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## Euthanasia-A Brief Overview

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### INTRODUCTION

“Euthanasia refers to deliberate termination of human existence to reduce agony, misery, anguish and distress of the individual. “It has been derived from, “the Greek word “euthanatos” means ‘good death’.”<sup>1</sup> It also refers to the trouble-free death of a victim facing a non-curable and painful affliction or in an unalterable coma. It is a manner of inducing or sanctioning death devoid of pain as a kind of respite. Euthanasia is the deliberate taking of life by an action or exclusion of a dependent human being for his or her own supposed benefit.

**Euthanasia defined by ‘The British House of Lords Select Committee’** There are various laws on Euthanasia in each nation-state. The British House of Lords Select Committee on Medical Ethics defines mercy killing as intentional interference done to extinct individuals living. This is done with the person’s consensus with an object to release him from the torments of life. Honor killing was defined in Netherlands as ending of life of a being, with the assistance of physicians, on the requisition of the applicant. Euthanasia can hence be categorized, each of which transports a diverse set of right and wrong perception.

### HISTORICAL PERSPECTIVE

Euthanasia was prevalent right from the ancient times even before man could be civilized. It has been observed that it was a Tribal Custom. There are various numbers of tribes, primeval and modern, who deserted their aged. In the rest situations they implemented it because the human being had reached a definite age or phase of weakening of healthiness. Euthanasia was just not limited to the elders but even the unwanted infants infirm, was throttled, kept hungry, malnutrition, or else clomped or beaten

<sup>1</sup> Sarafis P1 , Tsounis A. 2 , Malliarou M3 (01/2012); *Euthanasia An Active Area Of Research In Contemporary Bioethics: Challenges For The Society And The Professionals Of Health-Care*, *Hellenic Journal of Nursing Science*5(1):21-26.

to death. At times these acts were completed at the individual's desire.

This practice was practiced amongst the Eskimos. They deserted the in firms as they were of no use, worthless to the cluster of settlement they lived in and therefore thought it appropriate to eliminate them. Similar practice was adopted by the tribes of various islands. Each one had their own individual reason for this eradication. Some believed it that wicked spirits cling on to the elderly, ripened people. If kept alive these spirits shall prevail in the area they lived and cause trouble to the whole civilization. Some relieved the old on the grounds of compassion. These tribes administered poison to them and got rid of them as their goal was to spare the person from the wretchedness they were going through. There were tribes who believed nature to be divine and submitted to the rule of nature in order of life.

In the period around 348-428 BC the concept of this self-killing was condemned, criticized and considered this act shameful, scandalous. It was then acceptable on social moral values and if done for a justifiable cause. It was in this period that the concept towards annihilation changed in the real sense. The seeds to look it only from the compassionate point of view were thus unknowingly sown in the populace.<sup>2</sup>

Before the advent of Christianity, in primordial Greece and Rome the, approach in the direction of, active euthanasia, and purposefully taking of one's own life had been inclined to be liberal. Many primeval Greeks and Romans had no convincingly identified faith in the innate value of person's human life, and physicians from the society believing in polytheistic religion that is a belief in many gods, executed voluntary and involuntary mercy killings. Amongst the prudent men of Greece finishing solitary's life for an array of causes, like ache, sickness, poor health, was measured as a lucid and civilized act to be done. However it should be kept in mind, that this was not a common opinion of all the people. Euthanasia, currently, is not overtly admitted.

In Rome the concept of suicide differed it was penalized only if it was illogical. But there were a number of reasons for suicide that were considered logical by them. Intolerance due to sickness, hurt, agony, tiredness of life, insanity, apprehension of disgrace was few of the reasons to justify death.

