



## REVIEW OF RESEARCH

### “MERCY KILLING”

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#### ABSTRACT

*The question of whether a terminally ill person, or others, should be free in assistance to take their own lives has been prevailing for a period of time now. The concept of euthanasia involves not only ethical and medical issues relating to public health and palliative issues, but also involves legal issues, socio-economic issues.*

*The paper explains about the various dimensions of euthanasia such as the historical background, the religious views, the legal perspective and the socio-cultural aspect. The argument of 'Whether Article 21 of the Constitution of India, within its purview, includes the Right to die?' Is one of the major questions in the present scenario?*



**KEYWORDS :** *fundamental, natural right , socio-economic issues.*

#### INTRODUCTION

Despite the major advances in medical and palliative care, witnessed by the last century, many patients, even in the affluent western countries, die in pain and distress.<sup>1</sup> In almost every country in the world, the doctor who complies with the patients' request to end the life of a patient to end such pain and distress, commits the offence of murder or assisted suicide and faces a lengthy term of imprisonment and professional disgrace.<sup>2</sup>

Right to life is one of the most fundamental, natural right. Article 3 of the Universal Declaration of Human Rights states, "Everyone has the right to life, liberty and security of a person."<sup>3</sup> Article 21 of the Constitution of India aims at the protecting the fundamental right of a person, too. Article 21 of the Constitution of India states, "No person shall be deprived of his life or personal liberty, except according to procedure established by law." The argument about 'If the right to life within its purview, can include the right to die?' has been prevailing for a long period of time in India. Euthanasia is one such method of ending one's life.

The word 'Euthanasia' has been derived from Greek words, *eu* (good) and *thanatos* (death) which means 'good death'. Euthanasia in the modern times can be defined as "The act or practice of killing or permitting the death of sick or injured individuals in a relatively painless method to prevent further suffering."<sup>4</sup>

The laws on Euthanasia are different in different countries. There has always been a controversy around the world about the moral, ethical and legal issues of Euthanasia.

In India, the legalisation of Euthanasia faces moral, ethical and religious problems.

<sup>1</sup>Pg 1; Euthanasia, Ethics and Public Policy; John Keown; Cambridge University Press; 2002

<sup>2</sup>ibid

<sup>3</sup><http://www.un.org/en/universal-declaration-human-rights/>

<sup>4</sup><http://www.merriam-webster.com/dictionary/euthanasia>

The Euthanasia debate is riddled with confusion and misunderstanding. Much of the confusion derives from a failure of participants in the debate to define their terms.<sup>5</sup>

The debate about Euthanasia has become more significant in the present scenario due to various developments in countries around the world where euthanasia is now legally allowed.<sup>6</sup>

## RELIGION AND EUTHANASIA

The right to die or ends one's life is not something new or unknown to human civilisation ever since the emergence of mankind. Voluntary euthanasia for the elderly was an approved custom in many ancient societies. Many religious texts including Khuran and Bible mention euthanasia as self-destruction or suicide. In India, the history of Vedic age is replete with numerous examples of suicide committed on various religious grounds.

According to Hinduism, a doctor should not accept the request of euthanasia, since it will separate the human body on soul at an unnatural time. It also further results in damage of the karma of both the doctor and patients. It is also believed by the Hindus that, euthanasia cannot be allowed because it breaches the teaching of *ahimsa* (doing no harm). But people around the world agree that killing a person who is painful state in life is considered as a good deed which fulfils their moral obligation. Under Islam, euthanasia is strictly criticised as all life forms are considered to be sacred and only god has the right over the death of all kinds of species. The religion of Christianity is also against euthanasia based on '*Thou shall not kill*'<sup>7</sup> the argument is based on life as a gift of god and all human beings are made in a form of god's image. Birth and death are a part of god's plan which are not to be interfered by mortal beings. God created mankind and no other person has the right to take another person life even if the person wants to die voluntarily. Sikh Gurus rejected suicide and euthanasia on the grounds that pain and suffering was a part of karma and these acts would interfere in the god's plans.

