



JUDICIAL APPROACH TOWARDS EUTHANASIA IN INDIA

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ABSTRACT

Euthanasia is popularly known as 'Mercy Killing'. The word 'Euthanasia' consist of two Greek words i.e. 'eu' and 'thanatos'. 'Eu' means 'good' and 'thanatos' means 'death'. Thus, the literal meaning of the word 'euthanasia' is 'good death'. The definition of the term 'euthanasia' is given by the House of Lords Select Committee on Medical Ethics as "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering; an act which must inevitably terminate life",¹ The term 'euthanasia' is also defined by the Netherlands State Commission on Euthanasia as "the intentional termination of life by another at the explicit request of the person who dies".² Thus, the general meaning of the term 'euthanasia' is that the person requests or takes the help of another for killing himself in order to relieve himself from terminal illness or suffering.

KEYWORDS: Mercy Killing , good death , Medical Ethics.

INTRODUCTION

In India, the practice of suicide and euthanasia is not altogether unknown. In ancient India, there are some examples where the person was permitted to end his own life under certain circumstances. As per Hindu mythology Lord Rama took 'Jal Samadhi' in Sarayu river. Lord Buddha and Lord Mahavir also attained the death in similar way i.e. willing death. Vinoba Bhave also practiced the willing death by refusing to take the food. In modern age, however, law came into existence which prohibits the termination of one's own life and the life of another even on the request of the person who dies. There are several terminally ill patients who request Doctors to terminate their life and relieve them from unbearable pain and suffering but the Doctors are not allowed to terminate the life of their terminally ill patients even on the request of such patients. If the Doctors cause death of their terminally ill patients even on the request or with the consent of the person who dies, he will be liable for the offence either of Culpable Homicide or Murder and will be punished under Indian Penal Code.

However, Indian Judiciary has changed its approach towards the practice of euthanasia in India and allowed the practice of passive euthanasia in the case of Aruna Ramchandra Shanbaug v. Union of India³. Thus, now the Indian judiciary has recognized the necessity of euthanasia for terminally ill patients who want to die with dignity.

¹ House of Lords Select Committee o Medical Ethics 1994:1345-1346.

² Definition of euthanasia by the Netherland's State Commission on Euthanasia.

³ AIR 2011 SC 1290

CLASSIFICATION OF EUTHANASIA:

Euthanasia is termination of life of terminally ill patients who request for his own death for relieving himself from unbearable pain and agony. Euthanasia can be broadly classified into three heads depending upon the request or informed consent of the patients. We may discuss these three kinds of euthanasia as under:

- a) **Voluntary Euthanasia:** In the case of voluntary euthanasia the person who dies willingly makes request or consents for his or her death. In this case the person is capable to form decision and consent.
- b) **Non-Voluntary Euthanasia:** In this kind of euthanasia the person who dies is not capable to form a decision or consent due to some reasons such as infancy, unconsciousness or in coma and therefore a second person somehow intentionally contributes to the death of this kind of persons, it is known as non-voluntary euthanasia.
- c) **Involuntary Euthanasia:** In this kind of euthanasia the person who dies wishes to be kept alive but someone else elects to terminate the life of that person, it is known as involuntary euthanasia. It is not a good death but it is a homicide.

All these three kinds of euthanasia i.e. Voluntary Euthanasia, Non-Voluntary Euthanasia and Involuntary Euthanasia can be divided into two sub-heads i.e. Active Euthanasia and Passive Euthanasia.

- i. **Active Euthanasia:** Active euthanasia is direct intentional killing of patient either with the consent or without the consent of the patient by administering lethal injection. Thus, there may be Active Voluntary Euthanasia, Active Non-Voluntary Euthanasia and Active Involuntary Euthanasia.
- ii. **Passive Euthanasia:** Passive euthanasia is withholding or withdrawing the life supporting means or treatment and let the patient die. It is the decease which causes death of the patient and not the person who withholds or withdraws or consents to withhold or withdraw the life supporting means or treatment.

Thus, Euthanasia is divided mainly into three categories i.e. Voluntary, Non-Voluntary and Involuntary Euthanasia and all these three kinds can be further divided into two sub-categories i.e. Active and Passive Euthanasia.

EUTHANASIA AND LAW IN INDIA:

In India, euthanasia is undoubtedly illegal. There is no mention of the concept of euthanasia in any Indian Laws. Article 21 of the Indian Constitution says that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Thus, Article 21 protects the right to life and personal liberty of citizens from the executive and legislative action of the State. Thus, there is no clear mention of the concept of euthanasia or right to die in Article 21 of the Indian Constitution.

