

LEGALIZATION of EUTHANASIA

A Prime Human Right Issue to be Considered

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“The right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life- P. Rathinam v. Union of India AIR 1994 SC 1844”

The debate surrounding euthanasia has persisted across world and for several centuries. The proponents of euthanasia have tried and succeeded at various legislative and judicial platforms for the modern application of euthanasia in all its forms especially pertaining to medical and allied jurisprudence and have carved out a place within the legal framework of their respective nations. However not all forms of euthanasia has received extensive support.

Legalizing euthanasia also has concern on the type of euthanasia. There are said to be different classifications of euthanasia, they are as follows “voluntary, non-voluntary and involuntary”. These three are the said common classifications of Euthanasia. Voluntary euthanasia is that with reference to a person’s right to die. It speaks on a right of an individual to end their own life by their own wish. Involuntary is that where the decision to end the life of an individual is decided by other people. Since some chances are there for misusing this, euthanasia is opposed by many. But still to benefit the terminally-ill people who really wish to use this many scholars support this. Passive and active are the further classifications of voluntary euthanasia.¹ The clear difference between active and passive euthanasia are as follows, in active euthanasia it is done by some move like injecting a lethal injection to end the life of a patient who is voluntary to put an end to his life. This shall also be said as an affirmative move to bring death before the nature calls for it. In cases of passive euthanasia it can be seen as acts like withdrawing the life supporting systems of the patients who seems to be terminally ill and the direct result of such withdrawal would end life. (i.e.) acts such as, removing the artificial barriers to death and tending the natures move to a person’s death.

Illuminating on the Types:

Passive and Active euthanasia have often been placed on different footing by the law and support among nations, they seems more advanced towards the former than the latter. A nation’s criminal laws defining Homicide, Suicide and Assisted suicide forms the legal basis for treating the cases as either passive or active euthanasia. The recognition of living wills by certain nations has further engendered the progress towards the complete legalization of euthanasia. It argues that all forms of Euthanasia be legally accepted and calls for stern reforms in nations wherein only passive euthanasia has been legitimized. The basic right or freedom to which all human beings are entitled to is “Right to Life”. But this right is very limited when it comes to his decision on death. Law limits the rights of the people, where it says that a person has no authority to decide on his choice of death. “Quick, Easy and Happy death”, which directly refers to “Euthanasia” which was derived from the Greek in 17th Century.² The use of the word “Euthanasia” in English language has its trace from the year 1646.³ On

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¹Euthanasia - The Right To Die With Dignity, Hindustan Times, December 18, 2010 Saturday, ([http://www.Lexisnexis.Com/Uk/Nexis/Results/Docview/Docview.Do?Doclinkind=True&Risb=21_T12526167814&Format=GNBFI&Sort=BOOLEAN&Startdocno=1&Resultsurkey=29_T12526161593&Cisb=22_T12526167816&Treemax=True&Treewidth=0&Csi=282802&Docno=1](http://www.lexisnexis.com/uk/nexis/results/docview/docview.do?doclinkind=true&risb=21_T12526167814&format=GNBFI&sort=BOOLEAN&startdocno=1&resultsurkey=29_T12526161593&cisb=22_T12526167816&treemax=true&treewidth=0&csi=282802&docno=1))

² James H. Ondrey, Physician- Assisted Suicide, Greenhaven Press, 2006.

an expressed request the taking of life from a person is known as Euthanasia. In Black's law dictionary the term "Euthanasia" is defined as "the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an *act of mercy*⁴". The Rights of a person is limited when it comes to his negative rights since some chances are there for the misuse of the same.