In the middle Ages that is from the 1<sup>st</sup> century AD to the 15<sup>th</sup> century there was a downfall towards the concept of suicide or euthanasia which was justified on moral grounds. The advent of the Christian religion during that period was another major cause for the down fall. The priest emphasized that birth and death are in the hands of the almighty. It is he who creates us and therefore has the absolute power to decide our fate. In case anyone tried to disobey him it was imbibed on the populace that they were committing a sin for which they will have to go through expiation. To strengthen this view of euthanasia being a crime, efforts were made to deter people further and to be away from such acts. Penal punishments were done to the corpse of euthanized person or the suicides This was done for the strong

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<sup>2</sup> V. Prabhu & Tanuja Kalita - 2013 - *Eubios Journal of Asian and International Bioethics* 23 (2):46-49.

belief they had in god and that preservation of life till he took it away was the duty of a human.

In spite of atmosphere waging against euthanasia the 15-17<sup>th</sup> century witnessed support to euthanasia. The utopian accepted termination in case if a person was suffering from pain, distress. This could be done, if the patient desired and gave his consent Eradication was the only solution to relieve him from such agony. An English philosopher further promoted the concept and firmly asserted the doctors responsibility to take charge of this easy death.<sup>3</sup>

## LEGAL PERSPECTIVE

In India, since euthanasia was considered as suicide, euthanasia is also denoted as a crime. Suicide is punishable in India below section 309 of the Indian Penal Code which punishes a person who tries to give up their life by suicide. Similarly section 306 of the I P C punished an individual who encouraged suicide. , Active euthanasia in India is also punishable .It attracts punishment for murder below section 302 or below section 304 for culpable homicide not amounting to murder, according to Indian Penal Code 1860,). There is no law in India pertaining to euthanasia, therefore any person desirous of administering euthanasia have to move the requisition to the Indian courts. However, there are various pro organizations who are in favor and working for a legislation on euthanasia. The prominent amongst them being the Society for the Right to Die with Dignity, and Voluntary Health Association of India. Both these organizations are combating the issue of euthanasia. They are emphasizing the power that a person posses to decide his end. They focus on the autonomy of a person. They feel that if that is recognized it would not be to late to have a legislation on euthanasia. However, it is not very easy to make people accept this fact. As it has been observed that the judicial system of our country has given verdicts stating that the authority to live which is conferred by our constitution does not incorporate the liberty to terminate life. Therefore power to a decision about ending life is not an inherent right as interpreted by many proponents.

In spite of the aforesaid situation prevalent in 2011 a major developments took place in the perspective of euthanasia in India. The apex court of the state delivered a verdict which has laid a milestone on the issue of euthanasia. The judges allowed passive euthanasia in this case. They permitted it for “Aruna Shaunbag” a nurse who was in vegetative state for years together.. While deciding the matter the bench of the apex courts certain guidelines for legalizing passive euthanasia. The Supreme Court has directed that if to be administered a requisition will have to be made to the respective high courts of the state. This application can be filed only by the parents of the aspirant, his/her partner or the near relations who have been taking care of that patient day in and out. The apex court has also given directions to all the high courts. It states that high courts are bound to form a bench to resolve the issue. No single judge can decide the matter /requisition of the dear ones whether to be allowed or not.

<sup>3</sup> Rosemarie D. L. C. Bernabe, Ghislaine J. M. W. Van Thiel, Jan A. M. Raaijmakers & Johannes J. M. Van Delden - 2013 - BMC Medical Ethics 14 (1):6-

Now a day's euthanasia has become compassionate death or mercy killing when emphasis was given on active intrusion, intervention. The intervention was in the form of omission or commission of the act, depending on the same it was recognized as mercy death or mercy killing. One begs for mercy death when life becomes death. Proponents argue that it is justifiable as an individual is a master of his destiny. When a person feels about the undignified living he refuses his biological existence.

In India the concept of euthanasia even today is connected with human dilemmas of old age and terminal sickness. In many cases the patients prefer death to dependency, and loss of dignity. These individuals believe in autonomy. This belief of self sufficiency entrusts them with the feeling of having exclusive authority to decide about themselves even in respect to death. They think if they are not permitted to decide the end of their journey as they wish it is gross negligence of human rights which have been the right of all the individuals. It means taking away their autonomy which a state cannot do. Further they state that, if people are indulged in religious observances their life may be prolonged according to their desires. However if not, it is usually beneficial to allow termination of life if they wish so. They also believe that doing so will enable us to preserve resources which can be used to help others doing spiritual practice and also help the society in general rather than concentrating on those whose end is definite and just a matter of time.

