

A STUDY OF EUTHANASIA IN INDIA

GAURAV GOEL

LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY, UTTARAKHAND, INDIA

EMAIL ID-goelgaurav01997@gmail.com

ABSTRACT:

One of the basic Human Rights is Right to life. It starts from the time of origin in the mother's womb till death of the individual. It means not only living with dignity, but also dying with dignity. This right has been recognised by many countries and they have taken steps to ease and preserve the dignity of a dying person. In Indian Courts at various instances question have arisen. In *M S Dubal vs State of Maharashtra*, where a police constable who met with an accident which caused head injury leading to mental illness, tried to commit suicide by pouring kerosene and setting himself on fire and hence, charged for attempt to suicide, the Bombay High Court held that "Right to Life" includes the "Right to death". However, the Andhra Pradesh High Court, in *Chenna Jagadeswar & Anr. vs State of Andhra Pradesh*, where, the accused was convicted for killing his 4 children and wife, and then both trying to commit suicide; said that the Right to Life does not include the right to die, under Article 21 of the Constitution of India. The Supreme Court have dealt with this question in various judgements from 1994 onwards, and finally, acknowledged that the right to life does include, in some special circumstances, the right to die, in its landmark judgement. We will discuss the status of Euthanasia in our country, in the light of the said judgement - popularly known as the Aruna Shanbaug Case.

Key words: Constitution of India, Euthanasia, Passive Euthanasia, Right of life.

I. INTRODUCTION

Thomas Mann had in 1924 said; a man's dying is more the survivor's affair than his own'. Today his words are considered to be true as there is a wide-ranging debate on legalizing euthanasia.

In History, Euthanasia has been accepted in some form or the other. In certain conditions, helping to die or putting them to death was permissible in ancient Rome and Greece.

For example, Sparta newborns with severe birth defects were put to death. For elders voluntary euthanasia was permissible custom in ancient societies. Right to die was also recognised as traditional Indian Law

1.1 WHAT IS EUTHANASIA?

Ending a person's life in order to free from incurable disease, this practice is Euthanasia. Euthanasia has been derived from the Greek word "Good Death" and originally referred to intentional mercy killing. In recent period, Euthanasia is somewhat limited to killing at the request of patient by the doctors to free the patient from terminal illness.

Each civilized nation includes a group of ethical or moral, social, religious and legal principles which administer the people of that country. These principles are remarked as holy and symbol for the inner morality of human being. Among that one principle is of faith in human life for which deep recognition and respect is sign of every innovative nation. Due to this principle, positioning end of life can be seen as wrong. But this principle is not an outright principle. It is a aspiration of every human being to live precious and quality life but due to some incurable illness and diseases sometimes they have a wish to end their life. When an individual end his/her life by his own act it is considered as 'suicide' and punishable under IPC whereas when on request of a person life of that person is ended by some other person is known as 'euthanasia'. As everyone possess Right of independence and self-determination which contains in itself the right of dignity. So the issue of euthanasia is a clash between the principle of faith in human life and principle of independence and self-determination. Euthanasia is debatable matter and is required more concern by considering all aspect of lives by legislature and by judiciary.

1.2 CONCEPT OF EUTHANASIA AND ITS TYPES

The word euthanasia has been derived from Greek words 'eu' and 'thanatos' which means 'easy death' or 'good death'. Basically, Euthanasia means 'painless killing of a person who is suffering from incurable diseases or in

irreversible coma. It is also called as 'mercy killing'. "*Euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reasons of mercy.* The main purpose of euthanasia is to ensure a painless death to a person who is suffering from incurable disease since long time. There are five types of euthanasia which are following:

- 1) Active Euthanasia
- 2) Passive Euthanasia
- 3) Voluntary Euthanasia
- 4) Involuntary euthanasia
- 5) Non Voluntary euthanasia

1) *Active Euthanasia*: when a doctor gives a fatal dose or injection to a patient who are suffering from irreversible stage of life with an object to give him/her painless death ,it is known as Active Euthanasia.

