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LEGAL AND ETHICAL CONSIDERATION OF EUTHANASIA IN INDIA: A CHOICE BETWEEN LIFE AND DEATH

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ABSTRACT

Euthanasia has always been in glare of publicity and as a subject of debate in the field of medicine and law. It is one of the most baffling issue which the world face today when it comes to the life of a patient with terminal illness and acute pain, who is in a vegetate state and cannot support life with dignity. Severely handicapped or terminally ill people are supposed to have the right to choose between life and death. Euthanasia has been much debated subject throughout the world and India entered into the arena for debate since the case of Aruna Ramchandra Shanbaug (a junior nurse at King Edward Hospital, Parel, Mumbai) who was sexually assaulted by a ward boy in the evening of Nov 27, 1973. The present study provides the case of some countries which have enacted legislations to euthanasia, among these handful of countries Netherlands was the first to start the practice of euthanasia and later was joined by Canada, Columbia, Belgium, Luxemburg and the state of Oregon in USA. India also joined these countries which have already legalized mercy killing in some form or other, so far India is concerned 'Passive Euthanasia' is legalized by Supreme Court's two judge bench on 7th March 2011. Varied forms of euthanasia has been highlighted in the present research paper, the most prominent among them include Active and Passive, Voluntary and Non-Voluntary euthanasia. In the current study an attempt was made to explore the arguments in favour and the arguments against euthanasia and an account of euthanasia and the position of life in Islam is also explored. The research method used for the accumulation and analysis of data in the current study is Descriptive/ Ex post facto method. Finally an attempt was made to see the possibilities by which euthanasia can be avoided to a large extent while taking into consideration the ethical code of humanity.

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INTRODUCTION

Before the dawn of the twentieth century, a discussion of the right to die would likely have been an academic one, the theologians and moralists were engaged in an exploration of attitudes and beliefs regarding suicide. There was little alternative but to tolerate the natural progression of disease to its inevitable end or simply to wait for the inception of Pneumonia for the terminally ill patient. However, the frontiers of death have been pushed back by the recent joint venture of medicine and technology. Insistent drugs, sophisticated surgical techniques, and computers have caused the apparition of death to fade away to such an extent that at times an instrument is required to indicate if death has actually occurred.¹ The word euthanasia is said to be originated in Greece where it means a good death² while deriving its etymological meaning the word euthanasia is derived from the Greek word "euthanatos" which means "well death" and it is originally referred to intentional

mercy killing. When we define euthanasia in modern setting it is limited to the killing of a patient by physician at the request of the patient in order to free him from terminal illness or unbearable pain.³ Black's Law Dictionary (8th Edition) has described euthanasia as, "Euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reason of mercy". In taking this definition of euthanasia into consideration it can be extracted, putting a person to painless death especially in case of fatal suffering or when life becomes worthless as a result of mental or physical disadvantage is morally acceptable.⁴ In addition to this it can be said, Euthanasia or mercy killing is the practice of killing a person for giving him relief from untreatable pain or distress or allowing or causing painless death when life has become worthless and distasteful.⁵

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With its roots in conventional philosophy, euthanasia is a very old issue. However, it has been understood differently throughout the course of history. The concept of Euthanasia in present era has become increasingly under the spotlight due to the ongoing technicity of medicine. The issue of Euthanasia is a critical problem for contemporary society because of several other compounding factors making the issue very severe. It can be anticipated that the debate surrounding the moral adequacy of Euthanasia and its decriminalization will remain a challenge for our ageing societies of the 21st century.⁶ In short we can articulate, euthanasia is mainly associated with people who are in a state of terminal illness or have become incapacitated and don't want to go through the rest of their life suffering. This right of a patient with terminal illness cannot be equated with an able bodied, sane person's right. Euthanasia is a controversial issue which encompasses the morals, values and beliefs of our society.

Statement of the Problem

Euthanasia is still a debatable issue worldwide, when it comes to the life of a patient who is in a Permanent Vegetate State and is not in position to live life in worth and with dignity. A person who has the right to live a decent life with dignity should not be permitted to die after going through intolerable sufferings and misery in case of terminal illness or incapacitation. It is necessary to take in to consideration the legal and ethical values of a society before implementing euthanasia because every human life is of worth and decorum.

