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EUTHANASIA AND ITS VALIDITY: A CRITICAL STUDY

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ABSTRACT

Since the earliest times right to life has been codified for the protection of life of the human beings. There was an attempt for the codification of human rights for the first time which is said to be mentioned in the tablet of Hammurabi. It was started around 4000 years ago by Hammurabi who was a Sumerian king. It was a legally binding document, the aim of which was to protect the people from unjust and unethical punishment. In today's scenario the right to life is protected and guaranteed by Article 3 of International Convention Universal Declaration of Human Rights, 1948 as well as Article 21 of the Constitution of India. The right to life has always been a matter of aspects of the case as well as the situations advanced in the process of delivering justice for the Judiciary. The right to die has always been claimed under this head. The idea of euthanasia has been interpreted as "good death" as well as "mercy killing" in general parlance. The general norm is to let people live but in certain cases it becomes really frustrating and devastating for the patient who is suffering from prolonged illness to continue in the normal course of his/her life. In today's time there are some situations in which the person should get the right to choose death. Hence, it can be said that it is the duty of the parliament as well as the government to look before the proper use of the concept of passive euthanasia through proper laws as well as guidelines which would help in preventing the misuse of passive euthanasia. The concept of passive euthanasia as well as the various aspects and problems associated with the concept of euthanasia have been discussed in the Nikhil Soni "Snthara" case and Aruna Shanbaug's case which have mixed opinions about the right to health, medico legal challenges and other issues related to right to life.

KEYWORDS– euthanasia, right to life, human rights, patient, laws

INTRODUCTION

Passive Euthanasia may be defined as merciful death which is defined beyond the concept of natural death. The Greek word "euthantos" is the deriving word for euthanasia. The acceleration of the process of death in a terminally ill person has been defined since the ancient times. According to Plato, the doctors are liable to be punished by death if at the time of administering any kind of medical drug their act leads to the termination of the life of the patient. In the contrast of this Hippocrates defines it under the Hippocratic oath where he

defines that "I will not give poison to anyone though asked to do so nor I will suggest such a plan". The intentional premature ending of a person's natural life by interdiction life averting actions and resources (passive euthanasia) as well as direct interruption (active euthanasia) which is done at the implied or express voluntary request of the patient (which is known as voluntary euthanasia) and in case of the absence of such consent under (non – passive euthanasia). The distinction between the physician assisted dying and euthanasia has been drawn by the court in which the court

stated that the major distinction can be drawn by the fact that who administers the lethal medication. The court was of the view that in a suicide assisted by a physician it is done by the patient on the advice of the doctor, whereas in euthanasia the physician or the third party administers the lethal medicine.

The origin of the term “euthanasia” has been derived from the prescribed right i.e. Right to Live Life with Dignity that too in a dignified way. The validity of the term euthanasia and the argument of giving it a legal recognition has been a matter of debate all over the world. There has been a variance in the views regarding the matter over the countries around the world. It is therefore presumed that if such a situation comes before a person, then the family members as well as the medical science is forced to kneel upon their knees which will lead to them become helpless due to deplorable situations prevailing around them as well as the limitations of the medical science. In these situations where the patient is in such a situation where the patient is undergoing an immense amount of pain which is even painful than death, then in such cases for the interest of the patient as well as his family members, where a patient is in such a situation where he can give consent as he or she feels that death is less painful than the idea of leading a life further.

The Senate Selection of Bills Committee divided euthanasia into the following four categories:

- Active voluntary euthanasia: In this the patient by himself gives his voluntary consent to end his life by the way of medical intervention.
- Passive in/non voluntary euthanasia: In this the life support or medical treatment is withheld from a patient or withdrawn without the consent of the patient which is done to end the life of a patient.
- Passive voluntary euthanasia: In this the life support or the medical treatment is withdrawn from a patient, which is done

on the request of the patient to end the patient’s life.

- Non-voluntary/in voluntary euthanasia: The patient’s life is ended with the help of medical intervention without taking the consent of the patient.

