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Euthanasia: A Boon or a Scourge?

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Although life is genuinely unpredictable, what if an adverse event lengthens the time but shortens the feelings? Euthanasia is a controversial idea in many parts of the world. Despite prior attempts, several countries have yet to pass laws addressing it. People are already aware of the pain associated with an irreversible medical condition, where the pain is so intense that the patient loses interest in life and wants to be free of the artificial devices that support him. When the patient requests the removal of the life-prolonging apparatus or the administration of a lethal injection to end his suffering, euthanasia enters the picture (assuming the patient is in a satisfactory mental condition or there is approval from his family members). This article clarified whether such actions that will ultimately result in a person's death should be permitted. Or, let him endure such agonizing conditions.

Keywords: euthanasia, death, right to life.

INTRODUCTION

John Dryden's poem *Life is a Cheat* contains the lines "When I consider life, 'tis all a cheat; Yet, fooled with hope, men favour the deceit," which allude to the fact that no one wants to think about the fact that the true purpose of life is death. Consider a person who has survived a fatal disease or medical condition and is unlikely to resume his normal lifestyle. The person is in excruciating pain but is unable to express or explain it. The question that emerges in this

situation is whether he should be made to endure such suffering merely to prolong his life or assisted in putting an end to such a cursed life without suffering. The practical response to this query, overlooking the kin's emotional concerns, would be to terminate the person's life. In a certain context, life without dignity is an unacceptable defeat, whereas life that meets death with dignity is a value to strive for and a moment to rejoice. Hitler introduced the concept of euthanasia in the year 1939 to kill incurably ill, physically or mentally disabled, emotionally distraught, or elderly people to end such helpless situations. During his regime, there were approximately 200,000 or more victims of the euthanasia program, which continued until the fall of the Nazi regime in 1945.¹ However, the concept's goal has shifted dramatically over time. Let's learn more about what the term "euthanasia" actually means to comprehend this subject more fully. The word "euthanasia" comes from the Greek words "Eu" for "good" and "Thanatos" for "death." As the name implies, it might be taken to mean a painless death. Euthanasia, sometimes known as "mercy killing," is a method of putting a person who has a terminal illness to death without any pain.

ACTIVE AND PASSIVE EUTHANASIA

There are two types of euthanasia: active and passive.² The use of lethal substances or forces to kill the person is used in active euthanasia. For example, a cancer patient is given a lethal injection to end his life because he is in horrific pain. Passive Euthanasia refers to the cessation of medical treatments that were required for the continuation of life. For example, removing a machine that was assisting in the functioning of a coma patient's heart and lungs. Active euthanasia is illegal in most countries and is only legal where the legislature allows it. Active euthanasia is still illegal in India; it is a crime under Section 302 of the Indian Penal Code, 1860.³ Voluntary and non-voluntary euthanasia are additional categories for euthanasia. As the name suggests, voluntary euthanasia involves getting the patient's consent, but non-voluntary euthanasia involves not getting the patient's consent. This can happen for several reasons, such as when the patient is unconscious or incapable of giving consent. The former is

¹ Michael A. Grodin *et. al.*, "The Nazi Physicians as Leaders in Eugenice and "Euthanasia": Lessons for today" (2018) 180 (1) AM J Public Health, 54

² *Aruna Ramchandra Shanbaug v Union Of India & Ors* (2009) Writ Petition (Criminal) No. 115/2009

³ Indian Penal Code 1860, s 302

acceptable whereas the latter presents a host of concerns since euthanasia performed without the patient's consent raises many issues.

