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Euthanasia: A Challenge to Medical Ethics and Medical Law

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Abstract—*In today's contemporary scenario of desktops, laptops, and smartphones, where one's existence is proclaimed and validated on computer screens and inter-subjectivity is channeled in cyberspace, we would not be surprised to see some enterprising "Euthanologist" of the future advertise a gentle "logging-off ". Although fanciful, this prediction is well aligned with a conception of the world that views human beings as reducible to either to bodies with complex networks of neurological circuits wherein the entire range of human experiences can be created, recorded, interpreted, and terminated or products/commodities with 'use by' or 'best before' or 'expiry' or 'manufactured' dates which, should be checked out as quickly, cheaply and efficiently as possible of the supermarket of life.The national debate over the legalization of euthanasia was sparked by a favorable March 7th 2011 Supreme Court judgment in the case of 66-year-old Mumbai nurse Aruna Shanbaug, who was in a permanent vegetative state for more than 40 years after being sexually assaulted and died in 2015. Also, based on the recommendations of the Law Commission, ministry of health and family welfare had prepared a draft of The Medical Treatment of Terminally Ill patients (protection of patients and medical practitioners) in May 2016. This verdict has perhaps made this social stigma or ethical dilemma slightly easier for all of us by holding right to die with dignity as our fundamental right. But, is this ruling welcomed? Is it a progressive step? Is health care system ready to accept it? Can death be a prescription? This is the turning point where the debate, "To be or not to be" arises, involving moral, religious, legal, medical, human rights-related, health-related economic, spiritual, social-cultural and even political aspects. The discussion is organized as follows: at the outset the present study will set out some salient ethical, moral, legal, social, cultural, religious, spiritual and medical dilemmas. Then, it will critically ponder over by showing how far Euthanasia can be morally/ethically permissible in medical ethics and medical law. And further finally sum up, is there any alternative to Euthanasia.*

Keywords*: Euthanasia, Permanently Vegetative State, Living Will, Unbearable Suffering, Terminally ill, Physician Assisted Suicide (PAS), Healing, Palliative Sedation, Palliative Care*

1. SALIENT ETHICAL, MORAL, LEGAL, SOCIAL, CULTURAL, RELIGIOUS, SPIRITUAL AND

Medical Dilemmas:

- Do people really want doctors to help them to end their lives in times of pain and illness?
- Are there only these two ways: euthanasia and physician assisted suicide by which people die?
- Does the push for legalizing euthanasia to such a great extent is the result of a failure of medical training and practice?
- Is the legalization of euthanasia more reflective of a failure than a solution?
- Is that euthanasia simply another form of medical treatment?
- Is euthanasia a challenge to medical ethics?
- Is unbearable suffering, a subjective personal condition will determine the choice for euthanasia i.e. subjective evaluation by the patient?
- Is there any difference between unbearable suffering and unbearable pain?
- Is professional autonomy superior to patient's autonomy or vice versa?
- Why only autonomy from patient's perspective is considered important then from the patient's relations and physicians?
- Is a legal right to active euthanasia the natural next stop?
- Is living will not an instrument of euthanasia, but a request in advance to doctors not to give certain medical treatments?
- What is the point in wasting money in treating old-age ailments when one has to eventually die?
- Is it a pressure on vulnerable people to end their lives for fear of being a financial, emotional or care burden upon others?
- Is hard cases make bad laws?
- What about euthanasia for those who are mentally alert, though physically disabled?
- What is mental alertness in terms of medicine?

- Whether improving pain management and palliative care would be a better first step?
- What is the difference between Palliative sedation and active euthanasia?
- Is Euthanology a new occupation to empower anyone and to train to euthanize?
- What is healing? How it is related to medicine?
- Is there any alternative to Euthanasia?

In today's scenario when pre mature death can be a prescription then we are not living but only surviving our existence. Time immemorial we relate doctor's to be trained with to preserve life, to cure, to care, to nurture, to help, to heal, to alleviate suffering and pain and therefore "H", was an emblem of hospice and hope, but now "H" stands for hollowness, helpless, hopeless and hastened death. In olden times, when there were no such advancement in medicine and medical technology then patients in PVS or terminally ill were meeting natural death. In the 21st century, with the advancement of technology in medical care, it has become possible, with the help of support machines, to prolong the death of patients for months and even years in some cases. At this juncture, the right to refuse medical treatment comes into the picture. Since medical practitioner and physicians were morally trained to make decisions in the interest of the patient and keep them alive. As the value of life is a central element in Hippocratic ethics; shortening or actively ending a patient's life is clearly immoral. As a result of the amalgamation of new technology and old medical ethics, patients were being kept alive beneath sadistic conditions.

So, Is the legalization of euthanasia more reflective of a failure than a solution? Or Is that euthanasia simply another form of medical treatment? What about euthanasia for those who are mentally alert, though physically disabled? What is mental alertness in terms of medicine? Now in order to answer the above-mentioned dilemmas in particular and euthanasia as a whole, we need to understand these concepts in terms of code of medical ethics in India.

2. CODE OF MEDICAL ETHICS IN INDIA

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 is the only statutory regulation in India, which refers about euthanasia. Regulation 6 of the regulation mentioning euthanasia as one of the unethical acts and states that:

"6.7 Euthanasia: Practicing euthanasia shall constitute unethical conduct. However, on specific occasion, the question of withdrawing supporting devices to sustain cardiopulmonary function even after brain death, shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of support system. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer/Medical Officer in charge of the hospital and a doctor nominated by the in-charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994."[1]

It clearly states that only a team of doctors shall take decision for removal of life support system from a brain-dead patient where no chance of his medical recovery.

However, from a strict medical ethics perspective, international guidelines following the Hippocratic oath and the World Medical Association Declaration of Geneva still consider euthanasia as a morally forbidden practice.

3. MENTAL ALERTNESS IN TERMS OF MEDICINE

What is mental alertness in terms of medicine? Mental alertness is assessed by the Glasgow Coma Scale (GCS) score, which tells us the level of consciousness and therefore also potential suffering.[2] In normal individuals, the score is fifteen, and for those who are brain dead, it is three. A GCS score of less than eight means that the patient is not conscious, her/his airway is threatened, and her/his chances of recovery are less. But if the GCS score is three, the possibility of recovery is practically zero unless there is a miracle.

But, miracles do happen in our society especially when it is a matter of life and death, there are examples of patients coming out of coma after years and we should not forget human life is all concerning hope. Can doctors claim to have knowledge and experience to say that the disease is incurable and patient is permanently invalid? Moreover, every case is exclusive and no regulated framework will offer the foremost competent response to dilemmas that each time created.

4. PERSONHOOD- HUMAN BEING VS. HUMAN PERSON

The landmark verdict over the legalization of Passive Euthanasia was based on the argument that human beings enjoys the 'Right to life with dignity" as one of their basic as well as fundamental right without which all rights cannot be enjoyed (embodied in Article 21 of Indian Constitution) and further which can be decoded as that they also have 'Right to die with dignity' on the ground of the question of personhood.

Peter Singer defines *a 'person' as an animal (human or otherwise) who is actively exercising 'rational attributes' (self-consciousness, knowing, choosing, loving, willing, autonomy, relating to the world around one, etc.) and/or who is actively exercising 'sentience' (feeling pain or pleasure or the integration of the nerve net or brain).*[3] The arguments for 'personhood' i.e. 'individuality', 'rational attributes' or 'sentience' are based, not on scientific fact but on philosophical grounds.

Moreover, Bioethicist Joseph Fletcher drew up a comprehensive list of 'positive' and 'negative' human qualities that define exactly what a person is and is not i.e., human patients may genetically be human beings but not human 'persons' because they do not exercise "rational attributes" or "sentience" :-

- Persons with mental illness
- The mentally retarded
- Drug addicts
- Alcoholics
- The comatose
- Patients with multiple sclerosis
- Cripples
- Patients in persistent "vegetative" state
- Infants under one year of age, and many more...

If the above-mentioned list is only human beings and not human 'persons' then they also will not enjoy ethical/legal rights and protections. But scientifically it is proven that neither full "rational attributes" nor full "sentience" are present until years after birth. And if one defines a human person in terms of "rational attributes" only, or "sentience" only, one will eventually have to argue also for the moral permissibility of the infanticide of normal healthy human infants. On the contrary, there is absolutely no scientific evidence, which demonstrates the supposed correlation between 'brain birth' and 'brain death', pre-person and person, consciousness and self-consciousness.[4]

Speaking of human beings in the 'persistent vegetative state', Peter Singer argues as follows:

"In most respects, these human beings do not differ importantly from disabled infants. They are not self-conscious, rational, or autonomous, and so considerations of a right to life or of respecting autonomy do not apply. If they have no experiences at all, and can never have any again, their lives have no intrinsic value. Their life's journey has come to an end. They are biologically alive, but not biographically."[5]

Therefore legalizing euthanasia, within a philosophical framework such as that of Singer's concept of personhood, would pose a great danger to those who were considered 'non-persons'.

5. EUTHANASIA AND PALLIATIVE SEDATION

Euthanasia and palliative sedation are two different ways of ending or alleviating a patient's unbearable suffering. In the case of euthanasia, the patient's life is terminated. With palliative sedation, the patient is brought into a state of reduced consciousness until his death. Unlike euthanasia, palliative sedation is normal medical practice, though it is subject to specific criteria and conditions. Suppose, for example, in order to relief pain of a patient a doctor prescribed a medication with the intention to ease suffering but the dose of medication is also sufficient to end that patient's life. Now, this is known as the doctrine of double effect since it has an extra or additional impactof the treatment.Now in such a situation won't we say palliative sedation is also one form of euthanasia only i.e. active euthanasia? But the former is permissible in medical as well as in law and the later is forbidden. Though in both the cases we gave sedation with the intention to end suffering, so can we say that one is slow euthanasia and other is fast euthanasia?

6. HEALING IN MEDICINE

An absolute barrier to physicians to go for euthanasia is that doing so would be incompatible with their healer role. Therefore, the statement "Doctor as a healer" requires unpacking. The notion of "healing" is hard to outline, and it is nearly impossible to explain it in reductionist and objectivist terms. By its very nature, healing is all-inclusive and inter-subjective. Whether healing amounts to caring for the whole person or as the relief of "soul sickness" or "soul pain"? Although it is beyond the scope of this paper to consider the full breadth of healing as a human phenomenon, a few additional points are in order. Healing is an expedition, rather than an end point, and it is a course more than an epiphany.

Healing is associated with the following perspectives: a sense of connection to self, others, and a phenomenal world (i.e., a world experienced through the senses); an ability to derive meaning in the context of suffering; a capacity to find peace in the present moment; a non-adversarial connection to the disease process; and the ability to relinquish the need for control.

7. ALTERNATIVE TO EUTHANASIA

Is there any alternative to Euthanasia? Whether progression in pain management and palliative care would be an initial step?

Moreover, the deliberation would be more rewarding if on one hand the approach to palliative care becomes universal and on the other hand there is an ample training of healthcare professionals in end-of-life policymaking. We must try to solve the factual and unrelenting problems of inadequate care, instead of avoiding them through solutions such as euthanasia.

Providing more and better palliative and other care will undoubtedly help quell such demand. This includes measures such as increasing access to hospice care, improving physician training in the principles and clinical science of palliative care, improving hospital and nursing home capabilities in palliative care, financing for palliative care, and creating openness to discussions about the end of life between physicians and patients. These and other measures could reduce public anxiety and fear about death and the desire for euthanasia.

Further, if Medical Council of India makes it a mandate to add the concept of ethics through philosophical and psychological ethical theories in the medical curriculum along with their medical/scientific education, then definitely there will be a change in the mindset of the youth for such sensitive social stigmas.

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