

A SOCIO AND LEGAL PERSPECTIVE OF EUTHANASIA IN INDIA WITH REFERENCE TO ARGUMENTS FOR AND AGAINST EUTHANASIA

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ABSTRACT

“Dying can be a peaceful event or a great agony when it is inappropriately sustained by life support.” – Roger Bone.

Taking away life by killing with an emotion of mercy? This is what famously called mercy killing. “The desire of death of a terminally ill patient is a peaceful gateway of life.” This thought evokes a humanly emotion of mercy to release the terminally ill person from painful suffering and invites the word mercy killing. It is the combination of two contradictory words living together what happens when two contradictory people say together? It creates complex issues; same way these words cause the most complex issues relating to ethic, law, morality, humanity and society. This is not the question whether the action of killing is right. But the question is whether such mercy associated with the action of the line of being bad i.e. when such killing gives peaceful death and when it turns into murder in the eyes of law. Then one can question whether the actions could be misused and overused. And whether there is need of such laws at all. In this paper an attempt is made to analyze euthanasia by way of arguments both for and against legalizing euthanasia in India.

Key Words: *Mercy killing, terminally ill, legalizing euthanasia and peaceful death*

INTRODUCTION

The concept of keep on living even if it is not that comfortable is changing very fast with the notion that there exists a right to die or mercy killing through which the wishes of the terminally ill patient must be respected. Usually, mercy killing is requested for those terminally ill patients where any further treatment is futile. It is difficult to accept that if a person is suffering from unbearable pain then his life can be put to an end in a peaceful manner. But on the other hand, it is equally difficult to ignore the reality of those people who are terminally ill and suffering from enduring pain. Hence, there arises a question whether

such patients should wait till their natural death and keep on suffering till that time arrives or in order to relieve them from unbearable sufferings euthanasia should be made a legal option in order to give a peaceful end to the suffering patients.

There is no exclusive acceptance or rejection of the concept of euthanasia in various cultures and civilizations. That is why it is called an issue of controversy. Socially and legally, from both points of view it is tough to sustain these two terms together i.e. mercy and killing. Thus leading to very different approaches by people in different contexts of situation where mercy killing is accepted and rejected by them. It can be traced in different aspects like the theosophical view, medical view, legal view and its social aspect, the acceptance of it by common men living on the earth.

There are two divergent opinions regarding the acceptability of euthanasia in India. One view is pro-euthanasia and the other is against the concept. The arguments from both the opinions can be summarized as under-

ARGUMENTS FOR LEGALIZING EUTHANASIA

Though euthanasia is illegal in the present scenario, still some reasons which are advocating decriminalization of euthanasia has been elaborated below. Indian framework has also been looked into to find out whether euthanasia can fit into the system or not. In an attempt to do so the following are contended:-

INTERPRETING ARTICLE 21

Article 21 guarantees right to life and personal liberty. In common cause case an individual's right to die with dignity as part of her Right to Life and Personal Liberty enshrined in Article 21 of the Constitution. In P. Rathinam case the "right to life" was held to include right not to live; drawing its inference from the negative contents of Article 19. But that inference had been made on wrong assumptions as was pointed out in Gian Kaur's case. Freedom of speech and expression in Article 19 means freedom not to speak- mere suspension of the right it does not include freedom of cutting the throat total extinction of the right. Thus right to die i.e. total extinction of the right cannot be included in right to life. But the approach to interpret Article 21 can be made in a different manner. This Article not only contains right to life; it also contains personal liberty. Now, take the concept of life as continuous chain of events from birth to death and examine liberty in that concept. A person has no liberty in his birth. He exercises his liberty when he is unable to make judgment. He has liberty to shape his life as he wishes. He has liberty become a sage or a murderer. He has liberty to all unlawful acts- the State can interfere only after completion of these unlawful acts except in certain situations where state can intervene as preventive measure). On the other hand, when a person becomes a sage, he has fundamental right of freedom to practice and profess his religion under Article 25. Now, while exercising his "personal liberty" of shaping his life as he wishes, if the person wants to take Samadhi (meditation till death) to attain salvation, which is not harming the society at large (and assuming that a sage does not depend on anybody and no one depends on him), can the state prohibit his Samadhi (which would abridge his fundamental right of freedom of religion under Article 25). The act of sage (of taking Samadhi) is nothing but exercise of autonomy over his life, I one can set aside the religiosity of the act. Likewise, can a person not have his personal liberty to determine ending his life when he is terminally ill or in persistent vegetative state or his brain cortex has ceased to function? Can he not exercise his autonomy over his life in scenario?

