



EUTHANASIA VIS-À-VIS RIGHT TO LIFE

Ujwala S. Shinde¹, Ph. D. & Asst. Prof. Jyoti B. Shinde²

¹Principal D.Y.Patil Law College, Pune.

²Kha. Govindrao Adik Law College, Shirampur.

Paper Received On: 25 MAY 2022

Peer Reviewed On: 31 MAY 2022

Published On: 1 JUNE 2022



[Scholarly Research Journal's](http://www.srjis.com) is licensed Based on a work at www.srjis.com

Introduction

In India attempt to suicide are treated a criminal offences as well as punishable under Section (309) of Indian Penal Code. This Section was challenged in the Supreme Court for his constitutional validity The Supreme Court declared that IPC Sec 309 is unconstitutional, under Article 21 (Right to Life) of the constitution in a landmark judgment. But the new concept that is 'Mercy Killing' is also called as Euthanasia which is challenged to Right to life. This Euthanasia is a practice or an act by which a person suffering from painful and incurable disease is put to death in order to end the suffering of that person.

Kinds of Euthanasia

1. Voluntary

When the patient give the consent for Euthanasia. This type of euthanasia are permitted or legalizes in Luxembourg, Belgium, The Netherlands, Switzerland, Washington in the U.S.A and the states of Oregon.

2. Non-Voluntary

When the patient is unable to give consent due to his deteriorating health conditions. In this circumstances another appropriate person, on behalf of the patient, gives the consent. The quality of life and suffering needs to be taken into consideration.

Method of uses of Euthanasia in practices

1. Passive Euthanasia

Passive euthanasia is called when life-sustaining treatments are withdrawn. For instance, if a doctor may prescribe high dose of pain killing medicines like opioids, which perhaps may be toxic to the patient, or by removing a life support system.

2. Active Euthanasia

Active euthanasia is comparatively more controversial as it seems to derogate moral, ethical, religious and compassionate values. When somebody to end patient's life uses a lethal substance or force.

Indian Practices on Euthanasia

India is a country where there are no laws pertaining to Euthanasia. In fact, in India attempt to suicide and abetment to suicide are both punishable under Section 309 and 306 of Indian Penal Code, 1980 respectively.

In the case of *P. Rathiram vs. Union of India, 1994* constitutional validity of Section 309 was challenged in the Supreme Court, wherein it held that Section 309 of I.P.C was unconstitutional and was in derogation with Article 21, which pertains to 'Right to Life and Personal Liberty'.

However, in the case of *Gian Kaur vs. State of Punjab, 1996* there was the abetment of commission of Suicide punishable under Section 306 of I.P.C. came before the Supreme Court. The trial court convicted the accused, which upheld by the High Court.

Later on in an appeal to Supreme Court the accused contended that 'Right to Die' is included within 'Right to Life' under Article 21 of the Constitution of India. Further, any person abetting the commission of suicide by anyone is a mere helping that person in enforcing his fundamental right under Article 21. Hence, punishing the accused under Section 306 is the violation of fundamental right.

The constitutional bench of the Apex Court in this case held that 'Right to Life' under Article 21 of the Constitution does not include within itself 'Right to Die'.

Therefore, after this the Supreme Court reconsidered its earlier decision and affirmed that abetment of suicide and attempt to suicide are two distinct offences punishable under I.P.C.

Reasoning to oppose to practices of Euthanasia

Following reason are oppose to euthanasia apply in India

1. Disposing of diseased person

People suffering from incurable disease will be disposed off from the civilized society.

2. Violative of Fundamental rights

Euthanasia is violative of the basic fundamental rights and most importantly the Human Rights. For instance, euthanasia is unnatural termination or extinction of life, which is violative of 'Right to Life' under Article 21 of the Constitution of India.

3. Mental instability leads to incapability of decision

Suicide in most of the cases is a cause of mental illness, which is difficult to analyze.

4. Immoral abuse of euthanasia

There is the possibility of misusing Euthanasia by the family members of the patient for the purpose of inheriting the property or for any other greed.

5. Commercialization of health care

Commercialization of health care leads to the relatives of a poor patient withdraws the treatment because it involves a huge cost to keep them alive.

