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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN ANALYSIS ON EUTHANASIA AND RIGHT TO DIE – INDIAN PERSPECTIVE

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ABSTRACT

The topic of Right to Die and Euthanasia has been taken to review the importance and the relevance of Right to die (Euthanasia) which is a debatable concept in the Indian society and its conflict with the provision governing Right to life. The concept of Euthanasia has not been covered by any express legislation. But in 2018, the Hon'ble Supreme Court of India with a five judge Constitutional Bench by their judgment recognized the Right to Die with dignity and declared it to be a part of Right to Life under the Guaranteed fundamental rights of the Constitution. Basically, all human beings have the right to life under Article 21 and Article 3 of the Indian Constitution and International Convention Universal Declaration of Human Rights, 1948 respectively. Right to die has been always under the control of judiciary and it depends upon the facts and circumstances. The word 'Euthanasia' means 'mercy killing' and it is meant that under certain circumstances people can choose their death when it is difficult for them to live. But there are various perspectives which either allows or denies the concept of mercy killing in the society. Every person has the right to live dignified life with certain restrictions which has been imposed by law. When we look into the aspect of Hindu religion, the Vedas and others also taught that soul is eternal and it never dies. Under Muslim religion also, they believe that life should be according to the wish of Allah, it denied the unnatural ending of life. But under some critical situation people faces painful life and it better for them to end their life by this means of mercy killing. Therefore, this article clearly explains about the Constitutional legality of Right to Die, Article 309 and the position of Euthanasia in India. misuses. This article also emphasizes on the difference between euthanasia and suicide. Through this article, we can get a clear picture about the legal frameworks and the real status of both conflicting topics of Right to Life and Right to Die.

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KEYWORDS:

Euthanasia, Right to Die, Assisted Suicide, Right to Life, Passive Suicide, voluntary euthanasia.

INTRODUCTION:

“Euthanasia.... is simply to be able to die with dignity at a moment when life is devoid of it” – Marya Mannes

The word euthanasia has been derived from the Greek words 'Eu' and 'Thanos', which denote 'good' and 'death', which means 'mercy killing or good death'.³ It implies the intentional killing of one person who wishes to end his or her life through another person with the permission of the former. Euthanasia is “a deliberate interference undertaken with the express intention of ending a life to relieve intractable pains and agonies”⁴. It is to relieve that person from the pain and suffering of illness. It involves various types, like passive, voluntary, and involuntary. Basically, a misstructured and disabled person can decide for themselves whether to live or not. However, the concept is very controversial as it is related to the morals, values, and ethics of a society. Now, it has been practiced by doctors to end the lives of their patients at their request in order to relieve them from the painful life and terminal illness.

However, the concept is completely different from suicide, where one ends their life by themselves. There are various cases where the patients suffer from the miserable illness, and they struggle to a point where their life may end at any time and there is no hope for life. Thus, the concept of “euthanasia” intervenes here. Countries like the Netherlands (since 2001), Belgium (since 2002), Luxembourg (since 2009), Switzerland, Germany, the United States, Japan, Colombia, Albania, and Canada (since 2016) are found to be the Ten Countries where euthanasia and assisted suicide are legal and valid.⁵ But it is not permissible under Indian law to commit 'suicide' or 'abetment to suicide' which is an offense and punishable too. This concept originated from the right to life guaranteed under the Constitution of India. It's very difficult to legislate a law validating euthanasia because our constitution provision guarantees the right to life to every citizen in India. At the same time, euthanasia is completely against and ultravires to the idea behind the law of the land. In India, before March 2018, no law expressly spoke about the validity of euthanasia except for very few judicial

³ Harris N.M., The euthanasia debate, 147 (3) J R Army Med Corps, 367-70 (2001)

⁴ House of Lords, Report of the Select Committee on Medical Ethics, 1994.

⁵ <http://www.therichest.com/rich-list/most-influential/10-countries-where-euthanasia-and-assisted-suicide-are-legal/>
(Last Visited on November 19, 2023)

verdicts, and there were some medical cases that necessitated the practice of euthanasia. There are various views for and against the legalization of euthanasia. It is to decide the right of the people to live with dignity. It is not enough to make it legal at the societal level, but it should be taken into consideration at the international level.

