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EUTHANASIS AND RIGHT TO DIE WITH LIBERTY**Abstract**

This article focuses on relationship between Right to Die with dignity and Euthanasia. It goes onto examine the origin and history, the position as laid down in the common law and finally, the jurisprudence of the Indian Supreme Court on the matter over the years. It also discusses the various types and classification of Euthanasia and on its legality. Further the procedure laid down by the court as in each case. Concluding with the future of Euthanasia in India and need for formulating legislation.

Origin and History

Dignity of the individual is an idea that pre-dates the constitution and even modern legal system. All religions of the world recognise the need to basic human respect and dignity. It contains distinct position in all holy books. It could be understood as a natural law, that traces its origin back to the beginning to nature itself. Although often the word 'dignity' is associated with living being, it also extends to the dead. This was the reason that, there existed religious or social rituals and practices to honour the dead. While certain segments of the society performed burials, other burnt the dead to ashes. Even, the concept of Euthanasia or assisted suicide which literally means 'good death' in Latin existed before the Hippocratic Oath. The intention was that when a person was unable to be cured, rather than suffering he should be killed. This was done as a medical practice and did not even require the consent of

the patient.¹ Therefore, the belief that humans have a right to live with dignity although in a problematic form did exist since ancient times.

Euthanasia and Common Law

As I have examined the origin and historical idea behind Euthanasia. Let us examine its jurisprudence and position in modern legal systems. The debate on Euthanasia or assisted suicide has had a development in the past thirty years in common law jurisdictions. The legal meaning to the word, although not universally accepted is the act of deliberately killing a patient who is undergoing extreme distress due to an incurable disease.² Today, conversation also hovers beyond extreme distress which could relaxed to be understood to include even permanent disability. In this a classification is necessary in two forms of Euthanasia. The first is passive euthanasia in which a person who is dependent on artificial support to sustain their life be removed from such life support equipment on choice. The second is active Euthanasia in which the medical personnel assisting a person in death by inducing substances which might lead to such a situation. Some argue that active euthanasia should be termed as assisted suicide. However, even such a distinction is not universally accepted. In fact, the United States Supreme Court, unanimously opined there is no difference between the two.³ Interestingly, the judgement upheld the validity of a New York law banning active euthanasia, while passive euthanasia allowed to be practiced. The conflict majorly arises in US and other common law jurisdictions is that there exists law which punishes those who attempt to suicide. The consequence of both active and passive euthanasia is the taking of one's life itself by one's own wishes itself. It is a settled matter that the 'right to life' guaranteed across various constitutions does not include the 'right to die'. The difference was however, accepted in the landmark judgement of House of Lords in the United Kingdom. In Airedale NHS, it had decided there is a difference between both and while taking away life support, the doctor is merely removing artificial support given to the patient who would in the natural course would be dead.⁴ The judgement even recommended the parliament to make laws regarding, the legalising and providing a procedure to manage the cases of Passive Euthanasia. Subsequently, most common law countries have legalised Passive euthanasia

¹ Gandhi KR. Euthanasia: *A Brief History and Perspectives in India*. INT J EDUC RES HEALTH SCI 2017;3(2):105-108.

² MARGARET OTLOWSKI, Voluntary Euthanasia, and the Common Law, 4-5 (1998)

³ *Vacco v. Quill*, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834, 1997 U.S. LEXIS 4038, (U.S. June 26, 1997)

⁴ *Airedale NHS Trust v Bland*, [1993] AC 789, [1993] 1 All ER 821, [1993] 2 WLR 316, [1993] 3 LRC 340, [1993] 1 FLR 1026, [1994] 1 FCR 485, 12 BMLR 64, (1993) Times, 5 February

either by the Judicial pronouncements or legislative measures. While Active euthanasia continues to be banned.

Indian Context and Judicial Intervention by the Supreme Court

As I have dealt in brief with the context and situation in common law countries. Let us into the judicial history of Euthanasia in the Indian Context. It all began in 1994, in the P Rathinam case, which questioned the constitutional validity of IPC Section 309 which criminalised an attempt to suicide.⁵ The question was whether it was violative of Article 21. The Supreme Court held that it was violative of Article 21 which guarantees right to life. The judgement controversially opined that the right to life includes right to not live a forced life meaning right to die. The court while holding IPC Section 309 as void, also mentioned that it was cruel and irrational position of punishing the person already harmed. The case although declined to answer on Euthanasia. It did put forward a proposition that if suicide is legal, then it would only make sense to have passive euthanasia as legal.⁶ It also goes on to say that in its opinion if the consent of the patient is sought, then passive Euthanasia has to be legal. Hence, for a period of around 2 years both suicide and Euthanasia was legal, till the subsequent judgement of the Court in Gian Kaur correcting its previous decision. The five-judge bench unanimously agreed the interpretation of Article 21, Right to Life included Right to die was incorrect. It said it is the protection of life that is guaranteed, not the termination of life.⁷ It overturned the previous decision and criminalised the act of attempt to suicide under IPC Section 309. However, this time, the Court expressively for the first time held that the right to life includes the 'right to live with dignity'.⁸ The court classified that the right to die of a person in a vegetative or artificially supported state outside the natural process should not be confused with the death of a person who takes their like unnaturally. The first situation of passive euthanasia in the court's opinion takes place when death is certain and imminent. One could never construct suicide in the other category. Court also settled that, in no way law supports assisted suicide or active Euthanasia as it amounts to taking away life other than the natural process of death. Despite discussing all these, the Supreme Court did not make any

