

EUTHANASIA: 'RIGHT TO DIE'!

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INTRODUCTION

The word 'Euthanasia' originates from a Greek Word which roughly translates to "good death". Euthanasia is the intentional death of a person to relieve them from any form of pain and suffering. Euthanasia, also called mercy killing, is an act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures¹. Euthanasia is against the law in most countries. There is no specific provision regarding euthanasia in most legal systems and is often regarded as a form of suicide or murder.

Euthanasia is categorized or classified into three types:

1. Voluntary Euthanasia
2. Non-Voluntary Euthanasia
3. Involuntary Euthanasia

1) Voluntary Euthanasia

When Euthanasia is conducted with consent of the patient it is known as Voluntary Euthanasia. This is done by refusing burdensome medical treatment, asking for treatment to be stopped or switching off life-support machines. Voluntary refusal of food and fluids (VRRF) or Patient Refusal of Nutrition and Hydration (PRNH) can be said to be bordering on voluntary euthanasia. Voluntary Euthanasia is legal in the following countries: Belgium, Colombia, Luxembourg, Canada & Netherlands.

2) Non-Voluntary Euthanasia

When euthanasia is conducted on a person who is unable to consent due to their current health condition. In this scenario the decision is made by another appropriate person, on behalf of the patient, based on their quality of life and suffering.² To put it simply, when a person is unable to give consent because of the health condition or illness and the consent is given by an appropriate person mostly a family member then it is Non-Voluntary Euthanasia. This includes examples like Child Euthanasia which is also illegal in most countries. Child Euthanasia is decriminalized under some specific circumstances in Netherlands when the child or infant is suffering from an incurable or untraceable sickness.

3) Involuntary Euthanasia

Involuntary euthanasia is conducted against the will of the patient. It is one in which the patient who is able to give consent but does not because either they do not want to die or were not asked for consent. This form of euthanasia is often referred to as murder, as it is against the will.

Euthanasia is also classified into two types on the basis of method:

1. Active Euthanasia
2. Passive Euthanasia

1) Active Euthanasia

Active Euthanasia is one where death of the patient is caused by an act. A person deliberately causes the death of the patient in active euthanasia. In Active Euthanasia the medical practitioner gives a lethal dose of medication to the person suffering. Active Euthanasia is considered more controversial.

2) Passive Euthanasia

¹ www.britannica.com

² www.medicalnewstoday.com

In Passive euthanasia death is brought by an omission. Here the patient is allowed to die by withdrawing treatment on him/her. Here, the artificial life supports, treatments, medicines are all stopped which allows the patient to die eventually or passively.

HISTORY OF EUTHANASIA

Euthanasia dates back to the times of Ancient Greeks and Ancient Rome. It was also supported by learned and well-versed scholars such as Socrates, Plato & Seneca The Elder. A technique using Hemlock was employed by the ancient Greeks and Romans. *Conium maculatum* is the Latin term used by biological experts and scientists when it comes to describing the Hamlock flower. In the ancient world, Hippocrates had strongly opposed this practice. One of the oldest arguments against euthanasia is the Hippocratic Oath, which says that, "I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect." This was roughly 2,500 years ago. In the early modern period it was Francis Bacon, who first used the term 'Euthanasia' in his book *Euthanasia medica* where he defined euthanasia as 'a very gentle and quiet death, which happens without painful convulsions'. The debate regarding Euthanasia started when a school teacher, Samuel Williams, proposed to use Chloroform to deliberately hasten the death of terminally ill patients, he said that, "That in all cases of hopeless and painful illness, it should be the recognized duty of the medical attendant, whenever so desired by the patient, to administer chloroform or such other anaesthetic as may by-and-by supersede chloroform – so as to destroy consciousness at once, and put the sufferer to a quick and painless death; all needful precautions being adopted to prevent any possible abuse of such duty; and means being taken to establish, beyond the possibility of doubt or question, that the remedy was applied at the express wish of the patient." He delivered this speech in Birmingham in 1870, it received both negative and positive reviews. Thus, sparking the debate that the world is so familiar with today. The history of euthanasia has been polluted with dark Nazi history, the Nazis had a euthanasia program called Aktion T4. Hitler had signed a decree in 1939 which permitted doctors to give "mercy killing" to any patient deemed as incurable. The program initiated with the killing of children below the age of three, those born with deformities or those who had serious hereditary diseases. However, this was misused. The consent of the parents and legal guardians was obtained under the misrepresentation that they are being taken to a different treatment centre. These centres were special wards made for killing and disposing of bodies. Lethal injection was given to the children that caused quick death. It slowly started increasing to young children and also adults. It was a mass murder done by the Nazis under the name of a program. This despicable act is an example of Involuntary Euthanasia. Before 2013, it was believed that 70,000 persons were murdered in the euthanasia programme, but the German Federal Archives reported that research in the archives of former East Germany indicated that the number of victims in Germany and Austria from 1939 to 1945 was about 200,000 persons and that another 100,000 persons were victims in other European countries.³ Euthanasia is a very ancient concept that has been in the history of mankind since ages, it has experienced dark times and also favourable moments, which has made the acceptance and rejection of this practice difficult.

