

Euthansia: The Indian Legal Prespective

Sarada Saha¹, Sanghamitra Mukherjee²

^{1,2}Assistant Professor, Kolkata Police Law Institute

Abstract:

Clinicians are increasingly concerned about palliative care and quality of life issues for patients with terminal illnesses, such as advanced cancer and AIDS, in our culture. Euthanasia, also known as "mercy-killing," of terminally sick individuals, has emerged as a contentious subject alongside this one. Physician-assisted suicide (PAS) proponents believe that a person's right to autonomy inherently grants him the ability to choose a painless end to his life. The opponents believe that a doctor's involvement in a patient's death goes against a fundamental principle of the medical field. Furthermore, untreated depression and the potential for societal "coercion" among those seeking euthanasia raise additional concerns about the morality of the practice. Strict requirements for implementing PAS are the result of these issues. It becomes necessary to evaluate the mental health of the individual giving their consent to PAS, and here is where the psychiatrist's involvement becomes crucial. Despite being illegal in our nation, PAS has a number of supporters in the shape of nonprofit groups like the "Death with Dignity" Foundation. The recent Honourable Supreme Court ruling in the Aruna Shaunbag case has given this a boost. How long it takes for the Indian legislature to be shaken by this delicate topic is still up in the air.

Keyword: Euthanasia, physician-assisted suicide, palliative care

Introduction

"The web of our life is a mingled yarn, good and ill together"

- All's Well That Ends Well¹

Life in its biological sense of the term can be defined as the condition that distinguishes animals and plants from inorganic matter, including the capacity for growth, reproduction, functional activity and continual change preceding death. Despite its biological aspect life bears several important segments of meaning which comprehends the reality of every organism living on earth, that is, it serves to be the stage maker for its counterpart, Death –

"Out, out brief Candle!"

Life's but a walking shadow, a poor player

That streets and frets his hour upon the stage

And then is heard no more; it is a tale

Told by an idiot, full of sound and fury

Signifying nothing".²

Thus, life serves to be the accumulation of a variety of experiences which marks a person's journey leading to the ultimate reconciliation.

¹ William Shakespeare, "Alls Well That Ends Well", (January 20, 2025,) www.goodreads.com.

² William Shakespeare, "Macbeth", (Mar 12, 2025, 4:15 PM) www.poetryfoundation.org.

While analyzing the complexity of human nature, Jeremy Bentham, the proponent of legal positivism, has explained that human behavior can be studied with the reference to the two primary motives of pleasure and pain. At the beginning of the “Introduction to the Principles of Moral and Legislation”:

*“Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it”.*³

Throughout the complexities of life, a state of complete bliss is something unheard of. Hence life is an ocean brimming with rocks, from which man tries to stay away from the impending wreck even though he tries to deal with all the specificities, with his endeavors. But in every stage of his life, his progression, leads to something which is inescapable that is death, which is the last step in the wearisome voyage.⁴

Death with an unnatural mode has been dubbed as a sin in various religious cults. Suicide, the Christian doctrine claims, would lead a human to the pits of hell. Initially abortion was also considered illegal but later on keeping in various countries of the world. But it is to be kept in mind that in order to avoid the axiom of compulsory factor, and it is inevitable that to find the real meaning of life and personal liberty should be enjoyed only in the ambience of physical and psychological growth. The state endeavors to provide this kind of environment by granting fundamental freedom to them. Article 21 ensures every person Right to Life and Personal Liberty. In the case of *Munn V. Illinois*⁵, the court referred to the observation of Justice Field, wherein he stated that by the term ‘life’ as here used something more is meant than a mere animal existence. Thus, it embraces within itself not only the physical existence but also the quality of life.

Concerning various suicidal activities, which an individual commits in order to end his life before the stipulated time ‘Right to Die’ or “Right to die with dignity” is another issue which gives a person the privilege to have the control of his own body including the right to choose the time and the way of one’s own death. The right to die is a concept based on the opinion that a human being is entitled to end their life. The expression thus covers a huge assortment of ideas such as suicide killing and assisted suicide (the suicides aided by doctors).

Meaning of Euthanasia

Merriam Webster states the meaning of the term Euthanasia as: the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as persons or domestic animals) in a relatively painless way for reasons of mercy⁶. Phonologically speaking, the word derives its origin from the Greek word ‘euthanatos’ which means “easy death”.⁷ In English, euthanasia has been used exactly in the same

³ Jeremy Bentham, “Introduction to the Principles of Moral and Legislation”, (Apr 12, 2025, 5:40 PM) <https://www.goodreads.com>

⁴ Arthur Schopenhauer, “The Vanity and Suffering of Life” in *Oswald Hanfling*, (ed.), *Life and Meaning* 97-109 at 103 (1987).

