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EUTHANASIA IN INDIA

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ABSTRACT

When an individual ends his life, it is referred to as "suicide" however when a person's life is ended by others at the desire of the deceased, it is referred to as "euthanasia" or "mercy killing." This study aims to explain what euthanasia is and how it can be used in three different situations involving a living individual since birth. Although, the main aim of both suicide and euthanasia is self-destruction, there is significant distinction between the two. Euthanasia can be divided into five categories, and it can be used in a variety of ways. Apart from sociologists' views on euthanasia, its legal status in India in light of the Indian Constitution, Indian Penal Code, and other current laws, the positions of several countries throughout the world are also discussed.

Despite of the Hon'ble Supreme Court's decisions on this issue, some doubts remain about our position, which must be carefully examined. Finally, arguments for and against legalising euthanasia are presented, and the paper concludes with a strong recommendation for legalising passive euthanasia in India.

Keywords: Euthanasia, suicide, mercy killing, passive euthanasia, voluntary euthanasia.

INTRODUCTION

We call it "suicide" when someone takes their own life, but "euthanasia" or "mercy killing" when one person takes the life of another at the wish of the deceased.

The idea of euthanasia created a compassionate death that exists beyond natural death. The word euthanasia comes from the Greek word "euthanatos" which means "easy death". The term "euthanasia" was first used in medical terms by English philosopher and statesman Sir Francis Bacon, to refer to an easy, painless and happy death.² Euthanasia is defined as "a purposeful interference conducted with the sole goal of ending a life, to relieve intractable pains and

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² Francis Bacon, The major Works pp. 630 (Oxford's World Classic 2002)

agonies," according to the House of Lords Select Committee on Medical Ethics.³ Euthanasia is mostly linked with people who are dying or have become handicapped and do not want to suffer for the rest of their lives. A severely disabled or terminally sick individual should be able to choose whether or not to live. The freedom to choose whether to live or die should be granted to all human beings, not just those who are able-bodied and of sound mind.

Euthanasia has been a widely discussed topic all across the world. The argument has gained traction as a result of recent developments in the New Zealand and Spain, where euthanasia has been legalised. In 2011, the Supreme Court of India, in ArunaShanbaug case, has already addressed this issue and gave legal status to passive euthanasia in India.⁴

RESEARCH OBJECTIVES

- To understand the definition and types of euthanasia.
- To understand the difference between euthanasia and suicide.
- Legal status of euthanasia in modern age: A comparative study.
- To analyse the legal status in India.
- Reasons for supporting and opposing euthanasia.

HYPOTHESIS

- Legalizing Passive Euthanasia is a good step by the Indian Judiciary as it frees the patients of agony and pain that is there to stay and cannot be cured until their fate meets death.
- Most of the developed nations have legalized euthanasia.

DEFINITION AND TYPES OF EUTHANASIA

Black's law dictionary the term "Euthanasia" has been defined as, the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy.⁴ By the Encyclopaedia of 'Crime and Justice', euthanasia is defined as an act of death that provides relief from a stressful or unacceptable state of life. Simply said, euthanasia is the practise of compassionately ending someone's life to relieve them of an incurable condition, excruciating suffering, agony, and anguish. The delivery of medications with the explicit goal of ending the patient's life, at the patient's request, has been characterised as euthanasia.⁵ Euthanasia literally translates as "putting a person to death without pain," especially in cases of

³ Government of UK, <https://api.parliament.uk/historic-hansard/lords/1994/may/09/medical-ethics-selectcommittee-report>, (last visited Dec 1, 2021)

⁴ Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454
H. C. Black, Black's Law Dictionary 554 (8th Ed. 2004).

⁵ Baruch A. Brody, Life and Death Decision Making (Oxford University Press 1998).

incurable suffering or when life has become meaningless due to mental or physical impairment.⁶ In modern world, euthanasia is the deliberate ending of a person's life, usually for the purpose of alleviating suffering. Thus, the primary aim of euthanasia is to provide a less painful death to a person who will inevitably die after a protracted time of suffering.

Types of Euthanasia

Euthanasia is classified in a variety of ways, and it is vital to be confident and knowledgeable about these classifications.⁷

- **Voluntary euthanasia:**

Voluntary euthanasia occurs when a person chooses to end their life in order to avoid suffering in the future.

