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Passive Euthanasia: An Analysis of the Supreme Court Judgments

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ABSTRACT:

Euthanasia is a much debated issue in India and the world at large as it evokes strong emotions both for and against. In India, there has been a paradigm shift from illegality to legality of passive voluntary euthanasia. Article 21 now includes the 'Right to die' which earlier was unconstitutional. This shift can be seen in the varied judgments and Reports of Law Commissions of India. They paved way for formulation of new guidelines and procedures. The finality of this decision is now pending with the legislative body to frame the necessary law. Any decision will have a mammoth effect on the lives of persons who are suffering from incurable and extremely painful disease. The Court and legislature have based their arguments on legal and Constitutional basis, leaving aside other deliberations such as moral, ethical, economical which according to many who are against the idea of euthanasia have vociferously propagated. The intention of the author is to kindle and guide the discussion in these areas having before oneself the various judgments and their contentions and the arguments for and against in the debate of euthanasia to help persons to critically evaluate and form one's opinion and encourage further discussions for better enlightenment because the issue of euthanasia unlike other debatable issues touches the very core of human life and sanctity of life.

INTRODUCTION

From time immemorial human beings have had to face numerous dilemmas, which are not just emotionally charged, but also highly controversial and divisive. One such dilemma that has surfaced in the recent times is "Euthanasia". At the pivotal point of this dilemma lies the dignity of a human being which at no cost can be sacrificed, as it is both sacrosanct and fundamental.

The Indian judiciary through its apt and timely interventions in the form of interpretations and decisions have rendered yeoman service in grappling with this issue and provided lucid arguments and guidelines. A closer look at the response of the Supreme Court makes it very clear that there has been a long journey from 'complete denial' to 'partial endorsement' as regards 'Euthanasia'. This journey began with the illustrious case of Gian Maur (1996) (1) that set the stage for the debate whether the 'right to die' is included in 'right to life' as prevalent in Article 21 or not. The Apex Court in this case overruled P. Ratinam case.(2) in which right to die was recognized to be inclusive in the right to life and liberty as accessible in Article 21 of the Constitution, and further reiterated that 'right to life' is innately inconsistent with 'right to die' as is 'death'. Along this journey the paramount breakthrough was seen in the case of Arun Ramehandra Shanbaug where in the Apex Court drawing upon Article 21 of the Constitution interpreted emphatically that the 'right to life' includes the 'right to die with dignity'. It endorsed and reiterated the legal recognition of the right to 'passive



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euthanasia' and 'Advance Directive' or 'living will'. The famous saying that. "Rome was not built in a day" is true to this journey too, wherein, extensive study and reflection based on legal precedents and sound reasoning has borne this fruit and needs to be further cherished, assimilated and lived.

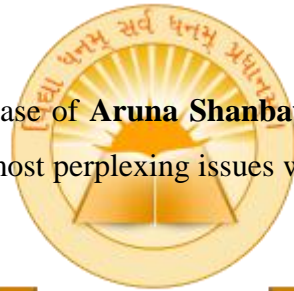
THE CONCEPT OF EUTHANASIA

The term euthanasia was first used by a Roman historian, Suetonius (70-140 AD) and in the 17th century by an English philosopher Sir Francis Bacon. (4) It was derived from Greek words, namely. 'eu' and 'thanatos' which means 'good death' or 'easy death'. It is also known as 'Mercy Killing'.(1) It is the termination of life of a patient, who requests death, as his suffering is unbearably painful and the disease is incurable.

Analysis of the Supreme Court judgments on Passive euthanasia

The Indian Judiciary has from time to time wrestled with this issue of euthanasia, with 'human dignity' as a pivotal point in question as the legislature and judiciary has the paramount duty to respect, protect and promote human dignity.

While pronouncing the judgment in the case of **Aruna Shanbaug (2011)**, the learned Judges have rightly expressed that, "Euthanasia is one of the most perplexing issues which the Courts and legislature all over the world are facing today.



VIDHYAYANA

1. State vs Sanjay Kumar Bhatia

This was the first case in which such an issue was brought before an Indian Court. In this case, a Division Bench of the High Court of Delhi criticized Section 309 IPC, 1860 and observed that the "continuance of section 309 IPC is an anachronism unworthy of a humane society like our" and further added that "no person who believes in the rule of law and the role of Courts as vital instrument of social change as I do, can permit such a situation to continue. Even though section 309 IPC may be on the statute book, I feel it is time when Courts must refuse to prosecute these victims of social circumstance" (2)

2. Maruti Shripati Dubal vs State of Maharashtra (3)

Here we also see that distinction is made between suicide and mercy killing. It was thereby held that section 309 IPC is 'ultra vires' the Constitution being violation of article 14 and article 21 therefore must be struck down. The reasons for striking down the section are: Article 21 has conferred a positive right to live which carries with it the negative right not to live. It took cognizance of the various causes that lead to suicide.



VIDHYAYANA

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www.vidhyayanaejournal.org

An International Multidisciplinary Research e-Journal

These being mental diseases and imbalances, unbearable physical ailments, shame and disgrace, etc. And finally, in India different forms of suicide are known such as johars, Samadhi, atmarpana (self-sacrifice), prayopaveshan (starving to death), etc.

