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LEGALIZING ASSISTED SUICIDE AND ACTIVE EUTHANASIA: MORE THAN JUST 'AN' INCONCLUSIVE DEBATE

By Vikram Krishnan
From Tamil Nadu National Law University

Introduction

In 2018, an elderly couple Iravati and Narayan Lavate petitioned the President of India to seeking permission for physician-assisted suicide. Neither are sick or ailing, their only wish is to die with each other and before they become bed-ridden or die of a terminal illness. In 2019, their petition was rejected.

The subject matter of this paper directly targets the validity of Euthanasia and physician assisted suicides (hereinafter referred to as "PAS") in contemporary context, given the backdrop of the elderly couple.

Euthanasia, a fiercely debated topic across the globe can be broadly divided under two criteria. On the basis of consent, Euthanasia can be of two types- voluntary, which involves active consent from the party and non-voluntary, where consent is absent due to present health condition. On procedural levels it can be divided into *active* and *passive* Euthanasia, where the former involves *injection* of a lethal substance to end a person's life and the latter involves discontinuation of a life-sustaining treatment. An extended concept of Active Euthanasia is PAS which specifies *"Intentionally helping a person commit suicide by providing drugs for self-administration, at that person's voluntary and competent request."*

The focus of this paper is to shed light on the quandary surrounding voluntary active euthanasia and PAS, two of the most debated topics for decades. One thing I have taken for granted is that the entire object of Euthanasia or Physician-Assisted Suicide (PAS) is to allow a painless and dignified dying. The couple's appeal for permission to die rather than pursue other options reflects their desire for a painless and dignified death free of guilt. This assumption is echoed throughout the project. I have written this paper from a secular and general standpoint, and I have avoided venturing into various religious arguments on the subject. Additionally, for the sake of this study, I have only dealt with Euthanasia and PAS with the *free and informed consent* of the subject who decides to end his or her life.

This paper is divided into five parts to present a holistic interpretation.

Part II of the project attempts to address the reasons for the fundamental moral conundrum surrounding PAS. It aims to address the various moral perspectives that prevail. In addition to this, the chapter compares active and passive euthanasia in general and delves into the moral differences between them.

Part III of the project examines the public angle engendered by legalizing PAS and Active Euthanasia, trying to ascertain how the state can balance public ramifications and Private Rights.

Part IV of the Project seeks to understand how, if possible, any legalization can be

established, as well as certain important guidelines and suggestions to be kept in mind when legislating on PAS.

Part V of the project concludes with a discussion of contemporary dynamics and other practical ideas.

Passive Euthanasia and Active Euthanasia, Distinction Without a Difference? A Moral Paradox

Passive Euthanasia is morally accepted, if not legalized in majority of the countries. [1]It is PAS that invites criticism and non-uniform perspectives. In this part I have attempted to compare through the moral lens, the difference between both and try to understand to what extent the difference accounts for. I have covered certain pertinent legal-moral relationships to understand the broader perspective. The distinction between passive euthanasia, which mostly everyone accepts is morally legitimate, and active euthanasia, which is significantly more contested, is that passive euthanasia includes allowing the patient to die, but active euthanasia requires actively killing the patient.[2]

So, the entire moral distinction arises because killing is more harmful than letting die and hence the disapproval. I intend to put forth an example to blur the distinction.

Let us consider two people A and B. A is a terminally ill patient who goes through painful treatment every day and discontinuation of treatment can lead to his death and B is just a regular person with no medical ailments but does not like the life that he is living to an extent where he is considering death (Example 1)

According to this moral perspective, if A requests that his treatment be discontinued and doctor does so such a death is morally acceptable as it can be understood that A would have died eventually and letting things go the natural way is not wrong. However, if B requests a PAS, he can be denied the same as morally speaking, one is obstructing the natural flow of life and directly and actively causing harm to a perfectly healthy B.

