

Abstract

In this uncertain world there is only one certainty that is death. Death will touch everyone at some time, whether we like it or not. As one approaches death, whether due to old age or terminal disease, one often wishes for a peaceful and painless death. In fact, since antiquity, a painless death in one's sleep has been considered an ideal and desirable death.

Euthanasia is derived from the ancient Greek words "eu" (good) and "thanatos" (death). Euthanasia is the intentional termination of another person's life, either through direct intervention (active euthanasia) or by restricting life-prolonging measures and resources (passive euthanasia), either at that person's express or implied request (voluntary euthanasia) or in the absence of such approval/consent (non-voluntary euthanasia). Many countries consider Physician Assisted Suicide or Assisted suicide as separate conditions where a doctor only provides the lethal substance to the person but the administration is done by the person himself.

Euthanasia has been a topic of immense debate and discussion since time immemorial. Debates on euthanasia have been rekindled in India by the Supreme Court Judgements in the Aruna Shanbaug case and the Common Cause case. This thesis is an attempt to understand the legal aspects of euthanasia and the right to die with dignity in India by conducting a comparative study of the legal provisions regulating euthanasia in various countries, viz., Australia, United States of America, Netherlands, Belgium, Switzerland, Luxembourg, Canada, New Zealand, Spain, Colombia and United Kingdom.

In ancient societies of Greece and Rome, euthanasia was considered a positive and desirable act to attain a peaceful death that released one from the sufferings of old age, infirmity or illnesses. As time went by, euthanasia assumed a negative connotation, particularly with the emergence of Judeo-Christian values, which suggested that euthanasia was immoral and unethical as it interfered in the domain of the almighty God. Later, however, the debates on euthanasia shifted towards the sufferings of terminally ill patients. Euthanasia was again getting prominence as a way to help patients escape from a painful existence of indignity, especially when

there was no cure to their condition. Till contemporary times, euthanasia has remained a contentious issue.

In India, the debates on euthanasia are deeply intertwined with the debate on decriminalizing suicide. Various High Courts and the Supreme court of India has dealt with decriminalizing attempted suicide under section 309 of the IPC and abatement to suicide under section 306 of the IPC. The landmark cases of P. Rathinam and Gian Kaur have produced contradictory judgements where section 309 was considered ultra vires the Constitution in the former while it was pronounced constitutional in the latter. These cases also dealt with the issue of 'right to die' as an extension of 'right to life' under Article 21. In P. Rathinam, the Court held that a person had a right to die but in Gian Kaur the Court opined that no such right exists. In Gian Kaur, however, the Court recognized that right to life means right to a life with dignity and that right also contains the 'right to die with dignity'.

In the case of Aruna Shanbaug, the constitutional bench of the Supreme Court of India refused to legislate from the bench on the issue of euthanasia. They agreed with opinion given in Gian Kaur and in Airedale that only Parliament had the authority to bring in legislation on Euthanasia. The Court agreed that Article 21, which protects the right to life, guarantees a right to a dignified life which can be interpreted to contain in its ambit a right to a dignified death.

The Common Cause judgement disagreed with the judgments of Gian Kaur and Aruna's cases that the Supreme Court cannot give a judgement on legalizing euthanasia. The Supreme Court ruled that a person, under the existing laws, has the right to refuse treatment and therefore, can choose passive euthanasia in situations where the illness is incurable. The judgement also provided extensive guidelines to be followed in patients in PVS, who cannot express their wishes, in case the family members, next of friend or the treating doctor decides that withdrawing treatment will be in the best interest of the patient. The Court also established the legal validity of advance directives and gave guidelines to make and implement advance directives. The Court, however, refused to legalize active euthanasia.

Various reports of Law Commission have also advocated for legalizing passive euthanasia. The Ministry of Health and Family Welfare, based on the recommendations of Law Commission, came up with a draft bill regulating passive

euthanasia. However, the provisions given in the draft bill are procedurally complex. It involves referral of the matter to jurisdictional High Court as the first recourse in case of any dispute, among other drawbacks, which can prolong the legal procedure and put unnecessary burden on the already stressed Courts. It also makes the provisions inaccessible to ordinary citizens. The bill is also flawed in refusing to give legal sanctity to advance directives.

When the legal provisions of various countries, which have already legalized euthanasia are studied, it becomes apparent that active euthanasia can play an important role in providing people with an option of a dignified and painless death when dealing with a terminal illness. Netherland allows its citizens to request for assisted suicide even when the person is not suffering from a terminal illness but feels that they have completed their purpose in life. Belgium has legalized euthanasia not only for adults, but also for children in specific situations. Switzerland allows assisted death for non-citizens also, and allows common people also to assist in death of another person. These countries have formulated legislations which provide much simpler guidelines while maintaining stringent safeguards in place to protect from abuse of the provisions.

After going through a comparative analysis of the provisions in various countries, various judgements of the Supreme Courts of India, the Law Commission reports, the draft euthanasia bill, it can be concluded that euthanasia is a vital tool to give a dignified exit to a person suffering from a terminal illness with no real hope of recovery. Legalizing passive euthanasia and advance directives is a welcome step but is eclipsed by a complex procedure. A well drafted legislation which provides simplified procedures and adequate safeguards is the need of the hour. The issue of legalizing active euthanasia too needs to be debated and discussed widely. Legalizing only passive euthanasia without legalizing active euthanasia is not likely to provide a meaningful right to a dignified death in many situations.