



**LEGALITY OF EUTHANASIA :
ARUNA RAMCHANDRA SHANBAUG
V/S UNION OF INDIA (PASSIVE
EUTHANASIA)**

*By Chhavideep Singh
From Amity Law School, Noida*

ABSTRACT

Euthanasia- commonly known as “Mercy killing” has been a controversial concept throughout the world, especially in India with all the cultural beliefs and values. When a person decides to end his life by giving consent to a third person to aid his death is called as Euthanasia. This paper seeks to discuss the landmark judgement of the Supreme Court in March 2018, allowing “Living Will” where an adult patient in his right mind is voluntarily allowed to refuse medical treatment and embrace his death naturally. Other relevant topics such as Difference between “Suicide” and “Euthanasia”, its relations to Human Rights and Bioethics will be discussed keeping in view its impact in the Indian Society. The evolution of the concept in India contemporary to international laws as well as the pros and cons of the landmark judgement passed in Aruna Shanbaug Case.

Keywords- Euthanasia, Aruna Shanbaug Case, Living Will, Suicide, Human Rights, Euthanasia in India, International laws on Euthanasia.

INTRODUCTION

Every person has the right to live and enjoy life until his last natural breath. This statement is undebatable throughout the humankind. The protection of life and personal liberty is a uniform law all across the globe and is considered an essential human right. Article 21 of the Indian Constitution defines the protection of life and personal liberty which says that no person shall be deprived of life except by any procedure established by law. Similarly, in the United States of America, Article 2 of their constitution defines the law on right to life, hence a basic human right covered by the power of law throughout the world. ¹

So, does this mean that the right to die shall also be treated as a law?

This question has been raising a lot of debate, not just in India but all over the world because ethics, values and beliefs are diversely interpreted in different parts of the world.

When a person decides to end his life by his own act, it is termed as a “Suicide” but to end one’s life with the help of another person on request is termed as “Euthanasia” or commonly known as the act of “Mercy Killing”.²

CHAPTER: 1

WHAT IS EUTHANASIA?

The Oxford English dictionary defines Euthanasia as the painless killing of a person

¹

<http://www.legalservicesindia.com/article/787/Euthanasia-in-India.html>

² <https://www.amsj.org/archives/2066>



or patient who is suffering from intolerable pain or an incurable condition or irreversible Coma. The word is derived from the Latin term “Euthanatos” where ‘Eu’ means Good and ‘Thanatos’ means Death. Euthanasia is often defined as relieving the person of his physical pain or an incurable condition by giving a fatal injection or removing artificial life support systems.

It is also called “Intentional Killing” or “Mercy killing” in the common language and the purpose is to intentionally end the life of another who is suffering from an irremediable condition, have zero chances of survival and will die a painful death.

As per the House of Lords select committee on medical ethics-USA, “*Euthanasia is a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering*”^[1]³

This can be achieved by any direct means such as the use of a lethal injection or not performing even the basic medical care and support or thirdly, removal of external life support system. Any of the above actions can be taken to release the patient from his endless suffering and allow the person to have a peaceful and painless death.

At least once in our lifetimes, have we come across a terminally ill patient who is suffering endlessly and all we wish for in that one moment is ‘death shall be better than this’. We say, Rest in Peace because no one deserves a hurtful death, it is a torture for the patient both in a physical and psychological sense.

³ [1] <http://www.legalservicesindia.com/article/787/Euthanasia-in-India.html>

Each one of us is entitled to the ‘Right to Life’ which implies the right to live with honour and dignity, the question arises whether dignity justifies the right NOT to live?

CONCEPT OF EUTHANASIA:

Euthanasia is perceived as a dilemma because there is more than one course of actions that can be followed and have been justified on various grounds. The orthodox mindsets which believe in existence and advocate survival at all costs because according to them, life is a gift from God and humans have no right to take that life away. Thus, they are anti on the idea of Euthanasia or Mercy killing.⁴ This ideology also puts a question mark on the ethical obligations of doctors and medical practitioners for artificial prolongation of life. These people also raise arguments that the common law doctrines empower the citizen with the right to have bodily integrity and autonomous decision making when it comes to their body and what happens with it after they dive to the other realm (death). An adult individual having a sound mind has the right to voluntarily decide what happens with his/her body and this decision needs to be respected and accepted irrespective of what the society thinks excluding the doctors as they must guide the person keeping their best interests at heart.

Good governance according to these people is to encourage care and protection of human life rather than consciously destroying it in the form of Euthanasia.

On the contrary, when you flip the coin of the debate, the other side has a completely

⁴ Rattan Singh, “Right to life and personal liberty”: journal of legal studies.



different ideology and explanation as to why they are pro with the concept of Euthanasia. The other half of the generic portion of people emphasize greatly on the quality of life.

When the quality of life degrades below a certain level of dignity due to any reason, be it illness, severe injury, permanent disability or irreversible coma; the aggrieved individual must have the right to end his suffering as per his own conscious will. People always argue that life is short, it should be worth living and suddenly when this idea actually has the need to be implemented, everyone forgets about it.⁵ A patient who is undergoing a deathly illness and is suffering from pain and struggling with his life, this idea takes a backseat and the autonomy of the patient is all that matters for the doctors, the family, the relatives, everyone.

Although, the right of the government to interfere with the state of any patient is unwarranted except if the patient is supposed to be an important asset to the country. In a world of limit and limited resources, treating a patient with irreversible illness for long can take a toll on medical resources of the country which can be actively used to save patients where there is at least a hope of survival. Hence, people with this mindset are all in for the concept of Euthanasia.

Both of the above opinions and concepts have somewhere or the other become a part of the hypocritic belief system that has been deeply inculcated in our mindsets. It is like standing on the edge of a mountain with a slippery slope, pertaining to save a life and

encouraging euthanasia violates the right to live with dignity and on the other hand, relieving the individual from his pain by killing him (euthanasia) violates the right to life and protection of personal liberty. Hence, a hypocritic ideology.

