



Death by Choice

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Abstract

The paper is an attempt to analyse the ethical, practical and religious side of the legalisation of passive Euthanasia by Supreme Court of India, by means of withdrawal of life support to patients in a permanent vegetative state. This decision was made as a part of the verdict in a case involving ArunaShanbaug who had been in a persistent vegetative state until her death in 2015. The order was passed by a five judge Constitution bench of CJI DipakMisra, Justice AK Sikri, AM Khanwilkar, DY Chandrachud and Ashok Bhushan. According to the above mentioned decision, passive euthanasia would be permissible in cases where the patients have consented through a living will and is either terminally ill or in a vegetative state. All the judges responsible for the verdict unanimously consented for holding the living will as a moral and legal criterion to practice passive euthanasia, because an individual should not be compelled to suffer in a vegetative state when they don't wish to continue living and life is not immortal. Thus, in the eye of morality, Living will becomes the moral criterion of passive Euthanasia. But is it so simple? Is this an idea to be

celebrated? Does it not interfere with article 21 of the constitution which gives us the right to live? But at the same time, does right to live not also include the right to die with dignity. Though the law incorporates safeguards, how do we still ensure that mis-utilisation does not happen? Also from a health care practitioners perspective, is it not his duty to take care of his patients and preserve life? Does the verdict not go against the very basis of medical profession, specially the Hippocratic Oath which states that the doctors foremost duty is to save life?¹

The paper would also focus on the reaction of religious groups on this verdict. For example, the Christian outlook which says that my life was given as a gift to me, what right do I have to take it away? On the other hand, we have Jains and Hindus who have the traditional rituals like Santhara and Prayopavesa, wherein one fasts unto death.² The paper would be a critical investigation into the moral justification of Death by Choice in the realm of bio-ethics. To initiate the same, we would be critically analysing various arguments in the realm of bio-ethics such as, whether there is a distinction between those declared brain dead and those in persistent vegetative state, is brain death necessary and sufficient for death, the sanctity of life, the moral dilemma of killing or letting die, etc.³ and conclude the paper by taking a conclusive stand in case of the existing moral debate in the field of Passive Euthanasia.

¹Medical definition of Hippocratic Oath, https://www.medicinenet.com/script/main/art.asp?article_key=20909, accessed on 10th may 2018.

²Life Beyond Death, <https://www.lifebeyonddeath.org/.terminal-illness.html>, accessed on 10th may 2018.

³Tom Russell, Brain Death, Ashgate Publishing limited.

1 Introduction

First let us try to understand the meaning of the term Euthanasia. It is defined from the Greek word euthanatos with eu meaning well and thanatos meaning death.⁴ It is defined as the practice of intentionally ending a life to relieve pain and suffering.⁵ The British House of Lords selected committee on Medical Ethics defines eu-

thanasia as a deliberate intervention undertaken with the intention of ending a life, to relieve intolerable suffering.⁶ Since 2006, euthanasia is the most active area of research in contemporary bioethics. Let us first try to trace the history of usage of this term. It belongs to historian Suetonius, who described how the emperor Augustus, dying quickly and suffering in the arms of his wife, Livia, experienced Euthanasia he had wished for.⁷

In medical context, the term was first used by Francis Bacon in the 17th century and it is referred to, painless and easy death.⁸ It was the physicians responsibility to alleviate the physical suffering of the body. In contemporary times, Euthanasia has been defined as the painless inducement of a quick death.⁹

The definition of Euthanasia by Oxford English Dictionary incorporates suffering as a necessary condition with the painless killing of a patient suffering from an incurable and painful disease or an irreversible coma.¹⁰

Types of Euthanasia

Euthanasia can be classified into five types;

1. **Voluntary euthanasia**- when a patients life is terminated on request by the patient.

2. **Involuntary euthanasia**- when the person whose life is terminated is not in favour of becoming a victim of this medical practice.

3. **Non-voluntary euthanasia**- when the person whose life is terminated neither initiated a request, nor gave any consent. Patients consent is unavailable. This generally happens in the case of patients in a persistent vegetative state.

