

PHYSICIAN-ASSISTED SUICIDE: THE RIGHT TO BODILY AUTONOMY IN INDIA

Punitha Miriam Ghooi*

ABSTRACT

With the advancement of technology in the medical sector, the life expectancy of terminally-ill patients has risen substantially due to the increased use of artificial life support; enabling even patients in coma or vegetative states to be kept alive through the use of machines. With these advancements has come the question of physician-assisted suicide, or euthanasia, and the ethics surrounding keeping patients in states of immense suffering alive against their will. With the conversations around bodily autonomy and self-determination increasing day by day, the controversial subject of euthanasia is worth taking a look at in the Indian context.

INTRODUCTION

The right to bodily autonomy is a concept that is perpetually surrounded by debate, and controversy and is subject to restraints of various degrees from society to society. Bodily autonomy is the indisputable right of a person to have full control over their body, and to exercise decisions concerning their health, well-being or appearance without being subject to any kind of coercion. It is the right to dignity, self-determination and self-ownership.

The factor of the 'right to dignity' is where the practice of assisted suicide comes into the picture. Assisted suicide is usually taken to mean euthanasia or physician-assisted suicide; a practice by which a licensed healthcare provider assists a patient to die provided the patient is terminally ill or in a vegetative state. Voluntary euthanasia is only legal in a few countries, including Belgium, Luxemburg, Switzerland, Australia, and some U.S. States.¹

Where does the concept of the right to dignity come from? The answer lies in the prolonged suffering, both physical and psychological, of terminally-ill patients. Most illnesses of this nature result in a significant drop in the quality of life of the individual. The condition of the patient deteriorates to the point where they cannot perform basic functions, they need 24/7 care and they become unrecognizable to their loved ones. There truly is a profound loss of

*BA LLB, SECOND YEAR, RAMAIAH COLLEGE OF LAW, BANGALORE.

¹ Yvette Brazier, 'Euthanasia and Assisted Suicide: What Are They and What Do They Mean?' (*Medical News Today*, 15 February 2023) <<https://www.medicalnewstoday.com/articles/182951>> accessed 11 May 2023

dignity, self-worth, and autonomy. This is just one of the reasons that advocates of euthanasia use to justify the same.

EUTHANASIA—ITS POSITION IN INDIA

In *Common Cause (A Regd. Society) v. Union of India*, passive euthanasia was legalized by the Supreme Court of India, for patients in a permanently vegetative state. The court stated that the decision to withdraw life support by the relatives, close friends or even the doctors could be taken while keeping the best interests of the patient in mind.² The court said that the judgement in *Gian Kaur v. State of Punjab*—which denied that the right to die is part of the right to life under Article 21 of the Constitution—did not overtly deal with the idea of euthanasia or physician-assisted suicide.³

What is passive euthanasia? In broad medical terms, passive euthanasia is the practice of deliberately withholding or withdrawing artificial life support.⁴ In the Indian context⁵, passive euthanasia refers to the *withholding* of life support—a decision that is only taken when the patient in question makes something called a ‘living will’, a document wherein they give instructions in advance about the steps to be taken in case they fall terminally ill, including withdrawing life support when all other options have been exhausted.⁶

On 24 January 2023, a Supreme Court bench headed by Justice K.M. Joseph laid down some significant changes in the guidelines established in the 2018 judgement. The 2018 judgement laid down that the consent of the district magistrate would be required to legalize the living will and that the district collector must constitute one board of medical experts. These guidelines were replaced, the court saying that it would be sufficient for a notary to sign the living will and that one board of medical experts must be constituted by the hospital in the question itself. The court also issued further directions that would speed up the process, cut through some of the red tape involved, and lay down a rigid timeline to be followed by medical experts while approving the procedure for passive euthanasia to be carried out.⁷

²*Common Cause (A Regd. Society) v Union of India* [2018] AIR 2018 SC 1655

³ *Ibid* [42]

⁴ ‘Euthanasia’ (*Centre of Ethics, School of Medicine, University of Missouri*)

<<https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia>> accessed 17 May 2023

⁵*Common Cause (A Regd. Society) v Union of India* [2018] AIR 2018 SC 1655

⁶ ‘Passive Euthanasia Now a Reality in India’ (*The Wire*, 09 March 2018) <<https://thewire.in/health/passive-euthanasia-now-a-legal-reality-in-india>> accessed 17 May 2023

⁷ Utkarsh Anand, ‘SC Eases Norms for Passive Euthanasia’ (*Hindustan Times*, 25 January 2023)

