

# **Sanctity of Human Life: Glimpses of Ethical and Jurisprudential Aspects**

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**ABSTRACT :** *Law and Ethics are very much interrelated. The legal and ethical impacts of various social issues will be conflicting in most cases. Thus law should be partly ethical and moral. Jurisprudence always had considered this aspect. Hence the article only intends to highlight certain links between law and ethics identified by ancient jurisprudential theorists. The analysis will help to realize the appropriateness of various theories in jurisprudence in explaining the link between law and ethics. In turn this will be useful in discussing many novel socio-legal issues which are popularly called as first impression cases.*

**Keywords –** *Ethics, Jurisprudence, , Natural law, Religion, Sanctity of life*

## **I. INTRODUCTION**

Human beings are called as the most precious beings on the earth and his reason dictates the law for this universe. This privileged position of every human being gives him special rights over the universe. The introduction of science and technology made things more complicated as it made serious threat to the traditional human values set forth in our society. The need for protecting human life and dignity is well recognized by the international community. Now in many ways man had stepped into the shoes of god by creating lives of his desire. These scientific improvements remarked the reconsideration of sanctity of human life and related values. The debate over human dignity will get more heated as the conflict between science and human rights come out as a need of society. The sciences like *in vitro* fertilization, embryonic stem cell research, cloning and many other modern therapeutic measures have caused many ethical and religious problems. Thus human life and its value are to be really regarded before making it as a subject of any experimentation.

Sanctity of life and how far it is to be protected can never be a domestic legal doctrine as the value of human life is a universal constant. So here the inquiry is how far sanctity of life will become a universal norm and to what extent it is to be protected. It is true that sanctity cannot be an unexpected concern when science interacts with law. As the natural lawyers argue at any time the human reason will interfere on scientific innovations in the name of sanctity and faith. It is observed that:

Faith and sanctity are indeed not very frequent but yet they are not miracles, but brought to pass by education, discipline, correction and other natural ways by which God worketh them in his elect at such times as he thinketh fit.<sup>1</sup>

The above observation clearly explains the role of divine reason that the nature infuses into human beings. But the present legal system is having much confusion over the doctrine of sanctity of life. It is argued that the doctrine will be disregarded by the world community within few years.<sup>2</sup> The increasing demand for quality treatment and solutions for many diseases will slowly pull down the ethical protest against scientific interference over human life. Despite these demands the legal philosophers should give due regard to the issues affecting human life and its dignity. Here the analysis is to find out the philosophical and ethical reasoning on which the legal doctrine of sanctity of life is placed.

## **II. SANCTITY OF LIFE: A LEGAL DOCTRINE**

The legal approval of special dignity for human life was there in the long past itself. The biblical verses have been always identified as the fountain of every rights identified under the sun. God created human beings with most valuable features like reasoning power. These unique features made human being prominent among all the creations.<sup>3</sup> In the western side of the world the concept of sanctity of human life is more highlighted while the easterners stood generally for the concept of sanctity of every life. Anyhow there is a high regard given for the sanctity of life throughout the world. Apart from the reasoning ability, the Catholic Church also place man as the image of God and induces more sanctity to human life than other living creatures.<sup>4</sup> The western religious beliefs had made sanctity of life a priority doctrine in the making of any law.

Advocates of the doctrine argues this doctrine if departed with will cause less value to some lives and make them not worth living.<sup>5</sup> The lives around us have equal value and should be equally protected and the

Catholic Church cautions any deviation from the rule will break the God's rule of treating all lives alike. Despite of these religious ethics, the doctrine is well supported by the non religious groups as they found some formula in it for attaining equal value for all human life.<sup>6</sup> Thus the doctrine is justified by non religious persons in the name that it satisfies the concept of equality. The eastern religions also value the life with great respect but the difference is that it cares for every life. Hinduism and Buddhism can be cited as examples for such religions. It is clearly narrated by *Manu* that all the life had been made from the same divine source<sup>7</sup> and Hindus still follow the belief of imaging the presence of God in one's self. The essence of God in all creations adduced equal sanctity all lives. But it is true that to some extent the Hindu mythology also place human being as a superior creature<sup>8</sup> Inviolability of life is identified as the cornerstone of Buddhist ethics.<sup>9</sup> The Buddhist philosophers stood strongly for the case of ahimsa and even opposed the practice of animal sacrifice which was prevailing in India. Jainism practiced the rule of *ahimsa* to greater extent that they even prohibited the killing of small insects<sup>10</sup>. These religions clearly maintain that the doctrine of sanctity of life was universally identified and was the rule of ancient legal system.

