
**EUTHANASIA: A LEGAL AND HUMAN RIGHT
TO DIE: COMPARATIVE ANALYSIS OF INDIA,
NETHERLAND AND AUSTRALIA**

AUTHORS

SANMATI RATHORE

LLM Candidate at Symbiosis Law School, Pune

VAIBHAV SHRIVASTAVA

LLM Candidate at Symbiosis Law School, Pune

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ABSTRACT

A person who is in permanent vegetative state or suffering from a chronic disease, who can't be brought back to the normal life, is it right to keep him alive on medical support for years until his body stops responding to that as well. This question encompasses the need to have subtle laws in this area. This study deals with a question that, if right to life is a human right, why not Right to die in certain exceptional situations to avoid further pain and suffering. This research paper will highlight why euthanasia is disregarded by people including the reasons that acts as barrier in the process of legalization of euthanasia. This research also aims to study the Human rights laws which affirms or dejects the concept of such Right to die. This research paper also analyses the effectiveness of legalization of euthanasia in Netherland and the status of Euthanasia in USA as well with a comparative approach. The prolonged treatment, life supports, palliative care in today's time is indistinguishably concomitant with this issue and intervention of judiciary becomes need of the hour. This research paper therefore studies the aforesaid factors along with the effect of judicial intervention in India and how the judiciary has helped in promoting euthanasia through the progressive judgments.

KEYWORDS: Assisted Suicide, Euthanasia, Human Rights, Palliative Care, Persistent Vegetative State, Rights.

CHAPTER 1

INTRODUCTION

Right to Die is an issue which is enshrined into the clouds of uncertainty from past so many years. With the march of time, several nations have accepted it and with effect to that given a legal sanctity to euthanasia in their respective countries. Right to die is one of the basic rights which every human should be entitled of so that he can die with dignity by exercising such right. The term Euthanasia is really broad in its scope.

Generally, it is defined as a process which includes intentional termination of a one's life to put an end to their pain and suffering, however it is not seen as an option only by those who are going through physical agony but also for several more reasons which includes changes in quality of life due to fatal physical injury or several psychological elements analogous with incurable diseases. Therefore, it not wrong to say that euthanasia is often erroneously specified as representing one certain kind of a practice.

Nonetheless, Euthanasia can be better assumed as blanket term which includes broad array of practices which can be defined as other forms of assisted dying under its horizon.

It includes-

- i. Passive Voluntary Euthanasia- Medical support or treatment is withdrawn at the request of patient, when patient wishes to end his life.
- ii. Active Voluntary Euthanasia- Patient request medical intervention to end his life, subsequently the physician administers lethal substance into the body of patient to end his life.
- iii. Passive Involuntary euthanasia- Withdrawal of medical life support, but it is not done on the request of patient, but on the request by patient's family.

- iv. Active involuntary euthanasia- It differs from the active voluntary euthanasia only in the sense that, patient's request is not undertaken.¹
- v. Physician Assisted Euthanasia- The medication is prescribed by the physician and the patient or some third person administers it to cause death.²

STATEMENT OF PROBLEM

Right to die is one such issue which has always been shrouded within several contradictions. In India the position as to legality of euthanasia and its forms is not clear. Passive Euthanasia is although given green flag by Supreme Court of India still it has no legal back. The status of Right to die is not clear also as a human right and it is not well accepted. In Australia also the position of euthanasia is not very lucent. Palliative care is also one such area of problem which is indeed very crucial but not much heed is paid to this concept by government, hospitals and people.

RESEARCH OBJECTIVES

- i- To study the constitutional provisions and legislations pertaining to Right to Die in India, Netherland and Australia.
- ii- To analyze and compare the legal status of euthanasia in India, Netherland and Australia.
- iii- To study the role and significance of Judicial activism in support of Euthanasia in India.
- iv- To evaluate the reasons due to which euthanasia is favored by some and not by others.

¹ Natasha Cica, Euthanasia-the Australian Law in an International Context Part 1: Passive Voluntary euthanasia, Parliamentary Library Research Paper No 3 (1996-7)

² Dowbiggin I. "A merciful end: The euthanasia movement in modern America." New York: Oxford University Press (2003)

RESEARCH METHODOLOGY

- i- Research Method- Doctrinal Research Methodology
- ii- Secondary Sources- Online Articles, Books, Journals, Legal Research Papers
- iii- Citation Method: Bluebook- A Uniform System of Citation (19th ed.)

SCOPE AND LIMITATION OF THE STUDY

The scope of the study can be explicitly ascertained while considering these following limitations. The scope of this research paper has chiefly been confined and restricted within the legal regime of Euthanasia and Right to die in India, Netherland and USA. This study is entirely an analytical work in nature. In this research work, no primary data has been collected and the findings are not outcome of field data or sampling since it is a Non empirical research. However, for critical and analytical study on Euthanasia and Right to die references has been made and taken from data and literature obtainable from the several secondary sources like, articles, research papers, books, reports etc.

