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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **ACTIVE EUTHANASIA IN INDIA: A CALL FOR LEGAL RECOGNITION AND ETHICAL FRAMEWORK**

AUTHORED BY - TANISHEE BANSAL

## **1. ABSTRACT**

*Active euthanasia is the practice when a medical professional intentionally does an action which leads to patient's death like injecting a lethal drug dose. Patients who are suffering from incurable disease and are suffering unbearable pain choose active euthanasia to die with peace and dignity. This research paper introduces the concept of active euthanasia and its legal position in India. It includes why active euthanasia is illegal in India and the rationale behind the prohibition of its practice under Sections 300, 304 and 309 of the Indian Penal Code, 1860 and landmark judgments which have talked about this practice. It also covers the imperativeness of active euthanasia in India from the legal, jurisprudential and ethical perspectives. This paper gives arguments in favour of legalising active euthanasia in India and its need in the modern time. It also mentions various developed countries that have legalised active euthanasia with proper conditions and procedures to be followed. This paper uses the qualitative research method which means that it includes both primary and secondary sources with the use of case laws, journals, legislations and internet sources and includes opinions and perspectives of various researchers who have given their views on this practice in India.*

## **2. KEYWORDS**

Autonomy, Criminalize, Dignity, Legalization, Medical, Patient, Practice

## **3. INTRODUCTION**

The practice of intentionally ending patient's life without any suffering is termed as euthanasia. This practice is adopted by a patient who is usually very sick, either terminally ill or in excruciating pain or by a patient who has limited period left to live. The word euthanasia is derived from Greek which translates to 'good death'. This is practiced to provide a patient with good death without any suffering and pain<sup>1</sup>. Although there are a lot of practices which fall

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<sup>1</sup> Euthanasia, SCHOOL OF MEDICINE UNIVERSITY OF MISSOURI (2024), <https://medicine.missouri.edu/centers-institutes-labs/health->

under the ambit of euthanasia but the two main types of euthanasia are Active Euthanasia and Passive Euthanasia.

Active euthanasia is when a doctor intentionally injects or doses a patient with a lethal substance or drug which leads directly to the patient's death. It requires a healthcare professional to intentionally intervene. This form of euthanasia requires an explicit consent from the patient or their legal representative. On the other hand, passive euthanasia entails delaying or stopping life-sustaining procedures or other interventions that could extend the patient's life. In this instance, the medical professional lets nature take its course rather than actively contributing to the patient's demise such as disconnecting a respirator or withholding artificial nutrition etc. This is practiced based on the patient's prior wishes or the decision of their legal representatives<sup>2</sup>.

The practice of passive euthanasia was legalised by the landmark judgement of Supreme Court in Aruna Shanbaug v Union of India<sup>3</sup>. This case set up guidelines which had to be followed if passive euthanasia has to be practiced on a patient. While this case legalised passive euthanasia, it also laid down the distinction between active euthanasia and passive euthanasia. It also ruled that active euthanasia is illegal in India.

#### **4. PROVISIONS PROHIBITING ACTIVE EUTHANASIA**

Active euthanasia is considered a crime under Section 300, 304 and 309 of Indian Penal Code, 1860. Section 300<sup>4</sup> of IPC or Section 101<sup>5</sup> of BNS defines culpable homicide as murder when the act is done with the intention of causing death or with the knowledge that the particular act will likely cause death. In the context of active euthanasia, where a person intentionally administers a lethal substance to end another person's life, both of these conditions would likely be met. This would mean that such an act would be considered murder under Indian law.

The practice of active euthanasia is also criminalized under Section 304 IPC. Section 304<sup>6</sup> of

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[ethics/faq/euthanasia#:~:text=Active%20euthanasia%3A%20killing%20a%20patient,Sometimes%20called%20%E2%80%9Caggressive%E2%80%9D%20euthanasia.](#)

<sup>2</sup> Euthanasia: Balancing Autonomy and Ethical Considerations, TESTBOOK (Aug. 9, 2023), <https://testbook.com/ias-preparation/euthanasia>.

