

EUTHANASIA AND ITS DESIRABILITY IN INDIA

*Shikha Mishra**

*Uday Veer Singh***

Abstract

Every human being should enjoy right to life. Article 21 of the Indian Constitution as well as under article 3 of International Convention Universal Declaration of Human Rights, 1948 guaranteed the right to life. The every aspects of right to life has been always subject to consideration of judiciary and depend upon the facts and situations. Right to die is also claimed under this head. Euthanasia is interpreted as 'mercy killing' or 'good death'. It is advocated that there are different situations in which it should be allowed to the person to let him choose his death in place of compelling him living alive. There are different approaches in this regard which either opposes the grant of mercy killing or denies to grant the death as right to die due to some causes. Everyone has the right to live dignified life according to his wish being living into certain limits and it is expected that a human being should struggle also in adverse circumstances around him. He should not lean in front of the situations. The Indian culture gives us such teachings. Hindu religion believes in the eternity of soul. Death is only the way to change a body. The soul never dies, it is eternal. Muslim religion also believes that life should be finished only upon the wish of ALLAH, it condemns the unnatural ending of life. But in present society in some situations it is defended that the person should have the right to choose death. Thus, in this context proper law and the guidelines should be prescribed by the Parliament and its' government to avoid it's misuses.

- I. Introduction**
- II. Views against euthanasia**
- III. Reasons to support euthanasia**
- IV. International situation over euthanasia**
- V. Euthanasia in India and the judicial response**
- VI. Conclusion and suggestion**

I. Introduction

THE IDEA of euthanasia introduced a merciful death which is found beyond natural death. The word euthanasia is originated from the Greek word 'euthantos'. English philosopher and statesman Sir Francis Bacon founded the word 'euthanasia' in early 17th Century, which

* Assistant Professor, Law, Teerthanker Mahaveer University, Moradabad, U.P.

** Assistant Professor, Law, Teerthanker Mahaveer University, Moradabad, U.P.

literally means 'good death' and decoded as 'mercy killing or a good death'.¹ It depicts the practice of ending life in a way that does not cause pain and suffering at all. According to the House of Lords Select Committee on Medical Ethics,² the definition of euthanasia is “a deliberate interference undertaken with the express intention of ending a life, to relieve intractable pains and agonies”. Euthanasia is basically an intentional premature ending of a person's life through direct interruption (which is called active euthanasia) or by interdiction life-averting actions and resources (which is called passive euthanasia) either at the express or implied request of that person (voluntary euthanasia) or in the absence of such approval/consent (non-voluntary euthanasia).³ That apart, the court has drawn a distinction between euthanasia and physician assisted dying and noted that the difference lies in the fact as to who administers the lethal medication. It has been observed that in euthanasia, a physician or third party administers it while in physician assisted suicide, it is the patient who does it though on the advice of the doctor.⁴

The concept of euthanasia originates through right to live the life with dignity in a dignified way. The origin of the concept of euthanasia as well as giving the legality to it, has been a topic of debate all over the world. Countries have framed no consensus in this regard. Though euthanasia and physician assisted suicide is prohibited in different countries all over the world. It is to presume that such a situation may come before the person, that his family members and medical science would come down to their knees and become helpless due to medical limitations and the adverse pathetic situations all around them. In such an adverse condition where the patient is suffering so much pain and regret constantly that in interest of his patient the family members or patient himself, whereas the patient is in a situation to give his consent, is begging his death because that is too easy in comparison to lead a life. Thus euthanasia involves a deliberate action to end or to assist in ending the life of a person on compensate grounds. Senate Selection of Bills Committee recommended euthanasia can be divided into four categories. These are:⁵

- Active voluntary euthanasia: where medical intervention takes place, at a

¹Harris NM “The euthanasia debate” 147 (3) J R Army Med Corps 367-70 (2001).

² House of Lords, Report of the Select Committee on Medical Ethics, 1994.

³*Common Cause Society v. Union of India* (2018) 5 SCC 1.

