



A PATIENT'S DILEMMA: NAVIGATING EUTHANASIA LAWS IN INDIA

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Abstract: According to the renowned legal philosopher and jurist, Hans Kelsen, all the laws in a society are based on an ultimate norm or the fundamental norm, called the Grundnorm. The Constitution of India is the Grundnorm or the ultimate norm to which all the other laws must subscribe. Article 21 of the Constitution, also known as the “watershed article”, guarantees the protection of the right to life and personal liberty. The present study investigates the question as to whether the right to life also provides for the right to die with special reference to the concept of Euthanasia in India, also termed as Mercy Killing. This research paper also lays down the various kinds of Euthanasia and the laws pertaining to Euthanasia in India. It is expedient to mention that this study lays down the various theories which deal with the perception of Euthanasia in the society.

Keywords : Euthanasia, Mercy killing, Physician assisted suicide, Euthanasia Laws in India, The Right to Die.

I. INTRODUCTION

Former Chief Justice Chandrachud has rightly remarked, “*The right to decide for ourselves to die without suffering is the last vestige of dignity we can afford ourselves.*”¹ There has been a constant and unending struggle among the people pertaining to survival. The need to have a healthy life and the urge to have all the necessary medical facilities in case of any unfortunate event is yet another point of concern. The Constitution of India provides for the preservation of life and protection against arbitrary deprivation of life thereby protecting the inherent value and worth of every human life. Hence, we can see that a dignified life is the basic necessity of every human being. But one must ruminate about the situation when the dignity no longer remains in the life. Rather, death becomes the last resort to provide peace by terminating all the sufferings of a human being. A rape victim who has gone in a persistent vegetative state or a person who has been comatose for an extremely long period of time cannot follow all the normal pursuits of life. Rather, they are strapped to a hospital bed and are reluctantly awaiting a moment where they will be free from all the shackles that are holding them back. EUTHANASIA, commonly known as the The Right to Die, is one such necessary evil which can help in the restoration of the dignity to such persons. If we talk about the etymology, it is composed of two root words of the Greek language, namely, *eu* and *thanatos*, which combined together means well death or easy death. The Oxford Dictionary has defined Euthanasia as “the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.”

¹ Krishnadas Rajagopal, *Passive Euthanasia : Enter the dark tunnel of death with dignity, says SC*, Available at : <https://www.thehindu.com> (Last updated on December 01, 2021)

II. OBJECTIVES OF THE STUDY:

- To describe the meaning of Euthanasia.
- To illustrate the different types of Euthanasia.
- To investigate into the legal framework including the legislation and the judicial pronouncements pertaining to euthanasia.
- To explain the various ethical theories and their relationship with euthanasia.
- To critically examine the arguments in favour of and against euthanasia.
- To draw a conclusion based on the research work.

III. RESEARCH METHODOLOGY USED:

The researcher has conducted a descriptive research which is used to define the characteristics of a particular research problem. For the analysis and interpretation of data, the researcher has used qualitative technique of research methodology. This technique of analysis is non-numerical in nature and it has helped the researcher gain in-depth insights on the concept of Euthanasia and the various Indian laws and cases associated with it. The data collected is usually secondary in nature and has been collected from various articles, blogs, websites, journals etc. At the end of the research, the researcher has interpreted this data by drawing conclusions and giving logical suggestions.

IV. SCOPE:

The study conducted by the researcher is a Doctrinal Research. Thus, the study mainly involves the laws, legal framework, legislative provisions and the judicial pronouncements pertaining to the Euthanasia.

V. LIMITATIONS OF THE STUDY:

It must be mentioned that the research conducted by the researcher pertaining to Euthanasia is strictly limited to Indian laws. The researcher has made no attempt to analyse any foreign laws or judicial pronouncements explaining the current status pertaining to Euthanasia in the other countries.

VI. WHAT IS EUTHANASIA:

Euthanasia can be defined as the process of intentionally putting an end to the life of a person, in most of the cases, a hopelessly sick or injured patient who has been suffering from prolonged pain and is unable to perform the basic functions of life. Usually, it is the termination of the life of a patient upon a request made to the doctor due to which it is also termed as physician assisted suicide. Some of the countries in which Euthanasia is legalized are Belgium, Canada, Colombia, Luxembourg, The Netherlands, New Zealand, Western Australia etc. It is pertinent to note that Euthanasia is a point of debate pertaining to the various social and ethical theories. Some people argue that it is a necessary evil and must be administered to the patients in order to put an end to their sufferings while others argue that it is a “method of killing” another individual and such a practise must not be encouraged. Hence, we can say that there exists a legal paradox regarding who should have the authority to end a person's life. Should this power be vested in a physician or exclusively with legal authorities that impose the death penalty, as outlined in Article 21 of the Indian Constitution? This Article ensures the right to life while also allowing for its deprivation through the due process of law.

