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A Critical Analysis of Right to Live V. Right to Die in the context of Euthanasia

In reference to Aruna Ramachandra Shanbaug V. Union of India via a Socio-Legal Lens

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ABSTRACT

We inhabit a society where people from different castes, races, religions, and nationalities coexist. However, one facet that we commonly share is 'birth' and 'death'. The life of a person is chiefly considered and has been defined primarily in multiple international declarations as well as a fundamental right in the constitution of India. India, the hub of various religious beliefs, has always been against the practice of euthanasia considering life to be the gift of god where god can only take this irreplaceable gift away.

Euthanasia or mercy killing is a procedure exercised to alleviate the affliction faced by individuals and propose a recourse for them to determine when they want to end their life. It is nowhere similar to suicide and many countries have already legalized both forms of euthanasia I.e. Active and Passive.

Those people who do not come forward in support of this are the ones who believe that poor people who are incapable of affording healthcare or people with physical disabilities will be discarded from society. They also think that people who are mentally challenged should be provided with help rather than asked to end their lives. They trust in the sanctity of life and efforts should be made to protect and extend it.

On the other hand, a lot of people believe that this is a very personalized opinion and everyone should have the autonomy to decide what they desire for their well being which also includes their death. They do not challenge the supremacy of life but they believe that determining their formal death is a part of their right to life.

The author of this research analysis wants to study the current status of Euthanasia in India, various judicial proclamations, and most importantly to apprehend where does 'Right to Die' stands in the light of the 'Right to Life'.

I. INTRODUCTION

In recent times, one of the most argued affairs is whether an individual is entitled to the right

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to die. However, the court of law has furnished insight into the hypothesis of euthanasia and its accepted status in India, many refute this argument on the fact that the life of an individual is extremely inviolable and no one has the right to take it away and bring death to himself.

Right to Life also incorporates the term 'Dignity', which means that every individual will have the right to live with dignity and nobility until the end of his natural life. This can have a varied interpretation as well. This may also mean that a dying man also has a right to die with dignity. This right can be often misconceived with the right to die an unnatural death retrenching the natural span of life. Therefore, the Right to Life is primary to the dispute of the legalization of Euthanasia.

Euthanasia is a contentious subject because it requires the intentional termination of human life. There have been many instances of deadly diseases which are unimaginable to the extent of suffering they cause to the patients. The pain and suffering grow each day and make the patient vulnerable to death. In such cases, the patient demands assistance in killing himself rather than going through affliction. *This research questions whether these patients should be allowed to kill themselves or whether they should suffer and die out of their fatal illness?*

(A) Research Methodology

Concerning methodological aspects of the research, the study can be classified as doctrinal.

(B) Aim

This research study encompasses the following subtopics:-

1. Introduction and History of Euthanasia
2. Euthanasia in reference to Human Rights.
3. Legal Provisions of Euthanasia
4. Status of Euthanasia in India along with a critical analysis of Aruna Ramachandra Shanbaug V Union of India.
5. Status of Euthanasia in other countries
6. Conclusion and Recommendations

(C) Research Design

Regarding the approach adopted for the selection of the research design, this paper can be classified as a qualitative research design.

II. UNDERSTANDING EUTHANASIA

Euthanasia has always been a controversial affair, a reason for conflicts and debates amongst various physicians, politicians, religious heads, ethical experts, or even common man. One of the main concerns is that aiding a suicide is fundamentally wrong and can be perceived as deliberately causing the death of another human being. This subject tends to boil deep emotions as it concerns significant human interests such as mortality and welfare.

Euthanasia originates from two ancient Greek words, 'EU' and 'THANOS' which means 'GOOD' and 'DEATH' respectively, hence euthanasia means good death.² It is performed medically via injecting or suspending some lethal medicinal treatment to the patient who is suffering from an intolerable and incurable terminal illness to free him from his pain and sufferings. Euthanasia is also defined as 'Mercy Killing' which can be interpreted as the intentional killing of a patient whose life is not left worth living due to his sufferings. This act lets the patient die a dignified and painless death from an irremediable and intolerable painful life. According to the definition of Merriam-Webster dictionary, it is the painless killing of an individual who is in an irreversible coma or untreatable disease.³ It is a calculated intervention by directly withdrawing life support or injecting fatal injections, or by denying basic medical care to end a painful life of a medically disabled person.⁴ The main purpose of euthanasia is to terminate a human life either by an act or by the intentional withdrawal of medical care.