⁵ *Munn v. Illinois*, 94 U.S. 113 (1876)

⁶ Euthanasia| Definition, (Feb 20, 2025, 2:40 PM), www.merriam-webster.com

⁷ Medical definition of Euthanasia, (Jan 30, 2025, 2:30 PM), <https://www.medicinenet.com>

sense since the early seventeenth century, when Francis Bacon⁸ described the phenomenon as “after the fashion and semblance of a kindly and pleasant sleep”.⁹

Euthanasia seems to grasp its heritage from ancient Greece and Rome and later on the concept of euthanasia used in the sense of alleviating the process of death harks back to the medical historian Karl Friedirich Heinrich, who gathered inspiration from Bacon’s philosophical ideas.¹⁰

Butterworth’s Medical Dictionary defines euthanasia as ‘an act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and intractably painful and distressing disease.

HISTORICAL BACKGROUND

The term right to life has been conceptualized to be a moral principle on the ground of belief that a human being is in possession of the right to live and particular should not be killed by another individual.¹¹ In the pages of human history one would get bewildered to get in touch with the fact that there has never been a general acceptance of the right to life which should have been innate to all human beings rather was granted as an entitlement to the creamy level of the social strata that is to those holding social and political power.

Belief in the sanctity of human though has ancient roots in a variety of religious conventions but the foundation of modern human rights dates back the era of renaissance where the concept of humanism was harking forth. The crusades and the European civil wars gave rise to the philosophy of liberalism and the belief in natural rights and ultimately they became the major concern of European intellectual culture during the eighteenth century Age of Enlightenment. Democracy as a worldwide concept underwent severe changes through the nineteenth century which ultimately paved the way of Universal Suffrage in the Twentieth century, and this gained momentum due to the two world wars leading to the fabrication of Universal Declaration of Human Rights.¹²

Since the dawn of human civilization life and death has been regarded as the extreme features of norm related factors. Rudyard Kipling in his famous poem “If”, states some important guidelines, a person should seek, in order to live a life of dignity. Thus the mantra of a dignified life has been a topic of utmost concern only for the present generation for the bygone generations also. In order to lead a dignity one must seek their rights and also a desire for a dignified death. Natural forms of death or death through accidental means have been regarded as something legal since the advent of human advancement. On the contrary suicide or intended killing have been dubbed as illegal in accordance with the judicial framework. The concept of “Euthanasia”, has taken its roots since it sorts to provide a dignified death to those, who are in the living yet dying condition. Euthanasia elicits strong emotions as it is concerned with life and death issues.¹³

Euthanasia seems to entrench within itself deep historical roots. Before Hippocrates, euthanasia was a routine procedure and physicians assumed that they had the authority to kill patients for whom they gave up the recovery, without asking for their permission. Hippocrates, the Greek physician of the Age of Pericles, considers this act of killing as something which would hinder initiation of clandestineness between the patient and the physician. This might act as the backdrop for the formation of The Hippocratic Oath: “*I will give no deadly medicine to anyone if asked* “

⁸ Euthanasia- Wikipedia, (Jan 12, 2025, 5:30 PM), <https://en.m.wikipedia.org>

⁹ Francis Bacon, “The Works of Francis Bacon, Lord Chancellor of England, Volume 1”, (Feb 13, 2025, 4:30 PM), <https://books.google.co.in>

¹⁰ Euthanasia-Wikipedia, (Feb 13, 2025, 4:30), <https://en.m.wikipedia.org>

¹¹ Right to Life, (Jan 12, 2025, 2:30 PM), <https://en.m.wikipedia.org>.

¹² History of Human Rights, (Nov 12, 2018, 2:45 PM), <https://en.m.wikipedia.org> .

¹³ Kusum Rajendra Gandhi, “ Euthanasia: A Brief History and Perspectives in India” , AIIMS, Bhopal.

