



## EUTHANASIA IN CONTEMPORARY INDIA: WHETHER AGAINST RIGHT TO LIFE UNDER ARTICLE 21?

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### ABSTRACT

Euthanasia also known as mercy death has been one of the most debated topic in India. There have always been two demarcated sides with the working of the concept of mercy death since the advent of law in independent India, where the Government had struggled for years on whether euthanasia could be legally granted in our country. The paper attempts at giving an insight of the working of euthanasia in contemporary India and also its journey of struggle and controversy to getting legalized. It has been one of the most controversial topics as it seemed to be directly hindering one of the most important fundamental rights of a human being i.e. Right to life guaranteed under Article 21 of the Indian Constitution. There have been discussion on its legalization since forever and this discussion finally came to an end after the Supreme Court for the very first time in 2018 agreed and legalized this concept in the case of Aruna Shanbaug restricting its ambit only by granting consent to passive euthanasia to be legal in India. The paper also displays the working of the concept since its legalization in India and also the misuse and aftermath of such legalization.

### 1. INTRODUCTION

A human being has full right to enjoy and safeguard their life which cannot be taken away by anyone in whichever way. India as a country has given people the full right to

safeguard their life which when infringed is made punishable by different laws. No person has the right to take the life of another in whatever circumstances other than the way prescribed by law. India is one of those countries which due to their religious bases have been against the practice of euthanasia which was considered as equal to taking someone's life.

India during the last two decades has undergone a variety of changes regarding various different laws out of which legalization of passive euthanasia is considered one of the most remarkable one till date as it has been an issue of controversy and debate for years since the advent of Indian Constitution and other laws prevalent in India. The concept of euthanasia has long debated as it was considered hindering the Article 21 of Indian Constitution which is considered as one of the pillars guarding the fundamental right of any human being. The concept of euthanasia or mercy death in India has been limited to its passive use and is also granted on the basis of certain restrictions mentioned. But the recent trend in the cases of passive euthanasia has to be studied with reference to contemporary healthcare and also the complex and changing dynamics of the contemporary society.

#### 1.1. MEANING

Euthanasia was for the very first time derived in Greece which basically means good death. Euthanasia has been given various different interpretations and meanings by different thinkers and countries. It has been said to be a practice or act of intentionally or deliberately killing any person for the very benefit of that person so that to relieve him from the pain and suffering of an incurable disease or incapacitating physical disorder or



allowing them to die by withholding treatment or withdrawing artificial life support system which facilitated their life.<sup>1</sup>The word euthanasia is said to be derived from the Greek words “*eu*” and “*thanatos*” which means “easy death” according to the Merriam Webster Dictionary. The Cambridge Dictionary defines euthanasia as “the act of killing someone who is very ill or very old so that they do not suffer any more”.<sup>2</sup> The Merriam Webster Dictionary defines euthanasia as “the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as persons or domestic animals) in a relatively painless way for reasons of mercy”.<sup>3</sup>

## 2. EUTHANASIA: LEGAL ASPECT OF RIGHT TO LIFE V/S RIGHT TO DIE

India has legalized the concept of passive euthanasia but there is still an ongoing debate and controversy regarding as to whether Article 21 of Indian Constitution which is Right to life includes Right to die. Article 21 of Indian Constitution has a wide scope of interpretation as it includes a variety of rights amongst itself and is also considered as one of the most important fundamental right of any human being and for the same reason the Supreme Court has struggled with the issue as to whether to include the right to die as a right under Article 21.

The whole controversy regarding Right to die originated with the case of State of Maharashtra v. Maruti Shripati Dubal<sup>4</sup> in which the constitutionality of “attempt to commit suicide”<sup>5</sup> under Indian Penal Code was questioned as it was considered to be infringing Article 21 (Protection of life and personal liberty) and Article 19 (Protection of rights regarding different freedoms) of an individual. But the Bombay High Court in the following case rejected the following contention and stated that Article 21 included Right to die as a right in itself. The same contention was upheld in the case of P. Rathinam v. Union of India<sup>6</sup> stating that Right to life included Right to die.

