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Dying with Dignity: Religious, Legal and Ethical Implications of the Euthanasia Debate in India

Introduction

The intense discussion on euthanasia in India began in 2011 when the Supreme Court consented to passive euthanasia by bestowing power upon doctors to execute while delivering the verdict in Ms. Aruna Shanbaug's case, who was in a vegetative state for 42 years. Euthanasia, a process of taking someone's life through medical intervention, is largely characterized into two types: active and passive. Active Euthanasia refers to voluntarily ending one's life by injecting lethal injection, whereas, passive euthanasia indicates withdrawing life support to the patient who is terminally ill. Although the plea for legalizing euthanasia was filed in the high courts of Bombay and Hyderabad earlier following the Euthanasia Acts of the Netherlands and Belgium, the legal intervention and the subsequent validity for passive euthanasia approved by the apex court through a set of guidelines passed in 2011 and subsequently solidified in its 2018 verdict. Through Shanbaug's case, the euthanasia debate on life and death was brought in to reveal the views from religious, legal, and ethical dimensions. The story of Shanbaug being in a vegetative state for 42 years following a brutal rape and strangling by her hospital ward boy evoked several debates on the circle of life and death, the right to life with dignity (article 21 of the Indian Constitution), and the right to have a peaceful death, etc. in Indian public sphere. Besides the legal discussion inside the courtrooms, in the social and mainstream media, one could notice debates on ideas of death and end of life being extensively discussed against religious and ethical backgrounds in India, for it has followers of different religions.

The followers of the Hindu religion, who are the majority do not approve of passive euthanasia as it voluntarily takes away those who are terminally ill, and, interestingly, the Karma theory of Hinduism puts the blame on their misdeeds committed during previous incarnations. Thus, the illness and suffering that one undergoes in the present life, according to Hinduism, is due to one's Karma. Further, polytheistic beliefs of Hinduism and monotheistic beliefs of Islam and Christianity widely

prevalent in India demonstrate the idea that only God has the right to end someone's life. Hence, the Western notions of providing living wills and advance directives are staunchly opposed by followers of Hinduism and other religions in India. By looking at the history of euthanasia debates in India through the significant story of Shanbaug, this chapter attempts to analyze how the legal interventions on euthanasia were received by different religious and social groups. Further, it tries to show how euthanasia debates engage with the circle of life and death with regard to those who are terminally ill, disabled, and aged people from religious, legal and ethical backgrounds. The chapter uses court verdicts, newspaper articles, research works, interviews of caregivers, the biography of Aruna Shanbaug, etc. as reference documents to establish the argument.

Historical Views on Death in India

A land of different religious followers from antiquity to the present, India has a rich legacy of beliefs and practices of the circle of life: birth and death. From the two major culturally significant periods in Ancient India—the Sangam and the Vedic periods to the modern age, India witnessed numerous practices of death and strident thoughts about afterlife abound in oral stories, religious scripts and literary writings. Thoughts on ways of dying, different funeral ceremonies and life after death, in fact, dominated the discourse of death in the pre-colonial period, which was mainly fraught with religious connotations. During the Sangam period, a widely held practice of dying among kings and other noble origins was called ›Vatakkiruttal‹, wherein they would sit and fast to death by facing in the north direction.[1] Notably, this practice of dying was held by the kings who had lost their honour in battles. In the Sangam age, people also believed in an afterlife, which has been well-documented in its poetry collections. In the anthology of poems entitled Kurunthokai, poem 49 brings out how the speaker ›Thalaivi‹ (heroine) ensured her husband ›Thalaivan‹ (chieftain) about their life after death:

1 Subbiah, G: King, Kingship and King-poets in Early Tamilakam, in: Proceedings of the Indian History Congress 44 (1983), pp. 86–100, here pp. 96–97.

> I want you to be my husband
> and me to be your wife in our
> next life, as we are in this one.[2]

This demonstrates how in the ancient period of South India, people had a strong notion about the afterlife.

In the Vedic period, an age marked by Hindu religious doctrines, the idea of death was conceived and practiced in three different ways: natural; unnatural (being killed); and self-willed.[3] The idea of natural death refers to life up to 100 years or till the end of lifespan as prescribed by Hindu religious scripts: »Those men who died naturally became the ancestors who were sustained through the offerings, ostensibly until they were reborn (though the offerings also ensured that they became gods (visvadeva) as part of the process, thereby creating a double buffer against the idea of death as annihilation).«[4] Unnatural death, on the other hand, was marked by murder, accident and death in battle, referring to what was termed in Hindu religious scripts as violent one, and thus did not deserve ›Sraddha‹ (funeral). In the ancient period, any death that occurred through unnatural means such as untoward violence, accidents and cowardly attack on the battlefield was nonetheless considered unnatural as opposed to the gallant fight in warfare, for it was voluntary and was devoid of any religious endeavours. However, the violent death of warriors on the battlefield was thought to be powerful from the religious perspective, for it was believed to lead to heaven or deification. Besides natural and unnatural deaths, there existed another form of death called ›self-willed death‹, which was primarily practiced in three different ways: »suicide; what we shall term heroic, voluntary death (mors voluntaria heroica); and religious, self-willed death (mors voluntaria religiosa).«[5] While suicide committed due to depression and uncontrollable circumstances was prohibited, voluntary and religious self-willed deaths were given religious sanction as they were done during religious rituals or to attain deification.[6]

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2 An Analysis of History of Tamil Religion / part: 17: Theebam.com, 2016, www.ttamil.com/2016/09/an-analysis-of-history-of-tamil_8.html.

