

Euthanasia: An Intricate Perspective from a Legal Outlook

Mridutpal Bhattacharyya

*Student, Dept. of Law, Brainware University, West Bengal, India
mridutpalbhattacharyya@gmail.com*

Abstract

The study delves into the deeper conflict of Euthanasia with the Indian Constitution and the lives of Indian citizens. The paper takes a head on doctrinal approach towards discussing and joining in the debate on Euthanasia being legal and a substantial right of any and all living individuals who possess the same rights as provided by the Constitution of India. This paper relies upon books, case laws & web sources to collect data. The paper further sheds light on the various forms of Euthanasia such as voluntary Euthanasia, non-voluntary Euthanasia, involuntary Euthanasia, assisted suicide. The legality of the said measures to end one's own life, owing to huge suffering which cannot be anymore tolerated, be it in the form of loss of mental or physical dignity needs to be examined judiciously. The paper further accentuates the study of the mindset of a person having an urge to end his or her own life.

Keywords: euthanasia, suicide, voluntary, non-voluntary, involuntary.

Introduction

“After great pain a formal feeling comes--
The nerves sit ceremonious like tombs;”
-- Emily Dickinson

Emily Dickinson in her poem “After great pain a formal feeling comes” discusses as to how moments of tremendous pain and suffering lead to death. Death in such situations comes not as a fiend but as a friend, awarding the suffering individual with the sweet kiss of relief to their grief and pain. The purpose is to make sure that the individual who has been suffering endlessly is to suffer no more & should enjoy a deep slumber which the individual deserves undoubtedly. Euthanasia is such a concept as can be the aforementioned relief to the suffering individual. Euthanasia exists to serve on the terminally ailing the sweet mark of relief in the form of a kiss of death. The word has been derived from its Greek origins where, “eu” refers to “well” or “good” & “thanatos” refers to “death”, and the practice as evident from the name, refers to the intentional ending of life to bring an end to suffering and pain.

Different countries have different laws governing the exhibition of Euthanasia. The House of Lords Select Committee on Medical Ethics of Great Britain defines euthanasia as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering".¹ The word "euthanasia" was first applied in a medical framework in the 17th Century by Francis Bacon, in reference to a relaxed, unproblematic, content death. Euthanasia was practiced in Ancient Greece and Rome: e.g. Hemlock was engaged as a mean of quickening demise on the island of Kea. Euthanasia, in the logic of acceleration of a person's demise, was buoyed by Socrates, Plato and Seneca the Elder.

¹ Harris, NM. (October 2001). "The euthanasia debate". J R Army Med Corps. 147 (3): 367–70.

Euthanasia & India

The Constitution of India is the Supreme authority of the land. Article 21 of the Indian Constitution states that no person shall be deprived of their rights to life & personal liberty except under certain circumstances as permitted and ordered in governance of the Law. This concept has developed from the First clause of the 6th Article of ICCPR (International Covenant on Civil and Political Rights).² The ambit of Article 21 does not enclose the “right to die” but only refers to, discusses the “the right to life” to the fullest.³

Euthanasia, as a practice of quickening the death in order to cause alleviation from tremendous suffering of an individual, can be classified into three types:

1. Voluntary Euthanasia - voluntary euthanasia is directed with the accord of the patient.⁴
2. Non-voluntary Euthanasia- is directed when the accord of the patient is inaccessible.⁵
3. Involuntary Euthanasia- involuntary euthanasia is directed contrary to the spirit of the patient.⁶

On the 9th of March 2018, an historical judgement was passed, entailing the legalization of passive Euthanasia, especially in cases of people in PVS7 or those individuals who are terminally ill.

Section 300 of the Indian Penal Code, 1860 which deals with murder, is suggestive of Involuntary Euthanasia as murder as it occurs in contradiction to the wishes of the patient suffering. But in such cases where non-voluntary Euthanasia or Voluntary Euthanasia is concerned, the intention to cause harm or death persists but only in order to provide the alleviation to one’s suffering, there is no guilty mind but a bona fide intention.

