



SUBSISTENCE OF THE RIGHT TO DIE IN THE GLOBALIZING WORLD

¹Saumya Tripathi

¹LL.M. (Criminal Law)

¹Symbiosis Law School, Noida, Symbiosis International (Deemed University)

¹Noida, Uttar Pradesh, India

Abstract: Since the beginning of time, people have practiced euthanasia. And it has always been divisive and the subject of heated arguments. Numerous modifications have been made in this industry over the past few decades, and numerous practices that had previously only been carried out secretly have gradually come to light and been controlled. In order to effectively illustrate the arguments used by civic organizations and authors to support or oppose the liberalization of euthanasia, this essay first clarifies the language and concepts commonly used in the discussion about euthanasia. Second, it depicts the legal & social climate around euthanasia, where court rulings and legislation have called for increased societal understanding. Thirdly, it makes an effort to contrast the euthanasia laws of a few different nations. Finally, it examines how to make the current situation better and develop better ways to regulate euthanasia. It is imperative to remember the tenets of our culture(s) as well as a society when engaging in such a discussion where ethical, moral, and religious reasons and convictions are invoked. As a result, while this paper focuses on the legal parts of this argument, it also seeks to consider some non-legal issues that are equally important and without that, it is impossible to fully analyze this subject. In the end, this essay does not try to take a neutral stance since legal experts shouldn't always confine themselves to a technical and objective examination of legal laws.

Index Terms - Euthanasia, Right to Die, Mercy Killing, Right to Dignified Death, Legal Issue

I: INTRODUCTION

**“Not all people who live long lives pass away peacefully;
occasionally, they scream for relief from life by dying,
and they often scream for a better death one that is painless”**

The notions of life and mortality are intertwined and have sparked discussions and disputes in a variety of fields, including law, government, health, morals, and religion, to mention a few. This definition of "life" has evolved over time, and legal institutions have repeatedly defined it as a right to a standard of living congruently with human individuality rather than mere animal existence.

In recent years, medical technology and science have advanced inexorably. These improvements have, however, had significant negative effects. Today, the majority of us are more afraid of suffering a horrible death, one that is connected to a hospital bed with needles, ventilators, gastrostomy tubes, or other mechanical life support systems, one that suffers from protracted agony brought on by such equipment or from medical negligence. Every creation has benefits and drawbacks, and technical and medical breakthroughs are no exception. The development of medicine has made it possible to treat many formerly incurable ailments. People now live longer thanks to medical developments and the usage of technological life support systems. However, this has also increased the difficulty or even the discomfort of dying. While some people profit from contemporary medical technology, others are forced by medical procedures to endure horrible lives. Modern medicine has frequently prolonged a patient's suffering and given cruel, inhumane, or otherwise

demeaning therapy in disproportionate amounts. A patient has frequently requested euthanasia due to intrusive medical attention and its side effects. So, this concern for the dignity of death sparked a resurgence in interest in euthanasia.

It is against the law there in that nation. But on the other hand, isn't the question to consider: Do not even deserve a quiet and painless death? Is it not cruel and barbaric to subject them to a life of suffering and suffering? One would select the option of passive euthanasia and give their beloved pet a peaceful death if they had a terminal illness with no chance of recovery because it would be more terrible to see them suffering and beg for death. Will one act the same way toward their loved ones, such as their spouse, parents, or children, in the same circumstance? Will you decide on such a method for yourself? Will you decide on such a method for yourself? Will you choose self-euthanasia? Through this investigation, the researcher hopes to find answers to a few questions.

II: THE CONSTITUTIONAL PARAMETER OF EUTHANASIA

2.1 INTRODUCTION

Euthanasia commonly referred to as "Mercy Murdering," is the act of killing someone without suffering in order to lessen his suffering. The phrase means "dying well" and is derived from the Greek terms "EU," which means good, and "Thanatos," which means death. Hence, it literally refers to a method for a patient who is terminally ill or is experiencing a hard existence to achieve a peaceful death.