For example, it is morally more acceptable to let go of a person already drowning in a simple, provided that its his wish than to deliberately drown a person Y who wishes to be drowned. I understand that there is a distinction between these two cases, but to what extent is the question one needs to ask. If the distinction made here does not account to an extent

where a moral difference can be created, the distinction finds no merit, morally speaking. It is this point which concerns me, in the sense although I understand the procedural difference between passive euthanasia and PAS, I fail to understand how the distinction creates morally opposite opinions. This can be better explained through an analogy.

[1] *See* Emanuel ,Fairclough, Daniels & Clarridge, *Euthanasia and Physician-Assisted Suicide: Attitudes and Experiences*; Robert J. Blendon Et al. ,Should *Physicians Aid Their Patients in Dying?* ,Journal of the AmericanMedical Association(1997) , Vol .267 , pp 2658– 62.

[2] David Boonin, How to Argue Against active Euthanasia, Journal of Applied Philosophy (2000),Vol. 17, No. 2 , pp. 157-168.

In the case of X and Y, what we fail to notice is how X ended up like that in the first place. To adopt a holistic approach, I feel it is necessary to comprehend all of the events that contributed to X's predicament. Assume X was about to be hit by a fast-moving automobile and would have died if it hadn't been for a person who pushed him into the pool and saved hislife temporarily speaking. It can be agreed that saving X was the morally right thing to do.

However, X had actually wanted to die, so he asks the person to let him drown in the pool.Can killing X be morally justified now?

The distinction between an act of omission and commission cannot hold good when the omission is done by forgoing a pre-existing moral duty to save a life. Here we can considerthe person to be a physician as he has a morally duty to save lives.

Getting back to the first example, the very reason why A is in his current state is because his ending life was saved by a doctor. By the moral obligation to save, the doctor has obstructedwith the natural course of death and given him a life to live, biologically speaking. Now thathe is in a better position health wise, does it not blur the distinction between active and passive euthanasia in the sense that, regardless of it being an omission or a commission, it ends a life would have not been lost anyways?

Does saving a life, just to assist in taking back again not impose the same kind of moral perception as in assisting in ending a life in favor of their own wishes, assuming that the breach of morality stems from taking a life. Is it not counter-intuitive to morally justify taking the life that has been saved in accordance to their wishes? If it is morally justified, howis it any different from taking B's life?

When we state that it is worse for me to burn your house down than to refrain from letting it burn, we do so by implicitly assuming that you did not ask me to burn your house down. If you agree to let me burn your house down, perhaps so you can use the land for something else, nothing in this situation suggests that it would be morally worse for me to burn your house down than for me refraining from letting it burn[3]

The distinction between omission and commission will hold good only under the implicit assumption that one had no duty to save a dying person's life in the first place. But don't the doctors and physicians have this duty thereby breaking the assumption to an extent where thedifference ceases to exist, contextually?

This argument is not flawless, however. An important perspective that has to be considered while assigning the moral difference, so to speak, is to give due importance to the ***who*** *does it, why it is done, what is done and how it is done*[4]

In that sense, lucid distinctions could be made when we look at "*who"* aspect of it. When we are looking from a physician perspective (Example 1) it is safe to say that

[3] *Supra* note 2, at 3.

[4] Hugh McLachlan, Moral *duties and euthanasia: why to kill is not necessarily the same as to let die*, Journal ofMedical Ethics (2011), Vol. 37, No. 12 (December 2011), pp. 766-767.

the doctor has moral duty to discontinue A's treatment when he has specifically and voluntarily asked for itand withdraws his consent to receive treatment. However, the doctor has no moral obligation to give B a lethal injection that ends his life, merely because he asked for one (even assuming that it is given for the right reasons)[5]

This viewpoint is limited to the physician's perspective; we cannot expect the same to be trueif a by passer is substituted for the physician. In such circumstance, the by passer has no moral duty to take any of the lives as he has no moral obligation to respect a patient'swishes.[6]

It is an undisputed notion in India that even a terminally ill patient can refuse treatment if he isof sound mind.[7] The same idea rings true in numerous countries.[8]