LITERATURE REVIEW

Review of literature is one of significant rule of research process which says about the researchers that various studies has been conducted by them related to their research problem. Following are the reviews of relevant literatures-

In 2007, a study titled as “**Euthanasia, Ethics and the Law: From Conflict to Compromise**”³ states that the law overseeing the ending of life in England and Wales is hazy and frequently opposing. The study includes some significant, however less well-charted areas, looking at the advent of 'death tourism' and the genuine status of involuntary and passive euthanasia in British law, in addition to clarifying the confusion that encompasses the utilization of ground-breaking painkillers like morphine. Managing both lawful and moral issues, the study presumes that the opportunity has arrived to more openly adopt a compromise position - one that more honestly recognizes and accommodates the competing values, whilst also restoring a measure of coherence to the law.

In “**Euthanasia a Reference Handbook**”⁴ the authors in this study of 2008 relied upon the Oregon Death with Dignity Act and he specified that there are no U.S. laws that permit doctors to help patients in demise. The study investigates the questions through a fair, insightful conversation of the lawful, clinical, and otherworldly parts of end-of-life questions. Through its target investigation of these issues, just as its recorded and global viewpoint, this volume assisted us for addressing the various question such as why people demand euthanasia in USA and whether there are any provisions or not and why US laws does not permit doctors to help patient in demise, and other various doubts identified with the Euthanasia.

³ HUXTABLE RICHARD, “EUTHANASIA, ETHICS AND THE LAW: From Conflict to Compromise, Routledge- Cavendish, (2007)”

⁴ FECIO JENNIFER MCDUGALL and GORMAN MARTHA, “EUTHANASIA A REFERENCE HANDBOOK,” 2 ABC- CLIO Inc, (2008)

In an article titled as “**Euthanasia – A dignified end of life**”⁵, author has talked about Euthanasia, Physician Assisted Suicide, Suicide, Religions on Suicide Right to Die, Mercy Killing, etc. Author has well tried to explain the types of euthanasia and its significance. Along with literature he has explained his words with explanation and examples so that reader can easily grab the idea of author that he wants to convey through his article. Further, he compared the current legal position of Euthanasia in countries like USA, UK, Australia, India, etc. This article has some cons also, as it does not talk about the remedies or what will be the position on euthanasia in future, etc.

In an article of 2021, titled as “**Euthanasia: Right to life vs right to die**”⁶, authors attempted to cover various areas related to Euthanasia like Symptoms of mental illness, Provisions in Indian Constitution, Intention of family member or relatives of patient, whether Malafide or Bonafide, etc. Authors contend through this study that quality care should be given to patient so that the demand of euthanasia will decrease. The study is not confined to right to die, it also includes the concept of Organ Donation. It mentions “Not only euthanasia gives ‘Right to die’ for the terminally ill, but also ‘Right to life’ for the organ needy patients”.

In 2017, **Cholbi** authored a study titled as “**Euthanasia and Assisted Suicide: Global Views on Choosing to End Life**”⁷ which aimed to introduce readers to the major moral, lawful, and policy driven issues surrounding the controversial practices of euthanasia. Working from a moral/philosophical system rather than a historical one, he familiarizes with the legitimate, cultural, and proficient improvements that educate us for contemporary debates surrounding these end-of-life choice.

⁵ Goel Vaibhav, Euthanasia – A dignified end of life”, 3(12) INTERNATIONAL NGO JOURNAL, 2008

⁶Math Bada Suresh and Chaturvedi K Santosh, Euthanasia: Right to life Vs Right to Die, INDIAN JOURNAL OF MEDICAL RESEARCH, 2012

⁷ J. CHOLBI MICHAEL, EUTHANASIA AND ASSISSTED SUICIDE: GLOBAL VIEWS ON CHOOSING TO END LIFE, ABC- CILO, 2017.

RESEARCH GAP

Through the review of literary work done in the field of Euthanasia certain gap has been recognized as follows-

- i- A key gap identified is that no study has been conducted to ascertain the reasons other than medical issues like financial complexities etc. for which euthanasia is demanded by the patient.
- ii- It has been identified that focus has not been laid on how the misuse of euthanasia by the associated people can be eliminated. This study tries to fill in the said gap.
- iii- No empirical study in this field has been conducted to determine the will and opinion of common man on practice of Euthanasia.