⁴*Ibid.*

⁵Available at: https://www.aph.gov.au/binaries/senate/committee/legcon_ctte/completed_inquiries/1996-99/euthanasia/report/report.pdf (last visited on Feb 25, 2020).

patient's request, in order to end the patient's life.⁶

- Passive voluntary euthanasia: where medical treatment is withdrawn or withheld from a patient, at the patient's request, in order to end the patient's life.⁷
- Passive in/non-voluntary euthanasia: where medical treatment or life-support is withdrawn or withheld from a patient, without the patient's request, in order to end the patient's life.⁸
- Active in/non-voluntary euthanasia: where medical intervention takes place, without the patient's request, in order to end the patient's life.⁹

Active euthanasia involves the use of lethal substance or forces to kill and passive euthanasia entails the withholding of common treatments such as antibiotics necessary for the continuance of life. However, in *Aruna Ramachandra* case¹⁰ two categories as active and passive euthanasia are discussed. Active euthanasia is expressed as intentional death by active intervention and passive euthanasia is considered as indirect intervention as by withdrawal of preventive measures. The court considered that active euthanasia is illegal and not possible without legislation while passive euthanasia can be granted without legislation. The court further classified between voluntary and non-voluntary euthanasia. Voluntary means where the consent is taken from the patient and in non-voluntary to take consent from the patient is impossible.

II. Views against Euthanasia

Euthanasia has remained the topic of conflicting opinions in context of its legal position. Euthanasia is an issue of deliberate discussion among intellectuals due to the need of enactment so that a uniform policy can be framed. It is the fact that life is the pious gift of God. The generally universally accepted view is that no one has the right to end one's or any other else's

⁶Cica N, "Euthanasia - The Australian Law in an International Context: Part 1: Passive Voluntary Euthanasia" 3 *Parliamentary Research Service* iv (1996-97).

⁷ The House of Lords Select Committee on Medical Ethics preferred to speak of "withdrawing or not initiating treatment" than using the term "passive euthanasia", arguing that there "is plenty of scope for argument over the ethical equivalence of killing and letting die in certain circumstances" House of Lords, 1 "Report of the Select Committee on Medical Ethics" 10 (1994).

⁸ *Supra* note 6, The House of Lords distinguishes between non-voluntary euthanasia (which it defines as the killing of a patient who does not have the capacity to understand what euthanasia means and cannot therefore form a request or withhold consent) and involuntary euthanasia (where the patient is competent to make a request, but does not do so): House of Lords, 1 "Report of the Select Committee on Medical Ethics" 11 (1994).

⁹ *Supra* note 6.

¹⁰ *Aruna Ramachandra Shanbaug v. Union of India* (2011) 4 SCC 454.

life. All religions condemned the unnatural termination of life. Everyone should face the situations which come before him. Every human is endowed with the duty to respect every human being. Humanitarian approach does not allow to leave a person helpless in trouble. It is our learning from the inception of the civilized society that nobody should surrender in front of enemies like disease or pains. The concept of family teaches us to help and keep in practice the principle of togetherness in every adverse situation. Besides, Governments are entrusted with the duty to do work for the welfare of all citizens of the country. The sanctity of life should be respected in every situation. The governments should provide and develop the means and measures in such a way that even a poor can get assistance. The law also does not grant the right in favour of anyone to kill the other person. Neither humanitarian, constitutional, legal nor religious beliefs allow a person to kill, whatever the situations are faced by them. In India, like our society euthanasia cannot be allowed merely on the wish of relatives as they can have interest to inherit the property of patient.

III. Reasons to support Euthanasia

In ancient India, under Hindu religion there are illustrations where to renounce the body (kaya) for eternal gains and benefits in the search of God is supported by monks. The making demand for death is advocated in such a situation where a sick person is facing intolerable pain. Right to make a claim for death emanates from the right to choose one's own way. Everyone is enriched with the right to self determination and is free to choose his way of living. Similarly it is advocated that everyone should have the right to end one's life when life would become so panicked then it is easier to die in comparison to live alive. As such death will give him relief from incurable disease and painful life. It can be analysed as a means of health care by the ending of life. It gives an end to such a life which is unworthy to live. Euthanasia was practiced since ages. With official permission, residents of Athens could obtain a dose of poison which would allow them to choose death over suffering. The controversy over euthanasia differs from country to country and culture to culture.