2) *Passive Euthanasia*: when a patient who is on vegetative stage surviving with the help of life support system and if a doctors stop or off that support system then, it is known as 'Passive Euthanasia'. In this doctors are withdrawing that support system with whose help the patient is surviving but they are not actively killing that person.

3) *Voluntary Euthanasia*: End of life of a person who is terminally ill with the consent of that person .He /she express their desire by exercising his/her choice to die for their best interest and others also, known as voluntary euthanasia.

4) *Involuntary euthanasia*: When Death of a competent patient is caused without his expressed desire or consent, known as involuntary euthanasia. It is considered as 'murder' and also against the purpose of euthanasia.

5) *Non Voluntary euthanasia*: Death of person who is not competent to make consent. Here, the patient due to lack of time in doing so, did not left any living will and not predicted the misfortune. In this, death is caused with the consent of family members of patient.

1.3 HISTORICAL PERSPECTIVE OF EUTHANASIA IN INDIA:

The concept of Euthanasia exists from ancient time and it can be seen in present scenario as well. In Ancient time, the Rome and Greece was helping a person to end their life which is permissible in certain situations. In many holy books such as 'bible', Rig Veda' and 'Quran' concept of suicide or self-destruction is present. Some examples of religious suicides also illustrates in 'Mahabharata 'and 'Ramayana'. There are two views of Hindus regarding euthanasia. On one side, some Hindus considered is as wrong as it is against the Karma of patient as well as doctors but on other hand, some says that it is a good deed to end a painful life. While writing commentaries on Manu, Kulluka and Govardana , it was witnessed that a man may undertake the 'mahaprastha' on a passage which ends in death, when he is incurably diseased or come across with a great misfortune , and that, it is not opposed to Vedic rules which forbids suicide. Majority of Muslims totally opposed to Euthanasia because they considered life is a gift from Allah and destruction of life is disrespect towards God. Christians are also against the euthanasia. According to them life is created by their God. Consequently, no human beings have authority to interfere in this.

II. LEGISLATIVE STEPS TOWARDS LEGALISING EUTHANASIA:

Towards the Legalizing euthanasia, the first legislative steps was taken in the year 1985 by Maharashtra legislature by moving a private bill in upper house. The bill consists of the provisions concerning to provide legal safeguard to all doctors by way of immunity from criminal and civil liability if they eliminates and stop the artificial life by withdrawing the life support system with the permission of patient. This bill also contains the provision, providing legal protection to patient who makes such decisions. The abovementioned bill also talks about 'advanced directives; if the patient become incompetent to express his desire to die later on. In 2007, a bill was brought up by C.K. Chandra pan (MP) in Lok Sabha named as "The Euthanasia(Permission and Regulation) Bill,2007" to provide painless end of life of patient who is completely bed ridden and suffering from a diseases which cannot be treated till his whole life.

III. LEGAL PERSPECTIVE OF EUTHANASIA IN INDIA

In Indian perspective, Euthanasia is burning controversial issue. Since active euthanasia is not permissible in India. As 'mercy killing' is considered as intentionally killing by a doctors which comes under the purview of clause first of section 300 of Indian Penal Code, 1860. But if the patients gives a lawful consent then it will attract the exception 5 of abovementioned section and the doctors will punishable under section 304 of I.P.C. 'culpable homicide not amounting to murder'. In India 'Right to life' under Article 21 does not comprises right to die within its purview and it is punishable under section 309 of Indian Penal Code, 1860. In *Gian Kaur Vs. State Of Punjab*, the Constitutional validity of Section 309 of I.P.C. was challenged by stating that Art. 21 'Right to Life' also includes right to die. But The Constitutional Bench of Five Judges Held that "*Right to life which includes life with dignity which means existence of life till the natural end of life and upheld the constitutional validity of section 309 of I.P.C.*".

