**EUTHANASIA: A HUMAN RIGHT’S PERSPECTIVE**

**Introduction:**

It is safe to say that Article 21 is one of the most celebrated fundamental rights we have in our Indian Constitution. The Article, from its bare perusal, makes it clear that the right is guaranteed to all ‘persons’, which means that is no demarcation of citizen or non-citizen is made for the purposes of *Protection of Life and Personal Liberty*. The ambit of this Article is ever-expanding. Remarkable steps have been taken time and again by the judiciary to understand the intricacies of this right in order to broaden its horizons. In the case of ***Francis Coralie Mullin v. The Administrator, Union Territory of Delhi***[[1]](#footnote-0), Hon’ble P.N. Bhagwati, J. stated that to understand right to life in its real essence, it must be understood that this right is not talking about mere ‘animal existence’. He further observed that the meaning of the term ‘life’ under Article 21 has to be construed as dignified life. This judgement was seen as stepping stone for better and clearer understanding as it gave extensive dimensions to Article 21.

**Trajectory of Judicial Precedents:**

Euthanasia, or mercy killing, can be well described as the choice of the individual to choose a painless death. While Article 19 grants *Protection of certain rights regarding speech and expression*, in the case of ***Bijor Emmanuel v. State of Kerala***[[2]](#footnote-1), it was held that it also includes right to remain silent. A debate took rounds where it was contended that the spirit of Right to Life also includes Right to Die. In the case of ***P. Rathinam v. Union of India***[[3]](#footnote-2)***,*** it was emphasised that there is a need to humanise the law. It was held that Section 309 of the Indian Penal Code, 1860[[4]](#footnote-3) is unconstitutional on the ground of being unjust and inhuman. It was further held that Article 21 includes right to die.

However, in the year 1996, in the case of ***Gian Kaur v. State of Punjab[[5]](#footnote-4)***, the five judges Constitutional Bench held the view that death and life and inherently inconsistent, and hence, right to life cannot include right to die. The court further observed that if allowed, it would lead to a suicidal alarm in the society. It is interesting to note that Hon’ble R Lodha, J., in the case of ***Naresh Marotrao Sakhre v. Union of India***[[6]](#footnote-5) stated, *“Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected”*[[7]](#footnote-6).

With these significant judgements, the stance was clear- any form of unnatural termination of life was illegal. However, in 2011 history was created with the landmark judgement of ***Aruna Ramchandra Shanbaug v. Union of India***[[8]](#footnote-7). This case witnesses the plight of a woman who was assaulted and pushed into a Permanent Vegetative State. In a couple of years, she even lost support from her family and was only supported by the staff of the hospital where she was a nurse. After spending almost 42 years of her life in that state, the Supreme Court made a distinction between Active Euthanasia and Passive Euthanasia. The court held that voluntary passive euthanasia will be allowed where the person is on a life support system and is a major. However, involuntary passive euthanasia will not be allowed unless guidelines laid down in this case are fulfilled. Hon’ble Markandey Katju, J. held that this decision can be taken only by the parents, spouse, any other close relative/next friend of the victim or by the doctors who are attending the victim. Such decision has to be mandatorily presented before the Chief Justice of the High Court of that state. The Chief Justice will then constitute a Bench of two sitting judges of the High Court and three doctors who are expert in that particular field. Hence, on 9th March, 2011 the decision by the Apex Court promoted the need to amend the prevailing laws on euthanasia.

Another landmark case that is pertinent to note on the subject is ***Common Cause v. Union of India***[[9]](#footnote-8). The 538 page unanimous judgement was delivered by the five judges bench of the Apex Court. Hon’ble Dipak Misra, J. held, *“Life sans dignity is an unacceptable defeat and life that meets death with dignity is a value to be aspired for and a moment for celebration”*[[10]](#footnote-9). The bench held that it is the fundamental right of every person to die with dignity and is a part of Article 21. The judgement was also critical in its analysis and stated that when the state cannot guarantee the right to an individual in totality, then it can also not deny the right to die a natural death with dignity. The court also was observant of the fact that the life support system being engaged unnecessarily may deny some other person his right to life. The concept of ‘Living Will’ was also highlighted and given importance to in this judgement.

The right to die with dignity in the above-mentioned case was upheld in the view of the court’s ruling in the case of ***Justice K.S. Puttaswamy v. Union of India***[[11]](#footnote-10).

