

# Euthanasia: Problems and Prospects in India

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## ABSTRACT

The palliative care and quality of life in diseases such as cancer and AIDS have become critical issue. Along with this Euthanasia has become another controversial issue. In passive euthanasia, death is brought by omission. The supporters and antagonists of euthanasia and PAS are present in India just like in the rest of the world. The landmark judgment in Aruna R Shanbaug case clearly states that passive euthanasia will only be allowed in terminally ill cases. The case with attempted suicide as in Aruna Shanbaug's case needs more help than punishment. Hon. Supreme court has directed Parliament to think about whether it can decriminalize the suicide attempt. The Supreme Court has clearly given direction that passive euthanasia can be practiced for terminally ill patients in various situations. The two landmark judgments have given clear guidelines and have suggested the way for thinking about various challenges in the area of the right to health, palliative care, etc.

**Key words:** Ethical, euthanasia, landmark judgment, legal, PAS

## INTRODUCTION

Due to rapid advances in medical field in India as in the rest of the world, we have devised and various techniques that can prolong life by artificial methods. These techniques may curtail terminal suffering, but it can be costly exercise for the families of the subject. That is why ending the life has become ethical problem not only in India but also throughout the world. The Antagonists of euthanasia and PAS are one step backward. The Supreme Court clearly gave direction that passive euthanasia can be an option for terminally ill patients in various situations. The two landmark judgments have given clear guidelines and have suggested the way for

thinking about various challenges in the subject of the right to health, palliative care, etc.

Moreover, concerns for its misuse remain a major issue which ought to be addressed before it becomes a law in India.<sup>[1]</sup>

## DEFINITION

Marya Mannes has said that Euthanasia is simply to be able to die with dignity at a moment when life is devoid of it. The term Euthanasia has been taken from the two Greek words and they are "Eu" meaning "good" and "Thanos" meaning "death." Thus, euthanasia has a broad meaning which can be defined as a way to relieve a subject from unbearable pain by ending his or her life through withdrawal or by termination of the medical aids. As per the House of Lords Select Committee on Medical Ethics, it is "a deliberate intervention undertaken with intention of ending life to relieve intractable suffering." Euthanasia is nothing but death with dignity.

It is expected that parliament will consider certain following things so that euthanasia will be widely accepted.

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- The consent of the subject
- Failure of treatments
- Patient is suffering from a fatal disease
- No chance of patient to recover
- Patient is in coma.
- The socioeconomic condition of family is very poor
- Doctor should have a good intention.
- Patient should not be abused.
- Any factor related to case.

Thus, Euthanasia may be legalized, and the law should be strict. Every case needs to be considered with views from the patient, the relatives and the doctors and one has to find out also whether society is ready to accept it or not.<sup>[2]</sup>



Euthanasia is a subject of debate in science. There are a lot of ethical issues related to it. It has legal and political implications. Many countries have supported passive euthanasia while few countries have accepted that active euthanasia doctors and nurses are in dilemma and have struggled regarding euthanasia, whether to accept it and what time. They are also having tough

time dealing with relatives. Doctor's view should be of paramount importance as he is aware of prognosis and disease condition of patient.

The Supreme Court of India in its judgment in the 3<sup>rd</sup> month of 2018 has legalized Euthanasia in India. A lot of issues were raised for and against. A debate is still on what is the exact meaning of the Right to Life, does it include Right to Die or not?

The present article, therefore, tries to study the concept of euthanasia in several countries all over the world and will also attempt to understand the Indian legal opinion regarding this matter. The article also attempts to draw attention toward various pros and cons of euthanasia in India so that one can better understand the exact views of euthanasia and related laws. Voluntary death is slowly being accepted by Indian society. The concept of nirvana and samadhi is very much old culture in India. During the period of Mahabharata and Ramayana, Pandavas decided to go on a path to meet death. According to Manu smriti, head of family after leaving peaceful life should consume air and water only till he finds eternal peace.<sup>[3,4]</sup> During recent times in 19<sup>th</sup> century great spiritual personality, Acharya Vinoba Bhave decided to end his life and refused any food or medicine and died. Hitler in 1939, he signed a decree "Aktion T4," for elimination of incurable or mentally weak persons.<sup>[5,6]</sup> The Movement of Euthanasia has long history for more than 700 years. The concept of Euthanasia was also opposed by Hippocrates, the Father of Medicine. In his famous Hippocratic oath, he was against giving any Medicine which will not cure the patients.<sup>[7]</sup>

The euthanasia supporters are of the view that PAS is as an act of humanity for the patients who are terminally ill. They are of opinion that the patient and family cannot be exposed to suffer through a long and painful death. If death remains the only option due to deteriorated patient's condition and low quality of life, euthanasia becomes justifiable.<sup>[8,9]</sup> To the advocate for PAS, legalization of PAS is a natural extension of patient's autonomy and the right to determine what treatments are accepted or refused. Legalization of PAS becomes rational, considering the sufferings of patients, friends, and family. If the patient is not going to improve, palliative care services may become irrational.<sup>[10]</sup> Proponents of euthanasia also criticize the "artificial and impractical" demarcation drawn by the court and the religious organizations between active and passive euthanasia. "In passive" euthanasia, withdrawal of life support with the patient's consent lends legitimacy to the act. However, one should also

think of physician administering a lethal dose of injection, with consent. It may be considered legal.<sup>[11]</sup>

The supporters of legalization of euthanasia are also of the opinion that death can be timed which will reduce not only sufferings but also stress associated with death process.<sup>[8]</sup>

## LEGAL PERSPECTIVE ON EUTHANASIA IN INDIA

Indian Constitution is the Supreme in our land and is influenced by many countries of the world. It is an umbrella which gives direction for human rights, duties, and various laws. The Principle of Sanctity of human life is the basic thing which all of us all must follow. Euthanasia has been widely debated in legal arena since a long time.

