



Euthanasia: Indian Perspective

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Euthanasia refers to the practice of intentionally ending a life to relieve pain and suffering (provided the purpose is good and the death is as painless as possible). This idea gave rise to a compassionate death which is found beyond natural death. Individuals who request euthanasia usually do so to avoid the physical and mental suffering that can characterize the final stages of a terminal illness. Individuals who perform euthanasia usually do so out of compassion for the sufferer and to end the sufferer's intolerable suffering. It is classified as voluntary, non-voluntary and involuntary. Euthanasia can be further classified into active or passive. Active euthanasia is a deliberate act in which a terminally ill patient is intentionally killed by various means, while passive euthanasia occurs when medical treatment is intentionally removed to relieve a person from never-ending pain, resulting in the person's death. Euthanasia has not yet been legalized in India. The phrase "euthanasia" was first used in a medical context by the English philosopher and statesman Sir Francis Bacon in the early 17th century. It is also defined as 'mercy killing'. The word euthanasia is derived from two Greek words 'eu = good' and 'thanatos = death', literally meaning 'good death'. Although a "good death" may seem like a bad death to some people, it may seem like a good death to others.

There may be paradoxes. This state usually refers to ending life in a relatively painless way or hastening the death of a terminally ill or terminally ill person or animal, usually for the purposes of mercy. The Brittain HatamShroff Lorm Chavan Committee on Medical Achievements defined euthanasia as the deliberate intervention in a person's life with the clear intention to end it, to relieve intolerable suffering and to prevent it.

Classification

Depending on whether or not a person gives informed consent, euthanasia can be classified into three types: voluntary, involuntary, non-voluntary, and involuntary

❖ **Voluntary euthanasia (with patient consent)**-Euthanasia is performed with the consent of the patient. After consent is obtained, deliberate administration of drugs that cause death to the patient is legal only in the Netherlands and Belgium.

❖ **Non-voluntary euthanasia (patient consent unavailable)** - Where a person is unable to give their consent and a stranger makes the decision on their behalf. For example the patient is in a coma, severely brain damaged or involves child euthanasia. This is also illegal throughout the world. Although it is decriminalised in the Netherlands under certain specific circumstances under the Vating Protocol. Passive forms of non-voluntary euthanasia (i.e. withholding treatment) are legal in many countries under specified conditions.

❖ **Involuntary euthanasia (without seeking consent or against the patient's will)** Euthanasia carried out against the patient's will is called involuntary euthanasia. It is also considered murder.

Voluntary, non-voluntary and involuntary types of euthanasia can be divided into passive or active types.

Passive euthanasia is where someone causes death by withholding or withdrawing treatment necessary to sustain life. For example stopping antibiotic treatment in some cases where this is necessary to continue life, removing life support systems etc. Active euthanasia is where someone deliberately intervenes to end a person's life by using harmful substances or forces. For example, giving lethal injection to end life. This is more controversial. Although some authors consider these terms to be clichéd and useless, they are still commonly used. In some cases, such as the administration of an extremely necessary but not required supply of painkillers, there is debate as to whether these operations should be considered active or passive.

Death penalty: In 2007 and 2013 physicians were asked to indicate pre-defined response categories. The G.I. has given 1) neuromuscular relaxant (curare or similar drug), 2) vercurium 3) benzodiazepine, 4) morphine or other opioid, and 5) other drug, with the possibility of specifying other options in writing.

Post-controversy - Ethical dilemma Arguments in favour of euthanasia-

The first reason presented by supporters of euthanasia is where an incurable illness becomes unbearable and causes the person intolerable pain. Euthanasia provides a way out by providing quick, safe and painless death. Thus compassion towards the victims is the main pillar on which this argument is based.

Another argument is that euthanasia allows a terminally ill person to have a dignified exit from life. According to the supporters of this position, seeing a person suffering in unbearable pain who is in a debilitating mental state offends the sensibilities of his relatives, friends, colleagues and anyone who knows that person while still active, therefore allowing the person to live in such a sub-human condition is incompatible with human dignity.

