CONSTITUTIONAL LEGITIMACY OF EUTHANASIA IN INDIA AND OTHER NATIONS: A CRITICAL ANALYSIS

Mr Md Jiyauddin, Assistant Professor of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology

Dr. Sunita Banerjee, Assistant Professor of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology

ABSTRACT

Mercy killing, another name for euthanasia, is a method of ending a person's life without causing them any suffering. This action is taken on behalf of a someone who has a debilitating and terminal illness, allowing them to pass away by stopping artificial life support systems or therapy. Any individual is protected against being deprived of their life or liberty under Article 21 of the Indian Constitution, unless a legally mandated procedure is followed. The right to life was protected by Article 3 of the 1948 Universal Declaration of Human Rights. Every facet of the right to life has always been evaluated by the courts based on the circumstances and evidence. This head also includes the claim to the right to die. 'Mercy killing' or 'good death' is the common interpretations of assisted suicide. There are circumstances in which it is argued that a person should be given the option to choose death rather than being forced to remain alive. One's right to a dignified death is encompassed in this as well. Not to be confused with the right to an unnatural death that reduces one's average lifespan, however, is the "right to die with dignity." Therefore, a consideration of the ethics of euthanasia must include the concept of the right to life. The topic of approving euthanasia or the Right to Die has been a contentious one in recent times. This research paper discussed about the constitutional legitimacy of euthanasia in India and other countries.

Keywords: Mercy killing, Debilitating, Terminal illness, Indian Constitution, Universal Declaration of Human Rights and Right to die with dignity.

INTRODUCTION

Euthanasia is derived from two Ancient Greek words: 'thantos' which means death and 'eu,' which means good death. Known by many as 'mercy killing' or 'physician-assisted death,' euthanasia is a complicated and hotly contested subject in the legal and ethical communities. The morality of euthanasia has been a topic of dispute for centuries among Western philosophers like Plato and Aristotle, and the argument is still relevant today. John Stuart Mill, a well-known proponent of utilitarian ethics in modern times, promoted the maximisation of enjoyment or minimisation of pain. In his book "On Liberty," John Stuart Mill argued in favour of human autonomy and freedom of choice, arguing that people ought to be allowed to make choices about their own lives, including whether to end their lives when their suffering becomes intolerable.[1]

DEFINITION AND CLASSIFICATION

"Active" or "passive" euthanasia is defined. The term "active euthanasia" describes a doctor's purposeful actions intended to end a patient's life. Withholding or discontinuing medical care that is required to preserve life is known as passive euthanasia. Active euthanasia is classified into three categories: involuntary, non-voluntary, and voluntary euthanasia. When a patient, fully knowledgeable of their mental state, decides to take their own life voluntarily, it is known as voluntary euthanasia. When a patient is not psychologically capable of making decisions for themselves and someone else does so on their behalf, this is referred to as non-voluntary euthanasia. Contrarily, when someone chooses to take their life without their consent, it is known as involuntary euthanasia. IPC sections 302 or 304 prohibit active euthanasia in India, making it a criminal. Section 306 of the Indian Penal Code (abetment to suicide) criminalises physician assisted suicide.[2] As per the new criminal laws in Bhartiya Nyaya Sanhita 103,105 and 108 active euthanasia were prohibited. A discussion of the legal implications follows:

Legal Aspects in India - Statutes and Judgements: Euthanasia is not mentioned in the Indian constitution anywhere. The right to live with dignity is guaranteed under Article 21, however

[1] R. Mahajan, "Validity of Euthanasia in India: Constitution and Legal Approach" *LEXOLOGY* (2024).
[2] *Ibid*.

the right to die is not specifically mentioned as a basic right. Consequently, discussions centred around the need to "die with dignity" as a basic right and blocked the judiciary's doors.[3]

De-criminalization of section 309 IPC and the concept of right to die: There is no explicit legislation or statute in India that governs euthanasia. The Indian Penal Code addresses the crime of aiding suicide under Section 309. It states that *"Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both."*

