



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Apparently Right to Die: Actually, Right to Life

Devki Dattaprasad Prabhu Lawande<sup>b</sup>

<sup>a</sup>OP Jindal Global University, Sonipat, India

*Received 17 May 2025; Accepted 18 June 2025; Published 23 June 2025*

---

*The right to life under Art. 21 has evolved extensively through the jurisprudence of Indian courts. There have been appeals from various spheres of society to recognise the ‘right to die’ as a facet of the right to life, which it was for a brief period; however, a larger Bench overruled that ruling. With the recent decriminalisation of attempted suicide by the introduction of a new Criminal Code on substantive law and the recognition granted by the Supreme Court to passive euthanasia as a facet of the right to life, people have raised doubts as to the status of the contentious ‘right to die’ in India. Through this article, I wish to address these contentions holistically by considering the Supreme Court of India holdings, international law, foreign jurisdictions, and a multi-religious perspective. The article supports the “right to die with dignity”, but not an unrestricted “right to die”. Suggestions for future development have also been included. The article uses Indian jurisprudence, theology, and comparative law analysis for the same.*

**Keywords:** *suicide, euthanasia, dignity, autonomy, mental health.*

---

### INTRODUCTION

In recent times, India has witnessed significant changes in its legal framework, including the repeal of the Indian Penal Code of 1860, which served as the foundation of Indian substantive criminal law. In place of the erstwhile Penal Code, the Government of India has introduced the Bharatiya Nyaya Sanhita 2023 to guide the substantive criminal law. The new Penal Code

no longer categorises suicide attempts as a punishable offence and has since brought about a change in the legal position.<sup>1</sup>

In 2018, a Constitution Bench of the Supreme Court of India recognised the 'right to die with dignity' as being within the ambit of Article 21 of the Constitution of India in the case of *Common Cause (A Regd. Society) v Union of India & Anr.*<sup>2</sup> Recently, there have also been some amendments in the guidelines provided by the 2018 judgment to ease access to the 'right to die with dignity'. The above developments have led people to believe that India is paving the way to recognise the controversial right to die.<sup>3</sup> As a constitutional right, but that is untrue. India is moving in the direction of enhancing the right to life.<sup>4</sup> For its citizens. In this article, I argue that the decriminalisation of attempted suicide and recognition of the right to die with dignity do not give people the right to kill themselves. These developments strengthen the constitutional promise of the right to life. The article also sheds light on the religious philosophy of suicide and euthanasia, along with international positions on the same, and provides some suggestions for future developments.

## MORAL AND PHILOSOPHICAL UNDERSTANDING OF DEATH AS A RIGHT

**Moral Duties of Individuals:** Since the advent of civilisation, the protection of life and the means to enhance living have been the most important issues for most communities. These ideas were fundamental in setting up a rights-based human society where people could live freely. The concept of the sanctity of life was propagated through religious and societal morals. These morals still have an extremely pervasive ideological restraint on human beings, so much so that even lawmakers cannot get rid of them while performing their legislative functions. However, this alignment with societal morality does not undermine constitutional liberties. In the present world, though we give a lot of importance to an individual's autonomy, liberty, and freedom, no country has given any individual the unfettered right to end their lives arbitrarily. This is because the concept of the 'right to die'

---

<sup>1</sup> Ramya Pillutla, 'Decriminalising Attempted Suicide in India: The New Penal Code' (*Keshav Desiraju Indian Mental Health Observatory*, 30 October 2023) <<https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal-code/>> accessed 05 March 2025

<sup>2</sup> *Common Cause (A Regd. Society) v Union of India & Anr* (2018) SCC OnLine SC 208 [165]

<sup>3</sup> *P. Rathinam v Union of India & Anr* (1994) 3 SCC 394 [31]

<sup>4</sup> Constitution of India 1950, art 21

is antithetical to the ideological belief of the 'right to life'.<sup>5</sup> Such an idea comes about through moral and religious viewpoints.

One of the most important moral compulsions against the right to arbitrarily kill oneself is that an individual is a part of a society and thus has responsibilities towards others in the society. The individual does not have the right to just abandon these responsibilities if he does not feel like living anymore.<sup>6</sup> An individual is not treated as the owner of their life but as a trustee.<sup>7</sup> Who has been entrusted with it to fulfil their duties to society? God is treated as the owner of this life, with members of the society having a stake in it.

**Religious Interpretations:** Religion is one of the most prominent guiding principles in an individual's life due to the pervasive ideological constraints exercised by it. Even an atheist or agnostic individual cannot escape the stronghold exercised by religious doctrines. The succeeding paragraphs explain how almost all religions condemn the self-willed killing of individuals, as life is treated as a sacred gift from God that can be brought to an end only by him. Any other means of doing so is seen as going against God's will, which is a sin.

