

Euthanasia and Physician Assisted Suicide; A comparative analysis

Osia Varghese

LLM student (Full – time), School of law, Christ University, Bangalore, Karnataka, India

ABSTRACT

‘Whether the life of a person can be terminated according to his will’ is a subject of highly controversial value worldwide. The mode of termination, assistance by practitioner, advance directives, eligible circumstances are different from country to country. Furthermore, whether euthanasia or Physician assisted suicide or both be legalised is also differentially treated by different countries. Physician assisted suicide happens when the practitioner prescribes medicine and is self-administered by patient whereas in euthanasia there will be administration and assistance by practitioner. The present article tries to understand the legal regime and methods followed by India, USA, Netherlands, Belgium, Luxembourg, UK, Switzerland, and Australia in case of termination of life of a person. The articles also try to draw a comparative analysis of the practices of these countries with India suggesting the need of a comprehensive law in India to remove the ambiguities with respect to termination of life.

Key words: *Euthanasia, Involuntary Active Euthanasia, Physician assisted suicide, Termination of life, Voluntary Active Euthanasia.*

INTRODUCTION

The concept of euthanasia and Physician assisted suicide is directly related to termination of life a person. Some countries like US only accept Physician assisted suicide whereas some other countries like Netherlands and Belgium accepts both Physician assisted suicide and Euthanasia. To understand the implications associated with these terms its vital to know their meanings.

Physician Assisted Suicide, (PSA) or Physician Assisted Death, is the act in which a physician provides medication to intentionally end a patient’s life at the explicit request of the patient[1]. Here there will be no administration of medicine by the practitioner. He only prescribes the medicine and it is to be self-administered by the patient. When this process is administered by the practitioner, it becomes euthanasia. Thus, in euthanasia there is administration and assisting of the practitioner. Here the medical professional terminates the life in contrast to Physician Assisted Suicide where the patient himself terminates his life. Pertaining to the manner of performance, euthanasia can be active or passive. It is passive euthanasia when the treatment or life supporting services given to the patient is withheld and is active where physician acts in a manner that terminates life of the patient. Euthanasia is of many kinds and they are Voluntary Active Euthanasia (VAE), Involuntary Active Euthanasia (IAE), and Nonvoluntary Active Euthanasia (NAE). In VAE, the mentally competent patient explicitly requests the physician to administer the medication voluntarily[2]. This is recognised in many states of US, Switzerland, Belgium etc. IAE is when a physician end patients’ life without the request of mentally competent person. This is normally not legalised in many of the countries. Lastly in NAE the medication is given to a non-competent person due to mental deficiency, dementia or Alzheimer’s or any other situations of mental incapacity[3]. Here the physician administers medication to such a person who is unable to give consent[4]. It is pertinent to note that the laws to the same in different in different countries. There is huge tussle and dilemma associated with euthanasia and Physician assisted suicide in almost all the countries on different dimensions due to which these differences arise. The law of one country can only be improved when it is compared with legal developments of other countries and therefore global analysis becomes imperative.

GLOBAL SCENARIO

For the comparative evaluation on Physician Assisted Suicide, (PSA) and euthanasia, legal regime in 8 countries is selected. The countries selected are India, USA, Netherlands, Belgium, Luxembourg, UK, Switzerland, and Australia. This selection was mainly based on the recognition of Physician Assisted Suicide and euthanasia among

different nations. Termination of life is an offence in UK and India (except in case of passive euthanasia). In Australia, Luxembourg, Belgium, and Netherlands both Physician Assisted Suicide (PSA) and euthanasia are recognised whereas in some states of USA only Physician Assisted Suicide (PSA) is recognised. This is furthermore elaboratively dealt in the below paragraphs.