- **Non-Voluntary euthanasia:**

Non-voluntary euthanasia occurs when another person makes the decision to end a person's life prematurely and mercifully because the person being euthanized is unable to take that decision for themselves. This type of euthanasia is mostly connected with infants or patients in a coma who are unable to take decisions for themselves owing to their age or condition.

- **Involuntary euthanasia:**

Involuntary euthanasia occurs when euthanasia is carried out on someone who is capable of giving informed consent but refuses to do so, either because they do not wish to die or because they were not asked.

- **Active euthanasia:**

When a person dies as a result of an act, such as being given an overdose of painkillers, then it is known as active euthanasia.

- **Passive euthanasia:**

Passive euthanasia is said to happen when the death of a person is caused by either withdrawal or withholding of the treatment that might keep the person alive. Thus, even if ways to keep a person alive are available, a person who is passively euthanized is permitted

⁶Dr. C.K. Parikh, Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology 1.55 (6th Ed. 2006).

⁷ Mark Dimmock and Andrew Fisher, ETHICS FOR A-LEVEL 123-124 (Open Book Publishers 2017)

to die naturally. Passive euthanasia is traditionally regarded to be less harmful than active euthanasia. However, some believe that active euthanasia is morally superior than passive euthanasia.

EUTHANASIA AND SUICIDE

Although the main aim of both suicide and euthanasia is self-destruction, there's a good amount of distinction between the two. Suicide as defined in Webster's Dictionary means an act or instance of intentionally killing oneself. Therefore, suicide can be defined as the act of deliberately terminating one's life by self-inflicted means for a variety of reasons, like frustration in love, failure in exams, or difficulty finding a good career, but mostly because of depression. The term euthanasia has not been defined in any religious scriptures, but given the fact that how closely it resembles the concept of suicide, it can be assumed that it is forbidden by all religions. In Indian law, criminal liability is based on the Roman Maxim, "Actus non facit reum nisi mens sit rea", which means that an act is not criminal unless the mind is guilty. Now on applying the above principle in the cases of euthanasia, one can argue that the accused is not accountable for any crime because the victim has given his or her consent to die. However, whether granting consent to kill someone absolves the offender of criminal responsibility or not is a crucial topic. If the answer to the previous question is yes, then euthanasia is not a crime. But the Indian law is fairly clear on this regard. One may argue that granting consent absolves a person of liability, or he can claim "volenti non fit injuria" as a defence. The consent law in Indian jurisdiction is quite comprehensive and provides no room for ambiguity in explaining it. Section 87 of the IPC, makes it clear that consent cannot be used as a defence in cases where the consent is given to cause death or grave harm.⁸ The Hon. High Court of Bombay in the case of Maruti Shripatli Dobal vs State of Maharashtra, while attempting to draw distinctions between suicide and euthanasia, observed that suicide is, by definition, the intentional killing or ending of one's own life without the assistance of others. Euthanasia, on the other hand, refers to the use of another human agency to put an end to a person's life. As a result, mercy killing cannot be placed on the same level as suicide. Mercy killing is nothing more than homicide, regardless of the circumstances.⁹ In the case of Naresh Marotrao Sakhre v. Union of India, the Bombay High Court observed that suicide, by its very nature, is an act of self-killing or

⁸ Indian Penal Code, 1860, s.87, Acts of Parliament, 1860 (India)

⁹ Maruti Shripatli Dobal vs State of Maharashtra, (1986) 88 BOMLR 589

self-destruction, an act of ending one's own act without the aid or support of any other human agent. On the other hand, euthanasia, often known as mercy killing, implies the use of another human agency to end a person's life. As a result, mercy killing is not the same as suicide. Both legally and factually, the two notions are separate. Whatever the circumstances, euthanasia or mercy killing is nothing more than homicide.¹⁰

Here, a new term “assisted suicide” gets involved in the discussion. As per Meriam-Webster dictionary, assisted suicide is the suicide committed by someone with aid and assistance from another person. The difference between assisted suicide and active euthanasia is that in the former, an individual must themselves deliberately take steps to end their life but, in case of active euthanasia, a third person ends the life of the individual. The Apex court, in the case of *Gian Kaur v. State of Punjab*¹¹, held that euthanasia and assisted suicide are both illegal in our country.