It is then claimed that every person has a right to die considering the fact that every person has the right to control his life. Thus every person has the right to determine the issues related to his life and death. This is based on the idea that human beings are free physical agents and independent biological entities who have the right to make and execute decisions about themselves. The supporters of this position do not believe in life after death. They regard death as the permanent, complete and irreversible end of all things.

According to euthanasia opponent Ezekiel Emanuel, supporters of euthanasia have put forward four main arguments:

- i. People have a right to self-determination, and thus should be allowed to choose their own fate.
- ii. Helping a person die is a better option than continuing to suffer.
- iii. The difference between passive euthanasia (which is often permitted) and active euthanasia is not real (The underlying principle—the principle of double effect—is unjustified. The principle of double effect states that if doing something morally good has a morally bad side effect, then doing it is morally acceptable, provided that the bad side effect is not intended. This is true even if you foresee that the bad effect will probably occur.) and
- iv. Allowing euthanasia will not necessarily lead to unacceptable consequences. Pro-euthanasia activists often take the example of countries like the Netherlands, Belgium, Luxembourg, etc. where euthanasia has been legalized to justify that it is mostly hassle-free.

Arguments against euthanasia

The first argument against euthanasia stems from a religious perspective. Adherents of the world's two major religions (Christianity and Islam) believe that euthanasia is tantamount to a human invasion of the authority and sovereignty of God, the creator of all things.¹³ Thus, euthanasia is seen as "playing God" and violates the idea of the sanctity of life.

Another argument put forward to challenge euthanasia supporters' view on each individual's right to die is that whatever rights a person has are undoubtedly limited by his or her obligations. The decision to die by euthanasia always affects other people, such as family, friends, health care professionals, and society at large. Therefore, the exercise of a person's right to die through euthanasia or assisted suicide must be balanced against the consequences for those who will be affected by the exercise of that right.¹⁴ The intolerable guilt, unbearable pain and severe emotional trauma (guilt, grief and anger) that survivors and society would suffer clearly far outweigh whatever cost or benefits euthanasia may have to the deceased.

The practice of hastening a patient's death is contrary to societal expectations and the basic ethics of the medical profession.

Another argument employed to refute the compassionate and dignified argument behind euthanasia relied upon by supporters of euthanasia is that a suffering person retains innate dignity even when availing of all available options for relief from pain and other forms of suffering. The issue of dying with dignity is a reason for the provision of good quality holistic palliative care that is responsive and concerned with the needs and wishes of patients and their families. It is not a reason to legalise euthanasia or assisted suicide.¹⁰

Furthermore, it has been argued that the issues relating to decision-making regarding the termination of the life of a suffering or terminally ill person are complex and difficult to consider. Obviously, a competent person cannot be treated without his or her consent. However, difficulties arise when a decision has to be made to end the life of an incapacitated person. For example, a patient who is in a permanent vegetative state or a patient who has gone into an endless coma. In such cases, the decision is made by relatives or guardians. It is assumed that such relationships have the best interests of the patient at heart. This is seriously questionable. The primary role of physicians is to cure or better treat the medically critical patient. This alone should be the physician's priority and has often served the good of society."

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- i. Not all deaths are painful.
- ii. Cessation of active treatment, with effective use of pain relief are available as alternatives to euthanasia.
- iii. The distinction between active and passive euthanasia is morally significant.
- iv. Legalising euthanasia would put society on a slippery slope, with unacceptable consequences. (In Oregon 2013, pain was not one of the top five reasons for which people sought euthanasia. In fact, it was loss of dignity, and fear of burdening others).