CHAPTER 2

RIGHT TO DIE AND ITS RECOGNITION AS HUMAN RIGHTS

In international Human Rights Norm, there is no right as ‘Right to Die’, on the contrary it calls upon states to protect life. International status of Right to die can be understood in the light of following –

- i. “*Universal Declaration of Human Rights, 1948*” provides that everyone has “Right to life, liberty and security of person”.⁸
- ii. “*International Covenant on Civil and Political*” Rights provides that “Every human being has inherent Right to Life. This Right shall be protected by law. No person shall be deprived of his life arbitrarily”.⁹
- iii. Article 2 of “*European Convention For the protection of the human Rights*” provides for the “Right to Life”. The court has held that “This article cannot be interpreted as conferring a Right to die, or a Right to self Determination in terms of choosing death rather than life”¹⁰. But, ECTPHR provides that State’s obligation under this Article no way precludes State from legalizing Euthanasia, provided sufficient safeguards are ensured and also adhered to.

CASE-

Hass v Switzerland, in this case ECTPHR elucidated that Article 2 “creates for authorities a duty to protect vulnerable persons, and obliged the national authorities to prevent an individual from taking his own life if the decision has not been taken freely and with full understanding of what is involved”¹¹

⁸ UDHR Art.3

⁹ ICCPR Art 6(1)

¹⁰ *Pretty v United Kingdom* (European Court of Human Rights, Chamber, Application No 2346/02, (29 April 2002)

¹¹ *Hass v Switzerland* (European Court of Human Rights, Grand Chamber, Application no 31322/07, 20 January 2011)

Lambert and others v France¹²- Mr. Lambert met with an accident and eventually he went into chronic vegetative state. Food and nutrition have to be provided through gastric tube. Doctors recommended putting end to his life according to the law, but the parents and relatives were opposed to withdrawal of nutrition. The European Court of Human Rights issued its decision by 12 votes against five, and held that state may cause the death of a patient in a minimally conscious state.

- iv. *ICCPR* obliges state “to protect both the dignity and physical and mental integrity of the individual”.¹³ Thus here it is debatable that state’s positive obligation mandates legalize active euthanasia in cases where the only option of a person is either to tolerate unendurable pain or to choose to put end to their life
- v. Article 10 of “*Convention on the Rights of Persons with Disabilities*” is focusing on safeguarding life rather than recognizing death as an option. UN treatise rejects the notion of right to die and promote the protection of sick and disabled. For example, Article 23 of CRC which says, “a mentally or physically disabled child should enjoy a full and decent life in conditions which ensures dignity, promote self-reliance and facilitate the child’s active participation in the community”¹⁴

¹² Lambert and others V France (European Court of Human Rights, Grand Chamber, Application no. 46043/14, 5 June 2015)

¹³ ICCPR Art 7

¹⁴ Article 23 of Convention on Child Rights

CHAPTER 3
LEGAL FRAMEWORK AND EVOLUTION OF
EUTHANASIA IN INDIA, NETHERLAND AND
AUSTRALIA:
A COMPARATIVE ANALYSIS

INDIA

Constitution of India enshrines “right to life and personal liberty under Article 21, Part II” which is wide in its scope and applicability, but right to die is a right whose status has never been settled accurately and thus it remains topic for judiciary to ponder upon from a long time. The first case which was dealt in Indian court in respect of right to die is *State v Sanjay Kumar*¹⁵ where High Court condemned section 309 of IPC and viewed it as “an anachronism and a paradox”.

The legal journey of Euthanasia as Right to die in India through judicial activism-

- a) The Supreme court has accepted Right to die as a component of article 21 in the case of “*P Rathinam v Union of India 1994*”¹⁶, it was the first Supreme Court which came out in light claiming Right to Die as Human right. The court held that “Any person cannot be compelled to live to his detriment or dislike therefore right to life includes right to die”. It was also a conclusion drawn by the state that penal laws in India should be more humane.
- b) However, in *Gian Kaur v State of Punjab*¹⁷, the court overruled P Rathinam Judgment. In the present case Gian Kaur along with her husband were charged under section 306 of IPC. They pleaded that since right to die is a Fundamental right, abetting it is merely an act of assisting

¹⁵ State v Sanjay Kumar (1985) Cr.L.J.,935 (India)

¹⁶ P Rathinam v Union of India, (WP)Cr, AIR 1994 SC 1884

¹⁷ Gian Kaur v Union of India AIR 1996 SC 1257

in enforcement of such right, hence should not be punishable. The court thus held that P Rathinam was wrong in its analogy and needs revision of thoughts and held in this case that “right to life does not include right to die”. The court also clarified that, here, in the present matter it is not engaging with questions of euthanasia and also differentiated between Right to Die (unnaturally) and right to die with dignity (naturally). Thus, in this case Section 306 and 309 of IPC were held valid purporting the idea that Article 21 doesn’t include right to die.

c) **Law Commission Report 2006**

- i. Report was titled as “Medical Treatment to Terminally Ill Patients (protection Of Patients and Medical Practitioners)”¹⁸.
- ii. The report suggested that there should be a law to protect patients from repercussions of Section 309 who are terminally ill, refuse artificial nutrition or hydration or life support. Moreover, in this process, the doctors who support such decision of the patient, should also be protected from section 306 IPC and Section 299 IPC.
- iii. The report clarified that patient, must be terminally ill to come within the ambit of such protection. The report made a distinction between ‘competent patient’ and ‘incompetent patient’. The incompetent patient is the one who does not have the ability to take a rational decision due to age, unsound mind or even if he is not able to communicate his decision. In such cases the report guides that, doctors are not supposed to withhold the treatment merely on their discretion but a proper procedure has to be followed in which opinion of board, of three medical experts has to be procured. If in case there is difference in opinion, the majority view would be taken a final decision.