The court held that it does not come under the umbrella of Euthanasia or Suicide and is merely a rightful exercise of individual autonomy[9]. The court making this distinction is widely debated, which is not within the ambit of this paper. I have mentioned this only tohighlight the legal and moral stance of refusing treatment to substantiate the argument that

the doctor is morally obligated to discontinue a patient's treatment at his request.[10] It is truethat a distinction certainly exists, but the question to ask here is to what extent does this distinction make a difference? The distinction between an apple and an orange is apparent. But if you are craving for food and in your individual perception, you like both equally and both of them satisfy your craving to the same extent, what exactly is the difference between them? Even if a difference exists, are they different enough to drive you to actively make a rational decision to select another? To what degree is the distinction material?

The validity of the preceding contentions is contingent on the assumption that life is valued interms of health and biology. The premise of the argument, is in line with *the Sanctity of life* notion. However, there are several contentions attempting to redefine the *true meaning of life.*

The contention with defining what life is involves understanding how people view human lifeas a whole. We live in a society which have diverse opinions on how they view human life. Some people believe that Human life is simply the existence and that by itself defines value while others believe that life without a quality is devoid of any value[11] . What I mean by quality is that a person should have sufficient interest to believe that his/her life is worth living. People can disagree to different degrees on this point.[12]

While some people endorse the view that life itself has value regardless of how bad and unbearable it is, as an opportunity to stay alive is significant in itself. Others

[5] McLachlan HV., *To kill is not the same as to let die: a reply to Coggon (2009)*, Journal of Medical Ethics Vol. 35: pp. 456-8.
[6] McLachlan HV., *The ethics of killing and letting die: active and passive euthanasia (2008),* Journal of Medical Ethics, Vol. 34, pp. 636-8.
[7] *See* Common Cause (A Regd. Society) vs. Union of India and Anr., (2018) 5 SCC 1, AIR 2018 SC 166.
[8] Well recognized in all Common Law countries.
[9] *Supra* note 7, at 5.
[10] *Supra* note 4, at 5.
[11] *Supra* note 2, at 3.
[12] *Id.*

endorse the viewthat life comes not only with mere existence but certain quality, in the sense that if life is notmere existence and a bad quality life is not worth living at all.

The issue with this fundamental contention is the fact that one can definitely not prefer one over the other. There is no right or wrong here as both are fully substantiated rational moraljudgments. In a pluralistic society, it is incorrect to promote and prioritize one view over another. By endorsing one view over another we would be disrespecting a particular class of people with a different moral value. We will not be able to get closure no matter how long we sit and debate which of these moral judgments is right. This is due to the fact that both of these are sound moral claims that cannot be reasoned and pressed over another. On a fundamental level, we cannot question things farther than this.

This argument in fact severely attacks the legalization of active euthanasia and PAS. By allowing PAS, the value of life is interpreted to include some quality as well. By penalizingand disallowing PAS, the value of life is interpreted to include just the existence. Such controversial stances can put a lot of pressure and lead to prolonged conflicts. A neutral viewis an appropriate one, but how that neutral view can be incorporated is a separate challenge initself.

We can say conclusively the debate of legalizing euthanasia involves appropriating one moral perspective over another moral perspective. The problem is the fact that both the perspectives are not wrong at all. Balancing such perspectives gives rise to moral enigma.

The same line of reasoning can be adopted in response to the *"Sanctity of Life*" notion as upheld in Indian and Foreign judgments concerning Euthanasia[13]. It is for this very reason that even suicide remains to be penalized in India under the penal code[14].The problem withthis notion is the fact that it is selectively applied across different instances and is in direct contradiction with autonomy of an individual. If a life, as mere existence is what should be *valued at all costs,* statutes pushing for self-defense would seem counter-intuitive.

Another moral ambiguity raised by the notion is the difference in the rights of competent andincompetent personnel. If it is acceptable for a competent person to decide and refuse medical treatment, why is it denied to an incompetent person, if we are looking at live as a concept of mere existence as stipulated by the *"Sanctity of Life"* concept?[15]How can one differentiate the life of a competent and incompetent person on his mere existence? And if we are choosing to look beyond mere existence and re-conceptualizing the notion, why can itnot include PAS?

