

EUTHANASIA

Dr. Nazneen Khatib

Assistant Professor

A.I.'s Barrister A. R. Antulay College of Law

University of Mumbai, Mumbai, Maharashtra, India.

Every individual desires to live, but at times one may want to end their life through unnatural means. This attempt to end one's own life is called "suicide" but termination of life of another although at the request of the deceased, is "euthanasia" or "mercy killing". This right to die should be a right available to every individual; however with a sound mind who can rationalize the impact of his decision as life once taken is an irreversible change. Euthanasia is controversial and debatable as it revolves around morals, values and beliefs of our society and our society believes in preserving life as it is given by God hence can be taken away by the creator himself and none other.

MEANING AND DIFFERENT TYPES OF EUTHANASIA

¹Encyclopedia of 'Crime and Justice', explains euthanasia as an act of death which will provide a relief from a distressing or intolerable condition of living. Euthanasia means "painless death" by the administration of drugs to end the patient's life, at the patient's request as they might be feeling meaningless or mentally/ physically handicap. Suicide is intentional termination of one's life by self-induced means may be due to frustration, failures or depression. Euthanasia is intervention of human agency to end the life. Termination of life with malafide intent is punishable in India on the premises of "Actus non facit reum nisi men sit rea." Thus the accused won't be liable if the victim has consented to die provided it is a free informed consent. Indian Penal Code lays laws for consent, being very exhaustive and unambiguous. ²Section 87 lays that consent cannot be pleaded as a defense where it is given to cause death or grievous hurt. The Bombay High Court in Maruti Shripati Dubal case has attempted to make a distinction between suicide and euthanasia or mercy killing pronouncing that suicide is an act of self killing by one's act without assistance from others.

However assisted suicide is active euthanasia where the person takes deliberate steps to cause his/her own death. Medical personnel may provide assistance, but the patient commits the act of suicide while in active euthanasia. Thus when a doctor helps people to kill themselves it is called 'doctor assisted suicide' or active euthanasia where the court held that assisted suicide is not lawful in our country.

KINDS-Active euthanasia is a painless procedure of administering lethal dose of medication to a patient. Passive euthanasia is causing death by removal off life support system of the patient. Voluntary euthanasia is the expressed desire and consent of the patient who has the right to choose to end his or

¹ https://uconn-storrs.primo.exlibrisgroup.com/permalink/01UCT_STORRS/1jc3j07/alma9934369473502432

² [https://www.indiacode.nic.in/show-](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45821§ionno=87&orderno=91#:~:text=Nothing%20which%20is%20not%20intended,has%20given%20consent%2C%20whether%20express)

[data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45821§ionno=87&orderno=91#:~:text=Nothing%20which%20is%20not%20intended,has%20given%20consent%2C%20whether%20express](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45821§ionno=87&orderno=91#:~:text=Nothing%20which%20is%20not%20intended,has%20given%20consent%2C%20whether%20express)



her life, subject to such choice being served in his/her best interest and also that of others. Non-Voluntary euthanasia means ending the life of a person who is mentally incompetent to make an informed request to die and has no such living will and often the family members make the decision.

HISTORICAL PERSPECTIVE

In ancient eras, helping others die or putting them to death was permitted in some situations such as the Greek city of Sparta where newborns with severe birth defects were put to death. Many ancient texts too speak of self destruction or suicide. In India, the Vedas, Mahabharata and the Ramayana is replete with numerous examples of suicides committed on religious grounds.³ Manu observed that a man may undertake the Mahaprastha, great departure on a journey ending in death if incurably diseased. From Ram's Jalasamadhi, Gandhi's and Vinoba Bhave's fast till unto death euthanasia existed.

Muslims believe in no human interference in life and death as life is given by Allah, and only he chooses how long each person shall live, thus suicide and euthanasia are explicitly forbidden. Christians are against euthanasia as they believe that life is a gift from God and birth and death are life processes which God has created, thus no human being has the authority to take the life, even if that person wants to die. The Guru Granth Sahib, and the Sikh Code of Conduct rejects suicide and euthanasia as interference in God's plan and Sikhs believe that sufferings are a part of the operation of karma, and human beings should accept it to make the best of the situation that karma has given them.

CURRENT INDIAN LEGAL STATUS OF EUTHANASIA .

