



RIGHT TO DIE AS RIGHT TO LIVE

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1. INTRODUCTION

Euthanasia is the recent debated topic. There is a dilemma with respect to the professionals in the medical industry in euthanasia involving the Hippocratic Oath, which they have to take at the time when they start with their professional life. The oath centers to the idea that the medical practitioner will not give a deadly medicine to anyone if asked nor suggest any such counsel. Thus, it is the utmost duty of the doctor to treat the patient in all circumstances.

There are two-fold objectives in the medical profession:

1. Preservation of life
2. To provide relief from the suffering

The death related concept changed with the advancement in science and technology. Earlier death meant ceasing of respiration. Then it was replaced by the absence of heartbeat. Now death is defined as cessation of brain function.

Life support techniques in the modern world have allowed brain dead persons to be artificially kept alive by making the other organs function. The concept of “quality of life” conflicts with the “preservation of life”.

Due to the various technological development in the medical field and advancement in the socio-economic and

political areas, there has been modification in the original Hippocratic Oath. Now the duty of the doctors has changed, i.e., not to unnecessarily prolong life by artificial methods but to serve the best interest of the patient.

If the patient is not allowed to die with dignity and the inevitable death is prolonged by the doctor, then the doctor has not acted in the patient’s best interest. Prolonging life violates the promise of relieving the patient from the pain, whereas on the other hand, relief from the pain by killing violates the promise to protect and prolong life.

This brings us to the question, whether a patient who is under extreme pain should be allowed to die? Does the right to live life with dignity include right to die?

DEFINITIONS

The word “Euthanasia” is derived from the Greek word “youthanazia” which literally means to die well. Euthanasia means to end a person’s life who is suffering from a terminal disease. Terminally ill means fatally ill and also includes person in a persistent vegetative state. The other names used interchangeably for Euthanasia are “mercy killing” and “compassionate killing”. Euthanasia means painless termination of life to end physical suffering.¹ It is the process whereby human life is ended by mostly to avoid the distressing effects of an illness.²

Kinds of Euthanasia

Euthanasia can be classified into various types as:

¹ 20th Century Encyclopedia

² Andrew Grubb, Principles of Medical Law 844 (198)



- 1) Active Euthanasia
- 2) Passive Euthanasia
- 3) Voluntary Euthanasia
- 4) Involuntary Euthanasia
- 5) Pediatric Euthanasia³
- 6) Geriatric Euthanasia⁴
- 7) Battle Field Euthanasia⁵

In active euthanasia the terminally ill patient's life is ended by taking active steps, for example, giving lethal injection or high dosage of tranquilizer etc. Whereas in passive euthanasia the patient's life is ended not by taking active steps, for example, withdrawing medical support with the intention to cause death of the patient.

If the patient gives consent for termination of his life, then it is termed as "Voluntary Euthanasia" and where the patient is not in a condition to give consent for ending his life, for example, the patient living in coma or brain death, then his life can be terminated by taking the consent of some other person on his behalf, e.g., parent, spouse etc., then it is termed as "Involuntary Euthanasia".

Prior to the Supreme Court's decision in *Aruna Ramchandra Shanbaug v. Union of India*⁶, euthanasia whether active or passive, voluntary or involuntary was categorized as crime under the Indian Penal Code, 1860. The man who killed the patient was punished as a murderer and the person who consented to be killed was punished as an instigator and abettor of homicide or murder under Section

107, Indian Penal Code, 1860, read with Section 302 and Section 304 of Indian Penal Code, 1860, irrespective of the fact whether euthanasia was done or not.

1.1 ACTIVE EUTHANSIA

Active euthanasia putting an end to life for an individual, for merciful reason, using lethal substances or forces.⁷ The person dies instantaneously and painlessly.⁸

Two characteristics describing active euthanasia are:

1. Involves explicit act, to cause patient's death
2. Lethal agents are used

Active euthanasia is a crime under Section 302 (Murder) or Section 304 (Culpable Homicide) of the Indian Penal Code, 1860. In the case of *Airedale N.H.S. Trust vs Bland*⁹, Lord Keith stated that though life's sanctity is not absolute, "it forbids the taking of active measures to cut short life of a terminally ill patient."

