

# LEGALFOXES LAW TIMES

## Euthanasia

By: Juhi Gaba

### ABSTRACT

In general, suffering is not only a medical problem but also an existential problem that extends beyond physical pain. It is influenced by many factors such as psychological, cultural, and spiritual factors and we can deal with physical symptoms but the suffering may remain. Euthanasia also called mercy killing. Euthanasia means terminating his own ill life. Different countries have different laws related to euthanasia. Some countries accept this and some countries reject this. Doctors and family members both are involved in this. The purpose of euthanasia is all about self-destruction. As per India, the Constitution of India is supreme which doesn't allow euthanasia as well as the Indian Penal Code also not allowed to do so. As an exception 5 of section 300 of the Indian penal code, 1860 where the law of India remains causing death with consent countries. Although in India Passive Euthanasia is allowed. In the USA, the UK euthanasia is illegal. It is a debatable topic everywhere in which many questions arise which we have to answer for that. The government should apply legal solutions to keep their country safe from these kinds of wrong things. Based on medical conditions a person chooses death for himself. It is professional and ethical misconduct on behalf of doctors if they help them to terminate their life. If he does so then he will be penalized. Christens and Muslims are against Euthanasia. Santhara means "Moksha". It is the practice of declining the intake of food and water. This practice is followed by the Jain religion to adopt death in a peaceful and dignified manner. "Assisted Suicide" means helping others to kill themselves intentionally.

**Keywords:-** Euthanasia, Passive Euthanasia. Santhara, Assisted Suicide.

## Introduction

As we all know this is a debatable issue where many people agree for this and some disagree. But sometimes it is good because people don't want to survive with pain. As god writes everyone's life that nobody knows when a human will die from their life. It's a person's discretion about their moral rights or moral wrongs. How many countries allow this? So 9 countries allow this legally and few countries are the Netherlands, Belgium, Colombia, etc. If euthanasia is allowed then there may be many cases to do something for the country like it's their discretion for life whether they want to live with dignity or not. All these kinds of examples are relatable to be in favor of it but some against points like it will increase the capacity of everyone to do who wants to do this, no strict action against them taken by the government. It is professional and moral misconduct. Euthanasia or we call mercy killing. It means a person ends up his life. Till any person dies before that he is capable enough to live his life as enjoyable. But sometimes he ends up his life by unnatural means because his desirous not getting fulfilled. As choosing death for himself based on the medical conditions of the person and death by someone else.

## Historical Background

This method of killing is not something new or not known to our society. In some countries it is permissible. As in many Bibles like Rig-Veda where self-destruction is included. Few religions are against euthanasia like As we talk about Muslims who are against it. As they think that Allah has given us birth and Allah will decide how long we have to live in this life. Some persons thought that they are useless in this life but they can't get involved in any unfair things which are related to them. Now we talk about another religion that most of the christians is against this mercy killing. They thought that God has given us this life and how we can destroy it without living it. As they agree birth and death are a part of this life which has been created by God, we have to take care of this. As in Jain, there is a santhara (fasting).

## Meaning

It derived from the Greek word "EU" and "Thanatos" which means easy death. Euthanasia can also be called mercy killing. Its ends a person's life at the request by himself or someone related human being as relative, guardian, etc. it also means when a person putting to any painless death when he is suffering from serious or uncontrollable sufferings or when his life becomes something purposeless as there is any mental or physical handicap.

The putting to death, by painless method, of a terminally-ill or severely debilitated person. –by **Duhaime's Law Dictionary**

An easy or painless death, or the intentional ending of the life of a person suffering from an incurable or painful disease at his or her request. –**The NCI Dictionary of Cancer Terms** –Add it as a footnote.

### Kinds

Active	Passive
Also known as positive euthanasia.	Also known as negative euthanasia.
Cause the patient's death either through injection or by overdose or sleeping pills.	It means someone withdrawing medical treatment. (The doctor are not actively killing them but they are simply not saving them)
To ends patient life something is done	Not act done to ends one's life.

### Euthanasia and Minor

Minors are not allowed to do this themselves at the age of 12, the guardian or family members' consent is mandatory till the age of 16. After the age of 18, they have a right to euthanasia without any parental involvement or consent. (Add footnotes- source from which this statement is derived)

### Legal provisions

As in India, the law remains the same where causing death with his consent continues to be governed by exception 5 of section 300 of the Indian Penal Code, 1860 which states that the person is above the age of eighteen years who suffers death or take the risk of death with his consent where culpable homicide is not murder when the person whose death is caused. But the doctor should be punishable under section 304 of the IPC says that culpable homicide not amounting to murder.

