

## EUTHANASIA-A LEGAL REFORM INITIATIVE

*Barsha Mitra & Ananya Das*

Symbiosis Law School, Pune

*The Article 21 of Indian Constitution guarantees Right to Life and personal liberty to every individual surviving under the shield of the nation and also where “life” implies “not merely an animal existence”. So when the basis of existence of a person deteriorates, death becomes the only destination. Thus the choice of “death with dignity” is the most favorable weapon to end the age long suffering. The concept of Euthanasia, also known as the act of intentional killing of a dependent human being suffering from incurable, painful and chronic disease is a difficult concept surrounded by varied moral ambiguities and controversies as it revolves around the dignity of life of the most dignified entity surviving on the Earth’s surface. Setting aside morality, in legal point of view the criminal justice system of India need some major changes for the welfare of patients who needs assisted death by medical practitioner. Therefore, this article has been primarily divided into four parts where the first part revolves around the introduction to the concept of Euthanasia. The second part shall discuss about the nuances of “Right to die” as a facet to “Right to life” and the third part will focus on the reformation required in the Criminal justice system while dealing with related cases of Euthanasia and finally the analysis and suggestions.*

### INTRODUCTION

*“This is not a matter of life versus death, but about the timing and manner of an inevitable death.”* Euthanasia has been a topic of immense debate since time immemorial and till date the ambiguities are attached to the concept of assisted suicide and the ethics behind it. In ancient Greece and Rome, euthanasia was a common practice where voluntary death was preferred over endless agony<sup>1</sup>. The primary ambiguity is embedded into the age old issue persisting in medical ethics also known as the Hippocratic Oath<sup>2</sup>. Criticized and banned by religious institutions, this topic of euthanasia brings one question in forefront as to whether living a life consists of mere existence or a human life in true sense? Also how can some religious or ancient thought process decide the way and time to embrace the inevitable

<sup>1</sup> Tania Sebastian, *Legalization of euthanasia in india with specific reference to the terminally ill: problems and perspectives*, Journal of Indian Law and Society, Vol- 2, Page- 354, (1<sup>st</sup> August, 2011)

<sup>2</sup> Suresh Bada Math and Santosh K Chaturvedi, *Euthanasia: Right to life vs Right to die*, Indian Journal of Medical Research, IJMR, [December 2012, 6:00 PM IST], <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/>

death of a body that is existing with external life-support systems having no life in its own? Right to life is a basic fundamental right bestowed upon the human kind, guaranteed under the Constitutional framework as well as numerous International instruments interpreted in various ways. If a person has the undisputed right to life then the right to die with dignity in case of incurable, degenerative, disabling life condition should also be a undisputed right.

---

## DEFINITION

---

Originated from Greece, the word “Euthanasia” is derived from the Greek words '*eu*' and '*thanotos*' which literally mean "good death". Euthanasia can be bifurcated into various forms that includes:

- **Active Euthanasia:** Introducing external methods to cause death.
- **Passive Euthanasia:** Removal of the life support systems or withdrawal of treatment to cause death.
- **Voluntary Euthanasia:** Death with consent.
- **Involuntary Euthanasia:** Death with consent from guardian.
- **Physician assisted Euthanasia:** usage of physician prescribed medicine administered either by the patient themselves or by a third party to end the life.

Advancement of medical science has increased the normal life expectancy of an individual. But the primary dilemma lies with regard to providing appropriate care while respecting the patient autonomy, especially in case of patients with terminal or incurable illness. Also the enigma with respect to the patient's rights and doctor's responsibilities in case of potential life limiting treatment decisions by strictly adhering to the definition of law creates the primary issue of the debate. The law does not authorize such act of assisted death by administration of lethal injections to patients suffering from painful terminal disease and any doctor involved in such acts of mercy killing can be prosecuted for murder or manslaughter or homicide. The famous case of *R vs. Cox*<sup>3</sup>, portrayed about the doctor's dilemma of choosing between pain or death. Dr. Cox administered a lethal dose of potassium chloride to his patient Lillian Boyes, who was suffering from terminal illness described as the worst case of rheumatoid arthritis, refused all therapeutic treatment and signed her death warrant five days prior to the incident. The patient was going through agonizing pain and wanted to end her life when all the treatments intensified her pain and her decision was supported by her sons too.

This landmark case has therefore highlights a situation as to what could be done when life becomes worse than death. Thus, it choice should be given to every individual whether to live a gradual painful life or a painless death. Henceforth extraordinary treatment problem

---

<sup>3</sup> (1992) 12 BMLR 38

can be approached through the dichotomy laid down in the criminal law with respect to commission and omission, the commission of the affirmative act that presume criminality and the omission to provide for the treatment that is not providing any benefit to the patients living condition which is termed as non-criminal.

