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With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

“RIGHT TO DIE- A FORBIDDEN RIGHT”

(By Amber Singh)

ABSTRACT

State is the protector of life, property and liberty of its people. The Constitution of India grants Right to life and liberty to everybody. However, the Court has interpreted Article 21 very broadly and included in it everything which makes a life worth living. Due to its such approach the Court was faced with a very serious issue, “Whether right to life includes right to die?” It took almost 30 years to resolve this issue.

The paper seeks to trace the judicial journey of the issue and lays down clearly the current status of the ‘right to die’ in our country.

Keywords: *Right to die, Euthanasia, Persistent Vegetative State (PVS), Advance Directives, etc.*



I. INTRODUCTION

Life is the most precious gift to the human beings. Every life on the earth is grace of almighty. Everyone struggle to lead a successful and a dignified life. It is duty of the state to protect life, liberty and property. The worth of life is even recognized by international community. Article 2 of European Convention on Human Rights, 1950¹ and Human Rights Act, 1998² protects this auspicious right. The value of life is also recognized by the Constitution of India. Article 21 of the Indian constitution reads as follows, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The moment a person is born he is clothed with this basic right. It is one of the most fundamental rights guarantees by the Constitution of India. Without this right rest of the rights would go in vain. The Constitution of India protects our life against all threats and danger posed by other persons or authorities.

The Supreme Court of India has through judicial decisions held that right to life doesn't mean mere animal existence rather it also includes every facilities and means to lead a dignified, meaningful and worth living. For example, right to livelihood, right to health, right to pollution free air, etc. Commencing with the case of *Maneka Gandhi v. Union Of India*³ where it was held that right to life is not merely a physical right but includes within its ambit right to live a dignified life. The Supreme Court of India in *Francis Coralie v. Union Territory of Delhi*⁴ held that:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic

¹ 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- in defence of any person from unlawful violence
- in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and
- in action lawfully taken for the purpose of quelling a riot or insurrection.

² *ibid*

³ (1978) 2 SCR 621

⁴ (1981) 2 SCR 516

necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

In the case of *Smt. Kiran Bedi v. Committee of Inquiry*⁵, the Apex court while referring to the American Judgement of *D.F. Marion v. Minnie Davis*⁶ held that ‘reputation’ is an element of life which makes it worth living and therefore it is protected under Article 21. The case of *Parmananda Katara v. Union of India*⁷ gifted another beneficial interpretation of Article 21 which states that it is the professional obligation of all doctors (government or private) to extent medical aid to the injured immediately to preserve life without legal formalities to be complied with the police. In *State of Punjab v. M.S. Chawla*⁸ it was held that Right to life includes right to medical care and health. Thus there has been plethora of cases which has given widest possible interpretation of Article 21 and has proved to be a powerful tool in the hands of citizens of one of the largest democracy of the world.

However, one of the interpretation of Article 21 has to took a long journey before it is admitted as a settled law in India. The interpretation which had caused such huge controversy is whether right to life includes ‘right to die’ also or not? The controversy was given a rest on 9th March, 2018 whereas the Apex Court in the case of *Common cause v. Union Of India & Anr*⁹. held that a person in persistent vegetative state can be granted permission for passive euthanasia under the guidelines prescribed by the court in this regard. Though the law on the point is still not settled but the Supreme Court has issued the guidelines to guide till any legislation is enacted on the point.

II. EUTHANASIA

It is a term used to express a process whereby someones’s life is deliberately ended in order to give him relief from pain or suffering. It is of two types:

1. ACTIVE EUTHANSIA

It is a process whereby a doctor administers deathly dose of any medicine or poison in order to end the patient’s life with his or his family’s or relative’s consent.

⁵ (1989) 1 SCR 20

⁶ 55 American LR 171

⁷ (1989) 3 SCR 997

⁸ AIR (1997) SC 1225

⁹ MANU (2018) SC 0232

2. PASSIVE EUTHANASIA

In this method though the doctor does not directly administer anything directly instead he withdraw the life supporting system or medicine in order to fasten the death of the suffering patient.

Euthanasia can be also categorised into two groups based on the consent of the patient:

1. VOLUNTARY EUTHANASIA

Euthanasia is performed after obtaining the consent of the patient. The consent should be free and the patient must understand the consequences.

2. INVOLUNTARY EUTHANASIA

In some circumstances the patient may be too ill to give consent so in these circumstances the consent is given by any family member or by close relatives or by friends on behalf of the patient to end patient's life. This is done when someone is completely unconscious or permanently incapacitated.

