

ENVISIONING INDIA AS EUTHANASIA FRIENDLY: INCEPTION WITH DECRIMINALISING LEGACY

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Mental healthcare act as propeller of hope-

‘There is no development without health and there is no health without mental health’- ministerial round tables on mental health by WHO within 58th World Health Assembly, 2001¹. Experiences of mental disorder are not limited to perceptions of abnormality and symptoms of illness but are escorted by a second illness representing the stigma and discrimination associated with the disorder. The social representation of the disorder is not only associated with knowledge but our Indian society is also influenced by values, beliefs, myths, ritual practices, norms, images and stigma which has ultimate impact on legislations of our country. With passing of mental healthcare 2017, on 7 April 2017, our legislation has taken a positive step towards empowering mentally ill persons. It is with a deep sense of satisfaction that we are witnessing the emergence of phenomenal movement for improving mental healthcare at a national level. One needs to focus on section 115 of the aforementioned act which decriminalised suicide which had been one of the legacy of Indian penal code passed during British Era. Suicide is tragic and ultimately loss of human life all the more devastating and perplexing because it is a conscious volitional act. Death is tragic and suicide the ultimate tragedy. This is a psychological perspective of suicide but the legal perspective before the passing of the act was to treat a survivor as a criminal. The society has started to bury this feeling of apathy towards a person who survived his/her suicide attempt. The section elucidates that a person who commits suicide is to be presumed to have severe stress and this has clearly been highlighted in the association between depression and suicide. These legal interpretations can only succeed in social sphere if citizens are made aware of this or in other words ‘mental health literacy’. Mental health literacy has been defined as the knowledge and beliefs about mental disorders which aid their recognition, management or prevention². We are living in an age where these two cannot or in majority of cases, will not exist in isolation. Hence it was

¹B.Saraceno, WHO perspectives on mental health beyond 2001: Putting the evidence into action.

²Jorm A.F.,Korten AE, Jacomb PA, Mental health literacy: a survey of the public’s ability to recognise mental disorders and their beliefs about the effectiveness of treatment, Med J Austr 166,182-186(1997)

noteworthy section in the act. Society has always been hesitant in accepting a survivor because of many reasons ranging from religious beliefs to their own prejudice. According to their beliefs how can a person be weak enough to give up their life for any amount of pressure or under any circumstances? This argument is subjective and has no psychological relevance as human mind doesn't function according to society's whims and fancies.

But can we interpret this decriminalisation of suicide in India as first step towards our legal community having euthanasia laws? As classified by many states who have accepted euthanasia, it is providing death with dignity. But as highlighted by supreme court that we can only live with dignity and not die with it. The most important aspect of this process is that the patient has to come in consensus with fate that there is no hope for future hence involving a psychological facet to it. Mental healthcare act deals with mental illness but another connotation to statement of objectives and reasoning is to understand the pre-stages of a mental illness also. It doesn't conclude that the patients who consent to euthanasia will have mental illness but the ingredient of hope is lost from their lives. This means that their attitude towards lives has undergone change which directly connects to our psychological self. Thus another countenance (even if very discreet/indirect) of this decriminalisation could be changing the social mind set towards euthanasia which can be a future amendment to the existing mental health legislations.

Relation between suicide and euthanasia-

Study shows that both euthanasia and suicide essentially involve the question of the right to die.³ While these terms may seem similar in their connotation, they differ vastly in their meaning and need to be distinguished:-

- (1) The first and the most important is that suicide is taking of one's own life but euthanasia is taking of the life of another.⁴
- (2) Suicide itself is the crime but euthanasia amounts to homicide.⁵
- (3) Another point of difference is that euthanasia or mercy killing essentially involves pain and suffering due to some incurable medical ailments while suicide need not involve any such malady.⁶

³ Aditya Kamath, Euthanasia, Suicide and Theology, available at www.law4u.net.com (last accessed on 11th July 2015).

⁴ ibid

⁵ ibid

⁶ ibid

(4) Then there is the question of consent. Consent to kill oneself is implied by the very commission of the act of attempt to commit suicide but in euthanasia the consent has to be in the form of a request essentially by the patient himself or close kith and kin.⁷

(5) Distinguishing euthanasia from suicide, Honourable Justice Sawant observed in Maruti Sripati Dubal⁸ case:

Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or mercy killing, on the other hand, means and implies the intervention of other human agency to end the life. Mercy killing thus is not suicide and an attempt at mercy killing is not covered by the provision of Section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected.

(6) Moreover, Honourable Justice B.L.Hansaria, speaking for the Division Bench of the Supreme Court in P. Rathinam v. Union of India⁹ observed: 'One would be right in making distinction logically and in principle between suicide and euthanasia, though it may be that if suicide is held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point.'

