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A Comparative Study of Euthanasia in India and Canada: A Critique

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ABSTRACT

Euthanasia has been one of the most debated topics in the field of law as it lies between the ethics of medical practitioners, freedom of choice and self determination of the people. The Supreme Court has always tried to interpret the provisions of the Constitution in widest possible manner to ensure utmost welfare of the citizens of the country. Parallelly, the Apex Court has included Right to die as an important facet of Right to life under the Constitution of India. The Supreme Court through its various judgements closely analysed the applicability of Euthanasia and finally legalized passive euthanasia in Aruna Shaunbaug case thereby providing big relief to terminally ill patients. The paper deals with application of Euthanasia and its legal perspective in India and Canada. The researchers have tried to compare the procedure of administration of Euthanasia in both the countries and critically analyse its practical application. The focal point of the research paper is to examine whether is it practically possible to administer Euthanasia while being sure that no one will take undue advantage of such right.

Keywords: *Euthanasia, Mercy-killing, Supreme Court of India, Constitution of India.*

I. INTRODUCTION

Each person has right to live his life fully and appreciate the products of life. Be that as it may, some of the time an individual is willing to end his life by utilization of unnatural means. To end one's life in an unnatural way is not a normal case. At the point when a man decides to end his life by his own willingness and actions we call it "suicide" however to end life of a man on the demand of the person itself with the help of others, is known as “euthanasia” or “mercy killing”. Euthanasia is a very gentle and painless death which takes place to free the patient from all their painful and unending sufferings. It can be termed as death with dignity.

It is basically to weigh between empathy and humankind. It stands on the notion that a man should have the opportunity to live his life on his terms. Euthanasia is for the most part

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connected with individuals with terminal disease or who have progressed towards becoming crippled and don't have any desire to experience whatever is left of their remaining life. An extremely impaired or at death's door individual ought to have the privilege to choose either to live or to die. The idea behind this is that the person gets death with dignity and to put an end to ongoing misery and unbearable trauma. It is to be in the best interest of the patient to be relived of consistent pain and suffering. Euthanasia is an arguable issue which is based on ethics, morality and convictions of people.

Euthanasia has been a much discussed subject all throughout the world. The discussion has turned out to be progressively huge in light of the on-going improvements in various countries where Euthanasia has been permitted e.g. India, Canada, and England and so on. Recently our Supreme Court delivered a landmark judgement thereby legalising passive euthanasia wherein with the consent of the individual and family members, life support system can be withdrawn[3]. The honourable court also added the concept of living will so that no one can take undue advantage from the same[4].

Meaning of Euthanasia

Euthanasia has different meanings depending on different situations and its usages. In layman's term it can be defined as a painless or happy death or alleviation of physical suffering from an incurable pain or a painful disease. Euthanasia is otherwise termed as 'Mercy Killing'. According to Cambridge Dictionary it has been defined as " the act of killing someone who is terminally ill and do not want to suffer anymore.[5] The most important factor which encompasses euthanasia is suffering from an incurable pain or a person been kept on life support for a long time wherein suffering is an integral element of Euthanasia. Speaking particularly about Euthanasia it means releasing a person from all his suffering for his/her betterment, it is a situation where a person kills another person out of no personal gain but for reliving the patient from his unending and incurable pain.

Draper argued that any definition of euthanasia must incorporate four elements: an agent and a subject; an intention; a causal proximity, such that the actions of the agent lead to the outcome; and an outcome. Based on this, she offered a definition incorporating those elements, stating that euthanasia "must be defined as death that results from the intention of one person to kill another person, using the most gentle and painless means possible, that is motivated

[3]Aruna Ramchandra Shanbaug v. Union of India, Writ Petition (Criminal) No. 115 Of 2009
[4] Common Cause vs Union of India, 2014 SCC 5 338
[5] Cambridge Dictionary

solely by the best interests of the person who dies."[6]

Euthanasia is limited to killing patients who have been in a permanent vegetative state for long and it can be done so only by doctors with the permission of the patient or by their kin. Euthanasia comprises of another element which is of utmost importance is ' Good Intention'- there must be intention of death and the intention must be a merciful death with no personal gain but putting an end to intolerable torture and misery.

