

REVIEW PAPER

Euthanasia: Should it be Legalised? Current Scenario in India

Nath Neena*

Received on August 6, 2015; first review on August 20, 2015; accepted on August 28, 2015

ABSTRACT

Euthanasia, a highly debated term was first used by Seutonius and was introduced in the medical field by Francis Bacon. Worldwide arguments are going on its various issues which gradually turned into euthanasia movement and have taken its pace in 20th century. Anne Hall was a major figure in euthanasia movement in USA, who organised an extensive letter writing campaign and also a debate on annual meeting of American Humane Association in 1905, which was the first landmark public debate following which America saw the first attempt to legalise euthanasia in 1906, but bill was not passed. After long continued debate, it was legalised in Netherlands, Belgium, Switzerland, Luxemburg, Washington and Oregon with strict guidelines, but was banned in Michigan. In India, euthanasia is not legalised till date. On 7th March, 2011 Supreme Court has given directive as a part of judgement in relation to appeal for euthanasia of Aruna Sarbhang, considering legal aspect which will be law until parliament passes bill legalising it. We need clear cut rules which should be ethically permissible and legally defendable keeping the patients best interest in mind.

Keywords: Euthanasia, Indian scenario, right to life, legalisation

INTRODUCTION

With easy accessibility of health care facilities, now we get many patients with terminal illness getting admitted into hospitals with the hope that their diseases are curable. But, even with the advancement of medical science many diseases are incurable till today. After realising this fact, towards the end of futile effort, being exhausted by sufferings many patients or their family members approach the treating physicians for dignified end of their life. We, clinicians are the first person to face this problem and also have to play an important role in the whole process. We need clear cut rules which should be ethically permissible and legally defendable. So, we should take prime responsibility to create awareness amongst public for generation of opinion regarding legalisation of euthanasia keeping the patient's best interest in mind.

REVIEW

Euthanasia the most widely debated and rarely accepted term was first used by great historian Seutonius to describe the death desired by king Augustus¹, and was introduced in the medical field by Francis Bacon² in the 17th century to describe easy, peaceful and painless death. Since then, arguments are going on worldwide raising issues in relation to ethical, moral, religious, civil rights and legal issues.

Since its introduction in medical field attempt has been taken to define it clearly for benefit of patients. The definition should include painless and quick death to lessen the suffering of patients without any personal gain. It incorporates all necessary condition, with "the painless killing of a patient suffering from an incurable

Address for correspondence and reprint:

*Associate Professor of Medicine
Tezpur Medical College and Hospital
Email: nath.neena@yahoo.in
Mobile: 9864033088

and painful disease or in irreversible coma”³ and “a deliberate intervention undertaken with the expressed intention of ending a life, to relieve intractable suffering”.⁴ Motive a crucial part of arguments for euthanasia, is incorporated in this definition but it did not specify about consent, another important aspect to be considered. In Netherlands, euthanasia is understood as “termination of life by a doctor at the request of a patient” and the law clearly states that patient should be the consenting authority.⁵ In a discussion of euthanasia presented in 2003 by the European Association of Palliative Care (EPAC) Ethics Task Force⁶ the authors offered: “Medicalised killing of a person without the person’s consent, whether non voluntary or involuntary is not euthanasia: it is murder. Hence, euthanasia can be voluntary only.”

Euthanasia is classified in three categories depending upon informed consent⁷ Voluntary-when patient himself gives the consent, non voluntary –where consent is given by a surrogate person because the person is unable to ask for euthanasia or to make a meaningful choice between living and dying and involuntary euthanasia conducted against the will of the patient.⁸ Euthanasia can be further divided into passive or active variants.⁹ Passive euthanasia entails the withholding of common treatments. Active euthanasia entails the use of lethal substances or forces, such as administering a lethal injection to kill. Another terminology used in this context is physician assisted suicide in which a person himself administers the lethal drug.

