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"Rights to Die with Dignity A Legal and Jurisprudential Analysis"

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THE HOHFELDIAN ANALYTICAL SYSTEM: RIGHT TO DIE WITH DIGNITY

The word right is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most of the rights are qualified.[1] All rights are claims" positions cannot recognize, for example, the rights in the Hobbesian state of nature, in which each person has unlimited privilege-rights of self-defense yet no claim-rights against attack. [2]The precise analysis of rights, with help of Hohfeldian analytical system, through associating four basic components of rights, to present scheme of rights which are called "Hohfeldian incidents". And the fundamental relation between them could be established through jural relations. Thus, these different kinds of rights are used to indicate the activity or potential activity of one individual which affects the other. However holfidien analysis consists of eight different but, here there is reference only to four major which are represented in his first scheme[3]. The development of analysis can be in terms of two legal persons and associating such elements with present discussion are one person X and other person Y.

Thus elements of which are focused are claim (right to life), the right which has the correlative duty (protection of life), the contradictory to claim that is privilege (right to die with dignity), the correlative position no claim (right to die).

"In Hohfeldian terminology, 'A' is said to have a right that 'B' shall do an act when, if 'B' does not do the act, 'A' can initiate legal proceedings that will result in coercing 'B'. In such a situation 'B' is said to have a duty to do the act. Right and duty are therefore correlatives, since in this sense there can never be a duty without a right".[4] thus in the present case the doctor can be compelled to perform his duty even thou he has the different opinion from that of the court to enforce the living will or right to die with dignity of the patients. Duty is an act which one ought to do, an act of opposite would be a wrong. Which arises when there is a claim that a person is ought to perform a certain act. Thus the duties may be moral or legal.[5]

It is easy to understand the relation between the right to life and corresponding duty which is equated to protection of life by individual and state, these are mural corresponding. The same is clear when it comes to the correlation between privilege and no right situations where if one person is said to have the privilege of right to die with dignity, no other person would be

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[1] American Bank And Trust Co. vs Federal Reserve Bank Of Atlanta 256 U.S. 350
[2] The Stanford Encyclopedia of Philosophy(Sept. 5, 2018, 06:30 AM), https://plato.stanford.edu/entries/rights/
[3] Ibid
[4] E. ALLAN FARNSWORTH, CONTRACTS, (3RD ED. 1999)
[5] P J FITZGERALD, SALMOND ON JURISPRUDENCE, (25TH ED. 2006)

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given this privilege, this situation of no right is that the person would not have right to die. However, every person would not get this privilege only those person who are in passive vegetative state or suffering from irrecoverable based on satisfaction of court which for this reason would act as the state who is obligated to protect life of its citizens. Thus this is not a universal right and given only to certain individual.

If a person who has claim as "right to life" would be left with jural opposite that is no right situation which is no "right to die". However, this right has not been made valid in the present case but the court once went far to include this right under article 21 which was later on criticized in it later cases. However this aspect remains untouched, and would be later discussed in this paper. And the person, who has the privilege that is right to die with dignity, would not caste any duty on state or doctor for the protection of their life as they are mural opposites. However, a person cannot waive the constitution protection under fundamental rights which are emerged through interpretation of courts under article 21. Thus a doctrine of waiver was evaluated as "no individual can barter away the freedoms conferred on him by the constitution"[6]. Even the duty of the state is not only a mere duty but an obligation on moral grounds as well as under the constitution duty of state under article 41,42 and 47 which talks about the public health improvement and the right to health is also made a fundamental right under Article 21 of the constitution[7]. In furtherance duty has also been imposed on the doctors in the form of obligation towards their profession and duty bound to give medicals assistance for preserving human life[8]. Thus government is also obligated to provide timely medical treatment to persons who are in need of such treatment[9].

In this regard jural contradictories are if one person X has a claim as to right to life Y cannot have the privilege as to right to die with dignity. Thus it indicates that Y can have privilege only if he does not have any duty that is duty to protection of life by state as well as the individual. This is the jural opposite of privilege is duty which indicates that if the person has right to die with dignity then that same person would not have to duty to protect life of others. This interpretation of rights would lead to destruction of morals of community as a hole where the state creates a duty on individual to protect the rights of other. Hence, contradictory means if, one person has the right to life the other person would not have right to die or die with dignity because other person has duty to protect (state or individual) such individual. Thus if there is no duty on the state or individual to protect the life of other then, people would have got the right to die with dignity. Because then X would have the privilege to die with dignity if and only if X has no duty not to protect the life of the individual. This could not be done as removal of such right would be against the constitution as well as natural justice principle because the society is formed on basis of social contact where state is empowered and obligated to protect the lives of the people.

