

Right to Life with Dignity also includes Right to Die with Dignity : Time To Amend Article 21 of Indian Constitution and Law of Euthenasia

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ABSTRACT

Article 21 of Indian Constitution grants Right to life only. According to Article 21 says, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Right life under Article 21 does not include Right to die. Right to life is a natural right. The question regarding Right to die first time comes before Bombay High Court in State of Maharashtra v. Maruty Sripati Dubal, 1987 Cri LJ 743. And here in this case court declared that Right to Life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 which makes attempt to suicide as punishable offence unconstitutional. But Supreme Court in Gian Kaur v. State of Punjab (1996)2 SCC 648, held that Right to life does not include “Right to die” or “Right to be killed”. Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in unnatural way. It was only after the case of Aruna Ramchandra Shanbaug versus Union of India (2011) 4 SCC 454, Supreme Court in its judgment declared that Passive Euthanasia is legal in India.

Here my question is whether Right to life with dignity includes Right to life with dignity. If the answer is Yes then why a cancer patients who were already in their last stage has to suffer lots till their death. In such cases active euthanasia is the only option, getting relief from the pain of cancer. A person who is already bedridden and is dependent on other for each and everything in that case how can we say that he is living with his dignity? In cancer (last stage), most of the patients died in pathetic conditions, where neither they can bear the pain of the diseases nor their family can watch their loved one in such an intolerable pain for such a long time. In such cases death with dignity is last option for the family members as well as for the patients to finally get relived from the ultimate pain. There is a need of Active Euthanasia for such patients.

Lastly, judgment of Aruna Ramchandra Shanbaug versus Union of India should be reviewed once again and medical committee should be formed to find out the cases where active euthanasia will be the ultimate option for the patients to die with dignity and without tolerant any pain.

Keywords: Euthanasia, Physician assisted Suicide, Mercy killing, Right to die, Cancer

I. INTRODUCTION

The term Euthanasia is derived from Greek roots “eu” means “well or good” and “thanatos” means- “death” means good death.

“The term Euthanasia normally implies an intentional termination of life by another at the explicit request of the person who wishes to die. Euthanasia is generally defined as the act of killing an incurably ill person out of

concern and compassion for that person's suffering. It is sometimes called mercy killing, but many advocates of euthanasia define mercy killing more precisely as the ending of another person's life without his or her request. Euthanasia, on the other hand, is usually separated into two categories: passive euthanasia and active euthanasia. In many jurisdictions, active euthanasia can be considered murder or Manslaughter, whereas passive euthanasia is accepted by professional medical societies, and by the law under certain circumstances.”

Dutch Commission on Euthanasia (1985) has defined it as: "A deliberate termination of life on an individuals' request, by another, in medical terminology, the active and deliberate termination of life on patients' request, by a doctor."

According to the definition given by Merriam Webster for Euthanasia, "the act or practice of killing or permitting the death of hopelessly sick or injured individuals (as persons or domestic animals) in a relatively painless way for reasons of mercy".

Again according to definition given in Oxford Dictionaries, Euthanasia means, "The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma".

Again according to Black's Law Dictionary (8th edition) euthanasia means "the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy".

So, from the above definition we can interpret that Euthanasia is the practice of killing one person who is sufferings from some kind of serious painful illness, so that he can get relief from his pain on the ground of mercy and sometime even it is known as mercy killing also.

II. METHODS AND MATERIAL

A. Constitutional Vality of Right to Die In India

Article 21 of Indian Constitution says, "No person shall be deprived of his life or personal liberty except according to procedure established by law". Right to life under Article 21 does not include Right to die. Right to life is a natural right. Now, the question regarding Right to die first time comes before Bombay High Court in State of Maharashtra v. Maruty Sripati Dubal 1987 Cri LJ 743. And here in this case court declare that Right to Life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 which makes attempt to suicide as punishable offence unconstitutional. But Supreme Court in Gian Kaur v. State of Punjab (1996)2 SCC 648, held that Right to life does not include "Right to die" or "Right to be killed". Thus, attempt to suicide is punishable offence under section 309 of Indian Penal

Code, 1860 and it is not unconstitutional to Indian Constitution Art. 21. Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in unnatural way.

Even when a petition was filed for Euthanasia, In Aruna Ramchandra Shanbaug versus Union of India (2011)4 SCC 454, Supreme Court in its judgment declared that only Passive Euthanasia is legal in India; means when a person is on ventilation in that case only, patient can be removed from the ventilation.