4. **Active euthanasia**- Bringing about death by an act is called active euthanasia.¹¹ This can be done by the high dosage of drugs either by oneself or by the aid of a physician.

5. **Passive euthanasia**- Bringing about death by omission is called passive euthanasia. This can be done by withdrawing or withholding treatment. Withdrawing treatment would mean switching off a machine (ventilator) that keeps the person alive. Withholding treatment means not carrying out a procedure. E.g. a surgery that would extend the life of the patient for a short time.¹²

⁴Euthanasia, <https://en.m.wikipedia.org/wiki/.Euthanasia> , accessed on 11th may 2018.

⁵Voluntary Euthanasia, (Stanford Encyclopaedia of Philosophy).

Plato.stanford.edu.

⁶Harris, N.M. (October 2001). The euthanasia debate.JR Army Med Corps.147 (3):367-370.doi:10.1136/jramc-147-03-22.PMID11766225.

⁷Philippe Letellier, History and Definition of a word, in Euthanasia: Ethical and Human Aspects , Council of Europe.

⁸Francis, Bacon, The Major Works by Francis Bacon.

⁹Kohl Marmin, The Morality of Killing, New York: Humanities Press, p.94.

¹⁰Euthanasia, Oxford Dictionaries, Oxford University Press.

Let us now focus on the famous ArunaShanbaug case which changed Euthanasia laws in India. It is considered to be a landmark verdict. The Supreme Court on March 9th 2018 ruled that individuals had a right to die with dignity allowing passive euthanasia with stringent guidelines. An individual can draft a living will specifying that they should not be put on life support if they slip into an incurable coma in the near future. This living will is referred to as an advanced directive by the court.¹³ In this context, it is worth mentioning that the NGO Common Cause had put in a plea saying that a patient who is suffering from end stage disease should be given relief from pain by withdrawal of artificial medical support provided to the patient. This is legally referred to as Passive Euthanasia. A little history of the case mentioned would help us to analyse the verdict.

Case Study: A RamachandraShanbaug was a nurse at the King Edwards Memorial hospital in Mumbai. In November 1973, she was assaulted by ward boy SohanlalBharthaValmiki of the same hospital while changing her clothes in the hospital basement. Valmiki strangled Shanbaug with a dog chain around the neck. The attack cut off oxygen supply from her brain, leaving her blind, and deaf, paralysed and in a vegetative state for the next 42 years. She would only survive on mashed food. She could not move her hands or legs, could not talk, or perform the basic functions of a human being.

The Concept of Living Will: If we read the judgement carefully, we find that it is wholly based on the concept of living will. The question which immediately arises is that What is a living will?. It is a written document that allows a patient to give explicit instruction in advance about the medical treatment to be administered when he or she is terminally ill or no longer able to express

informed consent. It also includes authorising your family to switch off life support, in case a medical board declared that they were beyond medical health. According to the living will, a terminally ill patient or a person in persistent vegetative state can refuse medical treatment saying that the right to live with dignity also includes smoothening the process of dying. Mere existence does not amount to presence. Just because a patient is lying in a vegetative state in a hospital does not mean that he is present in this world.

Does this mean that the living will can be issued by anyone? Well, the answer is no. not anyone can issue the advance directive for ending his or her life. The verdict clearly states that the advance medical directive can only be executed by an adult who is of a sound and healthy state of mind and a position to communicate relate and comprehend the purpose and consequences of executing the document. It must be voluntarily executed and without any coercion or inducement or compulsion and after having full knowledge or information. Nobody should force you to write this living will. You should have explored all the medical options before doing so.

¹¹Forms of euthanasia, [http:// www. bbc. co. uk/ ethics /.eu-
thanasia /overview /forms. shtml](http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml) accessed on 10th may, 2018.

¹²Ibid. accessed on 10th may 2018.

¹³India allows living wills for terminally ill, BBC NEWS, 9th march, 2018.

¹⁴Tom Russell, Brain Death, Ashgate Publishing limited, pg.42

¹⁵Ibid. Pg.40

¹⁶Irving, Copi, Introduction to Logic.

