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A comparative analysis of euthanasia laws: international perspectives and the legal landscape in India

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Abstract
This research paper explores the international legal aspects of euthanasia, focusing on variations in laws and societal perspectives. The analysis encompasses key countries such as Australia, Canada, the United States, England, and Switzerland. The study reveals diverse approaches, from the legalization of euthanasia in some regions to its criminalization in others. In Australia, the Northern Territory's pioneering legalization of euthanasia in 1996, subsequently reinforced by the Euthanasia Laws Act of 1997, stands in contrast to the criminalization in most Australian states. Canada grants patients the right to refuse life-sustaining treatments but does not permit euthanasia or assisted suicide. In the United States, a nuanced approach distinguishes between passive and active euthanasia, with the latter being illegal, as affirmed by Supreme Court decisions. The United Kingdom's House of Lords recognizes the right to refuse life-sustaining treatment and allows non-voluntary euthanasia in cases of patients in a Persistent Vegetative State (PVS). Switzerland criminalizes assisted suicide only if motivated by selfishness, making euthanasia illegal but physician-assisted suicide legal. Shifting the focus to India, the paper discusses the legal stance on euthanasia, emphasizing its illegality. While voluntary euthanasia, with the patient's consent, falls under culpable homicide, non-voluntary and involuntary euthanasia are deemed illegal. Assisted suicide is also prohibited under the Indian Penal Code. The study examines the constitutional dimensions, referencing the right to life under Article 21, and delves into the Medical Council of India's ethical guidelines. The research underscores the global diversity in euthanasia legislation and its profound ethical implications. It provides a comprehensive overview of the legal landscape in India, offering insights into the complex interplay between constitutional rights, medical ethics, and societal values in the context of end-of-life decisions.

Keywords: Euthanasia laws, persistent vegetative state, Indian penal code

Introduction

International aspect

In England the House of Lords, various decisions show variations about euthanasia. There is no unanimous opinion amongst them. It indicates changers in their decisions as per the changing social norms and cultural veracities. In Some countries it is legalized or in others. It is criminalized.

Australia

The Northern Territory of Australia was the first country to legalize euthanasia. It did so by passing the Rights of the Terminally Ill Act, 1996. It was held to be legal in the case of Wake v. Northern Territory of Australia [1] 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, prosecutions 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 euthanasia.

Canada

In Canada, patients have the rights to refuse life sustaining treatments but they do not have the right to demand euthanasia or assisted suicide.

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 [2]. In these cases the respondents are physicians who claim a right to prescribe lethal medication for mentally competent, terminally-ill patients who are suffering from 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 embodies 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 make a good distinction between Euthanasia and physician assisted suicide. In their opinion, when a patient refused life sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient injects 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.

In the state of Oregon, 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* [3], 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.

England

The House of Lords have 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 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 [4], 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 [5].

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 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 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 [6].

The United Kingdom

The euthanasia was illegal in United Kingdom. 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.

Switzerland

According to article 115 of Swiss Penal Code, suicide is not a crime and assisted suicide is a crime if and only if the motive is selfish. It does not require the involvement of physician nor is that the patient must be terminally ill. It only requires that the motive must be unselfish. In Switzerland, euthanasia is illegal but physician assisted suicide has been made legal.

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.

Legal Aspects of Euthanasia in India

The legal position of India cannot and should not be studied in isolation. India has drawn its constitution from the constitutions of various countries and the courts have time and again referred to various foreign decisions.

In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is a valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck down by proviso one to Section 92 of the IPC and thus be rendered illegal. The law in India is also very clear on the aspect of assisted suicide.

Right to suicide is not a “right” available in India – it is punishable under the India Penal Code, 1860. Provision of punishing suicide is contained in sections 305 (Abetment of suicide of child or insane person), 306 (Abetment of suicide) and 309 (Attempt to commit suicide) of the said Code. Section 309, IPC has been brought under the scanner with regard to its constitutionality.

Right to life is an important right enshrined in Constitution of India. Article 21 guarantees the right to life in India. It is argued that the right to life under Article 21 includes the right to die. Therefore the mercy killing is the legal right of a person. After the decision of a five judge bench of the Supreme Court in Gian Kaur v. State of Punjab [7] it is well settled that the “right to life” guaranteed by Article 21 of the Constitution does not include the “right to die”.

The Court held that Article 21 is a provision guaranteeing “protection of life and personal liberty” and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33 (m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners.

Exercising these powers, the Medical Council of India has amended the code of medical ethics for medical practitioners. There under the act of euthanasia has been classified as unethical except in cases where the life support system is used only to continue the cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of doctors, life support system may be removed.

In Gian Kaur’s Case Section 309 of Indian Penal Code has been held to be constitutionally valid but the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in a depression, and hence he needs help, rather than punishment. The Delhi High Court in State v. Sanjay Kumar Bhatia, in dealing with a case under Section 309 of IPC observed that Section 309 of IPC has no justification to continue remain on the statute book. The Bombay High Court in Maruti Shripati Dubal v. State of Maharashtra [8] examined the constitutional validity of section 309 and held that the section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14.

Article 21 was interpreted to include the right to die or to take away one’s life. Consequently it was held to be violative of Article 21.

In High Court of Bombay in Maruti Shripati Dubal’s v/s State of Maharastra [9] case held Section 309 (punishment for attempted suicide) of the Indian Penal Code as violative of Articles 14 (Right to Equality) and 21 (Right to Life) of the Constitution. The Court held section 309 of the IPC as invalid and stated that Article 21 to be construed to include right to die. In P. Rathinam’s case [10], the Supreme Court held that section 309 of the IPC is violative of Article 21 of the Constitution as the latter includes right to death. The question again came up in Gian Kaur v. State of Punjab case.

In this case a five judge Constitutional bench of the Supreme Court overruled the P. Rathinam’s case and held that right to life under Article 21 does not include right to die or right to be killed and there is no ground to hold section 309, IPC constitutionally invalid. The true meaning of life enshrined in Article 21 is life with human dignity. Any aspect of life which makes a life dignified may be included in it but not that which extinguishes it. The right to die if any is inherently inconsistent with the right to life as is death with life.

Conclusion

In exploring the international legal aspects of euthanasia, this research paper has traversed a landscape marked by diverse laws, societal perspectives, and ethical considerations. The juxtaposition of legal frameworks in countries such as Australia, Canada, the United States, England, Switzerland, and India reveals a spectrum of approaches, ranging from the legalization of euthanasia to its criminalization. Australia's contrast between the Northern Territory's early legalization and subsequent national criminalization highlights the complex and evolving nature of the debate. Canada distinguishes between the right to refuse life-sustaining treatments and the prohibition of euthanasia. The United States grapples with nuanced distinctions between passive and active euthanasia, showcasing the delicate legal balance. In the United Kingdom, the House of Lords recognizes the right to refuse treatment and permits non-voluntary euthanasia in specific cases. Switzerland criminalizes assisted suicide only when motivated by selfishness, illustrating the nuanced legal landscape. Shifting focus to India, where euthanasia is illegal, the research delves into constitutional dimensions and ethical guidelines. The study emphasizes the intricate interplay between constitutional rights, medical ethics, and societal values concerning end-of-life decisions. The global diversity in euthanasia legislation outlined in this paper underscores the ethical complexities inherent in these laws. The examination of legal aspects in India provides insight into the ongoing dialogue around constitutional rights and medical ethics. As the discourse on euthanasia continues to evolve globally, this research contributes to a deeper understanding of the legal, ethical, and societal dimensions surrounding end-of-life choices.

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