Indian Approach towards Euthanasia

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Abstract
Article 21 of the Indian Constitution states that 'No shall shall be deprived of his life or personal liberty except according to procedure established by law', which grants Right to life only and does not include Right to die. The question regarding Right to die first arose before the High Court of Bombay in State of Maharashtra v. Maruty Sripati Dubal. In this case, the Court declared that Right to life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 that makes attempt to suicide a punishable offence unconstitutional. After the judgement by Supreme Court in Aruna Ramchandra Shanbaug v. Union of India, passive euthanasia was legalized in India. Now arises the question if Right to life with dignity includes Right to die with dignity. This paper enshrines on the need for a review on the judgement of Aruna Ramchandra Shanbaug v. Union of India and the formation of medical committees to find out the cases where active euthanasia will be the ultimate option for the patients to die with dignity and without going through an unpleasant phase of anguish.

Keywords: Mercy killing, Active Euthanasia, Permanent Vegetative State, Right to die, Terminal illness

Euthanasia is still new to India and there are no special provisions about this either in law or legislation. In recent years, few medical cases indicate the necessity of euthanasia in India. In the absence of legal euthanasia in India, patients are deprived of receiving organs from a donor. Venkatesh, a boy, died in his sleep on December 17, 2004, and his plea to donate his organs prior to his death was not accepted by the Andhra Pradesh High Court. The hospital stated on the question of donation of organ, in the very case, it amounted to euthanasia or mercy killing, which is illegal in India. High Court judges Devender Gupta and Narayan Reddy said "the existing law has no such provision and the request cannot be conceded." His mother, K. Sujatha, was not ready to give up. She has vowed to fight it out in the court, so as to make mercy killing legal in India (Sinha, et al., 2012, p.177).

In 2006, the 196th report of the Law Commission of India brought out The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006. The health ministry had opted not to formulate any law on euthanasia. However, on March 7, 2011, while hearing the *Aruna Shabaug* v. *Union of India* case, the Supreme Court laid down guidelines to process pleas for passive euthanasia. It said that until the Parliament works out legislation, the procedures laid down by the guidelines should be followed. During August 2012, the Law Commission again proposed making legislation on passive euthanasia and prepared a draft bill called the Medical Treatment of Terminally Ill Patients (protection of patients and medical practitioners) bill. It does not recommend active euthanasia. In May 2016, the health ministry uploaded the draft bill and wanted people to give their views via e-mail to passiveeuthanasia@gmail.com, so that it can take a decision to enact or not to enact a law on passive euthanasia (Sinha, et al., 2012, p.178).

We propose that implementation of passive euthanasia shall be made under certain conditions:

- The death shall be requested by a person who is terminally ill and genuinely wishes to die. The autonomy of patient is the prime concern.
- The death is for the good of the patient who is well aware of the consequences and wishes to die and not for the "greater good" of the country, family, or anyone else. Beneficence component of bioethics is covered herewith.
- The death is to relieve the unbearable pain and suffering, i.e., not treatable in any other way. The patient is benefited by withdrawal of pain.

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- Decision for euthanasia shall be decided only in the absence of any other reasonable alternative.
- Patients shall be allowed to prepare their living will.
- All physicians are not allowed to practice euthanasia. Some medical practitioners of reputed background shall be trained in euthanasia to prepare them as specialists of euthanasia.

We, in the process of evolution, should acknowledge quality of life over quantity. The physician's duty is to ease pain and suffering. If there is no other option, the doctor, in fulfilling this duty, should be allowed to passively end the patient's life. This statement is not based on autonomy, but on beneficence.

It has been felt that permitting euthanasia could diminish respect for life. Concerns are raised that allowing euthanasia for terminally ill individuals could result in a situation where all terminally ill individuals would feel under pressure to avail euthanasia. The caretakers fear that such individuals might begin to view themselves as a burden on their family, friends, and society, or as a strain on limited health care resources. However, the proponents of euthanasia shall confirm that legalizing euthanasia would not devalue life or result in pressure being put on individuals to end their lives, but would allow those with no hope of recovery to die with dignity and without unnecessary suffering. I conclude by saying that euthanasia shall be practiced while keeping the patients' well-being in mind. Above all, real sympathy cannot kill and a dignified end-of-life is the right of every individual (Sinha, et al., 2012, p.179). Euthanasia shall be legalized in India too, under the strict supervision of trained physicians, judiciary bodies, and family members.

