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Euthanasia and Its Legal Position in India: An Analytical Study

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Abstract
Euthanasia, also known as mercy killing, refers to the deliberate ending of life to relieve suffering, usually of terminally ill patients. It is derived from the Greek words "eu" (good) and "thanatos" (death), meaning "good death." This paper examines the concept, types, ethical debates, arguments for and against legalization and the evolving legal position of euthanasia in India. The study discusses voluntary, non-voluntary and involuntary euthanasia, as well as active and passive forms, while analyzing constitutional, ethical and judicial perspectives. Special focus is given to landmark judgments such as *Gian Kaur v. State of Punjab* and *Aruna Ramchandra Shanbaug v. Union of India*, culminating in the Supreme Court's 2018 recognition of passive euthanasia and living wills. The paper concludes with recommendations for clear legislation to balance the right to die with dignity and the protection of life.
Keywords: Euthanasia; Mercy Killing; Passive Euthanasia; Active Euthanasia; Right to Die

Introduction:

Each individual is envious to live and appreciate the products of his life till he dies. But sometimes a person wants to take his life by utilization of unnatural methods. To take one's life in an unnatural manner is an indication of abnormality. When an individual finishes his life by his own act we call it 'suicide' but to end life of the individual by others though on his own the request, is termed as 'euthanasia' or 'mercy killing'. Euthanasia is a derived from the Greek words 'eu' signifying 'good' and 'thanotos' signifying 'death' so term Euthanasia literally signify 'good death'. It is generally depicted as mercy killing. The death of a terminally ill patient is accelerated through active or passive means in order to relieve such patient of pain or suffering. It appears that the word was used in the 17th Century by Francis Bacon to refer to an easy, painless and happy death for which it was the physician's duty and responsibility to alleviate the physical suffering of the body of the patient. The House of Lords Select Committee on 'Medical Ethics' in England defined Euthanasia as "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering". The European Association of Palliative Care (EPAC) Ethics Task Force, in a discussion on Euthanasia in 2003, clarified that "medicalised killing of a person without the person's consent, whether non-voluntary (where the person in unable to consent) or involuntary (against the person's will) is not euthanasia: it is a murder". In the Netherlands and Belgium, Euthanasia is understood as 'termination of life by a doctor at the request of a patient'. The Dutch law however, does not use the term 'euthanasia' but includes the concept under the broader

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definition of assisted suicide and termination of life on request. However the term Euthanasia has not been defined in Indian Statutes so we have to look at its dictionary meaning.

Black Law Dictionary (8th edition) defines euthanasia as "the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy".

According to Merriam-Webster Dictionary "Euthanasia is the act or practice of killing or permitting the death of hopelessly sick or injured individuals (as persons or domestic animals) in a relatively painless way for reason of mercy".

So in simple terms Euthanasia can be defined as the act or practice of painlessly putting to death or withdrawing treatment from a person suffering from an incurable disease. Euthanasia is intentionally killing another person to relieve his or her sufferings. In simple terms it is mercy killing for those patients for whom there is no end to their pain or no hope of being cured by the medical treatment.

Before coming to the point that whether it should be legal or not Let us have a view at the classification of Euthanasia

Classification of Euthanasia

Euthanasia may be broadly classified into three types, according to whether a person gives informed consent: voluntary, non-voluntary and involuntary consent: voluntary, non-voluntary and involuntary

- **Voluntary Euthanasia**: Euthanasia conducted with the consent of the patient is termed voluntary euthanasia. Voluntary euthanasia is legal in some countries. Jurisdictions, where euthanasia is legal, include the Netherlands, Colombia, Belgium and Luxembourg.
- **Non-Voluntary Euthanasia**: Euthanasia conducted where the consent of the patient is unavailable is termed non-voluntary euthanasia. Non-voluntary euthanasia is illegal in all countries. Examples include child euthanasia, which is illegal worldwide but decriminalized under certain specific circumstances in the Netherlands under the Groningen Protocol.
- **Involuntary Euthanasia**: Euthanasia conducted against the will of the patient is termed involuntary euthanasia. Involuntary euthanasia is usually considered murder.
- **Passive and Active Euthanasia**

  Voluntary, non-voluntary and involuntary types can be further divided into passive or active variants. Passive euthanasia entails the withholding treatment necessary for the continuance of life. Active euthanasia entails the use of lethal substances or forces (such as administering a lethal injection) and is the more controversial. While some authors consider these terms to be misleading and unhelpful, they are nonetheless commonly used.