Objectives of the study

The following points will direct us to comprehend the objectives of the present paper which are listed below:

1. To highlight and present the concept of euthanasia in general and to explore its special kinds in particular.
2. To explore and understand the present legal position of euthanasia in India.
3. To see and discuss the arguments in favour and the arguments against euthanasia.
4. To explore and highlight the ethical consideration of euthanasia and to see whether it is permitted in Islam or prohibited.

Methodology

The present research paper, "Legal and Ethical Consideration of Euthanasia in India: A Choice between Life and Death" is based on both primary and secondary data collected from different sources. The primary data was collected from religious text and first hand books. So far as secondary sources are concerned they were accumulated from number of research papers, articles, books and news papers. The research method used in the present study for exploration of data which amassed from different sources is descriptive/Ex post facto research method.

Kinds of Euthanasia

Euthanasia as discussed above is assisting a person who suffers critical and acute disease and is not in a condition to get restored of his health. Euthanasia can be of consent or without consent taking into account the circumstances which allow a physician to take decision over the withdrawal of life support

aids to such patient. Consequently, euthanasia can be classified under the following broad categories:

Active Euthanasia

Active euthanasia involves painlessly putting patients with terminal illness to death for merciful reasons, as when a doctor administers a lethal dose of medication to a patient. In this case a person cannot himself cause his death but requires someone else's help with some prescription causing death.⁷ Active euthanasia is a crime all over the world except where permitted by legislation, in India active euthanasia is illegal and a crime under section 302 or at least section 304 of Indian Penal Code. Physician assisted suicide is a crime under section 306 of IPC (abetment to suicide).⁸

Passive Euthanasia

Passive euthanasia demands the withholding of common treatments, such as antibiotics, necessary for the persistence of life. It involves not doing something to prevent death as when doctor refrain from using devices necessary to keep alive a terminally ill patient or a patient in a persistent vegetative state (PVS).⁹ Passive euthanasia is thought to be less brutal than active euthanasia. Passive euthanasia is the only way to legally administer euthanasia in India.¹⁰ In "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him.¹¹

Voluntary Euthanasia

In voluntary euthanasia person asks for death by either active or passive euthanasia. It is basically related with the right to choice of the terminally sick patient who decide to end his/her life, which serves his best interest and everyone connected to his terminal sickness. This type of euthanasia is practiced when the expressed desire and consent of the patient is given.¹²

Involuntary Euthanasia

The involuntary euthanasia occurs when a patient is killed against his stated will and under the law this is a criminal act of murder. Thus Involuntary Euthanasia occurs where the recipient has not agreed to the procedure and is an unwilling associate.¹³ Euthanasia can be said as an involuntary when the person killed is capable of consenting to her own death, but does not do so, either because he/she is not asked, or because he/she is asked and chooses to go on living. Confessedly this definition puts two different cases under one caption. There is a significant difference between killing someone who chooses to go on living and killing somebody who has not consented to being killed, but if asked, would have consented.¹⁴ In practice, though, it is hard to imagine cases in which a person is capable of consenting and would have consented if asked, but was not asked.

Non voluntary euthanasia

To end the life of a person who is mentally lacking ability to make informed decision about his/her death, such as a patient in coma. It includes cases where the patient has not addressed his/her wish of dying in any will or indication, and the authority to make the decision lies with the family members.¹⁵ If a person is not capable of understanding the choice between life and death than euthanasia is said to be non-voluntary

instead of voluntary and involuntary. Those unable to give consent would include terminally ill or severely disabled infants, and people who through accident, illness, or old age have enduringly lost the capacity to understand the issue involved, without having previously requested or rejected euthanasia in these circumstances.¹⁶

