

Legalization of Euthanasia: A persisting dilemma

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Abstract

The euthanasia is one of the most debated issues in the world. The main focus of the debate has been whether euthanasia should be legalized or not. Euthanasia generally means a mercy killing. Contrary views and arguments exist in this regard. The present paper is a moderate attempt to examine these contrary arguments. The paper concludes with the observations that debate on euthanasia is still grappled with dilemma. This debate is continuing one as some people are of the view that the life is sacred and no one has got the right to end it whereas others say that life belongs to oneself so each person has got the right to decide what he or she wants to do with it even if it amounts to dying.

Keywords:

Euthanasia, Physician assisted dying, Active and Passive Euthanasia, Mercy Killing, Medical Practitioner, Vegetative Stage, Ethical Dilemma, Intentional Killing

1. Introduction

There is a great variation on euthanasia laws around the world. These laws are subject to constant changes, as cultural values shift and better palliative care or treatments become available. It is legal in some nations, while in others it is criminal act. Euthanasia is a controversial subject, not only because there are many moral dilemmas associated with it, but also what constitutes in its definition. Consequent on this is the attendant confusion of thoughts and misinterpretations, which, in turn, have rendered euthanasia a controversial phenomenon all over the world.¹ Euthanasia is an act where a third party, usually implied to be a physician, terminates the life of a person—either actively or passively. The modern concept of euthanasia came into being in the 20th century after the invention of life-extending technologies.²

2. Euthanasia Defined

Euthanasia is the intentional killing by act or omission of a dependent human being for his or her alleged benefit. Stedman's medical dictionary defines euthanasia as "a quiet, painless death" and the intentional putting to death by artificial means of persons with incurable painful diseases. Collins English dictionary suggests that euthanasia is the act of killing someone painlessly, specially to relieve sufferings from an incurable illness and the terms 'mercy killing' and 'assisted suicide' are commonly used to describe the phenomena. The House of Lords Select Committee on Medical Ethics of England defines euthanasia as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering". In the Netherlands, euthanasia is understood as "termination of life by a doctor at the request of a patient".³ A small number of overseas jurisdictions have enacted

legislations related specifically to forms of euthanasia. These include the state of Oregon in the United States, the Netherlands, Belgium, and most recently, Luxembourg. In Switzerland euthanasia is not legal, but doctors are not prosecuted for practicing physician assisted suicide.⁴

Euthanasia can be classified according to whether a person gives informed consent. Many commentators identify different forms of euthanasia, making distinctions between ‘passive’ and ‘active’ euthanasia, and ‘voluntary’ and ‘involuntary’ euthanasia. Active euthanasia is taking specific steps to cause the patient’s death, such as injecting the patient with poison. In practice, this is usually an overdose of pain-killers or sleeping pills. Active voluntary euthanasia is legal in Belgium, Luxembourg and the Netherlands.⁵ Passive euthanasia” is usually defined as withdrawing medical treatment with the deliberate intention of causing the patient’s death. For example, if a patient requires kidney dialysis to survive, the doctors disconnect the dialysis machine, allowing the patient to die soon. This form of euthanasia is different from “active” euthanasia, or simply euthanasia, where the death is caused by the use of lethal substances. Passive voluntary euthanasia is legal throughout the U.S. (per *Cruzan v. Director, Missouri Department of Health*). When the patient brings about his or her own death with the assistance of a physician, the term assisted suicide is often used instead. Assisted suicide is legal in Switzerland and the U.S. states of Oregon, Washington and Montana.⁶ Voluntary euthanasia is when the patient requests that action be taken to end his life, or that life saving treatment be stopped, with full knowledge that this will lead to his death. Involuntary euthanasia is when a patient’s life is ended without the patient’s knowledge and consent. This may mean that the patient is kicking and screaming and begging for life, but in practice today it usually means that the patient is unconscious, unable to communicate, or is too sick and weak to be aware of what is happening or take any action on his own behalf.⁷

