



EUTHANASIA PRACTICES AND RECENT TRENDS IN INDIA

Dr. L. Shabha Rani

Assistant Professor, University College of Law, Telangana University, Nizamabad, Telangana.

Introduction

In our day to day life we often come across terminally ill patients that are bedridden and are totally dependent on others. It actually hurts their sentiments. Looking at them we would say that death will be a better option for them rather than living such a painful life; which is painful physically as well as psychologically. But if on the other hand we look at the Netherlands where euthanasia is made legal, we will see that how it is abused there. So following its example no one wants euthanasia to be legalized in India. But the question that lies before us is which will be a better option. In this project, some basic points regarding euthanasia are discussed and then it is totally on the reader to decide which will be better: legalizing or not legalizing euthanasia. Although the Supreme Court has already given its decision on this point but still some doubts arise in our point which we need to analyze carefully and reach at a conclusion.

The article deals with one of the most debated topics in the world and that is euthanasia. Euthanasia literally means good death but in this context it means mercy killing. The debate is regarding the legalization of euthanasia. This debate is a continuing one as some people are of the view that life is sacred and no one has got the right to end it whereas on the other hand some say that life belongs to oneself and so each person has got the right to decide what he wants to do with it even if it amounts to dyeing.

'Euthanasia' and 'end of life care' are two contradictory subjects. Euthanasia is regarded as the only viable option when all end of life care mechanisms fall short of a better life for an individual who is terminally ill or in a vegetable-like state. Although a law on euthanasia is a prerequisite for people suffering from terminal illnesses, there was no legislation with respect to euthanasia in India until now.

Euthanasia literally means "good death". It is basically to bring about the death of a terminally ill patient or a disabled. It is resorted to so that the last days of a patient who has been suffering from such an illness which is terminal in nature or which has disabled him can peacefully end up his life and which can also prove to be less painful for him. Thus the basic intention 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. Euthanasia is also popularly known as 'mercy death' as it is given to lessen the pain of the patient.

There are several circumstances in our human life in which we wish to end our life, such as in case of incurable disease, cruel or unbearable conditions of life, a sense of shame or disenchantment with life, etc. Nowadays the complications of human life have increased in wide range.

This competitive world to live with comfort, mental peace and satisfaction is not an easy task, a greed of more and more happiness does not let us sit calm and everyone wants basic amenities of life which are essential to live with happiness, it is the responsibility of state to protect individual from external aggression as well as to provide basic amenities for his survival with the emerging concept of welfare state. But if anyone could not get these basic amenities for his survival, or suffering with incurable disease and proceeding towards death slowly whether in such situation can he end his life? It is the most debatable questions whether a person should have a right to die like a right to live.

Euthanasia in other Countries

Australia

The Northern Territory of Australia became the first country to legalize euthanasia by passing the Rights of the Terminally Ill Act, 1996. It was held to be legal in the case *Wake v. Northern Territory of Australia* by the Supreme Court of Northern Territory of Australia. But later a subsequent legislation that was the Euthanasia Laws Act, 1997 made it again illegal.

United States

Here, active euthanasia is prohibited but physicians are not held liable if they withhold or withdraw the life sustaining treatment of the patient either on his request or at the request of patient's authorized representative. Euthanasia has been made totally illegal by the United States Supreme Court in the cases *Washington v. Glucksberg* and *Vacco v. Quill*. In these cases, the ban on assisted suicide by the physicians has been held to be in consonance with the provisions of the constitution. In Oregon, a state in America, assisted suicide has been legalized in 1994. Twenty seven lives were ended in 1999 and that number is still expected to increase.



Canada

Patients in Canada have right to refuse life sustaining treatments but they can't ask for assisted suicide or active euthanasia. Supreme Court in various cases has held that in the case of assisted suicide the interest of the state will prevail over individual's interest.

Netherlands

The Supreme Court of Netherlands allows euthanasia. According to the penal code of the Netherlands killing a person on his request is punishable with twelve years of imprisonment or fine and also assisting a person in committing suicide is punishable with three years of imprisonment or fine. But the law of Netherlands provides a defense of 'necessity' to the offence of voluntary euthanasia and assisted suicide. This defense of necessity is two fold; one is that of 'psychological compulsion' and the other is 'emergency'.

