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Case Analysis of International Jurisdictions on Euthanasia: The Universal Concern

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We have studied that the debate revolving around the concept of Euthanasia, whether it should be legalized or not is a worldwide phenomenon haunting the entire world. All the legislations of the world hold different opinion with regards to the same and are contemplating the best course of action in the interest of the patient and the society as a whole based on the humanitarian grounds.

Broadly, Euthanasia has been divided under two main categories, namely; *active* and *passive* Euthanasia as dealt in the preceding chapters. Due to this distinction, the debates around the world have evolved both on moral and legal grounds. Owing to this fact, most of the jurisdictions at the international level have legalized the *passive* Euthanasia either through framing the legislations or giving wider judicial interpretation. However, with regards to the *active* Euthanasia, there still exists a level of uncertainty of whether it should be granted the legal status of not. This chapter is divided in two parts viz. international landmark decisionsand Indian landmark court cases.

5.1 INTERNATIONAL POSITION AND LEGAL STATUS ON EUTHANASIA VIA LANDMARK JUDICIAL DECISIONS

5.1.1 Landmark Decision of NetherlandsAndries Postma[63] Case

Background

This landmark case led to the debate regarding Euthanasia in Netherlands as there was no law permitted Euthanasia at that point of time. Though the physician in this case was convicted, that led to the formulation of the guidelines dealing with this issue.

[63] *Andries Postma* Case District Court, Leeuwarden, 21 February [1973], N.J. 1973, No. 183

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Facts

Ms Postma was a physician who had terminated the life of her mother who was 78-year-old, staying in a nursing home and was undergoing the recovery treatment from a cerebral hemorrhage. The latter had expressed her desire to die and be relived of all the sufferings toher daughter as well as the staff of the nursing home. The daughter (Physician) administered the Euthanasia on her mother in order to relive her of all the sufferings.

Issue-

The issue was that whether the act done by the physician was accepted in the context of thelaw prevailing at the Netherland at that particular point of time.

Held-

The court in this case held that Postma's choice of method of a lethal injection cannot be considered to be a *reasonable means* of terminating the life of the patient. She was sentenced tojail. However, this had triggered the attention to the issue of Euthanasia by the **Royal Dutch Medical Association.** The importance of this decision lies in the fact that it is the first caseof its type, though not directly addressing the issue of Euthanasia per se but held that the physicians who administered the pain relievers are likely to lead to the death might be able to escape the criminal liabilities if they strictly adhere to and followed certain conditions.

Aftermath Judgment: Conditions given which if adhered would absolve the physician ofcriminal liability are as follows:

- If the suffering of the patient is unbearable and it shows no signs of improvement.
- The request should be made at the instance of the patient *voluntarily* and shouldpersist over a period of time.
- There should be an awareness of the condition, prospects and the options to thepatient.
- There should be a consultation regarding the same with at least one independentdoctor who confirms owing to the facts of the circumstances in the given case.

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- The procedure of administering the death should be done in a medically appropriate*fashion* by the doctor or that of the patient and the former must be mandatorily present.
- The patient in question shall be at least 12 years old (patients who are between theage of 12 and 16 years required the valid consent from their parents).

5.1.2 Landmark Decision of UK Airedale NHS Trust v. Bland[64]

Background

This case is considered to be the first case in the history of English Legal System to providefor passive Euthanasia by withdrawal of all the life supporting system and the medication or the treatment. **Lord Goff** drew a crucial distinction between the two forms of Euthanasia i.e. passive and active. According to him, the former deals with the cases wherein *"a doctor decides not to provide, or to continue to provide, for his patient, treatment or care which could prolong his life"* whereas the latter deals with the one which *"actively ending a patient's life"* for instance; administration of a lethal drug by the doctor to the patient in order to end his sufferings orterminate his or her life.

