

Euthanasia Vis-À-Vis Right to Die with Dignity: An Analysis of Article 21 of the Constitution of India and Approach of the Indian Judiciary

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Abstract

Questions are being asked as to whether it is right to continue life-sustaining medical treatment in cases where all hopes has extinguished or whether wishes of a person no more competent to exercise judgment and his wishes expressed before lapsing into incapacity of exercising judgment, be respected and complied with in terminating life. But, the risk and fear of misuse and abuse could be done away with the proper safeguards and specific guidelines. Due to the lethal indecision, people are increasingly relying on 'living wills', authorizing their surrogates to petition for removal of life sustaining devices in the event of becoming terminally ill. At the present time, "right to die with dignity" is being advocated by many organizations and individual. Many "right to die" societies are being created and living wills are becoming increasingly popular. There is also the issue of socio-economic viability linked with the right to die with dignity. The expense of health care system is increasing day by day all over the world. Keeping a person who is in a persistent vegetative state 'alive' by artificial respiratory system is an expensive affair today. In the light of recent developments (legal, moral and ethical), issues have arisen as to whether a person who is under ventilator and artificial nutrition should be kept alive for all time to come till the brain-stem collapses or whether, in circumstances where an informed body of medical opinion states that there are no chances of the patient's recovery, the artificial support systems can be stopped.

If that is done, can the doctors be held guilty of murder or abetment of suicide or not. It is time that India, like many other countries, needs to answer these questions with concrete legal measures and appropriate safeguards to prevent its misuse.

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I. Introduction

The term 'EUTHANASIA' means good death. Derived from two Greek terms 'Eu' meaning good and 'Thanatos' meaning death³. Thus, it is the act of putting an end to the life of a terminally ill patient by some other person, on the request of the said patient, when his pains and sufferings gets intolerable and the ultimate result is death which is unavoidable⁴.

In Black's Legal Dictionary the term 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'. Butterworth's Medical Dictionary defines euthanasia as 'The process of dying easily, quietly and painlessly; the act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and intractable painful and distressing disease'⁵. Oxford Concise Medical Dictionary terms it as 'the act of taking life to relieve suffering'. In common parlance, it means 'mercy killing'.

Expenses apart, in the growing popularity of nucleus family there is a crisis of man power to look after the patient who lies in bed in a vegetative state for months and years. In such a situation, moral lack of supervision and support, excessive medical expenditure, render the sick and dying a burden⁶. Then the utopian considerations are not important rather it is the person's right to dignity and dignified life that are to be discussed, fruitfulness of care and treatment given to the person needs to be evaluated. Unfortunately, that does not happen

³Gerald A. Larue, *Euthanasia : A Global Issue*, *Hindusim Today*, (1996), vol.13, pdf.

⁴DHARMENDER KUMAR NEHRA, PRADEEP KUMAR AND SHEETAL NEHRA, EUTHANASIA: AN UNDERSTANDING, Research Gate, (Last visited - Aug. 19, 2019, 10.13 AM), https://www.researchgate.net/publication/252626984_Euthanasia_An_Understanding

⁵Dowbiggin, I. A merciful end: the euthanasia movement in modern America. (2003), Oxford University Press, Page 10–13,

⁶Beauchamp, T.L. & Davidson, A.I, *THE DEFINITION OF EUTHANASIA*, *THE JOURNAL OF MEDICINE AND PHILOSOPHY*, ., Vol. 4, No. 3, 294-312, (1979).

and all hue and cries are reserved against euthanasia of such terminally ill patient⁷.

II. Euthanasia as Practiced in India

Mahatma Gandhi has once stated, “A calf having been harmed lay in anguish in the ashram in spite of all conceivable treatment and nursing. The creature's enduring was extremely intense. The issue was set before the entire ashram. At long last, in all lowliness however with cleanest of feelings I got in my quality a specialist to regulate the calf an end by methods for a noxious infusion and the entire thing was over in two minutes.”⁸

In India euthanasia is undoubtedly illegal as in cases of euthanasia there is an intention on the part of the doctor to kill the patient⁹. Assisted suicide which amounts to abetment of suicide is an offence expressively punishable¹⁰. The issue of euthanasia first hit the headlines in recent past when a mathematics teacher in Lucknow, terminally ill, had his family to submit petition to the President of India in 2001 seeking to end his life.¹¹ Again Venkatesh, a terminally ill Indian chess national champion was suffering from genetic neurological disorder – ‘Duchene’s muscular dystrophy’. The Court refused his request to turn off his life support system so that he could donate his organs before they were irreparably damaged.¹²

Then again two cases of Indian courts turning down requests of the patients to die were reported in the year 2001. The Patna High Court dismissed Tarakeshwar Chandravanshi’s plea seeking mercy killing to his 25 year old wife

⁷Burgess, S. &Hawton, K. *Suicide, Euthanasia and the psychiatrist.Philosophy, Psychiatry and Psychology*; (1998), pdf.