With the action taken to overturn section 309 of the IPC, passive euthanasia gained acceptance in India. In the case of *Maruti Shripati Dubal* v. *State of Maharashtra,*[4] the Bombay High Court became the first court to establish the legal basis for euthanasia. The idea of the right to die is discussed in this case. The court ruled that Articles 14 and 21 were violated by Section 309 IPC and maintained that the right to life included the right to die. On the other hand, the Andhra Pradesh High Court reversed its position in *Chenna Jagdeshwar* v. *State of Andhra Pradesh,*[5] ruling that section 309 of the IPC is constitutional since the right to die is not a basic right as defined by Article 21 of the Constitution.[6]

The Supreme Court aligned its views with the Maruti Shripati Dubal case,[7] holding that the right to life, as guaranteed by Article 21 of the Indian Constitution, includes the right to live with dignity and the right to die with dignity. The Supreme Court made reference to these two opposing views held by the High Courts. The court further acknowledged that the criminalisation of attempted suicide under Section 309 of the Indian Penal Code is unconstitutional and a violation of the fundamental right to life, and that the right to die with dignity is intrinsic to the right to live. In the case of *Gian Kaur* v. *State of Punjab*,[8] the Supreme Court annulled the Bombay High Court's decision in *State of Maharashtra* v. *Maruti Sripati Dubal*,[9] and overturned its own ruling in P. Rathinam's case. The court ruled that although the

[3] V. K. Sinha, S. Basu et.al., "Euthanasia: An Indian perspective" 54 *Indian Journal of Psychiatry* 177-183 (2012).
[4] Maruti Shripati Dubal v. State of Maharashtra 1987(1) BOMCR499.
[5] Chenna Jagdeshwar v. State of Andhra Pradesh (1988) CR LJ 549.
[6] Supra 3
[7] Supra 4
[8] Gian Kaur v. State of Punjab (1996) 2 SCC 648.
[9] State of Maharashtra v. Maruti Sripati Dubal (1986) 88 Bom LR 589.

right to life does not include the right to end one's own life, it does contain the right to live with human dignity, which values life quality.[10] The pertinent sections are taken from this: -

"The decisions of the Bombay High Court in Maruti Shri Pati Dubal v. State of Maharashtra,[11] and of a Division Bench of this Court in P. Rathinam v. Union of India and Anr.,[12] which held Section 309 I.P.C. to be unconstitutional, are incorrect. The Andhra Pradesh High Court's finding in Chenna Jagadeeswar and others v. State of Andhra Pradesh,[13] that Section 309 I.P.C. does not violate either Article 14 or Article 21 of the Constitution, is upheld for the reasons stated above. The constitutional legality of Sections 306 and 309 I.P.C. are resolved accordingly, with the conclusion that neither provision is constitutionally unconstitutional."

So, it is ultimately determined that Section 309 of the IPC is valid and does not contradict Articles 14 or 21 of the Indian Constitution. The new Act, Bharatiya Nyaya Sanhita 2023 (BNS), completely repeals section 309 of the IPC in light of legal developments on the right to die. This implies that attempting suicide will no longer be considered a criminal crime.

PASSIVE EUTHANASIA:

With advancements in the idea of the 'Right to Die', the Supreme Court in *Aruna Ramchandra Shanbaug* v. *Union of India*,[14] permitted for passive euthanasia of patients in the Permanent Vegetative State (PVS). The court decided the following:

1. The court distinguished between aggressive and passive euthanasia were granted permission for the latter.

2. Decisions about the removal of the life support system would be subject to review by the High Court in accordance with Article 226.

