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PASSIVE EUTHANASIA IN INDIA - A LEGAL AND CRITICAL EVALUATION.

AUTHORED BY - SOVI DEVASIA & GEORGE KO

In 2018, the Supreme Court recognized the legality of 'passive euthanasia' for terminally-ill patients, holding that the 'right to die with dignity' forms a part of the right to life under Article 21 of the Constitution of India. The request for untimely ending of life has become a matter of debate among different individuals in present-day. This debate includes many aspects of the society such as legal, ethical, human rights, religious, health, social and cultural aspects etc.

Article 21 of Indian constitution protects any person from deprivation of his life or liberty except by the procedure established by law. Right to life mentioned in our constitution also includes right to live with dignity. This also includes the right of a dying man to die with dignity. However, the 'right to die with dignity' isn't to be mistaken for the right to die an unnatural demise shortening the regular range of life. Consequently, the idea of right to life is integral to the discussion on the issue of Euthanasia. One of the disputable issues in the recent has been the subject of authorizing the Right to Die or Euthanasia.

"Euthanasia and assisted suicide are never acceptable acts of mercy. They always gravely exploit the suffering and desperate, extinguishing life in the name of the 'quality of life' itself."

- Pope John Paul II

PASSIVE EUTHANASIA

Euthanasia, also known as mercy killing is a way of putting someone painlessly into death. This act is done for a person who is suffering from painful and incurable disease allowing them to die by curbing treatment or by withdrawing artificial life support equipment. The word euthanasia originated from the Greece which means good death.

The practice of euthanasia can be classified into the following two categories:

1. Active Euthanasia: Active euthanasia is a method that involves taking active steps to end a life.

This involves taking positive steps to end a patient's life, such as by administering them

a dose of medication through their intravenous line that will kill them. Active euthanasia is also sometimes referred to by the term "aggressive euthanasia".

2. **Passive Euthanasia:** Passive Euthanasia is defined as the deliberate act of causing someone's death by withholding or withdrawing artificial life support, such as a ventilator, from a patient who is terminally ill. In a case like this, something that is essential to save a patient's life is not done.

In spite of the fact that the vast majority of countries have made passive euthanasia legal, either through legislation or judicial interpretation, the question of whether or not active euthanasia ought to be legalized continues to be a topic of debate.

The three broad forms of Euthanasia are:

- **Voluntary Euthanasia:** When a patient makes the conscious decision to end his/ her own life, this is known as "voluntary euthanasia". The individual who is making the request needs to be in unbearable pain and be in a terminal condition that is recognized by the medical community.
- **Non-voluntary Euthanasia:** "Non-voluntary Euthanasia" is a subset of the practice known as "voluntary euthanasia", which involves the termination of a person's life when that person is unable to express their preferences and must instead rely on some form of proxy request to end their life, most likely for reasons related to their health and presumably for their own benefit.
- **Involuntary Euthanasia:** In the case of "Involuntary Euthanasia", a patient is considered to be suffering from a terminal illness or in excruciating pain for an extended period of time, but has not been given a direct or indirect invitation to end their life. In this context, the term "lack of consent" refers to a patient's inability to genuinely give assent. This can include protracted and prolonged periods of sleep or coma in which the patient's preferences are unclear.

Legal Evaluation on Passive euthanasia.

1. ASPECTS ARGUMENTS MADE IN THE 2011 VERDICT THAT LEGALISED PASSIVE EUTHANASIA IN INDIA (AND AGAINST ACTIVE EUTHANASIA)

- For over 40 years – precisely 41 years and 173 days, for not a moment of suffering ought to be discounted – Aruna Shanbaug remained locked up in ward number 4 of KEM hospital, Parel, Mumbai. Her struggle to die ended on May 18, 2015. The

absence of bed sores on Aruna's dying body was celebrated and the nurses' tremendous "attachment" to her was much exalted. All this, despite the bitter fact that Aruna lived a life, to use Peter Singer's words, "so miserable as not to be worth living"

- In March 2011, the Supreme Court of India for the first time recognised the legality of passive euthanasia in the case of Aruna Ramchandra Shanbaug v Union of India., owing to Pinky Virani's indefatigable efforts, the Supreme Court of India deemed passive euthanasia legal. A detailed discussion of the different ways of implementing passive euthanasia is due, given the equivocality of the term in the legal document.
- In 2018, the Supreme Court recognized the legality of 'passive euthanasia' for terminally-ill patients, holding that the 'right to die with dignity' forms a part of the right to life under Article 21 of the Constitution of India.

