

Special Article

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Passive Euthanasia/ Physician Assisted Suicide-Whither Indian Judicial System?**Dr Soumi Biswas¹, Prof Malay Mundle²**¹2nd yr PGT, Community Medicine, Medical College, Kolkata²Professor & Head, Department of Community Medicine, Medical College, Kolkata**Corresponding Author:**

Dr Malay Mundle, Professor & Head, Department of Community Medicine, Medical College, Kolkata Mobile: 9903334810, email: malaymundle@hotmail.com

Background:

Passive euthanasia has now been made legal in India.¹ On 7 March 2011 the Supreme Court of India legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The decision was made as part of the verdict in a case involving Aruna Shanbaug, who has been in a vegetative state for 37 years at King Edward Memorial Hospital. Aruna had been a nurse working at the KEM Hospital in Mumbai on 27 November 1973 when she was strangled and sodomized by Sohanlal Walmiki, a sweeper. During the attack she was strangled with a chain, and the deprivation of oxygen had left her in a vegetative state ever since. She had been

treated at KEM since the incident and was kept alive by feeding tube. On behalf of Aruna, her friend Pinki Virani, a social activist, filed a petition in the Supreme Court arguing that the "continued existence of Aruna is in violation of her right to live in dignity". The Supreme Court made its decision on 7 March 2011.

The court rejected the plea to discontinue Aruna's life support but issued a set of broad guidelines legalising passive euthanasia in India. This decision was based on the fact the hospital staff who treat and take care of her did not support euthanizing her.²

Address for correspondence:The Editor/ Managing Editor,
Journal of Comprehensive Health
Dept of Community medicine
NRS Medical College,
138, AJC Bose Road, Kolkata-700014

The high court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law.^{2,3}

Active euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries.⁴ What is Euthanasia? Euthanasia (from Greek: eu; "well" or "good", thanatos; "death") refers to the practice of intentionally ending a life in order to relieve pain and suffering.⁵

Like other terms borrowed from history, "euthanasia" has had different meanings depending on usage. The first apparent usage of the term "euthanasia" belongs to the historian Suetonius who described how the Emperor Augustus, "dying quickly and without suffering in the arms of his wife, Livia, experienced the 'euthanasia' he had wished for"⁶

The word "euthanasia" was first used in a medical context by Francis Bacon in the 17th century, to refer to an easy, painless, happy death, during which it was a "physician's responsibility to alleviate the 'physical sufferings' of the body".⁷ Bacon referred to an "outward euthanasia"—the term "outward" he used to distinguish from a spiritual concept—the euthanasia "which regards the preparation of the soul." The British House of Lords Select Committee on Medical Ethics defines euthanasia as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering". In the Netherlands, euthanasia is understood as "termination of life by a doctor at the request of a patient".⁵ Euthanasia was practised 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 Marseilles and by Socrates in Athens. Euthanasia, in the sense of the deliberate hastening of a person's 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"^{8,9,10} Euthanasia was strongly opposed in the Judeo-Christian tradition—against the laws of God and Nature. Pope Benedict, XVI, 265th Pope of the Apostolic Roman Catholic Church, stated in his July 2004 article "Worthiness to Receive Holy Communion: General Principles," that "The Church teaches that abortion or euthanasia is a grave sin..."¹¹ Suicide and euthanasia were more acceptable under Protestantism and during the Age of Enlightenment, and Thomas More wrote of euthanasia in *Utopia*.⁹ A 24 July 1939 killing of a severely disabled infant in Nazi Germany was described in a BBC "Genocide Under the Nazis Timeline" as the first "state-sponsored euthanasia". Parties that consented to the killing included Hitler's office, the parents, and the Reich Committee for the Scientific Registration of Serious and Congenitally Based Illnesses. The Telegraph noted that the killing of the disabled infant—whose name was Gerhard Kretschmar, born blind, with missing limbs, subject to convulsions, and reportedly "an idiot"—provided "the rationale for a secret Nazi decree that led to 'mercy killings' of almost 300,000 mentally and physically handicapped people". While Kretschmar's killing received parental consent, most of the 5,000 to 8,000 children killed afterwards were forcibly taken from their parents. The "euthanasia campaign" of mass murder gathered momentum on 14 January 1940 when the "handicapped" were killed with gas vans and killing centres, eventually leading to the deaths of 70,000 adult Germans.⁵ Euthanasia can be classified as:

1. Voluntary euthanasia -

Euthanasia conducted with the consent of the patient is termed voluntary euthanasia. Active voluntary euthanasia is legal in Belgium, Luxembourg and the Netherlands. When the patient brings about his or her own death with the assistance of a physician, the term assisted suicide is often used instead. Assisted suicide is legal in Switzerland and the U.S. states of Oregon, Washington and Montana.

