



Euthanasia: A Wrong or a Human Right to Death

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"The care of human life and happiness and not their destruction is the first and only legitimate object of good governance." -Thomas Jeffersonⁱ

ABSTRACT

Whatever a human born with is considered ones human right, which is inherent and indivisible. Certainly the most precious right to life is the mother of all rights. The words "Right to death" evoke an exactly opposite sentiment. How can it be a right if you are using it to give up your rights? The above right has been used as an excuse or a smokescreen to include various concepts that are opposed to defense of life. Euthanasia/ Mercy killing /Physician Assisted Suicide (PAS), the species of the same genre are about giving license for the right to kill. This research is trying to explore the evolution of the concept of euthanasia and its legality in light of the mandate of article 21 of the Indian Constitution. It will briefly touch the different synonymic acts of mercy killing also for explaining its assessment or unavailability in Indian socio-legal system.

Keywords— Human Right, Euthanasia, Death

I. INTRODUCTION

Many people are of the opinion that patients who are terminally ill, and who are having no chance of recovery should be allowed to die as extending their lives merely adds to their pain and suffering. There are some who believe that individuals should have an unqualified right to die, while there are others who consider all forms of euthanasia to be murder or suicide and, thus, immoral.

Conception

In ancient Greece and Rome, helping others to put an end to their lives was permitted in certain situations. The term euthanasia is derived from the Greek words "eu" and "thanatos" which means 'good or easy' and 'death'. The English philosopher Sir Francis Bacon coined the phrase "euthanasia" early in the 17th century.ⁱⁱ He introduced the expression "outward Euthanasia" to designate what we would today characterize as end-of-life palliative care. 'Euthanasia is defined as the administration of a lethal agent by another

person to a patient for the purpose of relieving the patient's intolerable and incurable suffering'.ⁱⁱⁱ The term is usually acknowledged as 'mercy killing'. This is done simply to mercifully end the life of the victim to release him from the incurable disease, intolerable suffering and from the misery and pain of life. Euthanasia is an *"intentional killing by an act/ omission of person whose life is felt is not to be worth living."* The above acknowledgment consequentially includes just about anyone who has a suicidal wish. Moreover the term "person" is inclusive of any and everybody and is not solely restricted to "patients." The legalization of the above would result in nothing but mayhem.

II. HISTORICAL STIMULATION

The period of the Greeks and the Romans accounts for practicing suicide and assisted suicide without attaching any social predicament. Moreover, the present advocacy on this subject is based on the ideas of autonomy and individual rights, which are themselves the gospels of ancient Greeks and Romans.

Christianity and Judaism posed first great challenge to practicing euthanasia. Christianity teaches that life is a gift of God, and one must live it till the end. Another religion, Islam is also against the concept of euthanasia, as it professes that life is sacred which is given by Allah, and only he decides how long a man shall live.

Hinduism seems very much advocating suicide and self-liberation. A man who is terminally ill and has no chance of recovery shall be allowed to pursue death, who has accomplished all desires in life can seek to realize liberation from 'samsara'. Buddhism and Jainism also support suicide in some restricted form. Siddhartha Gautum who is commonly known as Buddha preached the gospels of samsara (cycle of life and death) and liberation from samsara as the ultimate goal of life. Jainism which emerged around 6th century BC also holds the concept of rebirth and final liberation.

In India, the moral values, rules, duties and principles of life and religion in the Srutis, Smritis, Vedas, Upanishads, Puranas, Gita, Mahabharata and the Ramayana and other texts are to be followed in life and upon the death by the people. It is believed that Lord Rama and his brother Lakshmana took Jal Samadhi in *Suryu* River, while Lord Mahavir attained death by seeking it. Veer Savarkar and Vinoba Bhave also chose to end their lives by refusing to take nutrition.

In India euthanasia is a crime. The opening note regarding euthanasia was made by the **Law Commission of India in 1971**^{iv}, which recommended first-time deletion of Section 309 of the Indian Penal Code, 1860^v, that deals with the attempt to commit suicide. Section 306 IPC deals with abatement of suicide- both actions are punishable. Further, the Supreme Court in *Rathinam v. Union of India*^{vi} held that Section 309 IPC is violative of Article 21 of the Constitution of India, termed the said section as cruel and irrational, resulting in punishing a person again, who has already suffered agony and would be undergoing humiliation because of his failure to commit suicide. Further, an act of suicide cannot be said to be against religion, morality or public policy, and that it does not cause any harm to others, because of which States' interference with the personal liberty of the people concerned is unwarranted.

