

EUTHANASIA: INDIAN AND GLOBAL PROSPECTIVE

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INTRODUCTION

Euthanasia and the physician assisted suicide, which is the practice of ending one's life in order to relieve pain and sufferings, is the most controversial issue facing amongst the world. Euthanasia further divided into 2 sides as its face. Active Euthanasia involves putting down patient by injecting him with a lethal substance e.g. Sodium Pentothal which actually causes the patient to go in deep sleep within the seconds and leads to death of the person without any pain. It amounts to killing of a person by a positive act in order to end the pain and sufferings of a person in the state of terminal illness. This is considered to be the crime in the world except the countries where permitted by the legislation, as observed earlier by the Supreme court. As of now In India too, active euthanasia is illegal and a crime under section 302 and 304 of the IPC. Physician assisted suicide is a crime in section 302 of IPC (abetment to suicide)¹. Passive euthanasia, otherwise known as 'negative euthanasia', however, stands on a different footing. It involves the withholding life support system for continuance of life e.g., withholding of antibiotic where by doing so, the patient is likely to die or removing the heart-lung machine from a patient in a coma. Passive euthanasia is legal without even legislation provided certain conditions and safeguards are maintained (*vide para 39 of SCC in Aruna's case*). When a person ends his life by his own act it is called "suicide" but to end life of a person by others though on the request of the deceased is called "euthanasia". We can ask the question about the attitude towards the annihilation of life viewed by different religions like Hindu, Muslim, Christin, Sikh. Thought the purpose of suicide and euthanasia is same. Although the supreme court has already has given its decision on this point but still we can touch all the features of the issue which we need to analyze carefully. This problem has a social and legal significance. Every adult person of a sound mind has a right to determine what should be done with his/her person. It is totally unlawful to administer a treatment of a sound mind without his consent. The patients with Permanent Vegetative State and person with no hope of the improvement can't make a decision about a treatment given to them. It is ultimately upon the court's decision to decide, as a *parens patriae*, as to what is in the best possible interest of the patient.

¹ *Ibid at 481*

Every human being desires to live and enjoy his/her life till he dies. But sometime the person wishes to end his life in a way he chooses. To end one's life in an unnatural way is a sign of abnormality. When a person ends his life by own we call it 'suicide' but to end the person's life by others on the request of the deceased, is called "Euthanasia" or "mercy killing". Euthanasia has been much debated subject throughout the world. The debate becomes controversial because of developments in the different countries. In Netherlands, Belgium, Colombia and Luxembourg euthanasia is legal. Switzerland, Germany, Japan and some states in the United States of America permit assisted suicide while in nations like Mexico and Thailand it is illegal. In India passive Euthanasia is legal, while the debate goes on about legalizing active euthanasia.

MEANING OF EUTHANASIA

The term Euthanasia comes from a Greek word "eu" and "thanatos" which means "good death"². It is also known as Mercy Killing. Euthanasia is an intentional premature termination of the person's life either by direct intervention (active euthanasia) or by withholding life prolonging measures and resources (passive euthanasia). It is either at the express or implied request of that person or in the absence of the such approval.

According to Black's Law Dictionary (8th edition) euthanasia means the act and the practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of the mercy.

According to J.S. Rajawat, Euthanasia is putting to death a person who because of disease or extremely old age or permanent helplessness or subject to rapid incurable degeneration and cannot have meaningful life. ³ It may also be defined as the act of ending life of an individual suffering from a terminal illness or incurable condition, by lethal injection or by suspension of life support system.

CLASSIFICATION OF EUTHANASIA

Euthanasia is the termination of an ailing person's life in order to relieve him of the suffering. In most cases, euthanasia is carried out because of the person seeks relief and asks for the same but these are the cases called Euthanasia where a person can't make such request. Broadly Euthanasia may be classified according to whether a person gives informed consent under the following heads:

- Voluntary Euthanasia
- Non – Voluntary Euthanasia

² Lewy G. 1. Assisted Suicide in US and Europe. New York: Oxford University Press, Inc; 2011.

