

INDIAN JOURNAL OF LEGAL REVIEW



VOLUME 3 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



Indian Journal of Legal Review [ISSN - 2583-2344]

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 3 and Issue 1 of 2022 (Access Full Issue on – <https://ijlr.iledu.in/volume-3-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

RIGHT TO DIE VIS-À-VIS EUTHANASIA: A CRITICAL ANALYSIS

AUTHOR - ABHINAV VISWANATH, STUDENT AT
SCHOOL OF LAW, CHRIST (DEEMED TO BE)
UNIVERSITY

BEST CITATION - ABHINAV VISWANATH, RIGHT TO
DIE VIS-À-VIS EUTHANASIA: A CRITICAL ANALYSIS,
INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 3 (1) OF
2023, PG. 822-826, ISSN - 2583-2344.

ABSTRACT

Every person should have the right to life. The right to life is guaranteed by both Article 21 of the Indian Constitution and Article 3 of the 1948 Universal Declaration of Human Rights. Every component of the right to life has always been open to judicial review and depends on the circumstances. This heading also includes the right to die. Euthanasia is considered a "good death" or "mercy killing." It is argued that there are some circumstances in which a person should be given the option to choose death rather than being forced to remain alive. There are various perspectives on this that either oppose the authorization of mercy killing or reject the authorization of the death as a right to die for certain reasons. Everyone has the right to have a respectable life while remaining within specified boundaries, and it is required of them to struggle when faced with challenging conditions. He shouldn't slant forward toward the circumstances. Such lessons are taught to us through Indian culture. Hinduism holds that the soul is eternal. The only way to transform a body is through death. The soul is immortal and never dies. The Muslim faith rejects the idea that life should cease other than at Allah's will and supports only natural death. However, under some circumstances in today's culture, it is argued that a person should have the option to choose death. Therefore, in this situation, the administration and the Parliament should

establish appropriate laws and rules to prevent abuses.

KEY WORDS: Euthanasia, Right to Die, Art. 21

INTRODUCTION

Euthanasia was proposed as a kind of death that goes beyond natural death. The Greek word "euthantos" is where the word "euthanasia" first appeared. Early in the 17th century, English philosopher and statesman Sir Francis Bacon coined the term "euthanasia," which can be translated as "a good death" or "mercy killing." It portrays the act of ending one's life in a way that results in absolutely no pain or sorrow. Euthanasia is defined as "a deliberate interference conducted with the express goal of ending a life, to relieve intractable pains and agonies," by the House of Lords Select Committee on Medical Ethics. In essence, euthanasia is the intentional, premature termination of a person's life through direct interference (active euthanasia) or by interfering with efforts to save a person's life and resources (passive euthanasia), either at the person's express or implied request (voluntary euthanasia) or in the absence of such approval/consent (non-voluntary euthanasia)²³⁸². Apart from that, the court has distinguished between euthanasia and physician aided death, noting that the distinction rests in who delivers the lethal drug. Euthanasia is typically carried out by a doctor or other third party, whereas physician assisted suicide is typically carried out by the patient, albeit under the doctor's guidance.

The right to live a life with dignity and in a decent manner is where the idea of euthanasia first emerged. Euthanasia's history and legalisation have been hotly contested topics of discussion throughout the world. There is no international agreement on this issue. Despite the fact that euthanasia and physician aided suicide are illegal in many nations around the

²³⁸² Common Cause Society v. Union of India, (2018) 5 SCC 1.

world. It is to be assumed that such a situation may arise, that the person's family and the medical community would fall to their knees and become powerless because of their medical conditions and the tragic circumstances all around them. Even when the patient is in a position to give his assent, the family members or patient himself are pleading for his death since it is so much easier than continuing to live in such a bad circumstance where the patient is continuously in pain and remorse. Euthanasia, then, refers to a purposeful action to end or help end a person's life for compensation. Euthanasia recommendations made by the Senate Selection of Bills Committee can be categorised into four groups. They are:

- Active Voluntary Euthanasia
- Passive Voluntary Euthanasia
- Passive non voluntary Euthanasia
- Active non voluntary Euthanasia

REASONS TO SUPPORT EUTHANASIA

There are examples from the Hindu religion's early days in India where monks encouraged people to give up their bodies (kaya) in order to achieve eternal rewards and further their search for God. When a sick person is experiencing terrible suffering, it is encouraged to urge their death. The right to make a claim stem from the freedom to make one's own decisions. Everyone has the benefit of the right to pursue their own interests and is free to live however they like. In a similar vein, it is argued that everyone should have the option to take their own life if they feel that doing so would be preferable than being alive. As a result, he will be relieved of his agonising condition and life after death. It can be analysed as a method of providing health care via death. It puts an end to a life that is not worthy of being lived. Euthanasia has been used for centuries. Residents of Athens could obtain a dose of poison that would allow them to choose death over suffering if they had official permission.

Euthanasia is a contentious topic that varies from nation to nation and culture to culture.

INTERNATIONAL PERSPECTIVE

In accordance with international humanitarian law, there is no "right to die." Any human rights document's common meaning does not imply the existence of a "right to a good death." Contrarily, states are urged in human rights declarations to safeguard and preserve everyone's life. Only four of the 193 members of the United Nations (the Netherlands, Belgium, Luxembourg, and Canada) have approved euthanasia. The topic is still being hotly debated, but many legislative bodies have decided against it. The United Nations has enacted the 2006 Convention on the Rights of Persons with Disabilities as an international treaty to safeguard human rights and dignity. According to a UN international treaty, "States Parties shall take all appropriate steps to ensure that persons with disabilities have the same right to the effective enjoyment of the right to life as other persons."²³⁸³ Every human being has the inherent right to life, according to Article 6(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR). No one's life may be taken against their will. Every child "has the inherent right to life," according to Article 6(1) of the Convention on the Rights of the Child (CRC).

In 2001, Holland legalised assisted suicide. The Termination of Life on Request and Assisted Suicide (Review of Procedures) Act, 2001, was passed by the Dutch Parliament and formalises a prior judicial judgement to soften the rule forbidding euthanasia and assisted suicide. Euthanasia and doctor-assisted suicide are only permitted under the terms of the patient and under a doctor's supervision, according to the Act. The Belgian Act on Euthanasia was passed on May 28, 2002, in Belgium. According to Belgian law, medical professionals could assist patients who expressed a desire to die sooner due to a terminal illness. With the

²³⁸³ Convention on the Rights of Persons with Disabilities, 2006, Art.10.

passage of the law on March 16, 2009, Luxembourg became the third nation to decriminalise assisted suicide. Those who are terminally sick will be permitted to end their lives with the agreement of two physicians and a group of specialists. In Canada, "physician assisted dying," sometimes known as voluntary active euthanasia, is permitted for any adults over the age of 18 who have a terminal condition that has advanced to the point that natural death is "reasonably foreseeable." After the Supreme Court of Canada's decision in *Cartar v. Canada*²³⁸⁴, the situation in Canada changed (Attorney General). In China and Hong Kong, euthanasia is illegal. It goes against traditional Chinese moral ideals. It is the equivalent of murder under Chinese law as it stands. In the United Kingdom, assisted suicide is forbidden. Anyone caught helping someone commit suicide is breaching the law; it is a statutory offence, punishable by up to 14 years in prison. *R v. Director of Public Prosecutions*²³⁸⁵, the House of Lords ruled that the European Convention's protection of the right to life and other human rights, which is enforced in England under the Human Rights Act of 1998, has not had an impact on the aforementioned law and that the convention does not require a state to legalise assisted suicide.

Active euthanasia is permitted in Germany, however passive euthanasia is not permitted. If a doctor discontinues life-saving measures at the patient's written request, that would not be considered a crime. While active euthanasia is prohibited in the United States (US), it is not. Only a small number of States, including Oregon, Washington, and Montana, have approved physician assisted suicide in some kind. Physician-assisted suicide and euthanasia have been distinguished from one another. Only self-assisted death is legal in both Oregon and Washington. Even in the absence of legal restrictions, aiding someone in their death by suicide by a doctor is nonetheless a crime. In

the US, a doctor can only turn off life support at a patient's request. The doctor exclusively considers the patient's desire to end his life when examining him.

