

---

# DELVING INTO ETHICAL QUANDARY -A COMPREHENSIVE ANALYSIS OF RIGHT TO DIE WITH REFERENCE TO COMMON CAUSE (A REGD. SOCIETY) V. UNION OF INDIA, 2023

---

Shriya Mishra, Law College Dehradun

Arya Singh, Law College Dehradun

## ABSTRACT

This article explores the intricate legal, ethical, and moral dimensions surrounding euthanasia and the right to die with dignity. It begins by setting the stage for an in-depth examination of the topic, highlighting the fundamental question of individual autonomy in end-of-life decisions. Focusing on the landmark case of Common Cause v Union of India, the article delves into the legal precedents and ethical considerations that have shaped the discourse on euthanasia in India and abroad. Drawing on international perspectives and legal cases from countries such as the Netherlands, Belgium, and the United States, the article provides a nuanced analysis of the regulatory frameworks and ethical dilemmas surrounding euthanasia. It discusses the implications of legalizing euthanasia for healthcare professionals, families, and society at large, emphasizing the importance of balancing individual autonomy with the protection of vulnerable populations. Furthermore, the article examines the ethical considerations underpinning euthanasia, including arguments for individual autonomy and concerns about potential abuses and societal impact. It highlights the role of the Common Cause case in shaping the ethical dimension of euthanasia in India and underscores the need for ongoing dialogue and regulatory frameworks to navigate this complex issue responsibly. Ultimately, the article concludes by reflecting on the implications of recognizing the right to die with dignity as a fundamental right, emphasizing the importance of striking a delicate balance between individual autonomy and safeguarding the vulnerable in end-of-life care.

**Keywords:** Euthanasia, right to die, Fundamental right, Suffering, Life.

## INTRODUCTION

The topic of euthanasia and the right to die with dignity is a deeply complex and morally charged issue that has sparked widespread debate and legal scrutiny. At the heart of this discourse lies the fundamental question of whether individuals should have the autonomy to make end-of-life decisions, including the choice to seek euthanasia to alleviate suffering. This introduction sets the stage for an in-depth exploration of the legal, ethical, and moral considerations surrounding euthanasia, with a specific focus on the landmark case of *Common Cause v Union of India*<sup>1</sup>. By delving into this multifaceted topic, we aim to provide a comprehensive analysis of the key facets and implications of euthanasia and the right to die with dignity.

This emotionally charged subject has evoked passionate arguments from both proponents and opponents, with each side presenting compelling perspectives rooted in morality, ethics, and individual rights. The legal terrain around euthanasia is equally intricate, as courts and legislatures grapple with the need to balance compassion for those enduring immense pain with the imperative to safeguard against potential abuses and protect vulnerable populations.

In the wake of pivotal legal cases, particularly the *Common Cause v Union of India*, the conversation around euthanasia has been propelled into the spotlight, prompting a reexamination of the rights of individuals to make choices about their end-of-life care. Furthermore, the ethical and practical implications of legalization, as well as the potential impact on societal attitudes toward life and death, have further catalyzed the need for a comprehensive and nuanced examination of this issue. As we embark on this exploration, we seek to shed light on the various dimensions of euthanasia and the right to die with dignity, with the goal of fostering informed and thoughtful dialogue on this critical topic.

## LEGAL CASES AND PRECEDENTS

In the realm of euthanasia and end-of-life care, legal cases and precedents have played a significant role in shaping the regulatory framework and influencing public discourse. The landmark case of *Common Cause v Union of India* stands as a pivotal legal precedent, particularly in the context of India, where it has provided a foundation for recognizing the right

---

<sup>1</sup> *Common Cause (A Regd. Society) v. Union of India*, 2023 SCC OnLine SC 99

to die with dignity as a fundamental right. This case has established the legality of passive euthanasia and the recognition of advance medical directives, paving the way for individuals to refuse medical treatment and assert their autonomy in end-of-life decision-making. However, the Court has observed that there is no consensus as to the rights and wrongs of helping someone to die.<sup>2</sup>

In addition to the *Common Cause v Union of India* case, various legal decisions worldwide have contributed to the evolving landscape of euthanasia and physician-assisted dying. For instance, the United States has witnessed influential cases such as *Cruzan v. Director, Missouri Department of Health*<sup>3</sup>, which addressed the legality of withholding life-sustaining treatment, and the more recent discussions surrounding physician-assisted dying in states like Oregon and California. Similarly, countries such as the Netherlands and Belgium have seen the legalization of euthanasia under certain circumstances, further delineating the parameters and legal guidelines for end-of-life decision-making.

