
PROBLEM, PERSPECTIVE AND SCOPE OF EUTHANASIA IN INDIA

Vanshika Singh, Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand

ABSTRACT

When an individual takes their own life through their actions, it is termed “suicide,” whereas to terminate the life of another person at the request of the individual, it is referred to as “euthanasia” or “mercy killing.” This paper aims to explore what euthanasia entails and its possible application in three distinct scenarios involving a living individual from birth onward. In ancient societies of nations like Greece and India, how the tradition of self-destruction was commonplace, and what the views were on the termination of life across various religions such as Hinduism, Islam, Christianity, and Sikhism. The idea of Euthanasia encompasses not only medical and ethical considerations related to public health and palliative care but also encompasses socio-economic aspects. To thoroughly analyze this concept and examine the relevance and sufficiency of the legal standards concerning the actual realities of public health and societal norms in India, an interdisciplinary approach is crucial.

Introduction

Every human being wants to live until death and enjoy the fruits of life, but sometimes a person may want to commit suicide in an unnatural way. Ending one's life in an unnatural way is a sign of abnormality. When a person ends their life of their own volition, it is called "suicide", whereas when a person's life is ended by another person, even if that is their wish, it is called "euthanasia". Euthanasia is primarily associated with people who are terminally ill¹ or incapacitated and do not wish to continue suffering for the rest of their lives. A seriously ill or terminally ill person should have the right to choose life or death. The right to choose life or death should not be a right granted to physically capable people, but to everyone. As a result, it is currently being debated in many countries across the world. Recently, the Supreme Court of India ruled on this point in the Aruna Shanbagh case², allowing passive euthanasia in India.

In the 17th century, the English theorist Sir Francis Bacon coined the term "euthanasia," which comes from the Greek words "eu" meaning "good" and "Thanatos" meaning "death." Originally, it meant a "good" or "easy" death.

Willful extermination is characterized as someone else dispatching a harmful specialist to a patient in order to save the patient from terrible and untreatable suffering. In typical fashion, the physician is motivated by compassion and the expectation of curing the disease. In the 17th century, Francis Bacon further expanded his belief that science helps promote human property, and the duty of a physician is to "not only restore health, but also to alleviate pain and d'Our. He argued that, and not only when such softening can lead to recovery, but also when it serves as a fair and easy passage.³

Euthanasia is presented in several different forms, each bringing different rights and wrong

1. Active and Passive Euthanasia

Active euthanasia causes a person to directly and intentionally cause the patient's death. Active euthanasia refers to a general practitioner who takes action to end the patient's lifespan. Output

¹ Brody, Baruch. (1998). *Life and Death Decision Making*, New York; Oxford University Press

² Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011

³ Ezekiel J. Emanuel, The History of Euthanasia Debates in the United States and Britain, 121 ANN INTERN MED. 793, 793-794 (1994)

extinction is related to maintaining or reducing important activities to sustain life. Active euthanasia falls into one of three categories: Premeditated murder is a form of dynamic, deliberate destruction carried out for the benefit of the survivor. Non-voluntary euthanasia, also known as "mercy killing," is a procedure that puts a patient's life at risk to ease their suffering, even when the patient has not made any prayers. In cases of manslaughter, where the patient is not mentally capable of consenting, the training is also suspended.

In passive euthanasia, they do not take the patient's life directly, they allow them to die.

It is a morally unsatisfactory distinction, because even if a person does not actively kill the patient. Passive euthanasia is when death occurs by doing nothing, i.e. allowing someone to cause a person's death. On March 7, 2011, the Supreme Court of India legalized passive euthanasia, the removal of life support from patients who remain in a vegetative state. The decision came as part of the verdict in the case of Aruna Shanbhog, who was in a presidential vegetative state (PVS) until her death in 2015.

2. Voluntary and involuntary euthanasia

Voluntary euthanasia occurs at the request of the person who dies.

Non-voluntary euthanasia takes place when an individual is unconscious or otherwise incapable (such as a very young infant or someone with extremely low intelligence) of making a significant decision regarding living or dying, and a suitable person makes the choice for them. It also encompasses situations where the individual is a child who possesses the mental and emotional capacity to make the decision but is not legally considered old enough to do so, necessitating that someone else decides on their behalf according to the law.

