ISSN: 0975-833X

Available online at http://www.journalcra.com

International Journal of Current Research
Vol. 9, Issue, 12, pp.63619-63622, December, 2017

INTERNATIONAL JOURNAL OF CURRENT RESEARCH

RESEARCH ARTICLE

EUTHANASIA AND ITS RELEVANCE: A COMPARATIVE STUDY IN REFERENCE TO VARIOUS NATIONS ACROSS THE WORLD

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ARTICLE INFO

Article History:
Received 15th September, 2017
Received in revised form
24th October, 2017
Accepted 19th November, 2017
Published online 31st December, 2017

Key words:

Euthanasia, Decriminalization,
Survival, Incurable.

ABSTRACT

Euthanasia is usually used in the context of 'Terminally-ill' patients. But the word "Terminally-ill" is ambiguous not well-defined anywhere and usually describes patients who are suffering from fatal diseases including those who are in a Permanent Vegetative State (PVS). 'Euthanasia' is the termination of a very sick person's life in order to relieve them of their suffering. In most cases, euthanasia is carried out because the person who dies asks for it, but there are cases called euthanasia where a person can't make such a request. The paper intends to throw light on conditions of Euthanasia in various nations across the world

Citation: Rahul Tripathi, 2017. "Euthanasia and its relevance: a comparative study in reference to various nations across the world", *International Journal of Current Research*, 9, (12), 63619-63622.

INTRODUCTION

'Euthanasia' is a Greek word Youthanazia.[1]It is a combination of two words eu-good and thanatos-death, means 'to die well.' Thus, 'Euthanasia' is defined as the 'termination of human life by painless means for the purpose of ending physical suffering. Sometimes, euthanasia is also defined as killing a person rather than ending the life of a person who is suffering from some terminal illness, also called as 'mercy killing' or killing in the name of compassion.[2] According to J.S. Rajawat, Euthanasia is putting to death a person who because of disease or extremely old age or permanently helpless or subject to rapid incurable degeneration and cannot have meaningful life.[3] It may also be defined as the act of ending life of an individual suffering from a terminal illness or incurable condition, by lethal injection or by suspension of life support extraordinary treatment. Euthanasia is usually used in the context of 'Terminally-ill' patients. But the word "Terminally-ill" is ambiguous not well-defined anywhere and usually describes patients who are suffering from fatal diseases including those who are in a Permanent Vegetative State (PVS). 'Euthanasia' is the termination of a very sick person's life in order to relieve them of their suffering. In most cases, euthanasia is carried out because the person who dies asks for it, but there are cases called euthanasia where a person can't make such a request. Broadly, Euthanasia may be classified according to whether a person gives informed consent under the following heads:

(a) Voluntary Euthanasia
(b) Non-Voluntary Euthanasia
(c) Involuntary Euthanasia

There is a debate within the medical and bioethical literature about whether or not the non-voluntary killing of patients can be regarded as euthanasia, irrespective of intent or the patient's circumstances. According to Beauchamp and Davidson consent on the part of the patient was not considered to be one of the criteria to justify euthanasia.' However, others see consent as essential.[4]

Comparative study of euthanasia

1.The Netherlands: An Expansive View of Patient's Rights

The Dutch Penal Code expressly prohibits the practice of euthanasia. A number of judicial decisions, however, have enveloped the statutory prohibition and permitted doctors to assist patients who request euthanasia. In the process of the decriminalization of euthanasia, courts have dispensed with the distinction between passive euthanasia, which is the

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[1] 20th Century Encyclopedia
[2] Saikia, Euthanasia 'Is it Right To Kill' or Right To Die', Cr LJ 356 (2012)
[3] J.S. Rajawat, Euthanasia, Cr LJ 321 (2010)
[4] Beauchamp; Davidson, The Definition of Euthanasia, Journal Medicine and Philosophy, 294 (1979).

