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Judicial Journey of Euthanasia in India

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Abstract

Euthanasia has been a concern across the globe for several years, and many countries have legalized it either by way of legislation or by way of judicial pronouncements decades ago. Across the globe, i.e., in several countries, euthanasia was legalized on the grounds that forceful treatment violates the patient's right to autonomy. However, the concept of euthanasia, though highlighted by the Hon'ble Supreme Court of India in 1996, became legally permissible in a passive manner in the case of Aruna Ramchandra Shanbaug (2011), wherein the court held that the right to live with dignity also includes the 'right to die with dignity'. Subsequently, the matter relating to euthanasia was referred to a Constitution Bench of the Supreme Court, and in that case, i.e., Common Cause (2018), the court laid down the entire procedure, which has again been modified in 2023. Hence, the objective of this paper is to discuss the journey of euthanasia in India while including within its ambit the types of euthanasia, the difference between active and passive euthanasia, the procedure for administration of euthanasia, and to what extent the court has allowed the same. Further, in this paper, the law relating to euthanasia in India since 1996 until the latest decision rendered in 2023, whereby the guidelines laid down in the Common Cause case (2018) have been modified, will be discussed.

Keywords: Active euthanasia, euthanasia, passive euthanasia, right to die with dignity, right to privacy, voluntary euthanasia

INTRODUCTION

One of the most precious gifts that God has given us is life. There have been instances when people wished to be immortal, but as is said in the Bhagavad Gita, anybody who has taken birth has to die one day. We all love ourselves and our near and dear ones, and we regard life as paramount.

However, there come stages in life when we no longer wish to live. Some of these instances occur when living becomes worse than death and is very painful. Examples of such instances are when a person is terminally ill, is in a permanent vegetative state, or has no reason or purpose for living.

In order to deal with such instances, the concept of euthanasia has come into existence. The term "euthanasia" is derived from the ancient Greek terms "*eu*" and "*thanatos*" and the term "euthanasia" means "good death". Euthanasia is also defined as putting to death a person who, because of disease, extreme old age, permanent helplessness, or rapid incurable degeneration, cannot have a meaningful life [1].

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We have understood the meaning of the term 'euthanasia', but one important aspect of the same is the means by which euthanasia is administered. In order to understand the same, we must know the different types of euthanasia which have been

discussed by the Hon'ble Supreme Court in the case of *Aruna Ramchandra Shanbaug v. Union of India* [2]. The same is briefly discussed here.

(a) *Active euthanasia:* It means causing the death of a person with his/her own consent by direct medical intervention. For example, administering a lethal dose of a medicine. In active euthanasia, a positive act on the part of the administrator is necessary.
(b) *Passive euthanasia:* It involves withholding or withdrawal of life-prolonging medical treatment as per the will of the patient. Such a will of the patient can be either expressed or implied. The withholding or withdrawal of such treatment ultimately leads to the death of the patient due to prolonged illness. In passive euthanasia, there is a mere omission and no positive act of causing death, as in active euthanasia.
(c) *Voluntary euthanasia:* It means that a patient's life is terminated as per the patient's request. Such a request may have been made at any point in time, either before contracting the illness or during the course of treatment.
(d) *Non-voluntary euthanasia:* It means that a patient's life is terminated without the patient's consent or if the request is made on his/her behalf since the patient is not in a position to give consent.
(e) *Involuntary euthanasia:* It involves the termination of a patient's life against his will.

Thus, from the given text, it can be inferred that euthanasia can be classified into two categories, i.e., on the basis of consent and on the basis of the mode of administering euthanasia.

When we discuss administering euthanasia, there are two conflicts that arise. One is medical ethics and the other is social ethics. Under medical ethics, the doctors take the Hippocratic Oath which provides that the physician shall not give a lethal potion to a patient who requests it or make a suggestion to that effect. However, one essential character of the Hippocratic Oath is that the physician shall come 'for the benefit of the sick'. Under social ethics, it is a firm belief that life cannot be ended according to our own wishes and that it is a decision left to the Almighty.

However, with the change of times, advancement of medical technology, and change in lifestyle, people have started shifting from a purely spiritual approach to that of a logical decision making process. With the change in moral thinking and attitude, the law also needs to change since it is dynamic and not static.

In countries like the United States of America, the Kingdom and the Netherlands, euthanasia is permissible as per the guidelines laid down by the legislative and judicial bodies. So far as India is concerned, there is no legislation relating to euthanasia. However, euthanasia saw the light of day in India when the Hon'ble Supreme Court rendered its decision [3], thereby permitting passive euthanasia in certain situations, though it was not allowed to be administered to the patient for whom the case was filed.

