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ASSISTED SUICIDE AND EUTHANASIA IN INDIA- A CRITICAL ANALYSIS

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ABSTRACT

Every soul is been blessed to live and enjoy the essence of life until the footsteps of death arrived on their path. But sometimes anxious to end their life human being adopts unnatural measures which show certain kind of abnormality. In general term, “suicide” is a situation where a person is interested in his or her destruction or intentionally taking of once own life but, to end up of his/her own life with the succour (help) of another person is called assisted suicide. Suicide is a type of crime on previous time with a penalty of “ignominious burial” and forfeiture of property. Now the current situation in the U.S this penalty has been abolished so the term suicide is no longer strictly a type of crime. In assisted suicide, if a doctor intentionally or knowingly encourages the patient with some kind of lethal drugs which the patient does not need for their comfort such kind of overdose calmative, with the aim of ending their patient life. On the other hand, Euthanasia is a situation where is a doctor is allotted by law and authority to end up a person’s life with some kind of lethal drugs with the consent of a patient and his family. Euthanasia, in general, we can say that it is the act that is undertaken only by the physician, with the intention to ends up the personal life at his or her request. All the physicians are using the help of some type of lethal substance which overdose causes the person’s or patient’s death.

Keywords - *IPC, Assisted Suicide, Euthanasia, calmative, physician, lethal drugs*

INTRODUCTION

Every soul is been blessed to live and enjoy the essence of life until the footsteps of death arrived on their path. But sometimes anxious to end their life human being adopts unnatural measures which show certain kind of abnormality. In general term, “suicide” is a situation where a person is interested in his or her own destruction or intentionally taking of once own life but, to end up of his/her own life with the succour (help) of another person is called assisted suicide. Suicide is a type of crime on previous time with a penalty of “ignominious burial” and forfeiture of property. Now the current situation in the U.S this penalty has been abolished so the term suicide is no longer strictly a type of crime. In assisted suicide, if a doctor intentionally or knowingly encourages the patient with some kind of lethal drugs which the patient does not need for their comfort such kind of overdose calmative, with the aim of ending their patient life.

On the other hand, Euthanasia is a situation where a doctor is allotted by law and authority to end up a person's life with some kind of lethal drugs with the consent of a patient and his family. Euthanasia, in general, we can say that it is the act that is undertaken only by the physician, with the intention to end up the person's life at his or her request. All the physicians are using the help of some type of lethal substance which overdose causes the person's or patient's death. The request of euthanasia comes from patients experiencing unbearable suffering from a long period of time and there are no chances or very less chance to improvement in health and recover from that disease then, the patient thinks to die because it is very painful to live a life as compared to death.

According to English Law, the term 'Euthanasia' is illegal in the eye of Law and is considered it is a type of murder. However, the UK Supreme Court ruled that any kind of legal permission would no longer be needed to remove treatment from patients in a perpetual state. Hence when we compare the two-term euthanasia and assisted suicide in both cases doctors must have to fulfil the statutory due care criteria. In every instance of euthanasia and assisted suicide must be reported to one of the five regional euthanasia review committees. The committee will check if the physician has taken due care or any kind of mistake from his own side. And if the physician found guilty of the act done by him then he may be prosecuted. The penalties vary depending on the work but in case of euthanasia, the penalty may be of 12 years in prison with some fine whereas on the other hand for committing assisted suicide it will be 3 years of prison.

ASSISTED DYING

Euthanasia assisted suicide and assisted dying would apply to ill people only. Illnesses should be allowed to have a choice over the manner and timing of their approaching death. In the United Kingdom at the current situation, it is possible to make a decision in advance to refuse any kind of specific treatment in the future period if we lose capacity beliefs to make the decision for yourself.

DIFFERENT TYPES OF EUTHANASIA

1. Voluntary
2. Non-voluntary Euthanasia
3. Involuntary Euthanasia

4. Passive Euthanasia

5. Active Euthanasia

1. Voluntary Euthanasia- In such circumstances the sufferer is in condition to give the consent to the doctor to end up their life then it is voluntary euthanasia. The countries in which it is legal are as follows-

1.1 Belgium

1.2 Luxembourg

1.3 The Netherland

1.4 Switzerland

1.5 The State of Oregon

1.6 And Washington in the U.S

2. Non-Voluntary Euthanasia- In such circumstances the sufferer is not in a condition to their consent due to deterioration in the health stage. In this type of situation, the decision is taken by another appropriated person such as his family member.

3. Involuntary Euthanasia- In such circumstances, the sufferer is in condition to give their consent, but couldn't give so either because they are against the will to die or because they are unaware of the Act. This is often referred to as murder.