A secular interpretation of the "Sanctity of Life "attempted by Justice Denman J of the UKHL says:

[13] *See* Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454; Airedale NHS Trust v. Bland (1993)AllE.R. 82, UKHL.

[14] *See* § 306 Indian Penal Code, 1860.

[15] Sushila Rao, The Moral *Basis For A Right To Die* (2011), Economic and Political Weekly, Vol. 46, No. 18(April 30-May 6, 2011), pp. 13-16

"In respecting a person's death, we are also respecting their life - giving it sanctity... A viewthat life must be preserved at all costs does not sanctify life... To care for the dying, to love and cherish them, and to free them from suffering rather than simply to post-pone death is tohave fundamental respect for the sanctity of life and its end."

Clearly then the notion can include the to die and a desirable and dignified death and such aright can be thought as an extension of Right to Life under Article 21 of the constitution.

This would blur lines between Right to Die and Right to Die with Dignity, demarcated bythe Supreme Court.[16]

This domino effect stemming from defining the aspects to be considered while understandingPAS and Active Euthanasia gives rise to a colossal moral paradox. Trying to untangle this Gordian's Knot is indeed a daunting task.

Physician Assisted Suicides- A Wider Public Angle

In the preceding part, I emphasized more on the individual factors relevant to the validity of Active Euthanasia and PAS, as well as the concerns it entails. However, the ambiguities do not stop at the individual level, as we keep unwrapping a complicated concept such as this, there are broader concerns which has to be addressed especially from the public and the government angle. Legalizing PAS can reflect on the society as a whole and has the potential to destroy the existing social fabric, so to speak. When it concerns the public as a whole, state Intervention logically follows.

To begin with, the Right to Die has the potential to impact persons who do not exercise such a right. It has the ability to substantially alter their perception of the worth of life.[17] A lot of this has to do with the fact that legalizing PAS gives the public a *choice* to exercise it. The psychological and mental repercussions stemming from such a choice can definitely not be ignored. When we emphasize on the concept of personal autonomy and self-determination what may *seem* right to do is to maximize the options available to him so that he can make a decision in his best interests. And by taking away this choice we could be stopping a man from living life to the fullest potential.

An articulated example of the Crux of this argument is given by Yale Kamisar.[18]

"Is this the kind of choice ... that we want to offer a gravely ill person? Will we not sweep up,in the process, some who are not really tired of life, but think others are tired of them; some who do not really want to die, but who feel they should not live on, because to do so when there looms the legal alternative of euthanasia is to do a selfish or a cowardly act? Will not some feel an obligation to have themselves "eliminated" ...?"

According to this argument the sole point of providing choices is to evaluate good and bad reasons and make the best choice for

[16] *Supra* note 13, at 7.

[17] Velleman, J. David. *Beyond Price: Essays on Birth and Death*(2015). 1st ed., Open Book Publishers.

[18] *See* Yale Kamisar, *Euthanasia and the Right to Death: The Case for Voluntary* Euthanasia(1970), ed. A. B. Downing ,New York: Humanities Press, , pp. 85-133.

oneself. Such a choice of choosing to die after coming to an understanding that one's own life is not worth living is a justified choice.[19]

And placing this option in the hands of an individual alone can be burdensome to him and other as well. Offering someone an alternative to the status quo opens up two possibilities for him, none of which was previously conceivable.[20] He may now pick between the status quo and the alternative, but he can't have the status quo without having to select the alternative now, which was possible for him previously.[21] This can be better explained with the help of an example. Let's assume that one of my friend's birthdays is coming up and I come to know that there is going to be a party. However, I decide not to go before-hand as it is in my best interest.

Possibility 1: I do not get invited to the party, so the reason for me to not go to the party is thefact that I didn't get an invitation in the first place
Possibility 2; I get an invitation and I choose not to go to the party.

