



Exploring Legal Dynamics of Euthanasia: An Analytical Overview

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<p>CC License CC-BY-NC-SA 4.0</p>	<p style="text-align: center;">Abstract</p> <p><i>The most important Public policy debates today surround the use of euthanasia to end the sufferings of terminally ill patients. This debate revolves around one of the most important aspects which is, the right to a dignified life, and it is the central concern for one and all. This research paper is an attempt to analyze the legal issues involved in legalizing euthanasia and the consequences thereof. The research paper will also focus on the role played by the judiciary in India related to euthanasia.</i></p> <p>Keywords: Euthanasia, killing, terminally ill, Right to life, suicide, physician-assisted death, voluntary, involuntary, fundamental right, duty, Permanent Vegetative State.</p>
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Introduction:

*Our days are fixed & all our days are numbered, how long and how short, we know not, this we know!
Duty Requires we calmly wait for the summons Not dare to stir till the heavens shall give permission.
(Robert Blair; The Grave 1.41)*

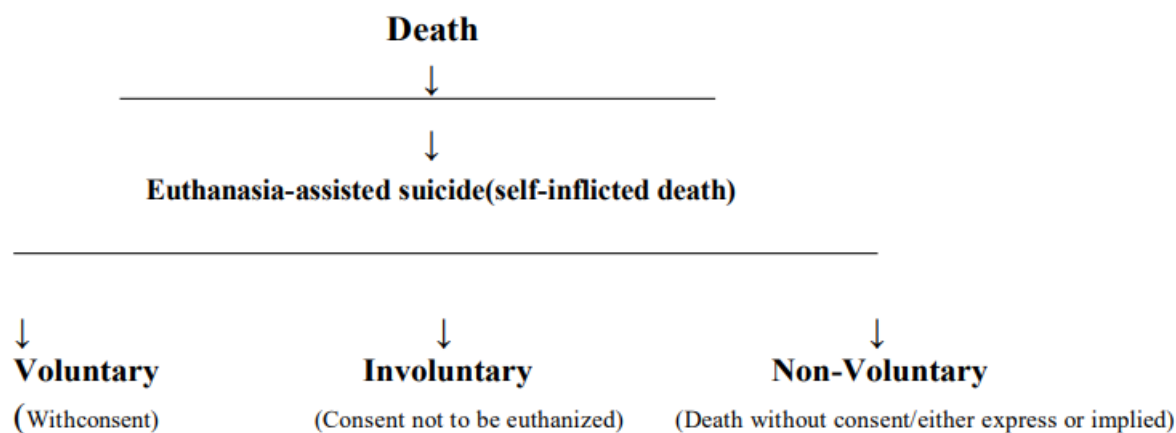
Euthanasia seems to be a new word but it existed in one or the other forms from earlier times. However as used in contemporary times, euthanasia involves the direct and intentional killing of a patient by a physician commonly by lethal injection. Euthanasia can be either voluntary or involuntary. In other words, one can say that euthanasia is a process of taking one's own life or permitting others to take it. This has become a topic of great controversy and the debate is continuing. The controversy of euthanasia is not limited to any particular segment of society and is a concern of all quarters of the world. It is a concern of nations all around the world. Any move towards it must be carefully and cautiously taken. In India, certain initiatives have been taken to make some changes in the law but euthanasia was not decriminalized keeping into view its socio-cultural or economic consequences.