In the ongoing discussion, it has to be kept in mind that when brain cortex cease to function, a person loses his prudence and intellect; respiration, circulation and other physiological events continue till 'brain-stem' is dead. Then terminally ill patients' situation becomes worse than animal existence. Right to life is not mere animal existence as has been held by the judiciary. Right to life guarantees more than animal existence – all that which makes the life dignified and worth living. But the person in persistence vegetative state cannot exercise this fundamental right of dignified life- either can the state enforce this right, so why not interpret Article 21 in such a manner that would allow a patient a dignified death relieving himself of pain as well as the persons who are taking care of him.

RIGHT TO PRIVACY

Another fundamental right, which is being violated by the state while not allowing a terminally ill patient to die who wishes to die, is his right to privacy. As has been held by the United States courts and as exists in the common law, the aspect of privacy is a determining factor in these cases. In India also, invasion of bodily privacy has been taken in cognizance. It is the person who is to decide when others can invade his or her body. This is also applicable in a doctor- patient relationship. A patient has the right to say after a certain point of time no one, including the doctor should invade his or her body. Even after this direction, if the doctor (or for that matter, any other person) invades the body of that person, it would constitute a civil wrong- it would invoke tort action for damages for trespass on the person. To respect a person's privacy is to respect his right to self-discrimination or autonomy.

RIGHT TO AUTONOMY

In recent years, the government of India has permitted human beings during their lifetime to donate their kidneys and after death their eyes and other vital organs for the benefit of those whose organs have failed. The right to donate parts of human body is an effective and meaningful legal right in the modern world. The process of transplantation of vital organs is hazardous. Donors may lose their lives during the process or afterwards as a result of the donation, yet the government has permitted it.

Now, when a person has autonomy or right to self-determination in giving his body parts for the benefit of others, why can he not have autonomy or right to self-determination from releasing himself from pain and unbearable physical and mental condition? Informed consent to pursue treatment or surgery is the exhibition or recognition of individual's right to autonomy. Many of Euthanasia debate in the western world had been entered on the right to self-determination or autonomy as the doctor is not entitled to administer treatment against the patient's wishes, there is clearly no question for his being under a duty to do so. He may, however, be under a duty to inform the patient of the likely consequences of his refusal.

Section 3 of the Medical Termination of Pregnancy Act, 1972 provides for the instances when registered medical practitioners can terminate a pregnancy. It provides that a pregnancy can be terminated, where the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. This Act made killing of a foetus justified to save the mother from physical or mental injury. The Act recognizes the consent of the mother and only of the mother in this regard. If Indian legislation legalizes killing of another person to relieve oneself from pain and injury, why should it not legalize putting an end to one's own life to relieve that person from pain, suffering or a meaningless vegetative state?

With regard to the doctor's liability in performing Euthanasia, it is an established notion in medical jurisprudence that the medical man shall use prudence in discontinuing his attendance on the patient. He is bound to provide medical aid as long as the patient needs it. He should not discontinue treatment simply because he has discovered the malady to be incurable. He should discontinue treatment only inter-alia with the consent of the patient. Therefore, the doctor could not be held guilty if he withdraws treatment with the patient's consent. Thus the perusal of the above mentioned aspect clearly reveals that Euthanasia could fit in the Indian legal framework; it would depend upon the interpretation and construction given to the laws.

LACK OF MEDICAL FACILITIES IN INDIA

The second argument which favours Euthanasia is that in the light of the increasing pressure on hospital and medical facilities in a developing country like India, it seems more appropriate that the same facilities should be used for the benefit of other patients who have a better chance of recovery and to whom said facilities would be of much greater value. Thus, the argument runs, when one has to choose between a patient beyond recovery and one who may be saved, the latter should be preferred as the former will die in any case.

PROPER LEGAL SAFEGUARDS CAN MINIMIZE MISUSE OF THE RIGHT

Further it is not the case of the supporters of Euthanasia that this right is not capable of exploitation. Rather they point out that almost any individual freedom involves some risk of abuse and argue that such risks can be kept to a minimum by using proper legal safeguards. Practice prevailing in the Netherlands is particularly important in this connection. Physicians in the Netherlands, who perform active Euthanasia, are not prosecuted if they follow certain guidelines. These guidelines include an explicit and repeated request by the patient which leaves no reason for doubt concerning his desire to die, mental and physical suffering of the patient is well informed and free; all other options for the patient have been exhausted. Furthermore, merely because the risk of abuse of a right exists is no reason to deny a person the right itself.

