

LEGAL CHALLENGES TO EUTHANASIA IN INDIA

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ABSTRACT

“I think those who have a terminal illness and are in great pain should have the right to choose to end their own life, and those that help them should be free from prosecution.”

--Stephen Hawking

Survival is valuable and there is no doubt obviously but sometimes and in certain conditions life becomes painful, in that stage surveillance seems, like a curse. Every human being desires to live and enjoy the life till his last breath. But sometimes a human being wishes to end his life in the manner he chooses. In recent times, the concept of Euthanasia has become increasingly under the spotlight due to the ongoing technological advancement in science and of medicine. There are several other compounding factors making the issue of Euthanasia a crucial problem for contemporary society. Right to life is one of the basic Human Rights. It starts from the time of conception in the very first day till death of the individual. It means not only living with dignity, but also dying with dignity. . If there is no hope for survival, the victims are kept artificially alive at least for some days, months or years by being put under the ventilators or life support systems. When life becomes a burden and causes an unbearable pain then arises a situation to choose whether to live or to die.

INTRODUCTION

In recent times, the concept of Euthanasia has become increasingly under the spotlight due to the ongoing technological advancement in science and of medicine. There are several other compounding factors making the issue of Euthanasia a crucial problem for contemporary society. Right to life is one of the basic Human Rights. It starts from the time of conception in the very first day till death of the individual. It means not only living with dignity, but also dying with dignity. This right has been recognized by many countries and they have taken steps to ease and preserve the dignity of a dying person. This question had come up many times in

the Indian courts. We do not have any Specific legislation in India regarding Euthanasia till date. The law of the land is operating through the various judgments by the Hon'ble Supreme Court, right from Rathiram's Case, way back in 1994, to the Aruna Shaunbag Case, in 2018. Euthanasia is mainly associated with people with terminal illness or who have become incapacitated and don't want to go through the rest of their life suffering. Euthanasia has been a much-debated subject throughout the world.

Euthanasia has been debated all over the world for several years. It has been favored by many advanced countries on humanitarian grounds that individuals and loss of dignity sometimes associated with certain serious disease deserve mercy and should be allowed to have a gentle death if he/she so desires . If there is no hope for survival, the victims are kept artificially alive at least for some days, months or years by being put under the ventilators or life support systems. When life becomes a burden and causes an unbearable pain then arises a situation to choose whether to live or to die. Death would be a merciful release from agony and loss of dignity as a human being. Now is the time when our legal system requires a revolutionary change and such progressive provisions need to be incorporated in our legal system which legalize euthanasia but simultaneously lays the fear of its misuse.ⁱ

MEANING AND KINDS

According to Oxford Dictionary, the term Euthanasia means “The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.”

According to Merriam Webster Dictionary, Euthanasia is “the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as a person or domestic animals) in a relatively painless way for reasons of mercy.

The word "euthanasia" was first used in a medical context by Francis Bacon in the 17th century, to refer to an easy, painless, happy death, during which it was a "physician's responsibility to alleviate the 'physical sufferings' of the body."ⁱⁱThe term euthanasia was derived from two Greek words “eu” and “thanatos”. “Eu” means good and “thanatos” means death. According to Oxford English dictionary, definition of euthanasia is the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.

Broadly, Euthanasia may be classified according to whether a person gives informed consent under the following heads:

ACTIVE EUTHANASIA- Active euthanasia means that if a patient who desires to die is given a lethal injection or a lethal drug and as a consequence of which he dies.

PASSIVE EUTHANASIA- Passive euthanasia means if life sustaining machine is disconnected or medical treatment is stopped to a patient suffering from incurable illness he will sure to die.

VOLUNTARY EUTHANASIA- Voluntary euthanasia means when euthanasia is practiced with the expressed desire and consent of the patient.

NON-VOLUNTARY EUTHANASIA- Non voluntary euthanasia means ending the life of a person who is not mentally competent to make a decision about dying, such as a comatose patient.

