

# THE CONCEPT OF RIGHT TO DIE IN INDIA: A CRITICAL ANALYSIS

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**Abstract:** The concept of Right to Die in India, an evolving concept, has been undertaken to study the relevance and importance of Right to Die (Euthanasia) which has been left uncovered under any express legislation dealing exclusively with it, but in 2018, the Hon'ble Supreme Court of India with a Constitutional Bench of Five Judges aptly have recognized the Right to Die with dignity and have held it to be the basic part of Right To Life by legalized Passive Euthanasia. It may be noted that the scheme of the Constitution of India only provides the scope and control of the Right to Life under Part – III of the Constitution of India. Interestingly, the euthanasia is being openly practiced and is found to be Legal and valid in number of Countries including Netherlands, Belgium, Luxembourg, Switzerland, Germany, United States, Japan, Colombia, Albania and Canada. In this regard, the objective of the study is to examine the legal and moral complexities which are prevalent in the world in this regard particularly focusing on Indians scenario. An effort has been made in order to highlight the sensitivity of the said concept. The study concludes that the situation of euthanasia should be taken into consideration and must be made a topic of discussion both at national as well as international level, supported with express legislation in this regard.

**Index Terms - Right to Die, Euthanasia, Terminally Ill Patient, Assisted Suicide, Passive euthanasia.**

## I. INTRODUCTION

“Life is Pleasant, Death is painful and said transaction is troublesome”.

Matthew Arnold.<sup>1</sup>

The general rule on the planet is the care of human life and the satisfaction is the real objective of good administration and not the decimation of human life. This sentence can be seen in contradiction to “The Right to die”. In what manner would this be able to be correct when the most valuable right revered in our Constitution of India is the Right to life? In what capacity can a man be allowed to surrender the most essential and fundamental right amongst all? Right to die can be used to denote the concept of Euthanasia, Mercy Killing, Physician Assisted Suicide (PAS), and Suicide etc. Everyone is well aware of the fact that life is precious and till date, there is nothing which has been discovered to be a substitute to life. The literal meaning of Right to die is to intentionally end up the life of a person. Talking about Euthanasia, which is a component of Right to die has been derived from the Greek word “eu” which means goodly or well, and “thanatos” which means death. Euthanasia refers to a situation where a doctor induces death of a patient with the aid of Lethal injection which is given to the patient suffering from unrelievable pain.<sup>2</sup> There are numerous medical cases where the lives of the patients are hanging between a point where their life might end and the death may occur anytime. This refers to a situation where a patient is suffering from any incurable disease or any unrelievable pain due to which his life becomes miserable and terrible than death and where there is absence of any hope for life. So often in such situation the patient finds it better to die than to continue living in said miserable conditions. But he is not permitted to do so as “suicide is a crime” and is a punishable offence in law. Moreover, even the doctors are also helpless in such cases as “abetment to suicide” is also an offence and is punishable. Thus, the concept of “Euthanasia” intervenes here. Countries like Netherlands (since 2001), Belgium (since 2002), Luxembourg (since 2009), Switzerland, Germany, United States, Japan, Colombia, Albania and Canada (since 2016) are found to be the Ten Countries where euthanasia and assisted suicide are legal and valid.<sup>3</sup> On the other hand, if we talk about our own Country India, before March 10, 2018 there was no express law on this subject and the situation was solely governed by few judicial verdicts.<sup>4</sup> Like all the other ongoing topics of discussion, euthanasia is also one of the most important situations which is required to be considered not only at societal and national level but also on international level focusing on both present and future aspects of euthanasia. So, presently it is required to scrutinize not only the facts which include the chances of abuse in case if euthanasia is legalized, but also its effects which would be caused on the norms and values of the society.

