ABSTRACT

The word euthanasia, originated in Greece means a good death. Euthanasia encompasses various dimensions, from active (introducing something to cause death) to passive (withholding treatment or supportive measures); voluntary (consent) to involuntary (consent from guardian) and physician assisted (where physician's prescribe the medicine and patient or the third party administers the medication to cause death). Request for premature ending of life has contributed to the debate about the role of such practices in contemporary health care. This debate cuts across complex and dynamic aspects such as, legal, ethical, human rights, health, religious, economic, spiritual, social and cultural aspects of the civilised society. The paper will look into the broad history of euthanasia, then glance across the globe to witness and take lessons from what all has been done till now by the other countries and then finally analyse the Indian position with regard to Euthanasia.

INTRODUCTION

"A man's dying is more the survivor's affair than his own."

- Thoman Mann

Euthanasia, a concept which has fuelled wide debates owing to the ruling of the Supreme Court of India in Aruna Shanbaug's case is not a novel notion but one that has witnessed its crests and troughs of relevance and importance at different point of time, with every new case that comes in the lime light, the discussion heats up. The sad part about the same being that till now, no concrete opinion has been affirmed by either the legislature or the judiciary, and this exactly will form the core of this research project, to strive to identify the Indian jurisprudence on euthanasia that has since long stayed in suspended animation.

The very concept of euthanasia is often said to be found in the middle of two very important principles, one of autonomy or self-determination and sanctity of life, which one to be preferred over the other is a question which is yet to be answered by the legislature, with regards the judiciary, The Shanbaug's decision was an awaited one and it took a step in the direction of resolving this very crucial and pertinent concern of ours.

CHAPTER 1: HISTORICAL AND RELIGIOUS PERSPECTIVE OF EUTHANASIA

Black's law dictionary defines Euthanasia as an act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, especially a painful one, for reasons of mercy. [1]

Euthanasia is derived from the term *euthanatos* (*eu* meaning good and *thanatos*, death) and thus it means good death, or can even be construed as death with dignity. Mercy killing is also a term that is often used to describe it and is a term in common parlance unlike the technical term euthanasia. It has been accepted in certain manners by different classes of groups of people in our history, like in Ancient Greece and Rome, helping others in dying, relieving their pain and putting them to death was held permissible. In Sparta for example, newborns with severe birth defects were put to death, same was the case for the elderly as well. In fact the Romans and Greeks thought greatly of dying decently, how they died was a measure of the final value of their life.[2]

The term Euthanasia in the earlier times also had spiritual undertones, which can be witnessed even today, in fact earlier; it was used to describe the spiritual state of dying person at the impending moment of death.[3]

The ancient Indian philosophy justifies the idea of willing death, as per Hindu mythology Lord Rama took *Jal Samadhi* in *Sarayu* river, the same was true for Lord Buddha and Lord Mahaveer as well, who attained salvation through these means only.[4]

Manu speaks about voluntary death in his commentary, Goverdhana and Kulluka, he says that man may undertake *Mahaprasthan* (big journey) which may end in his death. It has also been stated that when a person gets inflicted with an incurable disease or meets with great misfortune then he can rightfully end his life, moreover there is nothing in the *Vedas* that prohibits a man from killing himself.[5]

---

[1] BLACK'S LAW DICTIONARY BRYAN A GARNER Pg. 575 (1999).
[2] Shreyans Kasliwal, *"Should Euthanasia be legalized in India"* (08) CRIMINAL LAW JOURNAL 209, 209 (2002).
[3] Jay Thareja, *"Euthanasia the last right"* 02(06) CRIMINAL LAW JOURNAL 153, 155 (2009).
[4] J.S. Rajawat, *"Euthanasia"* 04(11) CRIMINAL LAW JOURNAL (2010).
[5] J.S. Rajawat, *"Euthanasia"* 04(11) CRIMINAL LAW JOURNAL (2010).

In Jain religion, there is a practice named *Santhara* which is a ritual of voluntary death by fasting, this has been considered a great achievement of a hermit's life.

