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Original Review Article

Euthanasia and Living Will - Right to Die with Dignity: A Literature Review.

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Abstract

Euthanasia can be the matter of concern pertaining not only to India but across the globe. Euthanasia is linked directly to right to life with dignity as well as right to die with dignity. Word Euthanasia was coined from Greek words "Eu" meaning well and "Thanatos" meaning death which literally means easy death. The term euthanasia refers to purposeful killing of the individual contracted with incurable disease by the relatives by any act or omission of any treatment. The phrase "living will" refers to a written instrument in which a person expresses instructions concerning his or her life in the form of advance directives for the administration of treatment when he or she is terminally ill and unable to express assent. Additionally, if a medical board determines that the patient is beyond medical help, it permits family members, close relatives, and nearest friends to turn off the life support equipment. The Apex court stated that "The Advance Directive can be executed only by an adult person who is sound mind and healthy state of mind and in position to express his/her views, relate and comprehend the purpose and consequences of executing the document.

1. Introduction

Euthanasia can be the matter of concern pertaining not only to India but across the globe. Euthanasia is linked directly to right to life with dignity as well as right to die with dignity. Word Euthanasia was coined from Greek words "Eu" meaning well and "Thanatos" meaning death which literally means easy death. The term euthanasia refers to purposeful killing of the individual contracted with incurable disease by the relatives by any act or omission of any treatment. Physician assisted suicide is type of euthanasia where the person is relieved by any act of commission or omission by the treating doctor.^{1,2}

The first steps towards legalizing euthanasia in India were made in 1985. A private bill regarding

euthanasia was introduced before the legislative council of the state of Maharashtra. This particular bill mentions provisions regarding civil and criminal protection to doctors, who assist in death of terminally ill patient on their request.^{3,4}

Concept of assisted suicide became a debatable issue after the judgment given by Supreme Court in the case of P Rathinam.⁵ In the journey of legalizing euthanasia in India the Aruna Shanbagh case was proven to be a mile stone. After the judgment of Aruna Shanbagh case, all the contradictory issues settled and the apex court clearly stated that all forms of euthanasia practice are not legal in the India. The Supreme Court opened a gateway for the legalization of passive euthanasia and provide proper

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guidelines regarding how to do it smoothly.⁶ Later in the Common Cause case,⁷ the Supreme Court held that the right to die with dignity is a fundamental right enshrined in the right to life under Article 21 of the Constitution of India. This is how passive euthanasia got legalized in India. Currently active euthanasia is not legalized in India while Passive euthanasia is allowed in few conditions with court permission. Hence, physician assisted euthanasia is not allowed in India and is considered to be unethical.⁸

2. Sanctity and Quality of Life

The "sanctity of life" is closely related to the practice of euthanasia. As well as a wide range of bioethical issues such as abortion, embryo research, cloning, genetic engineering, and many more. The phrase "sanctity of life" is used as a tool to combat behaviours or technology that violate the intrinsic value of human life. Every life has value and status, which should be acknowledged and safeguarded before any steps are thought through to extinguish or terminate life, according to the "Sanctity of Life" philosophy. The Sanctity of Life argument applies to all life, not just human life only.⁹

According to Craig Paterson, purposefully killing an innocent person is always wrong, regardless of the circumstances or the motivation for doing so.⁹ Even a person, who is in coma too has value because they are still human, thus it doesn't matter that they are unaware of their surroundings and have no loved ones or friends to worry about them.¹⁰ The proponents of the sanctity of life takes into consideration about the persistence of life and rejects the concept related to the quality of life. It may be said that experiences gained in life and interaction with others are deciding factors of quality of life'. If any life which can no longer be capable to gain experience and in which relationship with others are impossible, that life is not worthy or life with quality. So it may be said that quality of life is the deciding factor in cases of euthanasia.

3. Individual Autonomy & Freedom of Choice

It contends that people should be free to live their life whatever they like as long as their decisions do not negatively affect other people. Any intervention into a person's life, whether it be from the government or another person, must be limited. Euthanasia proponents contend that everyone should have the freedom to decide how and when to die. According to the idea of autonomy, people should be able to manage their own bodies and live their lives as

effectively and independently as possible. Every person should have the liberty to choose the manner of their death, and if there is need of the assistance of others, they should have the freedom to comply without worrying about facing legal repercussions. The argument put rip by proponents of euthanasia that people who oppose the practice are trying to impose their own moral or religious beliefs on others is also used to criticize those who disagree with it.¹¹

4. Medical Ethics and Duty of Physician

Unless there is a valid reason, no doctor will refuse to treat a patient and refer him to another doctor. The only time a doctor declines to treat or sent a patient who is in pain to another doctor is when the patient's condition is beyond the range of the treating doctor's competence. In air dale case' ¹² judgement states that "the doctor who is caring for any patient cannot be under absolute obligation to prolong patient's life by any means available to hint regardless of the quality of the patient's life." In the same case Lord Brown Wilkinson stated that the doctor has no obligation to the patient to keep them alive, particularly in situations where keeping them alive would require invasive medical treatment that they would not want.