For long, euthanasia has remained a controversial subject in the healthcare arena as many term it as 'suicide' if done so by the patient itself or 'murder' if done so by others. The debate over it has been going on for many years all over the world wherein some countries like UK it is still illegal and in countries like Netherlands, Canada, Colombia, and in three federal states of USA it is legal. In 2018, the Supreme Court of India also made Passive Euthanasia legal by passing some guidelines under it[7]. Thus, to sum up Euthanasia or mercy killing is to provide a less painful death to the person who has been suffering from a prolonged period and there is not even a slightest chance of him to get cured in anyway possible.

II. THE HISTORY OF EUTHANASIA MOVEMENT

The Euthanasia movement has deep roots and a dark history for over more than 700 years. "The Father of medicine", the Greek physician Hippocrates also opposed the concept of Euthanasia. He regarded this act of killing as an impediment between the physicians and the patients for this reason he took an oath which is famously known as " Hippocractic oath" – 'I will give no deadly medicine to any one if asked, nor suggest any such counsel'.[8] Before Hippocrates the physicians considered it correct and assumed that to ease the pain of the patients they could kill them without asking their permission upon whom they have given up hope for recovery and was for the betterment of the patient.

In Ancient Greece and Rome on the island of Kea, Hemlock- a highly poisonous plant was used as a means to speed up the process of death of a person. This process of quickening the death of a person was supported by great philosophers Socrates & Pluto but Hippocrates opposed the same.

In the early 19th Century in USA the concept of Euthanasia was argued by many with a view that when someone is suffering from incurable disease or terminal diseases then such patients

[6]Jadon Bhanwar Aditya, Euthanasia viz-a-viz right to life (Unpublished dissertation-Indian Law Institute, New Delhi) (last visited May 11,2020).
[7] Aruna Ramchandra Shanbaug v. Union of India, Writ Petition (Criminal) No. 115 Of 2009
[8] *History of Euthanasia*, http://www.euthanasia.com/historyeuthanasia.html (Last visited May 11,2020)

should have the right to end their life through suicide with the assistance of a doctor. Henry Hunt on the instruction of Anna Sophina Hall took the first step in introducing legislation in the General Assembly of Ohio. She was a major figure in the euthanasia movement as when she saw her mother suffering from terminal illness and dying a painful death then, she decided to end the suffering of other terminally ill patients and so she got engaged into the campaign and conducted annual meeting of the American Humane Association in 1905 which was described by as the first significant public debate on this topic in the 20th century.[9]

During the reign of Hitler in Nazi Germany in 1939, he signed a decree to allow mercy killing and to start Nazi Euthanasia program Code named "Aktion T4, which was meant to eliminate incurable or mentally disabled persons.[10] He administered physicians to focus and kill new-borns or children who are less than three years are suffering from mental retardation, or born blind or physical deformity. This program was not only limited to infants but also to older disabled children and adults. Through this program Genocide was disguised as Euthanasia where thousands of people were killed on the grounds of disabilities and religious beliefs.

Euthanasia does not support killing of people on religious grounds or because of disabilities but it is a system by which a person gets painless death from its long term illness. Many religions support it and many oppose it till today.

III. RELIGIOUS BELIEF IN INDIA ON EUTHANASIA

Euthanasia is a Greek word which is a combination of two words ‘eu’ – good or well and ‘thanatos’ – death.[11]

Euthanasia actually implies putting a man to effortless demise particularly if there is an occurrence of serious affliction or when life winds up purposeless because of mental or physical handicap.