4. Passive Euthanasia- It is the situation where life-sustaining treatments are put to an end. Sometimes High doses of drugs eventually are venomous for the patient as a result their consumption is advice to end up. Often people argued it not to be categorized under euthanasia because there is no intention of taking anyone's life.

5. Active Euthanasia- It is a situation where some lethal substances are utilized to end up the life of the patient. It may be due to the compulsion made by the patient or by someone else.

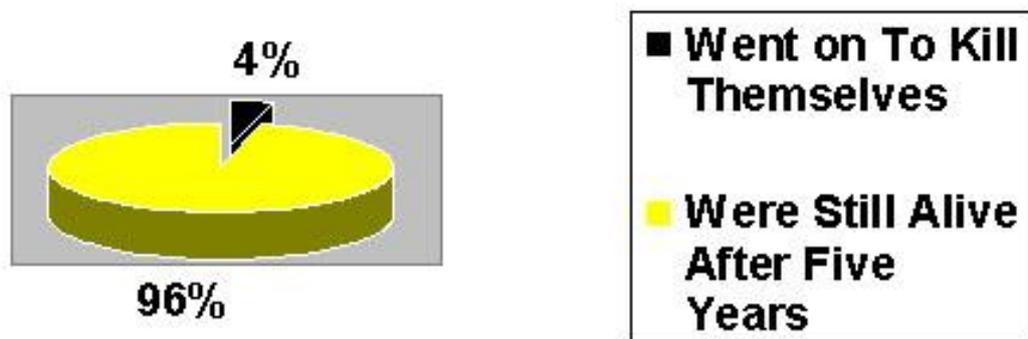
EUTHANASIA AND SUICIDE

Euthanasia and suicide are different terms with wide differences in nature and features and can never be served as the same act. Therefore, when distinguishing between both terms, 'Suicide'

could be denominated as an act of ending up once own life deliberately. It may be due to t various reason like frustration and love, failure in professional life or examination, but the most prominent reason of attempting suicide often results as depression and taking up of excessive stress which generally leads to panic and anxiety attacks. The occurrence of mental stability or depression never contrasts between the religion, culture, cast, creeds etc. in worldwide. Depression is a kind of mental illness which is suffered by nearly one in ten people worldwide.

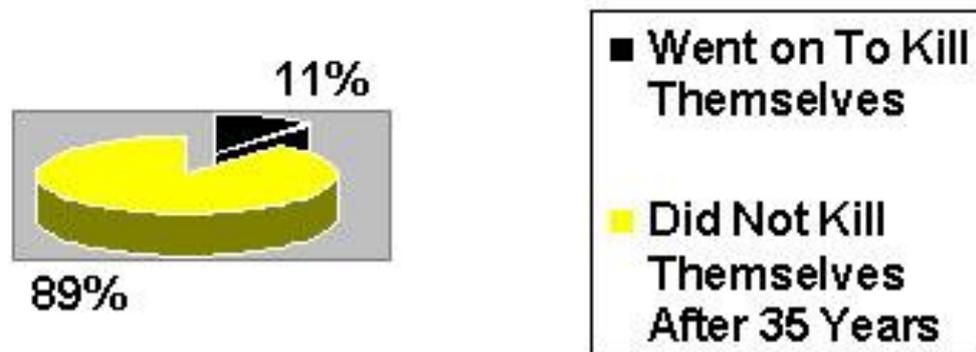
The rate of depression is much higher in women when compared it men and when it been worse it ultimately leads to end up one’s own life by suicide. It estimated that in 2012, 804000 deaths occur with the consequences of suicide. An annual global suicide death rate of 11.4 per one lakh population. And every suicide resulted in attempting much more suicide. Depression also leads to deterioration in health rate, fall in consumption of food, shortage in sleep, feeling of melancholy, state of dejection, loss of hope or courage, the feeling of agitation and the list goes on.

The Serious Suicide Attempt: Five Year Follow Up Study of 886 Patients



Note: The Graph and figure is based on Rosen, the Serious Suicide Attempt: Five Year Follow up Study of 886 Patients, 235 J.A.M.A. 2105, 2105 (1976).

35 Year Swedish Study



Note: The Graph and figure are based on A Swedish study with a 35-year follow-up found only 10.9 per cent later killed them.

LEGAL ASPECTS OF EUTHANASIA IN INDIA

We all know that the Constitution of India has drawn its Constitution from various countries. In India euthanasia is illegal. The intentions from the part of doctors to kill the patient such type of cases falls under clause-1 section 300 of Indian Penal Code, 1860. According to section-304 of Indian Penal Code the doctor or the mercy killer would be punishable of culpable homicide not resulting in murder. But this can be only happening in cases of voluntary euthanasia (where the patient gives his or her consent of death) that would bring exception 5 to section 300. The case of non-voluntary and involuntary euthanasia would be strike by provision 1 to section 92 of Indian Penal Code, 1860 that will be rendered illegal.