<sup>3</sup> Aruna Ramchandra Shanbaug vs Union of India & Ors, AIR 2011 SC 1290 (India).

<sup>4</sup> Indian Penal Code, 1860, § 300.

<sup>5</sup> Bharatiya Nyaya Sanghita, 2023, § 101.

<sup>6</sup> Indian Penal Code, 1860, § 304.

IPC or Section 105<sup>7</sup> of BNS deals with culpable homicide not amounting to murder. It essentially covers situations where a person causes death without the intention to kill but with the knowledge that their actions are likely to cause death. In the context of active euthanasia, Section 304 IPC or Section 105 BNS becomes highly relevant because active euthanasia inherently involves the intention to end a person's life, which is directly contrary to the requirement of the mentioned sections that there should be no intention to kill. Even if there is no direct intention to kill, administering a lethal dose in active euthanasia inevitable involves the knowledge that death is the likely outcome which fulfils another condition of these sections. Section 309<sup>8</sup> of IPC states that any person who attempts to commit suicide and does any act towards the commission of such offence shall be punished under IPC. This section is not directly related but if a person provides assistance to another individual who attempts to commit suicide, and the attempt results in death, the person providing assistance could potentially be charged under Section 309. Therefore, a medical professional practicing active euthanasia will be charged under this section as they are injecting a lethal dose to a patient which is assisting him to die which can be seen as committing suicide.

Another provision which prohibits the practice of active euthanasia in India is MCI Code of Ethics. The Medical Council of India (MCI) Code of Ethics Regulations<sup>9</sup>, 2002 plays a crucial role in defining the ethical boundaries for medical practitioners in India. The code is a comprehensive document outlining the ethical and professional conduct expected of registered medical practitioners in India. The code has been taken as the hallmark of professionalism, and observance of it by doctors, forms the foundation of trust and integrity of the profession. Euthanasia is succinctly declared by MCI to be unethical practice. It clearly forbids doctors to actively end a patient's life. However, the code also recognizes the complex issue of withdrawing life support in certain circumstances such as brain death.

## **5. LANDMARK JUDGEMENTS/PRECEDENTS**

There are some landmark judgements which contributed to the progress of active euthanasia in India.

In case of *P. Rathinam v Union of India*<sup>10</sup>, the petitioners argued before the Supreme court that

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<sup>7</sup> Bharatiya Nyaya Sanghita, 2023, § 105.

<sup>8</sup> Indian Penal Code, 1860, § 309.

<sup>9</sup> Code of Medical Ethics Regulations, 2002.

<sup>10</sup> *P. Rathinam v. Union of India*, (1994) 3 SCC 394 (India).

as Section 309 of IPC violated Article 14 and Article 21 therefore it is unconstitutional. The two-judge bench determined that Section 309 is unconstitutional because it violates the right to life, which is guaranteed by Article 21 and can be interpreted to encompass the right to not live a life that is forced upon one<sup>11</sup>. This case highlighted the need for clear guidelines on this matter.

The judgement in *P. Rathinam v Union of India* was overruled in the case of *Gian Kaur v State of Punjab*<sup>12</sup>. The Supreme court ruled that the right to life under Article 21 of the Constitution does not extend to the right to die. It interpreted “life” as life with human dignity, meaning that any action that respects and preserves life can be considered within the scope of this right. However, actions that extinguish life, such as euthanasia or assisted suicide, are inconsistent with the right to life and therefore not lawful in India. The court also upheld the constitutionality of Section 309 of IPC, which criminalizes attempts to commit suicide. This decision reinforces the principle that the right to live with human dignity cannot be interpreted as a right to end one’s life, at least before the natural process of death begins<sup>13</sup>.

