

# Ethics and legality of Euthanasia<sup>@</sup>

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## Euthanasia poses Ethical, Moral and Legal problems in today's world

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### Introduction:

Euthanasia is the intentional killing by act or omission of a dependent human being for his or her alleged benefit.<sup>1</sup> The current law in India does not permit Euthanasia. The Supreme Court of India, in the case of Gian Kaur v. State of Punjab<sup>2</sup> has held that the 'right to die' is not included in the ambit of the; right to life'. The High Courts of Andhra Pradesh<sup>3</sup> and Kerala<sup>4</sup> have also taken the same view. Further, the Patna High court had dismissed Tarakeshwar Chandravanshi's plea seeking mercy killing for his 25 year old wife Kanchan, who had been comatose for 16

months.<sup>5</sup> This is the current scenario in India with respect to the legal aspect of euthanasia.

The time has come to change this view and adopt the view taken by many western countries that permit passive euthanasia. "Passive euthanasia" is usually defined as withdrawing medical treatment with the deliberate intention of causing the patient's death.<sup>6</sup> This should be allowed keeping in mind certain guidelines.

### The situation in the United States of America

The view in the United States of America has differed from State to State. For instance, the Supreme Court of New Jersey held that the right to privacy had to be upheld for a patient being nourished and hydrated intravenously and who breathed with the assistance of a respirator. Hence, the patient had the right to have the respirator disconnected.<sup>7</sup>

Many courts in the United States of America began to follow the ruling in Quinlan's

1. Cf. <http://www.euthanasia.com/definitions.html> as visited on April 28, 2009 at 15:45 hrs.
2. 1996 (2) SCC 648.
3. Chenna Jagadeeswar v. State of Andhra Pradesh (1988) Cri LJ 549; Case of P. Venkatesh, Cf. [http://news.bbc.co.uk/2/hi/south\\_asia/4098337.stm](http://news.bbc.co.uk/2/hi/south_asia/4098337.stm) as visited on February 13, 2009 at 17:20 hrs.
4. C.A. Thomas Masters v. Union of India (2000) Cri LJ 372.

5. Cf: <http://www.thehindu.com/thehindu/op/2003/11/25/stories/2003112500341600.htm> as visited on February 12, 2009 at 14:12 hrs.
6. Cf. <http://www.pregnantpause.org/euth/types.htm> as visited on April 28, 2009 at 15:55 hrs.
7. Re: Quinlan's case 429 US 922 (1976)

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case<sup>8</sup> acknowledging a constitutional right of incompetent patients in a persistent vegetative state to have extraordinary means of support withdrawn or withheld.<sup>9</sup> This view was reaffirmed by the Supreme Court of United States in the case of *Cruzan v. Director, Missouri Department of Health*.<sup>10</sup>

In the case of *Barber V. Superior Court of Los Angeles County and the People*<sup>11</sup> it was observed that a patient has a basic and fundamental right to refuse medical treatment, even if it may save or prolong his or her life. Further, in the case of *Griswold v. Conn.*,<sup>12</sup> the United States Supreme Court ruled that there is a constitutionally guaranteed right of privacy that should support the claim that the individual should have the right to decide the extent to which his life should be prolonged. Moreover, in *Mckay v. Bergstedt*,<sup>13</sup> the Supreme Court of the State of Nevada upheld the permission granted by the District Court to permit the discontinuance of the respirator.

In the famous case of *Terri Schlinder-Schiavo*, the court permitted euthanasia. *Terri Schlinder-Schiavo* was a woman who had significant brain injuries. She was a living woman, and her family along with others said she was quite responsive. She didn't have a terminal illness and she was healthy except for her brain being damaged. Her husband, *Michael Schiavo*, decided to remove her feeding tube and let her starve to death. *Terri's* family wanted to take care of her, but the courts sided with *Michael*. She was 41 years

old when she died of starvation on March 31, 2005.<sup>14</sup>

Thus we see that after *Karen Quinlan's* case, the courts in the United States of America have given permission to discontinue the respirator and feeding tubes of a patient and hence allow passive euthanasia.

### The situation in the United Kingdom

In the renowned English Case of *Airedale NHS Trust v. Bland*,<sup>15</sup> *Anthony Bland* suffered a severe crushed chest injury, which gave rise to hypoxic brain damage due to which he was in a Persistent Vegetative State. There was no hope of recovery or improvement of any kind. The House of Lords upheld the decision of the Court of Family Division that the doctors may lawfully discontinue his life support system and thereafter need not furnish medical treatment to *Anthony Bland*, to end his life and to die peacefully with the greatest dignity and the least distress. Moreover, in a decision in the year 2002, the British High Court granted a woman paralysed from the neck, the right to die by having her life support system switched off.<sup>16</sup> The view taken in *Airedale NHS Trust v. Bland*<sup>17</sup> has been followed in many English decisions granting permission to conduct passive euthanasia in England. Further, even in case of conjoined twins, the Court of Appeal has affirmed the decision of the High Court granting permission to the doctors to separate the twins even with a high chance of one of them dying. This was done

8. Ibid.

9. David Levison, Editor Encyclopedia of Crime and Punishment, Volume 2, SAGE Publications, 2002, at p. 647.

10. DMH 497 US 261 (1990).

11. 147 Cal App 3d 1006 (1983).

