

EUTHANASIA AND RELATED LAW

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1. INTRODUCTION:-

Euthanasia or mercy killing means the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma according to common dictionary. This term was derived from a Greek word *euthanatos* which literally mean easy death. It was initially practiced in ancient Rome and Greece. ¹First country to legalise it was Netherlands in April 2002, according to a guardian report, the country had issued strict guidelines including that the patient must be suffering from unbearable pain, there illness must be incurable and the demand must be made in full consciousness by the patient. Belgium soon followed it in the same year later on Usually a person going through it is dealing with incurable diseases and ending their life seems much easier and convenient than continuing it but there can be other instances where person wants there life to be ended. It is also known as assisted suicide. Doctors sometimes perform it when it is needed or requested by people who are suffering. It is a very complex process and involves many decision making and other factors as related such as local laws of the land, physical and mental health of the person, correct reason and need to do so and their personal belief and wishes. Law relating to it differs from country to country and place to place as it involves very delicate and serious issues. A positive law may somehow result in more bad than good or vice versa hence it has to be dealt with utter care. As in the year 2006 euthanasia had become the most active area of research in bioethics. It is legal in several nations such as the Netherlands, Colombia, Canada and Belgium etc. while PAS is legal in japan, Germany and Switzerland.

When a person is too ill to even give consent or make request it can be made by medics or close relatives or even courts. There has been a confusion between the term suicide and euthanasia which has however been clearly distinguished in the case of *Naresh Sakhre v. Union of India* where justice Lodha made it clear that suicide is like an act of self-destruction and terminate one's own life without aid or assistance of any other while euthanasia is mercy killing by ones consent with help of other. People who are dependent on others for their day to day needs feel bad and actually this whole thing somehow hurt their sentiments and continuing life is painful however places where it has become legal has used this to bad deeds hence to bring or suggest euthanasia in India is a hard bread to bake as people in India are comparatively more sentimental and not very practical minded like in other countries and believe to serve till the end.

2. CURRENT POSITION & LAW IN INDIA:-

In India there is no clear and forward law regarding euthanasia however ²since March 2018, passive euthanasia is termed legal in India under strict guidelines and measures. Patients must consent trough a living will and must have a genuine reason which is acceptable under law. One must be in a vegetative state. The other cases of voluntary and involuntary euthanasia can be stuck by proviso 1 of section 92 of IPC. Section 305 and 306 deals with cases where suicide has in fact been committed. Those who abet or aid the procedure of suicide are guilty under these sections. There is need to study suicide in order to understand euthanasia as mostly they are termed same which is a mistake. There can be a demand of palliative care i.e. keeping people as comfortable as

¹ <http://thewire.in/230896/passive-euthanasia-now-a-legal-reality-in-india/>

² [Ps:en.m.wikipedia.org](https://en.m.wikipedia.org)

possible till the end of their life. According to Indian penal law suicide and abetment to suicide are crime and punishable under IPC thereby under:-

- **Section 305;** Abetment of suicide of a child or insane person – if any person under 18 years of age, any insane person, any delirious person, any idiot, or any person in state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment not exceeding ten years and shall also be liable to fine.
- **Section 306;** Abetment of suicide – if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either ten years and fine as well.
- **Section 309;** Attempt to commit suicide – whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment which may extend to 1 year, or fine or both.

Some cases dealing with such abetment are as follows:

Raj Bala v. State of Haryana, 2015 cri. Lj 4360 (SC).

Bhagwan Das v. Kartar Singh, 2007 Cri L.J. 3420 (SC)

M.Mohan v. State, 2011 II Cri. L.J. 1900 (SC).

State of Punjab v. Iqbal Singh, 1991 Cri. 1897 (SC).

Praven Pradhan v. State of Uttaranchal, 2012 IV Cri. L.J. 4925 (SC).

Sohan Raj Sharma v. State of Haryana, (2008)3 Cri L.J. 2569 (SC)

Arvind Kumar v. State of U.P., 2007 IV Cr. L.J. 3741(SC).

Assoo v. State of M.P., 2012 I Cri L.J. 658 (SC)

3. BASIC TYPES:-

There can be several ways depending on the law and circumstances of each case by which euthanasia can be performed.³ What is chosen will depend on a variety of factors which includes someone's level of consciousness and personal reasons.

A] Depending on legality and morale it can be;

- Voluntary euthanasia - where the person themselves agrees to the process by free will and consents it and they know the result of this, this is legal in some countries.
- Non voluntary euthanasia - where the consent of patient is missing or unavailable or consent is given by family members for their own good, however this is illegal in all countries.
- Involuntary euthanasia - where it is done against patient's will even when there is a desire to live, this is also illegal in all countries and is even considered murder.

