# Legality of Euthanasia vis-à-vis Right to Life – An Incessant Dilemma in the Periphery of International Human Rights Law

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## Introduction

"Everyone has the right to life, liberty and security of person" – the thousands of Google results speak similarly while searching for the associationof 'Right to Life' with 'International Law'. It is therefore well-evident that various International Human Rights Instruments such as Universal Declaration of Human Rights, ICCPR[2], Montevideo Convention[3] or Convention on the Rights of the Child as well as the Regional Treaties like European Court of Human Rights etc. have facilitated due recognition to the Right to Life and lacked in addressing a 'right to die' on the contrary. The status of 'Right to Death' is thus globally considered to be a negative right in the periphery of Human Rights. However, the dilemma does not end here. Rather, it takes the form of an irony while delving deeper into the UN controversy on legality of Right to die and its elements. Where the United Nations' Treaties and Legislations impliedly prohibit the preservation of 'Right to die' by way of excluding notions like Euthanasia and assisted suicide; the legalization of Euthanasia by four UN member states (Belgium, Canada, Netherlands and Luxembourg) in turn, portrays Euthanasia as a never-ending motion in the context of International Human Rights Law. Talking about this motion, the word 'Euthanasia' advocates the Right to die with the sole intention to reduce and relieve the suffering of the patients from incurable chronic diseases. Be it active or passive, consensual or involuntary euthanasia – *mens rea* is absent to form a criminal intention in every such cases. Euthanasia is therefore a 'good death' with a positive intent. The only distinction between active and passive euthanasia is acceleration of the person's death in case of the former and to let a person die passively without any medical support in case of latter. Similarly, the distinction between consensual and involuntary euthanasia *ipso facto* appears to be based on consent of the patient in former case and request of the family members of an irresponsive patient in case of latter. However, the contemporary

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[2]International Covenant on Civil and Political Rights, (Dec. 16, 1966).
[3] The Montevideo Convention on the Rights and Duties of States, 1933

global scenario speaks otherwise. Although the practices of passive and consensual euthanasia, in some countries, are still considered to be legal; the real debate surrounds the regimes of active and involuntary euthanasia. Even though the passive euthanasia is permissible in many countries, no such treaty or legislation has been uniformly enacted till date to support the practice in international level. Thus, by no stretch of imagination, the current status of euthanasia is an example of surrealism in International Law and mandates a high need of analytical discussion to cease the pressing dilemma with an effective remedy. This article hence holds a debate between Right to Life and the quasi-fictional Right to death with respect to basic principles of human rights and endeavours to analyze the relevance of Euthanasia or 'good death' with the Right to Die. Further, the article in itself balancesthe equation between the legality of Euthanasia and maintenance of Right to Life by way of proposing a draft regulation in this regard in consistent with the fundamentals of International Law.

# Chapter – I

## Relevance of Euthanasia and Right to Death – An Incessant International Controversy

'Life' and 'Death' are probably the easiest antonyms ever we learnt since the dawn of literacy. The ray of positivity the word 'Life' brings and the darkness of negativity the word 'Death' paves is inevitable. However, Right to Life and Right to Death may somewhere converge into each other to form a ray of positivity rather than merely remain antonyms. Yet, the world considers them as a positive right and a negative right respectively.

The evolution and movement of Right to die is recognized on an international level through the shields of Euthanasia and physician-assisted suicide. Like a life with dignity, this right claims a death with dignity for alleviation of the pain and suffering of the terminally-ill patients. Relating back to the historical evolution, the medical profession carried out two-fold objectives – to safeguard lives of the people and relieve their pain by treatment. Till 1960s, there was no dispute between these two objectives. But, as the days pass by and the era of modernization rises, the advancement is evinced in human thought which amounts to the change in the concept of Death and incorporation of Right to Death. Today, the Contemporary World defines 'Death' as cessation ofthe heartbeat as well as the brain functions or of the brain functions only. The era of modernization hence prioritizes 'quality

of life' more than the 'preservation of life', which emerged due to the four reasons – 1) pointless existence in absence of brain functions, 2) Meaningful Survival or elongation of life does not seem to be a matter of ordinary sense in absence of any social relation caused by the irreversible brain damage of the Patient, 3) Cardiac arrests are not always the reason of death; rather the resuscitation may be restored through providing adequate capacity and advanced techniques, 4) Brain death, today, is preferred to be denoted as a situation when Cerebral Cortical activities are completely and irretrievably damaged and cannot be artificially processed where other organs can take the artificial aid even if they cease to continue. Thus, the conflicts like Euthanasia and Physician-assisted Suicide come to the limelight under the aegis of Right to die.