Involuntary euthanasia happens when the individual who dies opts for life yet is killed nonetheless; this is typically termed murder, although one can conceive of scenarios where the act of killing could be seen as beneficial for the deceased individual.

3. Indirect euthanasia

This refers to administering treatment (typically to alleviate pain) that has the secondary effect of hastening the patient's death. Because the main goal is not to terminate life, this is viewed by some individuals (though not everyone) as ethically permissible.

Origin and Historical Development of Euthanasia in India

The beginnings of euthanasia can be traced back to ancient cultures. In Greek society, euthanasia was viewed as a way to attain a "good death" or "beautiful death." This notion was examined in philosophical texts by thinkers such as Plato and Aristotle, who delved into the ethical considerations surrounding voluntary death in cases of terminal illness. In India, the Vedic age history is abundant with various examples of suicides carried out on religious grounds. The Mahabharata and the Ramayana are also filled with instances of religious suicides. Most Hindus would argue that a physician should not fulfill a patient's request for euthanasia since this would lead to the unnatural separation of the soul and body. The consequence will tarnish the karma of both the physician and patient. Conversely, other Hindus contend that euthanasia cannot be permitted as it violates the principle of ahimsa (non-violence). Nevertheless, some Hindus maintain that by assisting in ending a painful life, an individual is performing a virtuous act and thereby meeting their moral responsibilities. Govardana and Kulluka, in their commentaries on Manu, noted that a person may undertake the mahaprashta (great departure) on a journey that culminates in death when he is incurably diseased or meets with a great misfortune, and that, it is not opposed to Vedic rules which forbid suicide.⁴

During the Middle Ages and the Renaissance, religious beliefs had a considerable impact on societal perceptions of life and death. The Christian doctrine frequently denounced euthanasia as a breach of the sanctity of life, based on the belief that life and death fell under the authority of a higher power. Thinkers like Voltaire and John Locke championed individual freedom and the quest for personal contentment. These concepts laid the groundwork for challenging conventional religious perspectives and examining the ethics of end-of-life choices. The phrase "euthanasia" was initially introduced by the British philosopher Francis Bacon in the 17th century, signaling a rising awareness of the idea.

The 19th century experienced notable medical progress, including enhanced pain management and the birth of the hospice movement. With these advancements, discussions regarding euthanasia became more pronounced. The emergence of medical ethics as a separate discipline initiated conversations about the moral challenges surrounding end-of-life care and the possibility that medical treatments could extend suffering instead of easing it. The Nazis

⁴ Laws of Manu, translated by George Buhler, Sacred Books of the East by F. Maxmuller (1967 reprint). Vol. 25

executed a program labeled "Aktion T4," which sought to eradicate individuals with disabilities or incurable diseases under the pretense of "mercy killing. " This horrific event illustrated the dire ramifications of unchecked euthanasia and emphasized the necessity of ethical frameworks and protections in end-of-life decision-making. Additionally, the atrocities of World War II left a lasting impact on conversations about euthanasia. Nevertheless, in the years that followed, medical innovations and evolving societal norms sparked renewed discussions. The 1960s and 1970s saw the rise of the contemporary hospice movement, promoting palliative care and prioritizing pain relief and comfort for patients with terminal illnesses. These transformations affected how society dealt with end-of-life choices.

The latter part of the 20th century brought varying approaches to euthanasia across different regions. Countries like the Netherlands and Belgium took steps toward legalizing euthanasia under strict conditions, while others maintained prohibitions. These developments ignited global discussions on individual autonomy, medical ethics, and the need for comprehensive legal frameworks.

Ongoing Debates The 21st century continues to witness dynamic debates on euthanasia. Advancements in medical technology have raised complex ethical questions about the boundaries between life and death. Cultural diversity and differing religious beliefs have contributed to the variability in perspectives across different societies. The emergence of assisted suicide as a distinct topic has further complicated the landscape of end-of-life decision-making .

