

**LEGALIZING ACTIVE EUTHANASIA: A RELOOK**

Zeb Hasan<sup>1</sup>

**Abstract**

*This article deals with one of world's most debatable topics, Euthanasia. The article will discuss why „Active Euthanasia“ must be legalized in India taking reference from previous cases. Some people consider it as immoral as it includes killing, while on the other hand some people think it is on the person to decide whether or not he wants to continue living with the ailment and die a natural death. Therefore the whole idea behind „Euthanasia“ is to let one person end his life in a peaceful way who is anyway going to die in future, and not let him go through the pain of inevitable death. This is why it's also called “mercy killing”. “Euthanasia” also known as “assisted suicide” is considered to be the only viable source of peace for people who are terminally ill or in a vegetative state and when they find it harder to live than to die.*

*Key Words:-Euthanasia, Passive Euthanasia, Active Euthanasia, Mercy killing.*

### **Categories of Euthanasia**

Euthanasia can be classified into two most important categories- Passive Euthanasia and Active Euthanasia. Passive Euthanasia is that form of „assisted suicide“ which includes taking away the medications, that is to say in order to end one life, we stop trying to save it. Passive euthanasia or letting the person die of his ailment may be done by withdrawing the life-sustaining medications as well as omission of the treatment.

Letting die here means to leave upto the ongoing inner-organismic process of disintegration, without assisting or switching crucial functions. And so the extubation [removal of the person from a ventilator] of an terminally ill patient, through a physical action with following death, is not killing in its true sense. The extubation of the patient does not cause the patient to die; it only influences the time of its happening. The fatal injection ends the life of both the ill as well as the healthy person; the discontinuation of life-sustaining medications, however, only causes the death of the ill. Active euthanasia one the other hand is intentional act to cause death of a person immediately, which includes injecting of drugs and helping one end his life peacefully and at once.

For years there was no law in respect to Euthanasia in India, it was after the Aruna Shanbaugh case<sup>2</sup> that only Passive Euthanasia was legalized, it has been a matter of discussion ever since. However even after so many debates and discussions India remains inconclusive regarding this issue.

### **The Aruna Shanbaug Case**

Aruna Shanbaug was a staff nurse in the KEM hospital, Parel Mumbai. On the 27<sup>th</sup> November 1973 she was attacked by a sweeper Sohanlal BharthaValmiki in the hospital, he wrapped around her neck a dog chain. Sohanlal went in there with an intention to rape Aruna, but when he found out she was menstruating, he sodomized her. And left her in the room her neck still wrapped with the chain. A worker found her lying on the floor next morning in an unconscious state of

## **INTERNATIONAL JOURNAL OF HUMAN RIGHTS: VOLUME 1 ISSUE 1**

mind and covered in blood. It was alleged that the strangulation caused the blood supply to her brain stop and damaged it. And this pushed her to a Permanent Vegetative State (PVS).

Her family, relatives and her fiancée deserted her after a few years. Since then, it is the staff of the KEM hospital that took responsibility to look after Aruna. They were family to her for 40 years and treated her like one among them. The fact that she did not develop a single bed-sore though she is on the bed for such a long time is an evidence to their good service.

In the year 2009 PinkiVirani a journalist, Indian writer and human rights activist filed a Writ petition in the Supreme Court, under Article 32 of the Constitution of India. She mentioned in the petition that “Aruna cannot be said to be a living person and it is only on account of mashed food which is put into her mouth that there is a facade of life which is totally devoid of any human element, She also said that, there is no possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital like a dead animal, and this has been the position for the last 36 years. She prayed that the KEM hospital authorities be directed to stop feeding Aruna, and let her die peacefully.”

Article 32 allows only fundamental rights violation cases under it, but the judges decided to allow this writ, based on the circumstances of this case. On 7<sup>th</sup> March 2011 the Supreme Court of India rejected her plea but legalized Passive Euthanasia by means of the withdrawal of life support to patients in a Permanent Vegetative State.

Ironically, even though it was Aruna’s case that forced the country to legalize it, it was not applied to her case. The staff at KEM hospital decided to still keep her alive by natural means of survival. She breathed her last on 18<sup>th</sup> may 2015 having been in a vegetative state for 40 years.

### **Right to die- Indian Perspective**

In India, the inviolability of life has been placed on the highest platform. "The right to life" under the Article 21 of the Constitution has received the widest possible exposition under the judiciary and rightly so. Indeed this right is indispensable and inherent in us.

## **INTERNATIONAL JOURNAL OF HUMAN RIGHTS: VOLUME 1 ISSUE 1**

In **Gian Kaur vs. State of Punjab**,<sup>3</sup> Constitutional Bench held that the "right to life" is inherently inconsistent with the "right to die" as is "death" with "life". In furtherance, the right to life, which includes right to live with human dignity, would mean the existence of such a right up to the natural end of life. It may further include "death with dignity" but such existence should not be confused with unnatural extinction of life curtailing natural span of life. In progression of the above, the constitutionality of Section 309 of the I.P.C, which makes "attempt to suicide" an offence, was upheld, overruling the judgment in **P. Rathinam's case**.<sup>4</sup> Hence, Gian kaur v. State of Punjab over ruled the judgment of P. Rathinam v. Union Of India.