The long and intensive debate on the legalization of Euthanasia has to be followed by a strict guarded approach because legitimizing it can have its own cons and may lead to a casual attitude towards life and medical healthcare ultimately leading to crimes, murders, private killings- all dressed up under the legality of euthanasia. Is this what people need?

So far, Netherlands, Belgium, Oregon, Canada and Columbia have legalized euthanasia and it is hard to believe the consequences irrespective of the intent behind the law.

WHAT IS THE DIFFERENCE BETWEEN EUTHANASIA AND SUICIDE?

People usually confuse Euthanasia with Suicide and draw their conclusions. Both of these terms are different in meaning and concept from each other. Loss of life is common between the two but the intention and the act are not alike.

In suicide, the individual voluntarily kills himself/herself by stabbing, hanging, poisoning etc. It is also an intentional attempt to take one's life due to depression, Loss of a loved one or examination stress, frustration, acute sadness and so on. There can be many

⁵ J.N Sharma, "Right to die in terminally ill state": A plea to legalize euthanasia in Law journal, Maharshi Dayanand University.



reasons where a person might think of taking his own life and this is called a “Suicide”.⁶

On the contrary,

Euthanasia too deals with a voluntary act to take life but in this case, the action is taken by another individual to take the life of a third person involved. There is active or passive involvement of another person i.e. abets or assists the killing of the third person.

It is necessary to mention in this matter that there is a conceptual distinction between “assisted suicide” and “euthanasia” as well.

Assisted Suicide is an act where a third person is helping or assisting the individual who is about to commit suicide by providing the means or tools to do so. When it is a doctor who is assisting in suicide by providing the individual with lethal medication or injections, then it is known as a ‘physician-assisted suicide’. Thus, in an assisted suicide, the individual is fully conscious of his actions and decisions as he/she is the one who commits the act of suicide and not the other person. The other person simply acts as an assistant for the individual.⁷

On the other hand, Euthanasia is when the individual allows or gives his permission to another person (usually a doctor) to kill him and relieve him of his pain. Active euthanasia is when the doctor gives the patient a lethal injection that kills him instantly and painlessly. Passive euthanasia is when the doctor removes the artificial life support system and the patient dies.⁸

⁶ Bartels L, Otlowski M. A right to die? Euthanasia and the law in Australia. *J Law Med.* 2010 Feb;17(4):532-55.

⁷ Mohita and Aman Chhibber, Euthanasia and Human Rights: <http://www.legalserviceindia.com>

Recently in 2019, the Supreme Court of India has legalized Passive euthanasia in the country after the landmark Aruna Shanbaug case.

TYPES OF EUTHANASIA

Over the years, Euthanasia has been classified into various categories:

- **Active Euthanasia**
- **Passive Euthanasia**
- **Voluntary Euthanasia**
- **Involuntary Euthanasia**
- **Non-Voluntary Euthanasia**

1. **Active Euthanasia:** Also known as ‘Positive euthanasia’, this type involves painlessly putting the aggrieved individuals to death to relieve them of their suffering, as when the doctor injects a lethal dose of any drug to a patient and he dies.

2. **Passive Euthanasia:** Also known as ‘negative euthanasia’, this type involves the removal of life-sustaining treatment of that patient without which he/she dies and is relieved of suffering and pain. For instance, the doctor withdraws the artificial life support system.⁹

In Passive Euthanasia, the doctors are not considered as killers, they are not actively killing the individual (patient), instead, they are simply not saving them from dying.

⁸ Walsh D, Caraceni AT, Fainsinger R, Foley K, Glare P, Goh C, *et al.* Palliative medicine. 1st ed. Canada: Saunders; 2009. Chapter 22, Euthanasia and physician-assisted suicide; p.110-5.

⁹ *Aruna Ramchandra Shanbaug v. Union of India*, 2011(3) SCALE 298; MANU/SC/0176/2011



3. **Voluntary Euthanasia:** When euthanasia is practised on a patient with his own will and consent, then it is considered voluntary. It is primarily concerned with the choice of the terminally ill individual who has the right to live but decides to end his life keeping his best interest in mind which in this case is to relieve himself/herself from the physical and psychological pain.

4. **Involuntary Euthanasia:** This is the exact opposite of what the concept of euthanasia stands for, it is clearly murder. When the patient is terminally ill but HAS NOT GIVEN CONSENT to mercy killing and is brought to death by active or passive euthanasia, it is known as Involuntary euthanasia which amounts to murder charges.

5. **Non-Voluntary Euthanasia:** This concept refers to ending the life of an individual who is mentally not competent to make the decision or give consent for euthanasia. For example: When a person is in a comatose state. In this case, the coma is usually irreversible and the decision is thus taken by the family members. This is known as Non-Voluntary euthanasia.¹⁰

Various methods can be used to carry out euthanasia:

❖ **Lethal Injections-** Injection of a poisonous/lethal drug or medication to take the life of the individual during Active Euthanasia.

❖ **Asphyxiation-** It is also popularly known as dying by suffocation where the cause of death is deprivation of oxygen in the lungs. The most popular gas used in this type is Carbon Monoxide (CO), nerve gas like Sarin are also added in small quantity to ensure death. Asphyxiation is also used when administering Active Euthanasia on a patient.

Another important aspect around the concept of euthanasia, linked to 'the last wish' or 'end of life choices' which should be distinguished from mercy killing is the doctrine of double effect.

This doctrine excuses the death of an individual which may result as a secondary effect to a primary action which is intended to alleviate the pain of that individual. Some people confuse this doctrine with indirect euthanasia but the term should be discarded considering the advanced research and diversification on the concept of euthanasia.