IV. International situation over Euthanasia

There is not a “right to die” under international humanitarian law. “Right to good death” cannot be inferred from the ordinary meaning of any human rights document. On the contrary, human rights documents call upon states to protect and secure the life of everyone. Out of the 193 members of the United Nations (UN), only four have legalized euthanasia (the Netherlands,

Belgium, Luxembourg, and Canada). The issue continues to be fiercely debated but has been rejected by legislatures in many jurisdictions.¹¹ The Convention on the Rights of Persons with Disabilities, 2006 is an international human rights treaty of the United Nations to protect the rights and dignity of people. The UN International treaty states that “States Parties must take all necessary measures to ensure that persons with disabilities have the same right as others to the effective enjoyment of the right to life.”¹² Article 6(1) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) states, “Every human being has the inherent right to life. No one shall be arbitrarily deprived of his life.” Article 6(1) of the Convention on the Rights of the Child (CRC) states that “every child has the inherent right to life.” Besides, article 7 of ICCPR states that human beings should be protected from inhuman or degrading treatment.

Euthanasia was legitimized in Netherland in 2001. The Parliament of Netherland enacted the Termination of Life on Request and Assisted Suicide (Review of Procedures) Act, 2001 which formalises a relaxation of the law prohibiting euthanasia and assisted suicide previously by judicial decision. The Act only permits euthanasia and doctor-assisted suicide under the wishes of the patient and with medical supervision.¹³ In Belgium, The Belgian Act on euthanasia was enacted on May 28, 2002. The Belgian law allowed doctors to help kill patients who during their terminal illness, express the wish to hasten their own death. The Belgium law imposed strict legal conditions and procedures in which euthanasia can be allowed. The patient’s request must be in writing. If the patient is not capable of doing this, the document is drawn up by a person designated by the patient. The physician commits no criminal offence when he ensures that the patient has attained the age of maturity, legally competent and conscious of making request and does request in condition of constant and unbearable physical suffering resulting from incurable sufferings caused by illness or accident. It is necessary that there must be no solution. If the patient is not in position to make the request he can designate such a person who must have attained the age of majority and must not have any material interest in the death of the patient. As well as where the cases in which no one is able to make a request then every able person can draw up the advance directives to physicians in matters of unconscious patients suffering with incurable disease or accident.¹⁴

¹¹ Available at: <https://adfllegal.blob.core.windows.net/international-content/docs/-dated on 22/10/2018>

¹² Convention on the Rights of Persons with Disabilities , 2006, art.10.

¹³ Ratanlal and Dhirajlal, The Law of Torts 564-565((LexisNexis: Butterworth, 26th edn.2010).

¹⁴ Available at : <https://associatie.kuleuven.be/p/flandershealthcare/tourofflanders/belgian-law-oneuthanasia.pdf>, (last visited on Feb.25, 2020).

Luxembourg is the third country who decriminalized euthanasia with the passing of law of March 16, 2009. Terminally ill people will be able to have their lives ended after receiving the approval of two doctors and a panel of specialists. In Canada, voluntary active euthanasia, called "physician assisted dying", is legal for all people over the age of 18 who have a terminal illness that has progressed to the point where natural death is "reasonably foreseeable". In Canada, situation changed after the judicial pronouncement of Supreme Court of Canada given in *Cartar v. Canada (Attorney General)*¹⁵ Euthanasia is not legal in *China and Hong Kong*. It is against the Chinese concepts of morality. According to the existing law of the China it is equivalent to murder. Euthanasia is illegal in the *United Kingdom*. Any person found to be assisting suicide is breaking the law, it is a statutory offence and can be convicted of assisting suicide with the 14 years' imprisonment. In *R (on the application of Pretty) vs. Director of Public Prosecutions*¹⁶ the House of Lords held that the right to life and other human rights enshrined in the European Convention and enforced in England by the Human Rights Act, 1998 have not affected the said law and that the convention did not oblige a state to legalise assisted suicide.¹⁷

In Germany active euthanasia is legal but this is not the situation in regard of passive euthanasia. If the doctor stops life preventive measures on the written wish of the patient then it would not come in the category of criminal offence. While in United States (US), also the active euthanasia is held illegal. Only in few States as in Oregon, Washington and Montana physician assisted suicide has legalized in some form or the other. A distinction has been drawn between euthanasia and physician-assisted suicide. Only self-assisted dying is permitted in Washington and Oregon both. Dying and any assistance to a person commit suicide by doctors remains a criminal offence outside the provisions of the legislation¹⁸ In the US a doctor withdraws life support only on the request of a patient. By assessing him the doctor only regards the patient's wish to end his life.