Legal position of Euthanasia in india and other counters

In 2001 Netherlands became first country to legalize euthanasia followed by Canada, states of Oregon, Washington and Montana in USA and Columbia. In June 2010 Germany became the fifth country in the world to legalize euthanasia. In both Netherlands and Belgium euthanasia is still a criminal homicide although it is neither prosecuted and nor punishable if the executor (doctor) congregates certain legal exceptions. Active euthanasia is practiced in Netherlands since it is legalized, when a patient is judged to be mentally competent to make the request and when his suffering is agreed to be severe, patient may lawfully be helped to die usually by a lethal injection administered at home by his doctor.¹⁷ There are some countries like in Switzerland; where there are two pertinent articles in the Penal Code. The voluntary euthanasia is illegal under Article 114 but at the same time Article 115 makes it lawful to assist someone commit suicide if, and only if, the motive is 'entirely honorable', to get suffering to an end.¹⁸ In UK a court in 2003 granted to a 43 year old women right to die who was paralyzed from the neck down. This is an instance of granting legal sanction to passive euthanasia, in other words a judicial exemption to the law of land.¹⁹

In India support to suicide and attempt to suicide are both against the law. The constitutional validity of Indian Penal Code Section 309 was challenged in the Supreme Court In 1994. The Supreme Court declared that IPC Sec. 309 is unconstitutional, under Article 21 (Right to Life) of the constitution in a landmark judgment and it was Justice B. L. Hansaria of the Supreme Court who described the plight of a rape victim forced to stand trial for the crime of attempt to suicide. In his judgment in *P. Rathinam v. Union of India*, the judge described the trail in one word: "persecution" (*P. Rathinam vs. Union of India*).²⁰ An interesting case of abetment of commission of suicide under Indian penal code sec 306 came to Supreme Court in 1996. The accused were criminalized in trial court and later the conviction was upheld by the High Court. They challenged that 'right to die' should be included in Article 21 of the Constitution under appeal to the Supreme Court and any person abetting the charge of suicide by anyone is simply assisting in the enforcement of the fundamental right under Article 21; hence their punishment is violation of Article 21. The Supreme Court was persuaded to rethink its prior decision and to reconsider the decision of right to die. Instantly the issue was referred to a Constitution Bench of the Indian Supreme Court. The Court held that the right to life under Article 21 of the Constitution does not include the right to die (*Gian Kaur vs. State of Punjab*).²¹

The Supreme Court of India in a path breaking judgment allowed "passive euthanasia" of retreating life support to patients in Persistently Vegetative State (PVS) but at the same time rejected active euthanasia of ending life through administration of lethal injection. The chief argument for arbitration before the Supreme Court was whether a person

who refuses to accept medical treatments or food in order to die, commits a crime under Section 309 of Indian Penal Code. The judgment was pronounced in relation to a journalist-writer, Pinki Virani's plea to allow passive euthanasia for Aruna Shanbaugh.²² Aruna Shanbaug was working as a nurse in the King Edward Memorial Hospital (KEM), Parel, Mumbai. The heartbreaking incident happened to her on the evening of 27th November, 1973. Aruna was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but on finding that she was menstruating, he sodomized her. To immobilize her during this act, he twisted the chain around her neck.²³ Aruna was found unconscious by one cleaner on the next day. Her body was on the floor and blood was all over the floor. The event did not allow oxygen to reach her brain, as a result of which her brain got damaged.²⁴

Under this judgment the court held that there is no right to die under Article 21 of the constitution but causing the death of a person who is in a persistent vegetative state, with no chance of recovery, by withdrawing artificial life support is not a 'positive act of killing'. Terming this passive euthanasia, a bench of justices Markenday katju and Gyan Sudha Mishra held that this could be permitted on a case-by case basis.²⁵ Consequently in *Aruna Shanbaug Case* the supreme Court decided to legalize 'passive Euthanasia' on 7th March, 2011, after a review by medical experts, while 'active euthanasia' is not allowed.

