

**How to Cite:**

Rahman, S., & Saikia, P. (2022). The legality of euthanasia concerning right to life: A comprehensive review. *International Journal of Health Sciences*, 6(S4), 10646–10654. <https://doi.org/10.53730/ijhs.v6nS4.11423>

## **The legality of euthanasia concerning right to life: A comprehensive review**

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**Abstract**---Article 21 of the Indian Constitution, which deals with the protection of life and personal liberty, has been interpreted in several landmark cases by the courts of law. Every one of those formulations has enlarged the scope of Article 21 to encompass those aspects of life that give meaning, purpose, and dignity to existence. The terms "life" and "liberty" are deeply linked. Liberty gives a person the freedom to make decisions freely, and life without liberty would be meaningless. Thus, Article 21 integrated the concepts of life and liberty distinctly and also connected them through the use of a legal mechanism for their deprivation. Due to this interpretation, the right to die was never construed as an important aspect of the right to life and personal liberty guaranteed by Article 21. The right to die is a notion that is predicated on the belief that a person has the right to make any choice about the termination of his or her life (this also includes undergoing voluntary euthanasia). The major issue is whether individuals should have the right to die and what may be the rationale for such a right. The notion of euthanasia is typically characterized as the "latest culture of death," since it attempts to eradicate miserable lives. Euthanasia is the act or practice of taking a person's life when they are suffering from an incurable and often severe or unpleasant condition. The question of euthanasia emerges, but just as a man has a right to live, does he have a right to die? Is physician-assisted suicide a crime? In this paper, the researcher has attempted to examine the concept of euthanasia concerning the right to life and whether the right to die is in the ambit of the right to life or not.

**Keywords**---Euthanasia, right to life, right to die.

*"Life is Pleasant. Death is peaceful. It's the transition that's troublesome."*

**-Mathew Arnold**

## **Introduction**

Ethics and religion are at the heart of the ban on taking human life. There is a belief that all life is God-given, and hence we should respect the process of birth and death. A person's will to live does not provide the right to take the life of another human being, and this appears to be a religious commitment.<sup>1</sup> It loses its significance and effectiveness if other human rights are not safeguarded, including the right to life, which is paramount. In ancient times, "euthanasia", a painless death, is increasingly gaining acceptance in many nations. When a patient in agony or an incurable condition dies without suffering, it is called "aided suicide," also known as "physician-assisted suicide". To end the pain of a terminally ill individual, Euthanasia is performed. Often, the person requests it; other times, family, medical experts, or the court do it. This fundamental right to life is guaranteed in all current constitutions of civilized nations. The right to life is enshrined in the Constitution for every human being. Man has sought acknowledgment of some rights as inherent rights by the government to recognize their sanctity.

## **Research Problem**

A patient in severe pain due to an incurable or terminal ailment or on a life support system may have the right to be euthanized. But does this right extend to the right to die as well? Upon a careful look at the concept of Euthanasia, it identified that a conflict arises between the basic human right to live and the right to die. Hence, a comprehensive analysis and practical answers to this dilemma are at the heart of this work's relevance.

## **Objectives**

- To understand the concept of Euthanasia.
- To examine the legal issues surrounding Euthanasia with emphasis on the right to life.
- To discuss the different arguments on Euthanasia.
- To suggest the enactment of an Act on Euthanasia.
- To contribute to knowledge in this area of law

## **Research Question**

The following are the fundamental issues that the current research has posed for consideration:

- What is India's current stance on Euthanasia?
- What measures are crucial to decrease the problem more effectively?

## **Importance**

As a result of the socio-legal significance of this research, we will be able to evaluate the extent to which euthanasia contributes to the breakdown of society.

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As a consequence, relevant laws and standards will be adopted, and the legislation of euthanasia will become an effective tool for protecting those who have been harmed due to improper management of the machinery involved.

### **Scope**

The researcher has attempted to comprehensively review the concept, scope, and law relating to Euthanasia in India. The researcher aims to determine how India's euthanasia legislation is enforced.

