

Concept of Euthanasia in India – A Socio- Legal analysis

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“To die proudly when it is no longer possible to live proudly. Death freely chosen, death at the right time, brightly and cheerfully accomplished amid children and witnesses : then a real farewell is still possible, as the one who is taking leave is still there; also a real estimate of what one has wished, drawing the sum of one’s life – all in opposition to the wretched and revolting comedy that Christianity has made of the hour of death.”

- Friedrich Nietzsche (1844-1900)
(German Philosopher, classical scholar, Critic of Culture).¹

ABSTRACT

Euthanasia is a term that often sparks heated debate, regardless of whether people are ‘for’ or ‘against’. It is one of the most debated ethical issues in recent time as revealed by the considerable number of scientific publications, media coverage of specific cases and also proposed bills in many countries. The concept is based on the philosophy of humanism and compassion. It recognizes the autonomy of an individual freedom of choice to live or die with dignity. In this article an attempt has been made to simplify the legal and moral complexities prevalent in the world regarding Euthanasia with special reference to Indian socio- legal picture.

INTRODUCTION :

Euthanasia is a very old issue, with its roots in classical thinking. Throughout the course of history, however, it has been understood differently. In recent times the concept of Euthanasia has become increasingly under the spotlight due to the ongoing technicization of medicine. There are several other compounding factors making the issue of Euthanasia a pressing problem for contemporary society. One can expect that the controversy surrounding the moral acceptability of Euthanasia and its decriminalization will remain a challenge for our ageing societies in the twenty first century.

The word ‘ Euthanasia’ is a derivative from the Greek words ‘eu’ and ‘thanatos’ which literally mean ‘good death’ or ‘easy death’. It is otherwise described as mercy killing. It is the painless termination of life of an unbearably suffering patient by the physician upon the e patient’s request.²

The death of a terminally ill patient is accelerated through active or passive means in order to relieve such patient of pain and suffering. It appears that the word was used in the 17th Century by Francis Bacon to refer to an easy, painless and happy death for which it was the physician’s duty and responsibility to alleviate the physical suffering of the body of the patient. It refers to the practice of ending a life in a painless manner, “a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering”. Euthanasia, involve taking deliberate action (intention) to end or assist in ending the life of another person on compassionate ground.³

1. <http://quotes.dictionary.Com/To-die-proudly-when-it-is-no-longer> (accessed : March 16,2015).

2. Brody, Baruch, *life and Death Decision making*, New York: Oxford University Press,1988.

3. Harris NM, *The Euthanasia debate. JR Army Med Corps* 2001;147 (3): 367-70.

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 disagreeable.⁴

The Concept is mainly associated with people with terminal illness, or who have become incapacitated and don't want to go through the rest of the life suffering.

According to Black's Law Dictionary (8th Edition), Euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reason of mercy. Thus to define in literally terms, it 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 handicap.⁵

TYPES OF EUTHANASIA :

Euthanasia may be classified into various categories as under :

- **Active Euthanasia :**
A deliberate life shortening act is called 'active' Euthanasia. Active Euthanasia involves painlessly putting individuals to death for merciful reasons, as when a doctor administers a lethal dose of medication to a patient. This involves causing the death of a person through the response to a request from that person. Here, in active Euthanasia something is done to end the patient's life.

- **Passive Euthanasia :**
Passive Euthanasia entails withholding of medical treatment for continuance of life e.g. withholding of antibiotics, where without giving it, a patient is likely to die, or removing the heart lung machine, from a patient in coma. The deliberate omission of life lengthening act is called Passive Euthanasia. It involves not doing something to prevent death as when doctor refrain from using device necessary to keep alive a terminally ill patient or a patient in a persistent vegetative state (PVS) ⁶
It means allowing patients suffering from terminal illness to call upon their physicians to withdraw their life sustaining treatment. Thus, in Passive Euthanasia, it means that something is not done that would have preserved the patient's life.

- **Voluntary Euthanasia:**
In voluntary Euthanasia it is performed with the consent of the recipient. ⁷
It involves a request by the dying patient or that person's legal representative.⁸
Here in this case, it is to be seen that the consent to be given should be free from all sense of coercion, that is, the choice of Euthanasia was an instance of unconstrained self-determination. This is the most acceptable form of Euthanasia at international level.

4. Nandy A. *Euthanasia in principles of forensic medicine*. 3rd ed. Kolkata : New Central Book agency (P) Ltd; 2009.p.70.

5. Dr.Parikh, C.K.(2006), *Parik's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology*. 6th Edition, Page 1.55. New Delhi , CBS Publishers & Distributors.