³ J.S. Rajawat, Euthanasia, Cr 14 321 (2010).

- Involuntary Euthanasia

There is a dispute amid the medical and bioethical literature about whether or not the non-voluntary killing of patients can be regarded as euthanasia, irrespective of intent or the patient's circumstances. According to Beauchamp and Davidson consent on the part of the patient was not considered to be one of the criteria to justify euthanasia.⁴

- Voluntary Euthanasia

When Euthanasia is practiced with the expressed desire and consent of the patient it is called voluntary euthanasia. It is primarily concerned with the right to choose of the terminally ill patient who decides to end his/her life, choices which serves his/her best interest and also that of everyone else connected to him.

This includes cases of:

- Seeking assistance for dying
- Refusing heavy medical treatment
- Asking for medical treatment to be stopped or life support system to be switched
- Refusal to eat or drink or deliberate fasting.

- Non – Voluntary Euthanasia

It refers to ending the life of a person who is not mentally competent to make an informed decision about dying, such as comatose patient. The case may happen in case of patients who have not addressed their wish of dying in their Wills or given advance indication about it. Instance can be enumerated, like severe cases of accident where the patient losses consciousness and goes into comma. In these cases, it is often the family members, who make the ultimate decision.

The person cannot make a decision or cannot make their wishes known. This includes cases where:

- The person is in a coma.
- The person is too young (e.g. A young baby)
- The person is absent minded
- The person is mentally challenged
- The person is severely brain damaged

⁴ Beauchamp Davidson, The Definition of Euthanasia, Journal, Medical and Philosophy, 294 (1979).

- **Involuntary Euthanasia**

Involuntary Euthanasia is euthanasia against someone's wish and is often considered as murder. This kind of euthanasia is usually considered wrong by both sides hence rarely discussed. In this case, the patient has capacity to decide and consent, but does not choose death, and the same is administered. It is quite unethical and sound barbaric. During World War II, the Nazi Germany conducted such deaths in gas chambers involving people who were physically incapable or mentally retarded.

REASONS OF EUTHANASIA

Euthanasia is the intentional death caused by act or omission of a dependent human being for his or her alleged benefit. There are certain reasons behind advocating euthanasia. People under circumstances justify its use.

There are various reasons for euthanasia. Some of them are:

- Unbearable pain.
- Demand of "right to commit suicide"
- Should people be forced to stay alive?

Unbearable Pain

Patients who suffer from unbearable pain which is beyond treatment or improvement desire peaceful death. It is life with less dignity or sometimes absence of dignity. Medical sciences have reached its peak in inventing lifesaving drugs and treatments. Numbing the severe pain caused by illness until recovery is acceptable, but depending on painkillers for the rest of your life is not a welcome choice. If such choice becomes a necessity of day to day living then the patient tends to develop the tendency towards putting an end to his life. But death is not a solution on the patient's troubles. Sentiments and emotions must not make judgments in such cases. Doctors do not advocate euthanasia in these circumstances. Passive euthanasia is justifiable in case of patients with Permanent Vegetative State (PVS)

Demand of "right to commit suicide"

The word right sounds absolute finality in the required choice. Sometimes it is confused with fundamental right of life granted under Article 21 of the Constitution of India. That is not the case here. This is about the procedural right needed on the patient's part. The rights of the relatives and medical professionals are also considered. The terms must not be misunderstood with the right to die in general sense. In other words, euthanasia is not about the right to die. It's about the right to bring about someone's death. Further it is not about giving recognition to the right but to make legal provisions for smooth and harmonious procedure of conducting euthanasia. Euthanasia and suicide should not be

used together. These terms do not have common ingredients. Suicide is a sad, individual act. Euthanasia is not about a private act. It's about letting one person facilitate the death of another.

Should people be forced to stay alive?