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In some cases, such as the administration of increasingly necessary, but toxic doses of painkillers, there is a debate whether or not to regard the practice as active or passive.

Arguments for Legalizing Euthanasia in India

From Ram's Jalasamadhi to Mahatma Gandhi and Vinoba Bhave's fast till death (in which Bhave died), euthanasia existed in Indian society. The judiciary has also viewed euthanasia from a sympathetic angle, which is evident from the observation of the various judges in cases dealing with right to suicide.

Euthanasia means killing a person rather ending the life a person who is suffering from some terminal illness which is making his life painful as well as miserable or in other words ending a life which is not worth living. But the problem lies that how should one decide whether the life is anymore worth living or not. Thus, the term euthanasia is rather too ambiguous. This has been a topic for debate since a long time i.e. whether euthanasia should be allowed or not. In the present time, the debate is mainly regarding active euthanasia rather than passive euthanasia. The dispute is regarding the conflicts of interests: the interest of the society and that of the individual. The arguments for legalizing euthanasia are given below –

1. that people have a right to self-determination and thus should be allowed to choose their own fate
2. assisting a subject to die might be a better choice than requiring that they continue to suffer
3. the distinction between passive euthanasia, which is often permitted and active euthanasia, which is not substantive (or that the underlying principle–the doctrine of double effect–is unreasonable or unsound);
4. Permitting euthanasia will not necessarily lead to unacceptable consequences. Pro-euthanasia activists often point to countries like the Netherlands and Belgium and states like Oregon, where euthanasia has been legalized, to argue that it is mostly unproblematic.
5. Other arguments:
   In Constitution of India 'Right to life' is a natural right embodied in Article 21 but euthanasia/suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'. It is the duty of the State to protect life and the physician's duty to provide care and not to harm patients.
6. Caregiver's burden: Right-to-die supporters argue that people who have an incurable, degenerative, disabling or debilitating condition should be allowed to die in dignity. This argument is further defended for those, who have chronic debilitating illness even though it is not terminal such as severe mental illness. The majority of such petitions are filed by the sufferers or family members or their caretakers. The caregiver's burden is huge and cuts across various domains such as financial, emotional, time, physical, mental and social.

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7. Refusing care: Right to refuse medical treatment is well recognized in law, including medical treatment that sustains or prolongs life. For example, a patient suffering from blood cancer can refuse treatment or deny feeds through a nasogastric tube. Recognition of the right to refuse treatment gives a way for passive euthanasia.
8. Encouraging the organ transplantation: Euthanasia in terminally ill patients provides an opportunity to advocate for organ donation. This, in turn, will help many patients with organ failure waiting for transplantation. Not only euthanasia gives 'Right to die' for the terminally ill, but also 'Right to life' for the organ needy patients.

Arguments Against Legalizing Euthanasia

Emanuel argues that there are four major arguments presented by opponents of euthanasia:

1. Not all deaths are painful;
2. Alternatives, such as cessation of active treatment, combined with the use of effective pain relief, are available;
3. The distinction between active and passive euthanasia is morally significant; and
4. Legalizing euthanasia will place society on a slippery slope, which will lead to unacceptable consequences
5. Practical arguments
    1. Proper palliative care makes euthanasia unnecessary.
    2. There is no way of properly regulating euthanasia.
    3. Allowing euthanasia will lead to less good care for the terminally ill.
    4. Allowing euthanasia undermines the commitment of doctors and nurses to saving lives.
    5. Euthanasia may become a cost-effective way to treat the terminally ill.
    6. Allowing euthanasia will discourage the search for new cures and treatments for the terminally ill.
    7. Euthanasia gives too much power to doctors.

As every coin have two sides similarly Euthanasia also has have two sides which are discussed above it is the wish of Legislature to give weightage to which one of the two while deciding whether to legalize Euthanasia or not. But if one critically analyzes the arguments favoring Euthanasia than it can be said that arguments supporting Euthanasia are far weightier than arguments against it.

Position 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

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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 Twenty-One guarantees the right to life in India. It is argued that the right to life under Article Twenty-One includes the right to die. Therefore the mercy killing is the legal right of a person. After the decision of a five judge bench of the Supreme Court in *Gian Kaur v. State of Punjab* it is well settled that the "right to life" guaranteed by Article Twenty-One of the Constitution does not include the "right to die". The Court held that Article Twenty-One 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 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*, 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* examined the constitutional validity of section 309 and held that the section is violative of Article Fourteen as well as Article Twenty-One of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article Fourteen.