In India, Hindu ideological doctrines pervade every aspect of society as they fit into the commonsensical notions of the powerful majority.<sup>8</sup> Among the *Dharma Shastras*, *Manusmriti* and *Yajnavalkyasmriti* mention legalistic prohibitions against killing oneself.<sup>9</sup> Hindus believe in the idea of Karma, which says that the suffering of an individual is a result of their past actions and can be relieved through future conduct.<sup>10</sup> The belief is that if one ends their life as they are unable to endure their suffering, it will only lead to more suffering in the next life, as suicide is seen as a negative karma. However, certain forms of suicide, such as *Sati* and *Mahaprasthana*, are viewed positively due to social and religious sanction.<sup>11</sup>

---

<sup>5</sup> Lloyd Steffen and Dennis R. Cooley, *The Ethics of Death: Religious and Philosophical Perspectives in Dialogue* (Augsburg Fortress 2014)

<sup>6</sup> Hans Jonas, 'The Right to Die' (1978) 8(4) *The Hastings Center Report* 32  
<<https://doi.org/10.2307/3560975>> accessed 08 March 2025

<sup>7</sup> Steffen (n 5)

<sup>8</sup> Satish Deshpande, *Contemporary India: A Sociological View* (Penguin Books 2003) 4

<sup>9</sup> Purushottama Bilimoria, 'The Bioethics of Euthanasia in India: Past and Present' (*The University of Chicago*, 18 December 2014) <<https://divinity.uchicago.edu/sightings/articles/bioethics-euthanasia-india-past-and-present>> accessed 08 March 2025

<sup>10</sup> Dr. Ameeta Jaiswal, 'Euthanasia' (*Patna Women's College*)

<<https://patnawomenscollege.in/upload/euthanasia-note.pdf>> accessed 08 March 2025

<sup>11</sup> Bilimoria (n 9)

Buddhism and Jainism are two offshoots of the Sanatana Dharma and are firmly rooted in the principles of *Ahimsa*.<sup>12</sup> Since actively committing suicide is causing violence to oneself, it is condemned in the religious scriptures of both. However, if a broader perspective is taken into account, Buddhism does permit passive euthanasia to some extent. Jains have an ethical code of conduct known as the *Sallekhana*, which draws parallels to the concept of the right to die with dignity. In this practice, once a person realises that the end of his life is near, he gradually reduces the intake of food and ultimately fasts to death. This practice is not treated as suicide, which is an act of violence, but as a choice to leave this world with dignity. The practice of *Sallekhana* has commonalities with the medical concept of passive euthanasia.

The Abrahamic religions also have their take on the right to kill oneself. The Jewish scriptures strictly condemn suicide as life belongs to God, and one cannot destroy something without absolute ownership.<sup>13</sup> In Islam, suicide is deemed to be an offence against Allah for which the punishment is condemnation to hell. Christians also view suicide as a grave sin. However, in all of the Abrahamic religions, altruistic suicide or suicide as a sacrifice for the community, nation, or religion is widely celebrated.

**Modern Interpretation:** From the above observations, it is clear that no religion gives its followers the right to arbitrarily kill themselves. However, if we take the Vedic religions into account, it is clear that they do have practices such as *Mahaprasthan*<sup>14</sup> and *Sallekhana*<sup>15</sup> to provide an avenue for a dignified death. These rituals are not seen as antagonistic to the concept of sanctity of life. Thus, even according to the ancient Indian ethos, the recognition of the right to die with dignity is not against the right to life, and a belief to the contrary is a result of invasions and colonialism.

**Constitutionality of Right to Die:** At present, there is no constitutionally guaranteed right to die, i.e., the right to actively kill oneself, in India. In 1994, the Supreme Court recognised the right to die in the case of *P. Rathinam v Union of India*, but this judgment was overruled by a Constitution Bench in the case of *Gian Kaur v State of Punjab*.<sup>16</sup>

---

<sup>12</sup> Bitupon Borah and Brinda Talukdar, 'Investigating the Matter of Euthanasia: Insights from Buddhist and Jain Perspectives' (2023) 3 (1) Journal of Namibian Studies 4037-38

<sup>13</sup> Steffen (n 5)

<sup>14</sup> Bilimoria (n 9)

<sup>15</sup> Borah (n 12) 4038

<sup>16</sup> *Gian Kaur v State of Punjab* (1996) 2 SCC 648 [45]

In the case of *Aruna Ramachandra Shanbaug v Union of India*, the Supreme Court acknowledged the legality of passive euthanasia, but active euthanasia or physician-assisted suicide is still illegal in India.<sup>17</sup> The Supreme Court has recognised the right to die with dignity, but this does not include the right to actively kill oneself. It only acknowledges the right to live a dignified life till one dies. Therefore, it can be reasonably concluded that the right to die is not accepted in the Indian jurisprudence. The values of the majoritarian ideology are visible through this jurisprudential journey, where suicide and active euthanasia are condemned, but passive euthanasia is accepted.