The primary goal of euthanasia is to end a person's life calmly and painlessly. It is only used as a final option for those who are terminally ill or who have become incapacitated as a result of a terminal illness. Euthanasia's goal is to end the suffering of a patient who has a fatal condition and has been suffering for a long time with no chance of recovery. The goal of euthanasia is to give a patient a dignified life in addition to a decent death, or a good death if his or her condition prevents them from living in a dignified manner. A decent death is one that is "free from needless suffering for patients, families, and careers in generally agreed with the patient and family and families' desires," according to the Institute of Medicine. Therefore, a tranquil death without unnecessary pain for the sufferer and his loved ones is a good death.

2.2 THE WORTH OF LIFE

The debate over euthanasia or the right to die is inextricably linked to the value of life. The debate over euthanasia is furthered by divergent views on how to appreciate life in light of the evolving nature of human existence. Actually, people's views on the ethics of euthanasia are likely to change at key moments depending on how much weight they place on life. When attempting to describe how one views the "worth of life" and its inherent significance, the term "person" is used to refer to a specific kind of person who is identified by their capacities or powers instead of by their allegiance to a particular species.

Life is valuable in addition to qualitative analysis. The worth assigned to each person's life should also take their quality of life into consideration. In the discussion of euthanasia, the topic of quality of life poses an important question: Which is more essential, how long we stay, or how we survive? This question will be addressed in the following section, which contrasts life's value and quality.

2.3 A TRILOGY ON CONSTITUTIONALISM, HUMAN RIGHTS AND DIGNITY, AND EUTHANASIA

The constitutions of all nations, including India, are not simply regular laws; rather, they are acknowledged as special legal sanctuaries that define the framework and primary duties of the state's organs and enshrine in law the fundamental rights of all people. The idea of human dignity is embodied in these essential rights.

The constitutions of all nations, including India, are not simply regular laws; rather, they are recognized as special legal sanctuaries that define the framework and primary duties of the state's organs and enshrine in law the fundamental rights of all people. The idea of human dignity is embodied in these essential rights. The law offers and defends each person's right to dignity. The discussion of euthanasia is grounded in human dignity, which emphasizes that everyone has the right to a peaceful death on par with that of a dignified life. Although the right to human dignity is upheld by Article 21 of the Indian Constitution¹, the right to a dignified death is not.

However, Article 21 of the Indian Constitution says that no person shall be deprived of his life or personal liberty except according to the procedure established by law."

¹ Constitution of India, 1950

Article 21 is one of those articles that, despite not having been textually changed, has undergone a complete transformation as a result of significant judicial rulings. The key elements of Article 21 are as follows:

- person;
- taking away one's life;
- taking away one's freedom;
- following a legal procedure.