Euthanasia in India

It was only with the story of Aruna Shanbaug (a woman who had been in a vegetative state for 42 years) that the issues of end of life and euthanasia came up for public discussion. Pinki Virani, a social activist, journalist and writer, filed a writ petition on behalf of Shanbaug and claimed that her right to life guaranteed by the Indian constitution had been violated. In the Shanbaug case, March 2011, the Supreme Court of India upheld that conditional passive euthanasia would be permissible in the rarest of rare circumstances. It clearly stated that a petitioner concerning passive euthanasia would have to move the high court, which would then be followed by the medical expert board enquiry. The Supreme Court opined that it could not be solely left to the discretion of the patient's relatives or the 'next friend' (like the nursing staff in the case of the Shanbaug case) to make decisions regarding the death of an individual. The court also stated that this judicial pronouncement would be valid till any further enactment on the subject by the legislature was set out. This case opened up a new dimension with regard to article 21, right to life. The prior judgments related to the issue of right to life require a special mention in any case concerning the issue of euthanasia.

The Law Commission of India came out with two pertinent reports which dealt with the issue of euthanasia to some extent. The 196th report of the Law Commission on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), released in 2006, was the first report on the subject. The second was the 241st report in 2012, named *Passive Euthanasia: A Relook*, that dealt with the same issue. The former report was the one which came up much before the Aruna Shanbaug verdict, making passive euthanasia permissible under the rarest of rare conditions. Although the report clearly stated at the outset that it did not deal with euthanasia but with a 'different matter of withholding life support measures', the Shanbaug case referred to it while coming up with its verdict on passive euthanasia. The second report stated that it was in accord with the views of the judiciary on the Shanbaug verdict, where it legalised passive euthanasia and laid down a set of criteria to guide the framework of its working. It reiterated the views of the Shanbaug judgment and once again threw light on the issue of passive euthanasia and analysed the findings and recommendations of the Supreme Court verdict on the subject.

On February 25, 2014, a five judge bench was constituted by then chief justice P. Sathashivam who claimed that a clear law on the subject of euthanasia in India was mandatory. The constitutional bench was constituted for the purpose of providing a new set of guidelines on euthanasia. The court acted due to a petition filed by an NGO named *Common Cause*, which argued in favour of the right to die with dignity. It was stated that the procedure set in the Shanbaug verdict did not comply with article 21 of the Constitution, as the right to life guaranteed by the article did not include the right to die with dignity under the supreme law of the land. Despite this, the Supreme Court of India legalised passive euthanasia under certain circumstances and laid down a procedure for its working.

Again on July 16, 2014, the Supreme Court of India issued a notice to all states and union territories on a plea for the legalisation of passive euthanasia by allowing the withdrawal of treatment from patients in a permanent vegetative state. States and union territories were asked to respond within the next eight weeks. The concept of a living will, which had been completely out of the discussion on euthanasia so far, also gained ground in the new stir caused by the Supreme Court's attempt. The Centre, however, opposed the petition and stated that it was a form of suicide which could not be permitted in the country. Then Health Minister, Harsh Vardhan, also commented on this issue, stating that a hasty resolution should be avoided and a national consensus should be built.

In our constitution there is provision for Right of Life under Article 21. But there is no such Right like right to die. On the other hand, if any person tries to end his life, he is made punishable under section 309 of Indian penal code.

The question first arose in case of *State of Maharashtra v. Maruty Sripati Dubai*, 1987 Cr. LJ 549 that whether the 'Right to Die' is included in Art. 21 of the constitution before Bombay High court. In this case a Bombay police constable who was mentally deranged was refused permission to set up a shop and earn a living out of frustration; he tried to set himself a fire in the corporation's office room.



The Bombay High Court held that the right to life guaranteed by Art. 21 includes a right to die, and consequently the court struck down section 309, I.P.C. which provides punishment for attempt to commit suicide by a person as unconstitutional and the judge held that, everyone should have the freedom to dispose of his life as and when he desires.

This decision of Bombay High Court created a large controversy and created a variety of views in society on this issue. On the other hand, the Andhra Pradesh High Court in Chenna Jagadeeswar v. State of A.P., 1988 CR LJ 549 Court held that the right to die is not a fundamental right within the meaning of Art. 21 and hence section 309 IPC is not unconstitutional.

This decision of A.P. High Court is exactly opposite in view as compared to Maruti Sripat Dubai's case and so there is more scope of controversy in those days. Number of Lawyers, Judges, social workers, even common persons has given their opinion on this issue and such issue had become the most highlighted topic.

It is true that normally a man is to live and to continue to enjoy the fruits of life till his life is ended by nature. Suicide or an attempt to commit suicide is not a feature of natural life.

