

ISSN 0973-3914

RESEARCH JOURNAL OF SOCIAL AND LIFE SCIENCES

HALF YEARLY, BILINGUAL (English/Hindi)

A REGISTERED REVIEWED/REFEREED RESEARCH JOURNAL
Indexed & Listed at: Ulrich's International Periodicals Directory©,
ProQuest, U.S.A (Title Id: 715205)

Volume- XXIX

English Edition

Year- 14 Sept., 2019

PEER-REVIEWED RESEARCH JOURNAL
UGC JOURNAL NO. (OLD) 40942
IMPACT FACTOR 3.928



JOURNAL OF

Centre for Research Studies

Rewa-486001 (M.P.) India

Registered under M.P. Society Registration Act,
1973, Reg. No. 1802, Year-1997

www.researchjournal.in

CONTENTS

1. A Study on the Problems of School Education in Amalgamated Schools of Kamrup Districts of Assam, India
Dulumoni Das, Nirada Devi 09
2. Euthanasia: Fighting for 'Right to Die'
Shilpa Seth 19
3. A Sociological Study on the Impacts of Communication and Technology on the Society in the New Century (An Empirical Study)
S.S.Thakur, Princy George 26
4. A Study on Indian Capital Market: An Overview
Brajesh Kumar 35
5. Accredited Social Health Activists (ASHAS), their Role in Improving the Health Status of Rural Women: A Sociological Study of Baramulla District
Shashank Shekhar Thakur 38
6. A Comparative Study of Personality Traits of Scheduled and Non-Scheduled Caste Students.
Tarkeshwar Nath Mishra 43
7. Pickle Industry in Mughal India
Moni Shukla 49
8. Persuasive woman politician in The glass palace
Hansa Paul 52
9. Study of Interests in Adolescent girl
Poonam Muktawat, Atima Bhardwaj 59
10. My Reading of Srimad Bhagwad Gita
Shubha Tiwari 63
11. A Comparative Study of Psychosocial Factor between Male and Female athletes of University
Khanna N.B., Shungloo R. 80
12. Changing Scenario of Accounting Education in India
Parag Thakkar 89

Euthanasia: Fighting for 'Right to Die'

* Shilpa Seth

Abstract- *The essence of the debate points towards the basic question: Is euthanasia really necessary for death with dignity? First thing which we should understand that euthanasia is different from suicide. A person commits suicide only when he/she is in depression and the cause of depression may be different like money problem, social pressure etc. Euthanasia takes place when a person is suffering from incurable disease and there is no hope of life. In Euthanasia a person wants to live but due to physical fitness it is not possible but in suicide person wants to die.*

Key Words- Euthanasia, Law, suicide.

The Supreme Court of India gave a landmark judgment in the case of semi-comatose 'Aruna Shanbaug'. Who was a nurse at Mumbai's KEM hospital when she was strangled and sodomised by a ward boy Sohan Lal Valmiki in 1973. For 38 years now, she has been in a semi comatose state just lying on her bed abandoned by family and looked after solely by the hospital staff. A writer & social activist 'Pinki Virani' penned her story and later filed a mercy killing petition for her, sparking off a debate over Euthanasia in the country. The court rejected this plea, but said passive euthanasia should be considered in certain cases in the country.

The court was reluctant of setting a precedent hence it took a cautious approach of denying 'Aruna' death but at the same time saying that passive euthanasia could be considered under special circumstances and that a law be formulated for this.

This is an instance of granting legal sanction to passive euthanasia in other words judicial exemption to the law of land. It is being seen as a landmark case being closely watched for the precedent it sets in the country's mercy killing laws the Supreme Court hastened a small step towards ineuthanasia laws by allowing passive euthanasia to be considered.

Meaning of Euthanasia:-

The term 'euthanasia' is derived from the Greek words 'eu' meaning "good" and thanatos meaning 'death' Euthanasia is the act or practice of ending the life of an individual suffering from a terminal illness or an incurable condition, by a lethal injection or by the suspension of extraordinary medical treatment.

* Assistant Professor, University College of Law, Mohanlal Sukhadia University Udaipur - Rajasthan 313 001

In the Netherlands, euthanasia is defined as "The intentional termination of the life of a patient at his or her request by physician"¹.

The Belgian euthanasia Act 2002 defines as the "Intentional life terminating (sic) action by someone other than the person concerned, at the request of the latter."²

On the basis of the nature of act being done euthanasia can be classified, as:

1. Active:- It is positive merciful act, to end useless suffering or a meaningless existence. It is an act of commission.
2. Passive:- It means not using or discontinuing the use of extraordinary life sustaining measures to prolong life.