While all this goes well in favour of euthanasia, there was severe opposition of the same as well, spearheaded by the Christian traditions, right from the 5th Century, it has been the staunch belief of the Christians that every human owes his existence to a loving being, the almighty i.e., God who has graciously brought the person into existence and thus their lives belong to God, hence human beings should respect the lives so given and should not choose the manner and time of other or for that matter one's own death.[6]

The Christians view suffering as beneficial for human existence and it is thought to induce spiritual maturity, thus one should not abandon the life assigned to him but should endure the pain in the hope of resurrection. The same belief continues till today which can be understood in light of Pope John Paul II's statement – *"Euthanasia is a grave violation of law of God, since it is the deliberate and morally unacceptable killing of human person."* The fundamental commandment of Christianity falls in line with this notion as well, which is "You shall not kill." This is also similar to tenets of Buddhism where Euthanasia is opposed on the principle of "sanctity of life."[7] According to Jewish tradition, preservation of life is of paramount importance; every moment of human life is precious and should not be shortened by artificial means. But this comes with a caveat, that if there is an impediment in the departure of the natural process of dying, then a doctor will be permitted to remove it.

Islam again has similar notions to Christianity when it comes to euthanasia, according to Islam, life is a gift of Allah and it is only for him to decide that how long a person should live, the Quran also speaks about this – *"And no person can ever die except by Allah's leave and at an appointed term."* (Qur'an 3.145).[8]

Hence it can be safely stated now, that there was no particular stand on euthanasia in history, as there were arguments on both sides, while some considered it permissible, some specifically prohibited it.

---

[6] Jay Thareja, *"Euthanasia the last right"* 02(06) CRIMINAL LAW JOURNAL 153, 155 (2009).
[7] Roy W Perrett, *"Buddhism, Euthanasia and sanctity of life"* 22(5) JOURNAL OF MEDICAL ETHICS 309 310 (1969).
[8] Jay Thareja, *"Euthanasia the last right"* 02(06) CRIMINAL LAW JOURNAL 153, 155 (2009).

CHAPTER 2: GLOBAL SCENARIO

India is still in a very nascent stage of development while other countries have zoomed ahead, but it is surely catching up with the others, and globalisation as a principle which was accepted in 1991 by our country can be read as a proof for that, as it is always good to have global exposure, the purpose of this chapter is also just the same, to review the global position on Euthanasia. This chapter scans through the world and will take a look at the major legislations and case laws that have been enacted and decided respectively with respect to Euthanasia in some of the major countries.

Universal Declaration of Human Rights is an important covenant which is of prime importance and is set as a common standard for achievement for all peoples of all nations. Article 3 of UDHR lays down that *"Everyone has a right to life, liberty and security of person."*[9] Now even though this right to life and liberty is very important, but still it must be read in light of the Preamble which delves on the principle of inherent dignity and the same rights thus should be subject to the clause of inherent dignity of every individual.

United Kingdom

Euthanasia is illegal in almost all the common law countries, but specifically with regards to UK, from where India has derived much of its legal jurisprudence from, mercy killing still remains illegal. The Landmark judgment on this front came out in the case of *Anthony NHS Trust v. Bland.*[10] The facts of the case are as follows:

Mr Anthony Bland met with an accident and went into a state named PVS (Permanent Vegetative State). In order to prolong his life, he was kept alive on artificial means like nasogastric tube, catheter and was thus restricted in his doings to the bed itself. Since there was no scope of the patient getting better, the relatives asked for discontinuing the artificial medical care after 3 long years, since there was an ambiguity about the act being an offence or not, the family asked the family division of a High Court for clearance and the Court held that the life support system can very well be withdrawn, the judgment was also affirmed by the Court of Appeal, but the matter finally came to the House of Lords where after much deliberation on the principle of sanctity of life, self-determination and best interest of the patient concurred

[9] The Universal Declaration of Human Rights, *available at* http://www.un.org/en/documents/udhr/index.shtml
[10] *Anthony NHS Trust v. Bland* 1993 (1) All ER 821 (HL).

with the High Court and the Court of Appeal and allowed for the withdrawal of life support system.

