

CRITICAL ANALYSIS OF EUTHANASIA IN INDIA¹**ABSTRACT**

According to section 21 of the Indian Constitution, every person has a right to live but as justice Chandrachud has said “There is no antithesis between life and death. Death represents the culmination, dying is the process.” Somehow this statement concludes the actuality that death is also a segment and character of life, now this statement also gives rise of questions like “whether death with dignity is a part of meaningful existence or whether a person has the right to end his life or not.”

It discusses in detail the landmark case which changed the history of euthanasia in India and its future approach. This research paper also critically analyses the historical and religious background of euthanasia in India, stating the fact that euthanasia is not a new concept and this concept is carried through ancient times.

This research paper also defines euthanasia and critically explains its concept. This paper also seeks to discuss its implementation and classification and how it is related to consent of a person. This paper also seeks to explain how the concept of euthanasia is different from the concept of suicide and murder. This paper will also talk about whether “right to death” is included in “right to live” or not with other legal aspects. This research paper also describes the topic taking in consideration the report given by Law Commission of India.

INTRODUCTION

Life is precious. Every person wishes to live and enjoy his life to the maximum extent. But there comes a time when people face such difficult challenges in their life that they seem to see death as a simple solution to their complex problems. “When a person tends to end his life by his own action, we term it as ‘suicide’ but to end the person’s life on his request by others is

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what has been called ‘mercy killing’ or ‘euthanasia’. The term euthanasia has been obtained from the Greek words “eu” “thanatos” which means “good death” or “easy death”.²“Euthanasia figuratively means putting a person to painless death especially in any case of incurable suffering or when life becomes purposeless, meaningless and there is no point of living, as a consequence of mental or physical handicap.”³“Euthanasia or mercy killing is the practice of killing person for providing them relief from incurable pain or suffering or allowing or causing painless death when life has become meaningless and disagreeable.”⁴

According to Black’s law Dictionary (8th edition) euthanasia means the action or practice of killing person or conduct about a death of a person who suffers from an incurable disease or condition, esp. a painful one for reasons of mercy. Encyclopedia of ‘Crime and Justice’, explains euthanasia as an action of death which will provide a relief from a distressing or intolerable condition of life. In modern context, Euthanasia is performed by doctors only at the prior request of the patient who will anyway have to die because of his incurable prolonged illness. Now when a person is not in his state of mind or in his senses to decide for himself or for taking decisions for his life there comes into play the ‘legal’ aspect, and now the decision is in the hands of court of law which has to intervene to look into the matter and give its decision considering the best interest of patient.

Euthanasia is legal in Belgium, Luxembourg, and Colombia. Switzerland, Germany, Japan, and very few states in United States of America allow ‘assisted suicide’ while in nations like Thailand and Mexico it is illegal. In India ‘passive euthanasia’ is allowed and legal but only in exceptional cases, while debate goes on for legalization of ‘active euthanasia’.

HISTORICAL AND RELIGIOUS BACKGROUND

The researchers find it pertinent and reasonable to trace the historical and religious story of euthanasia before coming to its current position. Euthanasia is not a new concept rather euthanasia is in existence since ancient time i.e. since the evolution of human civilization. Euthanasia was used to be performed in ancient Greece and Rome. On the island known as Kea, a poisonous plant called Hemlock was used as a means for faster death; techniques were also pursued and been performed in Marseilles. Euthanasia is not accepted and is punishable under

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

³Dr. Parikh, C.K. (2006). Parikh’s Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology. 6th Edition, Page 1.55. New Delhi, CBS Publishers & Distributors.

⁴Nandy Apurba. (1995). Principles of Forensic Medicine, 1st Edition, Page 38. Kolkata, New Central Book Agency (P) Ltd.

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Christian and Judaism/Jew community. While criticizing and derogating the practice Thomas Aquinas says that this idea is against a person's survival instinct and his urge for living life. Some Hippocrates disapproved the idea of euthanasia while some Greek philosophers like Socrates and Plato supported euthanasia. An argument countering against euthanasia or physician-assisted suicide is proclaimed as Hippocratic Oath, back dating some 2,500 years. All doctors used to oblige this oath before the modern oath. The original oath included, among additional things, the following words:

"I will neither give a deadly drug to anybody if they or someone else asked for it , nor will I make a suggestion to this effect."