## II. RIGHT TO DIE ESPECIALLY EUTHANASIA: HISTORICAL BACKGROUND

In ancient times, terminally ill patients were expected to die a natural death which was also considered to be both morally as well as ethically right. The requirement or necessity of any extra-ordinary medical treatment for ending one's life was totally absent as it was considered that such a treatment would only create unnecessary delay in the occurrence of natural death to a person. However, the

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concept of euthanasia cannot be said to be a modern phenomenon as it is as old as the human civilization. Moreover, talking about ancient Rome and Greece, helping a person in ending his life was permitted in certain circumstances.<sup>5</sup> The famous Greece writer–Plutarch stated that: In-Sparta Infanticide was practiced upon the children who lacked health & vigor. With the passage of time and due to the rise in organized religion, euthanasia started to become both morally as well as ethically abhorrent. Religions like Judaism, Islam, and Christianity all hold the human lives sacred and condemn euthanasia in any form but if we compare it with the western laws, it can be seen that the western laws have normally considered the act of assisting someone in dying to be a form of homicide subject to certain legal sanctions.<sup>6</sup> In Greece, euthanasia was considered to mean a good death and primarily referred to as a mode of dying a painless and easy death by way of consuming hemlock. So, it is clearly visible that the ancient view on euthanasia as per western laws is closer to suicide.<sup>7</sup> As per Hindu Mythology, Lord Rama and his brother took the Jal Samridhi in the river Saryu near Ayodhya. The history also reveals that Lord Buddha and Lord Mahavir attained death by seeking it.<sup>8</sup> Talking about recent history, Veer Savarkar and Vinba Bhawe are two most popularly known examples amongst the people who chose to end their lives by refusing to intake nutrition. Moreover, it is important to note that even Mahatma Gandhi was also known to have supported the idea of wilful death.<sup>9</sup> So, it is crystal clear from the above facts that euthanasia in some or the other form was prevalent in the primitive society. Talking about the Twelfth Century, euthanasia was also practiced in the regime of Adolf Hitler. Mandatory Euthanasia clinics were opened throughout Germany during the Third Reich in Nazi Germany. Said Clinics were composed of Physicians and Government Officials who used to segregate the people who were suffering from incurable diseases and have become burden on the state.

### III. RIGHT TO DIE (EUTHANASIA): CONCEPT AND MEANING

Before proceeding with our topic further, it is necessary to properly understand the meaning of euthanasia. The Oxford Dictionary has defined euthanasia as to bring about a gentle death in case if a person is suffering from any incurable or painful disease.<sup>10</sup> As per 'Encyclopedia on 'Crime & Justice', euthanasia is defined as an act of death, which would provide relief from distressing or intolerable condition of life.<sup>11</sup> Another meaning given to it is the intentional termination of life on the request of the person who wishes to die.<sup>12</sup> As Roedy Green<sup>13</sup> briefly explaining meaning of euthanasia primarily in four parts viz. good and Peaceful death; Mercy Killing; Physician Assisted Suicide (PAS) called as phaspects; and killing of a Terminally ill patient upon his own request. Further, the Select Committee on Medical Ethics of the House of Lords says that euthanasia can precisely be defined as a deliberate intervention undertaken with an express intention of fending a life to get of pain and sufferings. Coming to different country perspectives, the Netherlands defines euthanasia as intentional termination of life of ill patient at his/her request made to the physician. More precisely, the Belgium euthanasia Act, 2002 defines euthanasia as intentional life terminating action by person other than the concerned person, at the request of the latter.<sup>14</sup> Thus, Euthanasia in the simplest form refers to a term used to signify painless death.

### IV. KINDS OF EUTHANASIA

Euthanasia can be broadly categorized in the following two heads i.e. on basis of Procedural Decisions; and on basis of consent. Further, to explore these two kinds of heads in the following manner-

#### a) On basis of Procedural Decisions.

##### ❖ Active Euthanasia

An act which results in deliberately shortening the life of a person refers to active euthanasia. Active euthanasia involves the process by which the patient's life is ended painlessly. This type of death is caused only upon the request of that patient. Following are the three conditions that are mandatory for active euthanasia: the patient must be suffering from unbearable pain and incurable disease; the patient must have made request in this regard; and all other measures which could have saved the life of the patient must have been exhausted by the patient.