The law in India which is related to assisted suicide is also very clear. The right to suicide is not a granted “right” in India. It’s punishable under the India Penal Code, 1860. The provision

of punishing suicide accommodates under section 305 (abetment of suicide of child or insane person), section 306 (abetment of suicide) and section 309 (attempt to commit suicide) of Indian Penal Code, 1860. According to the Constitution of India “right to life” is an important right. According to Article 21 of the Constitution of India, it was first argued that right to life includes the “right to die” in accordance with it. However, after the decision of five-judge bench case in Supreme Court of India which is *Gian Kaur V. State of Punjab*, the decision came out that the right to life guaranteed by Article 21 of Constitution of India does not include the right to die. The Supreme Court of India held that Article 21 is the provision which granted protection of life and personal liberty and by no extend of the interest can add on the life.

The Indian Medical Council Act 1956 deals with the same issue. According to section 20A read with section 33(m) deals with section 33(m) of the said act the Medical Council Act of India may authorize degree of professional conduct and code of ethics for medical practitioners but after some time in Gian Kaur case under section 309 of Indian Penal Code 1860 has been held to Constitutionally valid but it should be deleted by Parliament because it has become anachronical. A person who attempts to suicide in depression he needs help as compared to punishment. In the case of *State V.Sanjay kumar Bhatia* of Delhi High Court deals with the case that under 309 of Indian Penal Code 1860 observe that section 309 has no justification to continue. The Bombay High Court in the case of *Maruti Shripati Dubal V. State of Maharashtra* examine the constitutional validity of section 309 and held that section is violative of Article 14 as well as Article 21 of Constitution so therefore, it is held to be discriminatory and arbitrary in Nature.

THE LAW COMMISSION OF INDIA AND ITS GUIDELINES **REGARDING EUTHANASIA AND ASSISTED SUICIDE**

According to section 309 of Indian Penal Code, the Law Commission in its 42nd report recommend the repeal of the same. The Indian Penal Code (amendment) of the bill in the year 1978, which is passed by the Rajya Sabha, accordingly provided for the omission of section 309 (IPC). However, the bill that is introduced to Lok Sabha has lapsed because the Lok Sabha is dissolved. The Law Commission in its 156th report conveys that after the proclamation of the judgment in *Gian Kaur V. State of Punjab* recommending retention of section 309.

After some time, the Law Commission in its 210th report submitted that attempt to suicide may be connected more as a manifestation of a diseased condition of mind deserving treatment and when we compare it as an offence it cannot be visited with Punishment. In the case of Gian Kaur V. State of Punjab, the Supreme Court of India focused on its constitutionality of section 309. However, the Law Commission has also recommended to the Government to initiate steps for the repeal of the anachronistic law that is under section 309 of IPC which would alleviate the distress of his suffering. In 196th report of the Law Commission on Medical Treatment to terminally ill patients. (Protection of Patients and Medical Practitioners) that is one of the most important subjects taken by the Law Commission of India.

The Law Commission has given the following recommendations that are as follows-

1. On the first point of view, the Law Commission is declared that every competent patient who is suffering from any kind of terminal illness has a right to refuse medical treatment and continuation of such treatment which has already been started. If such a decision is taken by the competent Patient the doctor must be satisfied that the decision is made by the competent patient and that is a pre-informed decision. And the informed decision may be taken by a competent patient independently without any kind of undue pressure and influenced by others.
2. The doctor shall not withhold or withdraw treatment till he has obtained the opinion of a body of three experts medical practitioners from a panel prepared by high ranking authority and the decision to withhold or withdrew must be based on guidelines issued by the medical council of India under the circumstances of medical treatment in relation with a particular illness or diseased could be withdrawn or withheld. In the case of the competent patient and incompetent patient, the doctor must be registered to proposed withholding or withdrawn treatment.
3. The patients who are taking decisions of withdrawal or withholding medical treatment has to be protected from pro-section under section 309 of IPC, 1860 (attempt to commit suicide). The doctor has to be protected of they are guilty of abetment of suicide under section 305 and 306 of IPC, 1860. And the term culpable homicide is not amounting to murder under section 299 read with section 304 of IPC, 1860. When they are taking the decision to withhold or withdraw life support in the interest of incompetent patients the doctors are not guilty of any of the following offences under the above sections which are section 76 and 79 of IPC, 1860. Therefore, in lasts, the practitioners act in accordance with the provision of the act while withholding or withdrawing any kind of medical treatment deemed to be lawful.

