

EUTHANASIA IN INDIA: AN INTROSPECT**Ms Zigisha Pujari****Research Scholar, P.G. Dept of Law, Sambalpur University****Prof (Dr) Sudhanshu Ranjan Mahapatra****Professor, P.G. Dept of Law, Sambalpur University****ABSTRACT**

Euthanasia has been in controversy all over the world though gets legal recognition in many Western countries. So far as India is concerned, passive euthanasia has got the legal sanction but active euthanasia is yet to get a legal stamp. As euthanasia involves termination of life so it is quite obvious that a stringent law shall be framed to prohibit its misuse. When talk about legal sanction of euthanasia, though it sounds rude or insensitive still it is high time now the Govt must take appropriate measure. Denying euthanasia to a terminally ill patient is a clear violation of his right to have a peaceful death. This paper focuses on the different aspects of euthanasia along with Article 21 and some leading cases which may open the door to legalise euthanasia in India.

Keywords: Euthanasia, Legal Sanction, Legislative Measure

INTRODUCTION:

"I am not afraid of being dead. I am just afraid of what you might have to go through to get there".ⁱ

"Death" is the ultimate truth and the above mentioned quote gives a fair idea that the process of 'dying' is scarier than the death itself. 'Death' is certain but normally when and in which form it comes we are not aware of. Where as in some exceptional cases, when and in what way it will come, it is confirmed. So, in such cases, why not an easy, comfortable and good death? Perhaps, here comes the concept of "Euthanasia" which literary means a 'Good Death'. Life is most beautiful, precious and dearest to all. So taking away the life goes against the very fundamental principle of 'life' and it covers legal, religious and moral issue. Taking away one's life or killing is regarded as a 'Crime' from legal aspect, a 'Sin' from religious aspect and 'Immoral' from ethical aspect.ⁱⁱ But, in the war field when one soldier

kills another it is neither regarded as unlawful nor unethical nor immoral. Whereas, when a doctor takes the life of a patient who has been terminally ill raises not only legal question but includes ethical and religious question as well. Perhaps, because, a soldier is trained to kill his enemy and a doctor is trained to save the life of his patient. Euthanasia involves a paradoxical concern because a doctor's essential duty is to save the life of his patient and the act of taking away the life of the patient, even though with consent is the violation of his fundamental duty. Thus, Euthanasia is a matter of serious concern which needs to be discussed from legal, social, religious and medical point of view.

The word 'euthanasia' has been derived from the Greek word 'euthanatos' signifies 'well death' and it may be granted to those who are incurably ill and in great pain or distress. The term was coined by great Historian 'Suetonius', who described the way King Augustus opted for quick, painless death without suffering.ⁱⁱⁱ Though, the concept seems to be a recent development, it's root could be traced in Indian mythology and history as well. For example, Pitamaha Bhishma of Mahabharat had been blessed with "Ichha Mritue" and the concept of "Jala Samadhi" which may not fall directly under the category of euthanasia but some way or other related to it as euthanasia deals with taking of one's life.

The study of euthanasia is more of a complex nature because it is not only about ethics and morality but of strong emotion as it involves taking of one's life which is equivalent with 'killing'.

Euthanasia implies the act of killing of those patients who have no hope of living a normal and painless life.

Types of Euthanasia

Euthanasia may be classified as active or passive euthanasia and voluntary or non voluntary euthanasia.

Active euthanasia means injects a lethal injection to the patient whereas in passive euthanasia the patient is allowed to die by withholding treatment or life support devices.

Voluntary euthanasia refers to mercy killing of a terminally ill patient with his or her consent and involuntary euthanasia is mercy killing without the consent of a terminally ill patient as the patient is not even in a condition to give his consent.

Different Aspects Euthanasia

Legal aspect

Our Constitution under Art 21 ensures every human being the 'right to live' and the very word 'live' is not merely confined to physical existence but it includes within its ambit the right to live with zest and dignity.^{iv} In *Francis Coralie v. Union Territory of Delhi*,^v the Court said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity" and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. So, with such interpretation of 'live', a person (patient) who has been in a vegetative state, who is not in a position to realize the difference between life and death, how far is it justified to treat him as a 'living person'? He may be alive in a mechanical way with the support of some medical equipment but practically not in 'life'. Moreover, if we are granted with dignified life and as life leads to death than certainly we are having the right of a 'dignified death'. Following the interpretation of Philosopher Michael Tooley^{vi} we may say that right to life is most essential aspect of a human person and if a person has a right to life he has an equal right to die.

