

Euthanasia: Indian Socio-Legal Perspectives

Sujata Pawar

Rayat Shikshan Sanstha's Ismailsaheb Mulla Law College, Satara 415001, Maharashtra, India

sujataspawar@gmail.com

Abstract

The function of law in society is not only to follow or adapt itself to public opinion, but also to give a lead and mould public opinion. Socio-legal debate is an important component of the process of law reform.

The questions whether the terminally ill, or others, should be free to seek assistance in taking their own lives, and if so, in what circumstances and subject to what safeguards, are of great social, ethical and religious significance. And there are widely differing beliefs and strong views of people in society.

The concept of Euthanasia involves not only medical and ethical issues related to public health and palliative care but also has socio-economic dimensions. To analyze this concept fully and study the relevancy and adequacy of the legal norms vis-à-vis actual realities of public health and social norms in India the interdisciplinary approach is very essential.

The basic aims of this paper is to explore the provisions related to euthanasia in various international and national public health systems and to analyze the constitutional and judicial trends concerning the right to euthanasia.

Keywords: Public Health, Palliative Care, Euthanasia, Death, Assisted Suicide

1. Introduction

Life is a gift of nature to mankind and so, right to life is the most fundamental, natural human right. Article 3 of Universal Declaration of Human Rights 1948 declares, "everyone has right to life, liberty and security of person." International Covenant on Civil and Political Rights 1966 in Article 6 declares, "Every Human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Constitution of India too declares in Article 21, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

But can this right to life be fetched to such an extent, so as to include within its purview, the right to die? Can any right to freedom be used for its own destruction? Can a right to live include right not to live or right to die?

Euthanasia is one of the ways of exercising right to die. So far it is legally prohibited in India. However the recent debate over allowing euthanasia in some countries has to be studied in the context of all its socio-legal perspectives.

Article 21 is worded in negative phraseology. But by its creative interpretation, the apex court of India has imposed positive obligation upon the state to take steps for ensuring better quality of life and dignity to people. Does it include the right to dignified Death? This is an important question to be answered.

The concept of death implies extinction of life. Death may be natural or may be caused by action or inaction of another person. When person dying himself causes death it is termed as suicide. Causing death unnaturally of oneself or any other person for whatever reason is legally as well as ethically bad and must be prohibited, however, when death is voluntary and with the full and real consent of the dying person, it may be allowed in exceptional circumstances.

Devising P. Rathinam's case was overruled in *Gian Kaur* and it was held that, Art. 21 guaranteeing the right to life did not include a right to die or right to be killed. It was further held that, right to life was a natural right embodied in Art. 21, but suicide was an unnatural termination or extinction of life and therefore, incompatible and inconsistent' with the concept of right to life. However the court appears to have approved passive euthanasia by holding that one may, in a given case, have the right to die with dignity as a part of right to live with dignity. It was observed that, these are not cases of extinguishing life but only of accelerating conclusions of the process of natural death which has already commenced. The Law Commission has recommended legalising euthanasia for terminally ill patients. The Law Commission in its 196th Report on Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) recommended the deletion of sec 309 of the Penal Code which makes the 'attempt to commit suicide' an offence. It also suggests that, refusal to obtain medical treatment does not amount to 'attempt to commit suicide' and withholding or withdrawing medical treatment by a doctor does not amount to 'abetment of suicide'.

In this scenario, a public debate must consider all pros and cons of such outcome that will have far reaching effects in all sectors of human life.

The word euthanasia comes from the Greek words eu (good) and thanatos (death), meaning "good-death" or "dying well". But how can death be good? Even though death is most certain, nobody knows or can predict its time; rather everyone dislikes the idea of dying, at least dying a premature death. We rejoice the birth but mourn

on death. Everyone wants to prolong the longevity of life by every possible means, so how can a death be good for anyone?

For an ordinary person, the necessary implication is; when life itself feels more painful, miserable and unbearable than death, then, one may embrace death (meaning *Dayamaran* or mercy killing or euthanasia). However, for the great saints, hermits and heroic persons, death implies a full stop to life when they have achieved their aims and feel content with their life. They accelerate death after achieving the purpose of life (meaning '*Swachchanda Mrityu*'. or *Echchamaran* or willful death). For some, death may not matter before performance of their duty which they find more sacred than death. ¹

2. Euthanasia: The Philosophical and Historical Perspective

According to Hinduism and Buddhism, human beings are captured in endless cycles of rebirth and reincarnation. The ultimate goal of mortal life is to achieve *moksha* or liberation from the cycle of death and rebirth. *Prayopavesa*, or fasting to death, is an acceptable way for a Hindu to end their life only in certain circumstances, provided, it is non-violent and occurs at the right time for this life to end i.e. when the body has served its purpose and becomes a burden. *Prayopavesa* is only for people who are fulfilled, who have no desire or ambition left, and no responsibilities remaining in this life.

