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PROBLEMS AND PERSPECTIVES OF LEGALISING EUTHANASIA- Sanjana Parisaboina¹**ABSTRACT**

Euthanasia, mercy killing, has ever been sought for by the people of modern nations. However, the same has been under continuous legal challenge. The term has been understood to include active euthanasia, commission with the help of poison, etc., and passive euthanasia, where the life support is taken away. This concept came into light when the meaning of 'life' changed, a person sitting on a bed in a vegetative state does not have any meaning of life as he/she is now devoid of purpose. In this paper, the author has started by explaining the origin of the term, Euthanasia. Then, the author discusses the situation under which a person can be subject to Euthanasia by elaborating upon the term "Terminal Illness". The author also discusses the Indian case laws on the right to die' being part of the right to life' under Article 21 and expounded upon changing scenarios. The major part of the paper deals with reasons for legalizing euthanasia and problems thereof by stating the advantages and disadvantages of the same. Taking into consideration the pros and cons, the framework for effective implementation of this concept has been expounded upon. The need for legalizing is also looked upon by the author. Along with the legal aspect, the author has contemplated upon the psychological, ethical, and moral perspectives. The author has also taken into consideration the writings of famous authors in the same subject matter. The paper ends with the possible misuse of euthanasia by family members as a cost-cutting measure rather than for the benefit of the patient and focuses on the fact that the practice of euthanasia can be normalized, though it should pass through serious monitoring by medical professionals.

INTRODUCTION

The word 'Euthanasia' is a derivative from the Greek words 'eu' and 'thanotos' which mean "good

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death". It is otherwise described as mercy killing. The phrase "euthanasia" indicates actions or omissions that result in the termination of the life of a terminally ill patient by a physician, normally through the prescription of a medication or administration of a poisonous dose or through removal from the ventilator.² Now the question arises as to who a terminally ill patient is. According to The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill 2006, 'terminal illness' means –

- (i) such illness, injury, or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or
- (ii) which has caused a 'persistent and irreversible vegetative' condition under which no meaningful existence of life is possible for the patient.

Lord Goff in *Airdale's* case³ mentions: "It is, of course, the development of modern medical technology, and in particular the development of life-support systems, which has rendered such as the present so much more relevant than in the past".⁴ Over the years the Court has given many judgments concerning this matter. In the case of *P. Rathinam vs. Union of India*⁵, the Court held that, "a person cannot be forced to enjoy the right to life to his detriment, disadvantage or disliking".⁶ However, in the *Gian Kaur* case⁷ the Court took a complete U-turn by overruling the above judgment by stating that "right to life" doesn't include the "right to die". It wasn't until 2018 when the Court pronounced "Passive Euthanasia" legal while "Active Euthanasia" remains illegal. The exact difference between active and passive Euthanasia was mentioned in the case of *Aruna Ramachandra Shanbaug vs. Union of India*⁸ by the Supreme Court of India where "Active Euthanasia" involves using lethal substances to cause the patient's death and "Passive Euthanasia" involves the withdrawal of life support. Although there isn't any law for passive Euthanasia in India the Court has permitted the procedure "provided

2. Sebastian, Tania, *Legalization of Euthanasia in India with Specific Reference to the Terminally Ill: Problems and Perspectives* Vol. 2 J of Indian L & Soc'y, (2011)

3. *Airdale National Health Service Trust vs. Bland*, [1993] AC 789

4. id

5. 1994 SCC (3) 394

6. id

7. 1996 SCC (2) 648

8. (2011) 4 SCC 454

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certain conditions and safeguards are met".⁹

Through this paper, the researcher will examine the various benefits of the legalization of Euthanasia and also the problems that may arise in this context.

RESEARCH PROBLEMS AND QUESTIONS

1. What is the necessity for Passive Euthanasia?
2. What does the current legal framework regarding Euthanasia comprise of?
3. What are the various pros and cons of Legalizing Euthanasia?

RESEARCH OBJECTIVES

- To delve deeper into the concept of Euthanasia.
- To understand the pros and cons of Legalizing Euthanasia.
- To analyze the framework under which it can be implemented.

RESEARCH METHODOLOGY

This study is focused on the Doctrinal Method of research, which involves the analysis and interpretation of prevailing case laws and data. This approach was considered permissible by the researcher based on the nature of the subject because it primarily involves the analysis of a wide variety of interconnected judicial decisions. To write the research paper and present a study, the use and examination of various secondary sources has been done, which covers research and literary work related to the field of ethics and Euthanasia. This paper contains different notions regarding the concept of Euthanasia. There are several details included in the report which are taken from literary sources.