ASSISTED SUICIDE AND EUTHANASIA:

Suicide is something different from euthanasia, and many of them have clarity about the difference. Suicide is nothing but individuals killing themselves on their own for many reasons. Therefore, it is termed an intentional act of ending one's life due to mental disturbances, depressed work loads, financial disability, or failure in their personal life. Students commit suicide because of heavy stress, failure in examinations, etc. So they'll end their lives voluntarily by stabbing, injecting any harmful substances, hanging, or consuming any kind of poisonous thing. It is completely different from euthanasia, which's a kind of end to the life of a sufferer by another person with the permission of the former in order to save him from painful hell.

In assisted suicide, the other person is purposefully given assistance in committing suicide, such as by giving them the tools to do so. "Physician-Assisted Suicide" is the term used to describe situations in which a medical professional, such as a doctor, assists a patient to terminate his own life by prescribing a fatal drug. In contrast, euthanasia may be passive, such as when a patient receives a deadly injection or dose, or active, like when a doctor removes the patient's life support system.

The concept of euthanasia and how it is distinct from suicide were clearly explained in the judgment of **Naresh Marata Sakhee vs. Union of India**,⁶ which is mentioned below in the topic of the position of euthanasia in India.

KINDS OF EUTHANASIA:

There are various types of euthanasia on different basis. It is classified on the basis of consent and on the basis of procedural decisions.

⁶ 1991 (1) BomCR 92.

On the basis of Procedural Decisions:

1. Active Euthanasia

Active euthanasia is the term for an act that intentionally reduces a person's life expectancy. The method by which the patient's life is ended painlessly is known as active euthanasia. Only at the patient's request can this kind of death occur. The three requirements that must be met in order to carry out active euthanasia are as follows: The patient must have an incurable illness and be in excruciating agony; the patient had to have requested this in this way, and all other actions that could have prevented the patient's death had to have been worn out by the sufferer.

2. Passive Euthanasia:

Passive euthanasia means the death of the sufferer either due to the act of the medical practitioner that prevents the patient from surviving or any kind of omission by the doctors that could have saved the patient, including disconnecting the feeding tube, turning off life support equipment (ventilators, etc.), and stopping the administration of extraordinary drugs, among other things. The aforementioned surgery is typically implemented for individuals who are terminally ill, in anticipation of their imminent demise. These procedures are frequently used for individuals who have severe brain damage, are in a profound coma, and have no or very little prospect of recovering from such a state of mind.⁷

On the basis of consent:

1. Voluntary Euthanasia:

When a patient actively chooses to end his life—either by active or passive euthanasia—that is referred to as voluntary euthanasia. As a result, in order to participate in this type of euthanasia, the patient or his legal representatives must make the request.⁸

2. Involuntary Euthanasia:

Non-Voluntary Euthanasia occurs when euthanasia is performed on a patient without that patient's agreement. The most relevant illustration of this type of euthanasia is child euthanasia, which is prohibited worldwide.

⁷ <https://www.religioustolerance.org/euth1.htm> (Last visited on November 19, 2023)

⁸ M.D. Singh “Euthanasia: How Merciful is the killing: Amritsar Law Journal, vol. XII, 2001 p-53.

3. Involuntary Euthanasia:

Other names for this type of euthanasia include "Murder" and "Medical Zed Killing." The best illustration of this kind of euthanasia is when a capable individual or a child acting as their surrogate declines it after being made aware of its potential consequences. In this case, the patient's death would still be considered involuntary euthanasia or plain murder.

RIGHT TO DIE:

The concept of the right to die is based on the idea that individuals have the freedom to make decisions about ending their own lives, including through voluntary euthanasia. This right is often seen as allowing those with terminal illnesses or a lack of will to live to end their lives or refuse life-prolonging treatment.

Article 21 of the Indian Constitution provides that, “ *No person shall be deprived of his life or personal liberty except according to procedure established by law*”⁹. The key question is whether people should have the right to die and what principle justifies such a right. The Indian judiciary has interpreted the right to life to encompass various new rights, such as the right to live with human dignity, livelihood, shelter, privacy, food, education, and a clean environment. The debate over whether the right to life includes the right not to live or the right to die has been discussed in numerous cases. Death can be natural or unnatural, caused by a person's actions or inactions. Unnaturally causing the end of a life by one's own actions is morally and legally wrong. All living beings seek to prolong their lives, and promoting the end of life goes against the intended purpose of this right.

