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Legality Of Active Euthanasia: A Socio-Medico Legal Analysis on Euthanasia with Special Reference to India

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Abstract:

Legal tolerability of euthanasia in a country like India is a key concern for the legalization of it. In global dimension where on one hand, acknowledge the

concept of euthanasia and numerous countries legalizes it and have commandment associated to it, on the other hand India encompass to take few steps on the subject of legalization of this perception and have to some extent legalized it. European countries like Netherland, Belgium and Luxemburg covered legalization where India is deficient behind. Indian standpoint states that legality of it may perhaps generate a pandemonium but in rare cases similar to Aruna Shanbaug this concept plays a fundamental alleviated role. As Indian picture is totally dissimilar and has a altered acceptability circumstance. Therefore, it is necessitated for the delivery of acquaintance of the notion and more and more swot up and research and most significantly legal statute with guiding principle and criteria.

The phrase euthanasia stirs up emotions, despite the consequences of the method it is worn. When pronounced, as an alternative of a rational discourse, detached camps of incompatible proponents and antagonist are drawn up. Both battle for dignity, liberty, independence, civil rights & humaneness. Few disputes in the area of health concern result in such divergence of judgment and outlook as euthanasia. While for several people euthanasia is a materialization of the individual's independence equivalent with a responsible control of one's fate, a compassionate feedback to someone's massive suffering or a clinical essential to act in the patient's unsurpassed interest, for erstwhile individuals, euthanasia is synonymous to or purely a euphemism for butchery, the violation of human existence and a breach of the person's right to life, being incongruous to the sacredness of life doctrine and assisting the maltreatment of vulnerable individuals. The hullabaloo adjoining the moral satisfactoriness of euthanasia and its decriminalization of the rational war of words in medical ethics and in unrestricted debates during the previous decades of the twentieth century in addition to the lingered challenges for our mature societies in the twenty first century.

Keywords: *Euthanasia, international dimensions, Indian scenario, legal acceptability*

1. Introduction:

Euthanasia is a gigantic term for mercy killing in addition to it also appears that it contradicts on the whole basic principle of decency as well as natural commandment which is 'killing is wrong'. Euthanasia catches the attention of controversies for the reason that its depths the predicament of suffering, dying persons in opposition to religious considerations, legal conducts along with medical ethics. This question has a center of attention on human decorum & an acknowledgement of individuals mutual sovereignty giving climb to innovative responsive in the

form of an enlarged manifestation of cohesion of the public on its satisfactoriness. “Three European countries Netherlands, Belgium and Luxembourg have legalized both physicians assisted suicide and euthanasia and the states Oregon and Washington have passed euthanasia law regulating physician assisted suicide and euthanasia.”¹ In India passive euthanasia is officially permitted. The Supreme Court of India authorized it, “which means removal of life support systems or instruments from the patient if the patient is brain dead and is solely kept alive on instruments and in ventilation”². The verdict was concluded as a part of the judgment in the case concerning Aruna Shanbaug, who had to live in Persistent Vegetative State in anticipation of her demise. In case of different countries who has laboured upon and passed along statues concerning euthanasia & has legalized euthanasia, there is not such extent of a divergence in legal acceptability although still India stands few steps at the rear. Oregon’s euthanasia law declares that “a person maybe allowed assisted suicide if they fulfil certain criteria under the law”³. In India where in no circumstance such assisted suicide is acknowledged legally. This article contemplates on the comparative analysis of international legal scenario and Indian and to lean its norms of legal recognition.

2. Literature Review:

“The killing of a disabled person is not ‘compassionate’. It is not ‘euthanasia’. It is murder- By Stella Young”⁴ “Opponents of active euthanasia argue that it undermines the value of, and respect for, all human life erodes trust in physicians desensitizes society to killing and contradicts many people’s religious beliefs. Moreover, they maintain that the intentions and natures of active and passive Euthanasia are not essentially the same.”⁵

“Most other strongly held beliefs, there are advocacy organizations for both sides. The Hemlock Society was founded in 1980, shortly after the first “living will law” was passed in California in 1976; since then, other organizations have developed.”⁶ “Do I have a sovereign right over my body and consciousness? If yes, I should be able to choose my exit. If the government wants to

¹ U.S. Food and Drug Administration, Device Advice, Classify Your Medical Device from <http://www.fda.gov/cdrh/devadvice/313.html> (accessed on 09-11-2020)

² Oregon Legal Daily; “Twelfth Annual Report on Oregon’s Death with Dignity Act with help from Oregon Department of Human Services” ; March, 2010. From (http://www.OregonDofHumanSer.org/site/ /2010/03 / Oregon_Department_of_Justice_Euthanasia_2010.pdf) accessed on 28th Dec, 2015.

