



ORIGINAL RESEARCH PAPER

Law

EUTHANASIA IN INDIA: LEGAL AND CONSTITUTIONAL UNDERPINNINGS

KEY WORDS: Euthanasia, Mercy Killing, Right to die, The Last Human Right

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ABSTRACT

Euthanasia is a sensitive issue as it involves ending of life of one person by other person though at the request of the later. Euthanasia is different from suicide and hence has different constitutional, legal and medical ramifications. Indian culture will not permit ending of once own life though via another person as it is generally believed that life should be finished only upon the wish of almighty God. But if a person suffers from any incurable disease whether he should be compelled to live or he should be allowed to extinguish his life with the help of any other person. This is a billion dollar question, the answer of which is based on several legal and constitutional underpinnings in India. This research will explain meaning, concept, type and desirability of euthanasia in Indian perspective. Further, the study will attempt to analyse the legal and constitutional underpinnings of euthanasia particularly passive euthanasia in India. The last part of the paper will also explore the role of Indian judiciary to euthanasia and would also offer several recommendations for the law and policy makers in India.

1. Prelude

Life is a precious gift of nature. Each and every ordinary or common person loves to live and enjoy the fruits of life till the tomb. But in some cases the position may be altogether different. A person may be willing to end his life by unnatural means. In case a person ends his life himself, it is a suicide. But if he requests others to kill him it is known as euthanasia or mercy killing. This second category of making an end of life can be seen in cases of person suffering from chronic, painful and incurable disease such as cancer, AIDS etc. Such persons and their family members sometimes request God or doctor to end the life of the ailing person. In some cases they write to the head of the country for mercy killing or euthanasia. Some countries allow the mercy killing and some deny. Here the researcher aims to study the position of euthanasia in India. The study aims to study all existing laws pertaining to euthanasia and the judicial trends towards the same.

2. Euthanasia: Meaning thereof

The term euthanasia is a Greece word. It derived from two Greece words 'eu' and 'thanatos' which means good death, easy death, to die well or mercy killing.¹ It is a practice of ending life at the own will of deceased. It has been termed as a matter right to die with dignity. As per the Merriam – Webster dictionary the term euthanasia means “the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as persons or domestic animals) in a relatively painless way for reasons of mercy.”² The Britannica Dictionary defines the term euthanasia as “act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures.”³ Thus it can be said that euthanasia is a practice of mercifully ending life of a person with an intention to release him from an incurable disease, misery, intolerable sufferings, pain of the life by administration of drugs, at the request of the patient himself. In short euthanasia is intentional termination of life of an individual.

3. Euthanasia, Suicide and Homicide

Causing death of a person is a crime. The death may be a result of one's own act as it is in case of suicide. A person can kill himself due to any reason behind the same. And if someone else kill a person then it is homicide. But this suicide or homicide are altogether different from euthanasia. Euthanasia is killing of other person but with his consent or it can also be said that it is assisting a person in committing suicide. Euthanasia is conducted on a person who is in coma or in persistent vegetative state (PVS). Euthanasia is practiced to stop pain and sufferings which can fall in the definition of suicide if committed voluntarily by the concerned person. The person who perform the euthanasia does not commit the offence of homicide.

4. Classification of Euthanasia

Euthanasia is the termination of the life of an ailing or permanently disabled person in order to relieve him from sufferings. It can be classified on the basis of patient's will or request and the manner of administering euthanasia. In case of patient's will the euthanasia can be classified into Voluntary, Non-Voluntary and Involuntary and in case of manner of administering euthanasia it can be divided into two categories i.e. active and passive euthanasia. All of these categories are defined hereunder:

4.1 Voluntary Euthanasia

The practice of conducting euthanasia on the basis of the consent of the person concerned is known as voluntary euthanasia. It is mandatory for such euthanasia that the person shall voluntary decides to end his life and requests for the same himself. Such person may himself request for assistance for dying, refuse heavy medical treatment, life support system to be switched off or ask for medical treatment to stop etc. In such cases lethal drugs may be administered to terminate painlessly the life of an individual at his request if he is suffering from an incurable condition deemed to be unbearable by him.

