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## Recognizing Euthanasia under Indian Constitution

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*Euthanasia is controversial and is a most debated topic in the Indian context, a person may wish to end their life through non-natural means, a person who unusually takes the life of another person constitutes abnormality. When a person takes his own life, it is referred to as "suicide," but when another person terminates a person's life at the deceased's request, it is referred to as "euthanasia" or "mercy killing," while euthanasia is often connected with those who are suffering from a fatal illness or have become disabled and don't want to spend the remaining years of their lives in pain. The option to either live or die should be available to those who are seriously ill or disabled. Human civilization is not new to or unaccustomed to the concept of choosing to end one's life. In some circumstances, aiding in another person's death or killing them to death was deemed acceptable in both ancient Greece and Rome. For instance, infants with serious birth abnormalities were executed in the Greek city of Sparta. In many ancient communities, the elderly's voluntary euthanasia was an accepted practice. This paper seeks to understand "Euthanasia" in a broader term and its implementation in a country like India, which has actions of an attempt to suicide and aiding to suicide as punishable under Sections 309<sup>1</sup> and 306<sup>2</sup>, also Article 21<sup>3</sup> of the Indian Constitution guaranteed the rights to life and personal liberty, as well as the rights to secrecy, autonomy, and self-determination.*

**Keywords:** euthanasia, mercy killing, section 309, article 21, section 306, passive euthanasia.

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<sup>1</sup> Indian Penal Code 1860, s 309

<sup>2</sup> Indian Penal Code 1860, s 306

<sup>3</sup> Constitution of India 1950, art 21

## INTRODUCTION

Euthanasia is the most debatable topic under Indian Constitution it's the act of ending a life to relieve a person from suffering or pain an act of eliminating a life. It's a practice where the lives of people suffering from incurable and intolerable painful maladies are given painless release by using a drug. "Under the Indian Constitution, Euthanasia is an offense punishable under Indian Penal Code, 1860"<sup>4</sup>. The term 'euthanasia' is connected with those who are suffering from a fatal illness or have become disabled and who do not want to spend their remaining years in pain. The option to either live or die should be available to those who are seriously ill or disabled. All people should have the option to live or die; it shouldn't just be reserved for healthy, able-bodied people. The ethics, values, and beliefs of our society are all touched on by the contentious issue of euthanasia. Euthanasia has always been a passionately debated topic all across the world. The act of giving a patient medication to end their life at their request is known as euthanasia.<sup>5</sup> Euthanasia implies sending someone to die without suffering, especially in situations where the suffering is intolerable or when a physical or psychological handicap makes life pointless.

Article 21 of The Indian Constitution<sup>6</sup> guaranteed the rights to life and personal liberty, as well as the rights to secrecy, autonomy, and self-determination. The right to die was considered contrary to the right to life and has long been a source of controversy in Indian law. The legal barriers to the recognition of the right to die were 'Sections 309'<sup>7</sup> and 306<sup>8</sup> of the 'Indian Penal Code', which both include criminal penalties for encouraging suicide but passive euthanasia is now legal in India, according to a ruling by Supreme Court. Euthanasia is considered illegal in India even if there is consent by the patient, as its culpable homicide under sec 300 of the Indian Penal Code<sup>9</sup>, euthanasia is also considered abetment to suicide sec 306<sup>10</sup> and if consent is not

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<sup>4</sup> Indian Penal Code 1860, s 302, 304

<sup>5</sup> Brody Baruch, *Life and Death Decision Making* (Oxford University Press 1998)

<sup>6</sup> Constitution of India 1950, art 21

<sup>7</sup> Indian Penal Code 1860, s 309

<sup>8</sup> Indian Penal Code 1860, s 306

<sup>9</sup> Indian Penal Code 1860, s 300

<sup>10</sup> Indian Penal Code 1860, s 306

taken it amounts to culpable homicide sec 299<sup>11</sup> of Indian Penal Code. Even if a patient gives consent to be killed it's considered a culpable homicide.

