



EUTHANASIA AND HUMAN RIGHTS IN VARIOUS PERSPECTIVES AND DIMENSIONS

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Abstract:

This article deals with one of the most debated topics in the world and that is Euthanasia. Euthanasia literally means good death but in this context it means mercy killing. The debate is regarding the legalization of Euthanasia. This debate is a continuing one as some people are of the view that life is sacred and no one has got the right to end it whereas on the other hand some say that life belongs to oneself and so each person has got the right to decide what he wants to do with it even if it amounts to dyeing.

In our day to day life we often come across terminally ill patients that are bedridden and are totally dependent on others. It actually hurts their sentiments. Looking at them we would say that death will be a better option for them rather than living such a painful life; which is painful physically as well as psychologically. But if on the other hand we look at the Netherlands where euthanasia is made legal, we will see that how it is abused there. So following its example no one wants euthanasia to be legalized in India. But the question that lies before us is which will be a better option. In this Article, some basic points regarding euthanasia are discussed and then it is totally on the reader to decide which will be better; legalizing or not legalizing euthanasia. Although the Supreme Court has already given its decision on this point but still some doubts arise in our point which we need to analyze carefully and reach at a conclusion.

Euthanasia and Human Rights:

Euthanasia literally means good death. It is basically to bring about the death of a terminally ill patient or a disabled. It is resorted to so that the last days of a patient who has been suffering from such an illness which is terminal in nature or which has disabled him can peacefully end up his life and which can also prove to be less painful for him. Thus the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering. Euthanasia is also popularly known as

'mercy death' as it is given to lessen the pain of the patient. Euthanasia is practiced so that a person can live as well as die with dignity. Euthanasia ("good death") is the practice of terminating the life of terminally ill person or animal in a painless or minimally painful way, for the purpose of limiting suffering.

Euthanasia can be classified into active and passive or alternatively into voluntary, involuntary and non-voluntary. Active euthanasia means putting an end to the life of an individual for merciful reason by a medical practitioner by giving a lethal dose of medication to the patient. Passive euthanasia takes place where methods such as removing artificial life support systems such as ventilators, hydration, etc are resorted to.

On the other hand voluntary euthanasia means where a patient who is suffering a lot asks a medical practitioner to end his life whereas involuntary euthanasia is just the opposite of voluntary euthanasia that is where there is no consent of the patient but for it there can be many reasons such as if he is not mentally competent to give his consent and other such reasons.

There are various ways for euthanasia. The most popular methods include -

1. Lethal injection – Injection of a lethal dose of a drug, such as a known poison,
2. Asphyxiation – The most popular gas used is Carbon monoxide (CO). Nerve gases like sarin & tabun etc., are also added in small amounts to fully ensure death.
3. One of the methods is also Dr. Jack Kevorkian's death machine (mercitron, thanatron). He is also known as Dr. Death. It's a unique method in which a person can end his life himself. With the use of this machine a person can end his life himself painlessly at the time chosen by the patient.

Court held in the case of **Gian Kaur** that Article 21 speak of right to life. However the supporters of euthanasia emphasize that when a person suffering with a terminal disease can't even take care of himself, then how can we think for him a dignified life. In that case it will be better if he is allowed to end his life as Article 21 speaks for a dignified life. But the court made it clear that according to Article 21, a person has a right to live a dignified life which also includes right to die with dignity. But here right to die means dying a natural death. Therefore, Article 21 nowhere mentions about right to die an unnatural death. Curtailing the natural span of life of a person who has a certain end to life cannot in any case be read into Article 21. If a person is terminally ill, it doesn't mean he himself or anyone else can end his life. It will surely be a violation of the 'sanctity of life'. Living a dignified life doesn't at all means that a person can end his life unnaturally. Our constitution nowhere provides for it. Thus, right to life does not include right to die. If a person's life is being ended unnaturally it will surely be a violation of human right. By virtue of being a human being a person has right to live a life as he wishes to. But that doesn't allow him to end his life as and when he wants. This life is given to him by God and thus, it should be ended at its natural span.