International Legal Regime

Thus the past millennium has perceived a large set of national and international law marshalling out the general idea into specific worded principles. The list of significant documents at the international level is listed below:

1. In 1776, Thomas Jefferson in the United States Declaration of Independence has declared:
*"All men are invested with certain natural rights and that among these are life, freedom, and the quest for joy".*¹⁴
2. Article 2 of The European Convention on Human Rights formally the Convention for the Protection of Human Rights and Fundamental Freedoms which came into force on September 3, 1953 states that:
*"Everybody's entitlement to life might be ensured by law. Nobody should be denied of his life deliberately spare in the execution of a court taking after his conviction of a wrongdoing for which this punishment is given by law."*¹⁵
3. Similarly, Article 4 of the American Convention on Human Rights, 1969 also declares:
*"Each individual has the privilege to have his life respected. This right might be protected by law and, in general from the moment of conception. No one shall be arbitrarily deprived of his life".*¹⁶
4. Article 3 of The Universal Declaration of Human Rights, 1948 s
*"Everybody has the privilege to life, freedom and security of person."*¹⁷
5. Article 6.1 of International Covenant on Civil and Political Right states:
*"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*¹⁸
6. Right to life has also been guaranteed by the Constitution of India under Article 21 which states that:
7. *"No person shall be deprived of his life or personal liberty except according to the procedure established by law."*¹⁹

National Legal Instrument

RIGHT TO LIFE IN THE INDIAN CONSTITUTION

Article 21 reads:

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

Jagdish Bhagwati, notable for his research in international trade and for his advocacy of free trade,²⁰ has commented that Article 21 "embodies a constitutional value of supreme in a democratic society." V.R. Krishna Iyer, a visionary and a path-breaking judge, who reformed the Indian criminal justice system with a variety of bold changes,²¹ has characterized Article 21 as "the procedural magna carta protective of life and liberty".²² The Article corresponds to the *Magna Carta* of 1215, the Fifth Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article xxxi of the Constitution of Japan, 1946.

¹⁴ Quoted in 'The Declaration of Independence: A Transcription, In Congress, July 4, 1776.

¹⁵ Quoted in "Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14."

¹⁶ Article 4, American Convention of Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969, (Feb 12, 2025, 3:50 PM) <https://www.cidh.oas.org>.

¹⁷ Article 3, Universal Declaration of Human Rights, (Mar 13, 2025, 5:30 PM), ccnmtl.columbia.edu.

¹⁸ Part III, Article 6.1, International Covenant on Civil and Political Rights, (Feb 18, 2025, 2:30 PM), <https://www.ohchr.org>.

¹⁹ Article 21 of the Constitution of India –Right to Life and Personal Liberty, (Mar 18, 2025, 7:30 PM), <https://www.lawoctopus.com>

²⁰ Jagdish Bhagwati – Wikipedia, (Jan 3, 2025, 7:30 PM), <https://en.m.wikipedia.org>

²¹ V.R. Krishna Iyer - Wikipedia, (Jan 3, 2025, 7:55 PM), <https://en.m.wikipedia.org>

²² "Article 21 of the Constitution of India – Right to Life and Personal Liberty"- Riya Jain, UIIS Punjab University, (Jan 4, 2025, 5:45 PM), <https://www.lawoctopus.com>

Article 21 has come to occupy the position of “brooding omnipresence” in the scheme of fundamental rights. This provision has become a “sanctuary for human values” and therefore has been rightly termed as the “fundamental of fundamental rights.”²³ The Article can only be claimed when a person is deprived of his ‘life’ or “personal liberty” by the State as defined in the Article. Under the canopy of Article 21, many other rights have found shelter, and have received nourishment; thereby the right provides a person the bare necessities and requirements which are unavoidable for him.

In the case of *Kharak Singh v. State of Uttar Pradesh*²⁴ the Supreme Court quoted and held that:

“By the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armored leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

Legality of Euthanasia

While giving the answer, that whether “right to life” incorporates within itself the “right to die” the Indian Courts has expressed different opinions. In *M.S. Dubai v. State of Maharashtra* the Bombay High Court held that right to life under Article 21 of the Constitution includes ‘right to die’ on the other hand, *Chenna Jagadeswa v. State of Andhra Pradesh*, the High Court of Andhra Pradesh, said that the ‘right to die’ is not a fundamental right under Article 21 of the Constitution.²⁵

Homicide is the act of one human killing another. Homicides can be divided into many overlapping legal categories including murder, man slaughter, and justifiable homicide, killing in war, euthanasia and capital punishment depending on the circumstances of the death.²⁶ These different types of homicides are often treated differently in the realm of the human societies; some are considered crimes and hence are unlawful on the other hand some are permitted or even order through the legal system of the country, hence lawful in nature.

INDIAN JUDICIAL APPROACH TOWARDS EUTHANASIA

‘Everyone’s right to life shall be protected by law’, it is the duty of the law to estimate, and provide ample security to human dignity. The legal framework of a nation serves as a norm of conduct for the citizens. Thus it has acted as the catalyst in the process of social transformation of people wherein the dilution of caste inequalities, protective measures for the weak and vulnerable sections, providing for the dignified existence of those living under unwholesome condition etc are the illustrious examples in this regard.²⁷

The Right to die was demanded under Article 21 of the Indian Constitution by pleading that Right to Life also includes the Right to die. This question came into consideration for the first time before the High Court of Bombay in *Maruti Sripati Dubal v. State of Maharashtra*.²⁸ The Bombay High Court had argued in the case that rights have their positive and negative aspects. Hence, the court had argued that the right to life under Article 21 of the constitution of India could also be interpreted as the right not to live a forced life.²⁹ The petitioner Maruti Sripati, in the case *Maruti Sripati Dubal v. State of Maharashtra*.