⁸Newspaper Report ,“The Times of India”; Bombay, Jan 03, 2005, <https://timesofindia.indiatimes.com/india>

⁹Newspaper Report, “Permission for Ending the Life with Sons”, Dainik Jagran, May 06, 2007, <https://twitter.com/jagrannews?lang=en>.

¹⁰Newspaper Report, “Allow us to die Kalam Sir” Times of India , October 07, 2006, <https://timesofindia.indiatimes.com>.

¹¹ewspaperReport,“The Times of India”; Aug 01, 2006.

¹²BBC News; December 17, 2014

Kanchan who had been comatose for 16 months.¹³ Kerala High Court said 'No' to the plea of BK Pillai who had a disabling illness, to die.¹⁴

There are recent cases of euthanasia recorded in India which are pending where people, due to various reasons, has filed petitions for allowing them to commit Euthanasia¹⁵. For instance, Ramgarh Pandey who has sold a quarter of his farm land for treatment in Uttar Pradesh, suffering from AIDS has asked the Country's President to allow them and their daughter to die through euthanasia as they were being harassed in their village. That is why a plea was sent to the President to grant the entire family euthanasia".

Again, a 79 years old freelance journalist has petitioned the Rajasthan High Court seeking permission for euthanasia, saying he wants to 'die with dignity'¹⁶

A serious political debate about euthanasia has begun in India after a Federal Law Commission recommended legislation to allow mercy killing¹⁷.

Thus, in case of terminal illness the conflict is often between doctor's duty to treat to the best of his ability and patient's right to be allowed to die quietly when medical measures only prolong life. The issue of euthanasia has been riddled with controversies with arguments for and against it¹⁸. Most religions

¹³As published in "The Hindu"; November 25, 2005

¹⁴ibid

¹⁵The special mention can be made of:

- (i) Swapna Dss and Biswanath' plea for mercy killing in Times of India, (2008) 2nd July 02 at 7;
- (ii) Appeal of society for Right to Die with Dignity, Mumbai to Supreme Court of India for Right to Die, Published in Danik Jagran, March 13 (2009);
- (iii) Jeet Narayan plea to President of India for euthanizing his three sons suffering from irrecoverable illness in Times of India, Aug 11, (2009).

¹⁶ibid

¹⁷LAW COMMISSION OF INDIA, "HUMANIZATION AND DECRIMINALIZATION OF ATTEMPT TO SUICIDE" REPORT NO210, NEW DELHI, (2008).

¹⁸Two Court cases of Euthanasia Request in 2001:

- (i) Tarakeshwar Chandravanshi's plea seeking mercy killing for his wife to Patna High 88 Court; and

disapprove of euthanasia but in India practice of ending one's life voluntarily is very old and intact, it exists even now. Following legalization of euthanasia in Netherland, there has been extensive public debate in India on the issue of euthanasia. In India, euthanasia and assisted suicide are illegal. A close perusal of the arguments that have been forwarded to indicate the sanctity of life and, the opposition to euthanasia stems from the fear of its misuse. Though mercy killing appears justifiable in cases of incurable diseases, doctors should be doubly careful since they run the risk of attracting punishment for murder under the Indian Penal Code, 1860.

III. Euthanasia: Study of the Indian Legal Framework

In India, the sanctity of life has been put on the highest pedestal. The Right to Life under Article 21 of the Indian Constitution has received the widest possible interpretation under the able hands of the judiciary. The right is inherent in us and inalienable. It cannot and is not conferred upon us¹⁹.

The Indian Constitution says that the right to die is not a fundamental right under Article 21. Does the right to die is included in Article 21 of the Constitution came up for consideration for the first time in the Bombay High Court in *The State Of Maharashtra V. M.S. Dubal*²⁰. Consequently the court struck down section 309 of the Indian Penal Code, which provides punishment for attempt to commit suicide as the matter being unconstitutional²¹.

The Supreme Court in *P. Rathinam V. Union of India*²², upheld the Bombay High court's decision in a later case. However, in *GianKaur V. State of*

(ii) B.K. Pillai's request for die with dignity to The Kerala High Court, Published in The Hindu Sunday, Dec12, 2004,

<http://www.hindu.com/2004/12/12/stories/2004121214570300.htm>

¹⁹Onwuteaka-Philipsenet al b. D., van der heideet al a., Koper, d.Etalkeij-deerenberg,l. Et alRietjens, j. A. C. Et alRurupet al m. L., vrakkinget al a. M., georgeset al j. J.,muller et al m. T., van der walet al g., & van der mass, p. Euthanasiaand other end-of-life decisions in the netherlands in 1990, 1995, and 2001, Page 362, 395–399, (2003).

