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Thalaikoothal: the Practice of Euthanasia in the Name of Custom

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Abstract

Like any other crime, poverty is also one of the main causes of practicing Thalaikoothal. When Pramila Krishan, Journalist of Deccan Chronicale, came to know about the practices of Thalaikoothal, she was very shocked. And while investigating the matter she found that most of the family members use to kill there parents whom they can't effort. And the aged people of Virudhunggar, they had accepted this practice of getting unnatural death as there fate as they also think that they have become burden for there children, as every thing in today's world is costly. Article 21 of Indian Constitution grants Right to life only. According to Article 21 says, "No person shall be deprived of his life or personal liberty except according to procedure established by law". Right life under Article 21 does not include Right to die. Right to life is a natural right. The question regarding Right to die first time comes before Bombay High Court in State of Maharashtra v. Maruty Sripati Dubal 1987 Cri LJ 743. And here in this case court declare that Right to Life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 which makes attempt to suicide as punishable offence unconstitutional. But Supreme Court in Gian Kaur v State of Puniab (1996)2 SCC 648, held that Right to life does not include "Right to die" or "Right to be killed". Thus, attempt to suicide is punishable offence under section 309 of Indian Penal Code, 1860 and it is not unconstitutional to Indian Constitution Art. 21. Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in unnatural way. Thus, the practice of Thalaikoothal is illegal and unethical.

Keywords: thalaikoothal; euthanasia; suicide; homicide; custom

Introduction

From ancient era, we had a tradition or culture to respect our parents. And we can find it out from the mythological story e.g. from *Ramayana* where Shravan Kumar* carries his blind aged parents in his shoulders for pilgrimage voyage. That was a time when parents were treated as a God and peoples used to worship their parents and now in 21st century with advancement of medical science and technology, life span of the average human being has not only increased but along with it the abandonment of aged parents has also increased that we can find from our locality and from

Shravan Kumar, *Indian Mythology*, (Nov. 1, 2014, 12: 50 PM) http://www.indianetzone.com/46/shravan_kumar.htm

the media. Growing population has also increased the poverty in the villages where people fail to arrange there one day meal. And only because of this most people think that their aged parents are becoming burden for them. And thus various crime against senior citizen has also increased day by day. This is a challenging issue for the government to protect the senior citizen of the country and also to help them to lead rest of their life with dignity.

It will be surprising for every one that even though Government of India, has passed many laws and rules for the protection of the Senior citizen but still some of the aged parents from Virudhunagar, Tamil Nadu has to meet with their unnatural death in the name of custom or tradition called Thalaikoothal. By doing this the children used to get rid from their parents. Thalaikoothal is the traditional practices of killing old people of the family by his or her family members. This is a clear practice of senicide in the name of traditions.

India is a secular country where one can find different religions, cultures, languages, customs and traditions etc. Here every religion has as its own faith and beliefs. And their right to practice and profess their religion is protected by Article 25 of Indian Constitution*. But in the recent time it has been found that a certain practices of killing of aged parent's i.e. *Thalaikoothal* were performed by the people of Virudhunagar†, Tamil Nadu, India.

We all know that a newborn baby is always welcomed into the family with joy and celebration, inviting all the loved ones. And the same festive mood is performed with Thalaikoothal, where the children of aged parents kills or murder their parents. Thus, we can say it is a ceremony where children kill there aged parent on a date fixed by them.

Meaning of Thalaikoothal

Thalaikoothal is Tamil word which means "leisurely oil bath". This is a process in which "an extensive oil bath is given to an elderly person before the crack of dawn. The rest of the day, he or she is given several glasses of cold tender coconut water". By doing this the temperature of the body falls suddenly and causing high fever which leads to the death of the old aged person within 1-2 days. According to Dr. Ashok Kumar**, general practitioner in Madurai,"Tender coconut water taken in excess causes renal failure". And this method is found to be as fail- proof as "the elderly often do not have the immunity to survive the sudden fever".

Recently other then Thalaikoothal, many other practices has been evolved now days for performing the same rituals. News Nation in its sting operation "The Bath of Death" found that the people of Virudhunagar also used medicine which is used to kill snakes and pigs. One of the most painful methods of killing is, when one swallows the mud dissolved in water. Doing this the person will suffer from indigestion and ultimately death as a result. Velayudham of Help age India aid that "the families used to take mud from there own land, if they had any as it will makes their soul happy". And if sometime they survive in this practice then again another treatment is given to that person i.e. milk treatments. In milk treatment, milk is poured by holding the nose tight. And sometime the milk treatment is often followed by starvation. Since, when milk is poured uninterruptedly into the mouth, it goes into the respiratory track. Thereby causing death of the person as a starved person cannot survive a single moment of suffocation.