(Mention which Law Commission report) The Law commission point of view related to general exception considers under the Indian Penal Code, 1860. A doctor acting in a desire of a patient who is suffering from a terminal illness or in a Persistent Vegetative State or coma shall not be deemed to be considered as a crime. Section 76 states that "Act is done by a person bound, or by mistake of fact believing himself bound by, law." As per this section medical treatment can be withdrawal by a patient who has its discretion that not to have any treatment. Section 79 says that "Act is done by a person justified or by mistake of fact believing himself justified by law." The doctor can take action for both competent and incompetent patients.

Article 21(of what mention and footnote the same) Right to life- The right to life doesn't include the Right to Die. To terminate his own life would lead to a violation of Article 21. It contains the positive right of an individual to live with dignity until the end of natural death.

The Supreme Court overruled in the case of **Gian Kaur vs the State of Punjab** said that 'Right to life' does not include 'right to die' or 'right to kill' and there is no basis to treat section 309 of IPC invalid.

### Comparison

Netherlands and Belgium have already recognized euthanasia in their own country. And in the few more years this euthanasia would be followed by themselves. The state of Oregon (United States of America) has already recognized this but Washington would be the second state who allows this. In China euthanasia not yet recognized by them as after so much research in Chinese hospitals during the past years, they recognized at a large number of such death not found. It found that in India only passive euthanasia is legalized as discontinuing the existing life in the terminally ill matters where the consent is given by close friends or close relatives. <sup>1</sup>In terminate his own life with peacefully is legalized in Mexico. (Rephrase the last sentence, the thought is not clear what the author is contemplating)

In German 1984 an old woman who was suffering from intense bodily pain as she was an acute case of cancer which had to swallow her to pass anything through her mouth and where treatments had reduced her body into unpleasant trouble, requested the doctor to help her die. Where that doctor had a talk with their colleagues, lawyers, and others and gave her cyanide dose and she dies. Thereafter a huge discussion began.(Footnote the same)

In 1984 London court held a person liable for nine months only for attempting to help a very old woman who terminally ill who begged to be assisted in suicide and then that court admitted that he must be guided solely by compassion.

The Supreme Court of New Jersey held that in their country a constitutional right to refuse a patient for life-sustaining treatment is privacy protects.

In the United States, the Supreme Court case *Cruzan v. Missouri* stated that a person has a constitutionally protected right to refuse unwanted medical treatment.

In Belgium a nine-year child who was suffering from a brain tumor and an eleven-year child who was suffering from cystic fibrosis, this country allows these youngest children to terminate their ill life in this unbearable suffering to choose to die. (Footnote the report which stated the same)

In India also euthanasia debate is increasing day by day. The Indian Society demands the right to die, New Delhi, and the society for the Right to Die with Dignity, where one state came in favor of euthanasia i.e. Bombay. In Maharashtra, a private bill passed which was in favor of Passive Euthanasia. Passive euthanasia means where the injury of a patient is incurable and he can't able

---

<sup>1</sup> (The Times of India Jaipur)

to survive without the support of the machine. The law in India where causing death with other countries' consent came under exception 5 of section 300 of the Indian Penal Code, 1860.

The Law Commission of India said to the government to recommend that mercy killing should be permitted so a person can terminate his ill life through suffering immense pain.

**Santhara** means "Moksha". It is the practice of declining the intake of food and water. This practice is followed by the Jain religion to adopt death in a peaceful and dignified manner. It is a 300 old custom which was followed until today under the Jain community. In 2006 Rajasthan High court, a Public Interest Litigation was documented to ban the practice of santhara. As it was declared an illegal practice followed by them which are illegal which attract sections 306 and 309 of the Indian Penal Code. This practice is against the law of land through Article 21 which states that 'Right to Life' but not 'Right to Die'. Mostly old age person adopt this method who knows they can't be recovered from their ill life. All the responsibility of a person towards his family was fulfilled. Family members or relatives decide and permit the person to follow the practice of santhara.

Euthanasia	Santhara
Get rid of the pain	The spiritual and sacred practice
Easily and fast process	Slow process
	Neither suicide nor Euthanasia

In the matter of Durgah Committee vs Hussain Ali (**cite the case**) in which could be held that Article 25 freedom of practice and propagation of religion and Article 26 freedom to manage religious affairs are the essential conditions on the part of the religious community. This immunity is not restrictive till the matter of belief but also extended to the matter of religion based on various ceremonies and worship which is a fundamental right of every person. But the court stated that there will be no immunity should be found based on wrong ritual practice.

"**Living will**" also called advance directives, in which a person tells his wishes to have cared and treated for his illness and in which manner not to be cared or treated.

