

Notes and Comments

The Historical Evolution of the Concept of “Euthanasia”

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I. Introduction

The term ‘EUTHANASIA’ means good death. It has been derived from two Greek terms ‘Eu’ meaning good and ‘Thanatos’ meaning death. Thus, it is the act of putting an end to the life of a terminally ill patient by some other person, on the request of the said patient, when his pains and sufferings get intolerable and the ultimate result is death which is unavoidable.

In Black’s Legal Dictionary the term has been defined as ‘The act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy’. Butterworths Medical Dictionary defines euthanasia as ‘The process of dying easily, quietly and painlessly; the act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and intractable painful and distressing disease’. Oxford Concise Medical Dictionary terms it as ‘the act of taking life to relieve suffering’. In common parlance, it means ‘mercy killing’.

The term is sometimes used narrowly to refer only to the taking of life by positive means, for example, the giving of a lethal injection to a patient whose life is full of unbearable pain. But, there are cases in which a doctor, intending his patient’s death, refrains from providing life prolonging treatment². These two cases are respectively termed as active and passive euthanasia.

Two distinct perceptions or understandings of active euthanasia are: On the one hand, that euthanasia is in the interest of the person but not with his express consent always, whose death it is and administered with some lethal injection, etc to allow the person to die with dignity, which would not be possible in normal course. On the other hand, it may be with the express wish of the suffering person and with his/her cooperation.

The ‘Right to Euthanasia’ is now being widely debated in various countries and strong opinions are developing in favor of euthanasia.

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² Stauch Marc, Wheat Kay and Tingle John; Sourcebook on Medical Law; Cavendish Publishing Ltd.; Second Edition, 2002 at p- 661.

Advances in medical sciences and technology have particularly brought this matter into fore. Questions are being asked as to whether it is right to continue life-sustaining medical treatment in cases where all hopes has extinguished or whether wishes of a person no more competent to exercise judgment and his wishes expressed before lapsing into incapacity of exercising judgment, be respected and complied with in terminating life.³ But, the risk and fear of misuse and abuse could be done away with the proper safeguards and specific guidelines. Practice prevailing in Netherlands is particularly important in this context.

II. The Historical Aspect

Human life is perceived as sacred, and life once taken cannot be given back through human life. Due to this inherent fragility of human life efforts have been directed to preserve and protect human life. This has resulted in the principle of sanctity of life gaining sure footing in the moral, religious as well as legal spheres. Certain factions of the society uphold life as a sacred gift which must be protected under any circumstances, while other factions have advocated an individualistic approach to life and that each individual is the master of his own life and is free to live his life as he wishes without external interference and may also wish to end his life while he is suffering from terminal illness and the illness has no cure and will ultimately result in death.

For an ordinary person, the necessary implication of life is that when life itself feels more painful, miserable and unbearable than death, in case of painful terminal illnesses, then, one may embrace death (meaning Dayamaran or mercy killing or Euthanasia). However, for the great saints, hermits and heroic persons, death implies a full stop to life when they have achieved their aims and feel content with their lives. For them, death may not matter before the performance of their duty which they find more sacred than death.

The doctor's goal in the context of their patient's life had been two-fold: to preserve life and to relieve sufferings. There were no conflicts among these goals till 1960s. However, with the advancements in science and technology in general, and the medical sciences in particular, the concept of death changed. The concept of 'quality of life' changed to 'preservation of life' and similarly, the Right to Life guaranteed under Article 21 of the Constitution of India has been interpreted to include the Right to death with dignity also. And thus, started the present day legalized physician assisted deaths, active as well as passive in few of the European countries.

³ "State Dumps Euthanasia Patient", The Telegraph February 21, 2001.

III. The Jurisprudential Roots of Euthanasia

According to Hinduism and Buddhism, human beings are captured in endless cycles of rebirth and reincarnation. The ultimate goal of mortal life is to achieve moksha or liberation from the cycle of death and birth. Fasting to death was an acceptable way for a Hindu to end their life although only in certain circumstances and moreover it was considered to be the only way of ending a life non-violently. However, this can be termed as a case of suicide and not euthanasia. As Hinduism does not speak about mercy-killing.

Jainism also allows a follower full consent of putting an end to his or her life, mostly by fasting, if he or she feels that moksha can be achieved by that way.