Misuse of Living Will

Is the concept of Living Will not prone to misuse? First instance would be of people who are poor. In such cases, doctors and relatives can probably conspire to ensure that there is some fudged living will. They would not want to bear the financial burden of a terminally ill patient. The second instance can be of a very rich person who is terminally ill. In this case, the relatives want to acquire his property and therefore they misuse this living will. The problem with both the mentioned cases would be that like Capital Punishment, if it is found out later that the living will was fudged, it maybe too late to reverse the decision about it. However, in order to allow passive euthanasia, the concept of living will has to be

implemented. For this, safeguards need to be evolved. The concept of living will can be implemented under the following conditions;

I have a terminal condition.

Or I have an end stage condition

Or

I am in a persistent vegetative state, meaning that the person is paralysed completely from many years.

Practical Arguments

1. **Proper Palliative care makes Euthanasia unnecessary.** This is applicable only in the case of terminally ill patients. We are not talking about patients in a persistent vegetative state.

2. There is no way of properly regulating euthanasia because the concept of living will can always be misused. In Switzerland, there was a doctor called Dr. Death and he made active euthanasia his profession. People from across the world would visit him. It was his passion to kill people to relieve them of their pain.

Ethical Arguments

• Difference between Vegetative state and Brain Death

Medically a person who is Brain Dead is bereft of all the functions of the brain such as cortical, subcortical and brainstem functions, wherein the chances of recovery are nil and the body is unable to maintain the cardiovascular or respiratory functions. Since disruption of all these integral functions of the body entails complete death, brain death which leads to the dis-function of these inevitable body processes is definitely a necessary and sufficient condition for death. But in contrast to this, when a body is in a vegetative state, the brain stops exhibiting the cognitive functions. It just leads to the damage of cortical functions. But unlike brain death, the other bodily functions like respiratory control, blood pressure are not ruptured. This means that the person is deprived of any physical mental cognition. This entails that the person would also not be subject to any mental cognition of pain and pleasure. Since the whole idea of consenting for Euthanasia is to relieve a person from any kind of unbearable pain and suffering, and in case of a patient being in a vegetative state the patient is actually oblivious of any pain and all the other organs are working properly, life being mortal, in such a case euthanasia should not be permissible. Medical history has given us evidence to believe that it is not impossible to regain consciousness on persistent treatment from a

vegetative state. Thus permitting euthanasia would be denying the person the most fundamental right listed in any constitution that is the right to live.

- **Sanctity of Life:** If euthanasia is accepted, then the societies respect for sanctity of life is weakened. We may start taking life very casually. Also accepting euthanasia means that we weigh the worth of some lives (those of disabled and sick people) are less worthy than others. What kind of species do we become if we do this?

- **Voluntary Euthanasia** is just an initiation of a slippery slope that gradually proceeds to involuntary euthanasia and the act of terminating people who are conceived as undesirable. Thus granting euthanasia as acceptable would grant murder also acceptable.

- **Best interest of the patient:** It is actually very difficult to demarcate the patients interest in case of patients suffering from terminally ill diseases. The doctor or the family might opt for euthanasia as the patients best interest as it will immediately relieve the patient from the unbearable pain or suffering, both physically and mentally he is going through. But the pace at which medical science is developing today, Karl Poppers theory of Falsification can thoroughly ensure chance of survival in case of the terminally ill patients. In case of a living will, also how does the person know whether euthanasia is in his best interest?

- The repercussion of giving euthanasia to a patient does not remain in isolation. It has a very grave impact on the family and relatives of the patient.

- Allowing euthanasia might also lead to imparting partial attention to the terminally ill by the doctors. Medical practitioners might not bestow as much effort as they do now to save a patients life. Allowing Euthanasia will keep absolutely no motivation for doctors to indulge themselves in the hard-core research for discovering new cures and the treatments for the terminally ill. If everyone has a living will, then what will happen to medical research and medical science? Most progress has been made because there have been certain diseases and scientist has been constantly engaged in finding out their cures.