This Euthanasia is voluntary when the person who is dead has requested to be killed and it is Non voluntary, when the person who is dead made no request and gave no consent.

Euthanasia in Historical & Religious Perspective:-

Euthanasia is not something new or unknown to mankind. In ancient Greece and Rome, helping others to put an end to their lives was permitted in certain situations.³ As per Hindu mythology lord 'Rama' and his brothers took Jal Samadhi in river Sarayu near Ayodhya.⁴ Lord 'Mahavir' and lord 'Buddha' attained death by seeking it. Vinobabhave chose to end his life refusing to take nutrition.

According to Buddhism 'Prayopavesa' and according to Jainism 'Santhara' (fasting to death) are acceptable ways to end their life provided. These way only for people who are fulfilled, who have no desire or ambition left and no responsibilities remaining in this life.

Muslim, Christian and Jewish laws are against euthanasia. They believe that human life is sacred because it is given by God, and human beings should not interfere in this.⁵

International Perspective:-

The last decade witnessed significant debates over the legalization of euthanasia in various countries as a result of which some countries have legalized euthanasia. The Voluntary Euthanasia society established in 1935 and being a leading research organization in the United Kingdom on issues related to assist dying, submitted that as a general proposition individuals should have the opportunity to die with dignity.

In 1997 Oregon in United States passed the 'Death with Dignity Act' allowing patients to inject lethal injections themselves.⁶

In 1997, 'Colombia's' supreme court ruled that penalties for mercy killing should be removed. In 'Australia' euthanasia was legal for a brief period but was overturned by the Australian parliament in 1997. In 'Switzerland' suicide assisted by doctors and those without medical training is allowed but euthanasia is not legal in the country. The UK is examining euthanasia laws following a court order. In Japan there are no specific laws but there are a set of guidelines governing the practice of mercy killing in many part of the country.⁷

Arguments in favour of Euthanasia:-

1. The major argument is that, it is a way to end extreme unbearable pain caused due to disease infirmity of body or mind or some incurable ailment.
2. Another argument is that if option to die in case of people facing terminal illness is allowed, family members may save on unproductive medical expenses. It may free up medical funds of the state to help other needy people.
3. The right to die provides a way of relief when a person's quality of life is low.
4. Another argument is that recognition of right to die is a case of freedom of choice or individual liberty. Positive right includes the negative right like the freedom of speech includes freedom not to speak in similar manner. The 'right to live' should include within it the 'right not to live'.
5. Terminal ill persons can't enjoy their life so after their death their body organs like eyes, kidneys etc. can be transplanted to other needy persons to make their lives enjoyable.

Arguments against Euthanasia:-

1. Allowing euthanasia devalues human dignity and will offend the principle of sanctity of life. Today advanced medical research is constantly being made in treatment of pain and diseases. Many diseases which had no cure in the past are curable and controllable today. Hence, the society has no right to kill a person and thereby deny him a chance of recovery in the future.
2. Euthanasia is not about the right to die, but it is about the right to kill. It may lead to legitimizing killing of persons by their relatives in collusion with the doctors in furtherance of their interests.
3. It is not necessary that in all cases, a patient would want to die under emotional and physiological pressure he may choose to die to relieve his family from the problems due to his illness.
4. In India where poverty and corruption is rampant there is no fool proof way to write the law without opening it to abuse. It would make doctors as well as impatient heirs irresponsible.
5. There is a 'slippery slope' effect that has accused where euthanasia has been first legalized for only the terminally ill and later laws are changed to allow it for other people or to be done non voluntarily."

Judicial Trend:-

According to Indian Penal Code 1860 in India both forms of euthanasia are prohibited and are illegal Euthanasia as there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of section 300 of IPC 1860, However as in such cases there is the valid consent of the deceased exception 5 to the said section would be attracted and the offender would be punishable under section 304 for culpable homicide not amounting to murder.

In case of physician assisted suicide, the doctor who provides the necessary prescription to the deceased will be liable for abetment of suicide and may be punished under section 305 or section 306 of Indian Penal Code. Regulation 6.7 of "The Indian Medical Council (Professional conduct Etiquette and Ethics) Regulations, 2002 declares 'euthanasia' as an unethical act.

The law commission has recommended legalizing euthanasia for terminally ill patient.