3. Euthanasia justified

Euthanasia means ending the life of a person who is suffering from some terminal illness, which is making his life painful as well as miserable. Now the question arises whether it should be allowed or not? And if it is allowed then how we will confirm that the disease is not recoverable? Supporters of euthanasia argue that society is obligated to acknowledge the rights of patients and to respect the decisions of those who elect euthanasia. The main purpose of the society and government is to assuring a dignified and peaceful life. Now if the individual who is under the unbearable pain is not able to decide for himself then it surely will hamper his interest. In that case it will surely be a negation of his dignity and human rights. Regarding this debate from legal point of view, article 21 of Indian constitution clearly emphasizes on living with dignity. A person has a right to live a life with at least minimum dignity and if this standard is falling below that minimum level then a person should be given a right to end his life.⁸ Supporter of euthanasia point out that the active euthanasia must be allowed. If any patient who knows he will die soon or got a terminal disease, he/she can choose active euthanasia. The supporters of euthanasia put forward their cases on certain arguments in favor of legalizing the euthanasia.⁹

3.1 Unbearable Pain without Hope of Recovery

The first argument comes from the logic that the patient must be experiencing unbearable pain. The pain and suffering experienced by terminally and incurably ill patients is consistently cited by proponents of PAD (Physician aid- in-dying) as the fundamental, compelling reason for their advocacy. Moreover, a patient has the right to judge the level of suffering that is acceptable and tolerable. There must be no other reasonable ground for justification of euthanasia. In recent times many latent diseases have been traced out by medical practitioners which are not recoverable and the life of the patient could not be saved.¹⁰ People who are alive without hope of recovery for lengthily periods of time can cause their loved ones much grief, survive in a state that the patient would not have chosen or wanted, and their care can cause a great deal of money. Moreover, the practitioner can make efforts to save the life of patients whose disease is recoverable instead of such patients said above.¹¹

3.2 Right to Die

The second argument is based on right to die. The people supporting euthanasia base their contentions on several grounds. The most important is the argument of quality life or dignified life.¹² The supporters say that everyone is entitled to dignified life and when the quality of life falls below the expected level of dignity, he/she has the right to die. To them quality of life is more important than the value of life itself.¹³ Moreover, a life is said to have value only if it is worth living. It is also argued that the doctor has a moral obligation to put an end to the sufferings of patient who is in extreme pain.¹⁴

3.3 Right to Refuse the Treatment

The third argument is related to right of refusing the treatment. While denying that it could ever be right for a patient to judge that his/her life was no longer worth living, they would defend the patient's right to judge whether a proposed treatment would be beneficial, as for example by improving the quality of his life.¹⁵ In determining whether a proposed treatment would involve excessive burdens to a particular patient, the views of the patient are clearly crucial. People differ, for example, in their ability to tolerate pain, and what may be excessively painful for one patient may not be so for another. So it should be totally depended on the patient whether he/she wants to continue or refuse the treatment.¹⁶

3.4 Justification based on Case Authorities

The fourth argument is based on case authorities around the world. The case of Nancy Cruzan v/s Director, Missouri Department of health,(497 U.S 261 (1990))¹⁷ has an important bearing on status of euthanasia. Cruzan had a major car accident in 1983. She continued to be fed through a surgically implanted gastrostomy tube. After several years, a court found that, although her respiration and circulation continued unaided, she was oblivious to her surroundings except for reflective responses to sound and perhaps painful stimuli; her brain had degenerated, irreversibly; she was a spastic quadriplegic; she suffered contraction of her four extremities, with irreversible muscle and tendon damage; and had no cognitive or reflex ability to swallow food or water or to maintain her essential daily needs nor would she ever recover such an ability. She lay in persistent vegetative state, even though she had told her housemate that if sick or injured, she would not wish to continue her life unless she could live "at least half normal." This was the first time U S Supreme Court had faced with what we call the "right to die". Nearly eight years later the accident, in 1990 a Missouri circuit allowed the removal of her artificial feeding system. Within two hours after the running, Cruzan's doctor removed the tube and she died.

Most observers trace the modern euthanasia debate back to the court case of Karen Ann Quinlan (70 N.J. 10, 355 A.2d 647(NJ 1976). Her story is a poignant example of medical technology's ability to prolong life. In 1975, after consuming alcohol and tranquilizers at a party, Quinlan collapsed into an irreversible coma that left her unable to breathe without a respirator or eat without a feeding tube. Her parents asked that she be removed from the respirator, but her doctors objected. The New Jersey Supreme Court case that followed was the first time to bring the issue of euthanasia into the public eye. In 1976 the court allowed Quinlan's parents to have the respirator removed. Although Quinlan lived for another nine years, the case set a precedent for a patient's right to refuse unwanted medical treatment

Several major court cases advanced the legal rights of patients or their guardians, to practice at least voluntary passive euthanasia. These includes the Karen Ann Quinian (1976) and Brophy cases. More recent years have seen policies fine-tuned and re-stated, as with Washington v. Glucksberg (521 U.S 702.1997) and Terri Schiavo Case. On December 31, 2009, the Montana Supreme court delivered its verdict in the case of Baxter v. Montana (MT DA 09-0051, 2009 MT 449). The court held that there was nothing in Montana Supreme Court precedent or Montana statutes indicating that physician aid in dying is against public policy.