³ Narayan CL, John T: The Rights of Persons With Disabilities Act, 2016: Does it speak to the needs of persons with mental illness and their Families. (*Indian Handbook on Psychiatry*) Serial online, 2017:59:17:20 [Accessed on 27/0/2018]

⁴ Law Commission report no.196 on medical treatment 15. to terminally ill patients; Available from- <http://lawcommissionofindia.nic.in/reports/rep196.pdf> accessed on February 19, 2016.

⁵ National Law Review Online; “Disabling Assisted Suicide, why a deadly movement hasn’t been contagious”; Smith, W.J.; on Jan. 19, 2004; from- <http://www.petersingerlinks.com/taking.htm>) [Last Accessed on 2020 Sept 14th]

⁶ The Debate on legalization of Euthanasia in India- By. Minakshi Biswas is a Research Scholar at the Centre for Political Studies, JNU.

decide my exit point, I feel enslaved to their ideas of freedom.”⁷ “Attempts to legalize physician aid in dying Although there had been perfunctory legislation unsuccessfully introduced in the first half of this century, it was in 1988 that the recent attempts to pass laws permitting physician aid in dying began. In California the Humane and Dignified Death Act.”⁸

“Broad legalization of physician-assisted suicide and euthanasia would have the paradoxical effect of making patients seem to be responsible for their own suffering. Rather than being seen primarily as the victims of pain and suffering caused by disease”⁹. “Patients would be seen as having the power to end their suffering by agreeing to an injection or taking some pills; refusing would mean that living through the pain was the patient’s decision, the patient’s responsibility.”¹⁰

“One can state that euthanasia violates human dignity and therefore it should be prohibited. However, another can argue that not allowing legal euthanasia violates human dignity since one then has to die in a way which harms dignity.”¹¹ “Euthanasia is a death which fully corresponds to human dignity (the law which regulates assisted suicide in Oregon State is entitled the Death With Dignity Act).”¹² “Placing the blame on the patient would reduce the motivation of caregivers to provide the extra care that might be required, and would ease guilt if the care fell short.”¹³ “An easy, thoughtless shift of responsibility is probably what makes most hospice workers so deeply opposed to physician assisted suicide and euthanasia.”¹⁴ “It can be argued that suicide doesn't hurt anyone but the doer but they are good enough for me. The state should do everything it can to discourage people from committing suicide. On the other hand, it shouldn't *penalize* people who attempt it and fail. If the crime of suicide is punished”¹⁵.

3. Objectives of the study:

⁷ Mahesh Bhatt, Film director, producer and screenwriter

⁸ Ezekiel Emanuel, Atlantic Monthly, March 1997. from (<http://infochangeindia.org/public-health/news/indian-supreme-court-rules-on-the-right-to-die.html> accessed on 28th Dec, 2015)

⁹ New York Times; “Hard Choice for a Comfortable Death: Sedation,” Anemona Hartocollis; December 28, 2009

¹⁰ Reddy K.S.N; The essentials of Forensic medicine & Toxicology; Avichal Publishing Company; Karol Bagh; New Delhi; 26th edition. 2007

¹¹ Indian Journal on Medical Research 136; “Euthanasia: Right to life vs right to die”; Santosh K. Chaturvedi; December 2012; Pg- 902

¹² Baxi, U: A not fought battle for human dignity. (Supreme Court Law Journal, Seminar, No. 439, March 1996, p 18) (SCJL)

¹³ Vijayalakshmi, K & Yadav, D. Radhika: Reforms in correctional institutions-need for new correctional rehabilitation techniques for the improvement of prison condition and reformation of the prisoners. (Supreme Court Journal, Vol. 5, Part 31, August 2007, Pg- 40)

¹⁴ Yale Kamisar; “Euthanasia Opposing Viewpoints- Voluntary euthanasia should not be legalized”; Greenhaven Press, Inc, San Diego, California. Pg. 68. (E-book)

¹⁵ Oregon Legal Daily; “Twelfth Annual Report on Oregon’s Death with Dignity Act with help from Oregon Department of Human Services” ; March, 2010. From (http://www.OregonDofHumanSer.org/site/_/2010/03/Oregon_Department_of_Justice_Euthanasia_2010.pdf) accessed on 28th Dec, 2015.

- 3.1- To revise the Indian legal perspective and scenario on the theme substance of euthanasia.
- 3.2- To make a study on the tolerability & acceptability and refusal of the legal stand of euthanasia globally.
- 3.3- To ascertain a virtual & comparative study on legal acceptability between international dimensions and Indian perspective.
- 3.4- To learn the potentials of recognition of euthanasia in India and worldwide by legal median.