## HISTORICAL BACKGROUND

In ancient times, physicians had a dual role: One to cure; and the other to kill.<sup>8</sup> Hippocrates separated the cure and kill function. The Hippocratic Oath states "I will give no deadly medicine to anyone if asked, nor suggest any such counsel."<sup>9</sup>

The actions of easy death have been prevailing over a period of time to help the patients who are in distress and who have been in extreme pain. In the olden times, incurable patients were drowned in River Ganga.

The actions of Euthanasia and suicide have been forbidden from time to time.<sup>10</sup>

This view revolutionised by Dr. Jack Kervokian, who was also popularly known as 'Dr. Death'.<sup>11</sup> He once stated that "Dying is not a crime".<sup>12</sup> Over the years, Jack Kervokian become a pathologist. Pathology is a study of disease inside human body. He assisted people suffering from acute medical condition by simply ending their lives. After years of conflict with the court system over the legality of his actions, it spurred a national debate on ethics of euthanasia and other hospice care. This medical Pathologist helped dozens of terminally ill people to end their life and he became a world level central figure in a national drama surrounding assisted suicide. Physician assisted suicide - was legalised in Netherlands in the year 1993. Despite the fact it was opposed by a faction of people in American medical establishment, many practitioners believed that such actions violate the basic tenant of medicine which is to do no harm. Medical ethicist

<sup>5</sup>Pg 7; Euthanasia, Ethics and Public Policy; John Keown; Cambridge University Press; 2002

<sup>6</sup><http://www.lawteacher.net/free-law-essays/human-rights/analysis-of-euthanasia-law-in-netherlands.php>

<sup>7</sup>Sixth Command

<sup>8</sup><http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1/>

<sup>9</sup><http://www.euthanasia.com/historyeuthanasia.html>

<sup>10</sup><http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1/>

<sup>11</sup><http://www.britannica.com/biography/Jack-Kevorkian>

<sup>12</sup><http://www.biography.com/people/jack-kevorkian-9364141#strict-upbringing>

criticised Kervokian for assisting in the death of many innocent lives and other virtual stranger for seeking publicity in order to promote his ideas as "mercy killing".<sup>13</sup>

In November 1998, he administered a lethal injection on a patient suffering from Lou Gehrig disease which is also known as *amyotrophic lateral sclerosis*. For this, he was charged first degree murder. Not only did he violate the law but also delivered a controlled substance without any medical license<sup>14</sup>. A year later, he was convicted to second degree murder and unlawful delivery of a controlled substance and sentenced to 20 to 25 years of imprisonment. He was imprisoned for a term of eight years after his conviction in 1999. He was released on parole for good behaviour. He later died on 3<sup>rd</sup> June, 2011 in Michigan.

### KINDS OF EUTHANASIA

Euthanasia literally means putting a person to painless death especially in a case of incurable sufferings and causing to end a life of a person which is meaningless. Euthanasia may be classified as follows:

- 1) Active or Positive Euthanasia
- 2) Passive or Negative Euthanasia
- 3) Voluntary Euthanasia
- 4) Involuntary Euthanasia
- 5) Non-Voluntary Euthanasia

**ACTIVE EUTHANASIA:** Active Euthanasia involves painlessly putting death to individuals for merciful reason. For example, when a doctor administers lethal dose of medication for patients.<sup>15</sup>

**PASSIVE EUTHANASIA:** Euthanasia is passive when the death is caused because a treatment that is sustaining the life of a patient and the patient dies of the result there of. For example withdrawing life supporting device from a serious patient which, the patient dies. But in the case of passive euthanasia the doctors are not killing any patient. They stop treating them after a certain point of time or in a case of no hope.

**VOLUNTARY EUTHANASIA:** It is Voluntary when the euthanasia is practised with expressed desire and on the consent of the patient. General Voluntary Euthanasia is concerned with the right of choice of a terminally ill patient who is willing to end his or her life.