¹⁸ 196th Law Commission Report, 2006

- iv. The committee also suggested the Medical Council of India to prepare comprehensive guidelines of all the possible situations where medical treatment can be withdrawn. If in case of incompetent patient, the patient has not taken an informed decision, then in such cases it lays duty upon the doctor to get consent of parents or relatives about the decision in writing. However, if they disagree with panel's decision, they can move to High Court, but if no decision has been pronounced by High Court in 15-day, doctor has the power to proceed with the board's decision.

d) In 2008, Law Commission submitted a report on 'Humanization and Decriminalization of attempt To Suicide'

Section 309 of IPC was found to be inhuman and unfair. It furthered that suicide is not a thought which pleases someone but a manifestation of diseased condition where in person is suffering from mental illness. They deserve treatment and care and not punishment and added trauma of undergoing cumbersome legal proceedings.

Commission clarified that abetment to suicide must not go unpunished but Section 309 IPC should be omitted from the statute books.

e) Aruna Ram Chandra Shanbaug V Union of India¹⁹

Aruna Shanbaug was sexually harassed in 1973 and was in coma since then. Victim's friend contended the Supreme Court to direct the hospital authorities to stop feeding Ms. Shanbaug and allow her to die peacefully. In this case passive euthanasia was discussed at length, and court invoked the Principle of Parens Patria (it is a Latin term for 'parent of the nation' where the court gets the liberty to step in and serve as the guardian). This power is bestowed to High Court by virtue of Article 226. The Court held active Euthanasia as illegal and passive as permissible one, but it has to be undertaken as per the guidelines of High Court.

¹⁹ Aruna Ramchandra Shanbaug v Union of India WP (Cr) No. 115 of 2009

f) **Common Cause (A Regd. Society) V Union of India**²⁰

Common cause is a registered society, which approached Supreme Court in 2005 under Article 32 pleading for the – “declaration that right to die with dignity is a Fundamental right under Article 21” along with the prayer to give direction to the central government to allow terminally ill person to execute ‘living will’ in the event if they are admitted to the hospital and are then not in the condition to express consent as to his death. The petitioners argue that denying right to Die to people who are terminally ill and going through cumbersome medical treatment is merely adding to their pain. In 2018, constitutional bench held that– “right to die with dignity is a fundamental right, and sanction to passive euthanasia has been granted in addition to the concept of Living will.”

²⁰ Common Cause v Union of India WP (C) No. 215 of 2005

NETHERLAND

In the Netherlands, euthanasia is characterized as intentionally taking an individual's life at the individual's urge. In physician-assisted suicide, the individual self-manages prescription that is prescribed by a doctor. Euthanasia and physician-assisted suicide are permitted provided that a doctor performs the act while adhering to specific requirements.

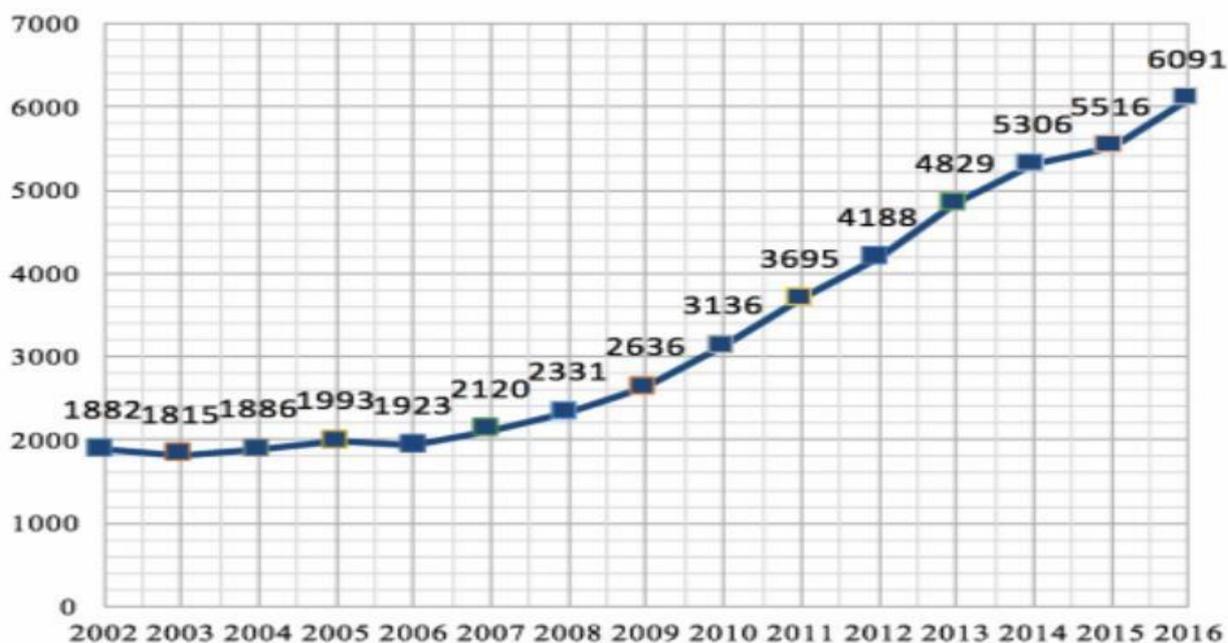
Originally, the first European nation which decriminalizes euthanasia and physician-assisted suicide was a Netherland by a law which was passed in 2001. The number of people who have been euthanized has developed consistently, which is a very serious matter in society.