Muslim, Christian and Jewish laws are against euthanasia. They believe that all human life are sacred. It is given by God and human beings should not interfere in this.⁴

However, the idea of willful death can be traceable to Socrates, Plato, and Stoics in ancient Greek and Roman philosophy as well.⁵

In ancient Greece and Rome,⁶ euthanasia was a common practice with many preferring voluntary death over endless agony. This widespread practice was challenged by the minority of physicians⁷ who were part of the Hippocratic School and had pledged “*never [to] give a deadly drug to anybody if asked for, nor ... make a suggestion to this effect*”.⁸ The ascent of Christianity, with its view that man’s life was a trust from God, reinforced

⁴ Retrieved from <http://www.bbc.co.uk/religion/hinduism/euthanasia/shtml>, visited on 20/02/2014

⁵ Kannan Krishnamurthy, J. ; “To die with dignity” ; (2010 PL April s-10)

⁶ Gupta & Mishra; The historical evolution of euthanasia in India, (1995); Abks publishers; pg 05-06

⁷ For instance, the Stoic founder, Zeno (c. 263 B.C.) committed suicide, by drinking poison in his old age prompted by the agonizing pain of a foot injury. Pliny the Younger, whose letters recorded the details of everyday life in first-century Rome, described a typical case: “[Titius Aristo] has been seriously ill for a long time ... He fights against pain, resists thirst, and endures the unbelievable heat of his fever without moving or throwing off his coverings. A few days ago, he sent for me and some of his intimate friends, and told us to ask the doctors what the outcome of his illness would be, so that if it was to be fatal, he could deliberately put an end to his life.” See also RICHARD SCHULZ, THE ENCYCLOPEDIA OF AGING 392 (2006).

⁸ See Peter Tyson, *Hippocratic Oath: Modern version*, *The Hippocrates Oath Today* (Mar. 27, 2001), http://www.pbs.org/wgbh/nova/doctors/oath_modern.html.

the Hippocratic position on euthanasia and led to a culmination of consistent opposition to euthanasia among physicians.⁹

Euthanasia-supporters gained advantage in the 19th century with the egress of the use of anesthesia.¹⁰ In 1870 came Samuel Williams' ¹¹ proposal to use anesthetics and morphine to intentionally put an end to a patient's life. Subsequently, in the 1890s, the euthanasia debate exploded to reach beyond the medical profession and to include lawyers and social scientists.¹² The most notable event occurred in 1906 with the introduction of the Ohio Bill¹³ in the United States to legalize euthanasia, which was ultimately defeated. Two Parliamentary Bills were introduced in Britain in 1936¹⁴ and subsequently for a second time in 1969.¹⁵ Both the Bills did not find favor before the House of the Lords, finding extensive criticism for providing inadequate safeguards to the patients, and were ultimately defeated. The euthanasia issue has since been a recurring decimal with periodic reappearances. With the increasing acceptance of patient autonomy, the euthanasia debate has once again become a matter of public concern. Sophisticated medical treatments which prolong life, while leaving a patient suffering without hope of recovery,¹⁶ too have forced reconsideration of the whole issue.

⁹ Emanuel, at 795.

¹⁰ SHAI J. LAVI, THE MODERN ART OF DYING: A HISTORY OF EUTHANASIA IN THE US 31(2007).

¹¹ Samuel Williams, a non-physician, began to advocate the use of drugs like morphine not only to alleviate terminal pain, but to intentionally end a patient's life. During the late 1800s, Williams' euthanasia proposal received serious attention in the medical journals and at scientific meetings; *see also* Gage Sandlin, *Euthanasia: Is It Murder?*, [http:// www.helium.com/items/156337-euthanasia-is-it-murder](http://www.helium.com/items/156337-euthanasia-is-it-murder)

¹² IAN DOWBIGG, A MERCIFUL END: THE EUTHANASIA MOVEMENT IN MODERN AMERICA 21(2003).