**INVOLUNTARY EUTHANASIA:** When the patient is killed without the expressed wish to this effect, it is known as Involuntary Euthanasia. It actually refers to a case where in a patient's life is brought to an end against the wish of a patient. If a patient disagrees with euthanasia, it may amount to murder.

**NON-VOLUNTARY:** This form of euthanasia clearly states that ending of a person's life who is mentally incompetent in order to make an informed request to die, such as a comatose patient. In non-voluntary euthanasia the patient has left with no such living or given any advanced directives, as he or she may never have an opportunity to do so or may not have anticipated any such accident. In this case usually the family members takes the decision.<sup>16</sup>

### LEGAL PERSPECTIVE AROUND THE WORLD

The laws relating to Euthanasia differ from country to country. In Netherlands, Euthanasia was legalised in around April, 2002. Netherlands became the first country to legalise euthanasia and assisted suicide. It imposed a strict set of conditions: the patients must be suffering unbearable pain their illness must be incurable, and their demand must be in "full consciousness" by the patient. In the year 2010, nearly 3,136 people were given a lethal cocktail under medical supervision.<sup>17</sup> *Palliative seduction* has also become a widespread practice in hospitals, with 15,000 cases since 2005.<sup>18</sup> According to Royal Dutch Medical Association, patients with a life expectancy with a minimum of two weeks or less are put in a medically

<sup>13</sup><http://www.britannica.com/biography/Jack-Kevorkian>

<sup>14</sup><http://www.britannica.com/biography/Jack-Kevorkian>

<sup>15</sup><http://medical-dictionary.thefreedictionary.com/active+euthanasia>

<sup>16</sup>Arunaramachandrashanbaug v. Union of India, 2011(3) SCALE 298; MANU/SC/0176/2011

<sup>17</sup><http://www.theguardian.com/society/2014/jul/17/euthanasia-assisted-suicide-laws-world>

<sup>18</sup><http://www.theguardian.com/society/2014/jul/17/euthanasia-assisted-suicide-laws-world>

included coma and all the nutrition and hydration are withdrawn.<sup>19</sup>The legislation has provoked a serious debate over the "right to suicide", because assisted suicide outside of the criteria set of euthanasia still remains illegal and counted as homicide.

In United States, doctors are allowed to prescribe a lethal dose of injection to terminally ill patients nearly in five States. Euthanasia, is however, illegal. Nowadays, the "aid in dying" movement have made increment gains, but the issue remains controversial. In the year 2013, roughly 300 terminally ill patients have been given lethal injection to end their lives. Around 230 people who have taken the lethal medication have died, but there are patients who have decided not to take them.<sup>20</sup>

In France, Euthanasia and Assisted Suicide are against the laws. The president François Hollande, promised to look at the "right to die, with dignity" but has always denied intention of legalising Euthanasia and Assisted Suicide.

In the year 2005, Lonettilaw introduced the concept of the "left to die". Under strict conditions, it allowed the doctor to decide to limit or stop any treatment which is not useful and disproportion or has no other object than to prolong life than to use painkilling drugs that might as a side effect shorten life.<sup>21</sup>

In German speaking countries, the term 'Euthanasia' is often avoided because of its associations with eugenics policy of Nazi era. The law therefore tends to distinguish between Assisted Suicide ( *Beihilfezum-suizid*) and Active Assisted Suicide (*Aktivsterbehilfe*).

In Germany and Switzerland, Active Assisted Suicide is, doctor prescribing a lethal dose of injection which is illegal. Both German law and Swiss law, do not allow Assisted Suicide. In Germany, Assisted Suicide is legal as long as the lethal medication is taken without any help, such as someone guiding or supporting a patient's hand. Hence, in Switzerland, this law is far more relaxed and it allows Assisted Suicide as long as "self- seeking motives" is involved.<sup>22</sup>

In Canada, the patients have the right to refuse to refuse life sustaining treatments but they do not have the right to demand for euthanasia or assisted suicide respectively. In Canada physician assisted suicide is illegal as per section 241(b) of the criminal code of Canada. The Supreme Court of Canada in *Sue Rodriguez v. British Columbia (attorney general)*<sup>23</sup>, held that in the case of Assisted Suicide, the interest of the State will prevail an individual's interest.

