Ethics and Legality of Euthanasia In Indian Context

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Abstract:

Purpose – The judgment of Aruna Shanbaug case suggests that passive euthanasia can be considered legal, whereas active euthanasia may not be. In this paper, we try to explore why active euthanasia can also be considered legal.

Design/methodology/approach – The paper will be analytical in nature based on the books and articles that are written on euthanasia. The paper takes the help of the judgment on Aruna Shanbaug’s case on euthanasia.

Findings – Active euthanasia can be as much ethical as passive euthanasia. In this paper we try to address this issue by giving arguments for and against active euthanasia and conclude that arguments against active euthanasia can be refuted and subsequently one can think of accepting active euthanasia as well within the fold of legalized euthanasia.

Research limitations/implications – Theoretical research. To explore going beyond what is legal, but ethical.

Practical implications – To think of the possibility of legalizing active euthanasia.

Originality/value – To alleviate the sufferings of the dying patients

Keywords active euthanasia, passive euthanasia, Singer, killing, letting die.

Paper type Research paper.
Ethics and Legality of Euthanasia in Indian Context

This paper tries to explore the ethical and legal issues pertaining to euthanasia. In this paper, an attempt is made to critically analyze the arguments for and against euthanasia. The paper concludes by making a claim that legality for active euthanasia can be considered as it can be argued that it is ethical.

Recently, in the Aruna Shanbaug case for euthanasia, the Supreme Court of India gave a verdict that allowed passive euthanasia to be considered legal. The Supreme Court verdict on 7th March 2011 was a landmark judgment with respect to the issue of euthanasia or mercy-killing. Aruna Shanbaug is lying in a vegetative state for 37 years in a Mumbai hospital. The King Edward Memorial hospital and Aruna’s friend Ms Pinky Virani were the two parties for the said case. The judgment was centered in the following question, “who is best friend or next friend of Aruna Shanbaug? Who is nearer to Aruna Shanbaug? Regarding KEM hospital as the next friend of Aruna Shanbaug in judgement it is argued that,

“…It is thus obvious that the KEM hospital staff has developed an emotional bonding and attachment to Aruna Shanbaug, and in a sense they are her real family today. Ms Pinky Virani who claims to be the next friend of Aruna Shanbaug and has filed this petition on her behalf is not a relative of Aruna Shanbaug nor can she claim to have such close emotional bonding with her as the KEM hospital staff. Hence, we are treating the KEM hospital staff as the next friend of Aruna Shanbaug and
we decline to recognize Ms. Pinky Virani as her next friend. No doubt Ms. Pinky Virani has written a book about Aruna Shanbaug and has visited her few times, and we have great respect for her for the social causes she has espoused, but she cannot claim to have the extent of attachment of bonding with Aruna which the KEM hospital staff, which has been looking after her for years, claims to have.’’

The judgement was a matter of discussion for many a reason. For instance, regarding the issue of whether Ms Pinky Virani can be the person to file a case on behalf of Aruna Shaunbag, the main issue in this case, Rakesh Shukla takes up the issue of guardianship. Rakesh Shukla in his article “Is the ‘Next Friend’ the best Friend” writes,

“The Supreme Court’s ruling in the Aruna Shanbaug euthanasia case seems to be solely based on the views of the nursing staff of the Mumbai hospital who have been looking after her. It totally ignores the patient’s interests and turns on the legal concept of ‘next friend’. This concept is in the context of a person who is unable to maintain a suit on her own behalf due to disability and is akin to a “guardian” legally representing a “minor”. The Court considered the nursing staff to be Shanbaug’s “next friend”. The total denial of recognition of the right to autonomy and self-determination of a person incompetent to consent, and the usurpation by guardians or the State of determining the best interests of the patient is a hazardous course of action.’’

1 (Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011)

2 (Shukla, 2011).
We will try to focus on the ethical and legal aspect of euthanasia with respect to that case. As mentioned the court considers passive euthanasia as legal, whereas it defers the issue of active euthanasia, though it mentions about the issue. The judgment mentioned that

“All active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide).”

The court also tries to come up with reason as to why active euthanasia is considered illegal. It further says in this regard, “Why active euthanasia need to be considered illegal? “…An important idea behind this distinction is that in "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him.” The Supreme Court acknowledges the issue involved in active euthanasia but defers deliberating on that issue. It says, “thus, proponents of euthanasia say that while we can debate whether active euthanasia should be legal, there can be no debate about passive euthanasia:”

Though the Supreme Court has categorically said that there can be no debate about passive euthanasia, still, one has to accept that there are quite good number of thinkers who do not accept

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3 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011
4 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011
5 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011
euthanasia of any form and there are quite a good number of countries that have not legalized euthanasia. But, since the court has already given the opinion that it favored euthanasia, at least, in this case a non voluntary passive euthanasia, we shall not go into the details of that. Rather, we would like to deliberate on that issue that has been deferred by the Supreme Court. If passive euthanasia is accepted, why can’t active euthanasia be accepted as well? Is there any moral difference between active and passive euthanasia? We will try to address these issues in this paper.

Before discussing these questions we should give a clear picture of euthanasia. Euthanasia is generally defined as the intentional killing by act or by omission of a dependent human being for removing his or her suffering. The word euthanasia is a Greek word and it literally means ‘good death’. Helga Kuhse in her article ‘Euthanasia’ writes that there are two features of the acts of euthanasia:

“1. Euthanasia involves the deliberate taking of a person’s life. 2. That life is taken for the sake of that person who is suffering from an incurable or terminal disease.”

Considering the definition of euthanasia Singer writes, “Euthanasia means, according to the dictionary, ‘a gentle and easy death’, but it is now used to refer to the killing of those who are incurably ill and in great pain or distress, for the sake of those killed, and in order to spare them further suffering or distress.”

In order to analyze further, we can classify euthanasia into different types on the basis of the consent and on the basis of the action. On the basis of consent, that is, whether the patient is

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6 Kuhse, A Companion to Ethics, 1991, p. 294

7 Singer, Practical Ethics, 1993, p. 175
consenting or capable of consenting to death, we can differentiate euthanasia into three types – voluntary, non voluntary and involuntary euthanasia. If a person has consented to die, then it is called as voluntary euthanasia. It is “carried out at the request of the person killed.” 8If the person doesn’t want to consent or he/she is not being asked of their consent, then it is called as involuntary. Peter Singer defines involuntary euthanasia as “when the person killed is capable of consenting to her own death, but does not do so, either because she is not asked, or because she is asked and chooses to go living.” 9 As this brazenly amount to murder, hardly any ethicist subscribes for involuntary euthanasia. If a human is not capable of consenting, then it is called as non-voluntary. (Aruna Shanbaug’s is of non-voluntary type) Regarding non voluntary euthanasia Singer writes,

“If a human is not capable of understanding the choice between life and death, euthanasia would be neither voluntary nor involuntary, but non voluntary. Those unable to give consent would include incurably ill or severely disabled infants, and people who through accident, illness, or old age have permanently lost the capacity to understand the issue involved, without having previously requested or rejected euthanasia in these circumstances” 10

For removing the intense suffering of a person Peter Singer justifies euthanasia particularly voluntary and non voluntary euthanasia. According to Peter Singer euthanasia can be justified in two grounds – voluntary, where the patient has the capacity to choose between life and death and makes an informed decision to die and the other is non-voluntary, where the patient do not have the capacity to understand the choice between continued existence and non-existence and

8 Singer, Practical Ethics, 1993, p176
9 Singer, Practical Ethics, 1993, p179
10 Singer, Practical Ethics, 1993, p179
therefore lack the ability to consent to death. 11 Along with Singer, there are some other thinkers as well who subscribe for euthanasia. Singer justifies euthanasia from preference utilitarianism standpoint. James Rachel’s (1941-2003) views concerning euthanasia are same with the view of Peter Singer. Rachel has given arguments for euthanasia from mercy and from the golden rule. Though Peter Singer and James Rachel’s views regarding euthanasia are same their accepting methods are different.

According to the way the euthanasia is practiced, it can be further classified into active and passive euthanasia. In the judgment of Aruna Shanbaug’s case active euthanasia and passive euthanasia is defined as:

“Active euthanasia entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony. Passive euthanasia entails withholding of medical treatment for continuance of life, e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma”12

We need to make these classifications in order to see which forms of euthanasia is justified and which are not. This is more meaningful than the outright rejection/acceptance of euthanasia without making these classifications. When we combine the consent part (voluntary and non

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11 Singer, Practical Ethics, 1993, p. 201
12 Supreme Court’s judgment on Aruna Shanbaug euthanasia petition, 2011
voluntary) of euthanasia with the implementation part of euthanasia we get the following combinations.

1. Active voluntary euthanasia
2. Passive voluntary euthanasia
3. Active non voluntary euthanasia
4. Passive non voluntary euthanasia

Among these different kinds of euthanasia, Aruna Shanbaug’s case is of the fourth type, which is non voluntary passive euthanasia. The Supreme Court of India has given approval for this type of euthanasia.

The ethical issue pertaining to euthanasia broadly comes from two different viewpoints - 1.the conservative’s view.2.The liberal’s view.

“The conservatives argue that euthanasia is morally wrong, because it is contrary to natural law, or against the commandments of God. It violates god’s absolute dominion over human life. They appeal to the principle of ‘sanctity of human life’ and say that the intentional termination of innocent human life is always immoral.”\(^{13}\) Regarding liberal view we can mention that, “the liberals maintain that euthanasia is morally acceptable for the reason that it provides an end to the horrible pain and suffering of terminally ill patients. They argue that it is cruel

and inhuman to refuse the plea of a terminally ill patient that his or her life be mercifully and peacefully ended to avoid further suffering and dignity”

The Supreme Court in its judgment has taken a liberal standpoint while addressing the issue of euthanasia though it also acknowledged the conservative position in this regard. There are a good number of thinkers who still argue against euthanasia from the Kantian or utilitarian perspectives. Some thinkers who argue against euthanasia are: J Gay Williams, Richard Brandt(1910-1997), Jean Davies, Christopher James Ryan, Grant Gillett (1988), Neil Campbell (1999). As the Supreme Court have already acknowledged one or the other form of euthanasia as legal, we shall not take up those conservatives arguments that go against any form of euthanasia as unethical. Suffice is to say that the conservative arguments that springs from Divine Command theory or Kantian theory or the Utilitarian theory can be countered with suitable counter-arguments.

We shall go one step further to explore why active euthanasia can also be considered when we contemplate on legalizing euthanasia? We would like to deliberate on this issue further with the hope that if the Supreme Court has acknowledged that euthanasia, particularly passive euthanasia can be considered as legal, it can also consider accepting active euthanasia. The grounds on which it accepted passive euthanasia can be extended and other arguments can be given to support the case of active euthanasia as well. Hence, we try to come up here with more arguments and counter-arguments pertaining to active euthanasia.

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Peter Singer, a thinker on ethical issues from a utilitarian standpoint, maintains that euthanasia can be justified as it helps one to annihilate one’s pain. In this case, the annihilation of oneself is the process of getting away from one’s pain and Singer justifies such an act to be an ethical one. Now, if the issue is to make a suffering being to get rid of one’s pain, then, in that case, according to Singer both active and passive euthanasia is justified. For that matter, both Singer and Rachel have justified both active and passive euthanasia. Rachel says, “Part of my point is that the process of being "allowed to die" can be relatively slow and painful, whereas being given a lethal injection is relatively quick and painless”.  

As mentioned in the above paragraph, Singer and Rachels both subscribe to active euthanasia. According to James Rachel there is no moral distinction between active and passive euthanasia. James Rachel says, “I argued against the traditional view, that there is in fact no moral difference between killing and letting die—if one is permissible, then so is the other”.  

We have already mentioned that ethicist like Peter Singer and James Rachels, there is no intrinsic distinction between active euthanasia and passive euthanasia. Though some ethical thinkers like Singer and Rachels do not find any difference between active and passive euthanasia, still, some others do feel that there is a difference between them. We would like to discuss three of the prominent arguments against active euthanasia.

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15 Rachel, Active and Passive Euthanasia, 1975  
16 Rachels, 1994
One of them is of the nature of slippery slope argument type. The slippery slope is a type of an argument that includes different course of implications while we take up the initial position and try to argue that the initial position that we have taken is given to discussion and hence cannot be taken in its face value. R.G.Frey has written about Slippery Slope argument which can be applicable to active euthanasia also, “take step A, and we shall be led to take steps B and C. Step A takes us out onto the slope; steps B and C take us down it. In this form, a slippery slope argument is consequentialist in character: the consequences of taking step A are that we shall take steps B and C. This matter is one of probability, however, so that we need to believe it likely or probable that we shall take steps B and C. For if this probability is low or remote, then fear of steps B and C may recede and step A may be taken; if, however, this probability is high, then the fear of steps B and C may well prevent us from granting the permissibility of step A, even if on other grounds it has passed moral muster.”

Krupa and Nikunj argued, "Legalizing voluntary active euthanasia can be very dangerous for society if a party with vested interests intends to misuse it. A terminally ill person is not in the best state of mind to take a decision if he/she should die or not. If legalized, voluntary active euthanasia is likely to be misused by those not suffering from any terminal disease but are psychologically depressed and don't want to live.” (Young Minds Debate Euthanasia, 2011). The same argument can be taken against active non-voluntary euthanasia. Again in the case of non voluntary active euthanasia, it can also be misused. Non voluntary active euthanasia may also lead to the incidents of murder. The slippery slope argument can be taken as valid or as fallacious argument. We try to propose that slippery slope argument for active euthanasia need not be taken as valid argument unless and until it is

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well substantiated that probability of the supposed grave consequences to follow is high. At the same time, as the same slippery slope argument is given to euthanasia and as the court has overlooked the argument, by giving verdict in favor of euthanasia, we try to conclude that we can use the same logic for favoring active euthanasia as well.

Betty Kitchener and Anthony F Jorm in their article “Conditions required for a law law on active voluntary euthanasia: a survey of nurses’ opinions in the Australian Capital Territory” (1999) presented that, to find out in which conditions nurses believe should be in a law allowing active voluntary euthanasia made a questionnaire survey among the registered nurses. The authors concluded that,

“Given the lack of support for some conditions included in proposed AVE laws, there needs to be further debate about the conditions required in any future AVE bills…Although the public have been clearly in favour of changing the law, the members of the lower and upper houses of the Australian federal parliament have not. To what extent should parliamentarians reflect the will of the people” (Kitchener & Jorm, 1999)\(^\text{18}\).

Though the cases or empirical studies that we referred to do not pertain to Indian scenario, but, still, the results drawn up from similar study in other countries and culture suggests that there is a good amount of support for voluntary active euthanasia amongst the people, though the parliamentarians have other perspective. While it can be argued that in Indian context, the

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responses may be different as Indian culture is somehow related to religion and every religion, in one or the other sense, suggests that killing is wrong and as active euthanasia is concerned with direct killing of a patient, it might not be the case that Indians may accept active euthanasia. This argument needs to be tested with the ground realities to subscribe to this position and hence we can say that till it is supported by sufficient empirical study, we cannot conclude that Indians may not be accepting active euthanasia.

The other argument related to euthanasia that can be extended to active euthanasia is that there is always a chance of getting person cured if we allow him to live and hence there need not be any urgency in to give active euthanasia – against this, Singer’s argument the worst scenario in Singer’s that even some cases go wrong, overall consequences is better. Singer writes,

“Against a very small number of unnecessary death that might occur if euthanasia is legalised we must place the very large amount of pain and distress that will be suffered if euthanasia is not legalised, by patients who really are terminally ill. Longer life is not such a supreme good that it outweighs all other considerations.”

The supreme courts argument that passive is omission, whereas active is commission and in that case it may amount to murder. Moreover their argument that if doctor withholds life saving devices he cannot be found guilty, but, if he injects the lethal medicine, then he may found guilty.

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19 Singer, Practical Ethics, 1993, p.197
This can be argued against by saying that if the aim is to lessen the suffering of patients, then both can be accepted. In this regard we can quote one of Singer’s relevant quotation

“…omitting to give antibiotics to a child with pneumonia may have consequences no less fatal than giving the child a lethal injection. Which approach is right? I have argued for a consequentialist approach to ethics. The acts/omissions issue poses the choice between these two basic approaches in an unusually clear and direct way…Having chosen death we should ensure that it comes in the best possible way.”  

Singer subscribes for both active and passive euthanasia. In fact, in certain cases he advocates active euthanasia over passive euthanasia. Singer opines that there is no intrinsic difference between active and passive euthanasia. Singer says,

“Passive ways of ending life result in a drawn-out death. They introduce irrelevant factors……into the selection of those who shall die. If we are able to admit that our objective is a swift and painless death we should not leave it up to chance to determine whether this objective is achieved. Having chosen death we should ensure that it comes in the best possible way.”  

H.J. Gensler says,

“This is especially clear in his discussion about the difference between killing and letting-die. Most non-consequentialists say that, while it is wrong to kill a

20 Singer, Practical Ethics, 1993, p207
21 Singer, Practical Ethics, 1993, P 213
defective infant (for example by poisoning it), it is not necessarily wrong to just
let it die (for example by refusing to perform an extraordinary operation needed to
save its life). Singer disagrees; he sees killing and letting die as morally
equivalent, since both have the same result…Singer’s consequentialist approach
says that the two acts, which have the same result are morally equivalent.”

There are many arguments against euthanasia (is also applicable for active euthanasia) and one
of these arguments is from care ethics. Critics say that through palliative care one may waive his
or her wish to die. In this regard Singer says,

“Ensure that candidate for euthanasia sees a palliative care specialist. If every
patient then ceases to ask for euthanasia, both proponents and opponents of
voluntary euthanasia will be pleased. But that seems unlikely. Some patients who
want euthanasia are not in pain at all. They want to die because they are weak,
constantly tired, and nauseous, or breathless. Or perhaps they just find the whole
process of slowly wasting away undignified. These are reasonable grounds for
wanting to die.”

Stephen Orlando in his article “An argument for the legalisation of Active Euthanasia” writes,

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23 Singer, Voluntary Euthanasia: A utilitarian perspective, 2003
“One principle in support of active euthanasia is the right to self-determination. The principle of self-determination has been affirmed as far back as early English Law. In the 1960 case Nathason V. Kline, Kansas Supreme Court Justice Alfred Schroeder reaffirmed the principle of self-determination when he declared that all individuals are masters of their bodies and have the right to decide what will be done with their bodies, including what medical treatment they will authorize or prohibit. Individuals have a right to choose their own treatment and act as the judge of their own best interest.”

The author says that, “Active euthanasia is simply a more merciful and compassionate extension of passive euthanasia. The distinction between legalized passive euthanasia and illegal active euthanasia is illusory.”

The Supreme Court has come up with a landmark judgement in Aruna Shaanbaag case taking into consideration the earlier similar and related cases. The court also acknowledges that it is a difficult issue to tackle and at the same time we should be ready to tackle it.

“In Gian Kaur's case (supra) the Supreme Court approved of the decision of the House of Lords in Airedale's case (supra), and observed that euthanasia could be made lawful only by legislation. ... It may be noted that in Gian Kaur's case (supra) although the Supreme Court has quoted with approval the view of the House of Lords in Airedale's case (supra), it has not clarified who can decide...”

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24 Orlando, An argument for the legalisation of Active Euthanasia, Annual Celebration of Student Scholarships and Creativity, 2010
25 Orlando, An argument for the legalisation of Active Euthanasia, Annual Celebration of Student Scholarships and Creativity, 2010
whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. This vexed question has been arising often in India because there are a large number of cases where persons go into coma (due to an accident or some other reason) or for some other reason are unable to give consent, and then the question arises as to who should give consent for withdrawal of life support.  

It is a vexed question and it remains so as to who should give consent for life support withdrawal. Similarly, it can also be a vexed question as to how to engage in that act, is it done through omission or through commission? But at the same time, it should also be faced as these sorts of questions are inevitable in the moral and legal realm. Here, through our perception we try to acknowledge the need for alleviating suffering of the patients and hence try to argue for considering as ethical the act of active euthanasia as well.

**Notes**

1 (Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011)

2 (Shukla, 2011).

3 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011

4 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011

5 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011

26 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011
6 Kuhse, A Companion to Ethics, 1991, p294

7 Singer, Practical Ethics, 1993, p.175

8 Singer, Practical Ethics, 1993, p176

9 Singer, Practical Ethics, 1993, p179

10 Singer, Practical Ethics, 1993, p179

11 Singer, Practical Ethics, 1993, p.201

12 Supreme Court's judgment on Aruna Shanbaug euthanasia petition, 2011


15 Rachel, Active and Passive Euthanasia, 1975

16 Rachels, 1994


19 Singer, Practical Ethics, 1993, p.197

20 Singer, Practical Ethics, 1993, p207
21 Singer, Practical Ethics, 1993, P 213
23 Singer, Voluntary Euthanasia: A utilitarian perspective, 2003
24 Orlando, An argument for the legalisation of Active Euthanasia, Annual Celebration of Student Scholarships and Creativity, 2010
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