



## 'EUTHANASIA': AN ACT OF PERFORMANCE UNDER THE PURVIEW OF ETHICAL AND CONSTITUTIONAL ASPECTS

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### ABSTRACT

'Euthanasia' is the most debatable issue and has been a burning topic all over the world. The word 'Euthanasia' has been derived from Greek word 'Eu' means 'goodly' or 'well' and 'Thanatos' means 'death'. The lexicographical meaning of the word 'Euthanasia' is 'mercy killing' in which the intentional termination of the life of a terminally ill person is carried out by the assistance of another person. It is a process of carrying out a gentle and easy death of a terminally ill person when his death is desired to free him from his terribly painful life. 'Euthanasia' generally can happen in two ways – **i. Passive Euthanasia and ii. Active Euthanasia.** In Passive Euthanasia, the treating doctors withdraw life-support machines or withhold any further treatment to shorten the life of a dying person. In Active Euthanasia, the treating doctors apply overdose of painkillers or some other medications to quicken the death of a dying person. Some countries have legalized passive and some have legalized active euthanasia under certain legal guidelines. In this article, the subject of euthanasia has primarily been discussed from the perspective of its righteousness under the constitutional laws and its enshrinement. I also intended for a debate on the preference of active euthanasia over the passive euthanasia for quickening the death of a terminally ill person.

**KEYWORDS :** Active euthanasia, Passive euthanasia, Voluntary euthanasia, Mercy Killing, Doctrine.

There has been much debate in recent years all over the world over issues concerning the end of life, such as 'Suicide' and 'Euthanasia'- the assisted suicide. Euthanasia became a matter of general debate in the late nineteenth century for the first time. The Public became conscious and felt the necessity to achieve a good death by allowing the terminally ill patient to die with less pain. The preoccupation of medicine in the 1950s to 1970s was to extend life at all costs (Van Delden 1988). However, both the concepts of patient's rights and liberty have widely highlighted the terminally ill person's right to decide the time and the way by which the person should die (Heintz, 1994). The word 'Euthanasia' which is Greek in origin appears during Hellenistic period. "Greek word- 'eu' means "goodly or well and 'thanatos' means death."<sup>1</sup> (Ref: Keown John, 1997, p.148) It is all about willing self-sacrifice or 'intended death' or 'death brought about by an action of one's own'. It is more helpfully be defined as the intentional killing by act or omission of a person whose life is felt to be not worth living. Euthanasia is usually considered as 'mercy killing' and is applied to situations where a patient is suffering severely or is enduring a terminal illness. This is attributable to the patients only who are terminally ill.

'Suicide' is killing or harming deliberately of a person's own life. It is derived from the Latin word 'Suicidium' which means 'the act of taking one's own life'. This is very different from euthanasia where in the case of euthanasia a group of persons take active parts to cause the death of a person. Suicide is a complex issue involving numerous factors and is not attributable to only a single cause. Suicide is such an act where the killer and the killed person are same. When a person kills himself or herself for the sake of his or her self-motivation, then this is generally called suicide. This kind of killer cannot be punished by the constitutional law unless the act of killing fails and the killer survives. Again there is no unanimous conclusion about the righteousness of this act in the perspective of morality or constitutional aspect.

#### Is suicide an offensive act in the point of view of morality? generally there are two kinds of suicide:

- a person who kills himself or herself intentionally without the help of another person and
- a person who kills himself or herself with the help of others.

The suicide assisted by others is not considered as an offence; rather this is considered as a dignified act whereas the suicide done unaccompanied or unassisted is considered as an offence and the question about its righteousness and morality arises. But the view of Scottish philosopher David Hume in the context of unassisted suicide cannot be overlooked. "Suicide is the act of intentionally causing one's own death because of depression, bipolar disorder, schizophrenia, personality disorder and the substance abuse like alcoholism, use of benzodiazepines."<sup>2</sup> (2.Ref: Hume, 1986, p.21). Some suicides are impulsive acts due to stress such as financial difficulties, troubles with relationships or bullying etc. A person when passes through a severe painful dishonoured squalid life and finds no any means to overcome this crisis, then will this be justifiable to live in such wretchedness or

should this be counted as an offence if that person commits a suicide? Likewise, will this be appropriate to remain confined in a burning house or should he or she take a proper measure to come out of the deadly house? In this context, there is a proverb saying – "Leave the world as you might leave a smoky room."<sup>3</sup> (3.Ref: Singer, 1993, p.83). The German philosopher Schopenhauer has however accepted the righteousness of suicide and has not considered this as an offence.