According to Hinduism and Buddhism, individuals find themselves trapped in perpetual cycles of rebirth and reincarnation. The primary aim of human existence is to attain moksha or freedom from the cycle of death and rebirth. Prayopavesa, or fasting to death, is an acceptable practice for a Hindu to conclude their life only under specific conditions, provided it is non-violent and takes place at the appropriate time for this life to end, that is, when the body has fulfilled its purpose and becomes a liability. Prayopavesa is reserved for those who are fulfilled, who retain no desires or ambitions, and have no remaining responsibilities in this life. • While suicide is commonly linked with feelings of frustration, depression, or anger, prayopavesa is connected with feelings of tranquility and fulfillment. Other Hindus contend that euthanasia should not be permitted since it contravenes the principle of ahimsa (non-harming). Nonetheless, some Hindus argue that by assisting in the end of a painful life, an individual is

performing a virtuous act and thus meeting their moral responsibilities. Govardana and Kulluka, while composing commentaries on Manu, noted that a person may embark on the mahaprastha (great departure) on a journey leading to death when he is suffering from an incurable illness or encounters significant adversity, and that this is not contrary to Vedic principles that prohibit suicide.

According to Sikhs, they largely base their ethics on the teachings found in their scripture, Guru Granth Sahib, along with the Sikh Code of Conduct (The Rehat Maryada). The Sikh Gurus condemned both suicide and euthanasia as a disruption of God's design. They taught that suffering is a component of karma, and that individuals should not only accept it without protest but strive to make the most of the circumstances that karma has provided them.

In contrast, Muslims oppose euthanasia. They hold the belief that every human life is sacred because it is bestowed by Allah, who determines the length of each person's life. Humans should not intervene in this matter. a) Life is sacred – Euthanasia and suicide are not permissible reasons for ending life in Islam. Do not take a life that Allah has rendered sacred, except in the pursuit of justice. If someone kills another person—unless it is for murder or causing corruption in the land—it would be as though he has killed all of humanity. b) Both suicide and euthanasia are clearly prohibited: "Destroy not yourselves. Surely Allah is ever merciful to you. " From the Christian perspective, the majority are opposed to euthanasia. The reasoning is typically based on the assertion that life is a blessing from God and that human beings are created in God's likeness. Birth and death are components of the life journey that God has established, thus we ought to honor them. Consequently, no individual possesses the right to end the life of any innocent person, even if that individual wishes to die.

Right to life vis – a – vis Right to die

Under Article 21 of the Indian Constitution, the right to life is recognized as a constitutional right that is assured to every single Indian citizen. The courts have explicitly interpreted this right to signify something beyond just survival and existence, and the Supreme Court has further claimed that this right is central to the constitutional rights detailed in Section III of the Constitution. In India, through judicial interpretations, the Right to Life has acquired the broadest and most expansive understanding. It not only involves safeguarding the existence of

an individual, but it also grants individuals the right to lead a dignified life⁵. It encompasses some of the "finer graces of human civilization that make life worth living" within its parameters and has broadened its scope to encompass the culture, tradition, and language of the individual involved.

The concern regarding the Right to Die being a component of the Right to Life has particularly arisen in relation to the acceptability of Euthanasia under the Constitution of India⁶. The debate, as seen in all discussions surrounding life and death, has sparked considerable controversy, and the legal, medical, moral, and religious facets of the issue have been analyzed. The question has emerged that if a person possesses a positive right to life, does he simultaneously possess a negative right to not live?⁷ In other words, can an individual be mandated to continue living against his will? Some groups advocating for an individualistic view of life contend that every individual has the right to decide the course and duration of their own life and cannot be obliged to live contrary to their own desires. Conversely, other groups that regard life as a sacred gift maintain that since man lacks the ability to create life, he does not hold the right to terminate life, regardless of the justifications in this regard.⁸ Now the question that surfaces is whether the right to conclude life with dignity also falls within this right if the right to life necessitates living with dignity? Numerous individuals have asserted that Article 21 grants a person the entitlement to live with dignity and that the "right to die" should also be afforded to individuals. Nevertheless, the right to die conflicts with the provisions of section 306 of the Indian Penal Code and section 309 of the IPC, which address suicide and suicide attempts, respectively. This legal issue initially emerged before the High Court of Bombay in *Maruti Sripati Dubai*.⁹ According to Article 21, the court determined that the right to life encompassed the right to die and declared that section 309 of the Indian Penal Code was unconstitutional. The Division Bench of the Supreme Court further affirmed in *P Rathinam v. Union of India*¹⁰, endorsing the Bombay High Court's ruling in *Maruti Sripati Dubai*, that the right to die was incorporated within Article 21 and also deemed Section 309 of the Indian Penal Code