2.2 PASSIVE EUTHANSIA

Passive euthanasia entails withholding or withdrawing of artificial life support systems or medical treatments needed for continuance of life of a patient.¹⁰ Denying food to a person in coma or PVS may also amount to passive euthanasia¹¹. In the strict sense passive euthanasia is not euthanasia. Instead passive euthanasia is:

³ Euthanasia of a child

⁴ Euthanasia of an aged person

⁵ Euthanasia on the war front of a soldier, who is badly wounded, and will die eventually

⁶ *Aruna Ramchandra Shanbaug v. Union of India* AIR 2011 SC 1290

⁷ *Aruna Ramchandra Shanbaug v. Union of India* (2011) 4 SCC 454 138 Supreme Court of India

⁸ Id at 142

⁹ *Airdale N.H.S. Trust v. Bland*, 1993 2 W.L.R. 316, 362, House of Lords

¹⁰ *Aruna Ramchandra* (2011) 4 SCC 454 138

¹¹ Id at 152



Withholding life sustaining treatment – foregoing life sustaining treatment, eg: switching off a heart-lung machine
 Withdrawing life sustaining treatment – cessation of life sustaining treatment, eg: not carrying out a life-saving surgery

Thus, death is caused by an omission and no expressed act. In Passive euthanasia, the life sustaining treatment is denied by the patient, because of many reasons like religion, side effects of the medical treatments, medical cost and fess.

2.3 ACTIVE VERSUS PASSIVE EUTHANASIA

The settled legal position is that active euthanasia is illegal unless there is a legislation which permits it. Whereas, passive euthanasia is legal even without a legislation, provided the safeguards are maintained as given in the case of *Aruna Ramchandra*¹² case. The reason behind such a distinction is that passive euthanasia has moral acceptance, whereas in the case of Passive euthanasia such moral acceptance is lacking. Acceptance is granted to the withdrawing/withholding treatment and letting the person die naturally by their disease but deliberately killing of a person by an expressed act is not acceptable. But there are some arguments that this distinction between active and passive euthanasia holds no value as withholding life-saving treatment is also a deliberate act. Thus, there is no real difference between the two types of euthanasia as both have the same result, i.e., the patient's death on the grounds of humanity. Further it is argued that active

euthanasia causes less agony for the patient and family as death is faster and causes less pain. But in most jurisdictions active euthanasia is illegal because the risk of its abuse is greater.

On the basis of this distinction an analytical question arises based on the distinction of the two types of euthanasia. Why the doctor who administers a lethal injection to the patient is guilty of murder and the doctor who discontinues life support and allows the patient to die, commits no crime. The answer lies in the “acts and omission doctrine”. An act causing harm is a legal wrong whereas an omission which causes the same harm is not wrong unless you have the duty to act.¹³

The right of denying treatment is given protection by the “Doctrine of Informed Consent”. The doctrine gives the right to the competent person to refuse medical treatment.¹⁴ A medical treatment without consent of the patient would be punishable liable and it is infringement of personal liberty and physical and bodily integrity.¹⁵

2.4 VOLUTNARY EUTHANASIA

The cognitive ability of the patient to request for euthanasia is known as voluntary euthanasia. Rationally and competently consenting to euthanasia for himself, is known as voluntary euthanasia. Causing death at the request of the person killed and includes the following cases:

- Requesting for help in dying
- Refusal of the burdensome medical treatment
- Refusal to eat

¹² *Aruna Ramchandra* (2011) 4 SCC 454 142

¹³ *Aruna Ramchandra* (2011) 4 SCC 454 144, 45

¹⁴ *Cruzan vs Director*, 497 U.S., 261, 277 (1990)

¹⁵ Common law tort of trespass, *Airdale* [1993] 2 W.L.R. 316



- Requesting for medical treatment to be stopped, or life supporting machines to be turned off

2.5 NON-VOLUNTARY EUTHANASIA

In case of non-voluntary euthanasia, the person is in an unconscionable state or due to other reasons like young age, insanity etc. unable to make a wise choice between life and death, and the decision on their behalf is taken by an appropriate and authorized person according to their living will or expressed consent.

