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## LEGAL PERSPECTIVE OF EUTHANASIA IN INDIA: A RIGHT TO DIE. ABSTRACT

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End life of a person by others though on the request of the deceased, is called “euthanasia” or “mercy killin. Passive euthanasia (Good death, easy death, right to die, mercy killing) is one of the major issues developed with progress of human race. Euthanasia has been practiced in most of the countries for more than twenty years and focuses mainly on the fact that patient suffering ought to be prioritized over the patient life. The quality of life shall be taken care of in critically ill patients. Euthanasia is not killing a patient but allowing the critically ill person to end his life on his own wish to die peacefully. This controversial topic is debated because it violates codes of medical ethics and patient care which exists since antiquity. The euthanasia, its types, guidelines for implication in various countries and perspectives in India are discussed in this article.

**Keywords:** Euthanasia, Mercy killing, Passive.

### INTRODUCTION

Euthanasia is the termination of a very sick person's life in order to relieve them of their suffering. A person who undergoes euthanasia usually has an incurable condition. But there are other instances where some people want their life to be ended. In many cases, it is carried out at the person's request but there are times when they may be too ill and the decision is made by relatives, medics or, in some instances, the courts. The term is derived from the Greek word *euthanatos* which means easy death. Euthanasia is against the law in the UK where it is illegal to help anyone kill themselves. Voluntary euthanasia or assisted suicide can lead to imprisonment of up to 14 years. India legalized passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The issue has been at the centre of very heated debates for many years and is surrounded by religious, ethical and practical considerations.<sup>1</sup>

### MEANING OF EUTHANASIA

The word *euthanasia* is derived from two Greek words which mean “a good death.”<sup>2</sup> In the current debate, Euthanasia has been defined as ‘the bringing about of a gentle and easy death for someone suffering from an incurable and painful disease or in an irreversible coma.’<sup>3</sup> Usually, ‘euthanasia’ is defined in a broad sense, encompassing all decisions (of doctors or others) intended to hasten or to bring about the death of a person (by act or omission) in order to prevent or to limit the suffering of that person (whether or

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<sup>1</sup> <http://www.bbc.co.uk/ethics/euthanasia/overview/introduction.shtml>

<sup>2</sup> Dharmender Kumar Nehra, Pradeep Kumar and Sheetal Nehra, Euthanasia: An Understanding, Global Vision Publishing House, 23 January 2014. <https://www.researchgate.net/publication/252626984>

<sup>3</sup> Pearsall, J. & Trumble B. (eds) (1996). *Oxford English Reference Dictionary*. Oxford: Oxford University Press.

not on his or her request).<sup>4</sup> Perhaps a clearer definition is: *The intentional killing by act or omission of a person, whose life is no longer felt to be worth living.*<sup>5</sup>

## **DIFFERENT KINDS OF EUTHANASIA**

### **Active euthanasia**

Active euthanasia is identical to mercy killing and involves taking action to end a life. Active euthanasia is defined as any treatment initiated by a physician, with the intent of hastening the death of another human being, who is terminally ill, with the motive of relieving that person from great suffering. For example, intentionally giving a person a lethal dose of a drug to end a painful and prolonged period of dying

### **Passive euthanasia**

Passive euthanasia is allowing the patient to die when he or she could have been kept alive by the appropriate medical procedures. Passive euthanasia is defined or considered as discontinuing, or not starting a treatment at the request of the patient<sup>6</sup>

### **Voluntary (statutory) euthanasia**

Voluntary euthanasia is when the decision to terminate life by the physicians corresponds with the patient's desire to do so and the patient willfully gives consent of its implementation

### **Involuntary euthanasia**

Involuntary euthanasia is when the decision to end life is implemented against the patient's wishes. No voluntary euthanasia refers to cases where patients are unable to make their decisions, for example, a person who is brain dead and in a permanent or irreversible coma.<sup>7</sup>

### **Physician-assisted euthanasia**

The deliberate termination of life, by someone other than the patient, at the patient's request and PAS as intentionally helping a patient to end his or her life at his or her request.