This is the third important question regarding the timing of administering of euthanasia. One should not be forced to stay alive. Law and medical ethics require that every possible means must be resorted to keep a person alive. Persistence, against the patient's wishes, that death be postponed by every means and manner available is contrary to law and practice. It would also be unkind and inhumane. There comes a time when continued attempts to cure are not compassionate, wise or medically sound. Then 'only' all interventions ought to be directed to alleviating pain as well as to provide support for both the patient and the patient's loved ones.

These reasons are of indicative and directive in nature. One cannot make them mandatory while considering euthanasia. Every case is different therefore same yardstick cannot be applied to each case.

ARUNA'S CASE – A NEW DIMENSION IN INDIAN LEGAL CONTEXT

Recently the judgment of our Supreme Court in Aruna Ramchandra Shanbaug v. Union of India opened the gateway for legalization of passive euthanasia. ⁵In this case a petition was filed before the Supreme Court for seeking permission for euthanasia for one Aruna Ramchandra Shanbaug as she is in a Persistent Vegetative State (P.V.S.) and virtually a dead person and has no state of awareness and her brain is virtually dead. Supreme Court established a committee for medical examination of the patient for ascertaining the issue. Lastly the Court dismissed the petition filed on behalf Shanbaug and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. The court also recommended to decriminalized attempt to suicide by erasing the punishment provided in Indian Penal Code.

The Court in this connection has laid down the guidelines which will continue to be the law until Parliament makes a law on this point.

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 a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

⁵ 2011 (4) SCC 454

2. Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale's case⁶ as this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

In this case question comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person. Then the Court held that it is the High Court under Article 226 of the Constitution which can grant approval for withdrawal of life support to such an incompetent person. The High Court under Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders.

According to the instant case, when such an application is filed 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. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench.

After hearing the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.

The High Court should give its decision assigning specific reasons in accordance with the principle of 'best interest of the patient' laid down by the House of Lords in Airedale's case.

LAW COMMISSION OF INDIA AND ITS RECOMMENDATION

The Law commission in its 42nd report recommended the repeal of section 309 of Indian Penal Code. Indian penal code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed. The Commission

⁶ [1993] A.C. 789

submitted its 156th Report²⁶ after the pronouncement of the judgement in *Gian Kaur v. State of Punjab*⁷, recommending retention of section 309.

Later the Law Commission in its 210th Report submitted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment. The Supreme Court in *Gian Kaur* focused on constitutionality of section 309. It did not go into the wisdom of retaining or continuing the same in the statute. The Commission has resolved to recommend to the Government to initiate steps for repeal of the anachronistic law contained in section 309, IPC, which would relieve the distressed of his suffering.

This 196th Report of the Law Commission on 'Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)' is one of the most important subjects ever undertaken by the Law Commission of India for a comprehensive study. This Report is relating to the law applicable to terminally ill patients (including patients in persistent vegetative state) who desire to die a natural death without going through modern Life Support Measures like artificial ventilation and artificial supply of food.

The Commission has given the following recommendations.

1. Obviously, the first thing that is to be declared is that every 'competent patient', who is suffering from terminal illness has a right to refuse medical treatment (as defined i.e. including artificial nutrition and respiration) or the starting or continuation of such treatment which has already been started. If such informed decision is taken by the competent patient, it is binding on the doctor. At the same time, the doctor must be satisfied that the decision is made by a competent patient and that it is an informed decision. Such informed decision must be one taken by the competent patient independently, all by himself i.e. without undue pressure or influence from others. It must also be made clear that the doctor, notwithstanding the withholding or withdrawal of treatment, is entitled to administer palliative care i.e. to relieve pain or suffering or discomfort or emotional and psychological suffering to the incompetent patient (who is conscious) and also to the competent patient who has refused medical treatment.
2. We propose to provide that the doctor shall not withhold or withdraw treatment unless he has obtained opinion of a body of three expert medical practitioners from a panel prepared by high ranking Authority. We also propose another important caution, namely, that the decision to withhold or withdraw must be based on guidelines issued by the Medical Council of India as to the circumstances under which medical treatment in regard to the particular illness or disease, could be withdrawn or withheld. In addition, it is proposed that, in the case of competent as well as incompetent

