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Right to Die: An analysis of Aruna Ramchandra Shanbaug Case

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ABSTRACT

The Constitution of India provides many fundamental rights under Part III. According to the Article 21 of the Constitution, "No person shall be deprived of his life and personal liberty except according to the procedure established by law". Here the question arises that whether Right to Life includes Right to die? If the answer is Yes, then why patients suffering from diseases like cancer suffer lots till their death. A patient who is already living with the support of ventilator and is depended on others for everything, then how can we say that such person is living with his dignity?

It might be exaggerating to say that the issue of authorizing right to die is done and there is any assumption for putting it into an establishment in the near future. Making a law isn't an answer on each troublesome we face in regular daily existence. Mercy killing is authentically not a run of the mill situation anyway a critical phenomenal condition. One out of thousands situation clinical specialists go over occurrences of patients with determined conditions, where adamant eradication is considered. It's definitely not an average case It is more astute to left the issue with the judiciary, until we set ourselves up genuinely and essentially to recognize it, as an element of our life.

Keywords: *life, right to die, judiciary, constitution.*

I. GENERAL OVERVIEW

Two moments are most important moments in the life of an individual i.e. it's birth and death, rest of the moments are just emotions between the journey from birth to death. The right to life including the right to live with human dignity would mean the existence of such a right up to the end of a natural life. This also includes the right to dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. William Shakespeare suitably said that "the web of our life is of a blended yarn, great and sick together"[2] .Life is about quality not quantity and without quality, the quantity doesn't matters. It is the right of every person to live

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[2] Frederick Ward Kates, The Use of Life, 18(1953).

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his life in a manner in which he wants to live. He can choose his own precepts, moralities and can take his own decisions to live his own life. The concept of Right to die is usually inferred to imply that an individual suffering from lethal sickness have to be permitted to halt his own life or to experience willful killing. The patient of cancer who has already been in the last stage of cancer has to suffer a lot till their death. In such cases active euthanasia is the last resort from getting solace from the trauma of cancer, a person who is already living with the help of life support system and is depended on others for everything and is unable to perform his daily action, then how can we say that such person is living with his dignity. In the last stage of cancer, in most of the miserable condition, where neither the patient can bear the pain of the disease nor the family can watch their adored ones in such a agonizing pain for such a long span of time. In such cases death with dignity is the last resort for the patient as well as for the family members and his loved ones to eventually get relief from the extreme pain. Doctors and medical practitioner aided suicide and euthanasia are the actions allied with the right to die.

The word euthanasia is originated from the Greek roots 'eu' means well or good and 'thantos' means death implies good death. English statesman and scholar Sir Francis Bacon originated the word "euthanasia" in seventeenth century, which basically means "good death" and interpreted as "good death or mercy killing". It describes the way of ending of life that doesn't cause any pain and affliction at all. As per the House of Lords select Committee on Medical Ethics[3], the definition of euthanasia is "deliberate interference undertaken with the express intention of ending a life, to relieve intractable pains and agonies".

As per the Black's Law vocabulary euthanasia means "the practice or act of killing or permitting the death of an individual suffering from an untreatable condition or disease, especially a painful one, for cause of mercy:"

So from the above mentioned definitions we can say that Euthanasia is the process of killing an individual who is suffering from a number of painful diseases, so that such person can get relief from his pain upon the view of mercy.

Euthanasia basically are of two kinds i.e. active euthanasia which means the use of fatal substance or force to kill and another one is passive euthanasia which means the withholding of general treatments essential for the continuation of life. Though, in Aruna Shanbaug case[4] two types of euthanasia has been discussed i.e. active euthanasia and passive euthanasia. Active euthanasia is defined as deliberate death by active intrusion and passive euthanasia is expressed

[3] House of Lords, Report of the Select Committee on Medical Ethics, 1994.
[4] Aruna Ramchandra Shanbaug v. Union of India ,(2011) 4SCC 454.

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as oblique intrusion as by abandonment of precautionary measures.

II. HISTORICAL BACKGROUND OF RIGHT TO DIE

Eminent history expert N.D.A. Kemp talks about adamant elimination's beginning stage. He says that the contemporary conversation on murdering started in 1870. The subject was discussed and bored some time before that. Murdering was bored in Ancient Greece and Rome: on the island of Kea, hemlock a poisonousplant was being utilized as a techniques for breathing life into passing, a system furthermore proceeded in Marseilles. The Greek intellectuals Socrates likewise, Plato maintained persistent killing while Hippocrates protested it. He was against such practice which would provoke destruction of a person.