There are slight modifications of modern oath, one state:

"If, given me a chance to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own vulnerability."

With the change of time the world has also changed since the period of Hippocrates; some people observed that the original and the past oath is not valid now and is outdated. In some countries like Pakistan, doctors still obliged themselves to the native and initial oath, while in some countries the updated version is used. Few religions like: Hinduism, Buddhism and Jainism recognize willful death.

This concept contains wide philosophical history. It describes the infinite and boundless circle of life and death and attaining salvation. Some Indian scholars criticized while some like Mahatma Gandhi braced the idea of euthanasia. There are so many unexplained stories of ancient century that explain euthanasia or willful death.

CLASSIFICATION OF EUTHANASIA

Classification of euthanasia needs a critical analysis. Talking with respect to procedural distinctions, euthanasia is classified into the following two categories: Passive euthanasia and Active euthanasia.

Active euthanasia is the act for quickening the death of a person by oneself or with the aid of a doctor when the condition of a person can't be made any better. An act is required (use of lethal substance) for deliberately causing a death to a person in 'Active euthanasia'.

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In Passive euthanasia, death is brought out by an omission of an act i.e. by removing a source on which a life of a person is dependent. It can be done by withholding or withdrawing treatment. Examples of withdrawing of treatment or withholding of treatment are:

- By disconnecting the feeding tube or by switching off the life support machine.(withdrawing treatment)
- By preventing proper treatment and preventing intake of drugs and medications.(withholding treatment)

According to the conventional doctrine, there is moral distinction between the passive euthanasia and active euthanasia. Passive euthanasia is sometimes can be permitted but active euthanasia is always forbidden because in passive euthanasia doctors are not just simply saving a person's life unlike active euthanasia where doctors are actively killing a person. This doctrine simply rests on the distinction followed between killing a person and letting them to die.

The moral distinction is that passive euthanasia is permissible because in this the doctors simply let the patient die rather killing them by a deliberate act even though the act was as per the consent of the patient.

Euthanasia is also classified on the basis of 'consent':

1. "Voluntary euthanasia"
2. "Involuntary euthanasia"
3. "Non-voluntary euthanasia"

In voluntary euthanasia consent is given by the patient only. Consent of a patient can also be determined by his living will. A living will is a written legal document and is directive to physicians, it allows patient to state explicit advance instructions about their end of medical care term. Through a living will a person can state his willingness for a life sustaining artificial treatment.

In Involuntary euthanasia, the euthanasia is conducted not considering the prior consent of the patient, going against the patient's will. Involuntary euthanasia clearly amounts to murder because in this the person is killed without his wish of dying and without his expressed consent.

In Non-voluntary euthanasia the consent is given by the close relative of a patient as the patient is not appropriate condition of to pass any consent or for expressing views. Non voluntary euthanasia occurs when a person is not in any position to give consent to a meaningful choice between living and dying, for example: a very young baby or a mentally disable person. In this case the relative take the charge to give decision for his life or death.

LEGAL ASPECTS OF EUTHANASIA IN INDIA

As we proceed further, it is quite clear that this concept of euthanasia is a very disputable, debatable and controversial because this concept involves killing of a human being, even if it's for his own benefit. In modern era, it is on welfare state to decide what is pivotal and what is crucial for its citizens by weighing the pros and cons of a particular decision. Legalization of euthanasia has always been a grass root issue. No one can come to a conclusion whether it should be legalized or not and what state and legislature can do about it. The complex matter of legalization of euthanasia s quite enlightened issue and has to be considered and solved critically. India is a country with vast population and a large fraction of people who are uneducated and not fully aware of their own fundamental rights. India is still fighting with issues like surrogacy laws, child abuse, drug abuse, domestic violence, rape cases, which are not just legal issues but also are major medical issues. A major concept like euthanasia is unknown to many.