In Belgium, the Belgium parliament Legislation of '*Belgium Act of Euthanasia*' has made Euthanasia legal in the year 2002. The legislation is quite similar as the one passed in Netherlands.

## MURDER, ASSISTED SUICIDE WITH EUTHANASIA

Murder is one the most heinous crimes, which is taking place in each and every Continent. Depending upon the circumstance of the killing, a person who has committed an offence of murder is punished of imprisonment for many years.<sup>24</sup>

Assisted Suicide is a sort of suicide usually committed with the aid of another person, who is generally a physician. Physician Assisted Suicide is often confused with Euthanasia (mercy killing). In Euthanasia, the physician administers the lethal drug, which is the means of death. Physician assisted suicide (PAS) is always with the consent of the patient. There has been great demand and request by the patients who are mostly suffering from incurable cancer. According to several studies, more than half of the patients around the world have requested Oncologists to end their lives.<sup>25</sup>

Physician Assisted Suicide is illegal in India under Indian penal code.

<sup>19</sup><http://www.knmg.nl/Over-KNMG/About-KNMG.htm>

<sup>20</sup><http://euthanasia.procon.org/view.resource.php?resourceID=000132>

<sup>21</sup><http://www.theguardian.com/society/2014/jul/17/euthanasia-assisted-suicide-laws-world>

<sup>22</sup><http://www.theguardian.com/society/2014/jul/17/euthanasia-assisted-suicide-laws-world>

<sup>23</sup> (1993) 3 SCR 519

<sup>24</sup><http://legal-dictionary.thefreedictionary.com/murder>

<sup>25</sup>Euthanasia and assisted suicide- Canadian medical foundation <http://policybase.cma.ca/dbtw-wpd/policypdf/PD07-01.pdf>

Under section 306 of IPC, *abetment of suicide* is punishable with the imprisonment for a period of ten years. and the guilty is trailed under section 299 and section 304 of IPC regarding Culpable Homicide not amounting to murder.<sup>26</sup>

There has been a lot of debate over *Volenti non fit Injuria* (to a willing person, injury is not done) taken as a defence. Section 87 of the Indian Penal Code, 1860, explains clearly that consent cannot be taken as a defence for murder or grievous hurt.

Thus, assisted suicide comes somewhere between Active Euthanasia and Passive Euthanasia.<sup>27</sup>

## CONSTITUTION AND EUTHANASIA

The society aims at the interest of the individuals or rather for their dignified or peaceful life. In the case of ending one's life, it will surely be a negation of the individual's dignity and human rights. Article 21 clearly states "*a person has a right to dignified life*". A patient may wish to end his life in cases of excessive agony and would rather prefer a painless death than living a painful and suffering a life of agony, respectively. Where the patient knows the fact that he is going to die anyway due to his terminal illness, which is no longer incurable, will opt for Euthanasia.<sup>28</sup>

There is also an intense opposition from religious groups of and other members from Legal and Medical profession, consider Euthanasia as impracticable. According to them, it is not "right to die" but rather it is "right to kill" and it is against medicinal ethics. Even though the technology related to medicinal science is advancing at a great pace, cure has not been found for all the incurable diseases. Thus, instead of killing the patients on their request, the professionals must be in the position of encouraging them to lead a painful life, since it is physically possible.<sup>29</sup> Finally, the right to life is a basic part of human and is also enshrined in the Indian constitution stating that every person has the right to life, liberty, and the security of a person. This right is not only guaranteed to the citizens of India but also to non citizens as well.