"**Assisted Suicide**" means helping others to kill themselves intentionally. As euthanasia is legalized in Belgium, Canada, Colombia, Netherlands whereas Assisted Suicide is legalized in Switzerland. (Footnote the same as to which reports point out to this fact) Especially in those countries where they both are legalized then they are fully responsible for the death which is between 0.3 to 4.6 percent. (Footnote) In assisted suicide without any aid of human intervention is involved. Euthanasia intervention of human agency is involved in ending his life.

There is an example of assisted suicide that if a patient swallow due to an overdose of medicine given by doctors for death.

The law commission's 196 Report and main objectives are suggested by the Law Commission (Footnote) under the- "**Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016**" is currently pending in the parliament it is related to permitting passive euthanasia. This bill aimed to allow patients to have a decision related to medical treatment on their own. This 196<sup>th</sup> Report stated the fundamental principle that patients have the right to refuse treatment and discretion of the patient is binding upon the doctor. It helps the patients as well as medical practitioners from any kind of liability for refusing any medical treatment. This bill's objective is to assist "for the right of a dignified death". After the Aruna Shanbaug case, this bill was introduced. The highest court stated that passive euthanasia should be allowed.

If the bill gets passed, there is an active part to play by the Medical Council of India. It will have to prepare guidelines for the practitioners to withhold the treatment which will be given to the patients. The NGO played an important role in framing this bill as the PIL filed in the Apex Court were stated that where a patient reached to stage from which he can't be recovered anymore, it is an essential condition that he should have a right to refuse any material to die with dignity. The main thing about this bill is to recover the dignity of the patients.

### **If Euthanasia get legalized**

There must be informed consent of a patient. The consent does not include any undue influence, coercion, etc. the patient should suffering from an incurable injury. When in doctors and patient mind is clear that throughout his life he can survive with the supported machines. The patient is confirmed about his injuries which have no alternative solution to recover that injury and there is no use of living life now.

After seeing all these points then right to die should be given. The patient who adapt this mercy killing, can't be called as a prosecutor. If in India it is legalized then everyone dreams come true.

### **Against Euthanasia**

If active euthanasia is allowed then it may more emphasis on murder and that would like to maintain this through not to die but right to kill which is wrongly stated. There must be professional obligations that prohibit killing in any manner. No one has a right to kill and declining them to recover themselves in the future. A patient who wants to die is not always possible in every matter. Euthanasia is misused by many sometimes. If active euthanasia is allowed then misuse of the power and intolerable risk are more. The cause of more harm than benefit is wrong. (Give references)

### **Case**

**Aruna Ramchandra Shanbaug<sup>2</sup>**

She was a nurse in the KEM Hospital in Mumbai. She was assaulted by a ward boy of the same hospital as she was changing clothes in the basement of the hospital. That ward boy strangulated her with a dog chain around her neck. Due to this she didn't get enough oxygen and she got paralyzed, deaf and in a vegetative state for the next 42 years. Her body function doesn't work properly. As that ward boy gets charged with attempted to murder but not for the rape. He got seven years imprisonment. It was held that there was no need for euthanasia should be given to her. But staff members and other municipal corporations filed a counter-petition for opposing euthanasia for her. On 18 May 2015, she died at the age of 66 due to severe pneumonia. She was on a ventilator for the care.

As to doctrine to informed consent, in which patients have a right to refuse the treatment. In the case of Cruzan's where the US supreme court stated the point that where artificial feeding and hydration to nancy Cruzan who was in PVS state not to be allowed. (cite the case)

**Conclusion**

Euthanasia used in the wrong way by doctors. (rephrase) that if a patient or his family member wants that a person is suffering from some critical condition and he wants to die so a doctor cannot give any decision in favor of them. Any legal system is allowing any voluntary euthanasia then only it is possible otherwise it is illegal to do so. Article 21 (Protection of his life and personal liberty)- No person shall be deprived of his life or personal liberty except according to the procedure established by law(footnote). It is kept in mind of everyone that the Right to live with human life and dignity only possible if a person has already in a healthy mind and body. "Live life with passion and die with compassion." They have to find some solution other than to adopt euthanasia. Saving their one owns life without harm to their body. Although improving the quality and standard of life. The Government should take strict action against them. There must be the law regarding them if they want some kind of destruction to their life so they can be rehabilitated and get any treatment. As people who want to do kill by themselves so they use various ways to do so like using drugs. So this is wrong because they must think about their family and this is morally wrong.

- In the legal perspective or any other manner Quality of life should be maintained.
- Patients have the right to refuse medical treatment.
- The medicine should not use for supporting life to reduce the pain for time being without providing permanent relief to the patient.
- A living will be legalized as an advance directive.

---

<sup>2</sup> (2011) 4 SCC 454

- Strict safeguards should be incorporated to avoid misuse of the law.



• LEGAL FOXES •

"OUR MISSION YOUR SUCCESS"