



LEGAL ASPECTS OF EUTHANASIA

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INTRODUCTION

EUTHANASIA : A merciful act to end one's life deliberately but is not a murder, it is an act of killing a person who is in a persistent vegetative state (P.V.S) and has no hope of recovery. Euthanasia is derived from Greek words 'Eu' & 'Thanatos' which means 'good death'. There are two types of euthanasia, active & passive euthanasia. Active euthanasia necessitates the use of lethal substances like a Sodium Pentothal & Botulinum, by injecting such substances in human body, a person goes in deep sleep in just few seconds and dies in sleep, it is the fastest and painless means of death, on the other hand passive euthanasia necessitates the withdrawing or withholding of treatment i.e. withdrawing means switching the machine off which is keeping a person alive, so that the person dies because of its disease while withholding of treatment means not providing of medicines & if there is a need of surgery that will extend the life for short time will not be done.

Active euthanasia is illegal in India under section 302 and 304, IPC and physician assisted suicide is a crime under section 306, IPC which is abetment to suicide. In other countries active euthanasia is illegal unless their legislation permitting it, only few countries in the world has permitted active euthanasia. It is considered as the crime because actively killing a person is morally unsatisfying. Sometimes the need to

differentiate the physician assisted suicide and euthanasia occurs, as both the terms seem to be inter-relating and cause misunderstanding. In euthanasia the third party and physician regulate the process while in assisted suicide patient itself does it, on the advice of doctor. Passive euthanasia is legal in India and in many countries even without legislation. On the traditional basis passive euthanasia is less bad than active euthanasia. Passive euthanasia is further detailed in two types i.e. voluntary euthanasia & non-voluntary euthanasia. Voluntary euthanasia is consent from the patient itself to die. The occurrence of non-voluntary euthanasia is when the patient is unconscious (in coma), so the close relatives or friend gives consent on behalf of the terminally ill person. Non-voluntary euthanasia also occurs when the terminally ill patient is a child & is unable to take its own decision.

LEGALISATION OF EUTHANASIA

Ending one's life is a kosher violation of their fundamental right 'Right to life' and the topic of concern. Killing a person is murder but if it is in the form of euthanasia it is bona fide, the concept of mercy killing is too complicated. The Supreme Court has given its guidelines on the validation of euthanasia in India after the case Aruna Shanbaug vs. Union of India. A writ petition was filed by the patient's friend Pinki Virani of Mumbai, claiming to be a next friend.¹ It was a sodomitical attack on Aruna Ramchandra Shanbaug who was a nurse in a hospital in Mumbai, by a sweeper in the hospital but when he found that she was menstruating he left her strangulated with a dog chain and escaped. On the next day when she was found

¹. Aruna Shanbaug v. Union of India, AIR 2011 CRI. L.J. (SUPP) 301 (2011).



by the hospital staff, she was alive but due to strangulation, supply of the oxygen to the brain stopped and the brain got damaged. After that incident Aruna Shanbaug got terminally ill & was not even aware of herself, she just lied on the same bed for 37 years. Then her friend Pinki Virani appealed to the court that she is not living a dignified life and is like a dead animal who is just breathing and eating mashed food, the end of her life would be better for her but the petition was dismissed by the apex court. The grounds to dismiss the petition were that under Article 32 of the Constitution of India the petitioner has to prove the violation of the fundamental right and it has been held by the Constitution Bench of this court in *Gian Kaur vs. State of Punjab* that the right to life does not include right to die.² It is also clarified by 196th Law Commission of India that we are not dealing with “euthanasia” or “assisted suicide” which are unmistakably crime, the concern of the commission was different i.e. “withholding life-support measures to patients terminally ill and universally in all countries, such withdrawal is treated as lawful.”³ The applicability of legal concepts to “withholding or withdrawing of life support” is the scope of concern and in which circumstances the medical professional could take such decisions and what will be the ‘best interest’ of a patient.