3. Upon receipt of an application, the Chief Justice of the High Court is required to form a bench. Prior to this, a committee consisting of three reputable doctors appointed

[10] Euthanasia and the Right to Die in India (2023), *available at*: https://clpr.org.in/blog/euthanasia-and-the-right-to-die-in-india/ (last visited on July 26, 2024).
[11] Maruti Shri Pati Dubal v. State of Maharashtra, 1987 Crl. L.J. 743.
[12] P. Rathinam v. Union of India and Anr., 1994 (3) SCC 394.
[13] Chenna Jagadeeswar and others v. State of Andhra Pradesh, 1988 Crl.L.J. 549.
[14] Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454.

must be recommended. The patient and their condition should be thoroughly examined, and the bench should give a notification to the patient's relatives.

4. The 'best interest of the patient' approach should guide the High Court's decision-making process, with particular reasons stated.

The right to die with dignity was extended by the Indian Supreme Court in *Common Cause* v. *Union of India*.[15] The case explores a number of legal issues related to treatment refusal and euthanasia, namely passive euthanasia. It affirmed the legality of advance directives and living wills. To guarantee that passive euthanasia is carried out with appropriate permission and supervision, the court established rules and protections for its implementation. In 2023, the Supreme Court updated the guidelines to allow for passive euthanasia in two steps and to simplify the process. This was done in response to a Miscellaneous Application No. 1699 of 2019 that was submitted in *Common Cause* v. *Union of India*.[16] The following can be used to summarise the new guidelines in the *Common Cause* v. *Union of India* (UOI) order dated case:

1. **Modification of Advance Directive**: An individual may, at any time while competent, withdraw or amend the Advance Directive by using the same process as described for registering the Advance Directive. Revocation or withdrawal of an Advance Directive requires a written document.

2. **Advance Directive Applicability**: If there are good reasons to believe that there are circumstances that exist that the person issuing the directive did not foresee at the time of the Advance Directive and that, had he foreseen them, would have affected his decision, then the Advance Directive shall not be applicable to the treatment in question.

3. **Ambiguity in Advance Directive**: In the case that an Advance Directive is unclear or unclear, the Medical Boards involved will not implement it. Instead, the recommendations intended for patients without Advance Directives will be implemented.
4. **Advance Directive non-compliance**: In the event that the Hospital Medical Board decides not to treat a patient in accordance with an Advance Directive, it must apply to the Medical

[15] Common Cause v. Union of India (2018) 5 SCC 1.
[16] *Ibid*.

Board that the Collector constituted in order to receive guidance and consideration regarding the Advance Directive.

5. **Procedure in the absence of an Advance Directive**: In the absence of an Advance Directive, the same process and protections should be followed as in the case of Advance Directives, plus the additional steps listed below:

- The doctor may notify the hospital, which will then create a Primary Medical Board in the previously mentioned way, if the patient is terminally sick and receiving extensive treatment for an illness for which there is no chance of recovery.

- The Primary Medical Board will confer with the patient's next of kin, next friend, or guardian, if applicable, and record the conversation in writing.

- If the patient's next of kin, next friend, or guardian consents in writing, the Primary Medical Board may certify the course of action to be followed, ideally within 48 hours of the case being referred to it. During the discussion, the pros and cons of withdrawal or refusal of further medical treatment to the patient shall be explained to them. Their choice will be considered a first assessment.

- The hospital will create a Secondary Medical Board by following the previously mentioned procedures if the Primary Medical Board approves the decision to stop receiving medical care or to refuse it altogether.

- After physically inspecting the patient in the hospital and reviewing the medical records, the Secondary Medical Board may agree with the Primary Medical Board's assessment.

- In such scenario, the hospital must notify the JMFC and the patient's next of kin, nearest friend, or guardian as soon as possible—ideally, within 48 hours of the matter being referred to it.

- The JMFC will visit the patient as soon as possible to confirm the medical reports, assess the patient's condition, speak with the patient's family, and, if satisfied in every way, approve the Collector-nominated Medical Board's decision to stop the terminally ill patient from receiving further medical treatment.

- The life support is being turned off, and the magistrate will notify the High Court of this as well. In addition to preserving the hard copy, which will be destroyed three years after the patient's passing, the High Court Registry will maintain it in digital format.