In the case Euthanasia and suicide are different, distinguishing euthanasia from suicide, Lodha J. in *Naresh Marotrao Sakhre v Union of India*<sup>12</sup> observed: "Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's act and without the aid or assistance of any other human agency. Euthanasia or mercy killing on the other hand means and implies the intervention of other humanitarian agencies to end their life. Mercy killing thus is not suicide and an attempt at mercy killing is not covered by the provisions of Section 309<sup>13</sup>. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected."<sup>14</sup>

Euthanasia in India was legalized by a decision of the court passive euthanasia was recognized in the case of *Aruna Ramchandra Shanbaug v Union of India*<sup>15</sup>, in this case, the court said Every person has the liberty to live and experience life to the fullest before dying of old age. But occasionally, a person may wish to end their life through non-natural means. While taking the life of a person unusually is often considered a symptom of abnormality, it means that when a person takes their own life, it is referred to as "suicide," but when another person terminates a person's life at the deceased's request; it is referred to as "euthanasia" or "mercy killing."

## HISTORICAL BACKGROUND

Euthanasia is a common practice in Greece and Rome as in ancient Greece and Rome people preferred voluntary death over painful agony. For instance, infants with serious birth abnormalities were executed in the Greek city of Sparta. In many ancient communities, the elderly voluntary euthanasia was an accepted practice. "The Bible, the Quran, and the Rig Veda are just a few of the ancient scriptures that describe suicide or self-destruction"<sup>16</sup>. "This

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<sup>11</sup> Indian Penal Code 1860, s 299

<sup>12</sup> *Naresh Marotrao Sakhre v Union of India* 1995 Cri LJ 96 (Bom)

<sup>13</sup> Indian Penal Code 1860, s 309

<sup>14</sup> *Naresh* (n 12)

<sup>15</sup> *Aruna Ramchandra Shanbaug v Union of India* 2011(3) MANU/SC/0176/2011

<sup>16</sup> Ian Dowbiggn, *A Merciful End : The Euthanasia Movement in Modern America* (LexisNexis 2003) 21

widespread practice was challenged by the minority of physicians who were part of the Hippocratic School and had pledged “never [to] give a deadly drug to anybody if asked for, nor make a suggestion to this effect”. The ascent of Christianity, with its view that man's life was a trust from God, reinforced the Hippocratic position on euthanasia and led to a culmination of consistent opposition to euthanasia among physicians<sup>17</sup>. The Vedic era of Indian history is replete with innumerable instances of suicides carried out for religious reasons. The Ramayana and the Mahabharata are both replete with accounts of religious suicides.

The issue of Euthanasia is a recurring dilemma appearing again and again periodically; it became a matter of public concern again. The medical treatment promises prolonged life which makes a patient suffer in pain without any hope of recovery. Support in favor of Euthanasia gained an advantage in the 19<sup>th</sup> century with the aggressive use of anesthesia. “In 1870 came Samuel Williams 'euthanasia proposal received serious attention in the medical journals and at scientific meetings; see also Gage Sandlin, Euthanasia: Is It Murder?’<sup>18</sup> Using Anaesthesia or morphine to put end to life. This debate exploded in the 1890s to include lawyers and social scientists.

## HINDUISM ON EUTHANASIA

The majority of Hindus would advise against the doctor, who approves euthanasia since doing so would result in the spirit and body being separated at an unnatural moment. Both the patient's and the doctor's karma will suffer as a result. Euthanasia is considered illegal by some Hindus since it goes against the ahimsa ethical guidelines of causing no harm<sup>19</sup>. Some Hindus, however, feel that by assisting in the death of an unpleasant person, a person is acting selflessly and fulfilling their moral obligation. Govardana and Kulluka made the point in their remarks on Manu that, despite Vedic laws forbidding suicide, a man who is terminally ill or experiences a severe catastrophe may go on a path that ends in death Hence, Hinduism has two contrary views on euthanasia that are: -

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<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> Shai J Lavi, *The Modern Art of Dying : A History of Euthanasia* (Oxford University Press 2023) 31

- A person fulfills their moral duty by assisting to put an unpleasant life to an end.
- By helping to end a person's life, specifically, the person who was full of suffering, and the one who tampers with both the chronological death and rebirth cycle. This is inappropriate behavior, and violators will receive the person's unfinished business.

This also suggests that it would also be wrong to keep someone on a life-support system to keep them alive artificially. However, using a life support system in an interim effort for healing purposes would not be detrimental. Since conscious dying is the objective, any palliative treatments that lessen mental alertness will be problematic performing Maharpashtra, which is known as great departure.

### **TYPES OF EUTHANASIA**

Euthanasia, commonly known as 'mercy killing', is the practice of killing someone to relieve them of unbearable suffering or to allow or cause painless death when the individual's life has become pointless and unpleasant. Modern euthanasia is only used by medical officers to execute patients who are suffering and who ask for it to stop their terrible suffering or to relieve them from pain. The main goal of euthanasia is to give someone who is going to die anyhow after going through a lot of pain a far less unpleasant death. The following categories apply to euthanasia:

**Active or positive:** Positive euthanasia refers to the intentional infliction of a painless death, such as when a doctor administers a fatal dose of medication to a patient.

