

LETTER TO EDITOR

Euthanasia and Death with Dignity*Yuvraj Dilip Patil**Ajeenkya D.Y. Patil University Pune-412105 (Maharashtra) India***Abstract:**

Dying has become imposition upon humans, who seek to avoid it as they encounter the inevitably fatal aging process. After the case of Aruna Shanbag a nurse who spent 42 years in a vegetative state as a result of sexual assault, the issue of euthanasia-mercy killing gained attention. The formulation of regulatory provision for euthanasia was earlier examined in Health Ministry in 2006 based on the 196th report of the law commission of India however; health ministry at that time had opted not to make law on it. Interestingly the health ministry has enacted bill for terminally ill patient in 2016. In this article author has discussed The Medical Treatment of Terminally Ill Patients (Protection of patients and medical practitioners) bill- 2016 with position in other countries.

Keywords: Euthanasia, Die, Medical

Introduction:

Dying has become imposition upon humans, who seek to avoid it as they encounter the inevitably fatal aging process [1]. Along with a good life, the wish for a good death is a basic human requirement. When illness or accident make living with dignity impossible, then the desire for dying with dignity grows.

On the basis of the consent euthanasia can be classified as the following three types [2]:

Voluntary Euthanasia: When a person who is competent to give a valid consent requests someone else the help to die. It is like a homicide with consent known as voluntary euthanasia.

Involuntary Euthanasia: when a person is not in a position to give consent due to illness or being in a persistent vegetative state, someone else gives the consent on his behalf to end his life. This is

conducted where an individual makes a decision for another person incapable of doing so.

Active Euthanasia: It involves the use of lethal drugs or chemicals to kill. It is the type of euthanasia where the life of a person is terminated in order to end useless sufferings and meaningless existence.

Passive euthanasia: by discontinuing the extraordinary life sustaining measures, if a person is allowed to die, die a natural death, is known as passive euthanasia. It envisages removing the life supporting system so as to allow him to die.

Legal position in the different countries [3]

Uruguay: is the country where practice of euthanasia has a legal approval.

Australia: has a voluntary euthanasia law which is stately working well. Euthanasia was legalized in Australia Northern territory, by the rights of the Terminally Ill Act 1995, but effectively nullified in 1997.

Belgium: legalized euthanasia in Sept 2002.

Netherlands: In 2002 Netherland legalized euthanasia but under specific condition and circumstances.

Though not approved, the legal position of euthanasia in Germany, Switzerland, Poland are comparatively liberal.

U.S.A. Its practice is clear offence, but in practices the judgments of different courts during trial of euthanasia cases seems to be liberal. For e.g. Jack Kevorkin a 67 years old pathologist attended 27 such suicides in U.S.A. in 1990. He has been

acquitted by 3 courts. IN 1996, two U.S.A. Federal Courts upheld this right of terminally ill persons with the help of doctors. Among the common people there are opinions in favor and against euthanasia. Supporters advance arguments of civil rights of terminally ill persons with the help of doctors. Opponent says it is to eradicate incontinently ill elders. A 1996 U.S.A. judgment says- "Competent adults have constitutional right to seek help in choosing a dignified and humane death than reducing to childlike state of helplessness".

Oregon On October 27, 1997 Oregon enacted the Death with Dignity Act which allows terminally-ill Oregonians to end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose. The Oregon Death with Dignity Act requires the Oregon Health Authority to collect information about the patients and physicians who participate in the Act, and publish an annual statistical report [4].

Washington and Vermont states have also enacted Death with Dignity Act.

Position in India

Right to die was challenged several times stating that it is against article 21 of the Constitution of India that ensures to all right to life and personal liberty. In the Case of *P. Rathinam Vs. U.O.I.*, [5] the supreme court of India held that right to life includes right to die. In a way it has justified mercy killing. However, in the subsequent case of *Gian Kaur Vs. State of Panjab*, [6] the Supreme court answered the same question but with a different understanding. It is held that right to life does include right to die but a death with dignity; it has to be natural death.

The Indian Supreme Court has given a new understanding to tackle the legal menace. In *Aruna Ramchandra Shanbaug Vs. Union of India*

and others [7] the court held that passive euthanasia will 'only be allowed in cases where the person is in persistent vegetative state or terminally ill with no chance of recovery. The court laid down the guidelines for passive euthanasia such as that the matter must be referred to the high court for a decision and that the doctor, or the parents or spouse of the patient must be the ones to petition for the withdrawal of life-support. In the absence of any of these, a person or a body of persons acting as 'next friend' can be permitted. The judgment allowing passive euthanasia will remain in force until such time as Parliament enacts a suitable law on euthanasia. Until then, the following process will be followed:

1. A special two-judge bench will be formed in every high court to decide applications seeking permission for euthanasia.
2. A committee of three reputed doctors from a panel constituted by the high court in consultation with the state government will examine the patient and submit its report to the high court bench.
3. Notices will be issued to all those concerned with the doctor's report attached.
4. After hearing everyone, the bench will give its verdict. The matter must be dealt with speedily as delays prolong the agony of the patient.

The Medical Treatment of Terminally Ill Patients (Protection of patients and medical practitioners) bill- 2016

The new bill has a provision for terminally ill and mentally competent patient to inform the decision of withholding or withdrawing medical treatment to the medical practitioner. In case of minor, the consent has to be given by parents. Protection is given to the terminally ill patient from criminal action who takes the decision of refusal of medical treatment.

The duty imposed on the medical practitioners to maintain the records of detailing of terminally ill patient and the need of withholding or withdrawing treatment from the patient.

In case the incompetent or competent terminally ill patient who has not taken informed decision then the person in the best interest of patient or medical practitioner can seek permission of the High court which needs to be decided by the division bench within a month. This will increase the burden on the court who is already burdened with the pending cases. Besides going to the court

the panel needs to form of expert doctors who will take this decision in the best interest of patient.

The bill is silent about the application, whether the bill would be applicable to the Non Indian citizen when he is taking treatment in India? This bill needs to be made applicable to Non citizen's as well in case he is taking treatment for minimum three months & he is terminally ill patient declared by the Doctors.

Active euthanasia is not recommended in this bill as it may be misused for ulterior motive.

References

1. Jennifer M. Scherer, Rita James Simon Euthanasia and the right to Die: A Comparative View. (1997) Rowman & Littlefield Publishers, Inc.
2. Peter Ladis F, Euthanasia: the paradigm shift from crime to a right, Third International Conference of the South Asian Society of Criminology and victimology, Jan 28-29, 2016 Conference Proceedings.
3. Lily Srivastava, Law & Medicine.
4. <https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct> (Accessed on 18th May 2016).
5. P. Rathinam vs. U.O.I., AIR 1994 SC 1844.
6. Gian Kaur vs. State of Panjab, AIR 1996 SC 946.
7. Aruna Ramchandra Shanbaug Vs. Union of India and ors, (2011) 4 SCC 454.

Author for Correspondence: Dr. Yuvraj D. Patil, 03- Sai Sadan, Shelar Mala Lane no-1, Utkarsh Housing Society Lane no-6, Katraj, Pune-411046 Email: yuv_raj11@yahoo.co.in Cell: 9960787828