



EUTHANASIA IN INDIA – AN ANAYLYTICAL STUDY

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ABSTRACT

Death is inevitable and whoever has taken birth has to die sooner or later. Euthanasia has been a standout amongst the most talked about moral issues in recent times. It has been debated for centuries over its ethics and legality. Euthanasia has been riddled with controversies with arguments for and against it. Mercy killing has been regarded as the only viable option when all life care interventions fall short of ensuring a better life for terminally ill patients or for patients who are in a persistent vegetative state. The fundamental right of 'right to life' guaranteed under article 21 of the Constitution is an inalienable right which cannot be taken away by anybody. However, the essence of human life is to live a dignified life and to force a person to lead an undignified life is against the personal choice. To die with dignity is a movement that has encouraged legislatures to allow people to decide how they want to die. Euthanasia is practice of terminating the life of a sick person in order to relieve them of their suffering. In circumstances, where the quality of life falls below the expected level of dignity due to illness, injury or disability, the aggrieved person has the right to die to alleviate from the pain as a result of terminal incurable illness. When a person is suffering all other things take a back seat except the autonomy of the patient as no such person can be compelled to enjoy right to life to their deterrence. The aim of this paper is to explain

the status of euthanasia and to explore the role of judiciary in its legalization in India.

Key words – euthanasia, passive euthanasia, mercy killing

INTRODUCTION

Every human being desires to live a long and healthy life. However, sometimes due to unforeseen circumstances a person might desire to end his life by unnatural means. To end one's life by unnatural means is a sign of abnormality. When a person ends his life by his own act, we call it "suicide", although ending the life of a person upon a request made by the deceased, is known as "euthanasia" or "mercy killing". Euthanasia is mainly associated with people suffering from terminal illness or who have become incapacitated due to any reason and do not wish to go through the rest of their life suffering. A person suffering from a terminal illness should be given the choice to decide whether he wishes to live or die.

Euthanasia refers to deliberately ending someone's life, usually to relieve the patient from the suffering. Euthanasia is performed at the request of person who has a terminal illness and is in a lot of pain. However, there are times when the concerned person might be too ill and the decision is made by close relatives, medics or in some instances, even the courts.

Euthanasia has been a much debated subject throughout the world. Euthanasia is a controversial issue as it involves deliberate termination of human life. It encompasses the morals, values and beliefs of our society. It has been at the centre of many heated debates



since a long period of time, which surrounds religious, ethical and practical considerations. There have been heated debates, not only within the confines of courts, but also among elites, intelligentsia and academicians alike.

MEANING AND DIFFERENT TYPES OF EUTHANASIA

The English philosopher Sir Francis Bacon coined the phrase “euthanasia” early in the 17th century. It is derived from the Greek word *eu*, meaning “good” and *thanatos* meaning “death,” and early on was signified as a “good” or “easy” death. According to Oxford dictionary, the term euthanasia means “The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.” According to Merriam Webster Dictionary, Euthanasia means “the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as a person or domestic animals) in a relatively painless way for reasons of mercy.

The Black’s Law dictionary (8th edition) defines Euthanasia as 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. Encyclopedia of ‘Crime and Justice’, explains euthanasia as an act of death which will provide a relief from a distressing or intolerable condition of living. Simply

euthanasia is the practice of mercifully ending a person’s life in order to release the person from an incurable disease, intolerable suffering, misery and pain of the life. The British House of Lords select committee on medical, defines euthanasia as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering¹".

Euthanasia has been defined as the administration of drugs with the explicit intention of ending the patient’s life². Euthanasia literally means putting a person to painless death especially in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap³. Euthanasia or mercy killing is the practice of killing a person for giving relief from incurable pain or suffering or allowing or causing painless death when life has become meaningless and disagreeable⁴. In the modern context euthanasia is limited to the killing of patients by doctors at the request of the patient in order to free him of excruciating pain or from terminal illness. Thus the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering.

Euthanasia may be classified as follows :-

- **Active or Positive euthanasia** – A direct intervention by a person to end someone’s life is known as active euthanasia. It involves

¹ Harris, NM. 2001. “The euthanasia debate”. J R Army Med Corps. 147

² Brody, Baruch. 1998. Life and Death Decision Making, New York; Oxford University Press

³ Dr. Parikh, C.K. 2006. Parikh’s Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology.