ARGUMENTS: FOR AND AGAINST EUTHANASIA

As mentioned earlier, Euthanasia has always been a topic of debate all over the world. Some countries have legalised euthanasia and some are considering the ethics and consequences of this decision. India is country with vast cultural diversifications and this makes it all the more difficult to come to a conclusion and decide the fate of legality when it comes to topics like euthanasia.

¹⁰POSITION OF EUTHANASIA IN INDIA - AN ANALYTICAL STUDY

https://www.researchgate.net/publication/259485727_POSITION_OF_EUTHANASIA_IN_INDIA_-_AN_ANALYTICAL_STUDY



However, there are certain arguments raised in favour of euthanasia and others against it.

¹¹

ARGUMENTS IN FAVOUR OF EUTHANASIA:

1. Rights Based Argument- Advocates of euthanasia support their argument on the concept of autonomy and self-determination. They argue that a patient or an individual has the right to live and decide as to when and how they should die. Autonomy is the concept that defines that a patient has the right to make decisions relating to his life just as long as it does not cause harm to others or the society in general.

¹²

This concept of autonomy empowers the individuals to make their life choices and decide the fate of their own bodies while they are living and after they die. They should have the right to decide when and how they will die based on the fundamental right to live which ethically extends to the right to die. Furthermore, according to the basic human rights, it is within the rights of the patients to make his own decisions and to die a dignified death.

2. Beneficence-

The act of showing mercy, doing charity and the connotation of doing good is what beneficence means. It is believed that relieving someone of their pain and suffering will do more good than harm and euthanasia is supported by such mentality.¹³

¹¹ <https://www.amsj.org/archives/2066>

¹² Bartels L, Otlowski M. A right to die? Euthanasia and the law in Australia. J Law Med. 2010 Feb;17(4):532-55.

The argument raised is backed by the cultural ethics of the society to show mercy and compassion to the needy and it suggests that no patient should be allowed to suffer a painful and unbearable death. Hence, according to them, mercy killing should be permissible and legalised to be practiced.

3. Morality of Active and Passive Euthanasia-

The advocates of euthanasia claim that active euthanasia is not morally worse than its passive type which is legalised in many countries including India to list after the 2019 landmark case of Aruna Shanbaug.

Passive euthanasia is the withdrawal of artificial life support or medical treatment necessary to keep the patient alive.

Active type suggests to inject a lethal drug which causes quick and painless death.

Arguments raised counter the legality of passive euthanasia over active euthanasia as passive is considered as relatively slow and painful when compared to active type.

Opponents of the concept raise the argument that there is a moral difference between 'taking a life' and 'not saving it'. Giving a lethal injection can be considered as killing if not for the sake of euthanasia and withdrawing the life-saving medical treatment is morally more ethical if the need is mercy killing.

Letting a patient die in passive euthanasia is allowing the cause of death be natural circumstances without moral culpability involved. ¹⁴Life support treatment is

¹³ Kerridge I, Lowe M, Stewart C. Ethics and law for the health professions. 3rd ed. New South Wales: Federation Press; 2009.

¹⁴ Callahan D. When self-determination runs amok. Hastings Cent Rep. 1992 Mar- Apr;22(2):52-55.



intervention in the natural death which merely postpones it by some time, once it is withdrawn the cause of death is still that underlying disease.

Indeed, this ideology is strongly endorsed by the Medical Association of Australia who are morally and legally against active euthanasia and physician assisted suicide, but passive euthanasia is ethical in their view as they do not consider withdrawal of life support to be the cause of patient's death, the deadly disease is the cause of death as opposed to active euthanasia and physician assisted suicide.¹⁵

ARGUMENTS AGAINST EUTHANASIA:

1. Sanctity of Human Life-

The society believes in God and everything natural which is created by the almighty. This thought provokes arguments which are against the use of euthanasia and is backed by religious and secular ideologies.¹⁶ Our constitution in Article 21 defines the right to life and the protection of life. Thus, the underlying crux of the matter is that the human life must be respected and preserved at all costs.

Religious views from Christian's belief says that life is a gift bestowed from God and should not be destroyed by human actions, death should take its natural course.

Similarly, in the Islamic holy books, it is written that "*it is the sole prerogative of God to bestow life and to cause death.*"¹⁷

The withdrawal of treatment is thus supported by such ideology as it allows the death to take its natural course.

2. Murder concealed as Euthanasia:

Euthanasia and murder are two different concepts which are often confused with one another. Although, it has been reported in countries where euthanasia is legalized that patients are getting murdered more often and the murderers are hiding behind this legality of euthanasia. Active voluntary euthanasia is considered as consenting to adult killing. There is a fine line of intention between murder and euthanasia which has to be strictly monitored by authorities.

3. Abuse of Autonomy and Exploitation of Human Rights-

Autonomy- Right of a person to make informed decisions about oneself without causing any harm to a third person or the society at large.¹⁸

Autonomy can be used in favor of euthanasia as well as in arguments against it. In simple terms, autonomy forbids euthanasia by voluntary ending of the conditions necessary for autonomy which would occur by ending one's life on earth.

Moreover, there have been detailed arguments about the fact that a patient's

¹⁵ Rachels J. Active and passive euthanasia. N Engl J Med. 1975 Jan 9;292(2):78-80.

¹⁶ Walsh D, Caraceni AT, Fainsinger R, Foley K, Glare P, Goh C, *et al.* Palliative medicine. 1st ed. Canada: Saunders; 2009. Chapter 22, Euthanasia and physician-assisted suicide; p.110-5.

¹⁷ Bulow HH, Sprung CL, Reinhart K, Prayag S, Du B, Armaganidis A, *et al.* The world's major religions'

points of view on end-of-life decisions in the intensive care unit. Intensive Care Med. 2008 Mar;34(3):423-30.

¹⁸ Goldman L, Schafer AI, editors. Goldman's Cecil Medicine. 23rd ed. USA: Saunders; 2008. Chapter 2, Bioethics in the practice of medicine; p.4-9.



request for euthanasia is rarely autonomous because most of the times, the patient is in comatose state or not in their sound mind to make an informed decision.¹⁹ Rationality is important for autonomous decisions with respect to euthanasia being proceeded.