Meaning and Types of Euthanasia:

The word Euthanasia coined in the 17th century (**Thomas More, Utopia 1516**) has been derived from the Greek words '**Eu**' meaning 'good' or 'well' and '**thanthos**' meaning death. So the literal meaning of euthanasia means good death, well death or dying well. As originally used the term *euthanasia* referred to painless or peaceful natural deaths in old age that occurred in comfortable and familiar surroundings. Euthanasia occurs when one person ends the life of another person to end the suffering and pain of that person (**Encyclopedia of Crime and Justice**). Euthanasia is also referred to as mercy killing and is understood as causing death painlessly because the person is suffering or terminally ill. **O'Loughlin and MC Nanara**; defined euthanasia as, the intentional taking of human life either by a deliberate act as with a lethal injection or by a deliberate neglect of reasonable

care e.g. not offering eatables to a newborn infant. The term euthanasia is also defined, as 'the lawful termination of human life by painless means to avoid unnecessary sufferings and under adequate safeguards' (*Euthanasia Society of America*). The definition of euthanasia includes doing something or omitting to do something to cause death to relieve suffering. So in euthanasia 'intention to cause death' is always a precursor to causing euthanasia (*John Fleming; 1992*).

Thus Euthanasia essentially means putting terminally ill patients to death by medical means. The term euthanasia can be analyzed in the following ways depending upon the modalities for its performance (*Arun Shorie; Mercy Killing—An Analysis; 2004*)



The above chart classifies various types of euthanasia though technically understood euthanasia in any of its forms is always meant as the intentional killing by any act or omission, of a dependent for his or her alleged benefits. So the important element in euthanasia is the intention to cause the death if such an element is missing there is no euthanasia. Various types of euthanasia depending upon the modalities for its performance are briefly stated below:-

- **Voluntary Euthanasia:** When the person who is killed has requested to be killed for the reason of ending the suffering is known as voluntary euthanasia. It is also referred to as euthanasia with consent. It may also be defined as the medically assisted quick and peaceful death at the request and in the interest of the patient (*22nd Interim Report of Select Committee 2015*) the killing of any person where on account of his distressing physical or mental state and is thought to be in his interest and the person's requests for the same. (*Daniel; Euthanasia (2008)*).
- **Involuntary Euthanasia:** when the person who is killed makes an express wish that he should not be killed or euthanased, it is involuntary euthanasia. This equates involuntary euthanasia to murder (*Jonathan Glover; Causing Death and Saving Life, 1987*).
- **Non-Voluntary Euthanasia:** when the person who is killed makes no request and gives no consent concerning euthanasia. In such a type of euthanasia, since the person is not capable of giving consent, the concerned person is killed at the request of family members.

Euthanasia may be conducted passively, non-aggressively and aggressively. Passive euthanasia involves withholding common treatments, non-aggressive euthanasia involves withdrawing of life support system whereas aggressive euthanasia involves the use of a lethal substance to cause death.

Legal Framework of Euthanasia:

There are few places/States in the world wherein euthanasia stands legalized which include Netherlands, Belgium and Oregon. Netherlands and Belgium have legalized both euthanasia and physician-assisted suicide whereas Oregon (State of U.S.A) has only legalized Physician Assisted Suicide. In India Euthanasia is undoubtedly illegal. In cases of euthanasia or mercy killing there is always an intention to cause the death. Hence such cases would squarely fall within the ambit of murder. That is within Section 300 of IPC however such cases would also attract exception-5 of Section 300 of IPC which is the death being caused by the consent of the deceased (as in the case of voluntary euthanasia) in other words to go strictly by the words of section 300 IPC defining murder euthanasia qualifies as consensual killing (*Section 300 IPC Exception-5*). The punishment for consent killing is provided under section 304 IPC. It prescribes the punishment for culpable