LAWS GOVERNING EUTHANASIA WORLDWIDE

The legality of euthanasia is a topic that differs between nations. Specific states in the US, such Oregon and Washington, as well as Belgium, Luxembourg, the Netherlands, and Switzerland, allow specific types of voluntary euthanasia. These nations have put in place certain rules and protections to guarantee that euthanasia is performed only in certain situations and with the patient's informed permission.[17]

Netherlands

The Netherlands is the first nation to legalise euthanasia, a development largely attributed to a number of court rulings. In the landmark Postma case,[18] courts took into account the potential of life termination on request for the first time.[19] The court noted that in order to terminate therapy, a certain condition had to be satisfied. They were as follows:

- The patient has a medical condition that qualifies him as incurably sick due to an illness or injury;
- The patient perceives their bodily or emotional agony as extreme or intolerable;
- The patient has formally stated in writing his desire to terminate his life or, in any event, to be freed from his suffering;
- A doctor, either the attending physician or another after consulting with him, performs the euthanasia.

The Supreme Court later decided in the Schoonheim (1984) case that a doctor may declare an emergency and assert Force Majeure if he;

[17] Supra 1
[18] District Court, Leeuwarden, 21 February 1973, N.J. 1973, No. 183
[19] M. Balal, "An Analytical Study on Right to Die and Euthanasia" 2 *International Journal of Legal Science and Innovation* 395-404 (2020).

- has thoroughly considered the pertinent obligations and interests at risk,
- in compliance with medical professional standards and medical ethics,
- and in doing so, made an objectively justified decision in light of the specific facts of the case.

In the decision, the Supreme Court also noted that a few elements can be deemed significant for evaluation. It looks like this:

- If a qualified medical expert determined that there was reason to believe the patient would lose more and more dignity or that his already intolerable suffering would get worse;
- If it was anticipated that he wouldn't be able to pass away honourably shortly;
- If there were any remaining opportunities to lessen the pain.

The first two elements are easily linked to the idea of self-determination. That would, however, be interpreting the decision incorrectly. The Supreme Court mostly saw the above listed variables as components of pain; it did not address patient autonomy. This case's resolution amply illustrates the physicians' viewpoint on the euthanasia debate.

The Supreme Court deemed a consultant's in-person assessment crucial in the Chatbot (1994) case. The Supreme Court also provided clarification on the following issues:

- The degree of anguish is sensed in isolation from its source. That is, it is the pessimism and unbeatability that matters, not the reason (whether it psychological, physical, or anything else);
- Euthanasia can also be justified in cases of suffering brought on by a mental condition or disorder;
- Patients in mental health can also freely and thoughtfully seek euthanasia;

- Judges must evaluate the doctor's emergency with particular consideration in cases of extreme suffering because,

    1. It has to be ruled out that the sickness or disorder has an impact on the patient's ability to make decisions;

    2. It is more challenging to determine the extent and hopelessness of suffering with such a reason; If the patient voluntarily rejects reasonable alternatives for treatment, there is, in theory, no hopeless suffering (i.e., no chance of recovery).

Later, in the Brongersma case (2002), Senator Edward Brongersma, a cancer patient, was put to death by Dr. A.H.J. Prins. Prins was found not guilty by the court due of his acts of kindness. Euthanasia may now be performed under specific situations without facing legal repercussions because to this case. Subsequently, guidelines for punishing doctors who carried out euthanasia were established by the Brongersma Guidelines (1994), which were named after the aforementioned case. They decided that in cases where certain requirements were satisfied like the existence of excruciating pain and the participation of a second doctor euthanasia would not be punished. Furthermore, the Netherlands became one of the first nations to legalise euthanasia and physician-assisted suicide under stringent guidelines with the passage of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act (2001).