Euthanasia can be either voluntary or non-voluntary. Involuntary euthanasia the patient is in a conscious state of mind and gives his consent to further end his life. However, in involuntary euthanasia, the patient is not in a sound state of mind, and the decision to end the life is taken by a close family member on his behalf. Other than these two, euthanasia can be further defined in two categories namely, active or passive. During active euthanasia, a doctor uses lethal substances to inject into the body of an individual to end his life and in passive euthanasia, the person is withheld from his life-sustaining medications.

(A) History of Euthanasia

The hypothesis of euthanasia dates back to the time of the Greeks and Romans. Philosophers like Socrates and Plato justified the elimination of children who were considered invalid because they were maimed. They contended that there is no need to keep such individuals alive

² William C. Shiel, *Medical Definition of Euthanasia*, MEDICINENET, <https://www.medicinenet.com/euthanasia/definition.htm>

³ *Euthansia*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/euthanasia>

⁴ Robert J.M. Dillmann & Johan Legemaate, *Euthanasia in the Netherlands: the state of the legal debate*, 1. EJHL 81, (1994).

who does not have a possibility of recovering. Even the doctors and physicians did not follow the Hippocratic oath⁵ that existed at that time which prohibited them to prescribe any deadly drugs whether asked for or not. Throughout this period, voluntary killing was more widely supported than an individual dying from prolonged agony or pain.

However, the spread in the belief of Christianity made people believe that human life was sacred and voluntary killing is a wicked practice that should come to an end. Similarly, Judaism and Islam strongly condemned this practice. Scholars like Thomas Quinas and Francois Ranchin also opposed euthanasia whereas people like John Donne came in support of it in 1624.

During the 19th century, the importance of euthanasia grew. Around 1937-1938, senators of the US government decided to introduce euthanasia and at the same time, the national society for legalization of euthanasia came into existence. The Nazis started using this practice to kill people and those children who were handicapped and disabled. This brought a whole new perspective to the concept of euthanasia in the US which was further disapproved by many. A petition was filed before the UN in 1952, to especially amend the human rights declaration and exclude it completely.

The Supreme Court of the United States in 1997, declared that there is no right to die. However, in 2002, Netherlands became the first country to legalize euthanasia which was followed by Luxembourg in 2008.

III. EUTHANASIA IN REFERENCE TO HUMAN RIGHTS

Human Rights are those rights that a person inherits from the moment he is born until his death. Everyone has a right to live a life with dignity irrespective of their caste, creed, gender, nationality, and status. Universal Declarations of Human Rights, 1948 is one of the most important and globally recognized documents and its preamble states that “Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”⁶ This very statement infers that no person shall be deprived of his basic rights and he can not deprive himself of the same too. The UDHR classifies the right to live as a human right.

Another covenant that is as important as UDHR is the International covenant on civil and political rights (ICCPR). The importance of the right to life is also recognized by ICCPR and

⁵ William C. Shiel, *Medical Definition of Hippocratic Oath*, MEDICINENET, https://www.medicinenet.com/hippocratic_oath/definition.htm

⁶ Preamble, Universal Declaration of Human Rights, 1948

its emphasis is also illustrated in domestic laws of various countries.

Article 6 of the ICCPR, states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”⁷. From this statement, it can be inferred that every individual has a right to life regardless of any situation or circumstances that may arise. Now can we assume that the right to die is a human right as well? We can contest this on the ground that if a person has the right to live with dignity then why can't he have a right to die with dignity as well? Why can't a person hold the liberty to choose when he wants to die and in which manner? This view was recognized because many people were more concerned about their quality of life than the duration of their life. They believed that if the quality of life is intolerable then one should be relieved from his sufferings at the mercy of the doctor who's trying to help him and save his life.⁸

Article 7 of the ICCPR states that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”⁹. The essence of this article is that although these provisions are protecting the respect and sanctity of life one should be aware that no one should be subjected to any kind of cruel practice which will reduce the quality and value of his life. However, neither in the human rights act nor in the European convention of human rights it is explicitly mentioned that the right to die is a human right.