The current legal status of Euthanasia is still unclear like a hazy glass. Over the decades, the debate continues to prolong on this incessant motion in the periphery of domestic and International laws as well. Some states plead for the motion while most of the states raise their strong objection. The controversy of 'Good Death' takes the form of turmoil while highlighting the fact that majority of global population are the advocates of Euthanasia despite being legally prohibited in most of the countries. The media and the International Organizations such as United Nations do not address the medical ethics behind Euthanasia any longer; rather they emphasize the arguments against Euthanasia to regulate it as soon as possible. Right to Die is hence a quasi-fictional right till date – a right which has been emerged through debate, addressed through endless controversies but whose implementation is a far-fetched dream yet.

International Human Rights Law however bases Euthanasia as a key instrument to introduce Right to Death as an incessant dilemma. Over the decades, the global society enlists Euthanasia as one of the taboos in the regime of Medical ethics. Such statement is broadly supported by the International Human Rights treaties like Montevideo Convention, Convention on the Rights of the Child etc.,International Legislations like Charter of the United Nations and other International instruments like International Covenant on Civil and Political Rights, Universal Declaration of Human Rights etc. where Right to Life is an express obligation but Right to death including Euthanasia is an implied rejection. This does not denote the inconsistency of Euthanasia with the fundamental principles of International Law; rather invites for an open debate to reconsider the moral issues underlying Euthanasia. Exponents of the Euthanasia utilize the principle of self-determination which restrains the

States from interfering with the individuals' lives and imposing arbitrary regulations over the private rights to live and die with dignity and without intense suffering. Henceforth, rejecting the legality of Euthanasia would ultimately compel the terminally ill people to suffer against their will, which amounts to be an instance of cruelty or immorality. Besides, Right to Life and Euthanasia are not contrary to each other. Right to Life refers to a claim or guarantee of a dignified life of the individual. But where intense pain and suffering replace the dignity, Right to Life tends to be of no value. [4]

On the other hand, the opponents of the Euthanasia do not consider human self-determination as a direct right of the individuals and term it as a hybrid one. It is only and expressly addressed in Article 1 of International Covenant on Civil and Political Rights (ICCPR) that the individuals cannot claim to preserve right to self-determination and it is the State which should consider along with interpretation of other rights as mentioned in the ICCPR. Besides, legalizing euthanasia will tend to damage the realization of the spirit of life lying in the Right to Life and end up obstructing the duty of the States to preserve the health and lives of the citizens. [5]

Although Belgium, Netherlands, Oregon and Northern Territory of Australia legalize voluntary euthanasia so that the terminally ill people can request for medical aid to end their lives, the rest of the nationsstill oppose the concept. Besides, while the euthanizing patients demand for their unequivocal consent as an essential element to legally perform Euthanasia, the conflicts continue to arise regarding the position of involuntary euthanasia. This consensual debate in the International Human Rights Law therefore reveals the picture of an incessant international dilemma and necessitates a high need of a strong resolution to cease the dilemma from protracting further.

# Chapter – II

## Current Legal Status of Euthanasia in Municipal as well as International Scenarios

[4]Sharma BR, Harish D. Euthanasia - a medical dilemma. Medicolegal Update 2004; 4 (1): 19 - 22.
[5]Sharma BR, MBBS, MD, Reader, International Human Rights Law and The Debate on Euthanasia – A Viewpoint, IIJFMT 3(4) 2005.

In the preceding context the problem chosen for the conceptual and research is the issue of Legalisation of euthanasia from an Indian and International prospective, The atrociousness of this issue can be easily understood by looking at the current scenario. The word euthanasia originates from Greek word "euthanatos" which means easy death. Generally euthanasia or physician assistant suicide when the patient when the patient is termed in a complete vegetative state. Accordingly to Hippocratic Oath which prohibits physician from prescribing poisonous drug and other material for his patient which was lost in Christian version of Hippocratic oath.

From the global prospective of the multicultural world the two practices euthanasia and physician assistant suicide raise various legal and ethical issues.

## Euthanasia worldwide[6]:

**Albania**: In Albania Euthanasia was legalized in 1991. Voluntary euthanasia was permissible. Under the rights of the terminally ill Act of 1995, Passive euthanasia is considered to be legal if 3 or more family members give consent to the decision.

