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## Euthanasia: A Critique

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*Euthanasia also known as a ‘medically related suicide’ is the practice by which a person is given an escape in the form of death to smoothen the agonized condition. This patient would generally be terminally ill or showing no signs of improvement, according to doctors. The word “euthanasia” itself comes from the Greek words “eu” (good) and “Thanatos” (death). Rather than experiencing a devastating and full suffering death euthanasia allows a person to die a calm death. There are generally two types of euthanasia: **Active euthanasia:** killing a patient by active means like injecting a patient with a lethal dose of a drug. Also called ‘aggressive’ euthanasia. **Passive euthanasia:** in this type of euthanasia we remove the life support from the patient’s body. This may also lead to a bit of suffering but is anyways better than a prolonged process of indefinite pain. Other than these there could be certain types like voluntary euthanasia, Involuntary euthanasia, Indirect euthanasia, and Assisted euthanasia.<sup>1</sup> This project yearns to answer some questions related to the practice of euthanasia and why it is still frowned upon in society.*

**Keywords:** euthanasia, right to life, suicide, right to die.

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## BACKGROUND

Euthanasia has been one of the most controversial topics in the world. Whether it is considered killing or whether it should be made legal are some of the many questions

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<sup>1</sup> Kimberly Holland, ‘Euthanasia: Understanding the Facts’ (Health Line, 1 June 2019) <<https://www.healthline.com/health/what-is-euthanasia#euthanasia-%20facts>> accessed 17 April 2022

disturbing humankind since time immemorial. It is a must to mention the HIPPOCRATIC OATH here. The oath says that a doctor must not refuse treatment to any patient and among many things a line states "*A Doctor will neither give a deadly drug to anybody who asked for it nor will the Doctor make a suggestion to this effect.*" Since the 1800s euthanasia has been a hot topic of whether it is ethical, acceptable, etc. To curb euthanasia, an anti-euthanasia bill was passed in New York in the states in 1928 and after some time other people thought rightly about this approach of passing anti-euthanasia bills. A euthanasian society was formed in the states after nearly 10 years of passing the bill. Suicide assisted by a registered medical practitioner was passed by Switzerland in 1937.

Since the right to life was considered in most places, a right to die approach was given support after a few years. Netherlands and states like Texas in the United States made it legal in a span of nearly 50 years. Some countries which approved euthanasia are **Belgium, Luxembourg, Canada, and the Netherlands**. There are many countries where euthanasia with rules is legal like USA, Switzerland, Germany, etc. The newest country to make euthanasia legal is New Zealand.<sup>2</sup>

## **STATEMENT OF THE PROBLEM**

It's not unknown to us that we have been incessantly pestered by the question of whether we can let our near ones suffer or ourselves consent to an untimely death. It takes a greater form in a country like India where family ties are very strong. The constant guilt of letting a known person die with your consent can haunt you for a significant time. This project aims to find out these reasons and why most countries do not recognize the concept of a 'happy death'. Using doctrinal and some non-doctrinal methods, the main focus is on the future of euthanasia in the ever-evolving techno-world.

## **SOME QUESTIONS THAT THIS PROJECT YEARNED TO ANSWER ARE**

- *Should active euthanasia be used for a person who is considered to be brain dead but is also the sole bread earner of a family?*

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<sup>2</sup> Yvette Brazier, 'What are euthanasia and assisted suicide?' (*Medical News Today*, 17 December 2018) <<https://www.medicalnewstoday.com/articles/182951#euthanasia-%20and-assisted-suicide->>> accessed 17 April 2022

Since this is an ethical question, there could be two sides to it. One side could say that it won't be possible for the family who might be below the poverty line to understand the implications of such a drastic step. It is well known that euthanasia could be an extended form of suicide which is a practice frowned upon by many communities. The other side could relate to the facts of science that once brain dead there is no or the very little possibility of a person to rise back again and the life support will continue to put the family under a vicious pressure as the hospital bill is no joke for anyone. The family has to strive now on their own and give the bread earner a farewell so as to limit his suffering. Now going deep into both the arguments. If a person is on life support as it is loads of money would be going into the hospital's hands now if the family is able to barely strive, they should end their suffering by choosing non-voluntary euthanasia and though it is unimaginably difficult, try to start afresh.

