

International Multidisciplinary
Research Journal

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Thoughts

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RNI MAHMUL/2011/38595

ISSN No.2231-5063

Golden Research Thoughts Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial board. Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

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CHALLENGES IN LEGALIZATION OF EUTHANASIA IN INDIA-
A SOCIO LEGAL OVERVIEW



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ABSTRACT:

A socio legal overview with respect to euthanasia is considered in the paper. The challenges that may be faced are varied in India. Primarily, the diverse cultures and their different view points to the concept are the prime obstacles. Religions like Islam , Christianity, or the Zoroastrian faith followers highly condemned it while the others approve under certain circumstances. The humanitarian and Libertarians are positive on the issue but shall have to work hard on

imbibing that it does not interfere in the spiritual journey towards liberation. Euthanasia does not mean killing as usually termed, but is assisting the terminally ill patient to end his life easily. The medical fraternity also needs to be clear that in which circumstances it is not defying them from their Hippocratic Oath. This shall also help in believing the concept. It has been observed that the approach of judiciary is positive in certain cases. This has made an atmosphere conducive for law on the subject. Legislation can therefore be expected.

KEYWORDS

legalization of euthanasia , socio legal overview , humanitarian and Libertarians .

INTRODUCTION

Euthanasia is not a new concept to the Indians. The revolutionary judgment delivered by the Honourable Supreme Court in Aruna Shanbags case has taken the thought to each Indian house. Explaining what euthanasia means is therefore really not required. The judgment has proposed the legislators to think about a law on the issue. But is it really so easy in country like ours to do so? India is known for its diversities in religion, culture and also educational position. All these factors play a major role in the thought process of an individual. It is therefore essential to understand the societal and legal perspective before legalization of euthanasia in India.

1.Social approach towards euthanasia in India.

1.1Religious Approach

Amongst the various religions prevalent, most of them are against the concept of euthanasia. According to the Hindus, as defined in the Hindu marriage act 1955. Jains, Sikh, Buddhist believes in embodiment of the soul after its departure from one form to another. They consider endless rebirths till the life attains salvation. To achieve this it is believed that they need to execute good deeds and lead a life of serenity. Euthanasia however is contradictory to all these beliefs. The hastening of life restricts the person from "Moksha". They are abstained from going to Hell or Heaven, as they do not complete the assigned "Karma". They themselves become a hurdle in the way towards liberation.

Hindus believe and preach "ahimsa" which means nonviolence. This restriction of not causing injury to any living creature includes no harm verbally, by any action or even thoughts. However if we have to implement euthanasia, one violates all the principles of "ahimsa". In such a situation there is no hope of deliverance, and the individual obligates himself/herself in the mortal sin. It is so accepted because it is assumed that sufferings in life are due to the sins committed in life. These sufferings if undergone, reach you to tranquility and rescues you from next births.

In spite of all these beliefs it has been observed that Hindus do trust in practices such as Prayopavesa. This was self sacrifice usually fasting unto death. The individuals who had attained enlightenment usually practiced it. It was they who had achieved composure, peacefulness in life were allowed to do so. They were people with no worldly desires, ambitions or responsibilities left in life. They therefore had the authority to terminate life as their body had served the purpose that was entrusted on them and free from all the duties conferred. They attain "moksha". It has been assumed that death in such a manner is natural. Hindus assumed in this fact the dharma gurus preached and accept it without a challenge. According to them it cannot be associated with euthanasia. Euthanasia for them is the outcome of depression, frustration and anguish.

Christians believe life as bequeath of the almighty. No individual has a right on it. It is for him to decide when one should come to existence and when one has to leave. No individual has the right to interfere in the progression of death. They state that the period before death is associated with divinity, purity and holiness. It is therefore an important phase in human life where he gets an opportunity of repentance and to ask for pardon for his deeds. In case if we think about euthanasia at such a stage we disrupt the spiritual phase of the humans which takes him to the almighty.

They further believe that we individuals are images of the almighty and formed to complete the

specific destiny of his life. For them human life is valuable and its conservation takes precedence over every other consideration. Though, this is the basic view of the Christians. There are some who believe that God conferred the rights of free will. This was to ensure that they enjoy the life at the fullest. Those, who believe in this concept of autonomy accepted euthanasia. It has also been observed that for them God is loving and forgiving. He therefore cannot see his images in enduring pain and suffering. Euthanasia if therefore administered to patients whose death is certain and there is no remedy to reduce the agony is justifiable.

