



Impulse Newsletter

Openness to Curiosity

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DEATH WITH DIGNITY : ON SUPREME COURT'S VERDICT ON EUTHANASIA AND LIVING WILLS

The core philosophy underlying the Supreme Court's verdict in *Aruna Ramachandra Shanbaug v. Union Of India*, allowing passive euthanasia and giving legal status to advance directives is that the right to a dignified life extends up to the point of having a dignified death. In four concurring opinions, the five member Constitution Bench grappled with a question that involved, in the words of Justice D.Y. Chandra-

chud "finding substance and balances in the relationship between life, morality and the experience of dying". The outcome of the exercise is a progressive and human verdict that lays down a broad legal

death for reducing the period of death of suffering constitutes a right to live with dignity". The core message is that all adult with the capacity to give consent "have the right of self-determination and autonomy" and the right to refuse medical treatment is also encompassed in it.

Passive Euthanasia was recognized by a two-Judge bench in *Aruna Shanbaug* case in 2011; now the Constitution Bench has expanded

sort of medical treatment that may or may not be administered in the extent of her reaching stage of terminal illness.

Passive Euthanasia essentially involves withdrawal of life support or discontinuation of life preserving medical treatment. So that a person with a terminal illness is allowed to die on the natural course. The court's reasoning is conceptionable when it says burdening a dying pa-



the jurisprudence on the subject by adding to it the principle of a 'living will' ;or an advance directive, a practice a person; while in a competent state of mind, leaves written instructions on the

tient with life prolonging treatment and equipment merely because medical technology has advanced would be destructive of her dignity. In such a situation, "undivided interest has to be



“Section 377 is irrational, arbitrary and incomprehensible as it fetters the right to equality for LGBT community... LGBT community possesses same equality as other citizens.”
-Dipak Misra

given priority one or the state interest”. The court has invoked its inherent power under Article 142 of the Constitution to grant legal status to advance directives and its directives will hold good until Parliament enacts legislation on the matter. The Government submitted that it was in the process of introducing a law to regulate pas-

sive euthanasia, but opposed the concept of advance directive on the ground that it was liable to be misused. The strongest condition imposed by the court regarding advance directives are intended to serve as a set of robust safeguards and all of any apprehension about misuse. The court is justified in concluding that advances directives will

strengthen the will of the treating doctors by assuring them that they are acting lawfully on respecting the patients wishes. An advance directive, after all, only reflects the patients autonomy and does not amount to a recognition of a wish to die.

Muhammed Aman,
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SECTION 377 OF INDIAN PENAL CODE

The Section 377 of the Indian penal code (IPC), 1860 is the section that criminalizes homosexuality and was introduced in the year 1861 during the British rule in India. It is referred to as an ‘unnatural offence’ and says whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life. The Supreme Court of India on September 6 2018, decriminalized the Sec. 377 of the IPC and allowed gay sex among consenting adults. The SC ruled that consensual adult gay sex is not a crime, saying sexual orientation is natural and people have no control over it.

This colonial-era law

was first challenged by the NGOs, Naz foundation and AIDS Bhedbhav Virodhi Andolan before the Delhi High Court in 2001. Both petitions were dismissed in the court. In July 2009, the Delhi HC decriminalized sex between consenting adult of same gender holding it is in violation of Art.14, 15 and 21 of the Constitution of India. Art. 14 of the Constitution guarantee equality before the law and equal protection of laws, Art. 15 prohibit discrimination on the ground of religion, race, sex, or place of birth, and Art. 21 guarantee the protection of life and personal liberty.

LGBTQ: Case law analysis

The HC’s judgment was overruled in 2013 by the SC who found it to be “legally unsustainable”. The court

also quashed the review petition filed by Naz Foundation. The SC in 2014 directed the government to declare transgender as a ‘third gender’ and include them in the OBC quota.

In 2016, five petition were filed in the SC by LGBTQ activists claiming that their “rights to sexuality, sexual anatomy, choice of sexual partner, life, privacy, dignity and equality, along



some of the fundamental rights guaranteed under part-III of the constitution, are violated by section 377 of IPC.

In August 2017, the SC had upheld the right to privacy as a fundamental right under the Constitution in the landmark *Puttuswami* decision. It also observed that "sexual orientation is an essential attribute of privacy". In 2018, a five-judge constitutional bench started hearing petition challenging Sec. 377.