---

## LEGISLATIONS AND JUDICIAL ACTIVISM

---

The laws pertaining to Euthanasia vary from one country to another as like any other law, the understandings as well as the utility of the concept constitute various factors pertaining to the social as well as economic status of the country.

### United Kingdom:

Generally under the English law, both euthanasia and assisted suicide are held illegal and is either regarded as either manslaughter or murder. The maximum penalty is life imprisonment.

A campaign was initiated for allowing the dying people with less than six months of life the option to control their death, known as "Dignity for Dying". Noel Conway, a patient of motor neuron disease challenged the persisting UK laws on assisted death.<sup>4</sup>

### United States of America:

Modern interest in euthanasia in the United States began in 1870, when a commentator, Samuel Williams, proposed permission for euthanasia "in all cases of hopeless and painful illness" to bring about "a quick and painless death." to the Birmingham Speculative Club. While active euthanasia is banned and condemned by being called "mercy killing", by the American Medical Association. Passive euthanasia has been upheld by the Court. The idea of euthanasia began gaining popularity in modern times not for the advent of new technologies for agonizingly prolonging life but due to the discovery of new drugs, such as morphine and various anesthetics for the relief of pain, which could also "painlessly" induce death. William's proposal became a topic gaining massive hype in media, books as well as various prominent journals. This led to the debate in 1906, when Ohio legislature drafted its first bill legalizing Euthanasia as "An Act Concerning Administration of Drugs etc. to Mortally Injured and Diseased Persons". Eventually the bill was rejected. California in 1976, became the first State to legalize Euthanasia as a "patient's right to refuse life-prolonged treatment".

Euthanasia reemerged in the 1970's, when in 1976 California was the first state to legalize a patient's right to refuse life-prolonged treatment. The Legislature passed the Natural

---

<sup>4</sup>*Euthanasia and Assisted Suicide*, <https://www.nhs.uk/conditions/euthanasia-and-assisted-suicide/>

Death Act, which allows for living wills, an advance directive to a doctor requesting the withholding or withdrawing of life sustaining treatment. Today, all states have some form of living will legislation. In addition, the individual who wishes to have such a will may also designate a family member or friend as a proxy to make the decisions for him or her should he or she is unable to make the decisions. Some states also require the individual to sign a power of attorney to do so.<sup>5</sup>

In the case of *Washington v. Glucksberg*<sup>6</sup>, on March 6, 1996, for the first time in U.S. history, the U.S. Court of Appeals overturned a Washington State law that made assisted suicide a felony. Upon being challenged under the “equal protection rights” enumerated in the 14<sup>th</sup> Amendment of the US Constitution, the court noted that, under present law, a dying patient on life support may have it removed legally, thus facilitating death whereas another dying patient, suffering the similar illness, without any life support system cannot avail any means to end his or her lives. The court, ruled that, bans on assisted suicide constitute a violation of the rights of the patient under the Fourteenth Amendment.<sup>7</sup>

#### **Belgium:**

The Euthanasia commission of Belgium’s upper house, the Senate, on 20<sup>th</sup> January, 2001, voted in favor of exemption of euthanasia from criminal prosecution pertaining to certain conditions. On 25<sup>th</sup> October, 2001, the law proposal was approved by the Senate upon a significant majority. Finally, on 16<sup>th</sup> May, 2002, the legislation in favor of Euthanasia was established. There were certain conditions that were laid down under which a doctor can practice euthanasia on patients who are unbearably suffering with incurable illness.

- The potential patient should be a Belgian resident.
- The patient should be of a minimum age of 18 years to make such voluntary decision.
- The section 3 of the act, states about adults or “emancipated minors”, i.e. autonomous persons capable of making decisions, generally patients within the age limit of 16-17 years. Such cases are considered as “borderline cases”.
- The request from the patient should be a written one, with the document dated and duly signed by the patient. In case the patient’s condition is critical, rendering infeasibility to obtain signature, then an adult shall be appointed on the basis of the patient’s choice to sign the request on their behalf. The adult chosen should not have

---

<sup>5</sup>The Law Teacher, United States Law And History On Euthanasia,  
<https://www.lawteacher.net/free-law-essays/medical-law/united-states-law-and-history-on-euthanasia-medical-law-essay.php>

any interest over the patient's property. Such requests are signed in the presence of the Physician. The document shall