The same issue was again raised before Supreme Court in P. Rathinam v. Union of India, (1994) 3 SCC 394 In this case the petitioners had challenged the validity of section 309 on the ground that it was violative of Articles 14 and 21 of the constitution and The S.C. held that section 309 of the IPC was violative of Art. 21 and hence it is void. A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. The Court held that section 309, IPC was "a cruel and irrational provision". The court also held that "Right to Life" of which Article 21 of the constitution speaks of can be said to bring in its trial the right not to live a forced life.

In India, euthanasia is a crime. Section 309 of the Indian Penal Code (IPC) deals with the attempt to commit suicide and Section 306 of the IPC deals with abetment of suicide – both actions are punishable. Only those who are brain dead can be taken off life support with the help of family members. Likewise, the Honorable Supreme Court is also of the view 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 imagination can extinction of life be read into it. However, various pro-euthanasia organizations, the most prominent among them being the Death with Dignity Foundation, keep on fighting for legalization of an individual's right to choose his own death.

The Medical Council of India, in a meeting of its ethics committee in February 2008 in relation to euthanasia opined: Practicing euthanasia shall constitute unethical conduct. However, on specific occasions, the question of withdrawing supporting devices to sustain cardio-pulmonary function even after brain death shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of support system. Such team shall consist of the doctor in-charge of the patient, Chief Medical Officer / Medical Officer in-charge of the hospital, and a doctor nominated by the in-charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994.

A major development took place in this field on 7 March 2011. The Supreme Court, in a landmark judgment, allowed passive euthanasia. Refusing mercy killing of Aruna Shaunbag, lying in a vegetative state in a Mumbai Hospital for 37 years, a two-judge bench laid down a set of tough guidelines under which passive euthanasia can be legalized through a high-court monitored mechanism. The court further stated that parents, spouses, or close relatives of the patient can make such a plea to the high court. The chief justices of the high courts, on receipt of such a plea, would constitute a bench to decide it. The bench in turn would appoint a committee of at least three renowned doctors to advise them on the matter.

Recent Developments

The debate on euthanasia in India remains inconclusive. The recent move by the government of drafting a bill on passive euthanasia and the release of a document inviting comments from the public can be regarded as a huge steps forward. This bill argues in favour of passive euthanasia and is in line with the judgment delivered in the Shanbaug case of 2011. On gaining support, the bill will not only prove to be a landmark legislation, but also provide a panacea to the terminally ill and those who champion patient's rights.

One may argue that the judgment delivered on all three cases mentioned above were based on liberal ideals which places the 'individual' (the patient in cases concerning euthanasia) at the centre. The verdict discussed here invoked the principles of autonomy and best interests of the patients. This clearly reveals the impact of a liberal perspective on the decisions of the judiciary. One needs to take into account how the state has taken up the role of a protector, aiming to foster and administer lives. Although it may appear that it is solely liberal principles that have been respected, a deeper analysis suggests a different idea that lies underneath.



The courts argued in favour of passive euthanasia in the cases mentioned. They supported the idea of removing patients from ventilation, artificial nutrition or hydration which were essentially of no benefit to the patients involved. It becomes important at this juncture to point out that the proponents of palliative care and many other do not regard passive euthanasia as a form of euthanasia at all. They believe that the idea of passive euthanasia is a misnomer. According to them, active euthanasia is the only true form of euthanasia. Within this context, it could be said that the courts not only respected liberal principles while pronouncing these verdicts, but also promoted the very ideals that the modern state is entrusted with.

A Five Judges Constitution Bench of the Supreme Court has not overruled the P. Rathinam's case and rightly, held that "Right to Life" under Article 21 of the constitution does not include "Right to die" or "Right to be killed". The "Right to die", is inherently inconsistent with the "Right to Life" as is "Death with Life".

The court made it clear that the "Right to Life" including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death.

The government of India has finally come up with a draft bill on passive euthanasia. It has also released a document on the website of the Ministry of Health and Family Welfare on May 9, 2016, inviting public comments on passive euthanasia to gather opinions from people in the country.

Bill on Euthanasia out for Public Opinion

Finally, after years of debates and legal battles, the Union Government has come up with a draft bill. The bill is on passive euthanasia that allows patients to terminate medication and allow nature to take its own course. The title of the bill is Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill and public suggestions have been invited from people before June 19, 2016 before passing the law.