Right to Life:

The right to life guaranteed and implied as a universal right, and finding place within the constitution of most nations, forming an essential part of international convention, and also finding a place within the statutory framework of the numerous legal systems would give credence to the argument put forth by the proponents of euthanasia that such a right would also include within its ambit the right to die with dignity. "Right to Life" is that said to include the right of a person to live with human dignity. This can further be meant as the existence of such a right up to the end of his natural life. In other sense this can also be said to be a dignified life till the death of a person and further death with such procedure which is dignified. The Indian Supreme Court illustrates the above notion in its Judgment in **Aruna Ramchandra Shanbaug Vs. Union of India ILC-2011-SC-CIVIL-Mar-10**. Other nations have recognized the right to die with dignity under their statutory law, i.e. the Oregon State has enacted the Death with dignity Act, 1997. The Indian constitution confers certain rights under the Article 21; this is called as "Right to Life". There is a controversy which argues whether the "right to live" includes a "right to die". This had its consideration initially in the year 1987. In **State of Maharashtra Vs Maruti Shripati Dubal**⁵, here the Bombay High Court said that, "Everyone should have the freedom to dispose of his life as and when he desires". And this decision was upheld in **P Rathinam Vs Union of India**⁶, here in this case the Supreme Court said that, "A person cannot be forced to enjoy life to his detriment, disadvantage or disliking". On the other hand, Supreme Court did not consider the plea that euthanasia must be legalized, this is because, a 3rd person is involved here; about whom it can be believed that he helps or abets for the death of another.

In the case of **Gain Kaur's**, a 5 Judge Bench overruled "**P Rathinam's case**", and said, "The 'right to life' under Article 21 of the Constitution of India does not include the 'right to die' or 'right to be killed'... the right to life would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death". However in the case of **Aruna Ramchandra Shanbaug vs. Union of India &Ors**⁷ the Supreme Court of India allowed for passive euthanasia (i.e.) the withdrawal of the life supporting system. A person who is attempting to suicide and requesting to die with dignity has some difference. It is that as per Human Rights, a man should hold certain rights to have a dignified death. A prior attention to Netherlands which provides a "Right to Die with Dignity" to its people is required. The other facets that proponents seek to use as their basis for legalization of euthanasia include the right against torture, right to privacy and self-determination. Right to Life guaranteed under the Indian Constitution protects the people against all forms of Torture and this would include the right to not live with pain and suffering which would tantamount to torture. Concomitantly, the right to Privacy also protects the right of ill persons and this would include the right to treatment and the absolute right to control over personal and moral matters. These rights and their application are the issues surrounding the debate on euthanasia in modern Jurisprudence.

The facility of patients to opt how they may perhaps die and have those selections respected is revered as a kind of keeping control, which could consecutively help in preserving personal dignity in

³Rosemary Firth RAIN, Euthanasia, No. 45 (Aug., 1981), Pp. 1-4, Royal Anthropological Institute Of Great Britain And Ireland, ([Http://www.jstor.org/stable/3031789](http://www.jstor.org/stable/3031789))

⁴H. C. Black, *Black's Law Dictionary*, 16thedn, St Paul Minn-West Publishing Co (1991), P. 554. Emphasis Mine.

⁵(1986) 88 BOMLR 589

⁶1994 SCC (3) 394

⁷[Http://www.indiankanoon.org/doc/235821/](http://www.indiankanoon.org/doc/235821/)

dying. But by identifying this in terms of “rights”, patrons have handled to carry euthanasia within the array of existing Human rights in spite of the fact that the “right to die” is not confined as a constitutional right. In the New England Journal of Medicine the reports show that the Death with Dignity Act is working very well.⁸ In **Aruna Ramchandra Shanbaug Vs. Union of India &Ors.** case the Supreme Court of India laid a decision saying that, “right to live with dignity also includes within its scope, the right to die with dignity”. This is said to be an important decision with regards to the issue of “Right to die”.

The landmark decision in **Bland case**⁹ is that, where the court stated that withdrawing treatment should “invariably be subject to judicial sanction”. In this case, Antony Bland left severely brain damaged, he was Seventeen years old and this happened in the Hillsborough Football Stadium disaster by the year 1989. Antony Bland was in permanent vegetative state-PVS until the year 1993. He was living with the help of artificial nutrition and hydration. The High Court and the House of lords agreed for the withdrawal of the artificial nutrition and hydration when his parents and NHS trust requested for the permission.

