

LEGAL PERSPECTIVE OF EUTHANASIA

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Abstract

Euthanasia came into limelight in India by Aruna Ramchandra Shanbaug vs Union of India¹. Though Supreme Court in this landmark case elaborated the difference between passive and active euthanasia and legalised voluntary passive euthanasia, the attempts could not remove the cloud of doubts hanging over. The debates are still going on because our Constitution recognises the right of life and the right to live does not mean right to die.² This paper explores the reasons why “Active euthanasia” should be legalised in India. It starts with some threads of history and then conjoins it with the arguments made in favour of euthanasia. It aims at providing the readers a legal perspective of euthanasia.

What is Euthanasia?

Breaking the word “Euthanasia” etymologically means “a good death” (It is made up of two Greek words “Eu” meaning good and “thanatos” meaning death). In layman’s language it is the practice of intentionally ending the life of a person to bring about an end to pain and sufferings. It is the reason why it is also known as mercy killing. The term includes acts as well as omissions which are sufficient to result in death of seriously ill person.

According to the succinct definition provided by the House of Lords Select Committee on Medical Ethics, euthanasia is "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering". In countries like Netherlands and Belgium, the word stands for “termination of life by the doctor when the request is made by the patient”. There are well settled circumstances and the permission is granted depending upon the illness, condition, mental state and requests of the person seeking assistance.

The first use of the word Euthanasia in a medial context is attributed to Sir Francis Bacon, an English philosopher and jurist in 17th century, to imply an easy death and he firmly believed

¹ Writ Petition (Crl.) No. 115 2009.

² Smt. Gian Kaur vs The State of Punjab, A.I.R. 1996 SCC (2) 648.

that it was the responsibility of the physician to provide with palliative medical treatment to allay the sufferings. But still the definitions are not clear and exhaustive enough to be used to decide the merits and is characterised by loopholes that it has failed to cover.\

Euthanasia and types

It is broadly classified into-

1. **Active euthanasia**- Active euthanasia takes place if deliberate steps are taken to end a patient's life. Example- Administering of Potassium compounds to induce cardiac arrest.
2. **Passive euthanasia**- Passive euthanasia is the withholding of treatments necessary for the continuance of life. Example- Removal of medical care, withholding of food and medicines.
3. **Voluntary euthanasia**- Voluntary euthanasia takes place when a competent patient makes a request for a life terminating process.
4. **Non-voluntary euthanasia**- Non-voluntary euthanasia is when a patient himself does not give informed and specific consent for such life terminating process. Example- If the patient is in state of coma, someone else can make the decision to terminate the patient's life.
5. **Involuntary euthanasia**- Involuntary euthanasia is conducted against the wishes of patient. It is considered illegal in every country.

Euthanasia and physician-assisted suicide: Both Euthanasia and physician-assisted suicide are divisions of “Assisted death”, but there exists dichotomy between them on the basis of extent of involvement of the doctor and the behaviour of the patient. There is more degree of involvement in voluntary Euthanasia as the doctor himself administers the lethal compounds to the patient (like giving intravenous lethal injections) while in physician-assisted suicide the attending physician merely provides avails the lethal compounds with proper prescriptions, which makes it relatively easier emotionally.

Is there any previous background of Euthanasia or is it a modern development?

Euthanasia is not a recent development. The actions of easy death have been applied for hopeless patients who have been suffering extreme pain since ancient ages. But with different places opinions have varied over time. In Mesopotamia, euthanasia was forbidden. In India incurable patients were drowned in the River Ganges. The reference of this practice can be found in Mahabharat, where Bhism exercises the boon given to him to decide his end himself (*Iccha mrityu*). In Sparta, it was mandatory to examine every newborn male child for signs of disability or sickness which, if found, ultimately led to his death. Belief was that by this way society could be relieved from unnecessary burden, and the person from the burden of existence which was painful. In Rome, euthanasia was equated to murder. Great Greek thinkers like Aristotle, Socrates, and Plato favored euthanasia but only under particular situation (when the pain was extreme and the cause could not be cured).

Sir Thomas More (1478-1535) was the first prominent Christian to support euthanasia in his book “**Utopia**”, only if-“...if a disease is not only distressing but also agonising without cessation, then the Utopian priests and public officials exhort this man...to free himself from this bitter life...or else to permit others to free him...”.³

In 1889, **Nietsche**, a German philosopher, said that terminally ill patients are a burden to others and they should not have the right to live in this world. It was only until 20th century that efforts to legalise Euthanasia commenced in USA. There were active developments in Germany (most of them were State-sponsored euthanasia) to legalise Euthanasia as scholars regarded it as a proper method to kill the weak and vulnerable so as not to taint the human gene. Various Voluntary Euthanasia Societies were brought into being for the purpose of delving into the legality of Euthanasia in countries like- England (1936), America (1937), Netherlands (1975).