1.1 JUDICIAL TRENDS REGARDING EUTHANASIA:

Deep analysis of euthanasia was made by judiciary in the *Aruna Ramchandra Shanbaug vs. Union Of India* popularly known as Aruna Shanbaug case. In this case all contradictory aspects of euthanasia has been argued by Apex Court and their possible elucidations provided through judgment. *The Brief Facts of the case is following:*

Aruna Shanbaug was working as a nurse in Edward Memorial Hospital, Mumbai. This event happened on the evening of 27th November, 1973 when she was attacked by wrapping a dog chain around her neck by a sweeper of hospital. He attempted to rape her but found her menstruating he sodomized her. On the next day her body was found lying on floor and blood is everywhere on the floor. Due to that dog chain the oxygen supply was stopped and her brain got impaired. Since 1973, she continued in Persistent Vegetative state. The writ petition Under Article 32 filed by Ms. Pinki Virani, alleging herself to be the next friend of Aruna Shanbaug by stating that Aruna Shanbaug is in persistent vegetative state for about 32-33 years and there is no option of improvement so the mercy petition should be allowed.

The Supreme Court opened a doorway for legalizing the passive euthanasia by allowing passive euthanasia in certain exceptional circumstances and provides recommendations regarding it which are as following:

- Parents, spouse or close relatives and in their absence, the decision regarding termination of life support system, should be taken by the next friend. In the absence of next friend it can be taken by a doctor who is treating that patient.
- The Decision of termination of life support system should be made bonafide and in best interest of that patient.
- If decision is taken by the close relatives, next friend and doctors the approval should be taken from high court under Article 226 which empowers high court to issue directions and order.

In this case, the Apex Court passed an order of appointment of medical committee of three doctors to examine her and submit a report before the court. They examine her and found that she become longest survival in this situation.

In 2018 again the Supreme Court in the Landmark case *Common Cause (A regd. Society) vs. Union of India* allowed the passive euthanasia and also held that 'living will' is legally valid. The Apex Court held that:

"The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, this Court has expanded the spectrum of Article 21 to include within it the right to live with dignity as component of right to life and liberty

The Court also allowed the concept of 'living will' by stating that:

"A failure to legally recognize advance medical directives may amount to non-facilitation of right to smoothen the dying process and right to live with dignity. Further, a study of the position in other jurisdictions shows that advanced directives have gained a lawful recognition in several jurisdiction by way of legislation and in certain countries through judicial pronouncements".

Concept of living will:

Living will is the written document in which person gives express instructions in the form of advance directives for the administration of treatment when he/she will terminally ill and will not able to give express consent. It also allows family members to stop the support system if medical board declares that they are beyond medical help.

IV. LEGAL POSITION IN OTHER COUNTRIES

NETHERLANDS

Under the penal code of Netherlands, law prescribes punishment for killing a person at his request or assisting a person in committing suicide. Beside its code, the Court of Netherlands gave its ruling prescribing defense to voluntary euthanasia and assisted suicide. Further to the decision on April 2001 a bill was passed, Netherland charted out a new chapter for legalizing euthanasia.

AUSTRALIA

The first jurisdiction to explicitly legalizing voluntary active euthanasia was the Northern Territory of Australia in the year 1996 and passes the Rights of the terminally Ill Act, 1996. Later on the Federal Parliament of Australia had to pass Euthanasia Laws Act, 1997 which got repealed the Northern Territory Legislation.

ENGLAND

As the part of rights of Autonomy and Self Determination the patient has the right to refuse life sustaining treatment. in case of patients in persistent vegetative state, non-voluntary euthanasia is legalized.

UNITED STATES OF AMERICA

Active Euthanasia is prohibited under the laws of U.S. Besides this passive Euthanasia is legalized by the courts as it says that no punishment is prescribed if doctors withhold or withdraw life-sustaining treatment at the request of patient. Federal Patient Self-Determination Act, 1991 made effective which required federally certified health-care facilities to notify adult patients of their rights to accept or refuse the medical treatment. The facilities should also inform the patients of their rights under the state laws to formulate advanced directives.

