

THE RIGHT TO LIFE, THE RIGHT TO LIVE IN DIGNITY AND THE RIGHT TO DIE – A COMPARATIVE ANALYSIS OF EUTHANASIA AND ASSISTED SUICIDE LAWS IN INDIA, U.S.A, SWITZERLAND AND THE NETHERLANDS

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Abstract: The author has highlighted the various approaches in international legislation to the idea and practice of Euthanasia and Assisted Suicide. He has used the countries of USA, Switzerland, Netherlands and India as his points of reference because of the stark differences in the thought processes and approaches to the concept of assisted death. The author has used the official legislations and landmark cases from each of these countries to show a comparative analysis of Assisted Death laws around the world. The author has further attempted to answer the question whether the right to life includes the right to death. The author has objectively concluded that if the conditions allow, the Right to Life does in fact include the Right to Death. The author concludes that individual bodily autonomy is supreme, and no person can be compelled to live in pain and without dignity by State mandate.

Index Terms - Euthanasia; Assisted Suicide; Assisted Death; Right to Life; Murder.

INTRODUCTION

*“Do not stand at my grave and weep
I am not there. I do not sleep.
I am a thousand winds that blow.
I am the diamond glints on snow.
I am the sunlight on ripened grain.
I am the gentle autumn rain.
When you awaken in the morning’s hush
I am the swift uplifting rush
Of quiet birds in circled flight.
I am the soft stars that shine at night.
Do not stand at my grave and cry;
I am not there. I did not die.”¹*

The concept of life and death is an extremely philosophical, spiritual and contested issue of debate. It's nature has roots in the fields of philosophy, religion, medicine and law. Is the right to die with dignity part and parcel of the right to live with dignity? Where do we draw the line? Why is it that we prosecute murder on the same lines that we prosecute a failed suicide attempt? Where the former stems from rage or *malafide* motives, the latter stems from mental conditions, illness or the general pain of life. We will not discuss many of these philosophical dilemmas in this paper. However, we will explore the concept of euthanasia and assisted suicide and its legal aspects in various countries. The countries chosen for this study each have a difference in the approach to the concept of euthanasia and assisted suicide and hence we have chosen them.

The term Euthanasia is Greek in origin and in Ancient Greece, the term 'euthanasia' meant 'good death'. The term was essentially used to describe the process of dying a painless and easy death by the consumption of hemlock.²

Euthanasia is a broad umbrella term and can be classified under: Direct active euthanasia (voluntary or involuntary), indirect active euthanasia, and passive euthanasia.³

Voluntary direct active euthanasia is basically murder that is committed at the request of the victim. Involuntary direct active euthanasia is murder that is committed against the victim without their explicit and repeated request. Both of these methods do not stem from intentions to hurt the victim, but rather stem from the intentions of ending the victim's pain and misery.

¹ Mary Elizabeth Fyre, “Do Not Stand at My Grave and Weep”, 1932.

² Robert Orfali, Death With Dignity: The Case For Legalizing Physician-Assisted Dying And Euthanasia 5 (2011).

³ S. Burkhardt, R. La Harpe, T-W. Harding & J. Sobel, Euthanasia and Assisted Suicide: Comparison of Legal Aspects in Switzerland and Other Countries, 46 MED. Sci. & L. 287 (2006)

Indirect active euthanasia is the process of administering drugs or medication that is capable of shortening the life span of a patient, when the patient is suffering from severe physical pain. Passive euthanasia, which is the most accepted form of euthanasia across the world, is the omission, seizing or disruption of life support systems, measures and processes that keeps a patient barely alive. Passive euthanasia is usually performed when the patient is permanently brain dead or has no hope of surviving or recovering without the life support systems. In many cases, ventilators (a device that keeps the heart pumping) is the only factor that determines whether a person is alive or dead, without which the patient is practically dead.

Assisted suicide is the process which involves prescribing or otherwise making available a drug or medication that gives the patient the option of ending his life. The final say and act is left to the discretion of the patient and the patient alone.⁴

INDIA:

The Right To Life is enshrined under Article 21 of the Constitution of India. Direct and Indirect Active Euthanasia is illegal in India and is liable to be punished under Sections 299 and 300 of the Indian Penal Code. Assisted Suicide with consent of the patient is liable to be punished under Section 299 as 'Culpable Homicide' and under 306, for 'Abetment of Suicide'.