The same case still remains good law and has been followed in a catena of cases till now, but still there were caveats given by the Court and it was also stated that in absence of any legislation on the same matter the doctor should act on the basis of an informed medical opinion, while also catering to the best interest principle of the patient, if this is followed then the act would not constitute an offence.

Netherlands

Netherlands became the first country to legalise Euthanasia by an Act of the Parliament which was passed in the year 2002 – Termination of Life on request and Assisted Suicide (Review Procedure) Act. This particular legislation came out in wake of the judicial pronouncements in favour of Euthanasia, the first case to come before the courts was *Eindhoven*[11] Case, after this in 1984 the Supreme Court was faced with euthanasia in *Schooneim's*[12] case where the court allowed the appeal giving the defence of medical necessity or *overmacht*. These and a plethora of other cases made way for the legislation that was enacted in the country in 2002, legalising Euthanasia.[13] The defence of necessity in Netherlands is of two types, one is psychological compulsion and the other, emergency, which can be used to justify the act when catering to a higher good.[14]

The stand for legalising Euthanasia also got a boost from the Remmelink report which was set up in 1990 under the Chairmanship of Attorney General Remmelink where it was found that high number of cases were being euthanized on a regular basis, it was common but unofficial, hence the legislators in order to standardise the process, legalised it in 2002.[15]

Belgium

Belgium was the second country to legalise the practice of euthanasia after Netherlands in 2002, the patients making such demands should be under constant and unbearable physical or

[11] Nederlandse Jurisprudence 1952, no. 275
[12] Nederlandse Jurisprudence 1985 no. 106
[13] Jocelyn Downie *The Contested Lessons of Euthanasia in the Netherlands, available at* http://www.law.ualberta.ca/centres/hli/userfiles/euthanasiafrm.pdf
[14] Shreyans Kasliwal, *"Should Euthanasia be legalized in India"* (08) CRIMINAL LAW JOURNAL 209, 209 (2002).
[15] *Euthanasia Practices in Netherlands, available at* http://www.bioethics.org.au/Resources/Online%20Articles/Other%20Articles/Euthanasia%20practices%20in%20the%20Netherlands%20-%20Brian%20Pollard's%20third%20Document.pdf

psychological pain which might have resulted from an accident or incurable illness. Also such a demand should be made in total consciousness and must be consistent.

Australia

In 1996, the Northern Territory of Australia became the first jurisdiction to explicitly legalise voluntary active euthanasia by passage of the Terminally Ill Act (1996) but subsequently the same was repealed by the Euthanasia Laws Act, 1997.

Canada

Almost the entire focus that came on euthanasia in the country can be attributed to the case of *Sue Rodriguez*.[16] It derived great amount of sympathy and public support but ultimately she was not allowed to die legally. But after this case, a committee was formed to look into the same, the committee though did not call for legalisation of euthanasia but it did call for creating a separate offence for euthanasia since it was motivated by compassion and not otherwise.[17]

United States of America

U.S. has laws which authorise legally competent individuals to makes advanced directives (living wills). These instruments allow individuals to control some features of the time and manner of their deaths. But the distinction between passive and active Euthanasia is still maintained, where active Euthanasia is explicitly prohibited, withdrawing life support systems is not so much frowned upon, as can be witnessed by taking a look at certain judgments in this regard where the Courts have ruled that physicians should not be legally punished if they withdraw the life support system.[18] These judgments basically cater to the principle of self-determination wherein a patient has the right to refuse treatment.[19]

Euthanasia is further subdivided into categories, which is very important for the present discussion, and this categorization is accepted universally, thus Euthanasia can be classified as thus:

---

[16] Rodriguez v. Attoreny General for British Columbia (1994) 85 CCC (3d) 15.
[17] Margaret Otlowski, VOLUNTARY EUTHANASIA AND COMMON LAW, 386 (2000).
[18] Shreyans Kasliwal, *"Should Euthanasia be legalized in India"* (08) CRIMINAL LAW JOURNAL 209, 209 (2002).
[19] Sangeetha Mugunthan, *"A Constitutional Perspective on Euthanasia"* 01(03) KARNATAKA LAW JOURNAL 10, 12 (2006).