3 Young, Katherine K, Euthanasia: Traditional Hindu Views and the Contemporary Debate, in: Coward, Harold G., Lipner, Julius, Young, Katherine K. (eds.): Hindu Ethics: Purity, Abortion, and Euthanasia, New York 1989, pp. 71–130, here p. 74.

4 ibid., p. 74.

5 ibid., p. 74.

6 ibid., pp. 74–75.

Besides Hindu religious perspectives, other religions followed in India also have viewpoints on the idea of death. For instance, Jainism, one of the religions in India, has the practice of fasting to death (Sallekhana) for those who suffer from incurable diseases and debilitating old age. This type of death was considered to be the most non-violent one in self-willed deaths.[7] On the contrary, as argued by David Brick, the practice of ›Sati‹ in which the wife ascends to the funeral pyre of her husband during the ritual to express her devotion to him is, in fact, considered to be the most brutal form of ritual suicide in the world.[8] While it was ostensibly seen as a cruel form of dying, such practice was, however, thought to be religious, for fire (Agni) till the modern period was worshiped as a god. This practice of widow burning was put to an end in 1829 during the colonial period with the intervention of Hindu reformists and colonial administrators. In the Sikh religious tradition, interestingly enough, the Sikhs who fought against the Mughal rulers, who were trying to destroy Sikhism in the seventeenth and eighteenth centuries were revered as martyrs. Notably, the Sikhs who lost their lives in such battles to save their religion and uphold righteousness were celebrated as heroes.[9] In Buddhism, one of the ancient religions in India, the ordinary suicide by volition was denounced, for it was seen as an immature activity and decided out of the mistaken desire to non-exist in the world. On the contrary, Indian Buddhism, as stated by Reiko Ohnuma, conceded to two types of self-willed deaths, which were widely celebrated: »These are self-sacrifice, which I define as compassionately sacrificing one's life for the welfare of others, and self-immolation, which I define as killing oneself as a sacrificial offering in a ritual act of devotion.«[10] An overt sympathy was, however, shown to those who committed suicide in classical India for debilitating old age and chronic health-conditions, as freedom to leave and easy death were

7 Kitts, Margo, Introduction: On Death, Religion, and Rubrics for Suicide, in: Kitts, Margo (ed.): Martyrdom, Self-Sacrifice, and Self-Immolation: Religious Perspectives on Suicide, New York 2018, pp. 1–17, here p. 15.

8 Brick, David, Sati, in: Kitts, Margo (ed.): Martyrdom, Self-Sacrifice, and Self-Immolation: Religious Perspectives on Suicide, New York 2018, pp. 163–182, here p. 163.

9 Fenech, Louis E, The Tropics of Heroic Death: Martyrdom and the Sikh Tradition, in: Kitts, Margo (ed.): Martyrdom, Self-Sacrifice, and Self-Immolation: Religious Perspectives on Suicide, New York 2018, pp. 206–226. here p. 206.

10 Ohnuma, Reiko, To Extract the Essence from this Essenceless Body: Self-Sacrifice and Self-Immolation in Indian Buddhism, in: Kitts, Margo (ed.): Martyrdom, Self-Sacrifice, and Self-Immolation: Religious Perspectives on Suicide, New York 2018, pp. 242–264, here p. 243.

encouraged.[11] Nonetheless, such forms of death through the act of suicide were prohibited, during the British period through legal intervention.

Euthanasia Debate in India

A re-visitation of the idea of death in different religious practices in India reveals the fact that albeit natural, unnatural and self-willed deaths, a uniform ritual of dying did not exist across religions. Similarly, the recognition and rejection of dying practice, in fact, varied from religion to religion, particularly in the case of self-willed death. The practice of euthanasia, closely connected to the idea of suicide in the ancient and medieval periods, was freely left to the choice and willpower of individuals till the modern age. While the practice of suicide was strictly prohibited in the Hindu religion from the tenth century C.E. onwards, both religious and self-willed deaths, as mentioned above, became illegal through the Indian Penal Code-309 enacted by the British Raj in India. With the prohibitory law on suicide in the colonial period, all forms of self-willed deaths including religious ones, indicating euthanasia practices, were completely halted in the subcontinent. The IPC sections, such as 309 and 306 have stringent punishments for those who attempt to commit suicide and provoke others to commit suicide respectively. It is in this context that the practice of euthanasia and its discourse in the Indian public sphere gain greater significance as it is viewed from religious, legal, medical and ethical viewpoints.

Prohibition of suicide under the IPC section 309 met with stiff resistance in religious and legal discourse, particularly in the post-independent period. Besides numerous voices of dissent stemming from religious context to the said IPC section on suicide, a staunch challenge came from justice T.K. Tukol, who argued in his series of lectures entitled *Sallekhana is Not Suicide* (1976) that the Jainist practice of ›Sallekhana‹ (fasting to death) cannot be called suicide.[12] Further, the legal developments that took place in India in the last decade, such as the enactment of the Mental Healthcare Act (hereinafter MHA) in 2017, the Supreme Court's verdict in permitting passive euthanasia and the Supreme Court's notice to the Central Government, seeking clarity on the punishment for suicide

11 Young: Euthanasia: Traditional Hindu Views, p. 76.
12 ibid.

survivors under the IPC 309 in 2020 all have questioned the validity of the IPC section on suicide.[13] Particularly, in the mentioned clarification notice to the Central Government in 2020, the Supreme Court said that the IPC section 309 contradicts MHA section 115, which reads: »Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.«[14] Thus, the 2020 Supreme Court notice again reiterated its 2018 verdict on passive euthanasia that the survivors of suicide require care, treatment, and rehabilitation, not punishment.