Persistent Vegetative State (PVS):

The decision given by the House of Lords in the case of “**Airedale NHS Trust v Bland**” formed the actual clarity in such cases. Here in this case, the House of Lords decided that the nasogastric feeding and hydration can be withdrawn from the patient who is said to be in a “permanent vegetative state” (PVS). Even though this decision appeared to give some clear view, critiques focused mainly on the multiple ways by which the Lordships arrived at the conclusion, perhaps telling in future there falls review.¹⁰

A landmark judgment involving a patient in permanent vegetative state for a period of thirty seven years is the case of **Aruna Ramchandra Shanbaug Vs. Union Of India &Ors.** The facts are as follows, where it is a patient who was a nurse was sexually assaulted and was in the state of coma for 37 years (permanent vegetative state). The plea for euthanasia was made by her friend who is a journalist. Since 1973 she has been in a vegetative state. This cases fall under the ambit of the “right to die with dignity as a part of right to live with dignity”. This case is not of putting off the life but it is just merely speeding the course of natural death which has previously commenced. The debate to allow doctors assisted death in these cases is inconclusive. Here the court rejected the plea of euthanasia, but it laid guidelines for passive euthanasia after setting a medical panel to examine her. The court allowed withdrawing the life supporting system allowing for a passive euthanasia¹¹.

However it is a fact that, regarding PVS patients where there is no possibility to recover, then it can be said as just a dead person with a living body. Here it is important to consider the right of the family and euthanasia is to be allowed. In such cases holding euthanasia doesn't seem to look right which can also be said to violate the fundamental right of the people under Human Rights. The “right to life”

⁸ Arthur E. Chin Et Al., *Legalized Physican- Assisted Suicide In Oregon- The First Year's Experience*, 340 *New Engl., J. Med.* 577 (1999)

⁹ *Airedale NHS Trust V. Bland* [1993] AC 789

¹⁰ See, For Example, Mason JK And Mccall Smith RA, *Law And Medical*

Ethics, 5th Ed, London, Butterworths, 199, Particularly At Chapter 16;

Mclean SAM, “Letting Die Or Assisting Death: How Should The Law

Respond To The Patient In The Persistent Vegetative State?” In Petersen K,

Ed. *Law And Medicine*, La Trobe University Press, 3, 1994.

(¹¹[Http://Www.Indiankanoon.Org/Doc/235821/](http://www.indiankanoon.org/doc/235821/))

is no more than a “right”. It is that the “right to life” is not an obligation to live. The right to life does not insist that it should be exercised. But before that, what “right to life” actually means? There we could see so many different meanings for this question. It could be said that the “right to life” means a right of a person to live with self respect. In others words, it is a right to live decent. Another component right in this wide-ranging package of rights is the “right not be killed or allowed to die”. This is where this right is under debate and controversy to euthanasia.¹²

To give the correct meaning and content of the word “life” under “Right to life”, it has to be construed as a life with human dignity. Law guaranties for the protection of life and the personal liberties under “Right to life”. But “Right to life” protects the right to life and not the life itself, at the same time as the sentence relating to deprivation of the life directs to protect a person from the 3rd party, (i.e.) the State and public, and not from them self.

Case Analysis:

The case of **Aruna Ramachandra Shanbaug** - Euthanasia is a perplexing subject which the courts face all over the world. In the said case Ms. Pinki Virani a friend of Aruna Ramachandra Shanbaug moved to the court to allow for euthanasia. Aruna was a staff nurse in “King Edward Memorial Hospital”. On 27.11.1973 she was attempted to rape being wrapped with a dog chain around her neck. Later she was found lying unconscious. She was examined and was found that her brain was damaged. It has been 36 years of the said incident and now Aruna is 60 years old.