2. Non-voluntary euthanasia -

Euthanasia conducted where the consent of the patient is unavailable is termed non-voluntary euthanasia. Examples include child euthanasia,

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

2. Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned.

3. When such an application is filled the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. A committee of three reputed doctors to be nominated by the Bench, who will give report regarding the condition of the patient. Before giving the verdict a notice regarding the report should be given to the close relatives and the State. After hearing the

which is illegal worldwide but decriminalised under certain specific circumstances in the Netherlands under the Groningen Protocol.

3. Involuntary euthanasia -

Euthanasia conducted against the will of the patient is termed involuntary euthanasia. Passive euthanasia entails the withholding of common treatments, such as antibiotics, necessary for the continuance of life. Active euthanasia entails the use of lethal substances or forces, such as administering a lethal injection, to kill and is the most controversial means. In the Aruna Shaunbaug case the apex court laid down the following guidelines:

parties, the High Court can give its verdict.^{12,13}

The debate over Passive Euthanasia has some takers as well as those opposing it wholeheartedly. Even India's Minister of Law and Justice, Veerappa Moily, called for serious political debate over the issue.⁶ The American Civil Liberties Union stated in its 1996 amicus brief in *Vacco v. Quill* states that: "The right of a competent, terminally ill person to avoid excruciating pain and embrace a timely and dignified death bears the sanction of history and is implicit in the concept of ordered liberty. The exercise of this right is as central to personal autonomy and bodily integrity as rights safeguarded by this Court's decisions relating to marriage, family relationships, procreation, contraception, child rearing and the refusal or termination of life-saving medical treatment."¹⁴

Margaret P. Battin, PhD, distinguished Professor of Philosophy and Adjunct Professor of Internal Medicine at the University of Utah, and Timothy E. Quill, MD, Professor of Medicine,

Psychiatry, and Medical Humanities at the University of Rochester, stated "We firmly believe that physician-assisted death should be one- -not the only one, but one--of the last-resort options available to a patient facing a hard death. We agree that these options should include high dose pain medication if needed, cessation of life-sustaining therapy, voluntary cessation of eating and drinking, and terminal sedation. We also believe, however, that physician-assisted dying, whether it is called physician-assisted death or physician aid in dying or physician-assisted suicide, should be among the options available to patients at the end of life¹⁵

However, the American Medical Association (AMA) stated:"It is understandable, though tragic, that some patients in extreme duress--such as those suffering from a terminal, painful, debilitating illness--may come to decide that death is preferable to life. However, permitting physicians to engage in euthanasia would ultimately cause more harm than good. Euthanasia is fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks." ¹⁶

This is an obvious echo of the Hippocratic sentiment. The involvement of physicians in euthanasia heightens the significance of its ethical prohibition. The physician who performs euthanasia assumes unique responsibility for the act of ending the patient's life. Euthanasia could also readily be extended to incompetent patients and other vulnerable populations. Instead of engaging in euthanasia, physicians must aggressively respond to the needs of patients at the end of life. Patients should not be abandoned once it is determined that cure is impossible.