INDIAN PERSPECTIVE

There is no legislation or statute which allows and declares the legitimacy of mercy killing in India. In 241st Report of Law commission of India titled "Passive Euthanasia – A Relook", it was proposed to legislate a law on the issue of passive euthanasia and drafted The Medical Treatment of Treatment of Terminally Patients (Protection of Patients and Medical Practitioners) Bill. The said Bill was indicated to the technical wing of the Ministry of Health and Family Welfare (Directorate General of Health Services-Dte. GHS) for checking up in June 2014. Meetings were called under the chairmanship of special director general of health service and attended by various experts. There after other meetings were held under the chairmanship of Secretary, Ministry of Health and Family Welfare, on May 22, 2015 to inspect the Bill and finally the expert committee had proposed formulation of legislation on passive euthanasia.

Mercy killing or euthanasia has remained a topic of legal and social concern for long due to different pathetic situations depicted in various facts and circumstances. At various times right to die has been claimed to cover up under the purview of right to life with dignity under article 21 of the Constitution of India. It is argued that where the dying process of the patient causes prolonged delay and unbearable sufferings to the patient and his near and dear ones, he should be allowed to meet with death to let him free with distress and agony. It is contended that the right to die is inseparable from the right to life with dignity. Though there is no law which would has been framed by the Parliament of India in this regard. Time to time the apex judiciary of the country has interpreted the concept of euthanasia. A two-judge bench of the Supreme Court held that a person has a right not to live a forced life and attempt to

²³⁸⁴ 2015 SCC 5.

²³⁸⁵ (2002) 1 All ER 1 (HL).

suicide is not illegal.²³⁸⁶ But this view was overruled by the constitutional bench of the Supreme Court.²³⁸⁷ At presently, due to the decision of the apex judiciary passive euthanasia is legalised in India.²³⁸⁸

In the constitutional validity of section 309 was challenged and at the same time it was contended that it is violative of article 14 and 21 of the Constitution of India. It was stated that the right to speech and expression includes in itself not to speak similarly the right to live alive includes not to live or right to die and to terminate one's life. The right to live under article 21 can bring into its scope not to live a forced or disadvantageous life. The court upheld section 309 of Indian Penal Code, 1860 beyond the limit and stated that it deserved to be effaced from the statute book to humanize our penal laws. The court declared it a cruel and irrational provision, and consequently it is like to punish a person who is suffering with agony already because of his failure to commit suicide. The act is not against public policy or morality and causes no harm to society.

In *Gian Kaur*²³⁸⁹ the validity of section 306 was challenged and violative of article 21 of the Constitution, which penalizes abetment of suicide by stating that as section 309 is held by two judge's bench in *P. Rathinam* judgement. *Gian Kaur* and her husband *Harbans Singh* were convicted by a trial court under section 306 of the Indian Penal Code. They were sentenced to six years imprisonment and fine of Rs. 2,000/- for abetting the suicide by *Kulwant Kaur*. Section 306 punishes anyone who abets the commission of suicide, while section 309 punishes anyone who attempts to commit suicide. The matter was decided by the constitutional bench. The court stated that the right to life guaranteed under article 21 of the Constitution does not include the right to die under its ambit.

The recent case *Common Cause Society v. Union of India*²³⁹⁰ was decided by the apex court on the issue of euthanasia. The petitioner, a registered society argued that the right to die with dignity should be declared fundamental right within the fold of article 21 under the Constitution of India, 1950. The petitioner seeks to declare issue direction to the respondent, to adopt suitable procedures, in consultation with state governments where found necessary, to ensure that persons of deteriorated health or terminally ill should be able to execute a document titled "My Living Will and Attorney Authorisation" which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant to appoint a committee of experts including doctors, social scientists and lawyers to study into the aspect of issuing guidelines as to the Living Will; and to issue such further appropriate directions and guidelines as may be necessary.²³⁹¹ The society claimed that the right to die with dignity is an inseparable part of the right to live with dignity.