Euthanasia is neither a 'killing' nor a 'suicide'— this has been discussed here in furtherance. Euthanasia or mercy killing is a deliberate act that causes death undertaken by one person with the primary intention of ending of life of another person in order to relieve that person from his sufferings. This act cannot be considered as an offence because the decision taken for this act is neither whimsical nor forcible one; rather when every measure for his recovery fails and any chances of survival proves futile and the ailing person suffers an acute painful life, then a group of another person consisting of doctors, relatives of the ailing person lawfully and constitutionally come to a conclusion to conduct an act of euthanasia.

There are various forms in euthanasia and there are also different sets of rights and wrongs in each of the forms. Euthanasia can happen in two ways:

#### (i) Passive Euthanasia and (ii) Active Euthanasia:

Passive euthanasia is usually done by withdrawing medical treatment by the doctor with the deliberate intention of causing the patient's death fairly soon to make the patient free from his painful, wretched life. The Supreme Court of India legalized passive euthanasia on 9<sup>th</sup> March, 2018 which states that a person, who is suffering from a serious kind of terminal illness may draft an advance living will. An advance living will, a written document through which a serious terminally ill person can give his or her clear instructions in advance about how long the medical treatment to be administered and when this limited stipulated time as desired by the patient is over; the act of passive euthanasia can be performed by doctors with the help of withdrawal of entire medicinal treatments along with the withdrawal of all medical life – support appliances. For example: Aruna Ramchandra Shanbaug who was paralyzed because of severe brain damage and was in a vegetative state for 42 years after a sexual assault in Mumbai, India, was granted passive euthanasia by the Supreme Court of India.

On the other hand, active euthanasia is usually done by taking specific steps to cause the patient's instant death, such as by injecting the patient with overdose painkillers or sleeping pills. The countries like America, England, Australia, India etc have recognized passive euthanasia as legal but active euthanasia has not been recognized as legal. But, the question is- if the passive euthanasia with the support of doctors and with its various medical aspects has been legalized then why the active euthanasia will not be recognized as legal? A patient who is dying of incurable and painful disease and is certain to die within a few days, even if all the possible treatment is continued, does not want to live any longer and so he asks the doctor for an end to his life and with the

consent of his family, active euthanasia should be preferred to the passive euthanasia to make the patient free from his or her terrible agony; rather it would be wrong to prolong his or her suffering needlessly.

#### **(ii) Voluntary euthanasia:**

Voluntary euthanasia is brought under consideration only when a terminally ill person requests for his/her death. This includes the cases by refusal of medical treatment or by withdrawing life support medical - appliances or by administering life – taking drugs for ending a terminally ill person's life in a painless manner.

There are four general arguments against the voluntary euthanasia – (1) According to utilitarianism of Bentham and Mill – the act of killing a self-conscious death-fearing person may cause a harmful impact to other living persons. (2) According to preferential utilitarianism 'living is always the most pleasurable and preferable to morality', - so killing of such person can cause a harmful impression to a self-conscious and judgmental person; so it is immoral to kill a judgmental person. (3) If a person is having a future – planning and if the person owns the right to execute his or her future planning, then the person has got the right to live and it is unethical to deprive him or her from his or her rights. (4) It is unethical to kill a person who is self– sustaining and independent.

Peter Singer has refuted these arguments – (1) The argument of Bentham and Mill is not applicable in the context of voluntary euthanasia. A miserable suffering person does not fear to die rather the person fears his or her miserable pain and suffering. A miserably suffering person only when gives his or her consent for killing himself or herself then only voluntary euthanasia will be allowed or otherwise he or she cannot be killed by any means. Voluntary Euthanasia can never be detrimental to a living person's mind when it is applied on a miserably suffering dying person; rather the voluntary euthanasia diminishes the fear of death of that person. Death is inevitable but how does it occur is unknown to all. It gives a great deal of solace if the path of self- killing is open to get rid of a tremendous painful life. (2) The preferential utilitarianism also does not oppose the voluntary euthanasia. If a person's free will is valuable (according to preferential utilitarianism) then death is just as valuable to a dying person as living is to a living person. If the wish of a dying person is neglected then his or her right to die is restrained. Therefore, it is not immoral to kill a dying person. (3) If it is agreed with the right of living of a living person for the fulfilment of his or her future planning, then it must be agreed with right of that person to give up that right as well. (4) A person is called to be self – sustaining and independent when he or she can take every decision by himself or herself without being influenced by another person. Therefore, killing in some specific case, is not unjustifiable for honouring the independent will. So, voluntary euthanasia is considered as ethical for some specific cases in spite of killing being an unethical act. So, many are favouring to make voluntary euthanasia as a lawful act.