The Islamic religious view also seems to be much favorable to the doctrine of sanctity of life at least in the case of human beings. Here the Islamic view comprehends much with that of the Catholic Church as both converge at anthropocentrism. On female infanticide, Islam has high opposition and remarks that no one can take the life of a human being as it is declared to be sacred.<sup>11</sup> Here it the impression that the sanctity of human life is well recognized under the Islamic law.

### **III. LEGAL THEORIES ON SANCTITY OF LIFE**

The idea of sanctity of life given by different religious ethics makes it only as a tool to attain social equality. There is no other explanation given to the concept by any religion. The divinity in human life is reasoned as the rule for protecting life. But the doctrine of sanctity of life has observed by legal philosophers in many ways and those discussions will give us a picture about the practical application of the rule in any society. From natural law jurisprudence to the modern legal theories the value of life is being regarded as a norm in positive and negative means. The image of God in all living beings and that life has the intrinsic value of God is no more the legal justification for the doctrine. The value of human life is interchangeably addressed by many words like "equality of life", "purity of life" and so on. But the word sanctity has its own quality to make the right more serious.<sup>12</sup> By the evolution of human rights jurisprudence, the concept became more attached to the part of human dignity than of equality. Here we can make an analysis of the doctrine from a jurisprudential angle. The application of the doctrine to various social issues will help much to understand its relevance. For instance the doctrine has made high debate in relation to abortion, euthanasia, human experimentation etc. Protagonists of the doctrine will even remark it as a cosmic shame to intentionally extinguish a human life at any stage.<sup>13</sup> These can be read from the criticisms and debates rose in response to death penalty.

While dealing with jurisprudence, we have to start with natural law and that too with the Greek tradition. Nietzsche rightly commended that when we speak of the Greek unwittingly speak of today and yesterday. And the history of human culture can be read much from this. The divine value was equally found in all human lives by the Greek theologians but the Sophists added the concept of might is right to that.<sup>14</sup> Plato also regarded classification of people on the basis of their intrinsic value and also defined law as something that is advantageous to the stronger.<sup>15</sup> For Plato there were a natural inequality for man and every man possess different stations for their work. In Rome and Athens citizens and ordinary persons were distinguished as Plato classified as people with gold, silver, iron etc. This gives us an impression that the ancient natural law failed to constitute to coin a collective dignity to human community as such.<sup>16</sup> The concept of sanctity of life as we dealt above was either not known or battered in those times of natural law. If there was any unique rule for sanctity of life, there cannot be two kinds of citizens or philosopher kings in the society. The Plato's classification can be equated much with that of *Manu's* in India.

By the introduction of Scholasticism into the natural law jurisprudence, the concept of divinity of life in all was also emerged. The scholastic school considered all man as the part of same spiritual humanity<sup>17</sup>. The views of St. Thomas Aquinas on the existing natural law theory with Christian exposure accorded a universal sanctity for human life. Thomist version of natural law recognized man made laws only to extend where it goes in tune with the divine reason. The declaration of right to life, liberty and pursuit of happiness by the Americans as rights endowed by the nature in 1776 was observed as the spirit of Thomist version.<sup>18</sup> Here the fact should be recognized that the natural law jurisprudence had add the real value of divinity to human life which seems to be absent at the old Roman practices. The values propounded by the Thomist school in 13<sup>th</sup> century can even be traced from the modern catholic approaches towards science and technology. The godly element in its entirety was not recognized for a long period following the innovations made by St. Thomas Aquinas. This resulted in the secularization of natural law by new exponents.

A new innings of natural law with a secular version was started by Hugo Grotius and Puffendorf. They declared that the natural law will remain the same even without the presence of any holy God. According to them reason

or the rational habit of every human being make them more content<sup>19</sup>. Simultaneously Thomas Hobbes also disregards the scholastic version of natural law and disbelieved the supernatural qualities in human beings. On other hand we can observe that Hobbes stressing on the human instinct for just and humane treatment on making a social contract. Here the man's demands for just treatment must be read as a part of identifying sanctity in his life. Grotius identify self preservation and need for society as two great human aspirations and for that one must use his rational abilities and without that one will become less human. The element of rational ability in every human makes him more sacred than he being the creation of God. To Grotius there are many things in the nature that a man can dictate even without a God on his part. Grotius said:<sup>20</sup>

Even if God did not exist, natural law would have the same content; and just as God cannot cause that two times two shall not be four, so he cannot cause the intrinsically evil to be not evil.

