

Critical Appraisal Of Euthanasia - Indian Perspective

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ABSTRACT

Article 21 of the Indian Constitution states that 'No shall shall be deprived of his life or personal liberty except according to procedure established by law', which grants Right to life only and does not include Right to die. The question regarding Right to die first arose before the High Court of Bombay in State of Maharashtra v. Maruty Sripati Dubal. In this case, the Court declared that Right to life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 that makes attempt to suicide a punishable offence unconstitutional. But in the case of Gian Kaur v. State of Punjab, Supreme Court held that Right to life does not include Right to die or Right to be killed. It was mentioned that Right to life is a natural right whereas Right to die is not such a natural right and none had the right to finish their life in an unnatural manner. Only after the judgement by Supreme Court in Aruna Ramchandra Shanbaug v. Union of India, passive euthanasia was legalized in India. Now arises the question if Right to life with dignity includes Right to die with dignity. This paper enshrines on the need for a review on the judgement of Aruna Ramchandra Shanbaug v. Union of India and the formation of medical committees to find out the cases where active euthanasia will be the ultimate option for the patients to die with dignity and without going through a unpleasant phase of agony.

Keywords: Mercy killing, Active Euthanasia, Permanent Vegetative State, Right to die, Terminal illness

I. INTRODUCTION

Every human being has the desire to live and enjoy life till their death. But there are times when an individual wishes to end their life in the manner they choose. It's an abnormality to end one's life in an unnatural manner. When a person decides to end his life by his own wilful act it is called suicide, but to end an individual's life by others on the request of the deceased, is called euthanasia or mercy killing. The concept of Euthanasia always possess complicated legal and procedural issues regarding compliance in countries across the world. Every adult of sound mind has the right to determine what should be done with them and it would be unlawful to provide treatment to an adult without his consent, who is conscious and of sound mind. In case of patients with Permanent Vegetative State (PVS) and no chance of improvement, it is ultimately the Court's discretion to decide, as legal protector of the citizens, based on the best interest of the patient. Euthanasia is basically associated with people suffering from terminal illness or those who have become disabled and is not willing to spend the rest of their life suffering. Handicapped or terminally ill person have the right to choose between life and death. This right of a terminally ailing person is not supposed to be equated with the right of an able bodied, clear-headed person. Euthanasia has been a much debated subject throughout the world and is regarded as an controversial issue which encompasses the values, morals and beliefs of our society. Countries like Netherlands, Belgium, Columbia and Luxembourg regard euthanasia as legal. Switzerland, Germany, Japan and some states in the United States of America permit assisted suicide while in nations like Mexico and Thailand it is illegal. In India passive euthanasia is legal, while debate goes on about legalizing active euthanasia.

II. NEED FOR THE STUDY

Worldwide, euthanasia is still a debatable issue that possess two facets as always, the boon and the bane. An individual who is incurred with the Right to live a decent life with dignity should not be permitted to die after going through unbearable sufferings and agony in case of permanent vegetative state or incapacitation.

III. OBJECTIVES

1. To know about the classification and reasons for euthanasia.
2. To determine the legal aspects of Euthanasia in India.
3. To analyse the new dimension in Indian history of Euthanasia after Aruna Ramchandra Shanbaug's case.
4. To suggest measures for the betterment in procedure of Passive Euthanasia and legalizing Active Euthanasia under restricted circumstances.

IV. EUTHANASIA: MEANING, CLASSIFICATION AND REASONS

According to Black's Law Dictionary, 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. Euthanasia literally refers to put a person to painless death in specific cases if incurable agony or when life becomes purposeless and void as a result of mental or physical handicap¹. Euthanasia, also termed as mercy killing, is the practice in which a person is killed for the reason of giving relief from incurable pain or suffering or to allow painless death when their life has become meaningless and disagreeable.² The procedural aspect of Euthanasia, in the modern context is limited to the killing of patients by doctors at the request of the patient in order to relieve himself from excruciating pain or terminal illness. Thus the main purpose behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering.

Classification of Euthanasia

'Euthanasia' is the termination of an ailing person's life in order to relieve him of the suffering. Usually, Euthanasia is carried out on the request of the person for relief, but there are instances where a person cannot make such request or give his consent for mercy killing. Euthanasia is classified according to whether a person gives informed consent, are as follows:

Voluntary Euthanasia - It is practiced when the expressed desire and consent of the patient is given. It is basically related with the right to choice of the terminally sick patients who decide to end their life, which serves best interest of them and everyone connected to them.

