

Law and Euthanasia

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“The woods are lovely dark and deep
but I have promises to keep
and miles to go before I sleep
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Robert Frost says that man has to live and endeavour to accomplish so many things before death but if he finds himself incapable of traversing the miles because of an incurable disease – DOES THE LAW ALLOW HIM TO DIE? If the answer is yes, then it is Euthanasia.

Euthanasia presents a paradox to the Hippocratic oath which serves as a code of medical ethics. The oath includes both a promise to protect and prolong life and to relieve pain. When a patient is in the last and most painful stages of a fatal disease, to prolong life is to violate the promise to relieve pain and suffering but to relieve pain is to violate the promise to prolong and protect life. Professionally, this puts the doctor in a difficult situation. The

medieval Catholic theologians developed the “double effect” principle which helps resolve the doctor’s problem. The principle holds that an action that has the primary effect of relieving suffering may be ethically justified even though the same action has a secondary effect of causing death. But most ethical doctors will not intentionally let their patients die.

Euthanasia is the practice whereby people suffering from intolerably painful and hopelessly incurable maladies are allowed a painless release from life by the action of an appropriate drug or by withholding an essential drug.

Legally, euthanasia is a crime in India punishable under the Indian Penal Code.

If there is consent on the part of the patient, it amounts to culpable homicide which is not murder under section 300 exception 5 of IPC. It also amounts to

abatement of suicide under Section 306. If there is no consent, it amounts to culpable homicide under Section 299 of IPC.

In India even if the patient consents to be killed, euthanasia is considered as culpable homicide. In the words of Honourable Judges Sawant and Kholse Patil, in the case *Maruthi Shripati Dubal Vs State of Maharashtra*. – “Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected. Unless it is specifically excepted it cannot but be an offence. We agree with the judges that if there is no consent from the patient, euthanasia is homicide. But we are of the opinion that if there is consent, euthanasia is abatement of suicide and not homicide.

A man resorts to suicide only when death seems to provide more relief than life. Such is the state of a man who consents to euthanasia. So, his consent is a desire to commit suicide, the doctor's role being one of abatement of suicide.

Article 21 of the constitution – “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

The debatable issue presently is whether the negative connotation of Art. 21 can be

considered as an interpretation of Art. 21. *i.e.*, Does the Right to life include the Right to Die? If a person has a right to life then he has a right to relieve himself of pain. If the only way to relieve the pain is death, it means that he has the right to die. The legalization of euthanasia in India largely depends upon allowing this interpretation of Art. 21. The primary step involved in the establishment of a procedure for legalization of euthanasia will be drawing of a will in which express consent to be killed in certain circumstances is given and consent to be killed can be given only if one has the right to die. If the provisions of Art. 21 are interpreted in a manner to include the right to die, *i.e.*, if suicide is not considered as offence, then it logically follows that aiding or abetting suicide is not an offence.

Merits of euthanasia

Euthanasia, in most cases is performed on people suffering from incurable diseases. There is no purpose served by keeping such an individual alive except to delay his inevitable death. The expertise and effort involved in keeping this person alive can be diverted to the needy. This point is more relevant in the context of our existing economic conditions and dearth of medical facilities.

It is more humane to allow a person to die than prolong his suffering and agony. Euthanasia allows a person to die with dignity rather than being a burden on society. This point is based only on humanitarian grounds and doesn't imply that congenial imbeciles, the aged infirms or other groups useless to the society should be eliminated.

Demerits of euthanasia

A person's right to life is violated if there is no consent on his part. Medically the reason for sustaining life is that it is impossible for a doctor to know with absolute certainty whether any condition that seems incurable might not suddenly improve. Also new medicines and cures are being constantly discovered.

Moralists condemn euthanasia on the grounds that except perhaps in cases of self-defence, no human has the right to take the life of another. This position is unanimously maintained by religious leaders.

An objective view of the merits and demerits, show that the arguments in favour of the merits outweigh those of the demerits.