Anthony Bland of England (BMJ 1999;318:1709) in March 1993, ended up in persistent vegetative state after suffering severe brain damage in the Hillsborough football stadium stampede, before a court order allowed his

degradation and indignity to come to a merciful close. The judges said that if he had made a living will expressing his future wishes he could have been allowed to die in peace earlier. He was the first patient in British legal history to be allowed to die.

The case of Aruna Ramachandra Shanbaug v/s Union of India (2011)4 SCC 454,524) is also important in this regard. Aruna was a nurse from *Haldipir, Uttar Kannada, Karnataka* in India. In 1973, while she was working at KEM (King Edward Memorial), Parel, Mumbai. she was strangled and sodomized by Sohanlal Walmiki, a sweeper. During the attack she was strangled with a chain, and the deprivation of oxygen has left her in a vegetative state ever since. Aruna Shanbaug has not walked or spoken a word in 37 years. Her condition has been described as semi-comatose and vegetative. But the Supreme Court on 7th march 2011 ruled that euthanasia is not a permissible option, at least not on the basis of the current appeal. The only reason is to dismiss the appeal is “We have no indication of Aruna Shanbaug’s views or wishes” the judges said. And the second thing is the petition was filed by Pinki Virani, a journalist and social activist who has written a book on the woman who she says is being forced to live her life stripped of basic dignity. The Supreme Court praised Ms Virani concern, but ruled that her relationship with patient does not give her right to petition on behalf of Ms Shanbaug for a mercy killing. The only party that can appeal for euthanasia for Ms Shanbaug is the staff of KEM Hospital.¹⁸ The verdict seems to save the life of patient. Because the Supreme Court gave two reasons for dismiss the appeal. The first one is the petition was filed by Mrs. Virani who is not a member of KEM hospital and as well as family member. And the second thing is supreme court didn’t have any indication of Aruna Shanbaug views or wishes. Now the question exists if any person who is in vegetative stage since 37 years then how she can give her consent to Supreme Court? Furthermore Aruna can afford her expenses because she was working there but how many people can afford the hospital for a long time? Moreover, in the light of increasing pressure on hospital and medical facilities, it is argued that the same facilities should be used for the benefit of other patients who have a better chance of recovery and to whom the said facilities would be of greater value. Thus, the argument runs, when one has to choose between a patient beyond recovery and one who may be saved, the latter should be preferred as the former will die in any case.¹⁹

4. The Dilemma Persists

Euthanasia is the killing of a patient at his or her request in the belief that death would be a benefit to the patient and that killing is for that reason justified. The mere fact that someone says, in an uncoerced fashion, that he or she wants to be killed does not in itself provide a doctor with a reason for thinking death would be a benefit to that patient. So there are so many reasons for not justifying the euthanasia.

4.1 Euthanasia is not in favor of Human Life

The supporters of euthanasia says that it is already considered permissible to take human life under some circumstances like self defense-but they forget that when one kills for self defense they are saving one innocent life, either their own or someone else’s. With euthanasia no one’s life is being saved, life is only just taken. Human life has an absolute moral value. Because of its absolute worth, it is wrong either to shorten the life of a patient or to fail to strive to lengthen it.²⁰ Whether the life is that of a seriously disabled new born baby or an elderly person with advanced senile dementia, morality prohibits its shortening and requires its preservation. Regardless of the pain, suffering or expense that life-prolonging treatment entails, it must be administered. So it is totally against the society and as well as the value of human beings.

