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CONSTITUTIVE PERSPECTIVE ON THE RIGHT TO DIE WITH DIGNITY- Nabeel Masood¹**ABSTRACT**

In the past few years there has been a rising debate in the legal fraternity related to the inclusion of “right to die with dignity “under article 21 of the constitution that makes provision for “right to life “. The contentions given by the supporters of right to die with dignity is that right to life which includes parameters related to living with dignity should also elucidate upon the choice of a person to die with dignity, second contention is that those who are in vegetative condition or are suffering from terminal disease should have a right to end their life. third contention is that whether those suffering from terminal diseases and in vegetative situation be allowed to take their life to get over sufferings and pain of stagnation. all the three contentions were answered by the supreme court in its Aruna Ramchandra Shanbaug landmark judgement where the court illuminated about the usage of passive euthanasia but in certain serious conditions such as in cases of vegetative situations / terminal diseases, there conditions were relied to check upon the misuse related to passive euthanasia approach.in the common cause vs union of India judgement, the supreme court upheld the validity of Shanbaug judgement and furthered its approach by making right to die with dignity a fundamental right and scrapping of section 309 of IPC. there is a long road ahead for the nation to make such approaches as set up by the supreme court judgement can be addressed by enacting a full-fledged statute covering all peripherals of the passive euthanasia.

KEY WORDS : Passive euthanasia , Aruna Ramchandra shanbaug , Common cause , Right to die , Dignity , Right to Life .

INTRODUCTION

The right to die with dignity is an issue that has been the centre of a lot of debates and quarrels among the legal fraternity. It is an issue that made headlines when the Supreme Court on 9thMarch 2018 passed a landmark judgement in the case of common cause vs union

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of India [1]. In which the constitutional bench of the Supreme Court comprising of CJI Dipak Misra, Justice AK Sikri, Justice Ashok Bhushan, Justice DY Chandrachud and Justice AM Khanwilkar. The constitutional bench of the Supreme Court made passive euthanasia and living wills constitutional and made it a fundamental right. The bench opined that the right to life has an important associated peripheral too which is the right to die, the order allowed passive euthanasia which means that the person has the right to form a legal document giving the concerned authorities the power to take decisions on their behalf if their health condition deteriorates. Common cause NGO filed a petition in front of the supreme court while exercising their right under article 32 seeking to declare the right to die as a fundamental right under the ambit of article 21 and to ensure the issuance of directions to respondents which lead to the adoption of suitable procedure under state government wherever required, to ensure that the patients whose health conditions are deteriorating should be allowed to execute a document with a title my living will and attorney authorization, which can be produced in the hospital for appropriate action in furtherance to any life-threatening scenario. The petition also seeks the formation of a committee that will comprise doctors, scientists, and lawyers.

HISTORICAL BACKGROUND

Right to die first time came into the limelight when Bombay high court got the case *Marti Sreepati Dubal vs state of Maharashtra* (1987) [2] which was filed for the inclusion of the right to die as a fundamental right, the result of which was that the Bombay high court struck down the constitutionality of section 309 (IPC) the high court opined that right to life includes right to die also.

In another case named *PRathinam vs Union of India* [3], it was decided that Article 21 of the constitution includes the right to die and struck the constitutionality of Section 309(IPC)

The issue of the right to die again came into the limelight with the case of *Gian Kaur vs State of Punjab* [4] in this case the supreme court opined that the right to die can not be made a fundamental right, all sorts of euthanasia are illegal and can not be counted under the ambit of Indian constitution and also upheld the constitutionality of section 309(IPC).

It was later in the case of *Aruna Ramchandra Shanbaug vs Union of India* where the condition of a woman Aruna Ramchandra was in a vegetative state and she had lost the interest in living and there were no chances of betterment in her health condition. The court allowed

passive euthanasia along with some observations that” when such applications are filed then chief justice of the court should form a special bench who should decide the allowance of passive euthanasia.

