



NEED OF LEGALIZING EUTHANASIA IN INDIA

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“No one is truly free to live until one is free to die”

- Martin Luther King

Abstract-- Legalizing of Euthanasia has been a major issue since the history time. Many countries have already legalized Euthanasia. When a person end his life by his own act it is called ‘Suicide’ but to end life of a person by others through on the request of the deceased is called ‘Euthanasia’ or ‘Mercy Killing’. The legal position of Euthanasia in India in view of the Constitution of India, Indian penal code, and other laws in vague. Bombay High court in State of Maharashtra v/s Maruty Sripati Dubal, 1987 Cri LJ 743 declared that right to life includes right to die thus making section 309 of IPC, 1860, which makes attempt to suicide as punishable offence unconstitutional. But Supreme court in Gian kaur v/s State of Punjab (1996) 2 SCC 648 held that right to life does not include right to die or right to be killed. It was only after the case of Aruna Shanbaug v/s Union of India (2011)4 SCC 454, Supreme court in its judgment declare that passive euthanasia is legal in India and strikes us to reconsider the legalizing euthanasia in India. This paper seeks to discuss about the Euthanasia and need on the legalizing of Euthanasia and role of Law Commission on India to legalize it.

INTRODUCTION

‘Life’ and ‘death’ are the two truths of the Land. Nobody can turn his face from these truths. The question of life and death invariably poses an intricacy on its very existence. Since the mankind has developed the knowledge of science of living and death, it has started rationalizing various aspects of living and hence demanding in various forms, the right of fruitful and meaningful existence. Besides, death has been considered as a dreadful sin of termination of life.¹ There are various ways of attending death such as natural death, accident, murder, suicide etc. Natural death is the only form of death accepted by humankind with dignity.²

The word ‘Euthanasia’ is a derivative from the Greek language meaning “good death”. It is otherwise described as mercy killing. The death of a terminally ill patient is accelerated through active or passive means in order to relieve such patient of pain or suffering. It appears that the word was used in the 17th Century by Francis Bacon to refer to an easy, painless and happy death for which it was the physician’s duty and responsibility to alleviate the physical suffering of the body of the patient. The House of Lords Select Committee on ‘Medical Ethics’ in England defined Euthanasia as “a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering”.³

When there is no slightest hope of recovery. The patient undergoing terrible suffering and worst mental agony does not want his life to be prolonged by artificial means. She/he would not like to spend for his treatment which is practically worthless. She/he cares for his bodily integrity rather than bodily suffering. She/he would not like to live like a ‘cabbage’ in an intensive care unit for some days or months till the inevitable death occurs. He would like to have the right of privacy protected which implies protection from interference and bodily invasion. As observed in *Gian Kaur’s case*, the natural process of his death has already commenced and he would like to die with peace and dignity. No law can inhibit him from opting such course.⁴

The question is regarding the Legalization of Euthanasia. Some people argued that life is sacred and gift of god no one has the right to end it whereas on the other hand some argue that life belongs to oneself and so each person has right to decide what he want to do with it even if it amounts to dyeing. It’s all upon the person who is suffering from such illness. The basic aim behind euthanasia is to bring a less painful death to a person who is

¹ Kavita Rai (2013), Need of law relating to Euthanasia, Bharati Law Review, Pune, 1(4), april-june, 152

² Ibid, 152-153

³ 241st report of Law Commission of India, August 2012, page no 1.para 1.

⁴ Ibid,page no-27,28



in any case going to die after a long period of suffering. In this sense it is known as mercy death.⁵ It was pointed out that in Gian kaur's case⁶, the supreme court approvingly referred to the view taken by House of Lords in Airedale case on the point that Euthanasia can be made lawful only by legislation. At paragraph 135 of Aruna's case, it was declared: "the procedure should be followed all over India until Parliament makes Legislation on the subject." In the case of Aruna Shanbaug v/s Union of India (2011)4 SCC 454, Supreme court in its judgment declare that passive euthanasia is legal in India and strikes us to reconsider the legalizing euthanasia in India.

CONCEPT OF EUTHANASIA

The word euthanasia is derived from the Greek word "euthanatos" which means "well or good death" and is a combination of 'Eu' means well or good and 'thanatos' means death refers to the practice of intentionally ending a life in order to relieve the pain and suffering, originally referred as to the intentional mercy killing.

