EUTHANASIA IN INDIA – LEGISLATIVE PERSPECTIVE¹

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Abstract

Every human being should enjoy right to life. Article 21 of the Indian Constitution as well as under article 3 of International Convention Universal Declaration of Human Rights, 1948, guaranteed the right to life. Every aspect of right to life has been always subject to consideration of judiciary and depend upon the facts and situations. Right to die is also claimed under this head. Euthanasia is interpreted as 'mercy killing' or 'good death'. It is advocated that there are different situations in which it should be allowed to the person to let him choose his death in place of compelling him living alive. There are different approaches in this regard which either opposes the grant of mercy killing or denies to grant the death as right to die due to some causes. Everyone has the right to live dignified life according to his wish being living into certain limits and it is expected that a human being should struggle also in adverse circumstances around him. He should not lean in front of the situations. The Indian culture gives us such teachings. Hindu religion believes in the eternity of soul. Death is only the way to change a body. The soul never dies, it is eternal. Muslim religion also believes that life should be finished only upon the wish of Allah, it condemns the unnatural ending of life. But in present society in some situations, it is defended that the person should have the right to choose death. Thus, in this context the paper concentrated on the law of euthanasia in India in a legislative perspective and judicial interpretations on euthanasia.

Keywords: euthanasia, personal liberty, Constitution of India, legislations, judicial interpretations, India

I. Introduction

Every human being is desirous to live and enjoy the fruits of life till he/she dies. But sometimes a human being is desirous to end his life by use of unnatural means.

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To end one's life in an unnatural way is a sign of abnormality. When a person ends his life by own act, we call it "suicide" but to end life of a person by others on the request of the deceased, is called "euthanasia" or "mercy killing".

Euthanasia is mainly associated with people with terminal illness or who have become incapacitated and don't want to go through the rest of their life suffering. A severely handicapped or terminally ill person should have the right to choose to live or die. The right to choose to live or die should not be a right allocated for sound mind bodies. Euthanasia is a controversial issue which encompasses the morals, values and beliefs of our society.

Euthanasia has been a much-debated subject throughout the world. The debate has become increasingly significant because of the recent developments in Netherlands and England euthanasia has been allowed. Recently the Supreme Court of India passed a landmark judgment of legalizing passive euthanasia in *Aruna Shanbag Case*³ on 7th March 2011.

II. Meaning and different types of euthanasia

The term euthanasia was derived from the Greek word "eu" and "thanatos" which means "good death" or "easy death". It is also called as Mercy Killing. According to Black's Dictionary (8th Edition) euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reasons of mercy. Encyclopedia of 'Crime and Justice' explains euthanasia as an act of death which will provide a relief from a distressing or intolerable condition of living. Simply euthanasia is the practice of mercifully ending a person's life in order to release the person from an incurable disease, intolerable suffering, misery and pain of the life. Euthanasia may be classified as follows:

- Active or Positive
- Passive or Negative (also known as letting-die)
- Voluntary
- Involuntary
- Non-Voluntary

Active or Positive Active Euthanasia involves painlessly putting individuals to death for merciful reasons, as when a doctor administers lethal dose of medication to a patient.

Passive or Negative Euthanasia is passive when death is caused because a treatment that is sustaining the life of the patient is held off and the patient dies as a result thereof. Example withdrawing life supporting devices from a serious patient, removing which, the patient dies.

³ 2011(3) SCALE 298: MANU/SC/0176/2011.

Voluntary – It will be done with the express desire and consent of the patient. Voluntary euthanasia is primarily concerned with the right to choose of the terminally ill patient who decides to end his/her life choice which serves his/her best interest and also that of everyone else.

Involuntary/Non-Voluntary – It refers to ending the life of a person who is not mentally competent to make an informed request to die, such as comatose patient.

There are various ways for euthanasia. The most popular methods include:

- a) **Lethal Injection** – Injection of a lethal dose of a drug, such as a known poison, KCl etc.
- b) **Asphyxiation** – the most popular gas used is Carbon monoxide (CO). Nerve gases like sarin & tabun etc. are also added in small amounts to fully ensure death. One of the methods is also Dr. Jack Kevorkian's death machine (mercitron, thanatron). He is also known as Dr. Death. It's a unique method in which a person can end his life himself. With the use of this machine a person can end his life himself painlessly at the time chosen by the patient.