Euthanasia and Law:

In India, euthanasia is absolutely illegal. If a doctor tries to kill a patient, the case will surely fall under Section 300 of Indian Penal Code, 1860, but this is only so in the case of voluntary euthanasia in which such cases will fall under the exception 5 to section 300 of Indian Penal code, 1860 and thus the doctor will be held liable under Section 304 of Indian Penal Code, 1860 for culpable homicide not amounting to murder. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to Section 92 of the IPC and thus be rendered illegal. There has also been a confusion regarding the difference between suicide and euthanasia. It has been clearly differentiated in the case *Naresh Marotrao Sakhre v. Union of India*. J. Lodha clearly said in this case. Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or mercy killing on the other hand means and implies the intervention of other human agency to end the life. Mercy killing thus is not suicide and an attempt at mercy killing is not covered by the provisions of Section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.

The question whether Article 21 includes right to die or not first came into consideration in the case *State of Maharashtra v. Maruti Shripathi Dubal*. It was held in this case by the Bombay High Court that 'right to life' also includes 'right to die' and Section 309 was struck down. The court clearly said in this case that right to die is not unnatural; it is just uncommon and abnormal. Also the court mentioned about many instances in which a person may want to end his life. This was upheld by the Supreme Court in the case **P. Rathinam v. Union of India**. However in the case *Gian Kaur v. State of Punjab* it was held by the five judges bench of the Supreme Court that the right to life guaranteed by Article 21 of the Constitution does not include the right to die. The court clearly mentioned in this case that Article 21 only guarantees right to life and personal liberty and in no case can the right to die be included in it.

The Position In Other Countries:

Netherlands

The Supreme Court of Netherlands allows euthanasia. According to the penal code of the Netherlands killing a person on his request is punishable with twelve years of imprisonment or fine and also assisting a person in committing suicide is punishable with three years of imprisonment or fine. But the law of Netherlands provides a defense of 'necessity' to the offence of voluntary euthanasia and assisted suicide. This defense of necessity is twofold; one is that of 'psychological compulsion' and the other is 'emergency'. The criteria laid down by the Courts to determine whether the defense of necessity applies in a given case of euthanasia, have been summarized by Mrs. Borst-Eilers as follows;

1. The request for euthanasia must come only from the patient and must be entirely free and voluntary.
2. The patient's request must be well considered, durable and persistent.
3. The patient must be experiencing intolerable (not necessarily physical) suffering, with no prospect of improvement.

4. Euthanasia must be the last resort. Other alternatives to alleviate the patient's situation must be considered and found wanting.
5. Euthanasia must be performed by a physician.
6. The physician must consult with an independent physician colleague who has experience in this field.

Thus, following these judicial guidelines a Bill has been passed in Netherlands in 2001 legalizing this practice. It allows a doctor to end the life a patient which is 'unbearable'.

Australia

The Northern Territory of Australia became the first country to legalize euthanasia by passing the Rights of the Terminally Ill Act, 1996. It was held to be legal in the case *Wake v. Northern Territory of Australia* by the Supreme court of Northern Territory of Australia. But later a subsequent legislation that was the Euthanasia Laws Act, 1997 made it again illegal.

United States

Here, active euthanasia is prohibited but physicians are not held liable if they withhold or withdraw the life sustaining treatment of the patient either on his request or at the request of patient's authorized representative. Euthanasia has been made totally illegal by the United States Supreme Court in the cases *Washington v. Glucksberg* and *Vacco v. Quill*. In these cases, the ban on assisted suicide by the physicians has been held to be in consonance with the provisions of the constitution. In Oregon, a state in America, assisted suicide has been legalized in 1994. Twenty seven lives were ended in 1999 and that number is still expected to increase.

Canada

Patients in Canada have right to refuse life sustaining treatments but they can't ask for assisted suicide or active euthanasia. Supreme Court in various cases has held that in the case of assisted suicide the interest of the state will prevail over individual's interest.

Belgium

Here, euthanasia was made legal in the year 2002.

