

EUTHANASIA – RIGHT TO DIE IN INDIA

Monisha S*

INTRODUCTION

The term Euthanasia advocates “die with dignity” which is considered to be a part of human life. The concept of Euthanasia is not new but legalizing euthanasia is still debatable in the contemporary legal era. Euthanasia is dealt with not only by legal stance but also by moral, ethical, cultural and religious stance in the society. The concept of euthanasia is being supported and opposed by many people in society. Euthanasia is a concept of dying with dignity i.e. A person who is terminally ill or if they are in a vegetative state, they can claim for euthanasia which is withdrawing their life support that may lead to death. In the 1970’s this concept was widely opposed rather than supported but in the 2000’s people started to support the concept of euthanasia and they thought that euthanasia would help the patients to have a dignified life and help them to relieve their pain. But people opposing euthanasia are of the opinion that no one has the right to decide one’s death and god has the right to decide it. Many people feel that by legalizing euthanasia there will be a chance of increasing mortality rate, people may give up on their lives easily, treatment for those illnesses will not be found, chance of less investment in medical experiments for the terminally ill¹. Still, many countries have begun to legalize euthanasia for terminally ill patients. One of the countries, which legalizes passive euthanasia, is India. In this article, we will have an analytical approach to how the legal system has evolved during this period and how this legal concept has changed the perspective of the right to life that is a fundamental right guaranteed in Article 21 of the Indian constitution.

EUTHANASIA

The Law Commission on its 196th report on medical treatment to terminally ill patients (Protection of Patients and Medical Practitioners) Bill on March 2006, submitted its report on 28th April 2006 defined the terms Euthanasia, Assisted suicide, incompetent patients and so on.

*BA LLB, THIRD YEAR, TAMILNADU DR. AMBEDKAR LAW UNIVERSITY, CHENNAI.

¹ Dying in dignity: the place of euthanasia in Kenya’s legal system, [Metrine Jephchirchir Kurutto](#) and Michael Wabomba Masinde Published Online: 16 Aug 2016

EUTHANASIA is defined as the act of killing someone painlessly to relieve the suffering of the person from an incurable illness. It is also called mercy killing².

Euthanasia is a term that signifies the importance of good death. Everyone deserves a death with dignity. No person shall be deprived of his/her dignity in his life. If Euthanasia takes in a positive sense it relieves the patient from the pain and helps them to relieve their struck soul.

ASSISTED SUICIDE is defined as when a doctor assists a patient by giving him medicines at the request of the patient who is unable to withstand his pain, to enable the patient to bring his life to an end³.

Assisted suicide is suicide that is assisted by a medical practitioner or person who has medical knowledge. There was an argument that doctors have not only the right to make the patient live but also help the patient to relieve the pain by assisting them. Some feel that by assisting the suicide the doctor's ethics will be questioned.

ETHUANASIA is divided into 5 broad categories⁴

- (1) passive voluntary euthanasia;
- (2) Active voluntary Euthanasia,
- (3) passive involuntary euthanasia;
- (4) active involuntary euthanasia
- (5) Active non-voluntary euthanasia.

Passive Voluntary Euthanasia: The medical treatment is withdrawn or withheld from a patient at the request of the patient to end the life of the patient. With the act of another person and, the voluntary consent of the patient euthanasia is done it is called passive volunteer euthanasia.

² The 196th law commission report on medical treatment to terminally ill patients (protection of patients and medical practitioners) bill, 2006.

³ ibid

⁴ ibid

Active Voluntary Euthanasia: This will take place through voluntary consent given by the patient. Another person injects some lethal to end his life. The consent must be a conscious and rational decision by the patient.

Passive involuntary Euthanasia: It will done under the influence of a third party. However, there will be no intention to kill the patient. The patient's consent will not taken into account. The consent may given by the doctor or others. In this also, the life support is withdrawn from the patient by the consent is involuntary.

Active involuntary Euthanasia: This is also due to the influence of a third party. The patient is injected with Lethal without the patient's request. Here there is no rational or conscious decision by the patient. The consent is involuntary and given by the third person.

Active non-voluntary euthanasia: Euthanasia is performed on a person who is incompetent. They are not capable of giving consent.

INCOMPETENT PATIENTS

Who are classified as incompetent Patients?

A person who is a minor or unsound mind or a person who is unable to:

- Understand about his/her medical information.
- Retain that information.
- Use that information to make any decisions.
- Decision-making due to mental disturbance in the brain.
- Communicate their decision.⁵

HISTORICAL BACKGROUND

We can trace back many euthanasia treatments in many countries. One of the crucial cases of euthanasia is the UK King case. Assisted suicide was done to George V George who was the king of the United Kingdom from 1910 until he died in 1936. During the First World War, George was thrown from a horse and seriously injured which made it difficult for him as he had breathing problems due to his excessive smoking and he had various illnesses. On his

⁵ The 196th law commission report on medical treatment to terminally ill patients (protection of patients and medical practitioners) bill, 2006.

deathbed, he started to mumble and curse so to preserve his dignity the doctors gave him a lethal injection of cocaine and morphine⁶.