## DECRIMINALISATION OF SUICIDE IN INDIA

**IPC Era - Section 309:** The recent step to do away with the criminalisation of attempted suicide in Bharatiya Nyaya Sanhita, 2023, has come about as a result of years of debate and deliberation. The attempt to commit suicide was criminalised under Section 309 of the Indian Penal Code, 1860. This led to criminal charges being pressed on the individuals attempting suicide. Several High Courts had conflicting opinions on the constitutionality of Section 309.

In 1994, a Division Bench of the Supreme Court in *P. Rathinam v Union of India* recognised the right to die as being within the ambit of the right to life under Article 21 of the Constitution of India. The reasoning for this recognition was that an individual cannot be forced to enjoy the right to life to his detriment, disadvantage or dislike. Another reason attributed to this recognition was the ratio decidendi in *R.C. Cooper v Union of India*,<sup>18</sup> which said what is true of one fundamental right is also true of another fundamental right and since it is well-known that other fundamental rights have their positive as-well-as negative aspects, the right to life should also include the right to die.

Based on recognising the right to die within the ambit of the right to life, the court held Section 309 to be unconstitutional as it is violative of Article 21. The court also said that Section 309 is a cruel and irrational provision as it subjects an already agonised person to even more agony and interferes with an individual's freedom without any religious, moral, or public welfare backing. The reasoning of this judgment was problematic in its sense. In India, the majority of suicides, particularly suicides by married women, farmers, and

---

<sup>17</sup> *Aruna Ramachandra Shanbaug v Union of India* (2011) SCC OnLine SC 447 [39], [41], [124]

<sup>18</sup> *R.C. Cooper v Union of India* (1970) SCR (3) 530

youngsters, are a desperate attempt to bring an end to their suffering and not necessarily because they wish to die.

They do want to live; however, they feel that their suffering is such that there is no alternative but death to get rid of it. Most of the time, this suffering is also due to some act or omission of the State, such as faulty law enforcement, inadequate support for the marginalised section of the society, rising unemployment, poor quality of the health and education system, etc. The court's recognition of a person's right to end their own life gave an easy way out to the State from performing its duties and being held accountable for not performing them.<sup>19</sup> It also diluted the suicide prevention campaign to a large extent, and the recognition of such a right can lead to a large-scale social imbalance.<sup>20</sup>

In 1996, a Constitution Bench of the Supreme Court in *Gian Kaur v State of Punjab* overruled the judgment of *P. Rathinam*. The court held that to perform the negative aspect of some other rights, no overt act has to be performed, but to exercise the right to die, certain overt acts have to be committed, which can in no way be included within the protection of the right to life under Article 21. The court could by no stretch of imagination include the extinction of life in the protection of life. The constitutional validity of Section 309 was reinstated through this judgment. This judgment also came with its flaws. Since Section 309 was no longer unconstitutional, individuals could be prosecuted and punished for attempting to commit suicide.

Section 309 is quite a problematic provision for various reasons. First of all, it was a measure by the colonial police State to control Indians and prevent certain kinds of protests.<sup>21</sup> Thus, it stems from a desire to control individuals, instead of protecting their right to life. Secondly, criminalisation of attempted suicide is a blatant tactic of over-criminalisation, as individuals who attempt to commit suicide are already suffering to such an extent that they feel that

---

<sup>19</sup> B. B. Pande, 'Right to Life or Death?: For Bharat Both Cannot be "Right"' (1994) 4 SCC Journal <<https://www.ebc-india.com/lawyer/articles/94v4a3.htm>> accessed 09 March 2025

<sup>20</sup> *Ibid*

<sup>21</sup> Keshar Tanwar, 'Need to Decriminalise Attempt to Commit Suicide in India' (2023) 3(2) JCLJ <<https://www.juscorpus.com/wp-content/uploads/2023/03/248.-Keshar-Tanwar.pdf>> accessed 09 March 2025

death is the only alternative to end it. Most of the time, these individuals suffer due to a culmination of various psychological, social, political, and moral factors.<sup>22</sup>

As I have already stated above many times, it is due to the State's conduct itself that they are pushed to the brink of suicide. Such an individual who is already agonised deserves support and not punishment.<sup>23</sup> Thirdly, there is no benefit apparent from this criminalisation. Some actions are punishable as they are harmful to society, and punishment can deter others from performing them.<sup>24</sup> Suicide does not harm society, and also, punishing an individual for attempting suicide does not deter others from following suit.