The main difference between the voluntary and non-voluntary euthanasia is that in the former the patient's consent is available, whereas in the latter the patient is unable to give consent because of the lack of capacity to consent.¹⁶ So in this case either the parents/spouse/children/close relatives take decision on behalf of the patient. In absence of close relative, patient's next friend may take the decision. This is known as the "substituted jurisprudence" in America. But only the surrogate's opinion is not sufficient. The court will have to make sure that the patient's best interest is guarded. The question arises whether the patient's life should be artificially prolonged by using the life supporting treatments. And this should be decided by a competent medical body in charge of the patient. History shows that mostly the opinion of the doctor and next friend coincide with each other.

2.6 LIVING WILL OR ACTIVE DECLARATION

The living will is also known as the medical power of attorney. A living will is an instruction given by the person when he is conscious specifying the action to be taken in a situation when he is incapacitated to decide and also appoints a person to decide on his behalf. The living will include the direction of withdrawing the life support systems on certain events. Preparation of living will take place when the person is competent but comes into existence when he becomes incompetent and becomes incapable of deciding for himself.

It is advisable to make a living will during the initial stages of the illness as this will give the assurance that the patient has an actual idea of his medical condition and this allows the doctors to give suitable solution for the future medical situations. That is why it is named as advance directives or the active declaration.

2.7 ADVANTAGES OF LIVING WILL

- It facilitates doctors to decide the appropriate medical treatment
- It allows the patients to discuss their end life's decisions with family and doctor.
- The family members are spared from taking difficult decisions for the patient's life.
- The patient's human right of rejecting a particular medical treatment is respected.

2.8 DISADVANTAGES OF LIVING WILL

¹⁶ Aruna Ramchandra (2011) 4 SCC 454 140



- The patient may change his decision of dying but the living will may specify contrary instructions.
- It is difficult for healthy person to imagine, what he would desire when a living will take effect.
- It can be hard to translate the words of living will into medical action

In the case of *Tzadok v. Bet Ha'aleh Ltd.*,¹⁷ the court dealt with the living will's validity made months ago on the onset of the illness. The court held that patient will be dealt in the same way as mentioned in his "living will" and her life will not be prolonged by artificial medical lifesaving treatments. Treatments used in routine like pain killers, injections, medicines can be continued. Though it is not compulsory that the living will be continued in all circumstances. But the living will be having an overriding effect and more weightage will be given to it in comparison to sanctity of life and the ethical duty of the doctor to provide treatment to the patient. Thus, life will be artificially prolonged till the quality of life of the patient exists, and living wills must not be executed without due care.

2.9 MEDICAL POWER OF ATTORNEY

Medical power of attorney is a document which allows a person authorised by the patient to take decision on behalf of the patient, who is incapacitated to make or deliver such decisions.

2.10 DOCTRINE OF DOUBLE EFFECT

It is the mercy killing done indirectly, where the treatment is provided by the doctor to reduce pain and also it speeds up the dying process of the patient. This type of mercy

killing is morally acceptable, as the primary intention is not to kill.

2.11 PHYSICIAN-ASSISTED SUICIDE (PAS)

When an individual is provided with the information and guidance regarding ending of life with the intention of committing suicide, it is known as "assisted suicide". When a doctor assists or helps in killing the other person it is called as "physician-assisted suicide". PAS is a criminal offence under Section 306, Indian Penal Code, 1860. PAS is a form of active and voluntary euthanasia.

The US supreme court has given reasons why PAS is illegal:

- PAS involves ending of the patient's life by taking tangible steps. Therefore it is categorized as active euthanasia. The doctor may administer lethal drugs or injection to cause death of the patient.
- It is in the state's interest to protect the vulnerable sections of the society, like the poor, disabled and elderly from mistake, neglect and abuse.
- The court observed that patients suffering from terminal illness may opt for PAS in order to prevent their families from medical expenditure.

3. INTERNATIONAL PERSPECTIVE ON EUTHANSIA

*Aruna Ramchandra Shanbaug v. Union of India*¹⁸ discussed the Euthanasia law in various countries:

3.1 NETHERLAND

¹⁷ *Tzadok v. Bet Ha'aleh Ltd* [1992] IsrDC (2) 485

¹⁸ *Ibid* at pp. 1312, 1313



Mercy killing and physician assisted suicide is not punishable under the Termination of Life on Request and Assisted Suicide (Review Procedure) Act, 2002, provided the physician acts with due care.