However, the result of implication of euthanasia needs to be reexamined again at regular intervals depending upon the development of society with regard to providing health care to disabled and terminally ill patients. The survey results will help in forming rules of euthanasia.

Article 21 of the Indian Constitution has been the central point of discussion in the debate over euthanasia in India. The arguable question for consideration has been whether right to life under Article 21 also includes right to die? The constructive interpretation of Article 21 by the Supreme Court of India has brought many rights within the domain of right to life. Now it is well-established that right to life does not mean mere animal existence, but it includes a dignified or qualitative life. So it is argued that every person has a life to live with at least a minimum dignity and when the state of existence falls below even that minimum level, the person must be allowed to end such tortuous existence. In such cases, relief from suffering rather than preserving life should form the content of the protection vested in Article 21. Personal liberty under Article 21 is also said to state that one should be free to deal with his body in any way he likes. However, sections 306 and 309 of the Indian Penal Code (IPC), which punish abatement to suicide and attempt to commit suicide respectively, were found to be the two important provisions in the way of having a legal right to die (Sinha, et al., 2012, p.180).

Indian judiciary has to some extent clarified the scope of euthanasia in India in three important cases decided by it. In *Maruti Shripati Dubal* v. *State of Maharashtra,* constitutional validity of section 309 of Indian Penal Code was in question. In the prosecution against petitioner, a constable who was suffering from psychiatric illness and consequently tried to commit suicide, it was argued on his behalf that section 309 of Indian Penal Code violates Article 14 and Article 21 of the Constitution. While agreeing to the argument, the Bombay High Court observed that:

> "Different mental, physical & social causes may lead individuals to attempt to commit suicide. Some individuals may resort to suicide to escape from cruel conditions of life which are every moment a punishment for them. Those who make suicide attempt on account of mental disorders require psychiatric treatment & not confinement in prison. Punishment serves no purpose (Sinha, et al., 2012, p.181)."

Article 21, according to the Court, not only provides protection against an arbitrary deprivation of life but also envisages a life with human dignity. Once everyone is entitled to dignified life under Article 21, it logically means that right to life also includes right to die or right to terminate one's life. Moreover every fundamental right has both positive as well as negative aspects. One should not view Article 21 in isolation; instead all fundamental rights should be read together. Such a reading would show that freedom

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of speech and expression includes freedom not to speak, freedom of business and occupation includes freedom not to do a business and so on (Sinha, et al., 2012, p.182). Therefore, right to life under Article 21 also includes the negative aspect. Consequently Section 309, being an obstruction in the exercise of fundamental right to life, is violation of Article 21.

Section 309 was also held to be violation of Article 14 on two grounds. Firstly, nobody knows what constitutes an attempt to suicide. It is difficult for anyone to say which act or acts in the series of acts would constitute attempt to suicide. Therefore it is not possible to have a reasonable classification of actions in different cases, which is essential under Article 14 of the Constitution. Secondly, Section 309 treats all attempts to commit suicide by the same measure. It does not make any distinction between a more serious attempt and a less serious attempt. Similarly it does not take into consideration the circumstances in which the attempts are made (Kusum, Gandhi, 2017).

However the Court drew a distinction between suicide and euthanasia on the basis of the fact that the former involves self destruction and the latter involves the intervention of a third party to end the life. Euthanasia, according to the Bombay High Court, is nothing but homicide, irrespective of the circumstances in which it is affected. Therefore it is punishable unless specifically accepted.

The first case on right to die before the Supreme Court of India is *P. Rathinam / Nagbhusan Patnaik* v. *Union of India*. While responding the question of constitutional validity of Section 309 of Indian Penal Code, the Supreme Court held that Section 309 is not violation of Article 14, but it is violation of Article 21. The Supreme Court rejected the views expressed by the Bombay High Court in Maruti Shripati Dubal on the violation of Article 14 (Gandhi, 2017).