On the other hand, criminalisation of attempted suicide has a counterproductive effect on suicide prevention. Sentencing an already distressed individual to prison can lead to an aggravation of suicidal thoughts.<sup>25</sup> Attempted suicide is grossly under-reported due to fear of penalisation, leading to unawareness of the extent of the problem and thus, inability to produce effective solutions. Many individuals are unable to access mental healthcare facilities due to the fear of their attempted suicides being discovered. Lastly, a person's dignity and respect are stripped away when they are branded as a criminal for no apparent fault on their part.

**Mental Healthcare Act 2017:** Due to concerns expressed by various groups, the Mental Healthcare Act 2017, was introduced. Section 115(1) of the Mental Healthcare Act 2017 is a non-obstante clause that protects an individual from being punished under Section 309 by presuming that the attempt was due to severe stress. However, this presumption can be rebutted by the prosecution.<sup>26</sup> The provision does not solve the difficulty created by Section 309. Firstly, the term 'severe stress' is ambiguous<sup>27</sup>, and it has not been defined. Thus, its standing in the court is doubtful, and a successful rebuttal can lead to punishment. Secondly, the safeguard is only from punishment, and the individual can still be prosecuted, which has

<sup>22</sup> Saurabh Anand, 'Suicide in India: A Socio-Legal Perspective' (2018) 8 GJLDP 96

<sup>23</sup> *Ibid*

<sup>24</sup> Dipannita Kundu Rumki, 'Revisiting the Criminalization of Attempt to Self-Annihilation: A Comparative Study of Bangladesh and India' (2021) 13 RMLNLU Journal

<sup>25</sup> Law Commission of India, *Humanization and Decriminalization of Attempt to Suicide* (Law Com No 18, 2008) para 4.4

<sup>26</sup> The Mental Healthcare Act 2017, s 115(1)

<sup>27</sup> Harshita Gupta, 'Resolving the Dichotomy Between Section 115 of the Mental Healthcare Act and Section 309 of the Penal Code' (SCC OnLine, 02 March 2023)

<<https://www.sconline.com/blog/post/2023/03/02/resolving-the-dichotomy-between-section-115-of-the-mental-healthcare-act-and-section-309-of-the-penal-code/>> accessed 12 March 2025

some amount of stigma attached to it. This can lead to a person losing face in society, even if they are not punished.

## RECENT DEVELOPMENTS

The recent decriminalisation of suicide is a balance between the ratios of *P. Rathinam* and *Gian Kaur*. Though the recognition of the right to die, it was problematic; Section 309 could still be held unconstitutional for being violative of Article 21. Several Supreme Court judgments have acknowledged that the right to life includes the right to dignity, and incarcerating a person already suffering for no fault of his own shows a blatant disregard for his dignity as he faces stigma, humiliation, and criminalisation for no good reason. The person is also deprived of his liberty guaranteed under Article 21 without any just cause, as his conduct is not harmful to society, nor does incarcerating him act as a deterrent.<sup>28</sup>

Though proponents of Section 309 claim that it is an embodiment of the protection of life guaranteed by Article 21, it has a counterproductive effect. Many people who attempt suicide are unable to obtain timely medical care.<sup>29</sup> Due to the fear of incarceration, which can lead to death. Individuals are unable to obtain help to deal with their suicidal thoughts, as the discovery of their previous attempts can lead to prosecution and punishment, leading to frustration and increased attempts to end their lives.

Fear of punishment leads to a gross under-reporting of suicide attempts, which downplays mental health issues and substantially reduces the chances of effective solutions being produced. Thus, Section 309 endangers life instead of protecting it. Additionally, incarcerating individuals for attempting suicide instead of supporting them is an easy way out for the State, which should be raising awareness and resources for mental health care. The State is also responsible for the creation of various factors that can lead to frustration in the populace, and therefore, the government needs to actively engage with these issues instead of curbing the freedom of individuals.

In *Gian Kaur*, the Supreme Court could have still upheld the unconstitutionality of Section 309 by doing away with the right to die. Therefore, the current situation is ideal as attempted

---

<sup>28</sup> Rumki (n 24)

<sup>29</sup> Law Commission (n 25)

suicide has been decriminalised without propounding any right to die. The present scenario is an appropriate representation of the right to life guaranteed by Article 21, as individuals are not incarcerated for being in pain; rather, they are given appropriate support to continue living and not the right to end their life.