### **Legitimate medical euthanasia**

This means providing treatment (usually to reduce pain) that has the side-effect of speeding the patient's death. It is based on the doctrine of "dual effect" and concerns the use of lethal dosing, or terminal sedation, by some medical professionals. Administration of terminal sedation, i.e., lethal dosing, to a competent, terminally ill patient by the physician, which by its "dual effect" may hasten the patient's death, is both ethical and legal as long as the terminal treatment is intended to relieve the pain and suffering of an agonizing terminal illness (editorial classification of euthanasia).<sup>8</sup>

<sup>4</sup> Gevers, S. (1996). Euthanasia: law and practice in The Netherlands. *Bntah Mtdical Bul*; 22 (No. 2): 326-333.

<sup>5</sup> Supranote-2

<sup>6</sup> **Kusum R Gandhi**, April 2017, *Brief History and Perspectives in India International Journal of Education and Research in Health Sciences*, April-June 2017;3(2):105-108

<sup>7</sup> *ibid*

<sup>8</sup> *id*

## LEGAL PERSPECTIVE OF EUTHANASIA IN INDIA

The legal position of India cannot and should not be studied in isolation. India has drawn its constitution from the constitutions of various countries and the courts have time and again referred to various foreign decisions. In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to Section 92 of the IPC and thus be rendered illegal. The law in India is also very clear on the aspect of assisted suicide. Right to suicide is not an available “right” in India – it is punishable under the India Penal Code, 1860. Provision of punishing suicide is contained in sections 305 (Abetment of suicide of child or insane person), 306 (Abetment of suicide) and 309 (Attempt to commit suicide) of the said Code. Section 309, IPC has been brought under the scanner with regard to its constitutionality. Right to life is an important right enshrined in Constitution of India. Article 21 guarantees the right to life in India. It is argued that the right to life under Article 21 includes the right to die. Therefore the mercy killing is the legal right of a person.<sup>9</sup>

After the decision of a five judge bench of the Supreme Court in *Gian Kaur v. State of Punjab*<sup>10</sup> it is well settled that the “right to life” guaranteed by Article 21 of the Constitution does not include the “right to die”. The Court held that Article 21 is a provision guaranteeing “protection of life and personal liberty” and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33(m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners. Exercising these powers, the Medical Council of India has amended the code of medical ethics for medical practitioners. There under the act of euthanasia has been classified as unethical except in cases where the life support system is used only to continue the cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of doctors, life support system may be removed.

In *Gian Kaur's*<sup>11</sup> case section 309 of Indian Penal Code has been held to be constitutionally valid but the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in a depression, and hence he needs help, rather than punishment. The Delhi High Court in *State v. Sanjay Kumar Bhatia*<sup>12</sup>, in dealing with a case under section 309 of IPC observed that section 309 of I.P.C. has no justification to continue remain on the statute book.

The Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*<sup>13</sup> examined the constitutional validity of section 309 and held that the section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be

<sup>9</sup> Caesar Roy\*position of euthanasia in india – an analytical study. Caesar, 31 December 2013. <https://www.researchgate.net/publication/259485727>

<sup>10</sup> 1996 (2) SCC 648 : AIR 1996 SC 946

<sup>11</sup> ibid

<sup>12</sup> 1985 Cri.L.J 931 (Del.).

<sup>13</sup> 1987 Cri.L.J 743 (Bom.)

discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14. Article 21 was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article 21.

### **LEADING CASE STUDY OF EUTHANASIA IN ARUNA RAMCHANDRA SHANBAUG V. UNION OF INDIA**

Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India*<sup>14</sup> opened the gateway for legalization of passive euthanasia. In this case a petition was filed before the Supreme Court for seeking permission for euthanasia for one Aruna Ramchandra Shanbaug as she is in a Persistent Vegetative State (P.V.S.) and virtually a dead person and has no state of awareness and her brain is virtually dead. Supreme Court established a committee for medical examination of the patient for ascertaining the issue. Lastly the Court dismissed the petition filed on behalf Shanbaug and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. The court also recommended to decriminalized attempt to suicide by erasing the punishment provided in Indian Penal Code.