⁵ *Maneka Gandhi v. Union of India* 1978 SC 597

⁶ Euthanasia is considered a practical, emotional, and religious debate. There is also a deep and broad history of euthanasia, which cannot be ignored when having a debate regarding this subject. Based on this history, beliefs, and viewpoints, certain arguments for and against euthanasia have been put forward.

⁷ "Euthanasia: Widely debated, rarely approved". *Times of India*. 8 March 2011.

<http://timesofindia.indiatimes.com/india/Euthanasia-Widely-debated-rarelyapproved/articleshow/7651439.cms>.

⁸ Otani, I, 'GOOD MANNER OF DYING' AS A NORMATIVE CONCEPT: 'AUTOCIDE', 'GRANNY DUMPING' AND DISCUSSIONS ON EUTHANASIA/DEATH WITH DIGNITY IN JAPAN, *International Journal of Japanese Society*, 19 (1)

⁹ 1987 Cri.L.J 743 (Bom.)

¹⁰ 1994 AIR 1844

unconstitutional. Proponents of these perspectives assert that it is rooted in the belief that human lives hold significance not only for individuals but also for the state that safeguards them. However, this provision has faced opposition not only from human rights organizations but also from the courts of law on ethical and constitutional grounds. The Indian judiciary has interpreted this right to life in various manners to incorporate numerous new rights within its scope, such as the right to live with human dignity, the right to live, the right to shelter, the right to privacy, the right to food, the right to education, etc. The issue of whether the right to life should encompass the right not to live or the right to die within its framework has been considered in numerous cases¹¹[3].

Every living being in this world wants to live a long life and wants to maximize the longevity of their lives by every possible means, and it is not the intended outcome of this right to encourage the end of those lives. It is necessary to grant us extreme longevity in this era of globalization and of potential technologies. Some recent cases of few people seeking assisted suicide from incurable diseases have raised the question of dying seriously as a matter of person or state. Many religions believe it to be a sin because they look at the moral side of death. If it's suicide or homicide[4]. We can see in most countries that euthanasia is legalized in the West. Doctors do voluntary euthanasia, but doctors have the right to determine who is important in the life of the patient and who is not? Speaking on the religious side today, religious claims are believed to be true only for religious adherents. We can't place limitations on all persons. But, on the other hand, it is believed that life can only be taken by God. In the case of *Gian Kaur v. the State of Punjab*¹²¹³ came to the Supreme Court in 1996, where the reduction of the suicide commission pursuant to section 306 of the Indian Penal Code was in question. The accused claimed that any individual who facilitated another in committing suicide merely assisted them in exercising their fundamental right under Article 21. However, the Supreme Court's Constitution Bench determined that the right to die is not encompassed within Article 21 or the "right to be killed. " It is traditionally viewed as a crime to force individuals to continue living against their will. Some argue that when contemplating taking life, it becomes a slippery slope towards legalized murder, but there is insufficient evidence to definitively support this assertion. Every aspect of life that makes it valuable can be included, but none that extinguishes it. "And that the "right to die, if it exists, is fundamentally at odds with the right to life, just as

¹¹ *Vishakha v. State of Rajasthan* 1997 INSC 604

¹² 1996 (2) SCC 648 : AIR 1996 SC 946

¹³ Cri.L.J 95 (Bomb)