VII. HOW DOES THE SOCIETY PERCEIVE EUTHANASIA?

Gunnar Myrdal has rightly exclaimed, “*Social taboos are shy like virtue; once lost, there is no remedy*”. It is expedient to mention that the concept of mercy killing of Euthanasia is neither a point of general discussion nor an aspect which is mentioned by the people in their day to day lives. Rather, it is a concept which is backed by emotional, psychological and physical pain and sufferings. The process of administering Euthanasia is too grave and horrible to be talked about among the common masses. People may see it as a taboo to talk about the concept of mercy killing openly. Hence, it appears that there are multiple reactions in the society associated with this phenomenon. Some of these can be discussed with the help of the theories given below:

❖ NATURAL LAW THEORY:

There are various scholars who have supported this theory such as Martin Luther King Jr., Mahatma Gandhi, John Locke, Albert the Great, St. Thomas Aquinas, Cicero, Plato and Aristotle. Etymologically, it is derived from the Latin term, "*lex naturalis*" which indicates natural law. This theory is characterized by the universality of the rights and values which are inherent in the human behaviour. To simply narrate, the natural law theory states that the human beings possess a certain intrinsic or inherent sense of judgement which helps them distinguish between the right and the wrong or the good and the evil. If we talk about mercy killing, this theory would not consider it as a process of "letting go of the pain and suffering" rather it will consider it to be "an abomination or a heinous act of the destruction of human life at the hands of the doctor". The followers of natural law theory consider it an immoral act and do not approve it.

❖ UTILITARIANISM:

The main exponents supporting this theory are Jeremy Bentham, John Stuart Mill, Richard Cumberland, John Gay and Henry Sidgwick. This is yet another ethical theory which narrates the relation between the concept of mercy killing and the adjacent reaction of the society towards this phenomenon. It is expedient to mention that this theory is primarily concerned with the consequences rather than the behaviour. The theory believes in "*the greatest amount of good for the greatest number of people*"². As far as the mercy killing is concerned, the Greatest Happiness Principle under this theory is in conformity with Euthanasia. A patient who cannot do anything on his own and who has lost all control over his body can never be considered as a happy person. Rather, it is mortifying to even think about living a life surrounded by the artificial support systems that tend to keep the heart and brain alive with no movement of any other part of the body even with the greatest endeavors. Hence, this theory approves Euthanasia. But mention must be made of the "slippery slope" doctrine. Under this doctrine, it is stated that Euthanasia must be practised as a last resort rather than a generally accepted custom. Also, the casual attitude towards this process may lead to an increase in number of patients administered with it and that too using extreme or dangerous methods without showing concern towards the consent of the patient or his family.

❖ DEONTOLOGY:

Etymologically, the word "deontology" is derived from two Greek words, namely, *deon* which means duty and *ology* which means the science or the study of. The great philosophers dealing with the deontological principles are Sir Immanuel Kant and Sir David Ross. There stands a wide contradiction between the the concept of deontology and consequentialism, also called the teleological ethics. Under the theory of deontology, the fact whether an act is moral or immoral is based on the rules and the deciding factors which itself state the action to be right or wrong or good or evil irrespective of its consequences. In other words, we ought to or ought not to do such acts. On the other hand, the righteousness of an act done under the concept of consequentialism is based on the consequences of that act rather than the act itself. If we address the concept of Euthanasia with reference to deontology, it can be taken as act which is to be performed in the best interest of the people seeking the mercy killing. It addresses the duty of the doctor to choose the right path and do what is in the best interest of the patient. Hence, where the doctor must remove the life supporting systems, it must be seen as an act done to assuage the excruciating pain of the patient.

❖ KANTIANISM:

This theory is a philosophical theory developed by Immanuel Kant, a German philosopher. It is imperative to mention that this theory is a broader perspective of the theory of deontology. Kant argued that "actions are morally right if they are made out of a sense of duty and if the guiding principle of the action can be applied universally."³ It means that a person's actions must be based on the principles that guide the human behaviour and must be universally accepted. It is the duty of every individual to make rational and ethical decisions and such decisions must not be based on his inherent desires or motive to gain advantage over others. Upon relating the concept of mercy killing with that of Kantian Ethics, it is pertinent to note that this theory is opposed to

² Carla Tardi, *Utilitarianism: What It Is, Founders, and Main Principles*, Available at : <https://www.investopedia.com/terms/u/utilitarianism.asp> (Last updated on May 06, 2024)

³ Jeff Schmidt, *Kantian Ethics*, Available at : <https://corporatefinanceinstitute.com/resources/esg/kantian-ethics/> (Last Modified on May 07, 2024)

administer Euthanasia. There are some Kantian axioms⁴ which support the above-mentioned statement. One such axiom is the connection between law and morality. It is not necessary that every lawful act shall be moral or ethical. We are well aware of the fact that it is our ethical duty to preserve the human life and this is a universally accepted duty. But it must be noted that administration of euthanasia to patients is not universally accepted as an ethical duty and is done only in extreme circumstances. Another point of contradiction is the categorical imperative under this theory. It can be defined as the criteria to determine whether an action is good or bad. Just like the deontological theory, the Kantian ethics have opposed Euthanasia based on the belief that the consequences if an act, no matter how good, would never justify the act.