In India the concept of Euthanasia is highly contested. The argument has gained impetus when the Supreme Court legalized passive euthanasia in "Aruna Shanbaug's" case.

In India, euthanasia is illegal. But passive euthanasia is recognized by the judiciary. Now the time has come when the legal fraternity also recognizes the living will of the patient. This shall help in ensuring the dignity of the person till his death. As many of the times when a patient suffers from a vulnerable disease the end is not peaceful and dignified. If given recognition it shall reduce the number of cases of euthanasia performed clandestinely. The doctors are now a day's respecting the wishes of the patient and do not resuscitate him/her in case they are in a critical condition.

## **MODERN PERSPECTIVE**

Law commission of India's response to the subject is also positive. They believe that legislation shall protect all. The person to be euthanized, the person assisting and the relatives of the patient. Various organizations have also been formed that work for upholding the issue in India.

India is a progressing country. There has been tremendous development in the field of medicine in the country. The after units also have been developed comparatively then the earlier period. This all has resulted into delaying death of the patient. This is not always beneficial in each case. In some cases it causes major problems for the family and relatives. The cost of medication is very high and not affordable to a common Indian. It increases their liabilities which is a major problem faced by the people. They are forced to keep the incurable alive increasing their life burdens for no reason. In such situation the permission to terminate life is a major issue to be resolved in the current situation. This matter now has been resolved by

the judiciary. They have approved passive euthanasia.

In the milestone verdict delivered the apex court has legalized euthanasia to a certain extent. In the year 2011 in the case of "Aruna Shanbaug" the court rejected the appellants plea of allowing euthanasia to the patient who was in an unconscious state for about 37 years. However the bench of justices Markandey Katju and Gyan Sudha Mishra, permitted "passive euthanasia" for the terminally ill in the state of P V S. Withholding of equipments that are necessary to keep the patient clinically alive was permitted. Doing the act that would hasten the termination period of life was permissible. However the verdict has absolutely denied extinction by active euthanasia.

The supreme court when permitted this act framed rules to be observed if any person was desirous of its implementation. This was done with the view that there should be no misuse of the verdict given which is equivalent to the law in absence of a specific legislation on the issue. The decision is a law till the houses consider it to be enacted. Along with these guiding principles the court also gave directives to the legislature to reconsider the deletion of the punishment stated for attempt to suicide under the provision of the criminal code. It stated that the proviso of section 309 of the I P C has been obsolete. And hence should be obliterated from the act. They stressed that an individual thinking of doing this act is a sick person and requires assistance rather than penalizing them. Justice Katju of the supreme court has laid a great deal of accountability on the judges of high courts of all states to assess the requisitions and then give an independent verdict of implementation or not. This decision came in the case of Aruna who had been raped by a sweeper of the hospital where she worked as a nurse. The incident throttled the nurse resulting in injury to her brain which left her in a vegetative state for a number of years.

A journalist who wrote articles on the case and visited the patient frequently for the purpose developed friendship with Aruna. In January 2011, this lady named Pinky Virani filed a requisition on behalf of the patient. The apex court in this case established a panel of doctors to scrutinize the patient's condition. The report submitted by this committee stated her to be in a state which can be narrated as P V S.

The constitutional question is whether the fundamental rights to live with dignity, privacy, autonomy, and self determination include the right to voluntary assisted suicide. The sacredness of existence is considered to be the utmost religious policy. The Constitutional right which is stated in the Article 21 "The right to life" which is absolute and innate. It has been elucidated by the court in the broadest probable manner.

The Article means that existence and freedom of living is ensured in the state. Under no circumstances can it be restricted apart from the due process of law.

In *Munn v. Illinois*, Field, J. spoke of right of Life in following words:

It means that life is not just survival or existence like any mammal but something more. It means protection of your whole body with all its organs intact. As if it is so, then only the living can have a meaning and

would be life of enjoyment with dignity. The proviso hence states that maiming of any part or organ of body is a ultra vires of the provision and strictly banned.

