

LAW RELATING TO EUTHANASIA IN INDIA: A CRITICAL STUDY

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ISSN 2277-7733

Volume 8 Issue 4,

March 2020

Abstract

Euthanasia and its procedure entail complicated issues regarding legal and procedural compliance in countries across the world. Every person has a right to determine what should be done with his/her person. It is unlawful to administer treatment on an adult who is conscious and of sound mind, without his consent. Patients with Permanent Vegetative State (PVS) and no hope of improvement cannot make decisions about treatment to be given to them. It is ultimately for the Court to decide, as to what is in the best interest of the patient. Every human being desires to live and enjoy the life till he dies. But sometimes a human being wishes to end his life in the manner he chooses. 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 a person's life by others on the request of the deceased, is called "euthanasia" or "mercy killing".

Keywords: *Euthanasia; legal rights; active euthanasia, passive euthanasia.*

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 supposed to have the right to choose between life and death. This right of a patient with terminal illness cannot be equated with an able bodied, sane person's right. Euthanasia is a controversial issue which encompasses the morals, values and beliefs of our society.

Rationale of the Study

The inquisitiveness of the author with respect to know about the conventions; to study the legislation in some countries relating to euthanasia; to study and understand the meaning of brain death; to study Euthanasia in the intentional premature termination of another person's life either by direct intervention (active euthanasia) or by withholding life-prolonging measures and resources (passive euthanasia), either at the express or implied request of that person (voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia) compelled to go ahead with this direction. A society, which functions within the framework of welfare state as envisaged in new Indian polity aiming at ensuring a minimum desirable standard of living to each and every member, is obliged to come forward to understand the true nature and scope of this.

Scope of the Study

The scope of this study is to know about the law relating to euthanasia in India, specifically in the context of permissible limit. The author tries to inquire into the existence and implementation of the law relating to euthanasia in India.

Research Methodology

This study will be partly Empirical and partly Doctrinal. In Doctrinal part, two types of reference will be used i.e. primary sources and secondary sources. Primary sources consist of statute and legislations and secondary sources are books, journals, articles. In Empirical part, the primary data will be obtained by field survey from common people to assess the knowledge of the common people with respect to the concept of euthanasia. The sample of 60 persons were taken up and interviewed. For empirical

study the researcher proposes to adopt field survey method for data collection from selected areas by means of interview through questionnaires. Basically the structured/close ended questionnaires were asked. Questionnaire method is helpful to collect data from large, diverse and widely scattered people. Accordingly 60 common people were interviewed through structured questionnaires, who were resident of Chinsurah sub-division under Hooghly District of West Bengal. The information has been collected on stratified random sampling method. The data obtained through the field survey is processed and presented in appropriate table for deriving conclusions. Simple statistical tools like percentages, is used for deriving inferences and conclusions.

Research Questions

The basic questions which the present study has raised for considerations are: What is the present position of euthanasia in India? Is the existing law adequate to handle the issue? What changes are needed to better handle the issue?

Hypothesis

The Hypothesis is as follows: Euthanasia is a conflict between Life and Death; The Indian Constitution is silent about euthanasia.; Voluntary death is taken as an attempt to suicide leading to criminal offence.; Passive euthanasia has legal recognition in India.; When someone unconscious or of unsound mind and is a terminally sick patient passive euthanasia can be lawfully granted without his consent.

Literature Review

In any research, literature review plays an important role. It is not only important but also essential when the author writes about any research report. It is a required homework that ought to have been done carefully. It is a fact finding task and initial step of any research. It depicts the pictures about what research has been done in the past of the topic chosen by the researcher. The main aspect of literature review is that it judge, sums up, compares and contrasts, connects various books, articles, other relevant sources that are very much related to the present research. It sharpens the focus of the researcher. A comprehensive review of relevant literature is essential as it place the research study in its proper perspective by narrating the amount of work already done in the related area. To build clarity of thought literature review plays a pivotal role. By identifying gaps in the existing literature, the researcher can justify the originality of the proposed research. The analytical features of a literature review might trace the intellectual progression of the field; identify the gaps exist till date. A good number of studies relevant for the present research have been studied.

