



Euthanasia - A Licence to Kill ?

*Prof. R. Venkata Rao**

No human being is an island. All human beings, excepting sinners are saints, are gregarious and they cannot afford to live in isolation. If that is the traditional saying, the modern version of it is 'no subject is an island'. One cannot afford to study any subject in isolation in a fast developing and ever expanding environs of the frontiers of knowledge. The strict watertight compartment regimentation of subjects is a thing of the past and for a comprehensive and holistic perception of any subject, an inter disciplinary approach is absolutely essential.

'From darkness to light, ignorance to knowledge and life to eternity' is the goal of acquisition of knowledge. After all the purpose of knowledge is to make the community around us a better place to live in, and therefore, the end process of all the subjects tends to be the same - to make this planet a better place. The inter-relationship between law and science is all the more important because (with apologies to Einstein) science without law will be blind and law without science will be lame. 'The function of Law', to Quote Prof. Dworkin, 'is the secure the desirable and to prevent the undesirable.'

Looked at that way even the function Laws of science, for that matter, any subject, will be to secure the desirable and prevent the undesirable.

Ever since the liberation of man from the shackles of religious bigotry and the subsequent development of critical spirit of enquiry (perhaps, the other name for scientific temperment) in the middle of the 19th century thanks to the publication of the 'Theory of Origin of Species' by Charles Darwin, 'The manifesto of communist Party' by Marx and Engels and the impact of industrial revolution, the scientific and technological advancement has been remarkable, bringing in its wake many unforeseen changes. Sometimes the changing facets of

science have prompted the law makers to make the corresponding changes in law thereby making law adapt to the changing environs. But it should also be mentioned that some times law has not been able to cope with the fast changing technological advancement.

In this paper an attempt is made to examine the issues pertaining to Euthanasia and to suggest the legal strategem to make life with dignity more meaningful.

An old man in his bout of morning walk, when asked, "How do you like your old age? replied" it is fine considering the alternative." This shows as to how precious and dear life is to living organisms and how scared are they of death.

Undoubtedly survival is a value. But in certain situations life becomes increasingly painful and one without dignity purely in a vegetative state. Dignity means the right to live in conditions in which genuine self-respect is possible or appropriate, whatever these are¹. The right to dignity is fundamental, urgent and imperative. Where life becomes worse by virtue of dementia, life ceases to have any meaning. The period of unconsciousness or dementia before death might make life worse as a whole than if that had come sooner. Normally life is judged not just by reckoning overall sums of pleasure or enjoyment or achievement, but more structurally, as we judge a literary work, for example, whose bad ending mars what went before.² The ability to retain similar level of control over dying as one has exercised during life is seen by many as the way to achieve death with dignity³. This is where the Euthansia engages the attentions of the jurists.

Euthanasia is defined as 'gentle and easy death: bringing about of this especially in the case of incurable and painful diseases.'⁴ The word Euthanasia comes from the Greak 'Euthanotos', derived from the words 'eu', meaning good, and 'thanatos', meaning death. It has also been defined as 'mercy killing of the hopelessly ill, injured

* Professor of Law, Dr. B.R. Ambedkar College of Law, Andhra University, Visakhapatnam.



or incapacitated⁵ and 'the ending as painlessly as possible of the life of the person who is fatally ill and suffering pain.'⁶

A distinction may be made between Euthanasia and abortion. Abortion is a waste of start of human life. Death intervenes before life is earnest has even begun. In Euthanasia people make decisions about death at the other end of life, after life is earnest has ended.⁷

The dilemma of criminal justice is that, when the trend is towards decriminalisation, criminal law tends to criminalise the acts coming within the meaning of Euthanasia. Should not criminal law make concessions for benevolent motives? Is the criminal law justified in demanding the indignified criminalisation of the practitioner? Is the purpose of criminal law not something more than only to prevent or reduce any conduct which may prove harmful to others? Should the right to die with dignity by Euthanasia be compromised by the law of homicide.⁸ In fact when Darwin (Australia's Northern Territory) had become the first state to legalise Euthanasia, a furore was created.

A reference to the case law across the countries clearly shows the inconsistency of criminal law in its response to the practitioners who take life limiting decisions.

