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CONTENTS

Sr. No.	Name & Author	Pages
1	Inherent Power of Court with Reference to Procedure Prof. Ravindra Wakade	1-5
2	Ethnobotanical Importance of Semicardium Anacardium and use by Tribal Peole of Seoni Distrct,- a Comperehensive Review. S. A. Firdousi	6-11
3	The Role of Language in History Dr. C. C. Chaudhari	12-16
4	An Analytical Study of Buddhist Culture in Arts of Wat Suthatthepwararam in Thailand Phramaha Theerawat Kamonviboon Dr. B.N. Kurhade	17-26
5	Revoicing the Traumatic Past: A Study of Indira Goswami's Pages Stained With Blood Dr. Sadaf Shah Pooja Kumari	27-37
6	Women Entrepreneur and Indian Dr. Anjali D. Kale	38-41
7	Study of Victims of Environmental Crimes and Scope for Compensation and Rehabilitation Priya P. Nadar Dr. K. S. Jambhulkar	42-47
8	International Human Resource Management Practices Mrs. Minakshi Soni	48-56
9	Knowing "Abhinaya" – The Art of Expression Nilesh Arvindbhai Parekh Dr. Sandhhya Purechha	57-59
10	Indian Children's Theatre Abdulwahed Sayyad	60-62
11	Role of Family and It's Socio-Economic Status in Nutritional Status of Adolescence Dr. Chetana. V. Donglikar	63-68

CONTENTS

Sr. No.	Name & Author	Pages
12	Effective Management of Intergenerational Challenges in the Families Dr. Ragini Rajendra Padhye	69-71
13	Planning and Implementing a Total Rewards System Minakshi Soni	72-78
14	Legal Guidelines to Fight Vehicle Pollution Laws :- A Study Mohan S. Gawai Anil Kumar	79-82
15	SOS Children's Village - Next to Home Dr. ChitraRajuskar Swati Bhupal Kamble	83-86
16	Development and Reforms of civil services in Thailand S. T. Shirsath Phramaha Prawed Panklang	87-90
17	The Role of Statutory Development Board in the Development of Nasik District Swapnil Suryakant Kulkarni Dr. Adinath More	91-99
18	The Gandhian Economic Thoughts: It's Applicability in 21st Century Dr. Vasudha Purohit - Khandewale	100-108
✓19	Euthanasia - To Be Or Not To Be? : A Dilemma Umesh U. Katekar	109-113
१	नटरंग - एका स्वप्नांचा प्रवास अभिमन्यू राजगुरु	१-३
२	डॉ. बाबासाहेब आंबेडकर यांचे आर्थिक विचार व सामाजिक परिवर्तनाचे अर्थशास्त्र प्रा. डॉ. सुभाष प्रभू राठोड	४-१०
३	जागतिकीकरणाचा मराठी कवितेवरील प्रभाव कैलास सुदामराव वानखडे	११-१५
४	नव्वदोत्तर मराठी दलित कविता : एक आकलन प्रा. कांबळे डी. आर.	१६-१८
५	बलुतेदार सहकारी ग्रामोद्योग संस्थांमधील सभासदांच्या सामाजिक विकासात आर्थिक लाभांचे योगदान प्रा. प्रकाश मांगीलाल राठोड	१९-२१

CONTENTS

Sr. No.	Name & Author	Pages
६	जागतिकीकरणाच्या स्पर्शाने मावळली ग्रामसंस्कृती प्रा.आनंदराव जाधव डॉ. मनोहर सिरसाट	२२-२३
७	संत तुकारामांच्या अभंगातून व्यक्त झालेला कर्मसिद्धांत वाल्मीक भावराव गवळी डॉ. मनोहर सिरसाट	२४-२७
८	लोकतत्वाचा एकनिष्ठ धागा - महानोरांची कविता प्रा. रमेश बाबासाहेब रिंगणे	२८-३०
९	मराठा : अस्मितेच्या पेचात अडकलेला समाज डॉ. आर. बी. शेजुळ	३१-३६
१०	बाबुराव कांबळे यांच्या 'न्याय' नाटकातून व्यक्त होणारे न्यायव्यवस्थेचे सामाजिक भान प्रा. संध्या वि. कांबळे	३७-३९
११	शारीरिक तंदरूस्त संदिप जाधव	४०-४२
१	पृथ्वीराज रासो की ऐतिहासिकता एवं प्रामाणिकता डॉ. कल्पना वर्मा	१-३
२	भारत में महिला सशक्तिकरण में शिक्षा की भूमिका : एक यथार्थ अवलोकन सुरेन्द्र प्रताप	४-८
३	समकालीन हिन्दी दलित कहानियों में सामाजिक यथार्थ विवेक जगन्नाथ पाखरे	९-१०
४	मुक्तिबोध का काव्य और मूल्य चेतना डॉ. शेखर घुंगरवार	११-१४