##### ❖ Passive Euthanasia

Passive Euthanasia is a situation wherein the death of a patient occurs when either the medical practitioner doesn't do anything to keep the patient alive or when they fail to perform the act which could have kept the patient alive which most commonly includes turning off the Life-support machines (Ventilators etc.); disconnection of the Feeding Tube; and discontinue the serving of extra-ordinary drugs etc. Generally, the said procedure is adopted for the Terminally Ill patients so that soon the death may occur to them. These practices are often adopted for the patients who are in a persistent vegetative state with a massive brain damage and who are in a deep coma wherein there are no chances or very less chances for them to return from such state of mind.<sup>15</sup>

#### b) On the Basis of Consent.

### ❖ Voluntary Euthanasia

Voluntary Euthanasia refers to the circumstances wherein the patient himself requests for his death either by way of Active Euthanasia or by way of Passive Euthanasia. Thus, this form of Euthanasia requires a request to be made from either the side of the patient or his Legal Representatives.<sup>16</sup>

### ❖ Non-Voluntary Euthanasia

The absence of consent of the patient upon whom Euthanasia is being conducted refers to Non-Voluntary Euthanasia. The most pertinent example of this form of Euthanasia is Child Euthanasia which is illegal across the world.

### ❖ Involuntary Euthanasia

This form of Euthanasia is also termed as “Medical Zed Killing” or “Murder”. The most suitable example of this type of Euthanasia is a situation wherein a competent person or a child his/her surrogate after being informed about the consequences of Euthanasia rejects it but still if the patient is euthanized, it amounts to involuntary euthanasia or simply murder.

## V. RIGHT TO DIE IN INDIA: CONSTITUTIONAL AND LEGAL REFLECTIONS

### a) Under the Constitution of India

The Constitution of India as well as the Constitution of all countries is not any ordinary Law, but a Law with a special Legal sanction which sets up the parameters and basic fundamental principles of the organs of the state and declares the fundamental rights guaranteed the citizens enforceable in the Court of Law and these fundamental rights embody the principle of Human Dignity. The law preserves the human dignity of an individual. The debates on the topic of Euthanasia, are prima facie based and put emphasis on the Human Dignity; which also emphasis on The Right to Die a proper and a dignified death. Article 21 of the Constitution of India upholds the individual's Right to Life with dignity but at the same time denies his Right to a dignified death. In India, the worth of quality life has been placed on the highest pedestal. The Constitution of India not only guarantees the right to life but also directs the state to provide health care to all citizens. This Constitutional guarantee reflects from Fundamental Rights and Directive Principles of State Policy i.e. Part III and IV of The Constitution of India respectively. Right to life includes right to die with dignity also. The issues like “Euthanasia” and “Right to die” can be meaningfully discussed only in the context to the specific social reality. While discussing these issues in the context of Indian society, there is a need to keep in mind the often ignored perspective of the population in lower stratum of society comprising approximately two hundred million destitute whose basic needs of food, shelter, medical treatment, education etc. are yet to be met adequately. The deliberation on the issue of “Right To Die” has to keep in mind the perspective of even those who still struggle for securing the crude right to life itself, those for whom life means nothing more than bare physical survival. This is an irony that in India there exists a Society for “Right to Die with Dignity” but there is no such Society for “Right to Live with Dignity”.

### b) Judicial Reception

In Gian Kaur's case, the apex Court has ruled that Euthanasia is only permitted through an express legislation in this regard. Similarly The Hon'ble Supreme Court of India in case of Aruna Ramchandra Shanbaug v. Union of India,<sup>17</sup> while rejecting the plea of euthanasia for Aruna has held that the Passive Euthanasia can only be permitted for terminally ill patients who cannot under any circumstances recover and all possible efforts have been made to protect him. Now, recently in 2018 The Hon'ble Supreme Court in the case of Common Cause (A registered Society) v. Union of India<sup>18</sup> has recognized The Right to Die with dignity and have held it to be the basic part of Right to Life by legalized Passive Euthanasia. As a part of the Fundamental Right to live with dignity, Passive Euthanasia has been upheld by the Hon'ble Supreme Court of India and the right to give advance medical directives or “Living Will” to smoothen the dying process. Passive Euthanasia is held to be an act of withdrawing or withholding medical support to a dying patient who has no hope for revive or care. A Five Judges Constitutional Bench led by Chief Justice of India Dipak Kumar Mishra, J., in four separate and occurring opinions ruled that Article 21 of the Constitution which guarantees Right to Life and dignity also includes The Right To Die with dignity and the dignity would be said to be lost if an individual is forced to undergo pain due to unwarranted medical support. D.Y. Chandrachud, J. in his separate opinion has observed that depriving a person from dignity at the end of life amounts to depriving him from meaningful existence. A.K. Sikri, J. in his separate opinion has said that even though the religion, morality, philosophy, law and the society have been conflicting as to whether the Right to Life includes The Right to die, but they all agree that a person should die with dignity.

