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LEGAL RESEARCH

TOPIC – CRITICAL ANALYSIS: EUTHANASIA

SUBMITTED BY – TANISHQ DASARI

L.L.M 2nd YEAR

P.E.S MODERN LAW COLLEGE, PUNE

I. INTRODUCTION

Euthanasia is the practice of intentionally ending a life to relieve pain and suffering. Different countries have different euthanasia laws. The British House of Lords select committee on medical ethics defines euthanasia as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering". In the Netherlands and Belgium, euthanasia is understood as "termination of life by a doctor at the request of a patient". The Dutch law, however, does not use the term 'euthanasia' but includes the concept under the broader definition of "assisted suicide and termination of life on request.

As of 2006 euthanasia had become the most active area of research in bioethics. In some countries divisive public controversy occurs over the moral, ethical, and legal issues associated with euthanasia. Passive euthanasia (known as "pulling the plug") is legal under some circumstances in many countries. Active euthanasia, however, is legal or de facto legal in only a handful of countries (for example: Belgium, Canada and Switzerland), which limit it to specific circumstances and require the approval of counselors and doctors or other specialists. In some countries - such as Nigeria, Saudi Arabia and Pakistan - support for active euthanasia is almost non-existent.

II. HYPOTHESIS

To know what is euthanasia and to exactly analyze the guidelines given by the majority of the judges in the Five judge bench of the Supreme Court with respect to who can seek or be given euthanasia and guidelines about the Advanced Directives.

III. WHAT IS EUTHANASIA

Euthanasia, also called **mercy killing**, act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures. Because there is no specific provision for it in most legal systems, it is usually regarded as either suicide (if performed by the patient himself) or murder (if performed by another). Physicians may, however, lawfully decide not to prolong life in cases of extreme suffering, and they may administer drugs to relieve pain even if this shortens the patient's life. In the late 20th century, several European countries had special provisions in their criminal codes for lenient sentencing and the consideration of extenuating circumstances in prosecutions for euthanasia.¹

IV. PASSIVE EUTHANASIA & ACTIVE EUTHANASIA

Voluntary, non-voluntary and involuntary types can be further divided into passive or active variants.

- **PASSIVE EUTHANASIA:-** Passive euthanasia entails the withholding treatment necessary for the continuance of life.
- **ACTIVE EUTHANASIA:-** Entails the use of lethal substances or forces (such as administering a lethal injection), and is the more controversial.

While some authors consider these terms to be misleading and unhelpful, they are nonetheless commonly used. In some cases, such as the administration of increasingly necessary, but toxic doses of painkillers, there is a debate whether or not to regard the practice as active or passive.

¹ www.britannica.com

V. RELATION BETWEEN PASSIVE EUTHANASIA & ART.21

In a landmark judgment (Common Cause (A Regd. Society) v. Union of India & Another² delivered on 9th March, 2018, the Supreme Court of India held that a person in persistent vegetative state can opt for passive euthanasia, and that a person can execute a living will to refuse medical treatment in case of a terminal illness. In response to the apprehensions of misuse of advanced directives (or living wills), such as those expressed by the Law Commission of India in its 241st Report, the court also issued comprehensive guidelines on the procedure for execution of an advance directive as well as for giving effect to passive euthanasia. The guidelines will remain in force until Parliament enacts a legislation on the subject.

In delivering its judgment, the Supreme Court held that the right to die with dignity is an intrinsic facet of the right to life under Article 21 of the Constitution of India. Article 21 comprehends dignity as its essential foundation and hence, each individual must have the right to decide whether or not to accept medical intervention in case of terminal illness. The right to live with dignity includes autonomy in relation to the process of dying and choosing to not undergo pain and suffering. Such interpretation is in consonance with Article 1 of UDHR that defines a dignified life and Articles 6, 7, 17, and 18 of ICCPR that broaden the conceptualization of the right to a dignified life.

The power to the judges to lay down the guidelines is 'judicial legisputation' - the application of legislation to new or unforeseen needs and situations' Dipak Misra affirmed that our court has expanded the spectrum of art.21, in the latest nine judge bench decision in *K. S. Puttaswamy and another v. Union of India and others*³, dignity has been reaffirmed to be a component under the said fundamental right.

Human dignity is beyond definition. it may at times defy description. To some, it may seem to be in the world of abstraction and some may even perversely treat it as an attribute of egotism or accentuated eccentricity. This feeling may come from the roots of absolute cynicism. But what really matters is that life without dignity is like a sound that is not heard.⁴ CJI. Dipak Mishra further added that a patient to

² Common Cause (A Regd. Society) v. Union of India (UOI), Others. 2018 SC 0232 ,52

³ K. S. Puttaswamy and another v. Union of India (2017) 10 SCC 1

⁴ Common Cause (A Regd. Society) v. Union of India (UOI), Others. 2018 SC 0232 ,52

wait for death when he /she does not know if he/she is living 'corrodes the essence of dignity'. As does not need any nexus worth the status of a person, death does not mean that dignity evaporates. Thus, a dying man who is terminally ill or in a PVS for a law in these regards as this is natural human right, and only passive euthanasia could come within the ambit of article 21.⁵

VI. GUIDELINES FOR SEEKING EUTHANASIA BY SUPREME COURT

□ WHAT ARE ADVANCE DIRECTIVE'S :-

Advance directive in context of passive **euthanasia**, is the decision of a patient, communicated in advance, about the situations under which those medical treatment should be withdrawn or withheld, that just has an effect of delaying the process of death and cause the patient pain and suffering for an extended time.⁶

1. WHO CAN EXECUTE ADVANCE DIRECTIVES?

Guardian or close relative who, in the event of the executor becoming incapable of taking a decision, will be authorized to give consent for withdrawal of treatment.