The euthanasia debate acquired significance in the post-independent period where the Indian practice of self-willed death was juxtaposed with Western views on compassionate murder, which is carried out by withdrawing life-support treatment in hospitals. While the latter can be surmised as passive euthanasia in the present context, especially after the approval of the Supreme Court, in the early years, the Western euthanasia practice involving advanced medical technologies was staunchly resisted. The growing acceptance of the idea of peaceful death with assisted suicide in Western societies, was, seen in opposition to Hindu religious worldviews. These conflicting views on death, emanating from the Western notion of modern humanism and Indian views on traditional religious viewpoints, led to the lively euthanasia debate in India, for both views continue to have considerable numbers of supporters, even in present times. While the former places importance on the role of physicians in assisting the patients in committing suicide, the latter, however, regards the individual's choice in dying, which is always guided by the respective religious precepts. The landmark verdicts of the Supreme Court in 2011 and 2018 in approving passive euthanasia, notably, attempt to conflate these two opposite viewpoints on death by sanctioning withdrawal of treatment for those who are terminally ill and falling into the medical condition of a Persistent Vegetative State (hereinafter PVS).[15] Furthermore, the 2018 verdict also authorized the ›living will‹, a legal document to be signed in

13 Mahapatra: Attempt to suicide punishable or survivor requires rehabilitation, asks SC, 12.9.2020, timesofindia.indiatimes.com/india/should-suicide-bid-be-punished-or-survivor-treated-with-care-sc/articleshow/78069068.cms.

14 The Mental Healthcare Act: Ministry of Health and Family Welfare, 2017, main.mohfw.gov.in/sites/default/files/Mental%20Healthcare%20Act%2C%202017_0.pdf.

15 Menon and Mohanty: India's top court upholds passive euthanasia, allows living wills in landmark judgment, 9.3.2018, www.reuters.com/article/us-india-court-euthanasia/ind

front of a district magistrate or government officer who belongs to the same rank and which will be executed when the person concerned falls into a PVS. Central to the euthanasia debate in India is the story of Ms. Aruna Shanbaug, who remained in a PVS for 42 years, evoking numerous discussions on the right to life, dignified death, living will, etc.

The Case of Aruna Shanbaug

Ms. Aruna Shanbaug, who worked as a staff nurse at King Edward Memorial (hereinafter KEM) Hospital in Mumbai was raped by a ward boy named Sohanlal Walmiki after he strangled her with a dog chain on the evening of 27 November 1973. This severely affected her body and left her in a PVS for 42 years. Further, the strangling led to the obstruction of oxygen supply to her brain, leaving her in permanent unconscious condition. Living in the liminality of life and death, Shanbaug had cortical blindness, paralysis, conjoined fingers and toes, an extremely fragile body, brittle bones, etc., and had food only through a feeding tube.[16] Not being able to recognize anybody including her family members, she was prone to shouting, weeping and laughing without any reason, and ended up becoming the person who lived in a PVS for the longest number of years, after Terri Schiavo in the USA had been in a PVS for 15 years. Shanbaug, due to the unstable financial condition of her family, was admitted to KEM hospital and till her death, her treatment was solely taken care of by the hospital. Further, she was left to the care of nurses in the hospital as after some years into the attack, her only sister who was visiting her stopped coming.

After the plea to mercy kill her, advocated by journalist Pinki Virani, who posed herself as next friend of Shanbaug was turned down by the Supreme Court in 2011, she died of pneumonia in 2015. Shanbaug's life in PVS engendered debates on euthanasia, Article 21, Section 306 of IPC, Section 309 of IPC, self-willed death, ethics and ethos of physicians, religious dogmas and social values more prominently in the first two decades of the present century. Her PVS life period is, however, said to be the

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ias-top-court-upholds-passive-euthanasia-allows-living-wills-in-landmark-judgment-idUSKCN1GL0MF/.

16 Aruna Shanbaug: Brain-damaged India Nurse Dies 42 years after Rape: BBC, 18.5.2015, www.bbc.com/news/world-asia-india-32776897.

history of serious euthanasia debates in India, connecting it with advance medical technologies and constitutional validity, while at the same time trying to detach it from any religious precepts.

Besides debates on euthanasia and the right to have a dignified death, Shanbaug's story, notably, invoked discussions on penal punishment for rape, for in her case, the offender Walmiki served only seven years of imprisonment for robbery and attempt to murder as per the sections 307 and 397 of IPC. Furthermore, Shanbaug's case also revealed the narrow understanding of rape in India as the gynaecologists, who examined her female reproductive organ submitted the report by saying that the hymen is intact.[17] This led to Walmiki not being punished for rape, and thus resulting in less years of imprisonment for him. The journalist Pinki Virani, who fought for peaceful death for Shanbaug and who wrote her biography by tracing her life-story and her hospitalization in KEM hospital after the sexual assault, told to BBC after she died: »My broken, battered baby bird finally flew away. And she gave India a passive euthanasia law before doing so.«[18] As mentioned earlier, Shanbaug's condition in a PVS for 42 years intensified the euthanasia debate in India in the spheres of religion, law, ethics, and medicine and finally, as Ms. Virani said, paved the way for the approval of passive euthanasia by the apex court in 2011 and 2018 judgments.