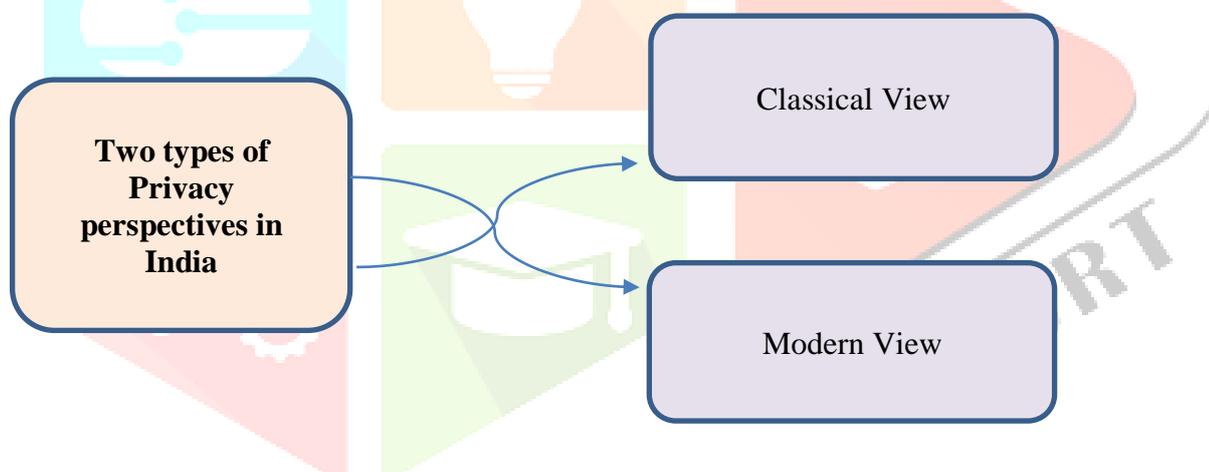
The Maneka Gandhi v. Union of India ruling, which expanded the scope of Article 21 by requiring that the method be "just, fair, and reasonable" in addition to being "established by law," is pertinent to the fourth component. It is insufficient to have legal legislation that allows for the taking of life or liberty that has been officially passed by an informed legislature. "It is in accordance with justice, fairness, and rationality," is how the procedure must be phrased. Later legal rulings have clarified how this principle applies in various circumstances.

The Fundamental Right to Life, which is established in Article 21, has been interpreted by Indian courts in the broadest and most liberal terms possible in order to read other rights, giving them a certain amount of constitutional legitimacy.

In India, neither a legislature nor the courts have recognized the legality of the right to death. However, Article 21 of the Constitution provides a constitutional guarantee of the principle of the right to autonomy, self-determination, or the right to choose choices and lead dignified lives. The unalienable rights that are granted to everyone in a democracy are enshrined in the Indian Constitution.

3: A COMPARATIVE STUDY OF THE LAWS RUNNING EUTHANASIA SELECTED WORLD COUNTRIES

3.1 Right to Privacy Perspectives in India



3.1.1 Classical view

The virtue of life has indeed been elevated to the greatest position in India. The Constitution of our country and the competent judiciary have given the phrase "right to life" the broadest and most inclusive definition possible. It was done correctly since the "Right to Life" refers to a life with dignity, not just a mere animal existence. Because of this, the judiciary in our nation has steadfastly opposed the establishment of the "Right to Die" up to this point.

A five-judge Constitutional Bench ruled in *Gian Kaur v. State of Punjab*² that the "right to life" and the "right to die" are inherently incompatible with one another as "death" is with "life." Additionally, the right to life, which encompasses the right to live with dignity, would entail the right to continue living until one's natural death. It can also refer to "death with dignity," however this does not imply the right to an unnatural death. According to Lodha J., "Euthanasia or mercy killing is merely homicide regardless of the conditions in which it is conducted," in *Naresh Marotrao Sakhre v. Union of India*³.

² *Gian Kaur v. State of Punjab*, 1996

³ *Naresh Marotrao Sakhre v. Union of India*, 1994

3.1.2 Modern view

Suicide decriminalization has proven to be a watershed moment. It has made way for fresh perspectives on and comprehension of the "Right to Die." The term "Right to Die" encompasses the idea of suicide.

"The Law Commission of India has suggested that Section 309 (attempt to commit suicide) of the IPC⁴ be removed from the statute book in its 210th Report. States and UTs were asked for their opinions on the Law Commission's recommendations because law and order is a state issue. The possibility of repealing Section 309 of the IPC has received support from 18 states and 4 administrations of Union Territory. It has been decided to strike Section 309 of the IPC from the statute book in light of the comments from the states/UTs.

The act of turning off the life support system or depriving the body of all food, nutrients, and water, which causes dehydration and hunger, is referred to as passive euthanasia. The person will experience a harsh and unjust death in this way. When a doctor recommends drugs and injections for a painless death, this is known as active euthanasia. Active euthanasia results in a painless, humane death. If killing someone is bad, then killing someone in such a violent and inhumane way is also wrong.