Even in India whether it is a Voluntary Euthanasia, Involuntary Euthanasia or Non- Voluntary Euthanasia whatever the case may be is not acceptable and is illegal here and it is a punishable offence under Indian Penal Code except the passive Euthanasia.

B. Right to Life With Dignity

Right to life with dignity means, when a person is enjoying his life in a dignified way. Means something which is not only a mere existence and not like the way which animal used to do. Now here lies my question, that whether a person who is bed ridden and dependent on other for his every basic needs e.g. last stage cancer patients in that cases whether he can be said that the person is enjoying his life with dignity. A person, who even can't eat with his own hand, can't move from his bed, can't even stand or walk for washroom, in such cases we can't say that the person is living with dignity, even though his family members love him lots and taking proper care also but still no body will like such kind of life.

Now when a person has spent most of his life without depending on other and suddenly he has to depend on other for his every basic needs, in that case he loses his self-confident, respect, independency etc which means a person is surviving without his dignity. We also know that Right to life Under Article 21 also includes Right to Privacy. Now when a person is bed ridden and he even can't change his own clothes or wear, in that case where is the Right to Privacy? This are certain instances which I feel that is the basic and important thing which every man do in their day today life, and no one would like to depend on other for those basic needs.

I have seen my own aunt dying with cancer. And during her last months, she was totally bed ridden. For the first time in my life I have seen her wearing gown (nighty or maxi). I have always seen her wearing sari. She was such a lady who used to wake up early in the morning and alone she used to handle her entire house hold work till night. But during her last days, she was totally bed ridden with bed sore. And was totally dependent on other, which makes her cry every day that she is dependent on other for every basic need. Now here is my question again that, whether right to life with dignity includes right to die with pain and suffering?

Right to life under Article 21 does not include right to die. But when terminally ill patients like cancer patients knows that he has only few days in his hand to enjoy his life, in that cases whether Right to die with dignity should be allowed? i.e. death with no pain and suffering. So, that he could not suffer the pain and lose his self-confident and respect. A person who is suffering with some deadly dieses in those cases he must have the right to die with dignity. Depending on other during old age is something different but depending on other due to some deadly diseases which nobody wants in their lifetime.

Even that, watching your loved ones dying with pain is also unbearable. Where person become helpless and the time becomes tough for him to watch his loved one dying with pain except one can become the silent spectator or become the witness of the last breath taken by his family member. And it is seen that blood oozes out from nose, mouth, ears and sometimes from private parts of the body in certain cases of cancer patients during their last breath which is the most painful and pathetic time of the life of the patient as well as for the loved one. As we all know that the pain which the cancer patients feel during their last breath is unbearable and that time no medicine works to reduce that pain. So, such time becomes like punishment for the loved one as well for the patient.

C. Countries Where Right to Life also Include Right to Die With Dignity

Recently, the California Government, Jerry Brown, has signed the California's right-to-die bill into law, allowing terminally ill citizens of the country to end their own lives with the help of their physician. According to this new law a terminally ill

patients can seek medical aid for ending their lives as long as they have been given six months or less to live by two doctors, provided a written request and two oral requests at least 15 days apart and are deemed mentally capable of making decisions about their own health. Montana, Oregon, Vermont and Washington have also legalized the practice, while aid-in-dying is currently in dispute in New Mexico's courts.

The California bill was passed due to Brittany Maynard, the 29-year-old resident of San Francisco Bay Area who gained national attention for her decision to move to Oregon to take advantage of the state's longstanding aid-in-dying law. Maynard had been diagnosed with terminal brain cancer, but as a California resident, could not pursue end-of-life options at home.

It was in the year 2002, when Netherlands became the first country to legalize euthanasia and assisted suicide. But it imposed certain strict condition which one must check before allowing some for Euthanasia as well as for Assisted suicide i.e the patient must be suffering unbearable pain, their illness must be incurable, and the demand must be made in "full consciousness" by the patient

Again Belgium becomes the second country in the world to legalize Euthanasia and it passed its law in the year 2002. The law says doctors can help patients to end their lives when they freely express a wish to die because they are suffering intractable and unbearable pain. Patients can also receive euthanasia if they have clearly stated it before entering a coma or similar vegetative state.

