

EUTHANASIA IN INDIA: SHOULD DEATH BE A CHOICE?

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As has been rightly said by Marya Manners, "Euthanasia is simply to be able to die with dignity at a moment when life is devoid of it". Euthanasia is a term that has often sparked debates whether people are 'for' or 'against'. It has become one of the most debated ethical issue of concern as can be inferred by considerable number of publications, media coverage and development of certain laws in some countries. It is a concept based on philosophy of empathy and solicitude. There would be a discussion on what euthanasia is, its types, its existence in some countries of the world, relevance and history in India, legal aspects of Euthanasia, case of Aruna Shaunbaug, and at the end its present scenario and suggestions for the same. The article would provide an understanding of the socio-political aspect of Euthanasia in India.

KEYWORDS: Euthanasia, empathy, solicitude, Aruna Shaunbaug case, legal and socio-political aspects.

INTRODUCTION

In our everyday life we come across terminally ill patients who are either bedridden or are completely dependent on others. It is sometimes inferred that it hurts those people's emotions by looking at their own condition. After looking at the condition of such patients it feels like death is a better option rather than providing them such a painful life in terms of both physical and psychological pain. But there are different viewpoints to this too as the legalization of euthanasia in Netherlands has made it to be misused more than used for the betterment of the patients and this has raised doubts in the minds of Indians as to euthanasia will take away the pain or invite more abusing of power of taking away someone's life.

If seen in Indian scenario it can be said that in almost all societies individual and social life was governed by social customs during the ancient and medieval ages. Social value preceded human values. India is no exception to this rule. India had too remained under the rule of customs, how so ever; some of them might appear as tyrant and unjustified today.¹ Indian culture seems to create an ambivalent attitude towards suicide and euthanasia, on the one

¹ http://shodhganga.inflibnet.ac.in/bitstream/10603/54434/7/07_chapter-2.pdf

hand sanctity of life was taken to be the highest value and the violation of it including suicide was considered the highest sin. But it can also be inferred from ancient texts that Hinduism made the provision of self-willed death also. In his book 'Merging with Siva' Satguru Sivaya Subramuniyaswami wrote about Hindu view of death in the following words: "Pain is not part of the process of death. That is the process of life, which results in death. Death itself is blissful. You did not need any counseling. You intuitively know what's going to happen. Death is like a meditation, a Samadhi. That's way it is called Maha (Great) Samadhi".²

All these arguments of euthanasia talk of the ancient view of the problem in India with its cultural ambivalence towards suicide and euthanasia. But the current scenario is different and in detail will be discussed later in the article. Just to give a brief outline it can be said that in recent times the concept of Euthanasia has become increasingly under the spotlight due to the ongoing technicization of medicine.³ There are several other compounding factors making the issue of Euthanasia a pressing problem for contemporary society. One can expect that the controversy surrounding the moral acceptability of Euthanasia and its decriminalization will remain a challenge for our ageing societies in the twenty first century.⁴

LITERARY REVIEW

In the introduction we discussed a lot on the concept of euthanasia and its existence in India by talking of Indian history and its relevance in present time. But now we would be talking on the presence of a heated debate on this topic of euthanasia in print media by taking into consideration a few bites by people and presenting a discussion on it.

Veena Johari, a lawyer with Courtyard Attorneys, who is also part of the Ethics Committee of KEM Hospital and involved in medico-legal issues, felt that there was also need to put a redressal system in place to check its misuse: "The consent of the patient is important; there has to be an informed choice." She recommended penal action against people found guilty of misusing the euthanasia option.⁵

A Christian priest, **Fr. Stephen Fernandes**, executive director of FIAMC Bio-Medical Ethics Centre, expressed the view that every human life was sacred, so no individual had the right to end her or his life, so the only way forward was to strengthen palliative care in the country.⁶

² http://shodhganga.inflibnet.ac.in/bitstream/10603/54434/7/07_chapter-2.pdf

³ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

⁴ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

⁵ <http://www.thehindu.com/news/cities/mumbai/news/The-right-to-choose-death-is-India-ready-for-euthanasia/article14499996.ece>

⁶ <http://www.thehindu.com/news/cities/mumbai/news/The-right-to-choose-death-is-India-ready-for-euthanasia/article14499996.ece>