[6] OLGA TELLIS & ORS VS BOMBAY MUNICIPAL CORPORATION 1986 AIR 180
[7] Consumer Education and Resource Centre Vs Union of India AIR (1995) 3 SSC, 42.
[8] Pt. Parmanand Katara v. Union of India and others, (1989) 4 SCC 286
[9] Paschim Banga Khet Mazdoorsamity vs State Of West Bengal & Anr1996 SCC (4) 37

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The other jural contradictory is the duty to protect lives of the individual contrary to no right situation which is right to die. This would satisfy rule lead down because if one person X has duty to protect the life of individual means the absence of right to die on other person Y. this is the reason right to die is not a constitutional right or as a legal right.

These theories are important to understanding legal development because they form the bedrock principles by which arguments and beliefs about the law are justified. As such, these theories are both indicators of and shaping forces within the social and legal culture.[10]

The primary moral and political theories that comprise our cultural set of beliefs provide a strong foundation for positive rights in the law.

Deontology is defined by a belief "in the existence of constraints, which erect moral barriers to the promotion of the good."[11]

Privilege and power cannot be negative rights, privileges, power and immunity cannot be positive right. Thus the right to die with dignity is neither negative nor positive.

The Blacks laws dictionary defines positive rights as a right entitling a person to have another do some act for the benefit of the person entitled.[12] and the negative rights are defined as a right entitling a person to have another refrain from doing an act that might harm the person entitled.[13]

However it is offend said that it is easy to fulfil the negative rights but, this right to die with dignity bit complicated because when it comes to enforcement it cannot be claimed by the person who wants such rights to be enforced but, other individual who has or has not obtained consent could also claim.

However the state can also enforce these rights through Parens Patriae which means under English common law principle “king is the father of the country and is under obligation to look after interest of those who are unable to look after themselves”. Thus the state being the position parent would be justified in taking decisions which would influence that individual. As said supreme court “parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words parens patriae meaning thereby `the father of the country', were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability”.[14] For this purpose the court is recognised as state[15]. Final authority which decides on enforceability of this right

[10] See David Abraham, Liberty Without Equality: The Property-Rights Connection in a Negative Citizenship"Regime, 21 L. & SOC. INQUIRY 1, 3 (1996) ("[Law, being located at the intersection of civil society and the state, combines the persuasive norms of the former with the coercive power of the latter.")
[11] KAGAN, supra note 27, at 73.
[12] BRYAN A. GARNER, BLACKS LAW DICTIONARY, 1519 (10TH ED 2014)
[13] ibid
[14] Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454
[15] In State of Kerala vs. N.M. Thomas, 1976(1) SCR 906

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would be courts otherwise there would be misuse of rights. Thus Supreme Court has heavily relied on Airedale case[16] to explain the concept of parens patriae where the stated that incompetent person mean a person who is in coma, Persistent Vegetative State (PVS) and terminally-ill. Thus court decision would be based on the best interest of the patient.

However, the opposite or negative right to right to life and personal liberty would be right to die and personal liberty. Hence there is more consideration to the first part of the article rather than to the second part which remains the same in both. Thus no person may be denied of his liberty. But, this liberty and freedom is not absolute in India, the government can come up with reasonable restriction in order to protect the rights of other individual. Who may have suffered from injustice if such restriction is not made.

Giving right to die for people would rise two fundamental problem which would affect the person on who's behalf such right has been exercised. They are right to privacy and consent which are Supreme Court has taken into consideration.

Right to privacy is intrinsic part of right to life and dignity, thus covers with fundamental conception of liberty which enables a individual to live the life as he wants without necessity intervention. Hence this right protects individual from interference and bodily invasion.

Every person should die today or tomorrow. We can predict death of individual. The natural process of his death of an patient who is suffering from PVS or irrecoverable injury and interference by medical treatment would be violation of privacy because it also violates the bodily autonomy of individual. If a patient is in undignified state and continues to live only because of right to privacy. Then his right to dignified life is adversely affected.

Since if a person given the right to face the death with dignity then right of privacy would not be violated because it would preserve the person's bodily autonomy. Thus this right is asserted as an ancillary right to the right to privacy.

Thus through enforcing this right to privacy the state would protect the will of patients and interest of society or community as a whole which also include the major interests of doctors, relatives, and family members.

The negative right enforcement would be difficult as people would start interpreting the rights in different manor from that of what court intent to say and in present as all the cases needs to be referred to court for enforcement of right to die with dignity. Thus this would increase the burden of the courts.

According to Holmes and Sunstein say the citizens rights are all enforced by the State and such rights are called positive. Moral urgency of securing negative rights have increased among citizens.