III. PHYSICIAN ASSISTED SUICIDE (PAS)

Physician-assisted suicide occurs when a physician or doctor facilitates a patient's death by catering the necessary means and/or information to enable the patient to perform the life-ending act. However PAS is totally different from euthanasia where lethal dose of medicine or withdrawal of life-supporting system is done by a third person or a doctor whereas PAS is the practice of making available a competent patient with a prescription for medication for the patient to use with the primary intention of ending his or her own life, the patient would have to self-administer the medication, directly or through a machine. The difference lies in the administration of lethal drug or medicine. In case of euthanasia it is administered by a third person or the doctor whereas in PAS it is self-administered by the patient.

IV. STATE V. SANJAY KUMAR¹⁰

The judiciary of this country had many occasions to determine whether 'right to die' is an inextricable facet of 'right to life' or not. The first occasion was the decision of a Division Bench of Delhi High Court in which, Sachar J. held that:

"It is ironic that Section 309 IPC still continues to be in our Penal Code.... Strange paradox that in the age of votaries of Euthanasia, suicide should be criminally punishable. Instead of

¹⁰ (1985) CrL. Law Journal, 931

the society handing its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to suicide, compounds its inadequacy by treating the boy as a criminal. Instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with Criminals.... The continuance of Section 309 IPC is an anachronism unworthy of a human society like ours. Medical Clinics for such social misfits certainly but police and prisons never.....”

V. MARUTI SHARIPATI DUBAL V. STATE OF MAHARASHTRA¹¹

The next occasion presented itself when Divison Bench of Bombay High Court in the case *Maruti Sharipati Dubal v. State of Maharashtra*¹² held Section 309 of Indian Penal Code to be violative of Articles 21 and 14 of Indian Constitution. Some of the significant rationale behind the judgement was as follows, (1) referring to the judgment of *R.C. Cooper v. Union Of India*¹³, the court was of the opinion that as every fundamental right has positive as well as negative aspect just as right to speak includes right not to speak and right to form an association also includes right not to join any association therefore the same analogy should go with Article 21 which should include right not to live read along with right to life; (2) Notice was then taken of the various factors which lead people to commit suicide. These being mental diseases and imbalances, unbearable physical ailments, affliction by socially dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the senses, extremely cruel unbearable conditions of life making it painful to live, a sense of shame or disgrace or a need to defend one's honour or a sheer loss of interest in life or disenchantment with it, or a sense of fulfilment of the purpose for which one was born with nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment.

However, the court neglected to take into consideration that negative aspects of rights hereinbefore mentioned doesn't require overt act as in the case of suicide.

The main reasons for the Section 309 being violative of Article 14 was stated as follows, (1) it is uncertain as to which act or acts in a series of act will constitute attempt to suicide, where to draw the line is not known, because some attempts may be serious while others non-serious; (2) Section 309 treats all attempts to commit suicide with the same measure without considering the circumstances in which attempts are made.

¹¹ (1987) CrL. L J 743

¹² *ibid*

¹³ (1971) 1 SCR 512

VI. CHENNA JAGADEESWAR AND ANR. V. STATE OF ANDHRA PRADESH¹⁴

Amareswari, J while writing the judgement held that:

“In a Country like India, where the individual is subjected to tremendous pressures, it is wise to err on the side of caution. To confer a right to destroy one-self and to take it away from the purview of the Courts to enquire into the act would be one step down in the scene of human distress and motivation. It may lead to several incongruities and it is not desirable to permit them. We, therefore, hold that S. 309 I.P.C. is valid and does not offend Arts. 19 and 21 of the Constitution.”

Dissenting with the Bombay High Court, the Madras High Court held that right to die cannot be accepted as a part of right to life incorporated in Article 21 of the Indian Constitution. The court held that Section 309 of IPC, 1860 doesn't mandate the infliction of punishment on the accused rather it only fixes the upper limit of punishment. Moreover Sections 3, 4 and 13 of the Probation of Offenders Act, 1958 confers a wide discretion on court either to commit such person to Psychiatric care or release him on admonition.

VII. COURT ON ITS OWN MOTION V. YOGESH SHARMA (CRL. REVISION NO. 230/85)¹⁵

It is an unreported decision of Delhi High Court in which Sachar, C.J. quashed all 119 proceedings related to suicide pending in the trial court. The court pointed that it is futile to attach criminal liability in cases of suicide. The court also stated that dragging of prosecution for years will further add to the misery of the victim and would be abuse of the process of the court.

