JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue
JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)
An International Scholarly Open Access, Peer-reviewed, Refereed Journal

A Study on Relevance Of Euthanasia In India

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Introduction

The phenomenal advances in medical science and technology have not been without a significant impact on society. They have brought into forefront issues that are altering the pattern of human living and societal values. With these changes is the upsurge of affirmation of human rights, autonomy, and freedom of choice. These issues compel us to re-evaluate our concepts of societal and medical ethics and value systems.

Amongst these issues, the palliative care and quality of life issues in patients with terminal illnesses like advanced cancer and acquired immune deficiency syndrome (AIDS) have become an important area of clinical care and investigation. Significant progress has been made in extending a palliative care/quality of life research agenda to the clinical problems of patients with cancer, including efforts that focus on mental health related issues such as neuropsychiatric syndromes and psychological symptoms in patients with terminal medical illness. However, perhaps the most compelling and clinically relevant mental health

issues in palliative care today concern the desire for death and physician-assisted suicide (PAS) and their relationship to depression.[1]

Desire for death has been postulated as a construct that is central to a number of related issues or phenomena, including suicide and suicidal ideation, interest in PAS/euthanasia, and request for PAS/euthanasia. This construct, which was initially proposed by Brown and it ranges from suicidal intent (i.e., a desire to end one's life immediately) to a complete absence of any desire to die.

Advocates demanding autonomy for patients regarding how and when they die have been increasingly vocal during recent years, sparked by the highly publicized cases of Drs Jack Kevorkian, Timothy Quill, and Aruna Shanbhag . These cases have centered on the plight of dying patients with terminal illnesses.

What has often been overlooked, however, in the political and legal machinations, is the importance of medical, social, and psychological factors (e.g., depression) that may contribute to suicidal ideation, desire for hastened death, or requests for PAS by terminally ill patients.

Definition and types of Euthanasia

The English philosopher Sir Francis Bacon coined the phrase “euthanasia” early in the 17th century. Euthanasia is derived from the Greek word eu, meaning “good” and thanatos meaning “death,” and early on signified a “good” or “easy” death. Euthanasia is defined as the administration of a lethal agent by another person to a patient for the purpose of relieving the patient's intolerable and incurable suffering.Typically, the physician's motive is merciful and intended to end suffering. Euthanasia is performed by physicians and has been further defined as “active” or “passive.” Active euthanasia refers to

[1] www.ncbi.nlm.nihg.gov.

a physician deliberately acting in a way to end a patient's life. Passive euthanasia pertains to withholding or withdrawing treatment necessary to maintain life. There are three types of active euthanasia. Voluntary euthanasia is one form of active euthanasia which is performed at the request of the patient. Involuntary euthanasia, also known as “mercy killing,” involves taking the life of a patient who has not requested for it, with the intent of relieving his pain and suffering. In nonvoluntary euthanasia, the process is carried out even though the patient is not in a position to give consent.[2]

PAS, on the other hand, involves a physician providing medications or advice to enable the patient to end his or her own life. While theoretical and/or ethical distinctions between euthanasia and PAS may be subtle to some, the practical distinctions may be significant. Many terminally ill patients have access to potentially lethal medications, at times even upon request from their physicians, yet do not use these medications to end their own lives.

Both euthanasia and PAS have been distinguished, legally and ethically, from the administration of high-dose pain medication meant to relieve a patient's pain that may hasten death (often referred to as the rule of double effect) or even the withdrawal of life support.The distinction between euthanasia/PAS and the administration of high-dose pain medications that may hasten death is premised on the intent behind the act. In euthanasia/PAS, the intent is to end the patient's life, while in the administration of pain medications that may also hasten death; the intent is to relieve suffering.

Distinctions between withdrawal of life support and euthanasia/PAS are, in many ways, considerably clearer. Long-standing civil case law has supported the rights of patients to refuse any unwanted treatment, even though such treatment refusals may cause death.On the other hand, patients have not had the converse

[2] www.lawteacher.net

right to demand treatments or interventions that they desire. This distinction has had the effect of allowing a patient on life support the ability to end his or her life on request, yet a patient who is not dependent on life support does not have such a right.

There are two types of euthanasia: passive euthanasia and active euthanasia. Active euthanasia is defined as taking an immediate action such as using lethal injection to painlessly put a terminally-ill patient to death. Passive euthanasia is withdrawing treatment while the life of the patient is still dependent on it and when it is believed that treatment is more burdensome than beneficial. Passive euthanasia allows the patient to die naturally and is often considered more acceptable.

Legal Aspects of Euthanasia

The legal status of Euthanasia and Physician assisted suicide has been debated by legislations and the judiciary in a number of countries focusing on either the legislation or the decriminalization of the acts.

In India

In India abetment of suicide (Sec 306 of the IPC) and attempt to suicide , this is in contrast to many countries such as the U.K and U.S.A & Switzerland where attempt to suicide is not a crime.

The supreme court in Gian Kaur v/s State of Punjab[3] held that Sec 309 of IPC has been held to be constitutionally valid, a person attempts suicide in depression, and hence he needs help, rather than punishment. It was quoted with approval the views of the House of Lords in Airedale's case.[4] it has not classified who can decide whether life support should be discontinued in the case of an incompetent person

[3] Indian Law Institute Journal, 2012 edition.

