

“Euthanasia”

Jharna Saksena
Dr. Shakuntala Misra National Rehabilitation University,
Lucknow

ABSTRACT

When a person ends his life by his own act it is called “suicide” but to end life of a person by others though on the request of the deceased is called “euthanasia” or “mercy killing”. Euthanasia is categorised in four types. It is one of the most debated ethical issues in recent time as revealed by the considerable number of scientific publications, media coverage of specific cases. It recognizes the autonomy of an individual freedom of choice to live or die with dignity. The Concept is mainly associated with people with terminal illness, or who have become incapacitated and don’t want to go through the rest of the life suffering. Euthanasia is a controversial issue which encompasses the morals, values and beliefs of our society. Euthanasia literally means putting a person to painless death especially in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap. This shows the historical background and legal aspects in India relating to the Euthanasia.

INTRODUCTION

Every human being is desirous to live and enjoy the fruits of life till he dies. But sometimes a human being is desirous to end his life by use of unnatural means. To end one’s life in an unnatural way is a sign of abnormality. When a person ends his life by his own act we call it “suicide” but to end life of a person by others though on the request of the deceased, is called “euthanasia” or “mercy killing”. The word ‘ Euthanasia’ is a derivative from the Greek words ‘eu’ and ‘thanatos’ which literally mean ‘good death’ or ‘easy death’. It is otherwise described as mercy killing. It is the painless termination of life of an unbearably suffering patient by the physician upon the patient’s request.¹

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 bodied individuals of sound mind but to all human beings. 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.

¹ Dr. Sanjeev Kumar Tiwari & Ambalika Karmakar, *Concept of Euthanasia In India-A Socio-Legal Analysis*, <http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf>

Recently our Supreme Court in Aruna Shanbaug² case has already given its decision on this point and allowed passive euthanasia in India.

According to Black's Law 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, esp. a painful one, for reasons of mercy.

TYPES OF EUTHANASIA

Euthanasia may be classified into various categories described as under:-

- **Active Euthanasia-** A deliberate life shortening act is called 'active' Euthanasia. Active Euthanasia involves painlessly putting individuals to death for merciful reasons, as when a doctor administers a lethal dose of medication to a patient. Active euthanasia involves helping the patient to die on the basis of a request by either the patient or those close to him or her, usually direct family members.
- **Passive Euthanasia-** Various medical and legal dictionaries say passive euthanasia is the act of hastening the death of a terminally-ill patient by altering some form of support and letting nature take its course. Passive euthanasia can involve turning off respirators, halting medications, discontinuing food and water so the patient dies because of dehydration or starvation. Passive euthanasia can include giving the patient large doses of morphine to control pain in spite of the likelihood that the painkiller can cause fatal respiratory problems.³
- **Voluntary Euthanasia-** It is voluntary when the euthanasia is practiced with the expressed want and consent of the patient. voluntary euthanasia is primarily concerned with the right to choice of the terminally ill patient who decides to finish his or her life, choice which serves his/her best interest and also that of everyone else.
- **Involuntary Euthanasia-** When the patient is killed without an expressed wish to this effect, it is a kind of involuntary euthanasia. It refers to cases whereby a competent patient's life is brought to an end against the wishes of that patient that oppose euthanasia; and would clearly amount to murder.

HISTORICAL BACKGROUND

Before discussing the legal position of euthanasia in India, let us try to find out its historical background. The right to die or end one's life is not something new or unknown to human civilization. In ancient Greece and Rome helping others die or putting them to death was considered permissible in some situations. For example, within the Greek city of Sparta new-

² *Aruna Ramchandra Shanbaug v. Union of India*, 2011(3) SCALE 298 : MANU/SC/0176/2011

³ *What is Passive Euthanasia?*, (Mar. 19, 2018, 03:09PM), <https://www.ndtv.com/india-news/what-is-passive-euthanasia-449280>.

borns with severe birth defects were put to death. Voluntary euthanasia for the elderly was an approved custom in many ancient societies. Several ancient texts together with Bible, the Koran and therefore the Rig-Veda mention self destruction or suicide. In India, the history of Vedic age is replete with various examples of suicides committed on religious grounds. The Mahabharata and the Ramayana are also full of instances of religious suicides. Most Hindus would say that a doctor should not accept a patient's request for euthanasia since this can cause the soul and body to be separated at an unnatural time. The result can damage the karma of both doctor and patient. Other Hindus believe that euthanasia cannot be allowed because it breaches the teaching of ahimsa.

There are two Hindu views on euthanasia: By helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations. By helping to end a life, even one filled with suffering, a person is disturbing the timing of the cycle of death and rebirth. This is a bad thing to do, and those involved in the euthanasia will take on the remaining karma of the patient. The same argument suggests that keeping a person artificially alive on a life-support machines would also be a bad thing to do. However, the use of a life-support machine as part of a temporary attempt at healing would not be a bad thing. The ideal death is a conscious death, and this means that palliative treatments will be a problem if they reduce mental alertness.

Muslims are against euthanasia. They believe that all human life is sacred because it is given by Allah, and that Allah chooses how long each person will live. Human beings should not interfere in this.

Christians are mostly against euthanasia. The arguments are usually based on the argument that life is a gift from God and that human beings are made in God's image. Birth and death are part of the life processes which God has created, so we should respect them. Therefore no human being has the authority to take the life of any innocent person, even if that person wants to die.

