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Euthanasia - Between Life and Death

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ABSTRACT

Every human, rich or poor, educated or an illiterate are alike in the hands of death. Euthanasia refers to the the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma. The legality of Euthanasia is different around the world. Certain countries have legalized even active euthanasia while majority of nations hold any form of Euthanasia as illegal. Netherlands, Belgium, Colombia, Canada are some countries where active euthanasia is legal. India is one of the countries where passive euthanasia is legal, it was legalized by the infamous Aruna Shanbaug Case. The Rajasthan High Court held that Article 21 does not enshrine the Right to die and that the practice cannot be taken as an essential religious practice under Article 25 of the constitution and banned the practice and made it punishable under section 309 and 306 of the IPC. The judgment received opposition nationwide from the Jain community.

Keywords: *Life, Right To Die, Passive Euthanasia.*

I. INTRODUCTION

Cyberbullying Life and death are the two sides of the same coin, they are intertwined with one another, daily some cells of our body die and new cells are born, death is within the human body, it cannot be separated from its host. Every human, rich or poor, educated or an illiterate are alike in the hands of death. As humans or any other living being we are not given the liberty to choose our birth it can be regarded as a Gift bestowed on us, but once born and brought to the consciousness of a common man, enlightened by our surroundings, do we possess the right to execute our own death, the legal system has many ways to punish a murderer but what if the edge of the knife is turned in the direction the holder itself, what if the bullet pierces the head of the shooter itself, what is the legal consequence when both the assailant and victim are host of the same body. The issue though which has been dealt in the past in multiple cases could not be arrived at a definite conclusion.

Definition

Euthanasia refers to the the painless killing of a patient suffering from an incurable and painful

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disease or in an irreversible coma.² The word ‘Euthanasia’ is built from the Greek words “eu” meaning ‘Good’ and “thanatos” meaning death, joint reading of the words literally mean ‘Good death’, which is the prime reason for pursuing Euthanasia in certain cases where the death is effected for the best interests of the person.

Types of Euthanasia

Euthanasia can be divided generally into three types 1) Voluntary euthanasia, where a person is put to death at their request in order to relieve them from suffering, it can also be termed as Assisted suicide 2) Non-voluntary euthanasia Is performed where the person is not in the condition to provide consent due to their severe illness or condition, it can include persons in coma or a child. 3) Involuntary euthanasia is conducted against the will of the patient. It has been in practice during the Nazi times. All the three types of Euthanasia can be Active or Passive, in active euthanasia the patient is administered lethal drugs to effect the death while in passive euthanasia the life supporting system is withdrawn in order to hasten the impending death.

II. EUTHANASIA AROUND THE WORLD

The legality of Euthanasia is different around the world. Certain countries have legalized even active euthanasia while majority of nations hold any form of Euthanasia as illegal. Netherlands, Belgium, Colombia, Canada are some countries where active euthanasia is legal. India is one of the countries where passive euthanasia is legal, it was legalized by the infamous Aruna Shanbaug Case. And also our Apex Court declared the right to die with dignity as a fundamental right,. Full bench constitution headed by Dipak Misra and others issued guidelines in recognition of “living will” made by terminally- ill patients. However many countries are yet to legalize any form of euthanasia. In an interesting case, London born ecologist and botanist David Goodall flew from Australia to Switzerland to end his life since he felt that the quality of his life had been deteriorating and not because he was terminally ill. Since Australia opposed the concept of Active Euthanasia, he had flown to Switzerland where that form of Euthanasia is legal. The incident received worldwide attention.

III. HISTORY OF EUTHANASIA

Euthanasia is not a novel concept, it has existed even in ancient states such as Ancient Greece and Rome. Alfred Tennyson states that “No life that breathes with Human breath has ever truly longed for death”, however there existed and still to some extent exists several form of self