In Netherlands, euthanasia is understood as "intentional termination of life by a doctor at the request of a patient". The definition offered by Oxford English Dictionary incorporated suffering as a necessary condition, with "the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma".⁷ 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 defined Augustus) to describe the death of Augustus Caesar.⁸ He described how the emperor Augustus, dying quickly and without suffering in the arms of his wife, Livia, experienced the euthanasia he had wished for.⁹

In the modern context euthanasia is limited to the killing of patients by doctors at request of patient in order to free him of excruciating pain or from terminal illness. Thus the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering.

CLASSIFICATION OF EUTHANASIA

'Euthanasia' is the termination of very sick person's life in order to relieve them of their suffering. In most cases, euthanasia is carried out because the person who dies asks for it, but there are cases called euthanasia where a person can't make such a request. Broadly euthanasia may be classified according to whether a person gives informed consent under the following heads:

- a) Voluntary Euthanasia
- b) Non-Voluntary Euthanasia
- c) Involuntary Euthanasia

(a) Voluntary Euthanasia: Euthanasia conducted with the consent of the patient is termed as Voluntary Euthanasia. Euthanasia is legalized in many States. In April, 2001, Netherland became the first country in the world to legalize active Voluntary Euthanasia. In September, 2002, Belgium became second country to legalize Euthanasia.

(b) Non-Voluntary Euthanasia: Euthanasia conducted where the consent of the patient is unavailable is termed as non-voluntary euthanasia. It may be contrasted with involuntary euthanasia, where euthanasia is performed 'against' the Will of the patient.

⁵ Kavita Rai,(2013), Need of law relating to Euthanasia, Bharati Law Review, Pune, 1(4), April-June, 153-154

⁶ (1996) 2 SCC 648

⁷ Manojkumar J. Naik,(2015), Euthanasia or mercy killing- Need of an hour to change the Law. Indian Journal of Legal Philosophy, 3(2), June , 102-103

⁸ Available at www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1/ last visited on 9pm, 21-12-2017.

⁹ Kavita Rai,(2013) Need of law relating to Euthanasia, Bharati Law Review, Pune, 1(4), April-June3, 152



- (c) Involuntary Euthanasia: Involuntary euthanasia means when a patient's life is ended without the patient's knowledge and consent usually patients who are in Permanent Vegetative State (PVS) in coma or brain dead. In these cases the guardians like a spouse, parents or a close relative and if no such person is available then a next friend like a social worker or a lawyer may be appointed to make a decision on behalf of the terminally ill patient.

Voluntary, non-voluntary and involuntary euthanasia can all be further divided into Passive or Active euthanasia.¹⁰

- (1) Passive Euthanasia: Passive euthanasia allows one to die by with-holding or withdrawing life supporting means. Life supporting means may further be divided into two categories i.e. ordinary and extra-ordinary. Ordinary means such as nutrition and hydration which are never to be withheld since they are one's basic requisites in order to survive. However, one may not be obliged to use extra-ordinary means to sustain life, such a discontinuance of medical treatment which is burdensome, dangerous, and extra-ordinary to the expected outcome. To withdraw, a life supportive treatment as condition worsens is letting one die and not a direct killing. In this case, it is the disease that is killed and not the one who withdraw or consent to withdraw the treatment.
- (2) Active Euthanasia: Active euthanasia or mercy killing is direct intentional killing of a patient with either consent or without consent when impossible to obtain, (non-voluntary) without consent when not sought (involuntary). Active euthanasia entails the use of lethal substances or forces, such as administering a lethal injection which is the most controversial means. A well-known example of active euthanasia is the death of a terminally ill Michigan patient on 17th September, 1998. On that date, Dr Jack Kevorkian videotaped himself administering a lethal injection to Thomas Youk, 52, who suffered with amyotrophic lateral sclerosis.¹¹

DEVELOPMENTS IN INDIA

In India, attempts in Legislature to legalize euthanasia began in 1985 when a Private Member Bill (popularly known as Varde Bill) was brought in the legislative Council of Maharashtra to provide immunity from civil and criminal liability to medical practitioners who at the request of terminally ill or terminally injured patient withdrew medical treatment. The Bill was criticized on the ground that such a law if made will lead to its misuse. An attempt was also made by Mr. B.V. Patil in the Lok Sabha in 1985 itself. But both the attempts could not fructify.

The Law Commission has opined in its 196th report to the Government that if a person is not in a position to take care or his body or has lost all senses, it would be cruel not to permit a person to die. Hence, a dying man who is terminally ill or is in PVS can be permitted to terminate it by premature extinction of life.