Further, Article 21 which ensures 'Personal Liberty' too may include that everyone is at his liberty to act in any manner unless his action is detrimental to others. So, an incurably ill patient must be at his liberty to decide whether to continue his life or ends his life. Thus, not permitting for a voluntary death (euthanasia) is a restriction on exercising his right to personal liberty. The other way round it could be argued that it is no less than a crime to force a terminally ill patient to go through unbearable pain and suffering just because our law does not permit it. The sense of 'self respect' and 'dignity' is more important than leading a life at vegetative state.

In this context it is pertinent to keep in mind that laws are made (not to speak of Natural Law but Positive and Prescriptive law) for a larger interest of a wider range of people. When 'law' comes on the way to cause inconvenience to individual instead of doing good, needs consideration and reconsideration. Thus, we are made to ponder over the issue so that a terminally ill person does not feel forced to live just because of restriction of law.

Medical aspect

When a terminally ill patient takes the decision to end his life by exercising his right to personal liberty, the most pertinent question comes, “Who takes his life?” Is it the doctor who either administers lethal drug or injection to kill the patient? Before the advancement of medical technology, terminally ill patients were dying in the natural course of treatment but after the invention of life support like ‘ventilator’ or ‘artificial feeding system’, the possibility to prolong their life has been increased. The dilemma of the doctor here is that, whether to prolong the life of such a patient who has been in a vegetative state or to withdraw the life support and provide him a dignified death.

The next logical question is that when a patient will be classified as terminally ill? According to The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006, ‘terminal illness’ means, such illness, injury or degeneration of physical and mental condition which is causing extreme pain and suffering to the patients and which, according to the reasonable medical opinion will inevitably cause untimely death of the patient concerned.

The medical aspect of euthanasia needs to draw the attention of Regulation 6.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which explicitly prohibits doctors from practicing euthanasia. Regulation 6.7 reads as follows

“Practicing euthanasia shall constitute unethical conduct. However, on specific occasion, the question of withdrawing supporting devices to sustain cardiopulmonary function even after brain death, shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of support system. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer/ Medical Officer in charge of the Hospital and a doctor nominated by the in-charge of the Hospital from the Hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994”.

The I.M.C. regulation though not support euthanasia but it keeps its door open for some specific/special occasion and the scope for special occasion gives sufficient hint that in near future euthanasia may be acknowledged.

While discussing, the medical aspect, some sensitive questions like patient’s legal right to refuse medical treatment, patient’s demand for a particular type of treatment and the role of

the doctor to assist the patient to commit suicide cannot be ignored and all these questions lead to the issue of legalization of euthanasia.

Ethical aspect

Every human being by virtue of being an individual is having the right of preference or choice. This right of preference or choice may include the choice to end the living in a dignified way. So, if one's preference to end the life outweighs the preference to live the life than there is nothing unethical about it. Even Mahatma Gandhi supported euthanasia in some exceptional cases. To quote his words, "I felt that humanity demanded that the agony should be ended by ending life itself."^{vii} Further, he said that as a surgeon does not commit 'himsa' when he wields his knife on his patient's body for the latter's benefit similarly one may find it necessary under certain imperative circumstances to go a step further and sever life from the body in the interest of the sufferer.

The conservatives argue that euthanasia is morally wrong because it is contrary to natural law or against the commandments of God. It violates God's absolute dominion over human's life. The appeal to the principle of 'sanctity of human life' and say that the intentional termination of innocent human life is always immoral. Moreover, it leads to disrespect for the sanctity of human life. This view is represented by thinkers such as St Thomas Aquinas, Gay-Williams, Joseph V. Sullivan, Joseph Fletcher, Tom L. Beauchamp and others.^{viii}

Those who believe in 'Karma' they are of the opinion that all our sufferings and pain are the result of our own deed and taking the life by the self goes against the very fundamental of karma. So, the patients who have been terminally ill or in a vegetative state they are bound to suffer because they have been destined to suffering.

But, when there is a conflict between 'destiny' and 'liberty to choose', the liberty to choose should be prevailed not the destiny because our Constitution ensures us 'right to life and personal liberty'.

Right to Life Includes Right to Dignified Death

There are some remarkable cases where the Supreme Court and different High Courts have explored this controversial topic, i.e. euthanasia which is also claimed as 'Right to die'. State of Maharashtra v. Maruty Sripati Dubal^{ix} is the first case of its kind where the question whether right to life includes right to die came for consideration. The Bombay High Court

held that the right to life guaranteed by Art 21 includes right to die and consequently the Court struck down Sec 309, IPC which provides punishment for attempt to commit suicide by a person as unconstitutional.