BASIS OF DISTINCTION BETWEEN ACTIVE AND PASSIVE EUTHANASIA

The supreme court in the case of Shanbaug case said 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". Here, the question may arise: Should the doctor who refused to use the life-prolonging device be held accountable? or if the physician who administers a deadly injection to end a patient's suffering will be charged with murder? Although the result of either course of action will be the same—death—is there anything unlawful with giving someone a lethal injection to put an end to their suffering? In the case of *Airedale NHS Trust v Bland*,⁴ it was observed by Lord Goff of Chieveley that: A doctor is not obliged to continue in a hopeless case, and hence when he switches off the machine it is in substance not an act but an omission to struggle. Discontinuation of a life-support machine is not different from not initiating a life-supporting machine in the first place. Another distinction between active and passive euthanasia has been made, where it was decided that passive euthanasia includes cases in which a doctor chooses not to provide, or to continue providing, for his patient, treatment, or care that could prolong his life. Active euthanasia is defined as when a patient dies because he is killed by a lethal drug.

ARUNA RAMCHANDRA SHANBAUG v UNION OF INDIA⁵

FACTS

Aruna Ramchandra Shanbaug was a staff nurse at King Edward Memorial Hospital in Parel, Mumbai. She was attacked by a hospital sweeper on November 27 in the late afternoon. She was pulled back with a dog chain that the sweeper had wrapped around her neck. After realizing that she was menstruating, he attempted to rape her but instead sodomized her. A cleaner discovered her asleep on the floor on November 28, 1973, with blood all over her. The

⁴*Airedale NHS Trust v Bland* [1993] 1 All ER 821 [HL]

⁵ *Aruna Ramchandra Shanbaug* (n 2)

dog chain's restriction caused her brain's oxygen supply to halt, causing harm. Her teeth have decayed, which is painful, she can hardly swallow any liquid food so she is given mashed food, she has stopped menstruating and her urine and excreta are discharged on the bed itself, and she is completely unaware of her surroundings and is unable to respond to stimuli. 36 years have passed since then, and she is still bedridden. She has grown weaker and her bones have become so tender that they can break easily if her hand or leg are awkwardly caught.

The petitioner requested to stop feeding Aruna and allow her to pass away gently because she is no longer a living being and is in a Permanent Vegetative State from which there is no recovery. Ms. Pinki Virani, a social activist from Mumbai who claims to be Aruna's close friend, filed the writ petition under Article 32⁶ of the Indian Constitution. The court appointed three eminent doctors from Maharashtra to evaluate the genuine condition and situation of Aruna Shanbaug due to various discrepancies in the writ petition and a rebuttal affidavit produced by Dr. Amar Premzi. She had to have a report from the doctors detailing both her physical and emotional health. According to the physicians, she is not brain dead and responds to various circumstances in her unique way. She smiles when given her favourite foods, such as fish and chicken soup, frowns at too many people, and relaxes when there are fewer of them present. She also likes listening to light devotional music. Even though she is bedridden, the quality of her skin is in good condition, and there are no bed sores or signs that any bed sores have healed, according to the doctors who watched how effectively the hospital staff is caring for her. But Aruna Shanbaug had every characteristic of the Permanent Vegetative State. The medical professionals believed that euthanasia was not required at this time because Aruna was not experiencing a terrible or wretched life.

WHAT WERE THE ISSUES RAISED?

1. Is it legal or permissible to stop receiving life-sustaining treatments when a person is in a permanent vegetative state?
2. Should the person's wish be respected in the event of futile care or a PVS if they haven't previously said that they want life-sustaining treatments?

⁶ Constitution of India 1950, art 32

3. Should a person's family or next of kin's desire to withhold or discontinue ineffective life-sustaining therapies be honoured if they had previously stated such a wish?
4. Aruna Shanbaug's entire family abandoned her, thus the question is: Will I decide on her behalf?

