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An Analysis Of Legislative Efforts Towards Legalisation Of Euthanasia In India

By - Akriti Daksh

According to Black's law dictionary, the term "Euthanasia" is defined as "the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy". However, in contemporary times, we associate this concept with people having terminal illness, or who have become incapacitated and don't want to go through the rest of their life suffering.[1]

This concept of causing unnatural death stands in contrast to the fundamental right to life which is considered as the most important right of man. Issues such as capital punishment, homicide, law of war, abortion, euthanasia, animal rights, etc. are debated time and again in the light of right to life.[2] Although, at several national and international platforms, various Legislations, Declarations and Convention had provided reaffirmations to these rights, the applications of these instruments are not stringent in States worldwide. So much so that India has no law yet on this subject. Only with the help of judicial activism, the question of constitutional validity of right to die with dignity has been decided; however, an effective statute to deal with the control and regulate practice of euthanasia in India is still awaited.

A Brief History of Euthanasia in Indian Context

In its earlier forms, it was used as an omnibus term to signify a death which is painless. In Classical Indian views, history depicts euthanasia as self-willed death, though attempts were made to define more parameters.[3] India since the Ancient times has witnessed different forms of unnatural termination of life by oneself. Either in the form of Samadhis, Santhara or Sati, the reasons could be multiple. Indian tradition has many religious practices and every religion accepts seeking voluntary death in one way or other. As per Hindu mythology, Lord Rama and his brother took jal samadhi in river Saryu near Ayodhya. The founder of Maurya Dynasty, Chandragupta Maurya, with his guru Muni Bhadrabaahu who was the disciple of Jainism adopted self-willed death by fasting.[4]

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[1] Dr. Sanjeev Kumar Tiwari and Ambalika Karmakar, "Concept of Euthanasia in India – A Socio- Legal Analysis" 2 *IJLLJS* 2 (2015).
[2] Daniel C. Maguire, "Death, Legal and Illegal" *The Atlantic Monthly*, Feb., 1974.
[3] Eremitism in Hindu India: The Classical Asrama System and the Law of Manu, *available at* : http://www.hermitary.com/articles/asrama_classical_manu.html (Last visited on April 4, 2021).
[4] S.S. Das, Euthanasia in Indian Perspective (Special Reference of Religions), *available at*:

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In Colonial era, another example of self-destruction of one's own body came into light which is the practice of Sati. It is a custom of burning the body of a widow with her husband's pyre. It later got prohibited under Sati Abolition Act5, when rights of women were realised by the society. The Common Law system remains a foundational pillar of Indian legal system. And post-Independence, these pre-existing laws were granted continuity6.

1.2 ***Statutory Denial of Right to Die in Post-Independent India***

Various legislative Bills have been introduced during different time period. To enable us to understand the background of euthanasia it is required to acknowledge where our legislative efforts did lack and it is equally important to throw light on provisions which deny the right to die to a person under the Penal code.

The law considers an attempt to take life, either of oneself or another, as a punishable offence under the Indian Penal Code, 18607. Any assistance or abetment rendered to such an offender is also punishable. In the present context, it is relevant to discuss some legal provisions.

The foremost element of contention in right to die is 'killing' or termination of life of a person. Sections 299 and 300 of IPC makes it a punishable offence if a death is caused by doing of an act with either the intention to cause such death, or intention to cause such bodily injury which causes death or with knowledge that he is likely by such act cause death. Since, in all the cases of euthanasia, the main aim is to bring about death of the patient, it is explicit that doctor will be liable for any such act which is done with the same intention.

However, it is pertinent to note that if there is consent of the patient to such a killing (i.e. voluntary euthanasia), the case would then fall under Section 300 exception 5 of IPC which would make the culpability of the doctor lesser and he would then be held liable only for culpable homicide not amounting to murder. The Doctrine of Necessity prevents a person to be held for murder under the said exception. Although the death was brought in good faith as described under Section 92 of IPC, nevertheless, the penal code render no legal protection to such an act of medical practitioner. The intention is only a material consideration in these cases to waive off such

https://www.researchgate.net/publication/281772512_Euthanasia_in_Indian_Perspective_Special_Reference_of_Religions (Last visited on May 5, 2021).
[5] Bengal Sati Regulation, 1829; Sati (Prevention) Act, 1987.
[6] The Constitution of India, art. 21.
[7] Act No. 45 of 1860 (Hereinafter mentioned as IPC)

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liability.

Although the suicide is not defined as a crime under Indian Penal Code, but the attempt or abetment of its commission is made punishable as a public policy, to discourage taking such step by masses. Section 306 of IPC punishes the abettor and Section 309 of IPC punishes attempted suicide as well as its assistance by any other person.