Epicureans had already made such a categorization of human reason out of the divine doctrine. Epicureans had sowed the seeds of pleasure theory in our legal history from where the utilitarianism had its birth. Epicurus attacked the Aristotelian concept of social survival and to him man is more individualistic.<sup>21</sup> According to them the order of the society is not one which man conforms but he creates. Here too the value of human life has been recognized beyond the divinity factor.<sup>22</sup> The power of reasoning the right from nature and thereby creating the moral values of the society, either by the help of God or by pure human intellect made the life of every human creature more sacred under the sun. This sanctity is still respected by many jurisprudential schools.

The natural law thesis of human dignity was severely attacked for the first time by David Hume. The views of legal theories propounded hereafter to a greater extent negated the rule of divinity and reason. Whether the removal of reason or divinity cause any harm to the sacredness of human life? This implicates the need for more analysis of jurisprudential theories. Hume totally disregarded the role of nature in deciding the rights and wrongs. According to him it was the sentiment of a human being that decides things. Hume's philosophy articulate this with the example of changes happened in a man's reasoning by education, socialization etc. The only concern of nature of things is the standard of judgment of a person. He observed:<sup>23</sup>

... that reason and sentiment concur in almost all moral determinations and conclusions. The final sentence, it is probable, which pronounces characters and actions amiable or odious, praise-worthy or blameable; that which stamps on them the mark of honour or infamy, approbation or censure; that which renders morality an active principle, and constitutes virtue our happiness, and vice our misery: it is probable, I say, that this final sentence depends on some internal sense or feeling, which nature has made universal in the whole species. For what else can have an influence of this nature?

The above quote reflects the role played by nature in finding the right and wrongs in the society. The influences of human sentiments are given more prominence in deciding the virtues of any society. Opposing the divine element of natural law, Hume even justified the human act of committing suicide. From the views of Hume on suicide, we can infer that there is nothing called sanctity of life. On suicide Hume observed that:<sup>24</sup>

For my part I find that I owe my birth to a long chain of causes, of which many depended upon voluntary actions of men. *But providence guided all these causes, and nothing happens in the universe without its consent and co-operation (emphasis in original)*. If so, then neither does my death, however voluntary, happen without its consent; and whenever pain or sorrow so far overcome my patience, as to make me tired of life, I may conclude that I am recalled from my station in the clearest and most express terms.

From this impression we can again collect the Hume's approach towards the human sentiments. Here the part that we have to consider is that whether this approach by Hume negates the sanctity of human life which was highly considered by scholastic school of thought. By a close reading of the *Essay on Suicide* by this early utilitarian, it will appear to have the same impulse towards the sanctity of human life which natural law had.<sup>25</sup> Thus the Hume's approach on the human life emphasizes the perfection of human being among all other creations.

Moving on to John Locke, he also agrees with the point that human life becomes more valuable as it possess the capacity of understanding. According to him this capacity keeps human beings above the rest of other beings.<sup>26</sup> The emphasis on right reason is more evident in the words of Locke itself. He commented the right reason as a definite principle of action from which all virtues springs out.<sup>27</sup> The scheme of natural law principle designed by Locke is different as he says that the moral goods are neither ascribed in every life nor traditionally give away with. According to his view reason and sense perception make everyone capacitated to this respect.<sup>28</sup> Locke hints about the human supremacy and also justifies punishing the wrongdoers. He observes:<sup>29</sup>

“... by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring may bring such evil on anyone.”

He admits to some extent that the earth and all inferior creatures are common to all men but man alike the other posses a property in his own person. Locke adduces the ownership to man for all the property that he has made with his labour.<sup>30</sup>