⁶ Edition, Page 1.55. New Delhi, CBS Publishers & Distributors

⁴ Nandy, Apurba. 1995. Principles of Forensic Medicine, 1st Edition, Page 38. Kolkata, New Central Book Agency (P) Ltd.



painlessly putting individuals to death for merciful reasons. For instance, a doctor administering a lethal dose of medication to a patient to end his life. It is also known as aggressive euthanasia.

- **Passive or Negative euthanasia** – It refers to intentionally withholding or withdrawing life sustaining treatment. It is usually a slower process than active euthanasia and more uncomfortable. In this case the doctors are not actively killing the patient, instead, they are simply not saving him⁵. It is also known as “euthanasia by omission”.
- **Voluntary euthanasia** – When euthanasia is carried out at the request of or with the consent of the patient, it is known as voluntary euthanasia. The concerned person must give their full consent and demonstrate that they fully understand what is about to happen.
- **Non-voluntary euthanasia** – It involves someone else making the decision to end someone’s life. Usually it is a close family member who makes such decision. This is generally done when someone is completely unconscious or permanently incapacitated and in no condition to give the consent.
- **Involuntary euthanasia** - It refers to the case where euthanasia is practised against the consent of the patient. In involuntary euthanasia, a person is killed who made an expressed wish to the contrary and it clearly amounts to murder. It is prohibited all around the world.

HISTORICAL BACKGROUND

Euthanasia is a concept not new to human civilization as it is being practised for centuries. Euthanasia is believed to have

begun in ancient Greece and Rome in fifth century B.C. It was permissible in certain situations. In ancient Greece, Socrates viewed death as nothing to be afraid of and therefore, there were liberal feelings regarding euthanasia in ancient Greece. The famous physician Hippocrates, separated the function of killing and healing by making all the doctors take the Hippocratic Oath, an ethics code which physicians took and swore never to do harm to anyone. The Hippocratic Oath that doctors of old Greece and Rome took had them swear to the gods that they wouldn’t give a patient poison, even if the patient asks for it. However, many doctors did not actually abide by the oath and often helped patients in ending their lives.

During the Middle Ages, euthanasia became a taboo and was considered a sin throughout Europe. The human body was considered a temple of God and therefore the destruction of it was a sin under the Christian God. Although, people started advocating in favour of euthanasia in 17th century but it was short lived. Euthanasia continued to be rejected during late 17th century and 18th century.

During the late 1930s, Euthanasia again started to gain support in the US and societies in favour of it started to pop up not only in the US, but in England as well. The organized movement for legalization of euthanasia began in 1935, when Voluntary Euthanasia Legalisation Society was founded by C. Killick Millard. However, the society’s bill was defeated in House of Lords in 1936, as was a motion again on the same subject in 1950. However, World War Two did change euthanasia forever. Hitler and the Nazis

⁵ *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454



killed hundreds of thousands of people using euthanasia. Hitler and company did this by gassing, drugs, and starving the people. This put a halt on the euthanasia movement as Americans grew less fond of euthanasia.

Legalisation of euthanasia again gained momentum in the late 20th and early 21st century. Netherlands became the first country to legalize euthanasia in 2002, closely followed up by Belgium. In 1998, Oregon became the first US state to allow euthanasia, followed up by Washington and Montana.

Religious suicides have been depicted in Hindu sagas i.e. 'Mahabharata' and 'Ramayana'. The Pandavas eulogized "Mahaprasthan" or the great journey through their Himalayan sojourn when they walked in pilgrimage, thriving on air and water till they left their bodies one after the other. The Hindus have two views regarding euthanasia. Some Hindus consider it wrong as it against the karma of the patient as well as the doctors. However, some believe it to be a good deed to end the suffering of a person. Majority of the Muslims are completely opposed to euthanasia because they consider life to be a gift given by Allah and destruction of life is certainly a disrespect towards God. Christians also are generally against the practise of euthanasia as they believe that human beings do not have authority to interfere in the phenomenon of death.

STATUS OF EUTHANASIA IN DIFFERENT COUNTRIES

The practise of euthanasia and the laws pertaining to it are quite different in each country, some of which have been illustrated below.