In 'Naresh Marotrao sakhre V. union of India'⁸ Lodha J. observed that, Euthanasia and suicide are different "Suicide by its very nature is an act of self killing or self destruction, an act of terminating one's own self without the aid or assistance of any other human agency. On the other hand euthanasia implies the intervention of other human agency to end the life. A person commits suicide when he is puzzled or mentally upset while euthanasia is an act of ending the life of an individual suffering from a terminal illness or an incurable condition.

In C.A. Thomas Master V. union of India⁹ the high court of Kerala dismissed the writ petition filed by a citizen wherein he wanted the government to setup "Mahaprasthan Kendra" (Voluntary Death clinic) for the purpose of facilitating voluntary death and donation, transplantation of bodily organs. In 2005 'Mohd. Yunus' from Kashipur Odissa requested the president for euthanasia on the ground that his children were suffering from incurable disease but the request was rejected. Similarly a petition filed by Mr. Tarkeshwar Sinha from Patna also came to be rejected.

In 2004 a two judge bench of the Andhra Pradesh High court dismissed the writ petition of a 25 year old terminally ill patient 'Venkatesh' who sought permission to donate his organs in a non-heart beating condition. The High court dismissed the writ petition where 'Venkatesh' had expressed his wish to be put off the life support system.¹⁰

Recently in Arun's case Supreme Court has taken a small step towards euthanasia laws by allowing passive mercy killing to be considered.

Conclusion:-

The essence of the debate points towards the basic question: Is euthanasia really necessary for death with dignity? First thing which we should understand that euthanasia is different from suicide. A person commits suicide only when he/she is in depression and the causes of depression may be different like money problem, social pressure etc. Euthanasia takes place when a person is suffering from incurable disease and there is no hope of life. In Euthanasia a person wants to live but due to physical fitness it is not possible but in suicide person wants to die.

The famous cancer specialist from France 'Dr. Leon' says that when medical science fails or declared that there is no chance for life than permission for euthanasia should be granted.¹¹

The arguments of the opponents of euthanasia are based on the fear of the misuse of the practice of euthanasia. Adequate safeguards can be put in

place in order to check any misuse of the practice of euthanasia it is proposed that voluntary euthanasia may be permitted if the following conditions are satisfied.

1. The person seeking euthanasia should be suffering from a terminally ill disease and should be adult of sound mind and capable of making a rational decision.
2. The request of euthanasia should be made by a minimum of three relatives of patient. They should be well informed about the condition of the patient on whom euthanasia is to be practiced.
3. The request should be made in writing and should be approved by an examination board consisting of three senior doctors, the local sub-divisional magistrate and the station house officer of the police station within whose local jurisdiction, the hospital is situated.¹²

The government should set out appropriate guidelines to be followed by the examination board it may be allowed as necessary exception only in rarest of rare cases, in passive form in appropriate cases where the individual is dying and gives informed consent and as per the genuine medical opinion, the death is near and certain and to withdraw the life support system is in the best interest of the patient.

Euthanasia is a very sensitive topic and no one rule can fit in all cases. Every case will have to be treated separately so one should actually refrain from saying that they are pro or anti euthanasia, simply because every life is different and as such must be given the unique respect it was born with.

=====

References :

1. Yale Kamisar, "when is there a constitutional right to Die? When is there no constitutional Right to Die?" Georgia, law review, 1991 vol.25, PP.1203-42
2. A.B. LaFrance, "physician assisted death A comparison of the Oregon and Northern Territory Statutes" newcastle law review, 1996 vol.1P.33.
3. Shailendar Kaur, "Euthanasia-A blemish or a Bliss, Delhi judicial academy journal, 2005 March, Vol. 4 (1) PP. 84-93.
4. Tarun Jain "Mercy Killing: An analysis, criminal law journal, 2004 February Vol. 110, PP.48-62.
5. Retrieved from <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml>.
6. Dr. H.G. Kulkarni, "Legalizing Euthanasia" All India Reporter, 2006, P. 17 (J)
7. Retrieved from <http://www.nightingalealliance.ara/cai-bin/home.Pl?section=3>
8. Naresh Marotrao sakhre v. union of india 1995 cri LJ 96 (Bom)
9. C.A. Thomas Master v, union of india 2000 cri L J 3729.
10. Also see Suchita Srivastva v, Chandigarh Admn (2009) q SCC 1
11. Retrieved from <http://www.euthanasia.com/definitions.html>
12. Shreyans Kasliwal 'Should Euthanasia be legalized in India', "Criminal Law journal, 2002" August, vol. 108, PP. 209-16 A. Ranjith Narayan, Euthanasia: Reasonable or Not," Kerala law Times, 2006, vol.4, PP. 53-55.