Switzerland

In Switzerland, euthanasia is illegal but physician assisted suicide has been made legal since 1918, A table representing the position is as follows;

Euthanasia and Physician – Assisted Suicide Status in other countries

Australia : Euthanasia

Illegal (legalized in the Northern Territory in 1995 and overturned in 1997) Physician – Assisted Suicide: Illegal

Belgium

Euthanasia : Legal since 2002 Physician – Assisted Suicide : Legal since 2002

Canada

Euthanasia : Unclear (approved by the constitutional court in 1997 but never ratified by Congress) Physician
– Assisted Suicide : Illegal

Germany

Euthanasia: Illegal Physician – Assisted Suicide: Legal since 1751

India

Euthanasia: Illegal Physician – Assisted Suicide: Illegal

Israel

Euthanasia: Illegal Physician – Assisted Suicide: Illegal

Italy

Euthanasia: Illegal Physician – Assisted Suicide: Illegal

Japan

Euthanasia: Unclear (Illegal in the Japanese criminal code, but a 1962 court case, the “Nagoya High Court Decision of 1962,” ruled that one can legally end a patient’s life if 6 specific conditions are fulfilled)
Physician – Assisted Suicide: Illegal

Netherlands

Euthanasia: Legal since 2001 Physician – Assisted Suicide: Legal since 2001

Russia

Euthanasia: Illegal Physician – Assisted Suicide: Illegal

Spain

Euthanasia: Illegal Physician – Assisted Suicide: Illegal

In Switzerland, there is an unusual position regarding assisted suicide. Even non-physicians can perform it. It is legally condoned although euthanasia is illegal. There was much discussion regarding assisted suicide in United Kingdom and United States of America but it was not so in Switzerland in the 1900s. There motive is most important while considering the cases of assisted suicide. It is punishable only if the motive is bad otherwise it is condoned. ‘Article 115 does not require the involvement of a physician nor that the patient is terminally ill. It only requires that the motive be unselfish. Swiss law does not recognize the concept of euthanasia. Murder upon request by the victim (article 114 of the Swiss penal code) is considered less severely than murder without the victim’s request, but it remains illegal. Following a proposal to the Swiss parliament to decriminalize euthanasia, in 1997 the federal government commissioned a working group which included specialists in law, medicine, and ethics to examine the issue. This group recommended that euthanasia remain illegal. Most of the group, however, proposed decriminalizing cases in which a judge was satisfied that euthanasia followed the insistent request of a competent, incurable, and terminally ill patient in unbearable and intractable suffering.

The Debate Regarding Euthanasia

'In Favor' Euthanasia means killing a person rather ending the life a person who is suffering from some terminal illness which is making his life painful as well as miserable or in other words ending a life which is not worth living. But the problem lies that how should one decide whether the life is anymore worth living or not. Thus, the term euthanasia is rather too ambiguous. This has been a topic for debate since a long time i.e., whether euthanasia should be allowed or not. In the present time, the debate is mainly regarding active euthanasia rather than passive euthanasia.

The dispute is regarding the conflicts of interests: the interest of the society and that of the individual. Which out of these should prevail over the other? According to the supporters of euthanasia the decision of the patients should be accepted. If on the other hand we weight the social values with the individual interest then we will clearly see that here the interest of the individual will outweigh the interest of the society.

The society aims at interest of the individuals rather it is made with the purpose of assuring a dignified and a peaceful life to all. Now if the individual who is under unbearable pain is not able to decide for himself then it surely will hamper his interest. In that case it will surely be a negation of his dignity and human rights. Regarding this debate from legal point of view, Article 21 clearly provides for living with dignity. A person has a right to live a life with at least minimum dignity and if that standard is falling below that minimum level then a person should be given a right to end his life. Supporters of euthanasia also point out to the fact that as passive euthanasia has been allowed, similarly active euthanasia must also be allowed.

A patient will wish to end his life only in cases of excessive agony and would prefer to die a painless death rather than living a miserable life with that agony and suffering. Thus, from a moral point of view it will be better to allow the patient die painlessly when in any case he knows that he is going to die because of that terminal illness. So the question arises why to let increase that period of pain for him when in any case he is going to die.