India

Partial euthanasia is allowed in India under 'rarest of the rare' circumstance under the aid of article 21 of the constitution braced by judicial precedents. But there is explicit prohibition on right to suicide under the Indian penal code sections 305, 306, and 307[5]. For instance section 309 on punishment of suicide was challenged before many courts of India as against article 21 and 14 of the constitution and those judgements drastically changed the judicial landscape on euthanasia in India. The discussion first came in the high court of Bombay in *Maruti ShripatiDubal versus The State of Maharashtra*[6]. The court here held 'right to die' is included in article 21 and struck down section 309 of the IPC. This view was further accepted in *P. Rathinam v. union of India* [7] where it was held that section 309 of the IPC is unconstitutional. Later in *Gian Kaur v. State of Punjab*[8], the decision in *P Rathinam* was overruled corroborating that right to life does not include right to die and thus makes section 309 constitutional. Thus, practitioner assisted suicide remained an offence under section 309 in India.

The 196th law commission report (2006) on euthanasia suggested on conceptualisation of a law for terminally ill people who desired to die who are refusing medical care, artificial feeding, or hydration. The act was titled "Medical Treatment to Terminally Ill Patients ("Medical Treatment to Terminally Ill Patients Protection of Patients and Medical Practitioners 2006"). But it was rejected on the ground that the recommendations were based on the reasoning that euthanasia will result in 'intentional killing' and resulting in legalization of suicide.

A remarkable change occurred in 2011 when the judgment in *Aruna Ramachandra Shanbaug v. Union of India*[9] was pronounced. In this case the Indian judiciary started observing the concept of euthanasia and particularized the classification of active and passive euthanasia. Though the termination was not permitted in the instant case, it recognised passive euthanasia. Thus, in India only passive euthanasia is recognised and active euthanasia is forbidden. Court here invoked *Parens Patriae* principle to decide for the best for the patient. This case holds importance as it laid standards when there was no law in India governing euthanasia. Later the judgement in *Common Cause v. the Union of India*[10] also marked a step-in furtherance of right to die. The establishment of the concept of "advance directives" and the procedure for executing advance directives in this case gave effect to passive euthanasia. The court expanded the 'right to die' in article 21 as 'right to die with dignity'. In a recent 2020 judgement of *Chandrakant NarayanraoTandale vs The State of Maharashtra*[11], where the petitioner sought permission for active euthanasia, the court referred the precedent in *common cause* and held that active euthanasia is not permitted in India.

United States of America

The Oregon's law of death and dignity Act[12] in 1997 that permitted Physician to assist in dying is one of the oldest laws pertaining to legalisation of Physician assisted Suicide (PSA). This act contained eligibilities that were to be met in case of PSA. This act considered the self-administration of lethal drugs not as suicide but death with dignity[13]. The act restricted the administration of medication by legal professional and only permitted his role as a supplier granting maximum autonomy for self-determination with the patient. Though there is such autonomy, a person who is below the age of 18 regardless of his health condition cannot be subjected to PSA. The prescribing physician must refer to another consulting physician who is supposed to confirm the diagnosis. Furthermore, the practitioners are not under mandatory obligation to attend the death.

Assisted dying is permitted in the region of Washington through the Death with Dignity Act after its approval in march 2009 and in Washington DC through death and dignity act 2017. Both the acts permits doctors to prescribe drugs for self-administration and includes provisions that corresponds with the Oregon's law[14]. This act requires the mandate of '6-month life expectancy' indispensable for PSA along with other non derogable mandates. In US, there also existed laws that asks for less than 6 months of life expectancy like that of the Patient Choice and Control Act 2013 in Vermont [15].

Unlike other states where there was a mandated law for self-administration, the law in Montana is directed through precedents. In Montana through a precedent in *Baxter v. Montana*[16] in 2009, prosecution against doctors who assisted the suicide of a person was barred and the court by citing the state's Rights of the Terminally Ill Act held that there exists no statutory regulation halting a physician from honouring a person who is terminally ill or mentally capable in his request to prescribe medicines to hasten his death.