But then why is euthanasia discussed with reference to section 309 of IPC?-

One view relates to the "act" of a terminally ill patient having an intention to die, whereby he/she expressly consents to euthanasia

Other view is, that a person having failed in his attempt to commit suicide, lands into a vegetative state, thus becoming a source of agony and torture for his family, does not deserve punishment under section 309, I.P.C. Rather, this state imparts a right upon his relatives to fulfil his/her desire to die by consenting for a non-voluntary passive euthanasia.

We are here discussing the first aspect where the patient is terminally ill and does not wish to continue his/her life and consents to die with peace. We can never understand the psychological mind set of both a suicidal person as well as a person who wishes to undergo euthanasia as it is close to impossible to step in their shoes. Both have different technicalities, as said by many judges in case judgements, but same psychological aspects hence are usually connected.

Viewing euthanasia with an open mind-

⁷ ibid

⁸ AIR 1987 CrLJ 549

⁹ (1994) SCC 394

India, as a society and as a country can't be understood without understanding the diversity and influence of different religion on societal decisions. In all religious belief systems the concept of suicide has been condemned because life as such is a sacred gift from the almighty and we humans don't have the right to take it away and hence it is our duty to live life. Right to die has always been an ethical as well as a legal question. Here are two examples where euthanasia is legal-

a) Switzerland

The Swiss Criminal Code under article 115 states that-

'Any person who for selfish motives incites or assists another to commit or attempt suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding 5 years or to a monetary penalty.'

Here the scope of the definition is broadened due to the presence of the words for 'selfish motives'. Hence passive euthanasia, if with consent from patient/kin, can be excluded from this penal code article. Switzerland even has NGO's who promote "the last human right"¹⁰ concept where foreigners are assisted with legal euthanasia (with criteria¹¹ only).

b) State of Oregon, United States Of America

The act was enacted on 27 October, 1997. Oregon's Death with Dignity Act allows terminally ill **Oregon** to obtain and use prescriptions from their physician for self-administered lethal doses of medication. The patient characteristics show that 78.9%¹² of patients had terminally ill diagnosed cancer.

Unlike doctor assisted suicide (DAS), with holding life-sustaining treatments with patients consent is almost unanimously considered legal in USA.

The legality we are analysing here can't be accurate without social aspects connected to it. Thus religious beliefs should also be considered here.

a) Christianity

¹⁰ Digitas, home page of website, the world federation of right to die societies and RtD Europe(Dec 20,2017,11:37 P.M.)www.digitas.ch.

¹¹ In case of medically diagnosed hopelessness or incurable disease/illness, unbearable pain or unendurable disabilities, also each permitted use of fatally effective medication requires a Swiss doctor's prescription for legal procurement.

¹² Oregon health authority public health division, Oregon death with dignity act data summary 2016, page 3 executive summary.

The Roman Catholic Church is strongly against euthanasia or the concept of assisted suicide as they believe that life is a gift from the almighty and deliberate cessation to human life is morally wrong and they state euthanasia, in whatever form, is murder¹³.

a) Hinduism

The essence of Vedas, Upanishads and Bhagavad Gita tells us that a soul never perishes. Man fears death and runs from it constantly but fails to understand the meaning of “Death is as sure for that which is born, as birth is for that which is dead”. According to Hinduism life on earth is like a punishment and deprives a person from enjoying heaven¹⁴ (peace) but here also deliberate taking of life is condemned.

Understanding euthanasia in Indian judicial context

a) State of Maharashtra v. Maruti Sripati Dubal¹⁵

Justice P.B.Sawant said: If the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the attempts. Those who make the suicide attempt on account of mental disorders require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen leading to further mental derangement... Thus, in no case does the punishment serve the purpose and in sometimes is bound to prove self-defeating and counter-productive.

Distinguishing euthanasia from suicide, he observed in Maruti Sripati Dubal case:

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b) P Rathinam v. Union of India¹⁶

¹³ BBC website, euthanasia and assisted dying under religions, BBC International (Dec 21, 2017, 11:30P.M.) www.bbc.co.uk?religion/religions/christianity/christianethics/euthanasia_1.shtml

¹⁴ Chapter 4 verse 9 conveys the message that one who knows the transcendental nature of lords' appearance will gain true knowledge and peace (moksha), in verse 10 of same chapter lord says if one is purified by knowledge of him will be freed of all worldly attachments.