Euthanasia is illegal in India. However, in voluntary cases there is the valid consent of the deceased where Exception 5, ⁴Section 300 of Indian Penal Code would be attracted. ⁵Article 21-Right to life is an important right enshrined in Constitution of India. It is argued that the right to life under Article 21 includes the right to die. Therefore mercy killing is the legal right of a person. However the decision of a five judge bench of the Supreme Court in Gian Kaur case settled that the "right to life" does not include the "right to die".

The Court held that Article 21 guarantees "protection of life and personal liberty" and by no stretch of the imagination can extinction of life be read into it. In Gian Kaur's and Maruti Shripal Dubal, High court held that section 309 of Indian Penal Code was held to be valid but now it is violative of Article 14 and 21 of the Constitution and should be deleted by the Parliament as it has become anachronistic and has no justification to continue as a law respectively because a person attempts suicide in a depression, and hence he needs help, rather than punishment. Section 309 was held to be discriminatory and arbitrary as it violated equality and right to life both.

³ <https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi>

⁴ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=336

⁵ <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://static.mygov.in/indiancc/2021/08/mygov-9999999991694106170.pdf>

Recently the ⁶ Aruna Ramchandra Shanbaug case opened the gateway for legalization of passive euthanasia where, she was in a Persistent Vegetative State (P.V.S.) and virtually a braindead person. The Supreme Court dismissed the petition filed on behalf of Shanbaug observing that passive euthanasia is permissible under supervision of law in exceptional circumstances but restricted active euthanasia. The Court laid down guidelines to be continued till the Parliament makes a law on this point.

1. A bona fide decision in the best interest of the patient to be taken to discontinue life support either by the parents, spouse, other close relatives, a next friend or even by the doctors attending the patient.

2. Such decision shall be approved from the High Court to rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient. The Bench of two judges under Article 226 can grant approval after seeking advice of the Committee of three reputed doctors, preferably a neurologist, psychiatrist and a physician. After hearing the State and close relatives e.g. parents, spouse, brothers/sisters, next friend etc. of the patient, the Bench shall give its verdict with specific reasons in best interest of the patient.

The ⁷Law Commission in its 42nd Report, 156th report too recommended the repeal and retention of section ⁸309. The 196th Report on 'Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)' is one of the most important subjects ever undertaken for patients who desire to die a natural death without going through modern Life Support Measures. Later the Law Commission in its 210th Report submitted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to relieve the distress of one's suffering.

The Commission recommended declaring that every 'competent patient', who is suffering from terminal illness, has a right to refuse starting or continuing any medical treatment including artificial nutrition and respiration. If such informed decision is taken independently without undue pressure or influence by the competent patient, it is binding on the doctor, notwithstanding withdrawal of any treatment, is entitled to administer palliative care i.e. to relieve pain or suffering or discomfort or emotional and psychological suffering to the incompetent patient. The doctor shall withhold/ withdraw treatment only after obtaining an opinion of experts. In addition, a Register must be maintained by doctors who propose withholding or withdrawing treatment and the decision making process, reasons for decision, view of experts consulted, details of patient, must be noted in it. The identity of the patient and other particulars must be kept confidential. If the above procedures are followed, the medical practitioner can withhold or withdraw medical treatment to a terminally ill patient. The patient who request euthanasia has to be protected from prosecution for the offence of 'attempt to commit suicide. This provision is of abundant caution because it and common law both, allow a patient's right to decide nature to take its own course and one commits no offence in doing it. Likewise, the doctors and hospital authorities have to be protected against

⁶ <https://indiankanoon.org/doc/235821/>

⁷ [https://www.advocatekhoj.com/library/lawreports/theindianpenalcode/26.php?Title=The%20Indian%20Penal%20Code&STitle=Earlier%20Report%20\(42nd\)%20of%20the%20Law%20Commission#:~:text=The%20Law%20Commission%20of%20India,incidentally%20to%20hijacking%20was%20discussed.](https://www.advocatekhoj.com/library/lawreports/theindianpenalcode/26.php?Title=The%20Indian%20Penal%20Code&STitle=Earlier%20Report%20(42nd)%20of%20the%20Law%20Commission#:~:text=The%20Law%20Commission%20of%20India,incidentally%20to%20hijacking%20was%20discussed.)