The law on euthanasia was enacted after the conviction that took place in the “Postma” case in 1973 in which a physician was convicted for facilitating death of her mother on her repeated requests for euthanasia. In this “Postma” case even though the physician was convicted but a the court set a criteria that the doctor should not keep a patient alive in the case of absence of the patient’s wish.

The Act gives the Medical Review Board, the authority to vitiate and suspend the prosecution for Euthanasia of the doctor, if the following conditions are fulfilled namely:

- 1) The patient’s suffering is unbearing with no prospect of improvement
- 2) The patient’s request for euthanasia must be voluntary and persist over time. (The request cannot be granted when under the influence of other psychological illness or drugs).
- 3) The patient must be fully aware of his/her condition, prospects and options.
- 4) There must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above.
- 5) The death must be carried out in a medically, appropriate fashion by the doctor or the patient, in which case the doctor must be present.
 - 6) The patient is at least 12 years old. (Patient between 12 and 16 years of age require the consent of the parents)

It will be the doctor’s duty to report the cause of death in accordance with the Burial and Cremation Act, to the municipal coroner. The compliance of the due care criteria will be assessed by the regional review committee. On the basis of the findings the case will either be closed or brought to the attention of the public prosecutor. Euthanasia will be considered valid on the written declaration of the will of the patient and such declaration can be utilized when the person is in coma and unable to communicate his will of euthanasia. Euthanasia becomes an offence, when there is non-compliance of conditions

of law.

However, there are certain exceptions to the rule of euthanasia when it’s not considered as an offence, and the legal restrictions do not apply as they are counted as normal medical practices

It includes:

- 1) Stopping or not starting a medically useless (futile) treatment.
- 2) Stopping or not starting a treatment at the patient’s request.
- 3) Speeding up death as side-effect of treatment necessary for alleviating serious suffering.

Euthanasia of children below 12 years’ age is illegal but Dr. Edward Verhagon has developed the Groningen protocol in which the prosecutors will refrain from framing the charges.¹⁹

3.2 BELGIUM

¹⁹ Aruna Ramchandra Shanbagh v. Union of India, AIR 2011 SC 1290 at pp.1312, 1313



Euthanasia was legalized in Belgium in 2002. In certain conditions suicide can be practiced but the doctors do not possess the license to kill. For mercy killing, the patients must be in persistent physical or psychological pain arising from an accident or incurable illness. The patients who request to end their lives must be conscious and must repeat their request for Euthanasia.

The patients can get their lives ended with painkillers. The authorities will have to ensure that the poor patients do not ask for death due to lack of money for treatment. If a patient is not suffering from a terminal disease then a third medical opinion becomes essential. Every mercy killing case has to be filed at the special commission to ensure that regulations are being followed by the doctors.

3.3 SWITZERLAND

Euthanasia is illegal in Switzerland, whereas assisted suicide is permitted, which can be performed by non-physicians. The difference between the two is that in case of assisted suicide, the patient administers the lethal injection himself whereas in case of euthanasia a doctor or some other person administers it. Active euthanasia, i.e., administration of the lethal injection by the doctor or some other person is illegal.

Article 115 of the Swiss Penal Code, assisting suicide is an offence when it is done with a mal intention or with a selfish motive. There is no special requirement of a physician in assisted suicide, but they mostly have access to special drugs. The ethical

condition in the Code cautions the physicians in prescribing deadly drugs. One loophole in the euthanasian law in Switzerland is that the recipient of euthanasia need not be a citizen of Switzerland and also it might be performed by a non-physician also. Therefore, citizens of other nations, like Germany visit Switzerland to undergo Euthanasia.

3.3 UNITED KINGDOM, GERMANY, FRANCE, ITALY, AUSTRIA

In these countries, mercy killing or physician assisted death is illegal.

3.5 UNITED STATES OF AMERICA

Active euthanasia is illegal in U.S.A., whereas physician assisted death is lawful in Oregon, Washington and Montana.²⁰ The difference between euthanasia and physician assisted death is that who is administering the legal medicine for causing death of the patient.

