



# EUTHANASIA-A PLEA FOR MERCY KILLING

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## ABSTRACT

Euthanasia is one of the most sensitive issue which the world faces today. Few developed countries have given sanction to active euthanasia..In India, there are several points given in favour of legalising euthanasia or against the euthanasia. The most important point that the opponent raise is that it will lead to its misuse by the doctors. So According to the supporters of euthanasia the consent of the patients should be accepted. If the patient is not able to give his consent then the consent of their parents or relatives will be accepted. A major development took place in this field on 7<sup>th</sup> March 2011 when Ms. Shanbaug has changed forever India's approach to the contentious issue of euthanasia. In this case Supreme Court allowed Passive Euthanasia in India and held that Passive Euthanasia will only be allowed in cases where the person is in persistent vegetative state or terminally ill.

This research paper deals with the most debated topic in the world, euthanasia. The debate is regarding the legalization of euthanasia. This debate is a continuing one as some people are of the view that life is sacred and no one has got the right to end it whereas on the other hand some say that life belongs to oneself and so each person has got the right to decide what he wants to do with it even if it amounts to dying.

## INTRODUCTION

Now-a-days Euthanasia is one of the burning topic that disturbs the modern society. It is a controversial issue since it involves the deliberate termination of human life. Many movies and cases are highlighted regarding euthanasia in few years back e.g. last year, Guzarish dealt with the issue of euthanasia. In 2009, a Marathi fil,, Sukhant, sensitively portrayed a family struggling with the issue of mercy killing.

Euthanasia is an intentional act of ending the life of an individual suffering from a terminal illness. In our day to day life we often come across terminally ill patients that are bedridden and are totally dependent on others. It actually hurts their sentiments. Looking at them we would say that death would be a better option for them rather than living such a painful life. But if on the other hand we look at the Netherlands where euthanasia is made legal, we will see that how it is abused there. So following its example, no one wants euthanasia to be legalized in India. Although the Supreme Court has already given its decision on this issue, in Aruna Shanbaug's case and allowed passive euthanasia in India.

Proponents of euthanasia feel that an individual's right to autonomy automatically entitles him to choose a painless death. The opponents feel that a physician's role in the death of an individual violates the central tenet of the medical profession. Moreover, undiagnosed depression and possibility of social 'coercion' in people asking for euthanasia put a further question mark on the ethical principles underlying such an act. These concerns have led to strict guidelines for implementing PAS. Assessment of the mental state of the person consenting to PAS becomes mandatory and here, the role of the psychiatrist becomes pivotal. Although considered illegal in our country, PAS has several advocates in the form of voluntary organizations like "death with dignity" foundation. This has got a fillip in the recent Honourable Supreme Court Judgment in the Aruna Shaunbag case. What remains to be seen is how long it takes before this sensitive issue rattles the Indian legislature.

### **EUTHANASIA-Its meaning and definition**

Euthanasia is a Greek word "youthanazia". It is a combination of two words "eu" means 'good' and "thantos" means 'death'. So euthanasia means good death which is gentle, easy and painless. Oxford dictionary defines it as the painless killing of a person who has an incurable disease or who is in an irreversible coma.

Euthanasia is an act of ending the life of a person who is suffering from terminal illness. According to J.S. Rajawat, euthanasia is putting to death a person who because of disease or extremely old age or permanently helpless or subject to rapid incurable degeneration and cannot have meaningful life. It may also be defined as it is an act of ending the life of a person who is suffering from terminal illness.

### **TYPES OF EUTHANASIA**

Euthanasia is a termination of a patient's life who is suffering from an incurable disease in order to relieve him from his sufferings. Thus the intention behind euthanasia is to ensure a less painful death to the patient who is suffering from terminal illness.

Euthanasia is a complex matter and there are many types of euthanasia. It may be divided into two types according to the means of death.

## 1. Active euthanasia-

where a person deliberately intervenes to end someone's life, that is active euthanasia. It is an act of commission e.g. by giving large doses of drug. It is a quicker means to cause death.