**A Human Rights Perspective of Euthanasia:** In several nations, euthanasia is a topic of contention, as there are various viewpoints in favour and against it. Some forms of euthanasia are allowed in certain countries, while they are banned in others. To get a better understanding of whether euthanasia should be permissible or not, it is imperative to know the meaning and types of euthanasia.

Euthanasia is derived from a Greek phrase that translates to good death.<sup>30</sup> It is a mechanism to free a diseased person from their suffering by ending their life. Euthanasia is practised in either an active or passive form. Active euthanasia involves taking overt steps, such as administering a lethal substance, to end an individual's life. On the other hand, passive euthanasia involves ending an individual's life by withholding or withdrawing life support. Passive euthanasia is legalised in most countries, while the legality of active euthanasia is under debate in most. In India as well, active euthanasia is illegal, and the person who has euthanised another can be penalised for murder.

A person can be euthanised in three ways: voluntarily, non-voluntarily, and involuntarily. When a person consciously decides to end their own life, they are practising voluntary euthanasia.<sup>31</sup> At times, when the person is unable to express their desire to die, the decision is taken by another person on their behalf. In this scenario, the decision is taken by another person due to the incapability of the victim, and thus, it is deemed to be non-voluntary. Involuntary euthanasia takes place when an individual is euthanised against their wishes.<sup>32</sup> It is an extremely unethical procedure and is deeply condemned worldwide.<sup>33</sup>

Physician-assisted suicide is another widely known means of relieving a person from mortal suffering. In this case, the physician prescribes a lethal medication at the patient's request as

---

<sup>30</sup> Rajesh Mahajan, 'Validity of Euthanasia in India: Constitutional and Legal Approach' (*Dentons Link Legal*, 11 April 2024) <<https://www.lexology.com/library/detail.aspx?g=247c8c66-b3ed-4179-bfe1-7df289a0cde5>> accessed 18 March 2025

<sup>31</sup> *Ibid*

<sup>32</sup> Dan W. Brock, 'Voluntary Active Euthanasia' (1992) 22(2) *The Hastings Center Report* 10, 19

<sup>33</sup> *Ibid*

they wish to end their life.<sup>34</sup> The basic difference between euthanasia and physician assisted suicide is the person who delivers the final death blow as the physician administers the life-ending substance when it's euthanasia, but the patient himself administers the prescribed substance when it's assisted suicide. Some countries permit physician-assisted suicide, but not active euthanasia, and this denial is based on very thin moral grounds. However, these grounds have more of a conscience-saving attitude than actual reasoning.

The idea of euthanasia has various contentions for and against it. One of the most important principles that support euthanasia is the right to bodily autonomy and self-determination.<sup>35</sup> An individual has the autonomy to make choices for themselves, including the choice to end their life if the process of death has already begun. The person should have the liberty to refuse to live a wretched existence that has no meaning attached to it. Another argument in favour of euthanasia is the respect for human dignity. If an individual is kept alive artificially in a deteriorating condition where he is just waiting for his death, the helplessness and loss of agency experienced by him are a complete violation of his dignity. The right to dignity and bodily autonomy are essential aspects of the right to life, and denying a person these rights is a clear violation of the right to life. There is also a plea to legalise euthanasia to relieve the patient's family and caregivers from the financial and emotional strain of their debilitating condition. Euthanasia also has a societal benefit as the resources employed to keep an irrecoverable patient alive can be used for the treatment of another individual who might benefit from it.<sup>36</sup> It reduces the burden on the State's resources.

One of the biggest arguments against euthanasia is the principle of sanctity of life.<sup>37</sup> This principle has strong religious underpinnings. It believes that every person has intrinsic value attached to their life, which cannot be diminished for any reason. The intentional killing of any individual is condemned. For any reason whatsoever. The goal is to let a person die a natural death and not curtail their life span. Opponents of euthanasia have proposed the slippery slope argument to demonstrate its impracticality. There is a fear amongst the masses

---

<sup>34</sup> Konstantin Tretyakov, 'The Right to Die in the United States, Canada, and China: Legal Fictions and their Utility in a Comparative Perspective' (2018) 21(2) University of Pennsylvania Journal of Law and Social Change 79, 81 <<https://scholarship.law.upenn.edu/jlasc/vol21/iss2/1/>> accessed 13 March 2025

<sup>35</sup> Rohitesh Tak, 'Right to Die Vis-à-vis Right to Life' - An Analysis of the Supreme Court Approach Towards Passive Euthanasia' (2022) 19(1) NLIU Law Review 253, 262 <<https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-IX-Issue-I-269-301.pdf>> accessed 13 March 2025

<sup>36</sup> Steffen (n 8)

<sup>37</sup> Tak (n 35)

that the legalisation of voluntary euthanasia would ultimately open the gateway to involuntary euthanasia, where individuals will be euthanised against their wishes. This would ultimately lead to a violation of individual autonomy and sanctity of life, as vulnerable individuals will not have their voices heard. There is also a fear that individuals might not freely decide their lives, due to financial and familial reasons. The idea of doctors being healers will also break down if they begin to euthanise their terminally ill patients.