Dr. Roop Gursahani, a neurologist with Hinduja Hospital. He felt that euthanasia was for animals and that human being needed to take charge of their destiny by deciding their own course of life. He recommended that people should make a Living Will in which they should clearly state the level of medical care they wanted towards the end of their lives or in case of terminal illness.⁷

"Based on the recommendations of the expert committee, the Directorate General of Health Services (DGHS) has proposed formulation of legislation on passive euthanasia. The expert committee has further suggested certain changes in the draft bill. The committee has not agreed to active euthanasia since it has more potential for misuse and as on date it is prevalent in very few countries worldwide," the Centre said in its response to a petition filed by Common Cause, an NGO.⁸

"In situations such as end-stage cancer, when even a morphine pump cannot manage the pain, mercy killing should be allowed," says oncologist **Dr PK Julka**. "We deal with such patients and see how devastating continued life can be for them and their families. And what is the point in prolonging the physical agony of a terminally ill person?"⁹

From all these bites it can be inferred that euthanasia is correctly called a debatable issue in present scenario. The issue in favor of euthanasia is that it saves a patient to be freed from the suffering that he goes through daily in his illness. It is like mercy killing where the when the medicines and the medical advancement can also not save the person it is better to make the person rest in peace and not to prolong the physical agony of the person. But there are many arguments against euthanasia too which put us in a dilemma as both the positives and negatives are equally benefitting and dangerous respectively. Being in a country like India where the morals play a very crucial role it is very difficult to give the right of any person's life in someone else's hand because it can be misused. In short it can be said what one of the neurologists has above recommended that it is better to make a rule where a person can make a living will and that will decide what they want in medical terms throughout their life. This will not take away a person's right to his life too and would save him from suffering too.

EUTHANASIA: MEANING AND DEFINITION

The English philosopher Sir Francis Bacon coined the phrase "euthanasia" early in the 17th century. Euthanasia is derived from the Greek word eu, meaning "good" and thanatos

⁷ <http://www.thehindu.com/news/cities/mumbai/news/The-right-to-choose-death-is-India-ready-for-euthanasia/article14499996.ece>

⁸ <http://timesofindia.indiatimes.com/india/Government-proposes-law-allowing-passive-euthanasia/articleshow/50778837.cms>

⁹ <http://www.hindustantimes.com/india/euthanasia-where-do-you-stand-on-the-right-to-die/story-r4Euz2ySNHjimk4C9w0GxN.html>

meaning “death,” and early on signified a “good” or “easy” death.¹⁰ The practice of intentionally ending a life in order to relieve pain and suffering. It refers to the situation when a doctor induces the death with a lethal injection, of a patient who is suffering unrelievably and has persistently requested the doctor to do so.¹¹

According to the House of Lords Select Committee on Medical Ethics, the precise definition of euthanasia is "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering"¹²

According to Black's Law Dictionary (8th Edition), Euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reason of mercy. Thus to define in literally terms, it means putting a person to painless death especially in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap.¹³

Types of Euthanasia:

Euthanasia may be classified under-

1) Passive Euthanasia

Hastening the death of a person by altering some form of support and letting nature take its course is known as passive euthanasia. Examples include such things as turning off respirators, halting medications, discontinuing food and water so as to allowing a person to dehydrate or starve to death, or failure to resuscitate. Passive euthanasia also includes giving a patient large doses of morphine to control pain, in spite of the likelihood that the painkiller will suppress respiration and cause death earlier than it otherwise would have happened. Such doses of painkillers have a dual effect of relieving pain and hastening death. Administering such medication is regarded as ethical in most political jurisdictions and by most medical societies. These procedures are performed on terminally ill, suffering persons so that natural death will occur sooner. They are also commonly performed on persons in a persistent vegetative state; for example, individuals with massive brain damage or in a coma from which they likely will not regain consciousness.¹⁴

2) Active Euthanasia

A deliberate life shortening act is called ‘active’ Euthanasia. Active Euthanasia involves painlessly putting individuals to death for merciful reasons, as when a doctor administers a lethal dose of medication to a patient. This involves causing the death of a person through