5. Living will

The phrase "living will" refers to a written instrument in which a person expresses instructions concerning his or her life in the form of advance directives for the administration of treatment when he or she is terminally ill and unable to express assent. Additionally, if a medical board determines that the patient is beyond medical help, it permits family members, close relatives, and nearest friends to turn off the life support equipment. The Apex court stated that "The Advance Directive can be executed only by an adult person who is sound mind and healthy state of mind and in position to express his/her views, relate and comprehend the purpose and consequences of executing the document. The court further said that it must contain decision relating to the circumstances in withholding or withdrawal of medical treatment can be resorted. There should be intention that executor may revoke it anytime and executor has understood the consequences of executing it. It should also specify name of the guardian and close relatives of the executor. If there is more than one valid 'Advance Directive' then the most recently signed 'Advance Directive' will be given effect to. The court further said that the 'Living Will' document should be signed by

executor in the presence of two attesting witnesses and countersigned by judicial magistrate of first class or designated by the concerned District Judge. The concept of 'Living Will' is related with passive euthanasia but it is not an easy task to legislate upon it. The medical treatment of terminally-ill patients (protection of patients and medical practitioners) Bill recognized the concept of a living will in India but unfortunately it does not make 'Living Will' concept binding on the medical practitioners in India. The 'living will' cannot be executed by any patient in absence of any 'Advance Medical Directives' for Physician- assisted suicide (PAS).

The highlights of Living will document are 1) Expedient mode of dying is included in right to live with dignity. 2) Right to self-determination had upper edge over the sanctity of life in case of debilitated persons. 3) Presence of proper statutory regime to satisfy the issues raised against euthanasia.¹³

6. The Euthanasia Debate

The debate over euthanasia is based on three main points: first, that death is an inevitable part of human life; second, that death may be brought on by human effort; this means that, like most human acts, the act of dying takes on moral dimensions; and third, that euthanasia is concerned with the position of the individual regarding the "Right to be informed" fully about his or her condition. The argument made by euthanasia proponents is that if euthanasia is authorized in some form, it will benefit all patients who are suffering physically and mentally as a result of an incurable illness. There is argument that a greater number of individuals—including the elderly, persons with disabilities, those who are ill, and others—would feel threatened by a law permitting euthanasia.¹⁴

Pro-euthanasia arguments

Miseries of terminally ill patients can be decreased by legalization of euthanasia. Patients should be given the option to choose induced death if they have an incurable disease or if their quality of life would not be negatively impacted by adequate treatment. When all other medical interventions have failed and there is little chance of recovery, euthanasia should be used as a last resort. In the anthropological analysis of euthanasia and assisted suicide, discourses about the notion of sovereign bodies, moral individualistic, and freedom of choice within the notion of human rights have traditionally predominated.

Arguments given in favour of euthanasia

Euthanasia is a kind and human act for those who are suffering with unbearable pain. Compassion is a noble emotion that people feel and suffer along with the sufferings of others who are in terminally-ill position. There are many persons who support euthanasia on the ground of compassionate feeling towards those who are in pain and suffering.

- a. 'Dying with dignity' is a strong argument that is given in favour of euthanasia. To have dignity means to be able to look at oneself with respect with certain degree of satisfaction. Dying with dignity refers that no one should depend on others for daily activity in life. Because dependency on others during life due to serious illness is worse than death. One could argue that euthanasia upholds the right to life by respecting the right to a dignified death.^{3,15}
- b. People should be free to decide their own fate since they have a right to self-determination. It could be preferable to help someone pass away rather than have them endure further suffering. Many people who are chronically unwell or in a persistent vegetative state do not want to bother their family members.
- c. Maintaining a life support system against a patient's wishes is improper and unethical according to both legal and philosophical medical standards. Passive euthanasia becomes possible when the right to refuse medical treatment is recognized.
- d. Patients who are terminally sick have the option of organ donation thanks to euthanasia. Because patients who are waiting for organ donations and have organ failure may receive new lives as a result of organ donation, this excellent and honorable deed.
- e. Euthanasia legalization will always result in favorable outcomes. In order to prove that euthanasia is not generally problematic, pro-euthanasia activists frequently cite examples of nations like the Netherlands and Belgium as well as places like Oregon in the USA where the practice is permitted.
- f. Health care costs are not always bearable by the patient's family. So, in that situation euthanasia should be legalized.¹⁶

Cons of euthanasia arguments:

It is not morally correct to kill someone. Homicide and murder of any person cannot be defended except in certain situations when private defense comes in

picture. The advancement of medical technology has created an environment where the length and quality of human life can be improved. Palliative care and rehabilitation facilities are better options for assisting persons who are disabled or nearing death to enjoy a better and pain-free life.¹⁷ Euthanasia is illegal in many nations throughout the world for a variety of reasons. The arguments that may be made in favour of euthanasia include the fact that it is against medical ethics, there is a hope for future medical advancement, pain and suffering at the end of life may always be regulated, etc.