⁷1996 (2) SCC 648: AIR 1996 SC 946

- patients, a Register must be maintained by doctors who propose withholding or withdrawing treatment. The decision as well as the decision-making process must be noted in the Register. The Register to be maintained by the doctor must contain the reasons as to why the doctor thinks the patient is competent or incompetent, as to why he thinks that the patient's decision is an informed decision or not, as to the view of the experts the doctor has consulted in the case of incompetent patients and competent patients who have not taken an informed decision, what is in their best interests, the name, sex, age etc. of the patient. He must keep the identity of the patient and other particulars confidential. Once the above Register is duly maintained, the doctor must inform the patient (if he is conscious), or his or her parents or relatives before withdrawing or withholding medical treatment. If the above procedures are followed, the medical practitioner can withhold or withdraw medical treatment to a terminally ill patient. Otherwise, he cannot withhold or withdraw the treatment.
3. A patient who takes a decision for withdrawal or withholding medical treatment has to be protected from prosecution for the offence of 'attempt to commit suicide' under sec. 309 of the Indian Penal Code, 1860. This provision is by way of abundant caution because it is our view that the very provisions are not attracted and the common law also says that a patient is entitled to allow nature to take its own course and if he does so, he commits no offence. Likewise, the doctors have to be protected if they are prosecuted for 'abetment of suicide' under sections 305, 306 of the Penal Code, 1860 or of culpable homicide not amounting to murder under sec. 299 read with sec. 304 of the Penal Code, 1860 when they take decisions to withhold or withdraw life support and in the best interests of incompetent patients and also in the case of competent patients who have not taken an informed decision. The hospital authorities should also get the protection. This provision is also by way of abundant caution and in fact the doctors are not guilty of any of these offences under the above sections read with sections 76 and 79 of the Indian Penal Code as of today. Their action clearly falls under the exceptions in the Indian Penal Code, 1860. We are also of the view that the doctors must be protected if civil and criminal actions are instituted against them. We, therefore, propose that if the medical practitioner acts in accordance with the provisions of the Act while withholding or withdrawing medical treatment, his action shall be deemed to be 'lawful'.
 4. We have therefore thought it fit to provide an enabling provision under which the patients, parents, relatives, next friend or doctors or hospitals can move a Division Bench of the High Court for a declaration that the proposed action of continuing or withholding or withdrawing medical treatment be declared 'lawful' or 'unlawful'. As time is essence, the High Court must decide such cases at the earliest and within thirty days. Once the High Court gives a declaration that the action of withholding or withdrawing medical treatment proposed by the doctors is 'lawful', it will be binding in subsequent civil or criminal proceedings between same parties in relation to the same

- patient. We made it clear that it is not necessary to move the High Court in every case. Where the action to withhold or withdraw treatment is taken without resort to Court, it will be deemed 'lawful' if the provisions of the Act have been followed and it will be a good defence in subsequent civil or criminal proceedings to rely on the provisions of the Act.
5. It is internationally recognized that the identity of the patient, doctors, hospitals, experts be kept confidential. Hence, we have proposed that in the Court proceedings, these persons or bodies will be described by letters drawn from the English alphabet and none, including the media, can disclose or publish their names. Disclosure of identity is not permitted even after the case is disposed of.
 6. The Medical Council of India must prepare and publish Guidelines in respect of withholding or withdrawing medical treatment. The said Council may consult other expert bodies in critical care medicine and publish their guidelines in the Central Gazette or on the website of the Medical Council of India.