4.2 Decision under depression and pressure

If someone sincerely wants to die this may well be due to depression or to a misapprehension of their true prognosis. Palliative specialists report that such requests are often used by patients to assess their worth and value to others. The decision to ask for euthanasia is not made solely by the patient.²¹ If euthanasia is permitted without the necessity to abide by government regulations and euthanasia laws, people will use it as a means to get out of even simpler trouble. Moreover, there may be ways in which pressure may be put on individuals to die or end their lives because they may seem as 'burden' to the family.²²

4.3 Lack of Genuine Voluntary Consent

We can never have sufficient evidence to be justified in believing that a dying person's request to be helped to die is competent, enduring and genuinely voluntary. It is certainly true that a request to die may not reflect an enduring desire to die. Opponents of euthanasia contend that there is no guarantee that euthanasia will be strictly voluntary. The potential for subtle coercion will threaten from several different angles. Family members faced with the overwhelming burden of caring for an ill person may unconsciously impart a feeling of worthlessness, thus hastening a "voluntary" decision toward euthanasia. The pervasive societal attitude in a "euthanasia culture" might convey that the infirm, disabled, and unproductive are worthless and a burden to society. Elderly and disabled patients are often invited by achievement-oriented society to see themselves as useless burdens on younger, more vital generations. In this climate, simply offering the option of "self-deliverance" shifts a burden of proof, so that helpless patients must ask themselves why they are not availing themselves of it. This situation might lead some to "voluntarily" decide to end a life that is perceived as worthless." That is why the supporters of euthanasia argue that a cooling off period should be required before euthanasia is permitted. If someone discusses the issue with others on different occasions, or reflects on the issue over an extended period, and does not waver in her conviction, her wish to die surely must be counted as enduring.²³

4.4 People may recover from an illness

Euthanasia is totally against the medical ethics. Medical ethics call for nursing, care giving and healing and not ending the life of the patient. In the present time, medical science is advancing at a great pace.²⁴ Even the most incurable diseases are becoming curable today. Many of the diseases that have historically killed people are now no longer a threat to most individuals. Medicine has made a variety of advances in the treatment of diseases such as smallpox, tuberculosis, malaria, pneumonia, polio, influenza, and measles. People now rarely die of such traditional causes. Life expectancy has risen to almost 75 years in most of the developed countries. Thus instead of encouraging a patient to end his life, the medical practitioners should encourage the patient to lead their painful life. It totally depends upon the medical practitioners, and if there is any problem, practitioners can be changed.²⁵

4.5 Against the Sanctity of life

Euthanasia is against the sanctity of human life. All human beings are to be valued, irrespective of age, sex, race, religion, social status or their potential for achievement. Human life is a basic good as opposed to an instrumental good, a good in itself rather than as a means to an end. Human life is sacred one. Therefore the deliberate taking of human life should be prohibited except in self-defence or the legitimate defence of others. The philosopher Immanuel Kant said that rational human beings should be treated as an end in themselves and not as a means to something else. The fact that we are human has value in itself. Our inherent value doesn't depend on anything else. It doesn't depend on whether we are having a good life that we enjoy, or whether we are making other people's lives better. We exist, so we have value. And this means that we shouldn't end our lives just because it seems the most effective way of putting an end to our suffering. To do that is not to respect our inherent worth.

4.6 Case Authorities against Euthanasia

John Whyllie died from an overdose of Nembutal, a powerful sleeping pill, in Sydney. His wife Shirley and friend Caren Jenning were accused of assisting his suicide-cum-murder. *Sue Rodriguez v/s British Columbia (Attorney General)* (1993) (3 S.C.R. 519), popularly known as 'Victoria woman' was diagnosed with Lou Gehrig's disease in 1991, asked legislators in 1992 to change the law banning assisted suicide. The Supreme Court rejected her plea, but she committed suicide in 1994 with the help of an anonymous doctor.

Ramon Sanpedro sought, through the courts, the assistance of a doctor to help him die with dignity. He was paralysed in Spain as a result of a swimming accident during his youth. He described himself as "a head attached to a corpse". He wrote "why die." Because every journey has its departure time and only the traveler has the privilege and the right to choose that last day to get out. Why to die? Because at times the journey of no return is the best path that reason can show us out of love and respect for life, so that life may have a dignified death. In fact, some people who are so paralysed take enjoyment in life and want to go on living. Their choice should be respected and they should be given every support.

