

A QUEST FOR THE LEGALITY OF EUTHANASIA IN INDIA

Vanshaj Shukla¹

Vaishnavi Gupta²

ABSTRACT

Euthanasia means painless or good death in which a person who is suffering from an incurable disorder is given death with dignity and the death which is given on his own consent which is called voluntary euthanasia and is allowed in several states including India.

With the help of this article, the research scholars analyzed the condition of euthanasia and illustrated various form by which euthanasia can be given and also discussed relevant laws related to euthanasia.

Later on, with the help of landmark judgements, the research scholars interpreted the role of Indian judiciary in euthanasia and then mentioned about the global aspect of euthanasia, by stating the dignity of euthanasia in several countries.

In the end, the scholars inferred that in the countries where euthanasia is allowed, only passive euthanasia is allowed keeping active euthanasia illegal.

Researchers depicted that passive euthanasia is a negative concept which should not be allowed as it is a painful way to give death and painful death is contrary to the meaning of euthanasia itself, which means painless death, so active euthanasia should be decriminalised instead of passive euthanasia, as by active euthanasia, a patient actually die with dignity which is included under right to life with dignity mentioned under Article 21 of The Constitution of India, 1949.

KEYWORDS: *EUTHANASIA, ACTIVE EUTHANASIA, PASSIVE EUTHANASIA, SUICIDE, ASSISTED SUICIDE, PAINLESS DEATH*

INTRODUCTION

God gave rise to nature and nature is run by the most beautiful creature of God which is called human life. But that life becomes ruthless when every single second that life is undergoing from extreme pain and agony, on the other hand abetting someone to commit suicide to end his/her life is against the morality as well as it violates the human right too.

This was the reason why the concept of the right to life which includes right to die with dignity was evolved and thus the concept of euthanasia was originated which is also known as mercy killing or allowing that person to die who is suffering from chronic disease or any mental or physical disorder.

Euthanasia is the act of giving death to the person in a painless manner by withdrawing or withholding all the medical treatments and other medical facilities if that person is suffering from any chronic or incurable disease or from any extreme mental or physical disorder.

According to Cambridge dictionary euthanasia is defined as "the act of killing someone who is very ill or very old so that they do not suffer any more." [1]

According to Oxford dictionary euthanasia is defined as "the practice (illegal in most countries) of killing without pain a person who is suffering from a disease that cannot be cured." [2]

¹ Student of B.B.A. LL.B. (Hons.), 4th Semester, Law College Dehradun, Uttarakhand University

² Student of B.B.A. LL.B. (Hons.), 4th Semester, Law College Dehradun, Uttarakhand University

HISTORICAL BACKGROUND

Euthanasia is derived from the ancient Greek Latin term *Eu Thanatos* in which "eu" means "good" and "thanatos" means "death" which literally means good death.

The English scholar Thomas More coined the issue of euthanasia in his work "Utopia" in 1516, to provide good death to the person who is undergoing from a severe or serious chronic mental or physical ailment or from any chronic disease but only with the prior authorization of priest and magistrate. Following him in the 17th century, the next English scholar, Francis Bacon puts on the command to the euthanasia in his thesis "Progress of knowledge e" by acquainting the term again in modern western culture.

In 1870, Samuel Williams who was a very eminent non-physician publicly interrogating for the practice of euthanasia but he was thwarted by many physicians.

The theory of euthanasia was composed in the book of 1920, "Allowing the destruction of life unworthy of living" which was documented by Alfred Hoche and Karl Binding who were very well-known psychiatrist and the jurist respectively.

As the years passed on, the technologies also advanced with time. On January 23, 1906, the Ohio legislature introduced a euthanasia bill. In the same year, a bill was introduced by Dr R.H. Gregory in Iowa state legislature.

In 1935, the euthanasia movement was started in England when voluntary euthanasia society was founded by C. Killick Milliard and a bill was introduced in the House of Lords in 1936 that would permit a person more than 21 years old undergoing from any chronic disease of extreme pain may request voluntary euthanasia.[3]

The requirements of both bills, bill of The United States of America and England was similar but was defeated. In England, the same bill came in motion by the society in the House of Lords in 1950.

In The United States of America, euthanasia society was established in the year 1938. Eventually, after passing many decades in The United States of America, Oregon became the first state to pass Oregon death with dignity act. But the law was instantly questioned in the case of *Lee v. State of Oregon*[4] and it came into effect in 1997. Consequently, Oregon became the first state in The United States of America to legalize assisted suicide.[5]

Later in the year, 2001 Netherland became the first country to legalize euthanasia and assisted suicide both and lately, in 2002, Belgium became the second country to do so.