The use of lethal substances or the use of forces used to kill a patient may be collectively called as active euthanasia whereas the process of withholding the required treatments which include the antibiotics which are required in order to save the life of the patient. In the case of Aruna Ramachandra the two issues namely the active and passive euthanasia have been discussed. The intentional death by active intervention is called as active euthanasia and when through indirect intervention the withdrawal of preventive measures is called as passive euthanasia. The concept of active euthanasia was considered to be as illegal by the court as is required formal legislation which was not available but in case of passive euthanasia the euthanasia could be granted without legislation. The classification of voluntary and non-voluntary euthanasia was done by the court by specifying the meaning. This can be defined as when consent is taken from the patient and when to take the consent of the patient is not possible.

THE VIEWS WHICH ARE CONTRARY TO EUTHANASIA

The legal position of euthanasia has been conflicting and a matter of debate among the critics. A deliberate discussion about the legality of euthanasia has been in picture as the critics demand for a uniform policy in the light of the issue. The notion generally says that any person doesn’t have any right to end his or her life nor someone else’s life. The unnatural ending and restriction to live by ending one’s life is considered as wrong and is condemned by all the religions around the world. The human beings are bound with the duty to respect one’s life and others lives also as it is the duty of any person to face all situations that come before

them during the natural course of life and reap the benefits of the gift of life which is bestowed by the almighty. The general perception is that no one should surrender or give up the gift of life from the fear of suffering from diseases or pain. The family also plays a vital role in maintaining the most important essence of family i.e., togetherness and helping each other in adverse situations. The Government is also dutybound to maintain the welfare of its citizens in the country. The law has never been of the view to grant the right to anyone to kill someone else or to take someone else's life. The legal, religious or humanitarian beliefs along with the religious beliefs don't allow a person the right to take the life of someone else or to deprive such person from the sanctity of his life. In a country like India the wishes of the relatives can't be entertained or sustained merely because the relatives have the vested rights and the right to inherit the property of the patient.

VIEWS IN SUPPORT OF EUTHANASIA

In Hindu religion since the earliest times the concept of renouncement of body i.e.(kaya) has been supported by the Indian sages and the monks. Therefore, the demand for death is made in such a situation where a person is facing intolerable pain and suffering from his normal life. The right to live life or end it solely depends on self-determination and free consent of the person. In the same manner the supporters of the idea of euthanasia advocate that a person must have the right to end one's own life if they are in such a deplorable and critical condition that death might be much less painful for them than to live a life full of pain and suffering. The way of death will provide them with relief from a lot of pain and suffering and would help them to be free from incurable diseases. The idea and concept of euthanasia has been practiced since ages as in the ancient Athens people by the official permission of the authorities may end their life with the help of poison when their life is much more painful than death. The views about euthanasia have

been differed from culture to culture and among countries to counties as this concept has been a serious matter of discussion and change.

EUTHANASIA IN INTERNATIONAL ASPECT

International Humanitarian Law suggests that there is nothing like "right to die" in its context. Ordinary meaning of any human rights document cannot be considered to be a valid concept for the term "right to good death". The United Nations consists of 193 member countries out of which only 4 have legalized euthanasia namely Netherlands, Canada, Luxembourg, and Belgium. It has been an issue for debate for all the countries all around the world and the legislatures as well as the jurisdictions all around the world have rejected the concept of euthanasia. The laws related to the UN International treaty states that "All necessary measures must be taken by the state parties to ensure that the persons having certain disabilities must enjoy the same rights which are enjoyed by the normal persons as they also have the right to the enjoyment of life". The international Covenant on Civil and Political Rights, 1966 (ICCPR) consists of various sections out of which section Article 6(1) states that the inherent right to life is provided to every human being and no one shall be arbitrarily shall be deprived from the right to life and enjoyment of life".

Euthanasia was decriminalized in March 2009 in Luxembourg by the passing of a law. A panel of specialists along with the approval of two doctors was required by the terminally ill people to be able to end their lives. In case of Canada people over the age of 18 can take part in voluntary active euthanasia which is also known as physician assisted dying for the people having terminal illness has reached to such a limit where the natural death of such a patient is reasonably foreseeable. China and Hong Kong consider euthanasia as illegal as it is against their concepts of morality. The Chinese people consider it as equivalent as to murder.

The United Kingdom also considers the practice of Euthanasia as illegal. The assisting of suicide is considered as illegal in United Kingdom and any person who is found assisting suicide is considered as a statutory offence and such a person can be punished for the offence of assisting for suicide for a term of fourteen years of imprisonment.