EUHANASIA 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 Dictionary⁷ 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. Euthanasia has not been defined in the religious books but since it is very close to concept of suicide, therefore it can be presumed that it is prohibited by all religions.

The Bombay High Court in Maruti Shripati Dubal case⁴ 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 is nothing but a homicide, whatever is the circumstance in which it is committed. In another case⁵ 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.

The concept of assisted suicide is also involved, which can be defined as providing an individual with the information, guidance and means to take his or her own life with the intention that it will be used for this purpose. Assisted suicide is distinguished from active euthanasia in the sense that the in the former, person must take deliberate steps to bring about his or her own death. Medical personnel may provide assistance, but the patient commits the act of suicide while in active euthanasia, it is the doctor who ends the life of the patient. When a doctor helps people to kill themselves it is called 'doctor assisted suicide'.

Our Supreme Court in Gian Kaur v. State of Punjab⁶, clearly held that euthanasia and assisted suicide are not lawful in our country. The court, however, referred to the principles laid down by the House of Lords in Airedale⁷ case, where the House of Lords accepted that withdrawal of life supporting systems on the basis of informed medical opinion, would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a normal death, where there is no longer any duty to prolong life.

LEGAL ASPECTS 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. 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 Punjab⁸ it is well settled that the "right to life" guaranteed by Article 21 of the Constitution does

⁴ Maruti Shripati Dubal v. State of Maharashtra; 1987 Cri.L.J 743 (Bomb)

⁵ Naresh Marotrao Sakhre v. Union of India; 1995 Cri.L.J 95 (Bomb)

⁶ 1996 (2) SCC 648 : AIR 1996 SC 946

⁷ Airdale NHS Trust v. Bland, 1993(1) All ER 821 (HL)

⁸ 1996 (2) SCC 648 : AIR 1996 SC 946

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 Gian Kaur’s case section 309 of Indian Penal Code has been held to be constitutionally valid but the time has come when it should be deleted by Parliament as it has become anachronistic. 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*⁹ 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.

ARUNA’S CASE – A NEW DIMENSION IN INDIAN LEGAL CONTEXT

Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India*¹⁰ opened the gateway for legalization of passive euthanasia. In this case a petition was filed before the Supreme Court for seeking permission for euthanasia for one Aruna Ramchandra Shanbaug as she is in a Persistent Vegetative State (P.V.S.) and virtually a dead person and has no state of awareness and her brain is virtually dead. Supreme Court established a committee for medical examination of the patient for ascertaining the issue. Lastly the Court dismissed the petition filed on behalf Shanbaug and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. The court also recommended to decriminalized attempt to suicide by erasing the punishment provided in Indian Penal Code. In this case question comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person. Then the Court held that it is the High Court under Article 226 of the Constitution which can grant approval for withdrawal of life support to such an incompetent person. The High Court under Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders. According to the instant case, when such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. After hearing the State and close relatives e.g. parents, spouse, brothers/sisters etc.

⁹ 1987 Cri.L.J 743 (Bom.)

¹⁰ 2011(3) SCALE 298 : MANU/SC/0176/2011

of the patient, and in their absence his/her next friend, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.¹¹

In the landmark judgement **Common Cause NGO vs Union of India** stating that human beings have the right to die with dignity, the Supreme Court allowed passive euthanasia, but made sure to set out strict guidelines that will govern when it is permitted. The top court also allowed an individual to draft a living will specifying that they not be put on life support if they slip into an incurable coma in the future. In a 'living will', a person can make a statement in advance that their life should not be prolonged by putting them on a ventilator or an artificial support system. The order was passed by a five-judge Constitution bench of Chief Justice (CJI) Dipak Misra and Justices A K Sikri, A M Khanwilkar, D Y Chandrachud and Ashok Bhushan. The apex court's order came on a plea by the NGO 'Common Cause'. Though the judges gave four separate opinions, all of them were unanimous that a 'living will' should be allowed, because an individual should not be allowed to continue suffering in a vegetative state when they don't wish to continue living. The top court today also set in place strict guidelines for carrying out the mandate of a 'living will'. The court did this by specifying who is authorised to give effect to it. The court also set in place strict guidelines for carrying out the mandate of a 'living will'. The court did this by specifying who is authorised to give the effect to it. The court also talked of involving a medical board to determine whether the patient in a vegetative state could be revived or not. The SC said it was aware of the pitfalls in giving effect to 'living wills', considering the property disputes relatives have. Therefore, the SC said the relatives of a patient who has not written a 'living will' can approach high courts asking for passive euthanasia.

The NGO had approached the court seeking a direction for the recognition of a 'living will' and contended that when a medical expert said that a person afflicted with terminal disease had reached a point of no return, then they should be given the right to refuse being put on life support. "How can a person be told that he/she does not have right to prevent torture on his body? Right to life includes right to die with dignity. A person cannot be forced to live on support of ventilator. Keeping a patient alive by artificial means against his/her wishes is an assault on his/her body," the petition said. The Centre, however, had told the court that the government had in principle decided to decriminalise attempt to suicide which at present is an offence punishable by up to one year jail term under Section 309 of Indian Penal Code.

CONCLUSION

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

¹¹https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-_AN_ANALYTICAL_STUDY

considered. It is not a common case. 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.