

Is Assisted Peaceful Death- A Right

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Abstract-“Euthanasia means as an action which objects of taking the life of another at the latter’s conveyed request. It concerns an action of which death is the aim and the consequence. “This definition relates only to voluntary euthanasia and eliminates the non-voluntary or involuntary euthanasia. The importance of this is that if one abandons the right, one can do so by using procedure established by law. Commanding death by way of capital punishment is an instance of the right to life being ended in accordance with the procedure established by law. To terminate life, even one’s own life, were it to be done without the consultant of law, would amount to an unlawful act. In certain cases, it may even be a criminal act. In fact, an attempt to commit suicide is a crime under the IPC. In present scenario there is no express law which govern euthanasia and it’s the judgement of SC which govern this. So our country is in urgent need of a stringent legislation for euthanasia that an uniform procedure can be followed and ambiguity can be removed.

Key words- Euthanasia, mercy killing, peaceful death, voluntary euthanasia, involuntary euthanasia, active euthanasia, passive euthanasia, living will

“Science says: ‘We must live,’ and seeks the means of prolonging, increasing, facilitating, and amplifying life, of making it tolerable and acceptable, wisdom says: ‘We must die’ and seeks how to make us die well.” -

M. De Unamund

A. INTRODUCTION-The pride of mankind has diminished the hope that individuals can achieve a dignified death.

Euthanasia is the process of mercifully ending a person’s life, allowing the individual to dignified death. The term has taken on many new meanings in this modern age of medical technological advancement.

“Euthanasia means as an action which objects of taking the life of another at the latter’s conveyed request. It concerns an action of which death is the aim and the consequence. This definition relates only to voluntary euthanasia and eliminates the non-voluntary or involuntary euthanasia, the killing of a patient devoid of the patient’s acquaintance or assent. Some call it “life-terminating treatment.”

Every day, numbers of people around the world get diseases that have no cure. Whether a person attempts to get rid the disease or does nothing at all, some diseases constricted will ever disappear. In fact, some illnesses will cause much pain and struggle throughout one’s fight for life, but at the end, these fatal diseases may kill that person leaving him/her fighting for nothing but death. If an individual will tolerate months of suffering and will most likely die, would it stand suitable to permit that person a peaceful death? Many people support assisted suicide to allow a person to bear less agony; euthanasia supporters push for intensifying and legalizing the practice to make it available to almost everybody.

However, a large number of peoples totally differ with permitting assisted suicide; these individuals are of the view that the terminally ill patients need love, support, and comfort in their struggle for life. With society insisently evolving, decisions with regards to euthanasia practices will not only shake the current generation, but it will have emotional impact on future generations, too, and in any generation, messing with an individual’s life will appear unfortunate. People should have the right to end their lives, whenever, and however they may desire. Many supporters of voluntary euthanasia consider that everyone has the right to control their body and life, and should be allowed to decide at what time, and in which way they will die. The idea behind this is that needless restraints on human rights should be avoided. It was said in an article in the Independent newspaper in March 2002, that; “In cases where there are no dependants who might exercise pressure one way or the other, the right of the individual to decide on should be paramount. So long as the patient is well-spoken, and his or her intent is clear beyond suspicion, there need be no further questions.” Since the right to life gives a person the right to not be killed if they do not wish for, exponents of euthanasia argue that respect for this right will prevent euthanasia being abused, as killing a patient without their acquiescence would infringe their human rights. It can also be argued that because death is a private matter, if there is no damage to

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any other people, there is no right to reject someone's desire to die. Supporters of this believe that, if euthanasia promotes the finest interests of all the parties concerned, and no human rights are dishonoured, then it is ethically suitable for voluntary euthanasia to take place.

The right to life was made more sacred and, over the years, has been seen as a fundamental feature of the Constitution, thereby making it both essential and eternal.

The importance of this is that if one abandons the right, one can do so by using procedure established by law. Commanding death by way of capital punishment is an instance of the right to life being ended in accordance with the procedure established by law. To terminate life, even one's own life, were it to be done without the consultant of law, would amount to an unlawful act. In certain cases, it may even be a criminal act. In fact, an attempt to commit suicide is a crime under the IPC.

If we place sideways the notion that death can in no way be something positive, we are capable to consider that it can in some cases be a better option than keeping a patient that is in dreadful pain and discomfort alive. If death is not always seen to be the most horrible result, then many of the hostilities to euthanasia no longer be existent, since many of the people have faith in the notion that death cannot be a good outcome. People generally do not accept the bare truth of death because they enjoy and value being alive, but in the case of a terminally ill patient, they may be in a lot of disquiet and agony, and are incapable to enjoy their life. This may cause the patient to diminish the dignity of their life, and the patient may choose that they do not wish to suffer their grief any longer. There is also the fact that though the patient themselves may desire to be euthanized; it may have a very unfavourable effect on the family of the patient. So i consider that since the death of a patient in that situation could be a better choice to keeping them alive; the patient's wish should be respected.