VIII. P. RATHINAM AND ORS. V. UNION OF INDIA AND ORS.¹⁶

A petition was filed in which constitutional validity of Section 309 of IPC, 1860 was assailed. The Court while referring to the judgment of *Maruti Sharipati Dubal v. State of Maharashtra*,¹⁷, 42nd Report of Law Commission, 1971 and various country's positions on law

¹⁴ (1983) CrI. L J 549

¹⁵ Sri BB Pandey, Reader in Law. University of Delhi, as published in Islamic and comparative Law Quarterly, Volume II (1) March at page 112 to 120 (1987)

¹⁶ MANU (1994) SC 0433

¹⁷ Supra at 11

of suicide came to the conclusion that Section 309 of IPC, 1860 is unconstitutional and violates Articles 14 and 21 of the Indian Constitution.

IX. GIAN KAUR V. STATE OF PUNJAB¹⁸

The appellant Gian Kaur and her husband Harbans Singh were convicted by Trial Court under Section 306¹⁹ of IPC, 1860, for abetting the commission of suicide of Kulwant Kaur. Their conviction was upheld by P&H High Court. They appealed to the Apex Court by way of Special Leave Petition contending that Section 306 is unconstitutional. By referring to the case of *P. Rathinam and Ors. v. Union Of India and Ors.*²⁰, it was contended on behalf of the appellant that right to die is a part of Article 21 and assisting someone in attainment of such right can't be an offence and Section 306 making such offence punishable is violative Article 21 and therefore unconstitutional.

In order to decide the substantial question of law as involved in this case, the court appointed Shri Fali S. Nariman and Shri Soli J. Sorabjee, senior advocates of Supreme Court, to appear as *Amicus Curiae* in this case.

Shri Ujagar Singh and Shri B.S. Malik, appeared on the behalf of the appellant. They both relied on the decision of *P. Rathinam's* case. However, Shri Ujagar Singh supported the conclusion of *Rathinam's* case of constitutional validity of Section 309 of IPC, 1860 only on the ground of violation of Article 14 and not Article 21 but Shri B.S. Malik contended that Section 309 is violative of Article 14 as well as Article 21. Shri B.S. Malik strongly supported the rationale given in the case of *P. Rathinam* behind the declaration of Section 309 as unconstitutional.

The Attorney General, Shri Fali S. Nariman and Shri Soli J. Sorabjee contended that Section 306 constitutes an entirely different offence as constituted by Section 309. Section 306 can exist independently without Section 309. They all disagreed with the judgement delivered in *P. Rathinam's* case and contended that right to life cannot be interpreted to include right to die. However, Shri Soli J. Sorabjee was of the opinion that Section 309 of IPC, 1860 is unconstitutional on the ground that it violates Article 14 and not Article 21 of Indian Constitution.

¹⁸ MANU (1996) SC 0335

¹⁹ **306. Abetment of suicide.**—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

²⁰ *ibid*

The court negative the contention that Section 309 of IPC, 1860 is violative of Article 14. The court held that:

“We have formed the opinion that there is no merit in the challenge based even on Article 14 of the Constitution. The contention based on Article 14 was rejected in P. Rathinam also. It was held therein as under :

The Bombay High Court held Section 309 as violation of Article 14 also mainly because of two reasons. First, which act or acts in series of acts will constitute attempt to suicide, where to draw the line, is not known some attempts may be serious while others non-serious. It was stated that in fact philosophers, moralists and sociologists were not agreed upon what constituted suicide. The want of plausible definition or even guidelines, made Section 309 arbitrary as per the learned Judges. Another reason given was that Section 309 treats all attempts to commit suicide by the same measure without referring to the circumstances in which attempts are made.

The first of the aforesaid reasons is not sound, according to us, because whatever differences there may be as to what constitutes suicide, there is no doubt that suicide is intentional taking of one's life, as stated at p. 1521 of Encyclopaedia of Crime and Justice, Vol. IV, 1983 Edn. Of course, there still exists difference among suicide researchers as to what constitutes suicidal behaviour, for example, whether narcotic addiction, chronic alcoholism, heavy cigarette smoking, reckless driving, other risk-taking behaviours, are suicidal or not. It may also be that different methods are adopted for committing suicide, for example, use of firearm, poisoning especially by drugs, overdoses, hanging, inhalation of gas. Even so, suicide is capable of a broad definition, as has been given in the aforesaid Webster's Dictionary. Further, on a prosecution being launched it is always open to an accused to take the plea that his act did not constitute suicide whereupon the court would decide this aspect also.