3.6 CANADA

The physician assisted suicide is illegal in Canada under Section 241 (b) of Criminal Code of Canada. In the case of *Rodriguez v. British Columbia (Attorney General)*²¹, a woman aged 43, was diagnosed with Amyotrophic Lateral Sclerosis (ALS) requested the Supreme Court of Canada to aid her in dying. The doctors had informed her that her life expectancy was 2 to 14 months and she would lose her ability to breathe, swallow and she would not be able to move her body and so she would be confined to the bed. The Supreme Court

²⁰ Oregon Death with Dignity Act, 1997

²¹ *Rodriguez v. British Columbia (Attorney General)* (1993) 3 SCC 519



rejected her plea of euthanasia. Justice Sopinka observed:

“Sanctity of life has been understood historically as excluding freedom of choice in self-infliction of death, and certainly in the involvement of others in carrying out that choice. At the very best, no new consensus has emerged in the society opposing the right of State to regulate the involvement of others in exercising power over individuals ending their lives”

4. EUTHANASIA IN THE INDIAN CONTEXT

Society for right to die with dignity (SRDD) was founded by Minu Masani in the year 1981. The society published the document named “Ichha Maran”. The Maharashtra government introduced a bill for mercy killing in the year 1984, but it was subsequently dropped because of the lack of support.²² In the Indian methodology, many gods like Buddha, Mahaveer, Sant Vinoba Bhave ended their lives by refusing to take food. During the Vietnam war, many Buddhist monks committed suicide as a war weapon.

4.1 LAW COMMISSION REPORT

Law Commission in one of its recommendation allowed mercy killing for terminally ill people to end their lives and to be relieved from the long-term suffering. Law Commission had also recommended earlier, in its 42nd Report, 1971 to abolish

attempt to suicide as an offence under I.P.C. by deleting Section 309, Indian Penal Code, 1861.

The Law Commission of India has recommended in its 169th Report that Passive Euthanasia should be legalized and the same was not accepted by the Government. The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill 2006 was drafted by the Law Commission and the same was modified in the light of Aruna Ramchandra Case.

A bill on Active Euthanasia named “The Euthanasia (Permission and Regulation) Bill, 2007” was introduced in the Lok Sabha. The bill states that “before making euthanasia legal, sufficient checks and balances at the institutional level are necessary to ensure that system is not misused” and that the “life of the patient is taken only after due process has been adhered to and in a humane and compassionate manner in the presence of family members and elected representatives”.

According to the bill, a completely bedridden person or who cannot carry out his daily chores without assistance can file a euthanasia application either with the civil surgeon or the Chief Metropolitan Officer (CMO) of the district government hospital.²³ The application is presented before the medical board will examine the condition of the patient. A certificate recommending the person’s case for euthanasia will be issued by the board in case the board is convinced about the incurable disease of the patient. But the bill elapsed.

²² J.S. Rajawat, “Euthanasia” 2010 Cr LJ, Journal Section, p. 321.

²³ Section 3, The Euthanasia (Permission and Regulation) Bill, 2007



In the case of *Gian Kaur v. State of Punjab*²⁴, the Supreme Court declared the debate on physician assisted termination of life to be inconclusive. Every attempt, assistance or abetment to take one's life or other's life is an offence under Indian Penal Code, 1860.²⁵ Involuntary Euthanasia cases are struck down by proviso one to Section 92, Indian Penal Code, 1860 and are declared illegal.²⁶

There were various attempts made to make Euthanasia legal with reference to Article 21²⁷ of the Constitution of India, 1950. Right to life includes right to live with dignity and peacefully.

In the case of *Maneka Gandhi v. Union of India*²⁸, it was stated by the Supreme Court that: "*The term personal liberty in Article 21 is of the widest amplitude and covers a bundle of rights which go to constitute the personal liberty of man and some of them have a raised to the status of distinct fundamental rights and given additional protection under Article 19(1)*".

This interpretation enlarged the scope of Article 21, wherein many rights were included under Article 21 like clean environment²⁹, right to education³⁰, right against bonded labour³¹ etc.