<<https://www.hindustantimes.com/india-news/sc-eases-norms-for-passive-euthanasia-101674585035342.html>> accessed 17 May 2023

While the right to die has not been accepted as part of the right to life; the Supreme Court did state in its 2018 judgment that the right to life under Article 21 includes the right to die with dignity. Our now present CJI Dhananjaya Y. Chandrachud stated, “Dignity in the process of dying is as much a part of the right to life under Article 21. To deprive an individual of dignity towards the end of life is to deprive the individual of a meaningful existence.”⁸

However, one must ask the following question: can this right only include the right to die with dignity, and not the right to end one’s life peacefully instead of living through prolonged suffering? Is it necessary that a patient can only have these limited options at hand only when they are terminally ill to the degree that they enter a vegetative state? Is it not the right of an individual to choose when to end his own suffering? These are the questions that have been asked continuously by the proponents of physician-assisted suicide.

THE ETHICS SURROUNDING EUTHANASIA

Before discussing the ethics of passive vs active euthanasia, let us first define what active euthanasia is, as well as the legal stance on suicide, assisted or otherwise in India. Active euthanasia refers to the deliberate act of the physician or any such healthcare professional to end the life of a patient, typically by the administration of lethal drugs.⁹

The practice of euthanasia began as early as Ancient Greece, where philosophers such as Socrates and Plato held that it was morally permissible to painlessly put a person to death when their suffering is intolerable. The perspective on euthanasia has shifted throughout human history; there was a strong pushback against it when Christianity came into power in the West because traditional Christianity rejects euthanasia as a form of murder that is prohibited in the Bible.¹⁰ Around the 1880s, doctors and pioneers in the West started to argue for mercy killing, especially as medical technology began to advance, artificially prolonging the lives of fatally ill or injured patients.¹¹

The question about whether the right to life also includes the right to die, came up famously in *P. Ratinam v. Union of India*, where the petitioner challenged Section 309 of the Indian Penal Code which criminalizes suicide¹² as irrational and arbitrary, violating the autonomy of

⁸ *Common Cause (A Regd. Society) v Union of India* [2018] AIR 2018 SC 1655

⁹ Kalaivani Annadurai, Raja Danasekaran, Geetha Mari, “Euthanasia: Right to Die with Dignity” National Library of Medicine <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4311376/>> accessed 17 May 2023

¹⁰ Britannica, The Editors of Encyclopaedia, “euthanasia” (*Encyclopaedia Britannica*, 2 May 2023) <<https://www.britannica.com/topic/euthanasia>> accessed 17 May 2023

¹¹ Anna Hiatt, “The History of the Euthanasia Movement” (*Daily JSTOR*, 6 January 2016)

<<https://daily.jstor.org/history-euthanasia-movement/>> accessed 17 May 2023

¹² Indian Penal Code 1860

the individual to decide on his own course of life. The Supreme Court in this instance said that the right to life includes also the right to not live a forced life, thus striking down Section 309. Furthermore, the court in its judgement remarked on the cruelty of the provisions in Section 309, and the need to humanize the law.¹³ However, in *Smt. Gian Kaur v. State of Punjab*, the court overturned the previous judgement in *P. Ratinam's* case, stating that there is a difference between the natural end of life and an unnatural end, i.e., suicide. The court differentiated between persons in a vegetative state being taken off life support and persons in the regular span of their lives; saying that the former is already dying in a natural manner and has the right to do so, while the latter does not have the right to die by unnatural means.¹⁴

The advocates for physician-assisted suicide insist that it is a humanitarian measure to reduce the prolonged and needless suffering of the terminally-ill patient. They say that when the quality of the patient's life becomes so low, there can be no justification for forcing him to stay alive in those conditions. Furthermore, this can relieve the burden and grief on the loved ones of the patient, who otherwise have to watch him deteriorate day by day until he is no longer recognizable. Keeping the patient alive through artificial means is also a big financial burden on the loved ones. Proponents of active euthanasia would further argue that if a patient consents to having life-support withdrawn through a living will (passive euthanasia), there is no reason why the patient cannot extend the same consent to a licensed doctor to have lethal drugs administered to help him die peacefully.¹⁵

Those who believe physician-assisted suicide to be unethical and immoral, however, would argue differently. They insist that provisions legalizing active euthanasia could be misused and that patients from vulnerable backgrounds could be coerced or manipulated into giving up life-support.¹⁶ Religious organizations strongly oppose euthanasia, the Roman Catholic Church in particular is one of its strongest opposers. The Church believes that life is a sacred gift that can only be given and taken away by God.¹⁷ Opposers also argue that the psychological condition of the patients, as well as the quality of palliative care that they