These legal cases and precedents have not only spurred legislative action but have also prompted broader societal reflections on the rights of individuals in the context of their own mortality. The impact of legal decisions on the ethical and practical dimensions of euthanasia underscores the confluence of law, morality, and public policy in shaping the discourse on end-of-life care. This intricate interplay underscores the need for a nuanced understanding of the legal foundations and precedents that underpin the ongoing debates surrounding euthanasia and the right to die with dignity. Below given some analysis by the author delves into the rich tapestry of legal cases and precedents that informed the deliberations and ultimate judgment in *Common Cause*:

**Aruna Shanbaug v. Union of India:** A seminal case that laid the groundwork for discussions on euthanasia and the right to die in India is *Aruna Shanbaug v. Union of India* (2011). Aruna Shanbaug, a nurse, had been in a persistent vegetative state for several decades following a brutal sexual assault. The Supreme Court, while denying the plea for euthanasia in this case, recognized the need for clear guidelines on passive euthanasia and the importance of respecting patients' dignity and autonomy. This case provided a backdrop against which the Court

---

<sup>2</sup> Alan Norrie, "Legal Form and Moral Judgement: Euthanasia and Assisted Suicide" in R.A. Duff, et al. (eds.), *The Structures of the Criminal Law* 134 (Oxford University Press, 2011).

<sup>3</sup> *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990).

revisited the issue in *Common Cause*, emphasizing the imperative of balancing the sanctity of life with individual autonomy.<sup>4</sup>

**Gian Kaur v. State of Punjab:** Another pivotal case that shaped the discourse on the right to die is *Gian Kaur v. State of Punjab* (1996). In this case, the Supreme Court held that the right to life under Article 21 of the Indian Constitution does not encompass the right to die or the right to commit suicide. The Court underscored the societal interest in preserving life and maintaining the integrity of the legal system. However, the judgment left open the question of whether passive euthanasia could be distinguished from active euthanasia, laying the groundwork for subsequent deliberations on end-of-life decisions.<sup>5</sup>

**Legal Precedents in International Jurisdictions:** In addition to domestic cases, the Supreme Court of India drew upon legal precedents from international jurisdictions to inform its decision in *Common Cause*. Cases from countries like the Netherlands, Belgium, and the United States provided valuable insights into regulatory frameworks, ethical considerations, and safeguards associated with euthanasia and assisted dying. By examining these international precedents, the Court gained a broader perspective on the complexities of end-of-life decision-making and the diversity of approaches adopted worldwide.

**Judicial Pronouncement in Common Cause:** Against the backdrop of these legal cases and precedents, the Supreme Court of India in *Common Cause (A Regd. Society) v. Union of India*, 2023, delivered a landmark judgment affirming the right to die with dignity as an intrinsic facet of personal autonomy and bodily integrity. The Court recognized the legality of passive euthanasia under certain conditions, allowing patients to refuse life-sustaining treatment. Moreover, the judgment validated the use of living wills as legally binding documents, empowering individuals to express their end-of-life preferences in advance.

## GLOBAL APPROACHES TO END-OF-LIFE DECISIONS

The international perspectives on the right to die, particularly in the context of euthanasia and assisted dying, offer valuable insights into the diverse approaches, regulatory frameworks, and ethical considerations surrounding end-of-life decisions. In the case of *Common Cause (A Regd. Society) v. Union of India*, the Supreme Court of India drew upon these perspectives to

---

<sup>4</sup> *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454.

<sup>5</sup> *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648.

inform its deliberations and shape its decision-making. Let's elaborate on some key international perspectives:

**The Netherlands and Belgium:** These countries are often cited as pioneers in the legalization of euthanasia and assisted dying. Both nations have established comprehensive legal frameworks that allow terminally ill patients to request euthanasia or physician-assisted suicide under strict conditions. The Dutch Termination of Life on Request and Assisted Suicide Act (2002)<sup>6</sup> and the Belgian Act on Euthanasia (2002)<sup>7</sup> outline eligibility criteria, procedural safeguards, and oversight mechanisms to ensure that end-of-life decisions are voluntary, well-informed, and carried out with due medical care. The Indian judiciary may have examined these models to assess the feasibility of implementing similar regulations while considering the cultural, social, and legal contexts in India.