- **Power in the hands of doctors:** Euthanasia gives too much power to the doctors. They decide whether a person should be allowed to live or not. Should so much of powers be given to

doctors? How do we ensure that everyone is acting in good faith and in the best interest of the patient? At the end of the day, doctors are also human beings and have a tendency to be corrupt.

- Lastly euthanasia pressurises vulnerable people to end their lives due to family pressure by greedy family members or relatives. Sometimes vulnerable people are unable to afford treatment and might consider euthanasia as the last resort. Doctors often might conceive of quickly freeing up the medical resources for the use of other patients.

2 Religious Arguments

From a religious perspective, euthanasia would generally not be acceptable as it would be implying that a person by opting for euthanasia is going against the will of God. If you believe in God, your religion will say that life is sacrosanct, nobody can grant it and nobody can take it other than God. To kill one-self or to get someone else to do it for us is to deny God and to deny Gods rights over our lives, his right to choose the length of our lives and the way our lives end.

Christianity teaches that suffering can have a place in Gods plan, in that it allows the sufferer to share in Christs agony and his redeeming sacrifice. The most powerful Christian argument against euthanasia is that death is not the end. (Saunders). Gods intervention through Christs death and resurrection for our sins (Romans 5:8; 1 Corinthians 15:3) means that through the eyes of faith, we can look forward to a new world after death with God where there is no more death or mourning or crying or pain (Revelation 21:4)

Islam says that all human life is sacred because it is given by Allah and that Allah chooses how long each person will live.

According to Hinduism (euthanasia, murder, suicide), interferes with the killed souls progress towards liberation. It also brings bad karma to the killer because of the violation of the Principle of non-violence.

Euthanasia is a concept that is accepted in two major religions, Jainism and Buddhism. However, Hinduism, Islam and Christianity are against Euthanasia. If we look at history, we find that there

is a contrast between the 2500 year old Hippocratic Oath of medical practitioners not to give a lethal drug to anyone nor to advice such a plan. The famous Greek philosopher Plato did not support medical treatment to those afflicted with disease. To quote Plato famous work, in which it is written but if the man had sickly constitution and intemperate, his life was worth nothing to himself or to anyone else; medicine was not meant for such people and they should not be treated though they might be richer than the midus. As per the Hindu scripture both life and death is gifted to us by the God, and no one in this world has the right to take it from us. As per Muslims, life and death is dependant on Allah's will. Christianity echoes the same view and disapproves the concept of euthanasia.

The concept of killing has also been discussed in religions like Buddhism and Jainism. Jains believe in the concept of self-build death referred to as *sanlekhana* which literally means fast until death. Buddhist scriptures also give us evidence wherein Lord Buddha permits the act of self-build death in case of an extremely ill person. Such an act would be categorised as an act of compassion. In Jainism, it is referred to as *Santhara* by Svetambara Jains and *sanlekhan* by Digambara Jains. The main aim behind this practice is self-purification, however it is only permitted when all purposes of life have been extinguished. Self-purification finally leads to liberation of the soul from the cycle of birth and death.

3 Conclusion

Thus from the above arguments, we can conclude that euthanasia must not be permissible in case of patients in a vegetative state and terminally ill patients as killing is wrong in itself, that is intrinsically and cannot be justified by any means in cases where the person still stands a chance to regain consciousness, in spite of having a living will as, when a person does not have the capability to give life, he/she must not have the liberty to take it. But at once killing can be sufficed to avoid greater evil. For instance, in case of the brain dead person, passive euthanasia might save everyone from greater evils. Since a brain dead person is undistinguishable from the dead person, that is death and brain death is used interchangeably by medical practitioners, giving him passive euthanasia

would not actually entail killing the person, as one by no means can kill a person who is already dead. But in this case, the act of euthanasia can lead to the allocation of the medical resources previously used by a brain dead person for actually the patient who has the potential to recover from his illness.

¹⁷Jonathan, Glover, The Sanctity of Life, in Bio-ethics: An Anthology, Blackwell Publishing, 1999, pg. 193

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