### c) The Treatment of Terminally – Ill Patients Bill, 2016

In 2005, an organization for Common Cause brought a Writ Petition<sup>19</sup> before The Hon'ble Supreme Court of India, in the interest of the public praying for the recognition of advanced directives for medical treatment that the patients would like to receive if they get into a persistent vegetative state, long time unconsciousness or coma. A five Judges bench refused to pass an order and instead, directed the

government of India to make it a matter of discussion in the Parliament, in response to which The Ministry of Health and Family Welfare got the draft of “The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) bill in May, 2016. The said bill was essentially a replica of draft legislation that was initially annexed to 196th report of The Law Commission of India in 2006<sup>20</sup> which was later revised in 2012.<sup>21</sup>

#### d) Salient Features of the Bill of 2016

There are some of the salient features of the said bill.

- ❖ According to The Bill, a Terminally Ill Patient above the age of 16 can give consent as to whether to continue to undergo the treatment or to refuse to it and let the nature to take its own course.
- ❖ The Bill also protects the patient as well as the medical practitioner from any liability for withdrawing any medical treatment.
- ❖ As per the bill, when the patient conveys his consent to the practitioner, he is bound by such consent.
- ❖ However, the bill also says that it is essential that the practitioner must be satisfied with the competency of the patient and that the consent must have been given with a free will.
- ❖ There shall be a panel of Medical Experts to decide the circumstances case by case.
- ❖ The Draft also lays the provision for obtaining the permission of The High Court before seeking Euthanasia.
- ❖ The bill exclusively aims in legalizing Passive Euthanasia.
- ❖ Thus, the Bill can be a welcome step in many aspects, which moves away from the decision based on the best interest of the patient and recognizes the right to die with dignity.<sup>22</sup>

#### VII. CONCLUSION

The proposed research highlights upon this thing that as “Right to Life” itself is an unaccomplished right in India and a movement for “Right to Die”, which is strictly opposite of the former right, has come into existence under the influence of western fads. Therefore, there is an urgent need to provide for adequate and practical legislation on this vital issue of Right to Die. Finally, with a view to give protection to Terminally Ill Patients and medical practitioners the Union Health Ministry has recently, in May 2016, proposed a draft Bill on withholding and withdrawal of treatment to terminally ill patients which has been modified and recommended by Law Commission of India in its 241st report 2012. It is significant to critically analyze the provisions of the said Bill with a view to search out the lacunas in the proposed law with a view to make it more practicable and comprehensive so as to fulfil the aspirations of people of India. For reaching this conclusion, a long judicial battle through plethora of cases has been fought and ultimately won with the verdict in Aruna’s case. Hence, it is significant to scrutinize the whole situation to reach a meaningful conclusion. Further, in India if a patient begs for killing and the doctor obliges, the doctor will be considered to have committed a murder U/s 302 of Indian Penal Code. If patient stops using life savings measures, the act of the patient is an outright attempt to suicide U/s 309 of Indian penal code. To sum up, the research over Right to die has to basically commence with the thread bare discussion on the concept of life and its various aspects, such as, the value of life, quality of life, sanctity of life, protection of life. It has been observed that not only the value but also the quality of life is extremely important. The quality of life has been evaluated in the clinical and legal perspective, as it targets the intrinsic value of life in the course of legalizing euthanasia. The need for protection of life has been emphasized by moral philosophers which has universal acceptance in a civilized society. For them, life has innate importance, and hence irrespective of the quality of life it should be protected. Article 21 of the Indian Constitution guarantees, among other things, life, liberty, privacy and human dignity. The Indian judiciary magnificently has broadened the horizon of Article 21 by providing the widest possible interpretation to include various facets of life under this provision. Unfortunately, the judiciary has not gathered courage to interpret right to die with dignity as a facet of Article 21.