The whole situation has changed in India with regard to this concept. Article 21 in the Indian constitution is one such kind of provision which can be interpreted to its widest sense. Article 21 reads as under: "*No person shall be deprived of his life or personal liberty except according to procedure established by law*".⁵

If analyzed, the concept of mercy killing, in cases of euthanasia or mercy killing, the doctor has the clear intention to terminate the life of a patient. These kind of cases would certainly fall under section 300 of Indian penal code, 1860". However, as in these kinds of cases, there is consent and approval of the patient for his death and this will fall under "exception 5 of section 300" which reads out that culpable homicide is not murder when the person who suffers death or tkes risk of death with his own consent. and the doctor or the medical professional would be punishable "U/S 304 of Indian penal code, 1860 for culpable homicide, not amounting to

⁵The constitution of India bare act , 2019 edition, universal publication, Lexis Nexis, new Delhi ,India.
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murder”.⁶But exception 5 of section 300 of IPC applies to those cases only where there is an occurrence of voluntary euthanasia i.e. where there is consent and assent of the patient for his own death. Cases involving Non-voluntary euthanasia and involuntary euthanasia would be struck down by the first proviso to section 92 of IPC (MATLAB PROVISIO ONE ME LIKHA HAI KI JINKI INTENTION HI DEATH CAUSE KARNA HITA HAI UNPE SECTION 92 NAHI LAGEGA) and thus be rendered illegal. The laws in India are also very evident on the aspect of assisted suicide. “In India, Right to Suicide is undoubtedly not considered as one of the “rights” given to Indian citizens and it is punishable under Indian penal code, 1860. Sections apply for punishments of suicide are:

- Section 305 - abetment of suicide of child or insane human.
- Section 306 – abetment of suicide
- Section 309 – punishes for attempt to commit suicide”.⁷ AMENDED BY MENTAL HEALTH CARE ACT 2017

Indian penal code has been brought under the examination with regard to its constitutionality for section 309. Right to life is an important right stated in our Indian constitution. Article 21 of our Indian constitution guarantees the right to life to every Indian citizen.

It is argued that if Right to die is also a segment of Right to life or not, or whether it should be parted with right to life under Article 21 of the Indian constitution. Hereby, mercy killing is one of the legal rights of a person. After the respected decision taken by five judge bench of our respective Supreme Court in “*Gian Kaur v. State of Punjab*”,⁸ it is well settled that “right to die” shall not be included in “right to life” under Article 21 of the Indian Constitution. The court held that Article 21 is such provision in our constitution that guarantees “protection of life and personal liberty” and by no meaning of stretch of imagination can extinction of life can be parted with it.

.In this current regime under the Indian Medical Council Act, 1956 also on the part deals with the issue. “Under section 2A read with Section 33(m) of the mentioned act, the medical council of India may prescribe a code of ethics for medical practitioners, and also the standards of

⁶Indian penal code bare act, 2019 edition, universal publications, lexis nexis, new Delhi, India.

⁷Indian penal code bare act, 2019 edition, universal publications, Lexis Nexis, New Delhi, India.

⁸1996(2) SCC 648: AIR 1996 SC 946, <https://indiankanoon.org/doc/217501/>

medical conduct and etiquette Under the IMC Act, 1956 the act of euthanasia is classified as unethical and against the bar of standards, except in cases where the life support system is used only to support artificial breathing and only to continue the cardio pulmonary actions of the body. In such cases life support system can be removed with subject to the certification and clarification by the doctors in term.”⁹

The Bombay High Court in “*Maruti ShripatiDubal v. state of Maharashtra*”¹⁰ revised the constitutional applicability of Section 309 of Indian Penal Code, 1860 and held that the section is violative of Article 14 (equality) and Article 21 (right to life) of the Indian constitution. It was held that the section is discriminatory biased in nature and violated equality guaranteed by Article 14 of Indian constitution. Article 21 of the Indian Constitution was interpreted to include right to die, the same it was held to be violative of Article 21. In Maruti ShripatiDubal’s case ¹¹the Bombay high court held that section 309 of Indian penal code,1860 that is punishment for attempted suicide, as violative of Article 14 (Right to equality) of Indian constitution. The court declared section 309 of IPC as null and void and stated Article 21 to be construed to include right to die. The Supreme Court in “*P.Rathinam ’s*”¹²case held that section 309 of IPC is violative of Article 21 if our constitution as the latter add right to death with it.

Soon again the question arrived again in the case of *Gian kaur v. State of Punjab* the five judge bench overruled the decision of *P.Rathinam ’s*case and held that right to die or to be killed shall not be included and be read with Article 21 Right to life of the constitution and there is no valid reason to hold section 309 of IPC. Article 21 states the true meaning of life with dignity and hence any provision essential for maintain better life and dignity of life can be added in it rather than an aspect which extinguishes it.