Historical Background

It was practiced in ancient Greece and Rome.¹Euthanasia is not accepted in Judaism and Christian traditions. Protestantism supported suicide and euthanasia while it was an accepted practice during the Age of Enlightenment. In early 19thcentury this word came to be used in the sense of speeding up the process of dying and the destruction of so-called useless lives and today it is defined as deliberately ending the life of a person suffering from an incurable disease. Some are supportive of right to die. The argument

¹http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/216022/5/05_chapter%202.pdf

against euthanasia started in 1870.² Religions like Hinduism, Jainism and Buddhism recognize willful death. The western religion has always viewed euthanasia as dishonest exercise of divine privilege. Islam does not accept any kind of justification for the killing of person and thus euthanasia and suicide are prohibited in Islam.³

Euthanasia: Meaning

Euthanasia is a Greek word. It is a combination of two words eu-good and thanatos-death means "good death"⁴. Thus, 'Euthanasia' is defined as the intentional premature termination of another person's life either by direct intervention (active euthanasia) or by withholding life-prolonging measures and resources (passive euthanasia). It is either at the express or implied request of that person (voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia).⁵ According to J.S. Rajawat, Euthanasia is putting to death a person who because of disease or extremely old age or permanent helplessness or subject to rapid incurable degeneration and cannot have meaningful life.⁶ When euthanasia is practiced with the expressed desire of the patient it is called voluntary euthanasia. ⁷ Non voluntary euthanasia refers to ending the life of a person who is not mentally competent to make an informed decision about dying, such as a comatose patient. Instance can be enumerated, like severe cases of accident where the patient loses consciousness and goes into coma. In these cases, it is often the family members, who make the ultimate decision.⁸ Involuntary euthanasia is euthanasia against someone's wish and is often considered as murder.⁹

Active euthanasia involves painlessly putting individuals to death for merciful reasons.¹⁰ Euthanasia is passive when death is caused by turning off the life supporting systems. Withdrawing life supporting devices from a terminally ill patient which leads eventually to death in normal course is a recognized norm. In "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him¹¹.

²O. Ruth Russell—*Freedom to die – Moral and legal aspect of Euthanasia*" (1997) Revised Addition (p.65-67)

³Tanusree Chakraborty made a Dissertation on Euthansis and submitted to the Dept. of Law, the University of Burdwan in 2017.

⁴Lewy G. 1. Assisted suicide in US and Europe. New York: Oxford University Press, Inc; 2011.

⁵AngkinaSaikia, Euthanasia 'Is It Right To Kill' or 'Right To Die', Cr IJ 356 (2012).

⁶J.S. Rajawat, Euthanasia, Cr 14 321 (2010).

⁷Dr. Parikh, C.K. (2006). Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology. 6th Edition, Page 1.55. Ne Delhi, CBS Publishers & Distributors.

⁸Ibid.

⁹This kind of euthanasia is usually considered wrong by both sides hence rarely discussed. In this case, the patient has capacity to decide and consent, but does not choose death, and the same is administered. It is quite unethical and sounds barbaric. During World War II, the Nazi Germany conducted such deaths in gas chambers involving people who were physically incapable or mentally retarded.

¹⁰A doctor administers lethal dose of medication to a patient. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide). There are four types of euthanasia: Voluntary and direct, Voluntary but indirect, direct but involuntary, and indirect and involuntary. Voluntary and direct euthanasia is chosen and carried out by the patient. Voluntary but indirect euthanasia is chosen in advance. Direct but involuntary euthanasia is done for the patient without his or her consent. Indirect and involuntary euthanasia occurs when a hospital decides that it is time to remove life support.

¹¹Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298; MANU/SC/0176/2011.

Indian Law on Euthanasia

Section 87 of the Indian Penal Code clearly states that consent cannot be pleaded as a defense in case where the consent is given to cause death or grievous hurt. There is punishment for attempting suicide as mentioned Section 309 of the Indian Penal Code. A doctor administers lethal dose of medication to a patient. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide). Patients are allowed to choose passive euthanasia but cannot choose active euthanasia. Passive euthanasia is when nothing can be done to prevent death. Making euthanasia legal is a bold step for a nation like us. In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia there is an intention on the part of the doctor to end the life of the patient, such cases would clearly fall under clause (1) of Section 300 of the Indian Penal Code, 1860 and treated as murder. However, if there is a valid consent of the deceased then Exception 5 to the said Section would be attracted and the doctor would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia 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. But now Union Government has decided to decriminalize section 309 IPC by deleting it from the Indian Penal Code. 18 state governments and 4 union territories have supported the recommendation of the Law Commission of India. We can say that is a welcoming step, with respect to honoring the wishes of the people concerned.