**Australia**: Rights of terminally ill Act, 1995 euthanasia was legalised in northern territory. Later on Federal Parliament repel the act two years later by passing euthanasia laws 1997 Victorian Charter and Human rights and responsibility Act 2006.

**Belgium:**The Belgium Act of Euthanasia came into effect on 20th May 2002 ,after its publication in the official Belgian gazette. The Belgian Law allowed Doctors to help to kill patients who are in the terminal illness. It became the 3rd jurisdiction after Oregon USA 1987 and Netherlands in April 2002.

**China and Hong Kong:** Euthanasia is not legalized in China and Hong Kong. It is against Chinese concept of morality. According to current law in the country it is murder.

**Colombia**:- Euthanasia is permissible from 1997 with assent of highest judicial body the constitutional court, That the individual have the right to end his life and Doctors cannot be prosecuted for their role in euthanasia treatment.

**Netherlands:**[7]

[6]Euthanasia: Global and Indian Perspective, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/54434/7/07_chapter-2.pdf (Last Accessed on 26/12/2017)

[7]Vander Maas P J, Vander Wal G.,Haverkate I. Euthanasia, physician assisted suicide and other medical practices involving the end of life in Netherlands, 1990 - 1995; N Eng J Med 1996; 335: 1699 – 705.

1. The request for euthanasia must come only from the patient and must be entirely free and voluntary.
2. The patient's request must be well considered, durable and persistent.
3. The patient must be experiencing unbearable suffering, with no chance of improvement.
4. Euthanasia must be the last resort. Other alternatives to alleviate the patient's situation must be considered and found wanting.
5. Euthanasia must be performed by a physician.[8]

## EuthanasiaCases:-

### 1. Gross v. Switzerland[9](14th May 2013)

An Elderly woman approached the European Courts of Human Rights stating, Article 8 of European Convention on Human Rights. Her wish for Legally Assisted suicide fell within the ambit of itThe Court held that Switzerland had Bridge Article 8 by felling to provide clear legal guidelines on the extent of right to volunteer euthanasia. The case has been referred to grand chamber and still remains pending.

### 2. Pretty v. United Kingdom[10](29th July 2002)

A UK National suffering from final stage of neurone disease applied to the authority to assisted suicide but her request was turned down. So she sought for declaration that her husband will not be liable if he help her to die. The declaration was rejected by authorities, so she approached ECHR Rights before European Court. It was being held that the Article 2 of ECHR was not a positive obligation and thus UK authority has not violated the Article 3 of ECHR.

## Current Indian Scenario:

On 7 March 2011 the Supreme Court of India legalised passive euthanasia to patients in a permanent vegetative state. In the landmark case of Aruna Shanbaug v U.O.I[11] , the petitioner

[8]TenHave HAMJ, Welie JV M. (1996) Euthanasia in Netherlands. Crit Care Clin. 1996; 12: 97 - 108.
[9] Gross v. Switzerland, ECHR 14 May 2013.
[10] Pretty v. United Kingdom, ECHR 29th April 2002.

Aruna Ramachandra Shanbaug[12] was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. On 27thNovember, 1973 she was raped by a sweeper in the hospital by wrapping a dog chain around her neck. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day, a cleaner found her in an unconscious condition lying on the floor with blood all over. It was alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged.Thirty six years had lapsed since the said incident. She had been surviving on mashed food and could not move her hands or legs. It was alleged that there is no possibility of any improvement in the condition and that she was entirely dependent on KEM Hospital, Mumbai. The Respondents KEM Hospital and BMC were directed to stop feedingAruna and let her die with dignity.

The respondents alsofiled a counter petition. The court decided to appoint a team of 3 eminent doctors to investigate the exact physical as well as mental conditions of Aruna.They studied Aruna Shanbaug's medical history in detail and opined that she is not brain dead. She reacts to certain situations in her own way. For example, she likes light, devotional music and prefers fish soups. She is uncomfortable if a lot of people are in the room and gets distraught. She is calm when there are fewer people around her. The staff of KEM Hospital were taking sufficient care of her. She was kept clean all the time. Also, they did not find any sign from Aruna willing to let her die. Further, the nursing staffs at KEM Hospital were more than willing to take care of her. Thus, the doctors did not recommend euthanasia here.