- While suicide is often associated with feelings of frustration, depression, or anger, *prayopavesa* is associated with feelings of serenity and fulfillment.² Jainism also allows a follower full consent to put an end to his or her life, mostly by fasting, if he or she feels that *moksha* can be achieved that way.
- The idea of willful death is traceable to Socrates, Plato, and Stoics in ancient Greek and Roman philosophy as well.³
- Muslim, Christian and Jewish laws are against euthanasia. They believe that all human life is sacred because it is given by God, and human beings should not interfere in this. ⁴

3. Advances in Medical Science and Technology and Concept of Death.

Even though, death is an inevitable incident, with the help of modern science and medicine, it may be prolonged to a considerable extent. A century ago, many diseases and epidemics surely meant death, often accompanied by excruciating pain. Women had shorter life expectancies since many died during pregnancy and in childbirth. Antibiotics, immunizations, modern surgery and many of today's routine therapies or medications were unknown then. But now, many ailments like high blood pressure, T.B., pneumonia, appendicitis, and diabetes, cancer etc. can be detected and cured or at least controlled. Today with the help of modern medicine and technology, the death rate has gone down and life expectancy has considerably increased. With the help of timely medical help, death can be prevented. Even transplantation of human organs is now possible.

However, advances in science and technology have also brought some complications with them. For example the concept of brain stems death. A person who is unconscious and is on the verge of death but whose brain-stem has not become dead can be kept alive by artificial respiration and nutrition for years together. It is difficult to conclude when does a person die? When his heart stops beating or when he stops breathing or when is in an irreversible coma? Or when his brain dies? A patient may be unconscious, unable to see or hear or speak or have any sensory capacity but as long as the brain-stem, which controls the reflective functions of the body is able to make the heartbeat and allow breathing to go on and digestion to take place, the person is not considered to be clinically dead. Today, a person who is in a persistent vegetative state, whose sensory systems are dead, can be kept alive by ventilators and artificial nutrition for years. Heart may be stopped during open-heart surgery but the patient can be kept alive artificially. In scientific parlance, the body is treated as dead only if the 'brain-stem' becomes dead. Once brain stem is dead, the brain cells cannot be regenerated and it is at that stage a person is treated as dead. ⁵ Thus now it is possible to extend the span of life with the help of advanced technology and medical science, but is it possible vice versa? Whether a person's life can be curtailed abruptly in certain circumstances with medical help, is a debatable question involving ethical as well as legal debate.

Right to life is the most fundamental and natural human right. Constitution of India declares in Article 21, "No person shall be deprived of his life or personal liberty except according to procedure established by law." But can this right to life be fetched to such an extent, so as to include within its purview, the right to die? Can any right to freedom be used for its own destruction? Can a right to live include right not to live or right to die?

¹ Some customs like "sati" or "johar", even though unjust; where women embraced death, had religious and social sanction in ancient India.

² Retrieved from <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml>

³ Justice Kannan Krishnamoorthy, *To die with dignity*, (2010) PL April S-10

⁴ Retrieved from <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml>

⁵ Airedale 1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (HL)

4. Difference between Euthanasia, Assisted Suicide and Suicide

Euthanasia- Euthanasia implies ending human life abruptly by deliberate action or inaction causing death for his or her alleged benefit. There is no euthanasia unless the death is intentionally caused by what was done or not done. Thus, some medical actions that are often labeled "passive euthanasia" are no form of euthanasia, since the intention to take life is lacking. These acts include not commencing treatment that would not provide a benefit to the patient, withdrawing treatment that has been shown to be ineffective, too burdensome or is unwanted, and the giving of high doses of pain-killers that may endanger life, when they have been shown to be necessary. All those are part of good medical practice, endorsed by law, when they are properly carried out. Voluntary Euthanasia - Euthanasia is voluntary when the person who is dead has requested to be killed and, it is Non-voluntary, when the person who is dead made no request and gave no consent. Euthanasia will be Involuntary, when the person who is killed made an expressed wish to the contrary. Euthanasia is called Active Euthanasia when it involves intentionally causing a person's death by performing an action such as by giving a lethal injection. And it is termed as Passive Euthanasia when it intentionally causes death by not providing necessary medical care or food and water.

Suicide is a private individual act of ending one's own life and is condemned morally as well as legally, almost everywhere in the world. Even though the act of suicide is an offence against life, it is not punished merely because the person who commits suicide is no more. Even attempt to commit suicide is not punishable in many countries because, the person needs sympathy and compassionate treatment for recovery from depressing thoughts of suicide, rather than punishment for failure in attempt to end his or her life. However, it must be noted that, if some other person has abetted or aided or instigated the suicide that person remains criminally liable.