United Kingdom

In the United Kingdom, patients in the Permanent Vegetative State (PSV) are eligible for passive euthanasia. The 1993 case of *Airedale National Health Service Trust* v. *Bland* addressed the removal of life-sustaining equipment that may contribute to a person's prolonged life. The following lists the pertinent points: -

- The court determined that Tony Bland, a patient in a persistent vegetative state with little chance of recovery, may legally be removed from all life-sustaining therapy and medical support measures.

- The choice was made with the patient's best interests in mind, adhering to the idea that life preservation is not always the best course of action, particularly when doing so will cause the patient to suffer unnecessarily.

- The court stressed the need of obtaining the court's permission in situations when responsible medical professionals or family members cannot agree, in order to ensure a comprehensive examination of all relevant facts and circumstances.

- The court upheld the sanctity of human life while striking a balance with the right to self-determination and the value of life, emphasising the necessity of taking into account more than simply suffering when making end-of-life decisions.

- The ruling emphasised the necessity for a legal system that upholds patients' humanity and dignity in such dire circumstances by drawing a contrast between wilfully causing a patient's death and withholding or withdrawing care, which may be allowed in some cases.

Colombia

In 1997, Colombia allowed assisted suicide by a historic ruling by the Constitutional Court. In Carlos Gaviria Diaz. Judgement C-239, the court decided that people have the right to a dignified death and can ask for euthanasia in certain situations, such as when they are suffering from an incurable illness. The following were noted by the court:

- Thorough confirmation by qualified individuals of the patient's true circumstances, illness, level of judgement maturity, and clear-cut desire to pass away.

- A precise list of the participants (qualified persons) who ought to be included in the procedure.

- Conditions under which the person wishing to terminate his life or give his consent to die should do so: how he should express it, who he should say it to, whether or not a qualified expert can verify his sanity, etc.

- Steps that the eligible person has to do in order to achieve the charitable outcome.

- Including subjects like life values and how they relate to freedom, social responsibility, and an individual's autonomy in the schooling process so that criminal provision is presented as the last resort in a process that may lead to other options.

Belgium

In 2002, Belgium legalised euthanasia, following the Netherlands' example. For persons suffering intolerably from a grave and incurable illness, euthanasia is legal in Belgium. With the passage of the Belgian Euthanasia Act of 2002, severe restrictions were placed on the use of both voluntary and non-voluntary euthanasia. Additionally, foreigners may request to end their lives in the nation under the Act. Patients are drawn to its distinctiveness from nearby nations like France. In 2009, the Act on Euthanasia and Assisted Suicide was passed in Luxembourg. Adults with severe and terminal illnesses who are in irreparable pain are permitted by law to end their lives. There are strict regulations and safety measures, much like in Belgium and the Netherlands.[20]

Switzerland

Euthanasia is prohibited in Switzerland; nevertheless, assisted suicide is allowed under specific circumstances. Assisted suicide services are offered to terminally ill patients who satisfy certain requirements, such as having the capacity to make decisions and experiencing extreme physical or emotional agony, by organisations like Dignitas and Exit Switzerland.

Australia

In Australia, common law has accepted the right to reject medical treatment and to make prior medical directives, wherein the patient's best interest serves as the basis for treatment decision-making. Furthermore, in the 1992 case of Secretary, Department of Health and Community Services v. JWB and SMB, the High Court of Australia ruled that a person (major) of sound mind is capable of making free decisions about what should be done to their body.

Canada

In 2016, medical help in dying (MAID) became lawful in Canada. If an adult is in an advanced state of irreversible decline, has a terrible and incurable medical condition, or is experiencing persistent agony that cannot be eased in a way that they find acceptable, they are legally permitted to request medical aid to end their life. The Supreme Court of Canada ruled

[20] S. Mishra and V. Singh, "EUTHANASIA AND ITS DESIRABILITY IN INDIA" *ILI Law Review Summer Issue* 208-219 (2020).

in *Carter* v. *Canada,*[21] that in some circumstances, such as when a person's health is grave and irreversible, physician-assisted suicide is acceptable. Nonetheless, an adult should expressly grant such consent.[22] The appeal is accepted. We would make the following declaration, subject to a 12-month suspension:

Section 241(b) and Section 14 of the Criminal Code unjustifiably violate Section 7 of the Charter and are of no force or effect to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease, or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. Several states in the United States have legalised euthanasia or assisted dying under certain situations. For example, Oregon's Death with Dignity Act (1997), Washington's Death with Dignity Act (2008), California's End of Life Option Act (2015), and others let terminally ill people to seek medicine to end their life under rigorous regulatory frameworks.

