

Euthanasia, a new phase to Indian society

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ABSTRACT

Euthanasia is the word which literally means mercy killing. When person has no hope to live and is nothing but a burden to the family and the society, he tries to end his life in the supervision of the medical expert is known as euthanasia. In India, the concept of euthanasia is not applicable as article 21 of the constitution governs and protects the right of the citizens. Such right also includes right to live. It will be a new era to the Indian society as euthanasia is being legalised in the modern India but there are no legal provision to this effect but the case of Aruna Shambhog where the Supreme Court legalised the concept of passive euthanasia. And made active euthanasia inapplicable in India. Euthanasia is different from the assisted suicide. In this article we will deal with the circumstances and changes comes in the Indian society after the legalising the passive euthanasia and also the classification of euthanasia as well as merits and demerits of euthanasia.

1. Introduction

Euthanasia still a new term to India. Majority of the people are not aware about the euthanasia as there is no legal provision for the euthanasia. However, euthanasia shall be a great step towards one's life and dignity to the person suffering from the incurable disease. It is a controversial issue in the Indian society as it termed into murder or a culpable homicide and it difficult to prove murder and culpable homicide. As euthanasia is also against the doctors hipocratic oath so it is difficult to interpret in the Indian context. But in 2006 the 196th report of law commission of India brought out the medical treatment of ill patient (protection of patient and medical practitioner) bill 2006, the health ministry refuse to make any law on euthanasia. However on march 7, 2011 while hearing the Aruna Ramchandra Shanbaug Vs. Union of India¹ case, the SC gave the guidelines for passive euthanasia. It was said that until the parliament makes legislation on euthanasia the respective case guidelines shall be followed. The commission prepared a draft for making legislation on passive euthanasia and the bill called medical treatment of terminally ill patient bill it does not recommend active euthanasia. After the Aruna Shambhog case a new changes comes to the Indian society.

2. Meaning Of Euthanasia

In the world where everyone is running for money and good life on the other hand some of them are trying to get rid off the life they are suffering or to end of his life due to the personal problem or disease. Sometime person finds suitable to end up his life by unnatural means instead of spending his/her life painful. When somebody ends up his life we call it abnormality or may be he/she has a relationship or other problem. When person endorphins life through the act of other is called euthanasia or mercy killing. The right to die shall not be specific right to the individual but as we always says there are exception so they must be granted but on the advice of

¹AIR2011SC1290

doctor and their guardian as they are the caretaker of that person.

Euthanasia is a very controversial topic and matter of debate it may come out to be the great step to the society but as we say everything carries advantages and disadvantages.

The term EUTHANASIA was derived from the Greek word "eu" and "thanatos" which means good death or easy death. It is also called as mercy killing.

According to Black's law dictionary euthanasia means the act or practice of killing or bringing

About the death of a person who suffers from an incurable disease or condition. ex a painful one.

Euthanasia has been defined as the administration of drugs with explicit intention of ending the patient life at the patient request

Euthanasia literally means putting a person to painless death especially in case of incurable suffering or when life becomes purposeful as a result of mental or physical handicap.

In general sense if we want to understand the meaning of euthanasia i.e. "To end up one's life by the act of other".

3. Classification Of Euthanasia

Euthanasia can be classified into 4 categories' which are as follows

1. Active euthanasia
2. Passive euthanasia
3. Voluntary euthanasia
4. Non voluntary euthanasia

1. **Active euthanasia:** active euthanasia is defined as any treatment initiated by physician with the intent of hastening the death of another human being who is terminally ill, with the

motive of relating that person from great suffering .for ex intentionally giving a person a lethal dose of a drug to end a painful and prolonged period of dying.

2. Passive euthanasia: we can call euthanasia is passive when the death is caused due to not giving treatment to the person so as to cause death.

In passive euthanasia doctor are not killing the patient they are not just giving the treatment or not saving them.¹

3. Voluntary euthanasia: when the euthanasia is caused by the consent and expressed desire of the terminally ill person is called voluntary euthanasia .it usually prefer right to choice of the terminally ill patient who decides to end up his or her life and also his or her interest is also kept in mind before giving the euthanasia.

4. Involuntary euthanasia: Involuntary euthanasia is caused when the person is not giving consent but by his act or circumstances shows his will to end up his or her life is called involuntary euthanasia.

4. Merits And Demerits Of Euthanasia

Merits

- **It gives rights to the sufferer to end his life.**

Before euthanasia there was only right to life but after euthanasia in many of the country people got the right i.e. right to die .it comes with more critics but at last it comes in favour of the sufferer who suffer a lot of pain.²

- **Its release the economic and psychological pressure from the family member.**

When person suffer any disease the family has the mental and psychological And sometimes economical pressure as well. As we know for the proper treatment they need to spend lot money for getting the person cured. Which inflict economic pressure to the family in case where the person belongs to the middle class or below average class family? If a person suffer with the incurable disease with lots of paid and his family pays lots of money to cure that disease but unfortunately which is incurable so in that case if laws permitted the passive euthanasia it would relief not only that person from pain but also the economic pressure from the family somehow it's emotional but finally it's comes to good step as well.