In USA, the euthanasia movement had taken its pace in the 20th century. Anna Hall saw the sufferings of her mother while battling with liver cancer and had decided that others wouldn’t have to endure the same sufferings and organised an extensive letter writing campaign and also organised a debate on annual meeting of American Humane Association in 1905, which was the first landmark public debate following which America saw the first attempt to legalise euthanasia in 1906 at General Assembly of Ohio by Henry Hunt¹⁰ but, bill was not passed. The Voluntary Euthanasia Society known as Exit, formed in 1935 in the UK was the first publicly acknowledged euthanasia society in the world, which organized a campaign for the legalization of euthanasia. The next year, a bill to legalize euthanasia was debated in the House of Lords in the UK, but it was rejected.¹¹ The debate continued extensively till the first court case in Netherlands in 1973, following which several important

cases appeared before court necessitating the need for legalisation.

Many terminally ill patients are getting admitted into hospitals with the expectation that diseases are treatable which in reality are not. Now, the question is, is it justifiable to keep a person alive suffering from an agonising painful incurable disease which will definitely cause untimely death? In permanent vegetative state is it reasonable to prolong the life? If a patient expressed a wish not to have life sustaining treatment in futile cases or in PVS should it be respected? If such request comes from family members can it be considered? Emotional sufferings of near and dear ones can it be ignored? Can the family bear the cost of LST which is very costly? These questions were argued before giving judgements in different landmark cases and the court decisions and directive on them became the cornerstones in the development of euthanasia act around the world.

Public opinion for legalization of euthanasia and physician-assisted suicide has been increasing over time. In the USA, in 1950, only 34% of citizens agreed that physicians should be allowed to hasten the lives of patients with incurable diseases. By 1991, the figure increased to 63%.¹² In Michigan, 66% supported PAS, 25% wanted a ban on it.¹³ In another study conducted on oncology patients and public, two third of them supported euthanasia and PAS.¹⁴

Clinicians face this problem before an appeal is made before court and also has to play an important role in the process. So their opinion is another factor to be taken into account. A survey was conducted in USA covering more than 10000 physicians on two aspects, physician assisted suicide [PAS] and withdrawal of life sustaining treatment [LST]. The result of PAS showed that 46% of physicians agree that it should be allowed in some cases; 41% do not agree, and 14% think it depends on circumstances. Survey on withdrawal of LST revealed that 16% will do so even if they think that it is too early, 55% will not do so, and 29% opined it will depend upon circumstances.¹⁵ In Washington, 54% and 53% physicians thought that euthanasia and PAS, respectively, should be legal in some situations.¹⁶ In Oregon, 60% of physicians thought that PAS should be legalized in some cases.¹⁷ Survey in UK show 64% supports and 34% opposes assisted dying of patients who has incurable and painful disease.¹⁸

Considering all these factors it can be said that yes, if euthanasia is used with strict guidelines will be beneficial for the society. So, legalisation of it is necessary to protect terminally ill patients to lessen their sufferings, to protect physicians, and to guide court to give judgement if such an appeal is made. In the process of legalisation we mustn't forget the slippery slopes like performing euthanasia without consent, unauthorised persons conducting it, using for personal gain like acquiring properties, may be a special danger to under-privileged group like children, elderly and disabled person, physician acting clandestinely to support their patients, non reporting of cases and utmost care should be taken to prevent those.