# Chapter – III

## Euthanasia versus Right to Life – A Balanced Approach to cease the Incessant Motion

The question on legality of Euthanasia keeping in mind Human Rights Legislations is still unanswered and ambiguous. A life with dignity is worldwide well-recognized but a death with dignity has been portrayed very differently. Euthanasia although categorized into several types, voluntary as well as passive, can be found as a type not targeting the Right to life

[12]Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454 (India).

directly. Deriving the nature of private right, it consists of the individual's will and the State's duty not to intervene in such will. Where Right to Life allows individuals to preserve their will to live with dignity, Right to death on the same footing legalizes individual's will to die with dignity.[13] The element that must be mutual while performing both the rights is an intention free from guilty mind so as to maintain the scale of dignity.

Right to live a dignified life obliges the States not to shirk their duty to maintain the standard of living of the individual and the healthcare of the citizens. To safeguard right to life, it therefore prima facie connects with a guarantee to provide medical treatment and take care of health of the citizens and not to refuse medical aid which, in turn, impedes the enhancement and prolongation of the spirit of a dignified life. But ironically, Right to refuse healthcare or medical treatment by the patients is well-established in International Law which, by no stretch of imagination, paves the tiles of passive euthanasia. Besides, the right to Life or right to health imposes a duty over the State to be responsible for providing the minimum degree of health care to the poor people so as to fulfill their standard of dignified living. But the contemporary scenario exhibits the failure on behalf of the States to perpetually alleviate hunger and poverty and hence makes all the arguments for Right to Life futile. Speaking on the same note, most of the nations till date promote no hospice care and reasonable protection to the terminally ill patients to restrain them from willing to die. Thus, the ineffective implementation of Right to Life is the sole reason behind the emergence of Euthanasia as well as Right to Death in International Law and the everlasting controversy in the United Nations.

This paper nevertheless cast a look across the borders of International Human Rights Law in order to prescribe strong and effective recommendations to stabilize the motion of the debate between Euthanasia and Right to Life.

First of all, the voluntary euthanasia where the patient is competent enough to request for the act of euthanasia, should be legalized under the International Law subject to the measurement of dignity and the condition that the patient requesting for voluntary euthanasia shall have no aid or other resources to fulfill the reasonable standard of living as explicitly required by the Right to Life.

[13]Gupta A. To seek death is legal, at last *The Tribune*, Jan. 1st 2001.

Secondly, in case of involuntary euthanasia where the terminally ill patients are not competent to respond or request for euthanasia or in a vegetative state, the assistance of the Medical professional (Doctor) must be required to legalize the involuntary euthanasia only in such case where there is no sign of a dignified life for the concerned patient but there may be a sign of dignified life for other needy patients through organ donation if involuntary euthanasia is performed on the concerned patient.

Thirdly, active involuntary euthanasia must not be legalized and should be considered illegal as it allows the Doctors to cause some deliberate act to kill the terminally ill patients without their consent and can therefore compare with murder or culpable homicide even though it has some good intention. On the other hand, active voluntary euthanasia can be considered legal only if the fulfillment of dignity as mentioned in our first recommendation is present.

Fourthly, however, to perform involuntary euthanasia legally along with the condition mentioned in our second recommendation, the process to adopt for exercising involuntary euthanasia must be passive one which allows to withhold medical treatment for letting the person die naturally subject to the condition when no medical treatment is sufficient enough to recover dignity in right to life of the euthanized patient.

Inclusion of the aforementioned recommendations in each and every international as well as municipal human rights instruments (be it legislations, treaties or precedents) will thus be able to form a balanced approach to the blurry status of Euthanasia and stabilize the motion regarding incessant controversy between International Human Rights Laws, Right to Life and Euthanasia towards equilibrium.

## Conclusion

Delving deeper into the arguments of proponents and opponents in regard to the Legality of Euthanasia vis-à-vis the inherent right to life, what makes a high need of the hour is a balanced approach staying the motion of the long-lasting debate in International Human Rights Regime. The weight on the major disagreements against Euthanasia and minor agreements for Euthanasia encouraged us to find the sensitive, balanced and mutually agreeable approach which in turn, creates a state of equilibrium in this regard. The recommendations that are proposed in this article should be implemented effectively by way

of laying down efficient legislations in municipal level and through inclusion of provisions in the major International Instruments. Moreover, clear guidelines relating to the criterion of the parameter 'Dignity' need to be drafted in order to settle the conflicts impeding the path of realization of such major human rights.