[16] Airedale National Health Service Trust v Bland, [1993] 1 All ER 821

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In the paper written by David P Currie where there is a reference to Jackson vs city the automobile caught fire which started burring with the people inside who were not saved by the police who was present thus there was duty on the state to dave the people who were in instant danger of death. Rather the people directed the vehicles around and cleared the crowed. Thus contention was that respondents were duty bound to save the life and liberty.

In opinion of judge Posner the respondents did not have common duty to rescue the stranger but, duty to exercise due case did arise. He further mentioned the difference between the positive and negative liberties when he said "the constitution protects citizens from oppression but does not grant them basic service".[17]

Thus same interpretation right to die is available when the due care is taken by the state as well as doctor who is allowing the patients to die by not giving the services which the are bound to give. Thus negative right would take the obligation on the state in this case the protection of life. But, question remains as to in the country where the right to life and health and the correlative duty which is created on the state and the individual documents or can the negative rights be enforceable is justified jurisprudentially.

The illustration is given where a women has given a choice to abort (negative right), even thou there is a obligation on state to protect the fetus but, under some circumstances it is allow under a statute. However, we attribute fetus with rights when its in mother's womb the right to property etc., right to life: then only negative right can be exercised when there instant danger to the mother. Where the consent of the court is not required but, only of that of mother and father. And for this case the consent of relatives would also not surface.

The court invoked not only the right to life but, also provision making it the duty of all state authority not only to respect but, also to power the dignity of man.

However, negative right are also defined as the right to act without interference. Then right to life would become a negative right because no other person can violate the same thus right to life cannot be violated by anyone. However, the positive right to life means the state is obligated to protect its people and no other person can also interfere with this right. As India constitution believes in positive aspect of law, the provision if made negative the right to die then would be a positive right which than would be a positive right which than needs to be regulated and protected by courts.

If we equate the positive aspect of rights to claim and negative to liberty which according to some scholars means privilege we would arrive ar the present situation that is right to die with dignity a liberty of an individual. This is being to universally accept in the future.

[17] DAVID P. CURRIE , POSITIVE AND NEGATIVE CONSTITUTIONAL RIGHTS, 53 CHICAGO.L.R 864-890 (1986)

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THEORIES OF RIGHTS: ANALYSIS OF RIGHT TO DIE WITH DIGNITY

The rights become legal because of enforceability and three other concepts which are connected with it they are 1. Protection afforded by the state 2. The elements of the will 3. The elements of interest

However the main characteristic of this law is that the legal right should be recognised by state. In India the right to die is a implied interpreted right derived by the judiciary but, the legislature which is the law making body is not clear of its stand's on this. Thus it can express through legislature enactment or amendment which it has not done.

Judiciary is not a state and the constitution has made it clear that it review of the laws enacted by legislation. There are three components which are highlighted under this aspect are the law will not always enforce a right but, may grant remedy to damages, imperfect rights may be recognised but, are not enforced directly and lastly always the court may not be adequate machinery for enforcement.[18]

We may not call right to die with dignity as imperfect right because both has been recognised by SC in different cases there is no legislation but, as the present the right is interpreted under the constitution and has made it fundamental right. The enforcement is possible as this right is recognised internationally in many countries. Some of the countries like Netherland which has legalised through enactment of separate legislation.

Elements of will: as the state cannot involve in every aspect of human life. The laws could be based on the will of the individual. This is the most related jurisprudential theory for the emergence of right to die with dignity. However, the court is clear when saying that this would only be given to PVS and the living will of the death is also made legal. Thus in this element the emphasis is given more to natural law, thus it consented with what law ought to be. Thus law takes into consideration of the desire of an individual owner.

Under the right theory such rights are not protected by the law of state. But, this will and desire of an individual may defer from one person to other. However, the law exists to compromise the conflicting desires of society. Thus according to positive view the law declared by legislature is law then the state should make its position clear as to whether it would allow such right intercepted by the courts, however the resent SC/ST act the court had deterrence of the legislation but, parliament was in other opinion thus passed amendment the legation to nullify the effects of the judgement.

The will of property, a persons will would be executed only after he is dead. Thus, to protect his property and interest on the property. However, the 'death will' states that the person wants to die and no one should interfere in this process. Thus his will or interest to die would be excited when he is living. Man can realise an effective life in society, but does not mean more than that his rights must be adjusted to the society.

[18] G. W. PATON & DAVID P. DERHAM, A TEXTBOOK OF JURISPRUDENCE, (4TH ED. 2014)

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The aim of law would not be to create new laws, but in the changing morals of the society the desire and will would be dynamic. The aim of the law should be to protect the individual through right. Tight to die is also one of the product of wills and desires of people.