⁸ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=347

civil and criminal actions if they are prosecuted for 'abetment of suicide' under sections 305, 306 or of culpable homicide not amounting to murder under sec. 299 read with sec. 304 of the Penal Code when they take decisions to withhold or withdraw life support and in the best interests of incompetent patients, as it is provided u/s 76 under general exceptions and such action shall be deemed to be 'lawful'. The commission thus provided an enabling provision under which the patients, parents, relatives, next friend or doctors or hospitals can move a Division Bench of the High Court for a declaration that the proposed action of continuing or withholding or withdrawing medical treatment be declared 'lawful' or 'unlawful'.

THE LIABILITY OF DOCTORS AT PRESENT.

Today, a brain dead person can be kept alive by ventilators and artificial nutrition for years raising the legal, moral and ethical concerns as to whether such a person should be kept alive for all time to come till the brain-stem collapses or when an informed medical body opines least survival and recover; the artificial support systems can be stopped. If that is done, can the doctors be held guilty of murder or abetment of suicide? The doctors "must give effect to his wishes of competent person even though they do not consider it to be in the best interests to do so" however only after administering the Competency test i.e. varied combination of different test depending on facts of the case. But where the patient's faculties are reduced due to chronic illness who cannot give medical opinion, his refusal is not binding and the doctors could approach the court for directions.

However this raises two issues. First, as far as the patient is an adult and competent refusing treatment, does it amount to 'attempt to commit suicide'? Secondly, as far as the doctors are concerned, in the case of an adult where they obey the patient's refusal or where in the case of competent patient whose decision to refuse treatment is not an informed one and where the patient is a minor or incompetent or a PVS they take a bona fide decision to stop artificial life support, whether they are guilty of 'abetment of suicide'? Section 309- 'Attempt to commit suicide' answers the first issue. When a person is suffering from disease, he may take medicines. But it should be his prerogative to take medication or allow the disease or illness to continue and not take medicines or invasive procedures. This act of allowing nature to take its course and not taking medical treatment is not an attempt to suicide. Hence no offence under sec. 309 is committed. As far as the second issue is concerned sec. 306 deals with 'abetment to commit suicide' applies. It provides that once the competent patient decides not to take medicine and allows nature to take its course, the doctor has to obey the instructions. Administering medicine contrary to the wishes of a patient is battery and is an offence. The omission to give medicine is based on the patient's direction and hence the doctor's inaction is not an offence. Even sec ⁹107 of the Indian Penal Code dealing with 'abetment', provides the same, where 'abetment' may be by a positive act or even by omission, does not hold the doctor guilty, because omission u/s 107 must be "illegal". Hence, the doctor is not guilty of 'abetment of suicide' under sec. 306 IPC, even if we read sec. 306 along with sec. 107 which deals generally with 'abetment'. It is still necessary to consider whether the action of the doctor in refusing to provide medical treatment, though with consent of the competent patient, amounts to 'culpable homicide' not

⁹ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45841§ionno=107&orderno=111

amounting to murder under section ¹⁰299 of IPC. After reading section 299 of IPC, it can be said that under the main part of sec 299, the doctor is not guilty because he had no intention to cause death or bodily injury which is likely to cause death. Sections 76, 81 and 88 of IPC provide scope for protection of the actions of doctors. Section 76 lays the defense of mistaken fact which can be invoked by the doctors in case of passive euthanasia where they have taken action to withhold or withdraw treatment in the case of refusal to medical treatment by a competent patient giving informed decision. The act of withholding or withdrawing medical treatment falls under section ¹¹79, if the said act is “justified by law” applicable to both competent and incompetent patients. Section ¹²81, the most important provision, may be invoked in termination of life as it contends passive and active euthanasia both, since it permits causing harm with an intention to avoid greater harm, but involves proof of several questions of fact, even if there is no criminal intent.

ARGUMENTS FOR LEGALIZING EUTHANASIA

1. It should be allowed as the decision of the patients should be accepted as a person decides for himself. We must acknowledge the rights of patients and respect the decisions that elect euthanasia based on the premises that euthanasia respects the individual's right to self-determination or his right to privacy. Individual interest outweighs social values as the society aims at assuring a dignified and a peaceful life which will be hampered if the individual is under unbearable pain. Not allowing euthanasia narrows to forcing people to suffer against their will, which would be cruel and a negation of their human rights and dignity.
2. The society should acknowledge a patient's right to active euthanasia in circumstances which become overwhelmingly burdensome for the patient, pain management is inadequate and only death seems capable of bringing relief. Moreover, in light of increasing pressure on hospital and medical facilities, these should be used for the benefit of other patients who have a better chance of recovery.
3. Euthanasia relieves the terminally ill people from a lingering death. It relieves the unbearable pain of a patient, mental agony, is altruistic and beneficial as the motive behind this is to help rather harm.
4. If a person has no duties to perform, either to himself or to others when he is terminally ill, he may decide to end his life and relieve himself from the pain of living and others from the burden of looking after him. This will relieve him of economical stress too.