4. Methodology:

This research will be composed on an empirical study. The basic investigation will surround among the patients who are terminally ill and are in permanent vegetative state. The foremost population for the study taken by the researcher will be made with the government hospitals and medical bodies and the patients with euthanasia insist. Eventually the study will role to the outlook of the society involving persons related to legal, medical and society (random sample of random age group who are not directly related to legal or medical fraternity). The variables and data for better understanding will be collected by field investigation and personal interaction or electronic communication. First hand data and information from sources like doctor, medical officers, professors (law and medical), College students (law and medical), will be obtained. Sampling design which will be employed by the researcher will be Simple Random Sampling with the help of lottery method (or whoever will be willing to communicate with us regarding the study).

The tool for data collection utilized will be questionnaire or interview (with whichever the responder is comfortable or its convenient with) and the tools will be applied with the help of administering written questionnaire, recorded videos, email exchange with the populace and telephonic conversation or message exchange. Analytical method will be employed to critically access the statutes present in India and in global scenario and judgements delivered both in India and in international spectrum. The researcher studied the current legal framework to further understand the impending possibilities and to search for further and better knowledge on the societal mindset and knowledge of active euthanasia in India and on international level. The swot up subject area would be concentrating on the legal sector and medical sector.

Irrespective of first-hand data collection, the information about various issues related to it should also be brought forward in order to place a better solution, study of secondary sources like study of journals, books, periodicals, newsletters and online reviews will be explored. The Internet places a huge helping hand in understanding and learning now a days, hence, websites and internet sources like lexisNexis, Manupatra, Law Library, University of Wisconsin-Madison,

Indian kanoon, Law Khoj.com, wakil arena will be taken into prodigious consideration for a wider information availability and for better area under discussion identification and understanding.

5. Findings from your Study conducted and Analysis:

The problem is that for any legal changes there is threat of misuse, misrepresentation and misinterpretation. In Indian circumstance it is dreadfully tricky and awkwardly complex to put on a flawlessly handled legal upholding distinctive of a lot of countries that have made research and enquiries which are known worldwide and legalized the matter of discussion 'active euthanasia'. Nevertheless, India cannot possibly generate an absolutely refined and sophisticated legal frame and statute lie Oregon, Luxemburg, Netherlands, Belgium, Spain, Canada, Hawaii, Vermont, New Jersey, California, Columbia, Switzerland and Germany. India can nonetheless can take baby steps to agree with the theory.

- 5.1 India can in addition lay down guiding principle like Oregon, just among stricter criteria plus court's meddling on whether to be certified or not.
- 5.2 Ought to be provided in rarest of the rare cases, after all a lot of study and exploration on the patient, so that an additional person should not undergo for almost 41 years.
- 5.3 For scrutinizing on the guidelines a committee could be setup. The committee can settle on & decide the physicians and doctors who would investigate the patient's situation, need for euthanasia and then forward the report on the foundation of which euthanasia will be sanctioned or discarded.

6. Discussion:

On "March 7th, 2011 the Supreme Court of India legalized it which means removal of life support systems or instruments"¹⁶ from the long-sufferer "if the patient is brain dead and is solely kept alive on instruments and in ventilation"¹⁷. The pronouncement was made as a division of the judgment in the case "*Aruna Ramachandra Shanbaug Vs. Union of India & Ors* (2011) 4 SCC 454, where Aruna Shanbaug was in Persistent Vegetative State awaiting her demise in 2015"¹⁸. "The Supreme Court declined active euthanasia by assistance of lethal injection."¹⁹

In intercontinental scenario the officially permitted status of euthanasia in varied countries are- Canada its illegal plus measured as 'aid & abetment to suicide' under "Section 241(b) of the

¹⁶ Opposing Viewpoints Series; "Ethics of Euthanasia"; James D. Torr; Pg.53; Greenhaven Press; Inc.; San Diego Press; California. (E-Book)

¹⁷ National Review Online; "Disabling Assisted Suicide, Why a deadly movement hasn't been contagious"; Smith, W.J.; on Jan. 19, 2004; from- <http://www.petersingerlinks.com/taking.htm>) [Last Accessed on 2020 Sept 14th]

¹⁸ Aruna Ramachandra Shanbaug Vs. Union of India (UOI) and Ors {2011(4) SCC 454}

¹⁹ http://www.hospicevolunteerassociation.org/HVANewsletter/0120_Vol6No1_2009Dec9_Now_The_Dutch_Turn_Against_Legalised_MercyKilling.pdf accessed on 28th Dec, 2015.