Now many nations like Netherland, Belgium, Columbia, Luxembourg, and India have legalized passive euthanasia keeping active euthanasia illegal whereas there are countries like Switzerland, Germany, South Korea, Japan, and in the United States of America states like Washington DC, Oregon, Colorado, Hawaii, Vermont, Montana and California where assisted suicide has been legalized.[6]

VARIOUS FORMS OF EUTHANASIA

Euthanasia is classified into various forms such as voluntary euthanasia, involuntary euthanasia and non-voluntary euthanasia and assisted suicide in which voluntary euthanasia is again classified into two forms i.e., active euthanasia and passive euthanasia.

1. Non-Voluntary Euthanasia:

Under this form of euthanasia, the patient is suffering from severe ailment like coma, brain trauma e.t.c., due to which he is not able to give his consent for euthanasia and on his behalf, the third person who is either relative or a known to the patient gives the consent for euthanasia. It is illegal in all countries.

2. Involuntary Euthanasia:

Under this form of euthanasia, the patient has given his consent to not to die but due to his/her incurable disease, he is given euthanasia against his wish.

It is illegal in all countries.

The above forms of euthanasia have always been controversial, as many countries believe that involuntary and non-voluntary euthanasia should not be followed anywhere in the world, as the patient doesn't give his consent by his own for euthanasia. Involuntary euthanasia by numerous medical practitioners is considered to be murder as killing someone without his consent is murder.

3. **Assisted Suicide:**

Assisted Suicide is of a different perspective than euthanasia, in this, a person assists the patient or help him to end his life and when a doctor or physician helps a patient to end his useless life (by prescribing him lethal medicine), it is called as physician-assisted suicide.

Note: Under assisted suicide, the patient has his full control over the procedure as he knows about the outcomes of his act.

4. **Voluntary Euthanasia:**

Under this form of euthanasia, the sufferer or patient himself request the medical practitioner or the doctor to withhold all the medical equipment or to withdraw all the medicine or the patient request to be given any lethal drug which could lead to instant death, this type of euthanasia is known as voluntary euthanasia.

It is legal in some countries.

Voluntary euthanasia is again classified into two categories –

1. **Active Euthanasia:**

Under this type of euthanasia a request made by the patient to end his meaningless life by giving him lethal dose or drugs which rapidly cause death. It is also known as aggressive euthanasia or positive euthanasia. It is illegal in all countries.

2. **Passive Euthanasia:**

Under this form of euthanasia, a request is made by the patient to end his useless life. It is the act of giving death by withdrawing all medical treatment and withholding all the medical facilities.

It is inactive and uneasy than active euthanasia.

It is legal in many countries.

According to research scholars, the death which is given in passive euthanasia is very harsh and painful and the death is also not even guaranteed, so it can be easily concluded that the passive euthanasia stands against the meaning of euthanasia itself.

RELEVANT LAWS

Article 21 of The Constitution of India, 1949

The Constitution of India, 1949 is the most lengthiest written Constitution of the world. The Constitution of India, 1949 guarantees fundamental rights to its citizen which is mentioned under Part III of The Constitution of India, 1949. These fundamental rights are also recognized as Indian bill of rights which we have taken from The United States of America.

Article 21 is one of the most important fundamental rights among all the rights which deal with the protection of life and personal liberty. It is regarded as the natural right which plays a very vital role in human life. It can be said as the soul of all the rights because further rights confides upon the validity of life itself. Only life can regulate all other rights value, integrity and utility. The main motive of this right is to prevent any type of constraints by the "State" upon the life and personal liberty.

Article 21 of The Indian Constitution, 1949 is stated as

“Protection of life and personal liberty” - “No person shall be deprived of his life or personal liberty except according to procedure established by law.”[7]

The Indian Penal Code, 1860

Euthanasia was one of the most debatable topics in India which were formerly absolutely illegal. Many medical practitioner and social workers nowadays believe that euthanasia should be one of the rights for the citizen but their view is always challenged by the traditional thinkers who believe euthanasia is nothing but it's a murder in itself.

Section 299 deals with the culpable homicide which states that **“Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”**[8]

When any person kills another person with the intention of causing death falls under Section 300 of The Indian Penal Code, 1860 resulting to murder, when an intention on the part of the doctor to kill the patient but when consent is given by the deceased or patient to the doctor then it falls under exception 5 of Section 300 resulting to culpable homicide not amounting to murder and will be punished by Section 304 of The Indian Penal Code, 1860.

Exception 5 of Section 300 of The Indian Penal Code, 1860 states that **“Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”**[9]

It is only applicable in case of voluntary euthanasia given by the doctor to the patients who are suffering from chronic disease and other mental or physical disorder.

