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Status of Euthanasia in Indian Law: Case Laws and Legal Provisions

ABSTRACT

In the Article, the Author describes Euthanasia, its definition, different categories such as Active, Passive, Voluntary, Non-Voluntary and Involuntary and different methods to terminate life. The main light in the article is focused on Euthanasia and its status in India. The text focuses on constitutionality of Euthanasia by analyzing Article 21 of Constitution of India and whether it includes Right to die along with Right to Life. The author attempts a better understanding of Euthanasia and how it evolved in India by examining different case laws from 1986 to 2018. The text seeks to answer the question like whether there is a specific legal provision for permitting Euthanasia? The article analysis the global scenario of the controversially debated topic with respect to that of India. It defines the meaning of many important words relating to Euthanasia. It is hoped this study will inform specifically the patients seeking for Euthanasia as well as the public in general.

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INTRODUCTION

Life is precious and it is our responsibility to cherish it. For this the main aim is to have a healthy mind and body. On the other hand there are many suffering from irrecoverable medical conditions such as advanced cancer and Acquired Immune Deficiency Syndrome (AIDS) and are most likely to choose death over living a life of suffering. Should they be granted Right to die? It is globally debated as it violates codes of medical ethics i.e. to take care of the patients no matter what the situation is. The paper seeks to explain Euthanasia, its definition, categories and different methods to terminate life. The paper aims to amplify legalization of Euthanasia in India. The text also distinguishes between Suicide and Euthanasia. The main light in the article is focused on the laws relating to Euthanasia in India and examining Supreme Court's judgments on cases relating to euthanasia. The text focuses on constitutionality of Euthanasia by analyzing Article 21 of Constitution of India and whether it includes Right to die with dignity. The text

seeks to answer the question- Whether there is a specific legal provision for Euthanasia? The article analyzes the global scenario of the controversially debated topic with respect to that of India. The purpose of the study is to present the systematic procedure to seek euthanasia. Also mentioning public opinion in favor and against the topic to take account of the status of Euthanasia in India.

EUTHANASIA: MEANING AND TYPES

The word Euthanasia is made up of two Greek ¹words i.e. "eu" and "thanatos" which refers to "good death". In Black's law dictionary euthanasia is defined as the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy². Francis Bacon was first to use the word " Euthanasia " in a medical context in the 17th century referring to painless and easy death of a person by the physician following his/her responsibility of alleviating the 'physical suffering' of the patient. In the modern context Euthanasia or Mercy killing is referred to the patient's request to terminate the ongoing medical treatment to end the suffering.

Euthanasia can be classified into different categories, such as-

- (i) Voluntary Euthanasia
- (ii) Non- Voluntary Euthanasia
- (iii) Involuntary Euthanasia
- (iv) Active and Passive Euthanasia

VOLUNTARY EUTHANASIA- When euthanasia is performed with autonomous cooperation of the patient i.e. the patient is not under anyone's pressure.

NON- VOLUNTARY EUTHANASIA- It occurs when the patient is unconscious or unable to make meaningful decision. An appropriate person takes this decision on behalf of the patient.

¹ Lewy G. Assisted suicide in US and Europe. New York: Oxford University Press, Inc; 2011.

² H. C. Black, Black's Law Dictionary, 16th edn, St Paul Minn-West Publishing Co (1991), P. 554. Emphasis Mine.

INVOLUNTARY EUTHANASIA- It occurs when a dying person could have been but was not asked for their consent and would clearly amount to murder.

ACTIVE AND PASSIVE EUTHANASIA-

In Active Euthanasia the person is forced to die through the use of lethal substances.

In Passive Euthanasia the person's life is put to an end by withholding the medical treatment.

SUICIDE, ASSISTED SUICIDE AND EUTHANASIA

Suicide is the act by which a person intentionally causes one's own death for various reasons such as, failure, frustration in love life, family pressure and mostly due to mental distress like depression and anxiety. When a person loses willpower and motivation to survive through life they tend to take the other road of killing themselves.

Assisted Suicide is helping someone to take one's death intentionally by providing them the means to do so. In India under Section 309 of Indian Penal Code (IPC)³ attempted suicide is considered as a criminal offence. Euthanasia on the other hand is helping a person to get rid of the life of suffering from an incurable disease and it differs from suicide on the main ground of intention.