V. Euthanasia in India and the Judicial Response

There is no legislation or statute which allows and declares the legitimacy of mercy killing in India. In 241st Report of Law commission of India titled "Passive Euthanasia – A Relook", it

¹⁵2015 SCC 5.

¹⁶(2002) 1 All ER 1 (HL).

¹⁷*Supra* note 6.

¹⁸ *Supra* note 3.

was proposed to legislate a law on the issue of passive euthanasia and drafted The Medical Treatment of Treatment of Terminally Patients (Protection of Patients and Medical Practitioners) Bill. The said Bill was indicated to the technical wing of the Ministry of Health and Family Welfare (Directorate General of Health Services-Dte. GHS) for checking up in June 2014. Meetings were called under the chairmanship of special director general of health service and attended by various experts. There after another meetings were held under the chairmanship of Secretary, Ministry of Health and Family Welfare, on May 22, 2015 to inspect the Bill and finally the expert committee had proposed formulation of legislation on passive euthanasia.

Mercy killing or euthanasia has remained a topic of legal and social concern for long due to different pathetic situations depicted in various facts and circumstances. At various times right to die has been claimed to cover up under the purview of right to life with dignity under article 21 of the Constitution of India. It is argued that where the dying process of the patient causes prolonged delay and unbearable sufferings to the patient and his near and dear ones he should be allowed to meet with death to let him free with distress and agony. It is contended that the right to die is inseparable from the right to life with dignity. Though there is no law which would has been framed by the Parliament of India in this regard. Time to time the apex judiciary of the country has interpreted the concept of euthanasia. A two judge bench of the Supreme Court held that a person has a right not to live a forced life and attempt to suicide is not illegal.¹⁹ But this view was overruled by the constitutional bench of the Supreme Court.²⁰ At presently, due to the decision of the apex judiciary passive euthanasia is legalised in India.²¹

In the constitutional validity of section 309 was challenged and at the same time it was contended that it is violative of article 14 and 21 of the Constitution of India. It was stated that the right to speech and expression includes in itself not to speak similarly the right to live alive includes not to live or right to die and to terminate one's life. The right to live under article 21 can bring into its scope not to live a forced or disadvantageous life. The court upheld section 309 of Indian Penal Code, 1860 beyond the limit and stated that it deserved to be effaced from the statute book to humanize our penal laws. The court declared it a cruel and irrational provision, and consequently it is like to punish a person who is suffering with agony already

¹⁹*P. Rathinam N. Patnaik v. Union of India*, AIR 1994 SC 1844 at 1868.

²⁰*Gian Kaur v. State*, AIR 1996 SC 946.

²¹*Common Cause (A Regd. Society) v. Union of India* (2018) 5 SCC 1.

because of his failure to commit suicide. The act is not against public policy or morality and causes no harm to society.

In *Airedale N.H.S. Trust v. Bland*²² it was highlighted that mercy killing is not legal in common law. Its application is permissible only by legislation. The matter was about withdrawal of life preventive means equipped to save the life of the doctor. In the said case, one Anthony Bland, who was a supporter of Liverpool Football Club, went to Hillsborough Ground, and sustained severe injuries as a result of which supply to his brain was interrupted. He suffered an Inconvertible loss to the brain as a result of which he got into a condition of persistent vegetative state (PVS). The House of Lords stated that the euthanasia is not legal in common law. It should be given legal effect only by legislation. It can be allowed in such cases only where the sufferings in causing assisted suicide are little in comparison to those sufferings to avoid which euthanasia is permitted. The state should have faith in the principle of 'sanctity of life'.

