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The Debate on Euthanasia in India - In a Nutshell

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Abstract: *The debate regarding euthanasia has been ongoing since a long time. Despite there being discussions by the Supreme Court, the current procedure for implementing and executing euthanasia remains complex and beyond the reach of common man. In order to allow the patients suffering from diseases to die with dignity and in peace, there is need for a nuanced law that would be cover various aspects related to euthanasia.*

Keywords: *Euthanasia, right to die, Supreme Court, law, die with dignity*

I. INTRODUCTION

Right to life is a quintessential part of the Constitution of India. Regarded as the most important right along with the right to equality and the right to free speech, the Supreme Court of India on various occasions has emphasised that the right to life is the right to live a dignified life and not mere animal existence.[1] However, whether the right to life includes the right to die and can an individual demand a dignified death remains debatable. These and related questions have rallied in the Indian legislative houses and the Courts for decades.[2]

This piece looks at some of the key arguments surrounding legalization of euthanasia, the legal position on euthanasia in India, highlights the gap in the current legal scenario and suggests some ways in which it can be legalised in India.

II. DEFINITION

Derived from the Greek words *eu* and *thanatos*, the term “euthanasia” means “good death” and is generally defined as an act of deliberately speeding up the death of an individual based on terminal medical condition.[3]

Euthanasia is further classified into active and passive euthanasia, where the former i.e. active euthanasia, considered as highly controversial form, is defined as use of lethal substances or forces, such as administering a lethal injection, to induce death and the latter i.e. passive euthanasia is defined as withholding (or non-use) of common treatments, such as antibiotics or a ventilator necessary for the continuance of life. Active euthanasia requires an *act to be done* whereas passive euthanasia requires omission (abstinence) or an *act not be done*. [4]

III. THE PRIMARY DEBATE

The debate surrounding legalisation of euthanasia has existed since long. The first use of the term euthanasia was in the 17th century and since then the lawmakers, courts, medical professionals, religious and social groups across various nations have, without reaching common consensus, argued over permissibility of this practice. Apart from involving important constitutional law questions, the practice of euthanasia raises moral issues such as can a third person be authorized to end life of a person facing inordinate suffering? If so, under what circumstances?

The three primary arguments surrounding legalization of euthanasia are the ‘compassion argument’, the ‘autonomy argument’ and the ‘public policy – slippery slope argument’. The compassion argument stems from the reasoning that life *per se* is not of value if one is in constant distress and cannot enjoy and experience the basis essentials.[5] It is argued that euthanasia would ensure that there is no waiting for death and would reduce the pain of a patient and his/her loved ones. In opposition, it is argued that all human life is intrinsically vital and sanctity of life should be maintained in all circumstances.[6] However, Lord Hoffman and Lord Goff in *Airedale* have opined that the principle of sanctity of life is not absolute and there is no sacrosanct rule in favor of prolonging life, irrespective of the circumstances. The opponents of euthanasia further argue that with modern day palliative care options, the pain and suffering could be reduced to a minimum and in some cases to almost negligible pain.[7] Though this seems to be a legitimate argument, the question still remains – till when should the palliative care be offered? In cases where chances of recovery are minuscule, the palliative care might reduce the pain, however the wait for death continues which it may be argued, emotionally strangles the patient and the loved ones.[8]

This leads to an argument that if the patient should be allowed to exercise bodily autonomy to choose if he/she wishes to end his/her life. The proponents have argued that the decision of a patient to end his/her life, if the means, manner and method of sustaining life lead to pain and suffering, should be respected and allowed.[9] Lawmakers and courts across the world, including in the United States and the United Kingdom, have argued that “slippery – slope” for this asserted “right” is steep and potential harm

to wider interests of the society in comparison to individual autonomy are high. Moreover, the risk of abuse by family or professionals attending to patient is excessive, especially since there can be no full proof mechanism to check if the decision to die is voluntary.[10] Irreversible effect of euthanasia, vested interest of family members or doctors, potential growth in medical science leading to cure, have been *inter alia* few important aspects due to which not many law makers are in favor of legalising euthanasia.