Section 92 of The Indian Penal Code, 1860 defines that nothing is an offence which is done for a person by another person for his benefit in good faith but, proviso 1 of this section struck down the case of non-voluntary euthanasia and involuntary euthanasia and rendered it illegal in India.

Section 309 of The Indian Penal Code, 1860 also punishes a person who attempts to commit suicide. Right to suicide is not accessible right in The Constitution of India, 1949. To end one's own life is an offence. As Indian law does not exemplify euthanasia in any chapter of an attempt to suicide and abatement to suicide.

DIFFERENCE BETWEEN EUTHANASIA AND SUICIDE

Suicide

Suicide is totally a different term from euthanasia, in suicide a person voluntarily ends his life by different means such as shooting himself, taking poison, hanging e.t.c. According to the American Psychological Association, “Suicide is the act of killing yourself, most often as a result of depression or other mental illness.”[10]

By this definition, the research scholars clarify that suicide is the act of killing yourself due to several reasons such as failing in examinations, losing a bet, financial loss, betrayal by someone, suffering from a mental disorder, tension, depression, anxiety, sorrow e.t.c. Under Indian Judiciary, the punishment for attempt to suicide is mentioned under section 309 of The Indian Penal Code, 1860 and abatement to suicide is mentioned under section 305 and 306 of The Indian Penal Code, 1860.

Euthanasia

In euthanasia, a person is killed by his consent from the hands of the third person either actively or passively. According to the National Cancer Institute, “An easy or painless death or the intentional ending of the life of the person suffering from an incurable or painful disease at his or her request. Also called mercy killing.” [11] By the aforementioned definition, the research scholars clarify that in euthanasia, there is an intention to kill someone in good faith. The patient voluntarily gives his consent to end his meaningless life by resisting his medical treatment or by taking lethal medication or drugs to end his/her life.

DIFFERENCE BETWEEN SUICIDE AND ASSISTED SUICIDE

Suicide and assisted suicide are also different from each other, suicide is done by any person who wants to end his/her life without any medical assistance whereas, in assisted suicide, the physician assists or help a patient who is undergoing from mental illness and chronic incurable ailment to end his worthless life by prescribing him lethal medications.

DIFFERENCE BETWEEN MURDER AND EUTHANASIA

Murder and euthanasia are different from each other. Killing is both applicable in murder and euthanasia but as we all know, in murder killing is done in malice intention on the other hand in euthanasia a person's life is taken in good intention and that too with consent.

ROLE OF INDIAN JUDICIARY IN THE DEVELOPMENT OF EUTHANASIA

The article 21 of the Constitution of India, 1949 deals with the right to life with dignity. In the ambit of right to life with dignity,

1. Does the right to life also include right to die?
2. Does Section 309 of The Indian Penal Code, 1860 can maintain its constitutional validity if the right to life with dignity includes right to die?

The aforementioned questions came into consideration for the very first time in the case of *State of Maharashtra v. Maruti Sripati Dubal*[12], the issue of whether right to life includes right to die arises before the High Court of Bombay, in which the High Court of Bombay after interpreting the Article 21 in accordance with the case of *Maneka Gandhi v. Union of India*[13] in which court held that right to life means Right to life with dignity and interpret right to life in all the widest and possible manner which is guaranteed under part III of The Constitution of India, 1949. In this case, the High Court of Bombay held that right to life includes right to die and held Section 309 of The Indian Penal Code, 1860 which provides punishment for attempt to commit suicide unconstitutional and invalid too because it infringes the existence of a given decision by the Hon'ble High Court.

The decision given by the High Court of Bombay was supported in the case of *P. Rathinam v. Union of India*[14], the division bench of Supreme Court held that right to life includes right to die and held section 309 of The Indian Penal Code, 1860 unconstitutional.

In the case of *Pt. Parmanand Katra v. Union of India*[15], the apex court stated that a person's life is of utmost importance and the doctor and the medical staff is compelled to give every possible facility and standards to safeguard the life of citizens. Here every doctor implies doctor of both government and private hospital is obliged to do so.

The decision which was given in the case of *P. Rathinam v. Union of India*, [16] was overruled by the five judges bench of Supreme Court in the case of *Gian Kaur v. State of Punjab*[17] and the court held that right to life does not include right to die. Right to life can only be taken in optimistic perception and also declared section 309 of The Indian Penal Code, 1860 constitutionally valid. Court states that right to life means right to life with dignity i.e., right to live with human dignity and also differentiates between right to die unnaturally and right to die with dignity which means natural death which comes in the ambit of Article 21 of The Constitution of India, 1949.

