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Legalizing Euthanasia or dooming to a slow death: A dilemma

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Abstract---In India, the sanctity of life has been placed on highest pedestal. From the moment of his birth, a person is clothed with basic human rights. Article 21 of the Indian Constitution provides for Right to Life which is one of the basic and most sacrosanct right. This right has received the widest possible interpretation at the hands of judiciary so as to make the human existence a dignified one. With the pronouncement of judgment by the Apex Court of India in Aruna Shaunbaugh's case on March 7, 2011, a new debate has started in the country regarding the legalization of euthanasia in India. Euthanasia is one of the most debated and controversial topics in the world. Euthanasia, basically, is bringing about the death of a terminally ill patient or a person who is in persistent vegetative state so that his life which is merely a namesake can be peacefully end up. Thus, the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. This debate relating to euthanasia is a continuing one as some people are of the view that life is sacred and no one has got the right to end it whereas others hold the view that life belongs to oneself and so each person has got the right to decide what he wants to do with it even if it amounts to dying. In the present paper, an attempt has been made to study the concept of euthanasia vis-a-vis Right to Life as the latter is central to the debate on the issue of Euthanasia and also to analyse the judicial response in the light of judgement in Aruna Shaunbaugh's case.

Keywords---Euthanasia, constitution India, right life, terminally ill, human rights.

Introduction

The Constitution of India guarantees certain fundamental rights and Right to life is one of the basic as well as fundamental right without which other rights cannot

be enjoyed. Right to life means a human being has an essential right to live particularly that such human being has the right not to be killed by another human being. But the question arises that if a person has a right to live whether he has a right not to live i.e. whether he has a right to die? The Indian courts expressed different opinions as to this question. In *State of Maharashtra v. Maruti Sripati Dubal*, the Bombay High Court held that right to life under Article 21 of the Indian Constitution includes 'right to die'. On the other hand in *Chenna Jagadeeswar v. State of AP*, the AP High Court held that right to die is not a fundamental right under Article 21 of the Constitution.

In *P. Rathinam v. Union of India* case Supreme Court of India observed that the 'right to life' includes 'right not to live' i.e. right to die or to terminate one's life. The Court ruled that the right to life embodies in it a right not to live a forced life, to one's detriment, disadvantage or disliking. This view constituted an authority for the proposition that an individual has the right to do as he pleases with his life and to end it if he so pleases. The Court further provided that the word 'life' in Article 21 means right to live with human dignity and the same does not merely connote continued drudgery.

The controversy was set to rest by the Supreme Court in *Gian Kaur v. State of Punjab*, wherein the radical view taken in the *P. Rathinam's* case was reconsidered by the full Bench of the Supreme Court. The Apex Court overruled the *P. Rathinam's* case and held that right to life under Article 21 does not include Right to die or Right to be killed. The Court stressed that Article 21 is a provision guaranteeing 'Protection of life' and by no stretch of imagination can 'extinction of life' be read to be included in protection of life being incompatible and inconsistent with the concept of the former.

Right to life including the right to live with human dignity would mean the existence of such right up to the end of natural life. This may include the right of a dying man to die with dignity. But the 'right to die with dignity' is not to be confused with the 'right to die' an unnatural death curtailing the natural span of life. Thus, the concept of right to life is central to the debate on the issue of Euthanasia. One of the contentious issues in the recent past has been the question of legalizing the right to die or Euthanasia. Euthanasia is controversial since it involves the deliberate termination of human life. Patient suffering from terminal diseases are often faced with great deal of pain as the diseases gradually worsens until it kills them and this may be so frightening for them that they would rather end their life than suffering it. So the question is whether people should be given assistance in killing themselves, or whether they should be left to suffer the pain caused by terminal illness.

Euthanasia : Meaning

The term Euthanasia comes from two Ancient Greek words: 'Eu' means 'Good', and 'thantos' means 'death', so euthanasia means good death or easy death. It is an act or practice of ending the life of an individual suffering from a terminal illness or in an incurable condition by injection or by suspending extra ordinary medical treatment in order to free him of intolerable pain or from terminal illness. It means putting a person to painless death especially in cases of incurable

suffering or when the life becomes purposeless as a result of mental or physical handicap.