In the context of Germany Passive Euthanasia is considered as illegal whereas active euthanasia is considered to be legal. Even if the patient provides a written consent by his/ her free wish and if the doctor stops providing for the life preventing measures, then in such case it would come under the category of criminal offence. Active euthanasia is also considered to be illegal in the US. But in few states like Montana, Washington and Oregon the physician assisted suicide has been considered as legal in some or the other forms. There has been a distinction made out of physician assisted suicide and euthanasia. Out of the provisions of legislation any assistance provided to a person to commit suicide and dying is considered to be a criminal offence. The request of the patient is a must necessary obligation for the removal of life support by the doctors in the US for the ending of the life of a patient on his voluntary wish in places where it is legalized.

EUTHNASIA IN INDIA AND THE LEGISLATION RELATED ISSUES IN INDIA (THE LEGAL AND CONSTITUTIONAL ASPECTS)

1. Right to Life in India

The sanctity of life has been given the highest preference in India. The right to life is guaranteed by the constitution of India as well as proper guidelines have also been provided for the proper care and upliftment of the rights of every citizen of the country.

This can be observed under various articles of the constitution namely:

a. Article 21 – regarding the protection of life as well as personal liberty

b. Article 14 – equality towards law

c. Article 39 – of the DPSP (The Directive Principles of State Policy)

d. Article 47 – of the DPSP (The Directive Principles of State Policy)

in *Kharak Singh v. State of Uttar Pradesh*, the court held that life is considered to be much more than mere existence like an animal. Right to live is guaranteed to every person. The medical officers are enshrined with the responsibility of protection of the lives of all the citizens by their medical expertise. The idea that the doctor can administer lethal dose of such medicines to the patients by the patients wish is considered to be unconstitutional as well as illegal under Indian legal system.

2. Legal aspect related to Right to Die

The law is always enshrined with an idea that taking life of another person is considered as an offence which is punishable under the Indian Penal Code. Any kind of efforts or assistance in such regard is considered to be an offence. In the current scene the various legal provisions enshrined under Indian Penal Code is important some of which have been described as under:

a. The Section 299 of the IPC

This section defines the offence of culpable homicide as whoever causes death of another person by doing an act with the intention of causing such bodily injury or with the intention of causing death or actions which are likely to cause death of a person is said to commit culpable homicide.

By keeping in mind this provision, the concept of the doctor ending the life of the patient is considered to be in pursuance of the section 299 of IPC as the doctor is willingly on the

consent of the patient is ending the life of the patient and is considered as illegal.

b. The sections 107 and 202 of the Indian Penal Code

These sections of the IPC all the individuals which includes the relatives of the patient who can be charged under section 107 of the Indian Penal Code which provides the punishment for the abetment of a thing as well as the section 202 of the Indian Penal Code and the relatives can also be charged under section 304-A and 299 of the Indian Penal Code.

3. Suicide and Euthanasia

The terms euthanasia and suicide are mostly considered to be same in general parlance by the people. But it can be stated that these two terms are totally distinct in nature and have certain distinctions between each other they are as follows:

The voluntary ending of one's life with the help of some kind of harmful material such as poison, any kind of hazardous substance or any sharp object to end one's life as such a person has no hope left for their life and wants to end their life as they in their mind have the perception that they have no reasons left to live whereas euthanasia is considered to be an act which is done by some other person on the consent of some person in order to end his/her life as their life as death is much less painful than the idea of living a life full of pain and diseases. There has also been drawn a distinction between 'Euthanasia' and "Assisted Suicide" as they are totally different from each other. On one hand assisted suicide means that one person provides with help or apparatus which helps the patient to end their lives with help of such means whereas euthanasia means that the active or passive administration of any legal substance by the doctor to the patient for ending the life of a patient which is done by removing the life support system which helps to keep the patient alive. Suicide as well as the

attempt to commit suicide is considered as an illegal offence which is punishable under law for the protection of the lives of the individuals as well as for securing the upliftment of humanity. The critics were of the view that if committing suicide is considered to be an offence then in the similar way the idea or practice of euthanasia must also be considered as unconstitutional and must be considered as a punishable offence. The society is based on the idea of social well being and protection of the life as well as the rights of the individuals which prescribes that no person shall be given the right to end their lives as it is against the very concept of humanity and it hampers the social well being and the basic structure of the society and it also hampers the dignity of the lives of the sound minded people living in the society.