**United States:** In the United States, the legality of euthanasia and assisted dying varies by state. Oregon<sup>8</sup>, Washington,<sup>9</sup> Vermont<sup>10</sup>, California,<sup>11</sup> Colorado,<sup>12</sup> Hawaii<sup>13</sup>, New Jersey<sup>14</sup>, Maine<sup>15</sup>, and Washington, D.C.<sup>16</sup>, have enacted legislation permitting physician-assisted dying for terminally ill patients who meet certain criteria. These laws typically require patients to be of sound mind, have a terminal prognosis of six months or less, and make voluntary and informed requests for medical aid in dying. The American experience offers insights into the interplay between state and federal laws, ethical dilemmas in end-of-life care, and the role of healthcare providers in honoring patients' autonomy while upholding professional ethics.

**Switzerland:** Switzerland has a unique legal framework that allows assisted suicide under certain circumstances. Unlike euthanasia, which involves a third party administering lethal medication, assisted suicide in Switzerland entails providing individuals with the means to end

---

<sup>6</sup> Dutch Termination of Life on Request and Assisted Suicide Act 2001, 194.

<sup>7</sup> Law on Euthanasia, Belgian Official Gazette, June 22, 2002.

<sup>8</sup> Oregon Death with Dignity Act (ORS 127.800-995)

<sup>9</sup> Washington Death with Dignity Act (RCW 70.245)

<sup>10</sup> Patient Choice and Control at End-of-Life Act (18 V.S.A. § 5281 et seq.)

<sup>11</sup> California End of Life Option Act (California Health and Safety Code § 443 et seq.)

<sup>12</sup> Colorado End-of-Life Options Act (Colorado Revised Statutes § 25-48-101 et seq.)

<sup>13</sup> Our Care, Our Choice Act (Hawaii Revised Statutes § 327K-1 et seq.)

<sup>14</sup> New Jersey Aid in Dying for the Terminally Ill Act (NJSA 26:16-1 et seq.)

<sup>15</sup> Maine Death with Dignity Act (Maine Revised Statutes Title 22 § 2380-B et seq.)

<sup>16</sup> Death with Dignity Act (D.C. Code § 7-661.01 et seq.)

their own lives, typically through the ingestion of a lethal dose of medication prescribed by a physician or obtained from an organization like Dignitas or Exit.<sup>17</sup> Swiss law does not criminalize assisted suicide, provided it is carried out without selfish motives and with the individual's informed consent. The Swiss model underscores the importance of patient autonomy, voluntariness, and access to end-of-life options, albeit within a framework that prioritizes safeguards and ethical considerations.

**International Human Rights Instruments:** Various international human rights instruments recognize the right to life, dignity, and autonomy, which intersect with the right to die with dignity. The Universal Declaration of Human Rights,<sup>18</sup> the International Covenant on Civil and Political Rights,<sup>19</sup> and the European Convention on Human Rights<sup>20</sup> affirm the principles of individual autonomy, bodily integrity, and the right to make decisions about one's own body, including end-of-life choices. While these instruments do not explicitly endorse euthanasia or assisted dying, they provide a foundation for interpreting and applying human rights norms in the context of end-of-life care.

By considering these international perspectives, the Supreme Court of India in *Common Cause (A Regd. Society) v. Union of India* gained valuable insights into the complexities of end-of-life decision-making, the diversity of regulatory approaches, and the ethical principles underlying the right to die with dignity. These perspectives enriched the Court's analysis and contributed to the evolution of India's legal and ethical framework on this contentious issue.

## ETHICAL CONSIDERATIONS

Ethical considerations form the bedrock of the discourse on euthanasia and the right to die with dignity, encompassing a wide array of moral, philosophical, and societal implications.<sup>21</sup> In the Indian context, ethical deliberations surrounding euthanasia have been deeply rooted in the principles of compassion, autonomy, and the alleviation of suffering.<sup>22</sup>

---

<sup>17</sup> Swiss Penal Code (Art. 115)

<sup>18</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

<sup>19</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

<sup>20</sup> Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

<sup>21</sup> Supreme Court of India, *Common Cause (A Regd. Society) v. Union of India*, (2018) 5 SCC 1.

<sup>22</sup> Indian Association of Palliative Care, "Ethical Issues in Palliative Care," accessed January 2024, <https://www.palliativecare.in/ethical-issues-in-palliative-care/>.