Islam however condemns euthanasia. According to them Allah has given life to and no man has the right to take it away. If a person tries to do would be doing an act of ungratefulness towards the almighty who has bestowed the life. The act done to take away life is considered as sins. It is a crime and clearly forbidden in their holy book. Individuals who attempt to do so their bodies are not blessed and therefore do not achieve solace in the next world.

Jews are also of the similar view taking one's life in any form is murder. Life is sacred and has to be preserved till the last breath. The religion teaches to fight, struggle till the end as there is always joy to the end. They preach to be thankful to the creator for his gift.

The Zoroastrians also do not believe in taking life which is bestowed by the creator. They are conservative like Muslims Christians Jews in their approach towards. They also do not allow the last rites to be performed in their religious towers if a person is euthanized.

1.2 HUMANISTIC APPROACH

This sect of the society is the most practical. They do not believe in any religion and strongly propound the moral ethics. Respect, compassion for others, promoting happiness and assisting others to achieve them is the sole motto of their lives. Non acceptance to the inflexible rules is on the highest platform. Personal autonomy is recognized by this group and believes that each one has a right to live a dignified life. To achieve this if one has to terminate life prior to their natural death it is absolutely justifiable. As they believe that no one would wish to end life unless it's torturous, miserable with no hopes of retrieval.

1.3 MEDICAL APPROACH

The medical fraternity has mixed views for the issue. They believe in advancement of medical science, the palliative care treatments therefore feel that euthanasia is not really essential. They apprehend that it would undermine their efforts and struggle towards research and giving the best to save the patient and enable him to lead a comfortable life till their death. It shall deter them from their Hippocratic Oath.

They at the same time also accept the limitations of the medical sciences and approve of euthanasia where there are no chances of revival of the patient or when the patient is in a vegetative state.

1.4 LIBERTARIANS APPROACH

This faction obviously supports euthanasia and is always for its legislation. Human autonomy is

placed on highest pedestal of life. Freedom to behave as one desires is their goal. This includes freedom to live and also to die. Each individual is the master of its own self and hence does not have to abide with regulations that disturb their liberty and wishes. The only thing to be observed is that while doing so they do not cause harm to anyone around.

1.5 ECONOMIC APPROACH

Many people now have been practical in their dealings this practicability is been applied even to humans. The medical expenses are very steep and are no more affordable easily to the common man. It has been observed that people are indebted in providing treatments to the sick. Palliative care to such patients is certainly an impossible thing. In cases where it is obvious and apparent that the effect of the treatment awarded is to extend life without any recourse of recovery in patient's condition, people are reluctant to utilize the resources as it burdens them more. People favor in such situations legislation for the issue. In absence of the same, many a time's people may indulge in suicides clandestinely.

OBSERVATION

It can be observed that the societies approach towards the subject largely depends on the influence they have of their religion, culture. Many a times education brings a marginal change in these conceptions but whether it is functional or not remains a question? The great pressure that exist in the society which does not allow you to swim against the flow causes a hurdle. The pressure exerted by the religious heads in the society to believe in the traditional views is also high. The state has yet not reached a level of 100% literacy and therefore it shall take a long way for people to think independently. No doubt there are people who believe in liberty and humanity who would assist individuals to think differently.

2.LEGAL APPROACH TOWARDS EUTHANASIA IN INDIA.

Indian judiciary, prior to the landmark judgment seemed to be confused on the issue of euthanasia. The Indian constitution guarantees a right to live under Article 21.

In *Vikram Deo Singh Tomar vs. State of Bihar* wide interpretation of Article 21 of the Constitution was stated. It mentioned that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen".

But does this right comprised of the right to die was always a question un resolved to all. This was first considered by the Bombay High Court in *The State of Maharashtra v. M.S.Dubal* . It was observed by the court that the right to life includes the right to die. The desire to die is not unnatural, but merely abnormal and uncommon.

The above view towards right to die was confirmed in *P. Rathinam vs. Union of India* and another in which a two-Judge bench of this Court quoted with approval a passage from an article by Dr. M. Indira and Dr. Alka Dhal in which it was mentioned : "Life is not mere living but living in health. Health is not the absence of illness but a glowing vitality".

In these judgments the right was recognized but however euthanasia was not permitted. It was held that it amounts to homicide and therefore not acceptable. But later in a subsequent judgment

delivered in *Gian Kaur vs. State of Punjab* the Supreme Court approved of the decision of the House of Lords in *Airedale's case*, and observed that euthanasia could be made lawful only by legislation. This case actually paved way to unfold the issue in public to think about euthanasia. However the judgment was not able to recognize the legality of the passive euthanasia. It did not convincingly decide the issue of passive euthanasia.