12. 381 US 479 (1965).

13. 106 Nev. 808, 801 P. 2d 617 (1990).

14. Cf. [http://marriage .about.com/od/celebritymarriages/p/schiavo.htm](http://marriage.about.com/od/celebritymarriages/p/schiavo.htm) as visited on March 28, 2009 at 14:35 hrs.

15. (1993) AC 789, per Sir Thomas Bingham MR.

16. Hindustan Times, New Delhi, march 23, 2002 at p. 1; Cf. <http://news.bbc.co.uk/2/health/1887281.stm> as visited on January 15, 2009 at 10:32 hrs.

17. Supra at fn. 15.

against the will of the twins' parents since one twin was living of the other and that would in time kill both of them. The doctors asked the court for a declaration to operate because the parents being Roman Catholics were against it. The doctors after receiving the declaration from the court went ahead with the operation, but unfortunately the weaker twin died a little while after the operation.<sup>18</sup>

### The situation in other countries

Some countries such as New Zealand,<sup>19</sup> Eire,<sup>20</sup> and Jersey,<sup>21</sup> have also gone to the extent of authorizing the withdrawal of artificial nutrition and hydration from incompetent patients who, although not in a permanent vegetative state, lack all awareness. In 2002, Belgium legalized euthanasia for adults suffering constant and unbearable physical or psychological pain and who were able to make such a request.<sup>22</sup> Countries such as the Netherlands and Canada<sup>23</sup> have also legalized euthanasia.

### Euthanasia should be permitted in India

In India too, passive euthanasia needs to be legalized. Many patients are lingering in hospitals and the poor specially are suffering since they cannot afford the cost of treating their family members. If there is certainty that there is no recovery, it is better to permit euthanasia than to make the patient's family spend a lot of money on treatment.

In a case in West Bengal in the year 2005, Abdul Rauf, father of two disabled daughters pleaded to the Chief Minister to allow his daughters aged 39 years old and 29 years old to end their lives legally. Abdul Rauf and his wife being very old, were worried that once they die, there will be no one to fend for their daughters. They wanted to spare their daughters the pain of a long suffering death. Abdul Rauf, a retired bus driver had to beg and borrow from neighbours to make ends meet. They were also unable to provide any more medical care for their daughters.<sup>24</sup>

There was another case in the same State in 2008 where a 40 year old woman (Swapna Das) with a kidney ailment and her husband (Biswanath) had written to the district magistrate of North 24-Parganas (West Bengal) seeking his permission to undergo euthanasia as they could not meet the treatment costs of Swapna's illness diagnosed since January 2008.<sup>25</sup>

Further, in a case in Tamil Nadu in the year 2006, Muthupandi, a resident of Dindigul district had approached people seeking medical aid for his son Surya Prabhakaran who was suffering from thrombosis, anaemia and haemophilia. He approached many affluent people and certain well settled doctors. But, unfortunately, no one came forward to help him. It's only after this that Muthupandi approached the court to permit euthanasia for his son as he could not afford to treat his son. He wanted his son to die in peace rather than suffer and die in pain.<sup>26</sup>

18. Re A. (Children) [2000] HRLR 721, CA.

19. Auckland Area Health Board v. AG [1993] Ac 1 NZLR 235 (Guillain – Bare syndrome).

20. In the Matter of a Ward of court (withholding medical treatment) (No 2) (1996) 2 IR 79.

21. In the Matter of an Infant (1995) JLR 296; Re Representation Attorney General (1995) Med LR 316.

22. Cf. <http://www.carenotkilling.orguk/?show=124> as visited on February 28, 2009 at 16.11 hrs.

23. Kasliwal Shriyans, 'Should Euthanasia be legalized in India?' 2002 Cri LJ/14 VIII.

24. Chhaya M. Father pleads to end daughters' lives. <http://www.rediff.com/news/2005/jun/13kolkata.htm> on February 12, 2009 at 1:28 hrs.

25. Agencies. 'Couple wants to undergo euthanasia in WB', <http://www.expressindia.com/latest-news/Couple-wants-to-undergo-euthanasia-in-WB/329870/as> visited on June 2, 2009 at 16:20 hrs.

26. TNN, 'Euthanasia plea rocks TN', The Times of India, February 19, 2006 at p. 7.

The above incidents tell us the reality in India. There are many more cases like the ones above where not only does the patient have no hope of recovery but also by the time the patient dies, the family is left without any savings to fend for themselves trying to take care of the terminally ill family member. It is not hard to adopt the English system of the court giving a declaration for legalizing the procedure of passive euthanasia. The problem in India is that the law is silent on euthanasia and even an attempt to commit suicide<sup>27</sup> is a crime whereas in England it had been legalised.

