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"Euthanasia In India: Navigating The Path Between Compassion And Law"

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Abstract:

Euthanasia, also known as "mercy killing," has generated a lot of discussion worldwide, and India is not an exception to that. The intentional termination of a person's life to relieve their suffering from terminal or incurable diseases creates serious moral, ethical, and legal issues. Cultural values, belief systems, and the judiciary's dynamic role in interpreting the right to life and dignity have all shaped the legal position of euthanasia in India. Even though the Supreme Court recognised that passive euthanasia is permissible in some situations, there is still substantial controversy around the process of complete legalisation. On the one hand, some contend that letting people choose how they want to pass away is an act of kindness that grants them the freedom to carry out this with honour. On the other hand, opponents warn that legalizing euthanasia might open the door to future misuse and destroy the sanctity of life. This article examines the legal framework, moral dilemmas, and current discussion around the practice of euthanasia in India in order to shed light on the conflicting relationship legal, moral and ethical dilemmas around euthenasia.

Key words:

Euthanasia, passive euthanasia, active euthanasia, mercy killing,

FULL PAPER

Any person may choose death to life if life turns out to be an experience that is far more painful and intolerable than death. In Plato's "The Republic," he made an argument that people with long-term ill health should be allowed to pass away[1]. Some intellectuals at the time agreed with his argument and opined that their suffering reduced their quality of life. On the other hand, Hippocrates and his well-known Hippocratic Oath promoted the usage of medicine to save patient's lives, especially when they were terminally ill[2]. A historical

[1] Santas, G. (2010). Understanding Plato's Republic. Germany: Wiley.

[2] Euthanasia: Searching for the Full Story: Experiences and Insights of Belgian Doctors and Nurses. (2021). Germany: Springer International Publishing.

conflict between a medical ethic that aims to preserve life, even in dangerous illness and a philosophical perspective that suggests death can be better than a life of suffering is always existing. The impact of the Hippocratic Oath emphasizes that how relevant it is with regarding end-of-life decisions today. The Greek words "eu," which means good, and "thanatos," which means death, are the roots of the term "euthanasia."[3] As a result, the meaning of this word is "good death." In more literary sense Euthanasia is understood as - providing death to a person who requests it in order to free himself from suffering, which is irreversible and that the person himself considers it as intolerable anymore. It is used to be considered as a way to eliminate those who were classified as living a less respectable life[4]. Euthanasia falls within the realm of life as a human right. They have been discussed throughout history and widely considered for a long time. However, the expression "good death" for euthanasia raises ethical, moral, and societal disputes. Generally, to view death as a positive thing is difficult. Because it is a loss of life. The name of euthanasia is misused in a number of historical occurrences such as the Nazi experiments [Aktion T4], which associated the term "euthanasia" more with murder than with a caring and kind deed[5]. The more recent writings enumerates euthanasia as a procedure which accelerates a patient's death from a terminal illness or incurable disease in order to save them from excessively suffering.

Nowadays, most of the nations including Canada, Holland, and Luxembourg, Belgium, Colombia, Spain; Switzerland and five U.S. states like Oregon, Vermont, Washington, California, and Montana etc.,. some countries are allowing euthanasia, some are decriminalizing assisted suicide and some other countries are famous for suicide tourism[6]. As more and more nations enacted laws pertaining to assisted suicide and euthanasia, the views of philosophers, doctors, politicians, and thinkers were brought to light. In their political systems, a number of countries have started to hold conversations on this issue.

When it comes to safeguarding people's rights, the Indian Constitution operates as an armor. A person is entitled to fundamental human rights from the moment of their birth. The Indian Constitution recognises "Right to Life" as an essential one since every individual have a fundamental right to life and the protection against being murdered by another person[7]. In the present situation, the question is whether or not the Indian Constitution's provision of the right to live also grants the freedom to die.