❖ SOCIAL CONTRACT THEORY:

Human beings are social animals. They live together in a society and depend on each other to fulfil their needs and to provide their support to others in return. Under the Social contract Theory, it is laid down that people live together in the society as a result of an implied agreement entered into by them to live with each other and follow the moral code of conduct towards others. This theory is considered to be the most dominant moral and political theory with Hobbes, Jean-Jacques Rousseau and Locke as its main propounders. Under this theory, the philosophers have stated that there existed a time where people lived without the existence of State or government. Thus, such a setup where there was absence of state or government was called “state of nature”. People then voluntarily entered into an implied agreement between themselves and the administrator of the government whereby they sought protection as per the agreement between the ruler and the ruled. One of the most prominent exponents of Social Contract Theory is John Keown. In his book, he has given several arguments against legalization of the physician assisted suicide. He has laid down the three main competing views pertaining to the value of human life. They are “Vitalism”⁵, “Sanctity/Inviolability of life”⁶ and “Quality of life”⁷. The term vitalism denotes that the human life has an absolute moral value and because it is of utmost importance, it would be wrong to shorten the life of a patient or fail to strive to lengthen it. Hence, the human life must be preserved at all costs. Sanctity or inviolability denotes the intentional shortening of the life of the patient. Any conduct which is done with the intention to shorten the life of the patient is wrong. The third approach under this theory given by Sir John Keown is Quality of Life. The doctrine of Quality of Life is based on the assessment of not only “*the worthwhileness of the treatment given to the patient but also the worthwhileness of the patient’s life*”⁸. In simple words, there are cases where the doctors support the procedure of Euthanasia where the lives of some patients fall below the quality threshold owing to some disease, injury or illness. In order to explain this approach, he has referred to an important case law in his book, namely,

*Airedale NHS Trust v Bland*⁹

In this case, the House of Lords applied the reasoning that a doctor could treat an incompetent patient only if it is in the best interest of that patient. Tony Bland was in a persistent vegetative state and it was found by the doctors that continuous tube feeding and treatment were no longer in his best interest. Hence, it was concluded that he should no longer be provided treatment. Keown critically analyzed this judgement and exclaimed that the presiding authorities have unwittingly shifted the emphasis of law from inviolability of life to Quality of life, thereby, accepting that “*certain lives are of no benefit and may lawfully be intentionally terminated by withholding or withdrawing treatment.*”¹⁰

⁴ Dr. Bijay Kumar Sarkar, *A SHORT MORAL ANALYSIS OF EUTHANASIA: KANTIAN AND INDIAN*, Volume 6, *International Journal of Creative Research Thoughts (IJCRT)*, 501 (2018)

⁵ John Keown, *Euthanasia, Ethics and Public Policy: An Argument against Legalisation*, p. 37 (Cambridge University Press, United Kingdom, 2nd edn., 2018)

⁶ *ibidem*

⁷ *Ibidem*

⁸ *Ibidem*, p. 43

⁹ [1993] AC 789

¹⁰ Vaishakhi Rajanayagam, *Keown Euthanasia, Ethics and Public Policy: An Argument against Legalisation*, p. 171-172, (Australasian Legal Information Institute), Available at : <https://www.austlii.edu.au/au/journals/UQLawJI/2002/16.pdf> (Last updated on November 28, 2008)

VIII. WHAT ARE THE VARIOUS KINDS OF EUTHANASIA?

In order to understand the various kinds of Euthanasia, we must first understand the meaning of the following terms:

Physician Assisted Suicide - It is when the patient or the patient who is willing to put an end to his life performs the process of doing so by himself, on the advice, assistance or guidance of a physician. For instance, where the physician prescribes a lethal dose of medicine to accelerate the death of the patient which he has to consume on his own. The patient self-administers the drug and the doctor or the medical practitioner or the physician shall intentionally provide aid to the patient by prescribing the drug.

Mercy Killing, (also known as Euthanasia) - This is the process in which the doctors or the medical practitioners take the action of putting an end to someone's life by consulting with the patient and his close relatives. Thus, we can say that a person is "killed" by another.

The various kinds of euthanasia are given below:

- **Active Euthanasia :**

This can be defined as the kind of Euthanasia which is associated with the effort of a person to cause his or her own death or the death of another. There are three forms of Active Euthanasia, namely, suicide, assisted suicide and mercy killing. In all these three forms, the medical cause of death is not associated with any disease or injury, rather it is the result of a fatal action taken. For instance, injecting the patient with a lethal dose of medicine or a doctor deliberately giving a patient an overdose of pain medication or sedatives to end their lives.