withdrawal of life sustaining medical intervention, from active euthanasia, which is the deliberate killing of the patient. Since 1973, courts have routinely refused to uphold convictions of doctors who perform euthanasia.[5] In 1973, the district court in Leeuwarden decided that life-shortening drugs may be administered to alleviate a patient's pain where five conditions are present.[6] The court required that patients be incurably ill, experience unbearable physical or psychological pain, state their request in writing, enter the dying phase, and have the aid of a physician in the termination of life.[7] The Leeuwarden court also found that the defendant doctor's intent in that case was to kill rather than to alleviate pain, but the majority ruled that the doctor was not required to serve a prison sentence.[8] Therefore, the Leeuwarden decision set the precedent for a series of judicial decisions which excepted the practice of euthanasia despite the prohibition in the Dutch Penal Code.

In 1981, subsequent to the Leeuwarden decision, another court in Rotterdam expanded the conditions which a patient must suffer before an assisted suicide is deemed legal.[9] The court, in convicting a non-physician of assisting in an illegal suicide, required a conscious patient experiencing "unbearable suffering" to voluntarily request euthanasia.[10] The court was silent, however, on how one determines "unbearable suffering" or the "voluntariness" of the request. Therefore, although the Rotterdam decision reinforced the judicial call to ignore the Penal Code, it did not fully shape the boundaries of the practice of euthanasia. In 1984, in *"The Schoonheim"* case, the High Court enlarged the pool of potential euthanasia recipients by declaring that the dire distress of a non-terminal patient may justify the application of euthanasia. The Court overturned the conviction of a doctor who administered euthanasia in Pumerend, Netherlands. In overturning the conviction, the Court ruled that a doctor's mental duress may be a sufficient defense to prosecution. On remand, the Court of the Hague dismissed the case after determining that the accused doctor made a reasonable medical choice after considering whether the patient, "in her own eyes," was still capable of dying with dignity, but would not do so shortly thereafter.[11] In addition to judicial attempts to define the permissible practice of euthanasia, there have also been legislative efforts to expand the realm within which euthanasia may be practiced.[12] On February 9, 1993, the Lower House of Dutch Parliament approved new regulations which could become law if approved by the Higher House.[13] The regulations state that physicians who perform active euthanasia, with or without the request of the patient, must report the events to a coroner, who must inform the district attorney. The district attorney will not make a further inquiry where the circumstances indicate the doctor acted with "due conscientiousness and care." [14] Furthermore, it is presumed the doctor acted with the requisite degree of care if the rules of conduct previously established by court decisions and health authorities were followed. Today, the relevant parts of the Dutch Penal Code are still in place even though there is judicial tolerance of the practice of euthanasia.[15] Although statutorily still a crime, Dutch jurisprudence has regulated the practice of physician-assisted suicide.[16] As a result, physician-assisted euthanasia is an accepted practice in the Netherlands and provides a model for other nations contemplating similar laws.[17] The regulatory framework governing euthanasia, however, has failed to eliminate the inevitable abuse which is endemic in the practice of euthanasia.[18] If Indian Courts decide to function in a similar manner, it is perfectly possible to allow the practice of Euthanasia to enter the Indian legal realm without going against statutory provisions.

2. Australia

The Northern Territory of Australia became the first country to legalize euthanasia by passing the Rights of the Terminally 111 Act, 1996. It was held to be legal in the case of *Wake v. Northern Territory of Australia*[19] by the Supreme Court of Northern Territory of Australia. Subsequently, the Euthanasia Laws Act, 1997 legalized it. Although it is a crime in most Australian States to assist euthanasia, prosecution have been rare. In 2002, the matter that the relatives and friends who provided moral support to an elder woman to commit suicide was extensively investigated by police, but no charges were made. In Tasmania in 2005, a nurse was convicted of assisting in the death of her mother and father who were both suffering from incurable diseases. She was sentenced to two and half years in jail but the judges later suspended the conviction because they believed the community did not want the woman but behind bars. This sparked debate about decriminalization of euthanasia.