4.2 Non-Voluntary Euthanasia

The non-voluntary euthanasia is all together different concept. In such type of cases the euthanasia is conducted without the consent of the individual. There is no request for mercy killing. It is an act of ending the life without explicit consent or request and without knowledge of the individual. The motive in voluntary and non-voluntary euthanasia is same i.e. relieve release from suffering and the only difference is the absence of request to end the life. The non-voluntary euthanasia is usually conducted on patients who are in permanent vegetative state, brain dead or in coma or mentally incompetent. Although it is conducted without the consent or knowledge of the individual but still the consent of his near and dear is always taken for euthanasia. These near and dear include spouse, children, parents, close relatives or social workers or any other person appointed to make decision on behalf of such individual.

4.3 Involuntary Euthanasia

Involuntary euthanasia is conducted against the will of individual and it is often termed as murder because it is performed on a person who is capable of giving consent but his consent is not taken or he does not want to die. This practice is unethical and barbaric. The Nazi German conducted such deaths during the Second World War in gas chambers of persons who were incurably ill, physically or mentally disabled, emotionally distraught and elderly people.⁴

4.4 Active Euthanasia

Active euthanasia is the killing of a person intentionally with

his or his near and dear's consent or even without consent with the help of some lethal substance or force such as administering lethal dose of injection. The use of such lethal substance is considered as the most controversial means.

4.5 Passive Euthanasia

Passive euthanasia permits or allows the removal of life supporting system of the patient so that he may die. These life support systems may be ordinary such as nutrition and hydration which are never to be withheld or extra ordinary such as medical treatment, ventilators which are mandatory for survival of the patient. By withdrawing life support treatment a person is letting a person die and it is not direct killing. The disease kills him itself and it is not the person who withdraws the life support system.

5. Reasons for Euthanasia

Euthanasia an act whereby a person is relieved from sufferings for his alleged benefit is exercised because of various reasons as given by different jurists. The very first reason given for euthanasia is the unbearable pain. If the unbearable pain is beyond treatment or there is no possibility of improvement then it has been advocated that euthanasia is the only medicine. Similarly the permanent vegetative state of patient has also been advocated as a reason for euthanasia. It is argued that every person is having right to life hence he shall have right to end his life. It is advocated that people shall not be forced to live if they don't want. Every person has self autonomy. He himself shall decide his fate hence if wants to die then no one shall force him to live. People shall have the right to die with dignity in the same manner in which they enjoy the right to live with dignity.

6. Types of Euthanasia

There are as many as five following types of euthanasia:

1. Animal Euthanasia
2. Child Euthanasia
3. Mental Patient's Euthanasia
4. Adult Patient's Euthanasia
5. Pregnant Women's Euthanasia

In case of animal euthanasia the animal is put to death or allowed to die. The reasons of animal euthanasia incurable or terminable disease, unbearable pain, rabies, old age animal testing, lack of home, behavioural problems etc. The animal euthanasia is conducted with the help of intravenous anesthetic, inhalants, injections, shooting.

The second type of euthanasia i.e. the child euthanasia or pediatric euthanasia is conducted on children who are seriously or terminally ill or suffer from birth defects. Although child euthanasia looks like infanticide but they are altogether different. Both of these involve distinctiveness as to the intention behind causing death of the infant. In case of child euthanasia the consent of parents plays a great role. It is the parents who shall take a call for euthanasia but the same shall also be endorsed by medical experts. But it has also been argued that in case of pediatric euthanasia it is still ethical even if there is absence of parent's consent.⁵

The other type of euthanasia i.e. the euthanasia in cases of mental patient is also prevalent in our world. If a person is major or adult but is not in a position to give consent due to mental illness can be subjected to euthanasia on the basis of the consent of the parents or the near and dears and the medical experts. But in cases of a person who is adult and competent to give constant then the euthanasia can be conducted on him only after getting his consent or request. The last type of euthanasia which is conducted in cases of pregnant women can be seen when medical experts can save only one person i.e. either the mother or the child. In such cases after taking the consent of the pregnant woman and consent of her near and dears if required the euthanasia is exercised.