- **Passive Euthanasia:**

This type of Euthanasia has a lesser degree of severity as compared to the Active Euthanasia. Here, the death of the patient is intended not by the introduction of any lethal substance in his body. Rather, it intends death by withholding (including withdrawing or refusing) available medical treatment or other care that clearly could enable a person to live significantly longer. Another expression used for this practise is "intentionally fatal withholding"¹¹. This expression is somewhat morally problematic and so it must not be confused with the intentional and legitimate withholding of the useless treatment, which even when provided to the patient, would certainly not help in averting the imminent death.

The Active and Passive Euthanasia can be further classified into the following three sub-categories:

- ✧ **Voluntary Euthanasia -**

Here, the active or the passive Euthanasia is administered only after procuring the due consent of the patient. His desire is honored by the one administering the Euthanasia. Thus, we can say that it is at the request of the patient that his life is put to an end upon his clear and express refusal to continue with the prolonged life treatment.

- ✧ **Involuntary Euthanasia -**

Here, the active or the passive Euthanasia is administered to the patient without his will or consent. His desire to continue with his life and undergo further medical treatment is not honored. Hence, it can be said that under this type of Euthanasia, the patient has explicitly refused to put an end to his life irrespective of the worthwhileness of his life or the worthwhileness of the medical treatment ought to be provided to him.

- ✧ **Nonvoluntary Euthanasia -**

Here, the patient is administered with the active or the passive Euthanasia without taking any note of the wishes or desires of such a patient. The person is killed by another who has no knowledge of what the patient truly wants. This may be because the express desires of the patient cannot be procured due to various reasons such as the state of comatose, unconsciousness or inability to speak or communicate by gestures due to any

¹¹ Gary P. Stewart, D. Min., "Basic Questions on Suicide and Euthanasia : Are They Ever Right?", p. 24 (United States of America, Kregel Publications, 1998).

illness, disease or inability etc. Another reason might be when the person administering Euthanasia is not willing to take note of the express desires of such a patient.

It is pertinent to note that in India, there are certain guidelines which are required to be followed while dealing with the cases falling within the ambit of Euthanasia.

IX. LAWS IN INDIA ASSOCIATED WITH EUTHANASIA:

Given below are the laws associated with Euthanasia in India:

Article 21 of the Constitution of India:

Euthanasia, or mercy killing, is the practice of intentionally ending a life to relieve pain and suffering. India has grappled with the ethical, moral, and legal implications of euthanasia. Article 21 of the Indian Constitution, which guarantees the "Right to Life and Personal Liberty," has been interpreted by courts to have implications for euthanasia. The relationship between Article 21 and euthanasia continues to evolve through court judgments and societal discussions, balancing individual autonomy with the state's interest in protecting life.

Article 14 of the Constitution of India:

Article 14 guarantees the "Right to Equality," and has implications for euthanasia laws and debates. The relevance of Article 14 to Euthanasia includes Equal protection under the law ensuring that all individuals, including those seeking euthanasia, are treated equally and without discrimination. Further, there is a prohibition on the discrimination based on factors like age, health, disability, or terminal illness, ensuring equal access to euthanasia options. Also, Article 14 protects individual autonomy, enabling persons to make informed decisions about their own life and death.

Bharatiya Nyaya Sanhita :

Under the Indian Penal Code, 1860, attempt to commit suicide was made a punishable offence under **Section 309**. The section went under constant examinations related to the controversy of it being a constitutionally valid provision or not but at the end of such examination, it was rightly concluded that attempt to commit suicide was a punishable offence and that Section 309 was constitutionally valid. This conclusion directed towards the validity of Euthanasia or the Physician Assisted Suicide. The controversy was finally resolved when the Hon'ble Supreme Court laid down that Passive Euthanasia was valid and did not fall within the ambit of a punishable act. Hence, for a valid termination of life or for the proper enforcement of the right to die, one shall have to follow the directions laid down by the Hon'ble Supreme Court. The old Indian Penal Code was replaced by Bharatiya Nyaya Sanhita and the position of suicide as a punishable offence was changed. The new law removes the section of attempt to commit suicide from the statute books but it doesn't entirely decriminalize the offence of attempting to die by suicide. **Section 224 of the BNS** states that whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service. So, an attempt to commit suicide remains a punishable offence if it is made to stop a public servant from acting.

Other laws:

The other laws pertaining to Euthanasia include the following:

- ✧ ***Euthanasia (Regulation) Act, 2018*** which regulates passive euthanasia and living wills,
- ✧ ***The Medical Treatment of Terminally Ill Patients (Protection of Patients' Rights) Act, 2018*** which allows passive euthanasia with safeguards,
- ✧ ***Universal Declaration of Human Rights (UDHR), 1948***, Article 3 - Right to life, liberty, and security,
- ✧ ***International Covenant on Civil and Political Rights (ICCPR), 1966***, Article 6 - Right to life,
- ✧ ***European Convention on Human Rights (ECHR), 1950***, Article 2 - Right to life and Article 8 - Right to private life,

- ✧ *Maharashtra Act No. XXXVIII of 2009* which permits withdrawal of life support in exceptional cases,
- ✧ *Mental Healthcare Act, 2017* which protects rights of mentally ill patients,
- ✧ *Indian Medical Association (IMA) Guidelines on Euthanasia* whereby Ethical guidelines for medical professionals are laid down.

