



EUTHANASIA: A LEGAL DIMENSION IN INDIA

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Introduction:

Life asked death, “why do people love me and hate you?” death responded, “Because you are a beautiful lie and I am a painful truth”.

The word death itself appears to be so intimidating, that often people avert taking its name. Death signifies end of a human being or an organism and as such quite unpleasant. In the universe, if anything exists for certainty, it is death. It being the bitter truth of life, every attempt is made to forestall its occurrence.

Life indeed is beautiful and one wishes to survive immortally. However, life always does not appear to be cordial and gracious. The other side of the truth being those people who yearn and knock the doors of death relentlessly but without any ray of hope of survival.

Religions, all over the world endorse the power of God to bestow life and also diminish the flame of life as and when He decides. Question of life and death often appear to be and considered by vast majority of people as a matter of destiny and discretion of God with little or no choice left in the hands of Human Beings. Suicidal attempts are often looked down upon as unforgivable sinful attempts directly opening the doors of Hell after death.

In this background, the pertinent question which comes on fore is about Euthansia, the word which has acquired paramount importance in recent years on account of conflicting views held by people pertaining to its maintainability.



Euthanasia: meaning and origin:

The English philosopher Sir Francis Bacon coined the phrase “euthanasia” early in the 17th century¹. The word ‘Euthanasia’ has been derived from Greek word ‘eu’ meaning good and ‘thanatos’ which means death². In other words, euthanasia stands for easy death. It implies a deliberate act to end the life of a patient suffering from terminal illness or incurable disease, either by administering some drugs to facilitate the process of death or by withdrawal of life saving system.

Euthanasia is carried on by the physicians in either of the two ways namely Active Euthanasia or Passive Euthanasia. Active euthanasia is a positive act whereby the physician deliberately ends the life of a patient by administering drugs. Passive euthanasia pertains to withholding or withdrawing treatment necessary to maintain life. There are three types of active euthanasia. Voluntary euthanasia is one form of active euthanasia which is performed at the request of the patient. Involuntary euthanasia, 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 suffering³. In non voluntary euthanasia, the process is carried out even though the patient is not in a position to give consent⁴

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¹ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/> ,last visited on 01/02/2017

² Nadeau R. Gentles. (1995). Euthanasia and Assisted Suicide: The Current Debate. Toronto: Stoddart Publishing Co. Limited;

³ Mc Dougall Jennifer, Gorman Martha. (2008) Euthanasia: A Reference Handbook, ABC-CLIO Inc

⁴ Yount L. Physician-assisted suicide and euthanasia. New York: Facts On File, Inc; 2000



The first recorded use of the word euthanasia was by Suetonius, a Roman historian, in his *De Vita Caesarum--Divus Augustus* (The Lives of the Caesars--The Deified Augustus) to describe the death of Augustus Caesar⁵.

Although a forbidden act, euthanasia was applied to many hopeless patients to relieve them from excruciating pain.

Holland is the first country in the world to legalize euthanasia (mercy killing) by two thirds majority in the House of Parliament. The Upper House (Senate) took the historic decision on April 11, 2001 to pass the euthanasia bill with a vote of 46 to 28. In December 2000, the Dutch Lower House approved the euthanasia bill by 104 to 40, after a prolonged debate. The Dutch move was welcomed by several human rights activists and patients' organizations who said that a long accepted practice in Netherlands has finally been given legal sanction⁶. Belgium legalised euthanasia on May 16, 2002⁷.

Physician's role:

“To please no one will I prescribe a deadly drug nor give advice which may cause his death” Hippocratic Oath – 400 BC.

As euthanasia need to be administered with the assistance of physician, it becomes very important to assess the role of physician in the matter of Euthanasia. Hippocratic code which mandatory for all physicians which is pledged before beginning with their professional life, mandates non prescription

⁵<http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1/>, read on 11.01.2017

⁶ <http://www.independent.co.uk/news/world/europe/holland-is-first-country-to-legalise-euthanasia-5367109.html>

⁷ http://www.apiindia.org/pdf/pg_med_2008/Chapter-02.pdf



of deadly drug which will cause death of the person. This has brought about a conflicting situation for the physician.