The practice of Thalaikoothal was highlighted when a 60 years old man named Selvaraj*** of Ramasamipuram Village, Virudhunagar died suddenly on 18th June, 2010. He was bed ridden after an accident for long time. After his sudden dead, his nephew Asokan registered an F.I.R and upon

^{*} MAMTA RAO, CONSTITUTIONAL LAW 268-269 (Abhinandan Malik, 1st ed,2013)

[†] Shahina KK, Mother, Shall I put you to sleep?,

http://archive.tehelka.com/story_main47.asp?filename=Ne201110Maariyamma.asp

[‡] Ibid

[§] Ibid

^{**} Ibid

News Nation Bureau, "Operation Maut Ka Snaan": A ritual to murder your parentshttp://www.newsnation.in/article/26796-operation-%E2%80%98the-bath-death%E2%80%99-a-ritual-murder-parents.html

^{‡‡} Munit Vikram, *Thalaikoothal: A Ritual to murder your parents* http://munitvikram.blogspot.in/2010/11/thalaikoothal-ritual-to-murder-your.html

^{§§} Ibid

^{***} Supra. ii

it, a woman named Zeenath was arrested for administering a poisonous injection to Selvaraj. But the then Commissioner of Police of Virudhunagar, Prabhakar admits that it was very hard to find any evidence as the body was cremated and there was no scope for re-examination of the corpse. Thus, Zeenath was released on bail. Some of the Villagers of the Ramasamipuram used to say that Zeenath was a professional mercy killer*. It was after the death of the Selvaraj, several mysterious deaths were reported in Virudhunagar when an investigation was done on mercy killing at Virudhunagar. And the result was shocking for V K Shanmugham†, district collector of Virudhunagar.

Reasons behind Thalaikoothal

Like any other crime, poverty is also the main cause of practicing Thalaikoothal. When Pramila Krishan*, Journalist of Deccan Chronicale, came to know about the practices of Thalaikoothal, she was very shocked. And while investing the matter she found that most of the family members use to kill there parents whom they can't effort. And the aged people of Virudhunagar, they had accepted this practice of getting unnatural death as there fate as they also think that they have become burden for there children, as every thing in today's world is costly. We all know that food and medical facilities which are the basic prime requirement of every one. But the people from poor section sometimes even fail to manage a handful of grain to have there one time meal in India. And in villages where it is tough for a person to manage a handful grain for his family in that case how he will manage his aged parents. That is the thinking of the aged parents because of which they accept the practice of Thalaikoothal. But that is not the only case to kill their parents. In some cases it is also found that children's kill their parents for getting ancestral property or sometime after getting the property from their parents. This practice is not limited to poor society but one can find this practice in High Society.

In fact killing or abandonment of parents is a very common practice in Modern World. Now a days, peoples became so busy, that they forget the truth that what they are doing with their parents now, the same treatment they will also get from there children. A tree will be strong only when its roots will be strong. In the same way a family will be strong when it head will be treated well.

Even Dr. Archana Kaushik§ says that, "the national policy on older persons mentions that the root causes of the plight of older people are economic support and security". According to her we must do something or there must be something in the system by which we can make the old people realize that they are not unproductive. Even the state governments should provide old age pensions to this aged section of the society. She revealed that at least two-third senior citizens need economic security for their survival. The governments of Delhi, Goa and Tamil Nadu already have a provision of distributing old age pension to the elderly people. However, the amount is skimpy and the norms tough, making only 8 percent of the needy availing the facility. She also called for setting up old age centers in a symbiotic existence with schools where the aged and the kids support each other.

Even The News Nation Team** while doing the sting operation found that this practice was prevalent in the poverty stricken of Tamil Nadu from 1980s. And also they founded that people working in the hospitals assist the villagers for killing there parents sometimes by giving lethal injections or some time by using medicines which is used to kill snake and pigs.

According to Chandra Devi^{††}, District welfare Officer, The practice of Thalaikoothal is not confined to any caste, the only reason for such kind of practice is Poverty.

Î Ibid.

[†] Ibid.