Elements of Interest: Interest of a person is protected based on will which a person has, thus interest is protected by state. Even thou individual does not have a strong will the passive capacity to be the subject of rights may belong to any entity for which the law would choose to grant these privileges.[19]

The right to die with dignity and living will, the person would have interest as well as the will and thus the capability of exercising both the elements of rights. If a person has no will (lunatic) then also his interest would be protected by the state. However, interest of individual is said to be protected by the state but, it has not made its stance clear. The Iherings views these interest are not states but the basic protection of community and state is protects the will. The question as to whether a person in persistent vegetative state could enforce the constitutional right and protect the interest of the right to privacy. [20] In case of Cruzan Vs Director, Missouri Department of Health[21] the court held that right to die would fit within the framework of due process of laws. The opinion of William H. Rehnquist "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment" based on the due process. Thus this interest would also influence the state interest in preservation of the human life. Thus the best interest of the patients should be taken into consideration where the patient interest would differ from person to person and from time to time. However, we may also contend that if the person is in PVS the state interest would reduce as to protect the life because there would be no benefit that state would derive from saving life.

If the will of the society is same or rationalised then interest of the interest of community would lead to state protection for giving rights to the citizens. We would be wrong if we say that majority of the people would have a desire to and obtain a right as people generally have this mentality, save a person from death any cost however we cannot generalise the claim but, it would create a reasonable doubt as to getting this right through legislative sanction.

Therefore, it would be wrong to assume that every man would have the same will and interest.

WHETHER THERE ARE DIFFERENCES BETWEEN ACTIVE AND PASSIVE EUTHANASIA

As the Blacks law dictionary defines the Euthanasia is the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition a pain full one, for reasons of mercy thus also known as mercy killing. Sometime in law they are second degree murder, man slaughter, or criminally negligent homicide.

[19] ibid
[20] 2 LEONARD W. LEVY AND KENNETH L. KARST, ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, 930 (2000)
[21] Cruzan Vs Director, Missouri Department of Health 497 U.S. 261 (1990)

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"it connotes that the means responsible for death are painless, so that the death sought would be a relief from a distressing or intolerable condition of living (or dying), so that death, and not merely the means through which it is achieved, is good or right in itself. Usually both aspects are intended when the term euthanasia is used",

As blacks law dictionary defines active euthanasia[22], which means euthanasia performed by a facilitator (such as a healthcare practitioner) who not only provides the means of death but also carries out the final death causing act; euthanasia committed through the use of techniques or instrumentalities for hastening death. And passive euthanasia[23] is defined as the act of allowing a terminally ill person to die by either withholding or withdrawing life sustaining support such as a respirator or feeding tube; euthanasia committed through omitting to supply sustenance or treatment that, but for the decision and intent to terminate life, would have been supplied. These are definition which the court has attributed the same meaning as dictionary. Thus in the later part there is no deliberate act to save or kill a person.

There is no real difference between the two kinds of euthanasia. The act or omission by the doctor which is deliberate with the intention of letting a person die would be desire to kill the individual because the act of not treating or cutting of life support is direct cause of death. Intention to cause a patient's death is present in both the types and would result in death of patients. Killing is moving one's body such that someone dies and letting die is failing to move it with the same result.[24] The act of removing or stopping of life support is just equal to act of killing or giving a lethal injection. Active euthanasia is morally better because the patients would not suffer as the death occurs instantly without any pain rather than passive euthanasia which is time prolonging process as the death is uncertain based on health conditions of the patients. And the life would prolong as long as body would sustain life.

Where as in active is harmless to individual as there would be no suffering caused. The latter is merely omission to act whereas the previous is acting in certain way in furtherance of peaceful death. Simon Blackburn explains it like this in the Oxford Dictionary of Philosophy: The doctrine that it makes an ethical difference whether an agent actively intervenes to bring about a result, or omits to act in circumstances in which it is foreseen that as a result of the omission the same result occurs.[25]

Suppose that you are half way down a cliff face dangling from a rope and I am endeavouring to haul you to safety. Feeling myself being dragged over the cliff, I take my hands from the rope to save myself with the result that you die. Though I have acted by moving my hands, I have surely let you die rather than killed you.[26]

[22] Supra 9
[23] Supra 9
[24] Will Cartwright, *Killing and letting die: a defensible distinction,* (Sept. 5, 2018, 06:30 AM),
[25] SIMON BLACKBURN, OXFORD DICTIONARY OF PHILOSOPHY (2nd ed 2016)
[26] Supra 14

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A person who knows swimming but, intentionally does not save that person who is drowning in the river. The person has not committed any offence. Thus if a person push other person to river in order to kill him it would be murder however the person omission to save or to act which resulted in the death of individual is not liable under any law.