Insofar as treating of different attempts to commit suicide by the same measure is concerned, the same also cannot be regarded as violative of Article 14, inasmuch as the nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately. It is worth pointing out that Section 309 has only provided the maximum sentence which is up to one year. It provides for imposition of fine only as a punishment. It is this aspect which weighed with the Division Bench of Andhra Pradesh High Court in its aforesaid decision to disagree with the Bombay view by stating that in certain cases even Probation of Offenders Act can be pressed

into service, whose Section 12 enables the court to ensure that no stigma or disqualification is attached to such a person.

We agree with the view taken by the Andhra Pradesh High Court as regards Section 309 qua Article 14²¹.”

The court while dealing with the riddle that whether ‘right to die’ is included in right to life held that it was founded that analogy placed in *Maruti Shripat Dubal’s* case was wrong. The Court held that:

“In those cases the fundamental right is of a positive kind, for example, freedom of speech, freedom of association, freedom of movement, freedom of business etc. which were held to include the negative aspect of their being no compulsion to exercise that right by doing the guaranteed positive act. Those decisions merely held that the right to do an act includes also the right not to do an act in that manner. It does not flow from those decisions that if the right is for protection from any intrusion thereof by others or in other words the right has the negative aspect of not being deprived by others of its continued exercise e.g. the right to life or personal liberty, then the converse positive act also flows there from to permit expressly its discontinuance or extinction by the holder of such right. **In those decisions it is the negative aspect of the right that was invoked for which no positive or overt act was required to be done by implication.** This difference in the nature of rights has to be borne in mind when making the comparison for the application of this principle²².”

The Court further, while addressing to the person in Persistent Vegetative State (PVS), held that:

“Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of Sanctity of life’ or the ‘right to live with dignity’ is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of ‘right to life’ therein includes the ‘right to die’. The ‘right to life’ including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. **But the ‘right to die’ with dignity at**

²¹ *Supra* at 18 (para. 27)

²² *Id* (para. 18)

the end of life is not to be confused or equated with the 'right to die' an unnatural death curtailing the natural span of life²³.”

The court rejected the contention of the petitioner that Section 306 is also unconstitutional on the sole basis that Section 309 being held invalid in *P. Rathinam's case*. The Apex Court denied the challenge to Section 309 as being contrary to Articles 14 & 21. The court overruled the judgement given in *Maruti Shripat Dubal's case* and upheld the stand taken by the Madras High Court in the case of *Chenna Jagadeeswar And Anr.'s case*.

X. ARUNA RAMACHANDRA SHAUNBAG v. UNION OF INDIA &

Ors.²⁴

The petition was filed under Article 32 of the Constitution of India on behalf of Aruna Ramachandra Shaunbag by Ms. Pinki Virani of Mumbai. The fact of the case is as follows: Mrs. Aruna was nurse employed in King Edward Memorial Hospital, Parel, Mumbai. She was sodomized by a sweeper of the hospital on the evening of 27th November, 1973. To immobilize her during the act he twisted a dog chain around her neck due to which her brain got damaged. The Neurologists stated that her cortex and other part of brain were badly damaged. It was stated by the petitioner that she had been bedridden for the past 36 years and she is no more than a human skeleton taking breath. She had developed bed sores, her wrist was twisted inward, her teeth had decayed causing her great suffering due to which she was fed mashed food. It was alleged in the petition that Aruna is in Persistent Vegetative State (PVS) there is no sign of life in her. Her brain was virtually dead and she is merely breathing by the virtue of mashed foods. Thus, the Petitioner prayed before the Court to direct the Respondent to stop feeding Aruna and let her die peacefully.

It is important to note that the Apex Court didn't dismiss the petition even though there was no violation of fundamental right as 'right to die' had been denied to be an extricable part of Article 21 in the case *Gian Kaur*²⁵. However the court decided to go into the merits of the case because of the importance of issue involved in the case.

There were variations between counter affidavit filed by Dr. Amar Ramaji Pazare on behalf of respondent and the facts alleged in the petition. To verify the ground reality, the Court

²³ *Supra* at 18 (para. 21)

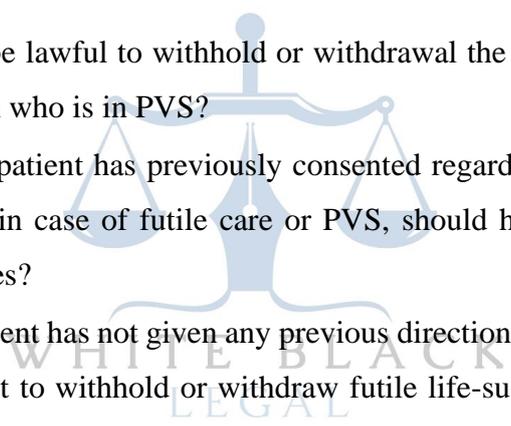
²⁴ MANU (2011) SC 0176

²⁵ *Supra* at 18

constituted a committee of three doctors to examine Aruna Shanbaug thoroughly and submit a report about her physical and mental condition.