Brain death is like a nightmare for anyone. It is mostly an untreatable loss of functionality of the cerebrum or the thinking part of the midbrain coordinating between the upper and lower parts of the brain and the brain stem which controls the body temperature and balances the body handled by the hypothalamus. Cerebral death cannot be brought back if it is too severe even by mechanical resurrection or other new-era techniques. But there have been instances of people waking up from a coma as well like the example of the legendary Formula 1 driver Michael Schumacher who woke up from a coma after a significant number of years but this was a miracle as it is not humanly possible to predict when will a person rise from a brain dead state so it is better to go with the safer option of using the tool called euthanasia for both yourself and that suffering member.

So, to neutralize this there have been new laws have been laid down so as to when can a doctor declare a patient to be brain dead.

- *Should there be global guidelines so as to when a person can be referred to as brain dead or what guidelines to be followed while choosing whether to go for active or passive euthanasia?*

When it comes to medicine, different countries have different healthcare-infrastructures the

USA though faced a difficult time during the COVID pandemic is believed to have one of the best infrastructures, and African countries and some Asian countries still haven't reached their full potential. There should be global guidelines when it comes to euthanasia so that the doctors cannot exploit the patient or his family by declaring the time of being brain dead or when can euthanasia be exercised. This will lead to uniformity. These guidelines should be laid out by doctors from all the major fields and should report to the WHO directly for a fair and just analysis. Global guidelines may also help to forbid the richer countries to climb up the ladder and those with poorer economies to stabilize a bit. This can be explained via an example.

Consider a country like the USA where if there are no restrictions, in order to make more money, the doctors may declare that the person might recover after a certain time in a coma so life support is necessary but as stated earlier no human can predict whether a person ever wakes up from coma or not. Due to a lack of knowledge of medicine, the family of the patient may allow the continued use of life support for moral reasons. Since the economy is already strong there and if we consider the hospital to be an established 'brand' they already know that people having money would visit them so they start exploiting without giving a second thought about that. When it comes to whether to go for active or passive euthanasia, it mainly depends on the situation. Many philosophers take this argument a bit forward. They say that active euthanasia may be considered better in a way that it is cleaner and less painful for the patient.

*A quote fitting perfectly:*

*"The doctrine that it makes an ethical difference whether an agent actively intervenes to bring about a result, or omits to act in circumstances in which it is foreseen that as a result of the omission the same result occurs."*

Thus, suppose I wish you dead, if I act to bring about your death, I am a murderer, but if I happily discover you in danger of death, and fail to act to save you, I am not acting, and therefore, according to the doctrine, not a murderer.<sup>3</sup>

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<sup>3</sup> Simon Blackburn, *The Oxford Dictionary of Philosophy* (2<sup>nd</sup> edn., Oxford 2008)

## A PERSPECTIVE ON EUTHANASIA BY D. OLIVER<sup>4</sup>

This article talks about the concept behind the disputes about euthanasia. It says that it's important to consider the suffering person's mental state. The demand for death can be an expression of fear or depression about "keeping alive" through technical treatment. Seldom it may also mean that we are about to lose something and be negatively impacted by it. According to some statistics, most people going for it are Caucasian, masculine, highly educated, and often think they may not be able to regulate their lives and death may be an alternative worth considering though unfortunately. ([Ganzini et al, 2000](#)). Suffering cannot be seen now as an integral part of our lives, but death may serve as an escape. In the Netherlands, it is now possible to receive assisted death in completely hopeless situations ([ten Have and Welie, 2005](#)). Palliative care always has a positive impact on the person, their friends, and family so it should always be considered.