Upon the debate of euthanasia, one very important point which cannot be missed is the provision under the Indian Penal Code, 1860[[12]](#footnote-11) which penalises an attempt to commit suicide. What is interesting to note here is that the presumption which lies in this provision is linked to Section 115 of the Mental Health Care Act, 2017, according to which whenever a person attempts to commit suicide, it shall be presumed that he was under severe stress which resulted in such a drastic step. This presumption is a rebuttable presumption. In nutshell, this means that Section 309 of the Code is overridden by Section 115(1) of the Mental Health Care Act, 2017.

**Legislative Wisdom:**

1. **The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006**

In the 196th Law Commission report the chairman, M. Jagannadha Rao, states *"This 196th Report of the Law Commission on ‘Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)’ is one of the most novel, interesting and important subjects ever undertaken by the Law Commission of India for a comprehensive study".* [[13]](#footnote-12)The report also provides a difference between the term Euthanasia and 'Assisted Suicide'. While Euthanasia is defined as any person, including a doctor, intentionally killing a terminally ill person by administering drugs, Assisted Suicide is defined as a patient who receives the assistance of a doctor and takes a drug with the intent of committing suicide.

The annexure of this report contains The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006 that defines various terms like best interests, competent and incompetent patient, terminal illness, and informed decision. Section 3 of the bill talks about the refusal of medical treatment by the patient and its binding nature on the medical practitioner. It lays down the right of a competent patient to refuse medical treatment and let nature take its course. Such an informed decision made by the patient is binding upon the medical practitioner once he's satisfied that the patient making such a decision is a competent patient under this act. Section 5 provides the power to the medical practitioner to withdraw the medical treatment without the consent of the patient in case he's of the opinion that withholding or withdrawal of such treatment is in the best interest of the patient. However, the medical practitioner does not have absolute power to take such a decision and is subjected to consultation with the medical expert panel. The medical practitioner has to select three medical practitioners from the panel of medical experts and take their written opinions before withdrawing or withholding any medical treatment administered to the patient in question. The guidelines for the formation of such a panel of medical experts is laid down in section 7 and it states that the Director-General of Health Services, Central Government and the Director of Medical Services (or officer holding equivalent post) in each State shall, prepare a panel of medical experts for such purposes. The panels shall include medical experts in various branches of medicine, surgery, and critical care medicine and all such experts shall not have experience of fewer than 20 years. Section 14 requires the Medical Council of India to issue guidelines from time to time for the guidance of medical practitioners withholding or withdrawing medical treatment administered to competent or incompetent patients suffering from a terminal illness.

The bill also seeks to protect the patients and medical practitioners from persecution under several sections of the Indian Penal Code, 1860[[14]](#footnote-13). Section 10 provides protection to competent patients from criminal action in some cases. Section 11 protects the medical practitioner or any other person acting on behalf of the medical practitioner if a withdrawal of treatment is done after following the due procedure and in the best interest of the competent or incompetent patient. The protection provided against criminal action is indicative of the acceptance of Euthanasia in extraordinary circumstances and the free will of the competent patient.

1. **The Euthanasia (Regulation) Bill, 2019**

Shri Bhartruhari Mahtab, a member of Parliament, introduced the Euthanasia (Regulation) Bill, 2019 to regulate the end of life of persons who are in a permanent vegetative condition or who are terminally ill and facing unbearable suffering, and for issues connected with or incidental thereto. In the statement of objects and purpose, Bhartruhari Mahtab say, *“There are divergent views world over whether a person has a right to end his life or not. The demands for such right are more vociferous in the case of individuals in permanent vegetative state and those with terminal illness and facing unbearable sufferings due to such illness”.*

Passive euthanasia is defined in Section 2(d) of the legislation as the cessation of life support from a person who has been in a permanent vegetative state for at least six months. The Evaluation and Review Board is established under Section 3 of the statute, and it comprises of the Director General of Health Services as ex-officio Chairperson, two eminent physicians, and a reputable jurist. Central Government shall also appoint an eminent person having experience in ethics or social work. The duty of the board is to examine applications of active euthanasia and passive euthanasia made under sections 7 and 8, respectively and give its opinion thereon. If the Board or Committee, after examining the person for whom an application has been made, determines that the person's life requires to be ended by active euthanasia or passive euthanasia, as the case may be, it shall issue a certificate to that effect, which shall include the reasons for such determination. Under Section 10 of the Bill, under this Act, no one may be given active or passive euthanasia unless he applies to a Court of Session and the Court grants the request. Upon receiving an application for euthanasia under section 10, the Court shall appoint a team of lawyers to examine and enquire as to whether the patient, really and without any outside influence of any type, wishes to end his life through euthanasia, and to make a report on the matter. If the Court is satisfied with the report, it may issue euthanasia approval in the prescribed form, which must be signed and sealed by the Court. Section 6 of the act provides protection to the physician for performing an act of termination of life through active euthanasia or passive euthanasia in accordance with the provisions of this Act.