There were some changes made in regarding what right to die includes in the case of *K.S. Puttaswamy v Union of India*<sup>14</sup>. The Supreme Court restated the fundamental idea that human dignity is a necessary component of Article 21. It is also claimed that the right to a dignified death includes facilitating the passing of a terminally ill patient who has no chance of recovery. As things stand, the legal position is that the right to live with dignity encompasses the “right to die with dignity” but the right to life does not include the “right to die”<sup>15</sup>.

## **6. THE IMPERATIVENESS OF ACTIVE EUTHANASIA IN INDIA**

The practice of Active Euthanasia is seen as killing a person and not relieving the same person from excruciating pain and suffering. The laws in India fail to see that by criminalizing Active euthanasia, they are forcing a patient to live the remaining life in pain. There are many other arguments in favour of legalizing active euthanasia in India. These arguments are just not on the basis of sympathy but also on the basis of autonomy and jurisprudential analysis.

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<sup>11</sup> Rajesh Mahajan, Validity of euthanasia in India: constitutional and legal approach, LEXOLOGY (Apr. 11, 2024), <https://www.lexology.com/library/detail.aspx?g=247c8c66-b3ed-4179-bfe1-7df289a0cde5>.

<sup>12</sup> *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 (India).

<sup>13</sup> *Supra* at 11.

<sup>14</sup> *Justice K.S. Puttaswamy v Union of India*, (2017) 10 SCC 641 (India).

<sup>15</sup> *Supra* at 11.

One perspective supports euthanasia, arguing that it should be permitted because it involves taking a person's life with their consent. Advocates believe the patient's choice should be respected and when weighing societal values against individual interests, the individual's interests should take precedence. Society exists to ensure the well-being and dignity of its members and denying a person the ability to make decisions about their own suffering would undermine that purpose. If a person in unbearable pain is unable to make decisions for themselves, this would further harm their interests and infringe on their dignity and human rights. Article 21<sup>16</sup> of the constitution guarantees the right to live with dignity and if someone's quality of life falls below the threshold of basic dignity, they should have the right to end their life<sup>17</sup>.

Proponents of active euthanasia also argue that since society already acknowledges passive euthanasia, such as the legal recognition of refusing life-sustaining treatment, active euthanasia should also be allowed. They emphasize cases where a patient's condition has become intolerably burdensome, where pain management is ineffective and where death is the only source of relief. Given the growing demand for medical resources, it is argued that facilities should be allocated to patients who have a better chance of recovery and choosing to focus on a patient who can be saved over one who is beyond recovery is seen as more practical since the terminal patient is expected to die regardless<sup>18</sup>.

Euthanasia would be relief from unbearable suffering for terminally ill patients, rescuing them from a slow agonizing death. It would also give relief to the families which have to go through mental anguish and the practice of active euthanasia would be considered a compassionate measure which should end the suffering without causing any harm. The purpose behind euthanasia would be to help by being mercifully ending the suffering of those with incurable diseases.

The argument in favour of active euthanasia is by invoking Article 21 by arguing that the right to a dignified life includes the right to end one's life when dignity is compromised by suffering. Since passive euthanasia is accepted then active euthanasia should be similarly permitted. Patient's seeking euthanasia only do so when their pain is unbearable and they wish for a

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<sup>16</sup> INDIA CONST. art 21.

<sup>17</sup> Caesar Roy, Position of Euthanasia in India-An Analytical Study, 32 JO 37. 60-62 (2011).

<sup>18</sup> *Id.*

peaceful, painless death rather than prolonged suffering. If it is seen from a moral perspective then allowing patients to die peacefully in such circumstances seems more humane<sup>19</sup>.

Another argument which can be raised in favour is the financial and medical resources spent on patients who are beyond recovery. The argument is made that the duty extends not only to the patient but also to their families who suffer emotional and financial burdens. Euthanasia is seen as a rational decision to relieve both the patient and their loved ones from unnecessary suffering. Section 309 of IPC, they argued was not intended to include cases of death due to such circumstances within its definition of suicide<sup>20</sup>. It can also be argued that society must respect the rights of patients and honour their decisions to choose active euthanasia. Euthanasia can be seen as a way to respect a person's right to autonomy and privacy and the only reason to interfere with this right would be to protect crucial societal values which in the case of terminally ill patients requesting euthanasia does not apply. Denying euthanasia would mean forcing people to endure suffering against their will which would be cruel and a violation of their human rights and dignity<sup>21</sup>.