2. HOW SHOULD IT BE RECORDED AND PRESERVED?

The document should be signed by the executor in the presence of two attesting witnesses and countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC). The witnesses and JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion. The JMFC shall preserve one copy of the document in his office and shall forward one copy to the registry of the jurisdictional district court for being preserved. The JMFC shall inform the immediate family members of the

⁵ No person shall be deprived of his life and personal liberty.

⁶ www.mondaq.com

executor, if not present at the time of execution. A copy shall be handed over to the competent officer of the local Government.

3. WHEN AND BY WHOM CAN IT BE GIVEN EFFECT TO?

In the event, the executor becomes terminally ill with no hope of recovery and cure of the ailment, the treating physician shall ascertain its authenticity from the jurisdictional JMFC. If the physician is satisfied that the instructions need to be acted upon, he shall inform the executor or his guardian /close relative about the nature of the illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. The hospital shall then constitute a Medical Board consisting of the head of the treating department and at least three expert doctors with at least twenty years of experience who, in turn, shall visit the patient in the presence of his relative and form an opinion whether medical treatment should be withdrawn or not. If Medical Board certifies that the instructions be carried out, the hospital shall inform the collector about the proposal. The collector shall then immediately constitute another Medical Board comprising the Chief District Medical Officer and three expert doctors. The board shall examine the patient and may allow withdrawing treatment after ascertaining the wishes of the executor or his family members if the patient is not in a position to communicate. The Board shall convey the decision to JMFC before allowing to withdraw the treatment. The JMFC shall visit the patient and, after examining all aspects, may permit to implement the directive.

4. WHAT IF PERMISSION IS REFUSED BY MEDICAL BOARD?

If permission is refused by the Medical Board, it would be open to the executor or his family members or even the treating doctor or the hospital staff to approach HC. The court shall take a call on the plea at the earliest.

5. REVOCATIO OR INAPPLICABILITY OF ADVANCE DIRECTIVE

A person may withdraw the Advance Directive at any time. Withdrawal or revocation of Directive must be in writing. If the Directive is not clear and ambiguous, the Medical Boards shall not give effect to the same and when the Hospital Medical Board declines the plea then an application shall be made before the Medical Board constituted by the Collector for appropriate direction.

6. IN CASE WHERE THERE IS NO ADVANCE DIRECTIVES

When a patient is terminally ill which is incurable, the hospital shall constitute a Medical Board which shall discuss with the family members and record the minutes of the discussion in writing. The family shall be apprised of the pros and cons of withdrawal of further medical treatment to the patient and if they give consent in writing, then it may certify the course of action to be taken.

The hospital shall immediately inform the jurisdictional collector who shall then constitute a Medical Board which shall examine the patient. The board then shall inform its decision to the JMFC and the family members. JMFC shall visit the patient and examine the condition of the patient and may endorse the decision of the Board to withdraw the treatment. In case of difference of opinions between two medical boards, the nominee of the patient or the family member can seek permission from the high court to withdraw life support.

VII. ADVANCED DIRECTIVE

Specifying an individual's healthcare decisions and identifying those who will take those decisions in case the patient is unable to communicate his wishes to the doctor

An advance directive only by an adult who is of :-

- Sound mind,
- In a position to communicate and comprehend the purpose and consequences of the Advance Directives,
- The advance directives must be voluntarily executed and without any coercion, inducement or compulsion.
- It must be in writing, clearly stating as to when and under what circumstances the medical treatment may be withheld or withdrawn.
- It should mention that the executor (i.e., the patient) may revoke the instructions at any time.
- It should specify the name of a guardian or close relative who will be authorized to give consent to refuse or withdraw medical treatment as per the Advance Directives.
- If there is more than one valid Advance Directives, the most recently signed Advance Directives will be considered.

VIII. OTHER ASPECTS OF EUTHANASIA

1) The validity of Advance Directives

The advance directives must be signed by the executor in the presence of two attesting witness countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the concerned District Judge. The document should be executed voluntarily and without any coercion. The JMFC shall preserve one copy of the document in his office, in addition to keeping it in digital format.

2) Effect to Advance Directives

If in case the executor become terminally ill then the preliminary opinion must be given by a Medical Board constituted by the hospital comprising at least three experts in the medical field with at least 20 years of experience in the medical profession. The board will visit the patient in the presence of his guardian or close relative and decide whether to certify Advance Directives. The certification of the Hospital Medical Board will be looked at by a second Medical Board constituted by the District Collector. The decision of the Board must be then conveyed to the JMFC who will visit the patient and authorise the patient's decision.

3) Procedure If Medical Board Refuses to Grant an Advance Directives

The patient, his family members, his doctor, or the hospital staff can approach the High Court under Article 226. A division bench constituted by the Chief Justice of the High Court will then decide whether to grant or refuse approval of the Advance Directives.

4) Revocation or Inapplicability of Advance Directive

The Advance Directives can be withdrawn or altered at any time, in writing. If the Advance Directive is not clear and ambiguous, the concerned Medical Boards shall not give effect to the same

and, in that event, the guidelines meant for patients without Advance Directives shall be made applicable.

IX. CONCLUSION

We can conclude that sometimes there is need of euthanasia in certain cases and therefore the Hon'ble Supreme Court has under the art. 21 gave euthanasia a Constitutional validity stating that an individual has right to die with dignity as part of his/her right to life and personal liberty under art.21.

In the, Euthanasia there is question of a life of a patient, sometimes there is need of euthanasia in certain cases but euthanasia can be misused against someone who do not have an immediate life threatening condition, but by following the strict guidelines of the court can stop the misuse of the euthanasia. In the given judgement or landmark case, the supreme court making way for passive euthanasia, which also described as physician assisted suicide.

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