*K. Venkatesh's case*¹² refreshed the debate related to euthanasia. Venkatesh, a boy aged twenty from Hyderabad died in 2004. He was aware of the fact of being terminally ill. His last wish was to donate his body after euthanasia by withdrawing life support system. He was in unbearable pain and was breathing with difficulty. She could not get such permission. Venkatesh died. His last wish could not be honoured, causing more pain to his mother. His body could not be utilized because of the delay.¹³

¹⁰ Ritika Bansal,(2013) Euthanasia- Appeal and Plea for Mercy killing, Universal law publishing Co. PVT. LTD New Delhi, 12-14.

¹¹ Ibid, 14-16

¹² Available at: www.hindu.com/2004/12/18/stories/2004121813030300.htm

¹³ Kavita Rai,(2013), Need of law relating to Euthanasia, Bharati Law Review, Pune, 1(4),, April-June, 160-161



In November, 2007, C.K.Chandrappan, Member of Parliament from Trichur constituency of Kerala, representing communist party of India introduced a bill to legalize euthanasia in the Lok Sabha. The bill received criticism from medical world on the ground of its possible abuse and from religious groups advocating for demanding the right to life. The debate and controversy going on since long got revived in January 2007 when a public interest litigation petition was brought before the supreme court by an Non Governmental Organisation requesting to declare 'right to die with dignity' a fundamental right and legalize mercy killing of terminally ill patients.

In the reportable case No. 115 of 2009 Aruna Ramchandra Shanbaug v. Union of India and Ors, in the judgment pronounced by justice Markandey Katju, the judge recited the quote of Mirza Ghalib that "Marte hain aarzo mein marne ki, maut aati hai par nahin aati." The Supreme court allowed passive mercy killing of a patient in a PVS by withdrawing the life support system with the approval of a medical board and on the directions of the High court concerned. The Supreme court pointed that "we are laying down the law in this connection which will continue to be the laws until Parliament makes a law on the subject,"¹⁴

COUNTRIES WHERE EUTHANASIA IS LEGALIZED

Euthanasia and certain forms of assisted dying are currently legalized in few countries. Luxembourg (2009) have legalized euthanasia (Cohen, Van Landeghem, Carpentier, and Deliens, (2014), and Canada (2016) has introduced a federal law allowing medical aid in dying.¹⁵ The laws pertaining to euthanasia and the practice of euthanasia throughout the world, has gained importance (and continues to be a significant contention for debates) for the most part, in the second half of the 20th Century. There are several instances pertaining to suicide and euthanasia in different countries, some of which have been illustrated below.

Netherlands : In April 2002, Netherlands became the first European country to legalize euthanasia and assisted suicide. Euthanasia in the Netherlands is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002. It states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. It legalizes euthanasia and physician assisted suicide in very specific cases, under very specific circumstances.

Australia: The Northern Territory of Australia became the first country to legalize euthanasia by passing the Rights of the Terminally Ill Act, 1996. It was held to be legal in the case *Wake v. Northern Territory of Australia*¹⁶ by the Supreme Court of Northern Territory of Australia. But later a subsequent legislation that was the Euthanasia Laws Act, 1997 made it again illegal by repealing the Northern Territory legislation.¹⁷

United States: Laws in the United States maintain the distinction between passive and active euthanasia. Euthanasia has been made totally illegal by the United States Supreme Court in the cases *Washington v. Glucksberg*¹⁸ and *Vacco v. Quill*¹⁹ but physician assisted dying is legal in the states of Oregon under the Oregon Death with Dignity Act, 1997, in Washington under Washington Death with Dignity Act, 2008 and in Montana by the State judiciary and not the legislature.

Canada: In Canada, patients have the right to refuse life sustaining treatments but they do not have the right to demand for euthanasia or assisted suicide. In Canada, physician assisted suicide is illegal as per section 241(b)

¹⁴ Ibid, 162-163

¹⁵ Hamilton Inbadas & ors, (2017), Declarations on Euthanasia and assisted dying, Routledge Taylor & Francis Group, Death Studies, 42(9), 574-584 available at <http://dx.doi.org/10.1080/07481187.2017.1317300>

¹⁶ (1996) 109 NTR 1

¹⁷ Ceasor Roy, (2011) Position of Euthanasia in India- An Analytical study, Researchgate publication, july Available at https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-_AN_ANALYTICAL_STUDY last visited 11.12.2017

¹⁸ 521 US 702 (1997)

¹⁹ 521 US 793 (1997)



of the Criminal Code of Canada. The Supreme Court of Canada in *Sue Rodriguez v. British Columbia (Attorney General)*²⁰, said that in the case of assisted suicide the interest of the state will prevail over individual's interest. Belgium: The Belgian Parliament legislation 'Belgium Act on Euthanasia' was made euthanasia legal in May, 2002 which is quite similar to that passed in the Netherlands.