The chairman of the 196th law commission observed and then addressed to the hon’ble ministers that, a century ago when there were no apparatus to keep a person alive, people used to die due to natural death and now by keeping them alive in such state is not bona fide for them, may be they

are suffering from a pain, postponing their death is also not a ‘best interest’ for them. The Law Commission in its report did an exhaustive study, recorded the bad and good aspects of the issue and concluded it as a legal framework. Supreme Court after five years of Aruna’s case rendered a landmark judgement by approving passive euthanasia subject to unquestionable safeguards and conditions anticipated in the judgement. The Supreme Court as well as the Commission considered it to be no crime and found no objection from legal or constitutional view.⁴

LEGAL PROCEDURE TO PERFORM EUTHANASIA IN INDIA

In 16th report of Law Commission of India, passive euthanasia has been advocated in the case of both competent patients and incompetent patients, who are terminally ill. In the case of incompetent patients, the attending medical practitioner should obtain the opinion of three medical experts whose names are on the approved panel and thereafter he shall inform the patient (if conscious) and other close relatives. Then he shall wait for 15 days before withholding or withdrawing medical treatment including discontinuance of life supporting systems.⁵ This 15 days are for contemplation for the patient (if conscious) or relatives or guardian to file a petition to the High Court seeking final declaration that the act or omission proposed by the doctor/medical practitioner in respect of giving euthanasia is lawful or unlawful. The final decision of the High Court is binding on all concerned and will play an effective role to protect doctors and hospitals from any civil or criminal liability.

². *Aruna Shanbaug v. Union of India*, AIR 2011 CRI LJ (SUPP) 301 (2011).

³. *Passive Euthanasia - A Relook*, Law Commission of India 241 Report, (14 May 2020, 16:25:30).

⁴. *Id.*

⁵. *Passive Euthanasia - A Relook*, Law Commission of India 241 Report, (14 May 2020, 16:25:30).



The approval for non-voluntary euthanasia was given by Supreme Court in the case of Aruna Shanbaug and laid down safeguards in the judgement. In Aruna's case it was ruled by the Supreme Court that in the case of incompetent patient specific permission must be taken from High Court. Anybody either relatives, close friends or hospital staff can seek permission from the High Court. After filing a petition, a panel of three doctors (one should be a neurologist, one psychiatrist and a physician) selected by court will examine the patient and then report to the court and on the basis of that report the court will grant its decision, either to euthanize the patient or not. The procedure laid down by the Supreme Court in Aruna Shanbaug's case to take High Court's approval as condition precedent for life supporting measures is safer according to the present Law Commission. The High Court's permission is necessary and desirable as the withholding of life supporting measures means violating the right to life and there is possibility that greedy relations who are interested in the wealth of the patient may with the help of doctors hasten the process of death. In such cases the High Court plays a big role and its decision is binding on everyone.

Yet there is no law in India to perform euthanasia, only the guidelines and safeguards which were given by Supreme Court in Aruna's case are the ways to perform euthanasia.

It was held by the Supreme Court that the same procedure will be done to euthanize a terminally ill person, until the legislation will make law on this. Patients below the age of

16 are required the consent of their parents to euthanize them.

LEGAL ASPECTS OF EUTHANASIA IN OTHER COUNTRIES

NETHERLANDS

In Netherlands euthanasia and physician assisted suicide are not punishable offences if performed within decided criteria of due care. Criteria concerns persistent vegetative state, request of the patient and a report of the attending physician to show to a review committee. The "Postma case" 1973 of Netherlands was debated as the concern of euthanasia, in which a physician facilitated its mother death following repeated explicit requests for euthanasia. While the physician was convicted, the court judgement sets out a criterion when a doctor would not be required to keep a patient alive contrary to his will. This set of criteria was formalized in the course of a number of court cases during the 1980s.⁶

SWITZERLAND

In Switzerland euthanasia is illegal while assisted suicide is legal the only difference between them is, in former the physician or some other person regulates it and in latter the person regulates the lethal dose itself. Assisting suicide is crime according to Article 115 of Swiss Penal Code, if the motive is selfish. It condones assisting suicide for altruistic reasons.⁷

There is uniqueness in Swiss law, as the recipient of euthanasia need not be a Swiss national and there is no need of involvement of physician. People from other countries,

⁶. Aruna Shanbaug v. Union of India, AIR 2011 CRI. L.J. (SUPP) 301 (2011).

⁷. Samia A Hurst & Alex Mauron, Assisted suicide & euthanasia in Switzerland: allowing a role for non-

physicians, (18 May 2020 15:25:30) <https://www.ncbi.nlm.nih.gov/>.



especially Germans go to Switzerland to undergo euthanasia.