Euthanasia in Indian context

A full-fledged debate over Euthanasia began in India when a horrific incident happened with Aruna Shanbaug and the petition was filed under Article 32 by the patient's friend and a lawyer Pinki Virani over legalizing Active Euthanasia. Following issues were raised from the side of petitioner-

³ “A New Zealand Resource for life related issues”, available at <<http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1/>>

- 1) Is withdrawal of life sustaining facilities for patients in Permanent Vegetative State unlawful?
- 2) The requests made by an ill person to discontinue with the life sustaining treatments if he believes they won't improve the condition, should be considered or not?
- 3) In case the patient has not previously expressed such wish, but his family makes a request to withdraw futile life-sustaining treatments, should their wishes be respected or not?

In the case of **P.Rathinam vs Union of India**⁴, it was held that the scope of Article 21 includes the ‘right to die’. But the decision was overruled in the preceding case of Gian Kaun vs State of Punjab. After a long deliberation in Supreme Court on 7th March 2011, the Hon’ble Division Bench of the Supreme Court of India, comprising Justice Markandey Katju and Justice Gyan Sudha Mishra enunciated a historic judgment permitting passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. But euthanasia could be the last resort only when the following conditions were met- 1) The patient has been declared brain dead for whom the ventilator could be switched off and 2) The patients in Permanent Vegetative State⁵. In its judgment it also laid down the following guidelines-

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken **bona fide** that serves the best interest of the patient.
2. An approval from the High Court of respective state must be taken although the request to withdraw life support has been taken by the near relatives or doctors or next friend to.
3. When such an application is filed the Chief Justice of the High Court should immediately constitute a Bench of at least two Judges who should decide to grant approval or not. A committee of three reputed doctors (which shall be nominated by the Bench) will give report regarding the condition of the patient. Before pronouncing

⁴A.I.R. 1994 SCC (3) 394.

⁵ A persistent vegetative state (PVS) is a disorder of consciousness in which patients with severe brain damage are in a state of partial arousal rather than true awareness.

a verdict a notice regarding the report should be given to the close relatives and the State. After hearing the contentions of the parties the High Court must give its verdict.

Later in 2014, a three-judge bench of Supreme Court of India comprising of CJI P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh while adjudicating on the issue raised by Common Cause NGO, after relying on Gian Kaur's case had termed the judgment in the Aruna Shanbaug case (2011) to be 'inconsistent' and subsequently referred the issue of euthanasia to a five-judge Constitution bench⁶ which is yet to be decided. Meanwhile the center government formulated **The Medical Treatment of Terminally-ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016** which was based on the recommendations made by the Law Commission in its 241st report (August 2012). The bill is an effort to sharpen the right to make choice between life and death when there is no safe return from the pain and sufferings.

Why euthanasia has been a debatable topic over the years?

The modern contemporary debate over Euthanasia began in 1870. Debates have always revolved around moral, legal and ethical grounds underlying the practice of euthanasia. The subject of debate has always provoked emotive responses, members of the medical profession and the general public participating in the debate. Some back euthanasia while some decry euthanasia saying that it fails on the test of morality and legality. Considering the sensitivity this topic carries, it will remain a subject of controversy within medical, legal, governmental bodies and public sphere.

- The act of euthanasia is illegal (It is legal only in 5 countries⁷), yet in reality passive euthanasia is carried daily in hospitals.
- Due to medical advances it is possible to artificially prolong the life of an increasing number of patients far beyond what was possible only a few years ago.

⁶ This bench comprises of CJI Dipak Misra, Justices A.K.Sikri, A.M.Khanwilkar, D.Y.Chandrachud and Ashok Bhushan.

⁷ As of November 2017, euthanasia is legal in the Netherlands, Belgium, Colombia, Luxembourg and Canada. Assisted suicide is legal in Switzerland, Germany, Japan, and in the US states of Washington, Oregon, Colorado, Vermont, Montana, Washington DC, and California.

- There is no clarity in interpretation of the legal concept of a patient's right on one hand and the rights and duty of a doctor.
- Unchecked practice can result in undermining of fiduciary trust between doctor and the patient. Medical practice centers around the preservation of life and no or minimal harm to life.
- Unless there is any concrete law there is a threat of potential abuse by the physician attending the patient.

For countries with a Christian tradition, euthanasia is a morally condemned practice due to the firm belief in sanctity of human life. Accordingly, every person had a right to life which was bestowed by God and the right to take away life lies in the hands of Almighty. But with the emergence of secular pluralistic societies, scholars accorded different meaning to the concept of personal autonomy, and the right to self-determination is a progressively recognized value in most of modern societies.

Euthanasia as perceived by international organizations

Article 6 as contained in International Covenant on Civil and Political Rights (it is one of the treaties of United Nations which is binding on member states) cherishes and guarantees the right of life to every human irrespective of his national, political, religious and ethical affiliations. The preamble of the treaty states that some of the rights mentioned in ICCPR are inherent in human dignity and are inalienable in nature. It was later on realised by the United Nations that the sub-clause of Article 6 as mentioned in the original draft (1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.) was narrow to some extent and it needs to be revised to meet today's expectations. This realisation and reinterpretation ended up with the body coming up with a draft aiming to exclude Euthanasia from the ambit of right to life⁸, and that the concerned states must in such serious cases provide and assist Euthanasia and physician assisted suicide.

