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The Dilemma between Right to Choose and Right to Life and Live with Dignity and Personal Liberty: Active Euthanasia

SAUBHAGYA SINGLA[1]

ABSTRACT

Euthanasia, also called mercy killing, act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures. Because there is no specific provision for it in most legal systems, it is usually regarded as either suicide(if performed by the patient himself) or murder (if performed by another). Physicians may, however, lawfully decide not to prolong life in cases of extreme suffering, and they may administer drugs to relieve pain even if this shortens the patient's life. In the late 20th century, several European countries had special provisions in their criminal codes for lenient sentencing and the consideration of extenuating circumstances in prosecutions for euthanasia.

The concept of rights is embodying in the idea that man as a free individual is empowered with reason and conscience capable of carrying out moral and free choices. Every human aspires to be treated with dignity, to express and voice out their opinion, to associate with whom they want to, to choose their representatives in the government, to worship and practice their religious beliefs how, when and where they want to.

To endown a man with the right to choose one's own path of life is the fundamental advantage man has among all the other creatures in the world. This right of choice has been recognized as a fundamental right under Article 21 of the Indian Constitution, this right was reinforced in the case of CA Thomas V. Union of India. It is also suggested that the value of life as so perceived is lessened not by a decision to refuse treatment, but by the failure to allow a human being the right of choice. A fundamental concept that defines the essence of Article 21 is the right to live with dignity and right to personal liberty. Although right to choose is a subset of the right to life and personal liberty, there has been a long-standing conflict between the right to choose and right to life with respect to active and passive euthanasia.

This paper aims at presenting a liberal idea of the marriage of the two concepts of right to choose and right to life with respect to active and passive euthanasia, also commenting

[1] Author is a student at Christ Deemed to be University, Main Campus, India.

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on the various ideologies by jurists on right to die and no right to die. It also aims at representing the right to live out life with dignity and chose when to artificially absolve an individual from the suffering of natural and unavoidable death of individuals on their own terms. This article also addresses the ' vitalism ' principle which is adopted by the state and how this principle fundamentally fails in paying attention to the truly vulnerable persons at the 'margins of existence' who are incapable of ending their lives because of mental incompetence or physical disability are unjustly pre-empted from availing the right to die in its plenary form.

The purpose of this paper will be to provide suggestions on how the law on active euthanasia can be drafted while also addressing the downfalls of this subject. It goes without saying this process is subject to many personal corruptions which have to be addressed by the authority before approving the procedure. This paper only deals with the will of an individual and respecting their decision to end their lives with dignity and not subject them to the an artificially prolonged life.

The following observations and findings are supported through a doctrinal research using well established articles, ratio of different cases, obiter of different justices and the jurisprudence behind the concept of individuals right to choose.

The right holder's wishes or choice to live or die in a situation of inevitable death and suffering has its moral ups and downs, but as Lord Browne-Wilkinson stated " ...how can it be lawful to allow a patient to die slowly, through painlessly, over a period of weeks from lack of food but unlawful to produce his immediate death by a lethal injection..." the concept of active euthanasia is not killing a man because he wants to die, it is upholding a mans right not to be left to die by suffering to an inevitable end.

I. INTRODUCTION

For the sake of this paper the word suicide will be interchangeably used for the act of active euthanasia. Suicide in the context of this paper will mean the act of choosing to end ones life through active euthanasia

The most fundamental question surrounding the concept of right to choose to live or not is whether life is worth living or not. If life is not worth living, then we can follow the assumption that our thoughts determine our actions the act of committing suicide is valid. If life is worth living then suicide is not valid. This paper addresses this right of individuals to choose to live or not, with the philosophical perspective and the right to live with dignity enshrined to people under Article 21 of the Indian constitution. Does the state's duty to protect the life of its people also include preserving life of the people who do not what to live life due to their own will or terminal illness over their right to choose and right to privacy?

If the state grants the right to individuals to choose whether they want to live or not, how would such a right be viewed from an individua's point of view and a society's point of view, since when a state grants a right, it implies that there a duty on the state towards the right holder, where the state derives this power from the society. Thus, it is also essential for this paper to focus on the socio-legal issues arising out of the same.

There are many philosophies around the world that have evolved with time either in support or against the act of suicide either by healthy or terminally ill individuals.

II. HISTORICAL VIEW OF SUICIDE

There isn't a consistent view which has been adopted by people with respect to the act of committing suicide. This act has different views ad explanations to these views based on religion, culture, superstition and pleasure. For example, before the Christian era, during the Germanic tribes' era, the act of committing suicide wasn't given any thought. The different views on this topic evolved with the evolution of a societal form of living which promoted the concept of self-preservation which was observed to be favorable to the society[2].