²⁰The State Of Maharashtra V. M.S. Dubal,AIR 1977 SC 411 (India).

²¹PATRA, S. AND PATRO, B.K. Euthanasia: Does the onus rest with thephysicians? Indian J Community, Med; 37, 60-1, (2012).

²²P. Rathinam vs. Union of India,1994(3) SCC 394 (India).

*Punjab*²³, a five judge constitution bench of the court overruled the decision of Rathinam's case and held that the right to life under Article 21 of the Constitution does not include the right to die or right to be killed.

However, it was stated that though a person has no right to die but a person certainly has the right to die with dignity²⁴. Thus, it should be ensured that a person should be allowed to die with dignity and thereby, any person suffering from terminal illness and unbearable pain, may be helped so that he gets relief from all his pains and thus, should be allowed to die a dignified death where death is inevitable²⁵.

III.I. Euthanasia: An Interpretation of Article 21 of the Constitution of India

The principle of sanctity of life has been given recognition as a fundamental and inalienable right in the Constitution of India. Article 21 of the Constitution of India guarantees that “*no person shall be deprived of his life or personal liberty except according to procedure established by law.*”²⁶ Through Article 21, protection is provided to human life and as well as to all the facts of life that contribute to the sanctity, preservation and enjoyment of life. This provision, popularly called the ‘Right to life’ guarantees that human lives and personal liberty, which is essential for the enjoyment of life cannot be deprived in an arbitrary and illegal matter. This provision only permits the deprivation of life and liberty that is in accordance with law²⁷.

²³Gian Kaur vs. State of Punjab, 1996(2) SCC 648 (India).

²⁴Newspaper Report, “Allow us to die Kalam Sir” Times of India 07th October , 2006, <https://timesofindia.indiatimes.com/india>.

²⁵CHARLENE A. WINTERS, Rural Nursing: Concepts, Theory, and Practice (2nd ed.) , 2013, Page 129-137, New York: Springer.

²⁶BILAL S. H., BADR NAGA MAJD T. MRAYYAN, *LEGAL AND ETHICAL ISSUES OF EUTHANASIA: ARGUMENTATIVE ESSAY*, EDUCATION AND TRAINING, (Last visited Aug, 29, 2019, 11:30 AM)

file:///C:/Users/HP/Downloads/EUTHENASIA2.pdf

²⁷Ramsay, J.H.R., *A KING, A DOCTOR, AND A CONVENIENT DEATH*, BRITISH MEDICAL JOURNAL, Page 308 (1445).

The Right to life embraces not only physical existence but also the quality of life as understood in the richness and fullness of life²⁸. The scope of the right to life has been widened to include several aspects which contribute to the enjoyment of a wholesome human life. Interestingly, the Supreme Court has also interpreted the right to life to include the right to die with dignity as well. It has been well stated that every person has a right not only to live with dignity but also to die with dignity.

However, in this context it must be noted that Article 21 has been held to have both positive as well as negative dimensions.²⁹ On this aspect of Article 21, the question that arises is whether a negative right such as the right to die, which takes away the right to life would be permissible under this Article.

Thus, there is a clear dilemma, as to whether the Right to die with dignity, as interpreted by the Supreme Court to be a part of Article 21, can include Euthanasia or mercy-killing³⁰.

III.II. Right to Die Vis-À-Vis the Right to Life

This issue of the Right to Die to be a part of the Right to Life has especially arisen in the case of permissibility of Euthanasia under the Constitution of India³¹. The issue as in the case of all debates on life and death has been a subject of immense controversy and the legal, medical moral and religious dimensions of the issue have been scrutinized³². The question has arisen that if a

²⁸Islamic Code Of Medical Ethics Endorsed By The First International Conference On Islamic Medicine. Islamic Organization Of Medical Sciences, Kuwait, (1981).

From [http://www.rewi.unijena.de/rewimedia/Downloads/LS_Ruffert/Ethical+Codes/Islami +Code of+ Medical+ Ethics. Pdf](http://www.rewi.unijena.de/rewimedia/Downloads/LS_Ruffert/Ethical+Codes/Islami+Code+of+Medical+Ethics.Pdf)

²⁹Unnikrishnan v. State of Andhra Pradesh, (1993) 1 SCC 645 (India).

³⁰India's Supreme Court lays out euthanasia guidelines. Mark Magnier, Los Angeles Times. (last visited Mar. 8 2011).