### **Literature Review**

Various writers have explored the concerns surrounding the right to die, particularly Euthanasia. The following research has been done to understand better the right to die, Euthanasia, and related concerns. In the book "Medical Law", Emily Jackson argues that patients should be permitted to express their desire to die. According to Jackson's book on Medical Law, only the patient understands agony and misery. If a patient desires to die, the law should establish procedures for such a desire to be examined and implemented if necessary.<sup>2</sup>

In her book entitled "Law and Medicine", Dr. Nandita Adhikari has wholeheartedly attempted to meet burgeoning areas such as surrogacy, human organ transplantation, and bio-medical waste management. The book discusses the doctor-patient relationship and its numerous international principles.<sup>3</sup> Another contribution can be seen in Dr. Rajesh Sethi's literary piece "Euthanasia - Legalizing Euthanasia in India", where he discusses the attitudes of physicians, attorneys, academicians, and others in an urban context to legalize Euthanasia in India.

A thorough examination of relevant literature is required to put the research study in context and show the work previously done in the field. It will help to create clarity of ideas and prove the research's originality by discovering gaps in the current literature. The research will track the field's intellectual growth and identify the current shortcomings. Many studies pertinent to this subject have been investigated.

### **Research Methodology**

The methodology used in the present study consists of doctrinal methods. While following the doctrinal research, the researcher has gone through the various primary sources like Constitution and Statutes. The researcher has collected secondary data from various books, journals, newspapers, magazines, reports, internet sources, etc. The Bluebook 20<sup>th</sup> Edition citation format has been used for footnoting and referencing the resources.

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<sup>2</sup>EMILY JACKSON, MEDICAL LAW (2d ed. Oxford University Press 2010).

<sup>3</sup>NANDITA ADHIKARI, LAW AND MEDICINE, (3d ed. Central Law Publications 2014).

## **Types of Euthanasia**

### **Euthanasia**

According to Mason and McCall Smith, Euthanasia is the deliberate killing of people with an untreatable or painful illness. However, there are other types of Euthanasia, which may be classified as follows:-

- Active Euthanasia
- Passive Euthanasia
- Voluntary Euthanasia
- Non-Voluntary Euthanasia
- Involuntary Euthanasia

### **Historical Position of Euthanasia in India: An Assessment**

Religious suicides were prevalent throughout the Vedic period, as shown by the Mahabharata and the Ramayana. Govardhana and Kulluka stated in their comments on Manu that a man might take his own life if suffering from an incurable sickness. But recently, Hindu beliefs have shifted. Hinduism opposes behaviors that cause death. According to it, Euthanasia is not a sin, but the misconceptions and difficulties surrounding it portray it as such. If a sanyasi or sannyasin wishes to die, they may do so to achieve Moksha (soul liberation).

Islamic law prohibits the practice of Euthanasia. They hold human life in high regard because they think it is a gift from Allah, who has the power to determine how long each individual will live. These supernatural abilities should not be tampered with by humans. Human beings are morally obliged not to terminate their valuable and holy life. The same is true for Christians as well. Suppose the shravak (the follower of Jainism) believes that they have reached a point where death is the only option. In that case, Mahavira Varadhmana specifically gives the shravak complete permission to die. Self-sacrifice is a means to salvation.

Jewish medical conventions are split on the notion of terminating one's life. Usually, Jewish philosophers severely reject voluntary Euthanasia; however, some rare thinkers favor voluntary Euthanasia in certain circumstances. Briefly, Euthanasia is a procedure in which life may be put to an end voluntarily to relieve the individual from suffering and misery. To describe Euthanasia in legal terms, it is death at will or mercy killing.