7. Euthanasia and Human Rights

There are rival views regarding euthanasia. People supporting the same call it to be the last human right of the concerned person. They give plenty of reasons for the same. To live and die with dignity, to choose the time and manner of one's death, right to self autonomy, seeking compassionate relief of pain and sufferings etc. are the major arguments of the jurists who support euthanasia. On the contrary, people who are against euthanasia are of the opinion that it is mandatory to save the human life. It is argued that a right to have one's life taken on his request has never been recognized in the Codes of ethics or the law of any country. It's assumption is in conflict with the protectively enunciated Universal declaration, to which majority on nations are signatory. It is also argued by supporters of this view that Thomas Jefferson had rightly said that "... the care of human life and happiness and not their destruction is the first and only legitimate object of good government."⁶

Thus the discussion on legality of euthanasia necessarily requires attention on human rights. It is mandatory to consider the right of a person on his own life and the duty of State to protect life of each individual and it's effect on entire society.

8. Euthanasia in India and the Judicial Response

The very first step towards euthanasia in India was initiated way back in the year 1985 and that too in Maharashtra State legislature, wherein a private member's Bill was introduced before the upper house for providing immunity from all civil and criminal liability to all doctors who remove artificial life prolonging measures at the request of the terminally ill patient. In the year 1996 the Constitutional Bench of 5 Judges of Apex Court in *Gian Kaur vs. State of Punjab*⁷ held that the right to life contained in Article 21 of the Constitution of India does not include the right to die or right to be killed. Thereafter in the year 2006 the Law Commission of India in it's report⁸ recommended that there must be a law to protect terminally ill patients who refuse to take the medical treatment, artificial nutrition, or hydration from Section 309 of the Indian Penal Code, 1860. It also recommended that the doctors who obey such a decision of the patients, or who make the decision for incompetent patients in their best interests of such patients, must be protected from punishment under Section 306 (abetment of suicide) the Indian Penal Code, 1860. The Report clarified that the 'patient' must be suffering from a terminal illness, i.e., an illness, injury or degeneration of a physical or mental condition that causes extreme pain and suffering, according to the reasonable medical opinion will inevitably cause the untimely death of the concerned patient.

Thereafter in the year 2007 a Bill⁹ was introduced in Lok Sabha to provide for compassionate, humane and painless termination of life of individuals who became completely or permanently invalid or bed-ridden due to sufferings from some incurable disease or any other reason. This Bill provided that before legalizing the euthanasia, there shall be a sufficient check and balance to avoid it's misuse. This Bill couldn't become law.

Thereafter, on 7th March 2011 the Apex Court of India delivered a landmark judgment in a very famous euthanasia case of *Aruna Shanbaug case*.¹⁰ Aruna Shanbaug was a kind hearted 25 years old nurse at King Edward Memorial Hospital, Parel, Mumbai. She was a fiancée of a young doctor who was her colleague as well. On 27th day of November, 1973 she was assaulted at night by a ward boy when she was changing her uniform for going back to her home. He strangled her with a dog chain and sodomized her and after robbing her of her earnings he left her lying there. In the morning she was found unconscious in a pool of blood by a cleaner. This cruelty caused cortically blindness to her and she was also paralyzed, became speechless and she entered coma from where she never came out. Her family completely gave up on her. The Hospital took care of her for 37 years. She didn't want to live

any more. The doctors told her that there is no possibility of any kind of improvement in her case. Her bones were brittle. Her skin was like 'Paper Mache' stretched over a Skeleton. Her wrists were twisted inwards, her fingers were bent and fistled towards her palms, resulting in growing nails tearing into her flesh very often. She choked on liquids and was in a persistent vegetative state (PVS). Therefore, Pinki Virani her next friend thought to move Supreme Court for giving directions to KEM Hospital to avoid force feed of Aruna. But the former Dean of KEM Hospital said that Aruna was not in coma as he was used to talk to her and further said that when you will tell her a story, she would start laughing, smiling and during prayers she was quiet and peaceful.

On 16th day of December, 2009 a Full Bench of Supreme Court admitted the plea to end her life and issued notice to Union of India, Government of Maharashtra and the Dean of KEM Hospital. The Court set up a three members medical panel to examine her. The medical committee concluded after examination of the case that Aruna met "most of the criteria of being in a PVS. But the Supreme Court on 7th day of March, 2011 rejected the plea and turned down the mercy killing plea. The major reason behind was the fact that the hospital staff who was treating and taking care of her did not support euthanizing her. But in this case the Apex Court allowed passive euthanasia in India and gave the following guidelines for the same.