Since a painless and dignified death is the primary goal of euthanasia, the courts should take this plea into consideration. The Supreme Court hasn't given the financial and economic elements any regard.

This doesn't imply that perhaps the author is contesting the Supreme Court's decision; rather, he is only offering a realistic way to carry out the suggested approach.

3.2 Netherlands

The Netherlands was the first nation to make euthanasia legal worldwide. By adopting a euthanasia directive, patients can describe the conditions under which they would choose to end their own lives. It can only be carried out if two doctors certify that the patient is chronically or irreparably sick.

3.3 Germany

The Bundestag passed a bill on advance directives on June 18, 2009, and it became effective on September 1, 2009. This law, which is based on the idea of the right to self-determination, permits a fiduciary's and a doctor's aid. The advance directive has been signed by nine million Germans. The law only permits medical treatment preference and the removal of life support systems, nevertheless. Germany forbids physician-assisted suicide.

3.4 United States

The majority of States in the United States accept advance directives or the designation of a health care proxy; for instance, California employs an Advanced Health Care Directive rather than a living will. According to surveys, one-third of Americans believe that they should decide on end-of-life care. Patients who had written advance directives obtained informed consent that was significantly correlated with their choices, according to surveys taken from 2000 to 2006. Thus, although the United States of America acknowledges advance directives for medical preferences and treatment rejection, it does not permit physician-assisted suicide.

3.5 England and Wales

Under the Mental Capacity Act of 2005, individuals in England and Wales are permitted to designate a proxy or issue an advance directive. This advance directive only applies to treatment refusal. The medical personnel will deem it valid and applicable, and it may only be used when the individual loses mental capacity. However, there is no legislative framework in the United Kingdom that implements advance directives or establishes their legal applicability for physician-assisted suicide. The common law has long recognized a person's fundamental right to refuse to touch another person's body. Lord Scarman referred to a patient's ability to choose his own course of treatment in *Sidaway v. Board of Governors of the Bethlem Royal Hospital* as "a core human right guaranteed by common law." The legal system does not, however, acknowledge any kind of advance directive that would permit euthanasia or medical aid in dying in the event of a fatal illness.

4: CONCLUSION AND SUGGESTIONS

4.1 CONCLUSION

Every beginning must eventually come to an end, no matter how painful it may be. Similar circumstances apply to this study project, which was started years ago. However, one benefit of finishing a research project is that it sparks multiple new starts.

This study on euthanasia's legalization in India was conducted in response to a protracted discussion that is gaining momentum and rising prominence in an effort to give terminally ill individuals who are underrepresented in society a dignified death.

The courts will undoubtedly be able to prevent potential conflict and tension in between law and medical technology while also protecting individual interests if a comprehensive set of laws for dignity in dying is in

⁴ Indian Penal Code, 1860 (Act 45 of 1860)

place. There is currently a lot of pressure on lawmakers to modify the law to let physicians to give a patient a fatal injection upon their request under certain strict guidelines.

Remember that the Constitution was written to limit the power of the government over the individual. However, the experiences of other nations where euthanasia is permitted can be thoroughly researched and studied. In a civilized community, nothing—not even the formulation of legislation—can be done in isolation. As previously said, none of the Indians had experience dating a democracy at the time the Indian Constitution was written. The necessary clauses from the already-existing constitutions of other nations were adopted when writing the Indian Constitution. Similar data may be acquired regarding the legalization of euthanasia from nations such as the Netherlands, Belgium, Switzerland, Luxembourg, and the State of Oregon.

As Lord Denning correctly noted, "The law has evolved up to this point. There are currently more upcoming developments. The law in this area has to be expanded and investigated right now for the benefit of patients who are terminally sick.

4.2 SUGGESTIONS

In light of the researcher's findings, it is in the best interests of terminally ill patients to legalize euthanasia in India, as stated in the conclusion, taking into account medical technology advancements and the vulnerable status of an incurable terminally sick patient.