This article is to tell about "Right to life" given by Indian Constitution. It is the fundamental right. This article is to promote the personal liberty of life. It is said by many that right to life means a dignified life and the right to die.

### Judicial Trends in India

The high court in a decision in *Gian Kaur V. State of Punjab* said that the "right to life" does not include the "right to die." The right to life is inherently inconsistent with the "right to die." the right to life, which includes right to live with human dignity, would include "death with dignity."<sup>[7-9]</sup> In *another* case, the Supreme Court believed that an attempt to Commit Suicide is also unconstitutional.

In one more case of Maruti Shripati Dubal, the Bombay High Court was of opinion that, everyone may have the right to dispose of his life as and when he thinks. Thus, there are a lot of conflicting decisions of courts in India and it is based on merit of every case. In *P. Rathinam* case against Union of India, the Supreme Court of India was of view that "Attempt to commit suicide" is cruel and is a violation of Article 21 of the Constitution of India.

In *Gian Kaur* case, the Apex Court was of the opinion that "Right to life" does not include the "Right to die" and also explained that Article 21 does not allow to reduce the life of a person. It permitted a dignified life till death, that is, a dignified form of death. The two concepts Euthanasia or mercy killing are nothing but committing homicide whatever may be the circumstances.

The revolution came in *Aruna Ramchandra Shanbaug* case. It was a unique case where a Passive Euthanasia was allowed with guidelines. This landmark judgment legalized passive euthanasia in India. Our judiciary has studied the issue of euthanasia in detail. The court examined many controversial issues and came with possible solutions. The Supreme Court has itself clarified and directed that passive euthanasia is allowed if the doctors treating the patients listen to the experts of medical professionals appointed by the court. If the court gives green signal then only they can withdraw life support in the best interest of patient. The court will be the ultimate decider. In one more judgment, the five judge bench clarified that right to die is a fundamental right and it is within the ambit of Article 21 of the Constitution.

The Apex Court gave guidelines procedure for execution of living will and executing passive euthanasia. This judgment brought a great relief to majority of patients and families.<sup>[9,10]</sup>

## RECOMMENDATIONS OF LAW COMMISSION OF INDIA

M. Jagannatha Rao who chaired the 196<sup>th</sup> Report of the Law Commission, opined for patients suffering from terminal illness or who are in persistent vegetative state by allowing them to die a natural death.

The principles mentioned in this report are universal in nature as the Courts in countries such as USA, Canada, Australia, and New Zealand to follow the same for patients. If the is patient is competent enough to make a decision of his health when he is terminally ill, refusal of the treatment is his right, and the doctors have to adhere to it. Guidelines which have been mentioned for incompetent patients too are as follows:

- The doctor cannot withdraw or withhold the medical treatment of the terminally ill patients unless there is opinion of three experts and if required, a "Bolam Test" may be carried out to confirm the patient's condition.
- Second, the doctor must follow by the decision made by expert panel and cannot go on his own.
- Third, the doctors treating with terminally ill patients shall have to keep a record of incompetent patients including their age, sex, name, and address and should mention the various reasons for withdrawal of medical treatment. The doctor should inform the patient and his family that he is going to withdraw the medical support.<sup>[10]</sup>

The then Medical Council of India, in February 2008, had opined that practicing euthanasia will be unethical. However, withdrawing supporting devices after brain death shall be decided by an expert team of doctors. They shall declare withdrawal of supporting devices. A team will constitute the doctor treating the patient, Chief Medical Officer of the hospital, and a doctor nominated by the in-charge of the hospital from the hospital staff.<sup>[12]</sup>

Although the purpose of suicide and euthanasia is self-destruction, there is clear difference between the two. Euthanasia may be classified in five categories and also there are various ways for its application.

Regarding current status and prospects in India, one can say that the answer to some extent came through the landmark judgment in Aruna Ramchandra Shanbaug, The judgment in this case gave clear guidelines that passive euthanasia will “only be allowed in cases where the person is in a persistent vegetative state or terminally ill.” In Aruna Shanbaug’s case, the Supreme Court commented on attempted suicide. It asked Parliament to think of what can be done to decriminalize the attempt for suicide. Thus, these landmark judgments on passive euthanasia have started the debate.<sup>[13]</sup>

## CONCLUSION

One can comment that the Supreme Court directed that passive euthanasia can be practiced for terminally ill patients in various circumstances. The two landmark judgments have given clear guidelines and has suggested the way for medicolegal challenges in fields of right to health and also some other important health conditions. Strong doctor-patient relationship is necessary to deal with this delicate issue.

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