X. JUDICIAL PRONOUNCEMENTS ASSOCIATED WITH EUTHANASIA:

In order to understand the right to die, we must first understand the right to live. It is expedient to mention that the Fundamental Rights guaranteed under Part III of the Constitution of India were implicitly granted to the people even before the enforcement of the Constitution. These rights were inherent in every human being in the form of natural rights which are vested with every individual by birth. Hence, it can be rightly said that the Constitution has merely given the right to life a concrete form and the capability of being enforced in a court of law. But the right to life was already prevalent among the people as an unalienable right.

The right to life and personal liberty is enshrined under Article 21 of the Constitution of India. In order to understand the right to die, we must first understand the right to life in consonance with the right to live with dignity.

Article 21 of the Constitution of India states that, "No person shall be deprived of his life and personal liberty except in accordance with the procedure established by law". In the case of **Francis Coralie Mullin v The Administrator**¹², it was held that Article 21 of the Constitution of India embodies a constitutional value of supreme importance in a democratic society.¹³

In the case of **Kharak Singh v State of UP**¹⁴, the Hon'ble Supreme Court gave a further interpretation of the term "life" and held that the right to life shall not mean only mere animal existence, rather it extends to the having of all the limbs and faculties by which a person enjoys his life. Hence, this judgement laid emphasis on the prohibition of mutilation, destruction or loss of working capacity of any part of the body which would otherwise deprive a person of his right to live with dignity.¹⁵

In the case of **Maneka Gandhi v Union of India**¹⁶, the Hon'ble Supreme Court gave a new dimension to the right to live with dignity, on the basis of the judgment given in Kharak Singh's case. It was held that the right to live with dignity shall include the provision of the bare necessities of life such as food, clothing, shelter and such other activities as may be carried out in order to constitute the bare minimum expression of human self.¹⁷

Now, the main controversy arises as to whether a person has the right to die or not. For this, we must start from the early stage when such a controversy began. It was during the prevalence of the Indian Penal Code when the question arose as to whether then attempt to commit suicide must be made punishable. A variety of judicial pronouncements paved the way in deciding the constitutional validity of Section 309 of the Indian Penal Code that provided for the punishment for attempt to commit suicide. The concerned case laws can be summarized as given below:

¹² AIR 1981 SC 746

¹³ *Drishti The Vision Foundation, India, Right to Live with Dignity, Available at : <https://www.drishtijudiciary.com/current-affairs/right-to-live-with-dignity> (Last visited on January 17, 2024)*

¹⁴ AIR 1963 SC 1295

¹⁵ *Drishti The Vision Foundation, India, Right to Live with Dignity, Available at : <https://www.drishtijudiciary.com/current-affairs/right-to-live-with-dignity> (Last visited on January 17, 2024)*

¹⁶ 1978 AIR 597, 1978 SCR (2) 621

¹⁷ *Riya Jain, Article 21 : Understating the Right to Life and Personal Liberty from Case Laws - Academike Explainer, Available at : <https://www.lawctopus.com/> (Last updated on January 30, 2024)*

■ ***P. RATHINAM v UNION OF INDIA***¹⁸

Section 309 of the Indian Penal Code laid down the punishment for attempt to commit suicide as imprisonment for a maximum period of one year. The constitutional validity of this provision was challenged in this case. The Hon'ble Supreme Court analyzed this provision by drawing a parallel comparison with the other provisions of the Constitution. It was said that just like Article 19 of the Constitution of India provided us the right to freedom of speech, it simultaneously provided with the right not to speak. Similarly, just like Article 21 of the Constitution provided us with the right to life, it also simultaneously provided us with the right not to live. Hence, the right to die was implicit under this provision of the Constitution of India and Section 309 was declared as unconstitutional.

■ ***GIAN KAUR v STATE OF PUNJAB***¹⁹

In this case, Gian Kaur and her husband Harbans Singh were charged and convicted by the Trial Court under Section 306 of the Indian Penal Code (punishment prescribed for abetment of suicide extended upto imprisonment of 10 years and with fine) for aiding and abetting the suicide of Kulwant Kaur. It was argued by the defendants that the right to life included the right to die and so a person who was abetting the suicide of another person was merely assisting in the enforcement of the right to die. The Hon'ble upreme Court overruled the judgement of P. Rathinam and laid down that right to life does not include the right to die but it shall include the right to live with dignity. Thus, Section 309 of the Indian Penal Code was held to be not violative of Article 14 and 21 of the Constitution of India and that any attempt to end one's life against the natural order or any act done to cause premature death shall be against the divine principles and shall be liable for punishment.