The above case was overruled by Gian Kaur v. State of Punjab<sup>7</sup> in which “abetment to suicide”<sup>8</sup> was upheld and it was stated in the Court that “in the context of a terminally ill patient or one in the PVS, the right to die is not termination of life prematurely but rather accelerating the process of death which has already commenced”.<sup>9</sup> The same contention was more elaborately explained in the case of Vikram Deo Singh Tomar v. State of Bihar<sup>10</sup> in which the Court stated that Right to live with human dignity also includes Right to die with human dignity i.e. to die peacefully without any physical and mental agony.

<sup>1</sup>Adam Augustyn, *Euthanasia*, BRITANNICA (Aug. 21, 2020, 11:53 AM),

<https://www.britannica.com/topic/euthanasia>.

<sup>2</sup>*Euthanasia*, CAMBRIDGE DICTIONARY (Aug. 18, 2020, 7:19 PM),

<https://dictionary.cambridge.org/dictionary/english/euthanasia>.

<sup>3</sup>*Euthanasia*, MERRIAM-WEBSTER (Aug. 19, 2020, 2:44 PM), <https://www.merriam-webster.com/dictionary/euthanasia>.

<sup>4</sup>State of Maharashtra v. Maruti Shripati Dubal, 1987 (1) Bom CR 499.

<sup>5</sup>Section 309, Indian Penal Code, 1860.

<sup>6</sup> P. Rathinam vs. Union of India, (1994) SCC (3) 394.

<sup>7</sup>Gian Kaur v. State of Punjab, (1996) 2 SCC 648.

<sup>8</sup>Section 306, Indian Penal Code, 1860.

<sup>9</sup>Gian Kaur v. State of Punjab, (1996) 2 SCC 648, ¶ 25.

<sup>10</sup>*Vikram Deo Singh Tomar v. State Of Bihar*, 1988 AIR 1782.



### 3. EUTHANASIA DIFFERENTIATED FROM RIGHT TO DIE AND SUICIDE

Although passive euthanasia and suicide, both these acts result in death of a person or can be described as a way of self destruction<sup>11</sup> there is a clear distinction between the two acts. Passive euthanasia has been legalized by the Supreme Court in the year 2018 in the Aruna Shanbaug Case<sup>12</sup> which clearly demarcates the difference between these two acts and shows the clear difference in intention of both suicide and passive euthanasia.

There is a great deal of difference which can be clearly seen through the eyes of our laws which makes “attempt to suicide” and “abetment to suicide” punishable as it has been said by the court in the case of Maharashtra v. Maruti Shripati Dubal<sup>13</sup> and Gian Kaur v. State of Punjab<sup>14</sup> which states that Right to life does not include Right to die and could not be widened to extend its scope to extinction of life of anyone and also Right to suicide which is a whole different act altogether and is also punishable.

### 4. DIFFERENT TRENDS OF EUTHANASIA IN DIFFERENT COUNTRIES

#### 4.1 NETHERLAND

Netherland was the 1st country that legalized euthanasia and assisted suicide in the world. Even their law states that killing a person on his request is punishable with twelve years of imprisonment or fine and also provoking a person to commit suicide is punishable by

imprisonment up to three years or fine. Despite this provision Netherland have come across the amendments in law and has provided a defense to charges of voluntary euthanasia and assisted suicide as against murder.

#### 4.2 DUTCH

With certain strict conditions on April 1st, 2002 Dutch Government legalized the concept of euthanasia. The patient is suffering from an unbearable or incurable disease with no improvement and also there is no hope of improvement can ask for euthanasia. For doing so the countries has prescribed that a doctor must clearly understand the condition and allow such practice and must be also approved by 2nd doctor.

