

## **COMPARATIVE ANALYSIS OF JURISPRUDENTIAL SCHOOLS WITH REFERENCE TO ARUNA SHANBAUG CASE**

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### **ABSTRACT**

The present research paper compares and contrasts various jurisprudential schools in the light of the case Aruna Shanbaug v Union of India in which the court dealt with the largely debated issue of Euthanasia. Through this comparative analysis, we understand how Jurists take different approaches in order to define what law is and how it should be. Depending on their approaches towards the nature of law and justice, the Jurists are classified under different schools of thought. The schools that will be compared with reference to this case are Natural school, Positive school, Historical School and the sociological school.

### **THE JURISTS OF NATURAL LAW SCHOOL**

Aruna Shanbaug was a nurse at the King Edward Memorial Hospital, Mumbai. On 27<sup>th</sup> November 1973, she was attacked by one of the sweepers of the hospital, who tried to wrap a dog chain around her neck. He attempted to rape her but on finding out that she was menstruating, he sodomized her and further twisted the chain around her neck. She was found in an injured and unconscious state the next day by a cleaner of the hospital. Due to the strangulation by the dog chain, the supply of oxygen to the brain stopped and her brain was damaged. It was stated that since Aruna Shanbaug's brain was virtually dead, she was in a permanent vegetative state (PVS) and was nothing more than a skeleton. Lying on the bed of KEM hospital for 36 years, it was contested that there was not a slightest possibility of improvement in her condition. Therefore, a petition was filed under Article 32 (providing Right to Life and Personal Liberty) by Ms Pink

Virani (friend of Aruna Shanbaug) to allow for the termination of Aruna Shanbaug's life and let her die in peace.

## **ISSUES RAISED**

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1. For a person who is in a permanent vegetative state, should withdrawal or withholding of life therapies be permissible?
2. If the patient has previous, expressed a wish not to have life-sustaining therapies in case of PVS, should the wish be considered when the situation arises? In cases where such a wish is not previous expressed, should the wish of the family members be respected?
3. In the context of the present case, Aruna Shanbaug had been abandoned by her family and was looked after by the hospital staff. In such a situation, whose wishes should be considered?
4. Should Active Euthanasia be allowed or only Passive Euthanasia?

## **JUDGMENT**

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The court studied Aruna Shanbaug's medical history in detail and stated that she was not brain dead as she would react to some situations in her own way. The petition filed for removal of life support system was thus dismissed by the court and stated that there were no suggestions/signs from the body language of Aruna Shanbaug that stated her wish to terminate her life. Even though, the court held that Euthanasia in this matter was not necessary, the concept of passive euthanasia was adopted , thus legalizing state approved suicide for the first time in India.

## **ANALYSIS**

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The present case of Aruna Shanbaug v Union of India has been a landmark case in the legal history of India as it sparked a debate regarding Euthanasia – which means “good death” and contended Article 21 of the Indian Constitution. It was for the first time, that the Supreme Court bifurcates Euthanasia into two parts – Active Euthanasia and Passive Euthanasia. In Active Euthanasia, the doctor takes an action with the intention that it will cause the patient's death. In passive Euthanasia

on the other hand, the doctor lets the patient die by taking off any life support system or therapies he/she might be on. Essentially, permitting active euthanasia is allowing the ‘killing of a person’ and permitting passive euthanasia is ‘letting a person die’. There was extensive debate carried out as to whether patients like Aruna Shanbaug should be allowed to terminate their lives through means of Euthanasia. Even though, the court did not favor the petitioners praying for Euthanasia in this case, it did recognize the use of passive Euthanasia that is approved by the state. Active Euthanasia is still a crime under Section 302 of the Indian Penal Code. Furthermore, in some of the previously decided cases such as *State of Maharashtra v Maruti Shripati Dubal*, it was contented that Section 309 of the Indian Penal Code was unconstitutional as it violated Article 19 and Article 21 of the Indian constitution. It was held that ‘right to life’ also include ‘right to die’ and section 309 was struck down. In the case of *Gian Kaur v state of Punjab*, the court stated that right to die in the context of a patient in the state of PVS is not the termination of life rather accelerating the process of death which has already commenced. It was also stated that the right to live with human dignity must also include a death with dignity and not one of mental and physical agony. The same principle was debated in the present case and the jurisprudential analysis of this case with respect to Natural, Positive, Historical, and Sociological Schools of thought will focus on these principles. As well as Ronald dworkin’s constructive interpretation of legal practice is been analyzed.