6. Shreyans kasliwal, " *Should Euthanasia be legalized in India?*", Criminal Law Journal, 2004 p.209.

7. Biggs Hazel , " *Euthanasi: Death with dignity and the Law*".

8.Singh M.D. " *Euthanasia : How Merciful is the killing*", Amritsar Law Journal, vol. X,2001, p.53.

- Non- voluntary Euthanasia:
This occurs when the person concerned has been unable to express an opinion, usually because he or she lacks the capacity so to do, but others consider that it is in his or her best interest to end his or her life at this time.⁹
- Involuntary Euthanasia :
This is said to occur when a patient is killed against his express will. This is a criminal act of murder. Thus Involuntary Euthanasia occurs where the recipient has not agreed to the procedure and is an unwilling participant.¹⁰

EUTHANASIA AND MURDER : DISTINCTION :

Normally, murder means intentionally killing someone in unlawful manner and such killing can be of two kinds. First, those where the murderer has informed consent of the person killed and secondly, where the murderer does not have the informed consent of the person killed. For pro-life proponents, Euthanasia is equivalent to murder because it is the act of deliberately ending the life of a patient both at the patient's own request and at the request of his kith and kin. The term mercy-killing, closely akin to Euthanasia becomes murder only when there is no consent of the patient, says Roedy Green. Whereas proponents of Euthanasia feels that phaspacts, that is (Physician assisted patient activated suicide) is not murder but Phactpared which is (Physician activated patient request) death is equivalent to murder, because in the later physician actively participates in the process of killing the patient.¹¹

EUTHANASIA AND SUICIDE : DISTINCTION :

Suicide and Euthanasia cannot be treated as the same thing. They are two distinct acts, suicide as mentioned in Oxford Dictionary means the act of killing oneself deliberately. Therefore, suicide can be termed as intentional termination of one's life by self induced means. The Bombay High Court in Maruti Shripati Dubal V. State of Maharashtra¹², has attempted to make a distinction between suicide and mercy killing. According to the Court, the suicide by its very nature is an act of self-killing or termination of one's own life by one's own act without assistance from others. But Euthanasia means the intervention of other human agency to end the life.¹³

CURRENT STATUS OF EUTHANASIA IN INDIA :

In India, the sanctity of life has been placed on the highest pedestal. The right to life under Article 21 of the Indian Constitution has received the widest possible interpretation under the able hands of judiciary. This right is inalienable and is inherent in us.

9. Biggs Hazel, "Euthanasia : Death with Dignity".

10. Biggs Hazel, "Euthanasia : Death with Dignity".

11. Dr. Kumar, Pawan; Kaur Amandeep, "Euthanasia and Legal Implications: A critical Analysis", Indian Bar Review, Vol XLI(4)2014.

12.1987 Cri LJ783 Bombay.

13. Naresh Marotrao ShakreV. Union of India ; 1995 Cr Lj95 (Bomb).

The Indian Constitution says that the right to die is not a fundamental right under Article 21. Whether the right to die is included in Article 21 of the Constitution came for consideration for the first time before the Bombay High Court in the State of Maharashtra V. M.S. Dubal¹⁴. The Court held that the right to life includes the right to die. Consequently, the Court struck down section 309 of IPC, which provides punishment for the attempt to commit suicide as unconstitutional. The judges felt that the desire to die is not unnatural, but merely abnormal and uncommon.

The Supreme Court in P. Rathiman V. Union of India¹⁵ upheld the Bombay High Court's decision. However, in Gian Kaur V. State of Punjab¹⁶, a five Judge constitution Bench of the Court overruled P. Rathinam's case and held that right to life under Article 21 of the Indian Constitution does not include the right to die or the right to be killed.

The Court held that the right to life is a natural right, embodied in Articles 21. However, suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of Right to life. It was held that this concept was unrelated to the Principle of sanctity of life or that Right to live with dignity.

The issue was extensively dealt with by the Law Commission of India in their 196th report. The major issue before the Law Commission was of withholding or withdrawing medical treatment (including artificial nutrition and hydration) from terminally ill-patients. The Law Commission addressed many question namely, as to who are competent and incompetent patients, as to what is meant by informed decision, what is meant by best interests of a patient, whether patients, their relations or doctors can move a court of law seeking a declaration that an act or omission or a proposed act or omission of a doctor is lawful, if so, whether such decision will be binding on the parties and doctors, in future civil and criminal proceedings etc. Law Commission recommended having a law to protect patients who are terminally ill, when they take decisions to refuse medical treatment, including artificial nutrition and hydration.