"death" is incompatible with "life. " In the case of *Naresh Marotrao Sakhre v. Union of India*¹³, the court recognized the difference between suicide and euthanasia. It was argued that suicide is a self-destructive act, without the help or involvement of any other person, to terminate one's own life, while euthanasia is different because it necessitates the participation of another person to end one's life. Therefore, while the Indian legal framework does not permit euthanasia and considers it unethical, passive euthanasia has been allowed in very limited circumstances. Nonetheless, doctors are still hesitant to perform euthanasia as they risk prosecution for homicide or murder under Indian criminal law. Nevertheless, the law does provide certain protections for doctors if they engage in passive or even active euthanasia cases. Physicians are ethically bound not to kill their patients or assist them in dying, regardless of how justifiable the cause may seem.¹⁴ However, in cases of terminally ill patients, where death is unavoidable and suffering is extreme, doctors should be permitted to make decisions to provide relief for the patient and their family. A person should receive assistance to die with dignity. Moreover, obtaining the consent of the patient or their family in this matter would greatly simplify the work of doctors.

Ban on Capital Punishment

The death penalty has been a form of punishment since ancient times, utilized for the eradication of criminals and as a consequence for the most atrocious crimes. Indian criminal law is founded on a mix of deterrent and reformatory punishment theories. While punishments are to be applied to instill fear in potential offenders, opportunities for rehabilitation should also be afforded to the offenders.

Human dignity is mentioned only once in the preamble of the constitution, and it has evolved and made its way into Article 21 through various precedents. Human dignity has now become recognized as a constitutional value and serves as the foundation for several rights granted to marginalized groups and those in undignified circumstances. Article 21 states that no individual can be deprived of life and liberty except through the procedure established by the law. The cases listed below are not associated with capital punishment; however, they are referenced to illustrate the status of human dignity in India. In the case of *M. Nagaraj v. Union of India*¹⁵, it was determined that "It is the duty of the State not only to protect human dignity but to facilitate

¹⁴ *Aruna Ramchandra Shanbaug v. Union of India*, 2011(3) SCALE 298 : MANU/SC/0176/2011

¹⁵ *M. Nagaraj v. Union of India*(2006) 8 SCC 212

it by taking positive steps in that direction. No precise definition of human dignity exists. It denotes the intrinsic value of every human being, which must be respected. It cannot be taken away. ” In the case of *Shabnam v. Union of India*, it was stated that “This right to human dignity comprises numerous elements. First and foremost, human dignity pertains to the dignity of each individual as a human being. Another crucial element to highlight is that human dignity is violated if an individual’s life, physical, or mental well-being is harmed. In this context, torture, humiliation, forced labor, etc. , all violate human dignity. ” In the case of the *National Legal Services Authority v. Union of India*, it was asserted that the fundamental principle of the dignity and freedom of the individual is universal across all nations, particularly those with democratic systems.

The physical and mental well-being of an individual subjected to capital punishment will certainly be negatively impacted and thus, will undermine the dignity of that individual. The state is also obligated to uphold and safeguard the dignity of a person, which is evidently not occurring as individuals continue to face capital punishment in the “rarest of rare” circumstances. Dignity was recognized as a constitutional principle, rather than an independent fundamental right. In the case of *Justice K. S Puttaswamy (retd.) and Anr. v. Union of India*¹⁶, dignity, in my view, being a constitutional principle and value must not be limited or restricted in any manner. In the case of *M. Nagraj v. Union of India*, it was determined that “Human dignity refers to the intrinsic value every human carries and this cannot be taken away by the state. ” Despite capital punishment being imposed in the “rarest of rare” cases, it undermines the concept of human dignity, which is a constitutional principle and should be upheld at the highest level. It was also established in the case of *Justice K. S Puttaswamy (retd.) and Anr. v. Union of India* that dignity is an intrinsic value “Intrinsic value also leads to the right to integrity, both physical and mental. The right to physical integrity includes the prohibition of torture, slave labor, and degrading treatment or punishment.”