“Euthanasia has been made legal in Netherlands for over 18-19 years.” Since 2001 law was passed and came into a force in April 2002. After passing this law, it has been found that cases of euthanasia have been continuously increasing. The regional euthanasia review committees presented a figure which shows an increasing number of infringements. Despite the fact that the exact conditions set up by law have not changed in strict sense, their broad understanding has made progressively questionable circumstances. For instance, Euthanasia on individuals with mental problems, dementia, individuals who are old, or those experiencing several pathologies, has nothing to do with the set up lawful prerequisites.

Parliament was under pressure to allow euthanasia for people above 70 years of age requesting it, and the motive was none other than but their age and "being tired of life". Thus, the association by free will for forcing a Parliamentary debate initiated a citizen's initiative petition in 2010.

CHART 1 –

This chart demonstrating the rise in the number of euthanasia and assisted suicide cases from 2002 to 2016



Source - “Annual report of the Regional Review Committees for examining euthanasia” 2016

In 2002, when the law was introduced first time in the Netherland, there were 1882 cases which were reported of euthanasia. In 2012, this number has risen to 4188 cases and whereas in 2016 it was 6091 cases reported of euthanasia. This means, within ten years i.e., from 2002 to 2012, the total number of cases has been doubled. Whereas in 2016 that is after 15 years for enactment of legislation, cases had been tripled.

By Comparison, the population of Netherland which increased only by 4% between 2012 to 2016. In 2016, there were approx. 16 case of euthanasia per day.

The majority of euthanasia cases (approx. 83%) was performed on those people who were suffering from incurable disease, 10% from multiple pathology, 4% because of their old age, 2% from mental disorder and remaining 1% for dementia. As per the report, 80% of the time, euthanasia has been done in patient’s home, whereas in 85% of cases, it was performed by family doctor.

EVOLUTION OF LAW

The Dutch Penal Code makes euthanasia illegal. Nonetheless, as stated in another article, it is not classified as murder (as in some other countries): according to Article of the Dutch Penal Code, it is not punishable for a physician to end his life at the patient's explicit request if he follows the procedure provided by the law and meets the euthanasia due care criteria. Any alternative therapy must be investigated by both the patient and the doctor²¹. A court case in 1973 (the same year the Dutch Society for Voluntary Euthanasia was founded) sparked the Dutch euthanasia debate (the same year wherein the Dutch Society for Voluntary Euthanasia was framed).

In one example, a general practitioner was charged with murdering her mother, who had had a brain hemorrhage, was mainly immobile or paralyzed, had hearing impairments, and was deaf. After repeatedly expressing her desire to die to her daughter, she took her mother's life by delivering a deadly dose of morphine. The court (of Leeuwarden) found her guilty not because she directly caused her mother's death (who was extremely ill and suffering indescribably), but because she took her mother's life directly by administering more than enough morphia, notwithstanding her mother's ability to refuse drugs or morphia.

THE LEGISLATION AND DUTCH PROCESS OF LEGAL CHANGES

In the Netherlands, there are different laws that allow for the practice of euthanasia and physician-assisted suicide in certain circumstances and when certain guidelines established by the Dutch government are followed.

Euthanasia was made lawful in the Netherlands by 2001 law, the "*Law for the Termination of Life on Request and Assisted Suicide*", which came into effect from April 2002. It is the consequence of a long cycle of discussions that started during the 70s-80s, with a more "understanding" vision for specialists, shaped by case law, and dependent on a few administrative and legislative recommendations and their proposals. The current Dutch legislation permits for

²¹ Section 2 of Article 293 of Dutch Penal Code

some instances of euthanasia without even decriminalizing it. Euthanasia, counselling or inciting suicide, and physician-assisted suicide are still considered criminal offences under the law.