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EVOLUTION OF EUTHANASIA IN INDIA AND THE LAWS THERETO

All the citizens are granted with basic human rights from the moment of birth. Right to life is a natural right inherent in the status of every person. Article 21⁴ of Constitution of India provides right to Life and personal liberty as a fundamental right. From time to time Article 21 has been interpreted through various landmark judgments. Article 21 specifically mentions that no person shall be deprived of Right to life and personal liberty except according to procedure established by law. So the question is whether Article 21 also constitute Right to die? This question has been answered through various landmark judgments.

³ The Indian Penal Code, 1860

⁴ The Constitution of India, 1950

In the case of *State of Maharashtra v. Maruty Shripati Dubal*, 1986⁵, Bombay High Court has argued that Right to life under Article 21 could also be interpreted as Right not to live a forced life. In *P. Rathinam v. Union of India*, 1994⁶ Supreme Court held that Section 309 of Indian Penal Code is unconstitutional and as Article 19⁷ includes Right to Speech but also right not to speak likewise Article 21 of Constitution of India also includes Right to die along with Right to Life. The constitutionality of this judgment was challenged in case of *Gian Kaur v. State of Punjab*, 1996⁸ and argued that, *P. Raghinam v. Union of India* was wrong in its interpretation as Right not to speak is an omission, while Right to die is an act. Therefore upheld the constitutional validity of Section 306 and 309 of IPC i.e. whoever commits suicide shall be punished and whoever attempt suicide and assist suicide shall be criminalized.

In the case of *Aruna Ramchandra Shanbaug v. Union Of India*, 2011⁹ Ms. Pinki Virani filed a petition on behalf of Aruna Ramchandra Shanbaug who was in a persistent vegetative state for 42 years until her death by pneumonia on 18 May, 2015. In 1973, she was sexually assaulted by a ward boy and remained in a vegetative state following the assault. The Supreme Court of India responded to the plea by setting up a panel of medical practitioners that included 3 eminent doctors to examine her situation. It was alleged that there is no scope of improvement in her situation and she was totally dependent on the hospital for her care. The medical panel examined that Aruna was not brain dead, she is able to breathe without support machine, had feelings and produced stimulus. Thus, in the landmark judgment by Supreme Court of India comprising Justice Markandey Katju and Justice Gyan Sudha Mishra, delivered this historic judgment on March 7, 2011 stating that the condition of Aruna is stable though she is in a PVS. So, terminating her life was unjustified. Though the judgment was ruled against the petitioners it was highly remarkable as it provided the procedure to be followed for plea of Euthanasia in India.

⁵ (1986) 88 BOMLR 589

⁶ 1844, SCC (3) 394

⁷ The Constitution of India

⁸ 946, SCC (2) 648

⁹ 4 SCC 454

Common Cause vs. Union of India, 2018¹⁰ the apex court finally held passive euthanasia as legal and validated living wills. The Supreme Court held that Right to die with dignity is a fundamental right under Article 21 of Constitution of India. Euthanasia The Court also issued guidelines to be followed in this regard until legislation is brought on the issue of Euthanasia. The Supreme Court has allowed the citizens of India to issue a Living Will i.e. it is a document that states a patient's desires relating to the medical facilities a person does or does not want in the situation when they are no longer eligible to communicate their will. Through these living will the spouse, family members and any third party decides according to the wishes of the patient whether or whether not to continue the life support that is given to the patient.

GLOBAL SCENARIO W.R.T INDIAN SCENARIO

The controversy of legalizing euthanasia differs from country to country on grounds of morality, ethics and law. Worldwide it is argued that any legislation that enables assisted suicide and euthanasia is a severe concern of violating the obligation of a country's government to secure the lives of all its residents, without exception. Belgium is the first country to legalize Euthanasia in 2002. Active Euthanasia is legal in countries like Columbia, The Netherlands, Belgium, Australia's northern territory, Canada, Luxembourg etc. The United States also permits withholding of life support for the patients. India joined the league by legalizing passive Euthanasia in 2018.

CONCLUSION

Though Passive Euthanasia is legalized in India, it is permitted in a very rare case and after many years of struggle by the patient waiting for one hearing to another in hope of getting justice. In my view the government along with judicial bodies should work to have separate legal provision for Euthanasia, eligibility criteria, methods and a specifically prescribed procedure for seeking Euthanasia. The Right to die with dignity should not be considered as a privilege for all and thus needs to be handled very carefully. Euthanasia is a controversially debated topic and will remain controversial in the future until a specific legislation with scope of amendments is not introduced.

¹⁰ 5 SCC

I think those who have a terminal illness and are in great pain should have the right to choose to end their own life, and those that help them should be free from prosecution.

-Stephen Hawking