In a similar vein, the death of Shanbaug was critically reflected by many scholars in the fields of medicine, anthropology, law, sociology, etc., situating her case in the larger context of the euthanasia debate in India. For instance, in the opinion »Aruna Shanbaug: Is Her Demise the End of the Road for Legislation on Euthanasia in India? « in the journal Science and Engineering Ethics published in 2016, Kanchan et al., maintain that the death of Shanbaug is not the end of the individual plight in PVS, rather the end of the road for well-defined guidelines on euthanasia in India. While talking about how passive euthanasia came to be approved by the supreme court in India, Virani writes emotionally in her article »The Motives of Mercy« re-published in her biography of Shanbaug titled *Aruna's Story: The True Account of a Rape and its Aftermath* (2000): »My poor, poor Aruna. All I have, standing in this one corner of the court, is my choice to be morally accountable for you, no matter the consequences in the court

17 Virani, Pinki: Aruna's Story: The True account of a Rape and its Aftermath, Amazon kindle 2000.

18 ibid., www.bbc.com/news/world-asia-india-32776897.

of God. And then, his voice cutting through the clutter of righteousness, I hear the judge use the words ›Passive Euthanasia.‹ This, too, is how landmark judgments come to a country.«[19] With the recognition of passive euthanasia by the apex court, people who are brain-dead and in a PVS can be recommended for the withdrawal of life-saving treatment and food intake after getting a proper opinion from a physician. Furthermore, Shanbaug's case also paved the way for legalizing living will in India just like last will, as mentioned earlier, to state how much medical intervention one wants in the case of being in PVS in the future. The sanctioning of passive euthanasia, arguably, has engendered several debates and dissent both in the courtroom and outside the public sphere. One of the major spheres of the euthanasia debate in which the discussion was held extensively was religion.

Religious Implications

Self-willed death or suicide in India, as explained earlier, has a complex and multidimensional history, particularly if seen from a religious perspective. Evidently, the complexity and multifariousness of suicide arise merely out of a plurality of religious practices in India, testifying to what is proudly pronounced as ›unity in diversity‹. Furthermore, the three phases of Indian history: ancient, medieval and modern witnessed numerous practices and beliefs of self-willed death followed in different religions. While in the ancient period, nearly all the major religions tacitly approved suicide, albeit for pious people, terminally ill people, old aged persons and others who wanted to end their life due to bodily and religious reasons, in the medieval period, however, there emerged disapproval of suicide, particularly in Hindu religion since sixth century C.E. onwards. Nevertheless, the practice of ›Sallekhana‹, as discussed earlier, continued into the modern period without any injunction, for it was given religious sanction in Jainism. Arguably, when suicide was brought into a criminal offence during the colonial period, almost all forms of self-willed religious deaths were met with punitive action. Furthermore, in the twentieth century, there were attempts by social activist groups to bring all forms of suicides including religious ones into section 309 of IPC.

19 Virani: Aruna's Story.

Prohibition and criminalizing the abetment of suicide sparked many debates in the ¯twenty-first century in the spheres of religion, law, ethics and culture. Interestingly, the blanket prohibition of suicide, however, by the turn of the twentieth century, introduced the Western discourse of euthanasia in India. In the post-independent period, particularly after the 1980s, euthanasia discourse gained traction among the elite section of India, emerging as a reasonable solution for those who lived in a PVS, brain-dead conditions, terminal illnesses and others. This advancement of knowledge in euthanasia, and withdrawal of life support, became possible due to the introduction of information about advanced medical technology and allied developments in the field of medicine in India from the early 1980s onwards. The establishment of palliative care centres, fostered by the idea of healing symptoms rather than curing through medical intervention, became widely popular in the Indian context after WHO emphasized it. Introduced as part of End-of-Life (hereinafter EOL) care, the palliative care system tries to mitigate pain and improve the quality of life of terminally ill patients. In the religious and spiritual contexts, however, this system has varied responses, for each religious strand on death is distinct from one another. Notably, the palliative care system extensively uses spiritual and religious coping methods while other methods fail to provide patients with solace.[20]

In Hinduism, death is piously seen as a »transition to another life by reincarnation, life in heaven with God or absorption into Brahma (ultimate reality).«[21] Due to this view, death in Hinduism is largely seen as good and bad ones. Needless to mention, voluntary death occurs in the form of suicide and is identified as a bad death. Furthermore, the karma theory of Hinduism makes this taxonomy more conspicuous as it is believed that good karma leads to good death. Additionally, the sufferings and pain of an individual in the present birth are thought to have been caused by their bad deeds in the previous birth. A dying person, nonetheless, can refuse medical treatment, for pain is seen to be an expurgating sin.[22] Buddhism, on the other hand, advocates for the idea of ›afterlife‹, for its eventual aim is to reach ›nirvana‹ (freedom from the cycle of suffering

20 Sharma et al: End-of-life care: Indian perspective, www.ncbi.nlm.nih.gov/pmc/articles/PMC3705699/.

21 ibid., www.ncbi.nlm.nih.gov/pmc/articles/PMC3705699/.

