Euthanasia

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. It is commonly called "mercy killing".

Euthanasia is defined as the administration of a lethal agent by another person to a patient for the purpose of relieving the patient's intolerable and incurable suffering.

TYPES OF EUTHANASIA

Euthanasia has been further defined as "active" or "passive".

- Active euthanasia refers to a physician deliberately acting in a way to end a patient's life. There are three types of active euthanasia.
  - Voluntary euthanasia is one form of active euthanasia which is performed at the request of the patient.
  - Involuntary euthanasia, also known as "mercy killing", involves taking the life of a patient who has not requested for it, with the intent of relieving his pain and suffering.
  - In nonvoluntary euthanasia, the process is carried out even though the patient is not in a position to give consent.
- Passive euthanasia pertains to withholding or withdrawing treatment necessary to maintain life.

ETHICAL DEBATE ON EUTHANASIA

It is a controversial issue that has been exposed to debate throughout the world as it involves deliberate termination of human life. This matter has witnessed heated debates not only within the premises of court but also among the elites, intelligentsia and academicians alike. There are two crucial paradigms around which the public discussions on euthanasia have been shaped.

- The first one revolves around sanctity of life and the impermissibility to end the same.
- The other one revolves around the principle of autonomy or choices and the belief that individuals have a right to end their life, when in misery.

Article 21 of the Constitution guarantees 'Right to Life', which is an inalienable right. However, the essence of human life is not merely restricted to breathing rather it is more about living a dignified life. To die with dignity is a concept that has led to major modifications in this field.

Recognizing this, in the landmark judgment in the matter of **Common Cause (A Regd. Society) vs. Union of India**, the Hon'ble Supreme Court of India also stated "*An inquiry into common law jurisdictions reveals that all adults with capacity to consent have the right of self-determination and autonomy. The said rights pave the way for the right to refuse medical treatment which has acclaimed universal recognition. A competent person who has come of age has the right to refuse specific treatment or all treatment or opt for an alternative treatment, even if such decision entails a risk of death*".

EVOLUTION OF LAW ON WITHDRAWAL OF LIFE SUPPORT IN INDIA

Active euthanasia is an offence under Section 302 (punishment for murder) of the Indian Penal Code (IPC) or at least under Section 304 (punishment for culpable homicide not amounting to murder).

- **302. Punishment for murder.** — Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.
- **304. Punishment for culpable homicide not amounting to murder.** — Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to 10 years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The following judgments of the Apex Court have played a significant role in the prevailing legal position on euthanasia:

- P Rathinam vs. Union of India in 1994

- Gian Kaur vs. State of Punjab in 1996
- Aruna Shanbaug vs. Union of India in 2011
- Common Cause vs. Union of India in 2018

In **P Rathinam vs. Union of India on 26 April, 1994**, it was held that *"Section 309 IPC deserves to be effaced from the Statute Book to humanise the Penal Laws… suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for… Section 309 violates Article 21, and so, it is void."* The Bench said that if a person has a Right to Live, he also has a Right to Die. However, this ruling was overturned in **Gian Kaur vs. State of Punjab on 21 March, 1996** where appellants were convicted by the court u/s 306 IPC and conversion was attacked on the ground that Section 306 IPC is unconstitutional violative of Article 21 – the constitutionality of Section 306 was questioned. The Court said that the Right to Life is a natural right embodied in Article 21, but suicide is an unnatural termination of life and declared Section 309 IPC as constitutional. It said that Article 21 does not include the 'Right to Die'.

Section 306 prescribes punishment for abetment of suicide, while Section 309 punishes attempt to commit suicide.

The issue of euthanasia was again raised before the Supreme Court in 2011 in "**Aruna Ramchandra Shanbaug vs. Union of India**", which for the first time allowed passive euthanasia for a patient in a permanent vegetative state, but it had to have the sanction of the High Court. The Apex Court noted the lack of a law with regard to withdrawing life support for a person in permanent vegetative state or who is otherwise incompetent to take a decision in this connection.

"*A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient"…"Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale's case (supra). In our opinion, this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient."* It further stated as follows *"…in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of the near relatives, next friend and doctors must be given due weight"*.

In the landmark judgment "**Common Cause (A Regd. Society) vs. Union of India, delivered in 2018**, the Hon'ble Supreme Court of India held that the Right to Die with dignity is now a fundamental right under Article 21 of Constitution of India. Through this judgment, it has legalized passive euthanasia and advance medical directive/living will. The Bench also drew a distinction between active and passive euthanasia. "In active euthanasia, a specific overt act is done to end the patient's life whereas in passive euthanasia, something is not done which is necessary for preserving a patient's life." This difference has led to legalization of passive euthanasia by making a law or by judicial interpretation.

The Court was of the opinion that *"Advance Medical Directive would serve as a fruitful means to facilitate the fructification of the sacrosanct right to life with dignity. The said directive, we think, will dispel many a doubt at the relevant time of need during the course of treatment of the patient. That apart, it will strengthen the mind of the treating doctors as they will be in a position to ensure, after being satisfied, that they are acting in a lawful manner."*

Four Terminologies Need to be Understood in Context of this Judgment

Advance directive: This is a legal document made when the person is alive and still in possession of decisional capacity about how treatment decisions should be made on her or his behalf if they are no longer able to make decisions for themselves or lose the capacity to make such decisions. Advanced directives are acted upon only when the patient has lost the ability to make decisions for himself. They can be revoked orally or in writing by the patient at any time (so long as he or she has maintained decisional capacity).

