

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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CRITICAL ANALYSIS OF EUTHANASIA AND ITS RELEVANCE IN TODAY'S INDIA

AUTHORED BY - JOSYN BIJOY

Introduction

The issue of euthanasia or mercy killing of terminally ill patients have been rising in the recent time.¹ There has been advocates for the both for and against the legalisation and implementation to euthanasia. Much of the contention surrounding the factor that whether the patient has self-autonomy over his/her life or shall such an interest over one's life be superseded by social, moral, ethical and legal constructs.

India has dealt with the matter of euthanasia primarily through the landmark judicial judgements in Aruna Ramachandra Shanbaug v. Union of India² and Common Cause v. Union of India³ which have distinguished active and passive euthanasia, where the former was prohibited while the latter could be administered by following the guidelines put forward by the court. These instructions and procedures put forward by the court were contented to be cumbersome and subsequently were modified in 2023 by a 5-judge bench which essentially simplified the procedure in withholding the life support of a terminally ill patient.⁴ However the question still remains prevalent on whether the such modifications were necessary and if positive then are they sufficient to address the matter in the most efficient way.

Study on the same holds relevance given the current evolving status of law regarding euthanasia. Euthanasia revolves around the complex ethical, moral, social and medical considerations and the rights of the patient.⁵ As identified, one of the primary obstacles in liberalising such a practice would be the vulnerability of the patients and the minority community to abuse and coercion regarding such matters. Hence legal safeguarding is essential and its efficiency can be rightly met if only proper research on the same is conducted. In light of the aforementioned, the research scholar believes that research is necessary regarding the matter. The paper shall primarily focus on determining the practice of euthanasia and justification for its current limitation considering

¹ Sinha, V.K., S. Basu, and S. Sarkhel. "Euthanasia: An Indian Perspective." 54(2) Indian Journal of Psychiatry 177, 177 (2012)

² (2011) 4 SCC 454

³ Common Cause (A Regd. Society) v. Union of India 2018 SCC OnLine SC 208.

⁴ Common Cause (A Regd. Society) v. Union of India, 2023 SCC OnLine SC 99

⁵ Aditi S Milap, "Euthanasia: Right to die with dignity", 10(1) International Journal of Science and Research Archive, 398, 398-403 (2023).

the rights of the patient and is there a need for liberating the still complex procedures regarding the matter.

BODY

The intervention of the judiciary into the subject matter of euthanasia and the right to a dignified death of the terminally suffering patient has been crucial, especially with the limited involvement of the legislature even after multiple landmark holdings by the Supreme Court on the matter. The judiciary was able to bring the much-required legal clarity upon the subject, with the landmark case of Aruna Shanbaug laying down the guidelines for passive euthanasia.

In India the legal landscape concerning euthanasia can be seen in the evolution and transformation of the reasoning and understanding of the Supreme Court pertaining to the matter. It is broadly categorised into passive and active euthanasia with the former being still illegal to be practiced in the country. However the same has been criticised for the lack of clarity and consistency in its interpretation in end-of-life decision due to the absence of comprehensive legislation.⁶

The three judgment of the Gian Kaur case where it observed the right to die in dignity to be within the definition of right to life with dignity is what that brought the reasoning for legalising passive euthanasia in the landmark judgment delivered by a divisional bench of the court in Aruna Shanbaug. However the concept of a living will was only recognised latter in the 2018 judgment of Common Cause v. Union of India by a constitutional bench where the court answered the question of whether an individual can execute his or her right to die with dignity through a validly executed and legally enforceable document, which is the living will.⁷

However, though being studied and discussed numerously, the contend of euthanasia is still considered to be an understanding foreign to the citizens with major contentions concerning sociocultural and ethical issues.

Socio-cultural concerning the implementation of euthanasia

The societal landscape in India heavily influences perspectives on euthanasia. Religious diversity plays a crucial role, with different faiths having varying views on the sanctity of life and the moral implications of ending it intentionally. Hinduism, the predominant religion in India, may have

⁶ Sinha, V.K., S. Basu, and S. Sarkhel. "Euthanasia: An Indian Perspective." 54(2) Indian Journal of Psychiatry 177, 177 (2012)

⁷ KUMAR, ALOK PRASANNA. "Tilting at the Windmills (Again): Should the Supreme Court Legalise 'Living Wills'?" *Economic and Political Weekly*, vol. 49, no. 34, 2014, pp. 10–12. *JSTOR*, <http://www.jstor.org/stable/24480904>. Accessed 3 Nov. 2023.

diverse interpretations of death as a natural process, while some interpretations of Islam and Christianity may vehemently oppose euthanasia due to beliefs about the sacredness of life. While such a view can be said as the most saturated of all and there being a huge population standing against the “unnatural curtailing of human life” through euthanasia, studies have shown that practices similar to euthanasia which are essentially end of life practices have been prevalent in rural regions of India. Practices such as “*Thalaikoothal*” where the terminally ill person is given an oil bath using gingelly oil and cold water several time a week or feeding the bedridden with holy water or mil with the intention to end the suffering or the ritual of feeding the ill with water mixed with mud until death occurs can be seen as customary practices which are believed to ensure the peaceful death of the bedridden, have been stated as customary practices.⁸ This essentially shows that people do believe in the right to have a dignified and peaceful death. However the study showed that reasons for such practices were not just spiritual, customary and moral obligations but also socio-economic factors.⁹ This calls for a need for a more civilised and legally structured framework in favour of euthanasia that ensures the peaceful and dignified death of the bedridden but at the same time helps in resolving the issue of elderly abuse.