According to the Supreme Court, whatever may be the differences as to what constitutes suicide, there is no doubt that suicide is intentional taking of one's life. It is open for the accused to take the plea that his act did not constitute suicide as he had no intention to take his life. The court, in such cases, would sit to decide the truthfulness of his argument by objectively assessing the subjective element of intention of the accused. Therefore there may not be set criteria for saying what kind of act constitutes attempt to suicide, but it is possible to determine, in a given set of circumstances, whether the act of accused falls within the ambit of attempted suicide. Further the argument that Section 309 treats different attempts to commit suicide by the same measure and hence it is violation of Article 14 was rejected by the Supreme Court (Gandhi, 2017). This is because, Section 309 speaks of only the maximum sentence and it does not prescribe minimum sentence. Consequently, the Court is free to adapt the appropriate sentence depending on the nature, gravity and extent of attempt to commit suicide.

On the debate over Article 21, the Supreme Court concurred with the findings of the Bombay High Court. Right to life under Article 21 was held to include both positive and negative aspects, just like all other fundamental rights. One cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. Therefore right to life brings in its trial right not to live a forced life. Furthermore, the person, who has attempted suicide, would be undergoing agony and ignominy due to his failed attempt. Punishing him again is nothing but punishing doubly, which is not justifiable. Therefore "what is needed to take care of suicide-prone persons are soft words and wise counseling (of a psychiatrist), and not stony dealing.

In the concluding part of the judgment the Supreme Court went to the extent of saying that Section 309 is a cruel and irrational provision, which deserves to be effaced from the statute book to humanize the penal laws. It also observed that the act of suicide is not against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Therefore, the state interference with the personal liberty of the concerned persons in such cases is not called for (Gandhi, 2017). However the Supreme Court again made a distinction between suicide and euthanasia by stating that the justifications for allowing persons to commit suicide is not applicable to the cases of mercy killing, and the person abetting euthanasia commits an offence.

Thus the courts have taken an autonomy oriented approach in the above decisions. This approach seems to originate from the view that as the destruction of property is not an offence, sacrificing once body is also not an offence. The judiciary has relied extensively on the ancient religious and other scripts, which

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recognize a limited right to die. Furthermore, in Rathinam, the Court made a reference to the global view on suicide and found that attempt to suicide is not an offence in United Kingdom and in United States of America. Because of these reasons both the Bombay High Court and the Supreme Court found that there is a need to legalize attempted suicide by parting with Section 309 (Bhat & Shyamala, 2011).

In 1996, the Supreme Court got an opportunity to reconsider the above decisions in *Gian Kaur* v. *State of Punjab*. The appellants, Gian Kaur and her husband, were convicted by the Trial Court under Section 306 for abetting commission of suicide by Kluwant Kaur. The appellants challenged the constitutional validity of Section 306 on the ground that Section 309 has already been held unconstitutional by the Court in Rathinam, since right to life under Article 21 includes right to die (Kusum, Gandhi, 2017). Once we recognize right to die as a fundamental right, any person abetting commission of suicide cannot be said to have committed an offence, since he is merely assisting in the enforcement of a fundamental right. Due to this reason, Section 306, which penalizes assisted suicide, is equally violation of Article 21.

As the argument was completely dependent on the unconstitutionality of Section 309 held in Rathinam, the Court was confronted with two questions. Firstly, whether the Court was right in deciding Rathinam? Secondly, if so, does Section 306 violate Article 21? While answering both the questions in negative, the Supreme Court observed that certain positive overt acts are the prerequisites for the commission of suicide, and the genesis of those acts cannot come within the ambit of protection provided under Article 21. Extinction of life cannot be interpreted to be within the protection of life. Right to life, just like other rights, is a natural right, but suicide is an unnatural extinction of life. Therefore a natural positive right cannot go hand in hand with unnatural negative. Further, the Court found inherent distinction between the nature of right to life under Article 21 and other rights such as right to freedom of speech, right to carry on business etc. The negative aspect of right to life would mean the end or extinction of the positive aspect, which doesn't happen in case of all other fundamental rights. Article 21 speaks of a dignified life. Any aspect of life that makes it dignified may be read into it, but not those aspects which extinguish it. Such a right to dignified life exists up to the end of natural span of life. It is true that everyone has right to die with dignity. However right to die with dignity at the end of natural life should not be confused with right to die an unnatural death curtailing the natural period of life (Gandhi, 2017). Therefore Section 309 was held to be constitutionally valid.