#### 4.3 BELGIUM

In Belgium euthanasia was legalized in the year 2002. Parliament of Belgium had enacted the ‘Belgium Act on Euthanasia’ in September 2002, which defines euthanasia as “intentionally terminating life by someone other than the person concerned at the latter’s request”. The act made is very strict which has many safeguards and conditions like the person must be major and not insane, should have made request voluntarily and many more. The situation must be verified by two doctors and a psychologist if the condition of the patient is doubtful.

#### 4.4 SWITZERLAND

Under Article 115 of the Swiss Penal Code, suicide is not a crime but assisting suicide is

<sup>11</sup>Caesar Roy, *POSITION OF EUTHANASIA IN INDIA - AN ANALYTICAL STUDY*, THE INDIAN JOURNAL OF CRIMINOLOGY AND CRIMINALISTICS (Aug. 20, 2020, 8:16 PM), [https://www.researchgate.net/publication/259485727\\_POSITION\\_OF\\_EUTHANASIA\\_IN\\_INDIA\\_-\\_AN\\_ANALYTICAL\\_STUDY](https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-_AN_ANALYTICAL_STUDY).

<sup>12</sup>Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.

<sup>13</sup>State of Maharashtra v. MarutiShripatiDubal, 1987 (1) Bom CR 499.

<sup>14</sup>Gian Kaur v. State of Punjab, (1996) 2 SCC 648.



a crime if the motive is selfish. It does not require any physician and also it is not necessary that patient was terminally ill. In Switzerland, physician-assisted suicide is legal but euthanasia is illegal.<sup>15</sup>

## 5. EUTHANASIA IN INDIA

India is a secular country and in any religion of the world killing a person is prohibited. Where our constitution provides and safeguards us with the Right to life and made strict laws against its violation like culpable homicide amounting to murder<sup>16</sup>, culpable homicide not amounting to murder<sup>17</sup>, suicide<sup>18</sup> etc. It was the major question in front jurists and lawmakers how they can provide the right to die or even legalization of euthanasia. Euthanasia are of four different types:

- Voluntary euthanasia- It is when the person himself request for death.
- Non-voluntary euthanasia- It can be considered as implied consent of the patient as he/she is not in a position to give consent.
- Active euthanasia- It includes taking life of someone by giving a lethal dose of drugs or by injections to the person. In India all forms of active euthanasia are illegal. It is also regarded as 'Aggressive Euthanasia'.
- Passive euthanasia- It is indirect action by not providing essential necessary help required to prolong life of any person. It implies the withdrawal of artificial life support system and is a slower process. Only this type of euthanasia is legalized in India and is also known as 'Non-Aggressive Euthanasia'.

In India passive euthanasia has been legalized after so many years in 2018 and also it is still not a right like any other which can

be asked for. Only the Apex Court i.e. Supreme Court has the power to grant passive euthanasia to any person to whom it seems necessary and also has the power to refuse so. It is on the desecration of the Supreme Court whether it grants this to any individual or not. Also there has been a broad elaborate standard setup to grant such way of ending one's life.

### 5.1. LEGAL ASPECT OF EUTHANASIA IN INDIA

Indian formed its legal system after thorough study of various different laws of different countries and adopted the ideas of legal fraternity from these countries and has also followed or various precedents since the advent of legal system in India. Euthanasia in India has been declared legal but before that it was considered illegal as the act contains the intention of doctor to kill the patient and the same would be punishable under Indian Penal Code for culpable homicide amounting to murder<sup>19</sup> and it also infringed one of the most important fundamental right of an individual i.e. Right to life under Article 21. But now, passive euthanasia is legalized in India and is considered as a valid part as to die with dignity under Article 21 of The Indian Constitution and paves a way for people to request it in order to escape the physical and mental agony they have been suffering but at the same time it does not include Right to die and suicide as path for such practice. It is on the discretion of the Court to decide whether passive euthanasia is to be granted to someone or not. Similarly, "attempt to suicide" and "abetment to suicide" are still punishable under the law

<sup>15</sup> Krishanu, *Euthanasia in India* (Aug. 17, 2020, 6:13 PM), <http://www.legalservicesindia.com/>.

