



RIGHT TO DIE WITH DIGNITY: A LEGAL RIGHT?

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ABSTRACT

Supreme Court of India on 9th March 2018 legalise Passive Euthanasia. The decision was made as a part of the verdict in a case involving Aruna Ramchandra Shaunbaug v/s Union of India. This is the landmark judgement which legalises Passive Euthanasia in India. It comes under Article 21 Right to Life – "as if a person is terminally ill he can die by his choice: Right to die with dignity. If a person is living a life of indignity due to the medical condition, if a person is in a situation of unbearable suffering, if a person is terminally ill or is in a persistent vegetative state then he or she should not be subjected to artificial means of prolonging life. To legalise passive euthanasia, the main motto of Supreme Court is that to help the people by providing them euthanasia who really need it. After all, a person's last wish should be honoured. Supreme Court's decision to legalise passive euthanasia in the country is a very courageous one and we should all respect that.

Keywords: - Passive Euthanasia, Verdict, Terminally, Indignity, Persistence Vegetative State (p.v.s.), Prolonging.

CHAPTER-1 INTRODUCTION

"Death is our friend, the best of our friends; it delivers us from agony. I do not want to die of a reaping paralysis of my faculties – a defeated man".

- Mahatma Gandhi

In 5th century BC Ancient Greeks and Romans tend to support mercy killing which means good death. These people were the first who introduced the phenomenon of mercy killing. In Ancient Greek and Rome, there were pagan physicians who frequently performed abortion, foeticide, and Active and Passive mercy killing respectively. Although not every physician render the same activity it was believed that they have to take an oath which prohibited them to give a deadly drug to someone not even if asked for; Pagan Physician called them Hippocrates¹. The word 'Euthanasia' was first used in the 17th century by Francis Bacon in a medical context in which he was referring to an easy, painless, happy death in which it was the responsibility of the physicians to soothe the suffering of the patients².

In India, the term right to die should be granted and it must be a part of Right to life first came in front of Supreme Court in the year 1994 in which the constitutional validity of Indian Penal Code (IPC Section 309) was challenged. The Supreme Court

¹ Euthanasia. procon, Historical Timeline, (14/6/18,9:50 AM),

<https://euthanasia.procon.org/view.timeline.php?timeLineID=000022>

² *Ibid*



declared Section 309 of IPC is unconstitutional under Article 21- Right to Life.

Supreme Court of India on 9th March 2018 legalise Passive Euthanasia. The decision was made as a part of the verdict in a case involving Aruna Ramchandra Shaunbaug v/s Union of India. A writ petition was filed by Pinki Virani (Journalist) under Supreme Court under Article 32 on the behalf of Aruna Shanbaug. Aruna was a nurse in King Edward Memorial Hospital, Parel Mumbai. She spends 42 years in a vegetative state; on the evening of 27th November 1973, she was brutally raped by her colleague a ward boy name Sohanlal Valmiki, chocked with a dog chain. It was ostensible that Aruna Ramachandra Shanbaug was in a persistent vegetative state (p.v.s.) and basically a dead person and has no state of awareness, and her brain is virtually dead. She can neither see, nor hear anything nor can she express herself or communicate, in any manner whatsoever. This is the landmark judgement which legalises Passive Euthanasia in India. It comes under Article 21 Right to Life – "as if a person is terminally ill he can die by his choice: Right to die with dignity"³.

CHAPTER -2 **THE LAST RIGHT: MEANING**

The term Euthanasia is derived from Greek word EU means good and thanos means death respectively. It simply means withdrawing medical treatment with the deliberate intention of causing the death of a person who is suffering from a non-curing

disease. Every individual wants to live a good life and hopes to die with dignity. If a person is living a life of indignity due to the medical condition, if a person is in a situation of unbearable suffering, if a person is terminally ill or is in a persistent vegetative state then he or she should not be subjected to artificial means of prolonging life.

CHAPTER-3 **FACETS OF EUTHANASIA**

Euthanasia is of two types Active Euthanasia and Passive Euthanasia. In Active Euthanasia the person is neither in a vegetative condition nor is he/she suffering from any non-curable disease, in this situation a person simply wants to end his/her life just because they don't want to live. Active Euthanasia is illegal in India. There was an issue which comes forward in Maharashtra a couple, Iravati Lavate, 79, and her husband Narayan, 86, fear that they will fall terminally ill and will not be able to 'contribute to society'. Iravati Lavate, 79, a retired school principal, and her husband Narayan, 86, a former government employee, have no major health problems. However, they have the major fear of falling terminally ill and believe that they will no longer be able to contribute to the society; this fear pushes them to write a letter to president seeking permission for doctor-assisted death. The couple does not have any children. When a journalist of Hindustan Times visited them to their house Iravati said, "From the starting year of our marriage I and my husband has decided that we don't want any kinds so we don't have any. Now, at this stage of our age, we don't want others to be liable for our condition later." The court rejected their plea and does not grant

³ Indian Kanoon, Aruna Shaunbaug v/s Union of India & Ors, (14/6/18, 11:42 AM), <https://indiankanoon.org/doc/235821/>



them to commit active euthanasia, even though it's where they don't have any right to end by artificial means (active euthanasia) which the Supreme Court of India has stated illegal.

