

divorce easily since the consequences of divorce would be serious and it will have adverse impact on the development of children. Even in England easy divorce is not endemic unless it becomes inevitable for spouses to get separated permanently. One thing is clear that modern trend is towards easy divorce that may be sought by the needy spouses when they find it difficult to live together.

Reference Books:

1. Mayne's "Treatise on Hindu Law and Usage", 14th Edition 1996
2. "Marriage and Divorce", A.N. Sinha, 4th Edition, 1987.
3. Paras Diwan "Muslim Law in Modern India", 3rd Edition, 1985.
4. Justice P.S. Narayan's 'Law relating to Christians in India', 2nd Edition, 2008.
5. Verma's "Muslim Marriage, Maintenance and Dissolution, 2nd Edition, 1988

EUTHANASIA : A LOOK AT THE INDIAN LEGAL SYSTEM

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1. The Indian Law considers as the most severest form of crime, the intentionally causing death of a person¹ and prescribes even the death penalty for such a crime². Any act by which death is accelerated in respect of a person laboring under a physical disorder, disease or bodily infirmity constitutes culpable homicide³. The law is not prepared to condone the act of a person resulting in death, even though the victim by resorting to proper remedies and skilful treatment, the death might have been prevented⁴. Even causing the death, while a person is still in the womb of the mother also treated as culpable homicide, if some part of the child is brought forth⁵. All the exceptions to murder stated in first to fifth, do not give any immunity

from punishment, but regard them as culpable homicide not amounting to murder, punishable under Section 304 of Indian Penal Code.

2. Acts of suicide, whereby the act of a person terminating one's own life, without any aid or assistance of any other agency is made punishable⁶. Striking down Section 309 IPC as unconstitutional, the Supreme Court held that 'no question of protection of society from depredation of dangerous person in case of suicide'⁷. However, in a latter decision, the Supreme Court lost no opportunity to overrule this decision and to uphold the constitutional validity of Section 309 IPC and stated in unequivocal terms thus : "Right to life under Article 21 does not include right to die, because of extinction of life is not included in the

1. See Section 300 IPC which defines the crime of culpable homicide amounting to murder.

2. See Section 302 IPC

3. See Explanation I to Section 299 of IPC

4. See Explanation II to Section 299 of IPC

5. See Explanation III to Section 299 of IPC

6. See Section 309 of Indian Penal Code

7. *P. Rathinam Nagabbusan Patnaik v. Union of India*, AIR 1994 SC P1844.

protection of life". It follows, that attempting to commit suicide, an act by which one causes his own death, is made punishable. No question of any humanitarian cause or sympathy is taken into consideration, while considering the criminal liability for a crime of an act of attempting to commit 'suicide'. When one's 'own' act of killing himself is neither excused nor condoned, the question of an assisted or aided killing by any other human agency, does not stand on any different footing and makes such acts as severe crimes.

3. Though self-killing is conceptually different from abetting others to kill themselves, and the later coming under 'Euthanasia' is sought to be justified on grounds of humanity or sympathy, as it would enable dignified exist of persons from the misery and misfortune of the deadly diseases and such cases are considered as 'life worst than the death'. However, the law makes such acts as offences falling under Exception V of Section 300 of Indian Penal Code which states thus :

"Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent."

As stated earlier, this exception makes the act to fall under the category of culpable homicide not amounting to murder and punishable under Section 304 IPC⁸.

4. Euthanasia is sought to be legalized on the ground, that it is an act of rational suicide in order to avoid protracted suffering from deadly diseases⁹. Even a staunch supporter of 'auto Euthanasia' *Arthur Koestler* ended in life by ingesting a lethal dose of drugs¹⁰. An

extract from the work of Robbins makes out a case of euthanasia which reads :—

"I am not afraid to die but I am afraid of this illness, what it is doing to me. There is never relief from it nothing but nausea and this pain"¹¹.

5. It is no doubt true that modern medicine has done a great job of prolonging life. But people who live long than they want to live, the legal system has found no solutions for it. In fact, it has been vehemently advocated that people should have the right to end their lives, when they want it and to get the necessary help for the exercise of this right. There are several decisions to the effect that the deprivation of the right to die and keeping a man in the hospital in his present condition would be abridging the right of privacy, removing the freedom of choice and invade the right to self-determination¹². A statement made in the World Medical Assembly enunciates that "the controlling principle for decision-making in health issues should be the 'best interests' of the patient"¹³ and the duty of the physician is to protect and maximize his patient's 'best interests'. However, the actual experience of physician's not to follow the principle of the 'best interests' on the face of several penal statutes prohibiting Euthanasia and imposing criminal liability¹⁴. In fact, code of ethics clearly imposes a duty on a physician to the effect that 'he shall give no deadly medicine to anyone, if asked or nor suggest any Counsel'¹⁵.