There are some arguments which can be in favour of legalizing active euthanasia from jurisprudential view. If a patient is forced to live with unbearable suffering which is without his consent, then it will be seen as a violation of principle of self-determination. The principle of self-determination emphasizes the necessity of honouring a patient's wishes. If an adult patient who is capable of making decisions, refuses treatment even if their choice seems unreasonable, the medical professionals are obligated to respect that decision even if they believe it may not serve the patient's best interests. Patient autonomy is fundamental to contemporary medical ethics and many widely accepted medical practices stem from this concept which aligns with the individual autonomy emphasized in the Indian constitutional framework<sup>22</sup>.

For autonomy to be meaningful, patients must understand their options and the implications of their choices. Medical decisions should prioritize the patient's experiences of benefits and burdens without the intention of hastening or delaying death. If seen from a jurisprudential

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<sup>19</sup> *Supra* at 17.

<sup>20</sup> *Supra* at 17.

<sup>21</sup> *Supra* at 17.

<sup>22</sup> Subhash Chandra Singh, Euthanasia and Assisted Suicide: Revisiting the Sanctity of Life Principle, 54 *Journal of the Indian Law Institute* 196, 217-218 (2012).

perspective, decisions about end-of-life care should be made by the patient in collaboration with qualified healthcare providers and family members they wish to include. If a patient is unable to participate in these decisions, trusted individuals should be authorized to make choices on their behalf. From a legal perspective, there is a potential avenue for individuals with terminal illnesses to broaden the interpretation of the right to life to encompass the right to die with dignity as well as to assert a constitutional right to refuse unwanted medical treatment<sup>23</sup>.

The centuries old Hippocratic oath which specifies the code to be followed relating to the sanctity of life ethics should be reevaluated as it is too absolutist to deal with all the circumstances of the current time. It should also be taken into account that the society should not let a member to be a victim of medical technology.

Article 21 of the constitution also states the right to privacy as an essential which may be violated if the state denies a terminally ill patient's desire of death with dignity. In India, this idea is also important as bodily privacy has become a legal issue. The right to decide how much someone can interfere with one's body belongs to the individual. This concept also applies to the relationship between a doctor and a patient where the individual has the power to set limits on how much a medical professional or anyone else can interfere with their physical autonomy. Respecting a person's privacy is closely tied to respecting their right to make their own choices and control their life. When someone gives informed consent for medical procedures or treatments, it shows that their autonomy and right to make decisions are being acknowledged and respected<sup>24</sup>.

It can be argued giving the example when there can be a termination of a pregnancy when its prolongation can cause threat to the life of the mother<sup>25</sup>. There is a risk that a child may be born with abnormalities and to address this risk, the law allows for the termination of a foetus if it is in the mother's best interest, provided her explicit consent is obtained. If such laws permit the ending of a potential life to prevent the mother's suffering why should not active euthanasia be legalized to allow an individual to end their own life to escape extreme pain and suffering?<sup>26</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> Ayush Agrawal, Much Awaited Response: Legalising Active Euthanasia in India, 5(01) Bennett Journal of Legal Studies 29, 36 (2023).

<sup>25</sup> Medical Termination of Pregnancy Act, 1972, § 3.

<sup>26</sup> John A. Robertson, Involuntary Euthanasia of Defective Newborns: A Legal Analysis 27STAN. L. REV. 213 (1975).

It's important to understand the psychological factors that might influence someone considering active euthanasia. In some cases, individuals may feel obligated to spare their family from emotional and financial burdens. An incurably ill person may see ending their life as a justified act of compassion if it helps to relieve their family from suffering. For this reason, society should respect the choices of those who opt for euthanasia and honour their autonomy. Denying them these right forces individual to endure suffering against their will which is both cruel and a violation of their fundamental right to control their own bodies. The push to legalize active euthanasia is rooted in humanitarian principles, aiming to offer a painless end to those suffering from terminal conditions<sup>27</sup>.