Moral arguments

- i. Euthanasia may undermine society's respect for the sanctity of life.
- ii. Accepting euthanasia would mean that some lives (those of the sick or disabled) are less valuable than others.
- iii. Voluntary euthanasia may start on a slippery slope that may lead to unethical euthanasia and the killing of those deemed undesirable.
- iv. Euthanasia may not be in a person's best interest.
- v. Euthanasia affects the rights of not only the patient but also others

Indian Scenario Legal aspects in India

Euthanasia is undoubtedly illegal in India. Since in cases of euthanasia or mercy killing there is an intent on the part of the doctor to kill the patient, such cases would clearly fall under clause (1) of section 300 of the Indian Penal Code, 1860. The right to life is an important right in the Constitution of India. Article 21 guarantees the right to life in India. It is argued that the right to die is also included in the right to life under Article 21. Hence mercy killing is a legal right of the individual. It is well settled after the judgment of the five-judge bench of the Supreme Court in the case of *Jan Kaur vs State of Punjab* that the "right to life" guaranteed by Article 21 of the Constitution does not include the 'right to die'. The Court held that Article 21 is a provision guaranteeing "protection of life and personal liberty and in no way can it involve the extinction of life. That is, the right to live with dignity includes the right to die with dignity. Though the court could not make any practical rule and put the responsibility on the law makers to make laws to regulate euthanasia. In this case, Section 309 of the Indian Penal Code was held constitutionally valid⁷ but the time has come when it should be removed by the Parliament as it has become anachronistic. A person tries to commit suicide due to depression, so he needs help and not punishment.

In 2006, the 196th report of the Law Commission of India recommended the Medical Treatment of Nerve Patients (Protected Judicial Actions) Act 2006. However, no law on euthanasia was made. In 2011, the Supreme Court in the case of *Baruna Janam vs Union of India* laid down guidelines for dealing with petitions for voluntary euthanasia. It stated that until the law is enacted, the procedures prescribed

by the guidelines should be followed. It also drew a distinction between active and passive euthanasia. In 2014, a three-judge bench of the Supreme Court of India termed the judgment in the Aruna Shanbaug case as inconsistent with itself and referred the issue of euthanasia to its five-judge Constitution Bench.

Supreme Court Guidelines on Passive Euthanasia

- ❖ The decision to withdraw life support should be taken by the parents, spouse or other close relatives or in the absence of any of them, such decision can also be taken by any person or body of persons.
- ❖ Such decision can also be taken by the doctors attending to the patient in the best interest of the patient.
- ❖ Every such decision requires approval from the concerned High Court.
- ❖ When such an application is received by that court, a bench should be constituted which will decide whether to grant approval or not. This bench will nominate a committee of three empanelled doctors and require a report from it.
- ❖ Before passing the judgment, notice should be given to the close relatives and the state regarding the report. After hearing the parties, the High Court can pronounce its judgment.

Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill (2016)

Important Points

- ❖ **Advance Medical Directive-** It is also called a living will. It means a direction given by a person as to what medical treatment he or she will not receive in the future when he or she becomes terminally ill.
- ❖ **Palliative Care**
 - a. Provision of appropriate treatment and nursing procedures for the relief of physical pain, suffering discomfort, or emotional or psychosocial suffering.
 - b. Appropriate provision of food and water.
 - ❖ **Competent patient** - means a patient who is not an incapacitated patient.
 - ❖ **Incapacitated patient** - It means a minor who is under the age of 16 years or is mentally unsound or a patient who is incapable of-
 - a. understanding the relevant information in making an informed decision about his or her medical treatment.
 - b. Retain and use that information to make decisions
 - C. Not being able to make informed decisions due to disturbances in brain functioning.
 - d. Communicate his/her informed decision by speech, articulate language or any other means.
 - ❖ **Informed decision-** means a decision to continue or stop or withdraw medical treatment made by a patient who is competent and has been informed about:
 - a. the nature of his/her illness
 - b. any alternative forms of treatment that are available
 - c. consequences of the treatment and
 - d. consequences of the treatment
 - ❖ **Incurable illness-** An illness/injury/deterioration of physical or mental condition which causes periodic pain and suffering to the patient and in medical opinion is bound to result in untimely death of the patient concerned.