[‡] Amir Khan, Satyamev jayate, http://pakedu.net/world-education/satyamev-jayate-old-age-episode-11-sunset-years-sunshine-life-15-july-2012/

[§] Episode 11: Sunset Years, Sunshine Life, SATYAMEV JAYATE, http://archive-in.com/page/1252565/2013-01-28/http://www.satyamevjayate.in/issue11/learnmore/detail/58/

^{**} *Supra*.vii

^{††} Saurabh Singh, "Thalaikoothal"- what it means! Perhaps Murdering Your Own who brought You on this Planet, Tehelka Magazine, Nov. 20, 2010

http://aavesh.wordpress.com/2010/11/15/thalaikoothal-what-it-means-perhaps-murdering-your-own-who-brought-your-on-this-planet/

Again according to Chellathorai*, the president of Paneerpetty village Panchayat, killing of elderly people is the better way to sole the financial crisis as there is no other alternative even though it is brutal. But killing of there parents doesn't mean that they do not love there parents.

It is found that whenever an elderly person fell ill and his family members is unable to maintain him or afford the medical expenses in that case they use to fix the date for Thalaikoothal.

Some people call this practice as "Euthanasia" and some call it "Homicide" as said by Rajeshwar Devarakonda[†]. But whatever term one can use to denote this practices, but there is one thing which I would like to say that Modernization has not only improve the life of the people but it has also increase lots of hurdle in one's life. Modernization has improved the life of the higher society but what about the poor society? Where still a poor man fails to manage a handful grains for his one time meal or even though we had a good medical facilities but still poor people were dying without getting any medical assistance.

When a custom can become a source of law

We all know that custom is also one of the sources of law. According to Salmond*, "custom is the embodiment of those principles which have commanded themselves to the national conscience as principles of justice and public utility". Even a custom followed in a particular area can become law when the following conditions will fulfill-

- 1. Custom to become law must be immemorial.
- 2. It must be reasonable.
- 3. There must be continuous performance of it.
- 4. The enjoyment of custom must be peaceful one.
- 5. Custom must be certain and definite.
- 6. A custom will be valid if it is compulsory to perform.
- 7. It must be general or universal.
- 8. In addition, it should not be opposed to public policy.
- 9. Custom should not be in conflict with the statutory law.

Now when we talked about Thalaikoothal we can find that none of this condition for custom to become law is fulfilled for the practice of Thalaikoothal legally. Even In **Baba Narayan versus Saboosa** (1943)2 **MLJ** 186[§], Sir George Rankin observed that "In India, while a custom need not be immemorial, the requirement of long usage is essential since it is from this that custom derives its force as governing the parties' rights in place of the general law".

In addition, still now it is not clear that from when this custom of killing parents was started in Tamil Nadu. In India this custom is followed only in a particular district of Tamil Nadu So in that case it is very unconstitutional to Article 21 of Indian Constitution. So, in that case one should not be allow doing such practices in the name of Custom or tradition. Now when we talked about Thalaikoothal in that case one thing is notable that even if the people of the Virudhunagar were practicing this tradition but it is not clear that from when they are practicing this tradition. So, in that case this custom cannot become a law prevailing in that area.

Even we all know about Sati System where a women use to immolates herself on the funeral pyre of her deceased husband and this practice was prevalent in ancient India. But latter on after the revolutionary movement of Raja Ram Mohan Roy, founder of Brahmo Samaj finally able to abolished Sati Pratha in the year 1829**. And after that in the year 1987, The Commission of Sati (Prevention) Act came into exist making this pratha illegal as well as making it a criminal offence.

Constitution validity of Thalaikoothal

Article 21 of Indian Constitution grants Right to life only. According to Article 21^{††} says, "No person shall be deprived of his life or personal liberty except according to procedure established

† Mark Magnier, *In southern India, relatives sometimes quietly kill their elders*, L.A. TIMES, Jan. 15, 2013 http://articles.latimes.com/2013/jan/15/world/la-fg-india-mercy-killings-20130116

^{*} Supra. xv

[‡] V.D MAHAJAN, JURISPRUDENCE & LEGAL THEORY,254(Eastern Book Company 5th ed, 1987)

[§] *Ibid*. 270

^{**} Snehal, *Raja Ram Mohan Roy- Greatest Social Reformer in the History of India*,(Nov. 6, 2014, 12: 50 PM) http://www.edurite.com/blog/raja-ram-mohan-roy-%E2%80%93-greatest-social-reformer-in-the-history-of-india/2028/#

^{††} Supra. i at 216

by law". Right life under Article 21 does not include Right to die. Right to life is a natural right. The question regarding Right to die first time comes before Bombay High Court in *State of Maharashtra v. Maruty Sripati Dubal* 1987 Cri LJ 743*. And here in this case court declared that Right to Life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 which makes attempt to suicide as punishable offence unconstitutional. But Supreme Court in *Gian Kaur v. State of Punjab†* (1996)2 SCC 648, held that Right to life does not include "Right to die" or "Right to be killed". Thus, attempt to suicide is punishable offence under section 309 of Indian Penal Code, 1860 and it is not unconstitutional to Indian Constitution Art. 21. Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in unnatural way.