In *Gian Kaur*²³ the validity of section 306 was challenged and violative of article 21 of the Constitution, which penalizes abetment of suicide by stating that as section 309 is held by two judge's bench in *P. Rathinam judgement*. Gian Kaur and her husband Harbans Singh were convicted by a trial court under section 306 of the Indian Penal Code. They were sentenced to six years imprisonment and fine of Rs. 2,000/- for abetting the suicide by Kulwant Kaur. Section 306 punishes anyone who abets the commission of suicide, while section 309 punishes anyone who attempts to commit suicide. The matter was decided by the constitutional bench. The court stated that the right to life guaranteed under article 21 of the Constitution does not include the right to die under its ambit.

The bench held that 'right to life is one of the natural rights under article 21 of the Constitution of India. It nourishes the human community from the inception of the civilization but on the other side, suicide is an unnatural termination or ending of life and, therefore, contradictory and conflicting with the concept of right to life. With respect and in all humility, the court denied from making any comparison between the right to life and the right to die. One gives the new beginning and a light to the lives of the people while the other ends the lives of the people. The comparison between right to life and right to die is dissimilar and unjustified, due

²²(1993) 1 All ER 821, HL.

²³*Supra* note 20.

to the considerations of article 21. The court clarified that at the end of life die naturally with dignity cannot be mingled or knitted with dying unnaturally, minimizing the sainthood of life. The constitutional bench of five judges declared section 306, 309 of Indian Penal Code, 1860 as constitutional. The Constitutional Bench of the apex court held that both euthanasia and assisted suicide are not lawful in India. The court upheld that euthanasia should be made applicable only through the legislation.

In the case of *Aruna Ramachandra Shanbaug*²⁴ the writ petition was filed by the interested person in the interest of the victim who was raped thirty six years back in 1973, she was a nurse in hospital where she was raped by a staff boy. She was not in awareness and her brain was unconscious. She was on bed continuously and was taken care of by the hospital staff. The petitioner advocated that the respondent should be directed that the victim's feeding should be stopped. The court did not allow the withdrawal of life saving measures and denying of feeding from the victim after considering the report given by doctors. Rolling back of treatment with the intention of causing death of the victim is considered as passive euthanasia. To prevent the feeding of a person in coma is also considered as passive euthanasia. The court considered the report given by doctors and hoped for the positive results. The court held that passive euthanasia can be legalized and extended into India only through the legislation.

The recent case *Common Cause Society v. Union of India*²⁵ was decided by the apex court on the issue of euthanasia. The petitioner, a registered society argued that the right to die with dignity should be declared fundamental right within the fold of article 21 under the Constitution of India, 1950. The petitioner seeks to declare issue direction to the respondent, to adopt suitable procedures, in consultation with state governments where found necessary, to ensure that persons of deteriorated health or terminally ill should be able to execute a document titled "My Living Will and Attorney Authorisation" which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant to appoint a committee of experts including doctors, social scientists and lawyers to study into the aspect of issuing guidelines as to the Living Will; and to issue such further appropriate directions and guidelines as may be

²⁴ *Supra* note 10.

²⁵ *Supra* note 3.

necessary.²⁶ The society claimed that the right to die with dignity is an inseparable part of the right to live with dignity.

It was advocated that if the cure of a patient is not possible and the patient is continuously going towards the death his or her health is falling down, then in such a situation every individual is capable to take the decision to continue or discontinue his life. It was contended that the right to die with dignity is the inseparable and complex part of article 21. Passive euthanasia should be made legalized because it drags out the patient from such incurable condition in which he is suffering with unbearable pain. It gives relief to the patient from such trauma and pains. The concept of living will and attorney authorisation was also supported. The patient should have the right to die with dignity without pain and sufferings.

In the present time, through the assistance of advanced scientific techniques and medical treatment life is imprisoned or prolonged and the patient has to face a lot of sufferings. The person has a right to self determination which includes the right to choose and deny. He has a right to choose the treatment where alternates are available to him. He should be allowed to make his choices. As where he is incompetent to express his wishes due to his illness, he should be given the right to express his wish in advance through living will or the wish of surrogate acting on his behalf. It is expected that the surrogate does the act in the best interest of the patient. The court declared that the right to die with dignity is an inseparable part of the society. The human being having mental capacity should have the right to refuse medical treatment including withdrawal of life saving techniques. The judgement also mandated the constitution of committees to exercise supervisory roles.