With P. Rathinam v. Union of India (1994)[8], the question of whether the right to die is part of the right to life under Article 21 was first raised. The Court made a comparison to the other essential rights in order to question the constitutionality of Section 309 of the Indian Penal Code. The freedom of expression guaranteed by Article 19 include both the right to speak and the right to remain silent. In the same way, Article 21's right to life contains the right to die[9]. Therefore, it was decided that Section 309 was invalid. A year later, the constitutionality of Section 309 of the Indian Penal Code was contested in Gian Kaur v. State of Punjab (1996)[10]. The five-judge panel overruled P. Rathinam's decision. It concluded that P. Rathinam[11] erred in relying on the analogy that other fundamental rights includes the "right not to," as the right to silence (based on the example P. Rathinam provided) is a hidden behaviour. It is not a clear act like killing someone[12]. Despite using many passages from Airedale N.H.S. Trust v. Bland (1993)[13], the Court made it clear that it would not be analysing the topic of euthanasia. But distinguished between right to die (unnaturally) and right to die with dignity (naturally). The constitutional legality of Section 306 and 309 IPC was confirmed. The idea of euthanasia was not condemned by Gian Kaur[14]. Indeed, it suggested that it may be a component of the

[3] https://applicationessaysforcollege552.blogspot.com/2019/11/

[4] Broadie, S. (1991). Ethics with Aristotle. United Kingdom: Oxford University Press.

[5] Braun, K. (2021). Biopolitics and Historic Justice: Coming to Terms with the Injuries of Normality. Germany: transcript Verlag.

[6] Manning, J. (2020). Suicide: The Social Causes of Self-Destruction. United States: University of Virginia Press.

[7] Our Rights, Our Information: Empowering People to Demand Rights Through Knowledge. (2008). India: Commonwealth Human Rights Initiative.

[8] **1994 AIR 1844, 1994 SCC (3) 394**

[9] https://www.scobserver.in/reports/common-cause-union-india-euthanasia-living-wills-dipak-misra-cjis-opinion-in-plain-english-judgment-summary/amp/

[10] 1996 AIR 946, 1996 SCC (2) 648

[11] **1994 AIR 1844, 1994 SCC (3) 394**

[12] gnanaganga.inflibnet.ac.in:8080/jspui/bitstream/123456789/211/1/Anikha%20Handique.pdf

[13] [1993] A.C. 789

[14] 1996 AIR 946, 1996 SCC (2) 648

right to live with dignity. Additionally, it made a distinction between ending one's life by withholding medical aid and ending one's life in a positive, overt manner.

In Aruna Ramachandra Shanbaug v. Union of India (2011)[15], the legality of euthanasia was brought up once again. The Court interpreted Gian Kaur's decision to allow the premature death of a person in a permanent vegetative state or with a terminal illness, and it defined "passive euthanasia" as the deliberate act of withdrawing the treatment with an intention of causing the patient's death. The Court held that euthanasia is permitted if doctors act in the patient's best interest by withdrawing life support and using the Parens Patriae principle (Latin for "parent of the nation," where the Court can intervene and act as a guardian), which gives the Court the final say in what is best for the patient[16]. Under Article 226 it expanded this authority to the High Courts. The topic at question is then covered by Chief Justice Misra. He defines euthanasia from the very beginning. There are two main categories: active, which is an overt act, and passive, which is not an overt act of giving medicines or other chemicals that may cause death. Aruna Shanbaug permitted passive euthanasia, but only under strict limitations[17]. It's forbidden to actively end a life. Euthanasia may also be non-voluntary, if the individual is able to make the decision, or voluntary. On the basis of the doctor's guidance, there is also "physician-assisted suicide." In Rodriguez v. British Columbia (Attorney General) (1993)[18] and Vacco v. Quill (1997)[19], Chief Justice Misra upheld the argument that the distinction between active and passive euthanasia is based on the cause of death and the intention behind it[20]. India's legal perspective on euthanasia was significantly shaped by this case. It cleared the stage for the subsequent Common Cause ruling in 2018, which built upon the tenets established in Aruna's case and gave living wills and passive euthanasia a legal status, as well as for more conversations around end-of-life care. The story of Aruna Shanbaug serves as a reminder of the intricate moral, physiological, and psychological considerations that go into life-or-death choices. It emphasised the necessity of compassionate treatment, legal clarity, and respect for human dignity, particularly when medical science provides no possibility of recovery.