Moreover the vulnerability of being abused cannot be the reason for rejecting the concept of euthanasia. The 196th report of the Law Commission suggested not acknowledging living wills or advance directives in Indian law due to concerns regarding potential misuse, specifically highlighting the risk associated with oral advance directives given the literacy and education levels in India.¹⁰ This recommendation was reiterated in the 241st report of the Law Commission, where a proposed draft bill allowed doctors to disregard living wills or advance directives.¹¹ Such an approach can be considered equal to stating that women should not go outside in the street since they are more vulnerable to get abused, rather than tackling the cause of abusing and ensuring a safe environment to women.

Ethical issues concerning the implementation of euthanasia

Ethical discussions surrounding euthanasia in India encompass multiple frameworks, notably patient autonomy, beneficence, non-maleficence, and justice. A major opposition against legalisation of euthanasia is with regards to its contradiction with the principles of medical ethics.

⁸ Ramalingam S, Ganesan S. End-of-Life Practices in Rural South India: SocioCultural Determinants. *Indian J Palliat Care*. 2019;25(2):224-227. doi:10.4103/IJPC.IJPC_173_18

⁹ *Id.*

¹⁰ Law Commission of India, Medical Treatment to Terminally 111 Patients (Protection of Patients and Medical Practitioners), Report No 196, pages 328-29

¹¹ Law Commission of India, Passive Euthanasia – A Relook, Report No. 241, page 43.

The medical profession is guided by a desire to cure and prolong life.¹² The Hippocratic Oath exquisitely exemplifies this concept, which states “I will prescribe regimen for the good of my patients according to my ability and my judgment and never do harm to anyone. To please no one will I prescribe a deadly drug, nor give advice that may cause his death.”¹³ Hence, the prospect that a doctor might expedite a patient's death directly, especially after having presumably provided treatment to prolong and enhance the patient's life, goes against the fundamental principle of the medical profession.¹⁴

The principle of autonomy asserts an individual's right to make decisions regarding their own life, including the choice of a dignified death. However, this clashes with the sanctity of life, a value deeply rooted in Indian society, influenced by cultural, religious, and familial beliefs. The clash of ethical principles, cultural values, and religious beliefs creates divergent viewpoints on euthanasia. Indian society traditionally values the preservation of life, yet the ethical dilemma emerges from the desire to alleviate intolerable suffering. These conflicting values shape the discourse on euthanasia and complicate the establishment of a clear ethical path.

In the Common Cause judgment the court has dived into the ethical, theological, philosophical and constitutional concepts.¹⁵ The principle of Sanctity of Life was also addressed with observation from several well known minds such as the opinion put forward John Stuart Mill where he describes an individual as the sovereign body over himself, his body and his mind.¹⁶ Prof. Upendra Baxi defines dignity as the respect for an individual person based on his freedom and decision making capacity and a good/just society shall be the one that respects dignity.¹⁷ Furthermore, in the KS Puttaswamy judgment¹⁸, a nine-judge Constitutional Bench recognized privacy as a fundamental component of the right to life outlined in Article 21. This acknowledgment also encompasses an individual's right to refuse medical care that prolongs life. Justice Chelameshwar commented that the state's forced feeding of certain individuals raises privacy concerns. He also noted that an individual's freedom to decline life-extending medical treatment or to end their life falls within the realm of privacy.¹⁹

¹² Sinha, Vinod K et al. “Euthanasia: An Indian perspective.” *Indian journal of psychiatry* vol. 54,2 (2012): 177-83. doi:10.4103/0019-5545.99537

¹³ Miles, Steven H. *The Hippocratic Oath and the Ethics of Medicine*. Oxford ; New York :Oxford University Press, 2004.

¹⁴ Sinha, Vinod K et al. “Euthanasia: An Indian perspective.” *Indian journal of psychiatry* vol. 54,2 (2012): 177-83. doi:10.4103/0019-5545.99537

¹⁵ Bharathi Challa, “Constitutional Bench Explainer Series: Common Cause v. Union of India”, Law and other things, (Nov. 04, 2023, 11:27 PM) <https://lawandotherthings.com/>

¹⁶ John Stuart Mill, *On Liberty*, 1859 (Batoche Books Limited, Ontario, 2001)

¹⁷ T.N. Madan, “Living and Dying” in *Non-Renunciation: Themes and Interpretations of the Hindu Culture* (Oxford University Press, New Delhi, 1987).