'अजिंठा' या त्रैमासिकात प्रसिध्द झालेली मते मुख्य संपादक, संपादक मंडळ व सल्लागार मंडळास मान्य असतीलच असे नाही. या नियतकालिकात प्रसिध्द करण्यात आलेली लेखकाची मते ही त्याची वैयक्तिक मते आहेत.

तसेच शोधनिबंधाची जबाबदारी स्वतः लेखकावर राहिल. हे नियतकालिक मालक, मुद्रक, प्रकाशक विनय शंकरराव हातोले यांनी अजिंठा कॉम्प्युटर अँड प्रिंटर्स, जयसिंगपूरा, विद्यापीठ गेट, औरंगाबाद येथे मुद्रित व प्रकाशित केले.

19

Euthanasia - To Be Or Not To Be? : A Dilemma

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Preface

Article 21 of Indian Constitution provides the boon of fundamental right to life and personal liberty. It is available to every individual irrespective of any considerations. Euthanasia or mercy killing, on the other hand, speaks of something inconsistent with this right as it implies taking of life of someone especially terminally ill persons. It is widely debated issue all over the world. It comes into limelight owing to the Aruna Shaubhag's issue, the Santhara issue, wide and consistent discussion over it in newspapers, T.V., movies (Marathi movie 'Sukhant') and other medium. Every time the proponent allege that, it is a kind of death which is necessitated in such worse conditions and, on the other hand, the opponent say nobody is allowed to take one's life at any cost and on any consideration, as it amounts to culpable homicide which is prohibited by law. In fact, it is a multidimensional concept which requires looking into many factors. In this research work, the researcher honestly tries to throw light on the concept of euthanasia.

Euthanasia: It's Meaning

The word 'Euthanasia' is originated from Greek language. The 'eu' means 'good' and 'thanatos' means 'death'. It means, 'the intentional termination of life by another at the explicit request of the person who dies'. In simple language, it implies that the act must be initiated by the person who wishes to commit suicide.¹ Sutionius, a Roman historian, is the first writer who used this word 'euthanasia'. Some say that the English philosopher Sir Francis Bacon coined the phrase euthanasia early in the 17th century. It is also reported to be used in 5th century B.C. in "Comedy Cratinus" and the word is to be understood as 'a person having good death'. At the end of the 4th century, this term 'euthanasia' is used by Greek poet, Meander defines it as, "easy death which is having the effect of distance to their own lives"². It is a broad and generic term meaning 'help with a good death'. It may be defined as "a deliberate act undertaken by one person with the intention of ending the life of another person to relieve that person's suffering and where act is the cause of death"³. On the other hand, Takwani gives its meaning as, 'painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma'⁴.

Forms of Euthanasia

Euthanasia is a multi-dimensional concept. In general sense, it includes voluntary and involuntary termination of life. Following are its forms-

I) Passive Euthanasia - It implies hastening the death of a person by altering some form of support and letting nature take its course.

For example: removing life support equipment (e.g. Turning off a respirator), or stopping medical procedures, medications etc., or stopping food and water and allowing the person to dehydrate or starve to death, or not delivering CPR (Cardio-Pulmonary Resuscitation) and allowing a person, whose heart has stopped to die.

The most common form of passive euthanasia is to give a patient large dose of morphine to control pain. It has dual effect of relieving pain and hastening death. Administering such medication is regarded as ethical in most political jurisdictions and by most medical societies. These procedures are performed on terminally ill, suffering persons so that natural death will occur sooner. It is also done on persons in a persistent vegetative state or with massive brain damage who are in coma from which they cannot possibly regain consciousness.