[4] Ibid

e.g :- a person in coma or P.V.S(Permanent Vegetative State) and if a decision is taken by the near relative or next friend to withdraw life support, such decision requires approval from the High Court concerned.

There are large number of cases in India where person go in to coma and unable to give consent, and the question arises as to who should give consent for withdrawal of life support, this is very important question because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialization, and the rampant corruption, and hence, the court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method.

The commercialization of our society has crossed all limits. Hence we have to guard against the potential of misuse,gave great guard against the potential of misuse, gave great weight age to the wishes of the parents, spouse, or other close relatives or next friend of the incompetent patient and also giving due weight age to the incompetent patient and also giving due weight age to the opinion of the attending doctors, we cannot leave it entirely to their discretion whether to discontinue the life support or not.

But if we leave it solely to the patients relatives or to the doctor or to next friend to decide whether to withdraw the life support of an incompetent person, thereis always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or grab the property of the patient.

Considering the low ethical levels prevailing in our society today and the rampant commercialization and corruption, we cannot rule out the possibility that unscrupulous person with the help of some unscrupulous doctors may fabricate material to show that it is a terminal case with no chance of recovery.

In our country we are giving great weight to the wishes of the parents, spouse, or other close relatives or next friend of the incompetent patient and also giving due weight to the opinion of the attending doctors, we cannot leave it entirely to their discretion whether to discontinue the life support or not. We agree with

the decision of the Lord Keith in Airedale's Case[5] that the approval of the High Court should be taken in this correction. This is also in consonance with the Doctrine of Parens Patriae which is well known principle of law.

Doctrine of Parens Patriae

The doctrine of Parens Patriae (Father of the Country) had originated in British law as early as in 13th century. It implies that the king is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. The idea behind Parens Patriae is that if a citizen is in need of someone who can act as a parent who can make decision and to take some other action, sometimes the state is best qualified to take on this role. This doctrine was laid down by Hon'ble Supreme Court in a case[6]

There is no statutory provision in our country as to the legal procedure for withdrawing life support to person in Permanent Vegetative State (PVS) or who is otherwise incompetent to take decision in this connection.

Even though active euthanasia is illegal, Passive euthanasia is lawful in India, on 7th March 2011 in Aruna Shanbhag v/s Union of India [7] the Supreme Court legalized passive euthanasia by means of the withdrawal of life support to patients In a PVS State. The decision was made as a part of the verdict in a case involving Aruna Shanbhag who has been in a Vegetative State for 37 years at King Edward Memorial Hospital. In

[5] (1993 AC 789; (1993)2 WLR 316;(1993)1 ALL ER821 (CA and HL)

[6] Charan Lal Sahu v/s Union of India (1990) 1 SCC 613.

[7] (2011) 4 SCC 454.

the absence of law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian Parliament enacts a suitable legislation.

Rejecting the Pinki Virani's (friend of Aruna) plea for Aruna Shanbhag's euthanasia, the court laid down the following guidelines for passive euthanasia:-

A decision has to be taken to discontinue life support either by the parents or the spouse or other close relative, or in the absence of any one of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. The decision should be taken in the best interest of the patient.

Even if a decision is taken by near relatives or doctors or next friend to withdraw the life support, such decision requires approval from the High Court as laid down in Airedale's Case.

When such application is filed, the Chief Justice of the concerned High Court should forthwith constitute a bench of at least 2 Judges who should decide to grant approval or not. A committee of the reputed doctors to be nominated by the patient, before giving verdict a notice regarding the report should be given to the close relatives and the state. After hearing the parties, the High Court can give its verdict.

The Supreme Court made a significant statement in this above Right to die case regarding attempt to commit suicide. Observing that a person who takes his/ her own life needs help rather than punishment and it asked parliament to consider decriminalizing the attempt to commit suicide, this would entail deletion of Sec 309 of IPC. The Supreme Court judgment in Aruna Shan Bhag case seems to have, in a broad sweep, sanctioned passive euthanasia for terminally ill patients in certain circumstances. Passive euthanasia in reference to medical practice generally refers to withdrawing life support and treatment, and letting nature take its course. The active/passive distinction is couched in terms of dichotomy between "Killing" and

"Letting die" which stipulates that it is morally wrong to intentionally take a life, but permissible to allow the inevitable to happen by withdrawing or withholding treatment.

Conclusion

Medical science is progressing in India as in the rest of the world, and hence currently we are having devises that can prolong life by artificial means. This may indirectly prolong terminal suffering and may also prove to be very costly for the families of the subject in question. Hence, end-of-life issues are becoming major ethical considerations in the modern-day medical science in India. The proponents and the opponents of euthanasia and PAS are as active in India as in the rest of the world. However, the Indian legislature does not seem to be sensitive to these. The landmark Supreme Court judgment has provided a major boost to pro-euthanasia activists though it is a long way to go before it becomes a law in the parliament. Moreover, concerns for its misuse remain a major issue which ought to be addressed before it becomes a law in our country.