Right to die isn't recognized in Judaism and Christian customs. While investigating the preparation Thomas Aquinas says that it is against man's perseverance instinct. Mixed evaluations on the matter show conflict between fighting analysts.

Protestantism maintained implosion and murdering while it was a recognized work on during the Age of Enlightenment. Each culture recognizes and sees these terms from different philosophies. From time to time they are contrasted with sins, while on specific cases they are seen as showings of boldness. There is a this line of differentiation between them.

In mid nineteenth century this word came to be used in the sensation of speeding up the route toward kicking the can and the destruction of implied trivial lives and today it is described as deliberately completing the presence of an individual encountering a genuine disorder. Some are consistent of alternative to fail miserably. The dispute against unyielding elimination communicates that it is against good, acceptable and legal guidelines of our lifestyle.

A wide range of executing is seen as murder. It is difficult to show capability among homicides and murder in complex cases. Ending one's life isn't seen as an strange practice in Ancient India. Hindu fables portray the implosion by Lord Rama as Jal Samadhi. In the long stretches of Lord Buddha it was called Maharparinirvaan. Practically identical was the circumstance of Expert Mahaveer. Swatantraveer Savarkar and Acharya Vinoba Bhave denied their lives relying upon Prayopavesa. It from a genuine perspective infers finding a way ways to go on through fasting. Mahatma Gandhi also maintained the chance of resolved downfall. Analysts like these upheld passing by tranquil strategies. Religions like Hinduism, Jainism and Buddhism see relentless downfall. The thought has philosophical establishment. It talks about a ceaseless circle of life and end and achieving salvation.

The possibility of completing the life after the inspiration driving the birth is fulfilled was

recognized by these perspectives. Hindu blessed individual Dnyaneshwar shut his human existence after his work was done. Along these lines, trace of choice to pass on existed in before times.

III. INTERNATIONAL OUTLOOK OF RIGHT TO DIE

In the International Humanitarian Law, there is no provision for "right to die". "Right to good death" cannot be derived from the usual denotation of any human rights manuscript. On the converse view, human rights manuscripts implore states to secure and defend every human being life. From the 193 member countries of the United Nations, only four countries have legally recognized euthanasia i.e. Luxembourg, Belgium, Canada and Netherlands. The issue persists to be ferociously discussed but rejected in many jurisdictions by the legislatures.

In United States of America, the active euthanasia is held unlawful, only in few states of America such as Washington, Montana and Oregon legalized the physician aided suicide in some form or other forms. In the United States of America a physician can withdraws life saving support only after the written request of the patient. By providing him the physician only regards the patient's desire to finish his life.

In Switzerland, as per the Article 115 of Swiss Penal Code, suicide is not a crime and aided suicide is a offense, if and only if the intention is self-centered. It does not necessitate the participation of physician nor is that the patient must be lethally ill. It only necessitate that the motive must be selfless. In Switzerland, euthanasia is unlawful but physician assisted suicide has been made permissible.

In Germany, active euthanasia is allowed but passive euthanasia is not permissible. If the physician discontinues the life saving on the written desire of the patient then it would not fall in the ambit of criminal offence.

IV. LEGAL POSITION IN AND JUDICIAL TRENDS IN INDIA

Right to life means that an individual has as a necessary right to live, principally that such individual has the legal right not to be killed by another individual. But the problem occurs that if an individual has a right to live his life, whether he has a right not to live that is, does he has a right to die? While giving answering this question, the Indian Courts articulated many opinions as follows:

In the leading case of State of Maharashtra vs. Maruti Sripati Dubal[5] in which the Supreme Court provides that section 309 Indian Penal Code which provides the punishment for those

[5] AIR 1997 SC 411.

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persons who found guilty of attempted suicide) is violative of Article 14 and Article 21 of the Constitution of India. Therefore, the apex court held that 'right to life' under Article 21 of the Constitution of India 'includes right to die'.

However, in the case of Chenna Jagadesswar v. State of Andhra Pradesh[6], the High Court of Andhra Pradesh held that "right to die" is not a fundamental right under Article 21 of the Constitution of India.