On September 6, 2018, the Apex Court announced that consensual adult gay sex is not a crime and Art. 14 and 21 of Indian constitution contradict the present view of

Sec. 377 in the case *Navtej Singh Johar v. UOI*. It also said that Sec. 377 remains in force relating to sex with minor, non-consensual sexual acts, and bestiality.

There arose many voices from the nook and corner to support and oppose the judgment. To me this decision seems to be a welcoming one in the current scenario, upholding the rights of the LGBT community.

Maulana Madni of the Jamiat Ulema echoes this in the article, stating that "Homosexuality is a crime according to scriptures and is unnatural. People cannot consider themselves to be

exclusive of a society. In a society, a family is made up of a man and a woman, not a woman and a woman, or a man and a man. Rabbi Ezekiel Issac Malekar, honorary secretary of the Judah Hyam Synagogue, in upholding the judgment was also quoted as saying "In Judaism, our scriptures do not permit homosexuality." Reverend Paul Swarup of the Cathedral Church of the Redemption in Delhi in stating his views on what the relations are identified as those shared by a man and a woman. The Supreme Court's view is an endorsement of our scriptures".

Sebin Tom Stephen
S2, B.COM. LL.B.

"Social morality cannot violate the rights of even one single individual,"

A M Khanwikar



QUARRELS FOR INSTANT JUSTICE

The news of all four accused in the rape and murder of a 26-year-old veterinary doctor on November 29 having been gunned down by the Hyderabad Police in an encounter on December 6 was sensational. Photographs of an encounter specialist police officer instantaneously flooded social media. There was pandemonium on television, with political parties vying to outdo each other. A commotion in Parliament was expected, with a blame game by both sides – instant justice versus the rule of law. And, of course, vows that the most stringent laws will be brought in.

The irony of India is that every issue is politicized, with action

contingent on which way the vote-bank can be maneuvered. That done, all else is forgotten, and this applies to rapes and rape-cum-murders as well. The urgency to punish the culprits early and set an example is grossly missing both in the polity and the judiciary.

In such a situation there was no question of accused attacking the policeman whilst they were also handcuffed. Secondly, assuming that the accused tried to flee, it is settled law that in such a case the escorting policeman is permitted by law to use a firearm, but only to hit them on the lower part of their body to fell them; to avoid their abscondence and not

to kill them.

One does not know in the instant case whether all these four persons sustained bullet injuries on the lower part of their bodies. If they were hit by bullets on lower parts of their bodies, then they would not have been instantaneously killed. With these circumstances the case of police men – a genuine encounter – becomes difficult to be accepted.

Instant justice appears to have been done to the satisfaction of a small section of the society. But, if the encounters are fake or stage managed, it does not improve the image of our system. It will have to be necessary to

find out, as the law says, that for every police encounter there has to be a magisterial inquiry. We will have to find out whether the case by the policemen is factually true.

Policemen on duty, on the other hand, also need to be protected for the discharge of their honest duties. Section 100 of the Indian Penal Code provides that right to self-defense to be extended

to causing death in appropriate cases. Whether the Hyderabad case, where as many as four suspects were killed, would be covered under Section 100 of IPC or not could be decided by the magisterial inquiry by collecting facts....

Swetha Dileep,
S6, BBA LL.B

Moral Policing v/s Law

Indian culture is a sum total of various languages, religions, dance, music, architecture, food and custom. They differ from place to place. In a single word it means "unity in diversity". Even if the culture, tradition etc plays a pivotal role, law is the supreme authority. The preamble and various articles of the Constitution provides different kinds of rights, duties and privileges to every citizen of the country. Moral policing is a conduct wherein an individual, or a group of individuals try to enforce certain laws according to their will.

They even don't refrain themselves from taking action, when a person commits something, which according to them is immoral. Morality is a clash between the proper and improper views of an individual regarding intention, decision and action. In the absence of well framed rules for morality, the concept changes from person to person. It is a code of conduct put forward by society from generation to generation. And there starts moral policing. Unlawful intervention to personal liberty is the root cause of moral policing. It starts from personal liberty and spread throughout the entire affairs of persons as well as the society. The vigilant group who were the supporters of moral policing is of the belief that their culture is degrading because of the western impart. Those interventions are towards the fundamental rights such as right to freedom of speech and expression, right to privacy, right to live with dignity. Some-

times it leads to criminal offences like assault, battery, violence, ultimately it can even lead to killing of human beings. Like any other concept it has pros & cons.

An instance of moral policing is that, in 1997 'The God Of Small Things' written by Arundhati Roy was criticised by EMS Nam-



bodiripadu and there was a suit filed by a Malayali lawyer named Sabu Thomas stating that the book contains obscene scenes. This was an encroachment towards writers' freedom of expression.