**Negative or passive:** Euthanasia is considered passive when a patient dies since a treatment that was keeping them alive was postponed and the patient suffered as a result. For instance, removing a serious patient's life support system would result in the patient's death. Doctors who practice "passive euthanasia" do not deliberately kill the patient; rather, they choose not to intervene to save him.

**Voluntary:** Euthanasia is considered voluntary when the patient expresses a wish for it and gives their agreement. The main issue with voluntary euthanasia is the terminally ill patient's

right to make a decision that is in both their own and everyone else's best interests to terminate their life.

**Involuntary:** When a patient is put to death without their express consent, this is known as involuntary euthanasia and it refers to circumstances where a knowledgeable patient's life is terminated against that patient's wishes, actions that are murderous and contravene euthanasia.

**Non-Voluntary:** This term describes the end of a person's life when they are not cognitively capable of making a conscious decision to end their life, for instance, a coma patient. In non-voluntary euthanasia, the patient has not provided any advance directives or written a living will because he may not have had the chance to do so or may not have foreseen any such accident or circumstance. The decision to perform non-voluntary euthanasia is frequently made by the patient's family

### IMPORTANCE OF EUTHANASIA UNDER THE INDIAN CONSTITUTION

The practice of Euthanasia is important as its performed to relieve the pain of people suffering from incurable diseases, as the people suffering from the diseases have no hope of being cured, and suffering endlessly in despair makes no purpose to keep them alive at least we can offer them a painless death. In our current economic condition and money used in keeping these patients alive can be used to help the needy. It is more humane to allow a person to be relieved from the pain instead of letting them suffer painless agony. Euthanasia helps these people to die without suffering without making them suffer or prolonging their life to make them despair. This notion is solely based on humanitarian considerations, and it doesn't suggest that gregarious imbeciles, elderly infirm, or other groups that are detrimental to society should be exterminated.

'Life is the companion of death; death is the beginning of life. Man's life is coming together of breath. If it comes together, there is life; if it scatters, there is death. And if life and death are companions to each other, then what is there for us to be anxious about.'<sup>20</sup> Euthanasia is not

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<sup>20</sup> Downbiggn (n 16)

assisted suicide. Suicide is a voluntary self-inflicted death, in assisted suicide doctors prepare the necessary or make available every means to the patient by which the patient can kill himself. Whereas in Euthanasia the patient is killed by the doctor (either directly or indirectly). As euthanasia also raises issues of a similar type. So, the problem of assisted suicide is intimately tied to those of euthanasia. Additionally, some nations have chosen to legalize assisted suicide even while they continue to oppose euthanasia.

## POSITION OF EUTHANASIA IN INDIA

Controversies in India over passive Euthanasia take new turns every time, “the meaning of euthanasia in India is “freedom to leave”, which permitted the sick and hopeless to terminate their lives. In contrast to many countries such as the USA where an attempt to suicide is not a crime, in India abetment of suicide, as well as suicide attempt, are criminal offenses according to Sections 306<sup>21</sup> and 309<sup>22</sup> of the Penal Code respectively”.<sup>23</sup> In the Indian Context when someone touches the topic of death they encounter three basic types of death unnatural, natural, and self-willed. Concerning natural death, we find that there was a strong Brahmanical Hindu prescription to live a hundred years or at least to the end of the natural lifespan. The funeral or shraddha rites were performed for those who died a natural death. Those men who died naturally became the ancestors who were sustained through the offerings, apparently until they were reborn.

Every human being has the right to life. Both Article 3<sup>24</sup> of the 1948 International Covenant on Human Rights and Article 21<sup>25</sup> of the "Indian Constitution" protect the right to life. India officially recognizes the right to a dignified death as a fundamental human right, making passive euthanasia acceptable. The Supreme Court also recognized "living wills" created by terminally ill patients.<sup>26</sup> A five-judge bench of the Supreme Court, headed by Chief Justice Dipak Misra and consisting of Justices A.K. Sikri, A.M. Khanwilkar, D.Y. Chandrachud, and Ashok Bhushan,

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<sup>21</sup> Indian Penal Code 1860, s 306

