



EUTHANASIA AND MEDICAL ETHICS: AN ANALYSIS

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ABSTRACT The term Euthanasia has triggered global controversy and invites debate both in the field of 'medicine' and 'law'. The right to have a dignified death puts medical ethics in a fix. Euthanasia involves a paradoxical concern; as a doctor who is essentially meant to protect the life of a patient is expected to 'terminate' his life by removing the life support or inject a lethal injection in order to execute euthanasia and the very act of removal of the life support though may be with the consent, violates his fundamental duty. Perhaps the dilemma of "Medical Ethics" starts with here, whether to perform a particular act or not? Euthanasia as an act done voluntarily by both parties (doctor and patient) with consent, so it does not go against medical ethics.

KEYWORDS : Euthanasia, Termination, Medical Ethics, Voluntarily

INTRODUCTION

"No one is truly free to live until one is free to die"

(Martin Luther King)

This thought provoking line of Martin Luther King a little before his assassination must have had a point in favor of euthanasia. The right to have a dignified death puts medical ethics in a fix. The doctor who is ethically bound to save the life of the patient, does he not equally duty bound to release him from all pain and suffering? Both duties are contradictory to one another and this contrast puts the medical profession in a dilemma of 'what to do' and 'what ought to be done'. A patient is not a subject matter to experiment with new medical technology but a human being with a right to live with dignity which shall include his right to refuse the medical treatment and even his right to have a dignified death.

While determining the medical ethics the greater benefit of the patient shall not be ignored. The medicine may prolong the life span of a terminally ill patient but it cannot take away the pain and suffering of the patient. When all hope is gone and death is obvious than why not a peaceful death? In such situation turning off the respirator or injects a lethal injection is certainly not considered as an offence or violation of any medical conduct rather a step forward to new dimension of medical ethics.

Euthanasia and Medical Ethics Conflict

When any patient who has been terminally ill and wishes to go for euthanasia, the question comes, is it the doctor who administers lethal drug or injection to kill the patient? The dilemma of the doctor here is that, whether to prolong the life of the patient who remains in a vegetative state or to withdraw the life support and provide him a dignified death.

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, explicitly prohibits doctors to practice euthanasia. According to it, "Practicing euthanasia shall constitute unethical conduct. However, on specific occasion, the question of withdrawing supporting devices to sustain cardiopulmonary 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".

Indian Medical Council regulation though not support euthanasia but it keeps its door open for some specific/special occasion and the scope for special occasion gives sufficient hint that in near future euthanasia may get medical acknowledgement.

Medical profession has been considered as one of the noblest profession and demands ethics, morality and integrity. Under the Hippocratic Oath, doctors take the pledge to save the life of the patients and release him/her from suffering and pain. This obligation of the doctors leads to the first research problem

"On the contrary is it not humane or moral responsibility of the doctors to release a terminally ill patient from his suffering by way of euthanasia etc"

Medical profession includes both 'protection of life' and 'release from pain and suffering'. Life may be saved by life support but what about the pain and suffering one person goes through? Can any medical equipment reduce the pain? Certainly not!! When a patient in a vegetative state and there is no possibility of his recovery than is it not the moral responsibility of the doctor to go for euthanasia and release the patient from it and allow him to die a dignified death?

Consent under Medical Profession and Euthanasia

Consent is a good defense in law and more particularly in criminal law. So when it comes to euthanasia, the pertinent question arises why consent could not be a defense in favor of doctors as there is the consent of the patient to exercise the same. The consent aspects lead to many complex issues as it revolves around the life and death of a particular patient. When we discuss consent as a defense, Section 300, exception 5 of IPC may be referred as it deals with causing death with the consent of the person who gives it.

According to it, "Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years suffers death or takes the risk of death with his own consent".

The language of Section 300, exception 5 is very much clear when it states that the consent must be without any condition. Here, the burden of proof definitely on the person who claims the defense of consent that the person did so with his full knowledge that he may die. Thus, it may be interpreted as a protective umbrella for the doctors who may exercise euthanasia in case of an adult and competent patient who gives his consent voluntarily and with full knowledge about the consequence. But the consent must not be given out of any provocation or instigation. Here, "Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006 may be referred where it is stated about the terminally ill patients who wishes to have a natural death without any medical life support and artificial supply of food.

The consent of a competent patient gives rise to two more questions. The first one is that the adult and competent patient who denies any further medical treatment comes under "attempting suicide" as per sec 309 IPC and the second one, where the doctors obey an adult and competent patient's request and stop his/her treatment, does it be treated as "abatement of suicide"? So far the first question is concerned, it will certainly not be considered as attempting suicide. Here, the patient is not hanging himself nor cutting his nerve nor taking poison. Simply he is denying medical treatment to prolong his life span which with all possibilities adds suffering to his life. The act of refusal includes his right to die with dignity. Further the second one, which puts the doctor's integrity into a question mark on abatement of suicide under Section 306, IPC, also an answer in negative. When a doctor does not force a patient to go for medical treatment rather follows the instruction of a patient for his (patient's) best interest only cannot be held guilty for abatement of suicide. Rather, through the omission (providing medical treatment forcefully) he protects the patient's right

to personal liberty and privacy as well.