Euthanasia in developed nations around the world

Debates regarding euthanasia have become increasingly common over the last twenty years. The evidence that surveys indicate considerable public backing has been utilized in legislative discussions to argue that euthanasia ought to be legalized. Nevertheless, opponents have raised doubts about the reliability of these surveys. The regulations related to euthanasia and the

¹⁶ *Justice K.S Puttaswamy (retd.) and Anr. v. Union of India* AIR 2017 SC 4161

application of euthanasia globally have gained prominence (and remain a significant issue for discussions) primarily in the latter half of the 20th Century. There are numerous cases related to suicide and euthanasia in various countries, a few of which are detailed below.

Netherlands

In April 2002, the Netherlands became the first European nation to legalize euthanasia and assisted suicide. Euthanasia in the Netherlands is governed by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act," 2002. It indicates that euthanasia and physician-assisted suicide are not subject to punishment if the attending physician acts in accordance with the criteria of due care. It authorizes euthanasia and physician-assisted suicide only in very specific situations, under very specific conditions. According to the penal code of the Netherlands, causing the death of a person at their request can result in twelve years of imprisonment or a fine, and assisting a person in ending their life can result in three years of imprisonment or a fine. However, the law permits a medical review board to suspend the prosecution of doctors who carry out euthanasia when all of the following criteria are met –

The patient's suffering is intolerable with no chance of improvement

- The patient's request for euthanasia must be voluntary and persistent over time (the request cannot be fulfilled if influenced by others, mental illness, or drugs). The patient must be fully aware of their condition, prospects, and options
- There must be a consultation with at least one other independent physician who needs to validate the conditions.
- The death must be executed in a medically appropriate manner by the doctor or the patient, in which case the doctor must be present.
- The patient is at least 12 years old (patients aged 12 to 16 require their parents' consent).

Australia

The Northern Territory of Australia became the first region to legalize euthanasia by enacting the Rights of the Terminally Ill Act, 1996. It was deemed legal in the case *Wake v. Northern*

Territory of Australia¹⁷ by the Northern Territory Supreme Court. However, later legislation, specifically the Euthanasia Laws Act, 1997, rendered it illegal again by repealing the Northern Territory statute.

United States

Laws in the United States differentiate between passive and active euthanasia. Euthanasia has been rendered completely illegal by the United States Supreme Court in the cases Washington v. Glucksberg¹⁸ and Vacco v. Quill,¹⁹ but physician-assisted dying is permitted in the state of Oregon under the Oregon Death with Dignity Act, 1997, in Washington under the Washington Death with Dignity Act, 2008, and in Montana through state judiciary rather than legislative action.

Canada

In Canada, patients retain the right to refuse life-sustaining treatments; however, they do not have the right to request euthanasia or assisted suicide. In Canada, physician-assisted suicide is prohibited according to section 241(b) of the Criminal Code of Canada. The Supreme Court of Canada in Sue Rodriguez v. British Columbia (Attorney General)²⁰ ruled that in cases of assisted suicide, the state's interests will take precedence over individual interests.

Belgium

The Belgian Parliament's legislation, 'Belgium Act on Euthanasia,' legalized euthanasia in May 2002, closely resembling the law enacted in the Netherlands.

Switzerland

According to Article 115 of the Swiss Penal Code, suicide is not considered a crime, and assisting suicide constitutes a crime only if the motive is selfish. There is no requirement for physician involvement, nor is it necessary for the patient to be terminally ill. The only stipulation is that the motive must be altruistic.

¹⁷ (1996) 109 NTR 1

¹⁸ (1996) 109 NTR 1

¹⁹ US 793 (1997)

²⁰ 1993) 3 SCR 519

Switzerland holds an unconventional stance on assisted suicide; it is legally authorized and can be executed by individuals who are not physicians. Nevertheless, euthanasia remains illegal. In both Russia and Spain, euthanasia and assisted suicide are against the law. In England, the House of Lords in *Airedale NHS Trust v. Bland*²¹ authorized nonvoluntary euthanasia for patients in a persistent vegetative state. This case concerned the withdrawal of artificial means for prolonging life by a physician. It was determined that administering treatment to a competent adult who is conscious, without their consent, would be unlawful. Such an individual has the full right to refuse treatment, even when the result of their refusal will be death. It was further established that if a person becomes unconscious due to an accident or other reasons and cannot give or withdraw consent for medical treatment, it is permissible for medical professionals to provide treatment that they believe is in the best interests of the unconscious patient. It is illegal for a doctor to give a medication to a patient to induce death, even if that action is motivated by a compassionate intention to alleviate suffering, no matter how severe that suffering may be. All the judges in the House of Lords unanimously agreed that Anthony Bland should be allowed to pass away.