The topic of euthanasia and assisted suicide was discussed in detail in the case of *Aruna Ramchandra Shanbaug vs Union Of India*⁵, in which it was held that although direct or indirect active euthanasia is prohibited, passive euthanasia can be allowed in cases of Persistent Vegetative State (P.V.S) or permanent brain death. The decision to discontinue life support should be taken either by the parents, spouse or other close relatives. In the absence of close family, this decision may be taken even by a person or a body of persons acting as a 'next friend'. Finally, the decision may also be taken by the doctors attending the patient. However, the decision should be taken *bona fide* and in the "best interest of the patient."

A person may approach the High Court under Article 226 of the Constitution instead of Article 32, as under Article 32 is not only entitled to issue writs but is also entitled to issue directions or orders.

UNITED STATES OF AMERICA:

The United States of America is a federation of states and each state has its own position on the matter of euthanasia and assisted suicide. Direct Active Euthanasia is prohibited in all 50 states and if practiced, can be prosecuted under murder and homicide provisions of criminal law.⁶

Indirect Active Euthanasia is allowed in most of the US States, so long as the criteria for administering the medication that ends a patient's life is done under the condition that the patient is terminally ill and in a lot of pain.

On the subject of assisted suicide, we look at the case of *People v. Kevorkian* (1994)⁷. In this case a doctor had administered medication to end the lives of two of his patients in 1991. One of his patients had incurable 'Multiple Sclerosis' and was bedridden, while the other was in constant pain even after undergoing many operations to remedy the pain. The Supreme Court of Michigan ruled that he is liable to be punished under the charge of first degree murder and he was imprisoned. The court decided that just because there is no criminal penalty for an act of suicide, does not mean that there can subsequently be a constitutional right to commit such an act of suicide. This is because there is no fundamental right to commit suicide that is protected by the due process clause.

Some of the states that allow Indirect Active Euthanasia and Assisted Suicide are Oregon, Montana and Washington.

SWITZERLAND:

Article 114 of the Swiss Penal Code declares Direct Active Euthanasia a crime. Article 115 of the Swiss Penal Code deems assisted suicide a crime only if the motive is "selfish." Assisted Suicide need not be only performed under medical supervision. However, in most cases it is the physician that has the required medication for the administration procedure. There are many guidelines that help the physicians in the ethical administration of these drugs.

The provisions relating to Euthanasia and Assisted Suicide are unique because the recipient need not be a Swiss national, and a medical professional need not be involved. Many citizens belonging to other countries, especially Germany, go to Switzerland to undergo euthanasia. This has led to people accusing Switzerland of encouraging Suicide Tourism or Euthanasia Tourism.

As it is not an essential requirement that a medical professional must be involved, it has led to the creation of many organizations that deal with this kind of business, of which many members are volunteers. These organizations are Exit for French-speaking Switzerland, Exit for German-speaking Switzerland and Dignitas. There are many conditions and factors these organizations must adhere to, when patients request life ending procedures from them. Firstly, the organizations must make sure that the patient making the request is legally competent to do so. Secondly, the patient is serious about the procedure and has made not one but

⁴ Ibid.

⁵ *Aruna Ramchandra Shanbaug vs Union Of India*, W.P (Cri) No. 115 of 2009

⁶ Supra.

⁷ *People v. Kevorkian*, 447 Mich. 436, 527 N.W.2d 714 (1994)

multiple requests. Thirdly, the disease they are succumbing to must be organic and incurable. Fourthly, the disease need not be fatal, so long as the illness is causing the patient unbearable and intolerable suffering. Finally, the organizations must decide whether or not the illness that is afflicting the patient will cause partial or complete disablement, mental or physical, if left to persist.