However, although Hippocratic code forbids Active Euthanasia, it refrains from expressly prohibiting Passive Euthanasia. As such, one method to resolve the dilemma would depend upon the interpretation of Hippocratic Code. Physician need not prescribe any deadly medicine to the patient, however, the Code does not prevent the physician from refraining to give medicines to terminally ill patients.

Euthanasia in India

In India, a fierce debate surrounds the topic of Euthanasia.

Various judicial interpretations have resulted in conflicting decisions.

Article 21 of the Constitution mandates right to life to every person and prohibits its deprivation except according to the procedure laid down under law. However this Right had been subject to conflicting judicial interpretations.

Bombay High court for the first time deliberated upon the question of Right to die. It held section 309 of IPC as unconstitutional and violating Article 21 of the Constitution. The court said that Right to life includes right to end one's life if one so desires⁸.

The issue further came under consideration in Supreme Court in the year 1994. In this case⁹, Supreme Court upheld the verdict of Bombay High Court and held

⁸ Maruti Shripati Dubai v.State of Maharashtra 1987 CrLJ743 (Bom)

⁹ P. Rathinam. V. Union of India, 1994 AIR 1844



that a person has a right to die. A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. The right to live in Article 21 of the Constitution includes the right not to live.

However, the 1994 decision of Supreme Court was further overruled by the Constitutional Bench of the apex court in *Gian Kaur v. State of Punjab*¹⁰ and held that right to die is not a part of the right to life. Extinction of life is not included in protection of life.

Need for Euthanasia:

With the advancement in medical science and technology, the mortality rate has come down to marginal rate. In comparison to betterment and advancement of life, it has helped in prolonging the life of patient. The quality of life may not be good as compared to length of the number of living years, thereby aggravating pain and suffering for the patient.

Two landmark decisions pertaining to the issue of Euthanasia are as follows:

Airedale NHS Trust v. Bland¹¹

On 15th April 1989, Liverpool was playing against Nottingham for FA Cup at Sheffield Wednesday's Hillsborough football ground. On account of heavy crowd outside the ground, police opened a set of gates leading to a narrow tunnel at the rear of the terrace. At the front of the terrace, fans were pushed and crushed against steel fencing. As a result of which Tony Bland, an 18 year old Liverpool

¹⁰ Criminal Appeal No. 364 of 1996

¹¹<https://www.brightknowledge.org/knowledge-bank/law-and-politics/features-and-resources/famous-cases-airedale-nhs-trust-vs-tony-bland>



fan sustained severe injuries in the nature of crushed ribs and punctured lungs. This interrupted supply of oxygen to his brain and left him in a permanent vegetative state (PVS).

He could not see, hear or feel anything. However the brain stem, which controlled the reflexive functions of the body like heartbeat, breathing, continued to operate. In the eyes of legal and medical world, a person is not clinically dead as long as brain stem continues to function.

As no useful purpose would be served by continuing with medical treatment, doctors in charge of Tony bland decided to discontinue artificial feeding which would merely prolong the life of the patient. Accordingly, they made an application to the High Court of Justice.

After deliberating on legal and ethical issues, Judges held that, “it is perfectly reasonable for the responsible doctors to conclude that there is no affirmative benefit to Tony Bland in continuing the invasive medical procedures necessary to sustain his life. Having so concluded, they are neither entitled nor under a duty to continue such medical care. Therefore they will not be guilty of murder if they discontinue such care”¹². Treatment was stopped and Tony Bland died on March 3rd 1993.

Aruna Shanbaug Case:

Aruna Shanbaug was a junior nurse working in KEM hospital. On 27th November, 1973, she was raped and strangulated with dog chain by the ward boy

¹² <https://www.brightknowledge.org/knowledge-bank/law-and-politics/features-and-resources/famous-cases-airedale-nhs-trust-vs-tony-bland>



of the hospital namely Sohanlal Bhartha Walmiki. This discontinued supply of oxygen to her brain leaving her into permanent vegetative state.