In *R Vs Cox*,⁹ where the doctor literally followed the instructions of his distressed dying patient and deliberately injected her with strong potassium chloride resulting the death of the patient, the doctor was convicted by the jury for the homicide. This inspite of the fact that the family considered that the doctor has provided a merciful release to the old patient. Many members of the jury openly wept when the verdict was returned.

The House of Lords in **Airedale N.H.S. Trust v. Bland**¹⁰ was called upon to decide the legality of withdrawal of feeding. B was severely injured in the Hillsborough stadium disaster. As a result of the interruption of supply of oxygen, he had remained for three years in persistent vegetative state. He had lost all the higher brain functions. There was clear medical opinion that there was no hope of ever regaining brain functions. He was fed and his other bodily functions met by artificial means and he received antibiotic treatment to combat recurring infection. Before the accident, he had not expressed any opinion as to how he should be

treated in these circumstances. The hospital authorities supported by the parents of B, sought a declaration to the effect that they might lawfully discontinue all life saving treatment and medical support measures including the termination of ventilation, nutrition and hydration by artificial means. They also desired to discontinue medical treatment except for enabling the patient to end his life with dignity. The House of Lords held that sanctity of life was not infringed by ceasing to give invasive treatment which conferred no benefit on the patient and there was no duty on the part of the doctors to continue such treatment when the patient had no further interest in being kept alive. The authorities were entitled to the declaration sought by them. The House further directed that until a body of experience and practice was built-up, application should be made to the Family Division of the High Court in any case where it was considered that continued treatment and care no longer conferred any benefit.¹¹

In the American case of Doctor Jack Kevorkean who was nicknamed Doctor Death, the Juries have repeatedly declined to convict the doctor of homicide. Doctor Kevorkean has constructed a variety of suicide machines and promoted the commercial use of machines to people seeking assisted death. He installed one of these machines to his Volkswagon Van; it allows patients to kill themselves by pressing a button that injects poison through need that doctor has inserted into vein. It is reported that atleast 28 people have made use of the suicide machines of the doctor. Though the techniques of the doctor were contrary to the letter of the criminal law, they seem to have satisfied the morality of a significant proportion of American Society resulting in the reluctance of the jury to convict the doctor.¹²

The Indian Supreme Court, though not called upon to examine the issue of Euthanasia directly, has made pertinent observations in the case of **Smt. Gian Kaur v. State of Punjab**.¹³

"Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' of the or the 'right to live with dignity' is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of 'right to life' therein includes the 'right to die'. The 'right to life' including the right to live with human dignity would mean



the existence of such a right upto the end of natural life. This also includes the right to a dignified life upto the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the 'right to die' an unnatural death curtailing the natural span of life.

A question may arise, in the context of a dying man, who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in these circumstances. This category of cases may fall within the ambit of the 'right to die' with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret. Article 21 to include therein the right to curtail the natural span of life.

It is an irony that though most countries still prohibit doctors or others from directly killing people at their own request, they still produce the apparently irrational result that people can choose to die lingering deaths by refusing to eat, by refusing treatment that keeps them alive. They cannot choose a quick, painless death that the doctors could easily provide.¹⁴ The latter example is generally observed in the Indian scenario where the aged people

generally persuade their near and dear to withhold treatment.

The antagonists to Euthanasia have certain misgivings like...¹⁵

- (a) There could be discovery of new treatments.
- (b) Medical profession is a profession, meant to save life and not one that helps the people to die.
- (c) There can be mis-diagnosis.
- (d) People's regard for doctors will go down.
- (e) Legally sanctioned killing will always make any society more callous about the death.

It is dignity that distinguishes the life of human beings from the life of other living organisms. It includes not only the right to live dignity but also the right to die with dignity, for example, if to terminate a pregnancy is permissible when the foetus is seriously abnormal when a baby would be born with Tay-Sach disease or without a brain - then it becomes permissible to end the life of suffering patient who wants to die or a patient who is in the persistent vegetative situation.¹⁶

Measures like recognising the efficacy of advance directions or the living wills of patients, making euthanasia the subject of special defence of homicide, providing built-in safeguards to punish those perpetrating involuntary euthanasia are some of the measures that can be given a serious thought.

If the patient's best interests are to be taken into consideration, a frank and free public discussion of death is what is needed. Though any discussion of death was a taboo once, now things seem to be opening up.

Notes and References

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