However, the law prescribes a relief from liability for doctors who has followed the “rules of due consideration”:

- 1) The patient's demand of euthanasia must be of his choice only and voluntary. The consent or permission of the patient who is now not able to express himself personally, then it may be taken into account if he has previously made a written declaration to that effect, and is at least 16 years old.
- 2) The patient's suffering should be viewed as agonizing without the possibility of progress.
- 3) The patient should be completely informed and mindful and aware of his condition, possibilities, and alternatives.
- 4) Both the physician and the patient have arrived at the conclusion that there is no other sensible option or alternative.

Dutch physicians who end a patient's life at the patient's request are not prosecuted if they follow the Dutch Criminal Code and the euthanasia review committee protocols.²² A physician who performed euthanasia must notify the regional review body of death from non-natural reasons.²³

Recently, The Dutch government has decided to approve plans for allowing euthanasia for ill children below the age of 12, who are about to die²⁴.

²² Dutch law on Termination of life on request and assisted suicide, website <https://wfrtds.org/dutch-law-on-termination-of-life-on-request-and-assisted-suicide-complete-text/>, accessed on 28th April, 2021.

²³ Ibid

²⁴ Dutch government backs euthanasia for under 12s, News, <https://www.dw.com/en/dutch-government-backs-euthanasia-for-under-12s/a-55270062>, accessed on 01st May, 2021.

AUSTRALIA

LEGALIZATION OF EUTHANASIA

On 24th of May 1995, an act was passed by Northern territory Parliament namely, 'Rights of Terminally Ill Act 1995'. This act made Australia the first country ever in the world and Northern territory of USA the first jurisdiction where active voluntary euthanasia and assisted suicide has been legalized. The final amendments in the act were passed on 20th February 1996 with regard to psychiatrist's role and interpreter. This act enabled people of age 18 and above who are suffering from some terminal illness to request the doctor to assist them in dying subject to certain conditions. With the case of *Wake v Northern Territory (1996) 109 NTR 1*, The NT Act was held valid however it was later repealed by Euthanasia Laws Act, 1997 which came into force from 27 march 1997.

LEGALIZATION OF PASSIVE EUTHANASIA IN OTHER STATES OF AUSTRALIA

Most of the Australian States provides for Advance directives and also have provision of enduring power of attorney as specified in Table 1.

Advance Directives permits the adults who are competent to execute in writing (except for the act when they may be oral)²⁵, by specifying their wish with regard to medical treatment which includes refusal of treatment.

Enduring Power of Attorney enables a person wherein he can appoint agent to make decision with regard to refusal of medical treatment on his behalf if his decision-making capacity is impaired.

²⁵ Medical Treatment (Health Directions) Act 2006 (ACT) ss 7 and 9.

2019 REFORM IN STATE OF VICTORIA

With the introduction of new reformative law in the state of Victoria now because of which the citizens can apply to put an end to their lives. The Victorian Voluntary Assisted Dying Act 2017 came into effect on June 19, 2019 and it permitted voluntary assisted dying however with safeguards and only in limited circumstances. When this bill was debated in the parliament, it was heralded as “the safest, and most conservative model in the world with 68 safeguards”²⁶The option of ending life according to this act shall be accessible merely to adults who are terminally ill with less than six months or a year left to live.

Method- The default method under Victorian framework for VAD is self-administration. In the process, the presence of doctor would not be mandatory. But the practitioner assistance would be allowed only if patient “has lost the physical capacity to self-administer or digest”²⁷. The doctor is also not authorized to assist the patient if he had unsuccessfully attempted to die.

²⁶ Premier Daniel Andrews. “Voluntary assisted dying model established ahead of vote in Parliament” media release] <https://www.premier.vic.gov.au/voluntary-assisted-dying-model-established-ahead-of-vote-in-parliament/> (22 December 2020)

²⁷ Section 53 VAD ACT, 2017

TABLE - 1
COMPARISON BETWEEN INDIA, NETHERLAND AND AUSTRALIA

BASIS	INDIA	NETHERLAND	AUSTRALIA
Active Euthanasia	Illegal	Yes	Yes, through 2019 legislation in Victoria.
Passive Euthanasia	Legal	Yes	Legal by virtue of Common Law
Existence of legislation	NO	Yes	Yes, In State of Victoria
Related Legislations/ Constitutional provision	Article 21 Constitution of India	Article 293, Dutch Penal Code	-Rights of Terminally Ill Act 1995 -Euthanasia Act 1997 -Victorian Voluntary Assisted Dying Act 2017
Current Status	Permitted by Supreme Court in Aruna Shanbaug V. Union of India in 2009, However, it still lacks legislative backup. No bill has been brought up in Indian Parliament to address this issue.	Euthanasia and active Voluntary Euthanasia are allowed making Netherland most Liberal nation.	Rights of Terminally ill Patients Act has been repealed in National Territory, No explicit legislation in other states except Victoria.