**Present Scenario:**

The debate over the complex issue of euthanasia has risen to the fore in the aftermath of a recent event where a group of medical students of a medical school in Uttar Pradesh wrote to the President of India requesting his approval for euthanasia[[15]](#footnote-14) as they were troubled by the disruption in their studies. It is not always a terminal illness or a patient's vegetative state that prompts a petition for euthanasia. Many societal factors also play a role, as seen in a plea filed by Aneera Kabeer, a transgender woman, in Kerela High Court. Having been rejected by 14 schools despite having the necessary qualifications, she complained in her petition that she's unable to work and live as a trans woman in a country like India. In another case, driven by poverty, a bedridden youth in Odisha requested euthanasia[[16]](#footnote-15). Examples are plenty but there is an urgent need for discussion in civil society about the practicality and feasibility of euthanasia. Our policymakers must also address the societal factors that drive people to the brink of euthanasia. Permission for euthanasia cannot be granted in every case, but the government and relevant authorities must understand the factors that cause people to give up on their lives and work to address those issues. The government should prioritize the well-being of its citizens, and it must also provide relief to those who wish to take such drastic measures. However, there are still some cases where people are beyond recovery due to a terminal illness, and policymakers must be open-minded while dealing with such cases, placing substantial emphasis on the individual going through the ordeal's independent will.

A welcome sign is that sociologists are starting to examine the conditions surrounding the issue of euthanasia and the broader societal implications of potential changes in the law, professional practices, and normative values. A sociological approach to euthanasia seeks to situate it in a larger social, cultural, economic, and political context. Durkheim, for example, noted that the frequency of suicide (a type of end-of-life decision) in modern industrial societies was related to social structures and the extent to which societies valued individual liberty as against social solidarity. Investment by organizations in the development of machines that assist a willing individual in ending one's life demonstrates modern society's acceptance of the phenomenon of euthanasia. For example, Exit International's 'Sacro suicide capsule' passed legal review in Switzerland in December 2021. The advancement of technology is an indicator of modern society's acceptance of an individual's right to end his life in extraordinary circumstances. If technology is easily accessible to the public without due process, it will pose a grave threat to civil society. Policymakers must urgently discuss the issue by involving all stakeholders and accommodating diverse viewpoints on such a complex issue. No decision should be arrived at hastily, but delaying a civil debate violates an individual's fundamental right to make an independent choice.

1. 1981 AIR 746 [↑](#footnote-ref-0)
2. 1986 3 SC 124 [↑](#footnote-ref-1)
3. 1994 AIR 1884 [↑](#footnote-ref-2)
4. Act No. 45 of 1860 [↑](#footnote-ref-3)
5. 1996 AIR 946 [↑](#footnote-ref-4)
6. 1996(1) BomCR 92 [↑](#footnote-ref-5)
7. *Ibid* [↑](#footnote-ref-6)
8. (2011) 4 SCC 454 [↑](#footnote-ref-7)
9. WP (Civil) No. 215 of 2005 [↑](#footnote-ref-8)
10. *Ibid* [↑](#footnote-ref-9)
11. (2017) 10 SCC 1 [↑](#footnote-ref-10)
12. Supra 4 [↑](#footnote-ref-11)
13. 196th Law Commission Report, *MEDICAL TREATMENT TO TERMINALLY ILL PATIENTS (PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS)* [↑](#footnote-ref-12)
14. Supra 4 [↑](#footnote-ref-13)
15. ‘Students of medical college in Uttar Pradesh seek President's nod for euthanasia’, *Hindustan Times* (2 February 2022) [↑](#footnote-ref-14)
16. ‘Driven by poverty, bedridden youth appeals for euthanasia in Kalahandi’, *Times of India* (28 November 2021) [↑](#footnote-ref-15)