As far as violation of human rights is concerned, it is a strong point in every argument that the act of mercy killing contravenes the “right to life” which is mentioned under every constitution in the world there is. In India, Article 21 defines this fundamental human right and the arguments get stronger every time. The Universal Declaration of Human Rights specifically mentions the gravity of the phrase “Everyone has the right to life.”

Some advocate the theory that if Right to life is legalized then so must be “Right to die” which is not factual as it makes suicide virtually justifiable in every case and that is beyond law.

4. Palliative Care- A Savior:

According to many international researches, it has been proven that palliative care makes an enormous difference in the psychological health of the terminally ill patient. Administering proper palliative measures can reduce the patient’s will to consent for euthanasia. Thus, proper-well administered palliative care encourages the patient to not give up on life. Incorporating this can sustain the act of euthanasia effectively.

5. Misuse of patient’s Vulnerability:

It has been noticed in countries where euthanasia has been legalized that sometimes in some areas, situations may arise where the rights of the vulnerable patients are undermined. For instance, patients or their families are coerced to choose between expensive treatments that may save the life of the patient- or may not and accepting euthanasia in any form- active or passive, as an alternative decision to relieve the suffering of the terminally ill.²⁰

So, because of such situations, many arguments have been raised on the legality and administration of euthanasia.

6. The doctor-patient relationship:

Patients and doctors have a professional relationship where the doctor is supposed to save the life of the patient rather than ending it. There is a trust and emotional connect that they develop. Destroying this trust and confidence between the two parties shall undermine the professional ethics of medical profession.²¹

It has been argued that doctors are meant to save lives, not the opposite. Casting doctors to administer euthanasia is some form of ‘cruelty’ and it compromises the objectives and ethics of medical profession.

INTERNATIONAL PROGRESSION OF EUTHANASIA

¹⁹ Patterson R, George K. Euthanasia and assisted suicide: A liberal approach versus the traditional moral view. *J Law Med.* 2005 May;12(4):494-510.

²⁰ George R J, Finlay IG, Jeffrey D. Legalised euthanasia will violate the rights of vulnerable patients. *BMJ.* 2005 Sep 24;331(7518):684-5.

²¹ Bartels L, Otlowski M. A right to die? Euthanasia and the law in Australia. *J Law Med.* 2010 Feb;17(4):532-55.



The laws related to euthanasia and the legality of active or passive euthanasia have been a hot topic for debate all over the world. Some countries have legalized it and others are still discussing the controversies and side effects. It is needless to say that the topic has gained importance over the years considering the number of cases increasing with each day, cases of suicide and euthanasia which gives fuel to the fire when it comes to the 'legality of euthanasia'.

The progression of euthanasia in different parts of the world have been further discussed:

A. UNITED STATES-

The Supreme Court of USA has been very clear on the distinction between active and passive euthanasia. There are several landmark judgements where the court has declared complete illegality of any form of euthanasia (*Vacco V/s Quill and Washington V/s Glucksberg*).

However, in some parts of the country, physician assisted death is legal and is covered under law.

For instance-

- In Montana- covered by the state judiciary, not the legislation.
- In the states of Oregon- covered under the Oregon Death with Dignity Act, 1997.
- In Washington- Covered under the Washington Death with Dignity Act, 2008.

B. NETHERLANDS-

Netherlands has been very open to the ideology of euthanasia and in the month of April, 2002, it became the first European country to legalize assisted suicide and euthanasia.

The legality of euthanasia in this country is covered under the "Termination of Life on Request and Assisted Suicide Act, 2002".

The act of euthanasia and physician assisted suicide are not punishable when the doctor undertakes all the legally necessary care. Although, the legality is applicable under extremely strict circumstances with very specific conditions.²²

Law in Netherlands allows the medical review committee to suspend the prosecution of physicians/doctors who performed euthanasia under the following conditions:

- The patient is in irreversible comatose and is suffering unbearably with pain.
- The patient's request for euthanasia is only granted when it is voluntary and persistent. Under no conditions should this decision be under any influence or psychological pressure.
- The person should be conscious and of sound mind at the time of making the decision.
- The physician must consult another independent doctor to review the condition of the patient before he practices euthanasia to confirm the conditions.
- The minimum age of patients must be 12 years old. Consent of parents is required in case the patient is between the age of 12-16 years.
- The death must be carried out under a medical supervision and in an appropriate fashion. The presence of doctor is essential to the list of conditions.

C. CANADA-

As per sections 241(b) of the Criminal Code of Canada, physician assisted suicide and the practice of euthanasia are considered illegal

²²

<http://www.legalservicesindia.com/article/787/Euthanasia-in-India.html>



and serious actions shall be taken against any person or doctor who tries to practice it. In Canada, the patient has the right to refuse medical treatment but is not allowed to voluntarily demand for euthanasia or assisted suicide. In one such case, the Supreme Court of Canada issued a statement that in case of assisted suicide, the interest of the state shall prevail over individual's interests (*Sue Rodriguez V/s British Columbia*)²³

D. BELGIUM-

Belgium was convinced by the decision of Netherlands to legalize euthanasia and therefore followed in its footsteps. In May, 2002 Euthanasia and assisted suicide became legal in Belgium under the Belgium Act on Euthanasia.

E. AUSTRALIA-

The progression of euthanasia in Australia has been interesting. The Northern territory of Australia legalized euthanasia under the Rights of the Terminally ill Act, 1996 (*Wake V/s Northern Territory of Australia*) by the Supreme Court of Australia.²⁴

Later, the decision was questioned by the subsequent legislation- Euthanasia Laws Act, 1997 which made it illegal again repealing the Northern Territory legislation.