1) <u>On the basis of nature of the Act:</u>
    a) Active Euthanasia – A positive act to end suffering or meaningless existence. It is an act of commission, e.g., a lethal injection.
    b) Passive Euthanasia – Simply put, it means withdrawal of life support system, it is normally understood as an act of omission. It includes non-usage of the measures that could delay death. e.g., removal of nasogastric tube.

2) <u>On the basis of consent</u>:
    a) Voluntary – It basically involves cases wherein the person himself/herself requests for Euthanasia.
    b) Non-Voluntary – Euthanasia in circumstances where a person is unable to make a choice on the basis of incompetence which could occur due to any of the reasons ranging from being a minor to being in a Coma or a Vegetative state.
    c) Involuntary – Euthanasia performed against the will of the patient.

One argument often used against euthanasia in the global arena is the slippery slope one, that once passive euthanasia is allowed, it would soon degenerate into allowing active and involuntary euthanasia, much cited example is that of Nazi Germany, but what needs to be realised is that today the social environment is very different from the one that existed before, today we have a principle named rule of law through which this kind of misuse can very well be kept in check.[20]

[20] Demetra M Pappas, *Recent Historical Perspectives regarding Medical Euthanasia and Physician Assissted Suicide, available at* http://bmb.oxfordjournals.org/content/52/2/386.full.pdf

CHAPTER 3: INDIAN POSITION

The Indian position with regard to Euthanasia has not developed much, given the fact that till now, no major case law or legislation was passed in this regard (prior to Aruna Shanbaug's case), till now euthanasia was inextricably linked with suicide, in fact the Indian jurisprudence w.r.t. euthanasia has not been able to thrive since it has always been an ancillary issue and never came to the fore like it should have been.

Chronologically speaking, the discussion was sparked off by the decision of Bombay High Court in the case of *Maruti Sripati Dubal v. State of Maharashtra*.[21] Here the Bench speaking through Sawant J., on being approached for quashing a prosecution launched against the petitioner under Section 309[22] of the IPC on grounds of unconstitutionality of the section, adopted the view that the section was ultra vires being violative of Articles 14 and 21.

Another High Court decision of A.P. HC that dealt with the same issue came out in the case of *Chenna Jagadeeswar v. State of A.P*[23] ., but it dissented with the ruling of Bombay H.C., and held that Section 309 did not in any way offend either of the Articles 19 and 21.

To put an end to the rising debate, the honourable Supreme Court via its decision in *P. Rathinam v. Union of India*[24] , held section 309 to be unconstitutional and violative of Article 21, the reasoning behind this was that right to life under Article 21 includes a right to die, vide *R.C. Cooper v. Union of India*[25] where it was mentioned that freedom of speech and expression also took within its stride right to silence, generally speaking Article 21 along with conferring a positive right to life, also carries with it a negative right, not to live.

But this was no end as thought, because in another two years, *Gian Kaur's*[26] judgment came out which overruled *P. Rathinam's* case and held that sections 306 and 309 were very much constitutional since Article 21 or for that matter none of the fundamental rights was violated. The Constitutional Bench further held that Article 21 did not grant a right to die under the auspices of right to life and liberty.

---

[21] *Maruti Sripati Dubal v. State of Maharashtra* 1987 Criminal Law Journal 743 (Bom).
[22] Sec. 309 – Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or both.
[23] *Chenna Jagadeeswar v. State of A.P* 1988 Criminal Law Journal 549.
[24] *P. Rathinam v. Union of India* AIR 1994 SC 1884.
[25] *R.C. Cooper v. Union of India* AIR 1970 SC 564.
[26] *Gian Kaur v. The State of Punjab* AIR 1996 SC 946.

The bench justified it by citing the much valued principle of *'sanctity of life'* -

"The significant aspect of 'sanctity of life' is also not to be overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in protection of life."

With regards to Euthanasia though, it was ruled that right to life includes right to live with dignity upto the end of natural life. So when a question arises in the context of a dying man, who is terminally ill or in PVS that he may be permitted to terminate it by a premature extinction of life in those circumstances, then these cases may fall within the ambit of the right to die with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. Hence it can be inferred from the judgment that passive euthanasia was not expressively prohibited and thus allowed by Gian Kaur's ruling.