In the first instance I don't have option but to not go to the party and that is my reason. In the second case however, the reason why I am not at the party is no longer the fact that I did not get an invitation and this is an excuse I am deprived of and can no longer employ, the reason instead becomes the fact that I have *chosen* not to come to the party. The distinctionis in the reason for not being present at the party. To what extent can this distinction make a difference?

This is reflected and echoed convincingly in our understanding of our choice to live. We do not live on under the implicit assumption that living despite all problems is a choice. We do not think of our existence as choice made by us every day to live, by consequently rejecting the option to take out life. By providing the option to take your own life at the point it becomes tiresome, the excuse for continuing to live can is longer the notion that you did not have the option to die, but the fact that u have exercised a choice given to you and chosen notto die.

So, the burden placed on an individual in this case is the fact that, one has to justify his existence every day, now that he has a choice. This was not the case previously. Previously life was accepted to have hardships and despite these hardships one has to survive because hedid not have an option. Now, one has the privilege to stop at every point and make a choice to understand if his life is worth living. Such a thought can make the mental state of an even a normal healthy person more fragile and vulnerable. A terminally ill patient has to take the burden of deciding why he chooses to exist altogether than to expectantly lead life in best manner possible. And it is possible that choice of dying can result in surfacing of new justifications for dying, in my opinion.

This can have adverse consequence on how life is viewed in the first place and can give riseto unintended ramifications. The value of life in the eyes of people can substantially be reduced if living was made a choice. Prostitution and pornography are treated in

[19] *Supra* note 17, at 8.
[20] *Id.*
[21] *Id.*

a similar way. Individual rights of women are forfeited in that circumstance due to the public costs, which include deteriorating public perceptions of women.[22] It is pertinent to note that the personal autonomy that is emphasized for advocating the legalization of PAS cannot necessarily hold good if the repercussions of one's personal decision is felt by the other members of the society to a certain significant extent.

Another issue to be tackled is the extent of regulation the State can exercise for public benefit.

The reason why PAS is different from prostitution or pornography is the fact that the latter only address a certain aspect of life, while the former directly hints the right to live itself? Insofar as that is concerned, it is safe to conclude that the range is certainly bigger. With that comes the need to.

Any State Legislation on this does not restrict just the aspects of live such as livelihood and profession but has substantial effect on life itself. The problem is vast; therefore, the state must evaluate if it is substantial enough to make a difference and carefully legislate. Another potential issue that can come up is whether the state can sanction to end a person's life by virtue of his request. To what extent the State can balance public and private interests? Where can the courts strike a balance?

A Blueprint for Potential Legislation

Any future policy on PAS should be carefully constructed, factoring all crucial questions andpossibilities. The *Law for the Termination of Life on Request and Assisted Suicide (2001)* of Netherlands can be taken as a good indicator to comprehend the nature of the legislation needed. Although assisted suicide and euthanasia remain illegal, the legislation itself offers a particular ground for immunity from prosecution in Netherlands.

Certain mandatory aspects, in my opinion, that needs to kept in mind while legislatingincludes:

1) Before opting on PAS, the patient should be informed of all the alternatives open to him. This can entail providing medical assistance as well as mental health treatment
2) The patient's fully informed permission must be verified at all times. This might necessitate the formation of a panel to assess the legitimacy of free consent, as well as periodic discussions (perhaps once a month) to better comprehend the situation.
3) Only a specially certified body of medical specialists should be permitted to consult and provide assistance. Professionals in this field should be carefully selected and ethically equipped to fully comprehend the totality of the circumstances.
4) There ought to be palliative assistance available.
5) A well-trained team of mental health specialists should be able to aid in determining aperson's capacity to consent as well as the proportionality of the decision a patient is adopting. If the situation seems out of proportion, the medical expert might

[22] William Grey, *Right to Die or Duty to live? The Problem of Euthanasia*, Journal of Applied Philosophy(1999) Vol. 16, No. 1 (1999), pp. 19-32.

offer to help the patient or guide him through other viable alternatives.