NETHERLANDS

Netherland became the first country in the world to legalize both euthanasia and assisted suicide. In Netherlands, euthanasia is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002. It states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. It is permissible to practise euthanasia in very specific cases and under very specific circumstances. The penal code states that killing a person on his request is a punishable offence with twelve years of imprisonment or fine. However, the law allows medical review board to suspend prosecution of doctors who have performed euthanasia when each of the following conditions are fulfilled:

- The patient's suffering is unbearable and there is no prospect of improvement.
- The request for performing euthanasia must come directly from the patient i.e. it has to be voluntary and should persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs).
- The patient must be fully aware of his/her condition, prospects and options available.
- The concerned physician must consult with one more independent physician who has prior knowledge and experience in the field.
- The death must be carried out in a medically appropriate fashion by the doctor or patient, and the doctor must be present
- The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents)

BELGIUM



Voluntary euthanasia and doctor-assisted suicide have been made legal in Belgium since the year 2002. Similar as to in The Netherlands, Belgium allows euthanasia only if an individual who is incurably ill and encounters insufferable pain, makes a voluntary, informed and repeated request without any external pressure. However, if the patient is not terminally ill, there is a waiting period of 1 month before euthanasia can be performed. The candidate for euthanasia need to reside in Belgium to be granted this right.

On February, 2014, Belgium legalized euthanasia for children by administering a lethal injection. Minors shall be allowed to end their lives with the help of a doctor in the world's most radical extension of a euthanasia law. There is no age limit to minors who can seek a lethal injection. Although, consent of the parents is paramount in this regard.

AUSTRALIA

The Northern Territory of Australia became the first jurisdiction to legalize euthanasia in the year 1996 by passing the Rights of Terminally Ill Act, 1996. In doing so, the law permitted both physician assisted suicide and active voluntary euthanasia under some circumstances. Euthanasia was legal in the Northern Territory for a brief period between 1996 and 1997, until a federal law overturned the territory law and removed the right of territories to legislate on euthanasia was passed. All throughout Australia, voluntary euthanasia is illegal, although, a patient can choose not to receive any treatment for a

terminal illness and can elect to have their life support turned off.

CANADA

In Canada, patients have a right to refuse the life supporting treatment, however they do not have a right to demand for euthanasia or assisted suicide. Physician assisted suicide is illegal as per Section 241(b) of Criminal Code of Canada. The Supreme Court of Canada in *Sue Rodriguez v. British Columbia (Attorney General)*⁶, held that in the case of assisted suicide the interest of the state will prevail over the individual's interest.

SUPREMO AMICUS UNITED STATES OF AMERICA

Active euthanasia is illegal throughout the United States but patients have the right to refuse medical treatment or withdrawal of life sustaining treatment on the request made by the patient voluntarily. Euthanasia was made totally illegal by the United States Supreme Court in the cases *Washington v. Glucksberg*⁷ and *Vacco v. Quill*⁸. However, passive euthanasia is considered legal as it does not involve the act of killing a person.

Physician assisted suicide is legal in nine US states which are Colorado, Oregon, Hawaii, Washington, Vermont, Maine, New Jersey, California and District of Columbia. The concerned individuals must have a terminal illness and a prognosis of six months or less to live.

UNITED KINGDOM

Active euthanasia is prohibited in the United Kingdom. Any person who is found to be

⁶ (1993) 3 SCR 519

⁷ 521 US 702 (1997)

⁸ 521 US 793 (1997)



assisting suicide is breaking the law and can be convicted of assisting suicide or for attempt to do so. Passive euthanasia is legal for patients taking informed decisions for refusal of life sustaining treatment. Assisted suicide is also illegal under the terms of the Suicide Act (1961) and is punishable up to 14 years of imprisonment.

SWITZERLAND

According to article 115 of the Swiss Penal Code, suicide is not a criminal offence, although assisting suicide shall be a crime if it is done with a selfish motive. There is no requirement for the involvement of a physician in the procedure nor for the patient to be terminally ill. It only requires the motive to be unselfish. Swiss law only allows providing means to commit suicide, and reasons for doing so must not be based on self-interest. While euthanasia is illegal in Switzerland, physician assisted suicide has been legal. Deadly drugs may be prescribed to a Swiss national or a foreigner, where the recipient takes an active role in the drug administration. All forms of passive euthanasia are prohibited in Switzerland.

