

Living will and the right to die: A debate on passive euthanasia in India



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Lead Essay

Living will and the right to die: A debate on passive euthanasia in India

Introduction

The issue of the legality of a 'living will' currently being adjudicated upon by the Supreme Court has brought back into the focus the debate on passive euthanasia and its related consequences. The petition raises the fundamental question of whether advanced directives issued by a competent patient should be a legally valid document. Although the present case exclusively deals with the matter of legality of a living will or an advanced directive of a person's will to die under certain medical circumstances, it is intricately linked to the broader issue of passive euthanasia. Passive euthanasia is defined as the condition where there is withdrawal of medical treatment with the deliberate intention to hasten the death of a terminally ill-patient. The withdrawal or withholding of medical treatment from a terminally ill person is a complex ethical issue and one which many countries have wrestled with in their attempts to introduce a legal framework. It is a multi faceted topic that has thrown various aspects of public policy and morality up for debate. Central to these debates is the question-does right to life, guaranteed as a fundamental right, includes the right of a person to die? Mostly, the answer has been in the negative until the landmark Supreme Court judgment of Aruna Shanbaug where it was declared that a person may opt for withdrawal of treatment under exceptional circumstances. Occasionally it was supported by the government as in the 196th and 241st Law Commission Report which suggested that passive euthanasia should be allowed with certain measures and restrictions. However, several ambiguities remained unclarified by the Supreme Court regarding the control over a person's own body, liability of the State and the role of a person's prior will. As a response to this, The Medical Treatment of Terminally Ill Patients Bill 2016 was introduced by the Government. Although a step forward in the right direction, critics have expressed several points of concern which were not addressed in the Bill and have suggested redrafting it.

Why is a new law needed?

Any discussion and deliberation on the lines of legalising and regulating passive euthanasia involves an appraisal of the duties of the state as a *parens patriae* and the autonomy a person has over his body. This autonomy extends to making decisions regarding his body like refusal of medical treatment and the right to die. Determining the extent of control an individual can exercise over his body needs to be elaborated by further elaborating on his right to die with dignity and respect for his decision to end his life with his best interests at heart. Vidhi Centre for Legal Policy has highlighted four principles that should be the cornerstone of any legislation for passive euthanasia-

- Duty of the State to protect a person's right to die with dignity
- Paramount autonomy of the patient over his body
- Exercise of this autonomy by the patient by minimizing judicial intervention
- Decision to end life keeping patient's best interests at heart

One of the most pertinent issues that emerged out of the debate on passive euthanasia is the legalization of the living will without which the essence of the legislation cannot be achieved. While arguments in favor of a legal recognition of the living will is strongly opposed by the government on the grounds of misuse, it is considered to be inalienable from the concept of autonomy over one's body. It flows directly from the principle of autonomy and is in accordance with a person's right to die. In such a scenario, any legislation which does not recognize the validity of a living will falls short of accomplishing its objective. As such, the Union of India's strong defence against the admission of such a document runs counter to its claims of drafting a legislation which guarantees a person the right to die under exceptional medical circumstances. The failure to give effect to advance medical directive which is defined in the draft Bill of 2016 while stating that these documents are null and void, strip the character of autonomy from the Bill. From a more technical aspect, the definition of the terms terminal illness and untimely death are problematic since they make the law conditional on arbitrary and subjective grounds. Understanding of terminal illness in terms of meaningful existence is also inconsistent with the right to die since it is a vague and imprecise term, and lends itself to subjectivity in as much as a third party would have to decide whether a person's existence is meaningful. No other country with jurisdiction to execute passive euthanasia has recognized such a term.

There are other definitional problems in the drafting of the Bill as well which erodes the effectivity of the legislation. First is related to the definition of terminal illness where sub-clause (i) of the definition appears to suggest that a mental condition is capable of causing death. Assuming that 'mental' has been used in the sense in which it is ordinarily understood and not as a substitute for 'neurological', the definition is factually incorrect in as much as it is medically impossible for a mental condition to cause death

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unless the illness drives a person to suicide. This has the alarming implication of potentially treating patients with mental illnesses as suffering from a terminal illness under the Bill. Apart from being an entirely inaccurate medical characterization, it is violative of the rights of patients with mental illness to autonomy and dignity, which the Mental Healthcare Bill, 2016 strives to guarantee. Second, the use of the word ‘untimely’ in the definition to describe the death of a terminally ill patient distinguishes and discriminates on the basis of age. Thus, a patient in his advanced years, suffering from terminal illness may not, according to the term used in the definition, be deemed untimely per se. This might have the effect of excluding patients advanced in years from the definition of ‘terminally ill’, thereby denying them the right to refuse medical treatment as legalized by the Bill. Usage of this word in the definition clause is not clarified and appears to have the unintended consequence of excluding precisely the class of patients that the Bill is intended to help.

