

EXPANDING HORIZONES OF CONSTITUTIONAL RIGHTS

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Ancient Indian saints had very much forecast in their life as well as death. Some saints even predict their exact date of death and embraced their fate on the same day. To them it was not a self-destruction, but a customary method of attaining Moksha, widely known in India as well as in Greece. The attitude towards annihilation of life is worth searching. It contains moral, ethical, and legal issues.

Every human being has a natural instinct or desire to live a joyous life.

"No life that breaths with human breath has ever truly longed for death" Alfred Tennyson.

But when a man undergoing trauma of pain and sufferings, fettered by both physical and mental illness and rainbows in life become colourless and the octopus gripping firmly with its tentacles, so that the person "shall rise up never" the things should be different. In such cases the human being will be constrained to terminate his life by use of unnatural means. This may be due to biological or social reasons. When he closes the pain and suffering of this world by his own act we call it "suicide". But the end of the life of persons by others, though at the request of the person himself is called "Euthanasia" or "mercy killing". Often people with terminal illness or who became incapacitated and not prepared to live due to sufferings and ailments are the unfortunate victims who desire whether to live or die. It is a moral as well as a social problem and has to be viewed and examined in all its perspective. Our Apex Court has meticulously examined this matter in detail by delivering three classic judgments. Those are 1. **Gian Kumar v. State of Punjab (AIR 1996 SC 946)**, 2. **Aruna Ramchandra Shanbaug v. Union of India (2011 (3) KLT SN 26 (C.No.30) SC = AIR 2011 SC 1290)** and finally **Common Cause v. Union of India (2018 (2) KLT SN 37 (C.No.47) SC = 2018 (2) KLT OnLine 2047 (SC) = AIR 2018 SC 1665)**.

The concept of Euthanasia was legalised in Netherland and England. In the wake of such revolutionary changes, in the sphere of legislation, in many of the nations across the world hotly debated whether or not to follow the Dutch and English examples. In *Gian Kumar's* case our Apex Court rejected the case of Euthanasia and thereafter in 2011 in *Aruna's* case Hon'ble Supreme Court has given its verdict on this point and allowed passive Euthanasia in India. Recently in *Common Cause* case our Hon'ble Apex Court has delivered a classic and mile stone judgment in this aspect. As per Black's Law Dictionary Euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one. The word Euthanasia is derived from the Greek Word "Eu" and "thanatos" which means good death or easy death. Euthanasia may be classified as

1. Active or Positive
2. Passive or negative
3. Voluntary
4. Involuntary
5. Non voluntary

Active Euthanasia involves painlessly putting individual to death for medical reasons as when a Doctor administers lethal doze of medicine.

In Passive Euthanasia Doctor is not actually killing the patient. He is simply not suffering the life. For example, withdrawing of life supporting devices from a serious patient, removing which the patient dies.

Voluntary Euthanasia is practiced with the expressed desire and consent of a patient.

Involuntary Euthanasia is the practice of killing him without express wish from him to that effect.

Non-voluntary Euthanasia refers to ending the life of a person who is not mentally competent to make an informal request to die.

In such cases it is often the family members who make the decision. The ordinary means are lethal injection i.e., injection of lethal dose of a drug such as non poison and applying of carbon monoxide gas. In **Maruti Sreepathy Dubai v. State of Maharashtra (1987 Cr.L.J.743)** the Hon'ble Bombay High Court distinguished Euthanasia and suicide. It held that suicide by its very nature is an act of self-killing or termination of one's own life by one's own act without the assistance of others. But Euthanasia means intervention of other human agency to end the life of another. The Hon'ble High Court took the view that it is thus nothing but a homicide. In **Gian Kaur v. State of Punjab** the Hon'ble Supreme Court held the view that Euthanasia and assisted suicide are not lawful in our country. The Court how ever referred to the principles laid down by the House of Lords in **Airedale case** where the House of Lords accepted that withdrawal of life supporting system on the basis of informed medical things would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a normal death where there is no longer any duty to prolong the life. Article 21 of the Indian Constitution guarantees the right to life. Five Judges Bench of the Supreme Court in **Gian Kaur's** held that right to life does not include right to die. In that case it was further held that S.309 I.P.C. is constitutionally valid. But the Apex Court observed that the time has given consent, it should be deleted by Parliament.

But a new dimension was raised in **Aruna's** case. Aruna was in a persistent vegetative state (PVS) and virtually a death person and has no state of awareness and her brain is virtually dead. The Hon'ble Supreme Court established a committee for medical examination of the patient for ascertaining her status. Lastly the court dismissed the petition filed on behalf of Aruna and observed that Passive Euthanasia is permissible under supervision of law in exceptional circumstances but active Euthanasia is not permissible in law. The court has further laid down some guidelines to the Parliament to make the legislation legalizing passive Euthanasia that

- (1) A decision has to be taken to discontinue the life support either by parents or spouse or other close relatives or next friend. The doctors attending the person can also take it. However the decision should be a *bona fide* one in the best interest of the person.
- (2) Even if a decision is taken it requires approval from the High Court concerned.