Here comes the question of whether Article 21 of the Constitution of India, within its purview, includes the right to die?

This question arose in the famous case of *Aruna Shanbaug v. Union of India*<sup>30</sup>, a person, Aruna Shanbaug, 60, a former nurse was beaten and sexually assaulted in the year 1973 by a co-worker, a hospital janitor at Mumbai's King Memorial Hospital, where she remains today. She suffered severe brain damage and paralysis after her attackers, Sohanlal Bharatha Valmiki reportedly choked her with a chain. Valmiki was convicted of assault and robbery in the year 1974 and was imprisoned for a period of seven years. After his release, he reportedly moved, changed his name and found another job.

The petition filed, being Shanbaug to be allowed to die was brought by Pinki Varini, who is an author as well as a right to die activist. After Shanbaug's family abandoned her, Varini argued that with the patient unable to see or speak properly, keeping her alive violated her basic dignity. Valmiki expressed regret that court didn't put an end to Shanbaug force-feeding. She still does not, after three and a half decades, receive justice, the bizarre postscript to Aruna's story is to those "who love her" and those "who wants to look after her" are the ones who want her to rest in peace". Refusing the mercy killing of Shanbaug, a two judge bench in Supreme Court, comprising of Justice Markandey Katju and Gyan Sudha Mishra, in a landmark judgement on 7th March 2011 supported "Passive Euthanasia" of withdrawing life support of the patient's (PVS) but rejecting active euthanasia of ending a patient's life through the administration of lethal substance.

The Apex Court while framing the guidelines for active euthanasia asserted that it would now become a law of the land until Parliament enacts a suitable legislation to deal with this issue. The bench also asked the Parliament to delete section 309 of IPC (attempt to suicide) as it had become an "anachronistic, though it has become constituently valid". "A person attempts to commit suicide in depression, and hence he needs help rather than punishment." Justice Katju writing the judgement, stated. The Apex Court noted that though there

<sup>26</sup>[http://endlink.lurie.northwestern.edu/physician\\_assisted\\_suicide\\_debate/what.cfm](http://endlink.lurie.northwestern.edu/physician_assisted_suicide_debate/what.cfm)

<sup>27</sup><http://www.lawteacher.net/free-law-essays/human-rights/analysis-of-euthanasia-law-in-netherlands.php>

<sup>28</sup><http://www.legalserviceindia.com/article/l118-Euthanasia-and-Human-Rights.html>

<sup>29</sup><http://sanamurtaza.blogspot.in/2011/05/article-21-and-euthanasia.html>

<sup>30</sup>(2011) 4 SCC 454

is no statutory provision for withdrawal of life support system from a person of PVS, it was of the view that "passive euthanasia" was permissible in certain cases that the court laid down the guidelines the responsibility of higher courts to take the decisions on the pleas on the case mercy killing.

Similarly in the case of *Gian Kaur v. State of Punjab*<sup>31</sup>, a Constitutional Bench in Supreme Court overruled the decisions in *Maruthi Shripati Dubal v. Rathinam*<sup>32</sup>, holding that Article 21 cannot be constructed to include the "right to die" as a part of fundamental right, therein. Therefore, it cannot be said that section 309, IPC is violative of article 21. It has observed that when a man has committed suicide he had to undertake a certain positive overacts and the genesis of those acts which cannot be traced to, or to be included within the protection of "right to life" under article 21. Right to life is a natural right embodied under article 21 but suicide is an unnatural termination or extension of life and, therefore, incompatible and inconsistent with the concept of "right to life". The comparison of other rights such as right to "Freedom of Speech" etc is inappropriate. To give meaning and content to the word "life" as in article 21, it has been constructed a life with human dignity. Any aspect of life which can be dignified may be read into it but not extinguish it and is, inconsistent with continuance existence of life in effacing the right itself. The "right to die", if any, is inherently inconsistent with "right to life" as is death to life respectively.

