



## Euthanasia: A study in Indian perspective

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### Abstract

As we know that the issue of Euthanasia is very complex and complicated issue around the worldwide. Some countries like - Netherland, Belgium, Columbia, Luxembourg, and India etc. have legalized human euthanasia whereas there are countries like Switzerland, Germany, South Korea, Japan, and in U.S states (Washington DC, Oregon, Colorado, Hawaii, Vermont, Montana and California) where Assisted Suicide has been legalized.

Euthanasia, as we all know is a very controversial topic in today's contemporary world. There have been heated debates, not only within the confines of courts, but also among elites, intelligentsia and academicians alike.

Judicial authorities have been willing to view the controversy over the existence of a "right to die" as one involving the recognition of a pre-existent right, while legislatures have been pushed to legislate laws for both for and against granting of euthanasia. In my opinion Judiciary must also legalize Active Euthanasia so that people who want to terminate their life or someone's life must exercise without any hindrance made or caused by the Legislature or Judiciary.

**Keywords:** right to die, supplying the drugs, voluntary euthanasia, non voluntary, involuntary, and physician assisted suicide

### Introduction

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### Meaning and Types

According to Oxford Dictionary the term Euthanasia means "The painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma."

According to Merriam Webster Dictionary Euthanasia is "the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as a person or domestic animals) in a relatively painless way for reasons of mercy.

The word "euthanasia" was first used in a medical context by Francis Bacon in the 17th century, to refer to an easy, painless, happy death, during which it was a "physician's responsibility to alleviate the 'physical sufferings' of the body [1]."

In General sense Euthanasia is termed as "Mercy Killing"

### Types of Euthanasia

Euthanasia is categorized in different ways i.e. Voluntary, Involuntary, Non- Voluntary Euthanasia.

**Voluntary Euthanasia** is legal in some countries.

**Non-Voluntary Euthanasia** (patient's consent unavailable) is illegal in all countries.

**Involuntary Euthanasia** (without asking consent or against the patient's will) is also illegal in all countries and is usually considered murder.

Moreover, euthanasia is classified into Active and Passive Euthanasia.

**Active Euthanasia** means Active Euthanasia, on the other hand, refers to someone's taking active steps to give a dying person, on his or her request, a lethal dosage of drugs in order to hasten death.

**Passive Euthanasia** (known as "pulling the plug") refers to someone helping another person to die by withholding or withdrawing life-sustaining treatment, including the administration of food and water. It is also known as "Euthanasia by Omission."

**Physician Assisted Suicide** is a suicide committed with the aid of another person, sometimes physician. It involves a doctor knowingly and intentionally providing a person with a knowledge or means or both required to commit suicide by

providing counseling about lethal doses of drugs, prescribing such lethal doses or supplying the drugs.

### **Development in the field of Euthanasia Law in India**

In India, euthanasia previously was undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck by proviso 1 to Section 92 of the IPC and thus be rendered illegal. The law in India is also very clear on the aspect of assisted suicide. Right to suicide is not an available "right" in India – it is punishable under the India Penal Code, 1860.

After the decision of a five judge bench of the Supreme Court in *Gian Knur v. State of Punjab* <sup>[2]</sup> held that it is well settled that the "right to life" guaranteed by Article 21 of the Constitution does not include the "right to die".

The need of change in field of euthanasia was triggered by the famous *Aruna Shanbaug Case* <sup>[3]</sup>. The SC in 2011 had recognized passive euthanasia and had permitted withdrawal of life sustaining treatment from patients not in a position to make firmed decision.

On 7<sup>th</sup> March, 2011 the Supreme Court, in a landmark judgment, issued guidelines legalizing passive euthanasia.

In the recent case of *Common Cause (A Regd. Society) v. Union of India* <sup>[4]</sup>, the Supreme Court held that that right to die with dignity is a fundamental right. The Bench also held that passive euthanasia and a living will also be legally valid. The Court has issued detailed guidelines in this regard. The Court observed that:-

*"The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, this Court has expanded the spectrum of Article 21 to include within it the right to live with dignity as component of right to life and liberty* <sup>[5]</sup>."

The Bench also held that the right to live with dignity also includes the smoothening of the process of dying in case of a terminally ill patient or a person in Persistent vegetative state with no hope of recovery.

The Supreme Court allowed passive euthanasia in certain conditions, subject to the approval by the High Court following the due procedure. It held that when an application for passive euthanasia is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so, the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the

State and close relatives e.g. parents, spouse, brothers/sisters etc. of the committee to them as soon as it is available. After hearing them, the High Court Bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.

### **Conclusion and Suggestion**

Out of the conflict between the opposing ideals of preserving all life and giving individuals the ability to choose non-treatment or even death, a debate has arisen over whether we are discussing the emergence of new rights or simply the recognition of old ones that never before faced serious challenge. This conflict manifests itself in the contradictory legislative and judicial treatments of the problem. Judicial authorities have been much more willing to view the controversy over the existence of a "right to die" as one involving the recognition of a pre-existent right, while legislatures have been simultaneously pushed to legislate both for and against the incipience of what many view as a modern creation.

Thus, though the judicial discretion is with the Court, the same is limited and not absolute. The Court is not entitled to weigh any factor as it likes. It has to act within the framework of the limitations.

There have been many pros and cons regarding legalization of euthanasia. Euthanasia is one of the biggest controversies in this decade. Though the Indian Judiciary has legalized 'Passive Euthanasia', but the legislature is far behind to legislate any law regarding it.

In my opinion Judiciary must also legalize Active Euthanasia so that people who want to terminate their life or someone's life must exercise without any hindrance made or caused by the Legislature or Judiciary.

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