In the US, A lady named Terri Schiavo had a heart attack. Due to this, she has been in a vegetative state since 1990. Her brain was almost not functioning. She was kept alive with a feed tube for over a decade. Therefore, her husband seeks to allow her to die i.e., euthanasia. There was huge attention to this case among the public. People started to support both sides. On 18th March 2005, her feeding tube was removed legally. She died on 31st March 2005.⁷

In India: The question of the legality of the right to die started in the case of State v. Sanjay Kumar Bhatia on 29 March 1985⁸ where the high court of Delhi criticized section 309 of the Indian penal code, 1860 that concerns suicide.

Next to that, the landmark decision for Euthanasia is P.Rathinam v. Union of India on 26 March 1994⁹. The court held that section 309 of the Indian Penal Code, 1860 is unconstitutional and stated that the persons who attempt suicide are already in mental stress and agony so the court should not double the pain by punishing them.

However, in the case of Gian Kaur v. State of Punjab 21 March 1996¹⁰ the court held that the right to die should not be held within the purview of the Article 21 of the Constitution that is the right to life. The right to life shall not include the right to die or the right to be killed. However, the court accepts Passive Euthanasia that is withdrawing the life support of the patient to end his life. The court is of the view that the Right to die with dignity is considered to be an integral part of the Right to live with dignity.

Another landmark decision is Aruna Shanbaug v. Union of India, 7th March, 2009¹¹. In that case, the court stated that passive Euthanasia could only be made legal by legislation. The decision of the court is ambiguous in nature. So an NGO named Common Cause filed a writ petition before the court decided on 9th March 2018 “Common Cause v. Union India¹²” In this

⁶“Euthanasia- the medical suicide” in a Buddhist perspective – by Rev. Embilipitiye Suseela

⁷ ibid

⁸ 1986 (10) DRJ 31

⁹ 1994 AIR 1844, 1994 SCC (3) 394

¹⁰ 1996 AIR 946, 1996 SCC (2) 648

¹¹ W.P.NO.115 OF 2009

¹² W.P.NO. 215 of 2005

case, the Supreme Court held the legality of passive Euthanasia and guidelines were given for assistance.

The Law Commission in its 196th Report on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioner) Bill, 2006 gave brief information about Euthanasia in India and other countries. It explicitly stated that in India Euthanasia and assisted suicide are not lawful and they deal with different matters holding life and opted not to make any laws regarding that¹³.

Again, the 241st Law Commission report titled 'passive euthanasia- a Relook which was prepared in August 2012 proposed to make laws on passive Euthanasia and prepared a draft bill "The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioner) bill"¹⁴.

SUPPORTING LEGALIZING EUTHANASIA

The first argument made by the supporters is to end their miserable and painful life. The patients who are vegetative and terminally ill patients cannot have a normal life they are in the dark and their life is painful. By ending their life, they can have a dignified life.

The second thing is the stress carried upon by the caretaker, and family members. They have the whole burden put on them. By performing Euthanasia on the patient, the family members can relieve the mental, physical, emotional and financial stress.

In 2005, the Pew Research Center surveyed strong support for the right to die in that more than 1500 Americans were surveyed among them nearly 70% of people were advocates right to die and only 22% opposed the right to die. In addition, there was a distinction made between the survey of 1990 and the survey of 2005. By comparing the both, we can analyse that there is increasing support for the right to die i.e. right to die with dignity.

AGAINST LEGALIZING EUTHANASIA

No man has the right to decide the future of anyone. The people who follow religious practices profess that God has the right to do so and humans should not kill anyone. In some religions,

¹³ The 196th law commission report on medical treatment to terminally ill patients (protection of patients and medical practitioners) bill, 2006

¹⁴ The 241th law commission report on medical treatment to terminally ill patients (protection of patients and medical practitioners) bill, 2012.

suicide is considered to be a sin. The Beliefs of the people made the. To think Euthanasia is autonomy performed by the man. Another big argument put forward is misuse of the power. Many people may tend to misuse the rights given in Euthanasia and perform involuntary assistance to the patient to utilise any gain from them.

It may lead to an increased mortality rate. The poor may tend to choose this method over others to lessen the financial burden on their family members. The next argument is people will give up on their lives easily. The will to live may decline if Euthanasia is legalized.

United States of America: In many states of America, active Euthanasia is still illegal but in states like California, Oregon, Washington, and Vermont where Euthanasia is legal.

- In Oregon, the Oregon Death with Dignity Act, 1994 legalized assisted suicide.
- The Washington Death with Dignity Act, 2008 legalized assisted suicide.

Australia: The first legislation enacted by the Australian government and passed in the northern territory of Australia for assisted suicide is “the Right of the Terminally Ill Act, 1995. This act was overruled by the Australian federal parliament in 1997. Now, assisted suicide is not legal in Australia. Other than these, many countries legalized passive Euthanasia and some countries discourage the concept of passive Euthanasia.

CONCLUSION

Euthanasia is the concept of giving dignified death to terminally ill or vegetative patients to relieve them from pain. However, there was a speculation in society that Euthanasia will lead the medical practitioner and professional to many difficulties. Their ethical values and morals are on a thin string. Legalizing Euthanasia is different from legalizing the right to die. The right to die includes suicide and other unnatural causes. Euthanasia includes the right to die with dignity for terminally ill patients only. In today’s world, suicide cases are rising and people are more depressed and mentally stuck. The concept of Euthanasia is inevitable.

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