In the Greco-Roman period of evolution, the act of committing suicide was condemned Athenian and Thebian practice of denying these individual funeral rights. Usually they would detach the hand that committed the act and burry it separately in order to indicate eternal damnation. With the evolution of the Greek philosophy it was noted that they did not condemn the act of committing suicide, but Socrates condemned the act, when there was a judgement passed against him, he changed his view and accepted the Greek philosophy of "visible necessity of dying." Plato further compiled these concepts in his work while condemning suicide and also providing exceptions to this act. His condemnation of suicide is questionable, as he stated that suicide is justifiable when it was committed due to intolerable stress, major disgrace or by virtue of judgment of the state. Aristotle condemned suicide as an act of crowdedness and against the state arguing that as law never commands a person to kill himself, thus, killing one's own self is against the law.

The Epicureans and Stoics philosophy is based on human pleasure, they believe that suicide is valid when the circumstances warrant it, as in the cause of pain or disease. According to the Stoics, right to die was necessary to establish the concept of human freedom.

The Roman philosophy also supports the Stoic view, there is no general prohibition to suicide, but when it was committed by soldiers who are essential to perform their duties for the welfare of the state, they would be punished for the attempted commission of the act.

[2] Jose P. Crisostomo Jr. , Cesar H. David, Dennis G. Mesina & Alfredo Z. Pio de Roda II., The Right to Die, 55 PHIL. L.J. 338 (1980).

Seneca contended that suicide is a last defence against intolerant human suffering. They argued for suicide in old age when the body could not discharge its offices, but in the same breath, they also recognised the duty to live for one's own dependents. Pliny maintained that the exercise of the right to die was God's best gift to man amidst the sufferings of life.

Completely contrary to the Roman view on suicide was Christianity's view on suicide. They believed that committing suicide was a sin, St. Augustine stated that suicide violates the commandment "Thou shalt not kill", that it precluded any opportunity for repentance and that it was a very cowardly act. According to him only God had the right to give and take away life. this philosophy was then adopted by all the countries around the world according to their own beliefs[3].

The Indian Penal Code also talks about punishment to individuals who attempt to commit suicide, individuals involved in instigating abetting and assisting in suicide are also punished. These principles are criminal in nature, the other aspect of this is the rich of choice and right to live a life with dignity.

III. EUTHANASIA

Along with suicide, euthanasia is the other expression of the right to die. Euthanasia, also called mercy killing, act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures[4].

Medical Aspect

The problem of a person's right to die is a crucial issue in the field of medicine. Practitioners in the medical field have always been tormented by this problem, facing the situation where a patient suffering from a painful, usually terminal illness would be better off if his existence were cut off instead of letting him drift to an inevitable agonizing death. Thus arose the solution presented by euthanasia. Its more popular form is active euthanasia or mercy killing[5].

The term euthanasia is derived from a Greek word which is literal translated to "easy death". An early medical definition of the word is "a soft easy passage out of the world, without

[3] Jose P. Crisostomo Jr. , Cesar H. David, Dennis G. Mesina & Alfredo Z. Pio de Roda II., The Right to Die, 55 PHIL. L.J. 338 (1980).
[4] Jennifer Cole Popick, A Time to Die: Deciding the Legality of Physician-Assisted Suicide, 24 PEPP. L. REV. 1327 (1997).
[5] Edward Rubin, Assisted Suicide, Morality, and Law: Why Prohibiting Assisted Suicide Violates the Establishment Clause, 63 VAND. L. REV. 761 (2010).

convulsion or pain." It can be observed throughout history that many physicians would provide their patients with the poison they asked for to avoid the suffering caused due to slow agonising pain by the terminal illness. But it has been observed that most doctors do not want to accept the role of public executioners by administering the process of active euthanasia. This act is considered to be against the doctors professional ethics, their hypocritic oath and general sense of morality.

Does this mean that the individuals do not have a right to refuse treatment or right to choose to die or right to live with dignity (being weak and suffering from constant pain is considered as being undignified)?