22 ibid., www.ncbi.nlm.nih.gov/pmc/articles/PMC3705699/.

and rebirth).[23] Similar to Hinduism, relying on medication to alter one's state of mind is prohibited in Buddhism as it is believed to affect the transition to the afterlife. While in Christianity, death is believed a consequence of sin and is a separation from body and soul, in Islam, submission to suffering is considered to be a submission to God, and death by medical intervention is strictly prohibited.

Approval of passive euthanasia in India by the Supreme Court was opposed by religious groups on the grounds that human life is a gift of God, and any means to end one's life amounts to playing the role of God. As stated earlier, those who suffer from pain have inherited karma from their previous birth according to Hinduism. Thus, the practice of euthanasia, as argued by religious people, devalues the God-given human life.[24] Notably, this view is upheld by religious followers of almost all religions in India. As it has been stated by Sharma et al., withdrawal of life support is seen differently by followers of different religions in India, which impacts their perspectives and their ideas of death largely.[25] Thus, western modern concepts like living will and advance medical directive do not find resonance in the Indian public sphere largely due to the widely-held notion that they are against religious doctrines. In Hinduism, it is widely believed that dying is a natural process, and thus, the end of the lifespan of any human being is determined by God without any external intervention. Moreover, it is also thought that the longevity of lifespan is provided by God to human beings for 100 years or more as per Hindu religious beliefs.

In India, notably enough, the euthanasia debate is centred on two important streams of thought: death with dignity and death with divinity. While the former has modern legal validity, originating from the Western socio-cultural, medical and legal matrix, the latter finds its root in longstanding diverse religious doctrines and practices in India by drawing on different forms of religious deaths. When these two diametrically opposite traditions of dying interact with one another in contemporary times, particularly after the endorsement of passive euthanasia by the apex court in 2011 and 2018 judgments, they have created several conflicting views in the Indian public sphere both in support of the verdict and their

23 ibid., www.ncbi.nlm.nih.gov/pmc/articles/PMC3705699/.

24 Krishanu: Euthanasia in India, www.legalservicesindia.com/article/787/Euthanasia-in-India.html.

25 ibid., www.ncbi.nlm.nih.gov/pmc/articles/PMC3705699/.

disagreement to it. Furthermore, as discernible from the socio-cultural implications of the two modes of dying, the boundary, however, between them is very thin, for both of them emphasize voluntary death. The distinction, nonetheless, needs to be made between euthanasia for terminally ill patients and debilitating old aged people, and self-willed death for those who opt with religious connotations. Though the above-mentioned verdicts underscore the choice for passive euthanasia for those who live in a PVS, religious beliefs regarding dying dominant in India did not let people like Shanbaug die peacefully, arguing for natural death. However, with the sanctioning of passive euthanasia and legalizing living will, the Supreme Court has affirmed the autonomy of individuals to choose their death as it was practiced in ancient and medieval periods in the form of self-willed death.

Legal Implications

The euthanasia debate from the mid-1990s onwards entered into the legal discourse and created the space both inside and outside courtrooms for discussing the right to have dignified death for every citizen of India. Evidently, the euthanasia debate that took place in legal space has shifted its course from full-fledged religious perspectives to constitutional aspects. Considered to be a taboo subject in the socio-cultural context in India, death acquired pivotal significance in the legal circle as it was viewed and discussed purely from constitutional validity. Terminal illness, debilitating old age, PVS, brain-dead and other similar conditions, notably, necessitated the courts in India to intervene in the euthanasia debate and look at it from a constitutional perspective. Central to the euthanasia debate in both high and supreme courts was Article 21 of the Indian constitution, which reads: »No person shall be deprived of his life or personal liberty except according to procedure established by law.«[26] The major emphasis in the said article is ›right to life‹, which received numerous interpretations over the years from judges, focussing on dignity, safety, control of the body, liberty, etc. In the case of those who have above said bodily conditions, which require euthanasia to have a peaceful death, the Supreme Court has stated in the Gian Kaur vs. State of Punjab case that the right to have life

26 Article 21 in Constitution of India: Indian Kanoon, indiankanoon.org/doc/1199182/.

under Article 21 also has the right not to have life.[27] Further, the quote underscored the intrinsic nuances in the said article, which permits the citizens to have death with dignity as part of the right to have a dignified life.

Article 21, being part of the set of Articles that provide fundamental rights to people, has been frequently evoked in the courts to discuss the feasibility of having the right to have death with dignity. By expanding this Article to bring in the right to have dignified death as a fundamental right, the high and supreme courts have critically reviewed sections 306 and 309 of IPC from the 1980s onwards. The challenge to the validity of section 309 of IPC was raised in the case P. Rathinam vs Union of India wherein the supreme court said that, according to Article 21, which includes the right to die as part of the right to life, the person assisting other person to commit suicide cannot be punished.[28] Because he/she is only helping the other person to have a dignified death. Further, in the case Gian Kaur vs. State of Punjab, the Supreme Court once again affirmed that, according to the said Article, section 306 of IPC (abetment of suicide) cannot be invoked to punish the person who assisted other person in committing suicide.[29] As stated in the judgment of Gian Kaur vs. the State of Punjab, the judges mainly relied on the ruling of the apex court in P. Rathinam vs Union of India, besides several high courts' judgments, to declare the section 306 is unconstitutional if seen from Article 21. These two verdicts, notably enough, laid the foundation for the strong euthanasia debate that took place in the Supreme Court from the mid-2000s onwards till the pronouncement of landmark verdicts in 2018, sanctioning passive euthanasia and legalizing living will.

