



LEGAL STATUS OF EUTHANASIA IN INDIA: A CRITIQUE

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"Making someone die in a way that others approve, but he believes a horrifying contradiction of his life, is a devastating, odious form of tyranny". Dworkin

Abstract:

The word Euthanasia is used in a more particular sense to mean 'mercy killing' for the purpose of putting an end to extreme suffering of the mentally ill or the incurably sick from the prolongation, perhaps for many years of a miserable life.

Euthanasia is one of those subjects of human concern which inspire of an endless debate, has not and probably cannot yield a unanimous decision. To permit or not to permit has remained an enigma the world over. Euthanasia literally means an easy and painless death- the hope and earnest desire of every human being. In an expanded interpretation it incorporates mercy killing- the deliberate ending of life of someone suffering from an incurable disease mental or physical.

Several questions arise in this grey area of law. Whether the basic right to life includes in itself right to a peaceful and willing death or more specific right to mercy killing or Euthanasia? To answer these endless questions an attempt has been made in this article to simplify the legal and moral complexities prevalent in the world regarding Euthanasia with special reference to Indian socio –legal status.

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Introduction:

Euthanasia, whether in a medical setting (hospital, clinic, hospice) or not (at home) is often erroneously described as "mercy killing". Most forms of euthanasia are, indeed, motivated by (some say: misplaced) mercy. Not so others. In Greek, "eu" means both "well" and "easy" and "Thanatos" is death. Oxford Dictionary defines it as 'bringing about of a gentle death in the case of incurable and painful disease' Ultimately, the word Euthanasia is used in a more particular sense to mean 'mercy killing' for the purpose of putting an end to extreme suffering of the mentally ill or the incurably sick from the prolongation, perhaps for many years of a miserable life.

Euthanasia is one of those subjects of human concern which inspire of an endless debate, has not and probably cannot yield a unanimous decision. To permit or not to permit has remained an enigma the world over. Euthanasia literally means an easy and painless death- the hope and earnest desire of every human being. In an expanded interpretation it incorporates mercy billing- the deliberate ending of life of someone suffering from an incurable disease mental or physical. The increasing incidents of cancer, AIDS and other dreadful diseases have sparked a world-wide controversy on the question of legalization of euthanasia or mercy killing practiced by physicians for terminally ill persons who are desperate to die.

TYPES OF EUTHANASIA

Euthanasia may be classified into various categories as under:

Active Euthanasia: A deliberate life shortening act is called 'active' Euthanasia. Active Euthanasia involves painlessly putting individuals to death or merciful reasons, as when a doctor administers a lethal dose of medication to a patient. This involves causing the death of a person through the response to a request from that person¹

Passive Euthanasia -The deliberate omission of life lengthening act is called 'Passive' Euthanasia. Passive Euthanasia involves not doing something to prevent death as when doctor refrain from using device necessary to keep alive a terminally ill patient or a patient in a persistent vegetative state². It means allowing patients suffering from terminal illness to call upon their physicians-to withdraw their life sustaining treatment.

Voluntary Euthanasia: In voluntary Euthanasia, a person asks to die (by either active or passive Euthanasia). It involves a request by the dying patient or that person's legal representative³. Thus, Euthanasia is voluntary, if the act or request proceeds from the will of act's subject or at least with his consent. The question here is to be asked is: Whether the consent was given under conditions free from all sense of coercion by the circumstances

¹ <http://www.religoustolerance.org/euth1.htm> visited on 8.10.2017

² Shreyans Kasliwal, "Should Euthanasia be legalized in India?" Criminal Law Journal, 2004 p.209.

³ M.D. Singh "Euthanasia: How Merciful is the Killing", Amritsar Law Journal, Vol. X, 2001, p.53.

or the wishes of others. In other words, it is to determine that the choice of Euthanasia was an instance of unconstrained self-determination⁴. This is the most acceptable form of Euthanasia at international level.

Non-Voluntary Euthanasia: Non-Voluntary Euthanasia refers to ending the life of a person who is not mentally competent to make an informed request to die, such as a comatose patient⁵. It involves issues like lack of consent on behalf of patient because he is unable to give or express his consent.

Involuntary Euthanasia: In addition there is another category i.e. involuntary Euthanasia. This is said to occur when a patient is killed against his express will. This is out- rightly a criminal act of murder. This is most often done to patients who are in persistent vegetative state and will probably never recover consciousness⁶.

EUTHANASIA AND SUICIDE

Self-sacrifice, avoidable martyrdom, engaging in life risking activities, refusal to prolong one's life through medical treatment, euthanasia, overdosing, and self-destruction that is the result of coercion - are all closely related to suicide. They all involve a deliberately self-inflicted death.

But while suicide is chiefly intended to terminate a life the other acts are aimed at perpetuating, strengthening, and defending values or other people. Many - not only religious people are appalled by the choice implied in suicide of death over life. They feel that it demeans life and abnegates its meaning.