³¹Euthanasia is considered a practical, emotional, and religious debate. There is also a deep and broad history of euthanasia, which cannot be ignored when having a debate regarding this subject. Based on this history, beliefs, and viewpoints, certain arguments for and against euthanasia have been put forward.

³²Van Der Maas, et al P. J., Van Der Wal et al G. And Haverkate I. Et al. *EUTHANASIA, PHYSICIAN-ASSISTED SUICIDE, AND OTHER MEDICAL PRACTICES INVOLVING THE END OF LIFE IN THE NETHERLANDS.*, New England Journal Of Medicine, 335: 1699–1705,(1996).

person has a positive right to life, does he have a negative right to not live. In other words, can a person be compelled to live against his desire³³? Certain factions who support the individualistic approach to life argue that each individual has a right to determine the direction and duration of his own life and cannot be forced to live against his own wishes³⁴. On the other hand, certain factions that consider life as a sacred gift hold the view that, as man does not have the power to create life, he does not have the right to extinguish life irrespective of the justifications in this regard³⁵.

The right to Die as well as the permissibility of Euthanasia in the Indian context has been the subject of debate before the Supreme court in certain cases, and it has been argued that where patients undergo great pain and suffering and are at death's door with no hope of recovering, euthanasia ought to be permissible as a means to enable the patient to exercise his right to die with dignity as an intrinsic part of the right to live with dignity³⁶.

Thus, although the Indian legal regime does not allow euthanasia and regards it to be unethical, passive euthanasia has been allowed in very rare cases. But doctors are still reluctant to conduct euthanasia as they are being prosecuted for homicide or murder according to the Indian criminal law. However, the same also provides for some safeguards to the doctors in case they involve themselves

³³Another important argument concentrates on the ambiguous notion of mental illness itself. If patients suffer in their environment and develop a mental disorder, it is difficult to ascertain whether the mental disorder and suffering are solely a natural reaction to an intolerable and/or hostile environment, or whether genuine mental disorder has ensued. Thus, the term 'mental suffering stemming from mental disorder' is vague and hard to define, and the potential for abuse is serious.

³⁴"Euthanasia: Widely debated, rarely approved". Times of India. 8 March 2011. <http://timesofindia.indiatimes.com/india/Euthanasia-Widely-debated-rarely-approved/articleshow/7651439.cms>.

³⁵Otani, I, 'GOOD MANNER OF DYING' AS A NORMATIVE CONCEPT: 'AUTOCIDE', 'GRANNY DUMPING' AND DISCUSSIONS ON EUTHANASIA/DEATHWITH DIGNITY IN JAPAN, International Journal of Japanese Society, 19 (1), Page 49–63, (2010).

³⁶India's Supreme Court lays out euthanasia guidelines". LA Times. 8 March 2011. <http://www.latimes.com/news/nationworld/world/la-fg-india-euthanasia-20110308,0,1497102.story>.

in cases of passive or even active euthanasia³⁷. The doctors are under an ethical obligation of not to kill their patients neither to help them to die, no matter how justified the cause is. However, in case of terminally ill patients, where death is inevitable, pain is unbearable, doctors should be allowed to take a decision to find out a way to give relief to the patient and his family members. A person should be helped to die with dignity. And the consent of the patient or his family in this regard, would make the work of the doctors much easier.

IV. Arguments in Support of Euthanasia

There are a lot of arguments to support decriminalization of euthanasia. Some of them can be discussed as under³⁸:

Arguments based on rights:

- People have an explicit right to die with dignity.
- A separate right to die is not necessary because our other human rights imply the right to die³⁹.
- Death is a private matter of an individual and if there is no harm to others, the state and others have no right to interfere (a libertarian argument)⁴⁰.

³⁷Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011 guidelines.

Though in this regard the 196th Law Commission Report³⁷ and the guidelines given in the Aruna's³⁸ case are there and guidelines will continue to be the law until Parliament makes a law on this point. In spite of those some suggestions are given below to check the misuse –The circumstances in which it would be lawful for a medical practitioner to cease or to authorize the cessation of life-sustaining treatment of a patient who has no spontaneous respiratory and circulatory functions or whose brainstem does not register any impulses.

³⁸PROCON.ORG, Pros and cons of Euthanasia, Last Visited September 29, 2020.

www.sanjuan.edu/pros%20and%20cons%20of%20euthanasia.pdf

³⁹DR. Parikh, c.k. PARIKH'S TEXTBOOK OF MEDICAL JURISPRUDENCES, FORENSIC MEDICINE AND TOXICOLOGY, Page 155, New Delhi, CBS Publishers & Distributors, (6th Edition, 2006).