In conclusion, it can be summarised that the right to live is indeed guaranteed by these human rights instruments but nowhere it is specifically mentioned about the right to die as a human right. The right to life has been kept at a very high pedestal as compared to the right to die but given the fact that many countries who support their countrymen to kill themselves who are in a vegetative state through euthanasia are recognizing the right to die with dignity as a human right. Prolonging one's life through drugs which have already taken a toll on the condition of the body of the individual is a violation of his right after all.

However, it can not be explicitly determined that the right to die is a human right because there are too many opinions in favor and against euthanasia making this issue quite controversial.

IV. LEGAL PROVISIONS APPLICABLE TO EUTHANASIA

In India, there were no legal provisions relating to euthanasia as the whole concept is

⁷ Article 6, International Covenant on Civil and Political Rights, 1966

⁸ K.Amarasekara & M. Bagaric, *The Vacuousness of Rights in the Euthanasia Debate*, 6 Int'l J Hum Rgts 19 (2002) 21

⁹ Article 7, International Covenant on Civil and Political Rights. 1966

considered illegal either active or passive euthanasia.

The only statutory regulatory provision related to euthanasia is in the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 which states that euthanasia is an illegal practice.

The provision follows as:

Euthanasia Practicing euthanasia shall constitute unethical conduct. However, on a specific occasion, the question of withdrawing supporting devices to sustain cardio-pulmonary function even after brain death, shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of the support system. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer/Medical Officer in charge of the hospital, and a doctor nominated by the in-charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994”¹⁰

However, in spite of the fact that there are no provisions in the legal system, The Indian Penal Code has some provisions which can be made applicable to certain cases unless they come under the exceptions specified in the code.

1) In a situation where the Euthanasia is Involuntary Active or even active and voluntary but consent is given by an incompetent person, the doctor would be culpable under Section 300 of the Indian Penal Code, 1860 which is Murder given the fact that there is an existence of intention on the part of the doctor to bring an end to the life of the individual and accordingly punished under section 302 of the Act.¹¹

2) However, in case it is Voluntary Euthanasia and the individual giving the consent is above the age of 18 years (provided that it is an informed decision), it would fall under Exception 5 of Section 300 and come under the scope of Culpable Homicide not amounting to murder. Thus the doctor will be punished under Section 304 of the IPC.

3) Further the doctor would also be held liable in case he assists in the suicide of the patient under section 306 of the IPC for abetting Suicide taking into consideration the age of the individual and the patient would fall under the purview of section 309 for an attempt to commit suicide.

V. THE NATIONAL PERSPECTIVE PRE – ARUNA SHANBAUG IN INDIA

Right to die is not a new concept rather dates back many years. Article 21 of the Indian

¹⁰ The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

¹¹ Indian Penal Code, 1860

constitution protects the fundamental right to live but whether it includes the right to die was first considered in the case of *Maruti Shripati Dubal vs. the State of Maharashtra*.¹² This case was discussed under consideration of section 309 of the Indian penal code, 1960 which talks about the attempt to suicide. The court interpreted that immaterial of the fact that Article 21 protects the right to live, it does not mean that right to die is abnormal or unnatural want. Hence, the court strikes down section 309 because of its arbitrary nature and its contradictory character against Articles 14 and 21 of the Indian constitution.

In *Chenna Jagdeshwar and Ors. Vs. State of Andhra Pradesh*¹³, a different viewpoint was adopted by the high court where it reinstated the validity of section 309 of IPC saying that its principle is not unconstitutional and even though the secret provides punishment for the attempt of suicide, it is not a mandatory provision. This means that it will be under the discretion of the court to punish him or not.

But finally, a verdict from the Supreme Court of India in the case of *P.Rathinam and Ors vs. Union of India*¹⁴ decided that an attempt to suicide can not be an offense as it does not harm anyone. Hence, it is unconstitutional and void because it violates Articles 14 and 21 of the constitution.

However, in the case of *Gian Kaur vs. the State of Punjab*¹⁵, the Supreme Court overruled its previous judgment and reinstated the fact that Article 21 of the constitution talks about preserving, protecting, and upholding one's life but the right to die is in contradiction to all these terms hence we cannot consider right to die in the same equation with the right to live.