¹³ LISA YOUNT, PHYSICIAN ASSISTED SUICIDE AND EUTHANASIA 9 (2000)

¹⁴ "I believe that posterity will look back on this refusal you are going to makeas people now look on the burning of witches". Lord Chorley words, after the English Bill, moved in 1936, relating to legalization of euthanasia was refused a second reading and subsequently, the motion lost. *See generally* Yale Kamisar, *Some Non-Religious Views Against Proposed "Mercy Killing" Legislation*, 42 MINNESOTA L. REV. 969, 1016 (1958).

¹⁵ W. B. Fye, *Active Euthanasia: An Historical Survey of its Conceptual Origins and Introduction into Medical Thought*, 52 BULL. HIST. MED. 492 (1978); *See also* [http://hansard.millbanksystems.com/lords/1969/mar/25/ voluntary-euthanasia-bill-hl](http://hansard.millbanksystems.com/lords/1969/mar/25/voluntary-euthanasia-bill-hl)

¹⁶ Diana Brahams Barrister, *A Visit to the USA: Part 2*, 138 NEW L. J. 383, 385(1988).

To begin with, Emile Durkheim, the French sociologist observes that a great deal of social change has been the direct result of people going against settled norms which often reflect the interests of those in power. He further elucidates his point by referring to the Greek philosopher Socrates and his conviction as a “criminal”. He says: “According to Athenian law, Socrates was a criminal, and his condemnation was no more than just, however, his crime, ‘the independence of thought’, rendered a service not just to his country but also to humanity....it served to prepare a new morality and faith which the Athenians needed, since the traditions they had lived until then were no longer in harmony with the current conditions of life”.¹⁷

Therefore, the moral stand taken by the influential sections (church etc.) or, the existing laws, cannot be taken to be infallible. Views to the contrary must be eagerly pursued to determine whether or not they can improve the quality of human life. It is important for socio-legal evolution that these be given an even higher amount of latitude if the subject debated has the potential to alleviate human misery in whichever way possible.

Religion too determines what activities receive the sanction of law and which do not. In India, there are religious scriptures that speak of comfort in the form of death when faced with incurable diseases. Manu states that man may undertake “great departure” on a journey which ends in death, *when he is incurably diseased* or meets with a great misfortune.¹⁸ The codified law adopts the sanctity of life in an inflexible manner, ignoring human misery originating due to debilitating illness.¹⁹

However, as Christianity developed and grew powerful in the west, it brought with it and, subsequently into the colonies of the western powers, the notion of life as God’s gift to mankind.²⁰ Any attempt to shorten life was perceived forcefully speaks out against the deliberate act of ending a human life.

¹⁷ CHRIS HALE, KEITH HAYWARD, AZRINI WAHIDIN & EMMA WINCUP, CRIMINOLOGY 302 (2005) (citing EMILE DURKHEIM, THE DIVISION OF LABOUR IN SOCIETY (1893)).

¹⁸ LAWS OF MANU (Georg Buhler trans.), in 25 SACRED BOOKS OF THE EAST 204 (photo. reprint 1967) (F. Max Muller ed., 1886).

¹⁹ Dr. Subhash Chandra Singh, *Euthanasia: Contemporary Debates*, (2000) pg 25.

²⁰ ‘Before I formed you in the womb, I knew you, before you were born, I set you apart’ (Jeremiah 1:5). The Christian version of life is thus based, to include life even before its actual inception.

IV. Euthanasia as Practiced in India:

IV.I. Ancient

Vaidya's oath, which is dated 1500 BC, taken by Ayurvedic physicians requires physicians not to eat meat, drink or commit adultery. Vaidya's oath entreats physicians not to harm their patients and be solely devoted to their care even if this puts their lives in danger. Most religions disapprove of euthanasia. Religious people refer to the sanctity of life. God gives people life; so only God has the right to take it away. Roman catholic church regards euthanasia as morally wrong. Muslims are against euthanasia as they believe that human life is sacred because it is given by Allah. Sikhs have high respect for life - a gift of God and suffering is a part of the operation of Karma. Buddhism considers suicide a dishonorable act. Buddhism places great stress on no-harm (Ahimsa) and on avoiding the ending of life.