homicide not amounting to murder. The consent of the deceased to suffer the death reduces the crime from murder to culpable homicide not amounting to murder. The punishment is justified on the ground that the life of a human being is not only important and valuable to himself but also to the state. Human beings are therefore not entitled to give up life by consent, though consent has unquestionably the effect of mitigating punishment. However, it can never exonerate the offender. This position of the Hon'ble Supreme Court is that fundamental rights are non-violable and cannot be waived (*Olga Tellis v. Bombay Corporation AIR 1986*). Thus a doctor has little defence available in India for euthanizing patients. If we go by the interpretation of law, the consent even if given by the accused, is null and void and renders the accused liable for murder. The general notion is attached except for section 300 IPC is that they mitigate the gravity of the crime. Consent for killing is unconstitutional & is inconsistent with the interpretation of the right to life by the Supreme Court under the constitution of India. However, it is also to be understood that it is only in cases of voluntary euthanasia that is where the patient consents to his death that exception 5 of section 300 is attracted. In the cases of non-voluntary and involuntary euthanasia, the act would be illegal and the exception would not be attracted because of the provisos 1&2 of section 92 IPC and punishable like any case of murder. It is submitted here that in the light of this discussion, the Supreme Court may declare exceptions 5 to 300 of IPC unconstitutional in the context of euthanasia (*Emphasis supplied*) because it seeks to bring the right to die within the constitutional precincts, which is strictly against the mandate of Right to life. (Article; **21 Constitutional law of India.**)

The law regarding brainstem death vis-à-vis euthanasia:-

Many jurisdictions have enacted specific laws dealing with brain death. In this regard, it was commented way back in the late 1970s by the neurologists of the United Kingdom that, "if the brain-stem is dead, the brain is dead and if the brain is dead the person is dead".

In the United States brain death was accepted as equivalent to death. The Uniform Brain-Death Act, of 1978 defines death as the cessation of all circulatory, respiratory, and brain functions including the brain stem. Initially, lower brain death was considered as an alternative mode of determining the probability of the revival (**James T. Bernet**). Today no state in the United States, allows the higher brain death standard to be equated with death, in some jurisdictions, it is legitimized from the perspective of the right to die with dignity (**Death with Dignity Act, 2004**). While in others, it is simply recognized as an exception to suicide. The rationale lies in the fact that every competent adult has the right to Medical treatment, or even a cure if it entails what for him are intolerable consequences or risks, however unwise his sense of values may be to the other. In some states, even a persistent vegetative state (a prolonged stage of vegetative state) is considered sufficient to allow the removal of life support systems and this decision of removal has been allowed by the United States Supreme Court to be taken by the kin of the patient (*Robert D. Trug; It Is Time To Abandon Death*).

Legal Position in India: To find the relevancy of euthanasia in the modern-day context, we ought to keep into account the advancements made in medical sciences that are stretching the normal lifespan of human beings. Questions are being asked on the propriety of the continuance of life support medical treatments in cases where all hopes have been extinguished. The moot question arises; Whether the wishes of a person not competent to exercise judgment and the wishes previously expressed before lapsing into the incapacity of exercising judgment be respected and complied with in terminating life (*H.D. Shorie; The Right to Live & Die, 1998*). The law regards brainstem death is not settled in India. Instead, the existing provisions have come to perplex the Indian medical fraternity with conflicting provisions under different laws. The same is clear from the survey of laws, as applicable to brain stem death in India. The discussion on the following laws will further clarify the point.

Transplantation of Human Organs Act: In India, the hitherto prevailing situation was dramatically reversed by the passing of the Transplantation of Human Organs Act, 1994 which defined a deceased person (**Section 2(e) of Transplantation of Human Organs Act, 1994**) as one in whom permanent disappearance of all evidence of life has occurred because of brain stem death. The Act also elaborates on the meaning of brain stem death as a stage at which all functions of brain stem have permanently and irreversibly ceased. The declaration of brainstem death was made subject to a certificate of a registered medical practitioner. The object of the Act was however different. The preamble of the Act provides that it is meant to provide for the regulation, removal, storage and transplantation of human organs for therapeutic purposes and the prevention of commercial dealings in human organs. Although the Act defines the deceased person its application is transplantation of organs only. Where a person's brain stem is dead and is maintained in the life support system, this status quo has to be maintained unless he has earlier consented to his organ donation and the prescribed procedure has been followed (**Section 3**).