Jurisprudential analysis also clearly puts some extra value for human lives in the entire universe. Now the rest to be considered is the impact of different versions of the concept of sanctity of life. Sanctity of life is compared with the concept of quality of life. Quality of life is considered as more complicated legal concept as it can be extended to any extreme and sanctity concept will think only about the presence of life in a person.<sup>31</sup> This discussion was put more efficiently by Richard McCormick, where he argues that the quality of life which one argues for will not always creates the similar standards.<sup>32</sup> Even though the sanctity of life is being heatedly debated in our times, the ancient Roman Catholic texts do not referred it in any manner.<sup>33</sup> The equality of life and quality of life is something different in the words of McCormick. The condition of life factor is to be regarded before dealing with the sanctity of life.<sup>34</sup> The sanctity in life can be argued on the basis of *bonum utile and bonum honestum* principles. One side it is argued that the life can possess sanctity as long as it remains as a useful good and on contrary life has a good in itself.<sup>35</sup> The quality of life concept runs in favour of the first rule of 'useful good'. As far as there is no inherent value for the life in a person then the sanctity of life also comes to an end. This new concept of sanctity of life can be equated with the philosophical discussion of concept of 'man' in the olden period. In addition to the sanctity concept, a little bit of human dignity is also to be considered. Dignity also demands the human living environment to be of more values. It is recognized that the human reading of the nature is an anthropocentric one and in which human being himself is an object of such approach<sup>36</sup>. Man thinks the other can be used as a tool for his research and experiments. It is claimed that the dignity of human being rests in his own nature and the reasoning power of every person is identified as the factor that gives him that dignity.<sup>37</sup> The right to life of a person is also well connected to the concept of dignity. This principle is being recognized internationally.<sup>38</sup> The right to life under Art.21 of the Indian constitution also covers right to dignity. Considering right to dignity as a part of Art.21, court interpreted the life under the said Article as a broader right.<sup>39</sup> Moreover Krishna Iyer, J. opined that.<sup>40</sup>

*... necessary conditions which must be fulfilled if everyone in the society is to be assured a life of basic human dignity and complete self-fulfillment which is the objective and goal of human rights. ... I do not want any people just to survive. I want them to live a life of human dignity and for that they must have the basic necessities of life including food and health. This right is not merely lexical and legal, but expands as we conceptualize the dignity and divinity of the human personality.*

Thus from the constitution also, it is evident that right to life talks about a dignified living in the society.

#### IV. CONCLUSION

Either from the side of philosophical theory of human life or it be the new version of human right jurisprudence, human life have certain sanctity that is to be preserved as a supreme rule of human universe. Interferences over human life is to be made with due regard to the concept of sanctity of life.

#### REFERENCES

- 
- [1]. <sup>1</sup> Thomas Hobbes, *Leviathan*, William Collins Sons & Co. Ltd., London, 1972 p.287
- a. <sup>2</sup> Peter Singer, "The Sanctity of Life", *Foreign Policy*, September/October 2005, accessed through <http://www.utilitarian.net/singer/by/200509--.htm>, on 13<sup>th</sup> June 2011.
- [2]. <sup>3</sup> Thomas Woods, *Dictionary of Christian Ethics*, Westminster Press, Philadelphia, 1967, pp. 195-96.
- [3]. <sup>4</sup> Joseph Boyle, "Sanctity of Life and Authorization to Kill: Tensions and Developments in the Catholic Ethics of Killing", *2003 University of St. Thomas Law Journal* vol. p. 217, see
- a. <http://www.stthomas.edu/law/programs/journal/Volume1num1/Sanctity%20of%20Life%20and%20Authorization..Joseph%20Boyle.pdf> accessed on 13<sup>th</sup> June 2011
- [5]. <sup>5</sup> Jonathan Herring, *Medical Law and Ethics*, (3<sup>rd</sup> Ed.), Oxford University Press, New York, 2010, p.504.
- [6]. <sup>6</sup> *Id.*, at p.505
- a. <sup>7</sup> Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of Manava- Dharmasastra*, Oxford University Press, New Delhi, 2009, pp.86-9.
- [7]. <sup>8</sup> *ibid*
- [8]. <sup>9</sup> Damien Keown, *Buddhism: A Brief Insight*, Sterling Publishing Co. Inc., New York, 2009, p. 153
- [9]. <sup>10</sup> *ibid*
- [10]. <sup>11</sup> Munawar Ahmad Anees, "Islamic Values and Western Science: A Case Study of Reproductive Biology", in Ziauddin Sardar (ed.), *The Touch of Midas: Science Values and Environment in Islam and the West*, The Other India Press, Goa, p. 101.
- [11]. <sup>12</sup> James F. Keenan, S.J., "The Concept of Sanctity of Life and Its Use in Contemporary Bioethical Discussion" in Kurt Bayertz (Ed.), *Sanctity of Life and Human Dignity*", Kluwer Academic Publishers, Dordrecht, The Netherlands, 1996 p. 3
- [12]. Knopf, New York, 1993 p.13 as cited in Eric Rakowski, "The Sanctity of Life", 103 Yale L.J. (1994) 2049,2050
- [13]. <sup>14</sup> Edgar Bodenheimer, *Jurisprudence: The Philosophy and Methods of Law*, Universal Law Publication Co. Pvt. Ltd., Delhi, (2006 Reprint), p. 4.
- [14]. <sup>15</sup> *Id.*, at p.6.
- [15]. <sup>16</sup> See the discussion in Costas Douzinas, *The Human Rights and Empire: The Political Philosophy of Cosmopolitanism*, Routledge Cavendish, Abingdon, U.K., 2007, p. 50-1
- [16]. <sup>17</sup> *Id.* at p. 52