Reasoning of supporter to practices of Euthanasia

Following reason are support to euthanasia apply in India

1. Eliminates Burden

It eliminates the burden from the shoulders of the caregivers of the patient suffering from incurable, disabling, degenerative or debilitating conditions.

2. Denying Medical Treatment

Refusal to take medical treatment is well recognized in law. For instance, a patient suffering from blood cancer can refuse treatment or deny feeds through nasogastric tube.

3. Right to die with dignity

Patients in the vegetative state or in chronic illness, who do not want to burden their family, can choose the option of Euthanasia as a way to uphold 'Right to life' by embracing 'Right to die' with dignity

4. Encourages organ transplant

Euthanasia not only gives 'Right to Die' to a person suffering from acute pain but also give 'Right to Life' to the organ needy patients, which ultimately encourages donation of organs.

Position of Euthanasia in India

On 9 March 2018, in **Aruna Shanbaug case** the Supreme Court of India, passed a historic judgement-law permitting Passive Euthanasia in the country. This judgment was

passed in wake of Pinki Virani's plea to the Supreme Court in December 2009 under the Constitutional provision of "Next Friend". It is a landmark law which places the power of choice in the hands of the individual, over government, medical or religious control which sees all suffering as "destiny". The Supreme Court specified two irreversible conditions to permit Passive Euthanasia Law in its 2011 Law:

- (I) The brain-dead for whom the ventilator can be switched off
- (II) Those in a Persistent Vegetative State (PVS) for whom the feed can be tapered out and pain-managing palliatives be added, according to laid-down international specifications.

The following guidelines were laid down:

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any 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. However, the decision should be taken bona fide in the best interest of the patient.
2. Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires presence of two witness and countersigned by first class judicial magistrate, and should also be approved by a medical board set up by the hospital.

The Supreme Court was tasked with deciding whether Article 21 of the Constitution includes in its ambit the right to die with dignity by means of executing a living wills/advance directives.^[13]

Revolution of Hippocratic oath

All the doctors that they will responsibly dealing with the health of their patients generally take Hippocratic oath. However, the words of the oath has changed over the years. The former is the earlier oath and the later is the modern oath. The former depicts an argument against Euthanasia while the later favors Euthanasia. Further, with the changing time and circumstance, some people feel that the original oath is outdated. In some countries the doctors while in other countries take a transformed and upgraded oath like Pakistan doctors still stick to the original oath. The change in the Hippocratic oath has take place in various nations.

Euthanasia turned into Murder

1. An elderly woman who was suffering from Dementia in the Netherlands was administered a lethal injection resulted to her death. The days before euthanasia as

undergone she repeatedly said that she do not want to die. This action resulted in the wrongdoing called murder.

2. When an elderly woman was suffering from dementia and she had a will to live. However, her son in the greed of the property instructed the doctor to administer her lethal injection so that her life is ended. On the instructions of the son the doctor acted accordingly. This action was immoral and both the doctor as well as the son was liable for the wrong doing.

The lack of following points led euthanasia to become murder:

1. Consent of the patient
2. Against the morality and justice
3. When the disease is not permanent or severe.
4. When it is against the law of the land.
5. When a person had a desire to live
6. When the family members in the greed of property leave a person to die without even considering the chances of his survival.

Conclusion

Wherefore, the main intent behind the practice of Euthanasia is not to take a life of a person but to relieve him from all forms of pains and suffering, which can also be named as 'good death'. 'Right to life' is given in all the nations of the world while 'Right to Die' is recognized only in few nations of the world, this is because the nations which have refused their citizen the 'Right to Die' believes that because this era is changing minds are becoming more practical there will be more of murders in the name of Euthanasia which will ultimately led to the violation of human rights. While other nations who approves the culture of euthanasia are of the opinion that a patient must not suffer and 'Right to life' includes within itself 'right to die with dignity'. Both the point of views is correct at their place, but some middle way needs to construct so as to achieve collective good. Further, approval of a passive euthanasia like removal of feed tube or removal of life support system in the case when the death is foreseen or when a person is in the vegetative stage. Active euthanasia wherein lethal drugs or injections are administered to the patient is something which must not be approved of.