The ambiguity and inadequacy related to right to die was eventually ended in the case of *Aruna Ramchandra Shaunbaug v. Union of India*[18], where Aruna who was a staff nurse in the Mumbai's King Edwards Memorial Hospital. She was wrapped by dog chain around her neck due to which oxygen supply to her brain was lessened. She was brutally raped and assaulted by a ward boy but finding her in mensuration period, he sodomized her. On the next morning, a cleaner found her lying on the floor with blood all around her in a virtually dead state. On examining her, the neurologist found her in a permanent vegetative state and extreme brain trauma.

A petition was filed before the Apex Court under Article 32 by the journalist Pinki Virani in 2009 to permit euthanasia or mercy killing who is undergoing from vegetative state, coma or virtually dead by withdrawing all the medical treatments and withholding all the medical facilities.

In this case, the Supreme Court gave a landmark judgement that euthanasia can be given to the patient who is suffering from exceptional vegetative state, coma or brain trauma when a request is brought up by any of the relatives and under the supervisory of doctors.

In the above case, the hospital department refuses to give her euthanasia and wanted to take care of her till her last breath, but the court refused the above contention and held that she has full right to die with dignity by allowing her passive euthanasia.

From this landmark decision of the Supreme Court of India, a new chapter called as euthanasia entered the India history.

In the case of *Common Cause v Union of India*[19], a PIL was filed by a registered NGO named Common Cause under Article 32 of The Constitution of India, 1949 to legalize passive euthanasia for the patients who are in a completely vegetative state or suffering from chronic mental or physical disorder like coma, brain trauma e.t.c. In this case, the Supreme Court's five judges bench headed by former Chief Justice of India, Dipak Misra, held that right to life and personal liberty which is mentioned under Article 21 includes right to die with dignity which is fundamental right and legalised passive euthanasia by providing a complete guideline of the procedure and execution for the same.

STATUS OF EUTHANASIA IN GLOBAL ASPECT

Australia

Australia became the first-ever country to legalize euthanasia when a bill was successfully passed named, "The Rights of Terminally Ill Act, 1996" but the only northern part of Australia allows euthanasia, even though euthanasia is considered as a crime in most of the parts of Australia as it was only allowed from 1996 to 1997 and later on, it became an illegal act. In Australian state of Victoria voluntarily euthanasia was legalised in June 19, 2019 when the bill named Voluntarily Assisted Dying Act, 2017 was passed to regulate and give access to VAD.

Belgium

The Belgium Parliament allowed euthanasia from the year 2002 when Belgium Act on Euthanasia, 2002 was passed. Belgium parliament legalise euthanasia for children by giving them lethal injections on February 13, 2014.

Netherland

Netherland is famous for being the first ever country to legitimize euthanasia as well as assisted suicide in the year 2001.

Canada

In Canada, the right to seek euthanasia is still not allowed and when it comes to assisted suicide, in the case of *Rodriguez v. Attorney* [20], 1994, the apex court of Canada said that the interest of the state will prevail over individuals interest. Law on allowing assisted suicide made legal in Canada when the bill was passed in both the house of Canada and received royal assent on June 17, 2016. Voluntarily active euthanasia is legal in Canada for the people who are above 18 years of age for terminally ill patients. In the case of *Carter v. Canada* [21], adults who are perpetually, outrageously and unbearably but they should be mentally competent have the right to seek doctor's assistance in dying.

The United States of America

When it comes to the most powerful nation, euthanasia is still not allowed and when it comes to assisted suicide, Oregon became the first state of The United States of America to decriminalise assisted suicide followed by the state of California in 2005.

The United Kingdom.

In The United Kingdom, euthanasia is illegal and is not permitted. In 2006 a group of doctors proposed that euthanasia should be allowed to the impaired newborn, but this bill is still pending.[21]

CONCLUSION

When research scholar analysed all forms of euthanasia, they found that active euthanasia is better than any other euthanasia as it results in instant death and as we all know euthanasia means good death or painless death but the thing which should be marked is that wherever euthanasia is allowed, they allowed passive euthanasia and as we know death which is given in passive euthanasia is very harsh and painful and the death is also not even guaranteed, so it can be easily concluded that the passive euthanasia stands against the meaning of euthanasia itself.

To prove the above statement let's take an example, Patient X suffering from mental disorder from the past 10 years, due to the expensive medical treatment he has lost all his savings but was not getting any effective response in his health so he decided to request for euthanasia, in the country where he was, only passive euthanasia was allowed so after all the paper works it was decided that he would be given euthanasia and for this his all medicines were withdrawn and all the medical facilities withhold by the Department of the hospital. Due to this X suffered from tremendous pain but he didn't die and suffered pain for the next six months. Later due to his pain he died. By giving this example research scholars want to prove that due to passive euthanasia the patient is dying from severe pain which is against the meaning of euthanasia as the patient who is getting passive euthanasia is not able to rest his soul in dignity.

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