B] Depending on process used it can be;

- Active euthanasia - where a certain act is done by doctor or person concerned in order to end the life i.e. an active action resulting in desired death. It has to be painless and certain like giving a sedative or lethal dose for a quick death. It can be done by asphyxiation where carbon monoxide is used and other nerve gases like tabun, sarin etc. are used. It is not legal in India.
- Passive euthanasia - where death is not caused not by an act but by an omission like withholding or limiting the life sustaining treatments or stopping the dosage that was somehow keeping them alive so that person passes more quickly. This process might be slow and take some time however it is legal in India under certain circumstances.

³ www.healthline.com

C] Depending on assistance and permission;

- Assisted suicide – it is also known as physician assisted suicide (PAS) which means a doctor well aware and knowingly helps someone to end their life who is suffering a lot to continue, the doctor may prescribe any drug they can take however the ending decision will be that of patient if they want to take it.
- Basic euthanasia – here doctor is simply allowed to end a person's life by painless means.

4. ETHICS OF EUTHANASIA:-

This whole topic is somehow complicated and raises moral dilemmas. There are always certain questions that raise in mind of person suffering, their relatives, the medics and law as well like ⁴is it even right to take someone's life just because he is ill, or does God allows this? Under what conditions can you kill someone and justify it as right thing to do or, does a human even have right to decide on issues of someone's life or death and what if person really wants to live but is not in mental state to understand or is forced or manipulated to agree to it? Hence there are unending set of questions that challenge the base of whole process. It is a known fact that human life has utter value and everyone has right to live as also proposed in the UDHR, although there are different ideas of different people on meaning of human life and value of their existence. Sometimes to keep an ailing person alive it takes much more money and energy than can be thought however killing someone wholly based on money issues can be highly immoral but the case is different when the sufferer himself wants it and it is firm that there is certainly no cure of their sufferings whatsoever and hence there is no better way to end it once and for all.

People with orthodox thinking feel that euthanasia is equal to murder and if people get to decide someone's life and death it clearly weakens the sanctity of life. Another problem arises about the ethical complications the doctor or medics may have to face as they are under oath to take care of their patients and never harm them no matter what. In the case of *Gian Kaur* the court held that under Article 21 of the constitution right to life has been given which can't be waived so easily but this particular Article also speaks for dignified life hence some supporters suggest to end the life which is not worth living. The dilemma whether Article 21 includes right to die or not first came in light in the case of *State of Maharashtra v. Maruti Shripathi Dubal*. In this case it was held that 'right to life' also contains 'right to die' and Section 309 was struck down (Bombay High Court). The ethics in medical says to take care and heal there pain rather than killing them as in the modern world there is barely any disease that is incurable. Ethics if disallows suicide then there are obvious questions against allowing euthanasia as well, as a person never attempts suicide for fun but only when one goes into state of depression and is hopeless of life similarly a person when so sick desires to die as one becomes hopeless and one who abets it is completely unethical.

5. CONCEPT OF LIVING WILL:-

It basically means a written document that allows a patient to give explicit instructions and convey their wishes in advance about the medical treatment they desire to be administered when they are terminally ill as when a person is assumed to be in a condition where one can no more convey their choices it is better to form it before hand to avoid confusion and rather person's decision making. To make the process of euthanasia justified it must be mentioned in the living will of person supposed to die. ⁵A five judge bench of supreme court in New Delhi headed by Dipak Misra (Chief justice of India) legalised the right to die and approved to the concept of living will.

⁴ <http://www.bbc.co.uk/ethics/euthanasia/overview/introduction.shtml>

⁵ <https://www.news18.com/news/india/as-sc-recognizes-right-to-die-heres-a-look-at-living-will-and-right-to-die-1683977.html>

It is a concept associated with passive euthanasia and in a form of document allows to put forth ones wishes for future in case they end up being incapable to do so. Court has held that a person of unsound mind is not allowed to make a living will. One can outline and provide if they want or not want to continue living in case of unbearable future conditions. PAS is only legally practiced if someone who is totally in their mental capacity are making this choice for themselves. The right of patient who is now incompetent to express his view can't be outside of fold of Article 21, also the rule of 'best interest principle' can be applied and it can be done by specified medical expert. The medics and law concerned must make it sure that it is for forced or forged by anyway.