## EUTHANASIA: RIGHT TO LIFE V/S RIGHT TO DIE

This article contains our country's view on the topic.<sup>5</sup> In India, crimes include suicide and an attempt to do so. In 1994, the constitutional validity of section 309 of IPC was questioned by the SC. The Supreme Court dismissed this possibility. In 1996, an interesting accomplice case was filed in the Supreme Court by the Suicide Commission (IPC Sec 306). The defendant was tried in court but was not declared guilty. They appealed to the Supreme Court, asserting that those committing suicide are exercising their right to die hence the punishment would be contrary considering article twenty one. Since Article 21 says about the right to life but suicide is not an acceptable way of ending it. So, not suitable. Though after making it a law, the Netherlands did see a decrease in the amount of care taken for terminally ill patients.

The amount of passive euthanasia cases in our country is on an increase as the poor people who cannot afford the costs of hospitals use this means. If euthanasia is made into law, this may negatively affect the treatment and caretaking of the elderly and terminally ill patients.

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<sup>4</sup> D. Oliver, 'A Perspective on Euthanasia' (2006) 95 British Journal of Cancer, 953-954  
<<https://www.nature.com/articles/6603365#citeas>> accessed 17 April 2022

<sup>5</sup> Suresh Bada Math & Santosh K. Chaturvedi, 'Euthanasia: Right to Life vs Right to Die' (2012) 136 (6) Indian Journal of Medical Research, 899-902 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/>> accessed 17 April 2022

## CASES RELATED TO EUTHANASIA

*Gian Kaur v State of Punjab*<sup>6</sup>

*M.S Dubal v State of Maharashtra*<sup>7</sup>

*Aruna Ramchandra Shanbaug v Union of India & Ors.*<sup>8</sup>

## ELABORATION ON THE CASE OF GIAN KAUR v STATE OF PUNJAB

In the aforementioned case, the court held that the right to life should come along with the right to die same as death with life. It further held that the right to life which was present in article 21 of the Indian Constitution meant only the right to live with dignity but this must also include the right to die with dignity. But such existence should not be confused with unnatural extinction of life curtailing the natural span of life. Furthermore, in Section 309 of IPC in which an attempt to suicide was an offense, it was upheld, overruling the judgement of P.Rathinam's case.

### FACTS OF THE CASE

The appellants Gian Kaur and her husband Harbans Singh were found guilty by the Trial Court under Section three hundred and six of the Indian Penal Code and each sentenced to six years of rigorous imprisonment and a fine of Rs. 2,000 or in default, further R.I. for nine months, for abetting the commission of suicide by Kulwant Kaur. When the couple approached the HC, both of their convictions had been held but the sentence of only the wife was decreased using a special leave petition. The first argument aimed to question the validity of Section three hundred and six which was formed with the decision in Rathinam's case by a Bench of two learned Judges of this Court wherein Section 309 of IPC has been held to be unconstitutional as it was not in terms with article twenty-one of the Indian Constitution. It was then that the demand to include the right to die with dignity also be included in Article 21 to assure that right to die is also a right that cannot be violated. In view of this argument retrospection over Rathinam's case was essential.

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<sup>6</sup> *Smt. Gian Kaur v The State of Punjab* (1996), AIR 946

<sup>7</sup> *Maruti Shripati Dubal v State of Maharashtra* (1986) 88 BomLR 589

<sup>8</sup> *Aruna Ramchandra Shanbaug v Union of India & Ors* (2011) Writ Petition (Criminal) No. 115/2009

## WHAT THE COURT HELD?

However, the five-judge Constitution Bench held that while the Right to life is a natural right, suicide is not an acceptable way of ending life hence in contrast with the right to life. The court did and unconstitutional only under the presumption of the right to die is not valid. There is no question of its unconstitutionality as no positive right will be created with its removal. However, the court rendered both Section 306 and 309 as "monstrous" and "barbaric" and contended that the extensive amplitude of Article 14 when read with the dignity of life as provided under Article 21 makes Section 309 unconstitutional.