THE LANDMARK CASE OF ARUNA SHANBAUG

This landmark case gave a new direction and new legal dimension to the concept of euthanasia in India. The petitioner whose name was ArunaRamachandraShanbaug was a health worker working in king Edward memorial hospital, Mumbai. She was harshly attacked by ainhuman sweeper in the hospital while she was on duty in the evening of 27th November, 1973. The sweeper choked her neck with a dog chain and pulled her all the way with the intention of

⁹ Indian Medical council act , 1956.

¹⁰1987 cri.L.J 743(bom.) <https://indiankanoon.org/doc/490515/>

¹¹MarutishripatiDubal v. state of Maharashtra; 1987

¹²P.Rathinam vs. union of India and Anr. , 1994 SCC 394 70

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raping her but after he found out that she was menstruating during that time, he sodomized her after realizing that he could not rape her. She was spotted in unconscious condition with blood all over on the next morning. Due to strangulation by the chain, the oxygen supply to the brain was stopped and brain damage took place.

Around 36 years had lapsed since the horrible incident. Since then Aruna was surviving on liquid diet and her whole body was badly paralyzed. It was claimed that there is no absolute possibility and hope of improvement in her condition and thus, she is fully dependent on KEM hospital. It was stated that she was in a permanent vegetative state (PVS) and she was actually living skeleton. Aruna prayed to stop nourishing and feeding her and asked to let her die in peace. KEM hospital responded that her brain works and she had senses and she also reacts sometimes in some situations like music etc. The respondents claimed that it is not necessary to give her euthanasia in that present case.

On 7th march 2011, the Hon'ble division bench of Supreme Court comprising of Justice Markandey Katju with Justice Gyan Sudha Mishra, passes an historic judgment. Considering Aruna's medical report and in respect to definition of brain dead under The Transplantation Organs Act, 1994, the court stated that she was not brain dead; the court passes the following statement in accordance with the decision quoting:

“A person's most important organ is his brain and it cannot be removed or changed like other body parts for e.g. if a person's hand or leg is imputed, he can get an artificial limb. Similarly transplant of other body organs like heart, bone marrow and kidney can take place after the failing of the original one, however brain transplant is impossible. If someone else's brain is transplanted into another's body, this is obvious that other person is living in one's body.... if a brain cell dies, they cannot be replaced. Brain cells require regular supply of oxygen like other organs of the body and if the oxygen supply is cut off for more than six minutes, the brain cell ultimately die and this condition is known as Anoxia. Hence, if the brain is dead the person is also said to be dead.”¹³

Although, the fact that she was on a liquid diet but terminating her life on this behalf was totally unfair and unjustified. The court further stated that Indian law would not advocate a

¹³2011(4) SCC 454: AIR 2011 SC 1290, <https://www.lawctopus.com/academike/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/>

person death from starvation of food as there is difference between removal of life support machine and denial of food intake. If euthanasia would be allowed in this case then all the efforts of the hospital for so many years would go waste.

The court further state again strongly the “parens patriae principle” to prevent misuse of euthanasia and recognized passive euthanasia in certain condition after the prior permission and authorization by the High court. Overall the guidelines states that whenever an application for passive euthanasia will be filed in the High court, the chief justice of the high court will constitute a bench of minimum two judges. The bench must seek the prior opinion of three reputed doctors after consulting the medical authorities as it may be deem fit. The High Court shall then issue notice to near or close relatives of the patient and also send a copy of medical report and doctor’s report to them as soon as possible.

Aruna Shanbaug was denied from the process of euthanasia and she finally passed away on 18th May 2015 due to pneumonia as she was on liquid diet for nearly forty two years.

Yet after some other cases, the judgment has been passed by bench comprised of chief justice of India Dipak Mishra, Justice A.K. Sikri, justice A.M. Khanwilker, justice D.Y.Chandrachud, Justice Ashok Bhusan, and the following statement was passed:

“The guideline laid by court shall remain in force till parliament steps in and brings legislation in the field. It was decided that it is permitted for the removal of life support systems for terminally ill person and for those who are in incurable comas. The court also permitted individuals to decide against artificial life support, and should the need arise by creating a living will. It also states that right to life and liberty under article 21 of the constitution will be meaningless unless it encompasses within its sphere individual dignity. The bench also held that the right to live with dignity also includes the smoothening of the process of dying in case of terminally ill patient or person in PVS with no possibility of recovery.”¹⁴

EUTHANASIA, SUICIDE OR MURDER ---ARE THEY SYNONYMS ?