Active Euthanasia entails the use of a lethal substance to kill a person whereas in Passive Euthanasia the person is almost dead only his mind is working, they cannot even move their body by themselves. It is a condition which is similar to coma in which a person is in a state of unconsciousness or lack of sensation; he has become unable to respond. Passive Euthanasia is must in some cases. It demands by the near and dear ones of the patient to withdraw them from life support system not because they want to kill them but because they cannot see them in such a miserable condition where the patient is dying every day in front of their eyes. The patients went through the pain every single day the pain which is unbearable for the family member of a person for whom the Passive Euthanasia is demanded. Supreme Court bench says Passive Euthanasia is permissible in India. The court said human beings have the right to die with dignity to contest a living will, family members or friends can go to the court; the court can set up a medical board to decide if Passive Euthanasia is needed or not.

CHAPTER-4
PORTRAYAL OF JUDICIARY

The Supreme Court legalises Passive Euthanasia in a legal verdict and given the people of India the Right of a "Living Will" withdrawing life support system if the person is living in a persistent vegetative condition for a long period of time.

The Judiciary alone was seemed to involve in this issue. Constitutionally, it should have been in the domain of legislature to construct a law providing for such remedies and then executive to implement it. The legislature and Executive show no proclivity towards this issue, then the people have only one option to move towards court and Judiciary- the pioneer didn't disappoint them. The Supreme Court held that Passive Euthanasia can be granted; the court will set up a medical board to decide if Passive Euthanasia is needed. Supreme Court will take the responsibility for all the pros and cons of Passive Euthanasia until any Legislation is passed by the Parliament.

People need to understand the difference between the two situations – Active & Passive Euthanasia:-

- First is where a doctor is administering a lethal dosage of medication to end the life of a patient.
 - Secondly where a doctor withholds or withdraws a treatment from the patient because of the futility of such treatment.
- The later is permissible but the former is not⁴.

The judicial system of India played a heroic role in legalising the Passive Euthanasia whereas the other two organs of government don't take any step in the matter related to Euthanasia.

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⁴ Ritika Bansal, Euthanasia: appeal & Plea for Mercy Killing, Universal Law Publishing Co., New Delhi, 2013
Edition.PP-70-80



CONCEPT OF LIVING WILL

A living will is a document prescribing a person’s wishes regarding the medical treatment the person would want if he was unable to share his wishes with the health care provider, also known as Advanced Medical Directive (A.M.D)⁵.

Process:-

When a person is in a Persistent vegetative state (p.v.s.) he is unable to communicate, if he has written any advanced medical directive that must be carrying by his/her relatives. The A.M.D should be hand over to the doctor. Hospital Doctor will call a board of 5 specialists having the experience of 20 years in different – different fields they are- Cardiology, Physician, Neurology, Nephrology and Psychiatry. If the board agrees with the A.M.D. then they will inform to Jurisdiction Collector about the case. The Jurisdiction Collector will set up the same board of specialist but this time they do not form hospital staff. When these two boards agree then a certificate will pass to the doctor allowing him to perform passive euthanasia on the patient.

Guidelines by Supreme Court:-

- The living will be given by a person who is mentally stable, who is of the age of majority and he must be in a position to understand the consequences of the document.
- It must be voluntarily executed and without any coercion after having full knowledge or information.
- It shall be writing which has to be written in front of magistrate clearly

stating as to when medical treatment can be withdrawn.

CHAPTER-6
LEGISLATIVE STAND

The government’s latest stand represents forward movement in the quest for a legislative framework to deal with the question whether the patients who are terminally ill and possibly beyond the scope of medical revival can be allowed to die with dignity⁶.

International Scenario-

The first country to legalise Euthanasia is Switzerland in the year 1942 after that Australia became the second country to legalise it in 1996, Netherland 2001, Belgium 2002, and Luxemburg 2009 respectively. The term “Euthanasia” is very controversial from the time when it was first discovered till now.