In New Mexico the district court in *Morris V. Bradenburg* [17](2012) held that prosecution of a doctor for "aid in dying" was constitutionally violative. But this judgement was overturned by the by supreme court concluding that it is not the function of the courts but of the legislature to allow medical aid in dying by the physicians[18]. Later in April 8, 2021 a progressive effort was made through the New Mexico Elizabeth Whitefield End-of-Life Options

Act liberalizing personal autonomy. The act stipulated the patient to be above 18 and mentally capable having a terminal illness. Such persons can be prescribed medication with the patient's written request. Other Similar laws In US include the End-of-Life Options Act 2015 in California; End Of Life Options act 2016 in Colorado; Our Care, Our Choice Act 2019 in Hawaii and the Aid in Dying for the Terminally Ill Act 2019 in New Jersey. All these laws protect from prosecution all those doctors who prescribes drugs for self-administration for termination of life.

Among the 50 states of USA, most do not recognise euthanasia. Only 9 states recognise the assisted suicide where the medical professional can prescribe lethal medications. Among the 9, the law in Montana is not statutory but only judicial. Furthermore, it is to be noted that Doctor-administered assisted dying and any form of assistance to help a person commit suicide that falls outside the provisions of Act will remain a criminal offence[19] according to the law of the land.

Netherlands

Netherlands is the first country to recognise euthanasia with the adoption of 'Termination of Life on Request and Assisted Suicide Act'[20] in the year 2001. This Dutch Act empowers to legalise both euthanasia and PAS originated provided that the physician acts in accordance with the 'criteria of due care.' The person can seek the relief when the person is suffering from an "unbearable physical or mental suffering" with no scope of improvement. If the age of the child is below 12, then parental consent plays a vital role and in case the patient falls within the age group of 16 and 17, then they can decide without parental supervision. The Dutch definition of euthanasia lays heavy emphasis on the concept of 'request.' The termination of life will be only performed with the request from the patient in the event of unbearable pain and suffering with no chance of improvement or possibility of alternative medications. The patient who undergoes the termination must be fully informed and the it must be in consistent with the appropriate way adopted for medication. Furthermore, there is no compulsory obligation with the practioners to perform and they do have complete right to reject due to ethical or social reasons.

Netherlands have broadened its scope of application even for psychological patients, persons having severe dementia, and active termination of life of children. Here an advance euthanasia directive can replace a verbal request for euthanasia in a later stage of dementia provided that all other norms are met without fail[21]. In April 2020, the Dutch Supreme Court ruled in the *Coffee euthanasia case*[22] that patients with advanced dementia who have made a written advance request for euthanasia can receive it. With this case the code of practice[23] for euthanasia was also updated and the Royal Dutch Medical Association (KNMG) [24]published a new guideline on end-of-life decisions concentrating on euthanasia in case of dementia.

Belgium

The Belgian Act on Euthanasia 2002 permits the doctors to prescribe drugs for self-administration as well as to administer the process. This law in Belgium is related to the law in Netherlands with slight differences. For instance, in Netherlands euthanasia is permitted in case of "unbearable suffering" due to "a medical condition," whereas in case of Belgium the "physical or psychological unbearable suffering" which is associated with "a serious and incurable disorder caused by illness or accident" is also covered. However, when it comes to the obligations of the doctors there is a huge similarity between the Belgium and Netherlands law regime on termination of life.

After the inception of 2002 law, voluntary euthanasia was legalised and after 2014 Feb 14th the age restriction was completely removed. Thus, if a terminally ill child who can understand the consequences of the decision, can ask for life termination with parental consent[25] if the child's suffering is constant and unbearable .when it comes to the consent of a major, it is mandatory that the person requesting it must have decisional capacity and repeat such request immediately before the process as a proof of voluntariness[26]. Due to lack of decisional capacity though the Act prohibits euthanasia in individuals with late-stage dementia and who have written advance euthanasia directive (when they lack decisional capacity at the time of the impending euthanasia), it makes an exception in case of an irreversible coma or vegetative state [27].

Luxembourg

Luxembourg became the 3rd European country to legalise euthanasia after the passing of The Law on Euthanasia and Assisted Suicide in 2009. The act permits both euthanasia and assisted suicide when the patient is suffering from any incurable and severe conditions without any prospects of improvement. Doctors are supposed to follow the due care process of consultation of independent specialist, person of trust and patients' medical team before the termination process to not face 'penal sanctions or civil suits. There is a provision for terminating a non-resident's life when there exists a close doctor-patient relationship. As on 2015, 34 people used this law[28].