Criminal Code of Canada”²⁰, Oregon it is legal barely with certain stipulations and circumstances to be fulfilled, Washington it is legal, Vermont legalized, California (effective starting mid 2016), Montana it is de facto lawful, Denmark is hitherto to legalese, Finland close by is in a grey area concerning this conception, France there is support intended for decriminalization of intentional euthanasia, Ireland it is completely illegal, Switzerland it is utterly criminal. European countries like Netherland and Belgium had it legalized. Luxemburg turn out to be “the third European country to decriminalize euthanasia, the country’s parliament passed a bill legalizing euthanasia on 20th February,2008”²¹. In 19th March, 2009, the bill was conceded”²².

In the nonexistence of legislation on this divisive subject matter of euthanasia, the Supreme Court of India has made a pace in and ruled that administering a lethal/fatal injection to conclude a life cannot be officially recognized. In the landmark case of Aruna Shanbaug where she has been sleeping for almost 37 lifetimes after being ruthlessly assaulted and raped, it then transformed the standpoint and perspective of the theory. Supreme Court in India placed down certain parameters for euthanasia in addition made dissimilarity among “passive euthanasia” with “active euthanasia”.

In Indian framework, populace is demanding a repeal in Section 309 Indian Penal Code (IPC)²³ which criminalizes the “attempt to suicide” and bearing in mind as euthanasia as a fraction of such a area under discussion. Where mutually the theories are entirely poling apart, legalizing euthanasia do not connote decriminalizing suicide. In this area under discussion people ought to foremost understand that euthanasia is made available to a person under what situation and why. For instance, only when a individual is in vegetative state, totally immobile, brain dead, suffering with a chronic disease which anyhow would kill that individual and euthanasia would in a way decrease the period of agony & suffering.

“Oregon has a able-bodied upholder law on euthanasia with principles & guidelines”²⁴ like the individual must be incurably & terminally ill, ought to have six months or fewer to live, be required to make two verbal requests on assisted death, ought to make one written appeal, have

²⁰ Medclaim Advice: Investigational Device Exemption, Overview of Device Regulation from http://ec.europa.eu/health/medical-devices/files/revision_docs/citizen_summary_20120926_en.pdf (accessed on 04/08/2020)

²¹ Narayan CL, John T: The Rights of Persons With Disabilities Act,2016: Does it speak to the needs of persons with mental illness and their Families. (*Indian Handbook on Psychiatry*) Serial online, 2017:59:17:20 [Accessed on 27/0/2018]

²² World Health Organization, Regional Office for the Western Pacific from http://asiahwp.org/upload/id238/WG02_Postmarket%20Surveillance20Vigilance.pdf (accessed on 17/11/2020)

²³ http://www.hospicevolunteerassociation.org/HVANewsletter/0120_Vol6No1_2009Dec9_NowTheDutchTurnAgainstLegalisedMercyKilling.pdf accessed on 28th Dec, 2015.

²⁴ Baxi, U: A not fought battle for human dignity. (*Supreme Court Law Journal*, Seminar, No. 439, March 1996, p 18) (SCJL)

got to convince two medical doctor that he/she is will anyway expire and is taking this resolution voluntary, individual must not be prejudiced by depression, individual must wait for 15 days, individual ought to be well-versed about feasible alternatives however not limited to relieve care, hospice care in addition to pain control.

7. Suggestions:

In Indian circumstances it is very knotty to put on a flawlessly handled legal statute distinctive of several countries that make research & enquiries have made it known in worldwide standpoint. India cannot possibly generate an absolutely sophisticated law like Oregon & Luxemburg except it can agree to the theory step by step.

- 7.1- India can in addition lay down guiding principle like Oregon, just among stricter criteria plus court's meddling on whether to be certified or not.
- 7.2- Ought be provided in rarest of the rare cases, after all a lot of study and exploration on the patient, so that an additional person should not undergo for almost 37 years.
- 7.3- For scrutinizing on the guidelines a committee could be setup. The committee can settle on & decide the physicians and doctors who would investigate the patient's situation, need for euthanasia and then forward the report on the foundation of which euthanasia will be sanctioned or discarded.

8. Conclusion:

Etymologically, euthanasia connotes a superior or in high spirit death. Numerous individuals might conjecture if death possibly will ever be a blissful event. The chief trepidation of the legal acceptability is the right to be misrepresented and misused which is the prime and first reason publicized by the anti-euthanasia crowd in conflicting and contradicting the theory/concept. However, in various countries it has been a conventional and acknowledged norm. The worldwide perspective has transformed a lot in addition to some countries being in the trail of accommodating the theory legally. The populace is geared up to embrace a sympathetic advancement to euthanasia if it is cautiously administered and monitored as. India can in addition to the extensive run plus future transformation might have a lot of legal approval of this theory by ironing the creases and embellishing it.

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