LEGAL ASPECTS OF EUTHANASIA IN INDIA

India is not an original when it comes to law, hence it should not be studied in that way either. Our constitution is a result of laws made in several countries, adopting the best

legal decisions made throughout the world. Even in current times, it can be claimed that courts do not hesitate to refer to a foreign judgement to make a legal decision. Analysts and legal critics suggest that although our law has been adopted from some of the best constitutions, Indian law is unique and specific to Indians when it comes to judgements and decisions.

Euthanasia is illegal in India and is punishable in the eyes of law. In the case of mercy killing, it is considered that the physician or the doctor had an intention to kill the patient and such cases fall under clause 1 of section 300 of the Indian Penal Code, 1860. However, in such cases of euthanasia there is a valid consent of the deceased which would fall under exception 5 of section 300 of IPC, 1860 amounting for culpable homicide not amounting to murder. This exception 5 is only invoked in case of voluntary euthanasia where the patient gives consent in a sound state of mind.²⁵

In case of non-voluntary euthanasia, the accused would be charged by proviso 1 to section 92 of the IPC and thus be considered as illegal.

Law in India is very transparent on the aspects of suicide and assisted suicide as well. Right to suicide is not legal in India, therefore, punishable under sections 305, 306 and 309 of the Indian Penal Code, 1860.

- a. Section 305 of IPC, 1860: Abetment of suicide of an insane person or a child.
- b. Section 306 of IPC, 1860: Abetment of suicide.

²³ (1993) 3 SCR 519

²⁴ <http://www.euthanasia.com>

²⁵

<https://www.researchgate.net/publication/259485727>



c. Section 309 of IPC, 1860:
Attempt to commit suicide.

The IPC has previously been brought under scrutiny with regard to its constitutionality, referring to section 309. It is often argued that Article 21 of the constitution guarantees the right to life in India. It is a very essential right enshrined in the constitution which provokes debates that it correlates with 'right to die'. It is then argued that mercy killing or euthanasia must be a legal right of a person.²⁶

In the landmark judgement of *Gian Kaur V/s State of Punjab*²⁷, the five-judge bench of Supreme Court distinctly mentioned that Article 21 i.e. 'right to life' does not include the 'right to die'.

The court held that Article 21- "right to life" guarantees 'protection of life and personal liberty' and by know explanation can 'right to die' be correlated with this law.

However, section 309 of the Indian Penal Code, 1860 has been held constitutionally valid in the *Gian Kaur* case which is debatable and legal critics have requested for it to be taken down by the parliament considering it is antediluvian for this time.

If a person is suffering from depression and attempts suicide, what should the law do? Provide medical care for his mental well-being or punish him for committing an illegal act under section 309 of IPC, 1860?

This statement has raised many questions and debates seeking justification from our legal system, buttressed by the bench of Delhi High Court in *State V/s Sanjay Kumar*

*Bhatia*²⁸ issuing a statement that there is no legal justification for section 309 of IPC to remain in the statute book any longer.

Euthanasia is a subsidiary element of euthanasia and is technically assisted suicide, the question on its legality often revolves around suicide and its punishments.

In a recent case of suicide by actor Sushant Singh Rajput on 14th June 2020, the conversation moved around the sensitivity of depression and suicide. Mental health is a great deal in today's time and archaic laws like section 309 of the IPC continues to exist and often being misused.

This section was previously known to have been repealed but it still continues to exist. The Mental Healthcare Act (MHCA), 2017 has significantly reduced the scope of section 309 IPC and an attempt to commit suicide was only punishable as an exception.

In favor of this debate, the MHCA under section 115(1) stated that any person to fall under charges laid down by section 309 IPC will be presumed, unless proved otherwise, to have severe stress and shall not be tried for violation of law.

Section 115(2) says that it is the duty of the appropriate government to provide care and rehabilitation to such person who has severe stress and has attempted to commit suicide,

²⁶ <https://indianexpress.com/article/explained/sec-309-ipc-questions-and-issues-around-an-archaic-section-of-the-law-6468338/>

²⁷ 1996 (2) SCC 648 : AIR 1996 SC 946

²⁸ 1985 Cri.L.J 931 (Delhi HC)



to reduce the risk of repetition of attempt to commit suicide.²⁹

On March 09 2018, The Supreme Court sanctioned the legality of Passive euthanasia in a landmark verdict on the **Aruna Shanbaug Case** which permits Passive Euthanasia (living will) by patients on withdrawing medical support if they fall into irreversible comatose.

CHAPTER: 2

ARUNA RAMCHANDRA SHANBAUG

V/s

UNION OF INDIA

This case became the reason of the landmark Supreme Court judgement on legalizing passive euthanasia in India.

BACKGROUND:

On 27th November, 1973, Aruna Shanbaug, who was a Junior Nurse at King Edward Memorial Hospital, Mumbai, was attacked by Sohanlal B Walmiki, a ward boy in the same hospital. During attack, Walmiki wrapped a dog chain around Aruna's neck and jolted her against the wall. He attempted to rape her but on finding that she was menstruating at that time, so he committed the act of buggery. During this activity, she was fighting and throwing her arms around, so in order to immobilize the victim, Walmiki twisted the dog chain wrapped around her neck.³⁰

On 28th, the next day, a cleaner of the hospital found her covered in blood, lying on the floor. The doctor professed that because of the strangulation with the dog chain, oxygen supply to her brain stopped and it got severely damaged.³¹

WRIT PETITION:

On 24th January, 2011, a journalist who claimed to be a friend to Aruna Ramachandra Shanbaug, Pinky Virani, pleaded to the Supreme Court. The plea was that Aruna Shanbaug be allowed to end her life as she was in a state of irreversible comatose for almost 37 years.