Facts

Anthony Bland was a seventeen and half year-old boy who had went to Hillsborough Ground as being the supporter of the Liverpool Football club in the year 1989. He was injured in the infamous, tragic Hillsborough Disaster in the history of UK. He succumbed to severe injuries which had disrupted the supply to his brain and nervous system, subsequently leading to an irreversible damage to his brain which gradually got him into the condition of*persistent vegetative state (PVS).* This made him incapable of any sort of voluntary movementand the ability to feel any pain or communicate. In order to keep him alive, the doctors hadtaken recourse to the artificial means of treatment. Owing to such circumstances, the doctors and the parents of the patient (Bland) were of the opinion that it was a futile attempt to provide continuous medical treatment or the artificial means in order to keep him alive.

[64] *Airedale NHS Trust v. Bland* [1993] AC 789

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Hence, the case was presented in the court in order to seek the validity of the decision ofwithdrawing the life supporting measures i.e. passive Euthanasia.

Issue

The issue which arouse in this case is that the patient who is question of being in a vegetative state is not in a position to withhold or give consent for the treatment. The same becomes the responsibility of the doctor to see whether the act is in *best interest* of the patient. Themain question thereby is that whether the artificial life support system can be withdrawn from the individual who is not in a condition to provide the medical professionals an *informedconsent* on the same as the stoppage or discontinuance of the medical care may absolve criminal liability.

Held

This case held that the doctors have the duty to act in the best interest of the patient in question but that does not imply that it is required to prolong the life of the patient. In the given facts of the case, it was considered to be that of the lawful act to cause or acceleratedeath of Bland as he was in a Persistent Vegetative State (PVS) and not being able to respond.

Lord Goff and **Lord Keith** opined that the *principle of sanctity of life* is not an absolute one and that there is no such absolute rule in existence that the life of the patient must be prolongedby such a treatment or care if available regardless or without paying attention to the circumstances of the case.

5.1.3 Landmark Decision of United States

Cruzan v. Director, Missouri Department of Health[65]Background

In the United States of America, Physician-Assisted Suicide (PAS) has been made legal in some of the states i.e. Oregon, Washington and Montana whereas active Euthanasia is illegal altogether. It has made a distinction between that of the Euthanasia and physician-assistedsuicide. In both the countries as that of Oregon and Washington only that of the self-

[65] *Cruzan v. Director, Missouri Department of Health* 497 US 261 [1990]

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assisted dying is allowed and any other form of assistance by that of another person or thedoctor-administered assisted dying remains outside the purview of the enactments or the legislations and thereby remains a criminal offence.

Facts

In the year 1983, there was a 30-year-old woman; Nancy Curzon was lingering upon a permanent vegetative state after three weeks of coma as a result of a massive car accident.The doctors had inserted a feeding tube for her long-term care. In the year 1988, her parentsrequested the doctor to remove the feeding tube which the doctors refused without the order of the court.

Legal Position in Missouri

Missouri court of law requires *"clear and convincing evidence"* of the patient's desire andpreference for the removal or the withdrawal of the life sustaining artificial measurers.

Issue

The legal question involved in this case was that whether the State of Missouri possessed the authority to acquire "clear and convincing evidence" from that of the Curzon's in order to remove the life sustaining measurers from their daughter and thereby causing passive Euthanasia.

Held

This is the first case dealing with "right to die" that the Supreme Court of United States hadheard of. In the decision of 5:4 majority, the court ruled in the favor of the Missouri Department of Health and held that nothing in the Constitution can prevent the state fromacquiring the "clear and convincing evidence" prior to ordering the termination of the life-sustaining or the artificial measurers to treatment.

In the majority of the opinion as opined by that of the Chief Justice Rehnquist gave the distinction with regards to the cases or the situation in the case of competent individual andthat of the incompetent individual. In case of the former, they have the right to refuse the medical treatment as being imparted to them. However, in case of the latter the Court hadgiven primacy to that of the "higher standard of evidence" which is required in case of the

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person if they were in the position of making their own decision for the termination of theirlife.