It has been observed that all these cases were not on euthanasia specifically but suicide and abatement to suicide.

It recommended the Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code. As a person attempting suicide is in a state of depression, and hence he needs help, rather than punishment.

All these controversies and confusions were set to rest by the judgment delivered by Justice Katju and Justice Mishra of the Apex Court In *Aruna shanbags case*.

The judgment was delivered after a detailed investigation on the issue. Cases pertaining to euthanasia worldwide were considered before arriving at the decision.

The Honble judges laid that " passive euthanasia should be permitted in our country in certain situations; we are laying down the law in this connection which will continue to be the law until Parliament makes a law on the subject. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

In our opinion, if we leave it solely to the patient's relatives or to the doctors or next friend to decide whether to withdraw the life support of an incompetent person there is always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or otherwise grab the property of the patient. Considering the low ethical levels prevailing in our society today and the rampant commercialization and corruption, we cannot rule out the possibility that unscrupulous persons with the help of some unscrupulous doctors may fabricate material to show that it is a terminal case with no chance of recovery. There are doctors and doctors. While many doctors are upright, there are others who can do anything for money (see George Bernard Shaw's play 'The Doctors Dilemma'). The commercialization of our society has crossed all limits. Hence we have to guard against the potential of misuse (see Robin Cook's novel 'Coma'). In our opinion, while giving great weight to the wishes of the parents, spouse, or other close relatives or next friend of the incompetent patient and also giving due weight to the opinion of the attending doctors, we cannot leave it entirely to their discretion whether to discontinue the life support or not. We agree with the decision of the Lord Keith in *Airedale's case* (supra) that the approval of the High Court should be taken in this connection. This is in the interest of the protection of the patient, protection of the doctors, relative and next friend, and for reassurance of the patient's family as well as the public. This is also in consonance with the doctrine of *parens patriae* which is a well known principle of law."¹

Further the court also has directed the procedure to be followed when an application has to be made for euthanasia. This procedure laid is cautiously drawn to avoid any kind of possible misuse by the society.

This decision has now legalized the passive form of euthanasia. Influenced by the first ever detailed judgment on the subject people are now more optimistic about legislation for euthanasia.

OBSERVATION

The issue of euthanasia has not directly been discussed much in the past. It was always held to be a crime. There were no much open discussions on the topic. An effort was always made to convince that decision to end life and then make a attempt should not be considered a crime. Suggestions were made by the judiciary to the legislators to scrap the provisions of IPC that punished the individual making efforts. This could be considered the base to change ones attitude towards the subject. It is not a crime. The later judgment of 2011 in Aruna's case threw more light on the subject , and it was now that the masses participated and took initiative in the discussions openly.

3. CONCLUSION

A number of diverse cultures, customs, and religions preserving their identities mingled with the historic Indian philosophies and rituals are a great challenge to imbibe the concept of euthanasia. Disintegration of it and their beliefs is a difficult task. Most of them oppose euthanasia. Though it is approved by some, it is in disguise and not generally applied for all. It has been restricted to the privileged, who have obtained serenity in life. But this definitely shows that there is a probability of openness towards the topic. The literacy rate that is increasing day by day shall definitely help in understanding the topic. The sweeping statements made about good death shall help in changing the attitudes. Where recourse and hospice care is not available this alternative shall be acceptable.

The medical fraternity that is still hesitant about the issue can be another challenge faced but the consensus to the issue in certain cases where the palliative care also cannot be a perfect solution it shall open doors for euthanasia.

In a state where poverty is rampant introducing legislation is a huge challenge. It can be misused to remove the unwanted or even take away lives for the lust of property. Corruption is another major issue which shall terminate the wanted.

In a nation where there are numerous basic problems like poverty, education, ,providing meals to all, yet to be solved can the populace think about this issue and even shall the state be able to have law on the issue in near future is a question that probes.

The legal approach now since 2011 has been relatively clear for passive form of euthanasia. But still a lot needs to be clarified. Does right to live includes right to die? If it is so, It shall be easy to have a law on the same.

Judiciary has not given suggestions on active voluntary euthanasia. They have simply refused it at the moment. If we are thinking about the legislation, rigorous care needs to be taken before its implementation. In a developing country like ours, where the economic condition is not that strong, there are chances of the slippery slope. People shall fall prey and abuse the law rather than utilizing it for the good of the people or for ensuring a life of dignity till death. In spite of all this we need to have legislation on the subject.

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