ACTIVE EUTHANASIA AND RIGHT TO DIE

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ABSTRACT

The author in this research paper aims to analyze active euthanasia in the context of article 21. Article 21 says that every person has the right to live with dignity. This right shall also include right to die and proper medical assistance, so that victim goes through minimum pain. In India passive euthanasia is allowed which is inhuman and merciless in nature it adds to the suffering of victim by removing all medical treatment whereas active euthanasia ends suffering of terminally ill patients and gives them relief from pain and agony. Beyond the concept of moral right and wrong, omission and commission, legal or illegal there lays suffering, pain and agony of a dyeing victim which should prioritized most.

Keywords: Article 21; Constitution of India; Euthanasia; Active Euthanasia; Passive Euthanasia.
EUTHANASIA – “MERCY KILLING”

If a person is allowed to choose his partner, Seneca, the Roman Stoic Philosopher once said: “Living is not the good but living well. The wise man therefore lives as long as he should, not as long as he can. He will always think of life in terms of quality not quantity. Just as I choose to ship to sail in or a house to live in, so I choose a death for my passage from life. Moreover, whereas a prolonged life is not necessarily better, a prolonged death is necessarily worse…”

The very word Euthanasia which is originated from the Greek terminology means “good death”, as Eu stands for good and Thanatos for death. Thus, Euthanasia can be described as killing a person intentionally and deliberately for his benefit in order to free him from his pain and adversity. Euthanasia is given to relieve a person who is terminally ill from the sufferings and pain he is going through. It can be further classified as active and passive euthanasia.

**Active Euthanasia:**

Active euthanasia is deliberately doing something (like use of lethal substances or direct forces) which results in death of a patient. Active euthanasia is considered as a crime and not all countries allow it. It is only allowed in countries where it is permitted by legislation. In India it is considered as a crime under IPC section 302 and 304. Not only this physician assisted suicide is considered a crime under IPC section 306 (abetment to suicide). Whereas in some countries legislation have legally permitted active euthanasia. First country to allow active euthanasia was Netherland where active euthanasia is particularly termed as voluntary euthanasia and limited to only voluntary active euthanasia. There it is also illegal to assist a person to commit suicide without adhering to guidelines laid down in Dutch euthanasia law. Second in the line is Belgium which also became first country to legalize child euthanasia. Switzerland allows assisted suicide with the help of non-physicians. And in Luxembourg both Active Euthanasia and Assisted Suicide are legalized since 19th February 2008. These are few to name, in countries like Japan,

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Albania, Germany, Colombia and in U.S states of Washington, Oregon, Vermont, New Mexico and Montana assisted euthanasia is legalized.

**Passive Euthanasia:**

Passive euthanasia is withholding any medical treatment which is required for the continuance of life. In simple words, it means that you are not directly killing person you are just not saving that person from dying. Therefore death in passive euthanasia is brought by act of omitting. Sweden, Mexico, Israel are some countries where passive euthanasia is legalized. India has also joined the league of allowing passive euthanasia. In India passive euthanasia is allowed which is inhuman and merciless in nature it adds to the suffering of victim by removing all medical treatment whereas active euthanasia ends suffering of terminally ill patients and gives them relief from pain and agony. Beyond the concept of moral right and wrong, omission and commission, legal or illegal there lays suffering, pain and agony of a dying victim which should prioritized most.

**ARUNA SHANBAUG: “JUSTICE OR INJUSTICE “**

Life is precious to everyone and no one wants to end his life at any condition. Everyone fears death and even a thought about it is beyond imagination for most of us. Where we don’t even want to think about death there are some people who ask for death. Imagine how intolerable there life would have been, that they wouldn’t have wanted to live anymore. How much suffering they might have gone through that for them there is peace in death. And what about those people who cannot even ask for death?

One of these people is Aruna Shaunbag who has been in a permanent vegetative state (the patient is awake but does not exhibit awareness of their surroundings) from last 41 years. She was working as a junior nurse in KEM hospital of Mumbai when a ward boy named Sohanlal Bhartha Walmiki sexually assaulted her. He wrapped a dog chain around her neck and sodomized her. This caused irreversible injury in her brain. Sohanlal only got 7 years of punishment her family.