The way life ends has a profound impact on the way the new life will begin as death is a transition and the deceased person will be reborn to a new life whose quality will be dictated by his Karma. Most Hindus would say that a doctor should not accept a patient's request for euthanasia as the result will damage the karma of both the doctor and the patient; others believe euthanasia breaches the teaching of ahimsa but some say by helping to end a painful life, a person is performing a good deed. Several Eastern religions believe that they live many lives and the quality of each life is set by the way they lived their previous lives. Suffering is a part of moral force of the universe and by cutting it short, a person interferes with their progress towards ultimate liberation. Hindus believe in the reincarnation of the soul (Atma) through many lives, not necessary all human but ultimately aim at liberation (Moksha).

In India, voluntary euthanasia was and perhaps is, in vogue for very aged and infirm particularly when they cease to be productive and feel they are a burden to others in society. They stopped drinking water and eating food or disappeared into the woods or drowned themselves in water of rivers. They considered that it is not a sin to end one's life under such circumstances as laid in Parameshvara V. The question of euthanasia.²¹ There is a Jaina ethic of voluntary death through fasting for instance. Prayopavesha or fasting to death is an acceptable way for a Hindu to end his life in certain circumstances. It is different from suicide. Prayopavesha is only for people who are fulfilled, who have no desire or ambition left and no responsibilities remaining in their life. It is non-violent and uses natural means unlike the suddenness of suicide. Prayopavesha is a gradual process. Conditions laid down for prayopravesha are: (1) Inability to perform normal

²¹ The hindu; 9th July 2001

bodily purification, (2) Death appears imminent or the life's pleasures are nil, (3) Decision is publicly declared, (4) The action must be done under community regulation. Satguru Sivaya Subramnai Swami, a Hindu leader born in California after finding that he had untreatable intestinal cancer meditated several days, accepted pain killing treatment only and would undertake prayopaveha – taking water but no food in November 2001 and died on 32nd day of self imposed fast.²²

However, there has been no instant case of practicing euthanasia or mercy-killing in ancient India as the definition of euthanasia suggests. There has been many cases of ending of life by suicide but cases of ending one's life by another on the request of such person is hard to find. Thus, it is very important to state that euthanasia is not as same as suicide. Both are the ways of ending one's own life but as suicide means ending the life by one self, euthanasia means ending the life by the help of some other person in the request of such person as such person is not even in a position to commit suicide. Thus, although the concept of killing one's own self is an ancient one but the practice of euthanasia was an uncommon one. Rather in such cases, the person assisting another to die was often convicted as murderers. Thus, doctors or relatives, in fear of sanction, did not take up the request of any such person to kill him. And religion mostly, forbid people from assisting another to end their lives.

IV.II. Modern

Mahatma Gandhi had once stated, "A calf having been maimed, lay in agony in the ashram despite all possible treatment and nursing. The surgeon declared the case to be past help and hope. The animal's suffering was very acute. In the circumstances, I felt that humanity demanded that the agony should be ended by ending life itself. The matter was placed before the whole ashram. Finally, in all humility but with cleanest of convictions I got in my presence a doctor to administer the calf a quietus by means of a poisonous injection and the whole thing was over in less than two minutes".²³

"Would I apply to human beings the principles that I have enunciated in connection with the calf? Would I like it to be applied in my own case? My reply is: Yes. Just a surgeon does not commit Ahimsa when he wields his knife on his patient's body for the latter's benefit, similarly one may find it necessary under certain imperative circumstances to go a step further and sever life from the body in the interest of the sufferer".²⁴

²² Retrieved from <http://www.bbc.com/uk/history/euthanasia>; visited on 15-02-2014

²³ As published in "The Times of India"; 3rd January 2005; Bombay

²⁴ *ibid*

In India euthanasia is undoubtedly illegal as in cases of euthanasia there is an intention on the part of the doctor to kill the patient. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected. Assisted suicide which amounts to abetment of suicide is an offence expressively punishable. However, following legalization of euthanasia in Netherland, there has been extensive public debate and coverage by mass media on the issue of euthanasia in India. A large number of people expressed their views and among them quite a few were, in favor of euthanasia. In response to an opinion poll conducted by Doctors in NDTV on the topic “Should euthanasia (mercy killing) be legalised In India?”.