2. THE KEY POINTS OF THE JUDGEMENT IN FAVOR OF PASSIVE EUTHANASIA (AND AGAINST ACTIVE EUTHANASIA)

The court also laid down detailed guidelines for passive euthanasia, both in cases where the patient left an 'advance directive' or a 'living will' stating that life support should be withdrawn if they fall terminally ill, and in cases where no such directive was left behind. The court further eased norms for this process in January 2023.

- The condition for the fulfilment of the act is that the patient should be in a Permanent Vegetative State(PVS).
- The court also gave meaning to the term "passive euthanasia" which allows withdrawing of life support system to a patient which is necessary for the continuity of their life.
- It allowed the practice of passive euthanasia but not active euthanasia.
- The court allowed the decision of executing passive euthanasia on a patient only if a person is either the parent or spouse or other close relatives or in absence of any of them, the decision can also be taken by a person or body of persons acting as a next friend of the patient.
- The court also asserted that the decision of discontinuing life support of a patient can be taken by a doctor who is acting in the best interest of the patient.
- The power of giving assent in execution of passive euthanasia is in the hand of the High Court of a state. When a High Court receives an application, the Chief Justice of the respective court must constitute a bench of minimum two judges who will further

decide to grant approval or not. The bench will nominate three reputed doctors to form a committee and submit a report of their observations to the court.

- A notice regarding the report submitted by the committee must be given to the close relatives of the patient and the state. After hearing of the parties in a given matter the High court can give its verdict.
- The court also made a recommendation to the central government to repeal the existing section 309 of Indian Penal Code, 1860.

3. INCONSISTENCIES IN THE VERDICT'S ARGUMENTS IN FAVOR OF PASSIVE EUTHANASIA (AND AGAINST ACTIVE EUTHANASIA)

Several inconsistencies in the verdict's arguments in favor of passive euthanasia (and against active euthanasia). Beyond the legal debates that ensued, euthanasia needs serious moral reflection in India.

- In accordance with the provisions of Article 21 of the Constitution, the right to life and liberty would be devoid of any significance if it did not also protect the dignity of the individual. In the case of *K.S. Puttaswamy v. Union of India*[2], the Supreme Court of India reiterated the principle that human dignity is an indispensable part of Article 21. Right to live with dignity is also said to include the smoothening of the process of dying in the case of a terminally ill patient with no hope of recovery. The legal position as it stands today is that "right to life" does not include "right to die", but "right to live with dignity" does include "right to die with dignity".
- The Right to one's physical and mental health is also guaranteed by the Constitution, being covered under Article 21 and protected under Part III of the Constitution. In the context of decisions regarding health and medical care, the exercise of self-determination and autonomy by a person includes the right to decide whether and to what extent he or she is willing to submit to medical procedures and treatments that are consistent with the individual's goals and values. This right applies both in the abstract and in concrete terms.
- It has been determined that the Right to privacy is an essential component of the Right to life and liberty, as outlined in Article 21, and safeguarded by Part III of the Constitution. This ensures that individuals retain their autonomy when it comes to making decisions concerning the private sphere of death, in addition to maintaining their bodily integrity.

- In the case of *State of Maharashtra v. Maruty Sripati Dubal*[3], the Bombay High Court ruled that under Article 21, the Right to life encompasses the Right to die in and of itself, as a result, the Court invalidated and declared as ultra vires section 309 of the Indian Penal Code, 1860.
- The writ petitioners in *P. Rathinam v. Union of India*[4] argued before the Supreme Court that Section 309 of the Penal Code, 1860 was unconstitutional on the grounds that it went against Articles 14 and 21 of the Constitution of India.
- The Constitution Bench deliberated and considered the correctness of the decision rendered in *P. Rathinam's* (supra) in the case of *Gian Kaur v. State of Punjab*[5]. In the case of *Gian Kaur* (supra), the Appellants were found guilty by the lower court of an offence punishable under Section 309 of the Indian Penal Code, 1860, which conviction was challenged inter alia on the ground that Section 309 of the Indian Penal Code is unconstitutional.
- Taking cue from the judgment in *Vishakha v. State of Rajasthan*[7], the Court laid down the law, while allowing passive euthanasia i.e. the circumstances when there could be withdrawal of life support to a patient in permanent vegetative state. The question as to whether one can seek right to die has been dealt with in the context of Article 21 of the Constitution, namely whether this provision gives any such right. The Court in *Aruna Shanbaugh's* case (supra), maintained the position as held in *Gian Kaur* (supra), that "right to die" had not been accepted as an integral part of "right to life" and thus, in so far as active euthanasia was concerned, the same was not accepted, however, passive euthanasia under certain circumstances has been accepted.