## 2. Passive euthanasia-

passive euthanasia is intentionally causing death by not providing essential, necessary and ordinary care or food and water. It is an act of omission e.g. by removing artificial life support system. It is a slower means to cause death.

In most cases, euthanasia is carried out because the person who dies, asks for it, but there are number of cases of euthanasia where a person cannot make such a request. In those cases consent of patient is not available. Some say that consent is necessary for killing a person, if there is no consent of patient then it is not euthanasia but it is a murder. Others of the view that consent is not essential part of euthanasia.

Thus euthanasia may be classified into three types according to the consent.

### 1. Voluntary euthanasia

In voluntary euthanasia the person himself requests the commission of euthanasia. In it consent is taken from the patient.

### 2. Involuntary euthanasia

Where the person on whom euthanasia is committed is mentally incapable to give a consent then it is called involuntary euthanasia.

### 3. Non-voluntary euthanasia

Non-voluntary euthanasia is euthanasia conducted where the explicit consent of the individual concerned is unavailable or Where the person who is killed made no request for killing.

## Difference between ACTIVE and PASSIVE euthanasia

1. in active euthanasia the doctor takes an action with the intention to kill the patient but in passive euthanasia the doctor lets the patient die.
2. Active euthanasia is an act of commission e.g. by giving large doses of drug. Passive euthanasia is an act of omission e.g. by removing artificial life support system.
3. In active euthanasia something is done to end the patient's life but in passive euthanasia something is not done that would have preserved the patient's life.

## DIFFERENCE BETWEEN SUICIDE AND EUTHANASIA:

According to section 309 of IPC , an attempt to commit suicide is a crime and after the Supreme Court's Landmark Judgement in Gian Kaur v. State of Punjab it is now settled that the “Right to Life” guaranteed under Art.21 of the constitution does not include the “Right to Die”. Thus some exponents of euthanasia says that when suicide is not allowed then euthanasia should also not be allowed because a person commits suicide when he goes into a state of depression and has no hope from the life, similar is the situation when a person asks for euthanasia.

But in reality euthanasia is totally different from suicide in the following ways.

1. in a suicide a man voluntarily kills himself by various methods or attempts to take his life. But in euthanasia there is an action of some other person to bring to an end the life of third person.
2. person commit suicide for various reasons like frustration in love, failur in examinations or in getting good job etc. But in euthanasia these reasons are not present . In euthanasia putting a person to painless death in case of incurable diseases or when life become purposeless or hopeless.

Therefors,provisions regarding attempt to commit suicide and abetment to suicide should be preserved in the interest of the society as a general rule but euthanasia should be permitted in certain circumstances as an exception to the general rule. Thus Indian Parliament should enact a law regarding euthanasia.

Distinguishing euthanasia from suicide,Justice Lodha In **naresh maratra sakhee vs union of india** observed that “suicide by its nature is an act of self-killing or self-destruction,an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or mercy killing on the other hand means implies the intervention of other human agency to end the life. Mercy killing is thus not suicide and the provision of section 309 does not cover an attempt at mercy killing. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected”

### Whether Euthanasia should be legalised or not

This has been a topic for debate since a long time i.g. whether euthanasia should be allowed or not. Different views have emerged and various view points have been discussed from this.

According to the supporters of euthanasia it should be legalised because it provides a way to relieve the extreme pain and suffering of the patient. Under Art.21 of the constitution the 'Right to life' is the fundamental right of an individual and every person has right to live with human dignity but to force the person to live in an undgnified way is against the person's choice or against the fundamental principle. A patient will wish to end his life only in cases of excessive agony and would prefer to die a painless death rather living a miserable life. Thus, it will be better to allow

the patient die painlessly.

According to Dr. B.K. Rao, Chairman of Sir Ganga Ram Hospital in New Delhi “ If there is no hope of recovery for a patient , it is only humane to allow him to put an end to his pain and agony in a dignified manner”.