B. EUTHANASIA AND THE WORLD-As it is a debated topic world -wide but many countries have legalised euthanasia and many do not. The point with regard to legalising euthanasia and forbidding it has diverse view over the world. On the one hand if we see Belgium, Luxemburg, The Netherlands, has permitted euthanasia but on the other hand USA, UK, Norway, New Zealand, Ireland, China etc forbids euthanasia. Different countries are having different opinion with regard to euthanasia in both theological and legal aspect.

But I am of the opinion that all countries must consider legalising euthanasia because it can save millions of patients around the globe hours of gruelling pain and suffering instead of dying a peaceful death.

C. RIGHT TO DIE—A DEMAND DRIVEN BY LOGIC-Article 21 of the Indian constitution asserts the right to life to all individuals, does it include right to die? The Supreme Court in number of cases has given verdict on this issue. In the case of *Gian kaur v. state of Punjab*¹ a five judge Constitutional Bench held that the "right to life" is inherently inconsistent with the "right to die" as is "death" with "life". In furtherance, the right to life, which comprises right to live with human dignity, would mean the existence of such a right up to the natural end of life. It may further include "death with dignity" but such existence should not be confused with unnatural extinction of life curtailing natural span of life.

My personal view is that if article 21 provides us a dignified life then, what about dignified life of a person who is in permanent vegetative state? Do the law or any medical treatment provides dignified life to them? Here is the complete silence with regard to so called "dignified life". The naked truth is that neither the law nor the medical treatment will can't give them a life which they ought to be given. A paradox with article 21 is that it is silent about the death of person, their will or desire to terminate individual's life. I am of the belief that if a person is in such a state which is miserable for their life medically then with the voluntarily will if he demands for the termination of his/her life. We should let them die naturally and to compelled them to be alive by switching them on artificial treatment and I am of the view that it is a logical demand of and individual with respect to their life as it is a private concern.

D. LOOPHOLES OF THE EXISTING PROVISION-Either there is no any law passed by parliament in India with regard to rules and regulation on euthanasia. It's the Supreme Court judgement through which we are regulated by upon this matter. Although there are various judgements of Supreme Court of India on this regard but the matter came in to limelight in ARUNA'S case², In the Aruna Shanbaug judgment, the Supreme Court made one of its finest judgements. The three clear, but nuanced, differences it made are a prized contribution to Indian jurisprudence and have far-reaching effects for social life since each qualitatively diminishes the arbitrary conduct of those in authority. The first refers to the wide and detailed discussions it offered on the nature

of human life. The court scrutinized medical literature and the supplementary moral considerations in bio-ethics to address the following crucial questions that were decisive to the case. When can one say that an individual is brain-dead and in a permanent vegetative state? What are the rights of such a person? And what are the responsibilities of the medical staff and of the state when a person is declared to be in a permanent vegetative state? The court provided vibrant guiding principle on each question. This has inferences not just for helpless persons such as Aruna, but also for the whole new-fangled area of human organ transplant that is compassionately growing. These clarifications meet the uppermost criteria of global jurisprudence.

But major drawback of this judgement was to seek the permission of the High Court every time life-sustaining medical treatment was to be withheld or withdrawn from a terminally ill patient.

On March 9, 2018 a landmark judgement of the supreme court of India gave a new dimension with regard to passive euthanasia. The SC ruling permits a person to make a “living will” which licences medical experts to end his life when he touches a point of no return. The ruling has important moral, social and professional inferences. The Supreme Court accorded importance to the constitutional values of liberty, dignity, autonomy and privacy as it laid down procedural guiding principle leading the improvement dictate of a living will. The guiding principle will function till legislation is put in place. The decision by the constitution bench came on a PIL filed by NGO Common Cause pursuing recognition of ‘living will’ made by terminally-ill patients for passive euthanasia.

What is passive euthanasia?

When medical experts intentionally take an action that causes a terminally ill patient’s death, it’s active euthanasia. But, when the medical experts let the patient die by not doing something that can delay his life or stop doing something that is extending the patient’s life such as putting him off life support, it’s passive euthanasia.

What is living-will?