Law Commission further stressed that although the medical practitioners will consult the parents or close relatives of the patients, but it is the prerogative of the doctor to take a clinical decision on the basis of expert medical opinion and the doctor's decision should be based on the guidelines issued by the Medical Council of India. The treating physician was not left with the liberty to choose expert of his opinion. The Law Commission was of the view that to ward off complaints of abuse of the system it is necessary that the panel of experts should be prepared by a recognized public authority and the Government should approve such panel.

It was also recommended by the Law Commission that it will be mandatory for the doctor to maintain a register where he obeys the patients refusal to have medical treatment or where, in case of (i) competent or incompetent patient, or (ii) a competent patient (who has or has not taken informed decision) the doctor takes a decision to withhold or withdraw or continue medical treatment, he must refer to all these matters in the register.

14. AIR 1977 SC 411.

15. 1994(3) SCC 394.

16. 1996(2) SCC 648.

The register shall contain the reasons as to why he thinks the patient is competent or incompetent, or what is the opinion of experts, before withholding or withdrawing medical treatment the doctor shall inform in writing to the patient (if he is conscious), parents or relative, about his decision to withhold or withdraw medical treatment in the best interest of the patient. If the relative, parents do not support this decision, they will move to High Court and the medical practitioner will postpone his decision till a verdict comes¹⁷

Coming specifically to the case of Aruna Shanbaug V. Union of India¹⁸, Euthanasia in its passive form has taken legal root in India. The Supreme Court recently on 7th March, 2011 broke new ground with a judgment in the Aruna Shangbaug's case, sanctioning passive Euthanasia or withdrawal of life support systems on patients who are brain dead or in a permanent vegetative state(PVS). Aruna Shanbaug is a former nurse from Haldipur, Karnataka in India. In 1973, while working as a junior nurse at King Edward Memorial Hospital, Parel, Mumbai, she was sexually assaulted by a ward boy and has been in a vegetative state since the assault. On 24 January, 2011, after she had been in this state for 37 years, the Supreme Court of India responded to the plea for Euthanasia filed by Aruna's friend journalist, Pinki Virani, by setting up a medical panel to examine her.

The Court turned down the mercy killing petition on 7th March, 2011. However, in its landmark judgment, it allowed passive Euthanasia in India. The Court clarified that active Euthanasia, involving injecting lethal injection to advance the death of such a patient, was a crime under law and would continue to remain so. The Hon'ble Court laid down certain guide lines which will continue to be law until Parliament makes a law on this subject. Those are as under :

- (i) A decision to discontinue life support should be taken either by the parents or the spouse or other close relatives. In the absence of any of them, such a decision can be taken by a person or a body of persons acting as a next friend. Also, the decision taken by the doctor attending the patient should be bonafide one and in the best interest of the patient.
- (ii) The supreme Court made it mandatory to take approval from the High Court concerned, even if the decision is taken by near relatives or doctors or next friend to withdraw life support, because in India the possibility of mischief being done by relatives or others for inheriting the property of patient cannot be ruled out.
- (iii) The Court also prescribed the procedure to be adopted by the High Court when such an application is filed. The Court propounded that a Bench of at least two judges should decide this application, after taking opinion from a committee of three reputed doctors to be nominated by the Bench after careful examination of the patient by those doctors. The Court also directed that notice should be issued to the state and close relative, next friend, after hearing them, the High Court should decide this application.

17. Law Commission of India in its 196th report on medical treatment to terminally ill patients [Protection of patients and medical practitioners] submitted on March, 2006.

18. (2011) 4 Scc 454.

Although, the Supreme Court dismissed the petition of Euthanasia and did not allow Euthanasia in the present case because of the noble spirit, outstanding and unprecedented dedication of Hospital staff in taking care of Aruna, but it cleared the way for many suffering who want to die with dignity.¹⁹ With respect to social, legal, medical and constitutional perspectives, the Court said, that the question of law involved requires careful consideration by a constitution Bench of the Court for the benefit of humanity as a whole. In the current context, the contentious issue of Euthanasia once again came to the fore recently, when the Supreme Court on July 15, 2014 issued notices to all the states and Union Territories on legalizing passive Euthanasia. The Court also appointed former solicitor General Mr. T.R. Andhyarujina as amicus curie to assist it on the issue. The Attorney General Mukul Rohatgi said that the Government doesn't accept Euthanasia as a principle. The Court has no jurisdiction to decide the issue. It's for the Legislature to take a call after a thorough debate and taking into account multifarious views.