## **NATURAL SCHOOL**

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The Natural law school jurists rest their focus on morality and ethics. This school states that individuals have natural rights which are given to them by God and it cannot be taken away by the man-made law. It is a moral theory which emphasizes that law should be based on morality and ethics as compared to the positive school which takes the law as it is and is not concerned with what the law should be. One of the greatest contributions made in this school of thought is by a philosopher named John Locke. He claimed that individuals have natural rights such as ‘right to life’, ‘right to liberty’; that have a foundation independent of the laws that are man made. In other words there were certain moral truths that applied to all people regardless of the agreements they made or the place they were at. Further, through his theory of social contract he explained that men

conditionally transfer some of their rights to the government in order to ensure the protection of their rights to life, liberty and property. Therefore, in the context of this case, if the state grants the 'right to die' to Aruna Shanbaug it will be taking away the 'right to life' which is out of the state's power according to the above theory. Locke was of opinion that life is given to us by God and only God has the power to take it, not the state. Aristotle has also contributed to this school of thought by talking about the Universal Law. He believes that "Universal law is the law of nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other". With respect to this view, the use of Euthanasia could not have been granted to Aruna Shanbaug as Aristotle believes that 'right to life' is a universal law and Aruna Shanbaug suffering from injustice, if any, was also a natural injustice.

## **POSITIVE SCHOOL**

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Positive school of thought is what could be stated as an opposite of the natural school of thought. On one hand, where the natural school focuses on moral, ethics and what the law should be; the positive school, on the other hand focuses on taking law as it is and not what it should be. John Austin, a contributor in this philosophy, said that law is a command of the sovereign which must be followed as it is and it is backed by sanctions for those who fail to follow the law as it is. Hart, who is another contributor in this philosophy explains that if law is made by proper procedure then it would be considered as law. The positive schools state that a written law provides the rights and duties of a citizen which are to be followed as it is and the judges also have to interpret the law as it is while giving a judgment. Keeping Austin and Hart in mind, a law cannot be struck down by the judges even if they feel it is morally correct to do so. In theory, we may understand natural school and positive school as opposites however in the context of the present case, considering both these schools of thought, the judgment would be the same. The positive school of thought also ruled the judges' mind as they delivered the judgment because under IPC section 300 and 307 both murder and suicide is a criminal offence. It was presumed that the right to life does not include right to die and therefore, even if the judges may feel it was morally correct to let Aruna Shanbaug die peacefully, this school of thought does not allow them to do so. Furthermore,

the question of right to live with dignity also arises and challenges the opinions arising from this point of view. It can be derived from Aruna Shanbaug's case that even though laws should be respected and natural rights must not be altered in any case, people must also have the right end their lives or a 'right to die' peacefully and with dignity in cases of PVS or being terminally ill. This was demonstrated by the recognition of state approved passive euthanasia.

## **HISTORICAL SCHOOL**

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Legal rights have been classified into four categories - Claim, privilege, power and immunity. Right to life would fall under privilege that can neither be taken away by someone nor can it be transferred to anyone. However, one's right to life must not violate another's right to life and the state is responsible to protect this right. Euthanasia fall under the category of claim right as a person seeks the permission of the state in order to terminate his/her life. Suicide is a crime because a person acts on his own, however through this case and the recognition of passive euthanasia, it was stated that when a person is living in a pathetic physical condition (PVS or terminally ill) he must be allowed to practice state approved passive Euthanasia. Therefore, Euthanasia can Be considered a claim right which a person can claim for but 'right to die' has failed to categorize itself under natural right.