4. LAWS TO ADDRESS INCONSISTENCIES IN THE VERDICT'S ARGUMENTS IN FAVOR OF PASSIVE EUTHANASIA (AND AGAINST ACTIVE EUTHANASIA)

- Major development in the debate took place when the Seventeenth Law Commission of India in 2012 published its 241st report on the issue of euthanasia. In the report, the Law Commission in the context of provisions of the Indian Penal Code, clarified that where a competent patient takes an 'informed decision' to allow nature to have its course, the patient
- is, under common law, not guilty of attempt to commit suicide (under section 309 IPC) nor is the doctor who omits to give treatment, guilty of abetting suicide (under section 306 IPC) or of culpable homicide (under section 299 read with Section 304 of IPC).

- Thereafter, in a Miscellaneous Application [9] filed by Indian Society of Critical Care Medicine, seeking clarification of the judgment in Common Cause (supra) directives vide judgment dated 24.01.2023, the Supreme Court has simplified the procedure for execution of Living Will and Advanced Directive since the directions as passed originally had become virtually unenforceable owing to the complexity of the procedure prescribed in the original judgment. Several changes and modifications were introduced by the five-Judge bench to the original procedure as prescribed in the 2018 judgment.

CRITICAL Evaluation on Passive euthanasia.

Critical analysis of Passive Euthanasia as a converging need.

The concept of passive euthanasia has its moral as well as social consequences. The concept has many loopholes which does not allow an individual who is suffering from a disease to come at peace with the situation. The idea of taking a patient's life due to an incurable disease is in itself presumptuous. It presumes the consent of the patient by overlooking the immoral consequences of their act.

1. LIMITATIONS ON EUTHANASIA ADMINISTRATION.

- We seem to intuitively understand that the pain of aching knees is qualitatively different from the pain of chronic cancer, paralysis or coma. Perhaps it is impossible to analyze and define what this difference really is, both in medical and moral terms. Despite this ambiguity, the medical fraternity must deal intimately with pain – by studying its causes as well as the preventive, curative and healing measures, by treating it and by simply witnessing it.
- By virtue of their profession, are doctors morally obliged to “care” for patients, “heal” their pain and thereby, sustain their lives “unconditionally”? It is important to note at the outset that the discourse on euthanasia begins by answering this question in the negative; thence follows another, more perplexing question. What are the morally permissible methods of implementing euthanasia, given that the patient is certain to die a slow and painful death because of her/his irreversible medical condition (like that of Aruna)?
- Inevitably, it is acts of commission on the part of the doctor that can provide the best possible death, which is the moral objective of euthanasia. In order to meet this

objective, doctors must be seen as agents who possess the moral integrity and technical expertise to judge when and how the patient's life ought to be terminated, depending on the patient's medical condition.

2. UNNATURAL TERMINATION OF LIFE

The act of discontinuing the necessary life support system from the patient goes against the principles of religious teachings. The notion that a human does not hold a right to decide the death of another being in any circumstance holds belief in our society.

A family member or a next friend decision over a patient's death in some cases can be for the benefit of them involving issues over property matters, etc. No individual should hold a right to decide a person's death. Death is a process that should come naturally to a person and not by withdrawal of a life support system.

3. MALICIOUS INTENT OF MEDICAL PROFESSIONALS

There are cases where due to a negligent act by a medical professional the patient suffers sometimes fatal consequences. A doctor can cover his negligence which can lead to a permanent destruction to an individual's life without any accountability. There are no guidelines mentioned by the court for the accountability of those medical professionals who commit negligence and to cover their act put a patient's life on stake by removing life support. This will in future may disturb the trust of citizens for medical institutions.