After about a decade, the **Law Commission of India in 2006** came up with the 196th Report^{vii} that only dealt with the protection of the terminally ill patients in cases where they are in a permanent vegetative state with no chance of recovery which recommended legalising 'passive euthanasia' in a very strict and controlled mechanism. The Report made it clear that euthanasia and physician-assisted suicide shall remain illegal. In such a case, the patient voluntarily by oral or written request can seek for the removal of support system, thereby hastening his death, though subject to certain safeguards. The doctors attending to such a patient have the duty to inform the patient completely of his state and future prospects and further, shall forcefully keep the patient on life support against his will. This request is made as a direction of the terminally ill patient that is binding on the doctor and protect them from Section 306 IPC if acts under such instructions of the patient. Further, in cases of incompetent patient a mandatory clearance from the High Court shall be taken by the next friend to give effect to the withdrawal of life support.

III. CLASSIFICATION OF EUTHANASIA

Euthanasia has pronged into two forms as 'active' or 'passive.' based upon the method by which they are performed by physicians. Active euthanasia refers to a physician consciously acting in a way to end a patient's life. It is a positive merciful act to end useless sufferings and a meaningless existence. It is an act of **commission** for example by giving large doses of a drug to hasten death. Passive or negative euthanasia is defined as hastening the death by removing the life support and

letting the death by natural phenomenon. It relates to withholding or withdrawing treatment crucial to sustain life. This includes an act of **omission**, such as failure to give the kiss of life to a terminally ill or hopelessly harmed patient or severely defectively newborn infant. It involves non-use of the measures that would probably delay death and permit natural death to occur. The above method is practiced where the chance of recovery of the patient is uncertain and is only done to allow the death naturally.

Further, Active euthanasia is classified into three forms on the basis of consent:

1. **Voluntary**- In which the patient makes a request orally or written, preferring euthanasia rather than to continue living in suffering. In this type, the person himself seeks the plea for commission of euthanasia. Therefore, under voluntary request both passive euthanasia and active euthanasia can be practiced.
2. **Involuntary**- In which the process is conceded without consent, if a patient is unable to convey it. e.g. in cases of brain-dead, coma patients, etc. This is also known as "**mercy killing**," involves taking the life of a patient who has not requested for it, with the intent of relieving his pain and suffering.^{viii} Here the individual is incapable to request for euthanasia and another person makes the decision on his/her behalf, usually based on earlier expressed wishes.
3. **Non-voluntary** – In this type, a person is competent yet non-consenting to the decision of euthanasia. No doubt, this form is direct homicide.
4. Other relevant terms with respect to euthanasia that deserve a mention here are : **Physician Assisted Suicide (PAS)**: a semi-passive form of euthanasia, also known as aid-in-dying, PAS is whereby the medical practitioner recommends the right amount of mortal dose for the termination of life at the request of the patient itself. The dose may either be self – injected by the person or the same be made available to the patient who self injects or inhales such dose.

Both euthanasia and PAS have been distinguished, legally and ethically, The distinction between euthanasia/PAS and the administration of high-dose pain medications that may hasten death is premised on the intent behind the act. In euthanasia/PAS, the intent is to end the patient's life, while in the administration of pain medications that may also hasten death; the intent is to relieve suffering. Distinctions between withdrawal of life support and euthanasia/PAS are, in many ways, considerably clearer. On the other hand, patients have not had the converse right to demand treatments or interventions that they desire. This distinction has had the effect of allowing a patient on life support for the ability to end his or her life on request, yet a patient who is not dependent on life support does not have such a right. Many terminally diseased patients^{ix} have access to potentially fatal medications, at times even upon request from their physicians, yet do not use these medications to end their own lives.

Permanent Vegetative State (PVS) : It is a state whereby a patient is in a vegetative stage, where he/she no longer is capable of sustaining on his/ her own means

and is on support of any or many life support systems or even other individuals (including family, relatives, doctor, medical staff, etc.) to perform basic human tasks.

Advanced Medical Directive: Also termed as **'living will'**, it is a directive given by a person, desiring that whether or not they want their life to be artificially prolonged in the event of a devastating illness or injury. Such a directive to be legal, must be voluntary, competent and in advance.