Non-voluntary Euthanasia - To end the life of an individual who mentally incompetent to make informed decision about their death, such as a patient in coma. It includes cases where the patients have not addressed their wish of dying in any will or indication, and the authority to make the decision lies with the family members.

Involuntary Euthanasia - It is to kill a person against someone's wish and is presumed to be equivalent to murder. In this case, the patient does not choose death even if they have the capacity to decide and give consent and the same is administered, which is quite unethical and sounds barbaric.

Active Euthanasia - It involves painlessly putting individuals to death for merciful causes. The controversial part is that it requires the use of lethal or fatal substances. As a person cannot cause his death by himself, there arises requirement for someone's help with medical assistance. In India, this form of Active Euthanasia is illegal and is regarded a crime under Section 302 or Section 304 IPC. According to Section 306 IPC, physician assisted suicide is a crime (abetment of suicide).

Passive Euthanasia - The causing of death by terminating the life supporting systems provided to the patient. Withdrawal of life supporting devices from a terminally unwell patient would eventually lead to death in normal course. In "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him.³ It requires withholding of common treatments that are necessary for the continuance of life.

¹ Dr. Parikh, C.K. (2006). Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology, 6th Edition, Page 1.55, New Delhi, CBS Publishers & Distributors.

² Nandy, Apurba. (1995), Principles of Forensic Medicine, 1st Edition, Page 38, Kolkata, New Central Book Agency (P) Ltd.

³ Aruna Ramchandra Shanbaug v. Union of India, 2011

Reasons for Euthanasia

Euthanasia refers to the intentional death caused by an act or omission of a dependent human being for their alleged benefit. There are certain reasons behind recommending euthanasia.

- (a) Unbearable pain – Patients suffering from unbearable pain that is beyond treatment or improvement desire peaceful death. Numbing the severe pain caused by illness until recovery is acceptable, but depending on painkillers for the rest of your life is not a welcome choice. If such choice becomes a necessity of day to day living then the patient tends to develop the tendency towards putting an end to his life. But death is not a solution on the patient's troubles. Passive euthanasia is justifiable in case of patients with Permanent Vegetative State (PVS).
- (b) Demand of 'right to commit suicide' – This is often confused with fundamental right of life granted under Article 21 of the Constitution of India. Euthanasia is not about right to die but it's about the right to bring about someone's death.
- (c) Compulsion on people to stay alive – Any person should not be forced to stay alive. Law and medical ethics require that every possible means be resorted to keep a person alive.

V. LEGAL ASPECTS OF EUTHANASIA IN INDIA

The Constitution of India is drawn from constitutions of various countries and the courts have repeatedly referred to various foreign decisions. In India, euthanasia is undoubtedly illegal. If there is an intention on the part of the doctor in case of euthanasia of mercy killing to end the life of the patient, it would clearly fall under Section 300(1) 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 (where the patient consents to death) that would attract Exception 5 to Section 300. 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 Indian laws are very clear on the aspect of assisted suicide. Right to suicide is not a "right" available 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 IPC. 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*³⁷ 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. The Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra* examined the constitutional validity of Section 309 and held that the section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14. Article 21 was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article 21.

The High Court of Bombay in *Maruti Shripati Dubal's* case held Section 309 (punishment for attempted suicide) of the Indian Penal Code (IPC) as violative of Articles 14 (Right to Equality) and 21 (Right to Life) of the Constitution. The Court held section 309 of the IPC as invalid and stated that Article 21 to be construed to include right to die. In *P. Rathinam's* case, the Supreme Court held that section 309 of the IPC is violative of Article 21 of the Constitution as the latter includes right to death. The question again came up in *Gian Kaur v.*

State of Punja case. In this case a five judge Constitutional bench of the Supreme Court overruled the P. Rathinam's case and held that right to life under Article 21 does not include right to die or right to be killed and there is no ground to hold section 309 of IPC constitutionally invalid. The true meaning of life enshrined in Article 21 is life with human dignity. Any aspect of life which makes a life dignified may be included in it but not that which extinguishes it. The right to die if any is inherently inconsistent with the right to life as is death with life.