### **Legal and Philosophical Aspect: A New Perspective**

Curiously in P.Rathinam's case, even when a Division bench affirmed the view in **M.S Dubal v. State of Maharashtra** that the "right to life" given by the Constitution It may be said to bring into its purview, the right not to live as a forced life, the plea that euthanasia be legalized was dismissed. It was held that "as euthanasia involves the intervention of a third person, it would indirectly amount to a person aiding or abetting the killing of another, which would be inviting Section 306 of the I.P.C."<sup>5</sup>

In **Naresh Marotrao Sakhre v. Union of India**, Lodha J. declared that "Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected."(Emphasis added).<sup>6</sup>

The question here is, shouldn't it be the patients choice whether or not he wants to klive or end his life? Aruna was in vegetative state for 40 years, fourty years of continuous suffering. What person would want to still hold on to life after being such miserable state for years. After having suffered for 40 years in a vegetative state who would want to continue living, there was not even a ray of hope of her being cured. My point it, if she had to die anyway, why not make it easy for her. But people will always argue that Article 21 gives us the Right to Life and liberty. The right to live with dignity. In the judgment of a case the Court held "The „Right to Die“, is inconsistent

## **INTERNATIONAL JOURNAL OF HUMAN RIGHTS: VOLUME 1 ISSUE 1**

with the “Right to Life” as is “death” with “Life”.<sup>7</sup>

It was held by the Court in the Gian Kaur case<sup>8</sup> that Article 21 speaks of the Right to Life, that everybody has the right to live with dignity, in which the supporters of euthanasia argued that if a

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<sup>4</sup> P. Rathinam v. Union Of India 1994 AIR 1844, 1994 SCC (3) 394

<sup>5</sup> 1987 (1) BomCR 499, (1986) 88 BOMLR 589

<sup>6</sup> 1996 (1) BomCR 92, 1995 CriLJ 96, 1994 (2) MhLj 1850

<sup>7</sup> Gian Kaur vs. State of Punjab 1996 AIR 946, 1996 SCC (2) 648

<sup>8</sup> *supra*

## **INTERNATIONAL JOURNAL OF HUMAN RIGHTS: VOLUME 1 ISSUE 1**

person cannot even take care of himself, the how can we think of him as having a dignified life. In that case one must be allowed to end his life, as Article 21 speaks of „dignified“ life. But here by the words “right to die” it means to die a natural death. Article 21 nowhere mentioned right to die an unnatural death. Curtailing the natural span of life of a person who has a certain end to life cannot in any case be read into Article 21. If a person is terminally ill, it doesn“t mean he himself or anyone else can end his life. It will surely be a violation of the „sanctity of life“. Living a dignified life doesn“t at all means that a person can end his life unnaturally. Our Constitution nowhere provides for it. Thus, right to life does not include right to die. If a person“s life is being ended unnaturally it will surely be a violation of human right. By virtue of being a human being a person has right to live a life as he wishes to. But that doesn“t allow him to end his life as and when he wants. This life is given to him by God and thus, it should be ended at its natural span.

What we need to understand here is that we have to stop associating the Right to life with the Right to death. The court also held in the above mentioned case that, Mingling the two things would not make life look better than death in certain cases. People who have been suffering from chronic incurable diseases, whose mere support of survival is through ventilators, food pipes etc. must be given the right to die with dignity. There is die need to look after this „Right to Life“ by providing proper food, clean drinking water, hospital services. Opposite to this, the state does not own the duty of upgrading, safeguarding and fulfilling the social and economic rights such as right to food, right to water, Right to health care, which are basic indispensable components of right to life. Till date, most of the states have done nothing to support those who are poor and terminally ill. There is an urgent need to enact a legislation to protect the terminally ill patients and also medical practitioners caring for them<sup>9</sup>.

Ofcourse it would take a lot of thinking and work to legalize this, because if we legalize the right to assisted suicide we are actually giving people the right to waive off their fundamental right to life and liberty and kill themselves whenever they find it hard to continue living, or give others the right to kill who so ever they is terminally ill and is a burden on them, the number of suicides

would increase.

India is in dire need to pass a legislation regarding Euthanasia. To legalize even passive euthanasia in 2011 needed a lot of work, now this is active euthanasia we are talking about. There were conditions laid down to legalize Passive Euthanasia, the same needs to be done for Active Euthanasia.

For instance the countries that allow active euthanasia have set of conditions to be met in order to be able to avail it:

1. The patient must be suffering from unbearable physical pain
2. Death must be inevitable and drawing near
3. The patient must give consent. (Unlike passive euthanasia, living wills and family consent will not suffice.)
4. The physician must have (ineffectively) exhausted all other measures reducing pain

In my perspective the „*physical pain*“ factor can be over looked in a certain cases, a person can be in pain and not necessarily „*physical*“. Like in Aruna’s case, she was „*vegetative-state-painful*“ not „*Physically-in-painful*“.