#### REFERENCES

- <sup>1</sup> Reference [http://www.uni-due.de/lyriktheorie/texte/1880\\_arnold1.html](http://www.uni-due.de/lyriktheorie/texte/1880_arnold1.html) visited on March 21, 2018.
- <sup>2</sup> Medical definition of Euthanasia Retrieved from <http://www.medicinenet.com/script/main/art.asp?articlekey=7365> visited on March 21, 2018.
- <sup>3</sup> Retrieved from <http://www.therichest.com/rich-list/most-influential/10-countries-where-euthanasia-and-assisted-suicide-are-legal/> visited on March 21, 2018.
- <sup>4</sup> K.Venkatesh’s Case in which a 25 years old patient was suffering from muscular dystrophy was kept confined to a wheelchair since he was 10 years old, who demanded death so that his organs could be donated but his request was turned down by the Hon’ble Andhra Pradesh High Court just a day before his death occurred in 2005 & also Aruna Ramchandra Shanbaug V. Union of India, A.I.R. 2011 Supreme Court 1290 - Retrieved from <http://www.womenexcel.com/law/Euthanasia.htm> visited on March 21, 2018.
- <sup>5</sup> Jay Thareja & Satyam Thareja, “Euthanasia; The Last Right” Criminal Law Journal, 2009 P-154.
- <sup>6</sup> M.D. Singh, “Euthanasia: How merciful is the killing. Amritsar Law Journal, Vol. X, 2001 P-54.



- <sup>7</sup> Subhash Chandra Singh, “Euthanasia & Assisted Suicide: Revisiting the sanctity of Life Principle,” Journal of Indian Law Institute, I.S.S.N. 00195731, Vol. 54, No. 2, April-June, 2012.
- <sup>8</sup> Bal Krishna, “The Right to Die: Indian Perspectives,” Kusum (Ed), Suicide some Reflections, Regency Publications, New Delhi, 1995 P-84.
- <sup>9</sup> Shailendar Kaur, “Euthanasia – A Blemish or a Bliss”, Delhi judicial academy journal, March 5, 2005. Vol.4, No. 1, P – 84.
- <sup>10</sup> <http://en.oxforddictionaries.com/definition/euthanasia> visited on March 21, 2018.
- <sup>11</sup> <http://www.encyclopedia.com/medicine/divisions-diagnostics-and-procedures/medicine/euthanasia> visited on March 21, 2018.
- <sup>12</sup> Retrieved from <http://www.religioustolerance.org/euth1.htm> visited on March 15, 2018.
- <sup>13</sup> Shalini Marwaha, “Euthanasia, personal Anatomy and Human Rights: An Intricate Legal & Moral Global Perspectives,” Amritsar Law Journal, vol. XII 2004. Pg – 96.
- <sup>14</sup> <http://www.ethical-perspectives.be> visited on March 21, 2018.
- <sup>15</sup> Retrieved from <http://www.religioustolerance.org/euth1.htm> Visited on March 22, 2018.
- <sup>16</sup> M.D. Singh “Euthanasia: How Merciful is the Killing: Amritsar Law Journal, vol. XII, 2001 p – 53.
- <sup>17</sup> 2011 4 SCC 454.
- <sup>18</sup> Decided on March 9, 2018.
- <sup>19</sup> Common Cause (A Registered Society) v. Union of India W.P. (Civil) No. 215 of 2005.
- <sup>20</sup> The Law Commission of India, 196th Report on Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) 2006.
- <sup>21</sup> The Law Commission of India, “Passive Euthanasia – A relook” Report No. 241 (2012).
- <sup>22</sup> <http://www.iasparliament.com/current-affairs/govt-policies-interventions/the-treatment-of-terminally-ill-patients-bill>. Visited on March 22, 2018.