3. Albania

Euthanasia was legalized in Albania in 1999, it was stated that any form of voluntary euthanasia was legal under the Rights of the Terminally Ill Act, 1995. Passive euthanasia is considered legal if three or more family members consent to the decisions.

4. Belgium

Euthanasia was made legal in 2002. The Belgian Parliament had enacted the 'Belgium Act on Euthanasia' in September, 2002, which defines euthanasia as "intentionally terminating life by someone other than the person concerned at the latter's request". Requirements for allowing euthanasia are very strict which includes the patient must be major, has made the request voluntary, well considered and repeated and he/she must be in a condition of consent and unbearable physical or mental suffering that can be alleviated. All these acts must be referred to the authorities before allowing in order to satisfying essential requirements.

5. Canada

In Canada, patients have the rights to refuse life sustaining treatments but they do not have the right to demand for euthanasia or assisted suicide. The Supreme Court of Canada in Rodriguez v. The Attorney-General of Canada,[20] held that in case of assisted suicide the interest of the State will prevail

[5] John Keown, The Law and Practice of Euthanasia in the Netherlands, 1992, Law Quarterly Review, Vol. 108, 51.
[6] Ibid
[7] Id
[8] Id
[9] Ibid
[10] Id
[11] Ibid
[12] ibid
[13] Id
[14] Ibid
[15] Ibid
[16] Id
[17] Ibid
[18] Ibid
[19] (1996) 109 NTR 1
[20] (1993) 3 SCR 519.

over individual's interest. This case is very important and deals with a number of legal principles. It dealt with the challenges by a patient to a section in the Criminal Code which prohibited 'assisted-suicide'.[21] The appellant in the case was 42 years old and was suffering from amyotrophic lateral sclerosis. Her condition was rapidly deteriorating and she would soon loose herability to swallow, speak, walk and move her body without assistance. Thereafter she will lose the capacity to breathe without a respirator, to eat without a gastronomy and will eventually become confined to bed. Her life expectancy was between 2 to 14 months.

The appellant did not wish to die so long as she still had the capacity to enjoy life, but wished that a qualified physician be allowed to set up technological means by which she might, when she will be no longer able to enjoy life, by her own hand, at the time of her choosing, end her life. She wanted to be assisted in suicide. She applied to the Supreme Court of British Columbia for a declaration that section 241(b) of the Criminal Code, which prohibits the giving of assistance to commit suicide, be declared invalid on the ground that it violates her right under sections 7, 12 and 15(1) of the Charter, and is, therefore, to that extent it precludes a terminally ill-person from committing 'physician- assisted' suicide, of no force and effect by virtue of section 52(1) of the Constitution Act, 1982. The Court dismissed the appellant's application by majority and the validity of section 241(b) was upheld. There is one another case also which shows that doctors must respect their patient's wishes. In Mallette v. Schulman,[22] a 57 years old woman who was seriously injured in a car accident - was taken to the hospital and she was unconscious. A nurse discovered in the woman's handbag, a card signed by the woman identifying her **as** a Jehovah's witness and requesting that no blood-transfusion should be given to her under any circumstances, that she fully realized the implications of that position but did not object to the case of non-blood alternatives.

The doctor was informed of the contents of the card but he personally administered blood transfusion to the woman as he was of the opinion that it was necessary to replace the blood that was lost and her life had to be saved. The woman made a 'very good recovery from her injuries.' She was discharged from hospital after six weeks. She then sued the doctor for negligence, assault, battery and religious discrimination. The trial judge Donnelly, J. accepted the plea of battery only and awarded damages of $20,000. This was affirmed by the Court of Appeal. The case demonstrates that doctors must respect their patient's wishes provided that the patient were in a fit state to make it plain or indicate in advance as to what validity made decision of the patient. In various cases[23] the Supreme Court of Canada gave importance to the wishes of the patient and if the consent should be validly obtained by the doctors or not. Otherwise doctors are made liable for their conduct.