3. P. Rathinam vs Union of India(4)

The Constitutional validity of section 309 was further discussed by the Supreme Court in P. Rathinam v/s Union of India.(5) It was held that section 309 is cruel and irrational as it punished a person doubly. It was indeed felt that this section needs to be deleted from the statute book to humanize our penal laws. Justice B. L. Hansaria without mincing words clearly stated that an act of suicide cannot be said to be against religion, morality or public policy and an act of attempted suicide has no baneful effect on society. As per this judgment it was held that section 309 IPC violated Article 21 and so, it was void. This learned decision was based on the fact that even the Law Commission held that it was essential to repeal section 309 IPC as it was 'harsh and unjustifiable'

4. Gian Kaur v/s State of Punjab: A five judge bench in Gian Kaur v/s State of Punjab approved the decision of Andhra Pradesh High Court in Chenna Jagadeeshwar and Another v/s State of Andhra Pradesh, 1988, CrI, L.J. 549, which stated that section 309 IPC is not violative of either Article 14 or Article 21 of the Constitution. And at the same time the Apex Court rejected the decision as 'unconstitutional and not correct' of the Bombay High Court in Maruti Shripati Dubal vs State of Maharashtra, 1987 CrI. L.J. 743 and a Division Bench of Supreme Court in P. Rathinam vs Union of India and Anr., 1994 (3) SCC 394, wherein section 309 IPC was held to be unconstitutional.(6)

5. Aruna Ramchandra Shanbaug vs Union of India, 2011

After much deliberations, the Supreme Court in Aruna Ramchandra Shanbaug vs Union of India, 2011 gave its decision on euthanasia. Aruna was a nurse working in King Edward Memorial Hospital, Parel, Mumbai. She was put in permanent vegetative state by a sweeper in the hospital who strangled her with a dog chain around her neck and wanted to rape her but ended up sodomising her. She had been in this state for nearly 36 years. A writer by the name Miss Pinky Virani who visited Aruna on certain occasions filed a petition for mercy killing (euthanasia) in the Supreme Court of India.

The issues at stake in this case were:

- a) Should euthanasia be made legal?



- b) Whether a person has a right of self-determination in the form of 'living will' to make a choice to stop life-sustaining treatments in case the person is in a permanent vegetative state.
- c) Secondly, in case a person has not made a 'living will' then can the family, friend or hospital staff decide on the person's behalf to stop life-sustaining treatments.

The judgment delivered by Justice Markandey Katju and Justice Gyan Sudha Misra is indeed a landmark judgment. The major highlights of this judgment are. (7)

Who can execute the Advance Directive and how?

What should it contain?

How should it be recorded and preserved?

What if permission is refused by the Medical Board?

Revocation of Advance Directive.

Where there is no Advance Directive.

Analysis of the Reports of the Law Commission on euthanasia

Apart from these judicial judgments, that paved the way for the development of policies pertaining to passive euthanasia there are also various Reports of the Law Commissions too that need to be seen for better analysis.

The Law Commission of India came out with two pertinent reports which dealt with the issue of euthanasia to some extent, but the various interventions have had a great influence on the issue of euthanasia. The 196th Report of the Law Commission on Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners), 2006 and Second, 241st Report named Passive Euthanasia: A Relook, 2012.

The 196th Report of the Law Commission on Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners), 2006. The major provisions of the Bill relate to withholding or withdrawing life support system like ventilation, artificial supply of food and hydration from a patient who is terminally ill.

The Kerala Law Reforms Commission (2009) has also suggested amendments in the Indian Penal Code,



VIDHYAYANA

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An International Multidisciplinary Research e-Journal

so as to legalizing euthanasia and to treat suicide attempts as a non-punishable offence. The Commissions following words are not only relevant but critical also at this juncture: "Mortality is life's inevitability and death is deliverance from dreadful disease and intolerable torment. Life is sacred, but intense pain with no relief in sight is a torture, which negates the meaning of existence. "(8)

CONCLUSION

The Supreme Court having given legal sanction to passive euthanasia is indeed an important milestone that cannot be ignored or downplayed. The key concerns of the judiciary was to preserve life, rule out use of arbitrary and unfair practice, to avoid abuses and undue influence as regards euthanasia. The motive for this sanction is based on human dignity and the smoothening of the process of dying in cases of a terminal illness or permanent vegetative state with no hope of recovery. This judgment has enlarged the interpretation of Article 21 to include 'Right to die' within the 'Right to life'. It has brought both physical and mental health and well-being within the ambit of the "right to life".

As mentioned in the introduction I totally agree with those who have expressed their opinion that the legal sanction to passive is 'too little' but disagree that it is 'too late'. For any good work, it is never too late. This 'too little' is seen in the debate that followed from the legal sanction of passive euthanasia has gone beyond the judicial elucidation. This we have seen in the pro and cons arguments which have not limited the arguments to just legal or Constitutional basis, but also taken into account morality, ethics, economics, religious and other factors.

Every argument in favor of euthanasia in whichever form it be is counter argued with logical and forceful argument. Therefore, it basically calls for a paradigm shift from a 'culture of death' to a 'culture of life'. It is a call to go the extra mile and think out of the box for the 'best interest of the person' which may not be death.



VIDHYAYANA

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VIDHYAYANA