In 1994, the Supreme Court ruled in the case of P. Rathinam vs. Union of India[7] that Article 21 of the Constitution of India that is, "Right to life" incorporate 'Right to die ' or to end one's life. The Supreme Court auxiliary affirmed that suicide attempt has no moreover beneficial or unfavorable effect on society and the act of suicide is not in opposition to religions, decency or community policy. But again in a leading judgment passed by the five Judges bench in Gian Kaur vs. State of Punjab[8] overruled the P. Rathinam's case and held that 'Right to life' does not comprise 'Right to die'. Ending of Life is not incorporated in 'Protection of Life'. Dying naturally with dignity at the end of life must not to be bemused or equated with the 'Right to die' an abnormal death curtailing the natural period of life. Auxiliary, the Court stated that prerequisite under section 309, Indian Penal Code punishing attempt to commit suicide is not violative of Article 14 or 21 of the Constitution of India.

Section 309 of the Indian Penal Code has been in debate for a long span of time. A range of attempts were made by erudite people to seek out nullification of the section 309. In the earlier period, the Law Commission has recommended its repeal. Even a bill was listed in parliament about its repeal; the similar was not approved and never prepared into the law. But now Central Government has determined to decriminalize the alleged section by removing it from the Indian Penal Code. Eighteen state governments and 4 union territories governments have supported the recommendation of the Law Commission of India. We can say that is a welcoming step, with respect to reverence the wishes of the people related with.

One of the contentious topics in the recent past has been the problem of decriminalize the euthanasia or right to die. Euthanasia is in controversy since it entails the premeditated end of human being life. Patient suffering from fatal illness are repeatedly facade with immense pain as the illness steadily deteriorate until it take life of them and this may be so terrifying for them that they would rather make end of their life than anguish it. So, the subject is whether people should be given aid in ending their life themselves, or whether they should be left to undergo

[6] 1998 CrLJ 549.
[7] AIR 1994 SC 1844.
[8] AIR 1996 SC 1257.

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the hurt caused by terminal-infirmity.

In the case of Aruna Shanbaug[9], A lady Aruna Shanbaug was 25 years old nurse, at King Edward Memorial Hospital. She was sexually abused on the night of 27 November, 1973 by a ward boy working in same hospital named Sohanlal. He assaulted Aruna after tying her with a chain of dog. Then he left her there and went away from there. On the next day Aruna was found by a cleaner of hospital in unconscious condition lying upon the pool of blood. She was also endured a injury of cervical cord. She went into ventilator from where she was never came out. She was cared by the King Edward Memorial Hospital doctors and nurses staff for a period of 37 years. She doesn't want to live her life any longer. The doctors have told her that she has no chance of improvement of her medical condition. She choked on liquid diet and is in a persistent vegetative state. Then her lawyer and next friend Pinki Viraani, decided to file a plea in Supreme Court to direct the King Edward Memorial Hospital not to feed her anymore. But doctors and medical staff of King Edward Memorial Hospital has denied as they say she act in response through her facial expressions. The case of Aruna is the crucial point of debate over the issue of euthanasia in India. On one hand, there is right to life and on the another hand death with dignity, and the Supreme Court has the exceptional and very complicated task to make decision on the fortune of a victim in a crime committed 41 years ago. In 2011 Supreme Court of India responded on the Aruna's lawyer and next friend's petition, by fixing a medical panel to look at her. The three member medical committee subsequently found out under the Supreme Court's directions, checked upon Aruna and concluded that she met "most of the standards of being during a PVS." However, it turned down the euthanasia petition on 7th March, 2011. The Court, in its landmark judgment, though, allowed passive euthanasia in India. While rejecting Pinki Virani's plea for Aruna Shanbaug's euthanasia, the Court laid down guidelines for passive euthanasia. Consistent with these guidelines, passive euthanasia involves the withdrawing of treatment or food that might allow the patient to measure. The judge who says that a CD he reviewed of Ms. Shanbaug shows, "she is never brain-dead. She expresses her likes or dislikes with sounds and movements. She smiles when given her desired food. She gets disturbed when too many people enter her room and calms down when touched gently".