In *C.A. Thomas Master v. Union of India*[27] , the High Court of Kerala dealt with Euthanasia directly, the court here entertained a writ petition where a Voluntary Death Clinic was asked to be set up for facilitating voluntary death and donation/transplantation of bodily organs, the petitioner wanted to end his life on a high note so as to donate the organs but the court dismissed the petition and reiterated the rule laid down in Gian Kaur's judgment.[28]

But then came the Law Commission Report on Medical Treatment to Terminally Ill Patients (Protection of patients and Medical Practitioners) 2006 which at least sought to lay down some concrete material in front of the legislators so that a law in this regard could be passed. But sadly enough the recommendations of the report were not accepted and it was rejected.

But still, since the report comprehensively dealt with euthanasia, it will be prudent to discuss it in this research paper and hence certain points raised in the report are highlighted here. The report absolved the doctor of any crime under the IPC if he in the best interests of the patient and on the expert opinion of body of experts decided to withhold the treatment.

The view furthered by the commission in light of the judgment in Gian Kaur of the Supreme Court, *Airdale* of the House of Lords and judgments in other countries was that the common law confers a duty on the doctor to withhold or withdraw treatment if so instructed by a

---

[27] *C.A. Thomas Master v. Union of India* 2000 Cri Law Journal 3729.
[28] Jay Thareja, *"Euthanasia the last right"* 02(06) CRIMINAL LAW JOURNAL 153, 155 (2009).

competent patient. In cases of an incompetent patient the doctors are justified in withdrawing the treatment if it is in the best interests of the patient. The commission further held that the action of the doctor would be justified by law since he will be protected vide Sec. 79[29] of the IPC.

Another point raised by the report was that since the omission in the doctor's case was legal hence section 107 will not be attracted. *"It was also proposed that in the case of patients with disease or in last stages of a disease, where a body of medical experts is of opinion that the prolongation of life serves no purpose and there are no chances of recovery, the doctors have no duty in law to merely prolong life. This principle is now accepted in all countries as part of common law."*[30]

Aruna Shanbaug's case

After the report there was a lull, but this was deftly cured by this very judgment. This case which is being hailed as a landmark judgment in the field of euthanasia after only weeks of passing is in most respects a beautifully crafted judgment delivered by Markandey Katju, J. The case involved one Aruna Shanbaug who has been in a PVS for the past 37 years which in brief essentially means that the patient is awake but not aware of the external stimuli, the question that came for consideration was whether her life support system should be withdrawn or not?

The court dismissed the petition for withdrawing her life support system but did lay down the law in this regard till the absence of any legislation. The main points of the decision are given as below:

1) Passive euthanasia to be allowed in certain situations.
2) The decision to withdraw life support system must be approved by the High Court concerned (Referral to *Parens Patriae* doctrine).
3) Procedure to be followed by the HCs was enunciated which involved seeking the opinion of a committee constituted by three reputed doctors.
4) The High Court should give its decision assigning specific reasons in accordance with the best interest principle.

[29] Sec. 79 – Nothing is an offence which is done by any person who is justified by law or by reason of mistake of fact and not by reason of mistake of law in good faith, believes him to be justified by law in doing it.
[30] 196th Report of the Law Commission of India, Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) (2006).

CONCLUSION

"Life is not a mere living in health. Health is not the absence of illness but a growing vitality, the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. Physical, social, spiritual and psychological well being is intrinsically interwoven into the fabric of life."[31]

In light of these words euthanasia can very well be defended, as the focus should be on quality of life rather than the quantity. Why a forceful life should be imposed on any individual given the fact that right to privacy in the Indian context can very well be read under right to life.

Potential misuse is obviously a threat, but are we going to be so afraid of the same so as to even grant rights now? The answer to this can be given by standardising the entire process of euthanasia by perhaps under the Indian Medical Councils Act establishing a tribunal for experts which can be easily referred to in such cases.

The anti-euthanasia stand talks about palliative care, but one thing that is missed here is the economic aspect of it, now given that a person desires to discontinue his life due to the lack of funds, from where can we provide for the palliative care of such patients.