Or

Meaningful survival of life is not possible due to irreversible vegetative state.

Key provisions of the draft bill

1. Every competent patient, including a minor above the age of 16 years, has the right to decide and express his/her wish to the doctor attending to him/her whether to continue further treatment or allow nature to take its course.
2. The bill provides protection to patients and doctors from any liability to withhold or withdraw medical treatment and states that palliative care (pain management) may continue.
3. If a patient informs the doctor about his/her decision, such decision is binding on the doctor. However, it also notes that the doctor must be "satisfied" that the patient is "competent" and that the decision is taken out of free will.
4. There will be a panel of medical experts to decide on a case-by- case basis.
5. The doctor will have to maintain all the details of the patient and ensure that he takes an informed decision. He will also have to tell the patient whether it would be best to withdraw or continue treatment. If the patient is not conscious, he will have to inform family members. In the absence of family members, the doctor will have to inform a person who is a regular visitor.
6. The draft also lays down the process for seeking euthanasia, from the composition of the medical team to approaching the High Court for permission.
7. Permission has to be taken from the High Court. Any close friend, legal guardian, doctor/employee attending to the patient or any other person having jurisdiction over the matter can apply to the High Court having jurisdiction. Such an application is treated as an original petition and the Chief Justice of the High Court shall, without wasting time, refer it to the Divisional Bench and it should be disposed of within one month as far as practicable. This Bench will nominate a committee of three eminent doctors and require a report.
8. The Bill proposes to legalise only what is called passive euthanasia, as discussed in the judgment relating to Aruna Shanbaug. Passive euthanasia is not being considered "as it is likely to be used by unscrupulous persons to achieve their ulterior motives."
9. Advanced medical directives or living wills will be void and not binding on any Chikilla practitioner.
10. The Medical Council of India may issue guidelines in line with the provisions of the Bill. It may be reviewed and amended from time to time.

Potential concerns- The draft Bill has received mixed reactions. Some consider it a 'good start', but others are not at all convinced. Some potential concerns are-

1. The draft has disappointed experts who wanted complete clarity on the concept of living will. While there have been demands to recognise advance medical instructions (also known as living wills), under which a person declares in his/her own time whether he/she wants to be treated or not if he/she is terminally ill and incapable of taking decisions in the future, the government has rightly rejected the proposal.
2. Human rights activists believe that in India, a child is not allowed to sign a contract or get married before the age of 18. Then how can a child decide to live or die.
3. The concern of its misuse remains a major issue that needs to be addressed before it becomes a law in our country-
 - a. Doctors may come under the influence of corruption and fabricate material to make it appear that it is a terminal case with no chance of recovery.
 - b. Leaving the decision of whether to withdraw life support of an incapacitated person or not solely to the relatives or doctors or next of kin of the patient, there is always the risk that it may be misused by some unscrupulous persons who want to get an inheritance or otherwise grab the life. The patient's assets

What is a "living will"?

In 2014, the Supreme Court had issued notices to all states seeking their views on whether a terminally ill person could execute a "living will" that would allow them to have their life support systems withdrawn

if they reach a terminal stage with no hope of survival. The court also appointed an amicus curiae

A living will is a document that sets out a patient's wishes with regard to health care and how they would like to be treated if they become terminally ill and unable to make or communicate their choices. Living wills are also called active declarations.

Arguments for living wills

1. They respect the patient's human rights and in particular their right to refuse medical treatment.
2. Making them encourages full discussion about end-of-life decisions.
3. Knowing what the patient wants means doctors are more likely to provide appropriate treatment.
4. They allow medical professionals to make difficult decisions.
5. The patient's family and friends do not have to make difficult decisions

Arguments against living wills-

1. They can be very frustrating to write.
2. It is difficult for a healthy person to adequately visualise what they would really want in situations where life would be affected.
3. It can be difficult to translate the words of a living will into actual medical action.
4. Patients can change their minds but cannot change their living wills.
5. They are of no use if they cannot be brought to the will when required.