The Court in this connection has laid down the guidelines which will continue to be the law until Parliament makes a law on this point.

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
2. Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in *Airedale's*<sup>15</sup> case as this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

In this case question comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person. Then the Court held that it is the High Court under Article 226 of the Constitution which can grant approval for withdrawal of life support to such an incompetent person. The High Court under Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders. According to the instant case, when such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. After hearing the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject. The High Court should give its decision assigning specific reasons in accordance with the

<sup>14</sup> 23. 2011(3) SCALE 298 : MANU/SC/0176/2011

<sup>15</sup> 1993(1) ALL ER 821 (HL)

principle of 'best interest of the patient' laid down by the House of Lords in *Airedale's* case .

## CURRENT LEGAL SCENARIO OF EUTHANASIA IN INDIA

On 9 March 2018 the Supreme Court of India legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The decision was made as part of the verdict in a case involving Aruna Shanbaug, who had been in a Persistent Vegetative State (PVS) until her death in 2015.

on 25 February 2014, a three-judge bench of Supreme Court of India had termed the judgment in the *Aruna Shanbaug case to be 'inconsistent in itself' and has referred the issue of euthanasia to its five-judge Constitution bench.*<sup>16</sup>

And on 23 December 2014, Government of India endorsed and re-validated the Passive Euthanasia judgement-law in a Press Release, after stating in the Rajya Sabha as follows: that The Hon'ble Supreme Court of India in its judgment dated 7.3.2011 [WP (Criminal) No. 115 of 2009], while dismissing the plea for mercy killing in a particular case, laid down comprehensive guidelines to process cases relating to passive euthanasia. Thereafter, the matter of mercy killing was examined in consultation with the Ministry of Law and Justice and it has been decided that since the Hon'ble Supreme Court has already laid down the guidelines, these should be followed and treated as law in such cases. At present, there is no proposal to enact legislation on this subject and the judgment of the Hon'ble Supreme Court is binding on all. The Health Minister, J P Nadda stated this in a written reply in the Rajya Sabha.

The high court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law.<sup>17</sup> Active euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries.<sup>18</sup>

In 2018 the Supreme Court of India declared through a five-judge Constitution bench that, if strict guidelines are followed, the government would honor "living wills" allowing consenting patients to be passively euthanized if the patient suffers from a terminal illness or is in a vegetative state.<sup>19</sup>

## SUGGESTIONS

It is feared that placing the discretion in the hands of the doctor would be placing too much power in his hands and he may misuse such power. This fear stems largely from the fact that the discretionary power is placed in the hands of non judicial personnel (a doctor in this case). This is so because we do not shirk from placing the same kind of power in the hands of a judge (for example, when we give the judge the power to decide whether to award a death sentence or a sentence of imprisonment for life). But what is surprising is that the fear is of the very person (the doctor) in who's hands we would otherwise not be afraid of placing our lives. A doctor with a scalpel in his hands is acceptable but not a doctor with a fatal injection. What is even more surprising is that ordinarily the law does not readily accept negligence on the part of a doctor. The Courts tread with great caution when examining the decision of a doctor and yet his decision in

<sup>16</sup> *Aw Street*. Supreme Court of India. 24 February 2014. Retrieved 18 May 2015.

<sup>17</sup> *The Hindu*. 7 March 2011. Retrieved 7 March 2011.