UK

Assisted dying and euthanasia is illegal in UK. In *R (Pretty) v DPP and Pretty v United Kingdom*[29], the house of lords as well as the European courts rejected the right to have practioners assisted suicide or voluntary euthanasia. The act of euthanasia is considered as murder and will be charge according to section 2 of the Suicide act 1961 for assisting murder[30].Furthermore in Northern Ireland Assisting or encouraging' termination will

attract section 13 of the Criminal Justice (Northern Ireland) Act 1966, which extends the Suicide Act 1961 to Northern Ireland. Though there is no specific offence of assisting the suicide, in Scotland it will be dealt under the homicide law and decision will be taken in accordance with the prosecution code. Nevertheless, in case of persons with mental depravity 'Advance decisions' under the Mental Capacity Act[31] (2005) gives a right to refuse health care treatment, including life sustaining treatment even in circumstances that would result in their death[32].

There were a series of bills introduced for legalising physician assisted dying in UK. The recent among them is the Assisted Dying Bill for England and Wales introduced by Baroness Meache. The bill after its second reading is passed in house of lords. This will help rescuing the practitioners from prosecution when self-administered termination is done in accordance with the legal framework. But after the new guidelines on assisted suicide in 2010, in some cases the penalisation will not be attracted if it is found that the assistance was due to compassion, voluntary decision to death, assistance out of compassion were the mitigating factors.

Switzerland

Though Switzerland penalises voluntary euthanasia, by virtue of article 115 of the Swiss Penal Code assisted suicides are permitted. This provision of article 115 indirectly gives the right by stating that incitement or assistance suicide is a punishable offence only when it is undertaken out of self-interested motivations of the parties[33]. The offence will be charged if found that the termination was active euthanasia regardless of motives.

Under the Swiss law, this right can be used even by non-residents resulting in a phenomenon called 'suicide tourism.' In this phenomenon the residents of other countries immigrate to Switzerland for termination of life. But only some of organisations allow it. It is also interesting to note that from 2008 to 2012, 611 non-residents were assisted to die[34]. The law permits the act to be done without the involvement of a doctor even by a nursing homes or hospitals.

Australia

The year 1993 marked the inception of Rights of the Terminally Ill Act 1994 that legalised euthanasia in the northern territory. But it was thereafter overturned by the commonwealth in the controversial Euthanasia Laws Act 1997. Subsequently there were efforts from Australian democrats and Australian greens which were futile in action. In May 2015, the standing committee on legal and social issues was directed to issue report on right to make 'end-of-life choices. The Voluntary Assisted Dying Act 2017 came into force in 19th June 2019. This act created shock and praise in Victoria as well as around Australia. The act legalises the prescription of drugs for self-administration and to administer the drugs in case of physically depravity to administer. In Western Australia the Voluntary Assisted Dying Act 2019 have similar provisions and it came to force in the year 2021. The year 2021 marked development in Tasmania where the End-of-life Choices (Voluntary Assisted Dying) Act 2021 facilitated administration and prescription of drugs.

COMPARATIVE ANALYSIS

An overview of 8 countries discussed above shows that all of them have different regimes on Physician assisted suicide and euthanasia. There are strict rules in UK that punishes anyone who assists the termination of life of or of suicide. A similar stand can be seen in India whereby such a person can be prosecuted under section 306 of IPC for abatement of suicide. However, the "passive euthanasia" is recognised in India through the *Aruna Shanbaug*[35] judgement. But any form of active euthanasia is still an offence against body in India. There is hence lack of statutory laws on euthanasia or Physician assisted suicide in India. The *Common Cause judgement*[36] and the later judgement provides the framework of law in India. The state of Montana of US also holds a similar situation. In Montana, the judicial precedent in *Baxter v. Montana*[37] (2009) protects doctors from prosecution in the absence of a statutory law.