The question whether Article 21 (Indian Constitution) includes right to die or not first came into consideration in the case of *Maharashtra v. Maruti Shripathi Dubal* (1987) (1 Bom CR499, (1986) 88 BOMLR 589). It was held in this case by the Bombay High Court that 'right to life' also includes 'right to die' and section 309 was struck down. The court clearly said in this case that right to die is not unnatural; it is just uncommon and abnormal. And the court mentioned about many instances in which a person may want to end his life. This was upheld by the Supreme Court in the case of *P. Rathinam v. Union Of India* (1994 AIR 1844, 1994 SCC (3) 394). The demise of the 25-year old Andhra youth K. Venkatesh, a muscular dystrophy patient, who wanted to be given euthanasia so that he could donate his organs, has sparked once again the fierce opposition to the legalization of euthanasia or mercy killing. Venkatesh sought the right to die not to escape sufferings from the degenerative muscular dystrophy, but to be able to donate his vital organs as doctors had warned that these could not be used once they became infected.

5. Conclusion

Euthanasia is a matter of continuing controversy, a tinderbox for debate, and an issue on which positions range widely and include enthusiastic advocacy of euthanasia, guarded acceptance of euthanasia, outright rejection of euthanasia, and vehement condemnation of euthanasia, equating it with murder, genocide, or worse. But who knows? To think of taking someone's life whatever reason seems unfathomable, yet there will be instances, when keeping a person alive would be cruel and selfish. To have a set of laws deciding one way or the other will not resolve the complexities of the issue. Each case is different and would have to be viewed in context and even then it is difficult to decide whether unethical or ethical? It's unlikely whether we'll ever know. We believe that euthanasia should be permissible under certain circumstances, and the people should be given the choice to voluntarily ask for some assistance in ending their own lives. But a careful assessment is strongly required to judge the validity and authenticity of each and every case to demand for euthanasia.

Notes and References

¹ The first euthanasia society was established in London in 1935. Subsequently it spread to America (1938) and other parts of the globe.

² Termination of life on request and assisted suicide act 2001.

³ Hendin, Rutenfrans & Zylicz "Physician Assisted Suicide and euthanasia in the Netherland" JAMA, VOL.277 No.21(6-4-97)1721.

⁴ A Swiss assisted suicide organization that facilitates assisted suicides for the hopelessly physically and mentally ill.

⁵ Steinbock B. *Introduction Killing and Letting Die* 2nd edition Ed. Steinbock B Norcross A. New York; Fordham University Press, 1994.

⁶ J. Kersy Anderson, p.210.

⁷ See Australia Medical Association (2007)

⁸ Fernades AK. Euthanasia, assisted suicide, and the Philosophical Anthropology of karol Wojtyla, Christian Bioethics, 2001;7(3) 379-402

⁹ See generally Yale Kamisar, "Physician-Assisted Suicide: The last bridge to active voluntary euthanasia" in Keown, 225, 230-3.

¹⁰ Indeed, the main focus of the guidance is not on the terminally ill, but on those who could live for months or even years.

¹¹ Coughenower M. Physician- Assisted Suicide. Gastroenterology Nursing, 26(2);55-59n

¹² Campbell C.S.Kimsma G ".Help me die"Cambridge quarterly of healthcare ethics, 2001;10(4);451-455.

¹³ B.B. Pande, "Right to life or death "for bharat can't be right"(1994) 4 SCC 1.

¹⁴ Gentzler J. What is a death with dignity? Journal of medicine & philosophy 2003;28(4):461-487.

¹⁵ Withholding and withholding life- prolonging medical treatment. Guidance for decision making(1999) (hereafter guidance)

¹⁶ Stein, Staurt D, "Life unworthy of life" and other medical killing programmes.

¹⁸ Aruna Ramachandra Shanbaug v/s union of india(2011)4 SCC 454,524.

¹⁹ Indian constitutional law.

²⁰ J. Harris (1995) Euthanasia and value of life.' In J.Keown (ed) euthanasia examined: ethical, clinical and legal perspectives, Cambridge university press.

²¹ Ganzini, "Commentary assessment of clinical depression in patients who request physician-assisted death" Ethics Rounds 19 (2000);476.

²² Depression, Euthanasia and improving End-of-life care, Ezekiel J. Emanuel JCO Sep 20, 2005:6456-6458.

²³ J.Keown, euthanasia, ethics and public policy: an argument against legislation (2002) pp 20-22.

²⁴ MDEL means medical decision concerning and of life.id.at 669.

²⁵ Van Der Mass, van Delden,Pijenborg.