In the case of *Shripati Dubal v. State of Maharashtra*<sup>33</sup> examined the constitutional validity of the section 309 and held that the section is violative of article 14 as well as article 21 of Indian constitution. This section was said to be discriminatory in nature and also arbitrary and violated equality guaranteed by article 14. Article 21 was interpreted to include right to die or take away one's life. Consequently it was held to be violative of article 21.

### MORAL ASPECT ON EUTHANASIA

The question whether the terminally ill, or others, should be free in taking assistance of their own lives, and if so under what circumstances and subject to what safeguards are of great social, ethical and regional significances. There are widely differing beliefs and very strong view of people in the society. The concept of Euthanasia, not only involves medical and ethical issues related to public issues and palliative care, but also socio economic dimensions. To analyse this concept fully and to study the concept of the relevancy and adequacy to the public health and social norms in India, the interdisciplinary approach is also very essential.<sup>34</sup>

Euthanasia is a one way of exercising the right to die and so far it is legally prohibited in India and many other countries. When looked upon it from a socio legal aspect, the Apex Court of India has imposed public obligation on the respective states only to ensure better quantity of life for people to live with dignity. Does this also include a dignified life to death? Now this is a question to be answered.

The concept of death implies the extension of life. Death may be natural or unnatural, which is caused by the actions of the people. When a person dying is dying by himself (who is the agent of his own destruction) is said to have committed an act of suicide. Causing death on oneself or on any other person is unnatural and is illegal and unethical for many reasons. But however, when the death of a person is natural and the time has come to depart from the world, it may be allowed in exceptional circumstances by the State. The final aspect of euthanasia is that is performing medical experiments on such patients for better advancement in medical science. Performing medical experiments on the patients without their condition is wrong and illegal.<sup>35</sup>

This drive to find cure for Euthanasia, especially the fatal ones is what and the only main reasons which led to many discoveries in the past, especially in the 20th century. Medical research is essential if the medical science wants to move any further.

<sup>31</sup>AIR 1996 SC 946

<sup>32</sup> AIR 1987 (1) BomCR 499

<sup>33</sup> 1987 Cri.L.J 743 (bom.)

<sup>34</sup><http://www.iiste.org/Journals/index.php/JLPG/article/view/6880>

<sup>35</sup><http://www.mbaskool.com/business-articles/human-resource/203-euthanasia-mercy-killing-legal-social-ethical-dilemma.html>

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## CONCLUSION

The debate over legalisation of euthanasia in India has been going on for over a period of time, now. In the modern world, "*freedom to die*" seems to be flowing from the rights of privacy, autonomy and self-determination.<sup>36</sup> Many countries around the world that have legalised euthanasia are very advanced in terms of medicine and medical technology. Is it morally and ethically right to help another person commit suicide? Is it legally viable? This is a matter of public concern as it can lead to exploitation, abuse and erosion of care for the most vulnerable people amongst us. There is no specific rule which gives a definite form to Euthanasia.

In India, for the legalisation of euthanasia, the Government should take into account various religious, ethical and moral factors. The legalisation should be based on the recommendations made by Law Commission of India.

The death of a person affects the society and the others surrounding the person in many ways; often in ways, which are unforeseen, by nature. Euthanasia is one in which the interest of the society cannot be separated from the interest of the individuals.<sup>37</sup>

Thus, it is suggested that, while deciding on the legalisation of Euthanasia, the conflict between the principle of sanctity of life and the rights to life and dignity of a person needs to be resolved. Euthanasia may be allowed as a general exception only in passive form under certain situations and conditions, where the individual cannot consent and the medical opinion is that withdrawal of life is the best option. Finally, euthanasia can be passive (by withholding medications, respiratory machine, feeding liquid, etc) or active (by injecting a dose of lethal substance).

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<sup>36</sup>ShreyansKasliwal, 'Should Euthanasia be legalised in India' (2003) PL WebJourn 16

<sup>37</sup>Diane Pretty v The United Kingdom [2002] EHRR 1