

Euthanasia: Should it be Lawful or Otherwise?

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For long, euthanasia has been keenly debated on its moral correctness. The debate falls within the philosophical realms of the right to take away life and resonates with other ongoing debates in medical arena such as on stem cell research and abortion. Diverse views prevail. The Supreme Court of India, by way of taking up the euthanasia case of Aruna Shanbaug, has laid down a guiding framework to deal with such cases till legislations are enacted on the same. The deliberations also offer guidelines to policy makers.

Euthanasia could be active or passive. Active euthanasia involves giving painless death to a person through the use of some external means whereas passive euthanasia entails withdrawal of life support mechanisms to a person (hereby referred to as patient). The Supreme Court of India has ruled out active euthanasia as illegal on several previous occasions holding that "right to life is sacred". The Aruna Shanbaug case addressed the issue of passive euthanasia and involved determination of the conditions under which withdrawal of external life support mechanisms could be allowed. Contending that the withdrawal of external life support mechanisms was not illegitimate, the Supreme Court accepted the case for debate.

Two aspects emerged as important in this debate. First one was regarding who could make a petition for grant of permission for euthanasia. Grant of permission for euthanasia could be sought either by the patient or by another person if the former is incapacitated and survives on external life support mechanisms. Very often passive euthanasia involves the latter. Risk of opportunistic behavior and adverse selection becomes pertinent in such cases because intentions of the parties involved in seeking permission for euthanasia are often unknown and difficult to be ascertained ex ante. They may seek some private benefit out of the death of the patient such as inheritance of his/her wealth. Thus it becomes important to rule out any wrongful intent while granting permission for euthanasia. Taking this into consideration, the Supreme Court held that only the next of kin or friend of a patient could move an application for grant of permission for euthanasia. This would ensure that only persons having deep emotional bonding with the patient could move an application for euthanasia. Deep emotional bonding would reduce the likelihood that opportunistic intentions underlie petitioner's application. In the Aruna Shanbaugh case, this meant that the application for grant of euthanasia had to be moved by KEM Hospital, which had taken care of the patient for the last 37 years. Pinky Virani had no locus standi in this matter.

However, next of kin or friend may not always be emotionally attached to the patient. Therefore, the court verdict allowing only the next of kin or friend to file petition for euthanasia may not be able to completely eliminate risks of opportunistic behavior and adverse selection. From this perspective, the second aspect that emerged as important during the court debate becomes pertinent. This was the decision regarding appropriateness of a patient's conditions for allowing passive euthanasia and involved determination of criteria for evaluating patient's condition and of the appropriate authority to collect evidences on the same.

Holding onto the principle that 'right to life is sacred', the court held that it was necessary to ensure that the person who was being considered for euthanasia was not living in the real sense. The court drew upon medical and legal definitions of life to conclude that a patient could be pronounced dead and permitted for euthanasia only when his/her brain was dead. Further to ensure that the condition of Aruna Shanbaug was assessed properly, the Supreme Court constituted a three-member panel of eminent doctors. In doing so, the court established a precedent for procedure to be followed in the evaluation of a patient's condition. Together, the laying down of criteria and procedure for assessment of patient's condition would further help in reducing opportunism in euthanasia cases. Only cases fit for euthanasia would be amenable to grant of permission thereby discouraging unscrupulous persons from petitioning for selfish ends.

In general, Aruna Shanbaug case illustrates an interesting phenomenon: how new governing institutions emerge in society. The questions or problems society engages with change over time due to evolutions such as scientific, cultural, and philosophical. The existing institutions, for example, the social and professional norms, are often not capable of addressing issues emerging during such transitions (Sreenath, 1998). New rules and norms develop to address these issues, with prevalent formal institutional bodies, such as the Supreme Court of India in the case of Aruna Shanbaug, serving as anchors in ensuring that adequate safeguards are incorporated to prevent misuse.

Reference:

Sreenath L. 1998. Euthanasia: Can there be a right to die and a duty to kill? *Law and Medicine*. 4: 139-148.

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