Subsequently, the Hon'ble Apex Court, through its Constitution Bench [4], affirmed the decision rendered in *Aruna's case* and further laid down elaborate guidelines to be followed in a case where euthanasia is requested, and it is only after following the said procedure that the decision shall be taken as to whether euthanasia should be administered or not. The Hon'ble Supreme Court also gave recognition to the concept of Advance Medical Directive and the procedure for its execution.

Though the decision in *Common Cause* was rendered in 2018, but in the year 2023, there appeared to be some difficulty in implementation of the directions laid down thereunder, as such an application was filed by the Indian Society of Critical Care Medicine for modification of the guidelines and the same has been done by the Hon'ble Apex Court of the country [5].

In this paper, the author's objective is to delve into the judicial pronouncements of the Hon'ble Apex Court from time to time with regard to euthanasia and discuss the same as regards its extent of

permissibility and other guidelines rendered by the Hon'ble Apex Court from 1996 to 2023. Hence, the following are few cases relating to euthanasia which have been decided by the Hon'ble Apex Court.

GIAN KAUR V. STATE OF PUNJAB, (1996) 2 SCC 648

In this case, a judgment convicting the accused-appellants under Section 306 of Indian Penal Code, which penalizes abetment of suicide, was put to challenge on the ground that the Hon'ble Supreme Court had overruled Section 309—Attempt to suicide [6]. While discussing the law relating to attempt to suicide and abetment thereof, the Constitution Bench of the Hon'ble Supreme Court in paragraphs 24 and 25 of the judgment had made a passing reference to the issue of euthanasia while mentioning the famous *Airedale case* which stated that right to life includes right to live with dignity till the point of death including a signified procedure of death [7].

ARUNA RAMCHANDRA SHANBAUG V. UNION OF INDIA, (2011) 4 SCC 454

This case came up before a two-Judge Bench of the Hon'ble Apex Court. The petitioner herein was a nurse at KEM Hospital, Mumbai, and during her duty, she was sodomized by a ward boy and she was also strangled with a chain as a result of which she had been in persistent vegetative state for a period of 36 years until the decision was rendered in the case. The petitioner was not on ventilator etc. but she was being fed forcefully and she could not do any of her normal daily chores on her own. One of the well-wishers of the petitioner, Pinki Virani, filed a case before the Hon'ble Supreme Court to allow passive euthanasia in the case of the petitioner.

The Hon'ble Supreme Court appointed a team of medical experts to examine the petitioner and submit a report to that extent. The report included a video clipping of the petitioner also as to how she responds to different activities being carried out in her ward.

The Hon'ble Apex Court, while discussing the various points, argued before the court held that since the Constitution Bench in the case of Gian Kaur has approved the decision rendered in *Airedale's case,* as such passive euthanasia should be legalized in India also. The Hon'ble Supreme Court exercising its powers under Article 142 laid down guidelines as to the manner in which passive euthanasia is to be administered in India until a law is enacted by the Parliament. It provided that:

(a) Active euthanasia is an offence in India under Section 302 or at least 304, Indian Penal Code.
(b) Abetment of suicide under Section 306 and an attempt to suicide under Section 309 are criminal in nature as provided in the Indian Penal Code.
(c) Decision to withdraw support needs to be taken by parents, spouse, close relatives, or next friend in the absence of any of them.
(d) The power to take such decision is also given to the attending doctor in extraordinary circumstances.
(e) Decision to withdraw support requires approval from the High Court concerned as has been provided in *Airedale's case.*
(f) In the case of an incompetent person, the power to take decision regarding withdrawal of decision has been given to the High Court in its *parens patriae* jurisdiction but due weight has to be given to the views of the family members, close relatives, and next friend.

Upon deciding the basic guidelines for the administration of passive euthanasia, the Hon'ble Supreme Court also laid down the manner in which the High Court is to take up petitions relating to euthanasia under Article 226 of the Constitution of India. It laid down as follows:

(a) The Chief Justice of the High Court concerned is to constitute a Division Bench whenever such cases come up.
(b) The bench is then supposed to constitute a committee of three doctors, preferably consisting of 1 Neurologist, 1 Psychiatrist and 1 Physician.
(c) The High Court has to give the state an opportunity to be heard and thereafter render its decision at the earliest since the case involves a question of life and death.

COMMON CAUSE (A REGISTERED SOCIETY) V. UNION OF INDIA, (2018) 5 SCC 1

This case was pending before the Hon'ble Supreme Court when the decision was rendered in *Aruna Shanbaug's case.* Subsequently, a 3-Judge Bench of the Supreme Court while taking up this matter held that the issues involved relate to Articles 14 and 21 of the Constitution of India, and further held that there are inconsistencies in the judgment rendered in *Aruna Shanbaug's case* [8]. Thus, the 3-Judge Bench without framing any specific questions to be decided by the Constitution Bench referred the entire case to the Constitution Bench whereby the instant decision and guidelines came into being.

