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RIGHT TO DIE: ETHICAL AND LEGAL

PANORAMA

AUTHORED BY - SANJANA MOSES

Abstract

“Life sans dignity is an unacceptable defeat, and life that meets death with dignity is a value to be aspired for and a moment for celebration.”

; Dipak Mishra, C.J.I. (former)

The word Euthanasia literally means good death, also called mercy killing. It is an act whereby a person's life is intentionally ended, and the person can die before their natural death primarily to end their suffering and agony. Active euthanasia involves deliberate administration of lethal substances to end a patient's life while passive euthanasia entails withholding life sustaining treatment to allow natural death. The paper examines the ethical legal and theological consideration surrounding active and passive euthanasia in India. Passive voluntary *euthanasia* was legalized in India in the year 2011 with the historical judgment of *Aruna Shanbaug v. Union of India and Ors.* But Active Euthanasia is still not permitted: to fully realize the Right to a dignified life, as provided in Article 21¹, it's important to include the Right to die within its ambit. Right to die with dignity is an inalienable part of the Right to life as provided under article 21 of the constitution of India. Drawing on existing literature and legal precedents, this paper aims to explore the ethics of the right to die. and the contrasting arguments against each type of euthanasia. It discusses cultural, religious, and ethical considerations. By explaining the complexities and nuances of active and passive euthanasia within the Indian framework the work aims to contribute to the ongoing discourse on euthanasia ethics for a infirmed future decision making,

Key words: Euthanasia, Active Euthanasia, Passive Euthanasia, Ethics of right to die, Right to Die, theological perspective, India.

¹ The Constitution of India 1950.

According to the Oxford English Dictionary, Euthanasia means '*the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.*' It is the process wherein the life of one human being is ended by another to revive the former from the distressing effect of an illness. Since the probability of its misuse is extremely high becomes vital that a legal framework is provided so that through it, only the terminally ill needy people are benefited². The debate regarding the legalization of euthanasia has been going on across the globe since time immemorial. The opponents of this practice hold the view that life is sacred, and no one has got the right to end it, whereas on the contrary to this is the supporters of euthanasia who believe that life belongs to the individual only and so each person has got the right to choose whether to live this life or not. To summarize, the debate is regarding the Sanctity of life versus individual autonomy. Different countries have different views on this and accordingly have formulated their legal framework. In this article some basic points regarding euthanasia are deliberated, and certain suggestions are given.

Euthanasia can be classified into - Voluntary, Nonvoluntary, and Involuntary euthanasia. Voluntary Euthanasia: It encompasses instances when a person requests to help him end his life. The request could be made orally or in a written form through a document. It usually covers cases where a terminally ill person is given the right to choose whether to live his life or end it. Voluntary euthanasia can be further classified into- Passive Voluntary euthanasia and Active Voluntary euthanasia.

Passive euthanasia refers to cases where life-sustaining measures are withdrawn or withheld and measures that could preserve or prolong life are not adopted, thereby allowing the patient to die. It does not involve actively killing a person but rather allowing his disease or condition to run its course. For example, not replacing the oxygen tank when it runs out. Whereas Active Euthanasia covers those cases in which some active steps are taken to end the patient's life, for example, directly giving a lethal dose of a drug or poison to a person.

Passive euthanasia is often considered more ethically correct since it accepts the natural course of disease and only involves refraining from interventions that would prolong life.

³But in result Passive and Active euthanasia do not differ since both have the same outcome- the

³ Subhash Chandra Singh, 'Euthanasia and assisted suicide: revisiting the sanctity of life principle'

death of the patient on humanitarian grounds. Both raise complex moral and ethical questions. The primary distinction lies in action. Non-Voluntary Euthanasia covers those cases where a person is not able to express his wish to end his life. For instance, he is unconscious in comatose. The patient is unable to make others know about his willingness to die, unlike involuntary euthanasia where the patient has been given a prior occasion to make his desire known. In most cases, it's the family members who take such a decision, but there are some countries, for example, the Netherlands, where the medical practitioner takes the final call, keeping in mind certain guidelines provided to him by the competent authorities. **In-Voluntary Euthanasia:** In-Voluntary Euthanasia covers those cases wherein a competent Patient's life is ended against the wishes of that patient. He is in no circumstance wants to end his life. No matter how noble the intention of the perpetrator is, this would be covered under cases of murder and is illegal.