- Include specification as to the reason behind the inability of the patient to sign the request.
- Include the name of the witness Physician.
- Be included in the medical record.
- The patient can waive the request at any point of time in any manner. In such cases, the document shall be excluded from the medical record and be handed over to the concerned patient.<sup>8</sup>

### Australia:

The Australian Northern Territory Act and the Oregon Death with Dignity Act also follows the aforementioned provision. It further states that, any request for Euthanasia will be approved only in case of patients suffering from constant, unbearable physical or mental pain which is serious and incurable. A minimum lapse of 1 month gap is made a mandate between the date of written request and the mercy killing, generally in case of patients who are not "terminally ill".<sup>9</sup> This method at times become controversial as such decisions are often taken by the patient as a consequence of unbearable pain. Some physicians opt for palliative care, an approach, minimizing pain in terminally ill patients with an extra layer of life support system that neither hasten nor slows down death.<sup>10</sup> Palliation is contrary to euthanasia and is not much in demand which has led to the gradual shutting down of the palliation units. In the case of *Wake v. Northern Territory of Australia*<sup>11</sup> the Supreme Court of Northern Territory of Australia legalized euthanasia. But later a subsequent legislation that was the Euthanasia Laws Act, 1997 made it again illegal.<sup>12</sup>

### India:

India holds the doctrine of the "sanctity of life" as absolute which states that human life is created in the image of God and, therefore, possesses an intrinsic dignity which entitles it to protection from unjust attack. The principle also abides by the fact that one must never intentionally kill an innocent human being. The "right to life" is essentially a right against intentional killing. Thus human life should be given special priority over dignity of life

---

<sup>8</sup> Raphael Cohen-Almagor, *Euthanasia Policy and Practice in Belgium: Critical Observations and Suggestions for Improvement*, <https://www.ieb-eib.org/nl/pdf/euthanasia-practice-in-belgium.pdf>

<sup>9</sup>George Buhler, *Sacred Books of the East*, Vol. 25, Page 204, (1967)

<sup>10</sup>WHO Definition of Palliative Care, World Health Organization, (28th January, 2018, 11:15 am. IST), <http://www.who.int/cancer/palliative/definition/en/>.

<sup>11</sup> 5 NTLR 170 (1996)

<sup>12</sup> Law Teacher, Legal Brief In Support Of Euthanasia,(25th January 2018, 7:00 am IST), <https://www.lawteacher.net/free-law-essays/human-rights/legal-brief-in-support-of-euthanasia.php>.

simply because it is human. Religiously inclined India had many scriptures that dealt with this issue. Suicide was regarded as permissible in some circumstances in ancient India. In the Chapter on "The hermit in the forest" in Manu's Code<sup>13</sup> says "*Or let him walk, fully determined and going straight on, in a north-easterly direction, subsisting on water and air, until his body sinks to rest.*" Getting rid of one's body by one of the modes such as drowning, precipitating burning or starving were practiced by the great sages, exalted in the world of Brahman, free from sorrow and fear". The commentary by Manu says that a man may undertake the mahaprasthan (great departure) on a journey which ends in death, when he is incurably diseased or meets with a great misfortune, and it is it is taught in the Sastras, which is not opposed to the Vedic rules which forbid suicide.

The massive debate about the legal standpoint of Euthanasia in India was first witnessed in the case that touched upon the proposition of "right to die" as a fundamental right under Article 21 of the Indian Constitution was in the case of *GianKaur*<sup>14</sup>. The court ruled out the proposition stating "Right to die" is a negative right and cannot be implied under "Right to life".

The landmark case of *Aruna Ramchandra Shanbaug*<sup>15</sup>, who was brutally raped in the hospital where she was employed as a nurse, rendering her into a comatose state with no hope of survival, brought forth a new dimension into the aspect of "right to die" and the concept of euthanasia. Although the plea for euthanasia was rejected for Aruna, the Supreme Court allowed passive euthanasia, opening a new gateway into the Indian Legal system. But it is to be performed under strict legal supervision only in extraordinary circumstances. Active euthanasia still remains illegal in India but post ArunaShaunbaug, the Court, suggested decriminalizing attempt to suicide under Section 309 Indian Penal Code, by repealing the punishment provided in the act. In this case the Court has put forth the concept of "Next friend" which needs judicial interpretation to understand the concept in its true sense and who can be the next best friend. The Court has absolutely ignored the condition and interest of the patient and focused on the concept of "next friend". The Supreme Court referred to the doctrine of 'ParensPatriae', under Article 226 of the Constitution, the High Court is empowered to pass suitable orders on the applications filed by the near relatives or next friend or the doctors/hospital staff for the withdrawal of life support of an incompetent patient (such as a minors).<sup>16</sup>