■ ***SEVENTEENTH LAW COMMISSION REPORT***

The Seventeenth Law Commission report discussed two important aspects concerned with Passive Euthanasia. While discussing the judgement of Gian Kaur v State of Punjab, the case of *Airedale NHS Trust v Bland*²⁰ was also addressed. In this case, the House of Lords applied the reasoning that a doctor could treat an incompetent patient only if it is in the best interest of that patient. Tony Bland was in a persistent vegetative state and it was found by the doctors that continuous tube feeding and treatment were no longer in his best interest. Hence, it was concluded that he should no longer be provided treatment. Another aspect discussed in this report related to the General Exceptions under the Indian Penal Code. It was laid down that a doctor acting under the express desires of the patient suffering from terminal illness or in the best interest of the patient in a coma or in a persistent vegetative state shall be made liable for the offence of causing death such a patient and shall be given the benefit of exemption under the General Exceptions. Also, the Law Commission referred the case of *Jacob Mathew v State of Punjab*²¹ and laid down that withholding or withdrawing the treatment in the best interest of the patient shall cannot be called as an act of gross-negligence under Section 304-A of the Indian Penal Code.

■ ***SEVENTEENTH LAW COMMISSION REPORT NO. 196***²²

Under this report, the Law Commission gave certain recommendations pertaining to Euthanasia. This report was on the Medical Treatment to Terminally Ill Patients (Protection of patients and Medical Practitioners). It is crucial to highlight that this report was not dealing with Euthanasia or assisted suicide and clarified that they must continue to be offences under the law. But the scope of enquiry of this report extended to the following two aspects:

¹⁸ 1994 SCC (3) 394

¹⁹ AIR 1996 SUPREME COURT 1257

²⁰ [1993] AC 789

²¹ AIR 2005 SUPREME COURT 3180

²² Law Commission of India, "196th Report on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) (2006)" Seventeenth Law Commission (Chairman Mr. Justice M. Jagannadha Rao 2003-2006)

1. To examine into the various legal concepts that must be applicable in case of withholding or withdrawing the treatment to the terminally ill patients if the doctor opines that it would be in the best interest of the patient.
2. To determine the circumstances as to when the doctor or the concerned medical professional could withhold such treatment.

The Chairman of the Law Commission made the following observations:

a) *INFORMED DECISION:*

In earlier times, when there was not much advancement in the technology or the medicine, the patients who were suffering from terminal illness had to meet their fate someday. But now, with the development of modern medical science and technology, the patient can take an informed decision to die naturally and to not be subjected to any medical treatment if he is competent to inform and communicate his decision.

b) *PALLIATIVE CARE:*

Also, we know that due to the development in medicine and technology, there may be an increase in the duration of life of the terminally ill patients but such a procedure may prove to be painful and insufferable, due to which the patient may choose to have the palliative care for reducing the pain rather than going through the painful medical procedure.

■ *NIETEENTH LAW COMMISSION REPORT NO. 241* ²³

The title of this report was “Passive Euthanasia- A Relook”. This report was based on the case of Aruna Shanbaug and laid down further clarifications with respect to the 196th report. The report laid down the recommendation that a person above 16 years of age and suffering from terminal illness shall have the right to decide as to whether he wants to continue or withhold the treatment. Where the patient is unable to communicate an informed decision, it shall be decided by the relatives of such a patient or by the doctor treating such patient but the same shall have to be approved by the High Court. An important point to note here was that irrespective of whether the medical treatment is withheld, the doctors are required to mandatorily give the palliative care to the patient.

■ *ARUNA RAMCHANDRA SHANBAUG vs UNION OF INDIA* ²⁴

Facts of the case:

This is a landmark judgement pertaining to right to die via administering Euthanasia. Aruna was a nurse working at King Edward Memorial Hospital, Parel, Mumbai. On 27th November, 1973 she went to the hospital basement to change her clothes when one of the hospital janitors strangled her with a dog chain and committed rape on her. Due to this attack, the oxygen supply to her brain was cut off that led to the brain stem contusion (a bruise on the brain stem that damages the brain tissue), cortical blindness and cervical cord injury. She was found the next morning by one of the staff in the hospital lying on the hospital floor in a pool of blood.²⁵

When she was taken to the hospital, the doctors declared that she was in a permanent vegetative state (PAS). After around 36 years, her next friend, Ms. Pinky Virani, filed a petition for mercy killing under Article 32 of the Constitution of India claiming in her petition that the victim was in persistent vegetative state since the incident and that she was virtually dead. She had been unable to move her limbs and was put on a mashed food diet. Also, it had been declared by the doctors that she had no chances of recovery. The petitioner requested the court to stop any further feeding to the victim and to let her die peacefully. The Supreme Court accepted this petition owing to the public interest in determining the legality of Euthanasia.