<sup>16</sup> Section 300, Indian Penal Code, 1860.

<sup>17</sup> Section 299, Indian Penal Code, 1860.

<sup>18</sup> Section 309, Indian Penal Code, 1860.

<sup>19</sup>Section 300, Indian Penal Code, 1860.



and cannot be considered as a part of mercy killing or Passive euthanasia in India.

## 5.2. DIFFERENT SCENARIOS REGARDING LEGALISATION OF EUTHANASIA

In every religion birth and death is considered as a wish and a blessing of God. Neither in Hinduism nor in any other religion a person is allowed to kill him in any condition. They all believe that no one has the right to bring death upon themselves other than God. According to both Sunnis and Shias, killing a terminally ill person whether through active euthanasia (physician-assisted suicide) or passive euthanasia (stopping life support or medicine) is considered as an act of disobedience against God.

## 6. PRESENT SCENARIO IN INDIA

### 6.1. ARUNA SHANBAUGH CASE: A TWIRL FROM THE REGIME

Aruna Shanbaug case<sup>20</sup> is a landmark judgment in which Aruna Shanbaug was a nurse working in the King Edward Memorial Hospital in Mumbai where on the night of 27<sup>th</sup> November, 1973 she was sexually assaulted and strangled by a ward boy in the basement but having found that she was menstruating, he did not rape her but strangled her with a dog chain around her neck due to which the blood flow to the brain stopped and she was paralyzed due to this. She was finally granted euthanasia after so many years in 2018 where she was released from the life support system.

### 7. MISUSE OF PASSIVE EUTHANASIA IN INDIA

The reality today is middle-class families don't want elderly person at home and treat

them as burden and due to this reason, passive euthanasia could be brought to a great misuse which will ultimately threaten the life of an individual given under Article 21.

Also it could be used as a defense against murder under Section 300 of Indian Penal Code which will also provide a getaway for such offenders. In order to avoid such misuse the Government needs to form a proper law for regulating this practice in India.

## 8. CONCLUSION AND SUGGESTIONS

India is a country where the death sentence is one of the rarest punishments as India Penal system believes in rehabilitation and not in punishment unlike other countries. Even the Supreme Court does not have any absolute power in cases where death can be granted other than the way specified by law. Providing and accepting euthanasia to any person in any condition is the revolutionary step in itself. But after the great struggle of decades India finally for the first time, Supreme Court gave permission for it. On 9<sup>th</sup> March 2018, passive euthanasia was legalized in India by the Supreme Court in Aruna Shanbaug case. As it is considered a landmark judgment in the history of India as it was considered to be infringing Right to life of a person, proper safeguards should be taken in order to regulate such practice in India.

Here are some of the suggestions which could be taken for regulating the practice of passive euthanasia in India:

- The Government needs to form a specific law regulating the practice of passive euthanasia

<sup>20</sup>MounicaKasturi, Symbiosis Law School, Pune, *Aruna Ramchandra Shanbaug v. Union of India: Case Analysis*, LAWCTOPUS (Aug. 19, 2020, 3:16 PM), <https://www.lawctopus.com/academike/aruna->

[ramchandra-shanbaug-v-union-of-india-case-analysis/](https://www.lawctopus.com/academike/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/).



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as it directly endangers the life of an individual.

- The decisions regarding the matter are to be taken on the basis of precedents and due care should be taken by judges while delivering such judgments.
- A specialized committee needs to be formed for regulating and granting such practice and to ensure medical negligence in such cases.
- The committee should have experienced practitioners and should be checked from time to time in order to avoid any negligence or corruption.
- Various steps of check should be formed to avoid any irregularity.

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