<sup>18</sup> [https://en.wikipedia.org/wiki/Euthanasia\\_in\\_India](https://en.wikipedia.org/wiki/Euthanasia_in_India)

<sup>19</sup> *BBC News*. 9 March 2018. Retrieved 12 March 2018.

the cases of euthanasia is not considered reliable. It is felt that a terminally ill patient who suffers from unbearable pain should be allowed to die. Indeed, spending valuable time, money, and facilities on a person who has neither the desire nor the hope of recovery is nothing but a waste of the same. At this juncture it would not be out of place to mention that the “liberty to die”, if not right in strict sense, may be read as part of the right to life guaranteed by Article 21 of the Constitution of

India. Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India* legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. Here it is sought only to agree for the legalization of voluntary (both active and passive) euthanasia. This is because though there may be some cases of non-voluntary or involuntary euthanasia where one may sympathize with the patient and in which one may agree that letting the patient die was the best possible option, yet it is believed that it would be very difficult to separate each cases from the other cases of non-voluntary or involuntary euthanasia. Thus, it is believed that the potential of misuse of provisions allowing non-voluntary and involuntary euthanasia is far greater than that of the misuse of provisions seeking to permit voluntary euthanasia.

It is submitted that in the present scheme of criminal law it is not possible to construe the provisions so as to include voluntary euthanasia without including the non-voluntary and involuntary euthanasia while expressly prohibiting non-voluntary and involuntary euthanasia. Coming back to the argument of the opponents of euthanasia that any legislation legalizing voluntary euthanasia would lead to a misuse of the provisions, I would now like to present a scheme by which such misuse could be minimized. The risk and fear of misuse and abuse could be done away with proper safeguards and specific guidelines.

Though in this regard the guidelines given in the *Aruna's* case are there and guidelines will continue to be the law until Parliament makes a law on this point. In spite of those some suggestions are given below to check the misuse –

1. The circumstances in which it would be lawful for a medical practitioner to cease or to authorize the cessation of life-sustaining treatment of a patient who has no spontaneous respiratory and circulatory functions or whose brainstem does not register any impulses.
2. A euthanasia request should come from a patient suffering from unbearable pain from an incurable condition, the physician must follow certain ‘due care’ criterion. He must –
  - (i) Be convinced that request was voluntary, well consider and lasting.
  - (ii) Be convinced that the patient was facing unremitting and unbearable suffering.
  - (iii) Have informed the patient about his situation and prospects.
  - (iv) Have reached the firm conclusion with the patient that there was no reasonable alternative solution.
3. The right of medical practitioner responsible for the treatment of a terminally ill patient to increase the dosage of medication, with the object of relieving pain and distress, even if the secondary effect of this may be to hasten the patient’s death.
4. Terminate life should be in a medically appropriate fashion. Like that the practice is to administer an injection to render the patient comatose, followed by a second injection to stop heart.
5. A person who is going to die;
  - (i) Must completely understand what will happen.
  - (ii) Must know about all other kinds of treatment.
  - (iii) Must freely repeat their wish to die over a period of time.
  - (iv) Must be suffering from something that will not stop or go away.

6. Whether it would be lawful for a medical practitioner to act on the request of a well informed, mentally competent and terminally ill patient to end his/her suffering by administering or providing a lethal agent.
7. There should be an explicit and repeated request by the patient which leaves no reason for doubt concerning his desire to die; mental and physical suffering of the patient must be very severe with no prospect of relief.
8. The circumstances in which a Court may order the cessation of medical treatment or the performance of any medical procedure which would lead to the termination of a patient's life.

## CONCLUSION

No such law could be guaranteed to be free to the possibility, if not the likelihood, of abuse, chiefly centered on the lives of other sick persons who did not want their lives taken. An especially dangerous aspect is that such abuse may be easily made undetectable. Thus although mercy killing appears to be morally justifiable, its fool-proof practicability seems near to impossible. After the *Gian Kaur's* case, suicide has become illegal per se, but the same could not be said for euthanasia. Recently the judgment of our Supreme Court in *Aruna Ramchandra*

*Shanbaug v. Union of India* legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. In view of the discussion above I believe that voluntary euthanasia should also be allowed in India and that the legislature should step in and make a special law dealing with all the aspects of euthanasia. So we need a law to legalize euthanasia with adequate safeguards. The recommendations laid down in the Reports of Law Commission of India and guidelines given in the Aruna's case are to be taken into consideration when any law on that point is to be framed to prevent the mal practices and misuse of euthanasia. Besides, if the suggestions laid down above are implemented then the chances of misuse of euthanasia would be greatly reduced.