Volume 3, August 2018 ISSN 2581-5504

"Case Commentary- Common Cause 'A' Registered Society, etc Vs. Union of India (UOI) and Ors., Etc. Writ Petition (CIVIL) No.215 of 2005"

Arjun Sahni
Symbiosis Law School,
Noida

CASE NAME: Common Cause 'A' Registered Society, Etc Vs. Union of India (UOI) and Ors., Etc.

BENCH: Hon'ble the then Chief Justice Of India P. Sathasivam, Hon'ble Ranjan Gogoi and Hon'ble Shiva Kirti Singh.

Citation: Writ Petition (CIVIL) No. 215 OF 2005.

Equivalent Citations: 2014 AIR SC 1556 and 2014 SCC 5 338.

ABSTRACT

Euthanasia has always been a matter of debate, not only in our country, but in all the countries around the world. We see that while some of the countries have legalized Euthanasia, both active and passive, some have different stands on both, partially legalized and some have totally banned and condemned the mere practice of suicide or here, Euthanasia.

In this research project, I will be discussing about the Writ Petition that was filed by the Common Cause Society in the Supreme Court in relation to the debacle of Euthanasia and its legality in our country. I will be putting forward the case laws on which this writ petition was dependent and critically analyse the decisions that were made with my own personal insight into the same.

KEY WORDS

1. Euthanasia
2. Right To Life
3. Right To Die
4. Indian Constitution
5. Passive
6. Active

Volume 3, August 2018 ISSN 2581-5504

INTRODUCTION

A Civil Writ Petition was filed in the Supreme Court in 2005 under Article 32 of the Indian Constitution with regards to the unconstitutionality of Section 309 and Section 306 of the Indian Penal Code, 1860 with reference to the Aruna Ramachandra Shaunbaug V. Union of India AIR 2011 SC 1290 and the Smt. Gian Kaur V. The State Of Punjab 1996 AIR 946.

The question of passive and active euthanasia was raised in the same with special emphasis on the Article 21 of the Indian Constitution, which gives the citizens of our country Right To Live and under the Right To Life ambit also comes the aspect of Right To Die.
The European Court of Human Rights decisions and the 241st Indian Law Commission report on Passive Euthanasia in the context of Article 21 of the Indian Constitution was also referred with several other acts, sections and submissions.

There were 4 primary issues that I will be dealing and discussing here are central to the developments in the related laws. The most imperative one is that should “Right to Die with Dignity” be included as a Fundamental Right under the folds of Article 21 of the Indian Constitution, “Right To Live with Dignity”.

The other three issues, complementing the above, most imperative one, are-

- The point of living will and attorney authorisation was also brought up, that should person with deteriorated health or terminal illness be allowed to have the same presented to the hospital in this case of execution?;

- The petitioner society also brought up that, as terminally ill and patients in vegetative state do not have the decision making capabilities, they are deprived of their rights w.r.t to any cruel or unwanted or aggressive treatment and the living will in this situation cannot be expressed;

- Hippocratic oath of the doctors, to save every patients life, was also in direct contradiction to the right to die aspect.

I will be carefully analysing and putting forth my view on the case and discuss all the issues critically and properly.

RELATED FACTS AND HISTORY

- The denial of right to die leads to extension of pain and agony both physical as well as mental which the petitioner Society seeks to end by making an informed choice by way of clearly expressing their wishes in advance called "a living will" in the event of their going into a state when it will not be possible for them to express their wishes.

Volume 3, August 2018 ISSN 2581-5504

- It is the stand of the petitioner Society that any such practice will not be in consonance with the law laid down by this Court in Gian Kaur as well as in Aruna Shanbaug.
- The Constitution Bench of the Supreme Court in Gian Kaur v. State of Punjab held that both euthanasia and assisted suicide are not lawful in India. The Court held that the right to life under Article 21 of the Constitution does not include the right to die (vide SCC para 33).
- Insofar as paras related to the Aruna Shanbaug case are concerned, Aruna Shanbaug aptly interpreted the decision of the Constitution Bench in Gian Kaur and came to the conclusion that euthanasia can be allowed in India only through a valid legislation.
- In the case, the Bench in Aruna Shanbaug was of the view that in Gian Kaur, the Constitution Bench held that euthanasia could be made lawful only by a legislation.
- This matter was then referred to the Constitution Bench of this Court for an authoritative opinion.
- All the above was referred in this particular writ petition.

ANALYSIS

Let us start by discussing the whole background of how we actually got where we are right now.