Switzerland

Passive Euthanasia is not illegal in Switzerland and can have the involvement of common persons or non- physicians. According to a report hundreds of Europeans have travelled to Zurich to end their life as they want to die with dignity. In 1998 an organisation was set up in country ‘Dignitas’ to help people who are suffering from terminal illness. They are provided with a lethal dose of barbiturates which they have to take by themselves. But Dignitas were forced to move, according to one report a person chooses to die in his car. According to Swiss law, a person can be prosecuted only if helping someone commits

⁵ BBC News, India allows ‘living will’ for terminally ill, (15/6/18, 21:41 PM), <http://www.bbc.com>news>

⁶ The Hindu, Towards a Law on Euthanasia,(1 5/6/18,10:28 AM),www.thehindu.com>editorial



suicide out of self-interested motivation and the 'Dignitas'⁷ staffs work as volunteers⁸.

Australia-

In Australia Euthanasia was legalised by Terminally Ill Act, 1995 in Australia's Northern Territory on July 1996. It consists of about 1/6th of the total landmass of Australia. This service of providing euthanasia to people is promoted by Marshall Perron and several Right to life organisation opposes it. It is permitted for Passive Euthanasia under doctor's prescription. After that similar bills were introduced in different states of Australia.

The first person on whom it is tested was Bob Dents 22 Sept. 1996. He was diagnosed with cancer in 1991 and converted to Buddhism shortly as his religion does not allow him to commit Euthanasia of any type. He writes a letter in which he confessed that he doesn't want to live anymore & his religion allows him that he can end his life so Euthanasia should be granted to him.

After his death, on his birth anniversary, 200 people marched through the streets of Sydney demanding Right to die laws. There was a patient Christian Rossiter, 49 years old who is also suffering from terminal illness, in August 2009 The Supreme Court of Western Australia give him a choice whether he wants to continue his medical treatment or to end his life; he chooses to end his life. Thus, The Court of Australia gives a right to patients who are suffering

from terminal illness and their parents that what type of medical treatment they would like to choose is up to them. It can, however, be concluded that Passive Euthanasia is illegal in Australia.

Luxemburg-

The first reading of Luxemburg's Parliament was 30 out of 59 votes in favour which passed a bill legalising passive euthanasia. 20th February 2008 Parliament of Luxemburg legalise passive euthanasia, Luxemburg became the third European country after the Netherlands and Belgium, to Legalise Euthanasia this was clear after the second reading of the bill which was passed on 19th March 2009.

People of Luxemburg now have the right to end their life after receiving the approval of two doctors and a panel of experts. The above law was passed by 26 out of 30 votes⁹.

Indian scenario:-

The issue of legalisation of Euthanasia in India is very old. It can be better understood with a view of Reflection from cultural and historical heritage. It was believed that death is certain_it is also mentioned in Bhagavad Geeta-

"Jatasyu hi Dhurvo mriyur dhurvain janma mriyasya cha Tasmad apariharyerthe an tam shochitum areas"

-Death is certain for one who has been born and rebirth is inevitable for one who has died. Therefore you should not lament over the Inevitable¹⁰.

⁷ "Dignitas "meaning- It is a Swiss non-profit organisation which provides assisted suicide to members who are suffering from terminal illness.

⁸ Shodh Ganga, Euthanasia: Global and India Perspective, (15/6/18, 11:46 AM), [shodhganga.inflibnet.ac.in>bitstream](http://shodhganga.inflibnet.ac.in/bitstream)

⁹ Supra7

¹⁰ The Bhagavad Geeta, Commentary by Sri A.C. Bhaktivedanta Swami, (24/6/18, 21:48 PM), <http://www.bhagavad-geeta.us>



India is country which remained under the rule of customs some of them appear autocrat and unjustified today. Indian culture seems to create an equivocal attitude towards Euthanasia and suicide, on the one hand ending life by artificial means was believed to be the highest sin. But on the other hand mercy killing or suicidal activities which defence social welfare and values were highly promoted. There were several customs in India such as Sati, Jauhar, Saka by performing these rituals men and women can kill themselves, they perform these rituals either in pressure of society for example self-immolation of a widowed women (A widow has to end her life by the date of his husband's death) or simply they just want to end their life. Sati was believed as the most important custom of Hinduism, women were bound to perform these customs.

There were some people who do not believe in such type of rituals and consider them as a sin for the society. Among them, there was Raja Ram Mohan Rai who with the help of Lord William Bantick, the then Governor General of British East India Company abolished "Sati Pratha" in 1928. Even in Recent times, people believe in such customs, there was a case of Rajasthan's Sikar district where a woman performed Sati, she burned herself on the burning pyre of her husband. Many local people have supported her and said it is the duty of everyone to uphold Hindu tradition as long as one can.