Assisted Suicide: When a person commits suicide with the help of someone who provides that person with the information, guidance, and means to take his or her own life; with the intention that, they will be used for this purpose, it will be assisted suicide.

When it is a doctor who helps another person to kill themselves it is called "Physician Assisted Suicide." If a third party performs the last act that intentionally causes a patient's death, euthanasia has occurred. If the person who dies performs the last act, assisted suicide has taken place.⁶

In suicide the person ends his own life by himself, mostly in secrecy. But sometimes he may find himself so helpless in a pitiable condition arising out of infirmity caused by physical or mental illness, disease, old age or such other condition; that, even for committing suicide, the person requires help of others. He or she may be disabled, in terminal illness, bed ridden or paralyzed or in coma or otherwise unable to commit suicide himself. And here exactly the ethical and legal debate for euthanasia begins.

Both euthanasia and assisted suicide are illegal in most of the countries as they involve unnatural termination of life and amount to murder in disguise. Even though in rarest of rare cases, passive euthanasia may be justified, it involves moral, ethical, legal, medical as well as political issues.

5. Arguments for Euthanasia:

- a) The major argument in favor of euthanasia is that, it is a way to end extreme unbearable pain caused due to disease, infirmity of body or mind or some incurable ailment. Insistence, against the patient's wishes, that death be postponed by every means available is contrary to law and practice. It would also be cruel and inhumane. There comes a time when continued attempts to cure are not compassionate, wise, or medically sound. It is cruel to make a person suffer excruciating pain when there is no chance of recovery.
- b) It provides a way of relief when a person's quality of life is low. Doesn't modern technology keep people alive who would have died in the past? Should people be forced to stay alive being "hooked up" to machines? It also causes physical, emotional and financial stress on the relatives and family members of the dying patient. Neither the law nor medical ethics requires that "everything be done" artificially to keep a person alive. Comprehensive and compassionate end-of-life care includes the promotion of comfort and the relief of pain, and at times, foregoing life-sustaining treatments.
- c) Since euthanasia and assisted suicide take place anyway, isn't it better to legalize them so they'll be practiced under careful guidelines and so that doctors will have to report these activities? However it may be noted that, doctors who do not follow the "guidelines" will not report and, even when they report, there is no way to know if it is accurate or complete.⁷
- d) It is also to be noted that patients have the right to refuse any medical treatment. A doctor who treats a patient against his or her express wishes can be charged with assault. It would be wise to educate people as to their right to refuse treatment at any time. The question is only when the person is unable to give consent and allowing euthanasia may be necessary.
- e) Some argue that, legalising euthanasia in case of people facing terminal illness may save on

⁶ Retrieved from <http://www.euthanasia.com/definitions.html>

⁷ Retrieved from <http://www.euthanasia.com/definitions.html>

unproductive medical expenses. It may free up medical funds of the state to help other needy people. In a country like India where millions of people live below the poverty line and cannot afford any expenses on medical treatment and may die due to non affordability and non availability of medical help, given the paucity of state funds for public health facilities; the funds freed by Euthanasia may be utilized to save lives of these poor and needy persons.

- f) Another argument is that it is a case of freedom of choice or individual liberty. Constitution guarantees the fundamental rights and freedoms to people where the positive right includes the negative right. For example, the freedom of speech carries along with it the freedom not to speak, The right to carry on business includes the right to close down the business; in similar manner, the right to live should include within it- the right not to live. People should not be forced to stay alive. It is the right of an individual to make a choice , whether to live or not to live. ⁸