STATUS QUO OF RIGHT TO DIE WITH DIGNITY

The common cause vs union of India case where Dr DY Chandrachud has given the differences between active and passive euthanasia, he has certainly supported the passive euthanasia which according to him is not a way of killing the patient rather it is just a means to take away the life support of the patient who is either in the vegetative condition or sees no change in the condition to let the person live on his own without any artificial support to enhance his life rather to just let them be on the natural course of a lifetime. In the case of active euthanasia, Dr DY Chandrachud illustrated the legal aspect associated where the doctor is committing an intentional act which is a crime as mens rea is the basis for the conviction in the criminal case. Therefore in the case of common cause vs union of India, it was held that passive euthanasia is legal because there are no legal penal provisions regarding it whereas, on the contrary, active euthanasia is legally under question regarding the intention behind committing the action to let the patient die. Court has also advised and proposed advanced directives to commit passive euthanasia. The common cause case has also provided incompetent patients with the right to living wills through which the patients can communicate their choices, it also gave people a right to choose an advanced medical attorney which is a trusted person who will be appointed on behalf of the patient who can decide on the patient’s behalf.

After the judgement in the case of Aruna Ramchandran Shanbaug, the law commission came with its 241st report, where the report has dealt with the concept of euthanasia the committee in the report has referred to the observations made by the chairman of the law commission back in the year 2006 where he addressed the problem of the today’s patient who is ill should be provided with the right to refuse to any medical procedure and allow the nature to take it’s own cause [5]. The law report was concerned that the right to not follow the medical procedure should be allowed and considering the condition of the patient who is suffering through such a complex issue. the law report also points out the fact that the majority of developed nations have enacted laws to provide people with the right to passive euthanasia

and make the right to die with dignity a fundamental right in their respective nations and a means to further humanity.

SUGGESTIONS / COMMENT

With the cases discussed above the supreme or the apex court should focus more on assisting those who are terminally ill for which they should constitute a panel of magnanimous doctors who are masters of their fields, they should provide the definitions and classify the illness into the categories where people are unable to seek for betterment in their conditions, these medical conditions of the people result in frustration for both the people suffering from it and associated people, there is a dire need for the constitutional provision in article 21 which makes the right to die with dignity fall under the prerogative of the fundamental rights. Where a person has lost the will to live the life due to deteriorating health conditions and he willingly wants to end his/her life there should be no stoppage regarding that.

In India, the law has to be formed by the government to take up the matters where people voluntarily want to die and they see no willingness to live a life full of agony and destitute, the law should make the matters evident and fulfil the requirement of the people, the 241st law report which suggested the formation of a committee involving all the best doctors and lawyers agreeing on the matters of the voluntary ending of life in the matters of suffering because of incurable diseases. The formation of law will have a widespread impact that will cater to providing for those in dire need.

CONCLUSION

Supreme court in the landmark judgement of common cause vs union of India explains the right to die with dignity as a fundamental right that needs to be interpreted and inserted in the prerogative of article 21 which talks about the right to life making the right to death as an important peripheral of the article 21. The apex court considered a plethora of points related to the suffering of people, the judgement was also carved after assessment of constitutions of the world considering the legality of right to die with dignity in different countries of the world (specially developed nations), the bench also examined important aspects of the international jurisprudence in the righteous way which proved to be beneficial and resulted in the best carved modest decision. The bench allowed passive euthanasia as a fundamental

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right but with certain assessments through the directives issued under the advanced directives of terminally ill patients or those in a permanent vegetative state. The right to die with dignity is like any other right open to exploitation by those who are living in destitute conditions or those who belong to the previous classes of the society or those who are avaricious for certain reasons create a threat which is one of the reasons why the government has been inactive regarding the enactment of the law in this regard. With the passing of this judgement the duty of both state and medical fraternity increases due to the misuse of the right by those who indulge in criminal activities and to meet their criminal agenda, the poor people can prove to be an ideal target group. But if the judgement is seen from the humane and rational perspective keeping the bad aspects at bay then it is an ideal judgement that is the next step towards a developed and civilized society. With the formation of the committee of the legal and medical fraternity and enactment of a law in this regard, it is heaven for those suffering from an incurable disease and vegetative conditions.ⁱ

ⁱ [1] <https://www.manupatra.com>

[2] <https://indiankanoon.org/doc/490515/>

[3] https://www.law.cornell.edu/women-and-justice/resource/p_rathinam_v_union_of_india#:~:text=Rathinam%20of%20India,penalized%20for%20their%20suicide%20attempt

[4] <https://www.scobserver.in/journal/right-to-die-court-in-review/amp/>

[5] <https://www.legalserviceindia.com>