Role of Judiciary

The Bombay High Court in *Maruti ShripatiDubal's* case¹² 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 other human agencies to end the life. Mercy killing therefore cannot be considered on the same footing as on homicide, whatever is the circumstance in which it is committed. In Naresh Marotrao Sakhre's case¹³ 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 life 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. The Supreme Court in *Gian Kaur v. State of Punjab*¹⁴, clearly held that euthanasia and assisted suicide are not lawful in our country. In *P. Rathinam's* case¹⁵, 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.

¹²Maruti ShripatiDubal v. State of Maharashtra; 1987 Cri.L.J 743 (Bomb)

¹³Naresh Marotrao Sakhre v. Union of India; 1995 Cri.L.J 95 (Bomb)

¹⁴1996 SCC (2) 648

¹⁵P. Rathinam vs. Union of India and Anr., 1994 SCC 394

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The question again came up in *Gian Kaur v. State of Punjab*¹⁶ 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, 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. In *Chenna Jagadesswar v. State of Andhra Pradesh*,¹⁷ the Andhra Pradesh High Court held that right to die is not a fundamental right under article 21 of the Constitution. In *Aruna Shanbaug*,¹⁸ the Hon'ble Supreme Court, in its landmark judgment, allowed passive euthanasia in India.

International Aspect

Although it is a crime in most Australian States to assist euthanasia, prosecutions have been rare. In the year 1999, Euthanasia was legalized in Albania. Euthanasia was made legal in the year 2002, in Belgian. Netherlands is the first country in the world to legalize both euthanasia and assisted suicide in 2002. In Canada, patients have the rights to refuse life sustaining treatments but they do not have the right to demand euthanasia or assisted suicide. In USA, 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 representatives. In England, the House of Lords have now settled that a person has a right to refuse life sustaining treatment as part of his rights of autonomy and self-determination. In Switzerland, euthanasia is illegal but physician assisted suicide has been made legal.¹⁹

Data Analysis through Table²⁰

Table 1: Opinion given by common people at Chinsurah Sub-division, Hooghly District

| Question Number | Questions put to the Respondents (Total No. of Respondents: 60) | Answers in % | |
|-----------------|--|--------------|----|
| | | YES | NO |
| 1. | Is the existing law adequate to handle the issue of euthanasia? | 35 | 65 |
| 2. | Do you think that euthanasia is a conflict between life and death? | 50 | 50 |
| 3. | Does our Constitution is silent about euthanasia? | 60 | 40 |
| 4. | Do you know about voluntary death? | 30 | 70 |
| 5. | Do you know that passive euthanasia has legal recognition in India/ | 25 | 75 |
| 6. | When someone is a terminally sick, passive euthanasia can be lawfully granted without his consent? | 30 | 70 |
| 7. | Do you think that a special law of euthanasia should be enacted? | 25 | 75 |

¹⁶1996 SCC (2) 648

¹⁷1988 Cr LJ 549

¹⁸*Aruna Ramchandra Shanbaug v. Union of India*, AIR 2011 SC 1290.

¹⁹Supra note 3 at Pp. 52-54.

²⁰Field survey by the author.

| No. Of Male Respondent: 30 | | No. Of Female Respondent: 30 | |
|----------------------------|-----------------------------|------------------------------|-----------------------------|
| Age wise-- Male | From 21-30 years: 08 | Age wise-- Female | From 21-30 years: 07 |
| | From 31-40 years: 09 | | From 31-40 years: 11 |
| | From 41-50 years: 10 | | From 41-50 years: 07 |
| | From 50 and above years: 03 | | From 50 and above years: 05 |

Conclusion and Suggestions

At present there is no specific law exclusively dealing with euthanasia. However a consideration can be given for enacting a law for carrying out euthanasia. But it poses practical problems. Euthanasia is a process which cannot be applied generally. Every case is different and thus requires different standards. The conditions and requirements for carrying out euthanasia are not watertight compartments. It is also important to mention that majority of the Hypothesis which the author has framed, have been proved. Euthanasia is not a common situation but quite a rare condition. What India needs is the maturity to handle the issue and understanding its pros and cons thoroughly. The requirement of having legislation on euthanasia depends on the intensity of number of patients with terminal illness and the gravity of such situations. It is also feared that placing the discretion in the hands of the doctor would be placing too much power in his hands and he may misuse it. Recently the judgment given by 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. However the author suggests that at present there is no need to enact an exclusive law dealing with euthanasia. It is also suggested that the State should widely circulate the decision given by the Supreme Court in Aruna Ramchandra case.

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