6. Arguments against Euthanasia:

- a) Euthanasia devalues human dignity and sanctity of life. No one and no sickness can take the human dignity away. No matter where you are in your life, you are still human and you have the dignity of being human. Allowing euthanasia will offend the principle of sanctity of life.
- b) Archbishop Vincent Nichols, the head of the Roman Catholic Church in England and Wales, believe that euthanasia will leave sick, disabled or vulnerable people with less protection than the rest of the population and could even be seen as providing a “cloak for murder”. It seems to imply that if the victim is disabled or terminally ill, then his or her life does not merit the same degree of protection by law. “Such an underlying assumption is unacceptable in a civilised and caring society.” ⁹
- c) Today, advanced research is constantly being made in the treatment of pain and, with every progressive achievement, the case for euthanasia and assisted-suicide is proportionally weakened. Accepting incurability of diseases will be underestimating medical science. Many diseases which had no cure in the past, are curable and controllable today with the help of research in medical field. For example, today, 95% of cancer pain is controllable and the remaining 5% can be reduced to a tolerable level. ¹⁰
- d) Although it is rare, some terminally ill people can and do get better. The chances of mistakes or errors of diagnosis cannot be overruled. Every good doctor knows that medicine is an art as well as a science. No one can predict with 100% certainty who will live and who will die. The Journal of the American Medical Association (JAMA) Vol. 284, No 4, reports that medical errors may be the third leading cause of death in the United States at 225,000 deaths per year. Half are medical mistakes, including 2,000 deaths in a year from unnecessary surgery; 7000 deaths a year from medication errors in hospitals; 20,000 deaths per year from other errors in hospitals; and 80,000 deaths per year from infections in hospitals.
- e) Euthanasia if allowed would not only be for people who are "terminally ill." Where euthanasia has been first been legalized for only the terminally ill, later on laws are changed to allow it for other people or to be done non-voluntarily. Euthanasia will become non-voluntary. Caring is not always curing, but every bit as important. In countries where assisted suicide is allowed, it has moved into mercy killings of deformed babies, and into allowing mentally ill people to kill themselves rather than seek treatment.
- f) It is usually believed that, patients with terminal illness have only two options: either to die slowly in unrelieved suffering or they receive euthanasia. However, there is a middle way, that of creative and compassionate caring. Research in Palliative medicine shows that virtually all unpleasant symptoms and chronic pain experienced in terminal illness can be either relieved or substantially controlled by palliative care and medicine.
- g) A patient with a terminal illness is vulnerable. He lacks the knowledge and skills to alleviate his own symptoms, and may well be suffering from fear about the future and anxiety about the effect his illness is having on others. Patients who on admission say 'let me die' usually after effective symptom relief are most grateful that their request was not acceded to. Losing the opportunity of caring for vulnerable people denies us an essential part of our humanity. The answer is not to change the law, but rather to improve our standards of care.
- h) To some extent it may be true that, Euthanasia can help in health care cost reduction. But it may develop dangerous precedents suggesting that, the longer we keep sick people alive, the more they cost us. Last illnesses cost more than any other medical category. In this materialistic world, if we convince you that you have no hope for a future, we save money on your care and make money on your organs. If

⁸ See the decision in *P. Rathinam v. Union of India* 1994 Cr. L.J 1605 (SC)

⁹ Retrieved from <http://www.telegraph.co.uk/news/newstopping/religion/6616160/Assisted-suicide-proposals-unacceptable-in-a-civilised-society---Roman-Catholic-bishops.html>

¹⁰ Retrieved from <http://www.nightingalealliance.org/cgi-bin/home.pl?section=3>

we convince you to die early, we inherit your money more quickly. The government saves on Social Security. Your company saves pension money. We must engage in economic activities to live, but this is not *why* we live. The purpose of economics is to sustain human life; the purpose of human life is not to sustain economics. A crippled person, a mentally retarded person, or an old person is no less valuable than a young and healthy person. The fact that they contribute less to the economy has nothing to do with their value as human beings.¹¹

- i) Many people who are terminally ill are not depressed. However, some terminally ill people are depressed and talk about suicide. If they get antidepressant medications, a good psychologist and a caring spiritual counselor, they can recover emotionally. Suicidal people need treatment for depression, not help committing suicide.
- j) Anti-euthanasia groups say the practice would put pressure on patients, especially on disabled persons, to choose to die rather than be a burden on their families. Emotional, financial and psychological pressures could become overpowering for depressed or dependent people. If the choice of euthanasia or assisted suicide is considered as good as a decision to receive care, some people will feel guilty for not choosing death. This duty to die becomes greater as one grows older. The Alaska Supreme Court ruled unanimously that state laws punishing assisted suicide as manslaughter are to be upheld. It argued that, "The terminally ill are a class of persons who need protection from family, social, and economic pressures, and who are often particularly vulnerable to such pressures because of chronic pain, depression, and the effects of medication"¹²
- k) Physicians and other medical care people should not be involved in directly causing death. It creates incentives to do less medical research and to save money on medical care by offering people poison pills. There is no way to control assisted suicide once you make it legal. In a country like India where poverty and corruption is rampant, there is no foolproof way to write the law without opening it to abuse. Those who oppose euthanasia say it would make doctors as well as impatient heirs irresponsible. There will be relatively little effort to improve pain and symptom treatment, suggesting that legalization of physician-assisted suicide might weaken society's resolve to expand services and resources aimed at caring for the dying patient.¹³

The World Medical Association, with members representing medical associations from eighty-two countries, has adopted strong resolutions condemning both practices and urging all national medical associations and physicians to refrain from participating in them even if national law allows or decriminalizes the practices.¹⁴ But in spite of this resolve, some states in the world have legalized euthanasia in one form or the other.

7. International perspective on Legal status of Euthanasia

Albania was the first country to partially legalise mercy-killing in 1995. Since 2002, Netherlands and Belgium permit both euthanasia and assisted suicide.