Significance of the Case

This case gave the following mentioned *precedents* which are fundamental in the governance of such decisions:

1. It established the phenomenon that the concept of "right to die" was not a right which has been guaranteed by the constitution.
2. It has formulated certain rules which are required by the third party refusing or withholding treatment on behalf of that of the incompetent person who is not in theposition to give consent about the same.
3. It established the principle that in the absence of any living will or that of the *"clearand convincing evidence"* with regards to what an incompetent person would have desired or preferred, the interest of the state in order to preserve the life of the individual will always outweigh the right of the individual in refusing the treatmentfor the same.
4. The right-to-die-standards are left to the discretion of the state in order to determinethe same than creating that of the uniform national standard throughout the country.

5.1.4 Landmark Decision of Australia

Hunter and the New England Area Health Service v. A[66]

Background

This is the recent common law decision upholding the right of the individual in making an*"advance care directive"*. This is also known as *"living will"*. This refers to a legal document wherein a person specifies or directs in advance the legal recourse which needs to be followed for their health or treatment in the situation wherein owing to their illness or incapacity they are not been able to take decision or give their consent for the same.

[66] *Hunter and New England Area Health Service v. A* [2009] NSWSC 761

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Facts

In this case, Mr A had made an advance directive (no legislative provision valid in NWS)which had directed the refusal of the dialysis in case his condition deteriorated and he is notin a position to give his consent for the same. After one year of making the directive, he wasadmitted to the emergency department of the hospital being in a critical state of health. Hewas being kept alive with the support of mechanical ventilation and that of the dialysis.

Issue

The doctors had sought the validity of the "*advance directive*" made by the patient prior to hiscondition indicating that no dialysis should be provided to him. The judicial declaration was sought in order to determine the constitutionality and the validity of the same.

Held

Justice McDougall had confirmed the validity of the advance directive by that of Mr A andheld that the hospital must respect the consideration and the implication of the advance directive. The importance of the judgment lies observing the common law principle is as follows;

According to this judgment, a person has an authority of making an 'advance care directive'which thereby refers to a statement which has been made by a capable person who does notwish to receive any kind of the medical treatment in case of illness and this must be clear and unambiguous and should be respected in all situations.

5.1.5 Landmark Decision of CanadaCarter v Canada (AG)[67]

Background

In Canada, the physician-assisted suicide is considered to be illegal as per the Section 241(b) of the Criminal Code of Canada. The first case was **Rodriguez v British Columbia (AG)[68].** This case was challenged on the ground of being contrary to the *Canadian Charter of Rights and*

[67] *Carter v Canada (AG)* [1992] 1 SCC 441

[68] *Rodriguez v British Columbia (AG)* [1993] 3 SCR 519

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Freedoms; however the court had upheld the provision of the Code. This was overruled bythis case.

Facts

In this case, the petition was filed challenging the provisions of the *Canadian Charter of Rights and Freedoms* by that of the several suffering parties. Some of the parties included, Kay Carter,a woman who suffered from the degenerative spinal stenosis; Gloria Taylor, another woman who suffered with amyotrophic lateral sclerosis.

Issue

The issue was that whether Section 14 and 241(b) of the Canadian Criminal Code infringedthe rights guaranteed related to life, liberty and security of the person as enshrined under ***Article 7*** of the Charter of Rights and Freedoms in the Canadian Constitution.

Held

The Supreme Court held that the infringing provisions of the Criminal Code void so far asthey impose prohibition on the physician-assisted death for that of the competent adult person who:

- Clearly has given consent to the termination of his or life.
- The person is suffering from a grievous and irremediable medical conditionwhich in turn causes the suffering which is intolerable as per the given circumstances of the conditions of the individual.