Attempt commit to suicide is an offence which is punishable under section 309 of IPC which provides 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*”¹⁰

⁹ Article 21 of Indian Constitution, 1950.

¹⁰ Section 309 of Indian Penal Code, 1860.

In the case of **State v. Sanjay Kumar Bhatia**,¹¹ the Division Bench of Delhi High Court observed that section 309 of IPC was barbaric and anachronism to the human society. Therefore, it have no justification right to continue remain on the statute book.

The Law Commission of India in its 196th Report, suggested the creation of a law to safeguard terminally ill patients who refuse medical treatment, artificial nutrition, or hydration from Section 309 of the Indian Penal Code. It also recommended providing protection for doctors who respect the decisions of such patients, or who make decisions on behalf of incompetent patients in their best interests, from punishment under Section 306 of the IPC (abetment of suicide) or Section 299 (culpable homicide). The report stipulated that the term 'patient' refers to an individual suffering from a terminal illness, which is defined as a condition that causes extreme pain and suffering and will inevitably lead to the premature death of the patient, according to reasonable medical opinion.

The Law Commission of India in its 210th Report found Section 309 of the IPC inhuman. It said that an attempt to commit suicide is a manifestation of a 'diseased condition of the mind'. It deserved treatment and care, not punishment. Inflicting additional punishment on a person who is already suffering agony is unjust and unfair. It does not help in preventing suicides and improving the access to medical care to those who have attempted it.¹²

Section 115 of the Mental Health Care Act, 2017 provides that, *"Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code"*.¹³

In the case of **Red Lynx Confederation v. Union of India**,¹⁴ petitioner is seeking specific measures to prevent individuals from attempting suicide by throwing themselves into animal enclosures at zoos. This act of attempting suicide is considered an offense under section 309 of the Indian Penal Code

¹¹ 1985 Cr LJ 931.

¹² "Right to Die: Court in Review - Supreme Court Observer", <https://www.scobserver.in/journal/right-to-die-court-in-review/amp/> (Last Visited on November 18, 2023)

¹³ Section 115 of Mental Health Care Act, 2017.

¹⁴ Writ Petition (Criminal) No:16 of 2020

(IPC). However, Section 115 of the Mental Healthcare Act, 2017, which creates a presumption, has an impact on section 309 IPC. The Supreme Court directed that the Attorney General for India be notified, requesting the Union of India to justify the validity of section 115 of the Mental Healthcare Act, 2017, which essentially undermines section 309 IPC.

LEGALITY OF SECTION 309 OF IPC:

In the case of **Maruti Shripati Dubal v. State of Maharashtra** ¹⁵, where a police constable was suffering from mental disorder after a road accident. He also attempt to commit suicide by pouring kerosene and setting himself on fire. He was charged under the section 309 of IPC. He filed a petition under Article 227 and challenged the constitutional validity of this section on the ground that it abridge the fundamental rights guaranteed under the Article 14, 19 and 21 of Indian Constitution. The Bombay High Court struck down section 309 of IPC as unconstitutional.

In the case of **Chenna Jagdeeswar & Anr v. State of AP** ¹⁶, the appellant killed his four children and attempted to commit suicide. He was charged under the section 309 of IPC. The Andhra Pradesh High Court upheld the validity of section 309 of IPC. It was held that section 309 of IPC was didn't violate the fundamental rights which are guaranteed under the Article 14 and Article 21 of the Indian Constitution.

In the case of **P. Ratnam v. Union of India** ¹⁷, A question before the court is whether right to die falls with the ambit of right to life under Article 21 of Indian Constitution. The supreme Court struck down section 309 of IPC as unconstitutional on the ground that "right to live" under Article 21 also include "right not to live".

In the case of **Gian Kaur v. State of Punjab** ¹⁸, The petitioners were convicted under the section 306 of IPC for abetting a suicide of their daughter-in-law. The petitioners contended that abetting a person to commit suicide is a mere assistance in the enforcement of Article 21 as it include "right to die". However, the five judges bench of the Supreme Court upheld their conviction thereby overruling

¹⁵ 1987 Cr LJ 743.

¹⁶ (1988) Cr LJ 549.

¹⁷ AIR 1966 SC 1257.

¹⁸ 1996 SCC (2) 648.