Although euthanasia and assisted suicide are illegal in Switzerland, assisted suicide is penalized only if it is carried out "from selfish motives. In Switzerland, assisted suicide is allowed, where a terminally ill patient is assisted to end his or her life. Euthanasia has been legal in Luxembourg since March 19, 2009. Euthanasia is still illegal in Canada and In USA, Mercy-killing is partially legal in the states of Oregon and Washington in that the patient can refuse to take medication to keep his vital functions alive. Oregon and Washington have passed laws permitting assisted suicide. Also, in 1997, Colombia's Supreme Court ruled that penalties for mercy killing should be removed. However the ruling does not go into effect until guidelines are approved by the Colombian Congress.

Australia: Euthanasia was legal for a brief period in parts of Australia. In 1995 Australia's Northern Territory approved a euthanasia bill. It went into effect in 1996 but was overturned by the Australian Parliament in 1997.

In Mexico, euthanasia is partially legal in the sense that passive euthanasia is permitted. The terminally ill patient is allowed to die without attending to his medical and health needs. The UK is re-examining euthanasia laws following a court order. In Japan there are no clear-cut laws. But mercy-killing is practiced in many parts of the country in the absence of specific legislation. There are a set of guidelines governing the practice.¹⁵

8. Current Legal Position of Euthanasia in India

¹¹ Jay Johansen, 'Euthanasia: A Case of Individual Liberty?' Available at <http://www.pregnantpause.org/euth/liberty.htm>

¹² From State of Alaska's Argument, in Sampson et al. v State of Alaska, 09/21/2001

¹³ Foley, 1995; Hendin, 1994 "Treatment of Pain at the End of Life", A Position Statement from the American Pain Society.

¹⁴ Retrieved from http://www.internationaltaskforce.org/rpt2005_3.htm#235

¹⁵ Retrieved from http://www.internationaltaskforce.org/rpt2005_3.htm#235

There have been debates on the need to legalise euthanasia in India too. The Law Commission has recommended legalising euthanasia for terminally ill patients. Currently speaking however, euthanasia is undoubtedly illegal in India. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to Section 92 of the IPC and thus be rendered illegal.

The law in India is also very clear on the aspect of assisted suicide. Abetment of suicide is an offence expressly punishable under Sections 305 and 306 of the IPC.

"The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002." Chapter 6 dealing with unethical acts declares that "a physician shall not aid or abet or commit any of the following acts which shall be construed as unethical". Regulation 6.7 declares 'euthanasia' as an unethical act.

9. Judicial opinion in various countries on euthanasia and assisted suicide-

In a landmark case of **Airedale**, a 21-year-old patient, in the care of the applicant health authority who had been in a persistent vegetative state, The House of Lords held that medical treatment, including artificial feeding and the administration of antibiotic drugs, could lawfully be withheld from an insensate patient with no hope of recovery when it is known that the result would be that the patient would shortly thereafter die, provided responsible and competent medical opinion is of the view that it would be in the patient's best interests not to prolong his life by continuing that form of medical treatment. His death would be regarded in law as exclusively caused by the injury or disease to which his condition is attributable. It was established that an individual may refuse to accept life-prolonging or life-preserving treatment: "First it is established that the principle of self-determination requires that respect must be given to the wishes of the patient, so that if an adult patient of sound mind refuses, however unreasonably, to consent to treatment or care by which his life would or might be prolonged, the doctors responsible for his care must give effect to his wishes, even though they do not consider it to be in his best interests to do so ... To this extent, the principle of the sanctity of human life must yield to the principle of self-determination ..."¹⁶

House of Lords in **Airedale** case makes a distinction between withdrawal of life support on the one hand, and Euthanasia and assisted suicide on the other. It lays down a crucial principle of law when it says that withholding or withdrawal of life support to a dying patient merely amounts to allowing the patient to die a natural death and that where death in the normal course is certain, withholding or withdrawal of life support is not an offence. A competent patient cannot be compelled to undergo life saving treatment. Medical treatment may be administered to a terminally ill person to alleviate pain although it may hasten death. It involved the notion of a distinction between doctors killing a patient and letting him die. This principle entails a distinction between foreseeing an outcome and intending it.

That distinction has also been accepted by our Supreme Court in **Gian Kaur's** case.¹⁷

But a diametrically different view was taken by US Supreme Court in a slightly different situation. In **Cruzan v. Missouri Deptt. of Health**, the petitioners, who were parents suing on their behalf and on behalf of their daughter, requested a court order directing the withdrawal of their daughter's artificial feeding and hydration equipment after she was rendered vegetative in an auto accident. The appellate court denied their petition holding that the petitioners lacked authority to effectuate the request because there was no clear and convincing evidence of the daughter's desire to have life-sustaining treatment withdrawn as required under the Missouri Living Will Statute, Mo. Rev. Stat. § 459.010 et seq. (1986).¹⁸

However later on US court in **McKay v. Bergsted**¹⁹ allowed a competent adult who had been dependent on a respirator for twenty-one years to discontinue treatment. The court distinguished the plaintiff's case from that of a suicidal adult by stating, "Unlike a person bent on suicide, Kenneth sought no affirmative measures to terminate his life; he desired only to eliminate the artificial barriers standing between him and the natural processes of life and death that would otherwise ensue with someone in his physical condition".²⁰

In the **C-Test** and 'competency' case, the patient was suffering from schizophrenia, developed gangrene and doctors opined that his leg below knee be amputated. The patient refused. The hospital moved the Court for directions. Thorpe J referred to what is now known as the **C-Test**-, that the patient must have the 'competency' i.e.