VI. Conclusion and Suggestion

With the advancement of the society, when to change the law is a necessity of the society and laws are being codified day by day. Steadily, when the new areas of rights are emerging and consequently the new dimensions of law are being established. There was a time when the most of the aspects of law were based on customs and not codified but under the due process of law such laws are also framed. Advancement of science and technology evolves new mechanisms and techniques. With the development of new faculties of lives, new claims are recognized and simultaneously these are provided the status of statutory rights. There are also the instances

²⁶ *Ibid.*

where in the absence of legislation the claims are recognized as a right with the help of judicial decisions as the precedent. For example, passive euthanasia is one of the instance which is recognized as the right through the judicial decision. The decision of the apex court should be welcomed. The physician and doctors, who are supposed to conduct euthanasia may be under pressure so it should be allowed with proper care and attention.

Human beings are a pious species of this universe. He is the best creation of this God. The sanctity of life should be preserved. The state is under an obligation to provide a secure and healthy life. But at the same time in contemporary society life has become very complicated. People are facing different diseases with a lot of suffering. Scientific advancements and techniques have grown up in every field. These advancements have also affected medical science and ultimately to the lives of the people. With the use of newly developed medical treatments, not only the people are benefited by saving their lives at various stages but also their lives are prolonged due to being equipped with life preserving treatments and the patient had to die every moment in wait of natural death. Good health is the precious jewellery of life. Life can be enjoyed with healthfulness. The person is enriched with the right to lead a dignified life which includes in itself the right to self determination, right to choose and refuse also.

When the health of any patient is so falling down, he is suffering too much pains that there are no chances of recovery or survive his life he should be allowed to refuse treatment or if he has expressed his wishes in advance to do so and now he is not in a condition of expressing his wish, his wish should be regarded. Sometimes, the patient may take the decision of being treated with euthanasia due to the circumstances around him. In such a situation he should be checked and looked after by a psychiatrist to come out from depression or otherwise. Every human being whether he is a healthy person or a patient suffering from any fatal disease should be allowed to die with dignity. The issue is linked to human rights protection and availability. To come within the fold of article 21 of the Constitution of India, the right to die with dignity should be secured from being misused. The patient should be conducted with passive euthanasia with proper care and attention. In Indian perspective the grant of active euthanasia may not be permissible in present scenario as the society is not so educated and the crime rate is too high in India so it will not secure the security and interests of the patient.

In society, like India relatives and any other beneficiary may be interested to get property and assets of patients in inheritance, it is the responsibility of the authorities to conduct it after

proper inquiry and confirmation of doctors and their reports. In India, property is a very common issue on which numerous disputes come before the court in which anybody murdered someone for succeeding his property or in civil matters as to manipulate or fabricate the documents as will, power of attorney *etc.* Property is one of the root causes of crime and fraud in society. In our country corruption is also blowing extreme and due to the population explosion economic means are very limited and people are easily manipulated for commission of a crime and wrongful act. They have no engagements to look after their families or for upbringing of their children. Due to these reasons they can be easily influenced for taking the part into the commission of a crime.

The law makers have to analyze the overall background and the socio legal conditions to grant the same in Indian perspective. The Supreme Court has considered the inherent motives of the persons responsible for not considering the active euthanasia. The Supreme Court of India has allowed passive euthanasia and to form a law to define the boundaries and limits. The apex judiciary also favoured for constituting a committee to play a supervisory role in the conduction of mercy killing. The decision of the honourable court is highly appreciable, it works like a light in the dark. Apex court has focussed upon the agony of the patient and his peaceful exit from life while allowing the same. To make secure the right to die with dignity is the positive expansion of the right to life under the ambit of article 21 of the Constitution. Though the grant of passive euthanasia should be welcomed and the law as well as now it is the responsibility of the Parliament to frame the law on this issue and the guidelines to implement the same as far as possible. It would be helpful in making the situation clear.