Demerits

- **It is contradictory to doctor's oath.**

As Doctor is considered as the next god after god and they take oath's i.e. "I will use treatment to help the sick according to try ability and judgement but never with a view to injury and wrong. Neither will I administer a poison to anybody when ask to do so, nor will I suggest such course. Euthanasia is contradictory to the oath of the doctors as in euthanasia doctors didn't try to save the patient they remove the life supporting instrument or give injection to the patient for giving peaceful death or mercy killing which is against the doctors oath.

- **It is against the human ethics.**

It is totally against the ethics as various religious belief says that causing harm or wrong to other is biggest sin.

5. Judicial observation on the case

MarkandeyKatju, J. Observed the following in the instant case, "As already stated above active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under Section 302 or at least Section 304 IPC. Physician assisted suicide is a crime under Section 306 IPC (abetment to suicide).

Active euthanasia is taking specific steps to cause the patient's death, such as injecting the patient with some lethal substance, e.g. sodium pentothal which causes a person deep sleep in a few seconds, and the person instantaneously and painlessly dies in this deep sleep.

A distinction is sometimes drawn between euthanasia and physician assisted dying, the difference being in who administers the lethal medication. In euthanasia, a physician or third party administers it, while in physician assisted suicide it is the patient himself who does it, though on the advice of the doctor. In many countries/States the latter is legal while the former is not.

The difference between "active" and "passive" euthanasia is that in active euthanasia, something is done to end the patient's life' while in passive euthanasia, something is not done that would have preserved the patient's life.

An important idea behind this distinction is that in "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him. While we usually applaud someone who saves another person's life, we do not normally condemn someone for failing to do so. If one rushes into a burning building and carries someone out to safety, he will probably be called a hero. But if one sees a burning building and people screaming for help, and he stands on the sidelines -- whether out of fear for his own safety, or the belief that an inexperienced and ill-equipped person like himself would only get in the way of the professional firefighters, or whatever -- if one does nothing, few would judge him for his inaction. One would surely not be prosecuted for homicide. (At least, not unless one started the fire in the first place.)³

Further, the following guidelines were laid down by the court:

- A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

- Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires presence of two witness and countersigned by first

²ArunaRamchandraShanbaug Vs. union of India ,2011(3),scale 298;MANU /SC/0176/2011.

³³ArunaRamchandraShanbaug Vs. union of India ,AIR2011SC1290

class judicial magistrate, and should also be approved by a medical board set up by the hospital.

6. Can euthanasia be legalised in India?

Euthanasia or physician assisted suicide or Mercy killing is the journey or process to end up ones life in peaceful manner in a case where person is suffering from huge pain, chronic and incurable disease.

Netherlands was one of the first countries to legalise euthanasia. Followed by Canada and soon after state of Oregon in USA and Columbia The state of Oregon has the law to die with dignity which was came into enforcement for almost 17 years from now. It allowed the terminally ill patient to take legal and prescribed medication to end his life. The legalizing of euthanasia has contention throughout the world and it will take many more years to reduce such contention as it completely accepted by all of the person in the world.

Every person says his/her views but what about the person who is suffering that pain what about his condition and his disease nobody thinks for others what all they have to do is to criticise or to say their views. The individual shall have the right to choose the peaceful death. Why we should left them to suffer the pain day and night.

The main essence of human life is that to live peaceful and dignified life as law provides the same but what to say when law itself says you to live a life with a pain and chronic and incurable disease we can't say anything as law is the command of sovereign which means nobody is above the law. The legalization of euthanasia should not include to end up the life in the small excuses it shall have some strong reason behind it but the patient shall be allowed to decide when he had suffered a lot.

Apart from thinking about the patient their family member suffers lot of pain and emotional and psychological tension. The close ones who takes care of the patient in his / her suffering and seeing that person suffering such pain is one of the most difficult time for that relative or family member. But

this question cannot be easily solved that whether euthanasia will be legalized or not .As there are many other circumstances which comes as barrier to legalize euthanasia that is 1 Medical science has over the years seen various miracle taking place day by day so as to patient live long. As the word "hope" which put the patient to live long? As with the new technique and advancements take place globally we have many cases where people were saved in the case of cancer and aids.

Chances of misuse of euthanasia are also very high but what if case where person is in coma and he is unable to make the decision should the relative allowed to make the voluntary euthanasia can be termed into the involuntary in the society. As the society is full of greed and corruption people kills their family member just for property and money. so it is one of the foremost barrier for legalizing euthanasia in India.

In country like India where religious aspects shall be considered before taking such contention able decision as the Bible says "thou shall not kill" Buddhism says killing or causing harm to other is a sin and even Islam does not allow anyone to take away anyone's life.

Article 21 also comes as barrier same how which state "No person shall be deprived of his life and personal liberty except procedure established by law and as far concern there is no law which allow euthanasia .But there is judicial precedent which was laid down after ArunaShambhogcase where supreme court legalized passive euthanasia on 9 March 2018, with strict guidelines. Patient must give their consent through a living will and must be terminally ill or in a vegetative state. After this case supreme court allowed passive euthanasia which means the doctors shall remove the life supporting tools or shall not treat such person and left them to die with dignity by the consent of such persons But here is no law as supreme court said that the verdict will be followed in upcoming cases until the law made by legislation This step of the supreme court shall be termed as Greta step for the legalization and law making for euthanasia. Still it can few more years for such law to be made but the soon day will come when law will be made for euthanasia and for its legalization.