Jauhar and Saka involve the voluntary death of men and women of the Rajput families, they do so to avoid capture, dishonour by their enemies, it was considered as a mass

suicide. There are several stories in Puranas and Vedas in which both men and women voluntarily accept death.

In the 21st century, the post-independent Indian society has made glorious achievements in the field of socio-economic development, the medical and health facilities have also made a great progress. Deadly diseases like polio, malaria etc. were largely controlled by vaccinations. Due to increase in medical facilities, the life expectancy has also increased accordingly. Life Support System and medical facilities to extend the life of a person such type of medical provisions were adopted by India even if the person is mentally dead.

State of Maharashtra V. Maruti Shripati Dubal¹¹Bombay High Court held that "Every person should have the freedom to incline of his life as and when he desires and his last wish should be honoured. The above decision of Bombay High Court was overruled by Supreme Court of India in the **P. Rathinam V. Union of India**¹²...Where the Supreme Court held that 'No person can enjoy his life to the extent which results in hurting him. Supreme Court rejected the plea of Euthanasia (mercy killing) and stated that no person should be granted Euthanasia on any grounds. In **Gian Kaur V. State of Punjab**¹³ ...A bench of five judges of Supreme Court overruled the P. Rathinam case and held that "Article 21 of the Constitution –Right to Life does not mean Right to die, it only means an exercise of such right up to the end of natural life. The Supreme Court also held that the Court

¹¹ [1987 (1) BomCR 499, (1986) 88 BOMLR 589]

¹² [AIR 1844,1994 SCC (3) 394]

¹³ [AIR 1996 SCC (2) 648]



Article 21 does not include right to curtail the natural lifespan. The court further stated that Euthanasia is not only a legal issue but it is also a social and moral issue and every person who is in a persistent vegetative state for a long period of time demands it.

Recently, however, the Supreme Court of India on 8th March 2018 in its historic judgement **Aruna Ramchandra Shanbaug V. Union of India**¹⁴legalise Passive Euthanasia which means a person can end his life with dignity with the withdrawal of life support system if he is in a persistent vegetative state or suffering from a not curing disease and whom doctors have lost hope of reviving even when the best medical facilities are being provided. The Court further stated that Active Euthanasia is still illegal in India and no person has the right to end his life by taking any kind of lethal substance it should be considered a crime under the law.

The above landmark judgement was given by Justice Gyan Sudha Mishra and Justice Markandey Katju in a PIL filed by Pinki Virani (journalist) in 2011 as a next friend of Aruna Shanbaug a nurse in a K.E.M. hospital Mumbai, On 27th of November 1973 Aruna was attacked and sexually assaulted by a ward boy Sohal Lal Valmiki, he tried to rape her but finding that she was menstruating he sodomized her. When she was 25 years old. Sohan Lal choked her with a dog chain due to which blood and oxygen supply to her mind get cut off this leads her in a condition of vegetative state & paralysis. On the next day on 28th of November 1973 in the morning a cleaner

finds her lying on the floor, she was all over in an unconscious condition. Since then she lied on the bed for 37 years. Sohan Lal Valmiki was charged with attempt of murder and robbery of Aruna's earrings. The court granted Sohan Lal seven years of jail and Aruna was struggling with her life. Valmiki walked free after just 7 years of punishment but his savage victim has been incarcerated her body for past 37 years, the longest patient to ever stay in a hospital. She was 25 then and now she is 63, she has spent all these years brain dead, unable to speak, hear or see. There is no hope for her ever reviving, her bone fingers are brittle, her teeth have a decade, and the mashed food was given to her to keep her alive.

Pinki Virani moved to the court and seeking that force-feeding to Aruna should be stopped, the court rejected her plea as she is neither her skin nor her caretaker but appreciated Virani for her efforts. Supreme Court ruled that Aruna Shanbaug should live, according to court Euthanasia should not be granted to Shanbaug and accepted the prayer of K.E.M. Hospital staff as they want her to die with natural death, they agreed that they will take care of Shanbaug in all possible manner.

Aruna Shanbaug died on 18 May 2015 in K.E.M. hospital due to pneumonia. She receives no justice from the system, no legal justice, no medical justice. She gave India the gift Passive Euthanasia.

The Supreme Court has laid down certain provisions which should be followed in the case of Passive Euthanasia. They are:-

- When there is no possibility that the patient is ever reviving or come out of this

¹⁴ WP NO. 115 of 2009



stage. If there has been no change in the condition of the patient at least for a few years.