After long debate, on all relevant matters it was legalised in Oregon, USA in 1994, suspended in 1995 because it did not give equal protection against suicide to terminally ill persons. Again, it was legalised in 1997 by death with dignity act to give permission to PAS. It was only in 1999, the House of Representatives voted to amend the act to make it a federal crime for doctors to prescribe drugs for terminally ill patients to end their lives. This ended the practice of legalized PAS in Oregon.¹⁹ Subsequently, euthanasia and assisted suicide was legalised in Belgium and Netherlands in 2002,²⁰ assisted suicide in Switzerland in 2003,²¹ Luxemburg and Washington in 2008,²² Montana in 2009 and in Vermont since 2013 with strict guidelines but banned in Michigan because Dr Koverkein misused it.²³

INDIAN SCENARIO

In India, Euthanasia in any form is not legalised till today. Prior to 7th March 2011, all petitions requesting for euthanasia were rejected stating that right to life does not include right to die [Article 21, COI]. On 7th March 2011, Supreme Court rejected appeal for euthanasia for Aruna Shanbaug stating that active euthanasia is illegal as it is crime under section 302 and 304, IPC²⁴ but, passive is legal even without legislation provided certain safeguards are maintained. As part of judgement of this case Supreme Court issued guidelines which will be law until govt legalises it.²⁵ After the judgement on this landmark case, Union law Ministry wrote to the 19th Law Commission on 20th July 2011 to give a report on its feasibility. Law Commission responded quickly and on 11th August 2011 submitted the report 'Euthanasia- A relook' proposing to follow Supreme Court's directive as guidelines for this matter²⁶ which will be binding as law [Article 226, COI] till

it is legalised. It states that:

1. Permission must be obtained from High Court [parens patriae].
2. A competent patient has right to refuse invasive medical treatment by way of artificial life sustaining measures and such decision is binding to doctors, hospitals if it is an informed decision.
3. A terminally ill competent patient shall not be deemed of any offence by any law for such decision.
4. Minor above 16 yrs can do so along with the consent of major spouse and one parent.
5. Decision to discontinue LST for incompetent patient should be taken by parents, spouse, close relatives or next friends and should be for the best interest of the patient.
6. When an appeal is made before court, the Chief Justice should constitute a bench of 2 judges.
7. A committee with 3 reputed doctors will be formed to give a report on the condition of the patient.
8. This report will be given to the relatives and state, hearings should be taken after that, final decision should be taken for the best interest of the patient and order will be issued by the High Court.²⁷

India is a country with diverse religious population. Any act which is against the religious opinion will not be accepted by the society. Considering this, The Telegraph asked for opinion from religious leaders of the Hindu, Muslim, Jain and Christian community. While the Jain, and Christians said passive euthanasia is acceptable under certain circumstances, in Hindus and Jain ending one's life is allowed by starvation if one thinks that his life is complete.²⁸

On 16th July 2014, Supreme Court after hearing Prasant Bhusan, counsel for the petitioner common cause, an NGO arguing that 'Right to life' includes 'Right to die with dignity and people must have right to execute 'Living Will' to refuse treatment and die, decided to adjudicate legality of active and passive euthanasia in India and issued a notice to all states and union territories to opine on this legally controversial issue, however Govt. opposes it. Attorney General Mukul Rohtogy stated Govt. doesn't accept euthanasia as a principle and court has no jurisdiction to decide it.²⁹

CONCLUSION

To summarise, Euthanasia can be considered sometimes from ethical, moral, social, legal and civil right point of

view. Parliament need to pass bill on this matter to lessen sufferings of patients with strict guidelines to prevent misuse of it .We have to follow the directive of Supreme Court until Euthanasia bill is passed.