On the other hand, the opponents of euthanasia said that the human life is gift of God and taking life is wrong and immoral. Today the most incurable diseases are becoming curable so instead of encouraging the patient to end his life, the medical practitioners should encourage the patients to lead their painful life with strength.

According to them if euthanasia is legalised then there will be chances of abusing it or it will be misused. If it is legalised then other groups of more vulnerable people will become at risk of feeling into taking that option themselves. It is feared that now it can be legalised only for terminally ill people but later on laws can be changed and then it may allow for non-voluntary or involuntary.

Thus there are several points given in favour of legalising euthanasia or against the euthanasia. The most important point that the opponent raise is that it will lead to its misuse by the doctors. So According to the supporters of euthanasia the decision of the patients should be accepted. If the patient is not able to give his consent then the consent of their parents or relatives will be accepted.

Thus Indian Parliament should enact a law regarding euthanasia which enables a doctor to end the painful life of a patient. Parliament should lay down some circumstances under which euthanasia will be lawful as below:-

1. consent of patient must be obtained
2. intention of the doctor must not be to cause harm
3. proper safeguard must be taken to avoid abuse of it by doctors.

Thus we can say that euthanasia could be legalised, but the laws would have to be very stringent. Every case will have to be carefully monitoring taking into consideration the points of views of the patient, relatives and the doctors.

## EUTHANASIA IN INDIA

In India Euthanasia is a crime. Section 309 of IPC deals with attempt to commit suicide and 306 of IPC deals with abetment of suicide, both actions are punishable. Basically euthanasia is a killing of patient by the doctors in order to free from terminal illness. There is an intention to cause death of patient which would attract clause first of section 300 of IPC. Thus it be rendered illegal in India.

According to Article 21 of the Constitution every person has “Right to Life” which means every person has an

essential right to live with human dignity. Now the question arises that if person has right to live, whether he has right not to live i.e. right to die. This question whether the "Right to Life" also included "Right to Die" came for consideration for the first time before the Bombay High Court in ***The State of Maharashtra v. Maruti Shripathi Dubal***. The Court held that the right to life guaranteed by Article 21 includes the right to die, and consequently the Court struck down Section 309 IPC, which provides punishment for attempt to commit suicide as unconstitutional. The judges felt that the desire to die is not unnatural but merely abnormal and uncommon. They listed several circumstances in which people may wish to end their lives, including disease, cruel or unbearable condition of life, and a sense of shame or disenchantment with life. They held that everyone should have the freedom to dispose of his life as and when he desires. On the other hand ***Chenna Jagadeeswar v. State of AP***, the AP High court said that right to die is not a fundamental right under Article 21 of the constitution. The Supreme Court in ***P. Rathinam v. Union Of India***, upheld the Bombay and AP High Court's decision but the same Court in ***Gian Kour v. State of Punjab***, a five judge Constitution Bench of the Court overruled the P. Rathinam's case and, held that "Right to Life" under Article 21 of the constitution does not include "Right to Die" or "Right to be Killed." The Right to Die is inherently inconsistent as is death with life.

On the contrary the advocates of Euthanasia contend that in cases of terminal illness the medical professionals do not prolong the life of a person; instead they prolong the death of that person. One cannot say that since the Constitution of India says that Article 21 is the right to life of an individual he must be kept alive through all the sufferings that he has to undergo throughout the period till death releases him from his ordeal. Sufferings can be physical, mental as well as monetary. Euthanasia can be considered to be a solution to get rid of such sufferings but this would be possible only when the legal provisions provide for a fool-proof mechanism that shall prevent the abuse of the law legalizing Euthanasia.

A major development took place in this field on 7<sup>th</sup> March 2011 when Ms. Shanbaug has changed forever India's approach to the contentious issue of euthanasia. In this case court held that right to life includes right to live with human dignity and in case of dying person who is terminally ill or in a permanent vegetative state he may be permitted to terminate it by a premature extinction of his life in these circumstances. Supreme Court also allowed Passive Euthanasia in India and held that Passive Euthanasia will only be allowed in cases where the person is in persistent vegetative state or terminally ill.