¹³*P. Ratinam v Union of India* [1994] 1994 AIR 1844

¹⁴*Smt. Gian Kaur v The State of Punjab* [1996] 1996 AIR 946

¹⁵ Vinod K. Sinha, S. Basu, S. Sarkhel, "Euthanasia: An Indian Perspective" National Library of Medicine <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>> accessed 14 May 2023

¹⁶ *Ibid.*

¹⁷ "Religion and Euthanasia" (BBC) <<https://www.bbc.co.uk/ethics/euthanasia/religion/religion.html>> accessed 19 May 2023

receive, must be taken into account¹⁸ and that euthanasia cannot be treated as the one-all and be-all solution.

THE OVERLAP OF EUTHANASIA WITH THE RIGHT TO BODILY AUTONOMY

As stated earlier, the right to bodily autonomy is the right to agency, self-autonomy and self-determination. While typically used in the contexts of abortion, birth control, surrogacy, sexual assault and so on, it plays an important role in the conversation around physician-assisted suicide as well.

If bodily autonomy is the inviolability of the person in the physical sense¹⁹, I would like to argue that it doesn't just decry the positive action of actively violating the individual. It also opposes the notion of subjecting a person to needless suffering when he, as an adult of sound mind, has decided to end his life peacefully. Forcing an individual to undergo traumatic suffering and a decline in quality of life when he is diagnosed with a terminal illness is a violation in itself. It is a denial of the individual's right to autonomy and it is a mockery of what is his inalienable right to decide what happens to his own body. Religious beliefs, superstition and other such things cannot supersede the dignity and comfort of the individual who is already undergoing unimaginable suffering.

The very real suffering that underlies the desire for a painless death cannot be denied. Chronic pain, paralysis, and partial or full disability are some of the physical factors. The psychological ones include depression, the fear of being a burden to one's loved ones, loss of dignity, and loss of control over one's faculties. Expensive and inadequate palliative care is also a factor that plays heavily into this aspect.²⁰

The notion of liberty and bodily autonomy cannot be separated from the right of the individual to make the final decisions regarding his person and health. Arguments about the 'sanctity of life', either in the moral or the religious sense, can hardly justify forcing a patient to die in a painful, undignified manner against his will when there are better options available to him. As eloquently stated by Professor Ronald Dworkin, "Making someone die in a

¹⁸ Vinod K. Sinha, S. Basu, S. Sarkhel, "Euthanasia: An Indian Perspective" National Library of Medicine <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>> accessed 14 May 2023

¹⁹ Ruth Austin Miller, *The Limits of Bodily Integrity: Abortion, Adultery and Rape Legislation in Contemporary Perspective* (1st edn, Ashgate Publishing House, 2007)

²⁰ Annadurai, Kalaivani, Danasekaran, Raja, and Geetha Mani. "Euthanasia: Right to Die with Dignity." *Journal of Family Medicine and Primary Care* 3, no. 4 477-478 <<https://doi.org/10.4103/2249-4863.148161>> accessed May 19, 2023

way others approve, but he believes contradicts his own dignity, is a serious, unjustified, unnecessary form of tyranny.”²¹

CONCLUSION

It cannot be denied that in order to take a step toward legalizing active euthanasia, there would need to be strong precautions in place to counter any misuse of the law. Experts have expressed concerns over how the law could be a slippery slope to forceful termination of the lives of patients in the name of eugenics²², that patients in poor financial situations may be coerced by their families into undergoing physician-assisted suicide, that the psychological conditions of patients undergoing suicidal ideation and depression might not be adequately treated, with euthanasia being taken as the answer.²³ All of these concerns are valid and need to be taken into account. The law would be a tricky one, with far too many opportunities for misuse.

However, just because there is a possibility of a law being misused, doesn't mean that it should not exist altogether. Decrying the entire concept of euthanasia while using the potential exploitation of the law as justification is irrational. There needs to be a delicate balance between the autonomy of a terminally ill patient and the greater good of society as a whole.

²¹ Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Oxford University Press, 1999) 145

²² Cheyfitz, K. "Who decides? The connecting thread of euthanasia, eugenics, and doctor-assisted suicide." *Omega* vol. 40,1 (1999) accessed 19 May 2023

²³ Vinod K. Sinha, S. Basu, S. Sarkhel, "Euthanasia: An Indian Perspective" National Library of Medicine <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>> accessed 20 May 2023