

Euthanasia: Law & Legislations

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ABSTRACT: “The debate over legalizing euthanasia, also known as the right to die, has been one of the most heated in recent years. The phrase ‘right to life’ refers to the ability to live one's life with human dignity, implying that such a right exists until the end of one's natural life and includes a dying person's right to die with dignity and respect. The right to die with dignity does not imply the right to die, which refers to the ability to end one's life in an unnatural way regardless of one's natural lifespan. As a result, the concept of having a right to one's own life is central to the debate over euthanasia. Euthanasia is a contentious medical practice because it involves the intentional termination of a human life. Patients suffering from diseases that eventually lead to death are frequently forced to endure excruciating pain as the disease progresses. This can be so upsetting for these patients that they choose suicide over enduring the agony of their illness. As a result, the question that must be addressed is whether people should be assisted in taking their own lives or whether they should be allowed to suffer through the agony of a terminal illness.

The historic ruling in the case of Aruna Ramchandra Shanbaug, which states unequivocally that passive euthanasia will only be permitted in cases of persistent vegetative state or terminal illness, provides part of the answer. The Supreme Court's decision in the "right to die" case of Aruna Shanbaug was a significant statement on the subject of attempted suicide. It was proposed that Parliament look into the possibility of decriminalizing suicide attempts, recognizing that someone who attempts to end his or her own life requires help rather than punishment. Section 309 of the Indian Penal Code would have to be repealed as a result. The Supreme Court's decision in the Aruna Shanbaug case appears to have broadly authorized passive euthanasia under certain conditions for terminally ill patients. This judgment, handed down seven years later, was reaffirmed in the case of Common Cause in a broader context by recognizing living wills and declaring the right to die with dignity as a fundamental right in harmony with the right to life as enshrined in the Constitution. The two landmark decisions on legalizing passive euthanasia in the context of the Nikhil Soni 'Santhara' case have received mixed reviews and present ethical and legal challenges. Furthermore, these decisions have paved the way for medico-legal challenges in areas such as the right to health, hospice and palliative care, and organ transplantation, to name a few”.

Keywords: “Euthanasia”, “Passive Euthanasia”, “Right to Die”

I. Introduction

In today's modern society, the question of a person's legal entitlement to the right to die has never been settled. Regarding the various religions practiced in India, the debate over this subject has been going strong for centuries. Despite its poor presentation, the message in this essay has a positive impact on the reader's life. To maintain its legitimacy, the state has a moral and legal obligation to ensure that its citizens have meaningful lives.¹

In response to the numerous cases presented before them, numerous Indian Judges have given the phrase "right to life" a range of interpretations over the years. Within its bounds, rights have already been separated. This includes the right to a respectable life, the right to food, the right to a clean environment, the right to a good roof over one's head, and a number of other rights. It must be decided immediately if the right to self-immolation is protected by the right to live in dignity. On this subject, numerous ethical, political, moral, and medical perspectives have been advanced. However, in the judgment of “State of Maharashtra v. Maruty Sripati Dubal”², it was decided that the right to die lies within the peripheral of the right to life, but later it was decided that this judgment should be overturned due to previous judgments.

"The right to die" refers to the freedom to end one's own life in a broader sense. Suicide and euthanasia are two methods that can help achieve this goal. Suicide attempts were made a crime with a potential jail sentence under Section 309 of the Indian Penal Code in 1860. Although it is widely accepted that someone who attempts suicide most likely has a mental illness, whether punishment for one's actions is appropriate is debatable. Euthanasia is another option for ending someone's life.

The History of the Law

The idea that everyone should be able to end their lives is not new in the modern world. People have been aware of this phenomenon since the dawn of human civilization. People have participated in the execution of others throughout the history of the Roman and Greek civilizations. This is demonstrated by the execution of infants suspected of having a congenital defect in the ancient Greek city of Sparta. In a number of ancient cultures, the concept of voluntary euthanasia, in which a person with their own consent performs euthanasia in the event of a terminal illness, was popular among the elderly. Euthanasia, also known as assisted suicide, was practiced. Suicide or self-destruction is discussed in numerous sacred texts, including the Rig Veda, the holy Bible, and the holy Koran. Numerous historical examples show that people in India have used religious justifications to

¹ Aruna Ramchandra Shanbaug vs. Union of India & Ors. Writ Petition (Criminal) no. 115 of 2009

² State of Maharashtra v. Maruty Sripati Dubal, 1987 Cri. L J 743 (Bomb).