#### **(iii) Involuntary euthanasia:**

Involuntary euthanasia occurs when the person wants to live but is killed anyway. The patient's life is ended without the patient's knowledge and consent. This is constructed with voluntary euthanasia (euthanasia performed with the patient's consent) and non-voluntary euthanasia (when the patients is unable to give informed consent, like when a patient is comatose or a child). For an example- a soldier has his stomach blown open and screaming in agony, he begs the army doctor to save his life. The doctor knows that he will die in ten minutes whatever it happens. As the doctor has no pain killing drugs with him and there is no means to remove the soldier and above all, he is approaching death with unbearable pain, the doctor decides to spare the soldier further pain and shoots him dead,

#### **(iv) Non-voluntary euthanasia:**

Non-voluntary euthanasia occurs when the persons cannot make a decision or cannot make their wishes. This includes cases where the person is in coma; the person is too young (e.g. a baby); the person is senile; the person is mentally retarded to a very severe extent; the person is severely brain damaged and disturbed in such a way that he should be protected from himself.

**Example: 1.** The son of Lui Riaoli was living with dementia of the nervous system and was completely unable to walk, speak and even to do any body movement. The deadly boy suffered for long five years and there after Lui killed him with chloroform.

**Example: – 2.** It is learnt from the documents of D.C. General

Hospital, Washington that a maid Rita Green was in coma for 39 years. Apart from this, it is learnt from different hospitals of U.S.A. that about 500 to 10,000 people were in coma and lived their lives as trees and plants for years. So, where the life is so miserable and meaningless, non – voluntary euthanasia can never be unjustified there.

#### **(v) Indirect Euthanasia:**

This means providing treatment (usually to reduce pain), that has the side effect of speeding the patient's death. Since the primary intention is not to kill but it quickens the patient's death.

#### **(vi) Assisted suicide:**

This usually refers to cases where the person who is going to die needs help to kill himself and asks for it. It may be like getting drugs for the person and putting those drugs within his reach.

Again, there is a popular term called "physician assisted suicide" and this is often used to describe the real sense of euthanasia. The physician carries out this act that causes death. When an ailing person passes through a wretched physiological condition, even he or she ceases the slightest body-movement and an unbearable pain persists all along the rest of life making it so miserable and there is no way or measure to cure the person; and when the person is not even able to go for self-killing, then the assistance of others is sought for conducting the act of euthanasia and the doctor along with others lawfully and constitutionally conduct this act to give relief to the patient from his or her incurable acute painful sufferings.

According to Lamerton's opinion, although the etymological meaning of euthanasia goodly or well death, but now this means mercy killing. It is needless to say that the speciality of euthanasia is different from mere act of killing or 'taking of life' (4. Ref: Singer, 1993, p.83). There has been much debate and arguments about the moral doctrine of active and passive euthanasia. James Rachels, the distinguished American moral philosopher has directly supported the active euthanasia. To begin with a familiar type of situation, James Rachels says: "A patient who is dying of incurable cancer of throat is in terrible pain, which can no longer be satisfactorily alleviated. He is certain to die within a few days, even if present treatment is continued, but he does not want to go on living for those days since the pain is unbearable. So, he asks the doctor for an end to it, and his family joins in the request.

Suppose the doctor agrees to withhold treatment, as the conventional doctrine suggests that although the passive euthanasia sometimes is permissible, the active euthanasia is always forbidden. The justification for his doing so is that the patient is in terrible agony, and since the patient is going to die anyway, it would be wrong to prolong the patient's sufferings needlessly. If one simply withdraws treatment, it may take the patient longer to die, and so he may suffer more than if direct action were taken by injecting a lethal injection to the patient. This fact provides strong reason for thinking about the decision not to prolong the patient's agony and so the active euthanasia is actually preferable to passive euthanasia, rather than the reverse." (5. Ref: Rachels, 1986, p.35).