COURT'S RULING

The court ruled that the dean of KEM Hospital in Mumbai will serve as an appropriate surrogate and that any decisions he makes will be recognized because Aruna Shanbaug was abandoned by her whole family and has been cared for by KEM Hospital for 37 years. The dean refused to stop providing life-sustaining care since, in her opinion, she is still very much alive and is adored by every member of the medical staff. He claims that although Ms. Pinki Verma has published a book about Aruna and has also paid her a few visits, the bond she shares with the medical staff is unmatched by Aruna. The learned Attorney General appearing for the Union of India was also of the view that Aruna Shanbaug has the right to live in her present state. According to him, Indian society is care oriented and we do not send our parents to old-age homes as people do in the west. Mr. T.R Andhyarjuna, who was appointed as an *amicus curiae* supported the views of the learned attorney general by saying that every person who is of sound mind has the right to determine what shall be done to his body, but when the person himself is not in his senses and not decide what and what not should be done so, it will be troublesome in such situation. So, instead of asking the family what should be done in such a situation, it is better that should be left with a body of medical persons, who can decide in the patient's best interest, which means that Mr. T.R Andhyarjuna was in favour of passive euthanasia. He was of the view that withdrawal of the essential food through the nasogastric tube is not the same as unplugging the ventilator, stopping food will starve her to death with all pain and suffering as she is not fully unconscious. Taking no active step when she combats other illnesses will be more appropriate in her case.

PREVIOUS OPINION OF THE COURT

In the case of *P. Rathinam v Union of India and another*⁷, the constitutionality of Section 309 of the IPC - whoever attempts to commit suicide should be imprisoned with a term of one year or fine or both. The Bombay High Court, in this case, opined that the fundamental right to not do something comes with the fundamental right of doing something hence Article 21⁸ which consists of the right to live would also include the right not to live i.e right to die or terminate one's life and Section 309⁹ was held ultra vires and unconstitutional.

In the case of *Gian Kaur v The State of Punjab*¹⁰, the constitutional validity of section 306 of IPC (Suicide attempt is a punishable offence) was questioned based on the judgement given in the case of *P. Rathinam v Union of India*. The court, in this case, overruled the judgement given in the *P. Rathinam case* and opined that unnatural death does not come under the ambit of the right to die with dignity which comes with the right to live with dignity. It has been made clear that the right to a dignified death at the end of life is distinct from the right to a premature death that shortens life expectancy. An issue may emerge over whether a dying individual who is terminally sick or in a prolonged vegetative state may be allowed to end it by a premature extinction of his life in those circumstances, the Court continued. When death due to termination of natural life is foreseeable and impending and the process of natural death has started, this category of situations may fall within the scope of the right to die with dignity as a component of the right to live with dignity. As a result, the court determined that Sections 306 and 309 were constitutionally sound and did not violate Articles 21 or 14¹¹. In the case of *Airedale NHS trust vs Bland* 1991, it was held that if a person is under a permanent vegetative state or is alive due to the life-prolonging equipment and is incapable of giving consent as to whether he should continue the treatment or not then the doctor is under no absolute obligation to prolong the patient's life. In addition, discontinuing life support through the removal of artificial feeding tubes or other forms of support did not constitute a crime

⁷ *P. Rathinam v Union of India and Another* (1994) AIR 1844

⁸ Constitution of India 1950, art 21

⁹ Indian Penal Code 1860, s 309

¹⁰ *Smt. Gian Kaur v The State Of Punjab* (1996) AIR 946

¹¹ Constitution of India 1950, art 21 and art 14

because the doctor was no longer obligated to keep the patient alive if continuing an intrusive life support system was not in the patient's best interests; instead, he was simply allowing the patient to pass away from his underlying condition, and his passing would be viewed in legal terms as solely the result of the injury or disease he had previously suffered. Until some strong body or principles are adopted for the withdrawal of life-prolonging equipment, the doctors treating such patients should seek the advice of the courts.