Indian Medical Councils Act, 1956: This Law also incidentally deals with the issue at hand in section 20-A read with section 33(m) of Act of 1956, the medical council of India may prescribe the standard of medical ethics for, medical practitioners (A. Jan; **Socio Legal Perspectives of Euthanasia, 2012**). The code of medical ethics for medical practitioners classifies the Act of euthanasia as unethical except in cases where life support is used only to continue cardio-pulmonary actions of the body.

Indian Penal Code: Provisions of the Act of 1994 do not apply to situations other than the donation of organs in such cases therefore the general position of law applies. Removal of life support from the body of the patient on which the entire body would cease to function would be tantamount to an act of murder. Motive is an irrelevant factor in the commission of an act. The doctor or the concerned person would nonetheless be liable though it may be a different case that the quantum of punishment be reduced. Further exception V to section 300 of IPC (**Exception V Section 300 IPC**) can not be availed since the patient would not be in a position to make valid consent. Euthanasia in India is undoubtedly illegal. In cases of euthanasia, there is a clear intention of killing hence such cases would squarely fall within section 300

which defines murder. Petitions are being moved before the courts where the prayers for the removal of the life support system have been made.

by Culpable Homicide is not murder when the person whose death is caused being above the age of 18 years suffers death or takes the risk of death with his consent or relatives of the patients but the judges have found themselves helpless in giving the clear position of law.

The position of law which emerges by taking together the Transplantation of Human Organs Act, 1994, Indian Medical Councils Act, 1956 and Indian Penal Code, 1860 can be summarized as follows;

In cases where the patient has given his consent for donation of his organs and prescribed procedures followed including the certification by a registered medical practitioner, it would be legally permissible to remove the life support system in case of brain stem death. Since the definition of a deceased person under the Act of 1994 is confined to the Act alone in any case where the act is not applicable, brain stem death may not be considered to be death under the eyes of the law. Under the regulation of 1956 it would not be unethical to remove the life support system if it is used only to continue the cardio-pulmonary actions of the body. The Act of 1956 does not amend the IPC. The Doctor removing the life support system may however be prosecuted for murder that act which falls outside the purview of Medical Council Act 1956. Where it is settled position that brain stem death is a death in medical parlance with no chance of recovery under the penal code it is punishable to remove the life support system to a person having suffered from brain death unless his case is covered under the Act of 1994. There have been several representations to cure this anomaly but to no avail (**Sunilk. Pandia; Brain Death and Transplant Law; 2000**). To this regard, it is apt to quote a member of the Maharashtra Confederation for organ transplantation who states,

“Neurologists/neurosurgeons are reluctant to ascertain a patient a brainstem dead and withdraw life support as they feel that it is not permitted under the law, they think that a patient has to be declared only in the context of organ retrieval.

*Also the Supreme Court of India in one of the cases the case of (**Gian Kaur vs. State of Punjab**) wherein one of the points directly raised was the inclusion of the Right to die within the ambit of article 21 of the constitution the bench observed,*

*To give meaning and content to the word life under article 21 it has been construed as the life with human dignity and the aspect of life which makes it dignified may be read into it but not that which extinguishes it and is therefore in consonance with the continued existence of life resulting in effecting the right itself. The right to die if any is inherently inconsistent with the right to life as is death with life. The right to life including the right to live with human dignity would mean the existence of such a right to the end of natural life. This also includes the right to a dignified life up to the point of death including the dignified procedure of death. In other words, this may include the right of a dying man also to die with dignity when he is ebbing out. But the right to die with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life (**AIR; 1996 SC**).*

Thus the court made it abundantly clear that so long as there is any trace of human life present in the patient, death could not be accelerated by the removal of the life support system. To this extent court reversed its earlier decision taken in the case of **P. Rantinam vs. Union of India (AIR; 1994)** where the right to die was considered as embedded in article 21 of the constitution. The court in Gian Kaur's case was categorical in restating that euthanasia was not permitted within the constitutional precincts.