“Living will” is a document made by a person in a healthy state of mind stipulating that if she/he slides into a vegetative state because of a permanent terminal illness, the drained existence should not be extended with the help of life support systems or other medical interpositions. In such a case, families will be spared the unbearable decision of take away life support and doctors will be guided solely by

the “living will”. In several cases, the unwillingness to pull the plug on a loved one even when s/he is in a vegetative state extends the pain of the patient. Though this judgement was hailed by various scholars but it is having various shortcomings.

Threat of misuse

Vice president of Confederation of Medical Associations in Asia and Oceania, and former IMA president Dr. K.K. Aggarwal, believed stringent guiding principle should be put in place to safeguard that there is no abuse of the ‘living will’ by relatives of the patient.

The caregiver may get fed up and irritated, and unintentionally may make the patient feel that he or she has become a liability and should not live anymore, he said, adding, “This is one facet which we need to emphasis on. When a person seeks (passive) euthanasia, the attitude of the relatives provided that care should be considered and opinion of doctors should be taken.”

Lack of Clarity

The experts also debated if death following a ‘living will’ will be interpreted as natural death. “If the entire process is legal, why would the insurance company not term it so?” asked radiation oncologist Dr. Nagraj Huilgol, who is also the president of the Society for the Right to Die with Dignity. While there is lack of clarity over what the living will should consist of and how it can be rightly executed, most professionals agreed that one should make a broad living will and choose a close person who would know what decision to take at the time.

The debate was jointly prepared by Narotam Sekhsaria Foundation, Maharashtra Palliative Care Network, Forum for Medical Ethics Society and End of Life Care in India Taskforce.

Lack of Legislation

As there is no legislative provision in India which govern the euthanasia process. In lack of these legislative procedure no clear guidelines and procedure is given with regard to...how the passive euthanasia shall be executed? At what extent it shall be implemented? What are the considerations to be taken account for the execution on it? As in absence of clear legislative principles only the principles laid down by the apex court can be applied which is not suitable for each and every cases. And this gap of legislation and judicial decisions gave rise to ambiguity and keep space for various interpretations. So this instability leads to confusion to the great extent.

it is the fact that there exists no legislation laying down the procedure to permit a person to take her own life. The lack of any law governing the subject results in people taking resort to courts to seek 'permission' to end their own lives, or the lives of others over whom they have some control. These would comprise petitions for euthanasia filed by persons who do not wish to live, or by relatives on behalf of those who suffer life-threatening pain or irrepressible illness. Petitions also extend to asking for approval to terminate undesirable, accidental or dangerous pregnancies which, remarkably, relate to the rights of an unborn person to enter life itself. The courts become arbitrators of the fate of such people. What happens now is that the courts are called upon to decide, without having the advantage of legislation to guide their decision-making. They have faith in on facts and the call of their conscience. Such ad hoc decisions suffer from arbitrariness and ambiguity two qualities that make for bad law.

EFFECTIVE MEASURES

As there is no prescribed procedure for the termination of life by consent of individual's will and so this ambiguity leads to confusion. To remove this ambiguity I suggest some point so that these loopholes can be filled.

- Euthanasia requires a proper legislation so that it would be easy for the people to understand the implementation. If legislatures make a law with regard to this the ambiguity and vagueness with regard to it shall be clear and even medical experts will get help from such law
- The law must be strict and particular with regard to euthanasia. It must contain rules which won't abuse individual's right and in the interest of terminally ill patients
- The law must specify all such conditions in which a person can be permitted for euthanasia
- The individual's consent shall be paramount consideration for euthanasia so that fundamental right under article 21 enshrined under part 3 of our constitution should not be violated
- The law should strict in such manner that no scope of arbitrariness by the court or by medical expert shall be left. Because interpretation by the court or by medical expert may sometimes be against the interest of individual's
- The law must consider that if the patient's is not in a condition to give his consent then that would be the authorised to give consent on behalf of the patient.

- The consent given by the patient as far as possible must be in written form and should be voluntarily
- The physician must consult at least two other physician with regard to patient's condition and shall submit the report to the proper authority and on the basis of such report and after minute analysis of patient's condition it should be delivered.

CONCLUSION

As a final note after considering the court's view, constitutional perspective, theological aspect and individual's will, I consider euthanasia is a boon for the person who is in permanent vegetative state and the state should not play with individual's will. The legislature should frame a law which give relief to such person whose death is more considerable than their life. Death with dignity is the right of human which he can demand and rationally state should be away from these affairs.

If we see from the human right aspect I consider this is important right, as a person who is unable to live dignified life at least he must deserve dignified and peaceful death.

References

- 1 AIR 1996 SC 946, 1996 SCC (2) 648
- 2 Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.

