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EUTHANASIA AND ITS ATTRACTIVENESS IN INDIA

AUTHORED BY - MEGHA DEY*

ABSTRACT

Life is the precious gift donated by divinity to mankind one has to protect and preserve this with kindness and dignity. Ethics and morals impose an obligation on the medical practitioners to assist the maintenance of life free from sufferings and pains. In case of absence of medically qualitative life pacing into vegetative state the soul is liberated from slow and horrible sufferings. In such situation the patient is given with right to choose quick and easy death. This is popularly known as good-death, that is to say Euthanasia. Euthanasia involves some significant issues like death with dignity, right to die freedom of choice between life and ending the life right to be killed. Death is only the way to change a body. The soul never dies it is eternal. In present society in some situations it is defended that the person should have right to choose death. Thus in this context proper law and the guidelines should be prescribed by the parliament and its government to avoid its misuses.

1. INTRODUCTION

Is ending life a solution to suffering? Life is the most precious gift granted to human by god and to enjoy the same is the biggest pleasure they can have. Every individual tries to maximize the enjoyment of his life and make it count by doing something worth. Considering the divine element involved with life, every human cherish it, but also to respect it. It is not only the person concerned, but also the state which has to respect it is to fulfill the requirement only that most of the states of the world ensure a "right to life" to their citizens and provide with protection of law against any encroachment on this right. State try to assure that life is enjoyed and every person is enabled to utilize his life by doing whatever he considers worth within the spheres of the law. They protect the life of people from any outsider attack or intervention. But there might arise a possibility when the attack on this right is not from the out sider but from insider. The situation being talked about here is when the person himself wants to end up his life.

Any attack on this right to life is not taken lightly by the state and provisions are made to punish all such attempts. For example, almost all the jurisdictions have made murder and crime, homicide which falls short of murder due to some technical reasons is also culpable. It shows that any outside attack is just not tolerated at all. But the position is not clearing the other situation i.e. when the attack is from within. Self-destruction acts like suicide and euthanasia can be included in this category. While the stand of law on the outside attack is animus there are different in opinion as to be inside attacks. There are countries where attempt to suicide is not a crime and is seen as an expression of one's choice and liberty while on the other hand there are countries which consider it to be outside the scope of liberty and as an intrusion into the state's monopoly of taking lives.

There is another form of inside attack on the other hand on the right to life: -Euthanasia or mercy killing is a very late entrant in the legislative debate. Since long it has attracted the attention of jurist and scholar but it could not pierce the legislative boundaries until very lately. It was in 2002 that the world saw its first euthanasia which legalized active euthanasia and the same has been at target of pro-life camp. There have been. Allegations that legislation is an act on the humanity and the sanctity of life. The legislation which brings an unnatural end to life is an intervention with the divine plan as they allow the human to decide about their death, a matter which is otherwise supposed to be dealt by god. The opponents base their arguments on various premises like morality, ethics, religious, ideologies and fear of abuse of the power. Euthanasia has attracted the attention of not only the legal school, but also has been on the focus of various religious authorities also. Almost all the religions have their own separate ideologies which treat life and the importance attached to it in a peculiar way. Some religion is very orthodox and treat god only as the authority to decide as to the matter of life and provide no scope for the individual discretion to end his life earlier than the natural span. At the same time there is no religion mainly the one originated in the Eastern parts of the world which though associate death with god but they see death not as spiritual moment where human are closest to god they see it as a time where the pain endured by the person gives him a chance to wash away all his sins of the present life and get rid of cycle of rebirth and attain salvation.

2. LEGAL ASPECTS OF EUTHANASIA IN INDIA

The legal position of India cannot and must not be studied in isolation. India has drawn its constitution from the establishments of various countries and the courts have time and again

referred to various foreign decisions¹. In India, euthanasia is undoubtedly illegal. Meanwhile in cases of euthanasia or mercy killing is an intention on the part of the doctor to end the life of the patient, such cases would clearly fall under clause first of section 300 of the Indian Penal Code, 1860. However, as in such cases there is a valid consent of the deceased Exception 5 to section 300 would be attracted and the doctor or the medical professional would be punishable under section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia that would attract exception 5 to section 300². Cases of non-voluntary and involuntary euthanasia would be struck down by proviso one to section 92 of the IPC and thus be rendered illegal. The law in India is also very clear on the aspect of assisted suicide. Right to suicide is not a right available in India- it is punishable under the Indian Penal Code, 1860. Provision of punishing suicide is contained in sections 305, 306 and 309 IPC has been brought under the scanner with regard to its constitutionality. Right to life is an important right enshrined in Constitution of India. Article 21 guarantees the right to life in India. It is argued that the right to life under article 21 includes the right to die. Therefore the mercy killing is the legal right of a person. After the decision of a five judge bench of the Supreme Court in Gian Kaur v. State of Punjab it is well settled that the “right to life” guaranteed by article 21 of the Constitution does not include the “right to die”. The Court held that Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33(m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners.