Many arguments have been advanced by scholars, human rights philosophers and law thinkers advocating legalization of euthanasia all over the world. These are made on the basis of moral, human rights, and utilitarian grounds. The moral ground is that it is against morality to leave someone in severe pain and do nothing for his/her relief. The human rights angle is that leaving a patient in severe pain would amount to directly challenging the fundamental right of the individual i.e., the right to a dignified life. The utilitarian principle believes in the greatest degree of happiness to the greatest number of people. If anyone is terminally ill, lying in hospital and is in severe pain, then it would not bring his/her family happiness and it will suffer because of his/her pain. Therefore, utilitarian thinkers argue that an act or abstaining from an act which does not give happiness to anyone is wrong. These views have been gaining support in the social circles triggering a debate on the question whether right to life includes within it the right to die especially in the context of Euthanasia or Mercy Killing.

In India, the sanctity of life has been placed on the highest pedestal. "The right to life" ^x is inalienable and is inherent in us. It cannot and is not conferred upon us. It laid down that **"no person shall be deprived of his life and personal liberty except by procedure established by law"**. However, the true significance of this constitutional provision goes beyond these words. Life in Article 21 does not mean merely animal existence but living with human dignity. This judicial attitude has mainly been influenced by the oft-quoted observation of the U.S Supreme Court in *Munn v Illinois*^{xi} in which it was observed that

"By the term life as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg..."

This judicial approach is epitomized by the observation of Bhagwati.J in Francis Coralie's case^{xii}:

"We think that the right to life includes the right to live with human dignity and all that does with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings".

However, Honable Supreme Court in *Gain Kaur* case^{xiii} held that the "right to life" is inherently inconsistent with the "right to die" as is "death" with "life". In furtherance, the right to life, which includes

right to live with human dignity, would mean the existence of such a right up to the natural end of life. It also includes "death with dignity" but such existence should not be confused with unnatural extinction of life curtailing natural span of life. It was observed by the honourable supreme court that:

"Euthanasia is termination of life of a person who is terminally ill or in a persistent vegetative state. In such a case death due to termination of a natural life is certain and imminent. The process of natural death has commenced..... This may include the right of a dying man to die with dignity when his life is ebbing out. But this cannot be equated with the right to die an unnatural death curtailing the natural span of life."

A Division bench affirmed^{xiv} that the "right to life" may be said to bring into its purview, the right not to live a forced life, the plea that euthanasia be legalized was discarded. It was held that as euthanasia involves the intervention of a third person, it would indirectly amount to a person aiding or abetting the killing of another, which would be inviting Section 306 IPC In progression of the above, the constitutionality of Section 309 IPC, which makes "attempt to suicide" an offence, was upheld, overruling the judgment in *P. Rathinam's case* that establishes that the "Right to life" not only precludes the "right to die" but also the right to kill." Justice Lodha J. affirmed^{xv} that **"Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected."**

The Supreme Court considered the whole debate in the landmark case of *Aruna Ramchandra Shanbaug v. Union of India*^{xvi}, passive euthanasia was made legal without any legislation under the guidelines provided there under. However, active euthanasia was altogether precluded from being legalised under the present statutes until and unless Parliament makes a specific law in this regard. Further, commenting upon active form of euthanasia, the Court ruled that it is no doubt a criminal offence punishable under Section 302 or at least 304 IPC, when done by any person, and when executed by a doctor as physician (PAS) is punishable under Section 306 IPC. The Court has ruled that active form of euthanasia shall remain illegal unless the legislature comes with a law to legalise it. Thus, the Court refused its legality as it would amount to 'constitutional cannibalism', 'judicial murder' and apprehension of being misused by unscrupulous person to inherit property etc. The Court gave the following safeguards and conditions:

- A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or
- in the absence of any of them, by a person or a body of persons acting as a next friend, or
- by the doctors attending the patient.
- The decision should be taken bona fide in the best interest of the patient.
- Even if the decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned.

However, apprehending misuse of the law at the hands of the unscrupulous person in conspiracy with the doctors to inherit or to grab the property of the patient, the High Court accepted the doctrine of *parens patriae*.

The **241st Report of Law Commission**,^{xvii} suggested legalisation of passive euthanasia. The above Report respecting the views expressed by the Court in the Aruna Shanbaug^{xviii} case, recommended that a law is necessary in line of the guidelines made out in case. However, the Report clarified that active euthanasia and Physician Assisted Suicide shall be illegal and even attributed active euthanasia as punishable under Section 300 (when voluntary) and Section 302 IPC (when involuntary), whereas PAS is opposed to Section 306 of the Code.

