

RIGHT TO DIE WITH DIGNITY: A HUMANE FACET OF ARTICLE 21- Nikhila Katupalli¹**Common Cause (A Regd. Society) v. Union of India**

The Apex court, on March 9th, 2018, in the landmark judgement of Common Cause (A Regd. Society) vs Union of India held that a person has a right to die with dignity in connection with right to live with dignity under Article 21 of the Indian Constitution. The judgment laid down guidelines for living wills and passive euthanasia for persons in persistent vegetative state (PVS) and terminal illness and recognised active euthanasia, whether voluntary, involuntary or non-voluntary as illegal which attracts punishment under the Indian Penal Code.

The court introduced advance directives, which according to Black's law dictionary is a legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate. A cumbersome three-tier procedure has been laid down by the court, where the concerned hospital authorities are to form a committee of medical experts to check the physical and mental condition of the person.

The reports shall be informed to the district collector, who will then form a second board consisting of the chief medical officer and with experts not less than 20 years of experience and the same is forwarded to the Judicial Magistrate First Class. In order to avoid discrepancies and halt misuse by family, friends or any other interested persons, the High Court under section 226 has the final powers to approve the same based on its discretion. These guidelines are to be followed until a legislation is made to that effect.

- **Retrospective/Referential observations of the court:**

The court with regard to the instant case, observed two important judgments, namely, Gian Kaur v. State of Punjab² and Aruna Ramchandra Shanbaug v. Union of India and Ors³. In the Gian Kaur case, right to life is inclusive of leading a life with dignity until the stage of death with a dignified procedure of death.

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² 2012 10 SCC 303

³ 2011 4 SCC 454

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With reference to *P. Rathinam v. Union of India & Anr*⁴, a distinction between right to die under section 309 of IPC and the right to die with dignity under the ambit of Article 21 has been made. The instant case disagreed to what has been stated in the *Gian Kaur* case, that euthanasia can be made legally valid only with an appropriate legislation by differing with the same, and also recognised that the case did not expressly state any opinions on euthanasia.

In *Aruna Shanbaug* case the court upheld the constitutional validity of passive euthanasia to persons in PVS for a premature extinction of life by deliberately restricting or omitting the required treatment. A clear distinction between active and passive euthanasia has been made. The former is actively and immediately taking away a life by injecting a lethal drug, and the latter refers to withdrawal of necessary medical treatment or life supporting systems. The court has laid down guidelines in answering the question as to who can give consent to an incompetent person.

- **Emphasising the Impact of Trauma and recognising Personal Liberty:**

To lead a dignified and fulfilling life, fundamental rights form an indispensable part in an individual's life. And the most important fundamental right to serve that purpose is Article 21 of the Indian Constitution. It is the kind of right that encompasses a plethora of rights within its broad domain. The question that was raised to be considered in the instant case was whether a person can be allowed to control his death and decide to end his life.

With the advancement of medical jurisprudence, salient factors like one's ability to deal with trauma throughout his period of survival or one's decision to end his life with dignity and peace have become important aspects that deserve attention and empathy, which cannot be overlooked by the courts.

The court also differentiates and explains that a physician assisted suicide is defined as a physician giving the means or directions of death and it is ultimately the patient to decide on administering the drug, whereas in euthanasia, the physician has an active and direct role in taking away the person's life. A person has the inherent liberty to make choices and decisions for his mind and body in whichever way he thinks is best for leading a meaningful life. That, regardless of any external factor cannot be infringed in any manner, even by the State. Seamless process of one ending his life and alleviating the trauma by giving force to advance directives is bound to be under the ambit of Article 21, encompassed in the dimension of dignity.

In the words of Justice DY Chandrachud,

“Dignity in the process of dying is as much a part of the right to life under Article 21. To

⁴1994 3 SCC 394

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deprive an individual of dignity towards the end of life is to deprive the individual of a meaningful existence.”

In considering the prayers of the petitioners, the court observed that in certain situations, the individual's interests shall prevail over the state's interests by extinguishing a person's life without pain and suffering for a peaceful death.

Concluding remarks:

This landmark judgment empowers the law making body to enact an effective law on right to die in a dignified manner, also recognising the importance of palliative care and End of Life Care services (EOLC) which include pain and symptom management for a “good” death. The last move left to show respect to someone and their life is to show respect to their death. That said, the manner of death then becomes very important to consider. This judgement has clearly stressed upon the need for calm and peaceful deaths with the absence of bodily damages and mental trauma, thereby upholding one's dignity in their last phase of existence.

I believe this judgement ratifies and reaffirms the principles of humanity, compassion and respect for one's inherent power to make choices about their body, even if it means to put a complete end to its functioning. The outweighing of dignity and personal liberty over all else has been very well articulated in this judgement. Thus, this decision proves to be one such positive verdict that reinforces the faith people have in judicial bodies, and that courts do uphold every intrinsic and broad nuance of every right constitutionally guaranteed to its citizens.