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Re-Visiting the Stance on Euthanasia in India

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ABSTRACT

Right to die has been a matter of controversial debate in India. In 2012, legalizing passive euthanasia stirred public opinion. While the proponents of euthanasia may see it as a progressive step but how can one justify the death of a patient which is caused by lack of food or treatment? Why the patient has to wait for his/her death while suffering even more but cannot have an immediate death? The total denial of the right to autonomy without due consideration of the unique state of affairs persisting in India is alarming. It is unacceptable to administer euthanasia according to the Supreme Court guidelines only without any comprehensive legal framework. Life is the most valuable asset which cannot be put to an end only because the medical practitioners or the relatives are of such an opinion. This article critically examines the position and various issues related to euthanasia in India.

I. INTRODUCTION

Death is something that no one can escape from, but whether an individual is entitled to end his own life or not, has been a matter of debate for a very long time. Right to Die can be interpreted in many forms: active, passive, indirect, Physician Assisted Suicide, out of which Euthanasia has been actively discussed in India. The term euthanasia is derived from the Greek word “eu” meaning good and “thanatos” meaning death.² Euthanasia, sometimes called mercy-killing, is an act or practice of deliberately ending the incurable and intolerable suffering of an individual by painful death. It is performed when the state of an individual is such that no chances of recovery are there such as in the case of AIDS or advanced cancer. It can be done in two ways, that is, active and passive. Active euthanasia involves killing a patient by active means which involves the deliberate administration of lethal drugs to the patient. Passive euthanasia is ending the life of a patient by intentionally withholding or withdrawing the life support system essential for his/her survival. In both cases, the ultimate result is the same but still the debate over killing and letting die persists as in the absence of a proper moral basis, the distinction is controversial.

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² Kalaivani Annadurai et al. *Euthanasia: right to die with dignity*, J Family Med Prim Care, 2014 Oct-Dec;3(4):477-8, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4311376/>.

II. LEGAL ASPECT OF EUTHANASIA

While many European countries have legalized euthanasia and also have laws in place for it³, in a country like India where poverty is rampant, the literacy rate is dismal, basic human rights are left unaddressed and problems like corruption and unemployment are worsening with each passing day, the issues related to euthanasia may seem irrelevant. However, the issue still holds water given the large population characterized by religious, ethnic, and linguistic diversity. It can be substantiated from the very fact that the Supreme Court, in *Gian Kaur v The State of Punjab*⁴, overruled the judgment in the *Rathinam* case⁵ and held that the spectrum of the Right to Life guaranteed under Article 21 of the Constitution cannot be stretched to include the Right to Die. However, later, a major development took place in the landmark judgment of *Aruna Ramachandra Shanbaug v Union of India*⁶, wherein, the honorable Supreme Court legalized Passive euthanasia and issued tough guidelines for the same; while Active euthanasia is still legally impermissible. Recognizing “living wills” made by terminally ill patients, the Supreme Court stated that if a person doesn’t wish to live then “living wills” should be granted to relieve the person, in a vegetative state, of his sufferings. Continuing the legacy, Right to Die with dignity was recognized by the Supreme Court as a part of the Right to Life in the case *Common Cause v Union of India*⁷. The judgment also made it clear that Right to Die with dignity has to be distinguished from Right to Die an unnatural death or, in other words, curtailing the natural span of life without a natural and justified cause for death. It was also held that the power to grant “living wills” would rest with the High Court after consulting the panellists of the Medical Board, under the impression of close relatives. Recently, in *Sindhu M.K. v. Union of India*⁸, a plea was filed by a woman seeking to stop her friend from travelling to Switzerland for Physician-Assisted Suicide which clearly demonstrates that legalizing passive euthanasia only served in more and more people demanding euthanasia as a trouble-free means of ending one’s life. Section 309 of the Indian Penal Code (IPC) deals with the attempt to commit suicide and Section 306 of the IPC deals with the abetment of suicide – both actions are punishable⁹. So, there is a high probability that the legalization of euthanasia will lead to the ‘slippery slope’

³ Shreyans Kasliwal, *Should Euthanasia be Legalised in India?*, PL WebJour 16 (2003).

⁴ Smt. Gian Kaur vs The State Of Punjab, 1996 SCC (2) 648.

⁵ P.Rathinam vs Union Of India, 1994 SCC (3) 394.

⁶ Aruna Ramchandra Shanbaug vs Union Of India & Ors, (2011) 4 SCC 454.

⁷ Common Cause (A Regd. Society) vs Union Of India, (2018) 5 SCC 1.

⁸ Nupur Thapliyal, *Woman's Plea To Stop Friend From Travelling Abroad For Euthanasia Withdrawn From Delhi High Court*, LIVELAW, (18 Aug 2022 11:17 AM), <https://www.livelaw.in/news-updates/womans-plea-to-stop-friend-from-travelling-abroad-for-euthanasia-withdrawn-from-delhi-high-court-206803>.