JUDGEMENT

Because Aruna can breathe on her own and does not require outside assistance to do so, the main problem that compounded the situation was that she cannot provide her agreement for such a significant move. This required careful consideration and wisdom. The key concern was who can decide on the patient's behalf because the goal was to decide in the patient's best interest. The people who were acting in her best interests did so without any consideration for their feelings or processes. But, the public interest and the interest of the state were also to be thought about, because passing such legislation can have several repercussions and the major one will be the misuse of such law. However, it was also essential to consider the public interest and the state's interest because adopting such laws may have unintended consequences, of which the misuse of the law will be the most significant. Informed consent (assent where the patient is aware of the repercussions of his treatment, such as his chances of life, etc.) and the patient's right to privacy about his or her own body were other issues that the Supreme Court addressed. The US takes this action in response to the *Nancy Cruzan case*.¹² In the *Nancy Cruzan Case*, a patient is competent to understand the effects of their treatment or when they make a decision while conscious, this is known as informed consent. If the patient was capable of giving consent but was not prompted, the doctor may be held accountable. Aruna Shanbaug was completely oblivious to all that was happening. The petition presented by Ms. Pinki Verani was denied by the Supreme Court of India. The court found that despite Aruna being in a permanent vegetative state (PVS), she was not brain dead because she could still breathe on her own and had feelings. Pinki Virani's plea, which said that Aruna was

¹² *Cruzan v Director, Missouri Department of Health* [1990] 497 U.S 261

already dead, did not persuade the court. The brain cannot be replaced like other organs, hence a person is considered dead when that organ is dead, according to the court. Aruna wasn't brain dead, thus cutting off her body's food wouldn't kill her. Allowing Aruna's life to be taken would go against the hard work of the hospital personnel, who fed her mashed food in this situation, acting as a life-saving method. The right to live with dignity also encompasses the right to die with dignity, according to the court's interpretation of the Gian Kaur case verdict. Under this ruling, a permanently vegetative person may be permitted to end his life prematurely, and doing so would not constitute a crime. However, in this case, it was unclear who would decide to stop providing life support. The court then considered the case of Airedale, in which it was decided that such actions need High Court clearance. Further, the court stated that Article 226¹³ gives the High Court broad authority to issue appropriate rulings on applications submitted by close family members, close friends, or medical professionals seeking approval to remove an incompetent person's life support system. So, the right to choose between Aruna's welfare and benefits lies with the hospital and not with Pinki Verani. However, the court, permitted passive euthanasia for specific cases, subject to the approval of the High court and the opinion of an expert medical counsel.

LEGAL STATUS OF EUTHANASIA IN SOME COUNTRIES

United Kingdom

In the case of Airedale, the House of Lords affirmed passive euthanasia as a lawful option open to even the mentally incapacitated. This was done with the help of the best interest of the patient principle. Euthanasia and assisted suicide, however, are prohibited in the UK under The Suicide Act, of 1961. The recent vote by the British Medical Association to adopt a neutral stance on assisted suicide may open the door for UK legislation.¹⁴

¹³ Constitution of India 1950, art 226

¹⁴ *Common Cause a Regd Society v Union of India and Anothers* (2018) Writ Petition (Civil) No. 215/2005

Australia

The court upheld that technically futile treatment may be discontinued from patients at their direct or indirect request or in their best interests following cases like **Hunter and New England Area Health Service v A**¹⁵, **Brightwater Care Group (Inc.) v Rossiter**,¹⁶ and many other cases in between.

Canada

The Criminal Code of Canada's section 241(b)¹⁷ makes physician-assisted suicide illegal. The Supreme Court of Canada ruled in *Carter v Canada* that the right to life, liberty, and security of the person guaranteed by Article 7 of the Charter of Rights and Freedoms in the Canadian Constitution is violated by the criminalization of physician-assisted suicide. Following the Supreme Court's ruling, a joint committee was formed, and some substantive and procedural measures were put in place to control medical aid in dying. The federal government passed the Medical Assistance in Dying (MAID) Act in 2016, which established the eligibility criteria and security measures for medically assisted suicide. In March 2021, a new law that expanded MAID eligibility became effective. Worldwide, euthanasia is legal in Switzerland (assisted suicide is legal)¹⁸, the Netherlands (“Euthanasia and assisted suicide are both legal for only if the criteria laid down in the Dutch Termination of Life on Request and Assisted Suicide are fully observed”), Spain, Belgium (same as the Netherlands), Luxembourg (Assisted suicide and euthanasia became legal for adults in the year 2009), Canada, Colombia (First Latin country to decriminalize euthanasia), Australia, USA, France (Palliative sedation is legal while assisted dying is illegal), New Zealand (In October 2020, legalized euthanasia).