The chief purpose of adopting a secondary source is that it provides an in-depth understanding of the topic and identifies research gaps. It also provides a basis for comparing the primary source of information which has also been incorporated while preparing the paper.

SCOPE AND LIMITATIONS OF STUDY

9. Law Commission of India, *Medical Treatment to Medically Ill Patients (Protection of Patients and Medical Practitioners)*, Report No.196, (March 2006) available at <https://lawcommissionofindia.nic.in/reports/rep196.pdf>

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The researcher seeks to examine the legalization of Euthanasia concerning the particular country of India. The researcher uses the doctrinal analysis method and secondary data to find the facts of the case which are restricted by the author's limitations. The researcher aims to expand the scope of the study to the review of the pros and cons in question. However, the scope of the study paper is limited to absolute liability under the tort law and secondary data available to the researcher.

SOURCES OF DATA

For research, the researcher uses primary and secondary data. The primary source of data includes the judgments given by the Courts in India, Constitution, and Acts. Secondary sources of data include articles published in renowned journals and the internet and material gathered from various online portals.

SIGNIFICANCE OF STUDY

This research will form a reliable guide to the legal professionals and lawmakers as it

- Provides an in-depth study into the need for Euthanasia,
- Articulates the Legal Procedures involved regarding Euthanasia.
- And provides suggestions to prevent misuse of Euthanasia.

The paper is also beneficial to the general public as it will help them understand the nuances that exist in the legal process of passive Euthanasia.

LITERATURE REVIEW

There are many sources of data and information regarding the concerned topic. Many articles and journals have also been reviewed for the purpose of the study.

However, the primary source of information has been the Law Commission report on Euthanasia.¹⁰ The report discussed euthanasia legislation's necessity, the various perspectives and views on Euthanasia's legalization, and the multiple issues of Passive Euthanasia and Palliative Care.

Ezekiel J. Emanuel in his article "What are the Great Benefits of Legalizing Euthanasia and Physician-Assisted Suicide?"¹¹ provides details regarding the benefits and harms of legalizing Passive Euthanasia

10. Law Commission of India, *Passive Euthanasia- a relook*, Report No. 241, (August 2012) available at <https://lawcommissionofindia.nic.in/reports/report241.pdf>

11. Ezekiel J. Emanuel, *What are the Great Benefits of Legalizing Euthanasia or Physician Assisted Suicide?* Vol 109,

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while also mentioning that the harms that arise may affect the vulnerable class in particular.

Pereira J in the article "Legalizing Euthanasia or Assisted Suicide: The Illusions of Safeguards and Controls"¹² talks at length on how if the law is put into place, it would be misused by the public at large.

Shivi Shrivastava in "India's Stand on Euthanasia: Supporting Right to Die with Dignity"¹³ refers to the history of Euthanasia, the current scenario, and details the liability of doctors in the case hand.

David C Thomasma et al.'s book "Asking to Die; Inside the Dutch Debate on Euthanasia"¹⁴ is a compilation of various, articles, commentaries, and excerpts of real-life incidents that give an in-depth understanding on the various pros and cons of Euthanasia.

NEED FOR LEGALISATION OF EUTHANASIA

Developments in technology and scientific fields, especially in the last century, have altered life and death concepts. Today a 'persistent vegetative' state patient, with the help of a ventilator can be kept alive despite the fact that the patient's sensory systems are not working. In scientific terminology only if the brain stems are dead, a person can actually be considered dead, and until then artificially a person can be kept alive for years. Empathetic clinical care to a patient does not necessarily mean prolonging the life artificially when the life that has started sinking and can't be maintained for long by any objective standards. The question regarding recognizing as well as legalizing Euthanasia everywhere throughout the globe however, the views, pro and cons rest on legal, ethical, moral and philosophical perspectives.

SCOPE OF ARTICLE 21 WITH RESPECT TO EUTHANASIA

Article 21 of India's Constitution directs against the dispossession of life or personal freedom unless set up by law. By the term 'Life', the Court defined it as "something more is meant than mere animal existence". The Law Commission in its report on Passive Euthanasia has mentioned that "The scope

ETHICS,629-642 (1999)

12. Pereira J. *Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls*. *Curr Oncol.*;18(2)e38-e45 (2011)

13. Shivi Shrivastava, *Legal Services India*, INDIA'S STAND ON EUTHANASIA: SUPPORTING RIGHT TO DIE WITH DIGNITY, (NOV.19,2020, 11:45 AM), Available at: [HTTP://WWW.LEGALSERVICEINDIA.COM/LEGAL/AUTHOR-5910-SHIVI.HTML](http://www.legalserviceindia.com/legal/author-5910-shivi.html).