exercise their right to die and commit suicide since the Vedic era. The Mahabharata and the Ramayana are two examples that clearly demonstrate this point. On the subject of euthanasia, Hindus typically hold a range of views. One school of thought holds that doctors who perform euthanasia should initially decline patients' requests because doing so would cause the patient to die unnaturally and separate his soul from his body. This behavior will bring bad karma to both patients and medical personnel. According to one school of thought, euthanasia should never be used because it violates the ahimsa philosophy, which states that no one should be intentionally killed. However, a third school of Hindu philosophy supports euthanasia. This school of thought believes that it is one's duty to end another person's life if their suffering is intolerable, and that doing so is a charitable act.³ Muslims do not support the euthanasia ideology in any way. They believe that human life, in particular, is extremely sacred because Allah gave it to us; as a result, only Allah has the authority to end another person's life. Human participation in this project is expressly prohibited. Christians in general hold the same viewpoint. God gave humanity both the gift of life and the cycle of birth and death; if this cycle were to be broken, the current global community would be unbalanced. As a result, Euthanasia another person, regardless of who they are or the circumstances, is never acceptable.

II. Euthanasia as a crime

Why euthanasia has been declared illegal in many countries is a frequently asked question. Many societies may have once believed that the only difference between euthanasia and murder was that the former was considered more dignified than the latter. The following examples show how euthanasia and murder differ in a variety of important ways.

Difference between Euthanasia and Murder

Murder occurs when someone kills another person without permission, in violation of the law, and for the wrong reasons. Euthanasia, which is closely related to mercy Euthanasia, entails Euthanasia a person with their consent in order to relieve them of their ongoing illness and suffering and allow them to die with dignity. Although the method of Euthanasia a person in both cases is the same—using a specific object to end another person's life—the main difference between euthanasia and murder is the intent of the person performing the procedure. Because it does not involve the patient's free and informed consent, some people compare involuntary euthanasia to murder. As a result, involuntary euthanasia is considered the same as murder. We must go a little further after recognizing the clear distinctions between homicide and euthanasia because the terms "euthanasia" and "suicide" have such incredibly nuanced connotations.⁴

Difference between Euthanasia and Suicide

³ Bongar BME. *"Suicide: Guidelines for assessment, management, and treatment"*. USA: Oxford University Press; 1992.

⁴ Lonnqvist J. *The Oxford textbook of suicidology and suicide prevention*. Oxford: Oxford University Press; 2009. Major

Despite the widespread belief that euthanasia and suicide are synonymous, there is a significant distinction between the two. As a result, suicide can be defined as the intentional act of taking one's own life with one's own assistance for a variety of reasons, including depression, relationship problems, and an inability to find work. Any religion's sacred texts have never defined euthanasia. However, given the close relationship between euthanasia and suicide, it stands to reason that many religious traditions are opposed to it. In India, a person is punished on the grounds that their actions were malicious. "Actus non facit reum nisi sit reum" is the guiding concept of Indian law. This sentence, which was originally written in Latin, can be translated as "Unless there is a criminal scheme, a demonstration does not render one responsible." As a result, under the Indian Penal Code, someone who acts or refrains from acting without intending to commit a crime is not guilty.

Applying the aforementioned legal principle to the euthanasia debate reveals that, in this case, the person performing the act is consenting to his or her own death and, as a result, is not criminally responsible for the act. The most pressing question at the moment is whether consenting to someone else's murder absolves the perpetrator of criminal liability. If a large enough number of people vote yes, euthanasia will not be made illegal. Indian law is very clear and concise on this subject. It is possible for the person who performs the euthanasia to argue that the other individual gave their consent, and as a result, he does not bear any responsibility for the offense or the defense of "volenti non fit injuria" can be taken by him.

Section 87 of the Indian Penal Code addresses consent in Indian law. The rule states unequivocally that authorization cannot be used as a defense and must be waived in cases where the problematic action was done with the intent to murder or seriously injure another person. In the well-known case of Maruti Shripati Dubal, the legendary Bombay High Court judge created a clear distinction between euthanasia and suicide in a way that the general public could understand. Suicide is the act of a person who desires to take his or her own life by a solitary act committed without the support of others, the court rules. Euthanasia, on the other hand, necessitates the assistance of a third party to end a person's life. As a result, it is legitimate to assert that there is no link between euthanasia and suicide. Another time, the Bombay High Court reiterated its previous decision. In light of this, we can argue that compassionate euthanasia differs from suicide. Law and truth are two concepts that are diametrically oppose.⁵

III. Euthanasia and Indian Law

A person's life is considered in the highest regard and veneration in India. It is the only part of "Article 21 of the Indian Constitution" that has been interpreted differently by different judges in various cases. "Article 21 of the Indian

psychiatric disorders in suicide and suicide attempters; pp. 275-86.