VI. NEW DIMENSIONS IN INDIAN HISTORY - ARUNA SHANBAUG'S CASE

Aruna Shanbaug, was a 25 years old nurse, at KEM Hospital and dreaming of marrying her fiancé - a young doctor colleague. She was sexually assaulted on the night of November 27, 1973 by a ward boy named Sohanlal Walmiki. He sodomized Aruna after strangling her with a dog chain. Then he left her lying there and went away. The ward boy got a 7 years' sentence for attempt to murder and robbery. Her next friend (a legal term used for a person speaking on behalf of someone who is incapacitated) and lawyer Pinki Virani decided to move the Supreme Court with a plea to direct the KEM Hospital not to force feed her. But doctors at KEM hospital don't agree, they say she responds through facial expressions.

Aruna's case was the focal point of the debate over euthanasia in India. On the one side, it is the right to live, and the other, death with dignity and the Supreme Court has the unprecedented and difficult task of deciding on the fate of a victim in a crime committed 41 years ago.

On 24th January, 2011, The Supreme Court consisting of Hon'ble Markandey Katju and Gyan Sudha Mishra, J. responded to the plea for euthanasia filed by the next friend of Aruna's Pinki Virani, by setting up a medical panel to examine her. The three- member medical committee subsequently set up under the Supreme Court's directives, checked upon Aruna and concluded that she met "most of the criteria of being in a PVS (persistent vegetative state)." However, it turned down the mercy killing petition on 7th March, 2011. The Court, in its landmark judgment, however, allowed passive euthanasia in India. While rejecting Pinki Virani's plea for Aruna Shanbaug's euthanasia, the Court laid down guidelines for passive euthanasia.

The case has to be referred to a Medical Board by the relevant High Court after evaluating the merits of the case, to decide whether passive euthanasia can apply. Till a new law is enacted by the Parliament on euthanasia, guidelines given under Ms. Shanbaug's case will be used as a point of reference by other Courts.

There are number of cases where the High Courts have rejected the euthanasia petitions. In Bangalore, the High Court has rejected the euthanasia plea of a 72 years old retired teacher from Devanagere, who sought the Court's permission to die. Justice Ajit Gunjal disposed of the petition based on reports by neuro- surgical and psychiatric experts from Nirnhans. The reports said Karibasamma does not suffer any pain or severe ailment. Her spine is normal and she can get-up without any pain. Neither does she suffer from any mental disorder.

Similarly, the Kerala High Court in *C.A. Thomas Master v. Union of India*,⁶³ dismissed the Writ Petition filed by a citizen wherein he wanted the government to set up "Mahaprasthan Kendra" (Voluntary Death Clinic) for the purpose of facilitating voluntary death and donation, transplantation of bodily organs.

In 2005, 'Mohd. Yunus' from Kashipur, Odissa requested the President for euthanasia on the ground that his children were suffering from incurable disease but the request was rejected. Similarly, a petition filed by Mr. Tarkeshwar Sinha from Patna was also rejected.

In 2004, a two-judge Bench of the Andhra Pradesh High Court in *Suchita Srivastava v. Chandigarh Administration*⁶⁴ dismissed the writ petition of a 25-year old terminally-ill patient 'Venktesh' who sought permission to donate his organs in a non- heart beating condition. The High Court dismissed the writ petition where 'Venktesh' had expressed his wish to be put off the life support system. It is better to leave the issue with the judiciary, until we prepare ourselves emotionally and practically to accept it as part of our life.

VII. SUGGESTIONS

- i. The Parliament should enact a law for euthanasia as early as possible.
- ii. While enacting the law the dignity of the person who is requesting for euthanasia should be taken into consideration, because every person has a right to live with at least a minimum dignity.

- iii. Active Euthanasia should be allowed when the condition has become overwhelmingly burdensome for the patient and only death seems capable of bringing relief.
- iv. By allowing Active Euthanasia under certain circumstances it can encourage the organ transplantation.

VIII. CONCLUSION

After the Gian Kaur's case, suicide has become illegal per se, but the same could not be said for euthanasia. Recently the judgment of our Supreme Court in Aruna Ramchandra Shanbaug v. Union of India legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law.

The legislature should step in and allow voluntary euthanasia by making a special law dealing with all the aspects of euthanasia and with adequate safeguards. The recommendations laid down in the Reports of Law Commission of India and guidelines given in the Aruna's case are to be taken into consideration when any law on that point is to be framed. It not only gives 'Right to die' for the terminally ill, but also 'Right to life' for the organ needy patients.

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