1.3 Legislative Efforts towards Legalising Euthanasia

The first step towards the legalisation of Euthanasia in India was made in 1985 in response to the need of patients. A Bill moved in Maharashtra legislature which contained the provisions providing immunity from civil as well as criminal liability to doctors practicing euthanasia by way of removal of life-prolonging treatment. This was to be done one request of patients. The very Bill also contained a provision of Advanced Medical Directives8, which was eventually rejected.

After a long battle of various prospective patients in the Court of law seeking relief from irremediable pain, the Law Commission in 2006 published a very rather interesting Report dealing with 'Withholding Life-support Measures' to patients who are terminally ill. They also took into account that such 'withdrawal' of life support system is legal universally and that it is not concerned with the matter of euthanasia at all.[9] The Report emphasized on an excerpt of the decision of the House of Lords in *Airedale N.H.S. Trust v. Bland*[10], which was cited by Supreme Court in *Gian Kaur v. State of Punjab* [11] in the context of an argument dealing with Physician's act and 'Abetment' of Suicide,

> *"Airedale N.H.S. Trust v. Bland was a case relating to withdrawal of artificial measures for continuance of life by a physician…the principle of sanctity of life, which is the concern of the State, was stated to be not an absolute one…it is not lawful for a doctor to administer a drug to his patient to bring about his death, even though that course is prompted by a humanitarian desire to end his suffering however great that suffering may be*[12]*"*

[8] Dr. Sarabjit Taneja, "Should Euthanasia be legalised? *Journal of Constitutional and Parliamentary Studies* 57 (2008).
[9] Law Commission of India, "196th Report on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), 2006" (March, 2006).
[10] 1993 (1) All ER 821.
[11] (1996) SCC (2) 648.
[12] *R. v. Cox* (1992) 12 BMLR 38

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In the Report, the Committee was of the view that Euthanasia and Assisted Suicide should remain to be offences under the penal law of the country. The Commission took up the subject for evaluation at the direction of the Indian Society of Critical Care Medicine and drafted "The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006" containing provisions as to advance Passive Euthanasia to terminally ill patients, in other terms, legalisation of Passive Euthanasia by way of withdrawal or withholding medical treatments was proposed by the Commission.

With regard to Active Euthanasia, the Commission recommended a different line of options to take into consideration while drafting legislation. However, the proposed Bill couldn't take the shape of the legislation till today. It was later reintroduced along with amendments through the 241st Law Commission Report in the year 2012, which too wasn't fruitful.

Over the years, few private member Bills have been introduced in the Lok Sabha as well. Earliest of them is titled "Euthanasia (Permission and regulation) Bill", 2007 by Shri C.K. Chandrappa which laid down provisions for providing compassionate, humane and painless termination of life. This applied to patients suffering from incurable and painful diseases, making person completely and permanently bedridden or to patients who cannot carry out their daily tasks by themselves. It never passed from the first stage and eventually got lapsed. In the immediate year, another Law Commission was formed which studied and presented views on "Humanization and Decriminalization of suicide"[13]. This was a *suo moto* step taken up to study the issue of suicide prevention. The Commission deliberated on various views which internationally existed. According to one view, there should be decriminalization of attempt to commit suicide but on the other it was observed that deletion of such provision would attract increased rate in suicidal tendencies in the youth since they tend to be very impulsive due to social pressures. It was pleaded several times that the people who failed at attempts of suicide need care and compassionate treatment not walls of prisons to spend time in. Many reasons are responsible for one to take such a drastic step and sending them to confined prisons will only elevate their sufferings.

Certain developments compelled the experts to reconsider whether the deletion was right thing to do or not. These were increasing crimes related to drug trafficking, terrorism, dowry deaths,

[13] Law Commission of India, "210th Report on Humanization and Decriminalization of Attempt to Suicide" (October, 2008).

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etc. This categorization was totally different from those who seek death due to depressing conditions prevalent in one's life.

The Report also highlighted the efforts of an NGO who was working towards prevention of suicidal deaths. This was a major issue to be addressed and cannot be worked until the penal provision is effaced from the statue altogether decriminalizing it. It draws focus on difficulties if one continues with the said provision. The Commission came to a view that:

> *"It is cruel and irrational to vex a person with punishment on failure to die. It is unjust to inflict punishment on a person who is already suffering agony…The criminal law must not work with misplaced overzeal…Section 309 of the Indian Penal code is a stumbling block in prevention of suicides and holds back improvements in access of medical care to those who have attempted suicide."*

It was also observed that a person may decide to encompass the feeling of self-preservation on various accounts such as family discord, destitution, loss of a dear relation or anything of a like nature. And in this view, it is highly unreasonable and inhuman to continue with such an archaic law. Having referred to various case laws regarding 'Right to die', Commission suggested that:

> *"Right to live would mean right to live with human dignity up to the end of natural life. Thus, it would include right to die with dignity at the end of life and it should not be equated with right to die an unnatural death curtailing natural span of life. Hence, a dying man who is terminally ill or in a persistent vegetative state can be permitted to terminate it by premature extinction of his life. In fact, these are not cases of extinguishing life but only of accelerating process of natural death which has already commenced. In such cases, causing of death would result in end of his suffering."*

These reports were definitely a way forward to codify law of Euthanasia which would prevent pain and agony in the process of dying and necessarily would provide a decent death in dignified manner, but they didn't came to any conclusion. However, it was opined that for such law to function, the legislation must be made with suitable measures.