(A) Critically Analyzing the Aruna Ramachandra Shanbaug V, Union of India Case

Facts of the Case:

Aruna's friend filed a writ petition under Article 32 of the Indian constitution. The petitioner was working at the King Edward Memorial Hospital as a nurse in Mumbai, Maharashtra. In 1973, one of the sweepers of the hospital tied her with a dog chain and assaulted her. He even tried to rape her but sodomized her because she was menstruating. In one of his attempts to stop her from moving and escaping he strangled and twisted the chain around her neck which resulted in cutting the oxygen flow to her brain and causing her severe brain damage. The petitioner was found in a vegetative state and the neurologist stated that her cortex of the brain is severely damaged and so is her cervical cord. She was in that situation for 36 years and was

¹² 1987 (1) Bom CR 499

¹³ 1987 (1) APLJ (HC) 340

¹⁴ AIR 1994 SC 1844

¹⁵ AIR 1996 SC 1257

at the age of 60.

However, this incident caused her persistent damage and was not in a state of awareness or consciousness around her. She was unable to hear, see, talk or understand anything. She started developing bedsores, and her teeth started to decay as well. She was virtually a skeleton and was excreting on the bed. She was in a sub-human condition and couldn't be called a living person ever again.¹⁶

It was prayed by the petitioner to stop feeding Aruna and allow her to die in peace.

Court Appointed Doctors opinion

A counter affidavit was filed by the respondents which created a conflict of statements. According to which Aruna was able to communicate through expressions and noises. This in turn led to the appointment of three experts who will determine the physical and mental condition of the petitioner and will report it to the court.

The experts concluded that Aruna is treated well and has been taken care of. She is aware of her surroundings and also communicates through noises and moving fingers. She also listens to devotional music and there are so many situations of bedsores. They also said that Aruna does not want to terminate her life and euthanasia is not required in her case.

Issues that were raised

1. Is withholding life-sustaining therapies and support systems permissible when a person is in a vegetative state?
2. Should a person's desire be respected in case he has requested to withdraw life support system in case of a persistent vegetative state?
3. Should the immediate family members be allowed to make requests such as withdrawal of life support system in case of permanent vegetative state?

Understanding the Judgement of the court

A clear and fluent distinction was made by the honorable Supreme Court between active and passive euthanasia. When lethal substances will be given to a person to end his life, it will be termed as active euthanasia and is illegal until legislation is passed making it legal. However, passive euthanasia will be the withdrawal of medical necessities required by a patient to sustain his life. Moreover, it will not require the recognition of any legislation given the fact is

¹⁶ AIR 2011 SC 1290

practiced with safeguards and under required conditions.¹⁷

The court adjudicated that there can be a debate about the legalization of active euthanasia but can not about passive euthanasia. No one can prosecute anyone for failing to save a life.

The court heavily relied on the landmark judgment of *Airdale NHS Trust vs. Bland*¹⁸ where a person was allowed to die by the withdrawal of his life support in English history.

One important decision taken by the court was stating that even though section 309 of IPC is constitutionally valid as regarded in *Gian Kaur's case*¹⁹, it shouldn't be looked at as a crime rather the person should be helped.

Next, the court distinguished between death and brain dead whereby coming to a conclusion that Aruna was not brain dead and was in a permanent vegetative state as there was very little activity in her brain alive.

Furthermore, the court also stated that there is no requirement for passive euthanasia in our country as many patients are going through the same situations. However, if there is any pre-condition then prior approval of the court is required to protect the best interest of the patient. This power to the court acts as a double check measure so that any malicious or vexatious act can be prevented.

A procedure was also laid by the court which has to be followed. An approval should have to be granted by the Chief Justice which will constitute a bench of a minimum of 2 judges which will take the opinion of the 3 expert doctors preferably being a psychiatrist, physician, and neurologist. Furthermore, the court was only supposed to take the opinions of the close relatives and arrive at a decision as early as possible keeping in mind the paramount interest of the patient.

Moreover, it was observed that even this landmark judgment did not give the right to die a constitutional status under article 21 of the constitution rather emphasized the right to live as the right to live with dignity.