Section 309 of the IPC, 1860 states the punishment for attempting suicide i.e. killing oneself as imprisonment for one year or fine. But, in cases of active Euthanasia, the patient is willing to finish his or her life & communicates such wish to the physician in charge of his or her treatment & the resulting administration of lethal drugs or other means of taking the life of the patient, & in cases of passive Euthanasia, the same wish is conveyed to the physician by the next relatives of the patient, & hence the act

² United Nations Human Rights Office of the High Commissioner, “*International Covenant on Civil and Political Rights*”, (n.d.) Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> . on 17/02/2020.

³ J.N Pande, Constitutional Law of India, Central Law Agency (pg. 311.)

⁴ BBC, “*Forms of Euthanasia*”, (n.d.) Retrieved from <http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml> . on 17/02/2020.

⁵ Ibid.

⁶ Ibid.

⁷ Google, “*PVS*”, (n.d.) Retrieved from https://www.google.com/search?rlz=1C1GIGM_enIN794IN794&sxsrf=ACYBGNS5y1KbyvX-30A7Wnxn6-DcUs5sQw%3A1581925380124&ei=BERKXoCnB5X6rQG-8JVg&q=pvs&oq=pvs&gs_l=psy-ab.3..35i39j0i67l5j0i67l2j0.1184151.1184491..1184653...0.1..0.165.326.0j2.....0....1..gws-wiz.....0i71.97zt3gy3VhA&ved=0ahUKEwiAud-ii9jnAhUVfSsKHT54BQwQ4dUDCAs&uact=5 on 17/02/2020.

or omission in this case that occurs that is the withdrawal or withholding of treatment is exhibited without the presence of a mensrea.⁸

“Act” or “Omission” is defined in the IPC. The withholding of treatment or withdrawal of treatment as well as lethal administration of substances refers to acts & omissions.⁹

Euthanasia around the World

Forms of active Euthanasia inclusive of the administration of lethal compounds are legalized in certain number of nations & jurisdictions¹⁰ including Luxemburg¹¹, Belgium¹², & the Netherlands¹³, as well as the American states of Washington¹⁴ & Oregon¹⁵ while all forms of active Euthanasia are banned in the Indian subcontinent.

In, 1994 the U.S adopted the Oregon Death with Dignity Act which allowed terminally ill individuals with 6 months to live to take a lethal dose of prescribed medications to die voluntarily.

A similar Act was passed in the state of Washington in 2008.

In 2002, the Netherlands’ government legalized assisted suicide & Euthanasia, i.e. allowed doctors to give a fatal injection.

In the same year, a similar act was passed in Belgium. ‘

In 2009, Luxembourg passed a law allowing terminally ill patients to end their lives under supervision of doctors.

Euthanasia & Judicial decisions in India.

In *ArunaRamchandraShanbaugh V. Union of India*¹⁶ a writ petition was filed by Ms. PinkiVirani of Mumbai claiming to be the next friend of the victim with a prayer for direction to the respondent to stop feeding & let her die peacefully. The petition was made to the State to make sure that treatment is withdrawn in the form of stoppage of feeding the patient in order to facilitate a quicker demise of the patient who had been suffering endlessly & tremendously. The facts were that the victim who was a staff nurse in King Edward Memorial Hospital, Mumbai was attacked on 27th Nov. 1973 by a sweeper in the hospital by wrapping a dog chain around her neck & yanking her back with it. He tried to vaginally rape her but found her menstruating & ended up sodomizing her. To immobilize her during the act, he twisted the chain around her neck. Successive day, a cleaner discovered her lying on the floor in an unconscious

⁸ Ibid.

⁹ The Indian Penal Code, 1860 (Section 33).

¹⁰ Times of India, “Euthanasia: Widely debated, rarely approved” (08/03/2011), Retrieved from <https://timesofindia.indiatimes.com/india/Euthanasia-Widely-debated-rarely-approved-/articleshow/7651439.cms?referral=PM> on 17/02/2020.