In *P. Rathinam v. Union of India*^x a Division Bench of the Supreme Court agreed with the view of Bombay High Court and declared that a person has a right to die. The court here analysed that the 'right to live' under Art 21 of the Constitution includes 'right to not to live' which signifies termination of life. But, surprisingly the Court rejected the plea of 'euthanasia' (mercy killing) should be permitted by law.

In *Gian Kaur v. State of Punjab*^{xi} the Supreme Court overruled the *P. Rathinam*'s case and held that 'right to life' under Art 21 does not include 'right to die' or 'right to be killed'. While delivering the unanimous judgement Justice J.S. Verma, observed, "Any aspect of life which makes it dignified may be read into Art 21 of the Constitution but not that which extinguishes it and is, therefore inconsistent with the continued existence of life resulting in effacing the right itself"^{xii}.

With reference to the protagonist's view of euthanasia, that existence in persistent vegetative state was not beneficial for the terminally ill patient, J. J.S. Verma held it being unrelated to "principle of "sanctity of life" or the "right to live with dignity. The Court set aside the judgement of Bombay High Court and the decision of Supreme Court in *P.Rathiram v. Union of India* and held that right to live does not include right to die.

Euthanasia as a Crime

The concept of 'euthanasia' though its root in our mythology and history as well but it has not been accepted either by religion or by society. The possible reason behind it may be that to many euthanasia, is more or less the reflection of 'suicide'. Whereas, both the concepts are poles apart. As per *Conscience Law Dictionary* suicide means self killing, it is not restricted to mean a wrongful act of self murder. It means self killing to the same extent as homicide means killing anyone else^{xiii}. On the other hand, euthanasia means 'good death' where the person is not killing himself but through any other human agency. In case of suicide, the person commits it does not seek the permission of others rather executes it in a very secret way but in euthanasia, the patient seeks the permission from the law to allow him to end his life. Therefore, euthanasia and suicide shall never be put under the same umbrella.

The next question in this context may arise whether, euthanasia is an offence or not.

The answer to this question lies in the roman maxim ‘Actus non facit reum nisi men sit rea’ on which law of crime in India is based which reads as an act alone does not constitute a crime unless it is accompanied by guilty intention. The omission of ‘guilty intention’ excludes euthanasia from a crime. Further it may be argued that as the person who applies for euthanasia dies with his/her consent, it keeps euthanasia outside the purview of crime. Though the provision of Sec 87,IPC clearly says that ‘consent’ cannot be a defence when it relates to hurt or grievous hurt but the issue ‘euthanasia’ is above all these as it deals not simply with death but ‘dignified death’, a peaceful death. So neither the felicitator nor the felicitated shall be accused of any crime.

The discussion on ‘suicide’ and ‘euthanasia’ may lead to another related concept, i.e. ‘assisted suicide’.

Legal Status of Euthanasia

Though many western countries have legalized euthanasia, the picture in India is bit different. In a culture and tradition and ethos bound country like India the matter is bound to be grave.

“In a country like ours where the poor barely have the right to live, a legally recognized right to die would push them to the very margins of healthcare services. There is the real danger that medical negligence could hide behind the lofty notion of mercy killing”^{xiv}.

This observation of Barkha Dutt compels us to think and rethink about the legalization of euthanasia in India. Though, right to health is a fundamental right under Article 21 still it is a farfetched dream for many and if euthanasia would have been legalized in letter and spirit than there is every possibility of being misused intentionally or accidentally. But, at the same time another sensitive question may come that how far is it justified not to legalize euthanasia just because there is an apprehension that medical services may take a back seat or medical negligence may get a protected shield in case euthanasia gets a legal status. Barkha Dutt’s concern is definitely not without reason and that’s why Government must take some such protective measures to make both ‘live’ and ‘death’ dignified and Judiciary as always concern for the people has made passive euthanasia legal in India under specific circumstances.