INVOLUNTARY EUTHANASIA- Involuntary euthanasia is against someone's wish and is often considered as murder. This kind of euthanasia is rarely discussed.ⁱⁱⁱ

Thus, division as regards its kinds is mainly based on whether the patient desires to die or to live his life ; and whether he is capable enough to give his consent to this mercy killing in the eye of law of the country or whether he is of sound mind in giving his consent voluntarily or not and whether euthanasia is exercised against his will .

EUTHANASIA AND SUICIDE

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**^{iv}, 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. 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.

In the landmark case of *State of Maharashtra v. Maruty Sripati Dubal*, the Bombay High Court held that the right to life guaranteed by Article 21 of Constitution of India includes right to die and consequently, the court struck down sec. 309 of Indian Penal Code as unconstitutional. They held that everyone should have the freedom to dispose of his life as and when he desires.

In *P. Rathinam v. Union of India*^v, the division bench of the Supreme Court agreed with the view of the Bombay High court in *Mautiy's* case and held that sec. 309 of IPC unconstitutional. but in *Giankaur* case, *Gian Kaur v. State of Punjab*^{vi}, a five judge constitutional bench of supreme court overruled the *P.Rathinam* case and held that right to life does not include right to die and held that section 309 IPC constitutional.

CURRENT STATUS OF EUTHANASIA

Legalization of Euthanasia has been a major issue in last couple of decades. Several countries have already legalized Euthanasia. For instance, Euthanasia is legal in Belgium. Belgian Paralympic champion Marieke Vervoot ended her life through euthanasia at the age of 40. The spiky-haired athlete announced her intentions after the Rio Games in 2016 to follow that path if degenerative condition worsened her suffering. Vervoot suffered a degenerative muscle disease that caused constant pain, paralysis in her legs and left her barely able to sleep, and gradually her life became torture. She was just 14 years old when diagnosed, but Vervoot pursued a sporting life with passion, playing wheel-chair basketball, swimming and racing in triathlons. She won the 100m gold and 200m silver wheel-chair races at the 2012 London Games, as well as the 400m silver and 100m bronze in Brazil four years later in 2016. But then her eyesight had deteriorated and she suffered from epileptic attacks, and she said that Rio would be her last competition. She said, 'After the Paralympic Games, when I quit, I'm going to enjoy every little moment in my life and I'm going to put more energy in my family and

friends , which I couldn't do with top sports because I had to train everyday ' , she said . Vervoot signed the paperwork to be euthanized back in 2008. She said in Rio that access to legal assisted dying had given her the courage to continue living for as long as she had, and insisted the practice should not be characterized as 'murder'. "It gives a feeling of rest to people," she said then. "if I hadn't gotten those (euthanasia) papers , I think I would already have committed suicide because it's very hard to live with so much pain and suffering and this unsureness".^{vii}

It appears that due to development of Science and technology in the last century, the concepts of life and death has been changed. Changes have even been brought to outlook and psychology of the modern people .Nowadays, a person who is in a persistent vegetative state(PVS), whose sensory systems are dead, can be kept alive by ventilators and artificial nutrition for years. In the light of these developments, legal, moral and ethical issues have arisen as to whether a person who is under ventilator and artificial nutrition should be kept alive for all time to come till the brain-stem collapses or whether, in circumstances where an informed body of medical opinion states that there are no chances of the patient's recovery, the artificial support systems can be stopped. If that is done, can the doctors be held guilty of murder or abetment of suicide? These questions have been raised and decided in several countries and broad principles have been laid down. 'Withdrawal of life support systems' is different for 'Euthanasia' or 'Assisted Suicide'. Withholding or withdrawing life support is today permitted in most countries, in certain circumstances, on the ground that it is lawful for the doctors or hospitals to do so. Courts in several countries grant declarations in individual cases that such withholding or withdrawal is lawful. It is a well settled principle at common law that a patient has a right to accept medical treatment or refuse it. This is called the principle of self-determination. In *Airedale*, Lord Goff of Chiveley stated that "it is established that the principle of self-determination requires respect must be given to the wishes of the patient, so that if any adult patient of sound mind refuses, however unreasonably, to consent to treatment or care by which his life would or might be prolonged," it shall be obeyed. The doctors "must give effect to his wishes even though they do not consider it to be in the best interests to do so." If a competent patient wants life support system to be withheld or withdrawn, its binding on the doctors unless they come to the conclusion that the patient's decision is not an 'informed decision'. In such cases, the doctor has to take a decision in the 'best interests' of the patient.