²³ Law Commission of India, “241st Report on Passive Euthanasia - A Relook (2012)” Nineteenth Law Commission (Chairman Mr. Justice P.V. Reddi 2009-2012)

²⁴ AIR 2011 SUPREME COURT 1290

²⁵ Gauri Gupta, Aruna Ramchandra Shanbaug vs. Union of India & Others (2011), Available at : <https://blog.ipleaders.in/aruna-ramchandra-shanbaug-vs-union-of-india-others-2011/> (Last modified on September 13, 2024)

On the other hand, the respondents (dean of the hospital) argued that almost 36 years had passed and the hospital staff had developed an emotional bond with the patient. Also, she was not fully numb towards her surroundings and was able to respond to many things through her small gestures and sounds such as smiling or blinking. One of the hospital members had even agreed to take care of her without any remuneration and that after attaining the age of 60 years, she would have a natural death. It was further argued that it was immoral and illegal to take away someone's life under Article 21 of the Constitution of India.

Issues raised by the court:²⁶

- Whether Article 21 of the Indian Constitution include the Right to die embedded within the Right to Life?²⁷
- What is the difference between passive and active euthanasia?²⁸
- Whether a person incapable to provide consent, be bestowed non-voluntary passive euthanasia?²⁹
- Whether suicide should be considered as a crime under Section 309 of IPC?³⁰

Given below are the important points laid down in this judgement:

- i. The court in this case made a clear distinction between Active and Passive Euthanasia.
- ii. The court also opined that Section 309 of the Indian Penal Code must be scrapped out because a person attempts to commit suicide as a result of depression, trauma or any problem in the mental faculty. Such a person should be provided with medical aid, therapy and counselling rather than punishment.
- iii. The court shall act as "parens patriae" in case of patients who are in persistent vegetative state and are unable to inform their decision pertaining to the withdrawal of treatment.
- iv. Active Euthanasia involving the direct introduction of lethal substances in the body would be considered as a clear violation of Section 302³¹ and Section 304³² of the Indian Penal Code.
- v. The physician assisted suicide is prohibited shall be considered as a crime under Section 309³³ of the Indian Penal Code.
- vi. On the other hand, the court legalized Passive Euthanasia and stated that it was not an act rather an omission of the act by the withdrawal of the life support system (such as switching-off the ventilator).
- vii. The decision pertaining to the withdrawal of the life support could be made by the High Court under Article 226 of the Constitution of India.
- viii. Upon receiving an application for Passive Euthanasia, the High Court is required to make a Bench to hear the committee of three reputable doctors who shall prepare and submit a report to the bench regarding the concerned case.

²⁶ *Garvita Garg and Sanskar Pradhan, Case Analysis v/s Union of India, Available at :*

<https://www.legalserviceindia.com/legal/article-12094-case-analysis-on-aruna-shanbaug-v-s-union-of-india-.html>

²⁷ *Ibidem*

²⁸ *Ibidem*

²⁹ *Ibidem*

³⁰ *Ibidem*

³¹ *Section 302, IPC - Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.*

³² *Section 302 IPC - Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.*

³³ *Section 309, IPC - Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.*

- ix. A notice issued by the Bench shall be forwarded to the state and the family members of the patient after conducting a thorough examination of the patient.
- x. The Passive Euthanasia shall be permitted only in “the rarest of the rare circumstances” (in this case, the Passive Euthanasia was denied as the KEM Hospital staff taking care of Aruna refused to withdraw her treatment but the staff was given an option to administer Passive Euthanasia in case they change their mind, after consultation with the Bombay High Court).

■ **COMMON CAUSE (A REGISTERED SOCIETY) v UNION OF INDIA**³⁴

This was another important judgement that laid down the validity of the right to die. The court referred the judgement of *Ks Puttawamy & Anr. v Union Of India*³⁵, whereby it was held that the right to privacy was an intrinsic part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The court opined that the right to privacy was a safeguard which protected the individual autonomy in making the personal choices or intimate decisions pertaining to life or death. Hence, the right to die is further protected within the sphere of the right to privacy which in turn is protected by the right to life and personal liberty under Article 21 of the Constitution of India

■ **MODIFIED GUIDELINES BY THE HON'BLE SUPREME COURT IN COMMON CAUSE v UNION OF INDIA**³⁶

On 24th January, 2023, a 5-Judge Constitution Bench of the Hon'ble Supreme Court led by K.M. Joseph and consisting of Ajay Rastogi J, Aniruddha Bose J, Hrishikesh Roy J, C.T. Ravikumar J delivered an important judgement making alterations in the guidelines laid down in 2018 pertaining to Passive Euthanasia. Such alterations are given below:

1. Before, the living will (a legal document containing the type and level of medical care and treatment an individual wants to receive in case he is not able to communicate his decisions owing to terminal illness) had to be attested and countersigned by the Judicial Magistrate but now it can be attested by a Gazetted Officer.
2. Before, the primary board of doctors consisted of at least four experts from general medicine, cardiology, neurology, nephrology, psychiatry or oncology with overall standing experience of 20 years. Now, the primary board shall consist of three doctors, out of which one shall be the physician in charge of treating the patient and two other doctors with an experience of at least 5 years in the said speciality.
3. Before, the District Collector had to constitute the secondary board of medical experts but now the hospital is required to do so.
4. Before, there was no outer limit with respect to time to decide for withdrawing the treatment. Now, the primary or the secondary board is required to take this decision within a period of 48 hours.