The Common Cause v. Union of India (2018)[21] case is a landmark case, especially when it comes to euthanasia and end-of-life decisions. According to Article 21 of the Indian constitution, the right to die with dignity is an inalienable component of the right to life, as acknowledged by this historic ruling by the Supreme Court of India. The NGO "Common Cause" started the lawsuit by arguing before the court that people in a vegetative or irreversible state should be permitted to pass away quietly without enduring the excruciating pain by means of mechanical life support. The petitioners claimed that it is against their right to live with dignity to force such people to remain unconscious or in excruciating agony.

The Supreme Court made passive euthanasia permissible but with subject to certain restrictions[22]. The term "passive euthanasia" describes the removal of life support or medical intervention to let a patient die peacefully. Court ruled that individuals have the right to refuse medical care including life-sustaining operations if he is suffering with fatal illness which is incurable, The ruling acknowledged the legality of advance instructions as popularly known as "living wills." There will be situations of medical conditions which subsequently prevents an individual from communicating their preferences. In such forecast people can state in advance through a living will that they do not want to be kept on artificial life support. The Supreme Court established a thorough process for putting living wills and passive euthanasia into practice. It underlined that the choice has to be carefully considered and subjected to several levels of examination. This includes getting consent from a court magistrate in some situations, consulting with close family members, and being certified by a medical board. These precautions were put in place to defend against abuse and guarantee that the choice to remove life support is taken voluntarily and with complete knowledge. Although the ruling was praised for promoting human dignity and individual liberty, it was also criticized for the involvement of intricate processes which could make it challenging for a regular person to readily exercise this right.

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[15] AIR 2011 SUPREME COURT 1290

[16] Sanctity of Life and Human Dignity. (2012). Netherlands: Springer Netherlands.

[17]

[18] 3 SCR 519

[19] 521 U.S. 793

[20] https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/aor_notice_circular/44.pdf

[21] AIR 2018 SC 1665

[22] Virani, P. (2000). Aruna's Story: The True Account of a Rape and Its Aftermath. India: Penguin Books Limited.

The Union Ministry of Health and Family Welfare introduced a draft bill "Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016". A five-judge panel decided to not pass an order and directed the Indian government to clarify its position and to hold a parliamentary debate. In response, the draft Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill ("the Bill") was published in May 2016 by the Ministry of Health and Family Welfare ("MoHFW"). Basically, this Bill is a duplicate of the draft law that was first included in the 196th Report of the Indian Law Commission in 2006 and then amended in 2012.

The draft bill is an attempt to protect both terminally ill patients and medical professionals and to provide clarity in the law regarding passive euthanasia[23]. the This draft was created in response[24] to the Supreme Court's ruling in the Aruna Shanbaug case, which permitted passive euthanasia with close judicial oversight but with lack of specific legal framework. The main goal of the draft bill to codify the process for denying or withdrawing life-sustaining care from patients who are terminally ill or in a permanently vegetative state[25]. This would ensure that such choices are made in a controlled, transparent, and compassionate manner. The patient's relatives or legal guardians must discuss with medical professionals before deciding to stop or discontinue treatment. In cases when patients are unable to communicate their wish the draft bill proposed the establishment of a medical board made up of senior physicians to evaluate the patient's condition and to prescribe suitable measures. To ensure responsibility and to avoid misuse, the Bill also highlighted the role of the treating hospital and mandated notification to the jurisdictional High Court or appropriate authorities.

Both support and criticism received for the draft bill. The shift toward patient autonomy, legal clarity, and moral decision-making in end-of-life care was welcomed by supporters. However, critics claimed that the Bill's processes were unduly bureaucratic and may delay important decisions particularly where patient is suffering significantly. Meanwhile, the Bill contained no provisions for advance directives or living wills which were already accepted by international legal systems and later embraced by the Supreme Court in its 2018 Common Cause decision. This lack of inclusion raised questions about to what extent the draft committed to the patient autonomy principle.

To conclude when a country like India where people always respect both life and death, mostly emotional towards family and where economic conditions are influenced by western lifestyle this could be a phase of dawn to the societal change. Hence the law making would be fraught with lot of questions and confusion which could be handle with care.

[23] AnalysisoftheMTTPBill_Vidhi.pdf

[24] https://www.onelittlewish.org/blog/tag/Press-Article

[25] https://estudosinstitucionais.emnuvens.com.br/REI/article/download/735/886/3800