The Genesis of Euthanasia can be traced back to approximately 5th century B.C, in Greece and Rome, where it was administered through abortions and at times even mercy killing with the help of medical practitioners who would give poison to their patient who asked for it. Moving forward in the 17th and 18th centuries, even though euthanasia was a topic of discussion amongst people, it was majorly condemned by them. It was not until 1828 that the first legal provision banning euthanasia and assisted suicide came in the United States of America. During the 1930s, euthanasia gradually gained support in developed nations like America and England. However, this global trend of favoring the practice met with a setback with the onset of World War 2. Hitler and the Nazis killed many people through euthanasia by gassing, drugs, and starving the people. In the late 20th and early 21st century, euthanasia again came into the picture with different countries and societies with different approaches towards it. In India, only passive euthanasia is currently legalized under a decision rendered by the apex court on 7th March 2011.⁴

Legality of Euthanasia and Right to Die: Across the globe, the debate regarding the legality of euthanasia has been going on for a long duration. In India, this debate was revived when the apex court of the country gave a verdict in the famous *Aruna Shanbaug case* in which the court permitted the patient's plea for euthanasia for had been living in a vegetative condition for the past 37 years. A division bench comprising of Justice Markandey Katju and Justice Gyan Sudha

(2012) 54 Journal of the Indian Law Institute 196.

⁴ N.D.A Kemp, *Merciful Release: The History of the British Euthanasia Movement*, (Manchester University Press 2002.)

Mishra in this case permitted to discontinue Shanbaug's life support to end her suffering and let her die peacefully. In this case, the court balanced various aspects ranging from the Patient's suffering, the constitutionality of the right to life, and that of medical ethics. In the landmark case, **active euthanasia was declared illegal while permitted passive euthanasia contingent upon certain circumstances**. Hence as of now, In India, Active euthanasia is not permitted and is illegal -only Passive Euthanasia was legalized by the apex court on 7th March 2011.

Under the **Indian Penal code, 1860** since in cases of Euthanasia, there is the intention on the part of the medical practitioners to end the life of the person according to the general rule is section 300 clause one would attract, but by **exception 5 of section 300**,⁵ the medical practitioner would be punishable under section 304- for culpable homicide and not section 302 for murder. The benefit of the exception would only be given in cases of Voluntary euthanasia where consent is an important ingredient. In other cases of non-voluntary or involuntary euthanasia, the benefit of the exception would not be provided.

If we look at the constitutional perspective, **Article 21** of our constitution provided "no person shall be deprived of his life or personal liberty except according to the procedure established by law. The question of whether Article 21 includes the right to die or not first came into consideration in the case *State of Maharashtra v. Maruti Shripathi Dubal*⁶ in which it was laid down by the Bombay High Court that "Right to life also includes right to die" and consequently Section 309 of the Indian Penal code that criminalizes attempt to suicide by a person was abrogated on the rationale that right to die is even though uncommon and abnormal but is not unnatural. The court supported this reasoning by giving various situations in which a person may no longer have the will to live. This was upheld by the Supreme Court in the case *P. Rathinam v. Union of India*⁷. However, in the case *Gian Kaur v. the State of Punjab*⁸ it was held "right to life as provided by Article 21 of the Constitution does not include the right to die"; therefore, the constitution by article 21 only guarantees right to life, and personal liberty and in no circumstance can right to die be covered within its ambit. Further, the court added that the right to life means to live a dignified life as well as to die in a dignified manner, which only means a natural death. Our constitution nowhere provides that a dignified death means to die unnaturally because such

⁵ Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

⁶ State of Maharashtra v. Maruti Shripathi Dubal 1987 (1) BomCR 49.

⁷ P. Rathinam v. Union of India, (1994) AIR 1994 SC 1844.

⁸Gian Kaur v. the State of Punjab, (1996) AIR 1996 SC 946.

a death is a violation of the sanctity of life. The gift of life is given to a person by God, and it is God only who can take this gift away. But on the other hand, in the **Aruna Shanbaug**⁹ case Supreme Court in its path-breaking judgment, allowed "Passive Euthanasia" by rejecting the petition on the ground it was one for active euthanasia. Further, the court also gave certain guidelines by saying that until the Parliament of the country does not enact any law on the subject, the concerned High Court is empowered to give a decision on the merits of the respective case.

ETHICS OF RIGHT TO DIE: EUTHANASIA.