¹⁶ Lord Goff in *Airedale NHS Trust v. Bland* [1993] AC 789, at p. 864

¹⁷ *Gian Kaur v. State of Punjab* 1996(2) SCC 648: 1994 Cr. L.J 1660 (SC)

¹⁸ *Cruzan v. Missouri Deptt. of Health* 111 L Ed 2d 224 : 497 US 261 : 110 S Ct 2841 (1989)

¹⁹ *McKay v. Bergsted* 801 P 2d 617 (1990)

²⁰ Justice Kannan Krishnamoorthy, *To die with dignity*, (2010) PL April S-10

the capacity to understand and decide the medical opinion. But where his faculties are reduced on account of his chronic illness and he had not sufficiently understood his state and the medical opinion, his refusal is not binding and the doctors could approach the court for directions.²¹

In Canada, in *Nancy B vs. Hotel Dieu de Quebec*,²² the Supreme Court opined that, "In any event, declining life-sustaining medical treatment may not properly be viewed as an attempt to commit suicide." The disease is allowed to take a natural course and "if death were eventually to occur, it would be the result, primarily, of the underlying disease, and not the result of a self-inflicted injury".

European Court on Human Rights at Strasbourg in the case of *Diane Pretty v The United Kingdom* stated that, "In an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity."

In this case the applicant, who was paralysed and suffering from a degenerative and incurable illness, alleged that the refusal to grant an immunity from prosecution to her husband if he assisted her in committing suicide and the prohibition in domestic law on assisting suicide infringed her rights. House of Lords dismissed her appeal. In giving the leading judgment, Lord Bingham of Cornhill held:

"100. ... *Respect for a person's 'private life' relates to the way a person lives. In that respect Mrs Pretty has the right of self-determination. In that sense, her private life is engaged even where in the face of terminal illness, she seeks to choose death rather than life. But it is an entirely different thing to imply into these words a positive obligation to give effect to her wish to end her own life by means of an assisted suicide. I think that to do so would be to stretch the meaning of the words too far.*"²³

10. The Judicial response to euthanasia and assisted suicide in India

The first case in which such an issue was brought before an Indian Court is *State v Sanjay Kumar*.²⁴ In this case, a division bench of the High Court of Delhi criticized section 309 of the Indian Penal Code, 1860 as 'an anachronism and a paradox'. This decision was followed by conflicting decisions of two High Courts.

The Bombay High Court in *Maruti Sripati Dubal v State of Maharashtra*²⁵ struck down section 309 as violative of right to life enshrined in Article 21 of the Constitution of India. Whereas the Andhra Pradesh High Court in *Chhena Jagadesswer v State of Andhra Pradesh*²⁶ held Section 309 as constitutionally valid.

In the case *State of Maharashtra v. Maruti Shripathi Dubal*, it was held that 'right to life' also includes 'right to die'. The court said that right to die is not unnatural; it is just uncommon and abnormal. Also the court mentioned about many instances in which a person may want to end his life. This was upheld by the Supreme Court in the case *P. Rathinam v. Union of India* by a two-judge bench of the Supreme Court through Justice B.L. Hansaria and invalidated section 309 of the Penal Code, which made attempt to commit suicide an offence, on the ground that it 'violated the fundamental right to life'. However in the case *Gian Kaur v. State of Punjab* the five judges Constitution Bench of the Court overruled Rathinam and held that Article 21 only guarantees right to life and personal liberty and in no case can the right to die be included in it.²⁷

In *Naresh Marotrao Sakhre v. Union of India*²⁸, Lodha J. observed that, Euthanasia and suicide are different. "Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or mercy killing on the other hand means and implies the intervention of other human agency to end the life. Mercy killing thus is not suicide and an attempt at mercy killing is not covered by the provisions of Section 309. The two concepts are both factually and legally distinct. *Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.*" (emphasis added)

In another case, *C.A. Thomas Master v Union of India*²⁹, the High Court of Kerala dealt with euthanasia. In this case, the Court entertained a writ petition filed by a citizen wherein he wanted the government to setup "Mahaprasthana Kendra" (Voluntary Death Clinic) for the purpose of facilitating voluntary death and donation/transplantation of bodily organs. The petitioner in this case was fit and wanted to terminate his life because he wanted to die in happy state of affairs. The High Court dismissed his writ petition and placed heavy reliance on the judgment given in *Gian Kaur's* case.