The Constitution Bench of the Hon'ble Supreme Court which decided the issue of euthanasia in 2018 comprised of Shri Dipak Misra, Hon'ble Chief Justice of India, Dr. A.K. Sikri, A.M. Khanwilkar, Dr. D.Y. Chandrachud and Ashok Bhushan, JJ.

The Hon'ble Chief Justice of India wrote the opinion on his own behalf as well as Shri A.M. Khanwilkar and the other three judges wrote their separate opinions though concurring with the opinion of the Hon'ble Chief Justice.

I will now discuss the law laid down by the Court while discussing the opinion of the Judges individually.

SHRI DIPAK MISRA (FOR HIMSELF AND SHRI A.M. KHANWILKAR)

In this opinion, the court discussed the entire international law on the issue of euthanasia and thereafter held that right to live with dignity under Article 21 includes right to live with dignity up to the end of natural life by smoothening the process of dying. The court laid great stress upon sovereignty which includes sovereignty over our own body and thus held that liberty of personal sovereignty over body and mind falls within the ambit of Article 21 of the Constitution of India.

While discussing the right to privacy of a patient, the court relied upon the decision rendered by the Hon'ble Supreme Court in the case *K.S. Puttaswamy v. Union of India* [9] and held that patient's right to refuse life prolonging treatment or terminate his/her life is a freedom which falls within the ambit of privacy which has been held to be a right under Article 21 of the Constitution of India.

The Hon'ble Chief Justice after deciding that passive euthanasia is legally permissible in India under Article 21 of the Constitution of India, gave recognition to the concept of execution of Advance Directives and also laid down the competency, procedure of execution, contents of the document, and manner of giving effect to the same or when it can be revoked or becomes inapplicable.

The court held that an Advance Directive can be executed by an adult of sound mind and health on his own accord and without any pressure or coercion from any corner whatsoever. It further held that the document should clearly indicate the decision relating to the circumstances in which medical treatment is to be withheld or withdrawn. The document should further contain when the executor can revoke its decision or advance directive. It should also contain the name of a guardian or close relative who will be authorized to give consent if the executor is unable to give the same.

In general parlance, all documents are registered before the sub-registrar under the Registration Act. But, an Advance Directive is required to be executed before a judicial magistrate first class (JMFC) so designated by the district judge for the said purpose in the presence of two witnesses and a copy of the same has to be preserved by the JMFC in hard copy as well as digital format. Copy of the same also needs to be forwarded by the JMFC to the registry of the district judge concerned where also it needs to be preserved in digital format. In case, the executor has a family physician, then a copy of the same is to be handed over the physician also by the JMFC.

The Advance Directive can be given effect to by the physician concerned when the executor is suffering from a terminal illness and undergoing prolonged medical treatment with no chances or bleak

chances of survival. The instructions need to be followed meticulously and upon being informed of the Advance Directive, the hospital concerned is required to constitute a Medical Board comprising of at least three doctors. Upon approval from the Medical Board of the hospital, the Collector of the district concerned needs to be informed, who again constitutes another Medical Board of its own to ascertain the condition of the patient and the instructions given in the Advance Directive. This second Medical Board shall not consist of any doctors who were a part of the first Medical Board.

If the Medical Board constituted by the Collector approves of administering passive euthanasia, the same needs to be communicated to the JMFC by it and the JMFC shall then have to come to the hospital, visit the patient, and examine all aspects and authorize the implementation of the Board.

In the event any of the medical boards refuses administering euthanasia, the patient or the hospital is at liberty to approach the high court concerned to end the suffering of the patient concerned. In the event there is no Advance Directive executed, then also the same procedure is to be followed and the patient shall not be at a disadvantage merely due to want of Advance Directive.

The court held that though sanctity of life is to be kept in mind, the same cannot apply to terminally ill patients or patients in persistent vegetative state, and in such case, right to self-determination needs to be given higher weightage.

SHRI A.K. SIKRI

In the opinion of Justice Sikri, he has discussed the concept of euthanasia, the relationship of passive euthanasia with *Aruna Shanbaug's case,* various laws wherein it has been decided that the right to life includes the right to live with dignity and the various concepts of euthanasia and dignity.

The court has opined that instead of sanctity of life, the concept is now moving to one of quality of life and sustaining the same. The court has discussed the theological model of dignity, the philosophical model of dignity, and the constitutional perspective of dignity wherein it has discussed not only the Indian decisions on dignity but also the international decisions on the same.