4.2 ARUNA RAMACHANDRA CASE³²

Aruna Shaunbagh was an old lady who has been in a permanently on the hospital bed for 37 years after being sexually assaulted by a ward boy. Pinki Virani, the next friend of Aruna file a writ petition that force feeding should be stopped and should be allowed to die in peace. For the examination of Aruna, the Supreme Court set up a medical panel. After the receipt of the medical report, set aside the writ petition on the ground that Aruna's brain is not dead and that Pinki Virani is not the next friend of Aruna Ramchandra and hence she cannot be euthanised.

The Supreme Court held that passive euthanasia is legal and permissible in India, provided the patient consents to the withdrawal of treatment. The Hon'ble Court laid down guidelines in cases where the patient is not able to consent, then euthanasia may be allowed after complying to the following guidelines:

1. The decision to withdraw life support has to be taken by the parents, spouse, close relative, in the absence these, next friend of the patient who is incompetent.
2. Due weightage has to be given to the attending doctor's advice.
3. An application has to be filed under Article 226 before the High Court.

²⁴ *Gian Kaur v. State of Punjab* 1996 Cr LJ 1660 (SC)

²⁵ Section 299 – Culpable Homicide

Section 300 – Murder

Section 304A – Causing death by negligence

Section 306 – Abetment of suicide

Section 309 – Attempt to commit suicide

²⁶ Section 92 exempts criminal liability for acts done in good faith.

²⁷ "No person shall be deprived of his life or personal liberty except according to the procedure established by law"

²⁸ *Maneka Gandhi v. Union of India* 1978 SCR (2) 621 662

²⁹ *Subhash Kumar v. State of Bihar* (1991) 1 SCC 598 Supreme Court of India

³⁰ Article 21A

³¹ *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161 Supreme Court of India

³² *Aruna Ramachandra* (2011) 4 SCC 454 13



4. The bench will comprise of the chief justice of High Court and at least two other judges.
5. A committee will be formed consisting of three reputed doctors, preferably a neurologist, psychiatrist and a physician nominated by the High Court in consultation with the state government.
6. The committee will examine the patient and submit its report.
7. Simultaneously, the person representing the patient shall supply the copy of committee's report to the court as and when its available.
8. The court shall dispose the matter expeditiously. The court will decide in the best interest of the patient and the reasons of the decision will be properly assigned.

4.3 DOES ARTICLE 21 INCLUDE RIGHT TO DIE?

In the case of *State of Maharashtra v. Maruti Sripati Dubal*³³, it was held that right to life envisaged under Article 21 includes right to die. The Bombay High Court struck down Section 309, Indian Penal Code, 1860 being unconstitutional and violative of Article 14 and Article 21. The Court held that the desire to die is not unnatural rather just abnormal and uncommon. Also, the court listed the various circumstances under which people may end their lives including diseases, unbearable condition of life etc. But Euthanasia and suicide cannot be at the same footing. Thus, it was held that Mercy Killing is homicide, be it under any circumstances

and is an offence under the IPC unless law makes some exceptions.

In the case of *Chenna Jagadeeswar v. State of Andhra Pradesh*³⁴, it was held that that right to die is not covered under Article 21 and thus, Section 309 of the Indian Penal Code, 1860 is constitutional.

In the case of *P. Rathinam v. Union of India*³⁵, the Supreme Court declared Section 309, of the Indian Penal Code, 1860 to be unconstitutional on the basis of Article 14, but upheld the challenge on the basis of Article 21 of the Constitution of India contending that Article 21 includes the "right not to live a forced life" which means right to commit suicide.

In the case of *Gian Kaur v. State of Karntaka*³⁶, the Supreme Court overruled *Rathinam* case and declared Section 309 to be constitutional and held:

"when a man commits suicide, he has to perform certain positive over act and the genesis of those acts cannot be traced to, or be included within the protection of the right to life under Article 21. The significant aspect of sanctity of life is not to be overlooked."

The court declared that "right to life" includes right to live with dignity upto death and includes a dignified procedure of death. But dying with dignity is not the same as dying unnaturally during a person's lifetime. The withdrawal of life supporting system was held to be part of right to life with dignity and is permissible, when it is certain that the person will die naturally.