XI. ARGUMENTS AGAINST EUTHANASIA:

- The human life is sacred and it must be preserved at all costs. By allowing Euthanasia, the value of human life is diminished.
- It is expedient to mention that the slippery slope argument is quite effective when it comes to question the adverse effects of allowing Euthanasia. If it is allowed to be administered in one case, it may lead to a habitual practise or a casual attitude of euthanizing every patient.
- It is pertinent to note that the Hippocratic Oath taken by the medical professionals make the swear to preserve the human life and not to end it. Hence, the concept of mercy killing is against such fundamental principle.
- There might be some instances where the patients were wrongly diagnosed and due to such misconception, Euthanasia was administered to them, where in fact, they had the chances of recovery and probably a longer life span.

³⁴ (2018) 5 SCC 1, AIR 2018 SC 1665

³⁵ AIR 2017 SUPREME COURT 4161

³⁶ *Drishti The Vision Foundation, India, Passive Euthanasia, Available at : <https://www.drishtiiias.com/daily-updates/daily-news-analysis/passive-euthanasia-2> (Last visited on August 24, 2024)*

- Mention must be made of the ethical and cultural responses towards Euthanasia. This procedure might hurt the sentiments of people because it is not generally approved in the society.
- The authority to administer Euthanasia to a person is an extremely dangerous power vested with the medical practitioner. There may be chances of it being indiscriminately used, abused or even exploited by the person by keeping the life of the vulnerable patient at stake for his personal gain.

XII. ARGUMENTS IN FAVOUR OF EUTHANASIA:

- The most important argument supporting Euthanasia is the preservation of the right to die with dignity. An individual is endowed with the right to die a peaceful death rather than succumb to the prolong pain and suffering.
- The right to die also guarantees the preservation of the right to make decisions regarding life and death and protects the dignity and autonomy of an individual.
- It provides a permanent solution to the insufferable and intractable pain and suffering which cannot be alleviated by the palliative care or treatment.
- The terminal illness or the persistent vegetative state is not only painful for the patient but also excruciating pain for the family members to witness their loved ones in such a condition.
- There are a variety of patients who are in need of immediate care and attention. The legalization of Euthanasia tends to conserve the hospital resources for the other patients.
- It also helps in reducing the healthcare cost for the prolonged treatment of a patient with terminal illness.
- The legalization of Euthanasia also helps to establish a clear legal framework to be followed by the medical practitioners and prohibits any sort of underground practices or abuse of authority.

XIII. CONCLUSION:

Thus, the researcher can conclude with the words of Isaac Asimov, *“Life is pleasant. Death is peaceful. It's the transition that's troublesome.”* The right to die with dignity is not just a fundamental human right, but it can also be called as a profound act of compassion. One cannot imagine being trapped in a body ravaged by illness, feeling one's autonomy slip away with each passing day. Every breath is a struggle, every moment a testament to unbearable suffering. The mind cries out for release, but the body is held captive by the relentless march of disease. The right to die allows a person to escape this prison, to shed the weight of unrelenting agony and find peace. It's a choice that acknowledges our humanity, our capacity to feel, to love, and to decide our own fate. Denying this right forces individuals to endure unimaginable torment, reducing them to mere shadows of their former selves. By granting the right to die, we affirm the value of life, acknowledging that its quality, not just its quantity, matters. We show empathy for the suffering, compassion for the vulnerable, and respect for the autonomy of those who have lived a life worth living. It's a gift of mercy, a final act of kindness, allowing individuals to die with dignity, surrounded by loved ones, rather than alone in a sea of despair.

No agony can be greater for an individual than witnessing the slow and painful death of his loved ones. The terminal illness constantly devours the body of the patient on one hand and the mind of the relatives of such patient on the other hand. It is rather extremely disturbing to bear an excruciating pain of knowing that the person whom one loved a lot can neither wake up nor his body can respond without the artificial support. Every day, there are numerous persons who come as visitors during the meeting hours at the hospital just to witness their loved ones either crying in an unbearable pain or not responding at all. It is just a frozen look on the face of the patient and the families have to witness this with empty eyes and exhausted bodies. Hence, the emotional toll on the families of the patients is far worse than the patient himself who is comatose. Deep down, the people have lost faith in the survival of that person and here the right to be granted a peaceful death becomes crucially important.

Another important factor which the researcher would like to highlight is that there are a number of people who are in a dire need of treatment but they cannot have it or they suffer from unnecessary delay in their treatment. This is because the patients with terminal illness who are beyond the scope of even a scrupule of recovery have occupied the beds in the hospitals. Thus, the lack of beds and the problems of accommodating the patients in the hospital is a common issue which can be seen at various places. For such instances, it becomes a matter of grave importance to promote methods such as Euthanasia in order to afford accommodation to the patients

who actually need it. We can also look into the economic aspect of this situation because it takes a lot of investment in keeping the patient alive via the artificial mechanisms of the hospitals and that too, to no avail.

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