5.2 LANDMARK DECISIONS OF INDIA

In India, the Right to life is guaranteed by the virtue of Article 21 of the Indian Constitution. However, the debate started with the controversial issue that whether the guaranteed fundamental right of Right to Life includes the Right to Die within its ambit. Through theseries of various decisions, the position has been cleared with respect to Euthanasia in theIndian context. The following landmark cases trace the development of the same in the Indian context:

Figure 5.1: Landmark cases in Indian Context

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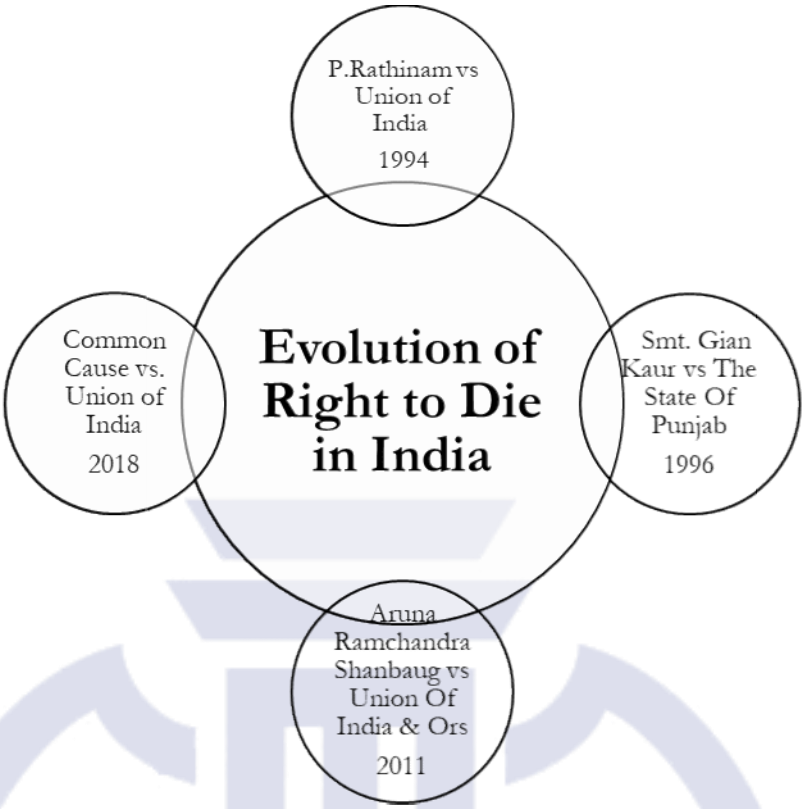

5.2.1 P. Rathinam v. Union of India[69]

In this case, P. Rathinam and Nagbhushan Patnaik filed the writ petitions in order to challenge the constitutional validity of the Section 309 of the Indian Penal Code. This

[69] *P. Rathinam v. Union of India & another* [1994] 3 S.C.C 394

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section imposes punishment on anyone who attempts to commit suicide. The punishment which is imposed who attempts to commit suicide is of simple imprisonment up to one year.

Supreme Court in this case, drew a parallel analogy with that of the other fundamental rights. For instance; the freedom of speech and expression as guaranteed under the Article 19 of the Constitution of India gives not only the right to speak but also it includes under its ambit the right not to speak; the right to live as provided under the Article 21 of the Indian Constitution also gives the right not to live.

Therefore, in the same manner, Section 309 was held to be unconstitutional. This implies that right to life does include under its ambit the right to die.

5.2.2 Smt. Gian Kaur v. The State Of Punjab[70]

In this case, Gian Kaur along with her husband Harbans Singh was being convicted by theTrial Code under the Section 306 of the Indian Penal Code. They were being sentenced tothe imprisonment of six years along with the fine of RS. 2,000/- for abetment of the suicide to Ms. Kulwant Kaur. Section 306 of the Indian Penal Code punishes any person who abetsthe commission of suicide and that of Section 309 anyone who attempts to commit the suicide. This case argued that the preceding case (P. Rathinam v. Union of India) held thatthe Article 21 of the Indian Constitution which guarantees right to life, includes under its ambit the right to die. Therefore, it argued that a person abetting the commission of suicideof another person is merely performing the act of assistance in the enforcement and the application of the Article 21 of the Indian Constitution.