<sup>22</sup> Indian Penal Code 1860, s 309

<sup>23</sup> *Ibid*

<sup>24</sup> International Covenant on Human Rights 1948, art 3

<sup>25</sup> Constitution of India 1950, art 21

<sup>26</sup> *Common Cause v Union of India* (1993) AC 789

provided directives in recognition of "living wills" made by terminally ill patients, establishing the right to die with dignity as a fundamental right.<sup>27</sup>

These regulations specify who may execute a will and the conditions under which a medical board may sanction passive euthanasia. According to First post, the Supreme Court also ruled that its recommendations and instructions would hold until appropriate legislation was introduced, the NGO Common Cause filed a PIL, and the court was deciding on it. Renowned attorney Prashant Bhushan argued when a medical professional believes that a patient with a terminal disease has reached the point of no return, the patient should have the choice to decline artificial life-sustaining treatment, which is medically known as passive euthanasia, to prevent prolonged suffering.<sup>28</sup>

In the *Gian Kaur v The State of Punjab*<sup>29</sup> case, the Supreme Court concluded that Article 21's<sup>30</sup> reference to "life with dignity" only applies to parts of life that contribute to that dignity and that the right to death is incompatible with that concept. In contrast, to this, the Supreme Court decided in *Aruna Ramchandra Shanbaug v Union of India*<sup>31</sup> in March 2011 that passive euthanasia could be allowed in extreme cases and under the tight supervision of the highest court.

## PASSIVE EUTHANASIA IN INDIAN CONSTITUTION

Following the landmark case of *Aruna Shanbaug v Union of India*<sup>32</sup>, the Indian government introduced legislation in Lok Sabha titled "The Euthanasia (Regulation) Bill, 2019." To become an Act, it must be passed by both Houses of Parliament and receive the President's assent. In India, active euthanasia is still illegal, and the legislation mentioned above is based on passive euthanasia.

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<sup>27</sup> PM Bakshi, 'Mercy Killing or Euthanasia' (2000) 21 Indian J Crime And Criminalistics 1, 5

<sup>28</sup> KPM Basheer, 'Legalise Euthanasia, Says Panel' (*The Hindu*, 8 January 2009)

<<http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article370554.ece>> accessed 01 January 2023

<sup>29</sup> *Gian Kaur v State of Punjab* 1996 SCC (2) 648

<sup>30</sup> Constitution of India 1950, art 21

<sup>31</sup> *Aruna Ramchandra Shanbaug* (n 15)

<sup>32</sup> *Ibid*



Section 11<sup>33</sup> of this bill states that upon receipt of an application for euthanasia under Section 10<sup>34</sup>, the Court shall appoint a team of lawyers to investigate and inquire whether the patient, actually and without any extraneous influence of any kind, wishes to terminate his life through euthanasia and make a report thereon. If the Court is satisfied with the report, it will grant euthanasia permission in the prescribed form, with its seal and signature.

"Section 12<sup>35</sup> of this bill states that the Civil Surgeon or Chief Medical Officer of a Government hospital shall fix a date for euthanasia upon production of permission from the Court of Session." In the presence of the patient's family and a Court of Session official, the patient's life will be ended gently and painlessly on the designated date. In conclusion, such legislation will likely put an end to people's suffering and give them the chance to die with dignity. Force will not be used to keep these folk alive; instead, they will pass away peacefully. It is preferable to pass away pain-free than to endure anguish against one's will. To fill in any possible loopholes, legislation on this topic may be amended.

## CONCLUSION

The Situation concerning Euthanasia has now almost become calm, 'Euthanasia' has already been recognized and legalized in various nations throughout the world, but expanding that practice may not be a very good idea. As a result, it has taken the Indian courts a long time to recognize and legalize euthanasia, including in the instances of Gian Kaur and Aruna Shanbaug and Common Cause (a registered society). As the nation's highest court of appeals, the Apex Court's rulings must be recognized and accepted by all of the nation's residents since the bench hearing the cases is very knowledgeable and experienced. Due to recent changes in the legislation of euthanasia in various countries, this move to legalize passive voluntary killing is thus applauded. Hopefully, active euthanasia won't be practiced in the future either as it is not now allowed. For the individuals for whom euthanasia has been legalized, it will do more harm than good.

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<sup>33</sup> Euthanasia (Regulation) Bill 2019, s 11

<sup>34</sup> Euthanasia (Regulation) Bill 2019, s 10

<sup>35</sup> Euthanasia (Regulation) Bill 2019, s 12