III. Assisted suicide

Assisted suicide happens when another person assists the person who is willing to commit suicide, with all the guidance and tools to take his own life, with the intention that whatever he is providing the person with, will be used for fulfilling this purpose only. Physicians can also assist a person in committing suicide which is called 'physician assisted suicide'. In India, under sections 305 and 306 of the I.P.C., 1860, abetment of suicide is expressly punishable.

Both euthanasia and assisted suicide are considered illegal in many countries since they can amount to murder in disguise. In India, euthanasia is punishable under clause 1 of section 300 of I.P.C. Non voluntary and involuntary euthanasia is struck down by proviso 1 to section 92 of the I.P.C. Regulation 6.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 also declares euthanasia as an unethical act. In modern parlance, the 'freedom to die' seems to have emerged from the rights of privacy, autonomy and self-determination. But the real issue today is of three types:

- (i) The people who want to commit suicide themselves. The act of suicide is an offence but it is not possible to punish the individual who is successful in committing it. The attempt to commit suicide is however punishable under section 309 of I.P.C. Though in some countries, this is not punishable.
- (ii) The people who are able to express their desire to commit suicide but are infirm due to some reason and need assistance from others.

- (iii) The people who are not capable enough to consent to their death because of physical or mental disability.

IV. Euthanasia and suicide

Suicide and euthanasia cannot be treated as one and the same thing. They are two different acts. Therefore, we shall have to make a distinction between 'euthanasia' and 'suicide'. Suicide as mentioned in Oxford Dictionary⁴ means the act of killing yourself deliberately. Therefore, suicide could be termed as the intentional termination of one's life by self-induced means for various reasons, such as, frustration in love, failure in examinations or in getting a good job, but mostly it is due to depression. The Bombay High Court in *Maruti Shripati Dubal case*⁵ has attempted to make a distinction between suicide and euthanasia or mercy killing. According to the court the suicide by its very nature is an act of self-killing or termination of one's own life by one's act without assistance from others. But euthanasia means the intervention of others human agency to end the life. Mercy killing therefore cannot be considered in the same footing as on suicide. Mercy killing is nothing but a homicide, whatever is the circumstance in which it is committed. In another case⁶ the Bombay High Court also observed that suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid and assistance of any other human agency. Euthanasia or mercy killing on the other hand means and implies the intervention of other human agency to end the life. Mercy killing is thus not suicide. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.

V. Legal provisions on euthanasia in India

In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill 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 the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary

⁴ Oxford Advanced Learner's Dictionary of Current English (2000), Sixth Edition; Oxford University Press.

⁵ *Maruti Shripati Dubal v. State of Maharashtra*; 1987 Cri.L.J 743 (Bomb).

⁶ *Naresh Marotrao Sakhre v. Union of India*; 1995 Cri.L.J 95 (Bomb).

euthanasia would be struck 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 an available “right” in India – it is punishable under the India Penal Code, 1860. Provision of punishing suicide is contained in sections 305 (Abetment of suicide of child or insane person), 306 (Abetment of suicide) and 309 (Attempt to commit suicide) of the said Code. Section 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*⁷ 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.

VI. Arguments for legalizing euthanasia

The major argument in favor of this is that it is a way to end an extremely miserable and painful life. Insistence to postpone the death against patient’s wishes are against law, unwise, inhuman and not medically sound. The family members of the dying patient are relieved of the physical, emotional, economical and mental stress upon them. It also provides comfort to the patient and causes relief of his pain. The patients also have a right to refuse medical treatment. If a doctor treats a patient against his express wishes, he can be charged with assault. Performance of euthanasia will free up the medical funds of the state to help other poor and needy people. An individual has the freedom to exercise his right to die. Constitution guarantees the fundamental rights and freedoms where a positive right includes a negative right. For instance, freedom of speech includes within its freedom not to speak etc.

⁷ 1996 (2) SCC 648: AIR 1996 SC 946.