Exercising these powers, the Medical Council of India has amended the code of medical ethics for medical practitioners. There under the act of euthanasia has been classified as unethical except in cases where the life support system is used only to continue the cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of doctors, life support system may be removed. A person attempts suicide in a depression and hence he needs help, rather than punishment.

India has been known for its precise characteristics of variety. This variety in India prevails due

¹ https://www.aph.gov.au/binaries/senate/committed/legcon_ctte/completed_inquiries/1996-99/euthanasia/report/report.pdf (last visited on June 1st 2023).

² Raman Devgan, IPC section 300, devgan, <https://devgan.in/ipc/section/300/>, (June 4th 2023, 10:34 Am).

to its secular nature. The nation respects all the extraordinary religions, groups, their subculture, and dialects. This performs a critical impact within the notion manner of a character in India. However, it not simply the religion that impacts one method towards the problem however even the educational qualification, his exposure to the outdoor world matter a lot. On this background, euthanasia in India may be discussed from various angles. Though there may be developing aid for the novel view there aren't any statutory provisions in ours of a to assist folks who want to withdraw life guide as they suffer from incurable contamination or are in a PVS. Terminally sick can't be exactly defined but any disease that curtails lifestyles or disease due to which death happens in a noticeably quick time can be termed as terminally unwell.

The authority conferred to stay is no doubt an inalienable and inherent strength of all the citizens. But at the same time, there arguments in India that say that this power conferred does now not include inside the authority to terminate lifestyles. According to the Indian Criminal Law, the effort to commit suicide is an offences punishable underneath segment 309 of the Indian Penal Code, and abetment of the identical is likewise an offence punishable below segment 306 Indian Penal Code. Euthanasia way deliberately taking one's lifestyles whether voluntary or now not this killing of the man or woman for any cause in any respect may be is an offence in this us of a and considered unlawful in India. In India, the idea of Euthanasia is surprisingly contested³.

Whether it must be legalized or now not, whether aid must be furnished to end their existence or no longer is an issue of controversy. The argument has won impetus whilst the Supreme Court legalized passive euthanasia in "Aruna Shanbaug" case. Euthanasia in India relies upon at the ideals of every character. The instructional stage, intercourse, age, and martial repute shall also have an impact on the choice of the person. Higher the instructional degree extra will be the probabilities of support. Males who've no longer married are alleged to be much less sentimental and are probably to indulge in sensible choices of supporting euthanasia.

Similarly, the younger knowledge also seems to be in favour of euthanasia. The scientific fraternity also wishes a law as they may be conscious that when a point of time there is no rescue for the affected person via drugs. In such instances euthanasia becomes inevitable however the medical doctors are not capable of implement it because of the criminal law every day that

³ Tanisha Maheshwari, Case Analysis of Aruna Ramachandra Shanbaug vs. Union of India, Manupatra, <https://articles.manupatra.com/article-details/case-analysis-of-Aruna-Ramchandra-Shanbaug-vs-union-of-India>. (last visited on June 5th 2023 ,6:30 AM).

punishes such motion. Legalizing euthanasia will allow medical doctors to evaluate the blessings against the load effortlessly without fear and hesitation.

The Law Commission of India agrees with the opinion of the Supreme Court in having legislation on passive euthanasia with precise security features. This method of the commission is based totally on humanitarian grounds and also to protect the physicians who're helping in performing the act for the welfare of the patient. However, they disagree with the Supreme Court in setting up a panel of doctor who might assist the selections. According to the Protection of sufferers and clinical practitioner "s invoice 2006 this necessary guard needs to be taken with the aid of the physicians who could act on the affected person"s request. This is nicely supported via the Supreme Court which has opined that if a man or woman voluntarily refuses to take remedy or wants to withdraw from life-helping structures it have to no longer be held against the law. In **Naresh Marotrao Sakhre vs. Union of India**⁴ Lodha J. affirmed that „Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected. “The meaning of the term „euthanasia“ is itself shrouded in ambiguity. It has been derived from the Greek word „EU Thanatos “meaning,, good death. “Toreiterate the judicial pronouncements in the Indian context, good or happy death would imply the ending of life the natural way.