⁵ Aruna Ramchandra Shanbaug vs. Union of India & Ors. Writ Petition (Criminal) no. 115 of 2009.

Constitution” protects the right to life. Residents of the country enjoy this right by default, and it cannot be taken away at any time in their lives. Because the right to die was established earlier in the text, it is not covered by the ancillary provisions of Article 21.

In any case, this issue was addressed in the case known as “State of Maharashtra v. M.S. Dubal,⁶” in which the apex court determined that “under Article 21, the right to die is intertwined with the right to live”. This revelation resulted in the repeal of IPC Section 309. The justices explained their decision, saying that the inclination to end one's life is not infrequent, even though it is rarely noticed. The judgment was maintained in “P. Rathiman v. Union of India”⁷, another victory for the plaintiff. However, following the “Gian Kaur v. State of Punjab decision”⁸, this option was revisited. In this case, a bench of five justices decided that Article 21 of the Indian Constitution does not protect an individual's right to die at their own discretion. The right to live was regarded to be a natural right, whereas the right to die was considered to be an unnatural component of existence that was not covered by natural rights. Natural rights only applied to aspects of existence that were considered to be natural.

The Indian Law Commission's 196th report, which is available here, goes into great detail on this subject. One of the most difficult decisions the aforementioned commission had to make was whether or not to discontinue treatment of patients on the verge of death.

The Law Commission proposed enacting legislation to protect terminally ill people who refuse all medical intervention, including externally administered food and water. This suggestion was made in response to the previous questions. Although the doctors would consult with the patient's family members, the final decision would be made in accordance with the rules of the “Medical Council of India” and after consultation with other experts. This was true even when doctors contacted the patient's closest friends and relatives. However, the patient's doctor is not free to select the specialist. If complaints about managerial exploitation were to decrease, the Law Commission believed that a bench of experts recruited and accredited by a reputable public institution and approved by the national government was required. This was the Law Commission's conclusion.⁹

A doctor must also document the patient's refusal to take the medication, according to the committee. The doctor must decide whether to continue, stop, or pause treatment in the case of (a) a victim who is fit (made or did not make an informed decision) and (b) a patient who is fit. He should document all of this information, along with the reasoning behind each of the decisions and the opinions of other medical specialists. If the patient's family disagrees with the doctor's decision, they may petition an honorable court in the state where the patient resides. If this occurs, the doctor will

postpone implementing his decision until the court issues its final decision.

Euthanasia and Laws around the world

As stated in previous chapters, euthanasia is not a problem that should be addressed solely in India; rather, it should be addressed globally. Euthanasia's morality and legality have also been hotly debated in a number of other countries. This article covers the following countries:

ENGLAND

Patients who are diagnosed as being in a persistent vegetative state (also known as PSV) and who meet the other requirements for euthanasia can legally have the procedure performed in England. In the case of “Airedale NHS Trust vs. Bland”¹⁰ The problem was the removal of additional components that help extend life. The court ruled that providing any form of therapy to a patient who is in an active mental state and has the right to refuse any form of care without their prior consent is illegal. A patient who has been injured in an accident and is unable to give consent or express his decision may, however, be treated legally by a medical professional. He is unable, however, to administer a dose of medication to treat the patient's condition because doing so would result in death. This case set a precedent that was followed by many others, and the statute is still in effect today. But there is still one question that hasn't been answered: who would decide what treatment would be most beneficial for a patient diagnosed with PVS? In response to this question, the House of Lords employed a wide range of alternative lines of inquiry.

SWITZERLAND

Suicide and assisted suicide are not crimes in Switzerland, according to “Article 115 of the Swiss Penal Code”, if and only if assisted suicide does not further the person's own interests. It is not necessary for the patient or doctor to participate at a specific stage; the only requirement is that the motivation is not ego-driven. Now that euthanasia is legal, anyone—not just doctors—can carry it out. Euthanasia, on the other hand, is illegal in both Russia and Spain.

IV. Arguments against euthanasia

Through discussions on euthanasia and our research into the laws that govern its practice in a variety of nations, we learned that euthanasia is prohibited in some nations but tolerated in others. Why people's views on euthanasia differ so greatly cannot be explained by a single factor. As a result, the remainder of this chapter will be devoted to debating the various benefits and drawbacks of euthanasia.

Reasons for declaring euthanasia legal

Euthanasia has been practiced on the Indian subcontinent at various points in its history since Lord Ram and Vinoba Bhave's decision to fast until death. In the current debate, dynamic Euthanasia is getting more attention than aloof willful extermination. The main source of disagreement is the conflict that arises between defending one's own interests and

⁶ State of Maharashtra v. Maruty Sripati Dubal, 1987 Cri. L J 743 (Bomb).