Another important basis of comparison is on the validity of euthanasia or Physician assisted suicide. Some states in USA only recognises Physician assisted suicide. Thus, doctors are supposed to prescribe medication and the patient is supposed to self-administer such medication. Oregon, California, Colorado, Washington, Hawaii, New Jersey, Vermont and Washington DC are such states where only Physician assisted suicide is recognised. Similar stand is also seen in Switzerland where the suicide can be assisted when the motive is not selfish. In other countries like Luxembourg, Belgium and Netherlands both euthanasia or Physician assisted suicide are permitted. In Australia states like Victoria, Western Australia and Tasmania passed legislation during the time period of 2017-2021 that permits the doctors to prescribe lethal medicines as well as administer when the patient is physically deprived.

When it comes to the concept of advance directives, it was recognised in India through the common cause judgement. Such advance decisions are recognised in Belgium also. The Dutch also by virtue of 2020 supreme court decision allowed advance directives for patients suffering from advanced dementia. Thus, people who can no longer make a voluntary choice can claim the right of termination [38]. However, the laws of Oregon (USA) do not recognise advance directives and asks them to be contemporaneous in nature. In some other countries with requisite safeguards, advance directives can be permitted. These countries include U.K, Netherlands, and Switzerland[39].

Psychiatric illness is not a ground for termination of illness in Oregon (USA). The person can claim for assisted suicide irrespective of the condition in Switzerland although psychiatric illness is not considered there. Moreover, in countries like Netherlands and Belgium mental element is also considered as a valid reason for termination of life.

The concept of suicide tourism is another aspect of comparison. Some countries allow to terminate the life of its residents exclusively whereas other countries permit termination of life of non-residents as well. The Swiss law is very prominent in this regard as it allows Physician assisted suicide for non-residents. Often the residents of UK use such provision to terminate their life. Other countries like India, Netherlands, Belgium, USA only permits for citizens or residents of such countries.

CONCLUSION

When compared to the frameworks in other countries it is evident that Indian law needs to change drastically. Considering the strong religious and moral beliefs embedded in the Indian society, the concept of euthanasia will be accompanied with controversies [40]. Furthermore there is a high problem that India do not have a comprehensive legislation in this respect. The source of law as far as termination of life is considered is judicial precedents only. Due to lack of law there is confusions on revocation of advance directives, definition of physician assisted suicide and euthanasia etc. Following the advancements in 2021 in Australia, India also should frame a legislation that specifically defines the extend of liability for a practitioner who is engaged in termination of life of a patient. The vague definition of right to die with dignity under article 21 must be narrowed down through a statue on euthanasia. The ambiguities as to recognition of passive euthanasia , the procedure to be followed and conditions for termination can be solved only through a comprehensive legislation like the ones in US , UK , Belgium etc.