In India if a doctor tries or attempts to kill a patient without any living will the case will surely fall under section 300 of the Indian penal code, 1860, somehow in voluntary act cases will be filed under exception 5 of the section 300 and doctor found doing this will be liable under section 304 of the IPC for culpable homicide not leading to murder. Government however had opposed the concept of living will and medical power of Attorney in case of terminally ill patients. According to government living will can be outdated and would not be considered informed as patients who may opt for it might not be fully aware of future medical developments that might take place or have already been there but there is unawareness and confusion involved. It does relates to a commonly used term called "death with dignity" which means a person must be allowed to choose or decide the way they die and encourages the legislature to allow it with certainty where needed. Some people who have loosed all faith in life and don't want to go through a long dying process should be allowed to form this will so that they can reduce the burden from themselves and their loved ones. However conflict arises that what if person made a living will and later wants to cancel it but is not in a position to do so? To decrease the misuse the court has stated that making of living will be only allowed after getting certification from a medical authority that patient's coma state is irreversible in nature.

6. ORIGIN IN INDIA (CASE STUDY):-

The whole rush of the concept of euthanasia started in India due to the case of *Aruna Shanbaug*. She was a nurse working at King Edward memorial hospital, parel in Mumbai. She was a happy lady and was engaged however on 27 of November 1973 she was attacked by a sweeper in the same hospital named sohanlal walmiki as an attempted rape and was strangled and solemnized with chain and hence this damaged her nervous system due to lack of oxygen and left her in vegetative state ever since. She has been kept alive by feeding tube and has been treated ever since in the same hospital she used to work. Although being in such a state she was taken care of and loved by the hospital staff...however later her old friend called Pinki Virani who was a known social activist saw this and filed a petition for her in the Supreme Court claiming that "continued existence of Aruna is in violation of her right to live with dignity".

The claim was rejected as the hospital staff did not support the idea of euthanizing her however court did issue guidelines legalising passive euthanasia in India as per its decision made on 7th of March 2011. The guidelines were rather strict and broad and included only ways not involving any active ways but by cutting of food or water supply needed to continue ones life. Aruna later dies from pneumonia on 18th of May 2015 after being in comatose for 42 years. ⁶The senior lawyer Prasant Bhushan (amicus curiae in above case) has stated that after this case it was only justified that legal guardian or medical board can decide whether life support can be removed or not when patient cannot decide. He even pleaded for active euthanasia to be legalized. Euthanasia has multiple and complex legal and emotional ramifications, and different nation have treated it differently in accordance with condition and ideology of that country. ⁷On 25th February 2014 while hearing a PIL filed by NGO common

⁶ Social story.com

⁷ Wikipedia.com/euthanasia in India.

cause, a three judge bench of Supreme Court observed that the judgement of Aruna case was based on wrong interpretation of constitutional bench judgement in Gian Kaur v. State of Punjab.

⁸In another case of Mr Narayan and Mrs Iravati Lavate, an elderly couple in Mumbai wrote to president asking permission for active euthanasia, the couple were not ill but wanted to end their lives out of fear of being ill and not able contribute to the society. There was another case where a woman from Kanpur wrote to prime minister asking euthanasia for her daughter Anamika Mishra as she was suffering from fatal disease called muscular dystrophy disease, of which her father has also lost his life to. In *Maruti Shri Pati Dubal v. State of Maharashtra*, the Supreme Court held that section 309 of IPC as violation of Article 14 and 21 of constitution.

7. INDIA'S VIEW ON PASSIVE EUTHANASIA:-

India as we all know is a land of religion, love, faith, humanity and sentiment. We unlike other nations tend to follow and respect life and relations much more hence it is very clear that the concept of euthanasia cannot be warmly welcomed by the majority of the crowd. The new generation might even try to understand its concept however can't fully follow it, meanwhile the older generation is way back in its understanding. When it was legalized in India it led to flurry of reactions all over the nation. Rohan Mahajan who is the Founder of an online legal platform *LawRato* stated that – “now a person suffering from coma or permanent vegetative state will have choice to decide whether they want to die or sustain through medical treatment” When court allowed for right to die with dignity alongside with right to live it meant with and by natural death. Even in the origin case the plea to euthanasia was rejected as it felt quite wrong to kill a person. Many people tend to opt this way even when there is no terminal illness involved like in a case where Dennis Kumar of Tamil Nadu asked permission of mercy killing for his infant son from the district collector in 2008, who was suffering from an unknown disease since he was born and father was unable to bear the expenses for his treatment however plea was rejected. In the very same year Jeet Narayan from mirzapur, Uttar Pradesh asked permit of euthanasia from president of India, for his 4 sons (22-10 yrs. of age), all crippled and were paralysed below the neck area but the plea was rejected.