One of the most well-known cases dealing with right to assisted suicide was that of Bouvia v. Superior Court[6] where Elizabeth Bouvai was a quadriplegic from cerebral palsy nd lived in a state hospital, she was completely dependent on others a d required high intermittent pain medication. She petitioned the court, seeking removal of feeding tube being maintained against her will. The Californian Court of Appeal ultimately ruled that Ms. Bouvia had the right to refuse medical treatment, stating that the decision to live or die belongs to the patient rather than the state. Justice Compton treated the case as one of requesting assisted suicide, where he wrote that the right to die is an integral part of our right to control our own destinies so long as the rights of others are not affected. That right should, in my opinion, include the ability to enlist assistance from others, including the medical profession, in making death as painless and quick as possible.

In another case of Donaldson v. Van De Kamp[7] it was held that Thomas Donaldson, who suffered brain cancer and was expected to die within five years, petitioned the court to be allowed assistance in his suicide so that he could be cryogenically preserved until a cure was found and, he hoped his body returned to life. The court referred to relevant state interests (preserving life, preventing suicide, protecting innocent third parties, and maintaining the ethical standards of the medical profession) that must be balanced against an individual's interest. It also added an unqualified general interest in the preservation of human life. However, the court failed to articulate whether Donaldson's interest in choosing death outweighed the state's interests. Instead it based its conclusion that Donaldson not be allowed assistance in suicide on the state interest in "maintaining the social order through enforcement of the criminal law".

[6] Bouvia v. Superior Court 225 Cal. Rptr. 297, 307-308 (Cal. Ct App.1986).
[7] Donaldson v. Van De Kamp 4 Cal. Rptr. 2d 59 (Cal. Ct. App.1986).

The court reasoned that this interest outweighs any interest of Donaldson in ending his life and having a third party assist him in doing so. The court also reasoned that it is difficult to evaluate the assister's motive and potential undue influence. The implication here is that if an assisted suicide law did not exist, there would be little reason to disallow Mr. Donaldson's request despite the court's determination that no constitutional right existed.

On the same line in the Indian scenario while analysing Article 21 of the constitution, the Supreme Court in the case of Gian Kaur v. State of Punjab[8] , held that death due to termination of natural life is certain and imminent and the process of natural death has commenced. The court further held that this may fall within the ambit of right to live with human dignity up to the end of natural life. This may include the right of a dying man to also die with dignity when his life is ebbing out. This cannot be equated with the right to die an unnatural death curtailing the natural span of life.

IV. ARTICLE 21: NO RIGHT TO DIE

With reference to the right to live with dignity, where dignity is its life breath from the directive principles of state policy and particularly clauses (e) and (f) of article 39 and articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

While noticing that the constitution is a paternalistic form law, whose aim is to protect the people that it governs, law in itself cannot propose a right which is violative of the basic functional norm of itself. The Indian constitution has a very high respect for customary law as long as it is morally right, as Kant in his Book mentions that the act of commuting suicide is a morally wrong act, the constitution despite having an express right that allows its people to have the right to live a dignified life, that does not include the immoral right to die.

In the case of State of Maharashtra v. Maruti Sripati [9]Duba the Court held that the right to life guaranteed under Article 21 includes right to die, and the Hon'ble High Court struck down Section 309 of the IPC that provides punishment for an attempt to commit suicide by a person as unconstitutional.

In another case of P. Rathinam v. Union of India[10] , a two-judge division bench of the

[8]Gian Kaur v. State of Punjab 1996 SCC (2) 648.
[9] State of Maharashtra v. Maruti Sripati Duba 1986 Mah LJ 913.
[10] P. Rathinam v. Union of India 1994 3 SCC 394.

Supreme Court, took cognizance of the relationship/contradiction between Sec. 309, I.P.C., and Article 21. The court supported the decision of the High Court of Bombay in Maruti Sripati Dubal's case held that the right to life embodies in article 21 also embodied in it a right not to live a forced life, to his detriment disadvantage or disliking. The court argued that the word life in article 21 means right to live with human dignity and the same does not merely connote continued drudgery. Thus, the court concluded that the right to live of which article 21 speaks of can be said to bring in its trail the right not to live a forced life.

V. CONCLUSION

Through the process of information review for this paper, it was seen that allowing active euthanasia has benefits such as improving Physician-Patient relationship, ending the inevitable suffering of the patient due a terminal illness. But it also has many ill effects such as the legal representatives of the individuals and the physicians will be playing the role of God by controlling who gets to live and who dies, it is also a slippery slope where there can be many cases of mistreatment, it is also dangerous in cases of misdiagnoses, most doctors are not willing to actively administer the killing of their patients which is against their professional ethic, morality and their most sacred hypocritic oath and last but not the least, there has always been diseases which used to be terminally, but now they have a cure due to the advancements in medical science. This hope of future improvements would be lost by patients when active euthanasia is legalised.

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