14. David C Thomasma et.al, *Asking to Die; Inside the Dutch Debate on Euthanasia*, 2000

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of Article 21 which was initially confined to arbitrary deprivation of life and personal liberty, was extended to positive rights to enable an individual to live the life with dignity. The Court however emphasized that right to life under Article 21 would include the right to live with human dignity up to the end of natural life which includes within its ambit a dignified procedure of death. In other words, the right to die with dignity is subsumed within the right to life.”¹⁵

CURRENT FRAMEWORK REGARDING EUTHANASIA

Since there is no law that has been legislated upon in the parliament regarding Euthanasia, the Supreme Court came up with a set of procedures to be followed if one wishes to undergo Passive Euthanasia.

First a Hospital Medical Board must be constituted comprising of heads of various departments who have critical care specialization as well as a minimum of twenty years experiences in the medical field on the request of the patient.

In furtherance to the opinion of the Hospital Medical Board, another Medical Board must be constituted upon the direction of the jurisdictional collector. This board shall be headed by Chief District Medical Officer. All members and heads of the board shall have a minimum of twenty years' experience in the field.

In case permission has been denied by the Medical Board, the patient's relatives can approach the High Court under Article 226 of the Constitution. It is understood that the High Court shall pronounce its decision at the earliest, however, no specific time frame has been provided for the Court to give the verdict regarding the matter.

ARGUMENTS IN FAVOUR OF LEGALISING EUTHANASIA

Philosophical or moral attitudes and notions towards passive euthanasia may differ, but it can be safely said that the majority of view is that such considerations do not come in the way of relieving the dying person of misery, anguish, lingering pain and unmanageable suffering.

Each citizen has the right and moral authority to control their life and body and the state should not interfere and create laws that prevent citizens being able to choose how and when they die.

¹⁵ . Law Commission of India, *Passive Euthanasia- a relook*, Report No.241, (August 2012), Available at: <https://lawcommissionofindia.nic.in/reports/report241.pdf>

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A terminally ill patient ought not endure an agonizing and long passing, and subsequently, it gets reasonable and moral to go to Euthanasia to ease the anguish. Given the likelihood that these indications and conditions may not be calmed, even with forceful palliative consideration and social administrations, the choice to expedite one's passing may appear to be judicious.

PROBLEMS WITH LEGALISING EUTHANASIA

Opposition to legalization of euthanasia has come from numerous different perspectives because of the fact that the medical profession is guided by a desire to heal and extend life.

One of the largest issues with legalizing Euthanasia is that people will start using it as a 'cost cutting health care technique'. People's financial motives too will come into play once Euthanasia turns legal. Greedy relatives who look towards usurping the wealth of the patient may look at loopholes and indulge in malpractices to expedite the process of death.

Another famous yet condescending opinion is that law is a blunt instrument and sensitivity, compassion and subtlety while dealing with those who are on the verge of death and that the legislation should not interfere at this point.

Any flaw in the law concerning terminally ill patients would proclaim a significant change in the ethos of medication. The contention is that the complicity of specialists in the death of terminally ill patients may subvert the trust and certainty that patients have in their primary care physicians and furthermore reduce the public's discernment that health professionals are committed to the patient's welfare and health.

CONCLUSION AND SUGGESTIONS

Clinical science is advancing in India as in the remainder of the world, and presently we have gadgets that can draw out life by methods. This may delay terminal torment in a roundabout way, and the subject's families may end up paying exorbitant amounts of medical fees. Thus, end-of-life issues turn out to be major moral contemplations in India's cutting-edge clinical science.

The recent Supreme Court judgment has turned out to be a milestone. It has provided a significant lift to pro-euthanasia activists; however, there is a long way to go before a law legislated by the parliament is put in place. Also, worries for its abuse remain a significant issue which should be tended to before

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it turns into a law in our nation.

The researcher suggests that on the grounds that Euthanasia and assisted suicide ought not to be considered a standard clinical practice; strict monitoring procedures must be put in place. Under a revised monitoring system, regional committees must be developed whose members would include, physicians, lawyers and ethicists. These committees would be responsible for reviewing cases and determining if the guidelines had been met or whether the prosecution was warranted. These panels would be liable for surveying cases and deciding whether the rules had been completed or whether the arraignment was justified.



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