The Writ petition filed by the journalist claimed that Aruna Shanbaug had been in that state for the past 36 years, she was as light as a feather and on that date, she was about 60-61 years of age. She alleged that she was extremely weak and her bones could break if she was moved to an uncommon position, even by accident. Her skin was paper thin, just stretched around her body, she had stopped menstruating and she was susceptible to sores from her bed. Her joints had permanently tilted inwards and she had no teeth left. All of these misfortunes caused her immeasurable pain.³²

She was declared to be in a Persistent Vegetative State (PVS). PVS was a severe state of brain dysfunction where the patient

²⁹ <https://indianexpress.com/article/explained/sec-309-ipc-questions-and-issues-around-an-archaic-section-of-the-law-6468338/>

³⁰ http://articles.timesofindia.indiatimes.com/2011-02-28/india/28641570_1_aruna-ramachandra-shanbaug-human-brain-pinki-virani

³¹ The Current Status of Euthanasia in India - ISSN 0971-0973

³² *J Indian Acad Forensic Med. April - June 2018, Vol. 40, No. 2*



shows no sign of consciousness. He/she can be called as 'brain-dead' in this state.

In this state of being 'brain-dead', Aruna can neither see, nor hear anything, she does not feel anything, nor is she able to express herself in any form. Her teeth were all decayed and when mashed food was put in her mouth, she had no control over chewing, nor she can swallow that mashed food. Her tongue has no taste and she does not show any sign of consciousness at all. This state of hers has been the same for the last 36 years.

The process of digestion that goes on in a normal person is impossible for the patient, the food goes down on its own without any effort, there is absolutely no muscle movement when she is swallowing. Her urine and excreta are discharged without any applied pressure, by itself on the bed. As per the filed writ petition, Aruna Shanbaug does not fit into any category of the living, she cannot be declared as a living person.

As per the doctor's reports, there is not even the slightest possibility for any improvement in her condition, she has been the same 'brain-dead' patient lying on the bed of KEM Hospital in Mumbai for the last 36 years.

The prayer of the petitioner to the Supreme Court is to direct the doctors and staff of KEM hospital to stop feeding the patient, so she can die a peaceful death.³³

COMMITTEE OF THREE DOCTORS APPOINTED BY THE HON'BLE SUPREME COURT:³⁴

The plea of the petitioner- Ms. Pinki Virani, was taken into consideration by the Supreme

Court and a committee of three doctors was composed as the court found some variation in the statements of the petitioner and the head of KEM Hospital where Aruna was admitted for 36 years after the tragic incident. The purpose of the three-doctor committee was to thoroughly examine the Aruna Ramachandra Shanbaug Case, from the date of the incident till then and submit a case report to the court after which action would be taken.

The committee suggested the following points in the case report:

1. The patient- Aruna Shanbaug meets all criteria for being in the Persistent Vegetative State (PVS).
2. She had developed irreversible brain damage, scientifically called as the hypoxic ischemic brain injury which is common after a strangulation attack causing lack of oxygen in the brain. However, it is non-progressive in nature.
3. She being alive was an evidence of a normal motor primary neural pathway and other visual and auditory functions, but during the examination, there was no sign of any motor movement or visual and auditory stimuli, which means she has no awareness or consciousness to register that information in her brain.

FACTS STATED BY THE SUPREME COURT:

After receiving the committee's examination report and hearing the petition, the Hon'ble Supreme Court stated some facts that they

³³ <https://www.bbc.co.uk/news/world-asia-india-32776897>

³⁴ Common Cause Vs Union of India & Ors. Civil Writ Petition No. 215 of 2005. 9th March 2018. 138

Available <https://indiankanoon.org/doc/184449972/>. Retrieved on 4th May 2018.



believed, had to be out-front before they arrive at a judgement.³⁵

1. If a person is in Persistent Vegetative State (PVS), should withdrawing life sustaining therapies or artificial life support including placement of an artificial placement pipe be permissible or called as ‘not unlawful’?
2. If the patient wishes not to be treated on life sustaining mechanisms when he/she goes into PVS or any state where she is irreversible unconscious, should the patient’s wishes be respected when and if the situation arises or the treatment should proceed?
3. If the patient has not stated his/her wishes or expressed in sound mind for artificial life support, and if the family requests for withdrawal of life support or life sustaining therapies when the situation arises, should their choice be respected or the treatment should proceed?
4. As mentioned in the writ petition, Aruna Shanbaug has been abandoned by her family and is being looked after by the staff of KEM Hospital, Mumbai. Who should take this decision for her, biological family or the Hospital?

PRINCIPLES HIGHLIGHTED BY THE COURT:

The court highlighted certain principles which can be used to justify the facts mentioned earlier and help this case to conclude.

- ***What is Autonomy?***

The right to self-determination where the patient has the right to decide the manner of

his treatment. An informed decision made in the sound state of mind is called Autonomy.

- ***What is Beneficence?***

Acting in the best interest of the patient is called Beneficence. This is a different concept from euthanasia which includes an intentional act of injecting poison to end the life of a patient to relieve him/her from suffering- active euthanasia.³⁶

Beneficence in this case was the prayer of the writ petitioner that asked the court to direct the hospital authorities and staff to withdraw from feeding the patient (Aruna), to let her die in peace which was for the patient’s best interest.

However, on the 7th day of March 2011, the Supreme Court rejected Ms. Pinky Virani’s plea and in a landmark judgement issued broad guidelines legalizing PASSIVE EUTHANASIA in India.³⁷

CAUSE OF REJECTION BY THE SUPREME COURT:

The writ petition filed by Ms. Pinki Virani who was a journalist and a social activist was rejected by the Supreme Court of India on the grounds that as per the guidelines issued regarding the legalization of Passive euthanasia, being a ‘next-friend’ is an essential criteria where if the patient has not signed a directive beforehand, the ‘next-friend’ shall give his/her consent to undergo the process of passive euthanasia.

³⁵ Common Cause Vs Union of India & Ors. Civil Writ Petition No. 215 of 2005. 9th March 2018. Available <https://indiankanoon.org/doc/184449972/>. Retrieved on 4th May 2018.