ARGUMENTS AGAINST LEGALIZING EUTHANASIA

1. Intense opposition from the religious, legal and medical professions is experienced as they advocate ethics. Today, medical science cures incurable diseases but these procedures being costly can burden the

¹⁰ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=335

¹¹ <https://indiankanon.org/doc/1918278/>

¹² https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45815§ionno=81&orderno=85

patient emotionally and financially. Thus a patient should be encouraged to lead their painful life with strength.

2. If euthanasia is legalized, who or what determines the criteria of the suffering which the individual is facing so as to allow him to embrace death, doctors or relatives. It might not always be clear that relatives and doctors are always acting in the patient's best interests. A doctor may be waiting for an organ for a transplant, for instance, or for a bed to become free and relatives may simply wish to be relieved of the burden of an ill member of the family. It has been contended that if such legislation is to take effect, will euthanasia be administered upon a free and balanced decision and informed consent as consent could be vitiated by undue influence.

3. Moreover, when a healthy person is not allowed to commit suicide then why a deceased person should be allowed to do so. Depression, family conflict, feelings of abandonment, hopelessness, etc. lead to suicide – regardless of one's physical condition. If pain and depression are adequately treated in a dying person the desire to commit suicide evaporates. Suicide cuts short the life of the victim and leaves survivors devastated.

4. The slippery slope would over the years lead to a slide down the objective slipping and eventually end up permitting even non-voluntary and involuntary euthanasia. Huge social pressures on very vulnerable people to 'volunteer' could be applied, causing much stress and suffering.

5. Taking life is wrong and immoral as life is gift from God and individuals cannot be given the right to play the part of God. The one who suffers pain is only due to one's karma and euthanasia devalues human life.

7. Even without it being explicitly stated, legalizing euthanasia would mean that the state was offering it as an alternative to people who were seeking benefits for sickness or unemployment or to pensioners, to refugees and people with disabilities. The victims would predominantly be the most disadvantaged members of society; the old, poor, disabled, infirm and unemployed due to their disabilities.

8. Expensive medical facilities are spent on these patients who are in any case going to die and we should also consider their families who look for emotional support and rational decisions to avoid unnecessary emotional and financial burdens. Placing the discretion in the hands of the doctor would be placing too much power in his hands leading to misuse

SUGGESTIONS

A close perusal of the arguments against euthanasia that have been summarized above tends to indicate that all the talk about sanctity of life notwithstanding, the opposition to euthanasia breeds from the fear of misuse of the right if it is permitted. Here it would not be out of place to mention that the "liberty to die", if not right in strict sense, may be read as part of the right to life guaranteed by Article 21 of the Constitution of India. Recently the judgment in Aruna Shanbaug Case passive euthanasia is permissible under supervision of law in exceptional circumstances. Any legislation legalizing voluntary euthanasia would lead to a risk and fear of misuse and abuse of the provisions which could be done away with proper safeguards and specific guidelines such as-

1. The circumstances in which it would be lawful for a doctor 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. Whether it would be lawful for a doctor to act on the request of a well informed, mentally competent and terminally ill patient to end his/her suffering by administering or providing a lethal agent.
2. The request should be from a patient suffering from unbearable pain from an incurable condition and certain 'due care' criterion should be strictly and appropriately complied with even if cumbersome, which otherwise would attract penal penalty.
3. The right of doctor treating a terminally ill patient to increase or alter medication to relieve pain and distress, even if its secondary effect may be to hasten the patient's death.
4. A person requesting euthanasia must be informed of disease, medical cures and implications of euthanasia and should explicitly and repeatedly request without reason for doubt concerning his desire to die; mental and physical suffering of the patient must be very severe with no prospect of relief.
5. The circumstances in which a Court may order the cessation of medical treatment or the performance of any medical procedure leading death of a braindead patient for which a quasi-judicial officer with a supervisor be appointed by the appropriate authority under the proposed statute to supervise all cases of euthanasia within a feasible territory.