Certain established doctrines and theories in medical jurisprudence have aided the proponents of Euthanasia. Various texts on Medical jurisprudence have come to accept the doctrine of double effect wherein a certain good and a bad result is obtained by carrying out a said medical procedure. The good result and the bad result in euthanasia with respect to the doctrine of double effect can be explained as, where the bad effect dealt here is the death of the patient and the good is the relief of the patient from his pains and sufferings The United States Courts have come accept this double effect doctrine more famously in the cases of **Vacco et al. Vs. Quill** and **Compassion in dying Vs. Washington**. The medical law jurisprudence adds further support towards accomplishing the goal of recognizing Active and passive forms of euthanasia. The right to refuse treatment is another principle which is accepted by numerous countries and juristic systems. In **Sidaway Vs. Board of Governors** of the Bethlem Royal Hospital, the Court held that the right to refuse treatment receives protection under the common law and it was also held that the same was a basic human right. The United States Courts have gone further to state that a person deciding against treatment would not be in the same shoes of a person who attempts to commit suicide, which is a punishable offence in most common law and juristic system. To bring about a change in the law recognizing passive euthanasia, this punishable offence has been made redundant by amending acts. The decision in **Mckay Vs. Bergstedt** recognizes this principle. Certain qualifications have been set in place to allow persons in terminally ill condition to exercise their right to die and the state being responsible for the welfare of its subjects have only allowed such cases of passive euthanasia when stringent medical conditions are met. It has been argued that such qualifications could be set to permit cases of active euthanasia especially in the case of terminally ill persons.

The forerunners of change of model towards recognition of active euthanasia stems from the recognition of withdrawal of life support and decisions affecting those found in persistent vegetative state. The elongation of principles recognized in such instances would form a valid argument in cases wherein passive euthanasia maybe recognized. The difference being the right to choice would reside with medically toured human being. The House of Lords in *Airedale NHS Trust v. Bland* have recognized this principle in the context of withdrawal of life support. The reasoning finds basis today as numerous Courts around the world have relied on the aforesaid decision as a persuasive precedent. The symphony of medical law jurisprudence and other basic human rights guides the way in accepting the argument for active Euthanasia.

¹²Joel Feinberg, *Voluntary Euthanasia And The Inalienable Right To Life*, Philosophy & Public Affairs, Vol. 7, No. 2 (Winter, 1978), Pp. 93-123.

The opponents of Euthanasia and more specifically the active form have placed certain arguments based on logic, law, morality, religion and ethics to justify their arguments. The case of **Union Pacific Vs. v. Bastford** is illustrative of the total restraint on allowing euthanasia on the aforesaid grounds. With the advent of time, in the numerous cases discussed the Courts have been keen to give heed to the arguments proposed and to such extent reduced the right of patients to choose active euthanasia by legal means. Understanding the legal concepts of Homicide, Death owing to medical negligence, suicide and assisted suicide will lead one to understand the implicit contractions between such concepts and the principles founding the basis of euthanasia. Nevertheless, Courts in different countries along with legislatures have softened their stand over the course of the twentieth century and have preferred a harmonious construction of the above legal concepts with the contradictory principles founding the basis for an argument for euthanasia.

It is that in the case of **VikramDeo Singh Tomar vs. State of Bihar**¹³ the court said that, "We live in an age when this Court has demonstrated, while interpreting Right to life, that every person is entitled to a quality of life consistent with his human personality". (i.e.) right to live with dignity is a fundamental right of every person. Also in **P. Rathinam vs. Union of India and other**¹⁴ the two Judge bench mentioned "Life is not mere living but living in health".