VII. Arguments against legalizing euthanasia

In Indian society, driven by religion, will not accept the concept of euthanasia as the religious scriptures defy it. Commercialization of euthanasia can take place. The poor people could resort to this in order to avoid the pecuniary difficulties of medication. Old and destitute are sometimes considered as burden and people can make use of this to shove off their responsibilities. Allowing euthanasia will devalue human dignity and will offend the principle of sanctity of life. It will leave sick, disabled people more vulnerable than the rest of the population and can also provide a 'cloak for murder'.

VIII. Judicial decisions in India

The first case which brought the issue of right to die before the courts is *State v. Sanjay Kumar*⁸ wherein the Delhi High Court criticized the section 309 and considered it to be 'an anachronism and a paradox'. This decision was followed by two conflicting decisions of the Bombay High Court and the Andhra Pradesh High Court in the cases of *Maruti Sripathi Dubal v. State of Maharashtra*⁹ and *Chenna Jagadeeswar v. State of Andhra Pradesh*¹⁰ respectively. In the first case, section 309 was considered violative of Article 21 and in the second case it was held constitutionally valid.

In *P. Rathinam v. State of U.O.I. and another*¹¹, again section 309 was considered unconstitutional, and it was concluded that the penal laws need to be more humane. But soon this decision was overruled in *Smt. Gian Kaur v. State of Punjab*¹² and it was held that Article 21 does not include a right to die. It was further held that right to life is a natural right but suicide being unnatural termination of life is incompatible with it. However, the court appears to have permitted passive euthanasia. The latest decision passed by the Apex Court is – 'Active euthanasia is illegal. Passive euthanasia is permissible, but it should be done under the supervision of the High Court.' This decision was passed in the famous *Aruna Shanbaug case* and the Supreme Court rejected the plea or petition to allow her mercy killing.

*Aruna Ramachandra Shanunbaug Case*¹³: The honorable Supreme Court of India passed a landmark judgment of legalizing passive euthanasia on 7th March 2011. The 110-page long document which gave this verdict was delivered in response to a

⁸ (1985) Cr. L.J., 935.

⁹ (1987) Cr. L.J., 743.

¹⁰ (1983) Cr. L.J., 549.

¹¹ AIR 1994 SC 1844.

¹² AIR 1996 SC 1257.

¹³ *Aruna Ramchandra Shanbaug v. Union of India* 2011(3) SCALE 298: MANU/SC/0176/2011.

criminal writ petition filed on behalf of Aruna Ramchandra Shanbaug in 2009. The petitioner requested for withdrawal of feeding to bring an end to her suffering. She has been lying in a persistent vegetative state since last 36 years following attempt of sexual assault and strangulation by a ward boy when she was on duty at the K. E. M. Hospital. The staffs of the hospital have been providing her with supportive medical care since then. Justice Markandey Katju and Justice Gyan Sudha Mishra in their judgment commended the dedicated efforts of K. E. M. hospital in providing selfless continuous care to Aruna and dismissed the petition. The judgment accepted the significance of the doctrine of “*parens patriae*” while deciding the case where the affected person has lost the decision-making capacity. This doctrine recognizes the responsibility of the state in taking care of its citizens when they are in need of a father figure to take decision on their behalf. The bench felt that withdrawal of life-supporting measures cannot be left to the sole discretion of the treating physician, relative, care giver, or friend of a person. The judgment has laid provision for care givers of cognitively incapacitated persons to request for non-voluntary and passive euthanasia to the High Court. Till the legislation from the Parliament is in place, the judgment has cited the powers of article 226 of the constitution for such a provision. On receipt of any application for passive euthanasia, the High Court would appoint a board of doctors comprising a physician, a psychiatrist, and a neurologist to examine the patient based on which the court would take the decision about life-supporting treatment. Passive euthanasia is legalized in India in this process¹⁴.

IX. Conclusion

In conclusion, it can be said that to resolve this debate, the conflict between the principle of sanctity of life and the rights of self-determination and dignity of an individual is to be resolved first and right to die should not be generalized but should be exercised as an exception in the rarest of rare cases.

¹⁴ Available from: <http://judis.nic.in/supremecourt/helddis3.aspx> [Last accessed on 2011 March 20].