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Article Twenty-One was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article Twenty-One.

Till 2011 the concept of Euthanasia was governed by Gian Kaur judgment i.e. Euthanasia was illegal and punishable under Indian Statutes but A major development took place in this field on 7 March 2011. When in the case of *Aruna Ramchandra Shanbaug v. Union of India* the Supreme Court of India 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 *(It is a disorder of consciousness in which patients with severe brain damage are in a state of partial arousal rather than true awareness.)* 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 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.
3. When such an application is filled 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.

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 after conducting a long inquiry followed by a detailed trail 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.

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

Situation after Aruna Shanbaug Case

After this case a huge debate was there in the whole country regarding Legalizing Euthanasia in India and Indian Government asked for the report of Law Commission on this issue and The Law Commission in its report[1] suggested to legalize Passive Euthanasia and proposed making legislation on passive euthanasia and prepared a draft bill called the Medical Treatment of Terminally Ill Patients (protection of patients and medical practitioners) Bill. Bill deals with passive euthanasia and living will. It doesn't recommend active euthanasia. But no bill regarding Passive Euthanasia has been passed till today.

However 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 on a PIL filed by *Common Cause*, which case is the basis of the current debate. Then, the CJI referred to an earlier Constitution Bench judgment which, in the Gian Kaur case, "did not express any binding view on the subject of euthanasia; rather it reiterated that the legislature would be the appropriate authority to bring change." Though that judgment said the right to live with dignity under Article 21 was inclusive of the right to die with dignity, it did not arrive at a conclusion on the validity of euthanasia, be it active or passive.

On 9 March 2018 Supreme Court while deciding the PIL filled Common Cause recognize Right to Die with Dignity as a Right Provided and protected under Article 21 Of the Constitution of India and given legal sanction to Passive Euthanasia and permitting *Living Will* by patients on

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withdrawing medical support if they slip into irreversible coma. The top Court also held that directions and guidelines lay down by it and its directive shall remain in force till Legislation is brought on the issue. Supreme Court also defined the term Living Will as a written document which sets out a patient's wishes regarding health care and how they want to be treated if they become terminally ill and unable to make or communicate their own choices. It is also called as active declaration. This will has to be made by patients when they were in complete command of himself/herself, with right cognitive abilities and not under any coercion further this will is to be executed when the person who is subject to treatment.

As there is no law on this subject so since 2018, passive Euthanasia is legal in India under strict guidelines. Patients must consent through a living will and must be either terminally ill or in a vegetative state.

Conclusion:

Euthanasia remains a deeply sensitive and controversial topic. While human dignity and self-determination are central to the arguments supporting euthanasia, concerns about ethics, potential misuse and societal consequences cannot be ignored. In India, euthanasia was traditionally prohibited under the Indian Penal Code and constitutional interpretations of Article 21, which guaranteed the right to life but not the right to die. However, landmark judicial pronouncements have shaped its legal evolution. The Supreme Court's judgment in *Aruna Ramchandra Shanbaug* opened the door for passive euthanasia under strict safeguards and the 2018 *Common Cause* case further expanded this right by recognizing "Right to Die with Dignity" and permitting living wills. Still, active euthanasia remains illegal. The study highlights that clear, comprehensive legislation is urgently needed to regulate euthanasia in India, ensuring patient autonomy, medical ethics and safeguards against misuse. Such laws would respect individual dignity while protecting vulnerable populations.

Reference:

- Bacon, F. (1623). *History of Life and Death.* London.
- Black's Law Dictionary (8th ed.). Definition of Euthanasia.
- Merriam-Webster Dictionary. Definition of Euthanasia.
- The House of Lords Select Committee on Medical Ethics (1994). *Report of the Select Committee on Medical Ethics.* London: HMSO.
- European Association of Palliative Care (EPAC) Ethics Task Force (2003). *Ethical Framework for Palliative Care.*
- *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648.
- *Maruti Shripati Dubal v. State of Maharashtra*, 1986 Cri LJ 589 (Bom).
- *State v. Sanjay Kumar Bhatia*, 1985 Cri LJ 931 (Del).

- *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454.
- *Common Cause (A Regd. Society) v. Union of India*, (2018) 5 SCC 1.
- Indian Penal Code, 1860. Sections 305, 306, 309.
- Indian Medical Council Act, 1956, Section 20A & Code of Medical Ethics Regulations.
- Ministry of Law and Justice. Law Commission Reports on Euthanasia.
- Articles and commentaries on euthanasia and patient rights, various journals.