In my opinion, the arguments in favour of euthanasia outweigh the ones against it. The principle of sanctity of life is against the premature ending of natural life; however, the proposal is to euthanise those individuals whose process of death has already begun, and we are only attempting to artificially prolong their lives.<sup>38</sup> There is an urgent need to rethink the idea of the sanctity of life, as forcing a person to continue living a life riddled with incurable pain and suffering is completely against the sacredness and dignity of human life.

One cannot enforce the principle of the sanctity of life over individuals by restricting their autonomy over themselves. The slippery slope argument is a presumption that can be controlled by taking adequate steps.<sup>39</sup> It does not warrant the curtailment of the right to bodily autonomy of individuals who wish to exercise it. The illegality of euthanasia puts immense strain on families who have to witness the misery of their loved ones.<sup>40</sup> And makes individuals live a painful life against their wishes, which completely denudes its sanctity.

## EUTHANASIA AND THE RIGHT TO DIE WITH DIGNITY

**Jurisprudential Reasoning:** Like most countries in the world, India has also legalised passive euthanasia. The case of *Gian Kaur v Union of India* briefly touched on the topic of euthanasia but did not give any ruling legalising or criminalising it. The topic came under contention in the case of *Aruna Ramchandra Shanbaug v Union of India & Ors*, the Supreme Court of India differentiated between active and passive euthanasia by bringing in the idea of act and omission. In the case of active euthanasia, an overt act is performed to end the patient's life, while in passive euthanasia, the physician omits committing an act to save the patient's life. Passive euthanasia, i.e., withholding or withdrawing life sustenance, was legalised in

<sup>38</sup> Sushila Rao, 'The Moral Basis for a Right to Die' (2011) 46(18) Economics and Political Weekly 13, 14  
<<https://www.epw.in/journal/2011/18/commentary/moral-basis-right-die.html>> accessed 14 March 2025

<sup>39</sup> Brock (n 32)

<sup>40</sup> Tak (n 35)

situations where a person is only kept alive mechanically, there is no foreseeable possibility of ever coming out of that phase, and all brain activity has ceased to exist. The High Courts were given power under Article 226 of the Constitution of India to decide whether passive euthanasia should be allowed in a particular case by taking the best interests of the patient into account.

In 2018, the Supreme Court of India adjudicated the question of declaring the right to die with dignity as a fundamental right in the case of *Common Cause (A Regd. Society) v Union of India*. The right to die with dignity was recognised as a fundamental right under the ambit of Article 21 of the Constitution of India. The judgment emphasised the importance of liberty, dignity, and autonomy for human existence. An individual has the right to refuse medical treatment, which can also be exercised through Advanced Medical Directives, i.e. a person can express his desire, in advance, to not be treated if he lands in a circumstance where he can no longer consent. Guidelines and safeguards were framed for their smooth and correct enforcement. A provision was also made for individuals who have not prepared an ADM to be able to die with dignity by keeping safeguards in place, which gave legal sanctity to non-voluntary passive euthanasia. However, a strict clause was introduced which stated that active euthanasia could only be legalised through legislation.

**Ethical Justification:** The legalisation of passive euthanasia is by no means a reiteration of the right to die. Individuals who choose to be euthanised or on whose behalf the decision is made are terminally ill,<sup>41</sup> or those who are alive artificially through life support, and there is no possibility of them ever living a normal life. Keeping an individual alive in that scenario against their wishes is akin to forcing an individual to live a tormented and undignified life with no scope for improvement. Living such a life can in no scenario be a life envisioned by the right to life. The person should have the autonomy to refuse to live such a life. The recognition of the right to die with dignity lets a person live with dignity and independence till the very end of their natural life.