There is a threadlike line between euthanasia and murder but there is obvious difference between suicide and murder. Euthanasia have always been a contentious topic in India and the main issue behind the concept of euthanasia is that is whether or not the right to die is also included in right to life or not and In controversial case of common cause vs. union of India

¹⁴Supra note 11.

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(2018), the five judge bench held that death with dignity is also a part of meaningful existence. After so many cases euthanasia is now a very common concept and considering the positive aspect of euthanasia many countries have legalized euthanasia, in India passive euthanasia is legal. Though euthanasia is now legal in so many countries but strict guidelines should be followed while conducting euthanasia else it would amount to murder and punishment will be declared.

According to Oxford dictionary, suicide is an act of killing yourself deliberately but in India, penal liability applies even on basis of intention as an act is not considered criminal act unless and until there is an intention to commit it, this statement is built on the legal maxim, "Actus non facit reum, nisi mens sit rea". If the patient has passed the consent for death the accused will not be held liable. But further "Section 87 of Indian Penal Code", evidently states down that patient's consent cannot be argued and pleaded as defense in the case where consent is passed for grievous harm and hurt or to cause death.

Therefore, suicide may be defined as termination of life with certain intention to do so because of frustration and depression.

The Bombay HC in a case attempted to distinguish suicide from euthanasia. According to the respected court, suicide is ending and terminating one's own life or self-killing without anyone's assistance. But euthanasia involves intervention of some human agency to end one's life, and hence Mercy killing is totally different from suicide.

CONCLUSION

So I like to conclude my research paper by stating the fact that if euthanasia is permitted generally then doctors can also misuse their power. It is feared that if death is placed in doctors' hands then there will be so much power in their hands and in any case the law does not acknowledge negligence by doctor.

The court always tries to examine a doctor's decision for cases of euthanasia and although his decision of euthanasia is not considered reliable sometimes. So it was later felt that the patients who are going through incurable disease and unbearable pain, should be allowed for death. Stating the fact that spending precious time, cost and expensive facilities on a patient who do not hope to recover and there is no possibility of his recovery is nothing but a waste of same, and not in any case it can be said that 'liberty to die' cannot be read with 'right to life', although

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it can't be read in a strict sense. In recent judgments court declared that passive euthanasia can sometimes be permissible but only in exceptional cases and active euthanasia is declared illegal. It is also stated that court may only agree on the cases of voluntary euthanasia (active and passive) and this is because sometimes it's not easy to differentiate the facts related to the cases of non-voluntary euthanasia an involuntary euthanasia as one person can also let the other person die showing sympathy to the patient and let him die .

It is also stated that provision related to non-voluntary and involuntary euthanasia can be misused more than the provisions set for voluntary euthanasia. To prevent the risk of misuse of provisions stated for voluntary euthanasia, proper and strict guidelines have also been declared by the court.

In this subject, according to “196th Law commission report, the guidelines that were declared in Aruna Shanbaug's case would be in force until the parliament steps inn and make laws on this point.”¹⁵

As considering the fact that India is a country with large and uncountable religious norms and practices, it is clear that declaring a law for euthanasia is not easy as judiciary have to consider every norm before passing any verdict.

So this is obvious that euthanasia is not like other medical processes or it is not just any solution to any incurable problem or disease. Thus, euthanasia cannot be conducted simply like other medical process. Every case has different facts and requires different standards and approach than the other case. Indian judiciary perfectly knows how to handle each and every case and pass valid decisions. According to the scholars, it is impossible to legalize euthanasia at this point of time as India is in its developing stage and because of high crime rate in India also because half of the population in India is illiterate and are not aware even about their fundamental and basic rights. Few countries, where euthanasia is legal are either very small country with least population or the people there must be literate and must contain knowledge about rights and dangers related to euthanasia. It's more appropriate if left the issue with judiciary only.

¹⁵<http://lawcommissionofindia.nic.in/reports/rep196.pdf>



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