LEGAL STATUS OF EUTHANASIA: A COMPARATIVE STUDY

In recent years, the use of euthanasia, or mercy killing, has expanded dramatically. Many countries have passed laws making it lawful. This is a challenging topic because few countries recognise the right to die as an intrinsic human right, while others deny it. As a result, euthanasia is allowed in only a few countries, forbidden in others, and partially legalised in the others.

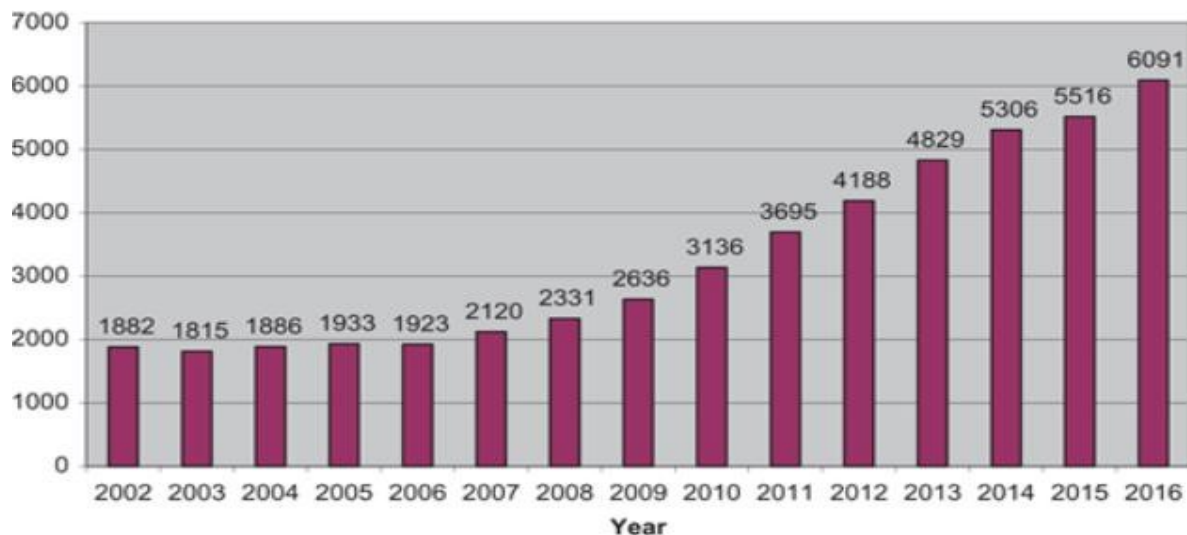
THE NETHERLANDS

In April 2002, The Netherlands became the first country to give legal status to euthanasia. The trend has been higher since the act was passed in the Netherlands. The graph below depicts the statistics on euthanasia-related deaths in the Netherlands.¹²

¹⁰*Marotrao Sakhre v. Union of India*, 1995 CriLJ 96

¹¹*Gian Kaur v. State of Punjab*, AIR 1996 SC 946

¹² Robert Peterson, *Death on demand? An analysis of physician-administered euthanasia in The Netherlands*, *British Medical Bulletin* (Dec 11, 2021, 09:32 AM), <https://academic.oup.com/bmb/article/125/1/145/4850942?login=true>



This graph demonstrates how well the people have accepted euthanasia and the right to die. Euthanasia in the Netherlands is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002. The act legalized euthanasia and physician assisted suicide in Netherlands in very specific cases, under very specific conditions. When each of the following requirements are met, the legislation authorises a medical review board to suspend prosecution of doctors who practised euthanasia.¹³

- The patient's suffering is unbearable with no prospect of improvement.
- The patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs).
- The patient must be fully aware of his/her condition, prospects, and options.
- There must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above.
- The death must be carried out in a medically appropriate fashion by the doctor or patient, and the doctor must be present.
- The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents).

THE UNITED KINGDOM

¹³ Government of Netherlands, <https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicideand-non-resuscitation-on-request>, (last visited Dec 11, 2021).