³⁶ Aruna Shanbaug Case. Available from: https://en.wikipedia.org/wiki/Aruna_Shanbaug_ca_se. Retrieved on: 2nd June 2018.

³⁷ <https://www.bbc.co.uk/news/world-south-asia-12662124>



In this case, the five-judges bench of the Supreme Court refused to accept Ms. Pinki Virani as 'next-friend', instead considered the staff of KEM Hospital in that position as they are the ones who are taking care of Aruna for the last 38 odd years.

Nevertheless, the court held Ms. Pinki Virani in the highest esteem because of her impeccable efforts and the five-judge bench believes that she has the best interest of the patient but she cannot match the efforts and involvement of KEM Hospital Staff who are working day and night to keep Aruna alive and that too for the past so many years.

The decision of the Supreme Court to reject the plea was because the KEM Staff wanted Aruna to be alive and they did not consent to progress her with passive euthanasia.³⁸ Ms. Pinki Virani said in a statement, "because of this woman who never received justice, no other person in similar position will have to suffer for more than three and a half decades."³⁹

Aruna Ramachandra Shanbaug took her last breath on 18th May 2015 as she was diagnosed with pneumonia. She was shifted to the Medical Intensive Care Unit, put on a ventilator but could not survive.

**"PASSIVE EUTHANASIA CANNOT OPERATE IN ABSTRACTION"
: SAFEGUARDS**

The five-judge constitution bench of the Supreme Court legalized Passive Euthanasia after the Aruna Shanbaug Incident and gave landmark judgements on the safeguards under which the action can be legally performed.

"Passive euthanasia cannot operate in abstraction" as it is a serious law passed with varied opinions and consequences if not performed under the right circumstances. According to the Supreme Court, these safeguards shall act as law until the legislations are adopted by the parliament with reference to this matter.

This action can be executed only by an adult of sound mind and who is in the position to comprehend and communicate the objective of executive such act and the sheer consequences of the same.⁴⁰

Justice Deepak Mishra, CJI head of the five-judge bench said that the consent shall be duly written clearly stating as to in what circumstances and at what stage should the medical treatment and life sustaining treatment be withdrawn,

Or, any specific type of treatment shall not be given which will result in delaying death which would otherwise cause the patient pain, anguish and immeasurable suffering, violating his rights of autonomy.

The directives of the Supreme Court must clearly indicate the following bullets:⁴¹

³⁸ <http://www.hindustantimes.com/mumbai/kem-nurses-dean-celebrate-aruna-shanbaug-s-birthday/article1-704677.aspx>

³⁹ <https://www.hindustantimes.com/archive-news/>

⁴⁰ <http://www.newindianexpress.com/nation/2018/mar/10/supreme-court-proposes-safeguards-on-living->

[will-for-terminal-patients-1784765.html](http://www.hindustantimes.com/mumbai/kem-nurses-dean-celebrate-aruna-shanbaug-s-birthday/article1-704677.aspx). Retrieved on: 2nd June 2018.

⁴¹

<http://www.latimes.com/news/nationworld/world/la-fg-india-euthanasia-20110308,0,1497102.story>



- The circumstances under which the decision of withdrawing life sustaining treatment and artificial life support system must be clearly mentioned.
- The guidelines must mention explicitly that the patient (executor) and the executing doctor can revoke the authority at any time, depending upon the condition of the patient.
- The consequences of executing such a directive must be clearly understood by the executor and this shall be explicitly written in the document signed by him.
- The document written by the executor must out-rightly mention the name of the guardian, family member, close relative, friend who will be authorized to give consent on executor's behalf when the situation arises and the executor becomes incapable to express his consent.
- In case there is more than one directive written and signed by the executor, the one with the latest date shall be considered as the patient's last wish which shall be respected.
- The directive advanced shall be signed by the executor in the presence of two witnesses attesting the document, preferably independent of any relations with the executor. This document shall further be signed by the Judicial magistrate which will act as a counter signature and a copy should be preserved in his office along with a digital format of the same.
- The magistrate shall call and inform the family members, friends, close relatives whose contact information is mentioned in the directive, of the execution process and make them aware by sending a copy of the signed directive to the officer of the concerned local government.

Any time in the future, when the executor becomes terminally ill and is confirmed to be in a state of irreversible disease with no hope of recovery what so ever, the treating doctor shall be made aware of the advanced directive signed by the executor.

The doctor shall crosscheck the same from the competent authority, in this case, JMFC magistrate before continuing with the process of execution in order to practice passive euthanasia.

As per this law, the hospital that is admitting such patient must constitute a medical board that should consist of three specialists in the fields of medical science, preferably:

- **Cardiology**
- **General Medicine**
- **Neurology**
- **Oncology**
- **Psychiatry**
- **Nephrology**

These specialists must have a minimum of 20 years' experience.

In case the medical board refuses to withdraw the life support after thoroughly discussing patient's medical condition, then the family members, friends, doctors or even hospital staff of the executor may approach to a high court where the decision would be finalized after appointing a committee to examine and investigate the case.⁴²

Regarding the cases, where there is no written directive of the executor, following the safeguards, in case the patient's health is critical and there is no hope for improvement or in cases of prolonged treatment of a disease which is incurable and this condition

⁴² The Mental Healthcare Act. Act No. 10 of 2017. Available from: <http://www.prsindia.org/uploads/media/Ment2017>

al%20Health/Mental%20Healthcare%20Act,%202017.pdf. Retrieved on: 2nd June 2018.



is irreversible, the doctor shall inform the medical board of the hospital to overview the case.

Then, the board shall inform the Magistrate who will appoint another committee with Chief District Medical Officer as the chairman and three other medical specialists in varied fields of medical science. These experts, as mentioned above shall have at least a minimum of 20 years of experience. If there is a conflict in decision making of difference of opinion while going to the decision, the family member, friend, relative or treating doctor of the executor shall move to the high court and file a petition with a prayer to withdraw life support of the executor, explaining his/her condition for permitting passive euthanasia i.e. withdrawal of life support to relieve the patient from his/her pain and suffering.

