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CASE REVIEW

RATHINAM AND EUTHANASIA : MORE QUESTIONS RAISED, FEWER STILL ANSWERED

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INTRODUCTION

The recognition of the right to 'die' as part of the right to 'life' under Article 21 of the Constitution, by the Supreme Court in the recent decision of *P. Rathinam v Union of India*[1], has added a new dimension to the controversial debate of euthanasia. Though the protagonists of euthanasia have claimed this judgment to be a positive step towards legalising euthanasia, it is necessary to examine the implications of this judgment on the euthanasia debate. While analysing the above question, incidental issues like the moral aspects involved, difference between passive and active euthanasia, the ethics of the medical profession, compatibility with the human rights philosophy etc., have also been dealt with.

WHAT IS EUTHANASIA?

The word 'euthanasia' is derived from two Greek words '*eu*' and '*thanatos*' which together mean 'without suffering.' It essentially means putting a terminally ill patient to death by medical means. There are two types of euthanasia, passive and active, based on the extent of the role of the doctor. The author does not agree with this traditional classification, the reasons for which are given later.

[a] Passive euthanasia

It means 'letting nature take its course' instead of applying medical treatment to lengthen the lives of the incurably and terminally ill patients. It involves the removing of all life saving devices if so requested by the patient or by his relatives if he is not in a position to give consent.[2]

[b] Active euthanasia

Here the terminally ill patient or their relatives request the doctor to prescribe a treatment which will put the patient to death. There is active intervention on the part of the doctor in prescribing the lethal medicine.[3]

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1 (1994) 3 SCC 394.

2 Scorer et al., Decision Making in Medicine: The Practice of its Ethics.

3 *Ibid.*

THE SUPREME COURT DECISION

The Supreme Court has held that the right to 'life' includes the right to 'die' as no one can be forced to lead a forced life to his disliking.[4] Though the Court has not given any decision on the question of euthanasia, it accepted that it might be logically correct to make a distinction between suicide and euthanasia but felt that recognition of 'legal suicide' would be a winning point for those arguing for passive euthanasia.[5]

DISTINCTION BETWEEN PASSIVE AND ACTIVE EUTHANASIA IS ILLOGICAL

The Supreme Court has adopted the traditional classification of euthanasia into active and passive euthanasia. The current distinction between active and passive euthanasia relies on the logic of killing and letting die in the respective cases. This distinction rests on the supposed difference between 'acts' and 'omissions'. This line of difference fails in theory as well as practice.

Is a doctor who turns off a functioning respirator 'actively' turning off the machine or 'omitting' to provide air? Is a patient who refuses food and water 'actively' starving or 'omitting' to eat?[6] Even if an event could unequivocally be established to be an act or omission, merely determining whether what was done involved a factual act or omission does not establish whether it was morally acceptable. Similarly in Criminal law and Tort law, the act - omission distinction does not determine liability. Failure to act when there is a duty to act would result in liability.[7]

Now, let us consider two cases. In the first, the doctor switches off a respirator or some other life sustaining device while in the second case he injects a lethal dose of a drug. In both cases, the direct result of the doctor's act is death of the patient. Thus it would be illogical to make distinctions like active and passive euthanasia and even more illogical to support one and reject the other.

ARGUMENTS IN FAVOUR OF EUTHANASIA

The champions of the cause of euthanasia argue that the right to 'die' is essentially a right to 'self-determination' i.e., a right to be free from governmental interference in making fundamental personal decisions. Patients want control over when they die, where they die, and their physical and mental state at the time of their death. The principle of self-determination demands that the state

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4 *Supra* n. 1 at 410.

5 *Id.* at 403 and 427.

6 "Physician-assisted suicide and the Right to Die", 105 *Harvard Law Review* 2021 (1992).

7 *Ibid.*

respect the individual's judgment about how much pain he wishes to tolerate before death.[8]

This principle of self-determination seems to flow through the *Rathinam*[9] case as the court while recognising the right to 'die' observed as follows:

'... one may refuse to live, if his life be not according to the person concerned worth living or if the richness and fullness of life were not to demand living... In any case, a person cannot be forced to enjoy the right to life to his detriment, disadvantage or disliking'[10]

If the right to life includes the right to live with dignity,[11] should not the right to 'die' include the right to die with dignity.

ARGUMENTS AGAINST EUTHANASIA

The primary argument against euthanasia is that it is against human rights philosophy. The basis of the expanding human rights philosophy is that survival is a natural and inherent instinct of every human being, while suicide is not. Recognition of euthanasia would be a negative step contrary to the development of the human rights philosophy which is positive.[12]

Another implication of the recognition of euthanasia would be on the ethics of the medical profession. Is the doctor's duty to a keep a patient alive at all costs or to kill him if he so requests ? Would not the noble impression of the public of the medical profession be changed to one of executioners if euthanasia is recognised.

The other implications are whether euthanasia should be allowed to 'terminally-ill' patients only and how 'consent' is to be ascertained.[13] 'Consent' especially, is of crucial importance in our country because of the possibility of large scale abuses because of the prevalance of almost total ignorance in our country.

Further, in India, stories of medical imprudence are legandary. A surgeon left a scissor in the body of a patient during operation. Another removed the wrong eye. Lastly, if we allow euthanasia, legal control is absolutely necessary. Immediately, the question that arises is whether we have a legal system capable enough of exercising that control?[14]

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8 *Ibid* at 2025.

9 *Supra* n.1.

10 *Supra* n.1 at 410.

11 *Maneka Gandhi v Union of India*, AIR 1978 SC 507.

12 Yogesh K. Tyagi, "Euthanasia : A Policy-oriented Approach", 35 *J.I.L.I.* 454 (1986).

13 *Ibid* at 457.

14 *Ibid.*

CONCLUSION

From a perusal of the arguments for and against the legal recognition of euthanasia we can conclude that though on logic and principle, euthanasia should be allowed on the basis of the right to self-determination, the balance is tilted in favour of those arguing against it because of the inadequacies of the legal and medical system and also the vast scope for abuse. Further, under the present law euthanasia is not possible. A doctor who puts a patient to death, irrespective of his motives, does so with the intention of killing him and the result of his act is the death of the patient. This is enough to attract Section 300 i.e., Murder under the Indian Penal Code, though he may claim exception 5 to Section 300 i.e., consent of the patient to undergo the act.