6. United States of America

There is a distinction between passive euthanasia and active euthanasia. While active euthanasia is prohibited but physicians are not held liable if they withhold or withdraw the life sustaining treatment of the patient either on his request or at the request of patient's authorized representatives. Euthanasia has been made totally illegal by the United States Supreme Court in the cases *Washington v. Glucksberg and Vacco v. Quill.*[24] In these cases the respondents are physicians who claim a right to prescribe lethal medication for mentally competent, terminally-ill patients who are suffering in great pain and who desire doctor's help in taking their own lives, but are deterred from doing so because of the New York Act. They contended that this is not different from permitting a person to refuse life sustaining medical treatment and hence, the Act is discriminatory. This plea was not accepted by the US Supreme Court. The Equal Protection Clause states that no State shall 'deny to any person within its jurisdiction equal protection of the laws.' This provision creates no substantive rights. It embbdies a general rule that the State must treat like cases alike but may, however, treat unlike cases differently. Everyone, regardless of physical condition is entitled, if competent, to refuse unwanted life-saving medical treatment, but no one is permitted to assist a suicide.

The learned judges makes a good distinction between Euthanasia and physician assisted suicide. In their opinion, when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingects lethal injection prescribed by a physician, he is killed by that medication. (Death which occurs after the removal of life-sustaining systems is from natural causes). (When a life-sustaining system is declined, the patient dies primarily because of an underlying fatal disease)". Similarly, the over-whelming majority of State Legislatures have drawn a clear line between assisting suicide and withdrawing or permitting the refusal of unwanted life-saving medical treatment by prohibiting the former and permitting the latter. In United States, nearly all States expressly disapprove of suicide and assisted suicide either in statues dealing with durable power-of-attorney in health care situations or in 'living-will' statutes. Only in Oregon, a State in America, physician assisted suicide has been legalized in 1994 under Death and Dignity Act. In April, 2005, California State Legislative Committee approved a bill and has become 2nd State to legalize assisted suicide. The Supreme Court of Oregon in Gonzales, Attorney-General et al v. Oregon et al,[25] upheld the Oregon Law of 1994 on assisted suicide not on merits but on the question of non-repugnancy with Federal Law of 1970. The Oregon Death with Dignity Act, 1994 exempts from civil or criminal liability State-licensed physicians who, in compliance with the said Act's specific safeguards, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill-patient. In 2001, the Attorney-General of US issued an Interpretative Rule to address the implementation and enforcement of the Controlled Substances Act, 1970 with respect to the Oregon Act of 1994, declaring that using controlled substances to 'assist suicide' is not a legitimate medical practice and that purpose is unlawful under the 1970 Act. This Rule made by the AG was challenged by the State of Oregon, physicians, pharmacists and some terminally-ill State residents. But the Supreme Court of Oregon upheld the Oregon Law of the 1994 on assisted suicide.

7. England

The House of Lords now settled that a person has a right to refuse life sustaining treatment as part of his rights of autonomy and self-determination. The House of Lords also

[21] 196th Report of the Law Commission of India, 196 (2010) 17th Ed.
[22] (1990) 72 OR (2d) 417 (CA): (1991) 2 Mad LR 162.
[23] Nancy B v. Hotel-Dieu de Quebee, (1992) 80 DLR (4th) 385; Ciarlariello v. Schacter, (1993) 2 SCR 119