CHAPTER: 3

ACCEPTANCE OF PASSIVE EUTHANASIA IN INDIA:

As we have previously talked about the religious beliefs in the Indian society and the impact it has on the legalization of passive euthanasia, I would like to include that now, the Supreme Court has recognized right to die with dignity as a fundamental right.

There have been numerous debates on the consequences to passive euthanasia in the country in all aspects such as religious, ethical, legal, human-rights, economic, cultural and social. The truth is that passive euthanasia is legal in India and here is how Indian society is accepting it.

Since this legalization, there have been debates on the professing even better ways of palliative care in order to significantly reduce the requests for euthanasia. Palliative Care is expert care of a terminally ill patient and their families, done especially by a professional health care service.

Even though the Supreme Court has recognized right to die as a fundamental right along with right to live, but the diverse cultural societies and their mindsets in India oppose such law.

Hindu culture has a term- 'Atma-gatha' which means voluntary killing and it is prohibited in Hinduism. The same thoughts are shared by Indian Muslims, although they have not made a public remark over the matter. They believe that no person has the right to die before the natural time decided by 'Allah'- God. Muslims are sheer believers of God and have a strong sense of religious beliefs. "Sunni" and "Shia" are two major Muslim groups and both of them unite on this thought that Active and Passive euthanasia are both disobedience against God and that it should not be legalized.

Let us consider the views of another religion, Indian Christians; they promote the sanctity of life and the teachings of God, more than others. Thus, the Catholic Church is also against the concept of euthanasia because it is contrary to the teachings of the Holy Bible.

On the professional front, Medical experts have a completely different view of euthanasia as a concept. They believe that it is already incorporated deep into the Indian society as all across the country, in majority of hospitals the poor terminally ill patients have no option but to discontinue the



treatment as they have lack of resources to keep the patient's treatment continued. Due to lack of financial support and increasingly expensive medical operations and treatments, they cannot afford life.

However, there are many people who do financially well and can afford advanced medical treatments and palliative care which has become very common these days.⁴³

Suresh Bada Math, national Institute of Mental Health and Neuro Sciences (NIMHANS) said that the diseases of today such as AIDS, HIV, Cancer, Mental illness, hypertension and many more do not have a permanent cure, they are treated by means of care. Palliative care is what the doctors focus on because the cure is distant when compared to earlier times where life was simpler in terms of medical treatment and cure of diseases.

A senior health ministry official once commented that people need good palliative care, if it is being provided to them, why would they want to choose euthanasia? The government has been promoting palliative care by constituting policies for the elderly and terminally ill people who can choose euthanasia to relieve them of their pain and suffering in life. These days, there are various professional healthcare programs for welfare and palliative care provided to patients who are terminally ill and suffering from AIDS, Cancer, Fatal kidney problems, Mental Health problems and other such chronic diseases.

Why is a patient opting for euthanasia? Public mental health experts ask.

According to mental health experts, it is very essential for the doctor or physician to assess the mental health of the patient who is asking for euthanasia. The most common reasons for euthanasia are hopelessness, depression, immense pain and lack of care and acceptance from the society.

Notably, requests for euthanasia have decreased significantly when proper palliative care is provided to the patient. Pain management techniques are used for people suffering from mental issues which relieve them and aims to give such patients hope for their life.

A draft of Medical Treatment of Terminally ill patients – Protection of patients and medical practitioners have been prepared by the ministry of health in the year 2016 on the recommendations of Law commission after the landmark judgement of the supreme court and its decision to legalize passive euthanasia in India.

Validating the right to die with dignity as an essence of right to live with dignity, the Supreme Court on 9th March, 2018 gave legal sanction to passive euthanasia and implementation of living will of people suffering from chronic, incurable fatal illness and those who are likely to slip into Persistent Vegetative State (PVS) which was made as a part of the verdict in case of **Aruna Ramchandra Shanbaug vs Union of India**

⁴³

<https://www.livemint.com/Science/Whfh9I34eZ8iAXWaHVqK/How-will-India-accept-passive-euthanasia.html>



& Ors. who was into PVS until her death in the year 2015.

CONCLUSION

It is almost Augean to believe that in a country like India, law can be implemented with hundred percent faith and honesty. No such law can be guaranteed to be free of abuse and exploitation. Indian law is based on intentions, they play a strong part in the making of a judgement. Law that is primarily centered across the lives of poor people is likely to be victimized more than some other regulations, especially of sick people who do not want their lives ended. A constituent aspect of such exploitation is that it may be assuredly made imperceptible. However, the concept of euthanasia or mercy killing appears to be morally substantiated, its implementation and contingency seems preposterous at more levels than one.

The Gian Kaur's case was the pivotal after which Suicide had become illegal intrinsically, but the same cannot be expected with euthanasia. Not long ago, the landmark judgement of Supreme Court in *Aruna Ramchandra Shanbaug v/s Union of India* legalized passive euthanasia in India and observed that it is permissible only under expert supervision and exceptional circumstances. This law would be administered under strict legal guidelines provided by law but Active euthanasia is still illegal and cannot be practiced under any given circumstances. It is considered murder as of today.

In my opinion, voluntary euthanasia should also be permissible by law and a special legislation should be talked upon by the legislature covering all aspects of euthanasia.

The concept of euthanasia is still new to the country and the people of India have diverse religious sentiments on life and death, we have legalized euthanasia partially but we desperately require a law with apposite safeguards.

The guidelines laid down by the reports of Law Commission of India and the safeguards devised after the Aruna Shanbaug case must be taken into consideration while constructing this legislation on euthanasia.

If these safeguards and guidelines are implemented with strict supervision, only and only then will the concept of euthanasia prevail in India and mal practices, crimes and exploitation shall be prevented or at least significantly reduced.
