

Topic: Right To Die, Passive Euthanasia Under Article 21

Name of the case: Common Cause (A Registered Society) v. UOI, W.P. (C) No. 215 of 2005

Bench: Chief Justice Dipak Misra, Justice A.K. Sikri, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud and Justice Ashok Bhushan

Background: The First Case: P. Rathinam v. Union of India, AIR 1994 SC 1844, wherein the court held that right to life embodied in Article 21 also embodied in it 'right not to live' a forced life, to his detriment, disadvantage or disliking. The view constituted an authority for the proposition that an individual has right to do as he pleases with his life and to end it if he pleases.

The view expressed in P. Rathinam could not last for long and overruled by a constitutional bench of Supreme Court in Gian Kaur v. State of Punjab, AIR 1996 SC 946.

Issue in Gian Kaur: If attempt to commit suicide is not recorded as penal then what happens to someone who abets suicide which is punishable under Section 306, IPC?

Factual matrix in Gian Kaur: Gian Kaur and her husband were convicted under Section 306, IPC, for abetting the commission of suicide by Kulwant, their daughter in law.

Ratio in Gian Kaur: The Constitutional Bench of Supreme Court ruled that Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can 'extinction of life' be read to include 'protection of life'.

Accordingly, the court has ruled that Article 309, IPC, is not unconstitutional. Therefore Section 306, IPC, has also been held constitutional.

However, the Supreme Court has distinguished between euthanasia and attempt to commit suicide. Euthanasia is termination of life of a person who is terminally ill, or in a persistent vegetative state. In such a case, death is due to termination of life is certain and imminent. The process of natural death has commenced, it is only reducing the process of suffering due to natural death. This is not a case of extinguishing life but only accelerating conclusion of the process of natural death which has already begun. This may fall within the concept of right to live with human dignity up to the end of natural life. This may include the right of a dying person to die with dignity when his life is ebbing out. But this cannot be equated with the right to die unnatural death curtailing the natural span of life.

Ratio in present case: The five-judge bench of Supreme Court recognised and gave sanction to passive euthanasia and living will/advance directive. The implication of this is that from now 'right to die with dignity' is a Fundamental Right.

The Supreme Court has clarified that the judgement in Gian Kaur case cannot be understood to have stated that passive euthanasia will be introduced through legislation. It further held that the word 'life' in Article 21 has been construed as life with dignity and it takes within the ambit the 'right to die with dignity' big part of the 'right to live in dignity'. The sequitur of this exposition is that a dying man who is terminally ill or in a persistent vegetative state can make a choice of premature extension of his life as being facet of Article 21 of the Constitution. If that choice is guaranteed under part of Article 21, there is no necessity of any legislation for effective waiting that Fundamental Right and more so his personal human rights. Indeed, that tried cannot be an absolute right but subject to regulatory measure to be prescribed by a suitable legislation which, however, must be reasonable restriction and in the interest of

general public. Thus, the court has clarified that Article 21 covers within its ambit only passive euthanasia and not active euthanasia.

In the present case, the Supreme Court has clarified that the 'right to live with dignity' also includes the smoothening of the process of dying in case of terminally ill patient or a person in permanent vegetative state with no hope of recovery and that is why it also recognises advance directive akin to a living will through which person of sound mind and in a position to communicate can indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be restored to. Elaborate procedure and safeguards for executing such advanced directive has been provided in the judgement with essential in gradient being that the treating physician of a terminally ill or patient undergoing prolonged medical treatment shall refer the matter to a medical board consisting of head of the treating department and at least three experts from the field of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession. The decision of the medical board shall be communicated to the jurisdictional collector who shall constitute a medical board comprising the Chief District Medical Officer of the concerned district as the chairman and three expert doctor in the same field mentioned above.

The chairman of the medical board shall after taking consent of the executor of advance directive or the guardian named therein, shall communicate his decision to the jurisdictional judicial magistrate first class, who shall then authorise the implementation of the decision of the medical board. The court has also laid down the procedure of altering the advance directive and for the cases where there are no directives. Thus, the Supreme Court has finally ruled that the interest of the patient shall override the interest of the state in protecting the life of a citizen and that the right to live with dignity attaches throughout the life of the individual.