Till Shanbaug's case, the Indian scene was heavily dominated by Gian Kaur's judgment which did not even directly deal with the concept of euthanasia and as was stated at the very onset of the paper, even though the Indian jurisprudence has not developed much with regards to euthanasia, but still it is fast picking up pace.

The researcher thus has found that taking any aspect on euthanasia, legal, medical, social, ethical or religious, passive euthanasia can very well be allowed and exactly the same has been done by the judgment of the Supreme Court, namely Aruna Shanbaug v. Union of India, the global and historical perspective of the same also doesn't go against the current stand adopted by the Supreme Court. Hence it is time to accept the change as has been garnered.

[31] *P. Rathinam v. Union of India* AIR 1994 SC 1884

BIBLIOGRAPHY AND REFERENCES

- Books
  1. Bryan A Garner, BLACK'S LAW DICTIONARY (1999).
  2. Margaret Otlowski, VOLUNTARY EUTHANASIA AND COMMON LAW (2000).

- Articles
  1. J.S. Rajawat, *"Euthanasia"* 04(11) CRIMINAL LAW JOURNAL (2010).
  2. Jay Thareja, *"Euthanasia the last right"* 02(06) CRIMINAL LAW JOURNAL (2009).
  3. Shreyans Kasliwal, *"Should Euthanasia be legalized in India"* (08) CRIMINAL LAW JOURNAL (2002).
  4. Roy W Perrett, *"Buddhism, Euthanasia and sanctity of life"* 22(5) JOURNAL OF MEDICAL ETHICS (1969).
  5. Vinod K Puri *"End of Life Issues for Modern India"* INDIAN JOURNAL OF CRITICAL CARE MEDICINE (2005).
  6. Shreyans Kasliwal, *"Should Euthanasia be legalized in India"* (08) CRIMINAL LAW JOURNAL (2002)
  7. Sangeetha Mugunthan, *"A Constitutional Perspective on Euthanasia"* 01(03) KARNATAKA LAW JOURNAL (2006).

- Web Sources
  1. 196th Report of the Law Commission of India, Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) (2006).
  2 Demetra M Pappas, *Recent Historical Perspectives regarding Medical Euthanasia and Physician Assissted Suicide, available at* http://bmb.oxfordjournals.org/content/52/2/386.full.pdf
  3 Jocelyn Downie *The Contested Lessons of Euthanasia in the Netherlands, available at* http://www.law.ualberta.ca/centres/hli/userfiles/euthanasiafrm.pdf
  4 The Universal Declaration of Human Rights, *available at* http://www.un.org/en/documents/udhr/index.shtml,
  5 *Euthanasia Practices in Netherlands, available at* http://www.bioethics.org.au/Resources/Online%20Articles/Other%20Articles/Euthan

asia%20practices%20in%20the%20Netherlands%20-%20Brian%20Pollard's%20third%20Document.pdf

TABLE OF CASES

- Foreign Judgments
  1. *Anthony NHS Trust v. Bland* 1993 (1) All ER 821 (HL)
  2. *Eindhoven* Nederlandse Jurisprudence 1952, no. 275
  3. *Schooneim's* Nederlandse Jurisprudence 1985 no. 106
  4. *Rodriguez v. Attorney General for British Columbia* (1994) 85 CCC (3d) 15.

- Indian Judgments
  1. *Maruti Sripati Dubal v. State of Maharashtra*. 1987 Criminal Law Journal 743 (Bom).
  2. *Chenna Jagadeeswar v. State of A.P* 1988 Criminal Law Journal 549 (A.P.).
  3. *R.C. Cooper v. Union of India* AIR 1970 SC 564.
  4. *P. Rathinam v. Union of India* AIR 1994 SC 1884.
  5. *Gian Kaur v. State of Punjab* AIR 1996 SC 946.
  6. *C.A. Thomas Master v. Union of India* 2000 Criminal Law Journal 3729(Ker).
  7. *Aruna Ramchandra Shanbaug v. Union of India and others* Writ Petition (Criminal) No. 115 of 2009, decided on 07-03-2011.