundamental principle.

Our results demonstrated that the right to life includes right to die in the Constitution in an implied way and not explicitly written anywhere. This right is extended only to the case of permanent vegetative state of patients and not to every citizen of the country.

The result highlights that little is known about Mill's view on ending one's life. Mill has not used the term “right to die” anywhere but the example of bridge and autonomy over mind and body indirectly supplements the theory of right to die. He provides liberty to every individual provided the person concerned shouldn't be a child or a lunatic or insane. Thus we can only assume that Mill was in favour of ending one's life wilfully.

The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma is considered to be just and fair even in medical science. The concept of living will is justified and adhered to. The living will of a patient must be executed and if he has no such document then the advice of medical committee is to be taken into consideration, before taking any crucial judgment. The Indian judiciary also favours a dignified exit. The Supreme Court under Article 21 has allowed right to die but only under certain guidelines like quantum of suffering, reversibility of disease, etc. However social activist prescient is that nothing could be worse than legalizing ‘right to die.’ Its legalization would result in increased rate of ‘organ racket’ and various other misuses. There is no denying the apprehension but that cannot merely be the reason to stop enactment of any such law. Each and every law is subject to misuse. So what? The relevance of law stands deep rooted.

The laws should always be amenable and dynamic according to the changing needs of society because values never remain the same. A self preserved life cannot subscribe a life with agony rather it includes meaningful and dignified life.

Life is the most beautiful gift of God and death is the harsh reality of life. Life and death are two sides of the same coin.

This paper contributes to fill the gaps in theoretical framework and implementation strategies.

Research Limitations and Implications :

The primary limitation of this empirical review is that facts are drawn from one focused group discussion due to paucity of time. Two three rounds of discussions would have given more reliable result and could have warranted a more extensive scope of investigation.

Conclusion :

Article 21 of the Constitution of India mandates that life can be deprived according to procedure established by law and this procedure must be just, fair and reasonable which could permit terminating of one's natural life span as required in the case of brain dead patients or salvation. This is what Mill also postulated when he talked about highest degree of pleasure or

intelligentsia pleasure which includes enlightenment of Gautam Buddha, Samadhi and many other styles of self realization as prescribed in Hindu mythology and scriptures. Even Rousseau supported it by quoting, “every man has the right to risk his own life in order to preserve it. Has it ever been said that a man who throws himself out of the window to escape from a fire is guilty of suicide?” (www.azquotes.com retrieved on 23/09/2018).

Further Rousseau also observed that “individual who as a result of being enslaved by his passions disobeys the voice of law, or of the general will than he will be forced to be free”(Johari,2012:596). By this he means that a person has no place in society if he does not abide himself by the rule of society as the ultimate aim of the society is welfare of the people.

Aristotle has rightly observed that ‘one who did not feel the need of the state is either an angel or a beast’ (Mukherjee, Ramaswamy, 2016:115). By this he implies that man is a social animal and he cannot live in isolation. Here comes a pertinent question what is the social responsibility of man? Why is state created? There is shift in the function of state, now the state does not act as a police state rather has turned into a welfare state with multifunctional work and therefore providing health care is state’s primary responsibility. At the same time, if the state accepts the right to die it may signify that state is withdrawing itself from the very purpose for which it exists. As Aristotle had said that state was formed for the life of people but continued for the good life of people. Even Mill, at that time when life does not involve such complexities, supported right to die by indirectly mentioning the example of crossing the broken bridge as the person was aware of the consequence and a person is the best judge of himself/herself. If we compare it to the present scenario, an example of elderly Mumbai couple can be cited who demanded that since they had lived happily and are in ageing process and have no offspring so they wanted to end their lives before any agony torments them and so they would be allowed to end their life, although such demand was rejected by the government, but values

change and so the demand of the society, so the situation may not be the same after 20 years or 30 years. The idea of Mill may not seem relevant today but his ideas have a vast implication tomorrow. Who knows?

The first hypothesis get partially proven as right to die will negate right to self preservation but not in all cases. Second hypothesis is self evident as it will lead to rampant misuses but that cannot be the adequate reason to stop such enactment of laws as recommended by the focus group. In that case no laws are beyond doubt.

Many philosophers and thinkers held that although human life is sacred, the quality of life is as important as the quantity (length) of the life. One cannot say that since in the Constitution of India Article 21 guarantees the right to life of an individual, he must be kept alive through all the sufferings that he has to undergo throughout the life span till death releases him from his ordeal. As Mahatma Gandhi once observed- “Death is our friend, the trust of friends. It delivers us from agony. I do not want to die of creeping paralysis of my faculties – a defeated man” (www.azquotes.com retrieved on 23/09/2018).

Mill also favoured bodily as well as mental autonomy to decide the conduct of one’s life and to decide to end one’s life. Mill’s individuality favours the recent judgment of Supreme Court with regard to the right to choose a dignified death for a brain dead patient, but soon the court may favour the same for normal people if they so desire.

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