The report reveals that though she is not so much aware of her surroundings, she somehow recognizes the presence of people around her and expresses her like or dislike by making certain types of vocal sounds and by waving her hands in certain manners. She appears to be happy with the food that she is being fed and even smile when she receives her favourite food like chicken soup and fish. She had been properly taken care by the hospital staff and they were also happy to serve her.

On the perusal of the supplement report submitted by the team of doctors the Court came to the conclusion that Aruna Shanbaug is clearly not brain dead as well as she is also not in coma. But the Court found her in case of Permanent Vegetative State (PVS). Now the issues before the court were :

- 
- Whether it would be lawful to withhold or withdrawal the life sustaining therapies in the case of a person who is in PVS?
 - In a case where a patient has previously consented regarding the withdrawal of life-supporting system in case of futile care or PVS, should his/her wishes be respected when situation arises?
 - In case where a patient has not given any previous direction and if his family or next of kin makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?
 - Since Aruna has no close kin who should take decision on her behalf?

The Court on hearing the parties and Mr. T. R. Andhyarujina, who had been appointed as Amicus Curiae by the Court went with view of Mr. Andhyarujina and held that right to self-determination i.e, to refuse treatment, should be upheld both in the case of previous consent as well as otherwise. The Court agreed that Passive Euthanasia should be allowed in India. Answering to the 3rd and 4th issues the Court held that:

“A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending

*the patient. However, the decision should be taken bona fide in the best interest of the patient*²⁶.”

The Court further while referring to the case of *Airedale NHS Trust v. Bland*²⁷, held that the consent given by any close relative or doctors or next friend on the behalf of the patient is subject to confirmation by the High Court.

PROCEDURE TO BE ADOPTED BY THE HIGH COURT WHEN SUCH AN APPLICATION IS FILED

The Supreme Court held that the High Court has power under Article 226 of the Constitution to order the withdrawal of life-supporting system. Whenever the High Court receive any such application, the Chief Justice forthwith should constitute a bench of at least of two judges who should dispose off the application. The procedure to be followed is:

- The bench should also nominate a committee of three reputed doctors with the function to advise and give opinion to the bench on the matter.
- Among the three doctors, one should be a neurologist, one should be a psychiatrist and the third should be a physician.
- Simultaneously the court should also give notice the State and close relatives and supply them with the copy of report of the doctor’s committee.
- The High Court after hearing them should deliver its judgement as soon as possible.

XI. COMMON CAUSE (A REGD. SOCIETY) V. UNION OF INDIA (UOI) AND ORS.²⁸

The Apex Court while deriving sustenance from the constitutional values of liberty, privacy, autonomy and dignity upheld the legality of Passive Euthanasia and recognised the tools of Advance Directives as a mean for terminally ill patient to convey their wishes in advance regarding their medical treatment. The Apex Court laid down guidelines for the formulation and execution of a Advance Directive to prevent its abuse.

²⁶ *Supra* 24 (para 12 (i))

²⁷ (1993) All E.R. 82 (H.L.)

²⁸ *Supra* at 9

XII. CONCLUSION

Right to die and Euthanasia has been a long debatable topic in our country. These two are always being mixed up and had resulted in lot of confusions. However the ruling in *Gian Kaur's case* has proved to be fruitful and a path guiding for further development of law of Euthanasia in our country. The court distinctly held that right to die and right to die with dignity are two different concepts. Right to die cannot be upheld to be an extricable part of Right to life incorporated in Article 21 of the Indian Constitution. Right to die with dignity was held to be a part of Article 21. However the method of exercising this right was further regulated by Supreme Court in the cases of *Aruna Shanbaug and Common Cause*.

Right to die if recognised will result in creating a chaos in the society because human beings gets easily frustrated and starts developing suicidal thoughts in case if anything goes against their will or wishes. They easily gets disheartened. This breakdown though temporary results in the vanishing of valuable lives. It is important to remember that when a person dies he destroys the lives of many who are dependent on him. Especially in a country like India giving recognition to 'right to die' will send a wrong message to the people.