⁵ P Rathinam v. Union of India, (1994) 3 Supreme Court Cases 394: 1994 Supreme Court Cases (Cri) 740

⁶ Id, 101

⁷ Gian Kaur and Ors v. State of Punjab and Ors, (1996) 2 Supreme Court Cases 648:1996 Supreme Court Cases (Cri) 734 – Para 22

⁸ Id, 24

opinion on whether passive euthanasia is legal or not. It had expressed that the decision must be taken by the legislature.⁹

The matter did not arise for over decade until a Public Interest Litigation was filed on behalf a person who was in a vegetative state for over 37 years. The patient was artificially supported and had to be assisted to even get required nutrients. The Supreme Court went on to detail in explaining the difference in active and passive euthanasia.¹⁰ It erroneously relied on Gian Kaur to say that there is a right to passive Euthanasia. However, active euthanasia was a crime and illegal as it is in most countries. The Court also decided to make a further classification for the first time in Indian courts. It was the distinction between voluntary euthanasia and non-voluntary euthanasia. Voluntary euthanasia is when the consent of the patient themselves is given in some sort. This could be a gesture or action indicating that the person wishes to be taken out of life support. On the other hand, non-voluntary Euthanasia is when the relatives of the patient or the doctors decide as the patient themselves is not in a state to make or indicate a decision. The court was of the opinion that voluntary euthanasia is legal but in case non-voluntary euthanasia some procedure must be established. Particularly in light of the fact that in case of relatives, there could be malice or motive other than the best interest of the patient that bases the decision. Hence, the procedure laid down by the court in the absence of legislation in case of non-voluntary euthanasia is that the closest members which consist of family and friends with consultation of doctor must take a decision and file for permission in the High Court under 226 and the high court with minimum of two judges must constitute a team of medical professionals which includes a neurologist, psychiatrist and a physician make a report sent to relatives and based on it the High Court shall decide on best interest of patient. Through this Court held that the 'right to die with dignity' is a fundamental right. However, writ was dismissed, and the petitioner was not granted any relief as the doctors opined that there was ready to continue to treat the patient.

The decision of Aruna Shanbaug was in question seven years later before a three-judge bench which found that the decision was erroneous as it decided based on Gian Kaur. It relied on that Gian Kaur and Gian Kaur was based on the opinion of Airedale NHS. However, as explained earlier there was a difference. Hence, even the procedure entailed in that judgement would not be valid. On this, the Court decided to constitute a five-judge bench to decide the

⁹ Id,40

¹⁰ Aruna Ramachandra Shanbaug v. Union of India and Ors, (2011) 4 Supreme Court Cases 454: (2011) 2 Supreme Court Cases (Civ) 280

matter.¹¹ The Supreme Court examined the difference between active and passive euthanasia once again. It emphasised the importance of two principles. First being, the bodily autonomy of a person to decide for himself and recognising, Right to Die with Integrity part of Right to live with Dignity guaranteed by Article 21. The second, the right of a patient to refuse medical treatment if they wish to do so with the exception of emergency cases. The Court particularly in the judgement written by Justice Chandrachud, has recognised the blurring difference between active and passive Euthanasia. The Court argues, in the end the novel ideal of removing suffering of the patient is the consequence and the motive. It has also put forward that legislature should decide upon active euthanasia.

In case, of passive Euthanasia court mandates if voluntary that is the patient giving consent, then no further process needs to follow. However, in case of non-voluntary euthanasia, the court directs two methods. One in case of Advance Directive and the other in the absence of it. The procedure however does not discriminate between it. A process is provided which includes permission of medical board of Hospital, a medical board consisting of Medical Board constituted by District Magistrate and finally permission of the Court. It ensures that a decision acts in benefit of the best interest of patient with sufficient safeguards. This procedure would be followed in the absence of legislation.

Conclusion

Euthanasia has existed since ancient times and was of common practices in certain faiths. However, after the Hippocratic Oath it started to be observed as an immoral practice. The revival of acceptance to Euthanasia has been a recent phenomena which began from the Airedale NHS case and other countries bringing in legislation. In India, although passive euthanasia was accepted, there was confusion regarding its legality and procedure. The matter was finally settled by the Supreme Court in Common Cause v. Union of India. Formally laying down procedure in the absence of legislation which ensures that the fundamental right of the individual to die with dignity is upheld and is in their best interest. The future with regard to Active Euthanasia is to be closely watched as it is growing in acceptance as a result of consequentialist understanding of the issue. It is imperative the Parliament start acting on the matter with experts of various fields and formulate legislation on matter which it has been largely inactive to avoid illegal practices in the absence of proper

¹¹ Common Cause v. Union of India, (2018) 5 Supreme Court Cases 1:2018 SCC OnLine SC 208

laws. Keeping in mind the larger responsibility of the State to fulfil the Fundamental Right to 'Right to Die with Dignity'.



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