In *Common Cause v. Union of India*^{xix}, a writ petition was filed for declaring 'right to die with dignity' as a fundamental right within the fold of 'right to live with dignity' guaranteed under Article 21 of the Constitution of India and to issue direction to the respondent, to adopt suitable procedures, in consultation with the State Governments wherever necessary, to ensure that the persons with deteriorated health or terminally ill should be able to execute a document viz. 'my living will & attorney authorisation.' That can be presented to the hospital for appropriate action in case of the executants being admitted to the hospital with serious illness which may threaten termination of his life or in the alternative, issue appropriate guidelines to this effect and to appoint an Expert Committee consisting of doctors, social scientists and lawyers to study into the aspect of issuing guidelines regarding execution of 'Living Wills'.

On March 2018^{xx} The five-judge constitutional bench pronounced that it is legalizing passive euthanasia (as part of the case involving Aruna Shanbaug who died in 2015 after decades of being in a Persistent Vegetative State) and granting legal recognition to Advanced Medical Directives or 'Living Will' for the first time in India. It is a legal document that underlines the wish of a person if they are terminally ill or unable to make an informed choice due to incapacitation. It is essential that its execution is free from any external interference in the form of inducement, coercion, or compulsion. To enforce such a will the court had also laid down guidelines concerning the 'living will' on part of the individual giving his consent in writing. The tenets laid down dealt with the executioner of the living will and the method, the process of its recording, refusal of permission by medical board and inapplicability of the directive.

It may be noted that in *Gian Kaur case* although the Supreme Court has quoted with approval the view of the House of Lords in *Airedale's case*^{xxi}, it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. This vexed question has been arising often in India because there are a large number of cases where persons go into coma or for some other reason are unable to give consent, and then the extremely important question arises as to who

should give consent for withdrawal of life support. In India because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialisation, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method.

'..... 'Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life'.

IV. LEGAL ISSUES AND PERSPECTIVE

Arguments in favour of legalization of euthanasia are typically grounded on the assumption that requests for PAS are "judicious" decision, given the circumstances of terminal illness, pain, increased disability, and fears of becoming (or continuing to be) a burden to family and friends.

Firstly proponents observe euthanasia as an act of humanity toward the terminally ill patient. They believe the patient and family should not be forced to suffer through a long and painful death, even if the only way to alleviate the suffering is through suicide.

Secondly, it considers ethical and justified when the quality of life of the terminally ill patient becomes so low that death remains the only justifiable means to relieve suffering. Lack of any justifiable means of recovery and the dying patient himself making the choice to end his life are conditions which make euthanasia more justifiable^{xxii}.

Besides this, legalization of euthanasia is a natural extension of patient's autonomy and the right to determine what treatments are accepted or refused.

In addition, the "artificial and impractical" demarcation drawn by the court and the religious organizations between active and passive euthanasia are also criticized. Withdrawal of life support, the classical form of "passive" euthanasia, actually involves taking an "active" step to hasten the death of a terminally ill patient and it is the patient's consent which lends legitimacy to the act. If, 'following consent of a similar nature, a physician administers a fatal dose of injection, there is no reason why this act should be considered as illegal or immoral'.^{xxiii}

Moreover, the desire to include one's physician in carrying out a decision to end one's life can be viewed as an extension of the natural reliance of terminally ill patients on their physicians for help with most aspects of their illness, as well as reasonable mechanism to ensure that they do not become more disabled and burdensome to their family or friends by attempting suicide unsuccessfully (causing a persistent vegetative state or increased disability).

V. CONTRASTING LEGALIZATION OF EUTHANASIA/ PAS

Opposition to legalization of PAS and euthanasia has come from numerous different perspectives.

Firstly, the suicide should be prevented at all costs. Suicidal desire in terminally ill patients is a sign of undiagnosed, untreated mental illness (depression and anxiety). Consequently, physician compliance with a suffering patient's stated wish for euthanasia may avoid the provision of appropriate psychiatric care.

Secondly, regarding pain and physical symptoms, requests for PAS may be evidence of inadequate palliative care. An even more frightening possibility is that physicians or other health care providers might recommend PAS as an option because the alternative – providing adequate palliative care – is too expensive or difficult to obtain.

Therefore possibly, patients with poor health insurance or limited financial resources may be “coerced” into requesting PAS by poorly managed or untreated physical and psychological symptoms, perceiving their only options to be either continued suffering or death.