Patients near the end of life must continue to receive emotional support, comfort care, adequate pain control, respect for patient autonomy, and good communication.¹⁶

Even Campbell is opposed to the legalization of voluntary euthanasia for terminally ill patients as administered by physicians. While everybody I respects and advocates for patients to have control and dignity in dying, it is contrary to the vocation of medicine to intentionally hasten or cause death. In all cases (medical or non- medical), taking human life should be a last resort, and until our society has given appropriate attention to pain control, hospice care, and advance directive, we will not have met the criteria of last resort with respect to legalized euthanasia.¹⁷

Daniel Callahan, PhD, Director of International Programs at the Hastings Center, stated : "This path to peaceful dying rests on the illusion that a society can safely put in the hands of physicians the power directly and deliberately to take life, euthanasia, or to assist patients in taking their own life. It threatens to add still another sad chapter to an already sorry human history of giving one person the liberty to take the life of another. It perpetuates and pushes to an extreme the very ideology of control--the goal of mastering life and death--that created the problems of modern medicine in the first place. Instead of changing the medicine that generates the problem of an intolerable death (which, in almost all cases, good palliative medicine could do), allowing physicians to kill or provide the means to take one's own life simply treats the symptoms, all the while reinforcing, and driving us more deeply into, an ideology of control."¹⁸ Besides, the Church exhorts civil authorities to seek peace, not war, and to exercise discretion and mercy in imposing punishment on criminals, it

may still be permissible to take up arms to repel an aggressor or to have recourse to capital punishment. There may be a legitimate diversity of opinion even among Catholics about waging war and applying the death penalty, but not however with regard to abortion and euthanasia.¹¹ What do the other religious sections feel about passive Euthanasia? The Islamic Medical Association endorses the stand that there is no place for euthanasia in medical management, under whatever name or form (e.g., mercy killing, suicide, assisted suicide, the right to die, the duty to die, etc.). Nor does it believe in the concept of a willful and free consent in this area. The mere existence of euthanasia as a legal and legitimate option is already pressure enough on the patient, who would correctly or incorrectly, read in the eyes of his/her family the silent appeal to go.¹⁹

Though many Christians and Jains think that passive euthanasia is acceptable under some circumstances, Jains and Hindus have the traditional rituals Santhara and Prayopavesa respectively, wherein one can end one's life by starvation, when one feels that their life is complete. Some members of India's medical establishment were skeptical about euthanasia due to the country's weak rule of law and the large gap between the rich and the poor, which might lead to the exploitation of the elderly by their families. Unlike the Centre, the medical fraternity is divided on euthanasia. While many neurosurgeons and onco-surgeons who deal with the worst-outcome cases argue against delaying the inevitable, others point out to palliative care and the possibility that medical research could one day provide a cure. "It is kinder to not delay the inevitable in terminally-ill patients," said a doctor who supports the pro-euthanasia movement. But, Dr

Hemang Koppikar, an ophthalmologist who has championed the pro-life cause for decades, said: "While everyone is crying themselves hoarse arguing for or against euthanasia, one needs to think of a feasible alternative for chronically or terminally ill patients who are afflicted by such dilemmas." Incidentally, he said, the ancient Indian practices of "Santhara" by Jains and "Prayopavesa" by Hindus allowed "non-violent, self-desired termination of life" when there was no longer a will to live. "But this happened when the person abandoned all attachments (tyaag) with equanimity and concentrated only on God. This is the 'Art of Dying'. Euthanasia should not be confused with Santhara. No one can be given Santhara as it is voluntary," Koppikar said.²⁰ In some countries there is a divisive public controversy over the moral, ethical, and legal issues of euthanasia. Those who are against euthanasia may argue for the sanctity of life, while proponents of euthanasia rights emphasize alleviating suffering, bodily integrity, self-determination, and personal autonomy. A survey in the United States of more than 10,000 physicians came to the result that approximately 16% of physicians would ever consider halting life-sustaining therapy because the family demands it, even if they believed that it was premature. Approximately 55% would not, and for the remaining 29%, it would depend on circumstances.²¹

In the United Kingdom, the pro-assisted dying group Dignity in Dying cite conflicting research on attitudes by doctors to assisted dying: with a 2009 Palliative Medicine- published survey showing 64% support (to 34% oppose) for assisted dying in cases where a patient has an incurable and painful disease, while 49% of doctors in a study published in BMC Medical Ethics oppose changing the law on assisted

dying to 39% in favour.²² Legalizing voluntary active euthanasia can be very dangerous for society if a party with vested interests intends to misuse it. A terminally ill person is not in the best state of mind to take a decision if he/she

should die or not. If legalized, voluntary active euthanasia is likely to be misused by those not suffering from any terminal disease but are psychologically depressed and don't want to live.²³

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