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ AIR 2011 SC 1290

state curtailed in blood. It was alleged that due to strangulation by the dog chain, the supply of oxygen to the brain stopped & her brain got damaged. She could be given only smashed food by putting it in her mouth. It was found on basis of reports to the Supreme Court by a board of doctors that she indeed had some brain activity. She, in all probability was to continue in the same persistent vegetative state till death without any improvements.¹⁷

The Supreme Court in a 2 judge bench decision, J. MarkandeyKatju & J. GyanSudhaMisra laid down the laws for passive Euthanasia:

- (1) In absence of family members, decision to withdraw or withhold treatment can be taken by the attending doctors as long as the decision is *bona fide* of the patient.¹⁸
- (2) The hospital staff did not want the demise of Aruna & hence her feeding or medication were not stopped¹⁹
- (3) A decision to cause Euthanasia requires approval from the High Court. So that the provision is not misused by unscrupulous persons and/or corrupt doctors, in consonance with the doctrine of *Parens Patriae*. Article 226 of Constitution can grant approval for withdrawal of life support to such an incompetent person..²⁰

The judgment in *GianKaur V. State of Punjab*²¹, reflects the right of a dying man to die with dignity when life is ebbing out and in the case of a patient who is terminally ill or a person in a PVS, where no hope of recovery is present, hastening the procedure of demise in order to reduce the period of agony constitutes a right to live with dignity, the case of *Airedale N.H.S. Trust V. Blend*²² was also cited in brief.

In *MarutiShripatiDubal V. State of Maharashtra*²³ the Section 309 of the Indian Penal Code, 1860 was declared to be unconstitutional.

Conclusion & Suggestions

Although the Indian Constitution does not in any way guarantee a right to die, it does however substantiate a right to live with personal dignity which when interrupted or inhibited, does not bear numerous options available to the individual. Which duly causes the individual to opt for Euthanasia? In circumstances where the patients of terminal illnesses are in their deathbeds, and they can no longer rely upon the administration of a proper alleviation, they like to be blessed with the bliss of death which although fearful can bring comfort to the ailments. Thus, it can be evidently concluded that Euthanasia doubles up not only as a means to relieve individuals of their sufferings but also as the friend of the patient in the form of merciful death provider.

Thus, Suggestive reforms from the conclusions are presented below :

¹⁷ J.N Pande, Constitutional Law of India, Central Law Agency (pg. 312)

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ (1996) 2 SCC 648.

²² (1993) 1 All ER 821 (HL).

²³ (1986) 88 Bom LR 589

- (1) Speedy justice: hasty trials of the cases relating to Euthanasia should be made & judgments should be pronounced as swiftly & efficiently as possible.
- (2) The organization & creation of a proper medical board with regards to such cases dealing with Euthanasia should be formed to further facilitate the said speedy justice.
- (3) Active Euthanasia should as well be legalized along with passive euthanasia, as a person is the owner of his or her body & no one else can claim as to his or her rights to live or die. Thus, the opinion of the person who is suffering when accessible is the most important, & is to be abided by.

References

1. (1986) 88 Bom LR 589
2. (1993) 1 All ER 821 (HL).
3. (1996) 2 SCC 648.
4. AIR 2011 SC 1290
5. BBC, “Forms of Euthanasia”,(n.d.)Retrieved from <http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml> . on 17/02/2020.
6. Harris, NM. (October 2001). "The euthanasia debate". J R Army Med Corps. 147 (3): 367–70.
7. J.N Pande, Constitutional Law of India, Central Law Agency (pg. 311.)
8. J.N Pande, Constitutional Law of India, Central Law Agency (pg. 312)
9. PSA Pillai’s Criminal Law edited by Dr. K I Vibhute (12th edition), Lexis Nexis (pg. 37-41)
10. PVS(Persistent Vegetative State): A chronic state of brain dysfunction in which a person shows no signs of awareness.
11. Google, “PVS”,(n.d.) Retrieved from https://www.google.com/search?rlz=1C1GIGM_enIN794IN794&sxsrf=ACYBGNS5y1KbyvX-30A7Wnxn6-DcUs5sQw%3A1581925380124&ei=BERKXoCnB5X6rQG-8JVg&q=pvs&oq=pvs&gs_l=psy-ab.3..35i39j0i67i5j0i67i2j0.1184151.1184491..1184653...0.1..0.165.326.0j2.....0....1..gws-wiz.....0i7i.97zI3gy3VhA&ved=0ahUKEwiAud-ii9jnAhUVfSsKHT54BQwQ4dUDCA&uact=5 on 17/02/2020.
12. The Indian Penal Code, 1860 (Section 33).
13. Times of India, “Euthanasia: Widely debated, rarely approved”(08/03/2011), Retrieved from <https://timesofindia.indiatimes.com/india/Euthanasia-Widely-debated-rarely-approved-/articleshow/7651439.cms?referral=PM> on 17/02/2020.