Another important point on which the supporters of euthanasia emphasize is that a lot of medical facilities which amount a lot are being spent on these patients which are in any case going to die. Thus, they argue that rather than spending those on such patients, it will be much better to use such facilities for those who have even fair chances of recovery. Thus, again the question lies that whom do we want to save using these medical facilities; those who are in any case going to die today or tomorrow or those who have fair chances of recovery. A point which is often raised against the supporters of euthanasia is that if such right will be granted to the terminally patients then there will be chances of abuse of it. But the supporters argue that every right involves a risk of being abused but that doesn't mean that the right itself should be denied to the people. We should rather look at the brighter side of it than thinking of it being abused. 'Against'

There is an intense opposition from the religious groups and people from the legal and medical profession. According to them its not granting 'right to die' rather it should be called 'right to kill'. According to them it is totally against the medical ethics. Medical ethics call for nursing, care giving and healing and not ending the life of the patient. In the present time, medical science is advancing at a great pace. Thus even the most incurable diseases are becoming curable today. Thus instead of encouraging a patient to end his life, the medical practitioners should encourage the patients to lead their painful life with strength which should be moral as well as physical.

The decision to ask for euthanasia is not made solely by the patient. Even the relatives of the patient pay an important role in doing that. Thus, it is probable that the patient comes under pressure and takes such a drastic step of ending his life. Of course in such cases the pressure is not physical, it is rather moral and psychological which proves to be much stronger. Also added to that is the economical pressure. The patient starts feeling him to be a burden on the relatives when they take such a decision for him and finally he also succumbs to it.

Opponents also point out that when suicide is not allowed then euthanasia should also not be allowed. A person commits suicide when he goes into a state of depression and has no hope from the life. Similar is the situation when a person asks for euthanasia. But according to the opponents, such tendency can be lessened by proper care of such patients and showing hope in them. Another argument of the opponents is regarding the slippery slope. According to this argument, if voluntary euthanasia will be allowed, then surely it will lead to consequently allowing involuntary and non voluntary euthanasia also. Also, as has been pointed out earlier, euthanasia in itself is an ambiguous term. The term 'terminally ill' has nowhere been properly defined. Thus even the medical fraternity is not clear as to who are the terminally ill patients, leave aside the legal practitioners. Thus, opponents strongly argue that euthanasia should be allowed only in rarest of the rare cases. If this is not done then surely it will lead to its abuse.

Conclusion:

If we carefully examine the opposition to the legalization of euthanasia, we can conclude that the most important point that the opponents raise is that it will lead to its misuse by the doctors. Thus, it is humbly submitted that when a patient or his relatives can willingly put his life in the hands of the doctor trusting him, then why can't a doctor be given such discretion to decide what will be in favor of his patient. Another doubt that is often raised is that if the doctors will be given discretion to practice voluntary euthanasia then surely it will gradually lead to asking for involuntary or non-voluntary euthanasia. But it is humbly submitted that a separate legislation should be made allowing only voluntary euthanasia and not involuntary or non-voluntary euthanasia. As has already been pointed out earlier, we also have to keep in mind the limited medical facilities available in India and number of patients.

This question still lies open that who should be provided with those facilities; a terminally ill patient or to the patient who has fair chances of recovery. As the patient himself out of his pain and agony is asking for death, doctor should not increasing that pain of his should allow euthanasia. It has been ruled in the Gian Kaur case that Article 21 does not include right to die by the Supreme Court.

But one may try to read it as is evident in the rights of privacy, autonomy and self-determination, which is what has been done by the Court of United State and England. Thus, we can see that as the said right has been included in the ambit of Article 21, so this can also be included in Article 21. This question was not raised in the case earlier. Again the point that remains unanswered is regarding the abuse of this right by the doctors. But relevant safeguards can be put on this right and thus its abuse can be avoided.

One of the safeguards can be that a proper quasi-judicial authority having a proper knowledge in the medical field can be appointed to look into the request of the patient and the steps taken by the doctor. To make it more foolproof some two or three assistant officials including one from the legal field can also be appointed. This will avoid any abuse of this right granted to the terminally ill patients. Here, we have to regard the painful situation in which the patient is and top priority should be lessening his pain. Now when we already know that he is anyways going to die today or tomorrow and he himself is asking for death, there is no point that he should be denied with this right of at least leading a life with minimum dignity and willingly. Otherwise his life will be no better in that situation. Thus, considering the financial and medical facilities also, the question still lies open that what will be better – allowing euthanasia or not allowing euthanasia.

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