- The decision to remove/withdraw life support system shall be taken by the parents, spouse or close relatives and in their absence by the next friend.
- The Doctors are also eligible to take decision in case of absence of next friend.
- The Decision of removal/withdrawal or termination of life support system should be made bonafide and in best interest of the patient concerned.
- If the decision is taken by the close relatives, the next friend or the doctors then the approval should be taken from the High Court under Article 226 which empowers High Court to issue appropriate directions and orders.

In the year 2014 the law commission of India proposed a bill to permit passive euthanasia,¹¹ but till date nothing positive happened in this regard. Thereafter, in the year 2018 the Apex Court gave another landmark judgment in *Common Cause (A Regd. Society) vs. Union of India*.¹² In the year 2005, the Common Cause, a registered society knocked the doors of the Supreme Court under Article 32 with an intention that the Apex Court shall declare 'Right to Die with Dignity' as a fundamental right under Article 21 of the Constitution of India. It urged the Court to issue directions to the Union Government to allow terminally ill patients and the patients in Persistent Vegetative State (TVS) or in state of permanent comas to execute 'living wills' for appropriate action in the beginning when they are admitted to hospitals. In the year 2014 the matter was referred to a larger bench, to issue proper judgment in this matter that too in conformity between the *Aruna Ramchandra Shanbaug vs. Union of India*,¹³ and *Gian Kaur vs. the State of Punjab*.¹⁴ The attention was also brought to the Law Commission's 241st Report titled "*Passive Euthanasia-A Relook*".¹⁵

The Constitutional Bench was formed to deal with this matter. The Apex Court in its final verdict held that the right to life includes the right to die with dignity will be available to those who are in Persistent Vegetative State (PVS) but the court denied the inclusion of the additional drugs which support the death of concerned individual. The court permitted the withdrawal of life supporting system in those cases where the patient is in a permanent coma or is terminally-ill. It also laid down guidelines where the patient cannot speak for themselves or are not in the condition to express their will. Liberty was also granted to decide on the matter of artificial life - saving machines in the living will of the concerned patient. Thus the Court upheld the individual's right over the State responsibility. The Court permitted the living will and

also laid down the procedure and essentials for executing the same. The Court also laid down the guidelines for giving effect to passive euthanasia. Additionally, specific guidelines were provided for implementation of passive euthanasia in all cases where there is no existing valid living will.

9. Euthanasia: The Last Human Right?

On the basis of the above discussion one obvious question that arises over here is whether the euthanasia shall be considered as the last human right of a person? To find out the answer to this question it is mandatory to go through the pros and cons or advantages or disadvantages of euthanasia. The jurists or medical practitioners who support euthanasia give following advantages or pros in favour of their view:

- Permitting euthanasia will make a person the real owner of his own life. It is like conferring individual autonomy. Hence the right to die shall be a personal choice. A person is always free to choose everything like his life partner, his work, how to live hence if permitted then he will be free to choose how and when to die.
- Permitting euthanasia will help a person to avoid sufferings of a lengthy death especially when there is chronic and severe pain.
- Euthanasia will be the last resort when all other options are off the table.
- A person will not be a puppet in the hands of government hence he will be free to chose his own path.
- Individuals will have more control over their own life's final decision.
- Since the death is going to happen in one way or the other therefore it's better to permit euthanasia.
- Permitting euthanasia will also provide psychological reassurance to the patient.
- It can also relieve suffering where the quality of life of an individual has become drastically low.
- It can free up health care resources to help someone else who is severely ill.

Although so many arguments have been given in favour of euthanasia but still there are many jurists and medical practitioners who give the following cons or disadvantages of euthanasia:

- The concept that every human life is precious and has value is undermined by euthanasia.
- Killing a person is morally and ethically incorrect. It can never be justified.
- It is the duty of State to protect every life and individuals cannot relieve State from this duty.
- Undue advantage or misuse of euthanasia cannot be ruled out.
- **The prediction of a terminal diagnosis is rarely accurate therefore acting on such prediction is harmful.**
- **The consent for euthanasia is a major issue in cases where the individual himself is not in a position to give the same.**
- **The medical practitioners vow to save life of patients hence taking life will be against the medical ethics as well.**