In *Cruzan* v. *Director, MDH*,[23] the Supreme Court of the United States affirmed patient autonomy by finding that the state would need to offer "clear and convincing evidence" of the individual's intention to stop life assistance in order to persuade the doctor to do so. The court cited the following significant points:

- The court ruled that incompetent persons have the right to refuse treatment, which can be exercised by a surrogate decision maker under a "subjective" test if clear evidence of purpose is available.[24]

- The court ruled that therapy can be discontinued under a "limited-objective" criterion if there is credible evidence of the individual's desire to end treatment, but not enough to demonstrate unequivocal wishes under the subjective test. If there is no reliable evidence and life-sustaining therapy would be cruel, a "pure-objective" criteria can be applied to end treatment.

[21] *Carter* v. *Canada* (2015) SCC 5.
[22] RK Mani, "Constitutional and Legal Protection for Life Support Limitation in India" 21(3), 258–261 (2015).
[23] Cruzan v. Director, MDH, 497 U.S. 261 (1990)
[24] J. Boruah, "Euthanasia in India: A Review on Its Constitutional Validity" *LEX HUMANITARIAE: JOURNAL FOR A CHANGE* 1-10 (2021).

- The court rejected categorical distinctions in prior refusal-of-treatment cases, including actively hastening death versus passively allowing a person to die, treating individuals initially versus withdrawing treatment later, and distinguishing between different types of life-sustaining medical procedures.

- The court emphasised that withdrawing life-sustaining treatment should be based on the patient's expressed intent, with efforts to minimise error. However, the case record lacked clear evidence of the patient's intent to withhold treatment.[25]

Spain

In 2021, Spain approved legislation making euthanasia and assisted suicide lawful. Adults with terrible and incurable conditions who are suffering unbearably may seek medical aid to terminate their lives under the legislation. It went into effect in June 2021.

France

France recently filed a bill in 2023 to discuss legalising euthanasia. France is going to legalise a type of assisted death known as "aid in dying". The law, which is scheduled to be presented to the National Assembly in May of this year, has caused heated discussion, with criticism coming from a variety of sources, including medical experts and political opponents.

CONCLUSION

Finally, there are many different sides to the debate about euthanasia in India, including moral, legal, ethical, and medical issues. Although court involvement has made passive euthanasia permissible, active euthanasia implementation is still controversial and complicated. The extent to which active euthanasia may be implemented in India has to be carefully considered and subject to stringent legislative review. Prioritising the defence of individual liberty, upholding human dignity, and reducing needless suffering are essential components of any regulatory framework. Comprehensive protections must also be put in place to prohibit discriminatory practices, abuse and coercion. There is a serious chance that this law will be abused in a number of ways. Moreover, the use of active euthanasia requires strong legislative frameworks, such as strict eligibility requirements, medical supervision and

[25] Supra 20.

procedural protections. Furthermore, any legislative framework must include procedures for judicial review, medical expert consultation and informed consent. The nation's differences in religion, culture, and society necessitate public discussion as well. Taking these factors into account, the introduction of active euthanasia in India necessitates a methodical strategy that respects the values of beneficence, autonomy, and justice while mitigating possible hazards and guaranteeing the safety of marginalised communities. Therefore, it is the responsibility of legislators, policymakers, and interested parties to engage in careful consideration and pass laws that are consistent with the moral standards, ambitions and values of Indian society.