It was only after the case of *Aruna Ramchandra Shanbaug versus Union of India (2011) 4 SCC 454*, Supreme Court in its judgment declared that Passive Euthanasia is legal in India; means when a person is on ventilation in that case only, patient can be removed from the ventilation.

Even in India if someone is trying to commit suicide then in that case it will be a punishable offence under section 309 of Indian Penal Code. Even in India whether it is a Voluntary Euthanasia, Involuntary Euthanasia or Non- Voluntary Euthanasia whatever the case may be is not acceptable and is illegal here and it will be a punishable offence under Indian Penal Code except the passive Euthanasia.

Thus, practice of Thalaikoothal is unconstitutional. As no one in India is allowed to commit suicide and even in Euthanasia, only passive euthanasia is allowed. Therefore, in no way Thalaikoothal be practiced for killing old aged parents.

Euthenesia and its position in India

The term Euthanasia is derived from Greek roots* "eu" means "well or good" and "thanatos" means- "death' means good death.

"The term Euthanasia normally implies an intentional termination of life by another at the explicit request of the person who wishes to die. Euthanasia is generally defined as the act of killing an incurably ill person out of concern and compassion for that person's suffering. It is sometimes called mercy killing, but many advocates of euthanasia define mercy killing more precisely as the ending of another person's life without his or her request. Euthanasia, on the other hand, is usually separated into two categories: passive euthanasia and active euthanasia. In many jurisdictions, active euthanasia can be considered murder or Manslaughter, whereas passive euthanasia is accepted by professional medical societies, and by the law under certain circumstances."§

Euthanasia means termination of life with the help of a doctor i.e. the termination of life with the help of a doctor at the express request of the patient and the consent must be voluntary, explicit and carefully considered and it must have been made repeatedly. Dutch Commission on Euthanasia** (1985) has defined it as:

"A deliberate termination of life on an individuals' request, by another, in medical terminology, the active and deliberate termination of life on patients' request, by a doctor."

According to the definition given by Merriam Webster^{††} for Euthanasia, "the act or practice of killing or permitting the death of hopelessly sick or injured individuals (as persons or domestic animals) in a relatively painless way for reasons of mercy".

Again according to definition given in Oxford Dictionaries^{‡‡}, Euthanasia means, "The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma".

Again according to Black's Law Dictionary^{§§} (8th edition) euthanasia means "the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy".

[‡] K.D.GAUR, TEXTBOOK ON THE INDIAN PENAL CODE, 532 (Universal Law Publishing Co. Pvt.Ltd 4th ed., 2009)

^{*} *Ibid. at 240*

^{&#}x27; Ibid

[§] Euthanasia, THEFREEDICTIONARY, http://legal-dictionary.thefreedictionary.com/Voluntary+euthanasia

^{**} *Supra*. xxiv

^{††} Euthanasia, MERRIAM- WEBSTER, http://www.merriam-webster.com/dictionary/euthanasia

^{‡‡} Euthanasia, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/definition/english/euthanasia

[§] Caesar Roy, Position Of Euthanasia In India – An Analytical Study,

 $http://webcache.googleusercontent.com/search?q=cache:RL8KzYAapVYJ:www.researchgate.net/profile/Caesar_Roy/particles.pdf.$

Thus, from the above definition we have found that Euthanasia is the practice of killing one who is sufferings from some kind of serious painful illness, so that he can get relief from his pain on the ground of mercy. Thus sometime is known as mercy killing also. Now when we talked about Thalaikoothal, the practice of killing old person who is suffering from illness or if he is bed ridden due to old age, the relatives of such person use to kill them on the ground of mercy.

Now when we talked about the of Euthanasia, it is to be mentioned here that in India as we discussed above in "Constitution Validity Of Thalaikoothal", only Passive Euthanasia is permissible in India after the Aruna Ramchandra Shanbaug versus Union of India (2011) 4 SCC 454. According to definition given by Supreme Court* on Aruna Shanbaug's case Passive Euthanasia means, the withdrawal of medical treatment with the deliberate intention to hasten a terminally ill-patient's death. Now here we can say that only doctor can withdraw the patients from ventilation. And in no other cases Euthanasia will be allowed. As it will be crime and except passive euthanasia other types of euthanasia is illegal here.