Euthanasia generally is considered similar and same as homicide and suicide but is totally different from them and has several differences. In the Indian Penal Code attempt to commit suicide as well as abetment to commit suicide is punishable under sections 309 and 306 respectively. Suicide is generally committed by a person who has lost all hopes in life as well as is sufferings from any kind of depression or mental condition in which such person finds no reason to continue his normal life due to which he commits suicide by the way of administering poison or hurting himself/ herself by any sharp object in order to cause death whereas Euthanasia may be considered as the assisted ending of life of a patient which can be active as well as passive and it is done by the removal of the life support system by the doctors in order to end the life of a patient to save the patient from a life full of suffering and pain. It is done in such situations where the choice of death is much less painful than the idea of continuing a miserable life which is full of pain and suffering. In the case of Chenna Jagadeeswar vs. State of AP the court held that the right to die cannot be considered as a fundamental right and it does not come under the purview of the Article 21 of the Constitution



of India whereas in the case of M.S. Dubal v. State of Maharashtra the court held that the Right to Die is included in Article 21 along with the Right to Life. This clearly states that there have been different views regarding the concept of euthanasia between the various bodies and the legal systems as well as the critics and supporters of the concept of euthanasia.

CONCLUSION

The occurrence of various types of crimes have led to the codification of rules for the maintenance of law and order in the society. As the new rights are emerging for the general people with the advancement of technology and society which has resulted in the emergence of new dimensions of law. In the earlier times most of the laws were based on the wisdom of the kings and queens or as per the customs prevailing in the society and were not codified. Due to the development in the new faculties of crime the new rights and claims for new rights have also emerged and have become a reason for the change in legislation and are recognized as a right through judicial decisions. The euthanasia which is to be conducted by the doctors and must be done by proper care and caution. Human beings are considered to be the most valuable and wise creation of God as the right to life is something which needs to be preserved. It is the duty of the state to provide a secure and healthy life for the individuals residing in the state. The life of the people has also become complicated due to the emergence of new diseases and the effects of such diseases on the lives of the people. The newly developed medical equipment's and the treatments administered by them have resulted in the curing of the diseases as well as reducing the effect of such diseases to a great extent. The presence of good health may be considered as the precious gift by the grace of God and helps the people to live a prolonged and healthy life.

There are certain circumstances in which the health of a patient is so bad that to sustain in his own wellbeing and normal course of life becomes so difficult and painful that the patient must be given a chance to express his wish for the stoppage of his treatment for the ending of his painful life. All these factors lead the patient to think about the idea of euthanasia keeping in mind the deplorable condition of his life. This advocates for the fact that if any person has the right to live with dignity, then he should also be allowed to die with dignity. This should only be allowed in circumstances in which the patient is suffering from fatal disease and his natural course of life seems to be more painful than death. As per Article 21 of the Indian constitution the provision of right to die must be prevented from being misused. The idea of granting passive euthanasia seems to be the most suitable keeping in mind the current scenario of India. The granting of active euthanasia seems to be too outsourced and vulnerable due to the high crime rate and lack of education among the people in the society. This can lead to the misuse of the provision of euthanasia by the relatives of the patient who in the greed of securing the property may opt for involuntary euthanasia of the patient who is incapable of admitting his consent. Thus, it becomes the responsibility of the authorities and the officers to examine the official medical reports and the testimonies before allowing the application or the pursuance of the idea of euthanasia.

SUGGESTIONS

- Euthanasia must be granted to such patients whose family economical condition is so low that such patient would suffer a lot of pain and suffering due to ill treatment and his/ her family would be suffering due to the expenses of the medical treatment of the patient.
- The intention of the doctor must be carefully examined by the medical authorities to avoid any kind of foul play or ill treatment.

- It must be the duty of the parliament to form such laws and regulations which provide the guidelines for the proper use of the provision of euthanasia so that it is not misused by the family members as well as the relatives of the patient and the doctors.
- A proper mechanism must be set up for the proper evaluation of the patient's health condition and to ensure that there is no foul play on the part of doctors as well as the family members of the patients.
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