Though passive euthanasia has been legalised in most countries, I strongly advocate for the legalisation of active euthanasia as well. Though I agree with the court refusing to legalise it and expecting the legislature to do the same, as law-making is a legislative function, it is time

---

<sup>41</sup> Rao (n 30)

for the legislature to take this matter seriously. Time and again, the distinction between killing and letting die is brought about to discourage the legalisation of active euthanasia. The idea is that in passive euthanasia, the person dies a natural death due to non-interference, and the sanctity of life is not violated, but one does not take into account whether that life contains any of the goods of human existence. Causation is the criterion deemed to be a distinction between active and passive euthanasia.<sup>42</sup>

In the case of passive euthanasia, the patient dies due to the natural progression of his illness, while to actively euthanise an individual, the physician has to administer a lethal substance to end his natural life. This distinction to legalise passive euthanasia is problematic. It is extremely clear that in the case of passive euthanasia, 'the patient dies both from [their] underlying condition and from the doctor's conduct, which is the withdrawal or withholding of life support mechanisms. Chandrachud, J. has acknowledged that Section 101 of the Bharatiya Nyaya Sanhita, 2023 considers both act and omission as elements of murder and that passive euthanasia is bringing about the death of an individual by omission. He also points out the distinction between withdrawing and withholding by demonstrating that in the case of withdrawing the life support mechanism, there is commission and not omission of an act that is leading to death. Thus, the concept of causation to distinguish and justify passive euthanasia has a very flimsy and refutable backing, which is created to safeguard the conscience of society.

Another criterion deemed to be a distinction between active and passive euthanasia is the intention behind the two acts. It is assumed that the intention behind withholding or withdrawing life support treatment is not death, but allowing nature to take its course, while in the case of active euthanasia, administration of the lethal drug shows the intention of dying. This distinction holds no ground as death is a foreseeable and certain conclusion if life support is not provided. Broadly speaking, there is no great moral distinction between active and passive euthanasia, but the law has created this distinction. The reason for the existence of this distinction is that there is a possibility of discontinuing the process of passively euthanising an individual if there is a change of mind, but the administration of a lethal drug

---

<sup>42</sup> Tretyakov (n 34)

is irreversible. This irreversibility prevents the Indian judiciary from legalising active euthanasia, and thus, the task has been left to the legislature.

It is high time that the legislature designs a framework for the legalisation and implementation of active euthanasia in India. The practice of passive euthanasia subjects the individual to a painful and slow death, instead of just relieving them from suffering in a moment.<sup>43</sup> The suffering ends in a torturous manner. Thus, the legalisation of active euthanasia will be a step in the direction of strengthening the right to die with dignity, as the patient would not be subjected to helplessness and suffering with the withdrawal of life support and would be more empowered to die a dignified death of his choice.

## INTERNATIONAL LAW ON THE RIGHT TO DIE

At a global level, the Universal Declaration of Human Rights (UDHR) enshrines the principles of human rights and liberties. The member countries of the United Nations (UN) imbibe the values of this Declaration in their legal and human rights framework. Article 3 of the Declaration states 'Everyone has the right to life, liberty and security of person'. Barely abiding by the text of this article, there is a widespread disgust for practices such as euthanasia, and International Law, by no means, makes provisions for such an alternative. Passive euthanasia is accepted worldwide, but active euthanasia is viewed with contempt.

There is a need to revisit and reframe this understanding of Article 3. At times, letting a person leave this mortal world is a better alternative, as there are no elements of life left in them. Keeping a person alive in such a scenario is cruel and is a violation of their right to life, which recognises dignity as an essential component of human existence. Institutions such as the International Courts and the UN need to give a broader interpretation of the right to life to include scenarios arising due to the advancement of human society in the form of advanced health care, which can keep individuals alive artificially.

## Comparative Analysis with Other Jurisdictions –

**Africa and Asia:** Though decriminalisation of attempted suicide is a very recent event in India, most countries in the world have done away with criminalisation of attempted suicide

---

<sup>43</sup> Rao (n 30)

a while ago. The majority of the Third World countries do not treat attempted suicide as a crime anymore,<sup>44</sup> because of the repercussions and futility of such criminalisation. Out of the nations where criminality is still attached to attempted suicide, most belong to either Asia or Africa.<sup>45</sup> However, with advancements in the legal system of Asian and African countries, changes have been seen in recent times, such as the decriminalisation of attempted suicide in Sri Lanka and India.

**Europe:** Most countries in the world permit withholding or withdrawing life support at the desire of the patient; however, active euthanasia is permitted in very few countries. The Netherlands and Belgium are two countries permitting active euthanasia.<sup>46</sup> Switzerland permits only physician-assisted suicide. However, all of these countries have strict regulations, such as committees for monitoring these deaths and consent being legally scrutinised to ensure that these provisions are not misused.