- On the plea of Patients relative, caretaker, friends, doctors or staff High Court can pass an order to withdraw the patient from life support system.
- A bench of two judges must be constituted by the Chief Justice of High Court if such type of petition is filed.
- The bench communicates with the panel of three doctors i.e. a neurologist, psychiatrist and physician before granting the permission for Passive Euthanasia.
- After giving the copy of doctors panel to the family the High court should hear them.
- The High Court would issue notice a notice to parties concerned and then give its judgement¹⁵.

The court appreciated Pinki Virani who filed this petition, the court holds her in high esteem and the staff of K.E.M. Hospital; Mumbai for their dedication in taking care of Aruna for so many long years they have shown what real humanity is every Indian should be proud of them.

The Court stated that Active Euthanasia is not legal in India and no person can end his life by taking the dose of lethal substance and the court further stated that the judgement of the judiciary is final until the parliament passes any law regarding Euthanasia.

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¹⁵ Amit Anand Choudhary, SC Guidelines on passive euthanasia, Times of India, (25/6/18, 6:59 PM), [HTTP:>timesofindia.indiatimes.com](http://timesofindia.indiatimes.com)>

IS EUTHANASIA EQUIVALENT TO SUICIDE?

The act in which a person intentionally causes one's own death is called suicide; it is sometimes a way for people to escape from pain or suffering. We can say that active euthanasia is somewhat similar to suicide. In Active Euthanasia the person is neither in a vegetative condition nor he/she suffering from any non-curable disease, in this situation a person simply wants to end his/her life just because they don't want to live. The Supreme Court of India on 9th March 2018 legalise Passive Euthanasia. The decision was made as a part of the verdict in the case involving Aruna Ramchandra Shaunbaug v/s Union of India. The court further stated that active euthanasia is illegal in India & it comes under criminal activity.

Legalising Passive euthanasia is also the biggest challenge for a country like India. The judicial system of India has played the important role because no other organ of government never take this issue seriously, the only judiciary is responsible for all the pros and cons of this until & unless the parliament has passed any bill. People in our country need to understand the difference between Active and Passive Euthanasia, only then after they will get to know the difference between suicide and euthanasia.

One of the biggest myths about legalising passive euthanasia is that it will lead to pressure on the old, disabled and infirm to end their lives. It's a fear among people we should not take it lightly, although it also has absolutely no basis. Death is not easy for those who are in a permanent vegetative state (p.v.s.) for a long period of time. For



them, death is usually slow, painful and undignified. And by refusing people the right to end their own life; we are increasing that pain and indignity to a horrifying extent. Suicide is far different from passive euthanasia; usually, people do it when they get depressed, tired of their life, they have to understand one thing suicide is not a solution to solve their problem. People who are against passive euthanasia argue that legalising euthanasia is somewhat related to the promotion of suicide directly or indirectly but this is not true. In **Gian Kaur v/s State of Punjab**¹⁶ the Supreme court held that Right to die does not include in the right to life under Article 21 and further stated that Right to live with human dignity cannot be constructed include within its ambit the right to terminate natural life by artificial means. Attempt to Suicide is an offence under Article 309 of Indian Penal Code. In a society where we place the high value on freedom and individual choice, why don't we allow people to choose the time and manner of their death? By legalising passive euthanasia in country judiciary is helping only those who are struggling for their lives for a period of time in a vegetative state. Do we have to understand two facts very clearly first whose life is it? If a person doesn't want to live anymore or want to die with dignity why can't he just finish his life, so Euthanasia must be granted when there is a need for it. People who believe in Law of God argued that let the maker take away the life he created, their point is that euthanasia is legalised in country sure to be misused. People need to understand life is precious. People who are against euthanasia believe

that we should live our life till the last breath.

CHAPTER-8

CONCLUSION

Euthanasia is a choice of personal matter law should not have any say in it. Every individual has the right to live with dignity then why can't he just die with dignity. Euthanasia is a painful decision for a terminally ill patient's family to take, it's not because they don't want to end the patient's life but because they want to see him die with dignity. Again the same question arises whose life is it? Supreme Court of India on 9th March 2018 legalise Passive Euthanasia. The decision was made as a part of the verdict in the case involving Aruna Ramchandra Shaunbaug v/s Union of India. Behind the legalising of passive euthanasia main motto of Supreme Court is that to help the people by providing them euthanasia who really need it. After all, a person's last wish should be honoured. Supreme Court's decision to legalise passive euthanasia in the country is a very courageous one and we should all respect that.

The time had come to permit passive euthanasia in other words people who are in a permanent vegetative state (p.v.s.) have the option for their family that they should be allowed a life with dignity.

¹⁶ Supra3