## **7. COUNTRIES THAT HAVE LEGALISED ACTIVE EUTHANASIA**

Although active euthanasia is criminalized in India but there are many countries who have legalized it seeing the urgency of the situations arising. These countries realised the importance of active euthanasia and took steps to legalize it as this not only protects the autonomy of the patient but also makes sure that medical resources are utilized by patients who actually have a chance of survival.

### 1) Netherlands

It is the first European country that had legalized euthanasia and assisted suicide. Euthanasia in Netherlands is governed by the “Termination of Life on Request and Assisted Suicide (Review Procedures) Act”, 2002<sup>28</sup>. According to this law, euthanasia and physician assisted suicide are not subject to legal penalties, provided that the attending physician follows the established criteria for due care.

### 2) Belgium

‘Belgium Act on Euthanasia’ which was passed by the Belgian Parliament made euthanasia legal which was similar to that passed in the Netherlands.

### 3) Colombia

It is the first Latin American country where the constitutional court ruling permitted medically assisted suicide under a doctor’s supervision. The nation’s highest court determined that a physician may assist a terminally ill patient in ending their life by administering a lethal drug without facing the risk of imprisonment. Colombia has

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<sup>27</sup> *Supra* at 24.

<sup>28</sup> *Supra* at 17.

already decriminalized euthanasia in the year 2021<sup>29</sup>.

4) Spain

It became the 4<sup>th</sup> country in the European Union that have legalised euthanasia and assisted suicide for people suffering with serious and incurable diseases and want to end their life.

5) Luxembourg

It also has legalised both euthanasia and assisted suicide but the patients must have an incurable condition, intolerable suffering and no chances of improvement<sup>30</sup>.

6) Canada

In Canada, euthanasia and assisted suicide are permitted for adults with “grievous and irremediable conditions” when their death is considered reasonably foreseeable.

7) Australia

Voluntary euthanasia laws were passed in Australia in 2017 but to be eligible, an individual must be an adult with decision-making capacity, reside in Victoria and experience intolerable suffering from an illness with a life expectancy of less than 6 months or up to 12 months in case of a neurodegenerative condition<sup>31</sup>.

These countries have legalised euthanasia with conditions and procedures to be followed while practicing active euthanasia. It can be seen that all these countries are developed nations and India as a developing country can derive such procedures adopted by all these countries while legalising active euthanasia.

## **8. CONCLUSION**

Euthanasia is a complex issue that demands thoughtful consideration of ethical, moral and legal dimensions. Its primary aim is to provide a more compassionate end-of-life option for individuals facing inevitable death after prolonged suffering. While it is difficult to accept the idea of a peaceful death for someone in immense pain, it is equally hard to ignore the plight of those enduring extreme suffering. With the growing number of people choosing euthanasia, more countries have legalized the practice over the past two decades.

Although it is to be taken into account that a practice like active euthanasia can be misused but

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<sup>29</sup>Countries where euthanasia, assisted suicide is legal, WION (May 13, 2022, 11:32 AM), <https://www.wionews.com/photos/countries-where-euthanasia-assisted-suicide-is-legal-281943>.

<sup>30</sup> *Id.*

<sup>31</sup> *Supra at 29.*

the legislature has to lay down certain conditions under which the patient will be allowed to choose this practice. It should also lay down procedures to be followed while carrying out this practice to make sure it is not being misused and it is used by people who need it. These conditions and procedures can be derived or taken from countries like Netherlands, Spain, Colombia, Australia etc. who have passed acts laying down strict provisions to carry out the practice. In India where there is a shortage of medical resources, the legalization of active euthanasia has become crucial. It is essential for the legislature to intervene and create a comprehensive law addressing all aspects of euthanasia.