IV. THE INDIAN POSITION

The Law Commission of India has observed that legal position on euthanasia in India is unclear and that there is a dearth of awareness amongst the common public on the subject, leading to an increase in suffering of the patients and family members and putting doctors and hospitals in predicament.[11]

As the Indian Parliament has remained silent on these issues, the concerned parties have sought judicial guidance. However, the judicial position has not been consistent and very little has been clarified regarding the procedure to be followed if euthanasia is permitted.

The Supreme Court of India initially in the case of *P. Rathinam v. Union of India*,[12] agreed with a decision of lower court and stated that right to life includes right not to live a forced life and an individual should be allowed to decide when not to live. This being a blanket decision, the Court failed to precisely identify when and under what circumstances can an individual decide not to live. Later the Supreme Court in *Gian Kaur v. State of Punjab*,[13] reversed its position and stated that life of individual cannot be taken away by any person and even in cases where a patient in suffering from terminal illness, the Courts cannot allow such person to die.

The Court changed its position again and in a recent decision, the Division Bench of the Supreme Court in the case of *Aruna Ramchandra Shanbaug v. Union of India*,[14] relying *inter alia* on House of Lords decision in *Airedale NHS Trust v. Bland*, stated that passive euthanasia in case of terminally ill patients should be allowed. The Court stated that in the “best interest” of patient to avoid inordinate suffering and where there is no hope of cure, euthanasia can be administered. However, this decision was referred to the Constitution Bench of the Supreme Court. The Constitution Bench in the *Common Cause* case stated that the right of the patient to choose the kind of treatment they wish to undertake is paramount and in cases where a patient is suffering from a terminal disease the patient should be allowed to choose or refuse the treatment. The Court then laid down procedure that ought to be followed in cases where a person is suffering from a terminal disease and has expressed his or her desire to end their lives. However, this procedure has been criticized for being too complex and almost out of the reach of the common person as the procedure involves approval and permissions from various authorities along with intricate formalities.

V. CONCLUSION AND THE WAY AHEAD

The legal scenario on the issue of euthanasia in India remains unclear without existence of formative law and without any stable position of the Judiciary. The Courts in recent cases and especially in the *Aruna* case have expressed an intention to allow passive euthanasia. However, law makers and Courts have continuously expressed the fear of abuse of legalisation of euthanasia by family members, doctors or malicious third party. Due to absence of any law on this point, the manner in which euthanasia should be executed, regulated and safeguarded remains unclear.

Clarity on position through a Statute or Judicial order is required. However, this Statute or order should be encompassing and should ensure that various procedure and safeguards are appositely stated.

The new law should *inter alia* include: *First*, that a patient’s demand for euthanasia should be allowed, only in cases of terminally ill patients, where there is no foreseeable cure and where voluntary and enduring wish to die is expressed. It should be ensured that a patient is competent to make such a decision and is duly informed of the effects and consequences. Once such a demand is made, a committee of medical experts appointed by the State Medical Council should examine the condition of the patient and confirm that the patient is suffering from terminal illness which has no cure presently and in the foreseeable future. This approval mechanism is similar to that in Belgium, which is one of the few countries where euthanasia is currently legalized.[15] *Secondly*, in order to prevent the abuse and considering the irreversibility involved in the process, if the committee of medical experts confirms that euthanasia may be administered, this decision should be approved by the State High Court within a definite time period. *Thirdly*, the law should unambiguously clarify, when and under what circumstances can any other person apart from the patient request for euthanasia to be administered. *Fourthly*, similar to the legal policy adopted by the State of Oregon in United States, a “cooling off” period should be mandatorily provided in every case where euthanasia is to be administered. Cooling off period is generally a time period after the patient has made request for euthanasia and the same has been approved by the various regulatory and judicial bodies and before euthanasia is actually carried out. During this cooling off period the patient should be provided access to family

members and professional counselors to ensure that his / her wish to end life is enduring and not wavering. *Lastly*, law should ensure that doctors or the hospital staffs involved in administering euthanasia are absolved of any criminal liability. However, it should also be clarified that misuse of this procedure either due to negligence or due to vested motives, would be strictly culpable. Unless India implements appropriate legislation and clarifies the procedure, the wait for death though near would be long.

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