There is no mention of the concept of euthanasia in Indian Penal Code. Euthanasia is either: Murder, Culpable Homicide or Abetment to Suicide. In the case of euthanasia or mercy killing, there is an intention on the part of Doctor to kill the patient. If there is an intention to kill the patient then such a case clearly falls under Section 300 of the Indian Penal Code and the Doctor would be liable for punishment under Section 302 of Indian Penal Code for the offence of murder. Section 92 of Indian Penal Code provides for an exception to the offences under IPC but first proviso of the section provides that 'That the exception shall not extent to the intentional causing of death, or the attempting to cause death'. Thus, in case of non-voluntary or involuntary euthanasia, where the patient is unable to consent, is struck down by the first proviso of Sec. 92 of IPC. In case of voluntary euthanasia, where the patient consent to death, exception 5 of Sec. 300 of IPC would be applicable and the doctor would be liable for punishment under Sec. 304 of IPC for the offence of culpable homicide not amounting to murder.

Right to suicide is also not available in India. Section 309 of Indian Penal Code provides punishment for attempting to commit suicide. In the case of *Gain Kaur v. State of Punjab*,⁴ a five judge Constitutional Bench of Supreme Court held that 'right to life' guaranteed under Art. 21 of Indian Constitution does not include 'right to die' and held that Section 309 of IPC is constitutionally valid.

The Indian Medical Council Act, 1956 also deal with the issue of euthanasia. 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 team of doctors, life support system may be removed.⁵

In 241st Report of Law Commission of India,⁶ submitted in the year of 2012 on 'Passive Euthanasia – A Relook', made changes in the bill drafted by the Law Commission of India in the year of 2006 on 'The Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006. The Commission considers it desirable to enact a law on the line suggested by the Commission at the earliest so that the uncertainty in the practice of euthanasia for terminally ill patients may be removed and the procedure prescribed by the Supreme Court *Aruna Shanbaug's* case may be refined.

Recently, Ministry of Health and Family Welfare, Government of India, issued circular on 6th May, 2016, soliciting public opinion/comments on the Draft Bill i.e. 'The Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill as given by the Law Commission of India in its 241st Report. Provisions relating to passive euthanasia for terminally ill patients have been incorporated in this draft bill. Till today, however, law did not come into existence.

Thus, existing laws in India did not provide for the euthanasia even for the terminally ill patients who want to die and relieve themselves from the agony.

JUDICIAL APPROACH:

The person is clothed with some basic human rights. Right to life is one of the rights which he got from the moment of his birth. Right to life means right to live and that human being has right not to be killed by another human being. But the question arise that whether this 'right to life' include the 'right not to live' or 'right to die'? The right to life under Article 21 of the Indian Constitution has received the widest possible interpretation by the Indian Judiciary. While interpreting the scope of Article 21 of the Indian Constitution, the court has expressed the different opinions in different cases. The approach of Indian judiciary toward the 'right to life', 'right to die', right to suicide' and 'euthanasia' or 'mercy killing' may be discussed in the following cases.

*Francis Coralie v. Union Territory of Delhi*⁷

In this case the Supreme Court has observed that the 'Right to live' under Article 21 of the Indian Constitution is not restricted to mere animal existence. It means something more than just physical survival. Therefore, any state of life below the reasonable standard of human dignitary is not a life and hence liable to be extinguished. Moreover, to keep a person on persistent vegetative state (PVS) is not natural and it only enhances the agony and suffering of the person who is laboring under the incurable disease.

⁴ (1996)2 SCC 648

⁵ https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-AN_ANALYTICAL_STUDY

⁶ <http://lawcommissionofindia.nic.in/report241.pdf>

⁷ AIR 1978 SC 597

Maneka Gandhi v. Union of India⁸

In this case the Supreme Court has given a new dimension to Article 21 of the Indian Constitution. The court held that the 'right to life' is not merely confined to physical existence but it includes within its ambit the 'right to live with human dignity'.

State of Maharashtra v. Maruti Shripati Dubal⁹

In this case, the question whether the 'right to die' is included in Article 21 of the Constitution came for consideration for the first time before the Bombay High Court. The Bombay High Court held that the right to life guaranteed by Article 21 includes a right to die, and consequently the court struck down Section 309 of Indian Penal Code which provides punishment for attempt to commit suicide by a person as unconstitutional.

Chenna Jagadeeswar v. State of A. P.¹⁰

On the other hand, in this case, court held that the right to die is not a fundamental right within the meaning of Article 21 of Constitution and hence Section 309 of IPC is not unconstitutional.