Life's meaning - the outcome of active selection by the individual - is either external or internal, the outcome of an arbitrary frame of reference, such as having a career goal. Our life is rendered meaningful only by integrating into an eternal thing, process, design, or being. Suicide makes life trivial because the act is not natural - not part of the eternal framework, the undying process, the timeless cycle of birth and death. Suicide is a break with eternity.

EUTHANASIA AND MURDER

Imagine killing someone before we have ascertained her preferences as to the manner of her death and whether she wants to die at all. This constitutes murder even if, after the fact, we can prove conclusively that the victim wanted to die.

Is murder, therefore, merely the act of taking life, regardless of circumstances - or is it the nature of the interpersonal interaction that counts? If the latter, the victim's will counts - if the former, it is irrelevant.

INTERNATIONAL LEGAL REGIME OF EUTHANASIA

Associations promoting legal Euthanasia exist in many countries now-a-days. But it is worthwhile to note that first in vain attempt to legalize mercy killing was made in the years 1936 in England.⁷ Organizations supporting the legalization of voluntary Euthanasia were established in Britain in 1935 and in the United States in 1938. They had gained some public support, but have so far been unable to achieve their goal in either nation. In the past few decades western laws against passive and voluntary Euthanasia have slowly been eased

⁴ Rajni Verma, "Termination of life on Request : An Analysis", Amritsar Law Journal, Vol. XIII, 2003, p.144.

⁵ Shreyans Kasliwal, "Should Euthanasia be legalized in India ?", Criminal Law Journal, 2004 p.209.

⁶ <http://www.religoustolerance.org/euth1.htm> visited on 8.11.2017.

⁷ Satpal Singh Makkar, "Euthanasia: A Betrayal of Justice," Amritsar Law Journal, Vol. 12, 1985, p.65

Although serious moral and legal questions still exist⁸. The Netherlands charted out a new chapter in the history of legalizing euthanasia and has become the first country which allows the physicians to end the lives of the patients suffering unbearably and without hope. In April, 2001 Netherlands parliament passed the bill on same. The new law sets forth rules that will make a long-tolerated Dutch practice legal. The law requests a long standing doctor-patient's relationship, patient's awareness of other available medical options and

LEGAL STATUS OF EUTHANASIA IN INDIA

In India the contention whether the 'right to live' includes within its ambit the 'right to die' came for consideration for the first time in the year 1987. It was in the case of State of Maharashtra v. Maruti Shripati Dubal, wherein the Bombay High Court held that, "Everyone should have the freedom to dispose of his life as and when he desires." The said decision of the Bombay High Court was upheld by the Supreme Court of India in the Case of P. Rathinam v. Union of India, where the supreme Court held, "A person cannot be forced to enjoy life to his detriment, disadvantage or disliking."

However, the Supreme Court rejected the plea that euthanasia (mercy killing) should be permitted by law, because in euthanasia, a third person is either actively or passively involved; about whom it may be said that he aids or abets the killing of another person.

It was in Gian Kaur's case, that a five Judge Bench of the Supreme Court overruled P. Rathinam's case, and held, "The 'right to life' under Article 21 of the Constitution of India does not include the 'right to die' or 'right to be killed'... the right to life would mean the existence of such a right upto the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death." The Supreme Court also held that Article 21 of the Constitution of India does not include therein, the right to curtail the natural span of life.

CONCLUSION

Euthanasia and physician assisted suicide are not simply legal issues alone; and by terming them as legal questions, we may be missing the crux of the matter. With everyday discoveries being made in modern science and medicine, new ways to sustain and prolong life are brought about, keeping us alive no matter what. But unless modern science and medicine come up with a miracle cure for age, that would keep us alive and active, more and more people such as those suffering from Aids, Cancer, or patients in Persistent Vegetative State, or patients suffering from motor neurone disease, would rather prefer to exercise the option of euthanasia and physician assisted suicide.

Proponents of Euthanasia argues unbearable pain, right to commit suicide- a private affair and people should not be forced to stay alive and above all proper legal safeguards can minimize misuse of the Right are sufficient reasons for permitting Euthanasia. On the other hand opponents of Euthanasia treat it as a euphemism for murder and maintain that Euthanasia is not about the right to die but about the right to kill. While in India, the case for Euthanasia is complicated by societal realities which could leave it open to gross abuse. The judiciary

⁸ M.D. Singh "Euthanasia: How Merciful is the Killing", Amritsar Law journal, Vol. X,2001,p-54

is justified in its lack of confidence in cherished Indian institutions like the family. There is always the fear that greedy relatives might mislead a widow in order to grab her property. There is a fear from nature of medical facilities available in India, that the team ‘terminally ill’ may not be properly valued. The levels of education and enlightenment in India do not suggest that the arguments for and implications of Euthanasia will be properly understood and appreciated. There will always be the danger that Euthanasia will not be the affirmation of individual choice that it is supposed to represent.