### **Legality of Euthanasia in India**

Article 21 of the Indian Constitution, states that-

"No person shall be deprived of his life or personal liberty except according to procedure established by law"

Many additional rights have been added through various landmark judgments in Article 21. These interpretations have broadened the use of Article 21 to embrace the aspects of life that provide meaning, purpose, and dignity. The words liberty and life are inextricably related. Life would be pointless without liberty. Thus,

Article 21 combines the concepts of life and liberty uniquely. Because of this interpretation, euthanasia was not included under the concepts of life and liberty. The phrase "death" refers to the cessation of life. There are two types of death, viz. (a) natural death and (b) unnatural death. A person's actions may lead to it. It is ethically and legally wrong to cause the death of a human being via one's actions, whether over oneself or someone else. When life becomes more terrible than death, it is very reasonable for the ordinary person to want for its end. The phrase euthanasia or mercy killing is used to describe this kind of voluntary death.

In India, active Euthanasia is punishable under section 302 or 304 of the Indian Penal Code. Doctor-assisted suicide is punishable under section 306. If the deceased gave legal permission, the doctor would not be punished under section 304. Patients have the option of selecting passive euthanasia, but they are not permitted to choose active euthanasia. When there is no possible way to stop someone from passing away, this is known as passive euthanasia. It would be a courageous move for a country like ours to legalize euthanasia. There is no question that euthanasia is against the law in India. But now Union Government has decriminalized section 309 of the Indian Penal Code.

### **Legality of Euthanasia in Other Countries**

The conventional interpretation of any human rights statement does not in any way indicate that there is a "right to a dignified death". The opposite is true, as stated in human rights declarations, which call on governments to safeguard and secure the lives of all citizens. Only four countries, viz. Netherlands, Belgium, Luxembourg, and Canada have allowed Euthanasia out of the 193 member countries of the United Nations (UN). According to the United Nations International Treaty, "States Parties shall take all necessary steps to ensure that individuals with disabilities have the same right as others to the effective enjoyment of the right to life". Everyone has the right to life. No one's life should be taken arbitrarily. Every child has the intrinsic right to life. Human beings should be protected from inhuman or degrading treatment.

Although euthanasia in its active form is prohibited everywhere in the United States, euthanasia with medical assistance is permitted in several states and countries, including Oregon, Washington, Vermont, California, and Mexico. Euthanasia had been legalized in Australia in 1995, making it the first nation in the world to do so. Since the Rights of the Terminally Ill Act, of 1995 was responsible for the deaths of four people in 1997, the federal government of Australia decided to repeal the Act. On September 16, 2021, voluntary euthanasia becomes lawful. In 2001, the Netherlands passed legislation legalizing the practice of euthanasia. In 2001, the legislature of the Netherlands passed the Termination of Life on Request and Assisted Suicide (Review of Procedures) Act, which formalized a loosening of the legislation that had prohibited euthanasia and assisted suicide in the past based on court decisions. Euthanasia and physician-assisted suicide are allowed under this Act only if the patient requests them and if they are carried out under medical supervision. On May 28, 2002, Belgium voted to legalize euthanasia and adopt the Belgian Act on Euthanasia. The law in Belgium authorized medical professionals to assist patients who were nearing the

end of their lives and wanted to hasten their passing due to a terminal disease. The law in Belgium imposes stringent legal limits and procedures that must be followed for euthanasia to be permitted. It is required that the patient put their wish in writing.

### **Judicial Dictum on the Right to Die**

The Delhi High Court in the case of *State v. Sanjay Kumar Bhatia* criticized that attempt to suicide as an “outdated concept and a paradox”.

The court distinguished between Euthanasia and suicide in *Naresh Marotrao Sakhrev. Union of India*.

In *P. Rathi Nam v. Union of India and another*, the court held that punishing misers attempting suicide, was unreasonable and should be repealed from the statutes to humanize our penal laws. It tries to double-punish the man in excruciating agony and would face humiliation if he did not commit himself. Later, in the case of *Gian Kaur v. the State of Punjab*, it was determined that the right to life does not include the right to die.