Upon being abandoned by her family members, her care was being taken by the staff of KEM hospital. However, on application on Euthanasia, being made by Pinki Virani, to relieve Aruna of her pain and agony, Supreme Court laid down landmark precedent on the issue of Euthanasia in India.

While turning down the plea of mercy killing on March 7, 2011, the apex court, however, allowed “passive euthanasia” of withdrawing life support to patients in permanently vegetative state (PVS). It rejected outright active euthanasia of ending life through administration of lethal substances¹³.

Supreme Court further laid down stringent guidelines for administering passive euthanasia. As per the guidelines, whenever there is a need for passive euthanasia for some patient, permission has to be obtained from the concerned High Court before life prolonging measures can be withheld. Here the court will act as ‘parens patriae’, a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf. The idea behind parens patriae is that the King as the father of nation has a sacred duty to take care of those who are unable to look after themselves. This is essential as in most cases where the question of passive euthanasia arrives; the patients are often unconscious or otherwise unable to communicate their intentions. Thus in order to prevent any sort of criminality by the patient’s relatives/friends or even treating doctors, courts will oversee and take the decision on behalf of the patient. It is ultimately for the Courts to decide, as to

¹³ <http://indianexpress.com/article/india/india-others/who-is-aruna-shanbaug/>



what is in the best interest of the patient, though the wishes of close relatives and next friend, and opinion of medical practitioners should be given due weightage in formulating the decision. Hon'ble Court also laid down procedure to obtain such permission in detail¹⁴.

A decision has to be taken to discontinue life support either by the parent or the spouse or other close relative or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient. Hence, even if a 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 as laid down in Airedale case.

Upon filing of application, the Chief Justice of the High Court is required to constitute a Bench of atleast two Judges to decide the application. The Bench is required to seek opinion of a committee of three reputed doctors, preferably consisting of neurologist, psychiatrist and physician, nominated by the Bench. The committee should examine the patient and the records before submitting its report to the Hon'ble High Court. The report should be submitted to the close relatives of the patient and after hearing them, High Court should pronounce its verdict.

Euthanasia and the Law Commission of India:

¹⁴ Thejaswi HT., Kumar A.,Gupta SK, Present Status of Euthanasia in India from Medico-Legal Perspective.



The 17th Law Commission of India while considering Euthanasia and assisted suicide as offence, confined its findings to examining the various legal concepts applicable to ‘withdrawal of life support measures’ and to suggest the manner and circumstances in which the medical profession could take decisions for withdrawal of life support if it was in the ‘best interests’ of the patient.

The 196th Report of the Law Commission stated the fundamental principle that a terminally ill but competent patient has a right to refuse treatment including discontinuance of life sustaining measures and the same is binding on the doctor, “provided that the decision of the patient is an ‘informed decision’ ”.

Law Commission’s 241st Report proposed draft legislation under the title “Medical Treatment to Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill 2006”.

Law commission in its 243rd Report has endorsed on passive euthanasia subject to certain safeguards. A competent ill patient who to the satisfaction of medical practitioners capable of taking informed decision has every right to discontinue the treatment. With regard to incompetent ill patient, who are in irreversible coma or in permanent vegetative state, the doctors decision shall be subject to clearance from Hon’ble High Court.

Conclusion:

Euthanasia aims at putting an end to the excruciating pain suffered by the patient. It seeks to relieve the patient and his family members from agony and suffering. Although death has always been the domain of destiny, certain degree of freedom need to be conferred to the individuals to maintain the dignity. In certain unavoidable circumstances, as involving a person in permanent vegetative state,



Euthanasia need to be administered to the patient by following necessary norms and principles. The interest of an individual however in no case can outweigh the interest of the society. Hence there is an urgent need to have a detailed legislation on Euthanasia in India in order to avoid any possible misuse.