CHAPTER 4

THE CONTRADICTIONARY VIEWS: WHETHER RIGHT TO DIE IS A RIGHT OR NOT?

Every individual carries different ideology when we talk about this right. The arguments which are generally advanced by the people not supporting this right and thus euthanasia is: -

A) Elimination of Non-Essentials

Antagonist contends that people will tend to eliminate those who are terminally ill and this can be highly misused. Moreover, the whole concept of palliative care will be doomed.

B) Against the Notion of Welfare state.

Article 21 of Indian constitution provides for right to life which encompasses the duty of state to protect lives of people which is derogatory with suicide which is unnatural way of termination of life as well as euthanasia since doctors are duty bound to protect lives of people, and not to cause death. It is also practical to say that if euthanasia will be legalized the State shall reduce investing in healthcare and support as evident and seen in Holland.²⁸ Thus this concept of right to die or euthanasia should not sustain in the welfare state.

C) Mental illness can be remedied

The reason why people attempt suicide is mental illness, depression, schizophrenia, drug or substance users. They need psychiatric treatment and can make their life useful instead of ending it.

²⁸ Caldwell S. Now the Dutch turn against legalized mercy killing.

D) Declining Morality in the society

In this era where morality and humanity has declined substantially, one member of family doesn't hesitate to kill other member for selfish motives, then imagining a situation when euthanasia would be legal, is definitely scary. The Supreme Court has also pointed out this concern in a judgement²⁹. There is always a fear of 'Killing Mercy' while advocating for 'Mercy Killing'. To address such issues, Indian Medical Council Regulations, 2002 discuss euthanasia in Chapter 6, Section 6.7 in accordance to the provisions of "The Transplantation of Human Organ Act, 1994"³⁰

E) Poverty

People may opt euthanasia due to financial incapacity to pay bills of hospitals and to circumvent pecuniary trouble. Life is for obvious reason is more important than money, and lack of money should not become the reason of death.

F) Religious beliefs

Euthanasia is defied by Indian scriptures and considers birth of human as gift and life as sacred. Indian religion does not permit oneself to take their life.

²⁹ Gian Kaur V State of Punjab, 1996(2) SCC 648

³⁰ The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

Counter Arguments in favor of legalization of Euthanasia

“Isn’t euthanasia a route to be able to die with dignity, when life has become devoid of it and full of distress?”

A) Caretaker hardship

When the patient is terminally ill and is also in extreme agony and pain it causes unnecessary emotional and financial encumbrances on the family members or caregivers. This argument is advanced due to lack of health facility and low investment by state in health care especially for downtrodden people which is a matter of mockery on much celebrated ‘Right to life’.

B) Refusal to Medical Treatment

Person’s legal right to autonomy and self-determination is enshrined in Article 21 of the Constitution of India. Patient can refuse life prolonging treatment and also can deny feeding through nasogastric tube. This right can be interpreted in the light of passive euthanasia.

C) Promotion of Organ Transplantation

When we advocate right to die for those who are terminally ill, we are also giving support to right to live to those patients who are in need of organ and these terminally ill patients can donate that. When the patient is at the verge of death but some of his organs can help others to live, is noble, and thus should be encouraged.

D) Divergence of State’s Fund

The Fund of state which is used to treat terminally ill patient or those who are suffering from chronicle incurable disease, should be invested for betterment of poor.

CHAPTER 5

ANALYSIS, FINDINGS AND DISCUSSION

Our research reveals that when applied to euthanasia in India, the Netherlands, or Australia, it does not evoke 'the' correct response or reaction. Rather, it represents a balance of rights, the appropriateness of which can be questioned. Death is prohibited by the right to life. In any case, a state is not required to defend a person's life security if doing so contradicts the individual's stated aims.

In the case of a request for intentional or voluntary euthanasia, the State's commitment to protect life must be balanced against the right to privacy and individual freedom. Legislation restricting admittance to voluntary euthanasia may violate the right to privacy under Article 17 of the ICCPR and must thus be justified as a valid limitation of that right. Similar to admitting to passive euthanasia, it is vital to remember that subjecting someone to treatment without their agreement or awareness may damage their respectability and violate their rights under Article 17 of the ICCPR.

Further, the Disability Convention clarifies that individual with incapacity are qualified for similar regard for their Rights to life, wellbeing, actual honesty, and individual independence as individuals without a disability.

If a state decides to allow voluntary euthanasia, article 6 of the ICCPR mandates that the laws include stringent and effective protections against misuse. Such law may need to include clauses allowing for 'conscientious objection' in order to be compatible with the right to free of thought, conscience, and belief.

In the Netherlands, euthanasia is legal according to Section 2 (Article 293) of the Dutch Penal Code; however, there are certain guidelines in the act that must be followed before performing euthanasia, and according to the study, they correctly follow the guidelines by which they perform euthanasia smoothly.