²¹ Re C (adult: refusal of medical treatment) 1940 All ER 819.

²² *Nancy B vs. Hotel Dieu de Quebec* (1992) 86 DLR (4th) 385,

²³ *Diane Pretty v The United Kingdom*: [2002] 35 EHRR 1. The full-text of the judgment is available at <http://www.worldlii.org/eu/cases/ECHR/2002/427.html>.

²⁴ *State v Sanjay Kumar* 1985 Cri LJ 931.

²⁵ *Maruti Sripati Dubal v State of Maharashtra* 1987 Cri LJ 743 Bom.

²⁶ *Chhena Jagadesswer v State of Andhra Pradesh* 1988 Cri LJ 549 A.P.

²⁷ Shreyans Kasliwal, *Should Euthanasia be Legalised in India?* (2003) PL WebJour 16

²⁸ *Naresh Marotrao Sakhre v. Union of India* 1995 Cri L J 96 (Bom)

²⁹ *C.A. Thomas Master v Union of India* 2000 Cri LJ 3729

In 2004 a two-judge bench of the Andhra Pradesh High Court dismissed the writ petition of a 25-year-old terminally ill patient, Venkatesh, who sought permission to donate his organs in a non-heart beating condition. In his petition, Venkatesh had expressed his wish to be put off the life support system, which he had been on for a couple of months, so that he could donate his organs. It was argued that Venkatesh's organs would deteriorate if he were not allowed to commit euthanasia. The High Court dismissed the writ petition, in view of the Supreme Court judgment in *Gian Kaur v State of Punjab*

In *Suchita Srivastava v. Chandigarh Admn.*³⁰, the Supreme Court refused to terminate a foetus of a mentally retarded woman who was a victim of rape and who had been brought up in a State-run orphanage, when the latter applied for the Court's permission for abortion. It is most likely that the Supreme Court would have granted the woman permission to terminate the pregnancy as well, if the woman had wanted an abortion, having regard to the provisions of the Medical Termination of Pregnancy Act.

In *Aruna Shanbhag's* case, a request was made to the court to stop giving food and water to a rape victim; now 60-year-old coma patient, without relatives to care for her, in a permanent vegetative state for the past 37 years in the hospital. The attorney, Shekhar Nafde, explained that the request by her friend social activist Pinki Virani could not be construed as a plea for euthanasia. "Her life is worse than animal existence." keeping her alive by force feeding her violates her right to die with dignity. The Supreme Court rejected the plea. This case reopened the debate on legalization of euthanasia in India. It is now high time for India to have a clear law on euthanasia.

The Law Commission in its 196th Report on Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) recommended the deletion of sec 309 of the Penal Code which makes the 'attempt to commit suicide' an offence. Refusal to obtain medical treatment does not amount to 'attempt to commit suicide' and withholding or withdrawing medical treatment by a doctor does not amount to 'abetment of suicide'.

The Report, concludes that 'Euthanasia' and 'Assisted Suicide' must continue to be offences under our law. The scope of the inquiry is, therefore, confined to examining the various legal concepts applicable to 'withdrawal of life support measures' and to suggest the manner and circumstances in which the medical profession could take decisions for withdrawal of life support if it was in the 'best interests' of the patient.

The report summarizes that,- from the principles almost uniformly laid 'down by the Courts in several countries, it is clear that (i) in the case of a patient who is seriously ill, but competent, his refusal, not to take medical treatment and allow nature, to take its own course, it is lawful and does not amount to 'attempt to commit suicide', (ii) Likewise, (a) where doctors do not start or continue medical treatment in such cases because of such patients' refusal, they are not guilty of abetment of suicide or murder or culpable homicide and (b) if the patient is a minor or is incompetent or is in a permanent vegetative state, or (c) if the patient was competent but his decision was not an informed one and if the doctors consider that there are no chances of recovery and that it was in the best interests of the patient that medical treatment be withheld or discontinued, the doctor's action would be lawful and they will not be guilty of any offence of abetting suicide or murder or culpable homicide. In such case, as the doctor is acting in good faith, his action in withholding or withdrawing medical treatment is protected and he is also not liable in tort for damages.³¹

11. Concluding Remarks

In modern parlance, the "freedom to die" seems to be flowing from the rights of privacy, autonomy and self-determination.³³ Suicide is a tragic, individual act. Euthanasia and assisted suicide are not private acts. It's about letting one person facilitate the death of another. Is it ethical and moral to help other commit suicide? Is it legally permissible? This is a matter of very public concern since it can lead to tremendous abuse, exploitation and erosion of care for the most vulnerable people among us. The real issue today is two types of cases:

Firstly, People who can communicate their desire to die. People who, perhaps because of a serious illness or perhaps for reasons unrelated to their illness, are extremely depressed and say they want to die. These people are no different than anyone else who thinks about suicide -- they just have medical problems in addition to their emotional or psychological problems. Some feel guilty about being a burden on their family. But social workers and psychologists have routinely found that when people like this talk about or attempt suicide, the vast majority don't really want to die. They just become frustrated that they cannot lead the kind of active lives that they used to before their illness.