Ms.Shanbaug's has, however, changed perpetually India's approach to the controversial issues of euthanasia. The judgment on her case today allows passive euthanasia reliant upon circumstances. So other Indians can now row in Court for the right to withhold medical treatment take a patient off a ventilator, for instance in the case of an irretrievable coma. This

[9] Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

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case verdict makes it apparent that passive euthanasia will "Only be allowed in cases where the person is in PVS (persistent vegetative state) or lethally ill."

Euthanasia is totally different from suicide and homicide. Under the IPC , attempt to suicide is punishable under section 309, and also abetment to suicide is punishable under section 306 . An individual commits suicide for several reasons like marital discord, dejection of affection, failure within the assessment, unemployment etc. But in euthanasia these reasons aren't there. Euthanasia means putting an individual to painless death just in case of terminal diseases or when life becomes meaningless or hopeless as results of mental and physical handicap. It also differs from killing. In murder, the murderer has the intent to cause harm or cause death in his brain. But in euthanasia though there's an intention to cause death, such intention is in straightness. A doctor applies euthanasia while the patient, affected by a fatal disease, is in an irretrievable condition or has no chance to improve or survival as he's pretentious by a painful life or the patient has been in coma for 20-30 years like Aruna Ramchandran Shanbaug.

It is apparent from the varied verdicts that the judiciary isn't only hesitant but also careful about taking steps towards approving euthanasia. Theirs may be a quite replica approach, which fair and reasonable in definite situations. Extinguishing a life or granting permission for a correspondent sounds pretty terrible. The patient or the person anxious who passes all the standards of living can't be subjected to death on the base of unbearable pain. The Central Government has taken a option on decriminalizing the section 309 of the Indian Penal Code. It's a convivial step and must applaud. In Aruna Shanbaugh's case the court has allowed passive euthanasia but it doesn't grant active euthanasia to Aruna.

As it has been previously stated, the complexity of legalizing euthanasia isn't an easy job. Despite of the parliament, the executive body and therefore the judiciary face regarding its handling isn't possible to clarify. India may be a varied country with assorted culture and traditional norms. It's not an immediately required legislation in India, when other severe matters require government's consideration and dealing. Demand for euthanasia legislation isn't unfortunate or premature. There are many medical problems and immoral practices in India which are vulnerable to violate moral, ethical and humane aspects of practice of euthanasia.

V. CONCLUSION AND SUGGESTIONS

A nearby scrutiny of the contentions against willful extermination that have been summed up above will in general demonstrate that all the discussion about holiness of life in any case, the resistance to killing varieties from the dread of abuse of the privilege on the off chance that it

is allowed.

It could be embellish to say that the subject of legalizing right to die is over and there is hope of putting it into an enactment in the in the vicinity of future. Creation of a law is not a elucidation on all problem we face in day to day life. Sympathy killing is not a ordinary situation but quite a rare situation. One in thousands condition medical practitioners come athwart cases of patients with persistent conditions, where right to die is considered. It is not a ordinary case. Taking into consideration euthanasia in case of a patient with PVS (persistent vegetative state) is sensible but that does not ensue with every such case. Estimating every case in here is not sensible and won't serve the purpose of the study. It is significant to assess the practical undertaking behind legalizing right to die in India. Countries in which right to die is legalized in all aspects, the practice of the right to die has crooked into a convention. The machinery has seen a extensive span of time tackling impediments and setting new standards. It is not the circumstances that the practice is full proof and without drawbacks in those countries. During that period the countries and their peoples have gone through an essential change in the medicinal field as well as human point of view. It has developed the state of mind of the whole society towards forming the view about deciding death over life. This perceptive has flowed through age groups now, which are appealing much innovatory. What India needs is the mellowness to handle the issue and accepting its pros and cons scrupulously. It is a enormous task. The necessity of having legislation on right to die is upon on the intensity of amount of patients with incurable illness and the severity of such situations. It is not frequently established in India. What a circumstances would require in future and what would be its consequences are subject of unknown actuality. Indian inhabitants has not developed the healthy probability required for legalizing right to die.

The countries which have legalized right to die, are pretty small in case its region. The population there is more educated and is attentive about their rights and dangers of right to die. In addition, the apparatus in play is complicated. Indian population has a larger segment of illiterates than the literate's one.

The literate inhabitants are not much liberal about right to die and might not approve its legalization. We Indians deal with such issues with emotions and which cannot supersede our rational decisions. It is good to leave the issue with the judiciary, in anticipation of, we get ready ourselves psychologically and practically to admit it as element of our life.

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