The advocates for euthanasia base their rationale that an individual shall be in control of one's life as much as possible.¹⁰ There should be Freedom to choose between quality and sanctity of life. Every individual should be given a choice to choose between having a certain quality of life or the sanctity of life. When a person is suffering in pain or is unable to do even the basic day to day work like eating his food or going to relieve himself in the bathroom, causes a feeling of dejection and in such cases, people who value the quality of life at a higher pedestal than the sanctity of life should be able to do so. Hence an option to end intolerable suffering should be given to terminally ill patients or who are incapacitated. Some diseases cause such suffering that a person becomes a living corpse. It takes away the mental peace of a person. On the other hand, it drains the family or the care takers of the patient as well because it is extremely difficult to see one's loved one in so much pain and suffering; in such cases, death is the only option.

On the other hand, Opponents of the legalization of euthanasia treat it as a synonym for murder and feel that euthanasia is not the right to die but the right to kill. Further it is inconsistent with medical ethics. Medical practitioners and healthcare workers are under a professional duty that does not permit them to take any life. It is a noble profession whose only aim is to improve and save lives. Euthanasia is inconsistent with the roles and duties of people in this profession.¹¹ Moreso There is rapid progress in the field of medical science, which will only grow in the coming times. A disease that is terminal and incurable today may not be so in the coming years to come. Hence no one has the right to deny any person the chance of future recovery and a promising life ahead. There is a chance of misuse of the provisions of euthanasia by close relatives and family members who may put undue pressure on the patient for monetary gains, particularly

⁹Aruna Ramchandra Shanbaug v. Union of India & Ors, (2011) 4 SCC 454.

¹⁰BR Sharma, 'Euthanasia: An overview of the Journey from inception to implementation' (2005) 5J Punjab Acad Forensic Med Toxicol 33

¹¹ Sushil Rao, 'The Moral Basis for a Right to die' (2011) 46 ECONOMIC AND POLITICAL WEEKLY 13

old and frail patients. Life is a sacred gift bestowed to us by the almighty. Therefore, the sanctity of life must be preserved over individual freedom. The gift of life is given by God, and it is only he who can take it away.

THE MORAL ARGUMENT: ACTIVE EUTHANASIA V PASSIVE EUTHANASIA.

The question whether one is “better” than the other is highly subjective and depends on various factors like individual’s ethical framework, cultural norms, and morals. The advocates for active euthanasia believe that it provides a more immediate relief to the suffering of the patient compared to passive euthanasia, which is a prolonged process. Further Active Euthanasia gives the patient greater sense of control and agency over his own death by allowing the patient to make an active choice to end his suffering. Thereby making it a clear and accurate process where all the stakeholders- the patient, family members and the health care workers are all aware of the decision and its consequences, leading to a more dignified death. From a practical standpoint, it minimizes the burden on the family members by saving them from prolonged emotional distress and the uncertainty associated with waiting for the patient to die by passive euthanasia.

In stark contrast the advocates for passive euthanasia feel that passive euthanasia preserves the sanctity of life by allowing death to occur in its natural course and not interfering with God’s plan. By no direct intervention of healthcare workers, it saves them from ethical dilemma of actively causing death to a person. It is thus more consistent with medical ethics based on the principle of non-maleficence which emphasizes the obligation to refrain from causing harm. The chances of abuse if passive euthanasia is also less as compared to active euthanasia because the latter involves deliberate administration of a legal substance. The passive approach ensures that the death of patient occurs naturally and gives better protection for vulnerable individuals. Passive euthanasia also promotes comprehensive palliative care by prioritizing comfort and dignity in the dying process rather than hastening it.¹²

THEOLOGICAL PERSPECTIVE

The Hindu religion is based on the notion of life after death.¹³ The soul’s next life is decided by the karma (net consequence deeds) in his previous birth, and the ultimate goal of this cycle is *moksha* (freedom from the cycle of death and rebirth), which cannot be achieved without good

¹² Anita Manchanda, ‘Euthanasia: A Social Science Perspective’ (2015) 51 JOURNAL OF INDIAN LAW INSTITUTE 26

¹³ Available at <https://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml> (last visited 02.02.23)

deeds. There are two Hindu views on euthanasia: according to the first view, By aiding a person suffering to end his suffering and thereby life, a person is performing good karma, which will help him attain his ultimate aim of Moksha. Hence promoting some form of Paassive Euthanasia. The other view is a stark contrast with the former view, according to which a person is interfering with the natural cycle of birth and death if he helps end a life, irrespective of how much pain and suffering was there in the life. Those involved in such bad deeds will assume it oneself the residual karma of the patient.

On the same lines regarding the use of life support to keep alive, it would not be appreciated because it is again interfering with the natural cycle of birth and death. But if the user is not permanent and only for a certain duration for recuperation, then it is permitted.

Prayopavesa, or fasting to death, is permitted under Hinduism with certain conditions like to be done under community regulation, etc.