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>

¹¹ <http://www.medicinenet.com/script/main/art.asp?articlekey=7365>

¹² <https://www.ncbi.nlm.nih.gov/pubmed/11766225>

¹³ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

¹⁴ <http://legal-dictionary.thefreedictionary.com/euthanasia>

the response to a request from that person. Here, in active Euthanasia something is done to end the patient's life.¹⁵

3) Voluntary Euthanasia

In voluntary Euthanasia it is performed with the consent of the recipient. It involves a request by the dying patient or that person's legal representative. Here in this case, it is to be seen that the consent to be given should be free from all sense of coercion, that is, the choice of Euthanasia was an instance of unconstrained self-determination. This is the most acceptable form of Euthanasia at international level.¹⁶

4) Involuntary Euthanasia

The term involuntary euthanasia is used to describe the killing of a person who has not explicitly requested aid in dying. This term is most often used with respect to patients who are in a persistent vegetative state and who probably will never recover consciousness.¹⁷

Difference between Euthanasia and Murder:

Normally, murder means intentionally killing someone in unlawful manner and such killing can be of two kinds. First, those where the murderer has informed consent of the person killed and secondly, where the murderer does not have the informed consent of the person killed. For pro-life proponents, Euthanasia is equivalent to murder because it is the act of deliberately ending the life of a patient both at the patient's own request and at the request of his kith and kin. The term mercy killing, closely akin to Euthanasia becomes murder only when there is no consent of the patient, says Roedy Green. Whereas proponents of Euthanasia feel that phaspects, that is (Physician assisted patient activated suicide) is not murder but Phactpared whch is (Physician activated patient request) death is equivalent to murder, because in the later physician actively participates in the process of killing the patient.

Difference between Euthanasia and Suicide:

Suicide is the act of killing oneself. It ranks number 13 on the leading causes of death in the world, with over a million people committing suicide every year. On the other hand, euthanasia which is the process of ending a life in order to stop pain and suffering, can also fall into the category of suicide if it is voluntary. Voluntary euthanasia is done with the consent of the patient. While the purpose of euthanasia is to end the pain and suffering of a terminally ill person, a person that commits suicide can have several different reasons. Suicide is certainly committed out of despair or mental illnesses like depression and schizophrenia, including drug abuse and alcoholism. Suicide is voluntary, meaning it is the person's will to end his life while euthanasia can also be involuntary or non- voluntary. Involuntary euthanasia is ending a person's life against his

¹⁵ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

¹⁶ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

¹⁷ <http://legal-dictionary.thefreedictionary.com/euthanasia>

will. Non voluntary euthanasia is ending a person's life when he is unable to give his consent as in the case of child euthanasia.¹⁸

The Bombay High Court in Maruti Shripati Dubal V. State of Maharashtra, 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. But Euthanasia means the intervention of other human agency to end the life.¹⁹

Euthanasia and Human Rights:

Euthanasia literally means "good death". It is basically to bring about the death of a terminally ill patient or a disabled. It is resorted to so that the last days of a patient who has been suffering from such an illness which is terminal in nature or which has disabled him can peacefully end up his life and which can also prove to be less painful for him. Thus the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. Euthanasia is also popularly known as 'mercy death' as it is given to lessen the pain of the patient.²⁰

CONTEMPORARY SITUATION OF EUTHANASIA IN INDIA

Every human is desirous to live and enjoy the fruits of life till he dies. But sometimes a human being is desirous to end his life by use of unnatural means²¹. Euthanasia presents a paradox in the code of medical ethics, for it involves a contradiction within the Hippocratic oath, which is essentially the promise to prolong and protect life even when a patient is in the late and most painful stages of a fatal disease. The paradox lies in the fact that while an attempt to prolong life violates the promise to relieve pain, relief of pain by killing violates the promise to prolong and protect life.²²

In India, the piousness of life is placed on the highest pedestal. The Right to life under Article 21 of the Indian Constitution has received the widest possible interpretations under the able hands of judiciary. This right is inalienable and inherent in us.