Switzerland: According to Article 115 of Swiss Penal Code, suicide is not a crime and assisting suicide is a crime if only if the motive is selfish. It does not require the involvement of physician nor is that the patient terminally ill. It only requires that the motive must be unselfish.²¹

In England, the House of Lords in *Airedale NHS Trust v. Bland*²² permitted non-voluntary euthanasia in case of patients in a persistent vegetative state. It was a case relating to withdrawal of artificial measures for continuance of life by a physician. It was held that it would be unlawful to administer treatment to an adult who is conscious and of sound mind, without his consent. Such a person is completely at liberty to decline to undergo treatment, even if the result of his doing so will be that he will die.

Justice Cardozo, while on the Court of Appeals of New York observed that "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages."²³

LEGAL ASPECT OF EUTHANASIA IN INDIA

In India the sanctity of life has been placed on the highest pedestal. Law Commission of India recommended Legalizing euthanasia for terminally ill patients. In *P.Rathinam v/s Union of India*²⁴, Supreme court took cognizance of contradiction between sec. 309 of IPC and Article 21 of the Constitution. The court ruled that right to life embodied in Article 21 also embodied in it a "right not to live" a forced life, to his detriment, disadvantages or disliking. The P.Rathinam's ruling came to be reviewed by full bench of supreme court in *Gian Kaur v/s State of Punjab*²⁵, the court ruled that Article 21 is a provision guaranteeing protection of life and by no stretch of an imagination can extinction of life be read to be included in 'protection of life'. "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". The court thus ruled that Sec. 309 of IPC is not unconstitutional. Accordingly Sec. 306 is also been held to be constitutional.²⁶

INDIAN PENAL CODE AND EUTHANASIA

In case of Euthanasia there is an intention on the part of the doctor to kill the patient. Such cases would clearly fall under Sec. 300(1) of IPC. However, in some cases (i.e. Voluntary Euthanasia) there is a valid consent of the patient, therefore Exception 5 to Sec. 300 of IPC is attracted and the doctor or mercy-killer would be punishable under Section 304 of IPC for Culpable Homicide not amount to Murder. However, it also needs to be considered that what protection remains even under exception 5 when the supreme court has held that the fundamental rights are not violable and cannot be waived.²⁷

²⁰ (1993) 3 SCR 519

²¹ Ceasor Roy, (2011), Position of Euthanasia in India- An Analytical study, Researchgate publication, July, Available at https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-_AN_ANALYTICAL_STUDY last visited 11/12/2017

²² 1993(1) ALL ER 821 (HL)

²³ *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-30, 105 N.E. 92, 93(1914)

²⁴ AIR 1994 SC 1844: (1994)3 SCC 394

²⁵ AIR 1996 SC 946: (1996)2 SCC 648

²⁶ Manojkumar J. Naik, (2015), Euthanasia or Mercy-killing- Need of an hour to change the Law, Indian Journal of Legal Philosophy, 3(2), June, 106-107

²⁷ *Olga Tellis v/s Bombay Corpn.*, AIR 1986 SC 180.



Here, under this sub-heading we will discuss three sections i.e. Section 300, 306, 309 of Indian Penal Code, 1860.

Section 300 defines murder and reads Culpable homicide is murder except in some cases, where one of the exceptions i.e. fifth exception says that “Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent”²⁸ The law clearly states that the consent must be unequivocal, unconditional, and without any reservation. The above stated provision resembles *the concept of euthanasia* but however the person who assists in death does not get any immunity from law and rather it is punishable under the penal laws. In *State of Maharashtra v. Vishwas*,²⁹ it was held by the court that shouts of the deceased when she was being assaulted, negates the history of consent for death.

Section 309 talks about punishment for “attempt to commit suicide.” The provision is that “whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for term which may extend to one

Year [or with fine, or with both].”³⁰ Emphasis is laid on the latter part i.e. any act towards the commission of such offence, by which it is meant that when such an act constitutes only the stage of preparation and not of attempt it is not punishable. e.g. In *Queen Emperor v. Ramakka*³¹ it was held that a person cannot be held guilty under this section as because the person is in a stage of preparation and did not constitute an act which could be considered as commencement of the offence.