- (3) Then on such application the Chief Justice of High Court should forthwith constitute a bench of atleast two Judges to decide the grant of permission. Before taking the decision the bench should seek the opinion of committee of three reputed doctors.

After **Aruna's** case much water had flown down the bridge. In the recent *Common Cause* case the Hon'ble Apex Court meticulously evaluated all these aspects under the spirit of the growing constitutional rights. The question that whether a person should be allowed to remain in such a stage of incurable passivity sufferings from pain and anguish in the name of Hippocratic oath was answered by the Hon'ble Supreme Court in *Common Cause* case. The Supreme Court highlighted the question that "right to die with dignity" will come under the "right to live with dignity" as guaranteed under Article 21. It is interesting to say that though the petitioner claims right to die with dignity is part and parcel of right to live with dignity, right to die is not a part of right to life. In this juncture it is to be borne in mind that "right to life embraces not only physical existence but also the quality of life has understood in its richness and fullness within the ambit of Constitution (See **P.Rathinam v. Union of India (1994 (2) KLT OnLine 1103 (SC) = AIR 1994 SC 1844**). While considering the constitutional validity of S.309 I.P.C. in *Gian Kaur* case the Hon'ble Apex Court straight away went to the extend of saying "In the context of a dying man who is terminally ill or is a PVS stage he may be permitted to terminate it by a premature extinction of his life in these circumstances. In this category of cases certainly the ambit of right to live with dignity included the right to die with the dignity.

The word life is broadly understood by the Hon'ble Supreme Court in **Board of Trustees of the Port of Bombay v. Dileep Kumar (1983 KLT OnLine 1205 (SC) = AIR 1983 SC 109**) that life does not merely connote animal existence or a continued drudgery through life. Before that in **Menaka Gandhi v. Union of India (1978 KLT OnLine 1001 (SC) = AIR 1978 SC 579**) the luminary Justice Krishna Iyer took the view that "Life is a terrestrial opportunity for unfolding personality, rising to higher status, moving to fresh woods at reaching out to reality which makes our earthly journey a time fulfillment. It is not a tale told by an idiot, but a fine frenzy rolling between the heaven and the earth. Thus it is clear that individual dignity is a facet of Article 21. C.J.I. Hon'ble Justice Deepak Misra in his classic judgement in *Common Cause* took the view that the word life in Article 21 has to be construed as life with human dignity and take with its ambit "the right to die with dignity". While adverting to situation of dying man who is terminally ill or in PVS, where he is, may be permitted to terminate it by premature extinction of his life, will certainly fall within the ambit of "right to die with dignity". Hon'ble Supreme Court further held that only passive Euthanasia would come within Article 21 and not one, which would fall within the description of active Euthanasia in which positive steps are taken. Right to life and liberty is meaningless unless it is encompassed within its sphere of individual dignity.

In order to overcome the difficulty of patients who are unable to express their wishes at the time of taking a decision, the concept of advanced medical directives were introduced and a comprehensive scheme was also introduced by this verdict. Besides that a competent person can express his choice to refuse the treatment when a decision is required to be made. In addition to the above all advanced medical directive, the introduction of medical power of attorney is also significant. It empowers the patient to appoint an agent to take

appropriate health care decision. Advanced directive can be executed only by a sound adult by a purely voluntary means. There should not be any iota of element of coercion or inducement or undue influence. It should be by writing in clear and unambiguous language. The documents should be signed by the executor in the presence of two attestors and counter signed by a Judicial First Class Magistrate designated for this purpose. In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of ailments the doctor can ascertain the genuineness of the documents from the JFCM. Then a medical board consisting of experts shall visit the patient and take an appropriate decision, which is only a preliminary opinion. If the preliminary opinion is to the effect that instructions contained in advanced directive ought to be carried out, then an apex body of medical board consisting of experts should visit the patient and say the final word. It is always permissible to the executor to revoke his decision at any stage. If the permission to withdraw the medical treatment is rejected by the medical board, the executor or his family can approach the constitutional courts by way of Writ Petition. Apex Court further clarify that these directions with regard to the advanced directions and safe guards shall remain in force till Parliament makes suitable legislation. We hope that the Parliament of India will rise to the occasion and will pass a foolproof legislation in tune with the spirit of the historical verdict of the Supreme Court, which protects and highlight the concept of human dignity.