Normally the practice of Thalaikoothal falls under the category of Voluntary Euthanasia which means euthanasia is performed by taking voluntary consent from the other who wanted to die. In India as it well discussed in *Gian Kaur v. State of Punjab*, that right to die or Suicide is not allowed in India. And if any one is found to assist and tired to commit suicide in that case it will be a punishable offence under various provisions of Indian Penal Code. The following are the provisions under Indian Penal Code, 1860 which makes Thalaikoothal as punishable offence:-

1. **Section 300** defines Murder also given five Exceptions, When *Culpable Homicide is not murder*,

Exception 5*:-.

"Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent".

This Exception mainly deals with the cases where death was caused by giving or taking consent, which is known as Euthanasia or Mercy Killing. In *Dasrath Paswan versus State of Bihar§*, *AIR 1958 SC 190*, it was held that, as the deceased was major person and she gave her consent voluntary, thus the accused will not be charged for murder but he will be charged for Culpable Homicide not amounting to murder.

Thus, person practicing Thalaikoothal will be punished under Section 300, Culpable Homicide not amounting to murder.

But when the consent is not given *Voluntary* in that case it will amount to be *Murder* and will fall under Section 300.

This section will attract that person who assisted the other person to finish his life. That means, the family members who perform thalaikoothal they will be booked under this section.

- 2. **Section 306**: Abetment of $Suicide^{**}$.- "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."
- 3. **Section 309:** *Attempt To Commit Suicide*⁺⁺. "Whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both."

Right to life is a natural right and also one of the rights enshrined under **Article. 21** as discussed above in "*Constitution Validity of Thalaikoothal*". That is why no one has right to finish there life as it will be against nature.

ublication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-

_AN_ANALYTICAL_STUDY/links/0046352c2cac3a199d000000+&cd=2&hl=en&ct=clnk&gl=in&client=firefox-a * What is passive euthanasia?, NDTV(March 07, 2011 15:20 IST), http://www.ndtv.com/article/india/what-is-passive-euthanasia-89964

^{† (1996)2} SCC 648

[‡] Supra. xxiv at 446

[§] Supra. xxiv.at 462

^{**} Supra. xxiv.at 528

^{††} Supra. xxiv.at 551

Thus, the practice of Thalaikoothal is against the nature. As one cannot finish there life before time even though if they are terminally ill or if they had become old. Only when a person is kept under ventilation in that case only he can be removed from ventilation i.e. the case of Passive Euthanasia. Even the mode or way by which the Thalaikoothal is practiced is totally against the man kind.

Thus from the above discussion we found that Euthanasia is the practice of killing one who is sufferings from some kind of serious painful illness, so that he can get relief from his pain on the ground of mercy. And Thalaikoothal is a practice of killing one's own aged parents when they become burden for there children.

A new pain cannot be given for getting relief from an existing pain

Suggestion

Even though Government of India has made so many provisions for the safeguard of the life of the Old aged person but still it found that all this provisions were not found to effective as most of the people from the Village they were not aware of this facilities because of the illiteracy and some become the victim of the corruption. In that case formulation of new policy will not be not be that much effective for the poor aged people.

Here, the only help which the Government can do for the poor aged people is by promoting the NGO. So that they can spread the all Government policy which has been formulate especially for the aged person like pension policy scheme for the people above 60 years and also about the Old age home.

Even in all villages of Tamil Nadu, where the practice of Thalaikoothal is prevalent, special team should be formed to check every door to door about the condition of aged person and the treatment given by there family members. And in case of any support assistance should be provided to them what ever is required to protect there life.

Even special old age home should be formed in such areas to protect the life of the old persons whose children fail or unable to maintain. So, that they can send there parents in such shelters home without killing them.

In case of death of any aged person in such areas should be reported first to the nearest Police Station and the body of the person should not be cremated without doing the Postmortem.

And if anybody found cremated the body of there parents without doing the postmortem in that case such person should be punished accordingly under section 201* of Indian Penal Code which states that "Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

Awareness of the Governmental policies in the poverty region areas is the only solution to prevent the death of the aged people of the Tamil Nadu.

Conclusion

Right to life is a constitutional right everywhere. But when we talk about custom or culture or tradition, then from above discussion we have found that no such custom or culture or tradition will be allowed to kill other person, causing unnatural death. Even the law which has been made by

^{*} http://indiankanoon.org/doc/386021/

the Government to protect the Senior Citizen of India is not seemed to be sufficient to protect the life and health. Mostly people from poor society they don't even know about their rights as well as about the Governmental Polices made for the benefit of the senior citizen. In this regard NGO can play a vital role to spread awareness among them to know about their rights.

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