³³ *State of Maharashtra v. Maruti Sripati Dubal* 1987 Cr LJ 549 Bombay High Court

³⁴ *Chenna Jagadeeswar v. State of Andhra Pradesh* 1988 Cr LJ 549 Andhra Pradesh High Court

³⁵ *P. Rathinam v. Union of India* AIR 1994 SC 1884 Supreme Court of India

³⁶ *Gian Kaur v. State of Karnataka* 1996 (3) SCR 697 Supreme Court of India



In the year 2004, there was a case before the Andhra Pradesh High Court where a patient named K.Venkatesh was suffering from muscular dystrophy sought a petition to be permitted euthanasia and that he could donate his organs to others. But the court rejected his petition and he died in the same year due to the disease.

5. CONCLUSION

A dilemma arises with respect to the right to die debate. An individual has complete autonomy over his body. But the question arises whether the person should be allowed to use this autonomy to cause prejudice to the interest of his family or the society at large? There is absolutely no surety that the right of self-determination will be utilized in the best interest of the individual. Various factors are taken into account by the individual like the fear related to the procedure, expenditure involved, burden on the family. E.g.:

- Life-saving treatment can be a costly affair. Thus, to avoid this financial burden on the family, the person may deny the treatment and thus opt for passive euthanasia.
- The cancer patient may be needing chemotherapy but may be fearing the side-effects of the treatment and may request for the withdrawal of the treatment.

In case of voluntary euthanasia, the stakeholder's interest would be the compelling treatment of the patients. But that would infringe the person's right over his body and thus amount to battery. The State has a compelling interest to safeguard the individual's right to privacy and self-

determination affecting the rights of third party in the society. There is lack of the state's compelling interest when an individual undergoes euthanasia or dies. Therefore, the state intervention in cases of euthanasia is unwanted. But the state shall take into account several considerations like abuse by the physician, the sanctity of the medical profession, the cost of keeping the terminally ill person alive. Thus, the state needs to balance the individual interest and the societal interest.

The courts all over the world have struggled to get the right balance between the individual and the societal interest. The Supreme Court, in the case of *Aruna Ramachandra*³⁷ has held that voluntary passive euthanasia is legal, whereas the non-voluntary euthanasia requires proper guidelines laid down by the hon'ble court. From the angle of human rights, the voluntary denial of treatment is human right. But this decision of withdrawal of treatment is not always rational. Thus, the need of law arises which ensures that the decision to deny treatment is taken in the best interest of the patient. Certain provisions can be made like the counseling sessions to be conducted mandatorily.

For the involuntary euthanasia, there are certain guidelines laid down by the Supreme Court. There are various drawbacks for the Supreme Court guidelines.

- It is a time-consuming process as it involves a judicial
- The procedure may be acceptable if there is vegetative state of the patient. But in case of a minor or an insane

³⁷ Aruna Ramachandra (2011) 4 SCC 454



person, the delay van be extremely agonizing.

- The procedure lacks an expressed “cooling off” period
- The High Court cannot be expected to permanently supervise passive euthanasia in its jurisdiction.

right can be abused. Abuse of right is always a crime. The legislators must provide safeguards to prevent or reduce abuse. The object of a legislation is to prevent the abuse of rights and the object of law, i.e., furtherance of the best interest of the patient at any cost.

These guidelines are only a stop-gap arrangement. There is a need for the legislature to pass a law with this regard. There must exist an independent quasi-judicial body consisting of retired high court, social workers and doctors. The body must function. The court’s function and must decide for the passive euthanasia application. Along with this committee there is a need for standing expert panel of doctors so that applications can be disposed without delay. The standing committee can consist of: a neurologist, a psychiatrist and a specialist in the field concerning the patient. The committee’s function would be to assess the patient and to submit a record whether he is a fit case for euthanasia.

For active euthanasia, there is no human right involvement for extinguishing the life by intervention done actively. Active euthanasia can be permitted only if a positive law is passed related to active euthanasia. Looking at the socio-economic scenario in India, it is better not to legalise active euthanasia in India. Whereas a legislation related to passive euthanasia must be passed in India. Its working should be observed effectively for a few years and then a legislation on PAS may be considered.

People who oppose legalizing of euthanasia have the views that there is a possibility of abuse of right. But this should not lead to an absolute prohibition. Criminalizing an act cannot defend it against the abuse. Every