6. In some of the legal systems, Euthanasia has been legalized. Australia's Northern Territory approved Euthanasia in 1995, and

8. This Section provides for imprisonment of either description which may extend to 10 years and liable to fine as well.

9. Rational suicide raises patient Rights issue, 66 ABAJ 1499

10. Time, March 14, 1983 at P.96

11. B. Rollin "Last Wish" 1985 (P.149)

12. *Bonvia v. High Desert Hospital*, Issues and Med. 493 (1986)

13. Statement of the World Medical Assembly, 140 Med. J. 431 (Oct, 1983)

14. Kulse "Euthanasia — again" 142 Med. J. Aust. 610 (dated 27.5.1983)

15. Hippocratic Oath 400 B.C.

in U.S. State of Oregon (1998), Netherlands on (2000) and Belgium (2002), it has been legalized. In some places, Euthanasia is legalized but the method of bringing about, has not been recognized as legal. Kulse points out cases, that the patient could have died less painfully, had lethal injection had been given¹⁶.

7. The Council of Ethical and Judicial Affairs of the American Medical Association has advocated a new policy¹⁷ known as “passive Euthanasia” whereby a physician can withdraw all means of life prolonging medical treatment, including water and food, from a patient in an “irreversible coma”. Occasions have arisen where reconciling the differences of opinion between physicians and patient’s family. This has provided an additional safeguard to the maintenance of self-determination, without judicial interference, when they were reconciled by Hospital Ethics Committee¹⁸. Newman points out, “disconnection of life – support systems by physicians acting at the behest of families should not be considered a criminal act”¹⁹ and this was further elucidated as one resting on request for cessation of treatment by a competent patient²⁰.

8. There has been a growing criticism that the judicial systems are ill-equipped and has no special competence to consider or take decisions regarding the treatment of critically ill and terminally ill patients and therefore, they cannot impose decisions on their evaluation of what is in the ‘best interests’ of the patients. On the other hand, there is a

heavy demand for the patient’s right to be recognized to refuse futile prolongation of dying, in case of terminally ill patients with no hopes of recovery. The question still remains unresolved, whether a refusal of life-sustaining therapies would constitute suicide? Perhaps, law in India may consider such refusals as attempt to commit suicide. The question assumes greater importance, when the patient is unable to participate in medical treatment decisions, on account of his physical disability.

9. It has been insisted that a ‘self-determination of death’ must be made in accordance with accepted rules, medical standards²¹ and other procedural requirements. Rational self determination to die shall be regarded as an ‘inalienable right’ which consists of :—

- (a) To refuse medical or surgical treatment; and
- (b) To choose to die in a Humane and dignified manner

While sanctity of life should be preserved, equally so, the physicians must have the authority – both legal and social to refuse unilaterally to do what they consider futile or doing anything which runs counter to the ‘best interests’ of the patients. At any rate, professional code requires physician not to treat a patient, while the patient refuses to take the treatment. This is based on “implied consent” not to touch the body of the patient without his consent.

10. Recently, an aged couple petitioned to the President of India for permission to die on account of severe illness, unbearable suffering and having no means of maintenance and support. It is now time to consider whether a change in the existing legal thinking is necessary and if so what should be the parameters or limits to permissible legal sanction.

16. Supra – Note 14 at P.611

17. This policy was framed on March 15, 1986, Chicago, Illinois

18. Dagi, “The Ethical Tribunal in Medicine” in Ethical, Legal and Social Challenges to a Brave New World, Chapter (7) (G. Smith ed-1982)

19. Newman, “Treatment refusals for the critically and terminally ill” – proposed rules for the family physicians and the State, 3 NY Law Sch. Human Rights Annual 35 (1985)

20. Suptd. of Belchertown State School v. Saikewicz, 373 Mass 728 (1977) p.76.

21. Smith, ‘Legal recognition of Neocortical Death’ 73, Cornell L Rev. 850 (1986)

11. An emergent need to enact a law titled “Euthanasia (Regulation and Control)” which must give some guidelines for managing death issues – The law may provide as follows :—

- (i) Any person who is above (75 years) of age may be entitled to seek permission to die; subject to the following conditions :—
 - (a) That he/she must be suffering from incurable disease and recovery of such patients is absolutely not possible. This should be supported by medical opinion;
 - (b) That he/she must be suffering from pain-mental or physical which is unbearable that ‘living is worst than death’;
 - (c) That he/she is absolutely without any dependence or maintenance for support;
 - (d) That in the opinion of the Medical Board duly constituted under the Act, that the case is a fit case for permitting to die;
 - (e) That the entire case with all medical records should be considered by the Medical Department, and placed before the cabinet for approval;

(f) When the State Cabinet accords approval, a Government Order should be passed that the person be permitted to die, a painless death only after the expiry of (6) months of the Government Order being passed;

(g) That a public notice shall be published in the leading newspapers including the Gazette, of the Government Order issued within two days of issuing of the Government Order;

(h) If any person, either relative or otherwise or a public institution comes forward to take care of the person concerned, the Government Order shall be cancelled and the person be handed over to such person/or institution after execution of a bond assuring to take care of the person in question without any claim for financial assistance; and

(i) The person be allowed to die only as a case of ‘last resort’ when no other remedy is available.

12. In conclusion, the State Government must show concern to save the life of the individual and permission to die being given as a ‘last resort’.

CONTRACT LEGISLATION AND MATERIALS MANAGEMENT

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1. In every organization, materials management occupies a very important place and the staff dealing with this subject must

acquire a thorough knowledge of all aspects relating to materials management. Materials management deals with procurement, which