## **SOCIOLOGICAL SCHOOL**

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The concept of sociological approach came up after the industrial revolution. The purpose behind establishing such approach was to maintain a balance between the welfare of the society and individual. This sociological approach did not devoted its approach toward ethical content and aim of law but toward the situations which have been arising to legal consequences. The theory as whole is made in respect to protect the society as a whole and protest against the traditional concept of law as an production from a single authority in the state, or as a complete body of explicit and wide-ranging proposal related by precise clarification, to all claims, affiliation and clashes of interest.

The main objective behind such school is to resolve the raising issues of the society with the help of different techniques like legal and extra-legal activities and aim at promoting coordination and balancing of the interest in the society.

### **DIFFERENT JURIST THEORY IN SOCIOLOGICAL SCHOOL:**

- Rudolf von Inhering- Ihering considered law as a tool for serving the need of all the person in the society. Law is to be deliberate in a way by which it is sub-served. According to him a man acts in a way just because it wants to attain to some degree. Accordingly law is only an instrument for serving the needs of the society its purposes and interest.
- Montesquieu- he was a French philosopher, he was the first one to recognize and take in picture the social influence on the legal system. According to him law should be determined by a notion so as to in relation to the prevailing situation in each and every country which keep on changing. He perceived history to be a way to make the structure of society an easy understanding.

In the present case of euthanasia applying the sociological approach, she was in a permanent vegetative state (PVS) and was nothing more than a skeleton. Lying on the bed of KEM hospital for 36 years, it was contested that there was not a slightest possibility of improvement in her condition. By seeing it through a social approach toward welfare of society the act of right to die should be permitted so that the person can be free from suffering and something good be done to her. In sociological school the main purpose is the welfare of society and individual, but sociological school also look forward to the prevailing law and legal system followed so following a law it cannot permit the right to die.

### **RONALD DWORKIN: LAW AS INTEGRITY**

Law as integrity shapes that the law must be interpreted in one way, so judges must undertake that the law is organized on rational principles about justice, and practically due process, and in all the upcoming cases which are brought before them, judges must bring this situation in practice so as to make each person's condition just and impartial by the equivalent standard – that is to say, treat



everyone equally. Laws Integrity is equally a legislative as well as an adjudicative principle. Legislative principle talks about the making of law and how it should be made morally comprehensible. The concept of Dworkin's aims to advance a theory of adjudication and it is necessary to involve in a constructive interpretation of legal exercise. Constructive interpretation is a methodology for construing social practices. The distinctive feature of this is that it is contrary.

Law as integrity involves judges to practice the techniques that they use for the interpretation of statutes and assessing precedents not simply as a part given by the legal system, but as ideologies they assume to be right in political theory, and when that is not acceptable they construct a theory of the system to improve them. As per Dworkin, no mortal judge can or should try to eloquent his natural working theory or make theory so concrete and detailed, that no further opinions will be essential as per situation. He must menace any general principles or rules as thumb he has followed in the ancient as interim and stand ready to unrestraint these in favor of more sophisticated and searching analysis when the occasion demands.

In this theory Dworkin asks to make an interpretation of the law by the judges in a way the law is ought to be made and to see to it that the justice is been served. In the present case of Euthanasia the law made available in constitution i.e. right to life does not include in it right to die so by this way the constructive interpretation of the legal term is made and law as integrity makes a proposal for adjudicator which guides judges to decide cases by application of same procedure from which integrity was derivative i.e by constructive interpretation. Judges can bring is by-laws in support to this case which was accordingly done and the concept of passive euthanasia was recognized and was approved by the state.

## **CONCLUSION**

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In my opinion, the philosophies that have been discussed earlier take extreme position on what the law means and how it should be followed. Active Euthanasia is legal in many countries and Aruna Shanbaug too would have had a dignified and peaceful death, had she been granted the 'right to die'. However, it is a very important case as it was because of this case that state approved passive euthanasia was recognized. It is a step forward in protecting the rights of people who live

with mental and physical agonies and except miracles, have no chances of getting back to normal state. In all, the judgment held in the present case supported the jurisprudential theories in many ways.