**United States of America:** In the United States of America, active euthanasia is illegal; however, physician-assisted suicide is permissible in Oregon, Washington, and Montana. There have been numerous decisions by the US Supreme Court which determine situations wherein withdrawal of life support is permissible. In the case of *Cruzan v Missouri Department of Health*, the court held that to withdraw the life support of an incompetent person, there should be clear and convincing evidence that the incompetent person had wanted, while competent, withdrawal of life support treatment in such an eventuality. *Quinlan, In Re* has held that a patient's treatment can be terminated on the grounds of that individual's right to privacy, which can be exercised by the incompetent patient's family on their behalf. The best-interest standard was propounded in the *Conroy, In Re* case, wherein it was held that if it is impossible to determine the patient's wish and the person's suffering makes further treatment inhumane, a purely objective standard could be used to terminate the treatment. However, this was applicable in a few instances.

**United Kingdom:** In England as well, the practice of active euthanasia is illegal, while judicial pronouncements have recognised circumstances where withdrawal of life support

---

<sup>44</sup> Rajeev Ranjan et al., '(De-)Criminalization of Attempted Suicide in India: A Review' (2014) 23(1) Ind Psychiatry Journal <<https://pubmed.ncbi.nlm.nih.gov/25535437/>> accessed 15 March 2025

<sup>45</sup> *Ibid*

<sup>46</sup> Subhash Chandra Singh, 'Euthanasia and Assisted Suicide: Revisiting the Sanctity of Life Principle' (2012) 54 JILI 196, 205, 210

may be permitted. The case of *Airedale NHS Trust v Bland* is most significantly known for recognising the legal status of withdrawal of life support.<sup>47</sup> In this case, the House of Lords held 'that the principle of sanctity of life was not an absolute one [and] that medical treatment could be withheld if it led to irredeemable pain and suffering'.<sup>48</sup> This case gave legal sanctity to passive euthanasia even in the case of incompetent persons by relying on the principle of the best interest of the patient. The Supreme Court of India relied on this English judgment to reach a conclusion on the legality of passive euthanasia in the case of *Aruna Ramchandra Shanbaug v Union of India*.

**Applicability in India:** As it can be inferred that most countries in the world do not support active euthanasia, however, there are a few where it is practised by keeping stringent regulations in place. In the Indian context, one will have to be extremely cognisant of social circumstances peculiar to India, such as the caste system and poor medical resources, while forming legislation for active euthanasia, as power dynamics can lead to unnecessary sacrifice of life. However, that is not a reason for criminalising active euthanasia, as it can also be beneficial to many, and India needs to take inspiration from foreign jurisdictions like the Netherlands and Belgium.<sup>49</sup> To create an airtight legal framework.

**Scope for Future Developments:** With the decriminalisation of attempted suicide,<sup>50</sup> the mental health discourse is likely to witness a good time ahead. Most of the time, attempted suicide is not an expression of the desire to die, but a desperate cry for help. Such individuals will be able to seek help and live a happy life without any fear of prosecution or harassment by State authorities. The provisions of the Mental Healthcare Act 2017 can now be implemented in a free and fair manner.

The Supreme Court of India has left the decision about the legalisation of active euthanasia in the hands of the Parliament. The possibility of such a provision coming into being is not very high due to the pervasive nature of religious ideology in every sphere of India's life. There is more focus on inculcating a caregiver mindset in the Indian youth, which tilts the debate in favour of palliative care and not active euthanasia. Though there is not much

---

<sup>47</sup> V. R. Jayadevan, 'Right of the "Alive [who] but has no Life at all" - Crossing the Rubicon from Suicide to Active Euthanasia' (2011) 53 JILI 437, 454-457

<sup>48</sup> *Ibid*

<sup>49</sup> Singh (n 46) 205-208, 210

<sup>50</sup> Pillutla (n 1)

practical difference between active and passive euthanasia, the creation of a philosophical difference between the two has made its implementation undesirable, even though it seems to be a lucrative option for suffering patients and their families by making use of the models being practised in above mentioned European countries.

## CONCLUSION

One can reasonably conclude that the decriminalisation of attempted suicide and recognition of the right to die with dignity are facets of the right to life and not a license to die. However, there is scope for enlarging the interpretation of the right to die with dignity by legalising active euthanasia. While framing such legislation, the Parliament will have to take into account India's social circumstances and bring about a law that will benefit the Indian masses. A thorough public consultation and expert scrutiny will be needed so that the law is palatable for Indian society. Even after it comes into force, appropriate scrutiny will have to be maintained to ensure that the law is not misused, as that will lead to the suffering and death of innocent individuals. A wider interpretation of the right to die with dignity will strengthen its end goal.