---

<sup>13</sup>Sacred Texts, *The Laws of Manu*, (26<sup>th</sup> January, 2018, 9:15 pm. IST), <http://www.sacred-texts.com/hin/manu/manu06.htm>

<sup>14</sup> 2 SCC 648 (1996)

<sup>15</sup>WRIT PETITION (CRIMINAL) NO. 115 OF 2009, 4 SCC 454 (2011)

<sup>16</sup> The Law Commission of India, *Passive Euthanasia- a relook*, Report no. 241, Page 16 (August 2012)

Pinki Virani who approached the court for euthanizing Aruna and filed the PIL for the same, has not been considered as the next friend rather the nurses who were taking care of Aruna for the past 30 years were included under “next friend.” Therefore the outright denial of recognition of the Right to Autonomy and self-determination of a person who is not capable to give consent could prove to be a hazardous course of action for a patient who is suffering from incurable diseases.<sup>17</sup> The issue of concern behind placing reliance upon the “next friend” upon the decision to withdraw life support system, the friend or the relative might misuse the law for fulfilling their selfish motives.

---

### LAW COMMISSION REPORT:

---

The Law Commission of India in the year 2012 has laid down certain guidelines in its 196<sup>th</sup> Report on Passive Euthanasia. The Commission has highlighted Apex Court’s decision in the earlier mentioned landmark case of *Aruna Ramchandra Shanbaug vs Union of India*. The Commission stated in the Report that it did not deal with the unlawful aspect of euthanasia or assisted suicide but is emphasizing upon withholding life support measures in case of patients with terminal illness in a universal perspective.

The 17<sup>th</sup> Law Commission has proposed a bill under the title “Medical Treatment to Terminally Ill Patients” [Protection Of Patients And Medical Practitioners] Bill, 2006. According to this Bill;

- The attending medical practitioner will have to obtain approval of three medical experts prior to withdrawal of medical treatment to such patients and the experts has to get due clearance from the High Court to give effect to such decisions. The relatives of the patient along with the patient if he/she is in a conscious state should be informed and a wait period of 15 days to be followed prior to the withdrawal of the life support system.
- The Chief Justice of High Court, prior to delivering approval, along with the coram of minimum two judges, the bench should also seek due approval from 3 reputed doctors as nominated by the bench, generally constituting a neurologist, a psychiatrist, and a physician.
- The competent patient suffering terminal illness has the right to refuse treatments and life sustaining measures and such decisions are binding upon the doctor.
- The Law Commission of India clarified that incase a competent patient takes an ‘informed decision’ to refrain from life support systems, the patient is, not guilty of attempt to commit suicide (u/s 309 IPC) nor is the doctor who omits to give treatment,

---

<sup>17</sup>Rakesh Shukla, “Is the ‘Next Friend’ the Best Friend?”, Economic and Political Weekly, Vol. 46, No. 18 (APRIL 30-MAY 6, 2011), pp. 10-13, 23-01-2018 09:09 UTC, <http://EUTHANASIA/nextfriend.pdf>

- guilty of abetting suicide (u/s 306 IPC) or of culpable homicide (u/s 299 read with Section 304 of IPC).
- The doctor in charge of the patient should act in accordance to the best interest of the patient.
  - The Medical council should issue guidelines for withholding or withdrawal of treatment of the competent as well as incompetent patients suffering from terminal illness.<sup>18</sup>

---

## CONCLUSION

---

In the Gian Kaur's case, it was observed in reference to the Article 21 of the constitution that "These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced." Thus the debates behind euthanasia should now be neutralized and every forms of euthanasia be permitted by the law upon special inspection so that no person is made to live on force as well as die on fallacies of any kind. The choice of death is not an easy choice, but if a patient prays for death with dignity for ending the pain that's killing the person every moment, then it should be honored. The "pain" concept does not only pertain to physical pain due to terminal illness, at times mental impairment can be a primary reason too. Though such intrinsic pains are not visible or explained, but that too diminishes the value of a human worthy life, then it is a better option to put an end to it in a dignified manner. Proper investigation should no doubt be carried out to prevent misuse of the rights for any illegal or selfish motives. Thus both active and passive euthanasia can become an honorable initiative if practiced with due diligence and care.

---

<sup>18</sup> The Law Commission of India, *Passive Euthanasia- a relook*, Report no. 241, Page 17-25 (August 2012)