⁹ Vinod K. Sinha et al. *Euthanasia: An Indian perspective*, Indian J Psychiatry, 2012 Apr; 54(2):177-83, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>.

phenomenon¹⁰ which will ultimately result in aggravating the situation and leading to an increased number of non-voluntary euthanasia deaths.

Apart from the active judicial consideration of the issue of euthanasia, the law commission reports have also addressed the concern about euthanasia time and again. The 196th Law Commission Report¹¹ presented in 2006, specifically recommended the Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners). The opening remarks of the report made it clear that, in any way, the report was not dealing with ‘euthanasia’ but endorsed that euthanasia must continue to be an offense under Indian laws while allowing the competent patient to refuse treatment by an informed decision. The 241st Law Commission Report¹², presented in 2012, also concurs with the 196th report that Passive Euthanasia should be allowed subject to certain parameters. The 241st Report took cognizance of the bill proposed in the 196th Report and guidelines laid down by the Supreme Court to propose a bill for providing legal recognition to passive euthanasia. However, the report failed to consider the challenges and merely suggested a slightly modified bill proposed earlier in the 196th Report which is way too simple and broad in scope to be able to properly implement the actual objective behind legalizing passive euthanasia. The above-mentioned bill was proposed before the parliament in 2016 but it has not been able to receive proper consideration and attention from the lawmakers due to which India still lacks legislation for euthanasia.

III. CHALLENGES TO EUTHANASIA

Prima Facie, the Aruna Shanbaug judgment undoubtedly boosts India’s journey towards development but given the dismal literacy in the country, the poor and illiterate would not be in a position to draft the wills and if they do, they would be highly vulnerable of being coerced, directly or indirectly, to demand euthanasia¹³. So, apparently, this provision of passive euthanasia becomes exclusive to the educated. The richly embedded religious sentiments of Indian people have influenced every aspect of life including law to which euthanasia is no exception. They believe that death is an order of divine authority and must not be in the hands of mortals as no one can interfere with the wishes of the divine authority. So, euthanasia directly opposes the religious sentiments of the people by devaluing life. Another issue is that a person may wish to die at a certain point of time as a fleeting desire, because of temporary mental

¹⁰ Subhash Chandra Singh, *Euthanasia and Assisted Suicide: Revisiting the Sanctity of Life Principle*, 54 JILI 196, (2012).

¹¹ 196th Report of the Law Commission on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), (March 2006).

¹² 241st Report of the Law Commission on Passive Euthanasia — A Relook, (August 2012).

¹³ Sinha, *supra* note 8.

instability or depression but may not desire so after some time. Also, in India, owing to the shortage of healthcare facilities, euthanasia may become an excuse for denying public health facilities to the patient in vegetative state and this would further serve as a cheaper alternative for pursuing research about terminal illnesses. It is important to note that the administration of euthanasia by a physician violates the ethical principles of medical profession as the central tenet of the profession lies in curing illnesses and saving patients.¹⁴ The spectrum of something to be classified as vegetative condition and terminal illness is also very broad which makes it susceptible to loopholes and undue advantage as there is a highly subjective distinction between murder and act of charity.

IV. WAY FORWARD

Human life is the most precious gift of nature by its very nature that humans can be endowed with. The provision of euthanasia devalues the sanctity of life and being absolutely irreversible, destroys the unknown possibility of life. The drafting of guidelines by the Supreme Court is insufficient as the main problem lies with the extent of implementation of such guidelines at the ground level. Many complex issues such as legal, psychological, and ethical, are involved in the execution of euthanasia which needs to be addressed in order to ensure proper application. Also, there is a need to differentiate between the person who lost the will to live and the person who cannot live. While prohibiting active euthanasia is highly venerated but passive euthanasia, which is legal, will also lead to the death of the person which makes it similar to active euthanasia as the ultimate result is the same.

The only way forward is to provide a well thought legal framework that would not only address the autonomy of an individual but also protect the right to life, that is to say, the act should balance out the conflicting rights of life and death in such a way that both the rights are equally accessible to everyone. If education in palliative care is improved and doctors' capacity to give this care to their patients is strengthened, there is a likelihood that the demand for euthanasia and assisted suicide will decline.¹⁵ The medical practitioners should be well aware of the conditions when euthanasia can be given and with whom the authority to seek euthanasia rests with. Euthanasia has to be regulated with well-defined procedures to minimize abuse and illegal euthanasia along with greater accountability of the physician and relatives involved, and protection of vulnerable patients. The act should focus on minimizing euthanasia seekers which can be achieved by strengthening the policies concerning terminally ill patients, the poor, and

¹⁴ Singh, *supra* note 9.

¹⁵ *Id.*

the elderly as they are most vulnerable to exploitation. India should act according to its unique state of affairs which implies that following the footsteps of developed countries could prove detrimental to the nation as a whole. The central tenet of any policy regarding euthanasia should be proper access and that people receive it wholeheartedly. So, it is evident that euthanasia is still a far-fetched concept to the Indian population and there is a long way ahead before realizing the actual implementation of euthanasia as a means of extending the autonomy of an individual to an extent that a person will be free to decide about his death as well.
