

EUTHANASIA

Euthanasia is bringing about a mercifully easy and painless death to a person suffering from an incurable and painful disease.

According to Concise Law Dictionary, P. Ramanatha Aiyar, Third Edition, 2009, “Euthanasia or mercy killing is the causing or hastening of death, particularly of incurable or terminally ill patients, at their own request. Generally, it is treated as illegal and not distinguishable from murder”.

Types Euthanasia

- i) Active Euthanasia: It involves the use of force or lethal substance to kill a person.
- ii) Passive Euthanasia: It involves withdrawing or withholding of medical treatment for continuance of life, which involves the withdrawal of life support system from the patient, who is in the state of Permanent Vegetation.

Further categorization of Euthanasia:

- i) Voluntary Euthanasia: It involves the process of euthanasia where the consent is being given by the patient voluntarily. Voluntary consent shall be an informed voluntary consent.
- ii) Non voluntary Euthanasia: It involves the process of euthanasia where informed voluntary consent cannot be obtained from the patient.

In a case where a patient is suffering from terminally ill disease, with unbearable pain and agony, informed voluntary consent can be obtained and whereas in a case where the patient is in the stage of permanent vegetation no informed and voluntary consent can be obtained. This creates a lot of legal trouble in the case of passive euthanasia.

Informed consent is a person’s agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives. Further free consent is what is defined as consent in the Contract Act, 1872 where consent is said to be free consent when it is not caused by a) Coercion, b) Undue influence, c) Fraud, d) Misrepresentation, e) Mistake.

Euthanasia and Physician -Assisted Dying:

The difference between the two lies in the fact that who administers the lethal substance to the patient. In Euthanasia, a physician or a third party administer the lethal substance to the patient whereas in physician- assisted suicide; the patient himself administers the lethal substances at the advice of the doctor.

The overall legal position in the world stands as:

- a) Active Euthanasia is illegal if not supported by legal provisions of the land
- b) Passive Euthanasia can be legal only when certain conditions and safeguards are in place.

Scenario in India

In India there is no law to legalize and regularize euthanasia, though a bill captioned, THE EUTHANASIA (REGULATION) BILL, 2019, bill no. 136/2019, aimed at to regulate termination of life of persons who are in a permanent vegetative state or terminally ill and facing unbearable suffering and for matters connected therewith or incidental thereto was placed in Lok Sabha in June 2019, but could not be placed before the Rajya Sabha and finally could not be converted into a law.

In India there is no law relating to Euthanasia, it is governed by various judgments of Hon'ble Supreme Court, which were instrumental in developing the concept of Euthanasia and to regulate the same, like in the case of State of Montana in America and also follows the principle of "parens patriae" as laid down in Airedales case, which is being opted as law in United Kingdom. "

Some important judgments by Hon'ble Supreme Court on Euthanasia are:

1. P. Rathinam v. Union of India & another , 1994 SCC (3) 394
2. Gian Kaur v. State of Punjab, 1996 SCC (2) 648
3. **Aruna Ramchandra Shanbaug vs Union Of India & Ors]**
4. **Common Cause (A Regd. Society) vs Union Of India**, 2014 SCC (5) 33,
8. 2011 SCC (4)454

It is relevant to discuss the Airedale case (Airedale NHS Trust Vo Bland (1993) all ER. 82)(HL), before discussing legal scenario with respect to euthanasia in India.

The Airedale case was decided by House of Lords, U.K. The fact of the case was that one Anthony Bland, aged about 17 years, on 15.04.1989 went to Hillsborough ground to support Liverpool Football club. During the disastrous fight among the supporters his lungs were crushed and punctured and the supply to his brain was interrupted. As a result of this his cortex was badly damaged and lost its activity although his brain stem was not affected and as such his heart was functional and digestion was normal. He was in a condition known as Persistent Vegetative State” (PVS). Anthony Bland Could not see, hear or feel anything, he could not communicate in any way. His consciousness had departed forever. This condition is sometimes known as “Irreversible coma”, “the locked in syndrome” and “brain death”. As per eminent medical opinion there was no prospect what so-ever that bland would ever make a recovery and there was every likelihood that he should maintain the status for many years to come.

In the given status of the case, even being supported by the parents of Bland, no useful purpose would have been served by continuing medical aid, the hospital authority sought a declaration from the British High Court, whether withdrawing medical aid do not amount to murder.

The House of Lords considered the principle of “Sanctity of life” which required the court to hold that medical treatment to Bland could not be discontinued.

All judges of the House of Lords in the Airedale case were finally agreed that Anthony Bland should be allowed to die.

Now fairly well settled Law in UK is that in case of incompetent patients, if the doctor acts on the basis of informed medical opinion and withdraw the artificial life support system, if it is in patient's best interest, the said cannot be regarded as crime.

However, the question remains that in case of persistent vegetative state (PVS) who will decide the best interest of the patient. In many cases decision of parents, spouse, other close relative carried the weight, provided it is informed one but it is not decisive. It is ultimately for the court to decide as to what is in the best interest of the patient as "parens patriae" though the wishes of close relatives and next friend and the opinion of medical practitioners shall be given due weight.