As per the Indian Constitution the Right to life as under Article 21 does not include Right to die. Whether Article 21 includes Right to die or not, first time came up for consideration before the Bombay High Court in the State of Maharashtra vs M.S Dubal. 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

¹⁸ <http://www.differencebetween.net/science/health/difference-between-suicide-and-euthanasia/>

¹⁹ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

²⁰ <http://www.legalserviceindia.com/article/l118-Euthanasia-and-Human-Rights.html>

²¹ <http://www.legalservicesindia.com/article/article/euthanasia-contemporary-debates-2182-1.html>

²² <http://www.legalservicesindia.com/article/article/euthanasia-contemporary-debates-2182-1.html>

unconstitutional. The judges felt that the desire to die is not unnatural, but merely abnormal and uncommon.²³

On 26 April 1994 in P. Rathinam v. Union of India, a two-judge bench of the Supreme Court through Justice B.L. Hansaria invalidated section 309 of the Penal Code, which made attempt to commit suicide an offence, on the ground that it 'violated the fundamental right to life'.²⁴

However, in Gian Kaur V. State of Punjab 16, a five Judge Constitution Bench of the Court overruled P. Rathinam's case and held that right to life under Article 21 of the Indian Constitution does not include the right to die or the right to be killed. The Court held that the right to life is a natural right, embodied in Articles 21. 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.²⁵

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.²⁶ The report dealt with many issues , some of which are, as to who is competent and incompetent patient, what is informed decision, what are best interests of patients, can a patient, their relatives or the doctor move a court of law seeking declaration as to an act or omission by a doctor is lawful, if so, the decision be binding on the parties and doctors and so on. 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 India²⁷. The treating physician was not left with the liberty to choose expert of his opinion. All this was done to protect the rights of the patients and to prevent abuse of power.

It was also recommended by the Law Commission that it will be necessary for the Medical Practitioner to maintain a register where he obeys the patient's refusal to have the medical treatment or where, in the case of (i) competent or incompetent patient or (ii) a competent patient (who has or has not taken an informed decision) he takes a decision to withhold or withdraw or starting or continuance of medical treatment, he must refer to all these matters

²³ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

²⁴²⁴ <http://www.legalservicesindia.com/article/article/euthanasia-contemporary-debates-2182-1.html>

²⁵ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

²⁶ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

²⁷ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

in the register.²⁸ The register shall contain the reasons as to why he thinks the patient is competent or incompetent, or what the experts have opined, as to why he thinks the medical treatment has to be withheld or withdrawn in the best interests of the patient.²⁹

In India, euthanasia is a crime. Section 309 of the Indian Penal Code (IPC) deals with the attempt to commit suicide and Section 306 of the IPC deals with abetment of suicide – both actions are punishable. Only those who are brain dead can be taken off life support with the help of family members. Likewise, the Honorable Supreme Court is also of the view that that the right to life guaranteed by Article 21 of the constitution does not include the right to die. The court held that Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read into it.³⁰

A major turn took place in the view on euthanasia in India after the case of Aruna Shanbaug vs Union Of India³¹, where the Supreme Court on 7th March, 2011 broke new ground with a judgment in the Aruna Shangbaug's case, sanctioning passive Euthanasia or withdrawal of life support systems on patients who are brain dead or in a permanent vegetative state(PVS). Aruna Shanbaug is a former nurse from Haldipur, Karnataka in India. In 1973, while working as a junior nurse at King Edward Memorial Hospital, Parel, Mumbai, she was sexually assaulted by a ward boy and has been in a vegetative state since the assault. On 24 January, 2011, after she had been in this state for 37 years, the Supreme Court of India responded to the plea for Euthanasia filed by Aruna's friend journalist, Pinki Virani, by setting up a medical panel to examine her.³²

The court held that active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide).³³ But the Supreme Court allowed passive euthanasia and provided certain guidelines :

- Any petition for Passive Euthanasia has to be filed with the relevant high court. The Chief Justice of the High Court should constitute a Bench of at least two Judges who should decide to grant approval or not.
- Before taking a decision, the bench should seek the opinion of a committee of three reputed doctors to be nominated by the bench. Preferably, one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician.