In P. Rathinam V. Union of India, 1994 3 SCC 394, the central question that was addressed and answered was whether the offence of attempt to commit suicide under Section 309 IPC should be retained or abolished. The Court opted for its abolition and Section 309 was no more part of the IPC.
But however, this did not last long. The decisions made in this particular case were overturned in the Smt. Gian Kaur V. State Of Punjab 1996 AIR 946. The five judge bench in the Gian Kaur case, headed by Justice J.S. Verma, stated that the article 21 of the Indian Constitution only spoke of Right To Life and the aspects of life and that the part of Right To Die does not come under the ambit of same. The bench held that both assisted suicide and Euthanasia were unlawful and went against the crux of article 21 of the Indian Constitution.
Even after all this, came another benchmark turning point. In the Aruna Ramachandra Shaunbaug V. Union of India AIR 2011 SC 1290, the court observed that "the general legal position all over the world seems to be that while active euthanasia is illegal unless there is legislation permitting it, passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained". The court also formulated guidelines for the passive euthanasia.

At first, Euthanasia was declared to be lawful, then unlawful and then a part of Euthanasia, Passive Euthanasia was made legal, given certain conditions are fulfilled.

Let us discuss the aspects of Euthanasia-

Volume 3, August 2018 ISSN 2581-5504

- Active Euthanasia can be defined as when a person directly and deliberately does something which results in the death of patient. Here specific steps/procedures are undertaken (by the third party) like the administration of a lethal drug. This is a crime (also in most parts of the world) under Section 302 and 309 0f the Indian Penal Code, 1860. There are countries which have passed legislation permitting assisted suicide and active euthanasia.

- Passive Euthanasia involves withholding of medical treatment or withdrawal from life support system for continuance of life (like removing the heart– lung machine from a patient in coma). Hence in passive euthanasia death is brought about by an act of omission and after the Aruna Shaunbaug case, passive euthanasia was made legal given certain conditions are fulfilled.

Euthanasia can be further classified as 'voluntary' where euthanasia is carried out at the request of the patient and 'non-voluntary' where the person is unable to ask for euthanasia (perhaps because he is unconscious or otherwise unable to communicate), or to make a meaningful choice between living and dying and a surrogate person takes the decision on his behalf. Legally speaking voluntary euthanasia is illegal as it can be interpreted as attempt to commit suicide which is punishable under Section 309 of the Indian Penal Code, 1860.
Whatever we have discussed till now answers our imperative and the most important issue, that should "Right to Die with Dignity" be included as a fundamental right under the folds of Article 21 of the Indian Constitution, "Right to Live with Dignity". In the Smt. Gian Kaur case, it central and crux Ratio Decidendi was that the article 21 of the Indian Constitution only includes Right to Life and the aspects of Life, not death, hence the part, "Right to Die with Dignity" is not included under the folds of Right to Life or article 21 of the Indian Constitution.

The central question that arises with respect to this particular answer of the issue is what of the Aruna Shaunbaug judgement as it allowed Passive Euthanasia under certain conditions. The bench in the Aruna Shaunbaug case did not explicitly discuss the right to life and right to die part, but as they declared Passive Euthanasia legal, it sort of comes under its ambit. Now why I say sort of but not totally is because that in Passive Euthanasia, the patient's will is not considered rather his/her condition is, hence it does not give the patient the liberty to decide whether to die or whether to live, but gives the one executing the life will of the patient.
Hence, my final answer on this particular issue, after taking into consideration both of the cases, is that, **no,** the part of right to die with dignity does not come under the ambit of right to live with dignity.

Let us discuss the other three issues too.

The second issue with respect to living will authorisation can be clearly answered by looking at the Aruna Shaunbaug case. The plea for Euthanasia of Aruna Shaunbaug was filed on her

Volume 3, August 2018 ISSN 2581-5504

behalf by Pinki Virani, a social activist. Now a living will is a written document allowing a patient to give instructions in advance about the medical treatment to be administered when he/she is terminally ill or no longer able to express informed consent, including withdrawing life support if a medical board declares that all life-saving medical options have been exhausted.
The Centre had opposed the concept of a living will, stating that there was risk of misusing such a provision and that it may not be viable as a part of public policy. As it could not be actually determined that does a patient require a living will at a particular point of time, the very idea was scraped off.

The third and fourth issues are complementing and sort of dictate the same language, that should a patient in a vegetative state be subjected to any treatment, as their living will cannot be determined at that point of time, however cruel and aggressive that treatment might be, so as not to go against the Hippocratic Oath of the Doctor.
Now the Hippocratic Oath or Corpus has not been entirely defined everywhere in a same sense, rather is subject to interpretation. The most common thing that one would find in the Corpus will be in relation to swearing to give the best treatment. Now for patients who are in constant pain and suffering, the best treatment for them would be to end their suffering by subjecting them to Euthanasia.