Euthanasia to a limited extent must be legalised in India. But this extreme step must be taken only with the consent of the

individual concerned. Hence here are a few suggestions for the legalisation of mercy killing – Firstly, a living will (a document which directs physicians to discontinue any treatment when the condition of the patient is hopelessly incurable and critical) must be executed by a person in favour of euthanasia, when a person who is above the age of eighteen years and of sound mind, which states that in the event of his being in an extremely painful and incurable state or in a state of brain-death (coma) with the approval of his immediate relations/friends, mercy killing may be adopted.

- Secondly, sufficient time for a possible recovery (3-4 weeks) must be given to the patient in cases of incurable diseases.
- The decision to commit euthanasia must be taken by a committee of doctors and specialists and the decision must be made in writing and signed by every member of the committee.
- The decision must be again approved in writing by the immediate relations/friends of the patient.

Efforts to legalise euthanasia

Several organizations, the world over, have expressed public support for legalising

euthanasia. In India, the "Society for Right to Die with Dignity" (S.R.D.D.) established in Delhi and Bombay is making efforts for legalising euthanasia.

The voluntary Euthanasia Legalisation Society was founded in England in 1935. In 1955 the society changed its name and became the Euthanasia Society. The Euthanasia Society in America was established in 1938. Two U.S. proposals presented to the state legislatures of Nebraska and New York were at first defeated but later euthanasia was legalised in Nebraska.

Historical Background

Euthanasia has a long history in practice and theory. In ancient Sardinia, old men were clubbed to death by their own sons. In Sparta euthanasia was performed on children "ill suited from birth for health and vigour". Plato, in 'The Republic', favours suicide as a remedy for unbearable pain. The only instance of a widespread policy of euthanasia in the twentieth century occurred during Hitler's Third Reich in Nazi Germany. Compulsory euthanasia clinics were established throughout Germany. A specially chosen Board of Physicians and Government Officials selected, for death, those citizens who supposedly were suffering from incurable diseases or who for varying reasons were

considered no longer able to lead useful and productive lives and had become a burden on the state. In fact, however, many victims were actually selected for other reasons. In Great Britain euthanasia was discussed as early as in 1873 by Lionel Tollemache in the 'Fortnightly Review'. Francis Bacon was also one among those who advocated euthanasia¹.

International Legal Status of Euthanasia

In several European countries, reform movements have aimed at shifting the central orientation of criminal law away from the type of crime committed towards emphasis on the type of actor *i.e.*, to lay emphasis on the motive of the 'murder' as the basis to classify the crime². In the revised penal codes of both Switzerland and West Germany, a mercy killer is neither charged with murder nor punished as a murderer. The Norwegian Penal Code of 1902 treats mercy killing as a special crime and the punishment is left to the discretion of the judge. Special provisions on euthanasia appear also in the criminal codes of Soviet Union and Poland, where homicide motivated by compassion and the victim's request is subject to a modified penalty. The penal code of Uruguay, adopted in 1933 specifically grants the mercy killer total freedom from criminal charges.

Under U. S. law, voluntary euthanasia is generally regarded as a crime – suicide on the part of the patient who kills himself or consents to be killed and murder on the part of anyone who helps with the suicide or kills the sufferer¹. Even when the charge against the accused is murder, U.S. law

by virtue of its administration through the Jury system has been historically sympathetic and lenient to the mercy killer in practice, and if not in theory, In Nebraska North Dakota, euthanasia has been legalised by the Natural Death Act, 1984,

(1) Encyclopedia Americana (10) P 711

(2) Chamber's Encyclopedia Vol 1, P 461

Remember that you ought to behave in life as you would at a banquet. As something is being passed around it comes to you; stretch out your hand, take a portion of it politely. It passes on; do not detain it. Or it has not come to you yet; do not project your desire to meet it, but wait until it comes in front of you.

— EPICETUS

Civilizations die from philosophical calm, irony and the sense of fair play quite as surely as they die of debauchery.

— J. W. KRUTCH