Arguments for Euthanasia

There are various arguments which support active euthanasia and contended that since society has acknowledged a patient's right to passive euthanasia (for example, by legally recognizing refusal of life-sustaining treatment), active euthanasia should similarly be permitted. When arguing on behalf of legalizing active euthanasia proponents emphasis circumstances in which a condition has become overwhelmingly burdened some for the patient, pain management for the patient is inadequate and only death seems capable of bringing relief.²⁶ Numerous patients in a persistent vegetative state (PVS) or in relentless illness do not want to be a burden on their family. And consequently in this situation passive or active euthanasia can be considered as a way to upheld the 'Right to life' by honoring 'Right to die' with dignity.²⁷

Arguments that are against to euthanasia whether active or passive are also numerous. Those who are against, argue that if we embrace 'the right to death with dignity', people with terminal and unbearable sicknesses will be disposed from our civilized society. The practice of analgesic care counters this view, as palliative care would provide relief from distressing symptoms and pain, and support to the patient as well as the care giver. Palliative care is an active, compassionate and creative care for the dying. They also emphasize that those who provide health services to the patients with terminal illness have professional obligations that forbid killing and maintain that euthanasia is contradictory with the rules of nursing, ear giving, and healing. But instead, with the rapidly advancing medical technology it is very much possible that those ill today may be cured tomorrow. Therefore the society has no right to kill any person with incurable sickness and thereby deny them the chance of future recovery. The Indian constitution says that

the 'right to die' is not a fundamental right under Article 21.²⁸ So by this position it can be said that every citizen residing in Indian territory shall have the right to live with dignity and should not be forced to die as such act will be considered the operation of approaching one to commit suicide.

Prohibition of Euthanasia in Islam

Based on a convincing interpretation of the Holy Quran, Islamic jurisprudence does not identify a person's right to die voluntarily. According to Islamic teachings, life is a divine trust and can't be terminated by any form of active or passive voluntary intervention. The Islamic arguments against euthanasia can be summarized in two main reasons: (I) Life is sacred and euthanasia and suicide are not included among the reasons allowed for killing in Islam and (II) Allah decides how long each of us will live²⁹ and two verses of Holy Quran support this reason:-

“And do not take any human being's life — (the life) which Allah has made sacred save with right (justice)”³⁰

“Do not kill yourselves: for verily Allah is to you Most Merciful”³¹

From the above verses which are taken from Holy Quran, along with all the Islamic scholars consider active euthanasia as prohibited (Haram) and there is no difference between Sunni and Shiite schools. The moment of death is under the control of Allah and the human has no say in this matter; the human cannot and should not attempt to hasten or delay the death. The prohibition on life applies equally well whether for self, suicide, or others, homicide or genocide.

SUGGESTIONS AND DISCUSSION

Besides keeping in view the religious and moral grounds, by the advancement and development of Science and Technology the concepts of life and death have been changed. Progresses and innovations in medical Science now allow both living and dying to be prolonged, a fact has raised consciousness of issue relating to death and dying in the community at large. By this fact the death to person suffering from immense pain can be avoided to a great and large extent. Here at this juncture some suggestions are needed that could bring in focus the proper use of euthanasia:

1. Need of the hour is to review the legislations concerning euthanasia, at the same time such legislations should be passed under which proper steps should be taken to save such patients who want to live in spite of their sufferings.
2. The patients who are suffering from terminal illness shall be provided with financial support and assistance so that they could no longer be burden on their family and relatives.
3. Physicians should be given training about the use of modern medical science and technology which could largely determine their course of decision while meeting with such patients.
4. Strong doctor-patient relationship is essential which could largely built ethical and moral values among physicians and they could do every possible effort to

save the precious life of a patient suffering from acute pain.

5. Such patients should be given freedom to choose between life and death instead they should not be forced to die.

CONCLUSION

Euthanasia is a burning issues in the present era where we have both class of arguers who support it and on the contrary those who object its implementation. Those who favour legalizing euthanasia emphasis circumstances in which a condition has become overwhelmingly burdened some for the patient, pain management for the patient is inadequate and only death seems capable of bringing relief. But at the same time there is another class of arguers who are very much against to the execution of euthanasia in its any form whether active or passive, voluntary or non-voluntary. But so far as the present age of science and technology is concerned and also modern innovations in medical science are taken into consideration euthanasia in its active or passive form can be avoided. The need is to open the gates of moral and ethical values which could create a friendly environment to the patients who are suffering from acute pain or who are in a persistent vegetative state. Euthanasia is to be resorted only when all other options have been exhausted and even in an extreme emergency it should be taken into consideration.

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