Although, assisted suicides are not prohibited and is practiced throughout Switzerland, there are still some legal procedures that follow. First of all, since this is not a death by natural causes, copies of the detailed protocol are always sent to the police. A copy is also sent to the medical examiner, who on being informed of the Assisted Suicide process, usually forgoes the autopsy and releases the body to the family who can begin the funeral preparations. The level of judicial procedure varies from canton to canton and is least cumbersome in Geneva.⁸

THE NETHERLANDS:

The Dutch Penal Code of 1886 prohibits the practice of euthanasia and Assisted suicide. Their code was the first in the world to make a difference between murder and euthanasia. Under Article 293 of the Dutch Penal Code, anyone who takes another person's life at his explicit and earnest request will be punished by imprisonment to a maximum of 12 years. Article 294 prohibits Assisted Suicide.

However, this has seen a gradual change through the decades because of liberalization of criminal statutes and the courts' liberal attitude towards it.

In the historical 'Alkmaar case' of 1994⁹, a practicing physician had ended the life of a terminally ill old lady, on her request. The Alkmaar District Court acquitted the doctor because it considered in high regard the patient's right of self-determination. On appeal, the Amsterdam Court of Appeals reversed the Alkmaar decision and found the doctor guilty but set no punishment. The Supreme Court of Amsterdam vacated the Court of Appeal's judgement and then subsequently referred the case to the High Court of the Hague. The Supreme Court requested that the High Court of the Hague analyze and assess if euthanasia can be considered legal in a situation of dire necessity, if it's based on an objective medical perspective from one or more medical practitioners. The High Court of the Hague gave its judgment in 1986 and acquitted the doctor. In assessing the instructions by the Supreme Court, it held that euthanasia may be justified if the patient is in dire distress and wishes to "die with dignity."¹⁰

Today, euthanasia in the Netherlands is regulated by the Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002. This Act states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. The first concern is the patient's request, as the principle of self-determination is paramount to the Dutch. Following which, the patient's suffering must be unbearable and hopeless, usually in connection with some terminal illness. The medical practitioner must provide all the information regarding the procedure to the patient and the list of reasonable alternatives. Finally, there must be at least a few more consultations with other practitioners to get multiple opinions.

With the amendments to the Criminal Code contained in the Act, euthanasia and assisted suicide performed under the conditions of due care are no longer subject to criminal sanction in the Netherlands.

The practice of non-prosecution of medical practitioners for performing euthanasia procedures when they follow criteria of due care has bolstered the country's progressive attitude towards legally assisted death.

CONCLUSION

We have analyzed that death, suicide and medical ethics are all part of the sensitive crux of our study. The Hippocratic Oath taken by doctors when they begin their medical career involves a promise to protect, prolong and save life and also a promise to relieve pain. When a patient is in dire pain and only death can give them peace, then to prolong life is a violation of this promise. However, on the other hand, to relieve pain and suffering by shortening a person's life is also a violation of the oath. We can understand why many medical professionals do not want to get involved in this moral and legal conundrum.

Therefore, to answer the most controversial question in this debate, does the Right to Live include the Right to Die? If the Right to Life includes the right to live in dignity and if to live in dignity is to live without intolerable pain and suffering, then it is a person's right to do anything in his power to cure themselves of the illness or pain. When everything else fails, if the only thing that will allow them to live in dignity is to shorten his life to the point where he can pass away from this world with dignity, then a person has the right to die. In many countries precautionary steps are taken by individuals and encouraged by the State in the form of their living wills. People will include the clause that if they are in the position of unbearable pain and suffering and cannot consent at that moment, then they have given their pre-declared consent to the process of assisted death. We see that in this scenario, the State tends to morally police a situation where it does not need to. We cannot say if religion, morals and beliefs can outweigh a person's actual pain and suffering while he's alive but to the best of our understanding, this decision should be left to the person themselves.

⁸ Supra.

⁹ *Nederlandse Jurisprudentie 1985*

¹⁰ Julie A. DiCamillo, A Comparative Analysis of the Right to Die in the Netherlands and the United States After Cruzan: Reassessing the Right of Self-Determination, *American University International Law Review*, vol. 7, no. 4 pp. 807-842, (1992).

RESEARCH METHODOLOGY

The author has used the doctrinal method of study. This includes the constitutions of various countries, the criminal jurisprudence of those countries, case laws regarding the subject matter, and paper published on the same subject matter.

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