It is also known as 'Mercy Killing' as it involves ending the life of an individual in a painless manner where he is in an irremediable condition or has no chances of survival. It implies the procuring of an individual's death, so as to avoid or end pain or suffering, especially of individuals suffering from incurable diseases. Thus, it can be said that euthanasia is the deliberated and intentional killing of a human being by a direct action, such as lethal injection, or by the failure to perform even the most basic medical care or by withdrawing life support system in order to release that human being from painful life. It is basically to bring about the death of a terminally ill patient or a disabled. It is resorted to so that the last days of a patient who has been suffering from such an illness which is terminal in nature or which has disabled him can peacefully end up and which can also prove to be less painful for him.

Trends of euthanasia in different countries

There had been many debates going on the issue of legalizing euthanasia in all the parts of the world. It is legal in some nations while in others it may be criminalised. Efforts to change government policies on euthanasia have not yielded the desired success globally with exceptional cases like that of the Netherlands. Netherlands is the first country in the world to legalise euthanasia in 2008. According to the Penal Code of the Netherlands killing a person on his request is punishable with twelve years of imprisonment or fine and also assisting a person to commit suicide is also punishable by imprisonment up to three years or fine. In spite of this provision, the courts of Netherlands have come to interpret the law as providing a defence to charges of voluntary euthanasia and assisted suicide. The defence allowed is that of necessity. In Canada, patients have the right to refuse life sustaining treatments but they do not have the right to demand for euthanasia or assisted suicide. The doctor, however, is not allowed by law to actively help someone to kill himself.

In U.S.A., there is a distinction between passive euthanasia and active euthanasia. While active euthanasia is prohibited but physicians are not held liable if they withhold or withdraw the life sustaining treatment of the patient either on his request or at the request of patient's authorized representative. Euthanasia has been made totally illegal by the United States Supreme Court. Euthanasia is illegal in United Kingdom but on November 5, 2006 Britain Royal College of obstetrics and gynaecologists submitted a proposal to the Nuffield Counsel of Bioethics calling for consideration of permitting the euthanasia of disabled new-born.

Legitimacy of euthanasia in India

The basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. Euthanasia is practiced so that a person can live as well as die with dignity. It put a person to painless death in case of incurable diseases or when life become purpose less or hopeless as a result of mental or physical handicap. Euthanasia is categorized

in different ways, which include voluntary, non-voluntary, or involuntary. Voluntary, non-voluntary and involuntary euthanasia can all be further divided into passive or active variants.

Passive euthanasia involves the withholding of common treatments, such as antibiotics, necessary for the continuance of life while active euthanasia entails the use of lethal substances or forces, such as administering a lethal injection, to kill and is the most controversial one. This research paper thus, deals with one of the most debated subjects in the world, ie. euthanasia. With the pronouncement of judgment by the Apex Court of India in Aruna Shaunbaugh's case on 7th March, 2011, the debate regarding the legalization of euthanasia in India has started. Euthanasia is one of the most debated and controversial topics in the world as it involves bringing about the death of a terminally ill patient or a person who is in persistent vegetative state so that his life which is merely a namesake can be peacefully end up. Thus, the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. Even before Shaunbaug's case many cases of mercy killing were raised before the Supreme Court. One former chess champion K.Venkatesh, who was terminally ill made a plea of euthanasia before the Court but died on December 17, 2004 after a futile wait for the court to accept his plea so that he could donate his organs. His eyes were donated after his death but no other organ could be transplanted as the 25 years old had been on a ventilator for a long time. Indian laws allow organ donation only if a person is brain dead.

This debate relating to legitimacy of euthanasia is a continuing one as some people are of the view that life is sacred and no one has got the right to end it whereas others hold the view that life belongs to oneself and so each person has got the right to decide what he wants to do with it even if it amounts to dyeing.