CONCLUSION

No law could be guaranteed to be free to the possibility of abuse. An especially dangerous aspect is that such abuse may be easily made undetectable. Moreover, in a country like India where there is tremendous pressure on the available medical facilities, euthanasia is all the more necessary for the maximum utilization of the limited facilities but prone to abuse. Thus although mercy killing appears to be morally justifiable, its fool-proof practicability seems near to impossible. Recently the judgment of our Supreme Court in Aruna Ramchandra Shanbaug case legalized only passive euthanasia under supervision of law in exceptional circumstances. In view of the above discussion, I believe that voluntary euthanasia should also be allowed in India and that the legislature should step in and make a special law dealing with all the aspects of euthanasia ensuring safeguards. The recommendations of Law Commission of India and guidelines given in the Aruna's⁴¹ case are to be taken into consideration when any law on that point is to be framed to prevent the mal practices and misuse of euthanasia. Besides, if the suggestions laid down above are implemented then the chances of misuse of euthanasia would be greatly reduced.

BIBLIOGRAPHY

- Oxford Advanced Learner's Dictionary of Current English. (2000). Sixth Edition. ; Oxford University Press.
- Dressler, Joshua. 2002. "Encyclopedia of crime & justice". New York: Macmillan Reference USA.
- Laws of Manu, translated by George Buhler, Sacred Books of the East by F. Maxmuller, Vol. 25.



Ratanlal Dhirajlal's, Indian Penal Code, 1860, 34th Edn, Jain Book Agency.

CASE LAWS

Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011 41.

Gian Singh Kaur v. State of Punjab, 1996 (2) SCC 648 : AIR 1996 SC 946

Maruti Shripati Dubal v. State of Maharastra; 1987 Cri.L.J 743 (Bomb)

WEBILIOGRAPHY

<http://lawcommissionofindia.nic.in/1-50/index1-50.htm>

<http://lawcommissionofindia.nic.in/101-169/index101-169.htm>

<http://lawcommissionofindia.nic.in/reports/rep196.pdf>

<http://lawcommissionofindia.nic.in/reports/report210.pdf>

<http://indiankanoon.org/doc/235821/>

<https://indiankanoon.org/search/?formInput=gian%20kaur%20case&pagenum=8>

<http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=006991623100>

<http://www.sacred-texts.com/hin/manu/manu05.htm>

<http://www.missionislam.com/health/suicidenotescape.htm>

<https://www.ucg.org/bible.../bible.../what-does-the-bible-say-about-someone-who-co...>

<https://www.sikhnet.com/news/sikh-view-about-euthanasia-and-suicide>

REFERENCES-

1. https://uconn-storrs.primo.exlibrisgroup.com/permalink/01UCT_STORRS/1jc3j07/alma9934369473502432
2. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45821§ionno=87&orderno=91#:~:text=Nothing%20which%20is%20not%20intended,has%20given%20consent%2C%20whether%20express
3. <https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi>
4. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=336chrome-



[extension://efaidnbmnnnibpcajpcgglefindmkaj/https://static.mygov.in/indiancc/2021/08/mygov-9999999991694106170.pdf](https://efaidnbmnnnibpcajpcgglefindmkaj/https://static.mygov.in/indiancc/2021/08/mygov-9999999991694106170.pdf)

5. <https://indiankanoon.org/doc/235821/>
6. [https://www.advocatekhoj.com/library/lawreports/theindianpenalcode/26.php?Title=The%20Indian%20Penal%20Code&STitle=Earlier%20Report%20\(42nd\)%20of%20the%20Law%20Commission#:~:text=The%20Law%20Commission%20of%20India,incidentally%20to%20hijacking%20was%20discussed.](https://www.advocatekhoj.com/library/lawreports/theindianpenalcode/26.php?Title=The%20Indian%20Penal%20Code&STitle=Earlier%20Report%20(42nd)%20of%20the%20Law%20Commission#:~:text=The%20Law%20Commission%20of%20India,incidentally%20to%20hijacking%20was%20discussed.)
7. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=347
8. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45841§ionno=107&orderno=111
9. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=335
10. <https://indiankanoon.org/doc/1918278/>
11. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45815§ionno=81&orderno=85
12. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45815§ionno=81&orderno=85m