SUGGESTION:

Due to development of Science and Technology the concepts of life and death has been changed. Advances in medical Science now allow both living and dying to be prolonged, a fact which has raised awareness of issue relating to death and dying in the community at large, popular fiction and the Medical Professions. Modern medicine can compel people to endure life beyond what they perceive to be dignified bounds. Statistical evidence also supports the popular perception that some doctors do sometimes engage in excessive treatment to prolong the lives of the terminally ill. Whether the decision is to cease or continue medical treatment, doctors may need to be "tactfully resistant" in order to avoid sacrificing the interests of the patient "to the emotional distress of the relatives". The dilemma for the Doctors lies in attempting to respect the wishes of patient and family while maintaining legal and ethical standards of care.²⁰ Here at this juncture, the time is ripe for appropriate legislation to be enacted regarding Euthanasia, at the same time an Act should be passed, in which proper safeguard should be taken to save such patients who want to live in spite of their sufferings, and such patients do not die for the want of medical support. In case the relatives cannot afford the costly medicines, the state should take the responsibility of such patients to provide proper health care.

The state should own the responsibility to decide the appropriate case in which the permission can be granted, as, the high courts are already flooded with cases, and, it will take a long time to decide, whether Euthanasia should be granted, instead, a statutory body should be constituted of doctors and retired Judges, who after examining the relatives, close friends, case history of the patient, recommendation of the treating doctors, should decide such application. Also, proper procedure should be incorporated by law to check the misuse of euthanasia which is still going on in society due to high cost of treatment. If the relatives find it difficult to meet the cost of treatment they take home the patient against medical advice. For want of medical support the patient succumbs eventually.

19. Dr.Bhatia, Alka ,*"Law Relating to Euthanasia After Aruna Shanbaug's verdict and need to legalize Euthanasia by an appropriate legislation"*, NYAYA DEEP, VOL. XIII, issue 2 & 3, April & July, 2012.

20 Biggs Hazel, *"Euthanasia, Death with Dignity and the Law"*.

The proponents of Euthanasia argues unbearable pain, right to commit suicide – a private affair and people should not be forced to stay alive and above all proper safeguards can minimize misuse of the right are sufficient reason for permitting Euthanasia. On the other hand, opponents of Euthanasia treat it as a euphemism for murder and maintain that Euthanasia is not about the right to die but about the right to kill. According to opponents advanced research is constantly being made in the treatment of pain, and with every progressive achievement, the case for Euthanasia is proportionally weakened. Many diseases which had no cure in the past are curable and controllable in medical field.

The proponents are of the view that without Euthanasia, the only way to control unbearable suffering today is through sedation to the point of unconsciousness or terminal sedation. Patients are given a combination of narcotics, and anaesthetics to induce coma. Death comes slowly from either the progressing disease or starvation if artificial nutrition is withheld.²¹

According to them these are not the cases of extinguishing life but only of accelerating the process of natural death, which has already commenced.

Of the two contradictory views, one view is that Euthanasia is contrary to human dignity, humaneness and compassion because the conduct of Euthanasia would violate human dignity, on the otherhand, the otherview is that dying under horrible suffering would violate humaneness, and therefore, a request for Euthanasia and its fulfilment are an expression of respect for human dignity and for a dignified death.

CONCLUSION :

Euthanasia is a highly emotive and sensitive subject, causing disputes and misunderstandings. Despite its frequent exposure in public media and in academic literature, it does not reflect a clear set of concepts and definitions. Euthanasia debates often wind up inadequately formed and ineffectual, causing more frustration than solutions. One can expect that the controversy surrounding good death as an existential, emotionally sensitive and morally contentious discourse will continue to be a serious social and legal challenge.

For both proponents and opponents alike ,it, therefore becomes a matter of principle to decriminalize Euthanasia on one hand and to halt its encroachment through restrictive legislation on the other hand.

The root of the dilemma is that autonomy and individual rights have to be promoted so that an individual can make the choice about his or her own life and death, while the right to life has to be strongly protected. The answer to a lot many questions which are left unanswered resulting in ambiguity, needs to be pondered over. A full fledged law on this sensitive issue is of dire need today,taking all sorts of caution and care keeping in mind the eternal philosophy,culture and natural and physical sensibility of our country where religion is the integral and inevitable source of life.

21.Orfali Robert, *"Death with dignity – The Case of Legalizing Physician Assisted Dying and Euthanasia"* First Edition 2011, MILL City Press, Minne apolis, MN 2011.