Increasingly people are relying on executing living wills, authorizing their surrogates to petition for removal of life sustaining devices in the event of becoming terminally ill. At present time right to die has been proclaimed by many organizations and individuals. Many Right to Die Societies are being created and living wills are becoming increasingly popular.

PENALTY VIS-À-VIS EUTHANASIA DEATH

The next argument given by the supporters of the motion is that if society can sanction death penalty then why not euthanasia. In both the cases the life of a person is put to an end. In the former a person is killed because of his wrong deeds and in the latter the person is killed for relieving him from a worthless painful life.

EUTHANASIA IS LETTING DIE-NOT KILLING

Euthanasia is letting die-it is not killing. The motive is to help and not harm. Hence it is distinct from murder.

ARGUMENTS AGAINST THE LEGALIZATION OF EUTHANASIA

IT is inevitably clear that, euthanasia amounts to an intentional act to end a patient's life. The pro-lifers do not support unnecessary prolonging of human life by artificial means. However, such supporters criticize active measures like lethal medication to cut short the natural span of person's life. The opponents of euthanasia consider it as a license to kill a patient. They equalize it with murder by saying that is actually not a right to die but it is right to kill. They further argue that giving blatant power to the doctors to practice active euthanasia would result in gross abuse of the powers due to the rampant corruption and malpractices in the medical profession. However, they recognize certain special circumstances in which active euthanasia may be accepted as ethically right. Having due regard to the above discussed background, here are the objections to the legislation of Euthanasia:-

THE DOCTOR-PATIENT RELATIONSHIP IS WEAKENED

If the physicians are allowed to put an end to the life of a terminally ill patient, the sensitive and the trustworthy relationship between patient and doctor would definitely get a setback. The general public entertains a fiduciary relationship with their doctors on the belief that they are dedicated to preserve and heal their lives. The Hippocratic Oath has its roots in such relationship. The above said oath is a commandment that a doctor will never kill his patient even if the latter is requesting him to do so. The medical profession will get involved in the killing process, after the legalization of euthanasia. The physicians would be tagged as legalized terminators. Furthermore, once it is allowed in the country, it will empower doctors more as compared to the patients. The patients will become victims and their vulnerability cannot be guarded in an adequate manner.

RIGHT TO DIE IMPLIES A DUTY TO KILL

Every right carries with it a corresponding duty. If euthanasia is legalized in Indian society, right to die will automatically invite its corollary i.e. the duty to kill. In such a situation, the right to die will be claimed by the people through a suit in the court of law and the state will be under obligation to ensure such right. The doctors may one day face litigation because of violating someone's right by not killing

him. They may in future start purchasing a malpractice insurance against such litigation at the instance of patients.

PROBLEM REGARDING MISUSE OF THE RIGHT OF EUTHANASIA

The anti-euthanasia people denounced the legalization of euthanasia in the country where already the old age and destitute people as considered as burden and above all, there is no social system to support them. People might exploit this law to fulfill their selfish interests. In order to inherit ancestral property a person may easily kill his predecessor with the help of doctor under the garb of mercy killing and it will further lead to chaos in family life. The disputes regarding succession to property of the deceased will be multiplied because of the provision of mercy killing. It will cause “Slippery Slope” soon leading to huge increase in non-voluntary Euthanasia of unwanted relations. On reverse the above discussed situation, there arises a new problem which can be summarized as under:-

Section 25 of Hindu Succession Act, 1956 contains a provision which will definitely prove to be a hindrance in the way of implementation of euthanasia provisions if it is legalized in India. Section. 25 of the said Act, disqualifies two set of murderers:

If an heir himself has murdered or caused abetment in the murder of the person whose property he was entitled to inherit otherwise but for such criminal act. Such crime was also committed in furtherance of succession.

If an heir has murdered or abetted the murder of someone other than the person whose property he was entitled to inherit otherwise but for such criminal act. Such crime was also committed in furtherance of succession.