P. Rathinam v. Union of India¹¹

In this case, a Division Bench of Supreme Court agreeing with the view of the Bombay High Court in Maruti Sripati Dubal's case and held that a person has a 'right to die' and declared Section 309 of IPC unconstitutional which makes 'attempt to commit suicide' a penal offence. The court held that Section 309 of 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.

However, the court rejected the plea that euthanasia (mercy killing) should be permitted by law. The judges said that they would not decide this point as *firstly* it is beyond the scope of the present petition and *secondly* also because in euthanasia a third person is involved. There is a distinction between an attempt of a person to take his own life and action of some others to bring to an end the life of a third person.

Gain Kaur v. State of Punjab¹²

In this case, a five judge Constitution Bench of the Supreme Court has overruled the P. Rathinam's case and held that 'right to life' under Art. 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'. 'Right to life' is a natural right embodied in Art. 21 but suicide is an unnatural termination or extinction of life and, incompatible and inconsistent with the concept of 'right to life'.

Naresh Marotrao Sakhare v. Union of India¹³

In this case also Justice Lodha affirmed that Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected.

⁸ AIR 1981 SC 746

⁹ 1987 Cr LJ 549

¹⁰ 1988 Cr LJ 549

¹¹ (1994) 3 SCC 394

¹² (1996) 2 SCC648

¹³ <https://indiankanoon.org/doc/1453319>

Nikhil Soni v. Union of India¹⁴

In this case, the High Court of Rajasthan has observed that the practice of 'Santhara' or 'Sallekhana' in Jain community is illegal and punishable under Sec. 309 of IPC. The Court has issued direction to the State authorities to stop the practice of 'Santhara' or 'Sallekhana' and to treat it as suicide punishable under Sec. 309 of IPC and its abetment by person under Sec. 306 of IPC.

Aruna Ramchandra Shanbaugh v. Union of India¹⁵

This case is a new dimension in India history. The Supreme Court in a Two Judges Bench decision laid down the law of passive euthanasia regarding the withdrawal of life support to a person in PVS or who was otherwise incompetent to take a decision in this connection and to continue the law of passive euthanasia laid down in this case till the law made by Parliament on the subject.

Common Cause (A Regd. Society) v. Union of India¹⁶

In this case, a landmark decision is given by the Supreme Court allowing 'passive euthanasia' and 'living will'. A Five-Judge Constitution Bench of Supreme Court has passed an order on 9th March, 2018, 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 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 made a statement in advance that their life should not be prolonged by putting them on a ventilator or an artificial support system.

Thus, we have discussed thoroughly the approach of Indian judiciary towards the right to life, right to die, suicide and euthanasia or mercy killing.

CONCLUSIONS:

Euthanasia is a highly controversial topic having ethical, social, philosophical, legal and religious concern. Though the termination of one's own life was permitted in certain circumstances in ancient India but termination of one's own life or assisting for termination of life to another is legally and ethically wrong in India. Existing laws in India do not permit anyone to terminate his own life or to assist another for termination of his own life. On the other hand such acts are made punishable by the law in India.

Judiciary, however, has played a very important role in democratic setup of India. Article 32 of the Indian Constitution gives it an exclusive right to review the law made by the parliament to uphold and strengthen the fundamental rights of individual. Under Article 32 of Indian Constitution, individuals can file Public Interest Litigation in Supreme Court to seek redressal for the violation of their fundamental rights. Thus, several petitions have been filed before High Court and Supreme Court by the individuals and NGO's claiming that 'right to die with dignity' is their fundamental right. Aruna Shanbaug's case is a milestone in the journey of euthanasia in India, in which SC, for the first time, has legalized the passive euthanasia for terminally ill patient. Recently, in the case of Common Cause (A Regd. Society) v. Union of India, SC has recognized that 'right to die with dignity' is fundamental right of an individual and allowed passive euthanasia and living will.

Though the SC has allowed the passive euthanasia and living will but there is no specific legislation dealing with the practice of euthanasia in India. Therefore, the bill pending before the parliament should be immediately passed with certain amendments like the proper safeguards and provision for active euthanasia in it which enables doctors to terminate the life of their patients with the consent of patients who are suffering from terminal illness and to relieve them from unbearable pain and agony and to die with dignity.

¹⁴ <https://indiankanoon.org>

¹⁵ AIR 2011 SC 1290

¹⁶ <https://timesofindia.indiatimes.com>

Every case, however, will have to be examined carefully taking into consideration the nature of decease, consent of patient and misuse of the provisions by the relatives and doctors.

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