The Bill Contains

1. The bill considers anyone who is 16 years and above to be competent patient who can take decision for oneself. If the patient expresses desire to terminate medical treatment, it shall be binding on the practitioner provided it is an informed decision. The practitioner shall inform the relatives or caretaker of the patient's decision and shall desist from executing the decision for three days following the intimation.
2. Even in cases where the medical treatment has been withheld, the patient shall still be given palliative care that is, reasonable medical and nursing procedures for relief of pain, suffering, discomfort or emotional and psycho-social suffering. Along with provision of food and water.
3. The bill provides for the procedure of attaining permission from High Court and that the identity of the parties shall be kept confidential.
4. Section 11 states that advance medical directive (living will) or medical power of attorney shall be void. Living will is 'a document in which a person states his/her desire to have or not to have extraordinary life-prolonging measures used when recovery is not possible from his/her terminal condition.' This move has been criticised by any experts.

Opinion on the Bill

All in all, the Bill addresses the needs of both the patient who desires passive euthanasia and the practitioners who have to facilitate it. With this legislation, India has found its place among a handful of countries that have legalised some form of euthanasia. Countries like Belgium, Colombia, Ireland, Luxemborg, Mexico and Netherlands have legalised some form of euthanasia.

This legislation was imperative and it shall finally put the lengthy debates on euthanasia to rest. This law shall be metamorphic and instrumental in saving a lot of people from unnecessary pain and suffering. In order to ensure favourable outcome, the implementation of the law has to be effective.

Conclusion

Medical science is progressing in India as in the rest of the world, and hence currently we are having devices that can prolong life by artificial means. This may indirectly prolong terminal suffering and may also prove to be very costly for the families of the subject in question. Hence, end-of-life issues are becoming major ethical considerations in the modern-day medical science in India. The proponents and the opponents of euthanasia and PAS are as active in India as in the rest of the world. However, the Indian legislature does not seem to be sensitive to these. The landmark Supreme Court judgment has provided a major boost to pro-euthanasia activists though it is a long way to go before it becomes a law in the parliament. Moreover, concerns for its misuse remain a major issue which ought to be addressed before it becomes a law in our country.



If we carefully examine the opposition to the legalization of euthanasia, we can conclude that the most important point that the opponents raise is that it will lead to its misuse by the doctors. Thus, it is humbly submitted that when a patient or his relatives can willingly put his life in the hands of the doctor trusting him, then why can't a doctor be given such discretion to decide what will be in favour of his patient. Another doubt that is often raised is that if the doctors will be given discretion to practice voluntary euthanasia then surely it will gradually lead to asking for involuntary or non-voluntary euthanasia. But it is humbly submitted that a separate legislation should be made allowing only voluntary euthanasia and not involuntary or non-voluntary euthanasia. As has already been pointed out earlier, we also have to keep in mind the limited medical facilities available in India and the number of patients. All in all, the Bill addresses the needs of both the patient who desires passive euthanasia and the practitioners who have to facilitate it. With this legislation, India has found its place among a handful of countries that have legalised some form of euthanasia.

References

1. Brown JH, Henteleff P, Barakat S. Is it normal for terminally ill patients to desire death? *Am J Psychiatry*. 1986;143:208–11.
2. Chochinov HM, Wilson KG, Enns M. Prevalence of depression in the terminally ill: Effects of diagnostic criteria and symptom threshold judgments. *Am J Psychiatry*. 1994;151:537–40.
3. Nadeau R. *Gentles, Euthanasia and Assisted Suicide: The Current Debate*. Toronto: Stoddart Publishing Co. Limited; 1995. Charting the Legal Trends; p. 727.
4. Decisions near the end of life. Council on Ethical and Judicial Affairs: American Medical Association. *JAMA*. 1992;267:2229–33.
5. Yount L. *Physician-assisted suicide and euthanasia*. New York: Facts On File, Inc; 2000.
6. Emanuel EJ. Ethics of treatment: Palliative and terminal care. In: Holland J, editor. *Psycho-oncology*. New York: Oxford University Press; 1988. pp. 1096–111.
7. *When Death Is Sought: Assisted Suicide and Euthanasia in the Medical Context*. New York: Health Research Inc; 1994. New York State Task Force on Life and the Law.
8. *Cruzan v Director, Missouri Dept of Health*. 497 US 261. 1990
9. 'Euthanasia in India' by A.K. Tharien retrieved from <http://www.eubios.info/EJ52/EJ52F.htm>
10. 'Euthanasia seeker dies in India' retrieved from <http://www.bbc.co.uk>
11. 'Euthanasia and Human Rights Law: Compatible or Contradictory?' retrieved from <http://www.independentliving.org/Library/content2.html>.