Parens patriae (father of the Country), the principle is laid on the basis of the fact that it was the sovereign duty of the king to protect the person and property of them who are unable to protect themselves.

In India Aruna Ramchandra Shanbaug Vs Union of Indian and others. W.P. (Cr.) No. 115/2009, Hon'ble Supreme Court of India passed a landmark judgment. In this particular case one Ms. Pinki Virmani on behalf of Aruna Ramachandra Shanbaug prayed that Euthanasia be allowed to Ms. Ramachandra, who is passing a persistent vegetative State for more than 37 years at King Edward Memorial Hospital (KEM Hospital), Mumbai.

In the aforesaid case Hon'ble Supreme Court Constituted a Committee of three eminent doctors, who visited the KEM Hospital, examined Ms. Ramachandra and submitted a report to the Hon'ble Supreme Court, concluding,

"From the above examination she has evidence of intact auditory, visual, somatic and motor primary neural pathways. However, no definitive evidence of awareness of auditory, visual, somatic and motor stimuli was observed during examinations."

KEM Hospital raised following issues before the Hon'ble Supreme Court, as quoted in the judgment , In Re Aruna Ramchandra Shanbaug Vs Union of Indian and others :

1. If a person is in a permanent vegetative state (PVS), withholding or withdrawing life sustaining therapies be permissible or not unlawful.
2. If the patient has previously expressed a wish not to have life sustaining treatments in case of futile care or a PVS, should his/ her wishes be respected as and when the situation arises.
3. In case a person has not previously expressed such a wish, if his family or next of kin makes a request to withhold or withdraw futile life sustaining treatments, should their wishes be respected.
4. Aruna Shanbaug has been abandoned by her family and is being looked after for last 37 years by the staff of KEM Hospital, who should take decision on her behalf.

The Hon'ble Supreme Court in the present case held:

1. We have no indication of Aruna Shanbaugs views or wishes with respect to life sustaining treatments for a permanent vegetative state.
2. Any decision regarding her treatment will have to be taken by a surrogate.
3. Staff of KEM hospital have looked after her for 37 years, after she was abandoned by her family. We believe that the Dean of KEM Hospital (representing the staff of hospital) an appropriate surrogate.
4. If the doctors treating Aruna Shanbaug and the Dean of the KEM Hospital together acting in the best interest of the patients feel that life sustaining treatment should continue, their decision should be respected.
5. If the doctor treating Aruna Shanbaug and the Dean of KEM Hospital together acting in the best interest of the patient feel that withholding or withdrawing life sustaining treatments is the appropriate course of action then such decision requires approval from the High Court concerned as laid down in Airedales case.

The Hon'ble Supreme Court, In Re Aruna Ramchandra Shanbaug Vs Union of India and others held as follows:

[“In the present case we have already noted that Aruna Shangbaug’s parents are dead and other close relatives are not interested in her ever since she had the unfortunate assault on her. As already noted above it is the KEM hospital staff, who have been amazingly looking after her day and night for so many long years, really are next friends and not Ms. Pinky Virani who has only visited her on a few occasions and written book on her. Hence, it is for the KEM hospital staff to take the decision. The KEM hospital staff have clearly expressed their wish that Aruna Shanbaug should be allowed to live.

Hence, even if a decision is taken by the near relative or doctors or next friend to withdraw life support, such decision requires approval from the High Court concerned as laid down in Airedales case”.

Hon’ble Supreme Court has also laid down procedure to be adopted by the High Court when such an application is filed. This provides for constitution of Division Bench as soon as such a petition is filed. The Division Bench shall appoint a Committee of three eminent doctors consisting of one neurologist, one psychiatrist and one physician. This Committee shall carefully examine the patient and also consult record and take the view of hospital staff and submit a report to the Bench. Simultaneously the Bench shall issue notice to the state and close relatives of the patient and in their absence his / her next friend. Bench shall supply a copy of the report to them and after hearing them give its verdict. The aforesaid procedure should be followed all over India until Parliament makes legislature on this subject.

The High Court shall give the decision at the earliest assigning specific reasons in accordance with the principle of best interest of the patient laid down in Airedale case. The views of near relatives and Committee of doctors should be given due weight pronouncing the judgment.]¹

The present position in India with respect to euthanasia now stands that there is no legal sanction to euthanasia in India but it has got a sanction because of the

¹, 2011 SCC (4)454

Hon'ble Supreme Court's judgment like in the case of State of Montana in America and also follows the principle of "parens patriae" as laid down in Airedales case, which is being opted as law in United Kingdom.

In **Common Cause (A Regd. Society) vs Union Of India**, Writ Petition (Civil) No.215 of 2005, the Hon'ble Apex laid down, Procedures and Safeguards for the Issuance of Advance Directives and Attorney. In this judgment the Hon'ble Supreme Court has balanced the right to life under Article 21 and individual's right to take decisions with respect to his/her body. [The Court has carried out a measured analysis of the social, philosophical, ethical and economical aspects regarding this issue. It has carved out an exception to the principle of sanctity of life in cases where a person's life has lost any meaning and the prolongation of life is no longer in his best interest.]²

² <http://docs.manupatra.in/newsline/articles/Upload/E4A68ACB-DCC1-4003-88DC-F41D7AA65A59.pdf>