The debate is actually of personal interest and society interest as to which one should prevail where mostly community interest does prevail that is against euthanasia. Also the term ‘terminally ill’ has nowhere been defined properly hence it is accepted only in rare of the rarest cases. ⁹Meena Ganesh who is MD and CEO of portea medical stated that, “forcing someone to remain on life support can be very difficult and the increasing cost of stay and care compound the situation. Thus, this decision of the Supreme Court must be applauded to agree to euthanasia”. Meanwhile there are many cases where demand of euthanasia is not made by a patient who is going to die or is unable to live. In fact demands are made by other people who have been through pain or injustice and are hopeless and want to end their life due to society issues, anger or depression or other reasons. Many times in India such demands are made to bring light on issues which otherwise would have been unheard and unknown, In case of Sonali Mukherjee of dhanbad, India who was a victim of acid attack, when she asked for mercy killing after being fed up of her hopeless life, the issue actually came in light and known to people. She was attacked in 2003 and suffered severe burns and disfigurement of face and neck and all her family savings were spent on her treatment.

⁸ www.freepressjournal.in

⁹ Social story.com

8. RIGHT TO WAIVER:-

There are certain rights which are granted to people by the ambit of law of the land whether they want it or not. Same is right to life which can't be waived or overthrown under any circumstances. Waiver basically means voluntary relinquishment or surrender of some known privilege or right, But since the whole concept of euthanasia is based upon waiver of right to life, in march 2018, supreme court passed judgement in case of *Common cause (A regd. Society) v. Union of India*, and recognized the right to die with dignity as fundamental right which is a waiver of right to life as in Article 21 of constitution. The bench hence recognized the concept of passive euthanasia and living will in India.

9. PROS AND CONS:-

Nothing in this world comes without a certain drawback so euthanasia is no different, on one hand it aims to end pain and suffering of a person with their consent while on other it can be easily abused and can cover murder or can be used by relatives to get rid of an ill person. Our constitution nowhere mentions right to die an unnatural death and if done so it will be considered violation of the sanctity of life. By virtue of being a human one has right to live one's life to fullest. Life is a gift from god hence it must end when god wants it to end and the way he wants it to end. However in certain cases it has been decided that right to die is not unnatural but uncommon and unnatural also there are many circumstances where a person might want to die. This was upheld in a case, *P. Rathinam v. Union of India*, by Supreme Court. If we look at the bright side it actually gives relief to a person by ending a meaningless life which is not worth living, the problem however is how to decide it.

This term is therefore ambiguous too but supporters desire that whatever the patient wants must be fulfilled. The life one is forced to live must be at least of minimum dignity. Everyone wants to live hence if a person desires to die he must be in deep agony and hence want to die a painless death than to live a painful life. Hence when it is clear that one is going to die anyway later should be allowed to end it quickly as moral point of view. Also many doctors agree that the money and resources used to keep such patients alive who are sure to die must be used to save those who have a fair chance to even survive or recover. The opposition says that there can be misuse of this freedom but every right involves some risk or other and there is no right immune to some danger of abuse but for this reason we must not overthrow the entire right. This however deals with intense opposition from people of medical and legal background and mostly from religious background. It is considered against medical ethics and is an anti-thesis of oath taken by the doctor, this right seems more about right to kill rather than right to die.

The decision to ask for euthanasia is not solely made by the patient and relatives also play an important role in doing that hence there are chances that the patient might be under some kind of pressure, it can be psychological, economic or moral if not physical. If patient is made to feel badly and as a burden on family anyone will agree to die instead. These kinds of demand will automatically lessen by proper care and igniting hope in the patients, even at the end times and death bed they must not die hopelessly begging for death hence there are both pros and cons to this but it can be only decided by act of people on it.

10. CONCLUSION:-

If we come to clearly examine all the terms, ideas, law and ethics we can conclude that at the end it is person's life and no one but oneself must decide ones fate and when a person believes a doctor by putting their lives in hands of doctor then doctor can also be given discretion to decide whatever

maybe in favour of the patient. If rules are followed and used properly, this right can be used as a boon but there must be clear guidelines about ability of a person to ask for euthanasia. There are many countries where it is allowed so India must learn there rules making process and mistakes must be avoided. There must be a proper quasi-judicial body having proper knowledge in medics and law who will be appointed to look into and review the demands made by patient and steps taken thereby by the doctor. This will ensure protection of this right and avoid any kind of abuse. No person with all sane mind will want to die out of free will but it is necessary that right path is shown by helping them deal with issues which can be solved as it is rightly said that death is a permanent solution to temporary problems, otherwise in cases where problems are irreversible, it will be justified to agree to euthanasia if it fits all the legal and medical guidelines formed...