6) At least to some extent, the system should take into account and respect the patient's right to confidentiality.
7) If a patient's appeal is denied, the rationale for the denial should be explained to him. In that regard, there should be transparency.
8) After a patient's appeal is denied, a sufficient amount of time should pass between theprior and subsequent appeals to screen out spurious appeals.
9) Patients whose appeals have been granted should be given a cool down time. This cooling-off period gives the patient the opportunity to reevaluate his or her decision and, if necessary, rescind their assent. This can assist avoid allegations that are made under duress or are dishonest.
10) Regular systematic inspections should be conducted to guarantee that the managementbody in question is competent to continue providing unprejudiced service.
11) The impact of such regulation on reliant industries like insurance should be carefullyassessed.

It's worth noting that I'm not lobbying for legislation to make PAS legal. My argument is that these recommendations might be valuable *IF* such legislation is considered required. The only way to strike a balance between an individual's right to terminate his own life and the consequent reduction in the value of life is to limit the number of persons who desire to exercise such a right to those who are in dire need of it. In this approach, the worth of life is not deteriorated to the point where a meaningful difference in public perception is generated.

I.

Conclusion

From the perspectives stated above, it is reasonable to argue that legalizing PAS and Active Euthanasia is a complex issue. I have only covered limited contentions surrounding PAS such as religion's interaction with PAS and the challenges it poses. Another issue to be addressed is medical professionals' breach of professional conduct and giving adequate rationale for them to go against the core tenet of saving lives. Another fundamental challenge to solve is what constitutes pain and suffering in order to validate PAS, as these are extremely subjectiveconceptions. Difficulties emerge when determining the level of pain and suffering, thus establishing a reasonable and equitable criterion is vital.

One general suggestion that makes policy on PAS more acceptable and practicable is to stipulate certain conditions in which permission to PAS should not be granted at all rather anspecifying the conditions when it should always be offered. Such a condition makes it seemmore like a legal permission than a legal requirement, so to speak.[23]

It is important to keep in mind that any conclusion reached should not be the result of a hasty and imprecise decision-making process. Any effect of such a decision might have far- reaching and unanticipated negative ramifications, in which case efforts should be made to mitigate the faulty decision's consequences. There is no need to rush since a late decision is certainly, preferable to a bad decision. If the situation

[23] *Supra* note 17, at 8.

necessitates such time and effort, it isonly fair that such time and effort be expended. An appropriate analogy can accurately describe the situation:

The varied aspects of a society may be symbolized by the different sides of a Rubik's Cube. Assume that one piece of this dimension is an individual's private right to die, and another is public and community benefit. Let the entire cube be solved except for these two pieces, so tospeak, and these two pieces must be appropriated and placed in their rightful place in order tobalance all the dimensions of society. There is no means of making a move that only affects these two pieces. Any attempt to solve the cube would include revisiting other dimensions and cube components as well. However, the fact that it requires altering other components is no reason to leave the cube unsolved. If it is left unsolved the society will be devoid of balance. However, care must be taken to ensure that none of the other sides/dimensions are compromised in the process of fixing this. Each turn of the cube should only be taken after thoughtful regard, as one turn has the capacity to jeopardize the other pieces and dimensions. The only thing left undetermined is the number of sides/dimensions that this problem has theability to affect. The more the dimensions, the more the complex it becomes. The more the complex it becomes, the greater the appreciation and value it will bring and more the need to take due regard of the same.

In addition to seeming to be an inconclusive discourse in and of itself, the dilemma of legalising euthanasia necessitates engaging and deliberating on ancillary inconclusive debates. Any healthy debate on the subject entails' meticulous conceptualization of not just 'an' inconclusive dispute, but a plethora of others that must be deciphered before arriving at any unambiguous reasonable conclusion. In this paper, I outline a few standpoints to contemplate while endeavouring to decrypt the moral paradox. There are undoubtedly other variables to consider, particularly in the Indian setting, where religion plays an essential part in determining the moral worth of an action. How challenging can it get to tip the scales and deliver justice?

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