Besides the above said two cases dealing with IPC sections 306 and 309, the Supreme Court, perhaps for the first time, extensively engaged with the euthanasia petition with the crucial case Aruna Ramchandra Shanbaug vs Union of India and Others filed in 2009 by the journalist Pinki Virani, who claimed to be the next friend of Shanbaug. The case was filed by Virani under Article 32, which provides a constitutional remedy

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27 Smt. Gian Kaur vs The State of Punjab on 21 March, 1996: Indian Kanoon, indiankanoon.org/doc/217501/#:~:text=The%20appellants%20Gian%20Kaur%20and,of%20suicide%20by%20Kulwant%20Kaur.

28 P. Rathinam vs Union of India on 26 April, 1994: Indian Kanoon, indiankanoon.org/doc/542988/.

29 ibid., indiankanoon.org/doc/217501/#:~:text=The%20appellants%20Gian%20Kaur%20and,of%20suicide%20by%20Kulwant%20Kaur.

when fundamental rights are violated, appealing to the apex court to permit euthanasia for Shanbaug, who was in a PVS for 36 years in 2009.[30] The said Article is crucial and it is evoked in the rare cases when someone feels that their fundamental rights are violated by any system. In such cases, the apex court has the power to provide a constitutional remedy. In the judgment of Aruna Ramchandra Shanbaug vs Union of India and Others case, in paragraph two, the judges opined that euthanasia practice was new to India and they found it difficult to arrive at a legal solution:

> Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. This Court, in this case, is facing the same issue, and we feel like a ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels before us.[31]

After hearing all the respondents, the court said that Ms. Shanbaug should be left to live in the same condition as there was no reason to perform euthanasia on her until she died a natural death. Further, for those who live in a PVS, the court alone would act as ›Parens Patriae‹, added the judges, for the chances of misuse are high. However, the parents and immediate relatives would have a say in this regard. Lastly, the court in the said verdict approved passive euthanasia in the rarest of the rare cases with the consent of patients' family members and treating doctors.

However, it did not stay for a longer period regarding euthanasia as the petition was filed in the Supreme Court to review the judgment, and thus, the case was referred to the constitutional bench in 2014. The petition to review the judgment stated that Euthanasia is a complex issue and thus requires deeper legal engagement to arrive at an amicable solution. Further, the 2011 judgment which was challenged in the review petition was understood by the large section of intelligentsia and civilians of India that it was internally inconsistent, and it was against Article 21 which guarantees the right to life. From the Central Government side also, the Ministry of Health and Family Welfare did not take any step-in support of approving euthanasia. Mr. Ghulam Nabi Azad, the Minister of Health and Family Welfare in 2013, led by the Congress Government, clarified in the Upper House of the Indian parliament that »The Ministry of Health and Family Welfare is not in favour of enacting the Bill [on mercy killing].

30 Article 32 in Constitution of India: Indian Kanoon, indiankanoon.org/doc/981147/.

31 Aruna Ramchandra Shanbaug vs Union of India and Others on 7 March, 2011: Indian Kanoon, indiankanoon.org/doc/235821/.

There is no proposal under consideration at this stage for making law on this subject.«[32] Similarly in 2014, in a written reply to the Upper House of the Parliament, the Minister of Health and Family Welfare, led by the BJP Government, Mr. J. P. Nadda said that after consulting with the Ministry of Law and Justice, it was decided that the government would follow the judgment of the supreme court in 2011 regarding passive euthanasia, and it did not have any proposal to enact it in the Parliament.[33] The Law Commission of India, a commission established to advise the Ministry of Law and Justice regarding legal matters, in its 241st report on »Passive Euthanasia — A Relook«, largely agreed to the 2011 judgment of the supreme court and recommended exempting doctors and patients from penalizing under IPC sections 306 and 309.[34]

In the 2018 landmark judgment of the Supreme Court regarding euthanasia in the case Common Cause (A Regd. Society) vs Union of India, the constitutional bench chaired by then chief justice Dipak Misra declared that passive euthanasia is valid after the due procedure set out by the court is followed. In paragraph seven of the said judgment, the chief justice reflects on life and death, and the right to have dignified death: »It is asserted that every individual is entitled to take his/her decision about the continuance or discontinuance of life when the process of death has already commenced and he/she has reached an irreversible permanent progressive state where death is not far away. It is contended that each individual has an inherent right to die with dignity which is an inextricable facet of Article 21 of the Constitution.«[35] The bench, for delivering this judgment, relied on the earlier cited cases, such as P. Rathinam vs Union of India and Smt. Gian Kaur vs The State of Punjab, and notable verdicts of the apex court in the USA and in other Global Northern countries. Further, as discussed earlier, besides permitting passive euthanasia, the Supreme Court in this verdict legalized advance medical directives (living will) for adults with mental faculty. With this judgment, the longstanding

32 Govt. not in favour of euthanasia, says Azad: in: The Hindu, 14.8.2013, www.thehindu.com/news/national/Govt.-not-in-favour-of-euthanasia-says-Azad/article11933988.ece.

33 Comprehensive Guidelines on Passive Euthanasia: Press Information Bureau, 23.12.2014, pib.gov.in/newsite/PrintRelease.aspx?relid=113942.

34 241st Report On Passive Euthanasia - A Relook: Indian Kanoon, indiankanoon.org/doc/133438875/#:~:text=Both%20the%20Supreme%20Court%20and,or%20constitutional%20point%20of%20view.

