
LEGAL CHALLENGES TO EUTHANASIA IN INDIA: A CRITICAL STUDY

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ABSTRACT

Legalization of Euthanasia has been a major issue in last couple of decades. Several countries have already legalized Euthanasia and Physician Assisted Suicide. Bombay High Court in *State of Maharashtra v. Maruty Sripati Dubal*, 1987 Cri LJ 743 declared that Right to Life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 which makes attempt to suicide as punishable offence unconstitutional. But Supreme Court in *Gian Kaur v. State of Punjab* (1996) 2 SCC 648, held that Right to life does not include "Right to die" or "Right to be killed". Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in unnatural way. It was only after the case of *Aruna Shanbaug v. Union of India* (2011) 4 SCC 454, Supreme Court in its judgment declared that Passive Euthanasia is legal in India

Keywords: Euthanasia, Physician assisted Suicide, Mercy killing, Right to life, right to die

INTRODUCTION

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 patient's request.¹ 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.

Euthanasia 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. 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.²

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)³ 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. It involves a request by the dying patient or that person's legal representative.⁴ 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.
- **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.
- **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.

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 phaspects, 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. ⁵

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 Maharashtra*,⁶ 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. 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

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

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. Dubal*.⁷ The Supreme Court in *P. Rathiman v. Union of India*⁸ upheld the Bombay High Court's decision. However, in *Gian Kaur v. State of Punjab*⁹, 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.

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 comes. ¹⁰

Coming specifically to the case of *Aruna Shanbaug v. Union of India*, ¹¹ Euthanasia in its passive form has taken legal root in India. This judgment broke new ground, sanctioning passive Euthanasia or withdrawal of life support systems on patients who are brain dead or in a permanent vegetative state (PVS). Aruna Shanbaug was 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.

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 Supreme Court on July 15, 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.

COUNTRIES WHERE RIGHT TO LIFE ALSO INCLUDES RIGHT TO LIVE WITH DIGNITY

The California Government, Jerry Brown, signed the California's right-to-die bill into law, allowing terminally ill citizens of the country to end their own lives with the help of their physician. According to this new law a terminally ill patients can seek medical aid for ending their lives as long as they have been given six months or less to live by two doctors, provided a written request and two oral requests at least 15 days apart and are deemed mentally capable of making decisions about their own health. Montana, Oregon, Vermont and Washington have also legalized the practice, while aid-in-dying is currently in dispute in New Mexico's courts. The California bill was passed due to Brittany Maynard, the 29-year-old resident of San Francisco Bay Area who gained national attention for her decision to move to Oregon to take advantage of the state's longstanding aid-in-dying law. Maynard had been diagnosed with terminal brain cancer, but as a California resident, could not pursue end-of-life options at home. It was in the year 2002, when Netherlands became the first country to legalize euthanasia and assisted suicide. But it imposed certain strict condition which one must check before allowing some for Euthanasia as well as for Assisted suicide i.e the patient must be suffering unbearable pain, their illness must be incurable, and the demand must be made in "full consciousness" by the patient Again Belgium becomes the second country in the world to legalize Euthanasia and it passed its law in the year 2002. The law says doctors can help patients to end their lives when they freely express a wish to die because they are suffering intractable and unbearable pain. Patients can also receive euthanasia if they have clearly stated it before entering a coma or similar vegetative state. Even in Switzerland Physician Assisted Suicide is legal.

CONCLUSION AND SUGGESTIONS

"Right to life" which is natural right, but euthanasia is an unnatural termination of life and, therefore, inconsistent and incompatible with the concept of 'right to life'. It is the duty of the State to protect the life of peoples and give medical aid. If euthanasia is legalised, then there is a grave apprehension that the State may refuse to invest in health (working towards Right to life).

Legalised euthanasia has led to a severe decline in the quality of care for terminally-ill patients in Holland. In the era of declining integrity and social values, there is a risk of misusing euthanasia by relatives or society for inheriting the patient property. The Supreme Court has also raised the same issue in the *Aruna Shabaug* judgement. Passive euthanasia occurs in majority of the hospitals across the county, where poor patients and their family members withdraw or refuse treatment because of the tremendous amount required for keeping them alive. Commercial health sector will serve death sentence to many elderly and disabled citizens of India for meagre amount of money if euthanasia is legalised. No one has right to take away the life of an individual not even individual him or herself. The concept of sanctity of life is inviolable and doctors having taken an oath (The Hippocratic oath) "to preserve life at all cost" cannot justify a patient to die. Government should give proper health care system to poor people because investment in health is not a charity as right to life in our constitution also include right to health, not right to death.

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