The constitutionality of section 309 of I.P.C. 1860, has been debated that it violates Articles 21 and 14 of the Indian Constitution. In *P.Rathinam v. Union of India*³² a division bench of the Apex court has observed that section 309 of the code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person two times who has already suffered agony and would be undergoing stress and social-criticism because of his failure to commit suicide. Here at this juncture a simple question can be raised whether by booking a person under the penal laws for an attempt to commit suicide will curb out the problem of suicide in the society? If it so then how come death sentences given in cases of murder does not take care of growing commission of a heinous crime like murder. As long as the penal provision for attempt to commit suicide will be there the concept of ‘euthanasia’ cannot be included under Indian law, otherwise laws on respective subjects will contradict each other.

Section 306, deals with the offence of ‘abetment of suicide’. This section punishes the abettor of a suicide where suicide is committed because of such abetment. The provision says that “If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”³³ Abetment may be instigation, conspiracy or by intentionally aiding by doing or abstaining from doing an act. Section 306 of IPC, 1860 can be related to euthanasia e.g. if a patient who asks the physician to aid or help or assist him in ending his miserable life then the physician by doing so not only goes against the medical ethics but also he is subjected to punishment under penal laws in India. So we can say until and unless the penal laws related to suicide are being erased, the concept of euthanasia and physician assisted suicide cannot be practiced in India.³⁴ This is the status of ‘euthanasia’ in Indian legal framework with reference to the Indian penal code and the Constitution.

²⁸ Indian Penal Code available at:

http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.html#Section_300_Murder (visited on September 14, 2017)

²⁹ 1989 Cri LJ 677 (Bom) (DB)

³⁰ http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.html#Section_309_Attempt_to_commit_suicide

³¹ (1884) 8 Mad 5.

³² JT 1994 (3) SC 392

³³ http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.html#Section_306_Abetment_of_suicide

³⁴ A project report on – World’s take on Euthanasia laws : A Critical study, submitted by Joy Sarkar, LL.M-1



ARUNA'S CASE – A NEW DIMENSION IN INDIAN LEGAL CONTEXT

Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India*³⁵ opened the gateway for legalization of passive euthanasia. In this case a petition was filed before the Supreme Court for seeking permission for euthanasia for one Aruna Ramchandra Shanbaug as she is in a Persistent Vegetative State (P.V.S.) and virtually a dead person and has no state of awareness and her brain is virtually dead. Supreme Court established a committee for medical examination of the patient for ascertaining the issue. Lastly the Court dismissed the petition filed on behalf Shanbaug and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. The court also recommended to decriminalized attempt to suicide by erasing the punishment provided in Indian Penal Code. The Court in this connection has laid down the guidelines which will continue to be the law until Parliament makes a law on this point.

(1). 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, 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.

(2). 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's*³⁶ case (supra) as this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

In this case question comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person. Then the Court held that it is the High Court under Article 226 of the Constitution which can grant approval. Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders.³⁷

CONCLUSION AND SUGGESTION

To conclude life and death are two side of one coin. Life is the gift of god. But when there is no slightest hope of recovery. The patient undergoing terrible suffering and worst mental agony does not want his life to be prolonged by artificial means. She/he would not like to spend for his treatment which is practically worthless. She/he cares for his bodily integrity rather than bodily suffering. She/he would not like to live like a 'cabbage' in an intensive care unit for some days or months till the inevitable death occurs. He/she would be allowed to die with dignity. Pain and pleasure are also two extremes. Pleasure makes life to survive with dignity. Pain gradually leads towards the death. Every human being is fearful of pain and cannot bear the pain beyond the point. Our country is rising every day with some objectives in placing the Act for implementation but it is unfortunate that those attempts are to be forced or given through judicial intervention. In Aruna shanbaug's case supreme court legalized passive euthanasia in India strikes us to reconsider the legalizing euthanasia in India. In this case, it was declared: "the procedure should be followed all over India until Parliament makes Legislation on the subject." So there is a need to legalized euthanasia in India by an Act of the Government.

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³⁵ 2011(3) SCALE 298: MANU/SC/0176/2011

³⁶ 1993(1) All ER 821 (HL)

³⁷ ³⁷ Ceasor Roy,(2011) Position of Euthanasia in India- An Analytical study, Researchgate publication, july

Available at https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-_AN_ANALYTICAL_STUDY last visited 11.12.17