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3 Available at http://www.patient.co.uk/doctor/vegetative-states (last accessed on 26/11/2017)
abandoned her after some time but nurses of the same hospital continued to take care of her. Pinki Virani a social activist filed a petition demanding euthanasia for her. Supreme Court of India rejected her petition. Supreme Court rejected the petition saying: “under the Transplantation of Human Organs Act, 1994, Aruna was not brain dead. She could breathe without a support machine, had feelings and produced necessary stimulus. Though she is in a PVS, her condition was been stable. So, terminating her life was unjustified”

Further they said that as nurses and staff are taking care of her from last 41 years so only they have the right to take decision on behalf of her and not anyone else. Though after her case, passive euthanasia was allowed in India. Perhaps the reason was “passive euthanasia being less evil than active euthanasia”, as instead of killing the person law was permitting the person to die by not saving him. By stopping the treatment and letting them die in slow agony. By adopting the so called religious idea of non-violence. Really! Is that what we considered as “less evil”? I don’t agree with the concept of passive euthanasia that I didn’t kill him by myself I just left him dyeing. 40 years ago Aruna Shanbaug was victim of sexually assaulted and now she is victim of her life! Since then nothing has changed instead she is living a more miserable life now. She can’t speak or move, she is like a living dead. And the judgment passed by Supreme Court of ceasing all treatments must have added more pain to her sufferings. Shouldn’t SC take into consideration the agony and suffering this woman is going through from past four decades? Wasn’t the brutal and barbaric rape enough?

Tony Bland suffered serious injuries during a football match. Due to interruption in oxygen supply to brain his injuries lead to irreversible brain damage. He went into Permanent Vegetative State. His family disowned him and considered him dead. Later, Dr. Jim Howe the Neurologist under whom Tony Bland was having his treatment requested Sheffield Coroner to remove all medication and treatment after taking the advice from his family. The very next day a statement was given by police to Dr. Howe that if Tony died due to removal of all treatment then he will be convicted for murder. After this Airedale NHS Trust consulting with Tony Bland’s family and Dr. Howe filed a petition in court to give permission to remove all life supporting treatment. This was considered a milestone case as all the present judges collectively agreed and granted

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4 Available at http://www.lawctopus.com/academike/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/ (last accessed on 27/11/2017)
permission to remove all life supporting treatment. Tony Bland’s life support system was removed as according to the passed judgment and he died 10 days later. This became a landmark judgment adopted by same kinds of petition in the entire world.

**Doctors Dilemma:**

“Doctors are bound to save life and not take it”, this is one of the main arguments which arises against euthanasia. “For some opponents of assisted dying, this reflects a religiously based argument about the intrinsic wrongness of killing: for others, it is the underlying axiom of medical practices to which the Hippocratic Oath alludes in stipulating that the physician shall give no deadly drug, not even when asked for it”.

I would argue that in a condition where there is no ray of light, living a painful and miserable life is beyond tolerance, then doctors are the only hope left to patients. They trust their physicians more than anyone when they know that their physicians are the only one to help them get rid of their situation and not leave them to die a painful death. Prioritizing patient’s will and condition medical integrity can be sacrificed in some sympathetic cases where patient’s illness is irrecoverable and to relieve him from his pain and torture will be the only morally correct way instead of leaving him dying mercilessly in front of your eyes and begging for death. Therefore, a physician who is struck between the dilemma of obligation to relieve suffering or obligation to prolong life, if he is taking ‘due care’ for terminally ill patients can be legally allowed to choose the former. This is what was adopted by Netherland, there euthanasia and physician assisted suicide can be legally allowed if it met all the requirements and guidelines laid down by courts and Royal Dutch Medical Association.