On December 23,2014, Government of India endorsed and re-validated the Passive Euthanasia judgement-law in a Press Release, after stating in the after stating in the Rajya Sabha as follows: that The Hon'ble Supreme Court of India in its judgement dated 7.3.2011 [WP (Criminal) No. 115 of 2009], while dismissing the plea for mercy killing in a particular case, laid down comprehensive guidelines to process cases relating to passive euthanasia. Thereafter, the matter of mercy killing was examined in consultation with the Ministry of Law and Justice and it has been decided

that since the Hon'ble Supreme Court has already laid down the guidelines, these should be followed and treated as law in such cases. At present, there is no proposal to enact legislation on this subject and the judgement of the Hon'ble Supreme Court is binding on all. The Health Minister, J P Nadda stated this in a written reply in the Rajya Sabha.

The high court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian Parliament enacts a suitable law. Active Euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries.

## **Global view of Euthanasia**

### **NETHARLANDS**

Netherlands is the first country in the world to legalise both euthanasia and assisted suicide in 2002. According to the penal code of the Netherlands killing a person on his request is punishable with twelve years of imprisonment or fine and also assisting a person to commit suicide is also punishable by imprisonment up to three years or fine. In spite of this provision, the courts of Netherlands have come to interpret the law as providing a defence to charges of voluntary euthanasia and assisted suicide.

### **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 of Wake v. Northern Territory of Australia by the Supreme Court of Northern Territory of Australia. Subsequently the Euthanasia Laws Act, 1997 legalised it. Although it is a crime in most Australian states to assist euthanasia. In Tasmania in 2005, a nurse was convicted of assisting in the death of her mother and father who were both suffering from incurable illnesses. She was sentenced to two and half years in jail but the judge later suspended the conviction because he believed the community did not want the woman put behind bars. This sparked debate about decriminalization of euthanasia.

### **ALBANIA**

In Albania, Euthanasia was legalized in 1999, it was stated that any form of voluntary euthanasia was legal under the rights of the Terminally ILL act of 1995. Passive euthanasia is considered legal if three or more family members consents to the decisions.

### **BELGIUM**

Euthanasia was made legal 2002 in Belgium. The Belgian Parliament had enacted the 'Belgium Act on Euthanasia' in September 2002, which defines euthanasia as "intentionally terminating life by someone other than the person concerned at the latter's request".

## CANADA

In Canada, patients have the right to refuse life sustaining treatments but they do not have the right to demand for euthanasia. The Supreme Court of Canada in Rodriguez v. Attorney, 1994 General for British Columbia said that in the case of assisted suicide the interest of the state will prevail over individual's interest.

## U.S.A

There is a distinction between passive euthanasia and active euthanasia. While active euthanasia is prohibited but physicians are not held liable if they withdraw the life sustaining treatment of the patient even on his request. In the cases Washington v. Glucksberg and Vacco v. Quill, Euthanasia has been made totally illegal by the United States Supreme Court. Only in Oregon, a state in America, physician assisted suicide has been legalized in 1994 under Death and Dignity Act. In April 2005, California State legislative committee approved a bill and has become 2nd state to legalise assisted suicide.

## CONCLUSION

From the above discussion we can conclude that no such law could be guaranteed to be free of the possibility, if not the likelihood, of abuse, chiefly centered on the lives of other sick persons who did not want their lives taken. An especially dangerous aspect is that such abuse may be easily made undetectable. Thus although mercy killing appears to be morally justifiable, its fool-proof practical applicability seems near to impossible. The medical loopholes, listed above, alone justify the common finding of the inquiries, that legalization would be dangerous. Rather than seek recourse to medical life-taking, all doctors with responsibility for the care of terminally ill patients should accept their duty to deliver this care at the known best standards, as they are legally obliged to do in other branches of medical practice.

In short, we can say that the right to have one's life terminated at will is subject to social, ethical, and legal strictures. The question that should euthanasia be legalized is not an objective question. It is a subjective one which depends more upon the cases and circumstances.

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