3. PRESENT SEENARIO

The apex court will not review its past Judgement of passive euthanasia and only make the guidelines on “Living will “an advance medical directive on end of life treatment, more workable. The apex court"s 2018 order on passive euthanasia wherein it recognised the right to die with dignity as a fundamental right and an aspect of Article 21(right to life) notwithstanding people wanted to get a “Living will Registered have been facing problem due to burdensome guidelines⁵. A five-judge Constitution bench headed by justice K M Joseph said during hearing a explanation by the court should not lead to more confusion.

“We will simply make it a little bit more workable, we can“t be reviewing it. We kept the matter in open court. There is nothing to be reserved we cannot be reopening the whole thing”, the bench

⁴ 1996(1) Bom CR 92.(India)

⁵ Krishnadas rajagopal. Supreme court eases procedures for terminally ill patients to withdraw medical treatment, <https://www.thehindu.com/news/national/supreme-court-eases-procedures-for-terminally-ill-patients-to-withdraw-medical-treatment/article66466280.ece>(last visited 23.june.2022 5:30 pm)

also comprising justice Ajay Rastogi Aniruddha Bose, Hrishiesh Roy and Justice C T Ravikumar said.

Additionally solicitor General KM Nataraj Contended the present proceedings fall within a very narrow compass. “All has already been laid down. Whatever are the practical problems that vacuum has to be filled in.

Senior advocate Arvind P Datar appearing for The Indian Society for Critical Care told the court that he has submitted a chart enlarging the area which are unworkable. He said suggestions put forth have been discussed with doctors and there is a complete report of the India Council Medical Research.

More than four years after its landmark order on passive euthanasia the top court said it is for legislature to enact a law for terminally ill patients wanting to stop treatment but agreed to modify its 2018 guidelines on “living will” observing that the legislature is much more endowed with “skill and sources of know knowledge” to enact a relevant law the apex court said it will limit itself to improving the guidelines it had laid down on “living will”.

The bench had said there can only be a little tweaking of the guidelines or else it will become a review of its own 2018 judgement.

The five-judge constitution bench was considering a plea seeking modification of guidelines for, living will/Advance Medical Directive issued by it in 2018.

The top court had in its March 9, 2018 judgement recognised that a terminally ill patient or a person in a persistent vegetative state may execute an advance medical directive or a “living will” to refuse medical treatment, holding the right to live with dignity also include “smoothening” the process of dying.

It had observed that the failure to legally recognise advance medical directives might amount to “non-facilitation” of the right to smoothen the dying process and that dignity in that process was also part of the right to life under Article 21 of the Constitution.

The apex court had laid down principle related to the procedure for execution of advance directives and spelt out guidelines and safeguards to give effect to passive euthanasia in both

circumstances where there are advance directives and where there are none.

The directive and guidelines shall remain in force till parliament brings legislation in the field.

The verdict had come on a pill, filed by NGO common Cause seeking recognition of the “living will” made terminally –ill patients for passive euthanasia.

4. PRO AND CONS FOR EUTHANASIA

From Ram’s jalasamadhi to Mahatma Gandhi and Vinoba Bhave’s fast till death (in which Behave died) euthanasia existed in Indian society. The judiciary has also viewed euthanasia from a sympathetic angle which is evident from the observation of the various judges in cases dealing with right to suicide⁶. Euthanasia means killing a person rather ending the life a person who is suffering from some terminal illness which is making his life painful as well as miserable or in other words ending a life which is not worth living. But the problem lies that how should one decide whether the life is anymore worth living or not. Thus, the term euthanasia is rather too ambiguous. This has been a topic for debate since a long time i.e. whether euthanasia should be allowed or not. In the present time, the debate is mainly regarding active euthanasia rather than passive euthanasia. The dispute is regarding the conflicts of interests: the interest of the society and that of the individual.

One school of thought argues that it should be allowed keeping in view the fact that the life of a person is taken away by his own consent. According to the supporters of euthanasia the decision of the patients should be accepted. If on the other hand we weigh the social values with the individual interest then we will clearly see that here the interest of the individual will outweigh the interest of the society. The society aims at interest of the individuals rather it is made with the purpose of assuring a dignified and a peaceful life to all. Now if the individual who is under unbearable pain is not able to decide for himself then it surely will hamper his interest. In that case it will surely be a negation of his dignity and human rights. Regarding this debate from legal point of view, Article 21 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. Supporters of

⁶ <https://www.clearias.com/euthanasia/> (last visited June 2nd 2023 at 7:50 PM)

active euthanasia contend that since society has acknowledged a patient's right to passive euthanasia (for example, by legally recognizing refusal of life-sustaining treatment), active euthanasia should similarly be permitted.