COMMENT: CONCLUDING REMARKS

In the year 2018, the Supreme Court of India recognized the right to die as a fundamental right and allowed passive euthanasia in the country. A five-judge bench headed by Deepak Mishra

¹⁵ *Hunter and New England Area Health Service v A* [2009] NSWSC 761

¹⁶ *Brightwater Care Group (Inc.) v Rossiter* [2009] WASC 229:40 WAR 84

¹⁷ Criminal Code of Canada 1892, s 241(b)

¹⁸ Joydeep Bose, ‘Switzerland Approves euthanasia device for painless death’ (*Hindustan Times*) (7 Dec, 2021) 06

the then Chief Justice of India issued guidelines in recognition of the 'living will' made by terminally ill patients which included who can execute the will and under what condition the medical board can endorse passive euthanasia.¹⁹ In the year the government stepped towards drafting a law for euthanasia the name of the bill was - **The Management of Patients With Terminal Illness**, the bill was for withdrawing the life support from patients who were in permanent vegetative condition or whose medical conditions cannot be reversed²⁰. But there is no further development regarding the bill and for now, India does not have any legislation for passive euthanasia and the directives and guidelines of the court are only being followed.

According to the court's opinion in the Aruna Shanabaug case, passive euthanasia can be made legal by legislation, as it was in the Gian Kaur case. However, it is impractical to postpone such a bill for a longer period. The two-judge bench has also noted that while active euthanasia appears to be prohibited unless there is legislation allowing it, passive euthanasia is legal even in the absence of legislation as long as certain requirements and safeguards are upheld. The guidelines provided by the court are quite lengthy and need an ample amount of time to be finally executed, hence a law with proper procedure and punishment will ease this situation. Despite the laws, there is a slim chance that shortly, countries all over the world may permit active euthanasia because it may have several negative effects. The distinction between active and passive euthanasia in the instance of **Claire C. Conroy**²¹ was made based on purpose. In this case, the court held that while someone seeking passive euthanasia may not have the aim of dying but rather of living without artificial aids, someone seeking active euthanasia has the intention of passing away with the aid of lethal medications.

In the Airdale case, the court determined that passive euthanasia was permissible because the doctor intended to give his patients the outcome they desired. Patients with irreversible diseases shouldn't have to deal with the effects of the doctor's Hippocratic Oath. The *241st Law*

¹⁹ 'SC allows passive euthanasia, recognises 'living will' of terminally ill patients' (*The Indian Express*) (9 March 2018) 06

²⁰ Krishanadas Rajagopal, 'Passive euthanasia already a law: govt' (*The Hindu*) (11 October 2017) 05

²¹ *In re Conroy* [1985] 486 A.2d 1209 [N.J.]

*Commission*²², in which arguments for euthanasia were seriously considered, was opposed by the ministry of health and family welfare because, in its opinion, it would impede the advancement of medical science in the areas of treating illnesses and relieving pain and suffering²³. This is only partially true, the majority of people, especially in developing nations like India, cannot afford many of these life-extending medicines. While there is a false promise of recovery, the patient's family also experiences physical, mental, and financial suffering. A person who is depressed or mentally ill can receive effective psychiatric treatment in situations where they want to die is only a transient urge and may be caused by environmental factors. However, if he has a terminal illness and chooses to pass away rather than endure excruciating pain, the person's consent can be obtained. Passive euthanasia is a blessing in disguise and a panacea for those who are surviving with the help of machines, but the endorsement of such a big step should be given very carefully, as one small error is capable of taking a life.

²² Law Commission of India, *Passive Euthanasia- A Relook* (Law Com. No. 241 2012)
<<https://lawcommissionofindia.nic.in/reports/report241.pdf>> accessed 25 July 2022

²³ Common Cause a Regd Society (n 14)