One of the primary ethical arguments in favor of euthanasia is centered on individual autonomy—the belief that individuals have the right to make decisions about their own lives, including the option to choose a peaceful and dignified end when faced with unbearable suffering.<sup>23</sup> This viewpoint emphasizes the notion of personal agency and the compassionate relief from protracted agony at the final stages of life.<sup>24</sup>

However, ethical concerns against euthanasia in India and elsewhere are grounded in a variety of principles, including the sanctity of life, the potential for abuse, and the impact on vulnerable populations.<sup>25</sup> These concerns highlight the need to safeguard against coercive influences, protect individuals who may be unable to advocate for themselves, and preserve the broader societal commitment to valuing and protecting life.<sup>26</sup>

Further ethical considerations also encompass the impact of legalizing euthanasia on healthcare professionals, families, and the wider community.<sup>27</sup> It addresses the potential shifts in societal attitudes toward death and dying, alongside questions about the role and responsibilities of healthcare providers in end-of-life care.<sup>28</sup>

In this ethical landscape, the *Common Cause v Union of India* case has been instrumental in shaping the ethical dimension of euthanasia within India. The recognition of the right to die with dignity as a fundamental right has been rooted in the ethical imperative to alleviate suffering and respect individual autonomy, subsequently influencing broader conversations on end-of-life care and medical decision-making.

As India navigates the ethical contours of euthanasia, it becomes imperative to strike a balance between respecting individual autonomy and ensuring the protection of the vulnerable.<sup>29</sup> These ethical deliberations reflect the intricate interplay of cultural, religious, and philosophical

---

<sup>23</sup> J. S. Mill, "On Liberty," in *Utilitarianism, Liberty and Representative Government*, ed. H. B. Acton (London: Dent, 1972), 130.

<sup>24</sup> World Medical Association, "WMA Resolution on Euthanasia and Physician-Assisted Suicide," October 2019, <https://www.wma.net/policies-post/wma-resolution-on-euthanasia-and-physician-assisted-suicide/>.

<sup>25</sup> UNESCO, *Universal Declaration on Bioethics and Human Rights*, October 2005, <https://unesdoc.unesco.org/ark:/48223/pf0000141904>.

<sup>26</sup> N. Maclean, "The Moral Justification of Euthanasia Revisited," *Bioethics* 22, no. 7 (2008): 388-94.

<sup>27</sup> D. A. Jones, "Euthanasia Reconsidered: The Choice of Death as an Aspect of the Value of Life," *Journal of Law and Medicine* 6, no. 1 (1998): 28-41.

<sup>28</sup> R. Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (New York: Vintage Books, 1994), 132-33.

<sup>29</sup> Indian Council of Medical Research, *National Ethical Guidelines for Biomedical and Health Research Involving Human Participants*, 2017, [https://www.icmr.nic.in/sites/default/files/guidelines/ICMR\\_Ethical\\_Guidelines\\_2017.pdf](https://www.icmr.nic.in/sites/default/files/guidelines/ICMR_Ethical_Guidelines_2017.pdf).

underpinnings that underlie the discourse on euthanasia and the right to die with dignity in the Indian context.

## PROS AND CONS

The discussion surrounding euthanasia and the right to die with dignity entails a careful examination of the potential benefits and drawbacks associated with this contentious issue. Here, we explore both the pros and cons to offer a comprehensive understanding of the multifaceted considerations involved.

### Pros:

1. Alleviation of Suffering: Euthanasia provides a means to end unbearable suffering, offering terminally ill individuals a compassionate exit from prolonged and agonizing pain.<sup>30</sup>
2. Respect for Autonomy: Recognizing the right to die with dignity upholds the principle of individual autonomy, allowing individuals to make choices about their own end-of-life care.<sup>31</sup>
3. Compassionate End: Legalizing euthanasia provides a humane and peaceful end to life for individuals who are facing inevitable death and pervasive suffering.<sup>32</sup>

### Cons:

1. Potential for Abuse: Legalizing euthanasia raises concerns about potential abuse, including coercion, exploitation, and the risk of involuntary euthanasia.<sup>33</sup>
2. Impact on Vulnerable Populations: Euthanasia may disproportionately affect vulnerable groups, including the elderly, disabled individuals, and those with limited access to high-quality healthcare.<sup>34</sup>

---

<sup>30</sup> P. Battin, L.G. Rhodes, A. Silvers, "Prolonging Life or Prolonging Death," in *Physician Assisted Suicide: Expanding the Debate* (New York: Routledge, 1998), 46-47.

<sup>31</sup> R. Dworkin, "Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom" (New York: Vintage, 1993), 208-209.

<sup>32</sup> M. Quill, "Death and Dignity: A Case of Individualized Decision Making," *New England Journal of Medicine* 324, no. 10 (1991): 691-694.

<sup>33</sup> J. Keown, "Euthanasia, Ethics and Public Policy: An Argument Against Legalization" (Cambridge: Cambridge University Press, 2002), 98-99.