CANADA

Patients have similar rights as that of U.S. in Canada to refuse life-sustaining treatment and formulate advanced directives. In spite of this they do not possess right to active euthanasia or assisted suicide.

EUTHANASIA IN UNITED STATES

In U.S., Euthanasia is not a new concept, it came into existence much before the World Wars. The debate regarding the same initiated in 1900s, it was addressed only in the early 1960s under the rights of the patient to die and non-stringent bioethics. The principle behind Euthanasia needed to be legalized was similar in countries like Canada, India, Netherlands etc. Karen Ann Quinlan case is the landmark case that threw light upon Euthanasia. In medical Ethics this case became the grund norm and milestone precedent for further similar cases. Karen Ann at the age of 21 became unconscious as a result of consumption of Valium and alcohol from a party. Afterwards, she stopped breathing for two intervals of 15 minutes which ultimately resulted in severe brain damage. She remained in coma and later diagnosed as being in Persistent Vegetative State(PVS). She was kept on ventilator but the attempts at reviving her were unsuccessful. Her parents asked for the ventilator to get removed and allowed her to die. When the hospital refused the parents of Quinlan furthered the appeal to New Jersey Supreme Court which ruled in the favour. After removing the ventilator, she breathed and after nine years of pneumonia died . This is a landmark case because it recurred two main issues: (1)Bioethics , (2)Right to die.

Terri Schiavo case: Terri Schiavo on Feb 25, 1990 at her Florida residence. For 5-6 minutes , it resulted into loss of oxygen to the brain. She consequently went into the PVS.

Thereafter, the parents of Terri Schiavo declared Michael(her husband) to be the guardian. In May 1998, Michael filed a petition to remove Terri's feeding tube , but this was opposed by her parents as they alleged that the sole motive of Michael was only to inherit her property and so wanted her to die. Terri, whereas, wished to

end her life. A series of events to keep her alive happened, both politically and religiously assisted. There remained a delay in granting relief for 7 years. On March 18, 2005, Judge Greer gave a decision to remove all the ventilators and food ingestion tubes in favour of Michael. In this way this case clearly distinguishes between pro-life and right-to-die choice

In State of Missouri, initially euthanasia gathered no support in the Supreme Court of Missouri. *Curzan v. Director, Missouri Department of Health* 497 U.S 261- it is also the similar case to the aforementioned case.

V. CONCLUSION

This two landmark judgments give right direction to euthanasia as it recognizes 'right to die with dignity' under the purview of Art. 21 of Constitution of India. Now there is time to take further steps by allowing the active euthanasia in exceptional circumstances whenever requires with adequate measures. The Supreme Court should also examine the controversial view regarding the active euthanasia and provide guidelines regarding the same.

REFERENCES

1. Available at : Black's Law Dictionary (8th Ed.).
2. Available at : F. Maxmuller, *Laws of Manu*, Translated by George Buhler, (1967 reprint). Vol. 25, Page 206.
3. Available at : Supryo Routh, "Right to Euthanasia: A case against criminalization", *Criminal Law Journal*, Vol.112, 2006, p-196.
4. Available at : Dr. Sarabjit Taneja, "Should Euthanasia be legalized?" *Journal of Constitutional and Parliamentary Studies*, p.-57.
5. Available at : Art.21: Right to life and Personal Liberty, Constitution of India.
6. Available at : AIR 1996 SC 946.
7. Available at : (2011) 4 SCC 454
8. Available at : Tanya Sarkar, "Aruna Shanbaug Vs. UOI: Case Comment", *International Journal Of Legal Insight*, Vol.1, P.-167.
9. Available at : <http://supremecourtfindia.nic.in/outright/wr1152009.pdf>.
10. Available at : <https://www.livelaw.in/breaking-right-die-dignity-fundamental-right-sc-allows-passive-euthanasia-living-will-issues-guidelines/>