Regarding euthanasia, Pope John Paul II has spoken out against what he calls a 'culture of death' in today's modern society and said that "human beings should always prefer the way of life to the way of death."¹⁴ ***Human beings are valuable because they are created in God's image; they possess an intrinsic dignity within themselves from the day they come into existence.*** To put forward euthanasia for a human being is equivalent to saying that his current life is not worthwhile, which contradicts the very notion of a worthy human being.

The church opposes the notion of the right to die, even though a human being is free individuals, but this freedom doesn't extend to taking their own lives "human being who insists that they have the *right to die* is denying the truth of their fundamental relationship with God."¹⁵ But others including some protestants and liberal schools of Christianity may accept some forms of passive euthanasia since it is morally permitted to refuse extraordinary and aggressive medical ways to save a life. It is not equivalent to killing oneself, but instead, it is an acceptance of the very truth of death¹⁶

¹⁴ Available at http://www.bbc.co.uk/religion/religions/christianity/christianethics/euthanasia_1.shtml (last visited 01.02.23)

¹⁵ Boudreau JD, *A healing curriculum*. (2007).

¹⁶ *Id*

Since Islam and Christianity have a common base, even in Islam like Christianity attempting to kill ourselves is not permitted on the ground that we have not created us. Only Allah has created us, and it is his right alone to destroy us.¹⁷The Qur'an says: "Do not kill (or destroy) yourselves, for verily Allah has been to you most Merciful." (Quran 4:29)...The concept of a life not worthy of living does not exist in Islam."

The ethics taught under Sikhism is primarily derived from the teachings of their scripture, Guru Granth Sahib, the Rehat Maryada (code of conduct), along with teachings of all the gurus.¹⁸Sikhs view life as a gift of God and hence have extremely high respect for it and hence do not support the idea of euthanasia. Since it is a gift of God, the timing when it should be taken away must be left to God to decide. According to Sikhism, euthanasia interference in God's plan- pain and offering is part of life, and human beings should accept it gracefully and make the best out of it. Teaching so Sikhism is revolved around caring for others who are less privileged, and, on this understanding, Sikhs believe "to provide such good care that euthanasia became an unattractive option."¹⁹

CONCLUSION

Human life's sanctity does not mean that a person is forced to continue to live a life full of pain and suffering. Even if we look at it from a constitutional perspective, Article 21 of the Indian Constitution says every person has a right to life; such life does not mean mere animal existence but dignified life. Hence when a person is supposed to live a dignified life and the state has a corresponding duty to provide such a life, he cannot be forced to live to his disadvantage. *Law must be stable, but it should not stand still.* The debate of which one is better – active or passive euthanasia is multifaceted and deeply nuanced – reflecting a vast and diverse perspective of ethical legal and cultural perspectives. While the former provides immediate relief from suffering it does raise serious ethical dilemmas and the potential risk of abuse. passive euthanasia on the other hand aligns with the principle of non-maleficence by respecting the natural course of death but it does prolong the suffering not only of the patient but of the family members as well. A possible solution to the problem can be the apex court may consider reading freedom to die as part of the right to privacy, autonomy, and self-determination. The gift of life is precious and needs to be given the respect it deserves, but at the same time, it has to be one with dignity. Living

¹⁷Mohammad Ali Showali, 'Islamic bioethics-a general scheme' (2008) 2 Journal of Medical Ethics and History of Medicine.

in a vegetative state does not qualify to be a dignified life where one has to depend on everything on others. If the living standard of a person falls below dignity and his life is like a punishment for him, he should be permitted to have a choice whether to continue living in this suffering to end his life. It is morally incorrect and even cruel to force a person to live such a life. Right to life means to live a peaceful life as a human being, if a patient is unable to take normal care of his own self or has lost all senses or has lost the zeal to continue to live, forcing him to continue with a life full of pain and suffering is mental torture for an individual. It causes deep agony not only to the patient but also to his near and dear ones who are tortured to see their loved ones in such a position feeling helpless to relieve them from the suffering. To check the misuse of the provisions, a holistic approach needs to be adopted. A body should be constituted consisting of medical practitioners, social workers, psychologists, and other experts whose decision must be based on the person's point of view and his caretakers. In navigating these complexities, the policy makers of the country should take a case-to-case basis approach by taking into consideration the interest of the patient, the caretakers and the social implications of legalization of euthanasia. Hence a thoughtful and compassionate deliberation is needed that the ethics of right to die are not compromised and every individual is entitled to a right to dignified death.