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**Article 21 and Right to Die:**

Article 21 is one of the most important fundamental rights available to citizens of India. It says “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Field J. in *Munn v. Illinois* held that “the term life (as appearing in the 5th and 14th amendments to the United States Constitution) means something more than mere animal existence”. This idea was adopted by Court in *Kharak Singh v. State of U.P.* It was also further recognized in *Board of Trustees Port of Bombay v. Dilip Kumar* and *Ram Sharan v. Union of India*. In all of these judgments it was held that the very word ‘life’ means more than mere existence or survival it also includes right to live a dignified life.

Now the issue is whether right to life also includes right to die. In *State of Maharashtra v. Maruti Sripati Dubal* judgment given by given Bombay High Court clearly mentioned that “right to life guaranteed under Article 21 includes right to die, and thereby invalidating section 309 IPC which provides punishment for attempt to commit suicide by a person as unconstitutional”. In *P Rathinam v. Union of India*, Supreme Court following the judgment passed in Maruti Sripati Dubal held that “under Article 21 right to life also include right to die and section 309 of Indian Penal Court which deals with attempt to commit suicide is a penal offence” unconstitutional.

Though later *Gian Kaur v. State of Punjab* it was held that “right to life guaranteed by Article 21 of the Constitution does not include the right to die. To give meaning and content to the word ‘life’ in Article 21, it has been construed as life with human dignity. So by this, right to life containing right to live a dignified life would mean to live a dignified life until death. If a person is not given this right to die with dignity at the end of their life, it would mean that he would be compelled to suffer his pain. This will be against human rights and the stated notion of “right to live with dignity”. Every human being has the right to live with dignity if not full at least some extent of dignity but if someone’s condition becomes so inhuman and degraded that it doesn’t even amount to least extent of dignity, then in such cases he should be permitted to end such intolerable and undignified life.

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7 Available at http://www.legalserviceindia.com/articles/rd_top.htm (last accessed on 26/11/2017)
8 State of Maharashtra v. Maruti Sripati Dubal AIR 1987 CrLJ 549
9 P Rathinam v. Union of India (1994) SCC 394
So if there are strict guidelines laid by constitution while adding right to die in Article 21 and procedures are foolproof and binding with properly followed mechanism then India can also allow euthanasia.

Therefore, if not in its strict sense but as only a part of article 21 of Indian Constitution guaranteeing right to life, it will be suitable to include right to die in right to life. Though Supreme Court totally invalidates such kind of interpretation but liberty to die can be read as emerging from right of privacy. This interpretation is adopted by both England and United States.

If we look at our ancient history we will find that in both Hinduism and Jainism, rishi-munis and priest after living their life fully and coming at certain age used to starve themselves until death. After gaining enlightenment they used to end their life at their own wish. Why is that now it has taken a form of sin and should be prohibited? Why is that now it is limited to only right to life as stated in Article 21?

Looking at the present scenario, taking human life is against nature and if suicide is ending human life then it will be also considered wrong and against nature. But what about taking one’s own life during wars, self-defense, capital punishment and many other similar situations? Why this is socially and legally acceptable and not voluntary or self-directed killing in painful and intolerable terminal illness?

In the latter killing will only benefit the person by releasing him from his pain and agony. Any help provided in performing it will be performed only at the consent of victim. So if a patient is terminally ill and there is not even a slightest possibility for him to recover then continuing all medication or treatment will be pointless, dehumanizing and painful. It will be best for him to die a painless and easy death rather than waiting for it in pain and agony until you die. Article 21 can thereby expand its scope to include right to die in its framework. Laws are made for the people and if required can bring in changes for the betterment and people and society.
CONCLUSION

I believe that with proper mechanism and guidelines laid by law, India can ensure its each citizen right to dignified life and death. Like Aruna Shanbaug and Tony Blaid ther are many people whose voice are still unheard, who want to be free from their undignified and painful life, who wants their sufferings to end and its only through changes in law that they can be heard. Only law can provide them proper justice. As it is well said by Marcus Aurelius—“the dead cannot cry out for justice. It is a duty of the living to do so for them.”