In the Kingdom, Euthanasia has not been legalized yet. It is a criminal offence under the Suicide Act, 1961 and is considered to be equivalent to murder. The Supreme Court of the United Kingdom has stated that the decision on the legality of euthanasia should be left to the parliament. This has prompted many groups to conduct polls, the results of which show the country's need for euthanasia. In 2015, a private member's bill was introduced in the UK parliament to address this topic for the first time. It was thwarted by a massive margin of 330 points against 118. In the 2020, a MP was of the opinion that the 2015 euthanasia bill would be passed in the coming years as there has been a growing support in the house for the same.¹⁴

THE UNITED STATES

In the States, the law maintains distinction between active and passive euthanasia. The Supreme Court of the United States, in cases of *Washington v. Glucksberg*¹⁵ and *Vacco v. Quill*¹⁶, has declared euthanasia to be completely illegal. However, physician assisted euthanasia is legal in some states like Oregon (Oregon Death with Dignity Act, 1997), Washington (Washington Death with Dignity Act, 2008) and Montana by the state judiciary.

LEGAL ASPECTS OF EUTHANASIA IN INDIA

Though the law is in place in certain nations, it is not in place in India, where euthanasia and physician-assisted suicide are both prohibited. A physician who delivers lethal medications to another individual in order for him to end his life will be held accountable as an aider and abettor in his death. Suicide and attempt to commit suicide, are both criminal offences in India under section 306¹⁷ and section 309¹⁸ of the Indian Penal Code, 1860. This is in contrary to countries like the UK and the USA where attempt to suicide is not a crime. However, a physician who tries to kill a patient, at the latter's request, will fall under exception 5 of section 300 of IPC¹⁹ and he will be held accountable under section 304 of the Indian Penal Code²⁰ for culpable homicide not amounting to murder. Cases of non-voluntary and involuntary euthanasia

¹⁴ SKY NEWS, <https://news.sky.com/story/assisted-dying-could-be-legalised-in-the-uk-within-four-years-leading-mp-predicts-12055523>, (last visited Dec 11, 2021).

¹⁵ *Washington v. Glucksberg*, 521 U.S. 702 (1997)

¹⁶ *Vacco vs Quill*, 521 U.S. 793 (1997)

¹⁷ Indian Penal Code, 1860, s.306, Acts of Parliament, 1860 (India)

¹⁸ Indian Penal Code, 1860, s.309, Acts of Parliament, 1860 (India)

¹⁹ Indian Penal Code, 1860, s.300, Acts of Parliament, 1860 (India)

²⁰ Indian Penal Code, 1860, s.304, Acts of Parliament, 1860 (India)

would be struck down by provision 1 of section 92 of IPC and hence will be rendered illegal.²¹ The law commission of India in its 42nd report (1971-73) had recommended repealing the provision in 1971 and had declare the provision to be draconian.²²

In India, even though active euthanasia is illegal in India, the Apex Court, on 11th of March 2011, in the case of ArunaRamchandraShanbaug v. Union of India²³ gave legal status to passive euthanasia by means of withdrawal of life support in a permanent vegetative state. The court stated that because there's absence of a proper law regulating euthanasia in India, its ruling becomes the law of the land until the Indian Parliament makes any appropriate legislation. In this case, the court also laid down the following guidelines for passive euthanasia;

- A decision to terminate life support must be made by the parents, spouse, or other close relative, or, in the absence of any of them, by a person or group of people acting as a next friend. It can also be administered by the doctors who are caring for the patient. The decision must, however, be made in the best interests of the patient.
- No matter who takes the decision to terminate the life support, the decision requires approval from the concerned High Court.
- When such an application requesting approval is made in the High Court, the Chief Justice of the High Court must set up a bench of at least two judges to decide upon the application. The bench must nominate an expert panel of doctors who would examine the condition and submit their report. The bench, before pronouncing the judgement, must give a notice regarding the report of the panel, to the state and the close relatives of the patient. After hearing arguments from the parties, the court can give its verdict.

In this case, the apex court made a remarkable statement regarding attempt to suicide. The court was of the view that since a person willing to take his own life needs help rather than punishment, it is not ethical to keep it as a criminal offence and asked the parliament to consider decriminalizing attempt to suicide i.e., to consider deletion of section 309 of the IPC.

²¹Subhash Chandra Singh, EUTHANASIA AND ASSISTED SUICIDE: REVISITING THE SANCTITY OF LIFE PRINCIPLE, 54, JILI 196, 208-209 (2012).