In order to explain the liabilities of a doctor we may refer to the illustration where a person is stabbed by other person in his stomach is bought to hospital. There is only one doctor in the hospital, who has some other personal commitments for that day. And his refusal for the treatment would kill that person or else in order to save him, it would take about one hour. This would be too much time for doctor as he has personal commitments. The doctor thus claims that he did not kill the patient. But "just let him die". However this is legally justified as the passive euthanasia is committed in this regard. Where the question arise as to whether it is justified morally. Such circumstance calls for more regulation in the mater as the doctor who is the only person to decide as to whether the person should be left to die even though the wish of the patents and family members and relatives are different. Thus there is a high chance of misuse of this by doctor for his personal gains and no one would know his ulterior motive. .

Suppose there are two patients who have suffered a similar injury and if the doctor invests his time completely on one person then that person could be saved however, the other person would die because of inadequate medical treatment. Who also had the equal chance of being saved by the doctor if the full time is dedicated to him. Now, question arises as, whether the doctor is justified in his action of saving one and letting other person die. Whether letting the person die is a passive euthanasia or omission to perform the duty by the doctor. On what bases does the doctor make the choice as to save the life of one, among two people. However, this would not attract any legal liability on the doctor but, the moral dilemma would be faced by him as to 'whose life needs to be saved'. Doctor is the sole person who can make the decision based on the circumstance to which he is put, taking into consideration the factors such as time, nature of injury of the person etc,

The doctor cannot depend on the court to make the reasoned decision because of time constrain and in-adequate specialisation in these matters. However, the court would also not have a fixed rule to say as to who should be saved. Case would be based on the morals. This would increase the burden of courts if all such cases were to be tried in court for the decision making. If the two persons where siblings then who would be in best position to take immediate decision is it family or relative who get to choose the loved one. No, this decision would completely base on ulterior motive. What if the people are not related and then two groups would start arguing based on the value which they attribute to their life which if saved would benefit not only their family but also the society would derive from saving his life. This would be a hard choice even for the doctor who should not be influenced by his biasness. But, take his decisions based on reasons and not morals. Even if the patient has previously consent to the death by dignity, that is not to prolong the life through artificial means of life. The patients may change the decision during the course of medical treatment

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because they hope that doctors may have found a cure or medical advancement would also trigger hope in patient's life to live.

However, Judith J. Thomson, in his paper he has contended that motive and outcome of passive and active euthanasia are identical and the sole difference among them is whether the death is result of acting or refraining. This he explains with examples "1. Alfred hates his wife and wants her dead. He puts cleaning fluid in her coffee, thereby killing her. 2. Bert hates his wife and wants her dead. She puts cleaning fluid in her coffee (being muddled and thinking it's cream). Bert happens to have the antidote to cleaning fluid, but he does not give it to her; he lets her die."[27] The second one may be morally wrong but, would not attract any legal obligation on the individual. Thus in second instance also the person may not be liable for murder. Thus it can be said that outcome would always be positive or desirable from victims point of view that is always death. This has been explained with another example where A finds B, his brother who he cares, are both at a beach. Where, A sees that his brother is floundering in the ocean, and hurries to save his life from drowning in the sea. In the second instance where under same circumstance when A goes to save B, B by himself somehow catches breath and swims to shore all by himself. And A simply had to watch and allow B to save himself. Thus in the both instances the outcome was the same, which was desired by A. And both were in their desired position. Hence in euthanasia the desirable outcome for all the parties is death which they value significantly through acting or refraining by doctors which would be achieved . In such cases there would be no difference between killing and letting die.[28]

The active euthanasia is a lesser evil which causes death swiftly without any pain or suffering. Where 'A', a person dying of incurable cancer would be put to death within seven days if, the treatment is stopped and the person thus would suffer for about seven days in pain even thou he and every other person wants him to die. However, if, a person is given lethal injection he would die in seconds without any suffering or pain. A best action causes great happiness to patients and every other person. And doctor would be satisfied because he performed duty to ensure that the patients did not suffer which was the wish of patients as well as the guardians.[29]

[27] JUDITH JARVIS THOMSON, 'KILLING, LETTING DIE, AND THE TROLLEY PROBLEM', (1976)

[28] Natalie Abrams, *Active and Passive Euthanasia*, (Sept. 5, 2018, 06:30 AM) https://www.jstor.org/stable/3749432

[29] *Active and passive euthanasia* (Sept. 5, 2018, 06:30 AM), http://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml