

Review Article

## Understanding Euthanasia: A comparative Study of India and Japan

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**Abstract:** Euthanasia unlike suicide, is an act which is committed by the assistance of the other and in most of the cases, it is physician assisted. It can be classified as either active, or passive. This paper will make an attempt to study the issue of euthanasia and some of the questions associated with it in two different nations with two different societies. It will try to understand the points of similarities and differences that exists in the Indian and Japanese society with respect to issues of euthanasia.

**Keywords:** Euthanasia, Autonomy, India, Japan.

### INTRODUCTION

The word 'euthanasia' implying 'good death' that relieves pain and suffering, was first used by Francis Bacon. Euthanasia has been regarded as deeply moral and ethical issue in the field of philosophy, as the stakes here are 'life' and 'death'. Euthanasia unlike suicide, is an act which is committed by the assistance of the other and in most of the cases, it is physician assisted. It can be classified as either active, or passive. Active euthanasia involves injecting lethal drugs into the patient's body while passive euthanasia involves withdrawing of life support system, food and drugs which are used to keep the patient alive when the patient is terminally ill or is in permanent vegetative state.

The paper would try to analyse significant cases and court judgements in Japan along with the path-breaking case of Aruna Shanbaug in India. It would then go on to highlight the areas of difference and try to bring up the grounds of similarity between the two countries with regard to the issue, if any. The purpose of this paper is to provide broad based analyses of how autonomy of an individual plays a significant role and what importance it holds in the context of euthanasia. For this it will now provide a discussion of the Japanese and the Indian state and how they view the issue of euthanasia and what judicial pronouncements and laws have been formulated in both the states respectively.

Japanese society is mainly marked by a single race and a population adhering to a similar culture. However the dominant religious community does not adhere to a single religion. They subscribe to Shintu<sup>[1]</sup> and Buddhism. They are constitutive of about ninety percent of the population. Other minority religious communities namely, Christians, muslims, Sikhs and hindus enjoy freedom to carry out their own practices. Japan is identified as a state that has a constitutional monarchy where the monarchy plays a ceremonial role and the real powers are vested in the Prime Minister and the other two elected houses.

The Supreme Court is at the apex and also has the right of judicial review. The judges are appointed by the emperor as is directed by the Cabinet. A reading of the legal and judicial system in Japan shows how it has been reacting and producing verdicts with regard to the issue of euthanasia. In the Nagoya High court decision of 1962 the court identified six conditions that must be met before one is legally permitted to end a suffering patient's life.

(1) The patient's situation should be regarded as incurable with no hope of recovery;

<sup>1</sup> The word *Shinto* ("Way of the Gods") was adopted from Chinese to do with worshipping and believing in "spirits", "essences" or "deities", that are associated with many understood formats; in some cases being human-like, in others being *animistic*, and others being associated with more abstract "natural" forces in the world (mountains, rivers, lightning, wind, waves, trees, rocks).

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- (2) The patient must be suffering from unbearable and severe pain that cannot be relieved;
- (3) The act of killing should be undertaken with the intention of alleviating the patient's pain;
- (4) The act should be done only if the patient himself or herself makes an explicit request;
- (5) The euthanasia should be carried out by a physician, although if that is not possible, special situations will be admitted for receiving some other person's assistance; and
- (6) The euthanasia must be carried out using ethically acceptable methods.

In this particular case poisoned milk had been administered to the patient by his son, It had been the father who had requested the son to do so in order to end his suffering. The high court ruled that only four conditions out of the six mentioned had been met. Although in accordance with the Japanese criminal code severe punishments like capital punishment or life imprisonment are held for homicide but in this case the severity of punishment was reduced. As in this case the son followed his father's directive he was sentenced to four years for imprisonment and suspended for three years.

In another case known as the Tokai University hospital case of 1991 the physician had acted on the request of the patient's son and administered potassium chloride into the patient's body who had already been comatose. However the son later denied had he had allowed the physician permission to put an end to the life of his father. The physician was imprisoned for a period of two years followed by a suspension for another two years. In the Kyoto Keihoku Town Hospital in April 1996 the physician decided to end the life of a terminally ill cancer patient. Here the patient was unaware of his sickness and therefore the question of informed consent by the patients was absent.

Traditionally in Japan immense faith has been placed on the physician who decided all when it came to the treatment of the patient. In most cases the patient was not informed about his sickness in order to avoid causing an added psychological stress. There has been no law with regard to euthanasia in Japan these few cases that have been discussed have been the only few instances when the issue has been taken up by the judiciary.

With decolonisation in 1945, India adopted liberal democratic framework of governance. The basic liberties in the Indian context are enshrined in Part III of the Constitution, namely the Fundamental Rights (Articles 14-32). In case of violation of any of these fundamental rights, a citizen has the right to move the court. However, there is one very significant issue which has not been taken notice of, an issue concerning decisions regarding life and death. There is no mention of the Right to die – 'right to die with dignity'. By right to die, this paper does not indicate an act of suicide but an issue with respect to the right to die associated the question of euthanasia.

In the Shanbaug case, March 2011, the Supreme Court of India upheld that conditional passive euthanasia will be permissible in case of rarest of rare circumstances. It clearly stated that a petitioner concerning passive euthanasia would have to move the High Court, which would then be followed by the medical expert board enquiry. It cannot be solely left at the discretion of the patient's relatives or the 'next friend' (like the nursing staff in the case of the Shanbaug case) to make decisions regarding the death of an individual. This judicial pronouncement would be valid till any further enactment by the legislature. This case opened up a new dimension with regard to Article 21 namely, Right to Life. The prior judgements related to the issue of Right to Life require a special mention in any case concerning the issue of euthanasia. One major judgement in this context is the case of P. Rathinam, 1994 which struck down Section 309 of IPC (attempt to suicide) as unconstitutional and stated that it violated Article 21. It held that Fundamental Rights have both positive as well as negative aspects. However, in 1996, the Gyan Kaur case overruled the earlier decision, observing that Article 21, Right to Life – speaks of life with dignity. Only aspects of life which make it more dignified can be read into this article stating clearly the fact that the right to die was inconsistent with it.

Apart from the form of Government and the judicial discourse one significant issue which merits attention with regard to the Indian society is its multicultural and multi religious social structures. The ancient scriptures and epics bear testimony to the fact that the concept of 'good death' was not absent and different forms of were practised in Hinduism, the dominant religion in India. Ram and his brothers are believed to have taken 'Jal samadhi' [2] in saryu near Ayodhya. Jainism too subscribes to a similar practice known as 'Sallekhana' or 'Santhara[3]'. However these practices are not in tandem with the law or the Indian judicial system. Such practices have found space in the respective religion and Santhara still continues to be practised by many in Jainism. However they remain unrecognised by the Indian legal system.

Therefore on briefly discussing the issue of euthanasia in both the Japanese and Indian context it can be clearly stated that there remains a lot that the legal system of both these nations need to work out with regard to the issue of euthanasia. Both the nations differ in terms of their culture, traditions, and beliefs as far as their society is concerned. They also differ in terms of their forms

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<sup>2</sup> Drowning oneself in the water. Although it is not viewed as suicide in mythological terms the practice did involve a concept of exercising one's own wish in the matter of dying as against the course which is involved in natural death.

<sup>3</sup> The practice of sallekhana or santhara involves fasting unto death, where the individual gives up food, water and other drugs and hastens his death and practices meditation. The aim here is believed to be self-realization and it is not viewed as suicide.

of government and what could be true in case of Japan may not be so in case of India due to the differences that exists between them. However one similar issue that has not been discussed at length and requires attention in both the nations is euthanasia and how the concept of individual autonomy is related with it.

In the case of Japan the guidelines that had been prescribed in 1962 Nagoya high court decision do not take into consideration a patient who is incompetent to give his consent as in the case of a patient who is in a permanent vegetative state or brain dead. Some conditions that they had court stated also appear overlapping in nature. The judicial pronouncement also does not mention what it means by 'ethical means' that should be adopted by the physicians in order to end the lives of the patients.

In the case of India in Aruna Shanbaug case which has been regarded as a landmark judgement by the Supreme Court of India it has been stated that the directives stated would be followed until a law is made in this regard. However some loopholes can be identified in this particular pronouncement as well as question of the patient's autonomy has not been addressed adequately.

It can hence be inferred that the question of autonomy is exercised by the patient only when there is a presence of informed consent to such an act. The concept of living wills which is regarded as source of consent and as evidence in various nations. It helps in taking care of the autonomy of the patient who is no more competent of deciding when terminally ill as in the case of permanent vegetative state or a patient who is already comatose.

Therefore one may indicate that concept of living will if made mandatory for all citizens; it could be helpful in deciding cases where the patient is no more competent of deciding when terminally ill. However this too is may not be useful in case of patients who are disabled mentally by birth and is terminally ill or patients who by some accident are rendered incompetent before the age of twenty five and are incurably ill. As the issue here at stake is extremely grievous and involves an ethical dimension, what still remains to be discussed and researched are how the question of autonomy should be addressed.

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