- [17].<sup>18</sup> J. W. Harris, *Legal Philosophies*, Butterworths, London, 1980, p.10.
- [18].<sup>19</sup> *id* at p.11.
- [19].<sup>20</sup> *Ibid*, See also the discussion in <http://plato.stanford.edu/entries/grotius/#NatLaw>, as visited on 16-03- 2011.
- [20].<sup>21</sup> Fritz Berolzheimer, *The World's Legal Philosophies*, Augustus M. Kelley Publishers, New York, 1968, p.70.
- [21].<sup>22</sup> J.B. Schneewind, *Moral Philosophy from Montaigne to Kant*, Cambridge University Press, Cambridge, 2003, p.25.
- a.<sup>23</sup> David Hume, *An Enquiry Concerning the Principles of Morals*, (1777 Edition), as cited in J.B. Schneewind, *Moral Philosophy from Montaigne to Kant*, Cambridge University Press, Cambridge, 2003, p.549.
- b.<sup>24</sup> David Hume, "Essays on Suicide and the Immorality of the Soul", (1783 Edition), p.8 [www.anselm.edu/homepage/dbanach/suicide.htm](http://www.anselm.edu/homepage/dbanach/suicide.htm), as accessed on 12<sup>th</sup> June 2011.
- [22].<sup>25</sup> *Ibid*. "... no man ever threw away life, while it was worth keeping"
- a.<sup>26</sup> John Locke, *An Essay Concerning Human Understanding*, p.1, accessed through <http://ebooks.adelaide.edu.au/l/locke/john/181u/B1.html>
- [23].<sup>27</sup> Mark Goldie (Edi.), *Locke Political Essays*, Cambridge University Press, Cambridge, 2006, p.82.
- [24].<sup>28</sup> *Id* p. 100
- a.<sup>29</sup> John Locke, "An Essay Concerning the True, Original, Extent and End of Civil Government", in *Social Contract*, Oxford University Press, London, 1946 p. 9.
- [25].<sup>30</sup> *Id* p. 24
- [26].<sup>31</sup> Annie Gilmore, "Sanctity of Life versus Quality of Life: The Continuing Debate", 130 Can Med Assoc J 1984, p. 180.
- [27].<sup>32</sup> Richard A. McCormick, "The Quality of Life, The Sanctity of Life", 1978 *Hastings Center Report* vol. 8 p. 31
- [28].<sup>33</sup> *Supra* n12 at p.4
- [29].<sup>34</sup> *Id* p. 7.
- [30].<sup>35</sup> *Supra* n. 32 at p. 34
- [31].<sup>36</sup> *Id*. Kurt Bayertz, "Human Dignity: Philosophical Origin and Scientific Erosion of an Idea" at p. 88
- a.<sup>37</sup> Hubert Canick, "Dignity of Man and Persona in Stoic Anthropology: Some Remarks on Cicero, *De Officiis 1*" in David Kretzmer and Eckart Klein (Edi.), *The Concept of Human Dignity in Human Rights Discourse*, Kluwer Law International, The Hague, (2002), p.24.
- b.<sup>38</sup> Jayme Benvenuto Lima Jr., "The Expanding Nature of Human Rights and the Affirmation of Their Indivisibility and Enforceability, in Berma Klein Goldewijk, Adalid Contreras Baspineiro *et. al.*(Edi), Intersentia Transnational Publishers, New York, (2002), p.49,
- [32].<sup>39</sup> *Francis Coralie Mullin v. Administrator Delhi Territory of India*, (1981) 6 S.C.C. 608.
- [33].<sup>40</sup> V. R. Krishna Iyer, *Social Justice- Sunset or Dawn*, Eastern Book Company, Lucknow, (1980), p.16.