James Rachels has argued that active euthanasia is not in itself any worse than letting die. Again, in this regard, Rachels has analysed the role of doctors in both active & passive euthanasia. According to him— "The important difference between active and passive euthanasia is that, in passive euthanasia, the doctor does not do anything to bring about the patient's death. The doctor does nothing, and the patient dies of whatever ills already afflict him. In active euthanasia, however, the doctor does something to bring about the patient's death; he kills him. The doctor who gives the patient with cancer a lethal injection has himself caused his patient's death; where as if he merely ceases treatment, the cancer is the cause of the death." (6. Ref: Rachels, 1986, p.36).

#### **There are various arguments against euthanasia—**

- (i) In the case of suicide, a person ends his own life by himself but in the case of active euthanasia, the responsibility is bestowed on a doctor. A doctor may feel guilty, disappointment and sad for this act of active euthanasia. So any physician may consistently refuse this act.
- (ii) A patient who suffers into terrible, intractable and incurable pain requests doctors to end his life. Now, can this kind of request be considered as logical? If the patient goes under palliative treatment, then how can one say that the patient would not change his desire or intention for his death!

- (iii) In case of euthanasia, the cause of death depends on the act of another person, the patient cannot do this for himself. In that case, another person does this, which is similar to the killing because no mercy or kindness or sympathy brings any change to the motive of killing.
- (iv) In case of euthanasia, the value of life-principle is summarily violated because the act of killing is just killing. Euthanasia has a psychological effect on people & Society like suicide. People who are prone to doing suicide also goes with the act of mercy killing. If society will accept it as a normal practice, it can influence more people to consider euthanasia and this also can be bad if the sickness was wrongly diagnosed but the patient was already euthanized.
- (v) If the consent or desire of the patient is not known and if another person have to take the decision of euthanasia, then who will take the sole responsibility to allow the act of euthanasia: and if it is so then the question is - has he any moral or constitutional right for doing so?
- (vi) Doctors take the Hippocratic Oath, which means that they are obliged to preserve or save life wherever it is possible.
- (vii) Religious believe in sanctity of life, which means all life is sacred and therefore should be kept at all costs.
- (viii) By accepting euthanasia, it is meant that people who are disabled and ill lives are burden for family and society and worthless than normal people.
- (ix) It gives too much power and access to doctors, they may misuse this under the umbrella of Euthanasia.
- (x) Allowing euthanasia puts psychological pressure on ailing people to end their lives so that they are no longer burden to their families: they may also feel moral pressure to free up the medical supports and resources. If euthanasia is not allowed there will not be any such problem.

Although on 9<sup>th</sup> March, 2018, Supreme Court of India has legalized Passive euthanasia which is related to terminally ill person and honoured the 'right to die with dignity', but as the terminal ill patient is a human being and there is no any alternative of life, so there are some sort of anxieties, which is quite natural, against this legalization which are as follows:

- i. The pain of the terminally ill person should be assessed and measured properly.
- ii. As euthanasia is an irreversible process so the living-will of the terminally ill person should be examined and should be justified properly before the implementation of euthanasia.
- iii. The hospitals, especially, the private hospitals may charge huge amount of extra money for it on the plea of the verdict given by Supreme Court for the implementation of euthanasia for the terminally ill person. Again the question arises about the disbursement of huge amounts of bills through the medical-claim policies as it is not at all a normal death.
- iv. The permission for euthanasia given by Supreme Court in view of 'right to die with dignity' is contrary to the constitution that says about 'right to live' as one of the fundamental rights.
- v. There is a possibility of misusing euthanasia by family members or relatives for inheriting the property of the patient by making the patient feel 'euthanasia is the only solution'. It is a slippery slope which leads to the killing of people who are thought undesirable and burden.

Although there are many disagreements about the rights of euthanasia, still the necessity of this act, now-a-days, has been felt deeply not only because of the unbearable suffering of terminal patient before death but also for family members and friends.

Here is an example taken from an essay by Sir Gustav Nossal, an eminent Australian researcher said: "An old lady of 83 has been admitted to a nursing home for aged because her increasing degree of mental confusion has made it impossible for her to stay in her home and there was no one in her house willing to look after her. Over three years, her condition deteriorates. She loses the ability to speak requires to be fed, and becomes incontinent. Finally, she cannot sit an armchair any longer, and is confined permanently to bed. One day, she contracts pneumonia. The relatives are contacted, and the matron of the nursing home tells them that she and the doctor she uses most frequently have worked out a loose arrangement for cases of this type. With advanced senile dementia, they treat the first three infections with antibiotics, and after that, mindful of the adage that 'pneumonia is the old person's friend', they let nature take its course. The matron emphasises that if the relatives desire, all infections can be vigorously treated. The

relatives agree with the rule of thumb. The patient dies of a urinary tract infection six months later."<sup>7</sup> (Ref: Singer, 1993, p.128).