Ethical arguments:

- Euthanasia weakens society's respect for the sanctity of life⁴¹.
- Euthanasia might not be always in the best interests of the person but it may be necessary for those who are fed up of living a life which is not worth living because of its unbearable pain, sufferings, etc amounting to overall indignity. Thus, for such people who have no hope to recover, death remains as the only option in order to end their lives in a dignified manner⁴².

Practical arguments:

- Proper palliative care makes euthanasia considerable, to be practised only in exceptional cases.
- Euthanasia truly reduces the costs of health care for patients who is terminally ill and has no hope to recover. It is better to spend that money for treating patients who has some hope to recover from their illnesses⁴³.
- Moreover, in the present day, there are mostly small families who have hardly any person left to look after a patient who is in a persistent vegetative state for a long time. Thus, euthanasia not only relieves those

⁴⁰BARTELS, L., OTLOWSKI M., "A RIGHT TO DIE? EUTHANASIA AND THE LAW IN AUSTRALIA", 17(4) Journal of Law and Medicine. Page 532 – 555, (2010).

A similar definition is also found at <http://www.terrisfight.org>.

⁴¹Ansari, A., "THE RIGHT TO DIE VIA EUTHANASIA: AN EXPOSITORY STUDY OF THE SHARI'AH AND LAWS IN SELECTED JURISDICTIONS", Page 673 – 681, Advances in Natural and Applied Sciences. (2012).

⁴²Assisted suicide is used to define scenarios where a person asks another to actively aid in taking his/her life. This differs from euthanasia on grounds that the death is not usually painless but the process is less painful than the current situation of the person who wants his life taken. Where a doctor provides medications or other means of committing suicide to a patient, that is termed as physician-assisted suicide.

⁴³A General History of Euthanasia, 19 Sep. 19, 2019.

<http://www.life.org.nz>.

patients but also the family members from the burden of looking after people who are left with no hope to recover⁴⁴.

Thus, it can be said that, there are arguments that enhances the chances of legalizing euthanasia. However, there are contrary opinions too. But it is high time that the legislature needs to focus on the issue of decriminalizing euthanasia and associating proper safeguards with it to prevent its misuse⁴⁵.

V. The Recent Developments

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations Act, 2002 legally recognizes euthanasia and declares euthanasia to be a completely unethical and illegal act. Regulation 6.7 of the said Act states that “practicing euthanasia shall constitute unethical conduct. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer in charge of the hospital, and a doctor nominated by the in-charge of the hospital from the hospital staff.”⁴⁶

Thus, the wordings of the above stated regulation clearly state that euthanasia is not a rule but only an exception in India. The doctors can conduct passive euthanasia in exceptional cases, that too if the procedural requirements are complied with. However, it also needs to be noted that there has been no legislation in India that imposes complete prohibitions on active euthanasia, nor exists any decision of the courts to that effect⁴⁷.

Further, a bill proposing legalization of euthanasia was introduced in the Lok Sabha as “*The Euthanasia (Permission and Regulation) Bill, 2007*”

⁴⁴Mazloom, S., HamidianJahromi, A., &Bastani, B. *LEGALIZATION OF EUTHANASIA AND PHYSICIAN-ASSISTED DYING: CONDEMNATION OF PHYSICIAN PARTICIPATION*, Online Journal of Health Ethics, 13(1), 8 (2017).

⁴⁵Von Devivere, B. *Searching and Finding Meaning: Viktor Frankl's Approach. In Meaningful Work: Viktor Frankl's Legacy for the 21st Century*, Page 19-52, (2018). Springer.

⁴⁶There is a procedure in the military called “save our souls” where a captured prisoner of war can either ask his captured colleague to kill him to save him from the torture the enemy might bestow on him to get information. Here, death is not always painless.

⁴⁷Bartels, L., Otlowski M., “A RIGHT TO DIE? EUTHANASIA AND THE LAW IN AUSTRALIA”. 17(4) Journal of Law and Medicine, Page 532 – 55, (2010) .

A similar definition is also found at <http://www.terrisfight.org>.

(*hereinafter*, “The Bill”).⁴⁸ The statement of objects and reasons states that in cases of persons with “*no hope of recovery*”, active euthanasia gives a way out and that it is a better alternative than committing suicide.

Additionally, it has to be ensured that the “*life of the patient is taken only after due process has been adhered to and in a humane and compassionate manner in the presence of family members and elected representatives*”⁴⁹.