²² Law Commission of India, <https://lawcommissionofindia.nic.in/1-50/report42.pdf>, (last visited Dec 12, 2021).

²³Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

The active/passive distinction is couched in terms of a dichotomy between 'killing' and 'letting die', which stipulates that it is morally wrong to intentionally take a life, but permissible to allow the inevitable to happen by withdrawing or withholding treatment.²⁴

VIEWS FOR AND AGAINST LEGALIZING EUTHANASIA

Reasons to support euthanasia

Monks encourage the renunciation of the body (kaya) for eternal rewards and blessings in the search for God in ancient India, according to Hindu faith. When a terminally ill individual is in excruciating pain, it is recommended that they make a demand for death. The right to file a claim for death stems from the freedom to make one's own decisions. Everyone has the right to self-determination and the ability to choose his or her way of life. Similarly, it is proposed that everyone should have the right to end one's life, if his life has become so stressful that he feels that ending his life will be easier than living and that death will provide him with respite from an incurable illness and a horribly stressed life. It can be considered as a way of health care as puts an end to a life that is unworthy of living. Euthanasia has been performed for centuries. Residents of Athens could get a dose of poison with government permission, thus allowing them to choose death over pain. Euthanasia debates vary greatly from country to country and culture to culture.

REASONS AGAINST EUTHANASIA

It is a fact that life is the universe's most precious gift. No one has the right to end another's life, according to the widely held belief. The unnatural termination of life was condemned by all religions. Everyone should deal with all kind of situations that come in their way. Every human being is obligated to respect all other humans. A humanitarian attitude does not allow for a person to be left defenceless in a crisis. Nobody should surrender in the face of foes such as disease or suffering, as we have learned since the dawn of civilised society. The concept of family encourages us to help one another and to maintain the principle of unity in all circumstances. Furthermore, the state is entrusted with the responsibility of working for the common good of all the residents of the state. Under all circumstances, the sanctity of life should be respected. Governments should establish and develop ways and mechanisms that

²⁴ Stephen Potts, looking for the exit door: killing and caring in modern medicine, 25 *Houst. Law Rev.* 504 (1988)

allow even the poorest people to get aid. In addition, the law does not allow anyone the right to kill another person. Regardless of the circumstances, a person's humanitarian, constitutional, legal, or religious views do not permit them to kill another. In India, euthanasia cannot be permitted only on the request of relatives, as they may be interested in inheriting the patient's possessions.

FINDINGS

- Not all developed nations have legalized Euthanasia.
- In India, only passive euthanasia is permitted. Law prohibits active euthanasia.
- The euthanasia set up in India is a two-step set up;

First, an application needs to be submitted in the concerned high court seeking permission for euthanasia.

Second, Chief Justice of the High Court needs to set up a bench consisting of at least two judges to decide upon the application. The bench then needs to nominate an expert panel of doctors who would examine the condition and submit their report.

- The apex court has asked the parliament to consider deletion of section 309 of IPC which deals with attempt to suicide.

SUGGESTIONS

The Supreme Court of India's decision of legalizing passive euthanasia is a clear winner. The government should pass legislation and a proper set of guidelines regarding passive euthanasia. It should work on the lines of the Netherlands' act on euthanasia. An additional clause of compulsory donation of organs for people opting for passive euthanasia should be legalized. These guidelines and rights that people have should be advocated large so that everyone is aware of it and does not face problems that existed before this judgment.

CONCLUSION

No law could be assured to be devoid of the risk, if not the certainty, of misuse, which would primarily focus on the lives of a sick individual who did not want their lives to be taken. And the fact that such misuse can readily go undetected, is a particularly element of concern. As a result,

while mercy killing appears to be ethically justifiable, its fool-proof implementation looks to be near-impossible.

Suicide has become criminal in general as a result of the judgement in the case of Gian Kaur, but euthanasia has not. In *Aruna Ramchandra Shanbaug v. Union of India*, the Supreme Court gave legal status to passive euthanasia, stating that while passive euthanasia is admissible under law in exceptional situations, active euthanasia is not.

In light of the above arguments, I would conclude that voluntary euthanasia should be permitted in India, and that the legislature should intervene and enact a special statute covering all elements of the practise. As a result, we need a law that legalises euthanasia while still providing necessary protections.