II) Active Euthanasia - It is the deliberate action to end the life of a dying patient to avoid further suffering. It has two kinds viz.

A) Active Voluntary Euthanasia-It involves causing the death of a person through a direct action, in response to a request from that person. A well known example was the mercy killing in 1998 of a patient with ALS (Lou Gehrig's disease) by Dr. Jack Kevorkian, a Michigan physician. His patient was frightened that the advancing disease would cause him to die a horrible death in the near future; he wanted a quick, painless exit from life. Dr. Kevorkian injected controlled substances into the patient, thus causing his death. Consequently, he was sentenced for life with the offence of murder.

B) Active Involuntary Euthanasia- It implies the killing of a person who has not explicitly requested aid in dying. This is most often done to patients who are in a persistent vegetative state and will probably never recover consciousness.⁵

Mercy Killing: A Brief Study

It is a term loosely used to describe all acts of euthanasia. According to dictionary meaning, it refers to the killing of a person who suffers from an irrecoverable illness or when his sickness is terribly painful. It implies, ending another person's life without explicit request in the belief that it is the only compassionate thing to do. Broadly speaking, it covers all forms of killing of an elderly person, a terribly disfigured baby and a person in a permanent coma. The term 'mercy killing' found its reference in history. Among some primitive tribal societies, elderly people who were no longer socially or economically useful were made to climb a tree and hold tightly its branches. Then some strong men would shake the tree vigorously, if the person was able to hold on they were allowed to live, otherwise they were put to death. On other occasion someone might be taken to deserts and left to destiny. Eminent philosophers like Plato and Bacon supported the notion that all

due consideration should be given to the healthy section of the society. If their ailment proves to be incurable, should be allowed to die comfortably. A mercy killing is a killing where the killer genuinely believes that it is in the best interests of the victim to die, i.e. terminally ill and in great pain. It will be a consensual killing only if the victim consents to be killed. A mercy killing that is not consensual will always be considered as a murder.⁶

Euthanasia: An International Perspective

The concept of euthanasia or mercy killing is widely debated across the world but rarely approved. The relative issues of Terrischiavo in U.S., famous rugby player Daniel James in the U.K. and Aruna Shanbaug in India provided a matter of hot debate. Only four countries in Europe and three States in the U.S. like Oregon, Washington and Montana have laws permitting some form of euthanasia. In several other countries, piecemeal judicial or legislative measures have been taken towards evolving a statute on euthanasia. But specifically any form of assisted suicide or death is considered illegal, almost universally. In many countries such as Scotland, Canada, Western and South Australia, France, Israel and Hawaii etc. attempts to pass laws decriminalizing euthanasia have been discarded.⁷

Euthanasia: Indian Legal Overview

In India, euthanasia is considered as a crime even though there is no specific provision with respect to it. Section 309 of IPC which deals with an attempt to commit suicide and Section 306 deals with abetment of suicide both is punishable. It means both the persons i.e. patient who wish to take the recourse of euthanasia and also the doctor who performs the euthanasia will be guilty under the current criminal law. The Law Commission of India has recently recommended that Section 309 of IPC should be decriminalized because of its inhumane nature. The Supreme Court has recently stayed the Rajasthan High Court judgment in Nikhil Soni's case⁸ which judgment has rendered the practice of Santhara or Sallekhana illegal and equivalent to euthanasia amounting it to be an offence under Section 306 and 309 of IPC. The reason behind such stay might be due to the fact that 'Santhara' is believed to be an essential religious practice of Jainism which could be saved from the purview of Article 25 even if it is violating other fundamental rights.