(B) Post “Aruna Shanbaug” in India

A bill named “Treatment of terminally Ill patients” was introduced in 2016 which gave permission to passive euthanasia, however, has not been passed as of yet. The bill allowed the patients to deny medical treatments if given any, made in their sound mind. Some salient

¹⁷ AIR 2011 SC 1290

¹⁸ (1993) All E.R. 82

¹⁹ Gian Kaur V. State of Punjab, AIR 1996 SC 1257

features of this bill are:

1. Every competent person which even includes a minor above the age of 16, has a right to deny any life support system no matter how deadly is the disease.
2. Neither the doctor nor the patient can be held liable for any criminal offense and the practitioner has a bounded duty to inform all the concerned people.
3. All the procedures will be outlined by the Medical Council of India to ensure that a guided process is followed.
4. Also, the doctor will hold a responsibility to take the opinion from a panel of 3 medically skilled experts before the commencement of any procedure.

After a landmark judgment was passed in the year 2018, through *Common Cause(A Registered Society) v. Union of India*²⁰, it was held by a 5 judge bench that the right to die with dignity is a fundamental right enshrined in the right to life and privacy and every individual has the autonomy to exercise it individually. It was also affirmed by the court that passive euthanasia is legal in India.

This case also highlighted the concept of “living wills” which means that if a patient communicates in advance his will to withdraw life support system then his decision should be respected by the doctors.

As of now, a bill titled “The euthanasia (regulation) Bill was introduced in the Lok Sabha by a private member which talks about the legalization of both active and passive euthanasia and has not seen any progress as of yet.

VI. Status of Euthanasia in other Countries

The Netherlands was the first country which legalized euthanasia in 2002. Some other countries that have legalized euthanasia are Canada, Quebec, Belgium, Finland, Germany, Columbia, Luxembourg, Norway, and Australia which tried its legalization almost 50 times. There are many states in the USA which have also legalized its status and have permitted and made euthanasia legal.

However, in the United Kingdom, euthanasia is still considered a criminal offense. Even in Switzerland where physician-assisted suicide is legal, euthanasia is considered illegal. China has also criminalized euthanasia. In France, one can be sedated until they die and this procedure

²⁰(2018) 5 SCC 1

is referred to as Palliative Sedation²¹, although euthanasia is a criminal offense.

Thus, there are not many countries that have legalized euthanasia completely but even those which are left have adopted some form or way to a certain degree. In many countries, it is at the discretion of the patient to decide if he is willing to or not.

VII. CONCLUSION AND SUGGESTIONS

Life is of the greatest importance and should always be regarded as one. With the revolutionising medical advancement and technologies, living a longer life has become easier as long as it is not for those who are terminally ill and are constantly on life support. Nobody should be forced to live a life where hope for recovery is impossible and life further spent will be in agony. Hence, such patients should have the right to deny any such medications which extends their painful span of life. This should not be considered suicide rather looked at it as a course of natural death if such advancements would not have existed. The court has taken a leap in legalising passive euthanasia along with the living wills.

However, there are a few shortcomings in the guidelines of the *Common Cause Judgement* which can be further improved with a few suggestions such as:

1. Two attesting witnesses which are preferably independent have to be present while executing the will, which was made compulsory by the court. When the whole purpose of outlining such a detailed procedure is to avoid any vexatious act then it should be made compulsory that the witnesses are independent and not relatives or kins to the patient.
2. The procedure laid down by the court is extremely long and cumbersome. A procedure so long this only adds to the pressure of the doctors, magistrates etc. This procedure is almost similar to the procedure of revocation of living will and is strenuous as well. Thus, the process should be simplified with approvals and such a long process should be avoided given the paucity of time.
3. Moreover, living wills should not be made as permanent wills as a person can change his mind as the years pass. Hence, it is suggested that one should renew his will after a few years, say preferably 5 years.
4. Furthermore, Advance Medical directives have a minimal scope and they in turn ruin the essence of right to die with dignity.

²¹ Nathan Cherny, MD, *Medical definition of Palliative Sedation*, UpToDate, <https://www.uptodate.com/contents/palliative-sedation>

The guidelines from the 196th report of the Law Commission has provided a good set of guidelines. Although they were not bought into force inspite being referred by the Apex court for bringing forth their judgements.

To conclude, we can say that right to die with dignity is indeed a fundamental right although there are a few restrictions and only a few of a certain category are entitled to it.

Euthanasia is an extremely sensitive subject and there are numerous controversies with regard to the same. There is a part of a society which wants to criminalise it and an another who wants its liberalisation. Ultimately what is important is one's own autonomy and self determination to make his own decisions in the society along with a law which makes sure of all the safeguards and the precautions to make sure that the best interests of an individual is taken care.

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