It is a principle of general policy that in such cases the murderer should be treated as non-existent and not as one forms the stock for a fresh line of descent. After reading the above provision it can be ascertained that the heirs of the patient, who is terminally ill and can be euthanized, will definitely feel hesitation in taking the benefit of euthanasia provisions as under Indian Penal code it will amount to murder or abetment as the case may be, result in such heir or heirs will not succeed to the property of such patient due to the provision contained under section 25 of Act of 1956. Hence, these conflicting provisions will pose a further problem regarding the implementation of Euthanasia provisions. Drastic changes in the form of amendments and repeals will be needed in various conflicting provisions in order to sustain them simultaneously.

MERCY KILLING AND DEATH PENALTY ARE DISTINCT CONCEPTS

With regard to death penalty, it is given to harden a criminal, who poses serious threat to the maintenance of law and order in a society. It is a punishment. While on the other hand, mercy killing is not a punishment given to a person for his misdeeds. A terminally ill person poses no threat to the society like a harden criminal. Moreover, death penalty is already under fire, Amnesty International, a London-based non-governmental organization has launched a worldwide campaign for the abolition of death penalty. Also the General Assembly of the United Nations had affirmed through various resolutions, the desirability of abolishing death penalty in all countries.

EUTHANASIA IS AGAINST MORALITY AND PUBLIC POLICY

For pro-life group, since issue of the sanctity of human life is involved, legalizing euthanasia or physician-assisted suicide will deface the precious human life, hence, it is against morality. For them, it is also against public policy relating to preservation of human life. God has created and conferred life on human beings. The person who is terminating the life of another in an unnatural way is committing a wrong. Hence, wrong people cannot be given the right to play the role of God. There is a common belief that if a person is suffering pain, his own Karma is responsible for such condition.

Thus, euthanasia undermines the value of human life. It is clearly opposite to the medical ethics, morality and public policy. Medical ethics demand caring, nursing and curing not putting an end to the life of a patient. Now a day, medical advancements have turned impossible things into possible ones. Even the

incurable diseases are curable today. So, preparing a patient for ending his life prematurely, it would be better to encourage him for leading his rest of life with courage and patience. Moreover the decision to ask for euthanasia does not solely depend on the wishes of the patient. The family of the patient also plays a significant role in arriving at such a decision. There are ample chances of undue influence and psychological pressure on the patient for taking such a decision. Sometimes, the patient may start feeling that his life has become a burden on his family. If suicide is taken as a crime in India, then euthanasia should also be considered as crime. A person commits suicide in a state of depression where he has already abandoned all his hopes from the comfortable life. The person requesting for euthanasia is somehow in the same condition as mentioned above. Such a trend can be controlled by proper care and showing hope to such persons. There are certain examples in the world, where patients have come out of coma after so many years. Further, human life rest on hope and this fact cannot be forgotten.

EUTHANASIA IS A REJECTION OF THE IMPORTANCE AND VALUE OF HUMAN LIFE

People who support euthanasia often say that it is already considered permissible to take human life under some circumstances such as self-defense but they miss the point that when one kills for self-defense they are saving innocent life-either their own or someone else's. With euthanasia no one's life is being saved – life is only taken.

History has taught us the dangers of euthanasia and that is why there are only few countries in the world today where it is legal. That is why almost all societies-even non-religious ones- for thousands of years have made euthanasia a crime. It is remarkable that euthanasia advocates today think they know better than the billions of people throughout history who have outlawed euthanasia-what make the 50 year old euthanasia supporters in 2005 so wise that they think they can discard the accumulated wisdom of almost all societies of all time and open the door to the killing of innocent people? Have things changed? If they have, they are changed that should logically reduce the call for euthanasia—pain control medicines and procedure are far better than they have ever been any time in history.

SLIPPERY –SLOPE ARGUMENT

Another favorite argument is that of the slippery-slope. The slippery slope argument, in short, is that permitting voluntary end up permitting even non-voluntary and involuntary euthanasia. The opponents of euthanasia point out the following two examples to display the working of slippery slope:-

In England, the House of Lords in Airedale NHA Trust vs. Bland Permitted non-voluntary euthanasia in case of patients in persistent vegetative state. Subsequently, the Supreme Court, of Ireland in Re-Award of Court expanded the persisted vegetative state to include cases where the patient possessed limited cognitive faculties. In Netherlands, the Supreme courts in 1984 ruling had held that euthanasia could be lawful only in cases of physical illness. However, a decade down the line, the Supreme Court in Chabot's case held that it could even extend to cases of mental illness

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