⁷ P. Rathinam vs. Union of India, 1994 AIR 1844.

⁸ Gian Kaur v State of Punjab 1996 (2) SCC 648.

⁹ M P Jain, *Indian Constitutional Law*, Lexis Nexis, 8th edition.

¹⁰ Airdale NHS Trust v. Bland, 1993 (1) All ER 821 (HL).

defending the interests of society as a whole. The sections that follow break down the debate over whether or not euthanasia should be legalized. They are-

One group believes that intentional Euthanasia should be legalized in the United States because the patient gives their consent and their and their family's wishes should be considered. Individual interests would be given more weight if we compared them to the interests of society because individuals make up society. As a result, it is society's responsibility to ensure that everyone can live in peace. When someone is unable to express their consent, it can be detrimental to their dignity. Taking everything into consideration, we should go over Article 21, which deals with living with pride. Ending a patient's life is morally acceptable if they have lost even the most basic elements of their dignity. Proponents of active euthanasia argue that it should be legalized in the same way that passive euthanasia is. They claim that patients feel their lives are too difficult at times and would prefer to end them. In these circumstances, it is best to end their life as soon as possible. This preserves the hospital's medical resources, which the staff can use to save the lives of other patients who are recoverable and want to live, as well as allowing the patient to die in dignity.

V. Reasons for declaring euthanasia illegal

There are still some nations in the world that do not permit euthanasia to be practiced legally. The explanations for this can be found in the following: -

The fundamental flaw in this argument is that it violates the moral principles of clinical experts. A doctor or nurse should not encourage a patient's suicide attempt; instead, it is their responsibility to treat them. Technology and scientific advances have resulted in a wide range of life-saving options being readily available today. Furthermore, the value of psychology in such circumstances cannot be overstated. Patients who are encouraged to live their lives and accept responsibility for their actions are less likely to attempt suicide. As a result, euthanasia should be prohibited in its entirety.

Advocates also wonder who or what will decide whether a patient chooses to die and how the patient himself can decide if he should die immediately. They question how the patient can determine whether or not he should be let to pass away immediately. Typically, patients who are in such excruciating mental and physical suffering that they are willing to consent to their own suicide do not have a stable mental condition. Consent is only valid if it is freely provided and uninfluenced by extraneous circumstances, which is not the case here. It might be difficult to tell if a trusted friend or a medical expert is looking out for the patient's best interests. A variety of egocentric considerations could have impacted their decision. Legalizing euthanasia would thus be detrimental to the patient.¹¹

Third, the concept of a slippery slope contrasts sharply with the possibility that governments may one day legalize assisted suicide. When it is legalized, the judiciary may sanction active

euthanasia as well. This idea will develop over time, eventually leading to the legalization of all forms of euthanasia.

VI. Conclusion

Euthanasia has become a difficult and contested topic in the previous ten years. Despite the fact that euthanasia has been discussed extensively, there is still no agreement on what it is. Mercy Euthanasia is an important social and legal issue since it is raised from a number of views based on religion, morality, and the law anytime the subject of euthanasia is debated. The fundamental point of contention in this debate is whether a person should be entitled to do everything he wants with his life, including the right to die. Euthanasia laws must be clarified and organized soon, particularly in India. When developing rules and regulations, all of the nation's religious, cultural, philosophical, and physical characteristics should be considered. I believe that detached and active deliberate eradication should be permitted, but only under very restricted conditions and after a comprehensive examination of the relevant difficulties. A patient's family or even a doctor may profit financially from the patient's death. This must be avoided, thus we must monitor the situation closely. The government also owes it to people in the middle and lower classes who cannot afford the high-quality medical care provided by private hospitals. As long as everyone in India has equal access to healthcare, legalizing passive euthanasia will not make the operation more accessible to patients.

When we only consider one side of a coin, we frequently forget that we are doing so. When we talk about providing persons in a vegetative state the right to die in peace and dignity, we are only looking at one side of the issue. "What about persons who wish to die due to the stresses of aging, having their family kick them out, and being unable to find suitable work but also desiring to die with dignity?" asks the flip side of the coin. If all forms of euthanasia are deemed legal, tens of thousands of petitions for a Writ of Mandamus from India's top court are expected to be submitted. As a result, even though Article 21 mentions natural rights and the presumption that death isn't natural, I feel it should still include a "Right to Die with Dignity" part.

¹¹ Saunders C. "Terminal care in medical oncology". In: Begshawe KD, editor. *Medical oncology*. Oxford: Blackwell; 1975. pp. 563-76.