State responsibility vs the right to die?

Countries across Europe as well as certain states of United States have legalized forms of passive euthanasia or assisted suicide, giving people the right over their own bodies. A famous US judgment in the case of *Airdale* mentions that the right over one’s body and to decide one’s own fate presupposes a capacity to do so unless he is proven to be mentally incompetent to do so. The logical corollary to this right is the right to refuse treatment. This has been reiterated in the laws of several countries which have legalized some form of euthanasia. In India, the primary debate involving euthanasia is one that revolves around a person’s right to make a decision regarding his/her body. It seeks to determine the extent up to which a person can exercise their will over their bodies. Its premise is similar to that of the Surrogacy Bill which although aims at preventing exploitation of a woman’s body, undermines her right over her body and subjects it to the approval of the State as the guardian of the citizen. Though the concept of *parens patriae* has been upheld by law, it is problematic because it gives limited right to a person over his own body. The landmark judgment of Aruna Shanbaug was notable for the recognition of the right to die in exceptional medical circumstances and the progressive and sensitive treatment of the complex interplay of individual dignity and social ethics. But it also stated that although the wishes of the patient as well as the parents, spouse or other close relatives and the opinion of the attending doctors should carry due weight, it is not decisive and it is ultimately for the Court to decide as to what is in the best interest of the patient. This was considered necessary to prevent the misuse of law. Thus, while the law guaranteed the right to die, the authority to sanction it ultimately remained with the State. The Court laid down a broad framework for legalising and regulating passive euthanasia and also emphasized on giving an opportunity to the patient to make an informed decision and prevent cruel and unwanted treatment. A reconciliation of both aspects seemed challenging especially as the government has categorically ruled out the possibility of a competent person making a living will to decide the course of his future treatment, making the decision more reliant on the Medical Board and the State rather than on the individual. Since the Supreme Court has placed the responsibility on the legislature to make a concrete law on this issue, it is the duty of the Parliament now to introduce a progressive law which gives more autonomy to the patient while at the same time ensures that it is not misused.

Conclusion

The Government’s attempt to introduce a revised Bill on legalising passive euthanasia in exceptional medical circumstances is encouraging but its stand on the ongoing case on living will makes it difficult to reconcile it with a progressive law on the same. Although the matter in question only seeks to determine the validity of a living will, a document in which a person states his/her desire to have or not to have extraordinary life-prolonging measures used when recovery is not possible from his/her terminal condition, it gives rise to questions about the broader issue of passive euthanasia. The discourse on the debate on legalising passive euthanasia in this country has been shaped more by conservative approaches than by an actual reading of the law. Morality has dominated over public policy as it is considered better to protect any remaining vestiges of life than to speed up the process of dying. However, the law of this land guarantees its citizens the fundamental right to live with dignity and not just a life of animalish existence. It extends to entitling people the right to die a dignified death instead of prolonging their agony for years in vegetative state. While rejecting Aruna Shanbaug’s mercy petition, the Supreme Court highlighted the need for a law on passive euthanasia to be applied in exceptional cases. It recognized the right of a terminally ill person to make a decision to refuse medical treatment if a medical team so prescribes. In a country where many cannot afford prolonged medical care for their family members, continuing medical treatment of a person in persistent vegetative state without any scope of recovery, passive euthanasia might be useful not just in asserting a person’s right over their bodies but also from an aspect of unavailability of funds. The fear of misuse remains the most compelling argument of those against passive euthanasia. But as experiences in many other countries reveal, due safeguards including a complete medical analysis prior to withdrawal of life support system will ensure that abuse of this law will be kept at minimum. The right to refuse life-saving treatment is guaranteed by the Supreme Court and advance medical directives are an extension of this right. The Bill must thus create a legal framework for the operation of such directives.

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References:

1. Analysis of the Medical Treatment of Terminally Ill Patients (Protection of patients and medical practitioners) Bill 2016, Vidhi Centre for Legal Policy, January 2017, https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/58c288d546c3c4b8bc4604e0/1489144102510/Analysis+of+the+MTTP+Bill_Vidhi.pdf
2. Draft Medical Treatment of Terminally Ill Patients (Protection of patients and medical practitioners) Bill 2016, PRS Legislative, <http://www.prsindia.org/uploads/media/draft/Draft%20Passive%20Euthanasia%20Bill.pdf>
3. The Surrogacy (Regulation Bill) 2016, Bill Summary, PRS Legislative, <http://www.prsindia.org/uploads/media/Surrogacy/Bill%20Summary%20-%20Surrogacy%20%28Regulation%29%20Bill.%202016.pdf>
4. Adrija Bose, All you need to know about India's draft bill on passive euthanasia, Huffington Post India, 16 May 2016, http://www.huffingtonpost.in/2016/05/16/euthanasia-draft-bill_n_9988522.html
5. Rythma Kaul, Right to die: Lines remain divided on legalising passive euthanasia, Hindustan Times, 19 May 2016, <http://www.hindustantimes.com/india/euthanasia-where-do-you-stand-on-the-right-to-die/story-r4EUZ2ySNHjimk4C9w0GxN.html>
6. Passive Euthanasia Bill ready but Supreme Court still to examine 'living will' The Wire, 11 October 2017, <https://thewire.in/186342/passive-euthanasia-bill-ready-but-supreme-court-to-still-examine-living-will/>
7. Vinod Sinha et al, Euthanasia: An Indian Perspective, Indian Journal of Psychiatry, 2012 Apr-Jun; 54(2): 177-183, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>
8. Shukla R. Passive euthanasia in India: a critique. Indian J Med Ethics, 2016 Jan-Mar; NS1(1):35-8
9. Passive Euthanasia: A Relook, 241st Report, Law Commission of India, August 2012, <http://lawcommissionofindia.nic.in/reports/report241.pdf>

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Delhi air pollution: 40% dip in emissions from fire crackers this Diwali, finds study

Hindustan Times , October 30, 2017

The level of emissions from fireworks fell by around 40 per cent during Diwali festivities this time as compared to 2016, according to the findings of a study which assume importance in the light of a region-wide ban on the sale of firecrackers by the Supreme Court. The SAFAR study concluded that, as a whole, the Diwali period (October 18-22) was the cleanest since 2014 . Level of particulates did shoot up a day after Diwali, but the dispersion was quicker and air quality attained the pre-Diwali level within three days. As compared to emissions from fireworks in 2016, the dip was significant: 50% on October 19, the Diwali night; 25% on October 20, when pollution peaked and 45% on October 21, SAFAR (System of Air Quality and Weather Forecasting And Research) said in its report released on Sunday.

Read More:

<http://www.hindustantimes.com/delhi-news/delhi-air-pollution-40-dip-in-emissions-from-firecrackers-this-diwali-finds-study/story-TmlOR9ZY6DXMct7fNU3jN.html>

Date Accessed: 30 October, 2017

Governance and Development

HEALTH

Caste, father's education, sanitation affect child malnutrition: new data

(Prachi Salve, *IndiaSpend* , October 25, 2017)

A recent report released by the National Institute of Nutrition found that an underweight child in urban India is more likely to belong to a scheduled caste or tribe, have an illiterate father or live in a home without a toilet than other children. The report is based on an urban nutrition survey – covering 16 states and 1,72,000 subjects from 52,577 households from more than 1,000 wards in 20 cities – carried out by the National Nutrition Monitoring Bureau during 2015-16. The findings are in consonance with a 2015 study, published in the *International Journal of Recent Advances in Multidisciplinary Research* , which noted that people belonging to schedule caste, schedule tribes or other backward classes fall are socially excluded from government services and programmes, which further worsens their health and nutritional status.

Read more:<http://www.indiaspend.com/cover-story/caste-fathers-education-sanitation-affect-child-malnutrition-new-data-36560>

Date accessed: 30.10.2017

Nine newborns die at Civil hospital in 24 hours in Gujarat

The Hindu , October 29, 2017

Nine newborn babies have died at Ahmedabad Civil Hospital on Saturday, prompting the State authorities to order a probe into the matter as the issue has been seized by the opposition ahead of the Assembly polls. Since Thursday, at least 18 newborn babies have died at the hospital. According to the hospital administration, of the total 18 deaths reported in the last three days, nine took place on Saturday out of which five were referred to from smaller places. “Five babies were of extremely low weight,” a senior doctor from the hospital said, defending the hospital management. “This is the pathetic conditions of health facilities in Gujarat’s largest hospital,” Congress spokesman Manish Doshi said, blaming the State health authorities for negligence.