In India, attempting suicide (Section 309 of the Indian Penal Code) and abetting suicide (Section 306 of the IPC) are offences and both acts are punishable. The problem is that to be able to make a living will, the law would need to decriminalise both. There are still many issues that the court must consider when considering the validity of a will. For example, if the patient's death is important to those close to him (such as property), doubts over the validity of a living will can become a legal issue. Thus, there is a need to carefully establish the conditions under which life will be taken.

Conclusion

There is no point in prolonging the physical suffering of a terminally ill person and the mental trauma of their loved ones. Hence, euthanasia should be legalized in such cases where there is no scope for the patient to recover. However, India needs a blend of sensitivity and maturity to take such a crucial decision as it involves the 'right to life' and the 'right to die with dignity'. Some preventive measures are needed to prevent the ongoing movement to recognize active euthanasia as a legal right in India, which remains a distant dream. The validity of Section 309 of the Indian Penal Code needs to be analyzed as recently the Central Government has decided to remove it from the Code in view of the 210th report of the Law Commission and the Aruna Shanbaug judgment. Ultimately it aims to attempt to differentiate the cases of brain dead patients and those in a persistent vegetative state (PBM) from other terminally ill patients so that they can be safely placed on life support machines a case can be made out for stopping or withdrawing the provision of passive euthanasia for brain-dead and patients in PVS. This report has been uploaded by the Law Commission of India through an evaluation of the provisions of the Bill prepared in its 241st report "Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill 2012".

Suggestions

➤ A closer study of the arguments against euthanasia summarised above indicates that despite all the talk about the sanctity of life, opposition to euthanasia arises from the fear of abuse of power if it is permitted.

➤ It is feared that giving discretion in the hands of the doctor would be giving too much power in his hands and he may misuse such power. This fear arises largely from the fact that discretionary power is given in the hands of non-judicial personnel (a doctor in this case). This is because we do not shy away from giving the same kind of power in the hands of the judiciary (for example, when we give the judge the power to decide whether the doctor should be given the right to life or not). The doctor with a scalpel in his hand is acceptable but the doctor with a lethal injection is not acceptable. What is even

more surprising is that generally the law does not accept the negligence of a doctor easily. The courts are very careful while examining the decision of a doctor and yet their decision is not considered reliable in cases of euthanasia.

➤ It is felt that an incurable patient suffering from unbearable pain should be allowed to live. In fact, spending valuable time, money and facilities on a person who has neither the desire nor the hope to recover is nothing but a waste. It would not be out of place to mention at this point that the “freedom to die”, if not strictly so, may be construed as a part of the right to life guaranteed by Article 21 of the Constitution of India. Recently our Supreme Court judgment in Aruna Ramachandra Shanchag vs Union of India legalized passive euthanasia and held that passive euthanasia under the supervision of law is permissible under exceptional circumstances but active euthanasia is not permissible under the law.

➤ Here consent is sought only for legalising voluntary (both active and passive) euthanasia. This is because although there may be some cases of non-voluntary or involuntary euthanasia where one may sympathise with the patient and in which one may agree that letting the patient die was the best option, it is still considered that it would be very difficult to distinguish each case from other cases of non-voluntary or involuntary euthanasia. It is thus considered that the likelihood of misuse of provisions permitting non-voluntary and involuntary euthanasia is far greater than the misuse of provisions permitting voluntary euthanasia.

➤ It is submitted that it is not possible to construe the provisions in the present scheme of the criminal law so as to include voluntary euthanasia without including non-voluntary and involuntary euthanasia, while explicitly prohibiting non-voluntary and involuntary euthanasia. Coming back to the argument of opponents of euthanasia that any law legalising voluntary euthanasia would lead to misuse of the provisions, I would now like to present a scheme by which such misuse can be minimised. The risk and fear of misuse and abuse can be overcome by appropriate safeguards and specific measures.

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