The extent of moral policing encroached even on personal liberty and privacy. In a particular event, a journalist and her husband were at-

tacked by a group of vigilants contemplating that they were not married and their relationship is against law.

There is no importance for a base less concept like moral policing. Our Indian Constitution guarantees many rights to the citizens for the attainment of welfare of its citizens which includes right to equality, freedom of speech & expression, freedom from illegal arrest and most importantly the right to life and personal liberty. These rights are considered as fundamental to the people. In such a position what is the need or role of a baseless concept like moral policing which unnecessarily encroaches into the life of the citizens. Why the society is afraid of moral policing? Think rationally and live life obeying the rules if the country.

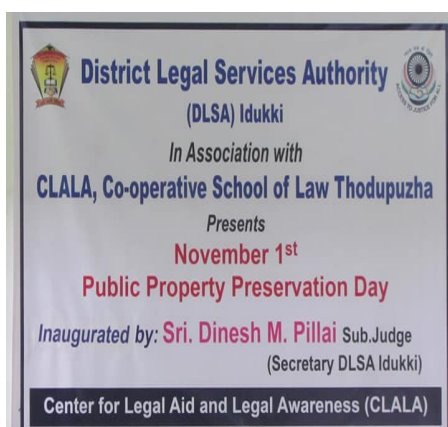
Lakshmi,
S4, B.COM LL.B

Campus Buzz

ETHNIC DAY CELEBRATIONS



01/11/2019



01/11/2019



Invited lecture on

'Public Property Preservation' by Adv. Babu Varikattu as part of the 'Public Property Preservation Day' celebrations conducted by the CLALA in association with DLSA.

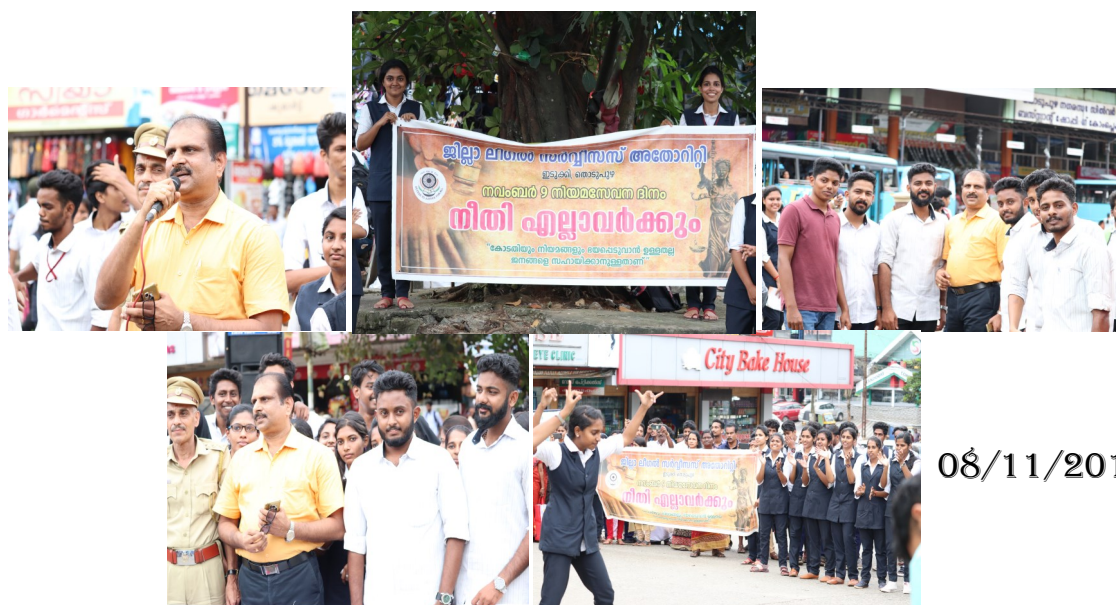
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Inauguration of the **DEBATE CLUB** activities and Invited talk on Constitutional law by Mr. Kunjikrishnan (Former Registrar, CUSAT)



02 / 11 / 2019



08/11/2019

Flash mob conducted by the students of CSL at Thodupuzha in association with DLSA Idukki as part of the Law Day celebrations.

Campus Buzz



Students participated in the Run for Safe Childhood marathon organized by the Childline Idukki and DLSA.

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IMPULSE NEWSLETTER

Openness to curiosity

*A Students Initiative from Co-operative School
of Law, Thodupuzha*

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