Secondly, People who are unable to communicate because they are in a coma, or paralyzed, or simply so sick and weak that they cannot make any meaningful communication. The pro-euthanasia people say that such patients' "quality of life" is so low that they are better off dead and they should be killed by taking away their

³⁰ *Suchita Srivastava v. Chandigarh Admn.* (2009) 9 SCC 1

³¹ See the Supreme Court decisions on civil liability of Doctors in, *Jacob Mathew: 2005 (6) SCC 1*, *State of Punjab vs. Shiv Ram: 2005(7) SCC 1* and *State of Harvana vs. Raj Rani: 2005(7) SCC 22*.

food and fluids, so that they starve to death.³²

However after considering the arguments in favour of euthanasia and arguments against the euthanasia, one may conclude that, the arguments against euthanasia outweigh the arguments for legalizing euthanasia.

There is no uniform opinion found in cases decided by foreign courts or the courts in India on issues related to euthanasia or assisted suicide. The essence of the debate points towards the basic question: Is euthanasia really necessary for death with dignity? If we kill people rather than caring for them affectionately, are we upholding their dignity?

The questions whether the terminally ill, or others, should be free to seek assistance in taking their own lives, and if so in what circumstances and subject to what safeguards, are of great social, ethical and religious significance and are questions on which widely differing beliefs and views are held, often strongly. In modern parlance, the “freedom to die” seems to be flowing from the rights of privacy, autonomy and self-determination.

³³ In the words of U S Catholic Bishop,

“To destroy the boundary between healing and killing would mark a radical departure from longstanding legal and medical traditions, posing a threat of unforeseeable magnitude to vulnerable members of our society. Those who represent the interests of elderly, disables, and persons with terminal illnesses, are justifiably alarmed when some hasten to confer on them the “freedom” to be killed.”

As regards voluntary euthanasia, the right to refuse medical treatment is far removed from the right to request assistance in dying. Ultimately, however, it may be concluded that, these arguments are not sufficient reason to weaken society's prohibition of intentional killing. That prohibition is the cornerstone of law and of social relationships. It protects each one of us impartially, embodying the belief that all are equal and therefore, there should be no change in the law to permit euthanasia. It may be acknowledged that there are individual cases in which euthanasia may be seen by some to be appropriate. But individual cases cannot reasonably establish the foundation of a policy which would have such serious and widespread repercussions. Moreover, dying is not only a personal or individual affair. The death of a person affects the lives of others, often in ways and to an extent which cannot be foreseen. The issue of euthanasia is one in which the interest of the individual cannot be separated from the interest of society as a whole.³⁴

Thus, it is suggested that, while deciding the debate on euthanasia, the conflict between the principle of sanctity of life and the rights of self determination and dignity of a human being needs to be resolved. Rather than legalizing euthanasia as a general rule, it may be allowed as necessary exception only in passive form in appropriate cases where the individual cannot give consent and the medical opinion the death is near and certain and, to withdraw the life support system is in the best interest of the patient.

Sujata Pawar (Asst. Professor, Ismailsaheb mulla Law College, Satara, Maharashtra, India)

³² Jay Johansen, Euthanasia: *A Case of Individual Liberty?* Available at <http://www.pregnantpause.org/euth/liberty.htm>

³³ Shreyans Kasliwal, ‘Should Euthanasia be Legalised in India?’ (2003) PL WebJour 16

³⁴ *Diane Pretty v The United Kingdom*: [2002] 35 EHRR 1. Available at <http://www.worldlii.org/eu/cases/ECHR/2002/427.html>.

This academic article was published by The International Institute for Science, Technology and Education (IISTE). The IISTE is a pioneer in the Open Access Publishing service based in the U.S. and Europe. The aim of the institute is Accelerating Global Knowledge Sharing.

More information about the publisher can be found in the IISTE's homepage:

<http://www.iiste.org>

CALL FOR PAPERS

The IISTE is currently hosting more than 30 peer-reviewed academic journals and collaborating with academic institutions around the world. There's no deadline for submission. **Prospective authors of IISTE journals can find the submission instruction on the following page:** <http://www.iiste.org/Journals/>

The IISTE editorial team promises to review and publish all the qualified submissions in a **fast** manner. All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Printed version of the journals is also available upon request of readers and authors.

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