As per the data provided on website "Parliament of India, Lok Sabha" managed and controlled by Lok Sabha Secretariat, till 15th May, 2021, five private members Bills were introduced in Lok Sabha regarding legalisation of Euthanasia during 2007 to 2020 and none of them reached the stage of debate and discussion yet; three of which had lapsed eventually. The researcher attempts

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to discuss the pending legislative Bills to know what are the merits and demerits of such Bills and what more is needed to be done.

1.3.1 Medical Treatment of the Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016

The draft Bill of Medical Treatment of the Terminally Ill Patients (Protection of patients and Medical Practitioners), 2016[14] is still pending for debate in the Rajya Sabha. This is most detailed Bill introduced till today in Parliament which consists of provisions regarding palliative care, passive euthanasia and recording keeping of the details or procedure adopted.

The Bill provides for protection to patients and physicians from any liability for withholding or withdrawing medical treatment.[15] It lays down guidelines for palliative care[16] and procedure to be followed throughout execution of the euthanasia. It contains proper definitions of various terms. The patient above the age of 16 years is made competent,[17] which is a welcoming step. According to the Bill, the consent or application to seek euthanasia can be withdrawn afterwards by applying to the concerned High Court.

However, the Bill even after genuine efforts lacks at certain points –

1. The Bill deals exclusively with the passive euthanasia and has conveniently ignored active euthanasia and physician assisted suicide. It only talks about withdrawal of withholding of medical treatment, which is accepted as a right worldwide.
2. The instrument of advance medical directives made by a patient is not made binding on the medical practitioner[18]. The Advance Medical Directives could be presented to hospitals or to the medical care providers to guide them in further treatment of the patient when the executor of the directive is not in a position to express his/her decision. These are the crucial elements to ensure patient's autonomy and bodily integrity. In declaring advance directives non-binding, the relevant provisions of the Bill would fall foul of the right to die with dignity and right to autonomy that has been recognised as a part of the right to life. After the landmark judgement of *Common Cause (Registered Society) v. Union of India*[19] validating the advanced medical directives, this Bill needs some

[14] Bill No. 27 of 2016.
[15] *Ibid* , s.7
[16] *Id.* , s.5
[17] *Id.* , s.3
[18] *Id.*, s.13
[19] (2018) 5 SCC 1.

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modification on this aspect. "The Treatment of Terminally-Ill Patients Bill" as introduced by Shri Baijayant Panda in 2016 in Lok Sabha makes directives legally binding[20] which should be retained for recognition of autonomy of the patients.

3. Definition clause contains incomplete and vague terms such as terminal illness or meaningful existence. It is vague, inconsistent and subjective; using such terminology to interpret the most important provision may prove fatal. It is very questionable as to why the term of euthanasia has not been defined in any of the Bills introduced. The term should be included to interpret in clear light and to prevent mischief in law in the future circumstances.
4. In the Draft Bill, the procedure of administering passive euthanasia is also not secured as per the researcher.[21] It does not give proper security to the patient and provide room for misuse by the family members. Amendment can be made to record such decisions and communication in camera.
5. Though the Bill deals with palliative care, it does not lay down the minimum standards to be maintained so that the patient after removal of treatment is not left being uncared and that his dignity of life is properly maintained.

It is a very precise Act and talks about minimum requirements and needs elaboration for clarity. It does not mandate patient/ physician to consult an independent practitioner before reaching to a decision. By including High Court in decision making process, it has invariably led to delaying of the process. The researcher has observed that there is no critical and reasonable mind applied while framing of this Bill as the draft only replicates the guidelines given in judgement of *Aruna Shanbaug v. Union of India*[22] and does not take into consideration by the Supreme Court that "Active Euthanasia can be legalised by establishing proper procedure through legislative act only".[23]

1.3.2 The Euthanasia Regulation Bill, 2019

In contrast of it, "The Euthanasia regulation Bill" 2019[24] as moved by a private member Shri Bhartruhari Mahtab, Member of Parliament, though lacks at nearly every procedural effort yet it tries to talks about active as well as passive euthanasia which is more wholesome in its approach

[20] The Treatment of Terminally-Ill Patients Bill, 2016(Bill No. 293 Of 2016) , s.4.
[21] *Supra* note 13, s.12.
[22] (2011) 4 SCC 454.
[23] *Ibid.*
[24] Bill no. 136 of 2019.