The main judgement that was passed in the particular writ petition was with respect to the living will authorisation and the part that does right to live with dignity include the right to die aspect, sort of complementing the Aruna Shaunbaug judgement, as these two elements were also the essentials of the above case.

Now is this a law in good and prudent faith or is a derogatory one?
The concept of Euthanasia has evolved over time, not only in our country but in all of the countries around the world. One of the first landmark cases with this respect was the Airedale N.H.S Trust V. Bland 1993 A.C. 789 in the house of lords, United Kingdom. In this case, Mr. Tony Bland was being subjected to artificial treatment and the Bland family with the help of Dr. Jim Howe, who was the consulting neurologist in the particular, submitted a plea to the House of lords to end the treatment and let Mr. Tony Bland die peacefully. The plea was accepted and this was one of the benchmark cases with respect to passive Euthanasia.

The current Indian law allows passive Euthanasia, subjecting it to certain particular terms and conditions, has also scraped off the concept of living will authorisation. I consider this something which is prudent and is going with respect to time and conditions in our country. Though there are still elements of Euthanasia, such as active Euthanasia and the crux definition of it that still remains ambiguous. I believe that with the passage of time the same will evolve and we will get something stringent and particular with this respect. A submission was made by the Indian Law Commission to the Government of India with respect to passive

Volume 3, August 2018 ISSN 2581-5504

euthanasia. The bill is pending before both the houses as of now, but passive euthanasia can be practiced under the specific guidelines that were provided by the apex court.

BENCHMARK CASES DISCUSSED

- P. Rathinam V. Union of India, 1994 3 SCC 394
  In this particular case, the Section 309 of the Indian Penal Code, 1860 was scraped off and assisted suicide was made legal. In that particular time this was considered to be prudent and according to the time.

- Smt. Gian Kaur V. State Of Punjab 1996 AIR 946
  The five bench judge, headed by Justice J.S. Verma, brought the Section 309 of the Indian Penal Code 1860 back and the judgement that was passed stated that, under the ambit of Article 21 of the Indian Constitution, the part of Right To Live only includes the aspect of life and thereof and nowhere includes the aspect of right to die. It was because of this particular case that passive Euthanasia and Assisted Suicide were made unlawful.

- Aruna Ramachandra Shaunbaug V. Union of India AIR 2011 SC 1290
  This was the last turning law point case, till date, in the aspect of Euthanasia.
  The decisions made in the Smt. Gian Kaur case were completely overturned and passive Euthanasia was made legal. This can be considered as a compliment case to what our case is, the main difference is that in this case, passive Euthanasia was made legal and in our case, the aspect of right to die with dignity was sort of included under the umbrella of right to live with dignity. I have discussed the same in the analysis part.

- Airedale N.H.S Trust V. Bland 1993 A.C. 789
  This was a case that was decided in the United Kingdom House of Lords and was something that was considered as a benchmark in passive Euthanasia and Euthanasia in all, around the world.

CONCLUSION AND SUGGESTIONS

The Supreme Court of India held that right to die with dignity is a fundamental right. The bench held the execution of living will and passive euthanasia also valid. The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, the Court has expanded the spectrum of Article 21 to include within its sphere individual dignity.
All in all, I would like to conclude this research document by saying that we have put forth the facts and the case history, relevant case laws have been referred for better understanding.
The current law in my opinion, with reference to the time and the current legal situation in our country, is prudent and just.

Though several ambiguous elements such as the exact umbrella of right to life and what all is included in it and the aspect of active Euthanasia need to be clearly and properly addressed by our judicial system for a clear and crystal view.

REFERENCES

- Euthanasia. Oxford Dictionaries Online. Available at: http://oxforddictionaries.com/definiti on/english/euthanasia.
- The Indian Penal Code 1860 (Ind) s 302 & 304
- Reuters FACTBOX - Legal status of euthanasia around the world. Available at: http://uk.reuters.com/article/2007/03/12/uk-france-euthanasia-factbox-idUKL1242645720070312.
- The Indian Penal Code 1860 (Ind) s 309.
- Smt. Gian Kaur vs The State of Punjab (1996) SCC (2) 648
- Airedale NHS Trust v Anthony Bland [by his guardian ad litem, the Official Solicitor of the Supreme Court] (1993) AC 789 HL.
- Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454 s 140.