<sup>34</sup> A. Meisel, "The Legalization of Physician-Assisted Death: A Response to A Physician's Appeal," *Journal of Law, Medicine & Ethics* 21, no. 1 (1993): 32-35.



3. Ethical and Moral Implications: The legalization of euthanasia evokes complex ethical and moral considerations regarding the sanctity of life, the responsibilities of healthcare professionals, and the broader societal attitudes toward death and dying.<sup>35</sup>

In the Indian context, the discourse on euthanasia and physician-assisted dying has been shaped by the ethical and practical implications outlined above. The recognition of the right to die with dignity in the *Common Cause v Union of India* case has underscored the importance of considering the potential benefits and challenges associated with legalizing euthanasia within the cultural, social, and ethical framework of India. This nuanced examination reflects the complex interplay of ethical, legal, and societal dimensions that continue to inform the ongoing dialogue on euthanasia and end-of-life care in India and beyond.

## **IMPLICATIONS FOR END-OF-LIFE CARE**

This includes the recognition of advance medical directives, the importance of palliative care, and the ongoing need for thoughtful legislative and ethical frameworks in addressing end-of-life decision-making. While *Common Cause* represents a significant step forward in recognizing individual autonomy in end-of-life decisions, challenges remain in the implementation and regulation of these principles. As society grapples with the complexities of death and dying, the rich tapestry of legal cases and precedents serves as a guiding light, illuminating the path towards a more compassionate and dignified approach to end-of-life care.

The implications of end-of-life care, particularly in the context of the recognition of the right to die with dignity as a fundamental right, extend across legal, ethical, and practical domains.

### **Legal Implications:**

The recognition of the right to die with dignity underscores the legal framework surrounding end-of-life care, including the validity of advance medical directives and the parameters for allowing passive euthanasia. This has profound implications for how individuals can express their wishes regarding medical treatment and end-of-life interventions, thus shaping the legal landscape of healthcare decision-making.<sup>36</sup>

---

<sup>35</sup> T. Beauchamp, "The Right to Die as the Triumph of Autonomy," *Journal of Medicine and Philosophy* 11, no. 3 (1986): 237-251.

<sup>36</sup> *Union of India v. State of Kerala*, (2009) 7 SCC 1

**Ethical and Moral Implications:**

From an ethical perspective, the recognition of the right to die with dignity reflects a commitment to respecting individual autonomy and alleviating undue suffering. This recognition also prompts a deeper ethical exploration of the responsibilities of healthcare providers, the obligations of society, and the broader moral considerations surrounding the value of life and the relief of suffering.<sup>37</sup>

**Practical Implications:**

The recognition of the right to die with dignity facilitates a more comprehensive approach to end-of-life care, emphasizing the importance of palliative care, the implementation of advance directives, and the need for enhanced support for individuals facing terminal illness. This has practical implications for healthcare professionals, families, and policymakers in terms of ensuring that individuals' end-of-life preferences are respected while also upholding the broader principles of patient care and support.<sup>38</sup>

**Fundamental Rights:**

The recognition of the right to die with dignity as a fundamental right establishes a paradigm for end-of-life decision-making that integrates fundamental rights such as the right to life, personal liberty, and dignity<sup>39</sup>. It embodies a progressive understanding of individual autonomy and personal choices within the broader framework of fundamental rights enshrined in the Indian Constitution.

In the Indian context, the implications of affirming the right to die with dignity as a fundamental right extend beyond legal and ethical dimensions, ultimately redefining the contours of end-of-life care and advancing the principles of individual dignity and autonomy within the framework of fundamental rights.

**CONCLUSION**

In conclusion, the Supreme Court's verdict in *Common Cause (A Regd. Society) v. Union of*

---

<sup>37</sup> Beauchamp TL, Childress JF. *Principles of Biomedical Ethics*. Oxford University Press; 2019.

<sup>38</sup> World Health Organization. *Palliative Care*. Accessed February 20, 2024, from <https://www.who.int/news-room/fact-sheets/detail/palliative-care>.

<sup>39</sup> The Constitution of India, art. 21.

India, 2023, marks a watershed moment in India's legal and ethical landscape regarding the right to die with dignity. By affirming the fundamental right to die with dignity as an extension of personal autonomy and bodily integrity, the Court has ushered in a new era of compassion and respect for individual choice at life's end. However, as society navigates the complexities of euthanasia, it is imperative to strike a delicate balance between upholding individual autonomy and safeguarding the vulnerable. This verdict not only sets a precedent for compassionate end-of-life care but also underscores the need for ongoing ethical dialogue and regulatory frameworks to ensure that the right to die with dignity is exercised responsibly and with utmost respect for human life.