⁸ Pete Baklinski, *UN considers reinterpreting 'right to life' to allow exceptions for abortion and euthanasia*, 15th July 2015, <<https://www.lifesitenews.com/news/un-considers-reinterpreting-right-to-life-to-allow-exceptions-for-abortion>>

The U.N. Resolution 67/139⁹, Right to a dignified and pain-free death has been recognised subject to certain conditions. Now the governments should shoulder the responsibility to ensure that above given right is ensured to every terminally-sick person who is often regarded burdensome by the family members.

Why Euthanasia should be declared legal everywhere?

“Dying is not a crime” once said Jack Kevorkian, an American pathologist marshalling for euthanasia. Stephen Hawking himself quoted that forbidding Euthanasia and denying them the right to kill is discrimination against the disabled people.

There are many reasons why Euthanasia should be recognized and granted a legal status. One must remember that life and death are two faces of same coin. Death is inevitable truth of life. Most of anti-euthanasia patrons hold that man, by the virtue of being human being has a fundamental and natural right to live. On the contrast, pro-euthanasia proponents argue that even though right to live and right to die is distinct but they are collateral to each other. Every reasonable person has a right to decide for himself his course of life. Both the rights are exercised in their own sense; right to life can be exercised until a person has capability to determine for himself. The way sun sets and dark approaches, death approaches at the end and the right to die comes into picture. A man has an explicit right to choose for himself; denying him the opportunity to choose for death over life is restricting his right to choose. It is like trespassing his freedom.

Euthanasia is not immoral. Immoral activities are those which are contradictory to moral values. The argument of anti-euthanasia proponents is that euthanasia is immoral because life must be preserved and protected. Euthanasia is completely different from murder because latter infringes a person's right to life by depriving the right to live while in the former, there is no infringement because the choice to die is solely exercised by the person himself (or in cases of non-voluntary euthanasia by the concerned near family members of the person). When a person is denied his right to die it is like forcing them to live a life without dignity. Euthanasia facilitates by making sympathy to that person's dignity. The right to life can only be enjoyed when a proper quality of life is led, the absence shall result in feeling of

⁹ <https://social.un.org/ageing-working-group/documents/fourth/OLIESEnglish.pdf>, page 14.

dissatisfaction and insipidness. It should not be overlooked that death is a private affair. Euthanasia by one person does not infringe the fundamental rights of any other person.

Euthanasia should be allowed in deserving cases. Acts should be passed keeping all possibilities in mind. Permission for such euthanasia should be given by groups of doctors or when a case is known to large numbers of people of the unnecessary suffering of someone whose life cannot be revived. Protracted palliative care for the terminally ill means a drain of money and medical resources on a person whose live cannot be improved; then why waste the precious resources on someone who has expressed a desire to die, when they can be instead used for improving the life of someone who wants to live?

Euthanasia is a more promising and foolproof solution to ailing patients belonging from poor background, as they are unable to avail the medical treatments due to sky-rocketing expenses. And in a highly populated country like India where there is large percentage of people who cannot afford such medical care, Euthanasia can be a better option in the hand of the patient and his family.

Usually what happens is that such ill patients who belong from a country where Euthanasia is illegal travel to other country where it is legal (Switzerland is the most preferred choice for people seeking assisted suicide, which is allowed under Article 115 of Swiss Penal Code). The issue arises because then it becomes difficult for the country to keep a track of people opting for Euthanasia. The only way of regulating and keeping it under supervision is by incorporating the provisions relating to Euthanasia in the law of land. Then there will be no necessity to penalize or prosecute the family ones or any person who has participated in assisting or encouraging the patient to travel to somewhere else for the process. Having a codified Euthanasia law shall bring uniformities in the countries. The trend is that the rich families have the wherewithal to travel to other countries where it is legal. The poor families are often left back to witness their painful condition.

One of the arguments against Euthanasia is that it shortens and kills a life. But the statistics say something else. Back in year 2005, a study was conducted by the New England Journal of Medicine and it was found that euthanasia procedures carried out without the patient's explicit permission were not more than 0.4% of all the cases reported. The percentage was higher around 0.8% in 1991 (approximately a decade before euthanasia was legalized in Netherlands). It also has economical edge as earlier the patient dies the lesser costly is his

care. The medical care units are often plagued because of problems like- insufficient healthcare funding, shortages of beds and nursing staff, as well as an increasing elderly population in the future. By opting for Euthanasia can actually help in truncating the economic burden faced in providing for health benefits. The funds can be best utilized when they are expended for people who can recover rather than people who are merely dragging themselves in life.

Questions That Need To be Adressed

In a bid to formulate a comprehensive and much needed Euthanasia law the following questions must be mulled over to guide the respective governments.

- 1) How to test whether the request or wish made to opt for Euthanasia is made with bona fide intentions, if he really wants to die or not, are there any financial gains to the other party?
- 2) How to make people aware about the various aspects of health, social care and their rights. There is an urgent need to sensitize the society over the ending of life by euthanasia.
- 3) A proper framework should be made with proper checks, so that the law permitting voluntary active euthanasia is not abused.