4. LACK OF INFORMATION PROVIDED TO THE PATIENT

A doctor has the duty to explain and make the patient understand all the treatments available, the procedures undertaken and the possible outcomes of any operation that they have to undergo in order to cure their disease. Failing in doing so a doctor should not make the patient sign a 'living will' under any condition.

This goes against the hippocratic oath which a medical practitioner undertake owing to their responsibility. A 'living will' should only be signed by a patient when he is fully aware of the consequences which he may have to bare.

5. AGAINST THE PRINCIPLES OF HUMAN RIGHTS

This concept goes against the principles of human rights which are the birth rights of an individual. The Right To Life is violated by giving a person the right to decide death of

another person. A patient's Right to dignity and liberty also gets violated by allowing any other person the right to decide another person's fate. The value of an individual's own will is diminished by this concept.

6. ACCOUNTABILITY OF THE STATE

The state should be held accountable for providing the necessary medical treatment that is imperative for an individual's health. There should be an equal opportunity of medical care given to all strata of society. The government must also ensure equal treatment of every patient that comes for help in a hospital.

There are instances where the government has failed to provide necessary medical assistance that was required in order to treat a patient which had led to his condition being incurable. In such a case there cannot be enough arguments to justify a patient's surrender to passive euthanasia.

7. SOCIAL ENVIRONMENT

- This reasoning is followed by absurd claims and sweeping generalisations, such as “Indian society is emotional and care-oriented” and the “unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialisation, and the rampant corruption” is lamented.
- Owing to an undeserved preoccupation with the doctor's agency in administering different types of euthanasia, the verdict ignores the two most fundamental ethical concerns of euthanasia, the patient's suffering, and the moral principle that guides the doctors' integrity in treating such suffering.
- If the doctor is to maintain her/his integrity, the patient's suffering must be accorded priority over the patient's life, which in turn, needs to be given priority over the doctor's agency. Only then can the different types of euthanasia be evaluated in terms of which method is best suited for a particular patient's medical condition.

ARGUMENTS IN FAVOR OF EUTHANASIA

1. End of Pain: Euthanasia provides a way to relieve the intolerably extreme pain and suffering of an individual. It relieves the terminally ill people from a lingering death.
2. Respecting Person's Choice: The essence of human life is to live a dignified life and to force the person to live in an undignified way is against the person's choice. Thus, it expresses the choice of a person which is a fundamental principle.

3. Treatment for others: In many developing and underdeveloped countries like India, there is a lack of funds. There is a shortage of hospital space. So, the energy of doctors and hospital beds can be used for those people whose life can be saved instead of continuing the life of those who want to die.
4. Dignified Death: Article 21 of the Indian Constitution clearly provides for living with dignity. A person has a right to live a life with at least minimum dignity and if that standard is falling below that minimum level then a person should be given a right to end his life.
5. Addressing Mental Agony: The motive behind this is to help rather than harm. It not only relieves the unbearable pain of a patient but also relieves the relatives of a patient from the mental agony.
6. Ethical Challenges
 - Medical Ethics: Medical ethics call for nursing, caregiving and healing and not ending the life of the patient.
 - In the present time, medical science is advancing at a great pace making even the most incurable diseases curable today.
 - Moral Wrong: Taking a life is morally and ethically wrong. The value of life can never be undermined.

CONCLUDING REMARKS

1. Euthanasia challenges traditional views on death and medicine. Public discourse that considers religious, ethical, and cultural perspectives is crucial.
2. There is a need for strict guidelines and safeguards are needed to prevent abuse or coercion.
3. Ensuring access to quality palliative care, which focuses on comfort and symptom relief, should be a priority alongside any discussion of euthanasia.
4. Notwithstanding the verdict's arguments in favor of passive euthanasia, acts of commission on the part of doctors are inevitable, if the best possible death is to be provided. Only if the patient's suffering is prioritized over the patient's life, would it become clear that passive euthanasia defeats the very purpose of euthanasia by unnecessarily prolonging a miserable life till death finally takes over.

We need to abandon the overwhelming preoccupation with the doctor's agency in administering euthanasia, to ensure that euthanasia is not reduced to another way of dying in miser