After the Airedale case as ruled by the House of Lords, it has been referenced in several cases in the U. K. , and the law is now reasonably well established that in situations involving incompetent patients, if the doctors rely on informed medical judgment and discontinue the artificial life support system when it serves the best interest of the patient, such action cannot be classified as a crime. The issue, however, persists regarding who will determine what constitutes the patient's best interest when he is in a persistent vegetative state (PVS). Although there are numerous court rulings in the U. S. A. related to this matter, they often adopt varying approaches.

India

In India, the legal framework cannot and must not be examined in isolation. India has derived its constitution from the constitutions of numerous nations, and the courts have repeatedly referenced various foreign rulings. The right to suicide is not an accessible "right" in India – it is subject to punishment under the Indian Penal Code, 1860. The punishment for suicide is outlined in sections 305 (Abetment of suicide of child or insane person), 306 (Abetment of suicide), and 309 (Attempt to commit suicide) of the mentioned Code. Section 309 IPC has

²¹ 1993(1) All ER 821 (HL)

been scrutinized concerning its constitutionality. The right to life is a significant right enshrined in the

Constitution of India. Article 21 ensures the right to life in India. It is contended that the right to life under Article 21 encompasses the right to die. Consequently, mercy killing is regarded as the legal right of an individual. Following the ruling of a five-judge bench of the Supreme Court in *Gian Kaur v. State of Punjab*²², it is firmly established that the “right to life” guaranteed by Article 21 of the Constitution does not encompass the “right to die.” The Court determined that Article 21 serves as a provision ensuring “protection of life and personal liberty,” and under no interpretation can the ending of life be inferred from it.

The Law Commission had also recommended legalising euthanasia for terminally ill patients. Currently speaking however, euthanasia is undoubtedly illegal in India. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860.

However, as in such cases there is the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to Section 92 of the IPC and thus be rendered illegal. The law in India is also very clear on the aspect of assisted suicide. Abetment of suicide is an offence expressly punishable under Sections 305 and 306 of the IPC. "

Conclusion

Euthanasia is a very delicate topic. The question of whether to support or oppose euthanasia, rather than being simply black or white, relies on various factors including the type of illness, extent of suffering, religious beliefs, a country's healthcare system, and the socioeconomic status of patients. In nations where euthanasia has been legalized, opposing arguments such as religious objections, slippery slope concerns, inefficiencies in the healthcare system, and ethical compromises have been raised. The creation of guidelines and their rigorous

²² 1996 (2) SCC 648 : AIR 1996 SC 946

enforcement in this context becomes crucial. Nevertheless, in addition to legal frameworks, medical practitioners must also be well-informed and skilled to make such difficult choices. Thus, the views of the public and healthcare professionals hold limited significance unless the legal and healthcare systems are prepared to manage euthanasia petitions.

Following Gian Kaur's case, suicide has become illegal in itself, but this does not apply to euthanasia. Recently, the judgment by our Supreme Court in Aruna Ramchandra Shanbaug v. Union of India²³ legalized passive euthanasia and indicated that passive euthanasia is allowed under legal supervision in exceptional situations, while active euthanasia remains prohibited by law. Considering the aforementioned discussion, I am of the opinion that voluntary euthanasia should likewise be permitted in India, and that the legislative body should intervene to establish a specific law addressing all aspects of euthanasia. Therefore, we require legislation to legalize euthanasia with appropriate safeguards. The recommendations outlined in the Reports of the Law Commission of India and the guidelines provided in Aruna's case should be taken into account when forming any legislation on this matter to avert malpractice and the misuse of euthanasia. Additionally, if the recommendations stated above are enacted, the likelihood of euthanasia being misused would be significantly diminished.

²³ 2011(3) SCALE 298 : MANU/SC/0176/2011