REFERENCES

- [1]. Emanuel EJ, Onwuteaka-Philipsen BD, Urwin JW, Cohen J. *Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe*. JAMA.;316(1):79–90. doi:10.1001/jama.2016.8499(2016).
- [2]. *Ibid*
- [3]. Yount L., *Physician-assisted suicide and euthanasia*. New York: Facts On File, Inc,(2000).
- [4]. *Ibid*
- [5]. Caesar R., *Postion of Euthansia in India- an analytical study*. Indian J Criminol Criminalistics (2011)
- [6]. (1986) Mah LJ 913.
- [7]. (1994)(3) SCC 394.
- [8]. (1996)(2) SCC 648.
- [9]. (2011) 4 SCC 454.
- [10]. Writ Petition (civil) No. 215 Of 2005.
- [11]. Chandrakant NarayanraoTandale v. The State of Maharashtra, decided by Bombay HC on 9 December, 2020.
- [12]. The Oregon Death with Dignity Act 1997., Oregon Public Health Division. <https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>. (Oregon)
- [13]. Steck N, Egger M, Maessen M, Reisch T, Zwahlen M. *Euthanasia and assisted suicide in selected european countries and US States*. Med Care;51(10):938-44, (2013).
- [14]. Washington State Department of Health. Washington State Department of Health 2014 Death with Dignity Act Report. [accessed 20 nov 2022]. Disponivel: <http://1.usa.gov/1DaWEB1>
- [15]. Vermont. Department of Health. Patient choice and control at end of life. 2013 [accessed 20nov 2022]. Disponivel: <http://1.usa.gov/1OGe9bd>.
- [16]. MT DA 09-0051, 2009 MT 449
- [17]. 2016-NMSC-027, 376 P.3d 836.
- [18]. Dyer O, White C, Garcia Rada A. *Assisted dying: law and practice around the world*. BMJ. 2015;351:h4481(2015).
- [19]. Lara Giddings MP and Nick McKim MP, *Voluntary Assisted Dying – A Proposal for Tasmania, Consultation Paper* (2013)
- [20]. Nicol, J, *Euthanasia and Assisted Suicide: International Experiences*, https://publications.gc.ca/collections/collection_2013/bdp-lop/bp/2011-67-1-eng.pdf(last visited on 20th November 2020)
- [21]. Munday T, Poon P. *Geriatricians' attitudes towards voluntary assisted dying: a survey of Australian and new Zealand Society for Geriatric Medicine members*. Australas J Ageing. 39(1):e40–8, (2020)
- [22]. SHADENBERG, Alex. *Doctor Euthanizes Patient with Dementia, Secretly Put Drugs in her Coffee*. Life News, 2017. Available at: <www.lifenews.com/2017/01/30/doctor-euthanizes-patient-with-dementia-secretly-put-lethal-drugs-in-her-coffee/#>
- [23]. Euthanasia code. 2018 Regional euthanasia review committees, euthanasia code 2018. Den Haag (2018)

- [24]. KNMG (2021). www.knmg.nl/advies-richtlijnen/scen-steun-en-consultatie-bij-euthanasie/over-scen.htm
- [25]. Vizcarrondo FE. Neonatal euthanasia: the Groningen Protocol. *Linacre Q.* 2014;81(4):388-92
- [26]. Nys H. *A Discussion of the Legal Rules on Euthanasia in Belgium Briefly Compared With the Rules in Luxembourg and the Netherlands.* Cambridge: Cambridge University Press; (2017).
- [27]. Cohen-Almagor R. *First do no harm: euthanasia of patients with dementia in Belgium.* *J Med Philos,* 41:74–89.(2016)
- [28]. Ministry of Health, Ministry of Social Security (Luxembourg). *Euthanasia and assisted suicide: 25 questions, 25 answers.* June 2010. www.sante.public.lu/publications/santefil-vie/fin-vie/euthanasie-assistance-suicide-25-questions-reponses/euthanasie-assistance-suicide-25-questions-reponses-en.pdf
- [29]. In R (Pretty) v DPP (UK) [2002] 1 AC 800 and Pretty v United Kingdom [2002] III Eur Court HR 427
- [30]. Simillis C. *Euthanasia: a summary of the law in England and Wales.* *Med Sci Law.*;48(3):191-8 (2008)
- [31]. Applying to England and Wales.
- [32]. Mental Capacity Act UK (2005) ss 24, 25(5) &(6).
- [33]. Hurst, S. A., & Mauron, A., *Assisted suicide and euthanasia in Switzerland: allowing a role for non-physicians.* *BMJ (Clinical research ed.),* 326(7383), 271–273 (2003).
- [34]. Suicide tourism: a pilot study on the Swiss phenomenon. *J Med Ethics* 2015;41:611-7.
- [35]. *supra note 9*
- [36]. *supra note 10*
- [37]. *supra note 12*
- [38]. *supra note 22*
- [39]. Vicki J. Bowers, “*An Advance Directive is a legal document explaining one’s wishes about medical treatment if one becomes incompetent or unable to communicate.*” *Advance Directives: Peace of Mind Or False Security,* 26 *Stetson L. Rev.* 678 -725 (1996)
- [40]. Padubidri, J. R., Antony Manoj, M., & Singh, T, *Euthanasia: A good death or an act of mercy killing: A global scenario.* *Clinical Ethics,* 17(2), 118-121 (2002)