The right to life under Article 21 of the Constitution whether includes right to die came up for consideration for the first time before the Bombay High Court in the State of Maharashtra v. Maruti Shripati Dubal.⁹ In this case the court held that Article 21 includes right to die. Consequently, the court struck down Section 309 IPC, which provides punishment for the attempt to commit suicide as unconstitutional. In P. Rathinam v. Union of India¹⁰, the court held that, taking one's own life does not damage the monopolistic power of the state to take life. Further the court held that in any case, a person cannot be forced to enjoy right to life to his detriment, disadvantage or dislike. Article 21 includes right not to live a forced life. Law cannot be cruel and a law which is cruel violates Article 21 of the constitution. Finally the court held that the right to life also includes the right not to live. In Gian Kaur v. State of Punjab¹¹, while overruling P. Rathinam v. Union of India,

the Court held that Article 21 of the Constitution guarantees the protection of life and personal liberty and in no stretch of the imagination: it can include extinction of life. In case of Francis Coralie v. Union Territory of Delhi¹², the apex court held that the right to life includes the right to live with human dignity. Further the provisos to Section 92 of IPC also discard euthanasia and render it as illegal.

In this connection issue of Aruna Shanbaug deserves special mention. Recently, a noted journalist and social activist Pinki Virani filed a writ petition for mercy killing on behalf of the petitioner Aruna Shanbaug under Article 32 of Indian Constitution. In her petition she had mentioned that Aruna cannot be said to exist in a sense as a human being to suppose to live. Hence, she pleaded with the Supreme Court to have Aruna being stopped fed and let her die peacefully. Aruna, who was working as a nurse at KEM Hospital in Mumbai was strangled and sodomized by a sweeper of that hospital. During the attack, she was strangled by a dog chain at the neck so that the deprivation of oxygen left her in a vegetative state ever since. She laid in such a condition since 42 years till 18th may 2015 and was kept alive by feeding tube. She also pleaded that the continuing vegetative existence of Aruna was in violation of her right to live with dignity. The court rejected the plea on two grounds, firstly, under Article 32 of the Constitution the petitioner had to prove violation of fundamental right such as right to life, secondly, in its judgment of Gian Kaur, the court concluded that the right to life did not include right to die or right to be killed. The right to die is inherently inconsistent with right to life. The right to die with human dignity cannot be construed to include within its ambit the right to terminate the natural span of life. Even exception 5 to Section 300 of IPC protects a person who causes the death of another above the age of 18 years with his/her consent. But it has limited scope as it only reduces the gravity of the offence and the person though not charged with murder but will be made liable for culpable homicide not amounting to murder. It implies that, the doctor who performs euthanasia on a person above 18 years of age with his consent, then the doctor will be liable for culpable homicide not amounting to murder and if the patient seeking euthanasia is less than age of consent then such doctor, even with the consent of patient, will be liable for the offence of murder. Even the defense of Section 87 of IPC cannot be pleaded in such cases because it lays down that consent cannot be pleaded as a defense if given to cause death or grievous hurt. Hence, the statutory law also does not advocate the unnatural termination of death, and so any sort of unnatural death, curtailing the natural span of life could not be lawful. According to this Bench, the petitioner's current petition had not shown a violation of any of her fundamental rights. But Court issued a set of broad guidelines legalizing passive euthanasia in India. The Court allowed passive euthanasia through High Court's monitoring mechanism which propounds that the parents, spouses or any close relatives of patient can make such an appeal before the High Court. The Chief Justice of such High Court on receipt of appeal would constitute a Bench to decide. The Bench can appoint a Committee of at least three renowned doctors to advise them on the particular fact and on the basis of the report a unanimous decision can be taken. The main

obstacle in implementing such law is that euthanasia itself is a twin-edged weapon. On one side, it can be used to relieve a patient from unbearable pain by giving him death, on the other hand, the practice of corruption and malafide or ulterior motives of doctors and relatives of patients may lead to its misuse as any type of uncertain death in a hospital would can easily be covered by taking the plea of euthanasia¹³.

Conclusion and Suggestions

In conclusion, we may say that, right to life is certainly the most important fundamental right. But in extreme cases, it should not be binding on the individual to exercise that right in cases of agony. Suicide should not be confused with euthanasia. The former is a narrower term than euthanasia. On the grounds of morality and public policy, the offence of abetment of suicide should be kept alive in the penal statute. It can be said that, euthanasia is an act of mercy rather than an act of murder if it falls within the dimensions of law. Every act has both positive as well as negative sides. Where the positive side is brighter than the negative consequences, it would be beneficial for the act to be allowed (e.g. abortion).

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