As the active euthanasia is not a lawful measure, so the treating doctor does not apply any deadly medicines, rather, he out of his kindness for the patient, adopts the method of passive euthanasia by keeping himself aloof from any further medical treatment. In this case, the passive euthanasia is considered as more inhuman because the patient does not die instantly by withdrawing medical treatment, rather he dies after living an unbearable painful prolonged life. So, where the disease is incurable, the pain is unbearable; in that case, for the sake of humanity, active euthanasia is very much preferable and an instant death by administering deadly medicine is more desirable.

In recent time, legalization of euthanasia demanded for the interest of the people is based on the voluntary euthanasia. Peter Singer has shown an example in his article Jean's way where he says about Derek Humphry and the death of his wife Jean. Jean suffering from unbearable cancer requested her husband Derek Humphry to do something so that she could die fairly soon with no pain. According to the wish of Jean Humphry brought her few tablets and Jean died after consuming those tablets. But this kind of killing is not recognised by all countries or states.

Ida Rollin, mother of Betty Rollin the writer of the book 'The Last Wish', was terminally ill with ovarian cancer said to her daughter Betty that she had enjoyed her life to the fullest which was going to end and this end of life was the most desirable in that condition. She said: "I do not fear to die, I am only afraid of this terrible pain and my painful wretched life will never do any welfare to anybody, so I do not desire to die slowly with this tremendous pain. Only the death can relieve my pain- so I wish for death."<sup>8</sup> (Ref: Margaret, 2005, p.98).

Here is another example of Tofazzal Hassain of Bangladesh, who was fruit vendor, wrote to his local district administration pleading for his two sons and a grandson for allow them to put to death with medicine as these three were suffering from an incurable form of muscular dystrophy. Tofazzal described his years – long struggle to cope with the costs of looking after his two sons and grandson, a way of life he "Can't bear any longer. (The Guardian, 2017, 24Jan).

All most all the countries across the world are thinking about euthanasia. As some important factors like human rights doctors' Hippocratic oath, religious beliefs, its legal view point and emotions etc. play vital role when it comes about euthanasia. Therefore, some countries are silent and are reluctant to express their opinions about its rights and wrongs to others. But the countries like Netherlands, Belgium, Columbia, Luxembourg and Canada have legalized active euthanasia under certain legal guidelines and the entire process must be carried out under the control of a group of specialist doctors, the family members of the patients and the constitutional personnel. Therefore, the medical board must abide by these legal guidelines or otherwise cannot respond to the prayer of the patient for euthanasia. Passive euthanasia has been legalized on 9<sup>th</sup> March, 2018 by the Hon'ble Supreme Court of India under the strict guidelines. The patient who is terminally ill or in a vegetative state, must express his or her consent through a living will for conducting the passive euthanasia. Euthanasia will continue to be debated at all times by its proponents and opponents. People from both sides will always discuss about its advantages and disadvantages. Whichever has more weight, perhaps, depends on situation and it is the best to consider these factors all the times. In fact, euthanasia can be considered as a way to uphold the 'Right to life' by honouring 'Right to die' with dignity. Euthanasia is not only considered as a way for a terminally ill person to die (right to die with less pain and dignity too) but also imparts privileges to an organ needy person to live his or her healthy life.

Above all, active euthanasia is morally preferable option to passive euthanasia as there is really no moral difference between the two. It may take the patient longer under unbearable pain by simply withdrawing the treatment or the life – support appliances (as in the case of passive euthanasia) which is wrong and may be termed as inhumanity. It does not make sense that law will not be created as it may be misused. Therefore, active euthanasia should be legalized like the passive euthanasia. Courts of law are to protect the happiness of the people of society, if this causes the pain for its people then law and order must be changed and reformed for the sake of humanity. Active euthanasia for a terminally ill person will always be considered as the blessings for the family, the relatives of the patient and also for the patient himself or herself if the doctor relieves him or her from

unbearable pain by applying lethal drugs to accelerate death.

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