The supreme Court of India has observed in the case of *Bachan Singh v. State of Punjab*<sup>28</sup> that the State has the right to take away the life of an individual in the rarest of rare cases. This has further been affirmed in the case of *Macchi Singh v. State of Punjab*.<sup>29</sup>

Thus we see that the Supreme Court of India has the power to permit the taking away of a person's life. If in such rare and exceptional cases, life can be taken away, then even in cases where there is no hope of recovery, the court should grant permission to the doctors to conduct passive euthanasia by removing the feeding tubes and discontinuing the respirator of a patient.

In the year 2009, the State Law Reforms Commission of Kerala recommended to the state government to allow euthanasia.<sup>30</sup> This commission has also drafted a Bill called

the Kerala Terminally ill Patients (Medical Treatment and Protection of Practitioner and Patients) Bill. The Bill provided for "the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment, including life support systems, from patients who are terminally ill."<sup>31</sup> In 2008, in Gujarat, a private member moved the Gujarat Physicians and Surgeons (Civil and Criminal Immunity) Bill 2008 in the State Assembly, seeking to allow patients suffering from terminal illness for voluntary euthanasia.<sup>32</sup> Therefore, we see that recently different states in India have also taken positive steps towards legalizing euthanasia.

Although euthanasia is not legal in India, it is still prevalent. One such case was of a 59 year old lady, Neena Bonarji, an international bridge player, who was suffering from progressive lung disease for three years and was being treated at Delhi's Ganga Ram hospital. She had instructed her daughter Nisha Bhambai to put off the ventilator when the time came. 'When my mother slipped to 100 per cent supplementary support, we did what she had wished for,' is what Nisha Bhambani told the reporter. Within an hour Neena Bonarji died.<sup>33</sup> By legalising passive euthanasia, doctors will be spared the criminal liability of murder.

27. Section 309 of the Indian Penal Code, 1860.

28. AIR 1980 SC 898.

29. AIR 1983 SC 947.

30. TNN, 'Kerala law commission in favour of euthanasia'. The Times of India, January 08, 2009 Cf. <http://grass-roots.in/cache/index.php/19320>.

31. Basheer K.P.M., 'Legalise euthanasia. Says panel', The Hindu, January 08, 2009, Cf. <http://www.hindu.com/2009/01/08/stories/2009010859260400.htm>

32. Express News Service, 'Assembly debate overbill for euthanasia', Expressindia, march 06, 2008, Cf. <http://www.expressindia.com/latest-news/Assembly-debate-over-Bill-foreuthanasia/280996/>

33. India Today, April 15, 2002, Cf. Rao P.V.L.N., 'Is euthanasia ethical?' Cf. <http://www.thehindu.com/thehindu.com/op/2003/11/25/stories/2003112500341600.htm> as visited on February 10, 2009 at 21:32 hrs.



### Suggestions in order to prevent misuse

In order to ensure that euthanasia is not misused, a proper system needs to be followed. The High Courts in India should be given the power to permit passive euthanasia to be performed at the request of the patient or his or her family. The High Court should see if the patient's case is genuine and also consult the doctor who is treating the patient and his or her family.

The Parliament should also come out with a legislation with regards to permitting passive euthanasia. It should lay down certain guidelines for the courts to follow. It should also set up a committee consisting of at least one retired Supreme Court judge, a representative from the National Human Rights Commission and doctors from different fields. The High Courts on receiving an application for granting a declaration for euthanasia should send it to the committee to investigate. The committee after investigating should send a report back to the High Court.

The High Court should grant permission only after it is satisfied with the necessary investigation, and has come to a conclusion that there is a need to permit passive euthanasia. This kind of a system should be

followed in order to prevent euthanasia from being misused especially by the patient's family members who might have some hidden intentions in mind rather than the patient's benefit.

### Conclusion

Whether passive euthanasia will be legalised in India is a question that no one at this moment can answer. There is a private members' bill in the Parliament called the Physicians and Surgeons (Indemnity from Civil and Criminal) Proceedings for Performing Euthanasia) Bill, 2005. Till date nothing in relation to euthanasia has been passed by Indian Parliament. The time has come to change as other western countries have done. We can only hope that the Parliament will recognize the importance of legalising passive euthanasia and will enact a law that will legalise it; otherwise the courts will have to take cognizance of this significant need. This will benefit the terminally ill patient, the patient's family as well as the hospital authorities who will be discharged from any kind of criminal liability. Until then we will just have to wait and keep guessing as to what will happen.



“There are changing conditions and never changing principles which should guide us in all our endeavours”

*Justice Shivaraj V. Patil*