Besides this, possibility of coercing individuals of lower socio-economic classes or other deprived groups either directly or indirectly, into requesting PAS as a means of resolving the complications posed by their illness. Family members may subtly suggest that death, since inevitable, would be preferable if it occurred sooner rather than later because of the **social and financial burdens** involved in caring for terminally ill family members.

The above implications conclude that any form which involves unnatural execution of life, whether an abetment to suicide/assisted suicide, attempt to suicide or euthanasia, is not only **illegal but also immoral**. This apart, the decriminalization of euthanasia is unworkable in the India, even on humanitarian grounds, as it involves a third person.

Moreover the implication of the term "euthanasia" is itself shrouded in ambiguity. Derived from the Greek word "euthanatos" meaning "good death", to reiterate the judicial pronouncements in the Indian context, good or happy death would imply the flow of life the natural way.

It is argued that, a patient in unbearable agony and excruciating pain or "terminally ill", the saving-grace is euthanasia on compassionate grounds. The term "terminally ill" has no precise definition. Some laws define "terminal" as one from which death will occur in a "relatively short time" or "within a span of six months" or "any disease that curtails life even for a day". The core of the point is that all these definitions involve ambiguity and medical experts have acknowledged that it is virtually impossible to predict the life expectancy of a particular individual.

In addition, if every terminal patient were prodded to a "gentle landing", impetus to research, which is the answer to curative medicine, would be foiled. The medical profession is guided by a desire to heal and extend life. Their Hippocratic Oath states, ^{xxiv} “I will prescribe regimen for the good of my patients

according to my ability and my judgment and never do harm to anyone.....” Thus, the possibility that a physician may directly hasten the death of a patient – one whom the physician has been presumably treating in an effort to extend and improve life – contradicts the central tenet of the medical profession. Therefore, if legalized, doctors would be forced to perform such acts against their will that would amount to a violation of the Hippocratic Oath.

The Supreme Court, in a landmark decision,^{xxv} specified two irreversible conditions to permit Passive Euthanasia: (I) the brain-dead for whom the ventilator can be switched off (II) those in a Persistent Vegetative State (PVS) for whom the feed can be tapered out and pain-managing palliatives be added, according to laid-down international specifications. The same case-law also asked for the scrapping of 309 IPC which penalizes those who survive suicide-attempts. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law.

Active euthanasia, including the administration of lethal compounds for the purpose of ending life, legal in a number of nations including Luxemburg, Belgium, Netherlands, as well as the States of Washington and Oregon in US, are still illegal in India, and in most countries.^{xxvi} In Netherlands, the Supreme Court in Chabot's case^{xxvii} held that euthanasia could be lawful only in cases of physical illness. It could even extend to cases of mental illness.

It may be pertinent to mention that the most vital point is the repercussions that could take place once something as controversial is legalized. In India, where abuse of the law is the rule rather than the exception and where conniving relatives scream to lap up an heirloom, the abovementioned argument holds great weight age. Thus, there is evidenced a conceptual degradation of the right to live with dignity.

The legalization of the same could be effected in India only if procedures are stringent, foolproof and with proper mechanisms in place, e.g. In Netherlands the request for euthanasia should come only from the patient and be free, voluntary, and persistent; it should be the last resort and should be performed by a physician in consultation with an independent experienced physician colleague.

VI. CONCLUSION

While some countries in the world have already recognised and legalised the provision of euthanasia, the legalisation of the same may not be a very appealing idea in India. In several case-law recognising and legalising the euthanasia, the court have legalised passive, voluntary euthanasia. Active euthanasia has not been legalised yet, and hopefully will not be done in the future as well. Euthanasia is going to be more of a mischief than a boon for the people for whom the legalisation has been done.

Thus the logical derivation of this aspect would be that India does not have an appropriate health-care mechanism in place, let alone foolproof procedures for euthanasia. In the presence of the above bottlenecks and policing rampant in our country, the appropriate course of action would be to develop proper "care ethics",

ensuring a "dignified existence and termination" of life. Let us augment the above and resultantly, the concept of euthanasia will be nothing but a distant reality. *All in all.... "No life that breathes with human breath has ever truly longed for death."*

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- ^{ix} Terminally diseased refers to an incurable and irreversible disease or condition that has been medically confirmed and will, within reasonable medical judgment, produce death.
- ^x Article 21 of the Constitution of India.
- ^{xi} *Munn v. Illinois* 94 US 113(1876).
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