

Euthanasia: Dying with Dignity

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ABSTRACT

The English philosopher Sir Francis Bacon coined the phrase “euthanasia” early in the 17th century. Euthanasia is derived from the Greek word “eu”, meaning “good” and “thanatos” meaning “death,” and early on signified a “good” or “easy” death. “Euthanasia” is a broad term for mercy killing – taking the life of a hopelessly ill or injured individual in order to end his or her suffering. It is the termination of sick person’s life in order to relieve them of their suffering. Life cannot be created so taking away of life is made legally punishable. But there are circumstances where even law is in a dilemma over the issues of life and death.

Euthanasia can be classified into active and passive or alternatively into voluntary, involuntary and non-voluntary. Active euthanasia means putting an end to the life of an individual for merciful reason by a medical practitioner by giving a lethal dose of medication to the patient. Passive euthanasia takes place where methods such as removing artificial life support systems such as ventilators, hydration, etc are resorted to. Passive Euthanasia is the act of withdrawing or withholding medical support to a dying patient who has no hope for revival or cure.

The Supreme Court of India has declared Passive Euthanasia and the right of persons, including the terminally ill, to give advance directives (Living Will) to refuse medical treatment permissible. In the historic judgement, SC held that the fundamental right to life and dignity under Article 21 of the Constitution includes ‘right to die with dignity’. Dignity is lost if a person is allowed or forced to undergo pain and suffering because of unwarranted medical support.

Keywords

Euthanasia, physician-assisted suicide, palliative care

INTRODUCTION

The Supreme Court on 9th March recognized right to die with dignity and allowed an individual to execute a “living will” authorizing someone to withdraw his/her life

support, if he/she went into a vegetative state because of an incurable and irreversible medical condition.

The landmark verdict was delivered by five-judge Constitution Bench headed by Chief Justice of India Dipak Misra, which laid down a set of guidelines for the purpose. The top court, however, said life support could be withdrawn only after a medical board approved it.

The court was issuing its verdict on a PIL filed by NGO Common Cause in 2005.

The Bench, including Justices AK Sikri, AM Khanwilkar, DY Chandrachud and Ashok Bhushan, said right to die with dignity was a facet of right life and liberty guaranteed under Article 21 of the Constitution.

Noted lawyer Prashant Bhushan had argued in the case that when a medical expert suggests that a patient suffering from a terminal disease has reached a point of no return, he/she should have the right to refuse artificial life support – medically referred to as passive euthanasia – to avoid prolonged agony.

The 538-page verdict also provides for mechanism to effect passive euthanasia where there are no advance directives in the form of a “living will”.

A “living will” is a document executed by an individual in full possession of his/her decision-making capacity, enunciating the condition of ill health in which he/she would not like to prolong life by artificial support. In such a situation, persons duly authorized by the patient should be allowed to arrange for termination of his/her life in terms of an advance directive in the “living will” by withdrawing artificial life support system.

Justice Chandrachud observed that to deprive a person of dignity at the end of life is to deprive her or him of a meaningful existence. Meaningful existence includes a person’s right to self determination and autonomy to decide his medical treatment.

While recognizing passive euthanasia, the SC allowed advance directive or living will, by which patients can

spell out whether treatment can be withdrawn if they fall terminally ill or are incompetent to express their opinion.

A five-judge bench, headed by Justice J. S. Verma, in *Gian Kaur vs State of Punjab* in 1994 had held that both assisted suicide and euthanasia were unlawful. The bench stated that the right to life did not include the right to die, hence overruling the two-judge bench decision in *P. Rathinam vs Union of India* which struck down section 309 of Indian Penal Code (attempt to suicide) as unconstitutional.

In the *Gian Kaur* case, the apex court held that Article 21 speaks of life with dignity, and only aspects of life which make it more dignified could be read into this Article, thereby pointing out that the right to die was inconsistent with it.

However, later in *Aruna Ramchandra Shanbaug vs Union Of India*, the Supreme Court in March 2011 held that passive euthanasia could be given a nod in case of exceptional circumstances and under strict monitoring of the apex court.

Aruna Shanbaug had been in a vegetative state for since 1973, and on her behalf, Pinki Virani, a social activist, journalist and writer, had filed a writ petition claiming that her right to life guaranteed by the constitution had been violated.

The SC opined that such a decision regarding the death of an individual could not be solely left to the discretion of the patient's relatives or the 'next friend' – like the nursing staff in the case of the Shanbaug case. The Centre at the time opposed recognition of 'living will' and said consent for removal of artificial support system given by a patient may not be an informed choice. The decision could stem from a lack of awareness of medical advancements.

The Supreme Court of India concluded:

“The Constitution Bench in *Gian Kaur's* case held that the “right to life: including right to live with human dignity” would mean the existence of such right up to the end of natural life, which also includes the right to a dignified life up to the point of death including a dignified procedure of death.”

The Court concluded the right to passive euthanasia was upheld by Article 21 of the Constitution of India which

declares that no person will be deprived of his life or personal liberty except for procedures established by law.

Doctor's call

SC placed the burden of making a call on the treating physician and hospital. The responsibility is on doctor to ascertain the genuineness and authenticity of the living will of a terminally ill patient from the judicial magistrate in whose custody the document is to be kept.

Once satisfied there is no cure the doctor has to give due weight to the living will. After the doctor decides that living will needs to be acted upon it is her or his responsibility to convey to the guardians the medical condition, availability of care and consequences of alternative forms of treatment and the consequences of remaining untreated.

The physician or the hospital has to constitute a medical board consisting of a head of treatment department and at least 3(three) experts from the field of general medicine, neurology, cardiology, nephrology, psychiatry or oncology with experience in critical care and standing of 20 (twenty) years of profession experience.

In case the medical board decides not to follow the living will, it can apply to the district collector concerned.

Living will

Living Will is a healthcare directive, in which people can state their wishes for their end-of-life care, in case they are not in a position to make that decision

Who can make it?

An adult with a sound and healthy mind can make it. It should be voluntarily executed and based on informed consent. It should be expressed in specific terms in a language “absolutely clear and unambiguous”.

What should it contain?

It should contain the circumstances in which medical treatment should be withheld or withdrawn. It should specify that the “Will” can be revoked any time. It should give the name of the “guardian or close relative” who will give the go-ahead for starting the procedure of passive euthanasia. If there is more than one Living Will, the latest one will be valid.

In *Aruna Ramchandra Shanbaug v. Union of India*, the Apex court of India rejected a plea for its use on a woman in a vegetative state but issued guidelines allowing for the use of 'passive' euthanasia for terminally ill patients through the withholding of treatment.

CONCLUSION

A recent study in the 'Lancet Commission on Global Access to Palliative Care and Pain Relief' confirms that more than 25.5 million people worldwide die every year with serious physical and psychological suffering as a result of disease, injury or illness and an estimated 10 million patients in India requiring palliative care every year.

The legality is not the only issue involved in "Euthanasia". The society must be willing to discuss death and prepare for it.

Also, it is important to make sure that the legal procedures connected are as friendly as possible.

While there is a right to live and die with dignity, it is important to ensure that the SC ruling does not get misused.

There is a need to be cautious as there can be hidden reasons why a person wants to end his/her life.

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