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EUTHANASIA: AN OVERVIEW AND THE INDIAN PERSPECTIVE

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Abstract: Mercy killing or Euthanasia has involved the attention of philosophers and lawyers, since the time of Greek thinkers in the west and the Mahabharata in the east. If we take a look at what different religions in India think about Euthanasia then we will find out that many religion favours Euthanasia like the Hindus, Jains,etc. In India abetment of suicide and attempt to suicide are both criminal offences under Indian Penal Code 1860. Because suicide has been interpreted as inclusive of all forms of self-willed death, Euthanasia became illegal. But there is some sympathy for Euthanasia. Recently the efforts has been made in India to repeal Section 309 of Indian Penal Code 1860 which has revived the debate of Euthanasia in the Indian perspective. The Aruna Shanbaug case initially brought the debate of Euthanasia into limelight after which the offering of mercy death to a suffering person has been greatly discussed. It has once again come to the forefront with the Government signaled its intention to do away with the section 309 IPC 1860. The present paper is an attempt to analyze Euthanasia and its overview in the Indian Perspective. In the rare circumstances death is a relief from a life of unbearable suffering, it should be encouraged.

Keywords: Mercy Killing or Euthanasia, Active Euthanasi, Passive Euthanasia, Homicide

Introduction

In the Indian constitution there is a provision for Right of Life under Article 21. But there is no such Right like right to die. On the other hand, if any person tries to end his life, he will be punished under section 309 of Indian Penal Code ,1860. But recently the efforts has been made in India to for repeal of Section 309 of Indian Penal Code 1860 which has revived the debate of Euthanasia in the Indian perspective. Before moving further we must understand the meaning of the word Euthanasia which is originated from Greece means a good death[1]. Euthanasia encompasses various dimensions, from active means introducing something to cause death to passive means withholding treatment or supportive measures; from voluntary consent to involuntary consent from guardian and from physician assisted where physicians prescribe the medicine and patient or the third party administers the medication to cause death.[2] In Euthanasia, a physician or third party administers it, while in physician assisted suicide it is the patient himself who does it, though on the advice of the doctor. In many countries/States the latter is legal while the former is not.

According to the historian N. D. A. Kemp, the origin of the contemporary debate on Euthanasia started in 1870.[3] Euthanasia is known to have been debated and practiced long before that date. Euthanasia was practiced in Ancient Greece and Rome: for example, hemlock was employed as a means of hastening death on the island of Kea, a technique also employed in Marsellies. Euthanasia, in the sense of the deliberate hastening of a persons death, was supported by Socrates, Plato and Seneca the Elder in the ancient world, although Hippocrates appears to have spoken against the practice, writing "I will not prescribe a deadly drug to please someone, nor give advice that may cause his death" (noting there is some debate in the literature about whether or not this was intended to encompass Euthanasia).[4]

Historical Background

If we take a look at what different religions in India think about Euthanasia then we will find out that many religion favours Euthanasia like the Hindus .The great saints, sages, and seers of India from time immemorial have been following the law of religious philosophy. They beckoned, welcomed, and met death at will in the later part of their ascetic lives by taking 'samadhi' which is complete absorption in God-consciousness to attain eternal peace and 'moksha'. Jains and Hindus have the traditional rituals 'Santhara' and 'Prayopavesa' respectively, wherein one can end ones life by starvation, when one feels their life is complete.5

In the Mahabharata and Ramayana we find that after the victory of good over evil and of dharma (righteousness) over adharma (sin) and after being freed from obligations and duties to society and the kingdom, both the ancestor and the guru of the Pandavas and Kauravas beckoned to death and, having ichcha mrityu, voluntarily died, and Lord Rama and his brothers who, after fulfilling their duties and obligations in life, voluntarily gave their lives by taking samadhi in River Saryu in Ayodhya. There were no laws to restrict a saint, seer, or ascetic from taking samadhi at will. On the opposing, the practice had religious sanctions. They had the right to die of their own will. Apart from this, Chandragupta Maurya, founder of the Maurya dynasty with his guru Jain Muni Bhadrabaahu adopted self-willed death by fasting till death as a true disciple of Jainism.[6]