Arguments may be given in opposition of euthanasia

- a. Euthanasia is against the 'Hippocratic Oath' which is bond of trust between doctor and patient. Date to legalization of euthanasia doubt will exist in the doctor-patient relationship. It is not proper and good for any society.
- b. People who oppose euthanasia contend that if the right to die with dignity is accepted, those who suffer from terminal illnesses will be expelled from civilised society. It means that "if legalization of euthanasia is made then it will place society on a slippery slope, which will lead to more acceptable consequences in the society". There is palliative care which may provide a relief to patients suffering with terminal illness and in pain.
- c. All deaths are not painful. The person who are against legalization of euthanasia argues that euthanasia should be legalized because all deaths are painful, which is not true.
- d. The modern age is the age of scientific development, inventions and of discovery. So there is always a possibility about the medical development and discovery relating to cure terminally-ill patient, who is in pain.
- e. It is said that "power corrupts and absolute power corrupts absolutely". Euthanasia would become authorized, giving doctors excessive authority at the expense of people.
- f. Euthanasia is not a desirable situation for any society since it will impede the search for novel therapies for terminally sick individuals.
- g. Those who are against the autonomy argument replied to the autonomy argument supporter that in any situation physicians should not be forced to perform an immoral act such as voluntary active euthanasia in the name of physical sufferings of patients due to incurable diseases.
- h. Article 21 of the Indian Constitution recognizes the right to life as a fundamental human right; yet, the practice of active euthanasia is analogous to agreed murder, which is inherently unnatural, immoral, and criminal. As a result, it is incompatible and inconsistent with the idea of life.
- i. India accepts the idea of a welfare state. Therefore, it is the responsibility of the state to safeguard human life while simultaneously ensuring that its people live honourable lives. There will be tremendous concern that the state may refuse to fund health and related initiatives if euthanasia is permitted (working towards right to life). Poor patients will experience problems as a result.
- j. Due to a severe likelihood of misuse of euthanasia by family members or relatives to get the patient's property in the present period, there is a lack of morality, justice, and good conscience.
- k. Difficulty of determining voluntary consent.
- l. The usage of contemporary painkillers eliminates the requirement for resorting to voluntary euthanasia.
- m. Risk of incorrect medical diagnosis.

Apart from the above reasons, there are some basic questions which need reply regarding the practice of euthanasia in genuine needs. The first question that must have an answer is how to determine whether a mental condition qualifies for mercy killing.¹⁸

Living will was an advance medical directive on end-of-life treatment. The Supreme Court's 2018 order on passive euthanasia wherein it recognised the right to die with dignity as a fundamental right and an aspect of Article 21 (right to life) notwithstanding, people wanting to get a "living will" registered were facing problems due to cumbersome guidelines, prompting a reconsideration by the top court. Supreme court judgement state that the document will now be signed by the executor of the living will in the presence of two attesting witnesses, preferably independent, and attested before a notary or Gazetted Officer. As per the top court's 2018 judgement, a living will need to be signed by the person making the will in the presence of two witnesses and a Judicial Magistrate of First Class (JMFC).

The top court also agreed to the suggestion that the executor shall inform and hand over a copy of the advance directive to the family physician, if any. The court had in its March 9, 2018 judgment recognized that a terminally ill patient or a person in a persistent

vegetative state may execute an advance medical directive or a "living will" to refuse medical treatment, holding that the right to live with dignity also included "smoothening" the process of dying. It had observed that the failure to legally recognize advance medical directives might amount to "non-facilitation" of the right to smoothen the dying process and that dignity in that process was also part of the right to life under Article 21 of the Constitution. The court had laid down principles related to the procedure for execution of advance directives and spelt out guidelines and safeguards to give effect to passive euthanasia in both circumstances where there are advance directives and where there are none. The verdict had come on a PIL filed by NGO Common Cause seeking recognition of the "living will" made by terminally-ill patients for passive euthanasia.¹⁹

7. Way forward

There is need for standardising procedure and protocols by Central government for euthanasia. These protocols can serve as cornerstone for state governments for effective implementation of supreme court judgement.

8. Conclusion

Currently there are huge number of recent advancements in medical science which can prolong the life of the individuals suffering from various diseases. But on other hand this can also put more economic burden on families of the patients. These issues can pose multiple ethical concerns in the medical field. For passing any law in favour or against the euthanasia, all the points should be taken into consideration before framing the law which will be in synchronisation with the situation in that country.

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