The above said bill states that: “*a person who is completely invalid and/or bedridden or who cannot carry out his daily chores without regular assistance, can either himself or through persons authorized by him have the option to file an application for euthanasia (an instance of active euthanasia) with the civil surgeon or the Chief Medical Officer (CMO) of the district government hospital*”.⁵⁰ However, the bill subsequently lapsed. However, the 196th Law Commission Report dealing with Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), 2006, took a contrary view⁵¹. The report, while focusing on the withdrawal or withholding of medical treatment by doctors, reasserted the acceptance of the practice of “*passive euthanasia*”⁵². It supported “*passive euthanasia*” of terminally ill patients, provided sufficient safeguards as mentioned therein were adhered to, to prevent

⁴⁸The Euthanasia (Permission and Regulation) Bill, 2007, No. 55. If passed, the bill would provide for a compassionate, humane and painless termination of the life of an individual who are permanently invalid or bedridden because of an incurable disease. Chandrappan (who moved the bill in the house) says, “If there is no hope of recovery for a patient, it is only humane to allow him to put an end to his pain and agony in a dignified manner.” Dr. B.K. Rao (Chairman, Board of Management, Sir Ganga Ram Hospital, and New Delhi) agrees saying “If it is established that the treatment is proving to be futile, euthanasia is a practical option for lessening the misery of patients.”

⁴⁹Michael A Salatka, “COMMENTARIES: THE PATIENT SELF-DETERMINATION ACT OF 1990: ISSUES REGARDING THE FACILITATION OF ADVANCE DIRECTIVES, PATIENT AUTONOMY, ASSISTED SUICIDE, AND EUTHANASIA” , Volume 1 The Journal of Pharmacy & Law, Page155, (1992).

⁵⁰K.P.M. BASHEER, LEGALIZE EUTHANASIA, SAYS PANEL, THE HINDU, Last visited Jan. 8, 2009,

⁵¹Luis Kutner, “DUE PROCESS OF EUTHANASIA: THE LIVING WILL, A PROPOSAL”, 4 Indiana Law Journal 539 at 550, (1969) [Kutner].

⁵²AMERICAN BAR ASSOCIATION [AMERICAN BAR], LIVING WILLS, HEALTH CARE PROXIES, AND ADVANCE HEALTH CARE DIRECTIVES, ONLINE (2009).

its misuse⁵³. This report maintains the established disdain for *active* euthanasia, which is “*comparatively quick and a less painful method of relieving a terminally ill patient from his on-going pain*”⁵⁴. This report is still unaccepted by the Indian Government.⁵⁵

Therefore, it can be stated that, the much needed law on euthanasia is something which we do not find in India. While the decisions of the Indian judiciary have kept the debate open, the legislature has not gone deep in the issue⁵⁶. The application of suicide laws in euthanasia has created much more confusions by overlooking the extinct distinctions between suicide and euthanasia. The law, being in limbo, has made doctors vulnerable to the legal sanctions. It is the fear of the legal sanctions that has compelled the doctors to refuse treatment of some patients, wherein there is a scope for death due to the administration of a drug. Therefore, it is time for Indian legislature to step in, and clarify the law on euthanasia in order to protect the interests of doctors on one hand and the vulnerable group of patients on the other.

VI. Euthanasia: The Role of Indian Judiciary

“Causing death of a person who is in a permanent vegetative state with no chance of recovery, by withdrawing artificial life-support is only an ‘omission(of support to life)’ and not an act of killing”

- Hon’ble Supreme Court of India.

At the first instance, the issue of the legal permissibility of the right to die was dealt with by the Supreme court in the case of *P.Rathinam v. Union of India*⁵⁷; in this case, the constitutionality of section 309 of the Indian Penal Code, 1860, which treats the attempt to commit suicide as a criminal offence,

⁵³Raphael Cohen-Almagor, *“The Patients’ Right to die in dignity and the Role of Their Beloved People”*, 4 Annual Review of Law and Ethics 213 (2017).

⁵⁴Dr.SarabjeetTaneja ,Should Euthanasia be Legalised?, 42 J. CONST. PARL. STUDIES 20, 57 (2008).

⁵⁵ibid

⁵⁶DR. M.R. RAJAGOPAL, From India: Palliative Medicine, Last visited October 5, 2020.

[http:// www.eapcnet.org/download/forEuthanasia/rajagopal.pdf](http://www.eapcnet.org/download/forEuthanasia/rajagopal.pdf) .

⁵⁷*P.Rathinam v. Union of India*(1994) 3 SCC 394 (India)

was challenged⁵⁸. On the issue on the constitutionality of the right to die, the Supreme court opined that the fundamental rights under the Constitution consists positive as well as negative dimensions⁵⁹. Accordingly, Article 21 of the Constitution would comprise of positive right to life as well as the negative right to die. The Supreme Court recommended the removal of section 309 of the Indian Penal Code, 1860 and decriminalization of the attempt to commit suicide in order to humanize penal laws.