²⁸ <http://lawcommissionofindia.nic.in/reports/rep196.pdf>

²⁹ <http://lawcommissionofindia.nic.in/reports/rep196.pdf>

³⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>

³¹ http://www.supremecourtcases.com/index2.php?option=com_content&itemid=99999999&do_p df=1&id=21326

³² <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

³³ <https://factly.in/aruna-shanbaug-euthanasia-case-woman-who-triggered-debate-on-euthanasia-in-india/>

- The High Court Bench should issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence, the next friend.
- The Court should supply a copy of the report of the doctor's committee to them as soon as it is available.
- After hearing all the parties, the High Court bench should give its verdict.
- The High Court should give its decision at the earliest.³⁴

The Bill has to pass through various stages before it becomes an Act. Until then the law laid down by Hon'ble Apex Court is to be followed whenever need for Passive Euthanasia arises in our country.³⁵

Although, the Supreme Court dismissed the petition of Euthanasia and did not allow Euthanasia in the present case because of the noble spirit, outstanding and unprecedented dedication of Hospital staff in taking care of Aruna, but it cleared the way for many suffering who want to die with dignity.³⁶

It can be said that from the point of social, legal, medical and constitutional perspectives that passive euthanasia or withdrawal of life support systems is not a step forward to breaking the social engineering of society. It can be said that until overruled this special law must be implemented according to the procedure by court. Most people in Indian society regard passive euthanasia as giving someone the right to take the life of another. The doors of awareness are the way to bring this issue up with a new perspective where it is seen to be different from right to die or attempt to suicide.

CONCLUSION-The painless killing of someone dying from a painful disease

“Marte hain aarzoo mein marne ki Maut aati hai par nahin aati”

- Mirza Galib

“I'm not afraid of being dead. I'm just afraid of what you might have to go through to get there.”

- Pamela Bone

These lines make us realize that a person who is born will also die one day and this is the universal truth of life. What every man deserves is the life of dignity provided a Right to life as well as Right to die. With advancement in science and technology even in the medical field there is a higher chance of the question regarding the right to die being raised.

³⁴ <https://factly.in/aruna-shanbaug-euthanasia-case-woman-who-triggered-debate-on-euthanasia-in-india/>

³⁵ <http://medind.nic.in/jbc/t14/i1/jbct14i1p59.pdf>

³⁶ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

This topic is becoming very debatable in the present scenario but what we need to focus on is that a body with flesh is not right to life but also having full human dignity and honor. If a person cannot live with this honor and dignity, he or she should have the right to medical assistance in dying. Therefore, more emphasis should be laid on quality of life rather than sanctity of life. As every coin has two sides the same way this issue of legalization of euthanasia has both the supporters and the critics.

The supporters say that people have a right to self determination and be allowed to choose their fate, letting a person die is a better choice than letting them suffer with their illness, those who have a debilitating state, chronic illness, incurable must be allowed to choose to die in dignity.

The critics say that euthanasia reduces the sanctity of life in society, not all deaths are painful, there are alternatives available for curing a disease than killing one, providing proper palliative care reduces the chance of conducting euthanasia, they say that it is not granting Right to die but Right to kill, it is also said that when suicide is not allowed euthanasia must also not be as even in suicide a person ends life when gives up all hope on living same as euthanasia where all hopes of living end too. It may also lead to misuse by doctors who will not give their best to save the life the patient.

Of the two contradictory views, one view is that Euthanasia is contrary to human dignity, humaneness and compassion because the conduct of Euthanasia would violate human dignity, on the other hand, the other view is that dying under horrible suffering would violate humaneness, and therefore, a request for Euthanasia and its fulfillment are an expression of respect for human dignity and for a dignified death.³⁷

The root of the dilemma is that autonomy and individual rights have to be promoted so that an individual can make the choice about his or her own life and death, while the right to life has to be strongly protected. The answer to a lot many questions which are left unanswered resulting in ambiguity, needs to be pondered over. A fully fledged law on this sensitive issue is of dire need today, taking all sorts of caution and care keeping in mind the eternal philosophy, culture and natural and physical sensibility of our country where religion is the integral and inevitable source of life.³⁸

At the end it can be said that our history has been the witness that we have loved both life as well as death because death is a bigger truth than life. As Rabindranath Tagore wrote in Gitanjali: And because I love this life, I know I shall love death as well. The child cries out when from the right breast the mother takes it away, in the very next moment to find in the left to find its consolation.³⁹

³⁷ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

³⁸ <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

³⁹ http://www.supremecourtcases.com/index2.php?option=com_content&itemid=5&do_pdf=1&id=21576