² Oxford Dictionary

imposing deaths by a person in religions like Jainism, Hinduism and Buddhism. However people who defend these types of practices defend that it is not a form of suicide. For example, Prayopaveshan allowed in Hinduism and Buddhism where one starves unto death is said to be a non-violent, calm manner of ending one's life, it is pursued when a person realizes that he has completed the meaning of his life and that continuing to exist in this flesh becomes a burden to him. Sallekhana practiced in Jainism even forms an important ethical code of conduct in that religion. In this practice the person reduces intake of food and liquids. After the vow is taken, the preparation and performance of the deed can span over years. Many scholars have drawn differentiation between such practices and suicide. The practice has been so popular that even renowned people of the past practiced it. In 298 BC, the emperor Chandragupta Maurya who was the founder of the Maurya Empire in ancient India renounced his rule, handing over power to his son Bindusara. He then traveled south to a cave at Shravanabelogola, now in Karnataka where Chandragupta meditated without eating or drinking for five weeks until he died of starvation in a practice known as sallekhana or santhara. The main contention is that a person decides to commit suicide when he becomes displeased in his life and even the mere continuation of life becomes unbearable for him that he is forced to take the only door available to him to end his misery. However in practices such as these the person decides to end his life in a well thought out manner having realized that he has achieved the purpose of his existence that continuing in the body further proves meaningless. A case was filed in the Rajasthan High Court in 2006 against the practice of Sallekhana arguing that the practice was punishable under section 309(attempt to commit suicide) of IPC. The Rajasthan High Court held that Article 21 does not enshrine the Right to die and that the practice cannot be taken as an essential religious practice under Article 25 of the constitution and banned the practice and made it punishable under section 309 and 306 of the IPC. The judgment received opposition nationwide from the Jain community. A three judge Bench, headed by Chief Justice of India H.L.Dattu in the Supreme court in a subsequent case stayed the High Court's order and lifted the ban on the practice. Supreme Court held in that case, "The right to life may include the right of a dying man to also die with dignity when his life is ebbing out. But the right to die with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life."

IV. LEGALITY OF EUTHANASIA

Section 309 of Indian Penal Code states:

Whoever attempts to commit suicide and does any act towards the commission of

such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

Although section 309 is still in effect, the Mental Healthcare Act 2017 has restricted its application. The relevant provision of the new act states:

Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code

The constitutionality of section 309 IPC was first argued in the case *P. Rathinam v. Union of India & another* (1994), in this case it was argued that freedom of speech and expression includes freedom not to speak and similarly, the freedom of association and movement includes freedom not to join any association or movement anywhere and, accordingly, it stated that logically it must follow that the right to live would include the right not to live, i.e., right to die or to terminate one's life". It was decided that no person can be forced to live a life where he had forfeited every passion and purpose to live and where further existing only means burden and suffering. The Apex court declared Section 309 IPC as ultravires of Constitution of India and that its existence as inhumane in the eyes of law. However it was reversed *Gian Kaur v. State of Punjab*³ where Section 309 was declared as Constitutional. It has been clarified that "the right to die with dignity at the end of life is not to be confused or equated with the right to die, an unnatural death curtailing the natural span of life. And it was further made clear that in the context of a dying man who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. These are not cases of extinguishing life but only of accelerating the already impending death. The Court further held "right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life".

The Supreme court created a landmark in the case *Aruna Ramchandra Shanbaug vs Union Of India & Ors*⁴ by legalizing passive euthanasia. Certain guidelines to carry out the passive euthanasia was formulated in the said case. This decision was further emboldened by the judgment in *Common Cause (A Regd. Society) vs Union Of India*⁵ by five-judges constitutional bench comprising the Chief Justice of India, Mr. Justice Dipak Misra, Mr. Justice, A.K. Sikri, Mr. Justice A.M. Khanwilkar, Mr. Justice D.Y. Chandrachud and Mr.

³ 1996 SCC (2) 648

⁴ 7 March, 2011

⁵ 9 March, 2018

Justice Ashok Bhushan. The case quoted “The right to die with dignity as fundamental right has already been declared by the Constitution Bench judgment of this Court in Gian Kaur case which we reiterate. (b) We declare that an adult human being having mental capacity to take an informed decision has right to refuse medical treatment including withdrawal from life saving devices. (c) A person of competent mental faculty is entitled to execute an advance medical directive in accordance with safeguards”. The concept of ‘living will’ has also been introduced in the said case. A living will is a written document allowing a patient to give instructions in advance about the medical treatment to be administered when he/she is terminally ill or no longer able to express informed consent, including withdrawal of life support if a medical board recommends to withdraw the support.

The petitioner argued in the case that each individual has an inherent right to die with dignity which is an inextricable facet of Article 21 of the Constitution. The counter by Union of India made some fine points against the petitioner’s contention. The opposition argued that “Progression of medical science to relieve pain, suffering, rehabilitation and treatment of so-called diseases will suffer a set back” if the petition was allowed and that “An individual may wish to die at certain point of time, his/her wish may not be persistent and only a fleeting desire out of transient depression.”

V. CONCLUSION

As of now Passive Euthanasia is legal in India, however there is no specific law to govern the process. There is only the guidelines formed by the Apex Court Judgment in Common Cause (A Regd. Society) vs Union of India. Still the concept of Euthanasia has scope for exploration, the essence of life is yet to be absolutely grasped by the human kind. In the words of Justice D Y Chandrachud in the landmark judgment Common Cause Vs Union of India & Others dated March 09, 2018, “Life and death are inseparable. Every moment our bodies undergo change... life is not disconnected from death. Dying is a part of the process of living.” Therefore there still needs to be steps taken by the Government in effort of creating laws to govern the process of Euthanasia.