It was advocated that if the cure of a patient is not possible and the patient is continuously going towards the death his or her health is falling down, then in such a situation every individual is capable to take the decision to continue or discontinue his life. It was contended that the right to die with dignity is the inseparable and complex part of article 21. Passive euthanasia should be made legalized because it drags out the patient from such incurable condition in which he is suffering with unbearable pain. It gives relief to the patient from such trauma and pains. The concept of living will and attorney authorisation was also supported. The patient should have the right to die with dignity without pain and sufferings.

CONCLUSION

²³⁸⁶ *P. Rathinam N. Patnaik v. Union of India*, AIR 1994 SC 1844 at 1868.

²³⁸⁷ *Gian Kaur v. State*, AIR 1996 SC 946.

²³⁸⁸ *Common Cause (A Regd. Society) v. Union of India* (2018) 5 SCC 1.

²³⁸⁹ *Gian Kaur v. State*, AIR 1996 SC 946.

²³⁹⁰ *Common Cause (A Regd. Society) v. Union of India* (2018) 5 SCC 1.

²³⁹¹ *Id.*

With the advancement of the society, when to change the law is a necessity of the society and laws are being codified day by day. Steadily, when the new areas of rights are emerging and consequently the new dimensions of law are being established. There was a time when the most of the aspects of law were based on customs and not codified but under the due process of law such laws are also framed. Advancement of science and technology evolves new mechanisms and techniques. With the development of new faculties of lives, new claims are recognized and simultaneously these are provided the status of statutory rights. There are also the instances where in the absence of legislation the claims are recognized as a right with the help of judicial decisions as the precedent. For example, passive euthanasia is one of the instances which is recognized as the right through the judicial decision. The decision of the apex court should be welcomed. The physician and doctors, who are supposed to conduct euthanasia may be under pressure so it should be allowed with proper care and attention.

Human beings are a pious species of this universe. He is the best creation of this God. The sanctity of life should be preserved. The state is under an obligation to provide a secure and healthy life. But at the same time in contemporary society life has become very complicated. People are facing different diseases with a lot of suffering. Scientific advancements and techniques have grown up in every field. These advancements have also affected medical science and ultimately to the lives of the people. With the use of newly developed medical treatments, not only the people are benefited by saving their lives at various stages but also their lives are prolonged due to being equipped with life preserving treatments and the patient had to die every moment in wait of natural death. Good health is the precious jewellery of life. Life can be enjoyed with healthfulness. The person is enriched with the right to lead a dignified life which includes in

itself the right to self-determination, right to choose and refuse also.

REFERENCES

CONSTITUTION OF INDIA

STATUTES AND BILLS

1. Termination of Life on Request and Assisted Suicide (Review of Procedures) Act, 2001. (Netherlands)
2. The Belgian Act, 2002. (Belgium)
3. Law on euthanasia and assisted suicide, 2009. (Luxembourg)
4. Human Rights Act, 1998. (UK)
5. Indian Penal Code, 1860.
6. The Medical Treatment of Treatment of Terminally Patients (Protection of Patients and Medical Practitioners) Bill, 2016.

CONVENTIONS

1. Convention on the Rights of Persons with Disabilities, 2006.
2. International Covenant on Civil and Political Rights, 1966

LAW COMMISSION REPORTS

1. 24th Law Commission Report

INDIAN CASES

1. P. Rathinam N. Patnaik v. Union of India, AIR 1994 SC 1844.
2. Gian Kaur v. State, AIR 1996 SC 946.
3. Common Cause (A Regd. Society) v. Union of India (2018) 5 SCC 1.

INTERNATIONAL CASES

1. Carter v. Canada, 2015 SCC 5.
2. R v. Director of Public Prosecutions, (2002) 1 All ER 1 (HL).