35 Common Cause (A Regd. Society) vs Union of India on 9 March, 2018: Indian Kanoon, indiankanoon.org/doc/184449972/.

euthanasia debate in the legal circle came to an end, although it was received with huge uproar and severe criticism by certain sections of Indian society embedded in religious, ethical, and cultural precepts. On the other hand, euthanasia supporters looked at it as a victory for their long-lasting struggle in the courtrooms and perceived it as a revolutionary intervention by the apex court in ensuring the right to have dignified death as a fundamental right under Article 21 of the Indian constitution. In the ethical realm, however, this judgment created considerable criticism among civilians, doctors, caregivers, social activists, patients, people with disabilities and others, fearing that the verdict would be invoked in the future to euthanize chronically ill patients, disabled and old-aged people.

Ethical Implications

The sanctioning of passive euthanasia by the Supreme Court both in the 2011 and 2018 verdicts resulted in staunch criticism, and considerable debates were conducted in media houses and social realms to discuss the ethical implications. The ethical core of Hindu and other religions practiced in India, nonetheless, advocates for natural death as opposed to medically assisted suicide (passive euthanasia). Further, the moral values prevalent in Indian society also do not approve of suicide or assisted suicide, for it is against the extant value system. India, a country with a rich tapestry of cultures and civilizations, approaches the euthanasia practice mainly with ethical connotations formed by religious beliefs and cultural practices. The impermeable taboo attached to death and related conversations, in fact, makes people not discuss death openly in social spaces. Interestingly enough, the rituals performed in houses if someone dies or during the funeral ceremonies are seen from religious perspectives.[36] Put differently, any death is accompanied by an array of elaborate religious rituals to secure Moksha (emancipation from the eternal cycle of life, death and rebirth) for the person who passed away and for their family members. This belief is so strongly entrenched in followers of many religions.

The worrying factor related to the approval of passive euthanasia is its misuse by relatives and family members of the patients as said by

36 Laungani, Pittu: Religious rites and rituals in death and bereavement: An Indian experience, in: International Journal of Health Promotion and Education 44 (2013), No. 1, pp. 7–13, here p.8

the judges in the judgments and general public. In a country where poverty and low-income dominate the majority of households, it is largely believed that the implementation of passive euthanasia would lead to patients being killed for inheriting properties and wealth and selling their organs through illegal means. Thus, it was proposed to permit passive euthanasia on a case-by-case basis. Further, in certain cases, people who earlier opposed euthanasia on ethical grounds started agreeing to it owing to the larger perspective about terminal illness and the resultant death imparted through the easy availability of advance knowledge in medicine. For instance, Ms. Sujatha, the mother of Venkatesh, who moved to Hyderabad High Court to euthanize him and then donate his organs due to progressive illness caused by his muscular dystrophy condition said: »I was also not in favour of my son seeking euthanasia but knowing his grave medical condition and his own keenness to donate his organs, I did not come in his way of approach the High Court.«[37]

The cost factor in the healthcare system, as argued by Sanjay Nagral, in fact, is leading to tacit passive euthanasia for many economically low-income families, for good healthcare in India is beyond reach for such families due to exorbitant treatment charges.[38] Owing to excessive charges levied by the hospitals for EOL care treatment, low-income families are forced to shift their patients to cheaper hospitals or to their houses, which eventually results in the death of the persons who are on life-saving treatments. Alongside the cost factor, another important aspect that plays a considerable role in the euthanasia debate is the drastic privatization of the healthcare system in India, as maintained by Nagral: »In a system where out-of-pocket payment is the norm and healthcare costs are booming, there has to be a way of differentiating a plea made on genuine medical grounds from one that might be an attempt to avoid financial ruin. This may not be easy for any court or institution. The state and judiciary, which are proactive in granting such permission, will also need to look at vested interests that are forcing futile but costly treatment in a

37 Passive euthanasia should be on case-by-case basis: in: Times of India, 7.3.2011, web.archive.org/web/20120323081452/http://articles.timesofindia.indiatimes.com/2011-03-07/hyderabad/28665220_1_passive-euthanasia-muscular-dystrophy-patient-k-sujatha.

38 Nagral: Euthanasia: cost factor is a worry, in: Times of India, 13.3.2011, web.archive.org/web/20130510131223/http://articles.timesofindia.indiatimes.com/2011-03-13/all-that-matters/28685344_1_passive-euthanasia-patient-legal-sanction.

healthcare system that aims to profit through any means.«[39] Notably, this aspect of the euthanasia debate has hardly been paid any attention in legal, medical and social realms.

Talking about how the approval of passive euthanasia would intervene in one's fate destined by God, Ravinder Kaur, a social anthropologist said: »To intervene is to defy fate«,[40] echoing many who believe that life is given by God. On the other hand, the four core values of medical ethics, which the doctors are expected to uphold: autonomy of patients; acting in the best interest of patients; not harming patients and equal distribution of health resources, make them not to assist patients in committing suicide in the palliative care system as practiced in India. Further, the other two values such as maintaining dignity, and upholding truth and honesty in having informed consent for carrying out treatment also play a major role in the palliative care system.[41] Due to these medical ethics adopted in the Hippocratic oath, which is taken during the convocation ceremony, many physicians fear that withdrawal of life-saving support for terminally ill patients would lead to punitive action, cancelation of their professional license and violation of their professional ethics. This apprehension, indeed, emerges from the existing discordance between Article 21 and IPC sections 306 and 309. While the apex court has extensively debated and arrived at a convenient position regarding this, the guidelines for passive euthanasia and living-will still rest with the government officials, who often hold ethical views fraught with socio-cultural and religious perspectives, making it difficult in execution. Furthermore, though the IPC section 309 has been declared by the court as constitutionally invalid, section 306 regarding abetment of suicide continues to remain without proper clarification, particularly in physician-assisted suicide (passive euthanasia).