On March 9, 2018, in the case of *Common Cause (A Regd. Society) v. Union of India*, the Supreme Court authorized passive Euthanasia. As a result, the right to die with dignity is now a fundamental right. A three-judge bench referred the matter to it in *Gian Kaur v. the State of Punjab* had not ruled on the validity of active or passive Euthanasia, despite ruling that the right to life Article 21 of the Indian Constitution included the right to die with dignity.

Advances in science and medicine have made it possible to extend or confine one's life indefinitely while causing them great pain. People have fundamental freedom of choice, which includes the ability to accept and reject. Where alternatives exist, the person is entitled to make his own decision. One should be allowed to make their choices. A living will or a surrogate working on behalf of the patient's intentions should be made available if they cannot communicate his requests owing to his sickness. The freedom to reject medical care, including life-saving measures, should be guaranteed to every person with mental ability.

### **Euthanasia: The Two Sides of the Same Coin**

#### **Justifications for Legalising Euthanasia**

- It's a means to terminate a life that's been a misery.
- Healthcare reduces the stress on the family members of a dying patient. It also helps to reduce the patient's discomfort their agony.
- Patients have the right to reject medical treatment as well.
- The practice of Euthanasia will free up public medical funding to assist other needy individuals.
- A person has the right to choose or not to choose their right to die.

## **Justifications against Legalising Euthanasia**

- Because the holy writings argue against euthanasia, the concept of assisted suicide is not going to be tolerated in the religiously conservative culture that prevails in the Indian subcontinent.
- The commercialization of Euthanasia is a possibility.
- Individuals who are unable to afford their medications could resort to this as a means of avoiding the related financial burdens.
- People may view the elderly and needy as a burden, and as a result, they may be exploited to avoid duties.

## **Conclusion and Suggestions**

### **Conclusion**

*“For those who are facing a terminal illness, who are in irremediable pain and suffering, and wish to exercise their right to die with dignity, a system should be available to them”.*

**-Dr. Jack Kevorkian**

Death is just as significant as life. If living is vital, then so is dying. Death is not a depressing or negative experience. Suppose a person has been in excruciating agony and has an incurable sickness for a fair amount of time. However, the issue of what constitutes a fair amount of time emerges. The facts and circumstances of each case will determine what constitutes a reasonable amount of time. There is no straight-jacket method for determining an appropriate time frame. To maintain the sanctity of human life, one does not have to be compelled to continue existing in an agonizing state of discomfort. If a terminally ill person has the option, they should be able to end their suffering. The idea here is that if a terminally ill patient meets the necessary circumstances and requests an alternative to their protracted and painful death, the law should make it possible for them to do so.

Pro-euthanasia advocates have greatly benefited from the Supreme Court's 2018 decision, but it is still a long way from becoming law. Furthermore, concerns about its abuse must be addressed before it becomes legislation in our nation. The positive extension of the right to life under Article 21 of the Indian Constitution is to provide the right to die with dignity. A new law authorizing assisted suicide should be applauded, but the duty of drafting legislation and providing rules for its implementation rests with parliament. It would be beneficial in clarifying the problem.

### **Suggestions**

- It is necessary to enact legislation for medical ethics rules to be effective on euthanasia issues. This legislation should define what Euthanasia is in the Indian context, what constitutes a euthanasia act, and whether it allows active or passive Euthanasia, as supposedly guaranteed by the Constitution.

- As we know, passive voluntary Euthanasia is lawful in most nations throughout the globe; thus, Indian criminal laws should be revised to ensure that they are up to date.
- The Indian legal system should implement the following steps:-
  - (a) There must be some criteria for determining what situations qualify for Euthanasia.
  - (b) A panel of competent persons could be entrusted with the final decisions in this regard.
- The government must balance its duty to preserve human life and citizens rights to freedom of choice, dignity, and self-determination. It should go beyond just preserving life for the welfare of the terminally ill individual and their family under the circumstances of the patient's or family's situation.
- The main concern is the potential for misuse due to its usage. It is suggested that suitable safeguards be implemented to prevent such misuse.

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