BELGIUM

Belgium is the second country to legalize euthanasia in Europe after Netherlands in 2002. Belgian law has set out some conditions to perform euthanasia, which can be practiced without giving doctors a license to kill. The patient who is desiring to be euthanized should be conscious and have a 'constant and unbearable physical and psychological pain' due to any accident or illness. In Belgian law, minors cannot seek permission to be euthanized. Each case of mercy killing must be filed in the special commission, to keep an eye on the doctors whether they are working under law or not.

UNITED STATES OF AMERICA

In all the states of America active euthanasia is illegal, but in the states of Oregon, Washington, Montana, assisted suicide is illegal but there are some conditions for how and when to give a person death.

OREGON

Oregon was the first state of America to legalize physician assisted suicide. In 1997, the Oregon legislature enacted the Death with Dignity Act. In this act there were criteria for an adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.⁸

After such a request an appointed physician (termed as 'consulting physician' in Death with Dignity Act, 1997) will check upon the patient and the reports of the medical history of the patient. After 15 days of request (either oral or written) and checking upon the patient assisted suicide can be performed.

WASHINGTON

The Death with Dignity Act, 2008 of Washington legalizes the physician assisted suicide in Washington.

MONTANA

In Montana, the rules for the physician assisted suicide are bit different, instead of legislative, the State judiciary has jurisdiction on such cases.

In no other state of USA euthanasia and physician assisted suicide is permitted.

CANADA

Earlier the section 241(b) of Canada Criminal Code declares physician assisted suicide illegal. The Canadian Supreme Court in its leading decision *Sue Rodriguez v. British Columbia*⁹, in which Rodriguez, a woman was diagnosed with Amyotrophic Lateral Sclerosis, due to which she is going to be bed bound soon and will lose the capability to listen, speak, eat & see. She pleaded in the Supreme Court of Canada to allow someone to aid her in ending her life. The Supreme Court rejected her plea by a 5 to 4 majority.

In 2015, the Canadian Supreme Court in *Carter v. Canada* ruled that the parts of Canadian Criminal Code need changes to satisfy the Canadian Charter of Rights &

⁸. Death with Dignity act, 1997 (Oregon, USA).

⁹. *Sue Rodriguez v. British Columbia (Attorney General)*, (1993) 3 SCR 519.



Freedom and the invalidity of the physician assisted dying would be change and to validate this concept a new law in June 2016, passed by the Federal Legislation of Canada.

On February 24, 2020, the Minister of Justice and Attorney general of Canada introduced An Act to amend the Criminal Code (medical assistance in dying) in Parliament, which proposes changes to Canada's law on medical assistance in dying.¹⁰

UNITED KINGDOMS

The Airedale case¹¹ in which a person named Anthony Bland, went to Hillsborough Ground to support the Liverpool Football Club, and there in crowd crushed against a steel fencing and injured. His ribs were crushed, and both the lungs punctured which interrupted the supply of oxygen to the brain, which caused catastrophic and irreversible damage to the brain. The patient was now in the persistent vegetative state. The doctor and parents were in belief that continuing medical treatment will not work and help to recover the patient. It was first pleaded in the Family Division of High Court and then transferred to the House of Lords, where they examined the condition of the patient and discussed the moral and ethical issues raised by this case and then decided to discontinue the medical treatment of Anthony Bland. Later in England in 2006, a bill which was allowing physician assisted suicide and euthanasia, was blocked by the House of Lords and never established as a law.

CONCLUSION

The issue of ending a life is incredibly controversial and is opposed by so many

people. It is hard to see their beloved suffering, still people keep them alive and desires for their well-being. But the situation of a terminally ill person cannot be understood by anyone, their sufferings, their pain, is what showing them a living hell, sometimes ending up their lives is 'best interest' for them. Therefore, the concept of euthanasia is introduced, just to give them a peaceful death instead of suffering. As discussed above people can use this process as greediness, so the establishment of proper law is needed badly. However, the Supreme court of India has given its guidelines for regulating euthanasia (when & how). But it is not the end, the proper legislation for the execution of euthanasia is necessarily required.

¹⁰. Government of Canada, Medical assistance in dying (26 May 2020, 22:04:56)

¹¹. Airedale NHS Trust v. Bland (1993) All ER 82.