The decision in Rathinam's case was subsequently overruled by the Supreme Court in *GianKaur V. State of Punjab*⁶⁰. In this case the court emphasized on the principle of sanctity of life and the need to uphold it. The Supreme court reasoned that the 'right to life' embodied in Article 21 of the Constitution of India is a natural right. It was held that the right to die is inherently inconsistent with the right to live, even in cases where patients are terminally ill. Accordingly, the Supreme Court held that the right to die was inconsistent with the right to life and hence, not included in the scope of Article 21.

From the aforementioned judicial pronouncements, the judicial trend appears to be that the Supreme court was not in favour of recognizing the 'right to die' as a part of Article 21 of the Constitution of India. However, the demand has been frequently made for decriminalization of Euthanasia in the light of the need for providing assistance to the terminally ill patients. Though there could not be

⁵⁸The argument put forth by some scholars, that euthanasia in developed countries might be a boon as against legalization of euthanasia in the so called third world countries, wherein its misuse will be more rampant because of scarcity of resources relating to medicine and medical care, and hence administration of a 'legal' drug will be considered as a much cheaper and efficient method to combat the meager doctor : patient ratio.

See Johannes JM van Delden & Margaret P. Battin, Euthanasia: Not Just for Rich Countries, http://www.eutanasia.ws/hemeroteca/eutanasia_rich_countries.pdf (for arguments and counter-arguments).

⁵⁹Block SD, Billings JA. *Patient requests for euthanasia and assisted suicide in terminal illness: The role of the psychiatrist. Psychosomatics*, 36:445-57, 1995 pdf.

⁶⁰*GianKaur V. State of Punjab*(1996) 2 SCC 648 (India)

much difficulty in terms of morality, the possibility of its misuse has been restraining the legal system from decriminalizing it⁶¹.

The first ever case in which such an issue was brought before an Indian court is *State V. Sanjay Kumar*⁶². In this case, a division bench of the High court of Delhi criticized section 309 of the Indian Penal Code, 1860 as 'an instrument and a paradox'. The Bombay High court in *MarutiSripathiDubal v. State of Maharashtra*⁶³ struck down section 309 as violating the right to live enshrined in Article 21 of the Constitution of India. Whereas, the Andhra Pradesh High court in *Jagadeshwar V. State of Andhra Pradesh*⁶⁴ held the same section as constitutionally valid.

In another case, *C.A. Thomas Master V. Union of India*⁶⁵, the High court of Kerala dealt with Euthanasia. The High court dismissed his petition and placed heavy reliance on the judgment given in GianKaur case.

VI.I. The Aruna Shanbaug Case

The issue of permissibility of Euthanasia has come up into the spotlight in the very recent and important case of **ArunaRamchandraShanbaug V. Union of India**⁶⁶. In this case a petition of euthanasia was made on behalf of a person who was in a permanent vegetative state for over three decades. In this case, the Supreme Court laid down the law with respect to euthanasia and the procedure to deal with a euthanasia petitions.

In the instant case, the Supreme Court distinguished between active euthanasia and passive euthanasia and held that while physician assisted suicide or active euthanasia is illegal, passive euthanasia is permissible in cases where the patient is in a permanent vegetative state⁶⁷. In this case, the Supreme Court attempted to

⁶¹M. K. Jah et al R. Pal et al P. Bhattacharrya et al S. S. Oberoi, A. GARG, EUTHANASIA: INDIAN SCENARIO PunjabAcad Forensic Med Toxicol, Page 46(2012).

⁶²State V. Sanjay Kumar,1985 Cri Lj 931 (India).

⁶³Maruti SripathiDubal V. State of Maharashtra,1987 Cri Lj 743 Bom (India).

⁶⁴Jagadeshwar V. State of Andhra Pradesh,1988 Cri Lj 549 A.P (India).

⁶⁵C.A. Thomas Master V. Union of India,2000 cri lj 3729 (India).

⁶⁶Aruna Ramchandra Shanbaug V. Union of India ,(2011) 4 SCC 454 (India).

⁶⁷A. NANDY, PRINCIPLES OF FORENSIC MEDICINE,38,(1st Ed., 1995). New Central Book Agency, Pvt. Ltd., Kolkata, Page 104.

recognize the fact that there are cases where prolonging or sustaining life by man-made means defeats the principle of life with dignity⁶⁸.

In order to prevent misuse and to safeguard the interests of the patient, the Supreme Court has made the prior permission of the High court mandatory in all cases where passive euthanasia is resorted to. The Supreme Court has empowered the high court to deal with euthanasia petitions and laid down the guidelines for the high courts to follow in dealing with the euthanasia petitions⁶⁹. In this case, has not categorically given recognition to the right to die. However, the Supreme Court has declared passive euthanasia to be permissible in some cases. Hence, it appears to be that the Supreme Court has given recognition to the right to die in certain situations as an extension of the right to live with dignity under the right to life⁷⁰.