Even in Switzerland Physician Assisted Suicide is legal.

III. RESULT AND DISCUSSION

A. Active and Passive Euthenesia

The Honorable Supreme Court of India in, Aruna Ramachandra Shanbaug vs. Union of India had made a clear distinction between Active and Passive Euthanasia. In Active euthanasia something is done to end the life of patient e.g. injecting the patient with a lethal substance e.g. Sodium Pentothal which causes the person to go in deep sleep in a few seconds and the person dies painlessly in sleep, thus it amounts to killing a person by a positive act in order to end suffering of a person in a

state of terminal illness. It is considered to be a crime all over the world except where permitted by legislation. In India too, active euthanasia is illegal and a crime under Section 302 or 304 of the IPC. Physician assisted suicide is a crime under Section 306 IPC (abetment to suicide). Passive euthanasia in other hand, involves withholding of medical treatment or withholding life support system for continuance of life e.g., withholding of antibiotic where without doing it, the patient is likely to die or removing the heart–lung machine from a patient in coma. Passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained. The core point of distinction between active and passive euthanasia as noted by Supreme Court is that in active euthanasia, something is done to end the patient’s life while in passive euthanasia, something is not done that would have preserved the patient’s life. To quote the words of learned Judge in Aruna’s case, in passive euthanasia, “the doctors are not actively killing anyone; they are simply not saving him”. The Court graphically said “while we usually applaud someone who saves another person’s life, we do not normally condemn someone for failing to do so”. The Supreme Court pointed out that according to the proponents of Euthanasia, while we can debate whether active euthanasia should be legal, there cannot be any doubt about passive euthanasia as “you cannot prosecute someone for failing to save a life”.

Again Passive euthanasia is further divided into voluntary and non-voluntary. Voluntary euthanasia is where the consent is taken from the patient. And in non-voluntary euthanasia, the consent is unavailable on account of the condition of the patient for example, when he is in coma.

B. Medical Treatment to Terminally ILL Patients (Protection of Patients and Medical Practitioners) Bill 2006

The preamble of the Bil starts with “A Bill to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally-ill”

Under section 2 (m) of Medical Treatment to Terminally Ill Patients (Protection of Patients and

Medical Practitioners) Bill 2006, ‘terminal illness’ means – (i) such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or (ii) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient.

If we interpret Sec. 2 (m) (i), then I think some where the cancer patients who were in there last stage where no medicine can save their life, fall under the category of Sec. 2 (m) (i). In that case passive euthanasia should be allowed to them in the form of physician assisted suicide for the sake of their Right to life and die with dignity.

This is the right time to introduced Right to die with dignity under Article 21 of Indian constitution in cases of terminally ill cases and also all the diseases which can be or which fall under the category of Sec. 2 (m) (i) should be inserted.

Even it is found that more than 1300 people died every day in India due to Cancer and in 2014 near about 5 Lakhs people died due to cancer. And also the treatment of cancer is very much costly which only rich people can afford and not by the poor people. So, in that case we can imagine the situation of the family whose loved one is suffering from cancer and they are unable to provide treatment to them because of its cost. And if it is last stage then nothing can be done except bearing the pain.

IV. CONCLUSION AND SUGGESTION

“Marte hain aarzo mein marne ki Maut aati hai par nahin aati”

---- Mirza Ghalib

“I’m not afraid of being dead. I’m just afraid of what you might have to go through to get there.”

----- Pamela Bone (A reputed Journalist)

A person who is born in world will also die one day. This is the universal truth, where there is life there is death. Nobody can escape from death. But one thing which every man deserves in his life is Right to life as well as Right to die with dignity. No one should be deprived from this right.

I think this is the right time when Right to die with dignity should be allowed under Article 21 for terminally ill patients. Even a medical committee should be formed to discuss and decide the diseases which can be fall under "Terminally ill" category. And for those diseases "right to die with dignity" through Physician Assisted Suicide should be allowed. So that, the terminally ill patients can dies without facing any suffering and pain.

If we consider Darwin theory of "Survival of the fittest", then we will find that in today's world only the rich people can survive well for their existence. And those who are poor they are born to live with misery. But death is the last stage of life which never see who is poor and who is rich. So, this last stage of life should be free of suffering and pain.

Lastly, it's high time to amend Article 21 of Indian Constitution and to include Right to die with dignity in it.

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