Therefore, the five-judge bench of the Supreme Court in this case overruled the P.Rathinam case. It held that the analogy stated in that case was wrong one and not applicable in all thecircumstances. The other fundamental rights include the *"the right not to…";* for instance the analogy of right to speak is an omission, while on the other hand that of the taking a life isan act itself. Hence, the court finally upheld the constitutional validity of the Section 306 and 309 of the Indian Penal Code.

[70] *Gian Kaur v. State of Punjab* [1996] 2 S.C.C. 648

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5.2.3 Aruna Ramchandra Shanbaug v. Union Of India &Ors[71]

In this case, the 'next friend' of Ms Aruna Shanbaug had filed the petition before SupremeCourt of India, since she was in a persistent vegetative stage and not in a condition to express or give her consent. The petition was filed to direct the hospital to stop feeding herthrough mechanical or artificial means and allow her to die peacefully. She has been in thePersistent Vegetative State (PVS) since she had been sexually assaulted in the year 1973.

The court in this case had formulated a team of three doctors in order to examine her condition and submit a report about both, her mental and physical condition. The court though did not allow the removal or withdrawal of the medical treatment to Ms. Shanbaug, it did discuss the issue of Euthanasia in detail and permitted "passive Euthanasia".

The court in this case defined "passive Euthanasia" as deliberate withdrawal of the treatment with deliberate intention in order to cause the death of the patient. It held that the same canbe allowed or permitted only if the doctors work as per the notified medical opinion and withdraw the life supporting system only taking into consideration the *"best interest"* of the patient. The court also invoked the principle of *"Parens Patriae"* which means the parent of the nation and held that the court has the ultimate and absolute power to decide what factors constitute and fall as the *"best interest"* of the patient.

5.2.4 Common Cause v. Union of India, 2018[72]

In this case, in the year 2005 Common Cause had approached the Supreme Court of Indiaunder the Article 32 of the Indian Constitution, praying the following;

1. Declaration that the Right to Die with Dignity as a fundamental right as under Article 21 of the Indian Constitution.
2. The Court to issue directions to the Union Government to allow or permit the terminally ill patients or that suffering from incurable diseases to execute *"living wills"*for conduction of the appropriate cause of action in case they have admitted to thehospitals.

[71] *Aruna Ramchandra Shanbaugh v Union of India* [2011] 4 S.S.C. 454

[72] *Common Cause v. Union of India* [2018] [1990] 1 SCC 613

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3. As an Alternative Prayer, it sought guidelines form the Court of law on this issue and the appointment of that of an "*expert committee"* to be comprised of that of the doctors, lawyers and social scientists in order to determine concept of "living will" in the Indian context.

Therefore, on 9th March, 2018; a five judge Bench was constituted that had held that the *"Right to Die with dignity is a fundamental right".* It also held that the individual's right of execution of the "advance medical directive" or that of the "living will" is itself am assertion which embodies within itself the right to "bodily integrity and self-determination" which thereby does not depend upon any of the recognition or enactment of any of the legislatureby the State.

Thus, as mentioned above, shows how the idea of Euthanasia has been interpreted and given recognition in the context of various jurisdictions at the international level with the help of the landmark cases in comparison to that of India. The timeline of India gives an insight as to how right to die evolved. It was recognized, overruled, and then again recognized. This kept on going until the landmark judgment in the year 2018 which also brought altogether a new concept i.e. the idea of the legal and binding document; "LivingWill" which has been executed by the patient prior to the suffering of any incurable diseases and has in turn has the force of a legal document. It shows that India has adopted a progressive attitude towards the concept of Euthanasia. In India, the Constitution of Indiaand the other statutes are dynamic in nature and change with the changing needs of the society. This approach ultimately led to the recognition of the right to die and subsequentlypassive Euthanasia in that of the Indian context which has implication for the society as awhole.