Legal Framework

In India abetment of suicide and attempt to suicide are both criminal offences. The Penal Code, based on British law at the time of the British rule, views suicide as a criminal act. According to section 309 of IPC 1860- Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for term which may extend to one year 1 or with fine, or with both. Because suicide has been interpreted as inclusive of all forms of self-willed death, Euthanasia became illegal with the advent of British law in India. But there is some sympathy for Euthanasia. Under the Penal Code, 1860, Euthanasia is under Exception 5 to Section 300 where it is given that culpable homicide is not murder when the person whose death is caused is above 18 years of age, suffers death or takes the risk of death at his own consent. It means that the person who is causing death is not absolved from the punishment; he will be liable for culpable homicide not amounting to murder. If we see in Global perspective then it can be seen that some countries in the world have adopted passive Euthanasia. Active Euthanasia is illegal in all states in U.S.A but physician assisted dying is legal in the states of Oregon, Washington and Montana. In Canada, Physician Assisted Suicide is illegal vide Section 241(b) of the Criminal Code of Canada. Euthanasia in the Netherlands is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002. It states that Euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care.[7]

Judicial Approach

A challenge to the Penal Code's ruling on suicide was made by Justice T.K. Tukol in a series of lectures. He tried to show the positive attitude of Euthanasia which is neither right to die nor attempt to suicide or sati pratha, jauhar, neither it is the starvation to leave the body nor taking jal samadhi, etc. While commentators on the Penal Code have included the case of religious fasting to death among the forms of suicide, Justice Tukol argued that such fasting to death is not suicide. The wise ones say that Sallekhana (Euthanasia) is giving up the body when there is calamity, famine, old age and decay, painful disease, and incurable disease for the sake of dharma.[8]

Dilip Machua[9], who pleaded to the President of India to either arrange for his treatment or sanction Euthanasia, died in a government hospital. He was readmitted in the hospital on April 10 after his health deteriorated further. Machua suffered a major injury on his spinal chord in a road accident in November last and he became paralysed from his waist downwards. There was a similar case where Dinesh Pratap Singh[10] knocked the doors

of the High Court pleading for Euthanasia but the Court refused. This shows that Euthanasia is not allowed in India but trying continues.

The law, though active in many countries, has been a sleeping giant in India, as Euthanasia goes on behind closed doors. In 1994, constitutional validity of Section 309 of Indian Penal Code Section was challenged in the Supreme Court in the case of P. Rathinam vs. Union of India [11]. The Supreme Court declared that IPC Sec 309 is unconstitutional, under Article 21 (Right to Life) of the constitution in this landmark judgement.

However, whatever progress was there came to a never-ending stop in 1996, and the state of confusion returned. There was a question on whether the right to die is included in Article 21 or not which came up for consideration for the first time in Maruti Shripati Dubal vs. State of Maharashtra[12], in the Bombay High Court. The Court striking down Section 309 IPC said that the right to life includes the right to die. In this case, a mentally deranged Bombay Police constable tried to set himself afire in the corporation's office as he was refused for a permission to set up a shop. The Court observed, that no deterrence is further going to hold back those who want to die for a special or political cause or to leave the world either because of the loss of interest in life or for self-deliverance.

In 1996, an interesting case of abetment of commission of suicide on Sec 306 IPC 1860 came to Supreme Court in Gian Kaur vs. State of Punjab.[13] In this case of Gian Kaur vs. State of Punjab both these rulings were overruled. A five-member Constitution Bench held that the right to life does not include the right to die or the right to be killed. The right to die is inherently inconsistent with the right to life as is death with life. Delivering this verdict, the Court observed, The right to life is a natural right embodied in Article 21 of the Constitution but suicide is an unnatural termination or extinction and incompatible and inconsistent with the right to life. It can be seen that the same Court supported the constitutional validity of Sections 309 and 306 thereby legalising the same. A judgment totally contradictory to the earlier one, this presented a picture of the confusion that prevails in our apex judiciary as far as Euthanasia is concerned. The primary basis for taking such a contention was Article 21, which states that all Indians have a right to life and personal liberty. The judgment accepted the view that in a terminally ill patient who is in a permanent vegetative state, mercy killing does not extinguish life, but accelerates conclusion of the process of natural death that has already commenced. But it goes on to say that the scope of Article 21 cannot be widened enough so as to include Euthanasia. In the concluding remarks, assisted suicide and abetting of suicide were made punishable, due to cogent reasons in the interest of society.