Ratnam's case.

POSITION OF EUTHANASIA IN INDIA:

Active euthanasia or assisted suicide is considered as an illegal practice in India and it was a criminal offence under section 306 and section 309 of Indian Penal Code. However, the courts have legalized passive euthanasia, allowing individuals to express their desire to not be kept alive by artificial means if they are in a vegetative state or have a terminal illness. The "Medical Treatment of Terminally Ill Patient Bill, 2016" was passed in 2016 with the aim of legalizing passive euthanasia. It aimed to provide protection to patients and medical practitioners when it comes to withdrawing or withholding medical treatment, including life support systems, for terminally ill patients.

In the case of **Naresh Marotrao Sakhre v. Union of India** ¹⁹, the court distinguished between Euthanasia and suicide, stating that suicide is the act of ending one's own life without assistance, while euthanasia involves the intervention of a human agency to end one's life. It further held that mercy killing is not covered under section 309 of the IPC.

In the case of **C.A. Thomas Master v. Union of India** ²⁰, an 80-year-old retired teacher, who had lived a successful and fulfilling life, expressed the desire to end his life voluntarily, stating that he had fulfilled his purpose. He argued that voluntarily ending one's life should not be considered the same as committing suicide. He also prayed to set up Mahaprasthan Kendra (Voluntary Death Clinic) for the purpose of facilitating voluntary death and donation of body organs. The Kerala High court ruled that there should be no differentiation between suicide as commonly understood and the right to voluntarily end one's life. Therefore, his petition was dismissed.

In the Landmark case of **Aruna Ramchandra Shanbaug v. Union of India** ²¹, the petitioner was a nurse who had been in vegetative state for the period of 42 years after being brutally raped and strangled by a hospital worker. Also, she had no family or relatives to look after her. Pinki virani, an activist filed a petition under Article 32 of Indian Constitution seeking to allow her to go with passive

¹⁹ 1994 Cri LJ 1605.

²⁰ 2000 CrLJ 3729 (Ker)

²¹ (2011) 4 SCC 454.

euthanasia and absolve her from her pain and agony. The Court selected a group of three doctors to assess Ms. Shanbaug's physical and mental state and provide a report. While the Court did not permit the discontinuation of medical care for Ms. Shanbaug, it extensively deliberated on the topic of euthanasia and authorized passive euthanasia. By invoking the Parens Patriae principle, which allows the Court to act as a guardian in certain cases, it asserted that the Court has the final authority in determining what is in the best interest of the patient. This authority was also extended to the High Courts under Article 226.

In **Common Cause (A Regd. Society) v. Union of India**²², the petitioners approached the Supreme Court for seeking to establish the right to die with dignity as a fundamental right under Article 21. They also asked the Court to direct the Union Government to allow terminally ill patients to create 'living wills' for future action in case they are hospitalized. Alternatively, Common Cause requested the Court to provide guidelines and appoint an expert committee to address the issue of executing living wills, consisting of lawyers, doctors, and social scientists. Common Cause stated that denying terminally ill or chronically ill individuals the right to choose a dignified death only prolongs their suffering. They urged the Court to secure the right to die with dignity by allowing these individuals to make an informed choice through a living will. The five-Judge Bench of the Supreme Court ruled that the right to die with dignity is indeed a fundamental right. They emphasized that an individual's right to create advance medical directives is an assertion of bodily integrity and self-determination and does not rely on recognition or legislation by a State.

CONCLUSION:

“Life and death are inseparable. Every moment our bodies undergo change. life is not disconnected from death. Dying is a part of the process of living.” – Justice D.Y. Chandrachud

The issue of euthanasia and the right to die is a multifaceted and contentious matter that necessitates a comprehensive understanding of moral, legal, and medical principles. The debate surrounding this topic is deeply entrenched in personal beliefs and values, and compelling arguments are presented both for and against the legalization of euthanasia. In regard to public policy, it is crucial for governments to carefully contemplate the potential repercussions of legalizing euthanasia and to

²² AIR 2018 SC 1665.

ensure the implementation of rigorous regulations and safeguards to prevent exploitation and safeguard vulnerable individuals. Moreover, facilitating open and honest conversations about death and end-of-life care within the medical community and society at large can help ensure that individuals' preferences are honored and that they receive appropriate care during their final days.