VikramDeo Singh Tomar v/s State of Bihar<sup>4</sup>

In this case a writ petition was filed by N G O from Bihar named Yuva Adhivakta Kalyan Samiti, Sasaram, They had appealed for the Among other things, it is alleged in the letter that the female prisoner of the ladies who were kept in "Care Home". The state of this home was pathetic the building was in a dilapidated condition and they were kept in miserable in human conditions. They were without any basic amenities essential for their living. While deciding this matter the apex court highlighted the sub standard facilities given and also the discrimination that has always been prevalent in the society due to the sex. They also highlighted the demotion done to her through the past. They also emphasized on the Article 21 of the Constitution and reminded that each citizen is at a liberty to enjoy living of excellence. It is the basic right of the individual to have a dignified life.

When discussions over euthanasia are held in the state Article 21 is the inevitable part of those arguments. It always has been the midpoint as the interpretation of the statute guarantees dignity of life. It has always been a point of debate whether this authority also comprises the authority to die as per our wish. The positive explanation of the authority incorporates numerous rights. When this is so the proponents argue that to extinct living should be innate right. In case of terminal ill patients this living steep down to the lowest amount of a respectful living. This is contradictory to the inherent authority of dignity. In such a situation forcing a person to live a miserable life does not in any circumstances uphold the right of living and therefore there is no harm in allowing them to finish their life according to their wishes and ensuring them a life of dignity till death. According to this view fortification guaranteed under the proviso means rescue of torturous life then prolonging the meaningless life. The freedom pledged to the human also gives him the authority of dealing with his life in any manner as he wishes. But if this thinking is to be appropriate then punishment given for instigating a person to give away life and efforts made to end life would be a major hurdle to euthanasia.

The judicial system in our state has made efforts to elucidate these controversies in the following matters.

Maruti Shripati Dubal v. State of Maharashtra<sup>5</sup>

In this matter suicide was committed by a constable afflicted with mental disorder and therefore charged under section 309 of the criminal code. The petitioner by filing this writ challenged the soundness of the proviso 309. The petitioners mentioned that section was not constitutional sound. It infringed the provisos equality and liberty under Article 14 and Article 21 respectively. The court convinced by the petitioners

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<sup>4</sup> 8 1987 Cr L J 743 (Bom)

<sup>5</sup> AIR 1994 S.C. 1844

plea stated that they should not be penalized on the contrary treated as they try to commit such acts due to mental instability that requires healing measures and not a penal action.

P. Rathinam / Nagbhusan Patnaik v. Union of India<sup>6</sup>

This was a petition to exercise euthanasia. It was the first ever matter on this subject. In this case also the issue of constitutional validity of Section 309 was raised. But partly contrary view to Maruti Shripati Dubal case was taken by the apex court. It held the proviso of article 14 to be valid but for article 21 to be violative. It held that right to end is assumed to be inclusive.

Gian Kaur v. State of Punjab<sup>7</sup>

In this case the petitioner were prosecuted for abetment of suicide under the criminal code. They filed this petition on the basis that the earlier verdict of P. Rathinam case where efforts made to terminate life was held to be violative of the right under article 21. The petitioners mentioned that if the authority to die is recognized then if someone is trying to aid a person to die it should not be considered a crime. As the person is just aiding in the implementation of constitutional right and therefore section 306 is also violative of Article 21. From all these cases it could be concluded that suicide was allowed not to be held as a crime but if any one assist they are guilty. To understand these views with reference to euthanasia it could be said that if you yourself administer a fatal drug prescribed by the doctor it would amount to suicide and not punishable. However, if the same is administered by physician it was an offence. The apex court tried to resolve this issues but were unable to do so. It may be because these matters were not directly related to the subject euthanasia.

All these issues were finally set to rest with a historic verdict on the subject which was delivered in 2011 by the apex court.

In Aruna Shanbaug case the court took an overview about the subject in detail. They studied the foreign judgments also on the issue and came to certain detailed conclusions that have left no controversy about the understanding and implementation of the subject.