In a country like India, one cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient. In this case the question that comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person⁷¹. The High Court under Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders⁷².

⁶⁸Famously known as 'Dr. Death', for his extrovert work in the field of active euthanasia. He is said to have 'relieved from suffering' around 130 patients by using devices named as 'Thanatron' and 'Mercitron'. He first administered active euthanasia in 1998. In 1999 the U.S. Supreme Court ruled that Americans who want to kill themselves, but are physically unable to do so, have no constitutional right to end their lives. Kevorkian was hence sentenced to 10-25 years in prison, but was paroled in 2007, citing failing health reason and nearing his own death. See The Real Jack Koverkian, PATIENTS RIGHTS COUNCIL, <http://www.patientsrightscouncil.org/site/the-real-jack-kevorkian/> (Aug. 30, 2019).

⁶⁹Aruna Ramchandra Shanbaug v/s Union of India, 2011(3) SCALE 298; MANU/SC/0176/2011

⁷⁰S. K. Tiwari. *CONCEPT OF EUTHANASIA IN INDIA: SOCIOLEGAL ANALYSIS. INTERNATIONAL JOURNAL OF LAW AND LEGAL JURISPRUDENCE STUDIES*, Journal Number 2348-8212, International Journal of Law and Legal Jurisprudence Studies, Vol.2, Issue 3 (1844-1990).

⁷¹S. Gondkar, *Euthanasia: Right to Die Physician Assisted*, op. cit, 12.

⁷²R. Shukla, *PASSIVE EUTHANASIA IN INDIA: A CRITIQUE*, Indian Journal of Medical Ethics, Vol. I, No. 1, Page 37 (2016).

According to the instant case, when such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Preferably one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician⁷³.

After hearing the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient and in their absence his/her next friend, the High Court must give its order. The above procedure is supposed to be followed all over India until Parliament makes legislation on this subject.

The High Court should give its choice doling out explicit reasons as per the standard of 'wellbeing of the patient' patient⁷⁴. However, the Supreme Court has not clearly provided for the foundation for passive euthanasia in the Constitution of India. It appears that passive euthanasia has been permitted as an exception to the right to life under Article 21 of the Constitution of India.

VII. Conclusion

Euthanasia is a very controversial issue, not only because there are many different moral dilemmas associated with it, but also in what constitutes its definition. Due to development of Science and technology in the last century the concepts of life and death has been changed. Nowadays, a person who is in a persistent vegetative state can be kept alive by ventilators and artificial nutrition for years. 'Withdrawal of life support systems' is different for 'Euthanasia' or 'Assisted Suicide'. Retaining or pulling back life support is today allowed in many nations, in specific conditions, on the ground that it is legal for the specialists or medical clinics to do as such. Courts in a few nations award announcements in singular cases that such retention or withdrawal is legitimate.

It is an all-around settled standard at custom-based law that a patient has a privilege to acknowledge clinical treatment or decline it. This is called the principle of self-determination. In Airedale, Lord Goff of Chiveley stated that

⁷³T. BHATTACHARYYA, (2010). THE INDIAN PENAL CODE, 420-470 (6th Ed.).

⁷⁴. M. Marwaha, *RELEVANCE OF SECTION 309 INDIAN PENAL CODE (IPC): A PERSPECTIVE*, Volume 21, Issue 1, Ver.III, Iosr Journal Of Humanities And Social Science (Iosr-JHSS), Page 19, (2016).

“it is established that the principle of self-determination requires respect must be given to the wishes of the patient. The doctors “must give effect to his wishes even though they do not consider it to be in the best interests to do so.” If a competent patient wants life support system to be withheld or withdrawn, it is binding on the doctors unless they come to the conclusion that the patient’s decision is not an ‘informed decision’. In such cases, the doctor has to take a decision in the ‘best interests’ of the patient.

To give an extreme recuperating contact to the perishing, the intelligent, the good judgment, the sympathetic methodology for Euthanasia can be sanctioned by the obstruction of law and enactment. For the tolerant Euthanasia society thus far as the abuse is concern it is realized that each shelter has some revile, even Code of Medical Ethics may likewise be treated as a shield while authorize Euthanasia as a protect for the revile.

Sanctity of human life doesn't suggest the constrained continuation of a presence in torment and languishing. Given that a person has the right to lead a dignified existence, he cannot be forced to live to in detriment. Thus, euthanasia necessarily needs to be decriminalized but with proper safeguards. People should be given allowed to die a dignified death if they are left with no reason to live and prefer dying rather than suffering unbearable pain.