Conflict of interest: None

REFERENCES

- Ethical eye: Euthanasia - ethical and human aspects. Council of Europe. Europe 2003;1:13.
- Bacon F. Brian Vickers, editor. The major works By Francis Bacon. USA: Oxford University Press; 2002:630.
- Euthanasia. Oxford Dictionaries [Online]. [cited 2015 July 25]; Available from: URL:<http://oxforddictionaries.com/definition/English/euthanasia>
- Harris, NM. The euthanasia debate. J R Army Med Corps 2001 Oct;147(3):367–70.
- Rietjens JA, vander Mass PJ, Onwuteaka-Philipsen BD, ven Delden JJ, ven der Heide A. Two decades of research on Euthanasia from the Netherland. What we have learnt and what Questions remain? J Bioeth Inq 2009;6(3):271-283.
- Materstvedt LJ, Clark D, Ellershaw J, Forde R, Boeck Gravgaard AM, Müller-Busch C, Porta i Sales J, Rapin CH. Euthanasia and physician-assisted suicide: a view from an EAPC Ethics Task Force. Palliative Medicine 2003;17(2):97–101.
- La Follette, Hugh. Ethics in practice: an anthology. Oxford: Blackwell; 2002:25-26.
- Perrett RW. Buddhism, euthanasia and the sanctity of life. J Med Ethics 1996 Oct;22(5):309–13.
- Rachels J. Active and passive euthanasia. NEJM 1975 Jan;292(2):78–80.
- Appel, Jacob. “A Duty to Kill? A Duty to Die? Rethinking the Euthanasia Controversy of 1906”. Bulletin of the History of Medicine 2004;78(3):618.
- Emanuel EJ. The history of euthanasia debates in the United States and Britain. Ann Intern Med 1994;121:793–802.
- Blendon RJ, Szalay US, Knox RA. Should physicians aid their patients in dying? The public perspective. J Am Med Assoc 1992;267:2658–2662.
- Bachman JG, Alcser KH, Doukas DJ et al. Attitudes of Michigan physicians and the public toward legalizing physician-assisted suicide and voluntary euthanasia. N EJM 1996;334:303–309.
- Emanuel EJ, Fairclough DL, Daniels ER. Euthanasia and physician-assisted suicide: attitudes and experiences of oncology patients, oncologists, and the public. Lancet 1996;347:1805–1810.
- Kane L. Doctors struggle with tougher-than-ever dilemmas: Other ethical issues. 2010 Nov 11 [cited 2015 July 25]; Available from: URL:http://www.medscape.com/viewarticle/731485_2
- Cohen JS, Fihn SD, Boyko EJ, Jonsen AR, Wood RW. Attitudes toward assisted suicide and euthanasia among physicians in Washington State. NEJM 1994;331:89–94.
- Lee MA, Nelson HD, Tilden VP et al. Legalizing assisted suicide—views of physicians in Oregon. NEJM 1996;334:310–315.
- Dignity in dying, opinion on assisted dying (Online). [cited 2015 July 25]; Aavailable from: URL:<http://www/London.info@digniyindying.org.uk>
- Death with Dignity Act. Department of Human Services. Portland, Oregon or: dhs. 2007 [cited 2011 Feb 17]; Available from: URL:<http://www.oregon.gov/DHS/ph/pas/ors.shtml>
- Smets T, Bilsen J, Cohen J, Rurup ML, De Keyser E, Deliens L. The medical practice of euthanasia in Belgium and the Netherlands: legal notification, control and evaluation procedures. Health Policy 2009;90:181–7.
- Hurst S, Mauron A. Assisted suicide and euthanasia in Switzerland: allowing a role for non-physicians. BMJ 2003;326:271–3.
- Steinbrook R. Physician-assisted death—from Oregon to Washington State. NEJM. 2008;359:2513–15.
- Jerald GB, David JD, Richard LL, Kirsten HA. Assisted Suicide and Euthanasia in Michigan. NEJM 1994;331:812-3.
- The Indian Panel Code. 1860 (Ind)s 302,304.
- Aruna Ramachandra Shanbaug v. Union of India, 2011 4 SCC 454 s 138,140.
- Law Commission of India. 2013 Aug 25 [cited 2015 July 25]; Aavailable from:URL:<http://lawcommissionofindia.nic.in/reports/report241.pdf>
- Thejaswi HT, Kumar A, Gupta SK. Present status of euthanasia in India from medico-legal perspective- An update. J Punjab Acad Forensic Med Toxicol 2014;14(1):59-64.
- Faiths take nuanced view. The Telegraph-Calcutta. 2011 Mar 7.
- TNN 2014 JUL17, 01:35AM IST.