## ELABORATION OF THE CASE M.S DUBAL *v* STATE OF MAHARASHTRA

### FACTS OF THE CASE

The petitioner works for the Bombay City Police Force as a police constable. He has served as a policeman for 19 years as today. In 1981, he was involved in a car crash and also sustained injuries on the head; losing sanity after this and remains so to some extent to this day. He had been receiving psychiatric treatment since January 1982, and his symptoms were characterized as "Giddiness Chabrat (fright), impaired sleep and hunger, nervousness, disorientation, etc." in July 1982. In August of 1982, he was diagnosed with schizophrenia. Hallucinations plagued him.

He suffered from an empty expression and a perplexed expression. He was subjected to electric shock treatment and was given a dose of massive tranquilizers till September 1982. Even now, this is his daily routine. The accident which happened was the proceeding on 27th April 1985 on which day about 10 a.m. he tried committing suicide outside the office of the Municipal Commissioner, Greater Bombay in an attempt to burn himself. He did so as his wife was denied a license to own a vegetable stall. The petitioner was denied by a rude security guard on that occasion even though he had a reference letter from a minister addressed to the Municipal Commissioner to look into the matter patiently and arrange a one to one meeting. The petitioner had raced inside the Commissioner's office but was denied again by the officer.

The petitioner thereafter was taken to the Azad Maidan Police Station., Where an offence was

registered against him under S. 309, Penal Code. He was detained and then was out on bail. The constitutionality of S.309 was in question in this case. Mr. Bhat appeared for the petitioner and asserted a total of three propositions before the court. His first contention was that an attempt to commit suicide cannot constitute an offence and section three hundred and nine makes it an offence so it was violative of articles nineteen and twenty-one of the Constitution.

The second argument was that the section in question illogically treated all forms of an attempt to one's life the same way and had the same punishment, not thinking about the severity of the incident and what amount of damage was caused to the body. Therefore, it was not in terms with the article fourteen

The third and final argument was that an attempt at suicide should not be considered an offence and even if it was, the punishment should undoubtedly be less severe so as to not defeat its one purpose to discourage suicide

### **WHAT THE COURT HELD?**

The court said that it believed the fact that the article 309 was not fitting in terms with articles 14 and 21 and these were beyond the legal jurisdiction of the constitution. Ratio-decidendi of the court was:

- The section is violative of Article 19 since In cases like the Kharak Singh's case, and Sunil Batra's case right to life not only includes the right to life with dignity but also that life of an individual must be protected. Articles nineteen and twenty-one must be read one after the other as they are in relation to each other.

### **CONCLUSION**

After going through a number of research papers, it is evident that euthanasia is a topic that always has ethical, moral, and legal counter arguments with it. Whether to make it legal and which type of euthanasia is a matter that different countries have to deal with in a personal space considering a number of factors that have been discussed in the project. There is no doubt that there should be global guidelines for euthanasia so that the world has its economic scales untouched and medicine that solely deals with saving lives should be kept

at an arm's length. The statistics also show us that different people coming from different walks of life, having different economic and societal standings have different perspectives on whether euthanasia should be legalized or not. This has family ties deeply embedded in it, so there cannot be a uniform rule for the whole world and the personal stands of the countries should be given utmost importance.

There should be a transition from the earlier and traditional practices so that we keep pace with this ever-evolving world including certain changes to the Hippocratic Oath taking into account how the 'people of today' analyse situations. This would anyways be different from the people of the 19<sup>th</sup> century looked at the world. Great support from the judicial system as seen in the cases described above ensures that the law even though being blind sees the atrocities being faced by the poorest of the poor and the common man and stands up for him/her providing justice that they rightly deserve. Euthanasia continues to be one of the hottest topics of this contemporary world combining people from all walks of life like philosophers, medical practitioners, sociologists, lawyers, constitutionally intellectual people, and many more under the same roof combining their arguments so that a streamlined result could be brought out for the betterment of humankind.