10. Conclusion and Suggestions

The right to live with dignity that too in a way decided by oneself is an integral part of right to life contained in Article 21 of the Constitution of India. This right shall also include the right to end one's life at his own will especially when he can't live a normal life. A person suffering from any disease or infirmity which resulted in persistent vegetative state (PVS) or he is in coma, deserves to end his life with the help of someone. Euthanasia helps to provide the suffering patient with a good, gentle and painless death, being an act of mercy. The Apex Court has also permitted the right to end life but only with the help of passive euthanasia. But there is definitely a different view that opposes euthanasia. It talks about the duty of State to protect the life of each and every individual. It

also talks about the consent especially in cases where the patient himself is not in a position to give consent. It says that in no case the others shall not be permitted to give consent even if they are the near and dears.

In India there is no legislation to deal with the euthanasia hence the same is regulated as per the decision of Supreme Court in Common Cause v. Union of India case wherein the concept of living will was endorsed by the Court and the passive euthanasia was also allowed. The Apex Court upheld the constitutionality of euthanasia in India. The Court empowered High Courts to deal with such cases under the writ jurisdiction under Article 226 of the Constitution of India. But in absence of legislation there is a possibility of application of euthanasia in different manner at different places. Each case has different circumstances and if decided at different places can result in different verdicts hence in all cases Supreme Court has to deal with such matters. Therefore legislation at national level is needed.

On the basis of the above research work the present researcher presents the following suggestions:

- A legislation on euthanasia shall be enacted at the earliest with the help of jurists, doctors, social workers and human right volunteers.
- The euthanasia law shall be made on the basis of models of the countries with such legislation and the best of these legislations shall be picked for India.
- Right to die with dignity shall be provided specifically in the euthanasia law.
- The active euthanasia shall be permitted in persistent vegetative state (PVS), coma patients, terminally patients etc.
- Medical ethics should be codified to provide immunity to medical practitioners involved in euthanasia.
- Right to refuse medical treatment shall be recognized.
- The best interest of patient shall be given preference in both cases of right to live and right to die.
- The euthanasia law shall protect the life of patient and at the same time it shall not result as a forced burden for terminally ill persons.
- The euthanasia law shall also provide for strict action against misuse of this law.
- The right to die shall be a rarest of rare case.
- It is in the best interest of our country to left this issue with judiciary until there is a specific euthanasia law.

REFERENCES

1. Wikipedia The Free Encyclopedia, *Euthanasia*, available at [https:// en.wikipedia.org/wiki/Euthanasia#cite_ref-1](https://en.wikipedia.org/wiki/Euthanasia#cite_ref-1) ,visited on 18-01-2022.
2. Merriam-Webster Dictionary, *Euthanasia*, available at <https://www.merriam-webster.com/dictionary/euthanasia> ,visited on 18-01-2022.
3. Britannica Dictionary, *Euthanasia*, available at [https:// www.britannica.com/topic/euthanasia](https://www.britannica.com/topic/euthanasia) ,visited on 18-01-2022.
4. Supra Note 1; Involuntary Euthanasia, available at https://en.wikipedia.org/wiki/Involuntary_euthanasia , visited on 18-01-2022.
5. Appel, Jacob M, *Neo-Natal Euthanasia: Why Require Parental Consent?* ,Journal of Bioethical Inquiry (2009) at p. 477.
6. Founders Online, available at: [https:// founders.archives.gov/ documents/Jefferson/03-01-02-0088](https://founders.archives.gov/documents/Jefferson/03-01-02-0088) ,visited on 18-01-2022.
7. (1996) 2 SCC 648.
8. The Law Commission of India, 196th Report on Medical Treatment To Terminally ill Patients (Protection of Patients And Medical Practitioners), 2006.
9. The Euthanasia (Permission and Regulation) Bill, 2007. This Bill was introduced by C.K.Chandran, a Member of Parliament from Kerala.
10. Aruna Ramchandra Shanbaug v. Union of India, AIR 2011 SC 411.
11. The Law Commission of India, 241st Report on Medical Treatment to Terminally ill Patients (Protection of Patients And Medical Practitioners), 2014.
12. (2018) 5 SCC 1.
13. Supra Note 10.
14. Supra Note 7.
15. Supra Note 11.