67% said ‘Yes’ and 33% ‘No’. In Indian subcontinent, culture and faith are interwoven and many moral decisions are influenced by a particular culture. The issue of euthanasia first hit the headlines in recent past when a mathematics teacher in Lucknow, terminally ill, had his family to submit petition to the President of India in 2001 seeking to end his life.²⁵ Again Venkatesh, a terminally ill Indian chess national champion was suffering from genetic neurological disorder – ‘Duchene’s muscular dystrophy’. The Court refused his request to turn off his life support system so that he could donate his organs before they were irreparably damaged.²⁶

Then again two cases of Indian courts turning down requests of the patients to die were reported in the year 2001. The Patna High Court dismissed Tarakeshwar Chandravanshi’s plea seeking mercy killing to his 25 year old wife Kanchan who had been comatose for 16 months.²⁷

Kerala High Court said ‘No’ to the plea of BK Pillai who had a disabling illness, to die.²⁸

There are recent cases of euthanasia recorded in India which are pending. Whereby people, due to various reasons, has filed petitions for allowing them to commit Euthanasia. For instance, Ramgarh Pandey who has sold a quarter of his farm land for treatment in Uttar Pradesh, suffering from AIDS has asked the Country’s President to allow them and their daughter to die through euthanasia as they were being harassed in their village. He stated, “We are tired of going to the administration. That is why we have sent a plea to the President to grant the entire family euthanasia”.²⁹

²⁵ As published in “The Times of India; 1st August, 2006

²⁶ BBC News; 17th December 2014

²⁷ As published in “The Hindu”; 25th November, 2005

²⁸ ibid

²⁹ RxPE News; 28th April, 2007

Again a 79 years old freelance journalist has petitioned the Rajasthan High Court seeking permission for euthanasia, saying he wants to die with dignity.³⁰

A serious political debate about euthanasia has begun in India after a Federal Law Commission recommended legislation to allow mercy killing. “We are looking into the recommendations. The proposal has been sent to Health Ministry for their opinion”.³¹

However, the Government has no plans to legalize Euthanasia. Stated that “Despite strong demands from different corners in favour of euthanasia, Union Government on Monday said it had no plans to give legal status to what is popularly known as ‘mercy killing’. Significantly, it slammed a full stop on future speculation saying that it would not consider any such application. Minister of State for Law and Justice K. Venkatapathy told RS (Rajya Sabha), Government is not considering to give legal status to euthanasia; till date law has not permitted and application of the same cannot be entertained.”³²

Thus, in case of terminal illness the conflict is often between doctor’s duty to treat to the best of his ability and patient’s right to be allowed to die quietly when medical measures only prolong life. The issue of euthanasia has been riddled with controversies with arguments for and against it. Most religions disapprove of euthanasia but in India practice of ending one’s life voluntarily is very old and intact, it exists even now. Following legalisation of euthanasia in Netherland, there has been extensive public debate in India on the issue of euthanasia. In India, euthanasia and assisted suicide are illegal. A close perusal of the arguments that have been forwarded to indicate the sanctity of life and, the opposition to euthanasia stems from the fear of its misuse. Though mercy killing appears justifiable in cases of incurable diseases, doctors should be doubly careful since they run the risk of attracting punishment for murder under the Indian Penal Code, 1860.

V. Conclusion

Thus, the Hindus has two views on euthanasia- by helping to end a painful life a person is performing a good deed and also fulfilling their moral obligations. On the other hand, by helping to end a life, a person is disturbing the timing of the cycle of death and birth. This is a bad thing to do and will suffer. The Muslims are completely against euthanasia. They

³⁰ ibid

³¹ As said by H.R. Bharadwaj, the Federal Law Minister. Published in World News, 16th June, 2006

³² As published in “The Times of India”; 1st August, 2006

believe that all human life are sacred because it is given by Allah, and He chooses how long each person shall live. Similarly, the Christians are also mostly against euthanasia. They held that life is a gift of God and so only He has the power to take it away.

Therefore, it can be rightly summed up that, as a result of the religious believes and moral cultures associated with the municipal laws of the countries in the world, Euthanasia and Physician assisted suicide are prohibited in most countries worldwide. However, end of life debates tend to occur more nowadays in various countries, although there are exceptions to this trend. But then, the need of the hour advocates towards legalizing Euthanasia as every person not only has a Right to live but also a Right to die a dignified death. Thus, euthanasia should be legalized for terminally ill patients but the laws also needs to contain proper safeguards in order to prevent its misuse.