The Chairman of the Kerala Law Reform Commission and imminent jurist and former Chief Justice of India Hon'ble Justice V.R. Krishna Iyer also shows sympathy for passive Euthanasia or withdrawing life-sustaining equipment in his report in 2008 in which he mentioned that passive Euthanasia is not an offence and should not be punished.[14]

Similarly, the 196th Report of the Law Commission of India also mentions that withholding life-supporting measures should not be considered unlawful but several guidelines should be made in order to practice passive Euthanasia. It is also reportedly in favour of decriminalising suicide along with making Euthanasia legal.

In fact, many people in India do not understand the technical terms related to Euthanasia, but they generally oppose it and they have great misconceptions regarding Euthanasia that it is misleading and has many side effects. But many people in India practice passive Euthanasia either knowingly or unknowingly. They often argue with the medical practitioners to withhold the life-supporting measures if the condition of the patient is very critical and there is no hope left of his living. Hence, this shows that, however, passive Euthanasia is being practised in India but this is not legal.

It is ultimately for the Court to decide, as parens patriae, as to what is in the best interest of the patient, though the wishes of close relatives and next friend, and opinion of medical practitioners should be given due weight in

coming to its decision. As stated by J Balcombe[15] the Court as representative of the Sovereign as parens patriae will adopt the same standard which a reasonable and responsible parent would do.

In the judgment of Aruna Shanbag vs. Union of India[16] , the judges open the path for passive Euthanasia in India although in this case Aruna Shanbag was not allowed passive Euthanasia. The judges told that in their opinion, the High Court can grant approval for withdrawal of life support to an incompetent patient. They have given the direction when passive Euthanasia is performed. They have told that in case such an application is filed the Chief Justice of the High Court should constitute a Bench of two Judges to decide to give approval or not. And before taking the decision, the committee should take consent of three reputed doctors, one of them should be a physician, one should be a psychiatrist and one should be a neurologist. All of them should go to examine the patient, his report and observe the condition of the patient, his relatives and the staff. This committee of three doctors should give its report to the High Court. Simultaneously, the High Court should issue a notice to the State and the patient's close relatives or next friend in the absence of close relatives and also provide them with the copy of the doctor's report as soon as possible. After all this process, and after hearing all of them, the High Court should give its judgment as early as possible so that there is no mental agony caused to the patient's relatives or friends. They have also told that the High Court should give its decision assigning a specific reason according to the best interest of the patient and the High Court should also give weight to the views of the near and dear ones of the patient. The judges have mentioned that this process should be carried all over India until and unless a specific law regarding Euthanasia is made by Parliament of India.

In India, it was the 42nd report submitted by the 5th LCI (June 1971) which recommended, inter alia, repeal of Section 309 IPC perceiving it as harsh and unjustifiable. Pursuant to this recommendation, the same was incorporated in the Indian Penal Code (Amendment) Bill, 1978 and even passed by the Rajya Sabha but before its passing in the Lower House, the then Lok Sabha was dissolved and hence the legislation lapsed. No efforts have been made by any successive dispensations either at the Centre or in any State since then even to re-introduce a legislation to repeal the same, much less its due enactment.

The law panel, in its 210th report submitted in 2008, had noted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind, deserving treatment and care rather than punishment, and accordingly recommended to the government to initiate the process for repeal of the "anachronistic" Section 309.[17]

Conclusion

Taking a step towards a more humane law, now the Government has recently signalled its intention in the Parliament with overwhelming favour from a majority of the States to do away with Section 309 IPC, there ought not be any more "inordinate delay" at least on the part of the ruling political executive in this regard. This provision which has since been termed as "anachronistic law" needs to be immediately effaced from the IPC.

Eventually, it is a positive first milestone in the Indian context, not the last. Yet many things are there to be carried out so that the modern developed medical technology cannot play with the human life and human feelings and the right of the person also survive. The most important step will be that when we will be able to aware our society that passive Euthanasia is not general right to die or attempt to suicide. It is not similar to that. Our history has been the witness that we have loved both life as well as death because death is a bigger truth than life. As Rabindranath Tagore[18] wrote in Gitanjali:

And because I love this life, I know I shall love death as well. The child cries out when from the right breast the mother takes it away, in the very next moment to find in the left to find its consolation.

In the rare circumstance that death is a relief from a life of unbearable suffering, it should be encouraged.

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