Arguments for legalizing euthanasia

The major argument put forth by those who advocate permissive euthanasia is that, it is a way to end an extremely miserable and painful life. Insistence to postpone the death against patient's wishes are against law, unwise, inhuman and not medically sound. Not only the patient is relieved of his pains and suffering but also the family members of the dying patient are relieved of the physical, emotional, economical and mental stress upon them. It is also stated that the patients also have a right to refuse medical treatment and his living will should be respected. Performance of euthanasia will free up the medical funds of the state to help other poor and needy people is also pleaded as a defence for euthanasia. The Constitution of India guarantees the fundamental rights and freedoms where a positive right includes a negative right. For instance, freedom of speech includes within it freedom not to speak, etc. therefore it is also argued that an individual should have the freedom to exercise his right to die as being included in right to life.

Arguments against legalizing euthanasia

Though demand for euthanasia has been raised many times but the daanger to allow is also not unanticipated. Those who are against the legitimisation of

euthanasia squabble that the Indian society, driven by religion, will not accept the concept of euthanasia as the religious scriptures defy it. Moreover, there is every probability of commercialization of euthanasia. Another argument advanced against allowing of euthanasia was that the poor people could resort to this in order to avoid the pecuniary difficulties of medication. Old and destitute are sometimes considered as burden and people can make use of this to shove off their responsibilities. Allowing euthanasia will devalue human dignity and will offend the principle of sanctity of life. It will leave sick, disabled people more vulnerable than the rest of the population and can also provide a 'cloak for murder'.

Judicial decisions in India

The judiciary in India has always been a sentinel of rights of the people. The issue of euthanasia has to be handled by the judiciary in a very sensitive manner as it involves ending the life of an individual and more particularly in a country like India where the issue involves socio-economic complexities. The first case which brought the issue of right to die before the courts is *State v. Sanjay Kumar* wherein the Delhi High Court criticized the section 309 and considered it to be 'an anachronism and a paradox'. This decision was followed by two conflicting decisions of the Bombay High Court and the Andhra Pradesh High Court in the cases of *Maruti Sripati Dubal v. State of Maharashtra* and *Chenna Jagadeeswar v. State of Andhra Pradesh* respectively but in *P. Rathinam v. Union of India* case Supreme Court of India observed that the 'right to life' includes 'right not to live' i.e. right to die or to terminate one's life. The Court further provided that the word 'life' in Article 21 means right to live with human dignity and the same does not merely connote continued slog. But *Gian Kaur v. State of Punjab* rests the controversy giving more importance to right to life than right to die. It was further held that right to life is a natural right but suicide being unnatural termination of life is incompatible with it. Delivering the unanimous judgement of the Court, Justice J.S.Verma observed:

"Any aspect of life which makes it dignified may be read into Article 21 of the Constitution but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself."

Referring to the protagonists of euthanasia's view that existence in persistent vegetative state was not a benefit to the patient of terminal illness being unrelated to principle and sanctity of life or the right to live with dignity, the Court said that this argument is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of right to life therein includes the right to die. The Court said that the desirability of bringing about such a change is the function of the legislature which may by enacting a suitable law providing adequate safeguards to prevent any possible misuse. However the court appears to have permitted passive euthanasia. The latest decision passed by the Apex Court is – 'Active euthanasia is illegal. Passive euthanasia is permissible, but it should be done under the supervision of the High Court.' This decision was passed in the famous *Aruna Shaunbag* case .

Conclusion

In conclusion, it can be said that to resolve this debate, the conflict between the principle of sanctity of life and the rights of self determination and dignity of an individual is to be resolved first and right to die should not be generalized but should be exercised as an exception in the rarest of rare cases. Thus, Euthanasia could be legalized, but the laws would have to be very stringent. Every case will have to be carefully monitored taking into consideration the point of views of the patient, the relatives and the doctors. But whether Indian society is mature enough to face this, as it is a matter of life and death, is yet to be seen.

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