Living will: A living will is a document that summarizes a person's preferences for future medical care and addresses resuscitation and life support. It is a document in which patients give clear instructions about treatment to be administered or state their wishes for end-of-life medical care, when they are no longer able to communicate their decisions. It comes into play if the person is terminally ill without chance of recovery, and outlines the desire to withhold heroic measures.

The living will gives a general sense of the patient's wishes, and can be modified by the patient to include

specific interventions such as cardiopulmonary resuscitation (CPR), ventilatory support, or enteral feeding.

Proxy will: In a proxy will, the patient identifies the person/s who will take decision with regard to treatment on his/her behalf in case he/she is incapacitated. Simply put, it can be called as giving "power of attorney" for medical decisions.

DNR or Do not resuscitate: This document talks of resuscitation only, whether the patient wishes for all efforts to be made to revive him by CPR and to be put on lifesaving ventilator.

However, the Bench cautioned about the need for safeguards and laid down strict guidelines on execution of the advance directive/living will to prevent its misuse. These guidelines remain in force since the Parliament is yet to enact a legislation on passive euthanasia.

Supreme Court Guidelines on Advanced Directive and Living Will

Who can execute the advance directive and how?

As directed by the Supreme Court, the advanced directive can be executed only an adult of sound and healthy state of mind, who can communicate, related and comprehend the purpose and consequences of executing the document. It must be voluntarily executed without any coercion or inducement or compulsion. It should be with informed consent without any undue influence or constraint. It should be written clearly when medical treatment may be withdrawn.

What should it contain?

The advanced directive should clearly indicate the decision relating to circumstances in which treatment is withdrawn. It should have absolutely clear instructions in specific terms.

The executor may revoke at any time but the executor must understand the consequence of executing such document. It should specify the name of the guardian or close relative who in the event of executor becomes incapable of making decisions, to authorize and to give consent. If there are more than one valid advanced directives, the most recently signed is considered.

How should it be recorded and preserved?

The document should be signed by the executor in the presence of two independent witnesses and countersigned by local Judicial Magistrate of First Class (JMFC) designated by concerned District Judge. The witnesses and the Magistrate record that the document is executed voluntarily without any coercion or compulsion with relevant information. The Magistrate shall preserve one copy in his office and also keep it in a digital format.

The Magistrate forwards one copy to jurisdictional District Court for registration. The Magistrate informs the immediate family members about the document. A copy is handed over to competent officer of local government, Municipality or Panchayat. The Magistrate shall hand over the copy to family physician if any.

When and by whom can it be given effect to?

If the executor (patient) becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician, when made aware about the advance directive, should ascertain the genuineness and authenticity thereof from the jurisdictional JMFC.

The physician/hospital where the executor has been admitted for medical treatment shall then constitute a Medical Board consisting of the Head of the treating Department and at least three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry, or oncology with experience in critical care and with overall standing in the medical profession of at least 20 years.

Once the hospital medical board certifies that the instructions contained in the advance directive ought to be carried out, the jurisdictional Collector is informed, who then constitutes a second Medical Board comprising the Chief District Medical Officer of the concerned district as the Chairman and three expert doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry, or oncology with experience in critical care and with overall standing in the medical profession of at least 20 years (who were not members of the previous Medical Board of the hospital).

This Board will visit the patient before implementing the decision of the Court. The JMFC shall visit the patient at the earliest and, after examining all aspects, authorize the implementation of the decision of the Board.

The executor can revoke the document at any stage before implementation.

What if permission is refused by the medical board?

If permission to withdraw treatment is refused by hospital medical board or the secondary medical board constituted by the Collector, the executor can approach the High Court by a writ petition under Article 226 of Constitution. The High Court constitutes an independent committee with three doctors from general medicine, cardiology, neurology, nephrology, psychiatry, or oncology with experience in critical care and at least 20 years of experience. The committee will submit the report about the feasibility of acting upon the instructions contained in the advance directive. The High Court is however expected to expedite the hearing and "shall render its decision at the earliest" acting in "the best interests of the patient".

Revocation or inapplicability of advance directive

At any time, the executor may withdraw the advance directive and it should be in writing. The advance directive shall not be applicable to the circumstances, which the person did not anticipate. If the advance directive is not clear and ambiguous, it is not applicable. If the hospital medical board decides not to follow advance directive, then the executor shall make an application to the medical board constituted by the collector.

If there is no advanced directive, the person cannot be alienated. The same procedure is followed as in cases where advanced directives are in existence.

EUTHANASIA GUIDELINES MODIFIED

The Indian Society for Critical Care Medicine (ISCCM) filed a petition in July 2019, describing the 2018 guidelines as "cumbersome". In a bid to streamline the steps of removal of life support from terminally ill patients, on 24th January 2023, the Supreme Court modified its 2018 order on passive euthanasia.

- While the modified guidelines have retained the requirement of two medical boards, the second review board will also be constituted by the hospital where the patient is undergoing treatment and not the District Collector as was mandated earlier. The review board will have a doctor nominated by the District Medical Officer.
- Earlier doctors with at least 20 years of experience were selected for the medical board. But now doctors with 5 years of experience can be included in the medical board.
- The Apex Court imposed a time limit of 48 hours (preferably) for the boards to come to a decision in order to hasten the process and not delay it any more than required.
- The new order does not require the sanction of the judicial magistrate for withholding treatment or withdrawal of life support. The Magistrate just needs to be informed.
- The living will or advance directive had to be made in the presence of two witnesses who would attest the document which had to be then countersigned by the Judicial Magistrate. But now the living will can be attested by a notary or a gazetted officer.

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