India must have its own guidelines laid down for availability of Active Euthanasia,

**1. The person must be in Permanent Vegetative State**

A permanent vegetative state is a harsh state of partial life, where one has a brain that is not completely dead, but due to the damage caused by lack of oxygen supply, only one part of it works partially. To say that the person must be in a vegetative state to be allowed to avail this right is not to say that anybody who is in a permanent vegetative state „must“ not have the right to live. We’ll leave that decision to the patient and his family. Like in the case of Aruna Shanbaug her family had not enough money to look after her, and if KEM hospital wouldn’t have helped, she would have

**INTERNATIONAL JOURNAL OF HUMAN RIGHTS: VOLUME 1 ISSUE 1**

been thrown out. Given their financial conditions her family wouldn't have taken her

### **Measures to legalize Active Euthanasia**

home, and conditions could have gone from bad to worse. In such a situation allowing Active Euthanasia would have been a relief for both the family and the patient.

In other words, a situation where the patient cannot himself take care of himself and doesn't even have a family to look after him, if there is no one to give him support and also there are no chance in the future for him to recover, Active Euthanasia must be allowed with the consent of his family.

#### **2. Death must be inevitable and drawing near**

There must be no chance of the patient to be saved, or cured in future. It must be proved first to the supreme court , for availing this right, one must through doctors reports prove to the Supreme court that there is absolutely no way to cure him. If after the submission of medical reports to the Separate bench (the one constituted by the High court to look into such cases) it has allows mercy killing, only then it must be allowed.

#### **3. The time period must be fixed by the lawmakers for such cases**

Again, fixing time does not mean that if a person has crossed a given date his family has the right to kill him. It only means that if the doctors after having used all sorts of medications for years find the disease to be incurable and if the person is willing to end his life, he must have the right to do it. And in case the person is unable to give consent then his family can on his behalf but only after a „*specific time*“ passed by the Court which has been passed earlier and if all medications have been tried and If after the submission of medical reports to the Separate bench, it has allowed mercy killing, only then it must be allowed.

#### **4. In case of absence of prior consent from the patient(if he's unable to express his consent), the family must be allowed to give consent on his behalf**

In case, the situations are such that the patient is unable to give consent on his own,

and there is no previous consent given either, and if the patient has been in a PVS (Permanent Vegetative State) for longer than the mentioned period, and if there is absolutely no hope of him being cured, only then can the family members give consent on his behalf. They may approach the separate bench and if after the submission of medical reports to the Separate bench, it has allowed mercy killing, only then it must be allowed.

After fulfillment of these conditions one may look into the guidelines that were upheld by the court in the Aruna Shanbaug case while allowing Passive Euthanasia guidelines to prevent any misuse of the provision and that these guidelines have to be followed in every such case till legislation is made by the Government. The guidelines to be followed in such cases are

Any writ petition for Passive Euthanasia has to be filed with the relevant High Court, also the Chief Justice of the High Court must constitute a Separate Bench of at least two Judges who would decide whether to grant approval or not.

- Before taking a decision, the bench must seek the opinion of a committee of three reputed doctors to be nominated by the bench. Preferably, one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician.
- The High Court Bench must issue notice to the State and close relatives i.e. parents, spouse, siblings etc. of the patient, and in their absence, the next friend.
- The Court should supply a copy of the report of the doctor's committee to them as soon as it is available.
- After hearing all the parties, the High Court bench must give its verdict.
- The High Court must give its decision at the earliest.

I agree with the fact that killing may not be the right choice always, this one reform may change so much in the country. From the perspective of mental health psychiatrists recommend to avoid suicide at all cost. People may misuse Euthanasia. Relatives who hold grudges against the patient or have feelings of enmity against them may ask for euthanasia. People who belong to the

lower middle class may find it easier to end their life. There are chances that the elderly may start seeing themselves as an imminent burden on the family and end their life. It would put the Elderly to further risk. Suicides due to depression is very common among youngsters in our country, the rates of death due to depression would rise. Family members of the patient may misuse it to their property and arrogate their property. These are the reasons why the Supreme Court decided that the Chief Justice of the High Court must constitute a Separate Bench of at least two Judges who would decide whether to grant approval for Euthanasia or not. Making the patient and his family dependent on the judgment of the High Court.

The reason why emphasis on legalizing „Active euthanasia“ has been laid is because in my perspective, what Sohanlal did to her 40 years ago was brutal, but Passive Euthanasia did to her for the 4 years after the judgment was passed, was even worst. Given the situations in Aruna’s case, where there was not even the slightest hope of her being cured in the future Active Euthanasia would have been an easier way for her, rather than keeping her alive and taking away her medications and letting her die of her miserable ailment.

Even if we Look at it with a moral perspective, living a life that is devoid of its very essence, waiting for death to come, Doesn’t matter how long that takes, is far more merciless and immoral than Active Euthanasia would ever be.

It took years to legalize Passive euthanasia, Are we now waiting for another ArunaShanbaug case to legalize „Active Euthanasia“.

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<sup>9</sup> Law Commission Report-196