In the year 2011, Supreme Court legalized passive euthanasia by withdrawing of life support to the patients in a permanent vegetative state. This decision came in the case of Aruna Shanbaug^{xv} who had been in a persistent vegetative state for a long forty two years. It is a

path breaking decision as to implement own choice rather than to be controlled by destiny. The Supreme Court specified two irreversible conditions to permit passive euthanasia, i.e. the brain dead for whom the ventilator can be switched off and those in Persistent Vegetative State for whom the feed can be tapered out and pain managing palliatives be added. The Supreme Court issued certain guidelines in this regard. Those are

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 'next friend'. It can also be taken by doctors attending the patient. However, the decision should be taken bona-fide in the best interest of the patient.
2. Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support such decision requires approval of the High Court concerned.
3. When such an application is filled the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. A committee of three reputed doctors to be nominated by the Bench, who will give report regarding the condition of the patient. Before giving the verdict a notice regarding the report should be given to the close relatives and the State. After hearing the parties, the High Court can give its verdict.

Another case in which too euthanasia has been discussed in length and detail is Common Cause (A registered society) V. Union of India

But so far as active euthanasia is concerned it is yet to get a legal stamp.

Common Causes (A Registered Society) v. Union of India^{xvi} is another leading case where the legalization of euthanasia has been discussed by the Supreme Court. A writ was filed to declare 'Right to die with dignity' as a fundamental right within the fold of 'Right to life with dignity' guaranteed under Art 21 of the Constitution. The petitioner suggested to execute a document, 'my living will and attorney authorization' which can be presented to hospital for appropriate action in the event of the executants being admitted to the hospital with serious illness which may threaten termination of life of the executants or in the alternative, issue appropriate guidelines to this effect and to appoint an Expert Committee consisting of doctors, social scientists and lawyers to study into the aspect of issuing guidelines regarding execution of 'living wills'.

According to the petitioner society, the citizens who are suffering from chronic diseases and / or are at the end of their natural life span and are likely to go into a state of terminal illness or permanent vegetative state are deprived of their rights to refuse cruel and unwanted medical treatment like feeding through hydration tubes, being kept on ventilator and other life supporting machines in order to artificially prolong their natural life span. Thus, denial of this right leads to extension of pain and agony both physical as well as mental which the petitioner society seeks to end by making an informed choice by way of clearly expressing their wishes in advance called “a living will” in the event of their going into a state when it will not be possible for them to express their wishes^{xvii}.

The recommendation of the petitioner society is a step forward to think deeply about the legalization of active euthanasia in India.

Conclusion

“Hiranmayena patrena satyasya pihita mukham”.

The truth (reality) is concealed in the golden pot and the perceiver is puzzled by the dazzling of the pot and fails to get into the reality. To a great extent this is true in our issue. The depth of the suffering of the man in vegetation/ terminally ill condition is (possibly) relegated to the back but safe guarding the golden lid i.e. law gets prominence. Leave apart the physiological/ psychological suffering of the patient, the amount of labour (energy), time, money invested for the purpose could be used for other socially constructive programmes. In the situation under discussion not only the patient suffers but his attendants, doctors, employed nurses and subsidiary supporting associates also devote time and energy to the best of their ability which could be diverted to other needy occasion, whereas existing law gets prominence. It is high time for us to think, to realize and follow the path tracked by other countries to resolve the issue. Active euthanasia be honoured and the patient be allowed to sleep for good while all others associated with the process to have a sigh of relief.

References

- ⁱ Pamela Jone, a reputed journalist
- ⁱⁱ Euthanasia: The Ethical Angle by Tandra Patnaik
- ⁱⁱⁱ Council of Europe. Ethical Eye: Vol I, Ethical and Human aspects, 2003, P 13
- ^{iv} AIR 1981 SC 746
- ^v AIR 1978 SC 597
- ^{vi} An American Philosopher, University of Colorado, Boulder
- ^{vii} Times of india.indiatimes.com/home/Gandhi. Euthanasia/articleshow/978350.cms
- ^{viii} Ethics: Theory and Practice, The Justification of Voluntary Euthanasia, Y.V. Satyanarayana, Page no-166
- ^{ix} 1987 Cr LJ 549
- ^x (1994) 3 SCC 394
- ^{xi} (1996) 2 SCC 648
- ^{xii} Pandey Dr J.N., Constitutional Law of India, 48th edition, P 260
- ^{xiii} Conscience Law Dictionary, P Ramanatha, 3rd edition
- ^{xiv} Barkha Dutt (2007)
- ^{xv} Aruna Ramachandra Shanbaug v. Union of India and Others, (2011) 4 SCC 454
- ^{xvi} (2014) 5 SCC 338
- ^{xvii} Supremecourtofindia.nic.in/outtoday/wc2152005.pdf