- Although quality of life should always take precedence over the sanctity of life, at least in the case of terminally ill patients, is urged. To preserve the dignity of terminally ill individuals, quality of life must be protected.
- Both from a clinical and legal standpoint, it is important to preserve the quality of life.
- When a patient is in a terrible medical situation, their best interests should be taken into account not just for the safeguarding of life but also for the right to a dignified death.
- The foundation for legalizing euthanasia is the right to decline medical care, self-autonomy, and informed consent. These ideas should be pushed further to help terminally ill folks pass away with dignity.
- The State has a duty to defend people's lives, but in the same way that it can legally take someone's life by imposing the death penalty, it can also permit a dignified death under special conditions.
- Just as artificial life support systems should not be utilized to temporarily relieve a patient's discomfort, painkilling medications should not be used to do so.
- The proposed law should include an advance directive to give it a legal foundation. The living will be recognized as a valid advance directive in India.
- As inserted at the appropriate location in the thesis, the pertinent provisions of the Indian Penal Code should be changed in conformity with the Constitutional provisions for the right to die with dignity in terminal illness.
- The researcher's model law represents the first step toward making euthanasia lawful. The policymakers should include a detailed definition of euthanasia when crafting the laws, as well as stringent safeguards, to prevent abuse of the law.

RESEARCH METHODOLOGY

The goal of this research is to examine, evaluate, and analyze various foreign viewpoints on the legality of euthanasia, and an international viewpoint on the legalization of euthanasia is explored, studied, and analyzed in this research. However, I have taken a few countries for comparison with India in which I have chosen the countries from the view that where the concept of Euthanasia started and which are the countries where Euthanasia is legalized and not legalized and on which grounds.

ACKNOWLEDGEMENT

At the very outset, I express my deep sense of gratitude to my Professors, Parents, Colleagues, Friends, and well-wishers. I acknowledge any indebtedness to one and all. With Immense gratitude and reverence, I acknowledge the valuable support of my father (Mr. Satish Tripathi) who has paved the path throughout my research Journey. This research would have been impossible without his relentless support and direction. I would like to extend my sincere gratitude to the Symbiosis School Noida, Uttar Pradesh, and the librarians for their assistance and cooperation in helping me finish my research project. Last but not least, I bow down to the Supreme Soul who is all-powerful, omniscient, and all-present and who gave me the blessing to finish my studies.

REFERENCES

- [1] Lifton, Robert Jay 2017. German Doctors and their Final Solutions, Journal of Times Magazine New York, 3(2): 115–128.
- [2] Lonqvist J. The Oxford Textbook of Suicidology and suicide prevention. Oxford: Oxford University Press; 2009. Major psychiatric disorders in suicide and suicide attempters; pp. 275–86
- [3] Saunders C. Terminal care in medical oncology. In: Begshawe KD, editor. Medical oncology. Oxford: Blackwell; 1975. pp. 563–76.
- [4] Aruna Ramchandra Shanbaug vs. Union of India & Ors. Writ Petition (Criminal) no. 115 of 2009, Decided on 7 March 2011.
- [5] Prabhu V. Ethics and Legality of Euthanasia in Indian Context, 2013 Ubios Journal of Asian and International Bioethics 23 (2):46-49.
- [6] Zyliz Z, Finlay IG. Euthanasia and palliative care: reflections from The Netherlands and the UK. J R Soc Med. 1999;92:370–3.
- [7] Gandhi A, Chaturvedi SK, Chandra P. Desire for death in cancer patients - an Indian Study. Presented at the International Congress of the International Psycho-Oncology Society, Copenhagen 2004
- [8] Sheldon T. Dutch legal protection scheme for doctors involved in mercy killing of babies receives the first report. BMJ. 2009:339.
- [9] Euthanasia and end-of-life practices in France and Germany. A comparative study. Ruth Horn - 2013 - Medicine, Health Care, and Philosophy 16 (2):197-209.