EUTHANASIA AND SUICIDE

Suicide and euthanasia cannot be treated as one and the same thing. They are two different acts. Therefore, we shall have to make a distinction between 'euthanasia' and 'suicide.' Suicide as mentioned in Oxford Dictionary⁸ means the act of killing yourself deliberately. Therefore, suicide could be termed as the intentional termination of one's life by self-induced means for various reasons, such as, frustration in love, failure in examinations or in getting a good job, but mostly it is due to depression. Euthanasia has not been defined in the religious books but since it is very close to concept of suicide, therefore it can be presumed that it is prohibited by all religions. In Indian law intention is the basis for penal liability. An act is not criminal act if it is committed or omitted without the intention and law of crimes in India is based on the famous Roman maxim, "Actus non facit reum nisi men sit rea." Now applying the above maxim in cases of euthanasia one may conclude that since the victim has given the consent to die therefore, the accused is not liable for any offence. But does giving a consent for killing a person absolve the offender from his criminal liability is very important question. If answer to this question is in affirmative then euthanasia is not an offence. But the Indian law is very clear on this point. One may argue that giving the consent absolves a person from liability or he may plead the defense of "volenti non-fit injuria." Law relating to consent as contained in Indian Penal Code is very exhaustive and leaves no ambiguity to explain it. Section 87 of the Indian Penal Code clearly lays down that consent cannot be pleaded as a defense in case where the consent is given to cause death or grievous hurt. The Bombay High Court in *Maruti Shripati Dubal*

⁸Oxford Advanced Learner's Dictionary of Current English. (2000). Sixth Edition. ; Oxford University Press.

*case*⁹ has attempted to make a distinction between suicide and euthanasia or mercy killing. According to the court the suicide by its very nature is an act of self -killing and termination of one's own life by one's act without assistance from others. But euthanasia means the intervention of others human agency to end the life. Mercy killing therefore cannot be considered in the same footing as on suicide. Mercy killing is nothing but a homicide, whatever is the circumstance in which it is committed. In another case¹⁰ the Bombay High Court also observed that 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 and 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 is thus not suicide. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.

Herein, the concept of assisted suicide is also involved, which can be defined as providing an individual with the information, guidance and means to take his or her own life with the intention that it will be used for this purpose. Assisted suicide is distinguished from active euthanasia in the sense that the in the former, person must take deliberate steps to bring about his or her own death. Medical personnel may provide assistance, but the patient commits the act of suicide while in active euthanasia, it is the doctor who ends the life of the patient. When a doctor helps people to kill themselves it is called 'doctor assisted suicide'.

Our Supreme Court in *Gian Kaur v. State of Punjab*¹¹ clearly held that euthanasia and assisted suicide are not lawful in our country. The court, however, referred to the principles laid down by the House of Lords in *Airedale case*¹², where the House of Lords accepted that withdrawal of life supporting systems on the basis of informed medical opinion, would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a normal death, where there is no longer any duty to prolong life.

CONCLUSION

This paper concludes with the difference between the Euthanasia and Physician assisted suicides. Aruna's case gives the clear view of the euthanasia and opens the doors of the passive euthanasia. The patient can't be forced towards death without his/her consent. Consent is necessary in each aspect if he is not willing the consent of his/her near ones is necessary. Many cases were cited above which give the clear cut idea of legalization and

⁹*Maruti Shripati Dubal v. State of Maharashtra*, 1987 Cri. L.J 743 (Bomb)

¹⁰*Naresh Marotrao Sakhre v. Union of India*, 1995 Cri. L.J 95 (Bomb)

¹¹1996 (2) SCC 648: AIR 1996 SC 946

¹²*Airdale NHS Trust v. Bland*, 1993(1) All ER 821 (HL)

ban of the euthanasia and its types and in what manner such practice is allowed. There are many different countries where such practice is allowed by the laws and government but the Aruna's case in India opened the new door in the legalization but with special restriction. Till the date there are various recommendation and comments of the Law commission of India regarding Euthanasia but it is very hard to prove that it is a suicide as it is always done without consent. There were various perspectives of analyzing the aspect. This paper has focused over limited perspective.