When arguing on behalf of legalizing active euthanasia⁷, proponents emphasize circumstances in which a condition has become overwhelmingly burdensome for the patient, pain management for the patient is inadequate and only death seems capable of bringing relief. Moreover, in light of increasing pressure on hospital and medical facilities, it is argued that the same facilities should be used for the benefit of other patients who have a better chance of recovery and to whom the said facilities would be of greater value. Thus, the argument runs, when one has to choose between a patient beyond recovery and one who may be saved the latter should be preferred as the former will die in any case.

Also, one major argument against euthanasia being legalized is that if such a person were to kill and claim that he acted out of compassion, who could prove otherwise? Even if euthanasia is legalized, who or what determines the criteria of the suffering, the individual is facing so as to allow him to embrace death. Should it be the recommendation of a recognized doctor that the patient so named cannot be cured. Or it should be testified by the parents or near relatives that their ward cannot survive but with acute pain and suffering, which they cannot withstand.

Decisions left in the hands of doctors or relatives are very risky also. It might not always be clear that relatives and doctors are always acting in the patient's best interests. A doctor may be waiting for an organ for a transplant, for instance, or for a bed to become free and relatives may simply wish to be relieved of the burden of an ill member of the family. It has been contended that if such legislation is to take effect, euthanasia should be administered at or upon the consent of the patient but this point of consent being taken by the supporters of euthanasia also fails to consider that if one is in great pain or is suffering from mental problems then the person is not in a position to make a free and balanced decision. The elements of free consent also need to be imported in our case and for any patient who gives such consent. It could be argued that his consent was Another favourite argument is that of the "slippery slope". The slippery slope argument, in short, is that voluntary euthanasia would over the years lead to a slide down the slippery slope and eventually

⁷ Marya Mannes, Euthanasia V Right to Life, Baylor Law Review, https://thelawbrigade.com/wp-content/uploads/2019/12/MERCY-Killing-IN-INDIA-A-JUDICIAL-OVERVIEW_MONALISHA.Pdf (last visited 5th June 2023 12:37 PM).

we would end up permitting even non-voluntary and voluntary euthanasia. Legalized euthanasia would produce huge social pressures on very vulnerable people to „volunteer“ causing much stress and suffering.

5. CONCLUSION

It could be exaggerating to say that the issue of legalizing euthanasia is over and there is hope of putting it into an enactment in the near future. Making a law is not a solution on every problem we face in day to day life. Mercy killing is not a common situation but quite a rare condition. One in thousands situation medical practitioners come across cases of patients with chronic conditions, where euthanasia is considered. It is not a common case. Taking into account euthanasia in case of a patient with PVS state is practical but that does not happen with every such case. Evaluating every case in here is not practical and won't serve the purpose of the research. It is important to assess the practical task behind legalizing euthanasia in India. Countries where euthanasia is legal in all aspects, the practice of the same has turned into a convention. The mechanism has seen a long span of time tackling obstacles and setting new norms. It is not the situation that the practice is full proof and without loopholes in those nations. During that period the nations and their citizens have gone through a radical change in the medical field as well as human perspective. It has developed the mind- set of the whole community towards forming the opinion about choosing death over life. This understanding has flowed through generations now, which is pretty much revolutionary. What India needs is the maturity to handle the issue and understanding its pros and cons thoroughly. It is a mammoth task.

The requirement of having legislation on euthanasia depends on the intensity of number of patients with terminal illness and the gravity of such situations. It is not commonly accepted in India. What a situation would demand in future and what would be its repercussions are matter of unknown reality. Indian population has not developed the healthy potential required for legalizing active euthanasia. It considers both the sides of a subject in a dispute and helps to apply to a proposal. Euthanasia has developed into an important question in the defend of human dignity. Medical science has become more capable at prolonging life. But, it has been observed that it not essentially made life important. Euthanasia is an option to be well thought-out by those who suffer, those who love the terminally ill, and those who are designated with their care. Euthanasia on empathetic basis, for those in support of it says that euthanasia is a footstep of consideration. Importance of living has to be considered of the incurably ill patient. This can be guaranteed if

they are given the liberty to decide their fate. The amount of pain they need to tolerate. They need to be discharged from the obligation of living if there is no recourse to their situation. The primary ethical morals of society, sympathy and mercy, state that no patient should be allowed to suffer insufferably and euthanasia should be allowable. Relieving a patient from agony, suffering by performing euthanasia does more good. Further, these patients can assistance others and keep many lives. They can attain “moksha” for the good conduct done by them before ending life willingly. The terminally ill patients can donate their organs. This shall eventually help in saving many individuals life that is precious. The sufferings which they are going through are believed by the religious proponents to be due to their bad karma. This donation can thus alleviate them in attaining spiritual gain. The long term palliative care is a waste of available medical resources. A country like ours where there is already a scarcity of medical assistance, medical decision makers are already facing difficulties in choosing between competing demands.