On the question of constitutional validity of Section 306, Court observed that once Section 309 is found valid, no serious challenge to the constitutionality of Section 306 remains. The Court also pointed out that Section 309 and Section 306 speak of altogether different offenses. While Section 309 deals with an unsuccessful act, attempt to suicide, section 306 refers to a completed act of suicide. Section 306 punishes abatement to suicide, and abatement to attempt to commit suicide is not within its purview. So Section 306 can stand independent of Section 309. Furthermore, the Court observed that in most other jurisdiction, even though attempt to commit suicide is not a penal offence; abatement to suicide as well as abatement to attempt to commit suicide are punishable offenses. This was found to be desirable to prevent the possible abuse in the absence of such provision.

The court also made a passing reference to passive euthanasia. Interestingly, it observed that those who are terminally ill or in constant vegetative state come within the ambit of right to die with dignity. The course of natural death has already commenced in such cases and therefore the death cannot be referred to as unnatural termination of life. Thus termination of life can be permitted to reduce the period of suffering during the process of certain natural death (Gandhi, 2017). While holding that abatement to suicide is an offence, the Court referred to *Airedale N.H.S. Trust* v. *Bland*, which enunciates the English position on active euthanasia. The Court found that under English law, it is unlawful for the doctor to administer a drug to the patient to bring about his death, but the Court did not make any observation on the Indian position. A point to be noted here is that the Court looked into the English position on euthanasia while determining the status of abatement to suicide and not of euthanasia.

The constitutional validity of Section 309 and Section 306 does not seem to have much effect on the debate over euthanasia. In this regard the views of V.S. Deshpande, former Chief Justice of Delhi High

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Court, seem to be extremely appropriate. According to him if Section 309 is restricted in its application to attempts to commit suicide which are cowardly and unworthy, then it is inconsonance with Article 21 of the Constitution. But if a person having had no duties to perform to him or to others, when he is terminally ill, decides to end his life and relieve himself from the pain of living and the others from the burden of looking after him, prosecution of such a person under Section 309 would be adding insult to injury (Basu & Sinha, 2012). Therefore it is unjustifiable to extend the meaning of Section 309, so as to include even the latter cases within its ambit.

Now the passive euthanasia has been given legal recognition in India under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. While prescribing certain code of conduct to be followed by medical practitioners, Regulation 6.7 speaks about the following procedure to be followed in euthanasia.

Practicing euthanasia shall constitute unethical conduct. However on particular juncture, the question of withdrawing supporting devices to sustain cardiopulmonary function even after brain death, shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of support system. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer / Medical Officer in charge of the hospital and a doctor nominated by the in-charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994 (Gandhi, 2017).

The wordings of above regulation are clear enough to say that euthanasia is not a rule but only an exception in India. The doctors can conduct passive euthanasia in exceptional cases, that too if the procedural requirements are complied with. Thus, while passive euthanasia has become acceptable under Indian legal system, the active euthanasia still remains in dilemma. To note, there is no legislative provision striking complete prohibition on active euthanasia, nor any decision to that effect. Quite interestingly, there are some defenses under IPC, which are available to the doctors conducting euthanasia (active or passive) in certain circumstances (Gandhi, 2017).

Conclusion

Recently the judgment of our Supreme Court in Aruna Ramchandra Shanbaug v. Union of India legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. The legislature should step in and allow voluntary euthanasia by making a special law dealing with all the aspects of euthanasia and with adequate safeguards. The recommendations laid down in the Reports of Law Commission of India and guidelines given in the Aruna's case are to be taken into consideration when any law on that point is to be framed. It not only gives "Right to die" for the terminally ill, but also "Right to life" for the organ needy patients.

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