In India, if euthanasia is decriminalized or permitted attempt to commit suicide can not survive as an offence. Attempting to commit suicide is self helped attempt to euthanasia. In euthanasia a third person may come into the picture otherwise there is no difference. Under the present legal system,

euthanasia is murder or culpable homicide not amounting to murder if the consent of the person seeking euthanasia is obtained.

Judicial Approach to Euthanasia: Euthanasia is not permitted in India and the judiciary has maintained this position of law and in almost all cases disallowed the petitions seeking permission for euthanasia. However, a softer view was taken by the courts in India in 2011 wherein passive euthanasia was permitted. Some of the case laws about euthanasia decided by the Indian judiciary are listed below:

The case of Sudeshwari vs. State of Assam(1981)3Cr.L.J.PP.1005) is one of the interesting cases which came before the High Court of Assam. In this case, a three-year-old child was killed by her mother and one of the defences stated by her was, that the child had been done to death because she was suffering from illness badly and the accused could not bear the trouble and the court was asked to decide whether mercy killing was permitted as an exception to murder available in India. The specific argument before the court was whether mercy killing is exempted under the law, and if yes to what extent. For this purpose the court referred to diminished responsibility available under Homicide Act 1957 in Britain which enables the judge to reduce or extinguish the sentence on merciful grounds and does not leave the accused entirely on the executive(1981Cr.L.J) The court observes that the purpose of criminal law is to induce people to control their impulse and thus mercy killing due to impairment of mental faculties of the victim was no exception under Indian law, even if it be to relieve pain or unbearable sufferings. Another case which is largely relied on upon by the supporters of euthanasia is the **Maurti Sharipati (Dubal vs. the State of Maharashtra)** case the high court of Mumbai invoked several decisions of the Supreme Court and came to hold that what is true for one fundamental right is also true for another fundamental right. It is not and cannot be disputed that fundamental rights have positive as well as negative aspects.

If it is so, logically it must follow that the right to life as recognized by Article 21 of the Constitution would include the right not to live or not to be forced to live. To put it positively, it would include the right to die or terminate own life. In this case, there was a judicial transmutation of the right to life into the right to die. After concealing a positive right to life, the court painstakingly laboured to create a new right namely the right to die from the basic right. The analysis of the decision reveals that while suicide may be permitted under certain circumstances euthanasia or mercy killing is never permitted, as it amounts to murder. However the decision of the Supreme Court in the case of **Gian Kaur vs. The State of Punjab** has negated the allowance to commit suicide and thus the decision of the Bombay High Court has no force or authority of law now. In **Gian Kaur's** case, it was held that section 309 of IPC provides for an attempt to commit suicide & is not violative of Article 14 of the constitution. The right to die is not included within the ambit of the right to life and Article 21 of the Constitution. Thus right to live with human dignity cannot be construed to include within its ambit the right to terminate the natural life, at least before the commencement of the natural process of death. The court held that Article 21 of the Constitution guarantees the protection of life and liberty and by no stretch of the imagination can the extinction of life be read into it. Article 21 of the constitution cannot be pressed into service to support the challenge based on Article 14 it cannot be therefore said that section 309 of IPC is violative of either Article 14 or 21 of the constitution. The Kerala High Court said no to the Plea for the death of B.K Pilla who had a disabling illness. Recently the State of West Bengal, the father of two disabled daughters, sought permission from the state Government to end his daughter lives who are in Moribund state but the Plea was dismissed(1996; Cr. L.J) In another case **Kumari Pranajali Vs. Chief Secretary(India Today April 5, 2005)** a petition seeking mercy killing of a 10-year-old girl, Pranajali, was filed by her mother. The girl was suffering from a serious ailment for which there was no effective treatment, the petition was dismissed. In another case **Venkatesh vs. State of Andhra Pradesh** Venkatesh a former National chess champion, 25 years of age, had been in hospital in the southern city of Hyderabad for more than seven months battling Duchenne's Muscular Dystrophy. This disorder degenerates the body's muscles heart and lungs. Venkatesh mother filed a writ petition before the Andhra Pradesh High Court seeking a declaration from the high court to switch off the life support system but the petition was dismissed. The Plea which was raised before the court was that Venkatesh wanted to donate organs" Heart, Kidney, Liver" before it was too late. The petition was dismissed the court declared that the law doesn't allow transplanting organs from a person who is still alive. **Devender Gupta J. and Narayan Reddy J.** said the existing law has no such provision and such a request cannot be conceded. It will amount to mercy killing which is not legal. The petition is accordingly dismissed. Although the Indian Judiciary has been reluctant to acknowledge and legalise euthanasia however a partial change in this trend has been observed in the case of **Aruna Ram Chandra Shanbaug vs. Union of India (Times of India, December 15, 2005)** when the honourable Supreme Court of India on 7th march 2011 legalized passive euthanasia using withdrawal of life support, (Aruna was a staff nurse at KEM Hospital Mumbai who was raped