ARUNAS SHANBAUG'S CASE

On the evening of 27th November, 1973, Aruna Ramchandra Shanbaug^{viii}, a Junior Nurse at King Edward Memorial Hospital, was attacked by a ward boy, Sohanlal B. Walmiki, in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, so he sodomized her. During the act, to immobilize her, he twisted the chain around her neck. The next day at 7.45 a.m. a cleaner of the hospital found her lying in an unconscious condition on the floor with blood all over. It was alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and her brain got damaged. On 24 January 2011, after she had been in this state for 37 years, the supreme court responded to the plea for euthanasia filed by journalist Pinki Birani, by setting up a medical panel to examine her. The court rejected the petition on 7th March 2011, however in its landmark opinion it allowed passive euthanasia in India.

The centre has informed the Supreme Court that it is vetting a draft law to permit passive euthanasia – **The Medical Treatment of Terminally Ill Patient (Protection of Patients and Medical Practitioners) Bill** but that it is against letting people make living wills by which they can direct that they not be put on life support in case of terminal illness. The draft bill was released by the Health Ministry in 2016, based on the Law Commission of India report no. 241 (August, 2012). This bill is a bold and welcome step in many respects, and it is a significant improvement over the draft ministry bill that it is based on, it moves away from decision making based on the best interest of the patient and recognizes the right to die with dignity. This bill does not permit active euthanasia. Once the practitioner is satisfied that the patient is competent and has taken an informed decision, the decision will be confirmed by a panel of three independent medical practitioners. However, there is need to clearly think through some of the provisions in this bill and the procedures it sets out.^{ix}

Recently Supreme Court on 9th March, 2018 in a constitution bench headed by CJ Dipak Mishra upholding the right to die with dignity gave legal sanction to passive euthanasia and execution of a living will of a person suffering from chronic terminal illness and likely to go into a permanent vegetative state.^x

CONCLUSION

Indian judiciary has always been in the confusing state of mind on the issue of euthanasia. In most of the cases, the Courts distinguished between suicide and euthanasia, without really and clearly understanding the conceptual and practical differences. In *Maruti Shripati Dubal and Rathinam*, the Court held that suicide is permissible and euthanasia, in whatever circumstances, would amount to homicide, and therefore not permissible. This leads to an unreasonable conclusion that if the doctor assists in suicide by prescribing high dosage, he is not liable but if he administers the same to the patient, he is liable for homicide. The Supreme Court, in *Gian Kaur*, recognized the legality of passive euthanasia, but could not conclusively decide on the issue of active euthanasia. More importantly, focus of all these cases were on suicide and abatement to suicide, and not on euthanasia. Therefore, while making or passing reference to euthanasia in these decisions, the courts seems to have not made enough research on euthanasia. The much-needed law on euthanasia is something which we do not find in India. While the decisions of the Indian Judiciary have kept the debate open, the legislature has not to cause, or be known by the sore to be likely to cause, to any person for whose benefit it is done in good faith, and who has given consent, whether express or implied, to suffer that harm, or to take the risk or that harm. The application of suicide laws to euthanasia has created much more confusions by overlooking the existing distinctions between euthanasia and suicide.

Therefore, it is high time for Indian legislature to step in, and clarify the law on euthanasia in order to protect the interests of doctors, on the one hand; and the vulnerable group of patients, on the other hand. Let's hope the position will be clear in the coming days.

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^{vi}*Gian Kaur vs. State of Punjab*. 1996(2) SCC 648 (1996).

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