Few scholars argue that "Voluntary euthanasia" is said to be the beginning of slippery slope which might result in "involuntary euthanasia" and killing individuals who are considered undesirable. Euthanasia might not be "in a person's best interests". Also they say it weakens the society's respect towards sanctity of life. These are some of the opposing arguments which says euthanasia legalization should be banned. But, for such reasons the respect towards the request of people suffering from terminal illness is disapproved. Some say this might give more powers to doctors which might result in worse situations. But a proper care and rules will not lead euthanasia in such a bad situation. Eugene Volokh argued that judicial reasoning might sooner or later result to a steady break in the lawful limitations for euthanasia.¹⁵

Conclusion:

"I believe that decisions about the timing and manner of death belong to the individual as a human right. I believe it is wrong to withhold medical methods of terminating life painlessly and swiftly when an individual has a rational and clear-minded sustained wish to end his or her life".¹⁶ It is said to be a man's right to have control over his life about death. In the case of **Union Pacific Vs Bastford**¹⁷, the Supreme Court said that, "no right is more sacred or more carefully guarded, by the common law, than the right of the individual to the possession and control of his own person." If this control is established in life, then it should be a valid one to end the life of the people to those who undergo intolerable sufferings. It is that a control over one's life is imperative, but it is that it should also contain a choice to end the life if it has no eminence anymore. In case of euthanasia against the will of a person, it might be a one resulting to an act of murder. (i.e.) taking the life of another person against their wish. The standing main reason for not legalizing euthanasia is that, when it is legalized it might fall in the hands of the wrong doers and they might miss use this without the right reason of legalizing euthanasia.

Few say that the act of euthanasia is considered as an unlawful act committed by a person on the life of the other person. In "Alonso Gómez Méndez, Delitos Contra la Vida y la Integridad Personal (Universidad Externado de Colombia 1998) 195" it is said that Criminal Code provision on the matter of euthanasia do not give an authorization for taking away of the lives of the ones

¹³1988 (Supp) SCC 734 (Vide Para 2)

¹⁴(1994) 3 SCC 394

¹⁵Eugene Volokh, Mechanisms Of The Slippery Slope, ([Http://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=343640](http://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=343640))

¹⁶Professor A C Grayling, Dignity In Dying Patron ([Http://www.dignityindying.org.uk](http://www.dignityindying.org.uk))

¹⁷ 1891

experiencing severe sufferings, but fairly reduce the punishments of the wrongdoer because of less intensity of the lawful reproach. Here what makes the punishment less is the motive of the person. A fact that the “consent” of the person is said to be irrelevant here, as said that a person in such an extreme situation might not be in a position to do a valid decision.¹⁸

In the light of the developments in the law as pronounced by the Courts and those receiving the assent of the legislature, there is sufficient legal basis to include within the ambit of the law the right to euthanasia. Countries have adopted the more passive form but the same rationale which led to such adoption can be argued to apply to cases of active euthanasia. The law needs to play the role of a balancer in such a situation wherein it must empathize with the suffering and needs of terminally ill persons and at the same time reconcile with stern principles and legal concepts present under various laws. Over the past hundred years there has been a monumental effort to allow euthanasia in certain cases but not allowing the application in totality at times causes needless hardship of those desirous of a dignified death. Certain implicit human rights need to be assessed with the ever growing needs of a modern society with sophisticated medical machinery and treatment options. Numerous age old precedents have been overruled and the most recent one being in case of **Aruna Ramchandra Shanbaug vs. Union of India**. Countries have switched over from a system of not allowing euthanasia to a system allowing passive euthanasia as illustrated by above ruling. The system is changing but not at the rate required by modern society and the conditions attached to allowing passive euthanasia, it needs to be carefully assessed so as to not allow the benefit to accrue owing to the impossibility of achieving such conditions. The aforesaid analysis of law puts forth a clean opinion that to call for a universal right to both active and passive euthanasia which may be useful in serving the growing needs of the terminally ill patients present in our modern society.

¹⁸Gómez Méndez, Above N. 18, At 209; Gómez López, Above N. 5, At 90.