Read More: <http://www.thehindu.com/news/national/other-states/nine-newborns-die-at-civil-hospital-in-24-hours-in-gujarat/article19944141.ece?homepage=true>

Date Accessed : 30 October, 2017

URBAN

Road Trap: Killer Potholes, rising death toll and authority's apathy

DNA , October 30, 2017

The death of a 61-year-old man in Civil Lines last week has once again thrown the spotlight on the poor condition of roads in the Capital and the indifference of the Delhi government's Public Works Department. This is the second death reported due to potholes in the city in the past three months. Badly constructed roads and their poor upkeep have been a cause of worry for residents across the city, who rue that in spite of taking up the matter with the PWD, which is responsible for the maintenance of roads, they are often left unattended for months together, leaving them with no option but to "adjust" to the situation. Residents Welfare Associations in various areas, as well as local area councillors routinely take up the matter with the PWD for better roads, but their pleas fall on deaf ears. For people who pay taxes for better civic facilities, they lament that they are not getting the worth. Delhiites rue that despite taking up the issue with the PWD, no progress has been made

Read More: <http://www.dnaindia.com/delhi/report-speak-up-delhi-road-trap-killer-potholes-rising-death-toll-authority-s-apat-hy-2556316>

Date Accessed: 30 October, 2017

Governance and Development

ENVIRONMENT

Livelihoods, conservation and the Forest Rights Act in a national park: a conundrum

(Subhashree Banerjee & Syed Ajmal Pasha, *Economic and Political Weekly* , October 14, 2017)

Abstract: National parks have been instituted in India to take care of ecosystems rich in biodiversity, and to protect them from human intervention. This has led to many conflicts between the local communities and the state. To address these issues, the state has enacted laws such as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in favour of local communities. However, the purpose of national parks and the FRA seems to be in contradiction. [The authors] analyse existing acts and regulations being implemented by the state in Bhitarkanika National Park in Odisha and try to understand their relevance when compared with the ground reality, based on [...] village level investigations in the Bhitarkanika ecosystem.

Read more: <http://www.epw.in/node/150031>

Date accessed: 30.10.2017

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Read More: <http://www.hindustantimes.com/delhi-news/delhi-air-pollution-40-dip-in-emissions-from-firecrackers-this-diwali-finds-study/story-TmlOR9ZY6DXMCt7fNU53jN.html>

Date Accessed: 30 October, 2017

Eighteen years on, memories of Super Cyclone still haunt locals

PTI, *The Indian Express* , October 30, 2017

The memories of Super Cyclone on the intervening night of October 29 and 30 in 1999 continue to haunt people living by the sea here even as the government claimed to have adopted precautionary measures to thwart another disaster. As soon as the cyclone warning was sounded, the emergency office was flooded with calls from people who wanted to know if they should be shifting to a safer place. The cyclone weakened over the sea but the locals had voluntarily prepared themselves to face any eventuality," the official said. However explaining the measures taken by the government, the managing director of Odisha State Disaster Management Authority, P K Mohapatra, said the state would soon have an early-warning siren system for disasters, the first of its kind in the country. "The government has initiated measures for commissioning siren towers at 122 locations by November 15. People living within 2.5 km radius of the towers can hear the siren," he added.

Read More: <http://indianexpress.com/article/india/odisha-naveen-patnaik-eighteen-years-on-memories-of-super-cyclone-still-haunt-locals-4913566/>

Date Accessed : 30 October 2017

Governance and Development

LAW AND JUSTICE

Ex-servicemen demanding OROP forcibly evicted from Jantar Mantar following orders from NGT

PTI, *Firstpost* , October 30, 2017

Armed with an NGT order banning protests and dharnas around the historic Jantar Mantar in Delhi, the police and civic officials on Monday demolished tents and makeshift structures set up by ex-servicemen protesting there demanding implementation of the One Rank-One Pension scheme. "It is an attempt to throttle our voice in a democracy. And, even if there has been any order from any tribunal, there is a way to do things. What they have done is completely unfair and unjust," Major general (Retd) Satbir Singh said. He further said the wife of an ex-serviceman was inside the tent when the exercise was carried out. He, however, clarified that nobody was hurt. The police on the other hand, denied use of any force. "The OROP protesters were informed about the NGT's order about vacating the Jantar Mantar area and asked to either leave or bring a stay order from the court," a senior police official said.

Read More: <http://www.firstpost.com/india/ex-servicemen-demanding-orop-forcibly-evicted-from-jantar-mantar-following-orders-from-ngt-4183709.html>

Date Accessed: 30 October, 2017

Set up centres for vulnerable victims under all High Courts: SC

(Krishnadas Rajagopal, *The Hindu* , October 29, 2017)

Citing trauma that disabled victims of crime face in conventional courtrooms, a Supreme Court Bench of Justices A.K. Goel and U.U. Lalit directed the setting up of at least two vulnerable witness deposition centres in the jurisdiction of every High Court across the country within the next three months. "There should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment [sic] in court so as to encourage a vulnerable victim to make a statement," the Bench noted in its order, while suggesting that other HCs should adopt the Delhi HC's 'Guidelines for Recording the Evidence of Vulnerable Witnesses in Criminal Matters,' with required modifications.

Read more: <http://www.thehindu.com/news/national/set-up-centres-for-vulnerable-victims-under-all-high-courts-sc/article19944728.ece>

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