¹⁸ *K.S. Puttaswamy & Anr. vs. Union of India & Ors.* (2017) 10 SCC 1

¹⁹ *Id.*

Comments

The case of *Rodriguez v. British Columbia (Attorney General)*²⁰, heard before the Supreme Court of Canada, the argument was made that restricting euthanasia impinged on the individual's right to life as guaranteed by section 7 of the Canadian Charter of Rights and Freedoms. The contention was that such limitations hindered the individual's ability to end their life when they were unable to do so independently. The court determined that while the law appeared to encroach upon the rights protected by section 7 of the charter, it served the state's aims of preserving life and safeguarding the vulnerable. This legislation mirrored the state's policy of valuing human life and preventing the devaluation of life by permitting its termination.²¹ Furthermore, the observation that no one has the right to curtail the natural life span of a human being as submitted in the *Gian Kaur* case is a defining factor that has influenced all subsequent judgments. However with the right to a dignified death being observed by the court in these cases, it is unreasonable to object the implementation euthanasia as an essential in today's India.

We can see that the ethical issues pertaining to the same that such an approach is against medical guidelines as professed by the medical practitioners and the morality believed, practiced and professed in the country, should not mean that the individual autonomy and an individuals say on ones life and his privacy can be overlooked. Furthermore, the contention that easy access to euthanasia can make people, especially the marginalised, vulnerable is not to be considered as an justifiable defence as previously observed.

Moreover, it is nothing new when said that India lacks medical infrastructure and enough availability or access to palliative care. Studies show that more that 60% of the deaths require palliative care. At such a situation with lack to proper health and care the state must realise that it is not up to them to burden the individual with sufferings and they are inherent of their right to die a dignified death. The same shall be said to be more reasonable when the definition of life is understood not just by its physical aspects but by its intellectual, emotional, psychological and spiritual make-up of a person.²² A statement, articulated by two medical experts from India, suggests that life transcends mere existence, emphasizing the importance of living in a state of

²⁰ (1993) 107 DLR 4th 342.

²¹ Fontalis, Andreas et al. "Euthanasia and assisted dying: what is the current position and what are the key arguments informing the debate?." 111 *Journal of the Royal Society of Medicine* 407-413 (2018).

²² Stanley Yeo, *Dying With Dignity: Case for Legalising Physician-assisted suicide*, *JOURNAL OF THE INDIAN LAW INSTITUTE*, Vol 50, No.3, 321-338 (2008)

well-being.²³ They highlight that health encompasses more than the mere lack of illness, emphasizing a vibrant vitality that embodies a sense of completeness and the potential for ongoing intellectual and spiritual development.²⁴ The experts underscore the interconnected nature of physical, social, spiritual, and psychological well-being, emphasizing their intrinsic integration within the framework of life.²⁵

Challenges and Future Implications

Even with the supreme court trying to de-complicate the whole process regarding euthanasia with the 2023 judgment reevaluating Common cause guidelines, it is still far from avoiding the cumbersome tag that the whole process comes with. With the legislature still seemingly staying silent on the matter leads to multifaceted challenges. The lack of legal clarity results in varying interpretations and ethical dilemmas for healthcare professionals, ultimately impacting the patient's right to choose a dignified death. Moreover, disparities in access to quality healthcare intensify ethical concerns about unequal opportunities for a compassionate end of life.

Addressing these challenges and shaping the future implications of euthanasia in India necessitates a comprehensive approach. Crafting inclusive legislation that considers the nuances of cultural and ethical diversity, while addressing disparities in healthcare access, is critical. Promoting extensive public discourse and education on end-of-life decisions will be fundamental in establishing a balanced and inclusive approach to the right to die.

Furthermore, the whole contention for easier access to euthanasia is on the absence of proper quality healthcare to all and thereby being the ones to suffer. The paper does not study on a day when technology is accessible to all and allows the recovery of all diseases and health conditions. Also, the concept of cryonics, which currently is regarded as a pseudoscience, a theory of freezing oneself in the hope of healing them in the future when technology and medicine is adequately developed, is something that is studied upon if practiced. Shall the concept of euthanasia still prevail or will the life be frozen and preserved till the technology allows the cure for the same. Only that can eventually conclude on whether there is essentially a right to die peacefully.

Conclusion

Euthanasia in India is a multifaceted issue influenced by legal, ethical, and sociocultural factors. The absence of comprehensive legislation has led to a complex landscape where varied

²³ 3. M. Indira and A. Dhal, "Meaning of life, suffering and death", paper presented at the International Conference on "Health Policy, Ethics and Human Value" held in New Delhi in 1986 and cited by the Supreme Court of India in Rathinam, supra note 17 at 29

²⁴ *Id.*

²⁵ *Id.*

interpretations and ethical dilemmas persist. A need for a holistic approach, balancing individual autonomy, ethical principles, and cultural values, is imperative in navigating this sensitive territory. India's path forward involves drafting inclusive legislation that respects diverse perspectives, ethical considerations, and societal values, aiming for a compassionate and comprehensive understanding of the right to die. The paper recognises the need for the same but finds a dilemma on figuring whether it is a right of the individual or a compensation at the absence of access to proper healthcare and cure .

This expanded version provides a deeper exploration of the legal, ethical, and sociocultural facets of euthanasia in India, acknowledging the complexities and challenges inherent in this deeply debated issue.