INTERNATIONAL SCENARIO

In the past few decades, several efforts on changing the law related to euthanasia have been made. These efforts have not been a success in most countries. There are however a few countries that made active human euthanasia legal which are Netherlands, Belgium, Colombia, Luxembourg and Canada.

1) Netherlands

The Termination of Life on Request and Assisted Suicide (Review Procedures) Act was passed in April 2001. It took effect in 2002. It says that euthanasia or physician assisted suicide is not punishable. This legality is obviously subject to some criteria. The physician won't be liable only if some conditions are met. The conditions are:

- the patient's suffering is unbearable with no prospect of improvement
- the patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs)
- the patient must be fully aware of his/her condition, prospects, and options
- there must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above
- the death must be carried out in a medically appropriate fashion by the doctor or patient, and the doctor must be present

³ "Sources on the History of the "Euthanasia" crimes 1939–1945 in German and Austrian Archives" [Quellen zur Geschichte der "Euthanasie"-Verbrechen 1939–1945 in deutschen und österreichischen Archiven] (PDF). Bundesarchiv. 2018. (Wikipedia.org)

- the patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents)⁴

The main debate regarding euthanasia in Netherlands had started off with the “Postma Case” of 1978, which went down as one of the most historical cases of euthanasia in medical history. As of 2016, the number of deaths caused by euthanasia in Netherlands was 6,091 which amounted to 4% of the total deaths that year. It was observed that most cases were of cancer patients and it was mostly carried out in the patient’s home.

A new legislation called the “Groningen Protocol” was also developed in September 2004. In this, the physician was allowed to commit active euthanasia on infants. It says that the decision should not be made by the physician but the parents. Only the parents are allowed to initiate the process. For committing euthanasia on the infant four conditions have to be fulfilled:

1. The presence of hopeless and unbearable suffering.
2. The consent of the parents to termination of life.
3. Medical consultation having taken place.
4. Careful execution of the termination.

In Netherlands, only voluntary euthanasia is legal for those who are above the age of 12. This means that euthanasia is illegal for those below 12 years of age.

2) Belgium

The Belgium Parliament legalised on 28th May 2002. After that several cases of euthanasia were reported. It was observed that the most common cases were of young adults, male and cancer patients. It was reported in 2010 that after the law passed in 2002 there has been an average of 1400 cases each year. The Belgian senate also voted that they will be extending the euthanasian law to terminally ill children in December 2013. There were several requirements that needed to be fulfilled. They are:

1. The patient must be conscious of the decision and should understand the true meaning of euthanasia.
2. The request should be approved by the child's parents and also the medical team
3. The patient should be terminally ill

These are some of the requirements that need to be met.