The *Gian Kaur v. State of Punjab*³⁰ overruled *P. Ratnam v. Union of India* in which right to die was recognized to be inclusive in right to life and liberty Article 21 of the constitution, and the constitutional validity of Section 306, 309 that is abetment of suicide and suicide was questioned.³¹ The case briefs upon

²³ P. Shesdari, “Social Justice and Media: Problems and Perspectives- A Critical evaluation”

²⁴ 1963 AIR 1295, 1964 SCR (1) 332

²⁵ Euthanasia in India, (Jan 6, 2025, 4:50 PM), www.legalservicesindia.com

²⁶ Homicide-Wikipedia, (Jan 7, 2025, 4:45 PM), <https://en.m.wikipedia.org>

²⁷ Krishan Tiwari, “Importance of Law in Society”, (May 7, 2025, 7:30 AM), Legaldesire.com

²⁸ Manuputra Articles, (May 7, 2025, 8:30 PM), www.manuputrafast.com

²⁹ ‘When attempt to end life is the start of more problems’, The Hindu, (May 7, 2025, 8:45 PM), thehindu.com

³⁰ 1996 AIR 946, 1996 SCC (2) 648

³¹ Legal Brief in Support of Euthanasia, (Mar 5, 2019, 8:45 PM), <https://www.lawteacher.net>

when the appellant Gian Kaur and her husband were convicted by the trial court for abetment of suicide of their daughter-in-law Kulwant Kaur. The matter was raised before a divisional bench of the court, which considering the importance of the issue, referred it to a Constitutional Bench of five judges. Each of the convicted was sentenced to six years R.I and fine of Rs. 2000/- or in default, further R.I for nine months, for abetting the commission of suicide by Kulwant Kaur. On further appeal to the High Court, the conviction of both has been maintained though only the sentence accorded to Gian Kaur alone has been reduced to R.I for three and these appeals were documented against their conviction and the sentence accorded under Section 306, IPC.

The Supreme Court on March 9 ruled that individuals had a right to die with dignity, allowing passive euthanasia with guidelines. The need to change laws was triggered by the famous Aruna Shanbaug case. The court in 2011 had recognized passive euthanasia in Aruna Shanbaug case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision.³²

Aruna Shanbaug was working as a junior nurse in the year 1973, at King Edward Memorial Hospital, Parel, in Mumbai. On the night of 27th November, 1973, Shanbaug was sexually assaulted by Sohanlal Bhartha Walmiki, a sweeper on contract at the hospital when Aruna was changing clothes to her usual sari in the basement of the hospital. The man choked her with the help of a dog chain and attempted anal sex with her, as she was on her menstruating period. The choking led to asphyxiation which cut off the supply of oxygen to her brain, resulting in brain stem contusion injury, cervical cord injury and cortical blindness. She was discovered with blood splattered around her at 7:45 am the next morning by a cleaner.³³ The Neurologist in the Hospital diagnosed her with planters' extensor, which relayed the information that her cortex has been harmed; moreover she also encountered mind stem wound damage with charm to the cervical line.

The case was in the form a writ petition and was invoked by activist-journalist Pinki Virani who showed a keen interest on Aruna's case. She plead to the Supreme court of India so that Aruna who was in comatose state can have a peaceful and calm death.

The medical team which was designated by the Supreme Court stated that though she is in a comatose state she is not brain dead. The staff of the KEM hospital took sufficient care of her. Moreover they did not find any suggestion from her body language of Aruna as to the willingness to terminate her.³⁴ Thus the doctors were of the opinion that euthanasia in that instant particular matter was not necessary. Thus the major issues regarding this matter were

1. If the person concerned is under the comprehension of a permanent vegetative state (PVS), should the activity of withholding or withdrawal of life sustaining therapies be permissible or be dubbed as 'not unlawful'?
2. In case if the patient has earlier desired not to be under life-sustaining treatments where the situation reflects the futility of the treatments due to a state of PVS, would his/her desires be respected?
3. In case when the patient has not earlier expressed his/her desire but later on his/her family or next kin makes such a request to withdraw or withhold the futile life sustaining treatments, would their wishes be taken into consideration