by ward boy in the same hospital in 1973, she died in may 2015 after spending 42 years in coma) MarkandeyKartjuJ. while delivering judgment quoted the following couplet of Mirza Ghalib;

مرتے بینارزومینمرنے کی موتاتیہے پر نہ ہناتی

while rejecting Pinkey Viran's Plea for Aruna Shanbaug's euthanasia against which the KEM Hospital filed a counterpetition. Since there were disparities in the petitions filed by the petitioners and respondents the court appointed a team of three eminent doctors to investigate and file a report on the physical and mental health of Shanbaug's. They studied the medical history in detail and opined that she was not braindead. She reacts to certain situations in her way for example she likes light, devotional music and prefers fish soup and mango. She is calm seeing fewer people around her. The KEM Hospital was taking sufficient care of her. She was kept clean there was no sign from her body language of willingness to terminate her life. Further the nursing staff at KEM was willing to take her. Thus, the doctors opined that euthanasia, in this case, was not needed or necessary and therefore euthanasia was denied by the courts in this case. In Aruna in 2015 died a natural death in KEM Hospital after spending 42 years in a coma.

While rejecting Pinki Viranis' plea of euthanasia for Aruna the court laid down the below-mentioned guidelines for passive euthanasia which are as:

- a) The decision regarding discontinuance of life support has to be made by the parents, spouse or even by a person acting as the next friend or by the doctors attending the patient. However, the decision should be taken bonafide in the best interests of the patients.
- b) Before executing such decisions should be approved by the High court.
- c) When such an application is filed the Chief Justice of High Court should forthwith constitute a bench of at least two judges who should decide on the grant of approval or not.
- d) A committee of three reputed doctors, nominated by the bench will report the condition of the patient.

Although the decision is path-breaking however there is more possibility of misuse of the guidelines. The evil consequences of euthanasia cannot be ruled out. For instance the faith in doctors as healers will shake, and every ailing patient would live under the constant sword of euthanasia. Euthanasia denies the patient the final stage of growth. Euthanasia undermines medical research, curing and caring centres will convert into killing centres etc.

Conclusion

Euthanasia seems to be a beautiful concept in terms of relieving the pain & suffering of terminally ill people but at the same, it goes against the philosophy of life. The right to life is a basic and inalienable right which is the reason why there are only a few states throughout the world which have legalized euthanasia. In India euthanasia is not legalized and the courts have maintained this position of law. However, in Aruna Shabang's case court has legalized passive euthanasia and prescribed guidelines for the the same. Although the decision is historic and landmark. However, the decision may set a stage for legalizing euthanasia for which the time is not ripe enough while considering the social, economic & cultural setup in India. If euthanasia is legalized in India attempt to commit suicide will no longer remain on the statute books. Thus any move towards euthanasia must be carefully and cautiously taken keeping in view the essence and importance of life for the existence of the human race. With the following message, I conclude this research paper by asking that,

'Should we humans allow and empower any institution to end the lives of innocent ailing/terminally ill persons when our responsibility towards them has to be on priority'?

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