Further, if Sec 299 of IPC (Culpable homicide not amounting to murder) will be considered than also a doctor cannot be held guilty as there is lack of intention. Other provisions of IPC such as Section 76, 81 and 88 are sufficient enough to protect the doctors from held being guilty. Section 76 may be invoked when it comes to passive euthanasia. When a doctor withholds medical treatment as per the request of a competent patient, doctor is bound with such refusal and the doctor's action will fall into the exception, i.e. Section 79 if the said act is "justified by law". Interestingly this section is applicable not only in case of competent patients but incompetent patients as well.

The next important protection comes under Section 81 which may be exercised in relation to decisions of termination of life, which covers not only passive euthanasia but active euthanasia too as it permits to cause harm to avoid any greater harm. But, here proof of several questions of facts have been involved despite of no criminal intention. If the protection under all these sections will be compared than under Section 76 and 79 doctor's stand is more advantageous than Section 81.

Constitution and Euthanasia

Art 21 of Indian Constitution ensures every individual the 'right to live' and the very word 'live' is not merely confined to physical existence but it includes within its ambit the right to live with zest and dignity. In the leading case of Francis Coralie v. Union Territory of Delhi, the Court highlighted that the right to live is not restricted to mere animal existence. It indicates something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity" and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. So, with such interpretation of 'live', a person (patient) who has been in a vegetative state, who is not in a position to differentiate "life and death", how far is it justified to treat him as a 'living person'? He may be alive in a mechanical way with the support of some medical equipment but practically not in 'live'. Moreover, if we are granted with dignified life and as life leads to death than certainly we are having the right of a 'dignified death'.

With reference to Article 21 which ensures 'Personal Liberty' too may include that everyone is at his liberty to act in any manner unless his action is detrimental to others. So, an incurably ill patient must allow to think whether to continue his life or ends his life. Thus, not permitting for a voluntary death (euthanasia) is a restriction on exercising his right to personal liberty.

Judiciary on Right to Death

There are some remarkable cases where the Apex Court and various High Courts have explored this controversial topic, i.e. euthanasia which may include 'Right to die'. In State of Maharashtra v. Maruty Sripati Dubal such a question has been raised for the first time that whether 'right to life' includes 'right to death' or not. The High Court of Bombay said that the 'right to life' guaranteed under Art 21 includes 'right to death' and consequently Sec 309, IPC has been struck down and declared as unconstitutional which provides punishment for attempting to commit suicide by a person.

Thereafter, a Division Bench of the honourable Supreme Court in P. Rathinam v. Union of India expressed a similar view with that of Bombay High Court and declared that a person has a right to death. The court here analyzed that under Art 21 of the Constitution 'right to live with dignity' includes 'right not to live' which signifies termination of life. But, surprisingly the plea of 'euthanasia' (mercy killing) has been turned down by the said Bench.

In the case of Gian Kaur v. State of Punjab the verdict of P. Rathinam's case has been overruled and said that 'right to die' or 'right to be killed' shall not be included under Art 21. While delivering the unanimous judgment, it has been observed by Justice J.S. Verma, "Any aspect of life which makes it dignified may be read into Art 21 of the Constitution but not that which extinguishes it and is, therefore inconsistent with the continued existence of life resulting in effacing the right itself"

With reference to the protagonist's view of euthanasia, remains in a vegetative state continuously was not beneficial for the terminally ill patient; Justice J.S. Verma held it not related to the principle of "sanctity of life" or the "right to live with dignity. The judgment of Bombay High Court and P.Rathiram v. Union of India's as well, have been set aside and held "right to live does not include right to die".

CONCLUSION

It is high time now to come out from the conventional interpretation and place euthanasia within the orbit of medical ethics. Here, lines of Tristram Engelhardt may be referred as he stated that, there is no ethical difference between killing and letting die as long as mutual consent of the involved parties is obtained. With the change of culture and social norms, it is expected to accept euthanasia, physician assisted suicide as public policy. Professional autonomy must not outweigh the individual autonomy.

Euthanasia must be considered as a boon to relief from unbearable pain and sufferings. In global perspective in many countries, Euthanasia has been legalized but in India, active euthanasia is yet to get the legal stamp though in Aruna Shanbug case passive euthanasia has been granted by the Supreme Court with some guidelines.

Let set aside the conflict of ethics and morality and value human life and extend it to a dignified death.

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