At the same time, in India's current state, it is questionable if euthanasia should be permitted or legalized. Many suggestions have been made in landmark cases in India, but there has been no improvement in the functioning of euthanasia, and it is still being fought in India.

According to the study, there is no obvious right demanding complete authorization of voluntary euthanasia, nor is there any obvious right prohibiting its acceptance provided severe measures are taken. From the view of human rights, the prospect of assisting in the authorization of voluntary euthanasia procedures seem to exist, given that sufficient safeguards are in place to avoid 'arbitrary' (and discriminatory) life sufferings.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

“For those who are facing a terminal illness, who are in irremediable pain and suffering, and wish to exercise their right to die with dignity, a system should be available to them”

- Dr Jack Kevorkian

When a person is born, he is bestowed with myriad of rights and obligation. Humanity lies in compassion for the sufferers, which is the basis of Human Rights and thus it becomes crucial to allow individual who is in so much pain that he would rather end his life then continue living, a decision that is against our most basic instinct of survival but is being forced to stay alive against his will has to suffer every second of existence is just not right. While supporting the concept of euthanasia, it is wrong to advocate that individual should have right to end their life according to their will for petty pursuits. Decriminalization of Section 309 doesn't promote suicide attempts, but merely makes provision for help in place of punishment.

India, should strive to give euthanasia a legal backup to put an end to the suffering of many and for the larger benefit. The judgement of 2018 is evident of the fact that India is also progressing like other countries, but legalization of euthanasia still looks like a dream for India. Thus, it would not be wrong to say that the future of Euthanasia is certainly uncertain in India. Australia is also progressing towards entitling its citizen with this right. The step by Victorian State is a major step towards it. Other Australian States should also observe the Victorian Law and should implement it in their state as well to let people die with dignity.

Security is also a big concern which needs proper insight and thus the law legalizing euthanasia should only be implemented when sufficient safeguards are built to prevent any possible misuse by patient, family, doctors, hospitals, or even State. Let's make this world a better place to live and die for.

RECOMMENDATIONS

Bringing euthanasia into the legal domain is a complex process, however, important. The philosophy of not legalizing Euthanasia due to possible loopholes is a loophole in itself and we should work to fill those holes to make this law appropriate for the society. Through the study and observation, the recommendations of researchers are following for better implementation and prevention of misuse of Laws relating to Euthanasia

1. A team of independent personnel should be made to assess each case demanding euthanasia. This unbiased panel should look into the corners of the case including medical situation of the patients, motive of person (family member) pleading for patient's right to die, authenticity of procedure, treatment and medical reports of patient, and other concomitant factors
2. When an application is made by person not having locus standi, the plea should not be rejected merely due to lack of locus, since there can be several people who are devoid of family and relatives.
3. These cases should be heard by courts on fast-track basis, since the person is already suffering and should not suffer more due to delay in justice.
4. Total reliance on 'Living Will' is also not appropriate course of action, since it is made in advance and situation foreseen by the executor back then may not match the actual condition. So, a proper assessment of Living will be also crucial keeping in mind the benefit to the patient.

REFERENCES

- i- Bartels Lorana and Otlowski Margaret, right to die? Euthanasia and the law in Australia, 17 JLM, 2010
- ii- Dowbiggin I. A Merciful end: The euthanasia movement in modern America. New York: Oxford University Press, In, 2003.
- iii- FECIO JENNIFER MCDOUGALL and GORMAN MARTHA, EUTHANASIA A REFERENCE HANDBOOK, ABC- CLIO Inc, 2nd Ed, 2008.
- iv- Goel Vaibhav, Euthanasia – A dignified end of life”, 3(12) INTERNATIONAL NGO JOURNAL, 2008.
- v- HUXTABLE RICHARD, EUTHANASIA, ETHICS AND THE LAW: From Conflict to Compromise, Routledge- Cavendish, 2007.
- vi- Kerridge Ian H and R Mitchell Kenneth, “the legislation of active voluntary euthanasia in Australia: will the slippery slope prove fatal?” 22 JOURNALS OF MEDICAL ETHICS, 273, 1996
- vii- Lambert and others V France (European Court of Human Rights, Grand Chamber, Application no 46043/14, 5 June 2015)
- viii- Math Bada Suresh and Chaturvedi K Santosh, Euthanasia: Right To life Vs Right to Die, INDIAN JOURNAL OF MEDICAL RESEARCH, 2012.
- ix- Onwuteaka-Philipsen Bregje, Willmott Lindy and P White Ben, Regulating Voluntary Assisted Dying in Australia: Some insights from the Netherlands, 211 MJA Issue 10, 2019
- x- Pereira J., Legalizing euthanasia or assisted: the Illusion of Safeguards and Controls, JOURNAL OF CURRENT ONCOLOGY, 2011