39 ibid., web.archive.org/web/20130510131223/http://articles.timesofindia.indiatimes.com/2011-03-13/all-that-matters/28685344_1_passive-euthanasia-patient-legal-sanction.

40 Magnier: India's Supreme Court lays out euthanasia guidelines, in: Los Angeles Times, 8.3.2011, www.latimes.com/world/la-xpm-2011-mar-08-la-fg-india-euthanasia-20110308-story.html.

41 Sharma et al: End-of-life care: Indian perspective, www.ncbi.nlm.nih.gov/pmc/articles/PMC3705699/.

The Present Situation

In the post-2018 period, though passive euthanasia and living will are legally valid in India, the majority do not approve of it. Even six years after living wills were approved by the Supreme Court, very few officially authorized living wills exist in many states.[42] Except for the southernmost state of Kerala, which has a slightly higher number of living wills, all the other states have very few wills, testifying to the fact that the legal entitlement of death with dignity still has not reached the majority. However, in the case of passive euthanasia in terms of withdrawing life-support or food intake, the middle and upper-class families do not approve of it, instead, they approach private hospitals for terminally ill patients and those who are on the verge of death to temporarily extend their lifespan. Such concern of family members by relying on money to save their dear ones, as argued by many euthanasia supporters, ends up causing heavy pain and more misery to those who are in the final days of their lives, leaving them to die alone with several tubes connected to their orifice. Notably enough, in the present times, physicians and medical professionals have divided views on passive euthanasia: some of them agree to its practice, while others, influenced by religious, moral and cultural values, do not approve of it.

Protests against the passing of passive euthanasia were organized in many parts of India by several groups such as human rights, religious, disabled, social activists and others. It is strongly believed that in India, the EOL of someone is determined by social, religious, cultural and regional factors.[43] However, in the educated elite section of society, passive euthanasia is considered to be a viable solution for upholding the dignity of terminally ill patients and those who live in a PVS. As Kanniyakonil states about the positive changes in accepting passive euthanasia, »A change in the attitude of the Indian people regarding passive euthanasia happened due to the inability to treat incurable and painful diseases, financial issues, liberal policy, and post-modern ways of reasoning.«[44] On the other hand,

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42 Rajagopal and Sharma: A Dignified Peaceful Passing is Everyone's Right, in: The Hindu, 8.5.2024, www.thehindu.com/opinion/lead/a-dignified-peaceful-passing-is-everyones-right/article68150530.ece.

43 Kanniyakonil, Scaria: New Developments in India Concerning the Policy of Passive Euthanasia, in: Wiley Bioethics (2018), pp. 1–6, here p.4, onlinelibrary.wiley.com/doi/abs/10.1111/dewb.12187.

44 ibid., p. 8.

in rural areas, people generally resort to assisted dying for those who are on the verge of death by using their own native methods, such as making them drink tender coconut water, feeding raw paddy, giving them oil baths, etc. This is generally done in the families that fall in the lower social and economic strata of society to give easy and quick death to those who are in the final days of their lives. This practice, notably enough, does not come under legal purview and has been in existence with mutual agreement for several centuries.

Conclusion

The most mundane aspect of human life, death has received several views, rituals and practices in the history of India. From antiquity to the present, ways of dying, and religious and ethical values related to death have been staunchly upheld by people. When assisted dying was introduced in the form of euthanasia, Indians had varied views on its practice due to the fact that EOL is deeply connected to religious, cultural, moral and regional factors. The majority, however, supported religious self-willed death over the modern medical method of euthanasia. Conversely, when the British Government came out with IPC sections such as 306 and 309 against assisting suicide and voluntary death, religious self-will deaths met with stiff legal resistance. Enlightened by the Western medical discourse on euthanasia, the elite intelligentsia from the mid-1990s onwards started approaching the high and supreme courts to seek legal remedies for euthanasia implementation in India on a case-to-case basis for their family members, relatives and friends. One such case that got legal attention and paved the way for the ruling of passive euthanasia in India was Aruna Ramchandra Shanbaug vs Union of India and Others (2011) filed by the journalist Virani, appealing the court to permit passive euthanasia to ensure the dignified death for Shanbaug.

Though the court did not permit passive euthanasia for Shanbaug, it provided detailed guidelines for passive euthanasia. Nonetheless, this legal victory did not stay for long as the apex court in 2014 referred the euthanasia matter to its constitutional bench by stating that the 2011 judgment was internally inconsistent. Finally, in 2018, the constitutional bench of the Supreme Court ruled in favor of passive euthanasia and legalized living will with a set of guidelines for adults with mental faculty. Although this verdict is the law in India as the central government did

not enact any legislation pertaining to passive euthanasia, it has not been fully realized till date, for people have divided views on it. The most vulnerable sections, such as disabled, chronically ill people, patients with incurable disease and old aged people genuinely fear that this will be used to euthanize them with absolute impunity.

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