STATUS OF EUTHANASIA IN INDIA

Right to life is one of the basic human rights. It is a fundamental right guaranteed under article 21 of the Constitution of India. Right to life is fundamental to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It means human beings have an essential right to live, particularly the right not to be killed by

another entity including the government. All other rights add quality to the life in question and depend upon the pre-existence of life itself for their operation. Therefore, no other rights can be enjoyed without the right to life.

Right to life commences from the time of birth and continues till the death of an individual. It means to live with dignity but does it also include to die with dignity? The question has arisen several times in the Indian Courts. The courts have expressed different views in this context. The legal impediments in recognition of right to die are sections 309 IPC and 306 IPC containing penal provisions for attempt and abetment to suicide respectively.

*Maruti Sripathi Dubal v. State of Maharashtra*⁹ was the first case where a constable with psychiatric illness tried to commit suicide and subsequently was tried under section 309 of IPC. The Bombay High Court held that every fundamental right has positive and negative aspects, and the negative aspect of articles 21 includes the right to die, hence Section 309 IPC violates article 21 of the Constitution. However, the Andhra Pradesh High Court in *Chenna Jagadeeswar & Anr. v. State of Andhra Pradesh*¹⁰, held that right to die is not a fundamental right under article 21 of the Constitution. The next case to follow in which the same question arose again was that of *R Rathinam v. Union of India*¹¹, where the Supreme Court held that right to life does include within its purview the right to die. The apex court said that section 309 IPC was a cruel and irrational provision which needs to be effaced from the statute books to humanize penal laws, hence section 309 IPC

⁹ AIR 1987 Cr LJ 549

¹⁰ AIR 1988 Cr LJ 549

¹¹ AIR 1994 (3) SCC 394



was not held in line with article 21 of the Constitution.

The constitutional validity of section 309 was again challenged in the case of *Gian Kaur v. State of Punjab*¹². In this case, Gian Kaur and her husband were convicted by the trial court under section 306 IPC for abetting the suicide of Kulwant Kaur. The appellants sought relief on the ground that Section 306 IPC is unconstitutional. They urged that since the validity of Section 309 is questionable, therefore abetting the commission of suicide by another is merely assisting in the enforcement of the fundamental right under Article 21 and Section 306 IPC penalising assisting suicide is equally violative of article 21 of the Constitution. The Supreme Court drew distinction between natural and unnatural extinction of life. The Court said that right to die with dignity at the end of natural life should not be confused with right to die an unnatural death curtailing the natural span of life. The constitutional bench of five judges held that “Right to life which includes life with dignity which means existence of life till the natural end of life and upheld the constitutional validity of Section 309 of IPC”.

Till date, there is no legislation in India regarding euthanasia. The law of the land is operating through various judgements by the Hon’ble Supreme Court. The issue again surfaced in the famous case of *Aruna Ramachandra Shaunbag v. Union of India*¹³. A deep analysis of euthanasia was done in this case.

The writ petition was filed under Article 32 of the Constitution by Ms. Pinki Virani on behalf of the petitioner Aruna Shanbaug. On the evening of 27th November, 1973, Aruna Shanbaug, a Junior Nurse at King Edward Memorial Hospital, was attacked by a ward boy, Sohanlal B Walmiki, in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. During the act, to immobilize her, he twisted the chain around her neck. The next day at 7.45 a.m. a cleaner of the hospital found her lying in an unconscious condition on the floor with blood all over. It was alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and her brain got damaged.

In her writ petition, Ms Pinki alleged that since the incident 36 years have passed and on that day Aruna Shanbaug was about 60 years of age. She was featherweight, and her brittle bones could break if her hand or leg are awkwardly caught, even accidentally, under her lighter body. She had stopped menstruating and her skin was now like papier mache’ stretched over a skeleton. She was prone to bed sores. Her wrists were twisted inwards. Her teeth had decayed causing her immense pain. She can only be given mashed food, on which she survives. Thus, Aruna was in a persistent vegetative state (P.V.S.) and virtually a dead person, without any state of awareness, and her brain virtually dead. She can neither see, nor hear anything nor can she express herself or communicate, in any manner whatsoever. Mashed food was put in her mouth, she was not able to chew or taste any food. The prayer

¹² AIR 1996 (2) SCC 648

¹³ Supra 5



of the petitioner is that KEM Doctors and Staff be directed to stop feeding Aruna, and let her die peacefully. The Supreme Court appointed a committee of three doctors to thoroughly examine Aruna and give a report to the Court about her physical and mental condition. After hearing the petition and the opinion expressed by the committee of doctors, the Supreme Court rejected Pinky Virani's Plea. Aruna Shanbaug died on 18th may 2015. The Supreme Court, however, issued a set of broad guidelines legalizing passive euthanasia in India. The court also made a significant statement on attempted suicide, stating that a person who attempts to take his/her life needs help rather than punishment and recommended the Parliament to decriminalize attempt to suicide by erasing the punishment provided in Indian Penal Code.