[24] (1997) 117 SCT 2293
[25] US (SC) 17-1-2006

permitted non-voluntary euthanasia in case of patients in a Persistent Vegetative State (PVS). Moreover, in a very important case namely, *Airedale NHS Trust v. Bland,*[26] the House of Lords made a distinction between withdrawal of life support on the one hand, and Euthanasia and assisted suicide on the other hand. That decision has been accepted by Supreme Court of India in *Gian Kaur's case.*[27] The facts of the case are: Mr. Anthony Bland met with an accident and for three years, he was in a condition known as PVS. The said condition was the result of distinction of the cerebral cortex on account of prolonged deprivation of oxygen and the cortex had resolved into a watery mass. The cortex is that part of the brain which is the seat of cognitive function and sensory capacity. The patient cannot see, hear or feel anything. He cannot communicate in any way. Consciousness has departed for ever. But the brain-stem, which controls the reflective functions of the body, in particular the heart beat, breathing and digestion, continues to operate. In the eyes of the medical world and of the law, a person is not clinically dead so long as the brain-stem retains its functions. In order to maintain Mr. Bland in his present condition, feeding and hydration are achieved by artificial means of a nasogastric tube while the excretory functions are regulated by a catheter and other artificial means. The catheter is also used from time to time give rise to infusions which have to be dealt with by appropriate medical treatment. As for Bland, according to eminent medical opinion, there was no prospect whatsoever that he would ever make a recovery from his present condition but there was every likelihood that he would maintain the present state of existence for many years to come provided the artificial means of medical care is continued. The doctors and the parents of Bland felt, after three years, that no useful purpose would be served by continuing the artificial medical care and that it would be appropriate to stop these measures aimed at prolonging his existence. Since there were doubts whether withdrawal of life support measures could amount to a criminal offence, the Hospital Authority (the appellant) moved the High Court for a declaration designed to resolve these doubts. That judgment was affirmed by the Court of Appeal. Sir Thomas Bingham, Butler-Sloss and Hoffman L.JJ., opined that:

"Despite the inability of the defendant to consent thereto, the plaintiff and the responsible attending physicians:

- May lawfully discontinue all life-sustaining treatment and medical supportive measures designed to keep the defendant alive in his existing PVS including the termination of ventilation, nutrition and hydration by artificial means; and
- May lawfully discontinue and there after need not furnish medical treatment to the defendant except for the sole purpose of enabling him to end his life and die peacefully with the greatest dignity and the least of pain suffering and distress."

On further appeal to the House of Lords, Lord Keith observed that the object of medical treatment and care is, after all, to benefit the patient. But it is unlawful, both under the law of torts and criminal law of battery, to administer medical treatment to an adult, who is conscious and of sound mind, without his consent. Such a person is completely at liberty to decline to undergo treatment, even if the result of his doing will be that he will die.[28]

8. The United Kingdom

The euthanasia is illegal in United Kingdom but on November 5, 2006 British Royal College of Obstructions and Gynecologists submitted a proposal to the Nuffield Counsel of Bioethics calling for consideration of permitting the euthanasia of disabled new-born.

9. Switzerland

According to article 115 of Swiss Penal Code, suicide is not a crime and assisting suicide is a crime if only if the motive is selfish. It does not require the involvement of physician nor is that the patient terminally ill. It only requires that the motive must be unselfish. In Switzerland, euthanasia is illegal but physician assisted suicide has been made legal. However, decriminalizing euthanasia was tried in 1997 but it recommended where a non-physician helper would have to be prosecuted where as the physician would not.

Conclusion

Death is not a right, it is the end of all rights and a fate that none of us can escape. The ultimate right we have as human beings is the right to life, an inalienable right which even the person who possesses it can never take that away. It is similar to the fact our right to liberty does not give us the freedom to sell ourselves into slavery. In addition, this right to die does not equal to a right to 'die with dignity'. Dying in a dignified manner relates to how one confronts death, not the manner in which one dies.

[26] 1993 (1) All ER 821

[27] Gian Kaur v. State of Punjab, (1996) 2 SCC 64[illegible]

[28] Re F (Mental Patient), 1990 (2) AC 1; Bolam v. Friern Hospital Management Committee, 1959 (1) WLR 582.

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