The court rejected the plea of the petitioner but permitted passive euthanasia. This was permitted not only to those who were competent to give consent but also for those who were in permanent unconscious state due to their ailment. However like any other legislations they levied practical stipulations to the act. The sole intention behind it was to avoid misuse. It has imposed a duty on the medical fraternity to decide whether the case was really fit for the act. They have suggested the doctors to check with every possibility of revival with the new medication and then only decide the case fit. While explaining the aforesaid fact they have cited example of Arkansas man Terry Wallis who revived after twenty four years at the same

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<sup>6</sup> AIR 1966 SC 1257.

<sup>7</sup> (1993) 2 WLR 316 (HL)

time they have also quoted the judgment of Airedale case delivered by the House of Lords.

The court appreciated the verdict.

The bench clearly denied recognition to active euthanasia. They narrated the reasons for its elimination. According to them a state that suffers from low moral values, unbridled corruption and commercialization in every profession irrespective of the cause of that work shall definitely endanger the proviso. They suggested the law makers of the country to check the possibility of removal of section 309 of IPC.

## CONCLUSION

The empirical studies have shown that euthanasia has been a complex and intricate question to reach a conclusion for all countries across the world. But the studies all over definitely assisted us in formulating opinions about the topic which is so serious and has been neglected over the years, may be under the pretext of tradition, culture, taboo, religion, morality etc. There have been many debates about whether it should be accepted or not without concrete decisions of its acceptance or not.

It has been observed that euthanasia and assisted suicide have remained illegal simply for the deep apprehension about the compromise of public safety for the disabled, elderly and vulnerable persons if the law had to be changed.

The question of evaluating the performance of death in the variety of methods prevalent is often complex, thus contemporary discussion on euthanasia being morally valid is persistent throughout the world. It has been observed that, all over the globe that philosophies and religion plays a central role in determining ethical standing of euthanasia. The experiential revision about it has furthermore thrown an insight on the topic and lead to eminence for open discussion.

Although active euthanasia is difficult to be implemented, it is not impossible to defend passive euthanasia. It seems to be ethically acceptable. It makes exceptions for those who have achieved a progressive condition of mental power and their desires to end life are selfless. Cases; where probability of patients death is high as healing opportunity is negligent; accepting practices of controlled, deliberate, chosen death in any form of euthanasia shall possibly be measured moral.

Although little consensus prevails concerning the principles put into practice about euthanasia amongst every institution, it has been examined that under certain situation the performance can be acquiescent to everyone convention, principled and honest code.

The miserable agony that the patient goes through, the trauma and the emotional turmoil his relatives go through is immense. It is difficult to see your close ones suffering and going through pain. It is then; you wish that the laws should be changed. An individual has a right to decide where to marry, right to decide where to work, and then why at the last hurdle of life, he shouldn't be given an opportunity to decide about, how he desires to terminate existence.



A person who assists others to terminate a miserable life and reduce distress discharges fine act achieving good karma.

The research is a combination of fieldwork and empirical research focused on euthanasia its possibility of legislation in our country. The study has been accomplished by following the historical and analytical method of research. The research enabled the researcher to understand the concept of euthanasia. It was experienced from the research work that the concept of euthanasia is not a novel or innovative one but a one which traces back to the period before people were civilized. It further continued even in the era BC. The Greek and Rome culture has depicted that they believed in good death of a person and hence accepted euthanasia as a part of their culture. It has been observed that with the advent of Christianity the trend or the outlook of the people towards euthanasia was altered or transformed. The tolerant attitude of the populace tapered down and attention was given on "Thou shall not kill." The Hippocratic Oath of the medical fraternity also influenced the masses further. The eighteenth century witnessed a revolution. The religious authoritative teachings tattered on euthanasia. This awakening was amongst the Germans, French and the Americans. In the twentieth century patient's autonomy was recognized. Subsequently few countries witnessed legislation on euthanasia.

It has been observed from the analysis of the research that a majority of the community favors euthanasia in India. To actually authenticate the perception of the populace towards the subject analysis is required. Once this is evaluated, to identify whether it is in the interest of the public to have a law on the issue also needs to be verified.

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