3) Canada

In Canada, voluntary active euthanasia is legal. It is called “physician assisted dying”. It is only allowed to people who are over 18 years of age. Above that, the people who are eligible to obtain the Canadian Health Insurance can only use this, it has been made like this to prevent suicide tourism. Suicide tourism or euthanasia tourism is one where a person travels to a country or jurisdiction where euthanasia is legal. This has been made available to such patients that are suffering from terminal illness and whose death is foreseeable. The Supreme Court of Canada ruled in favour in the year 2015 and then gave the government time to draft laws and policies regarding the same.

Other than that Luxembourg and Colombia have also legalised euthanasia.

NATIONAL SCENARIO

India is a country where people follow various religions and belong to different faiths. In India, all religions have a different belief and approach towards Euthanasia,

1) Hinduism

In Hinduism euthanasia is seen from two points of view.

1. If euthanasia is done with a selfless motive, it is seen as a good deed as a person has been freed from suffering and terrible pain. It is said that it fulfils their moral obligation.
2. It is also viewed in another way that it will disturb the time cycle of life and death. Death comes naturally at its own time. Those involved in euthanasia will take up the remaining karma of the patient.

2) Islam

Muslims are strongly against euthanasia. It is believed that God has chosen how long one person is allowed to live and no one can interfere in that. It is forbidden for a Muslim to know the time and place of his/her own death in advance.

3) Jainism

Jainism suggests Sallekhana or voluntary death. Sallekhana is made up of two words, Sal means properly and lekhan is to thin out. Sallekhana means to properly thin out from all passions and desires. A person can fast up to his/her death, he/she can also take the vow of Sallekhana after some requirements are fulfilled. It is not considered suicide. When Sallekhana is performed one mustn't have a desire to live or a desire to die. On

⁴ Wikipedia: The Free Encyclopaedia

cannot desire enjoyments or recall past pleasures or enjoyments. This practise is not accepted in all parts of India. It amounts to 100-240 deaths in a year.

4) Christianity

Christians condemn euthanasia. They call it a crime against life and a crime against God himself. There are however some Christian representatives who have come up in support of euthanasia in various countries.

ARTICLE 21 OF THE CONSTITUTION OF INDIA

According to Article 21 of the Constitution of India,

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

This means that a person has the right to live a meaningful, complete and dignified life. It has a broad meaning and it is not taken in a narrow sense or restricted. A person's personal liberty should not be deprived. It has been held by the Bombay High Court that Right to Life guaranteed by Article 21 also includes Right to Die⁵. Section 309 of the Indian Penal Code was also struck down because it was unconstitutional in nature, Section 309 was attempt to commit suicide.

It was held that Right to Life means to carry on several functions and the normal way of life. If a person is in a vegetative state and cannot function properly life becomes meaningless. A person's right to life is violated if a person is forced to live with a terminal illness and cannot perform basic functions properly. Hence, right to life includes right to die.

JUDICIAL PRONOUNCEMENTS

1) Postma Case

The social debate regarding euthanasia had initiated after the famous "Postma" case of 1973. It was in Netherlands. Andries Postma and Truus Postma were married and were general practitioners in a small village in Netherlands. Andries Postma's wife had a mother who was severely handicapped. She suffered from brain haemorrhage. Other than that she was also deaf, was unable to speak properly and was also tied to her bed in her nursing home which prevented her from falling down from her bed. Her mother repeatedly begged her daughter to end her suffering by ending her life. She eventually agreed and injected her mother with 200 mg of morphine. Truus Postma was then charged under the law that prohibits voluntary euthanasia, this law theoretically carried a prison term of 12 years. She was given a lesser term and a symbolic punishment which included one-week suspended prison term and 12 months of probation. Six years before this incident Andries Postma, who was popular among the village folk had expressed his beliefs regarding the right to have a good and conscious death in a local magazine. Postma and his wife had no intention to question the Dutch Euthanasian law but this case had sent a shock wave around the world and it also broke social taboos in a country that is bound by Christian Traditions and beliefs. Their actions played a major role in the launch of the Dutch Voluntary Euthanasia Society that played a major role 20 years later in changing the law. Postma and his wife wrote in a Dutch Journal of Medicine after this case, asking for a change in law where they said that many people die inhumanely and after a lot of pain and suffering and there should be another way. Royal Dutch Medical Association had distanced itself from this case at that time and it took them further 11 years to accept that a change in law is needed. The Postma case was among the first cases of euthanasia in the country and it has shaped the medical practice and medical laws in the country of Netherlands till today.