After discussing the entire concept of dignity, the court held that, as the process of dying is an impeccable or inevitable consequence of life, the right to life necessarily implies the right to have nature take its own course and to die a natural death.

In *K.S. Puttaswamy's case,* the nine-Judge Constitution Bench held that the right to life enshrined in Article 21 includes the right to privacy. Relying on the same, the Bench held that one of the facets of this right acknowledged is an individual's decision to refuse life prolonging medical treatment or to terminate his life.

As far as the discussion of Advance Medical Directive is concerned, the Hon'ble judge concurs with the opinion of the Chief Justice of India.

DR. D.Y. CHANDRACHUD

Dr. Chandrachud, in his opinion, has more or less concurred with the opinion of the Hon'ble Chief Justice except that he differs with regard to the difference made between active and passive euthanasia. According to him, there is a lot of similarity between active and passive euthanasia. Though it is said that active euthanasia involves an act whereas passive euthanasia is merely an omission, in his opinion, withdrawal of medical treatment also involves an act.

Dr. Chandrachud further states that there are many more disadvantages to passive euthanasia. For example, if the hydration tube or ventilator is withdrawn from a patient, the likelihood of him suffering more is increased due to suffocation or starvation. This at least does not happen in active euthanasia,

where a person dies peacefully. In view of such observations, Dr. Chandrachud highlights the necessity of legalizing active euthanasia in India by providing the necessary safeguards and overcoming the slippery slopes.

SHRI ASHOK BHUSHAN

Justice Bhushan, while recognizing the concepts of sanctity of life, right of self-determination, and dignity of the individual human being and discussing the philosophical, religious, and mythological thought of sanctity of life, has held that an adult human being of conscious mind is entitled to take a decision regarding the extent and manner of his medical treatment.

Justice Bhushan has concurred with the opinion of the Hon'ble Chief Justice with regard to the execution of Advance Medical Directives and highlighted how the concept of the execution of such documents emerged.

Upon going through the entire judgment and various opinions of different judges, it is clear that the Constitution of India is supreme and has given recognition to the right to dignity, privacy, self-determination, and autonomy over one's body. It has further been held that the sanctity of life also includes the quality of life and meaning with which a person is living.

However, since the directions given by the court regarding implementation or execution of passive euthanasia seemed to be non-implementable, the Indian Society of Critical Care Medicine approached the Hon'ble Supreme Court for modification of its directions, and the same has been done [10]. The following changes govern the field of euthanasia as of date and are binding under Article 142 of the Constitution of India:

(a) Earlier, the document needed to be executed before a JMFC, but now it can be done before a notary or a gazetted officer.
(b) Preservation of documents by JMFC or furnishing copies to the district judge registry or the family physician no longer arises. It is the executor himself who has to furnish a copy of the Advance Directive to his family physician, if any.
(c) The executor has also been given the option of incorporating his Advance Directive as a part of the digital health records.
(d) If the patient does not have decision-making capacity, reference can be made to the digital health records of the patient or to the custody of the municipality or other local bodies that are custodians of the document.
(e) If the hospital is satisfied that passive euthanasia is to be administered, then it shall inform the persons whose names have been mentioned in the Advance Directive.
(f) Earlier, the doctors constituting the board should have had at least twenty years of experience and the field from which they were to be chosen was given by the court. Now, it provides that the board should consist of the physician concerned along with two subject experts of the concerned specialty with at least five years of experience, and the board shall form an opinion preferably within 48 hours of the case being referred to it.
(g) The same procedure applies to the Secondary Medical Board constituted by the Collector as it does to the Primary Board of the Hospital.
(h) Earlier if the Primary Board would take a decision not to apply the Advance Directive, then reference was to be made to Secondary Board by the hospital itself. Now, the person or persons referred to in the Advance Directive have to request that the hospital refer the case to the Secondary Medical Board.

CONCLUSION

In view of the given discussions, it is absolutely clear that the Constitution of India keeps the right to dignity, even at the ebbs of life, on a very high pedestal. From the given case laws, it is absolutely clear that the objective of the Apex Court on euthanasia is that the right to live with dignity exists until the

natural course of death arises. It is only thereafter that the concept of euthanasia is to be brought into play. According to the latest case law, i.e., the *Common Cause case*, the right to live with dignity also includes the right to die with dignity, as can be drawn from the rights to privacy, self-determination, and autonomy. Thus, it is high time that the law laid down by the Hon'ble Supreme Court be codified, and the recommendations made should also be taken into consideration by Parliament.

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