The court formulated guidelines that shall be in force until the central and state government draft rules pertaining to termination of life. This is important in a country like India with its vast and culturally diverse population where unfortunately the ethical standards of the society have descended to new low. There is an impending possibility that people might misuse passive euthanasia in order to inherit the property etc. The guidelines are as follows:

- The decision regarding discontinue of life support system should be taken by parents, spouse or close relatives and in their absence of them it can be taken by the next friend. In the absence of next friend it can be taken by a doctor who is treating that patient.

- The Decision of discontinue of life support system should be made bona fide and in best interest of that patient.

- If decision is taken by the close relatives, next friend and doctors, the approval should be taken from high court under Article 226 which empowers high court to issue directions and order.

After the decision of the Supreme Court in the Aruna Shanbaug case, the law commission presented its 241st report¹⁴ in 2012. It was proposed in this report that a proper legislation regarding euthanasia has to be ruled out in India by the Parliament to prevent the misuse of this right. As a result of efforts of various people, the Health Ministry drafted a bill for public opinion in the year 2016. The Bill is known as “The medical treatment of terminally ill patients bill, 2016”.

The Supreme court in *Common Cause (A regd. Society) v. Union of India*¹⁵, issued a landmark judgement by allowing ‘passive euthanasia’, stating that individuals have a right to die with dignity under strict guidelines. The five judge bench in a broader prospect gave recognition to living will by permitting its citizens to draft a living will that specifies life support not to be provided in the case of coma. A living will is a written document which allows patient to give instructions in advance about the medical treatment to be administered when he/she is terminally ill or no longer able to express informed consent, including withdrawing life

¹⁴ Law commission report no. 241. “Passive Euthanasia – A Relook”

<<http://lawcommissionofindia.nic.in/reports/rep241.pdf>>

¹⁵ (2018) 5 SCC 1



support if a medical board declares that all the lifesaving options have been exhausted

The Court observed that :- “The right to life and liberty as envisaged under article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, this Court has expanded the spectrum of article 21 to include within it the right to live with dignity as component of right to life and liberty”.

The court held that the individuals are allowed to draft a living will while they are in a normal state of health and mind. It was also held that the right to live with dignity also includes the smoothening of the process of dying in case of a terminally ill patient or a person in persistent vegetative state with no hope of recovery. The apex court issued comprehensive guidelines on the procedure for execution of an advance directive as well as for giving effect to passive euthanasia. The Supreme Court allowed passive euthanasia in certain conditions, subject to the approval by the competent High Court following the due procedure. It held that when an application for passive euthanasia is filed, the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who shall decide that approval has to be granted or not. Before doing so, the Bench should seek the opinion of a committee comprised of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the committee to them as soon as it is available. After hearing them, the High Court Bench should give its verdict. The above

procedure should be followed all over India until Parliament makes legislation on this subject.

CONCLUSION

Euthanasia is an exceedingly emotive and delicate subject. The principle of self-determination and the best interests of the patient have been considered as fundamental for arguing in favour of legalizing euthanasia. The Supreme Court has paved the way for execution of passive euthanasia through advanced directives and setting stringent procedural guidelines for it. Although, with this late judgement, euthanasia has become even more difficult to give effect to, as the procedure prescribed involves execution of the directives in presence of two witnesses, authentication by a Judicial Magistrate, permission from two medical boards and a jurisdictional collector.

One major issue regarding euthanasia is the concern for its misuse, which needs to be addressed by the Parliament before it becomes a law in the country. There are several other issues which remain unaddressed in the latest judgment passed by the Supreme Court such as recognition of the capacities of minors to give advance directives and access to palliative care.

In essence, the decision of judiciary to legalize passive euthanasia is a progressive step and the legislature should also take steps to make a law in this regard. A well framed law is required, which takes care of the interminable philosophy, culture and sensibility of our nation where religion is the indispensable and unavoidable wellspring of life.



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