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Common Cause V. Union of India

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ABSTRACT

Euthanasia and its legality have been a topic of controversy for a long time², since it includes the deliberate termination of an individual's life. One of the basic fundamental rights given to us under the constitution is the Right to Life. But if a person is given the Right to Life then what about right to not live. 'Right to Life' includes right to live with dignity therefore it should also include the right to die with dignity. The verdict given for Common Cause v. Union Of India paved the way for passive euthanasia. The issue surrounding euthanasia is anything but simple. It involves moral, economic, ethical and societal aspects.

Keywords: *Euthanasia, Right To Life, Right To Live With Dignity, Right To Die With Dignity.*

I. BACKGROUND

The issue whether article 21 covers right to die was first discussed in the supreme court in *P. Rathinam v. Union of India*³. Under this case Section 309⁴ of Indian Penal Code, 1860 (IPC) was challenged for its constitutionality. Taking in account the verdict given in *Maruti Shripati Dubal v. State of Maharashtra*⁵ Section 309 of IPC was ruled unconstitutional as the court held that fundamental rights have both positive and negative aspects. Therefore the Right to Life could also include the right to die.

Later in the case of *Gian Kaur v. State of Punjab* section 306 of IPC⁶ was challenged for its constitutionality. Under this case the court decided to set aside their ruling in *P. Rathinam v. Union of India* and declared that not all fundamental rights are same and therefore a uniform standard cannot be applied to all of them. So, Article 19 may have a negative aspect to it but

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² John D. Papadimitriou et. al, *Euthanasia and Suicide in Antiquity: Viewpoint of the Dramatists and Philosophers*, 100 (1)

J.R.Soc. Med. 25-28 (2007).

³ AIR 1994 SC 1844.

⁴ 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.

⁵ (1986)88 BOMLR 589.

⁶ Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

the same cannot be said for Article 21. Even if Article 21 was treated the same, suicide would still not be considered a part of it. As right to life cannot include the unnatural termination of an individual's life.

But once referring to the judgement passed by the House of Lords in *Airedale N.H.S. v. Anthony Bland*⁷ a difference between the right to die and right to die with dignity was brought forward. It was highlighted that when a person is terminally ill or in a vegetative state and is living off of life support then the natural process of death has already started and if it wasn't for the life support technology then their death would have been inevitable.

Later in the case of *Aruna Ramchandra Shanbaug v. Union of India*⁸ the court dealt with euthanasia and for the first time the issue of permitting it. Aruna Shanbaug, a nurse in KEM Hospital sustained injuries from being raped brutally in the hospital. The injuries were so severe that she was left in a vegetative state and was cared for by the staff of the hospital. For a long time the staff served Shanbaug but no improvement was observed in her condition. A social activist, Pinki Virani file a writ on behalf of Shanbaug, seeking for euthanasia but it was declared that she had no locus to file for the writ on the grounds that she was not a next friend.

II. FACTS OF THE CASE

A writ petition was filed under Article 32 of the Indian Constitution in 2005 by Common cause a registered society for common welfare of people. The writ was filed for the legalization of passive euthanasia and to legally validate living wills. The NGO had previously approached ministry of law and justice and ministry of health and family welfare by letters to them in regards to passive euthanasia. But on receiving no response they had to file a Public Interest Litigation (PIL). The petitioners put forth the argument that an individual's right to live with dignity is with them till they die therefore they should also have the right to die with dignity. But the advancements made in technology has caused the life of a patient to be extended unnecessarily condemning them and their family members to a life filled with pain and distress. Furthermore the legalization of living wills was demanded for by the petitioners, where the patients could right about the medical treatment and ask for their family members to stop such treatment.

III. ISSUES RAISED

1. Is there a difference between active euthanasia and passive euthanasia
2. Can passive euthanasia be allowed on living will of patient

⁷ [1993] A.C. 789.

⁸ (2011) 4 SCC 454.

3. Does an individual have the right to refuse medical treatment and withdraw themselves from life support system
4. Does Right to Life under Article 21 of the constitution include the Right to Die

IV. JUDGMENT

The apex court declared that under Article 21 of the Indian Constitution an individual should have the right to die with dignity along with their right to live with dignity. Therefore legalizing the removal of life support and stopping of medical treatment for those who are terminally ill or in an incurable vegetative state. The judgement further recognized the need for living wills and permitted an individual to decide against life support.

Certain propositions were further laid down by the court in regards of the procedure for execution of Advanced Directives along with providing the guidelines to give effect to passive euthanasia.

V. ANALYSIS

In spite of the controversies surrounding euthanasia there is only two possible take that a person can have on it. First being those who believe life to be a divine gift giving us no right to end on our terms and the second those who believe that people should have the right avoid going through the pain of being in an incurable vegetative state or suffering through a terminal illness by ending their life on their own terms. However laws have been laid down in regards of euthanasia for the welfare of the people therefore making it a clash between law and religion. But law shall always prevail even above religion.

The judgement is therefore in the right direction for the people suffering through pain and agony of a terminal illness which have no cure except medical treatments and technologies that prolong the patient's life with the unavoidable death hanging over them. Their suffering will only be extended by denying them the right to die with dignity.