4. The patients, parents, relatives, doctors and hospitals can move to the high court for a division bench of declaring that the action of continuing or withholding or withdrawing medical treatment shall be treated to be either lawful or unlawful within the 30 days, the High Court must decide the cases at the earliest. If the High Court gives declarations withholding or withdrawing of medical treatment offered by the doctors is lawful or valid then it will bind in Civil and Criminal proceedings.

5. It is internationally acknowledged that the identity of the doctors, hospitals, patients, experts to be kept private. And during the court proceedings, all these persons will be reported by a letter drawn by the English alphabet the media can disclose or publish their names. After when the case is disposed of then also disclosure of identity is not granted.

6. We all know that the Medical Council of India must publish detailed guidelines related to the withholding or withdrawing medical treatments. The council also take help of expert's bodies in using critical care medicine and published their guidelines related to the central Gazette or maybe on the website of Medical Council of India.

CONCLUSION

“Suicide” is a situation where a person is interested in his or her own destruction or intentionally taking of once own life but, to end up of his/her own life with the succour (help) of another person is called assisted suicide. Suicide is a type of crime on previous time with a penalty of “ignominious burial” and forfeiture of property. Euthanasia is a situation where is a doctor is allotted by law and authority to end up a person's life with some kind of lethal drugs with the consent of a patient and his family. All the physicians are using the help of some type of lethal substance which overdose causes the person's or patient's death. The request of euthanasia comes from patients experiencing unbearable suffering from a long period of time and there is no chances or very less chance to improvement in health and recover from that disease then, the patient thinks to die because it is very painful to live a life as compared to death. Euthanasia, assisted suicide and assisted dying would apply to ill people only. Illnesses should be allowed to have a choice over the manner and timing of their approaching death.

Suicide' could be denominated as an act of ending up once own life deliberately. It may be due to t various reason like frustration and love, failure in professional life or examination, but the most prominent reason of attempting suicide often results as depression and taking up of

excessive stress which generally leads to panic and anxiety attacks. The occurrence of mental stability or depression never contrasts between the religion, culture, cast, creeds etc. in worldwide. The law in India which is related to assisted suicide is also very clear. The right to suicide is not a granted “right” in India. It’s punishable under the India Penal Code, 1860. The provision of punishing suicide accommodates under section 305 (abetment of suicide of child or insane person), section 306 (abetment of suicide) and section 309 (attempt to commit suicide) of Indian Penal Code, 1860. According to the Constitution of India “right to life” is an important right.

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REFERENCES

BOOKS:

1. Criminal Manual (w.e.f.21.04.2018)

WEB

1. <https://law.jrank.org/pages/2180/Suicide-Legal-Aspects.html>
2. <https://www.sciencedirect.com/science/article/pii/S0160252715001429>
3. <http://www.legalserviceindia.com/legal/article-1423-suicide-law-in-india.html>
4. <https://www.all.org/learn/euthanasia/law-and-suicide/>
5. https://en.wikiversity.org/wiki/Should_suicide_be_legal%3F
6. <https://www.nhs.uk/conditions/euthanasia-and-assisted-suicide/>
7. <https://www.medicalnewstoday.com/articles/182951>
8. <https://www.bbc.com/news/uk-47158287>
9. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3070710/>
10. <https://onlinelibrary.wiley.com/doi/full/10.1002/hast.1083>
11. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563356/>
12. <http://www.legalservicesindia.com/article/787/Euthanasia-in-India.html>
13. <https://www.latestlaws.com/articles/euthanasia-india-team-latest-laws/>
14. <https://thewire.in/health/passive-euthanasia-now-a-legal-reality-in-india>
15. https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_AN_ANALYTICAL_STUDY
16. https://www.researchgate.net/publication/335293074_review_article_on_euthanasia
17. https://www.researchgate.net/publication/252626984_Euthanasia_An_Understanding
18. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/>
19. <http://medind.nic.in/jal/t08/i2/jalt08i2p92.pdf>
20. http://academicjournals.org/article/article1380895703_Goel.pdf
21. <https://academic.oup.com/jmp/article-pdf/4/3/294/2671171/4-3-294.pdf>
22. <http://www.euthanasia.com/charts.html>
23. <https://www.theguardian.com/news/2019/jul/15/euthanasia-and-assisted-dying-rates-are-soaring-but-where-are-they-legal>

24. <https://www.defendnz.co.nz/info/euthanasia-and-assisted-suicide-deaths-increase-every-year>