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towards rights of the terminally ill patient. The Bill seeks to allow active euthanasia[25] for terminally ill individuals who are facing acute suffering due to such illness and passive euthanasia[26] for individuals in permanent vegetative state. It provides for Constitution of Evaluation and Review Board to overlook matters incidental thereto[27] and mandates that euthanasia be applicable to person only after Court of Session has given its consent. However, the following points are worth to be noted:

1. The Bill drastically fails to define the terms in their proper sense and even does not define "informed consent", "terminal illness" "competent person" at the least.

   Competency is crucial in matters to seek euthanasia in any of its form. A non – consensual euthanasia will lead to homicide which stands in contrast to Section 6 of the concerned Bill which decriminalises every act of euthanasia performed by the medical practitioner.

   The term patient has not been defined instead "a person" is used in the legislation which along with undefined illness construes that any person even those who are not terminally ill are permitted to apply for administration of euthanasia on his body. The aim of the legislation would get forfeited if the sense is ambiguous and vague.
2. This Bill too lacks mention of advanced directive and procedure regulating its execution even when in 2018 the Supreme Court[28] had laid down guidelines regarding the same.
3. The Bill does not contain any safeguards regarding communication of consent by the patient. The communication regarding decision for Active and Passive euthanasia should to be video monitored. The Active Euthanasia being a very sensitive act that may alternatively become a tool of unauthorised killing could be monitored by audio visual recordings which is much possible in this technological advanced era. Also, written reasons as stated by the doctors could be safely kept in forms of records and evidences.
4. Bill although is very open to using Passive and Active both forms of Euthanasia in all kind of cases, but there needs to be a demarcation of criteria for administration of both passive or active form of euthanasia. Also, the term 'Physician Assisted Suicide' goes missing. Atleast what can be done was to criminalise Physician Assisted Suicide and decriminalise Passive or Active euthanasia through provisions if that was clear intention of the proposer of the Bill.
5. Time limit for any procedure is not contemplated in the Bill. The absence of mention of period of filing such application, the period within which the consent can be revoked or

[25] *Ibid* , s.7.
[26] *Id* , s. 8.
[27] *Id*, s. 3.
[28] *Supra* note 19.

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minimum period for which euthanasia cannot be administered were basic deficiencies this Bill suffers from. The same lacunae can be seen in all the previous Bills. This only shows the inability of the legislature to draft a Bill regarding such a complex issue.

In totality, it is an inherently incomplete piece of draft legislation. It can only be rejected at the very instance of presentation inferring from the context it talks about.

Conclusion and Suggestions

In Indian jurisdiction, several attempts have been made to legalise Euthanasia through legislation, but none of them could materialize into a stringent law yet. One or the other Bill falls short of minimum requirements to monitor and control the execution of such a sensitive matter at hand. Though the proposed 2016 Bill legalising passive euthanasia permit terminally ill patients to live their final days in dignity, it definitely needs modification to come in line with the guidelines as laid down by the Supreme Court in *Common Cause judgment* in 2018. The legislature has vehemently failed to enact a concrete law in this regard and failed to borrow any provision from legislative marvel from States of Netherland, Oregon or Belgium where laws are smoothly controlling the process and aftermath related to administration of euthanasia to patients in all its forms.

One of the foremost things which could be done is to include various provisions and definitions in the draft bill. There is an immediate need of full-fledged legislation on Euthanasia in India; which should contain provisions regarding –

a) Allowing active euthanasia and passive euthanasia on request of the competent patient,
b) Permitting the physician to assist his patient to die in the least painful way,
c) A provision for enforcement of advanced medical directive,
d) Provisions for severe punishment in case a medical practitioner or hospital staff does not exercise due care in administration of euthanasia or does not follow the procedure laid down in the Act,
e) Prohibition on administering euthanasia without officially recording the reasons for it,
f) Constitution of statutory bodies on State and District level to regulate and adjudicate matters arising thereto, and
g) Proper definitions of terms like “euthanasia”, “terminal illness” “active euthanasia” “passive euthanasia” advanced medical directives” “consent” “competent patient” “due care” at the least.

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Along with legalising all forms of euthanasia through a legislation, one additional provision could be introduced in the law regarding administration of "sedatives" so as to minimise pain till natural death occur. This could be applied to those patients who are not brain dead, feel immense pain and family members do not want to terminate life of the patient earlier than natural span through direct modes such as active or passive euthanasia. The laws on euthanasia of foreign countries viz. Netherlands, Belgium and Oregon can also be referred in enacting a good and exclusive law in India.

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