¹⁵ AIR 1987 CrLJ 549

¹⁶ (1994) SCC 394

Moreover, Honourable Justice B.L.Hansaria, speaking for the Division Bench of the Supreme Court in the case observed: Euthanasia is not much related to the act of committing suicide in as much as wherever passive euthanasia has been held to be permissible under the law, one of the requirement insisted is consent of the patient or of his relations in case the patient be not in a position to give voluntary consent. So, if one could legally commit suicide, he could also give consent for his being allowed to die. But then, the legal and other questions relatable to euthanasia are in many ways different from those raised by suicide. One would therefore, be right in making distinction logically and in principle between suicide and euthanasia, though it may be that if suicide is held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point. The justification for allowing persons to commit suicide is not required to be played down or cut down because of any encouragement to persons pleading for legalization of mercy killing.

c) *Gian Kaur v. State of Punjab*¹⁷

But the decision of P. Rathinam was subsequently overruled by Supreme Court; it was held that provision for penalizing attempt to commit suicide is not unconstitutional. It was held extinction of life is not included in protection of life and hence Article 21 did not include 'right to die'. Thus, Section 309 and article 21 are not ultra vires.

d) *Aruna Ramchandra Shanbaugh v. Union of India*¹⁸

The verdict on 7th March 2011 allowed passive euthanasia contingent upon circumstances. The 2 Judges Bench of Justice Markandeya Katju and Gyan Sudha Mishra, also asked the Parliament to delete Section 309, IPC as it has become "anachronistic though it has become constitutionally valid." Justice M. Katju while writing the judgment, also said that, "A person attempts suicide in a depression and hence he needs help, rather than punishment."

Euthanasia: right of individual vs right of society's morality

It is often agreed that law is a rational device through which the society is regulated and it should not be mixed with morality as rationality is often challenged in case of morality.

The Wolfenden Report¹⁹ stated a general principle: the law's function, in this field, the Committee said, was "to preserve public order and decency, . . .to protect the citizen from what is offensive and injurious, and to provide sufficient safeguards against exploitation and

¹⁷ (1996) SCC 648

¹⁸ W.P. (CrI.) NO. 115 OF 2009

¹⁹ Edward H. Levi, *The Collective Morality of a Maturing Society*, 30 Wash. & Lee L. Rev. 399 ,page 3-4(1973)

corruption of others, particularly those who are especially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.

"It is not. . . the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour further than is necessary to carry out the purposes we have outlined. . . . Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business."

A persons' choice is what shapes his/her individuality and taking that choice away prevents the person from exercising their human right of freedom of expression. Justice Sikri highlighted the importance of right of choice in one's life²⁰. We should have it as in the end we would face the consequences so why should others have influence in our initial choices? Law should interfere when the consequences of our choices harm the other person or deprives the other person from exercising their rights. In this situation the choice as well as the consequence is to a private individual. Even in Aruna Ramchandra case the nurses told that, "She was one of us"; "She was a very nice and efficient staff nurse but due to the mishap she is in this bed-ridden state"²¹. The entire nursing staff member and other staff members had a very compassionate attitude towards Ms. Aruna Ramchandra Shanbaugh and they were all very happy and willing to take care of her²². They all were very proud of their achievement of taking such a good care of their bed-ridden colleague and felt very strongly that they wanted to continue to take care of her in the same manner till she succumbed naturally²³. They do not feel that Ms. Aruna Ramchandra Shanbaugh is living a painful and miserable life²⁴.

Conclusion

It wouldn't be wrong to suggest that India is on the verge of change. Our country has always considered suicide or assisted suicide as murder but that changed when Mental Healthcare Act, 2017 decriminalised it under section 115. Passive euthanasia had only been allowed in Aruna shanbaugh case but it wasn't carried out as the nurses didn't give their consent to it (they were officially her next friend). This judgement can't be the only guide for such serious issue and an urgent need is legislation in regards to this matter. Law and medical field are connected with

²⁰ National legal services authority v UOI (2014)5 SCC 348

²¹ Judgement of Aruna Ramchandra Shanbaugh v Union of India and others WP (CrI)NO. 115 of 2009, para 6-8 page 5/51

²²ibid

²³ ibid

²⁴ ibid

a thread of ethics, which has always been difficult to define in both these professional field. Law differentiates legal and illegal and medicine differentiates dead from alive but which or who distinguishes good from bad. Often this task is left for the people involved but that is where the loophole can be seen with clarity. We as humans have a tendency to mix our profession with our emotions and to think rationally these two fields have to be kept at distance. India is lacking specific laws related to euthanasia and the available medical facilities are inadequate for the huge population of India. Hence there are numerous instances of suicides which can be reduced, if the boundaries have been defined clearly, now that they have become blurred.