³² The Aruna Shanbaug case which changed laws in India, (Mar 6, 2025, 8:56 PM), <https://m.economictimes.com>

³³ Aruna Shanbaug case- (Mar 5, 2025, 8:45 PM), <https://en.m.wikipedia.org>

³⁴ *Aruna Ramachandra Shanbaug v. Union of India: Case Analysis*, By Monica Kasturi, Symbiosis Law School, (Mar 5, 2025, 7:45 PM), <https://www.lawoctopus.com>

The court contented that the mentioned questions if answered would give rise to various issues revolving around ethics, legal framework and society. So they resolved to establish their perspective based on medical facts and medical ethics, the two cardinal principles of medical ethics being Patient Autonomy and Patient Beneficence. Patient Autonomy refers to the right of the patients to make decisions about their medical care without their medical care provider trying to influence the decision. Patient Autonomy does allow for health care providers to educate the patient but not to take health provider to take decision for patient.

Suggestions and Conclusion regarding the concept of Euthanasia

Quality is more important than Sanctity of Life

Animals are instinctive. A coyote caught in a trap would rather chew its limb and live in pain than accept death. On the contrary, humans are not only instinctive but also rational. They are capable of sorting out their priorities which are generally based on the preferences when it comes to their own lives. The quality of life principle states that a person, who is completely disabled does not qualify to the essence of a meaningful life. On the other hand, the sanctity of life principle states that even though a person does not qualify the status of achieving a dignified life, he wishes the right of having an equal value to his life.

Dignity is important for one's wellbeing

Dignity is the quality of being honorable, noble, and excellent or worthy and if it gets associated with a human, dignity, in its most appealing sense is termed as human dignity. It is the conceptual basis for the formulation and execution of human rights and is neither granted by the society nor can it be legitimately granted by the society. The deep philosophical roots of the term human dignity were articulated by Emmanuel Kant. The legal perspective of the concept of human dignity traces back its origin in the Second World War.

Euthanasia not something out of the natural course

Relieving a person of his tedious life journey wrecked with sickness or is no longer cognizant deems to be the most appropriate decision, as nature's motivations are not served when a plastic or unnatural heart pulsating within a human body composed of flesh and blood, despite being in a dormant stage. Nature tends to infuse life within a person, but when that life becomes a slave to life-support systems, and then it seems to deviate from the essence of nature and fall into the pit into the pit of something unnatural.

Moreover legalizing euthanasia will also prevent the current duplicitous and unregulated practice of the medical profession and other modes of unnatural death such as secretive suicides, which thereby creates various loopholes in the system.

- **Euthanasia might save scarce medical resources**

Under the pretext of the present day condition, where the population is blooming at a faster rate, medicinal request also seemed to acquire a boundless circumference. Thus the death of an individual who is already in a dormant or near death like situation will thus spare the use of rare medical assets. It is exceptionally odd to demand life of those individuals who are already on the verge of death and thus need to relieve him of the pain must keep on occupying informal lodging costly medications, when down the passageway in a similar doctor's facility may be a little kid who needs the specialist's care and access to similar medications, in order to carry on a normal life, is getting deprived of the similar.

Life is accompanied by death so we as human beings should bear the truth in mind and need to accept the whole spectrum of life from birth to death. While accepting the inevitability of death we must also encourage ourselves to live a good and well composed life as long as we can avert the destiny leading towards death.

An individual as soon as he or she reaches the footsteps of a hospital, seem to heighten up the hopes to live life to its fullest. Even though a well versed human being who is aware of the limitations of the medical science, is not likely to hasten his death, despite knowing that the medicine might fail to cure him. As, finality in life encroaches, death seems to occur like a microcosm in the macrocosm of life.

The crisis for the dying patient seems to arrive when he stops fighting for life. The scene refers to dying hour when the dying person accept the end of his struggle and his ineluctable death, thus is relaxed and ready to depart gradually distancing himself from life, turning away from close friends and relatives, literally moving towards the end of the wall of life, as he prepares himself to die.

The sense of abandonment which dying patients fear is not only emotional but also adopted in the literal sense of the term. Doctors, nurses and medical practitioners who are accustomed to the sight of death have developed hardened emotions towards it, and thus try to distance themselves from the dying patients, and subsequently have referred the care of unconscious patients as “watering the vegetables”. The moment which requires the removal of life-sustaining equipment is camouflaged by using the term “pulling the plug”. In order to prevent themselves to get driven by the overwhelming impulse of staying in the vicinity of dying patients many hospitals have adopted the policy of moving patients who are almost on the verge of death to a secluded room away from their sight.