2) Aruna Shanbaug Case

Aruna Shanbaug was a nurse who lived in a vegetative state for 42 years after she was brutally raped and assaulted by a ward boy, Sohanlal at King Edward Memorial Hospital, Mumbai in 1973. The attack took place in the night of 27th November 1973. She was sexually assaulted by Sohanlal in the hospital basement while she was changing clothes. The sweeper claimed that he had done that act in a "fit of rage" because he and Shanbaug had an argument regarding a leave that he wanted which was refused by Shanbaug. The sweeper choked her with a dog chain and sodomized her. Her oxygen supply to the brain was cut off and she was left to die by Sohanlal. She survived but unfortunately, she was in a vegetative state. Sohanlal was caught and he was charged with theft and attempted murder, for which he served a sentence of two concurrent 7 years. In January 2011, that is 37 years after she was in a vegetative state a journalist and human-rights activist Pinki Virani filed a plea to grant euthanasia in the Supreme Court. The Supreme Court set up a three member medical-panel that examined Shanbaug. The panel concluded that she was in a permanent vegetative state. The Supreme Court, in a landmark judgement, issued several broad guidelines legalizing passive euthanasia in India. The guidelines included that the decision to discontinue life support lied in the hands of parents, spouse or other close relatives, or in the absence of them by a "next friend". The Supreme Court, declined to appoint Pinki Virani as a "next friend" and decided to keep the KEM Hospital staff as the "next friend". This was done because the KEM Hospital staff had taken care of Shanbaug since the last 38 years. They also appreciated the splendid social spirit shown by Ms Pinki Virani and cited that the Court has no intention to degrade her. The KEM Hospital staff

⁵ State of Maharashtra v. Maruti Sripati Dubal, 1987 (1) BomCR 499, (1986) 88 BOMLR 589

wished that she should be kept alive and Viranis petition was declined. The Court also said that KEM Hospital Staff can withdraw life support by seeking approval of the Bombay High Court if they change their mind. On 18th May 2015, Aruna Shanbaug died of pneumonia. She was shifted to a Medical Intensive Care Unit after she was diagnosed with it and then put on a ventilator. The Supreme Court on 9th March 2018 legalised passive euthanasia on those who have been in a Permanent Vegetative State. It can be done by withdrawing the life supporting devices and ventilator machines. The Supreme Court also made a historic judgement on 8th March where it gave legal recognition, and constitutional sanctity to Living Wills. A Living Will is a written instrument where a person expresses his/her wish in relation to medical treatment in case of a terminal illness. Suppose, a person can write down his/her wish about, to or not to be on life supporting machines or ventilators in the event of illness. The Court has directed that such Living Wills will have to be honoured by the Hospital, Doctors and the terminally ill patients family. This decision gave a relief to the medical practitioners as they had to constantly juggle between the wants and wishes of the patient's family, their own ethics and the legal consequences. This decision was a big win and it was a victory for personal autonomy and the right to live and die with dignity.

The world is dynamic and it is constantly progressing. A country like India bound by traditions and culture has also taken a brave step in legalizing euthanasia, something that has been frowned upon by most of the world. Many other countries are moving forward and taking steps to legalize euthanasia. The basic fact that the world is ready to acknowledge that every person has the right to live with dignity and also the right to die is a victory for everyone who has shown support, suffered pain and also lost people. People shouldn't be allowed to suffer against their will, it is morally incorrect to allow someone to fight for a hopeless cause. Passive Euthanasia should be legalized for those who are in desperate need of freedom from pain and suffering. There should be guidelines and rules that need to be followed to prevent its misuse. People should be educated about living wills, the types of euthanasia, why euthanasia exists so that they can gain knowledge and can avoid future suffering if any god-forbidden harm comes to them.