India is nowhere behind in accepting voluntary death or mercy killing like other ancient civilisations. The concept of nirvana and samadhi are a part of Indian culture which dates back during the period of Mahabharata and Ramayana when Pandavas gave up their kingdom and embarked on the path to meet death. The words ‘Nirvana’ and ‘Samadhi’ do not hold place in English Dictionary but that doesn’t mean they don’t exist in India. For instance, the Manusmriti

[9] Robert Jay Lifton, *GERMAN DOCTORS AND THE FINAL SOLUTION*, New York Times Magzine (September 21, 1986), https://www.nytimes.com/1986/09/21/magazine/german-doctors-and-the-final-solution.html (Last visited May 12, 2020)

[10] Kusum R Gandhi, *Euthanasia: A Brief History and Perspectives in India*, 105 ResearchGate https://www.researchgate.net/publication/320829903_Euthanasia_A_Brief_History_and_Perspectives_in_India, (Last visited May15, 2020)

[11] Ibid

says: "When the head of the house is old enough and has seen all the happiness in life and is contended by his achievement then he should leave everything to find eternal peace and should consume only air and water until his body finally gives up."[12]

In modern times, the most well-known example is of freedom fighter and spiritual teacher Acharya Vinoba Bhave who, when he fell ill in 1982, decided to end his life and refused to accept any food or medicine during his last days. He starved himself and died on November 15, 1982.[13]

In Jainism Voluntary Death or also known as "Santhara" is practiced by Jains where a person voluntarily gives up on food and drink so that he is starved till death. This form of practice is highly applaudable among the Jains, which also means that after death they would get a place in heaven.

IV. CLASSIFICATION OF EUTHANASIA

Euthanasia can be divided on the basis of act being done:

i. **Active Euthanasia** is a situation where the doctor directly ends someone's life by giving by giving a lethal dose of sedatives to such persons who are suffering from terminal cancer or other terminal illness and is in terrible agony.

ii. **Passive euthanasia** is sometimes described as withholding or limiting life-sustaining treatments so that a person passes more quickly. A doctor may also prescribe increasingly high doses of pain-killing medication. Overtime, the doses may become toxic.[14]

Euthanasia divided on the basis of Consent which are:

i. **Voluntary Euthanasia** is where a person himself makes the decision to end his life with his full conscience to end his life which is full of unending and incurable suffering. It includes cases where the patient voluntarily refuses medical treatment or refuses to eat or drink even refuses to be kept on life support.

ii. **Non-Voluntary Euthanasia** refers to ending life of a person when a person is not mentally competent to make an informed request to die, such as a patient in coma. In Non-Voluntary euthanasia the patient has left no such living will or given any advance directives, as he may not have had an opportunity to do so, or may not have anticipated any such accident

[12] Rema Nagarajan, *Indian culture had place for voluntary death* (Jul 17, 2014) Times of India https://timesofindia.indiatimes.com/india/Indian-culture-had-place-for-voluntary-death/articleshow/38504764.cms (Last visited May 15, 2020)
[13] Ibid
[14] Kimberly Holland, *Euthanasia: Understanding the Facts*, Healthline, https://www.healthline.com/health/what-is-euthanasia#types, (Last visited May 15, 2020)

or eventuality. In cases of non-voluntary Euthanasia, it is often the family members, who make the decision.

EUTHANASIA VS SUICIDE:

The ongoing debate over the issue whether every person who possess 'right to live' also possess the 'right to die' too. There are numerous and contradictory opinions over the same. Some argue by supporting euthanasia as it allow people to die with dignity and it relieves them from their unending illness while some argue that when God has given us life he is the one to decide when to take life and we as human beings have no right to decide about our death.

Arguments are also when we are given life to live then we should live it in every possible way and face any form of difficulties whatever comes in our way as it is part of life. It is also opined that by allowing euthanasia we would indirectly be allowing suicide therefore certain strict guidelines should be made before allowing Euthanasia which should be made very restrictive in nature.

There is a very thin line between Euthanasia and Suicide. There is no particular definition to explain Euthanasia which is a derivation of Greek Word which means good death. Euthanasia is an act which is done with the permission of the patient but executed through doctors. It is done so with good faith for the welfare of the person suffering from terminal illness. Whereas, Suicide is more of a negative term which has been defined by Merriam Webster Dictionary as – "the act or an instance of taking one's own life voluntarily and intentionally"[15]. Suicide is attempted mainly by people who are depressed from their failures in life such as failure in career or love life etc. These persons become so depressed that they think suicide is the best way to end their problems. In one way people tend to run away from their failures which they are afraid to face. Both Euthanasia and Suicide needs 'Intention' to do but Mercy Killing is done to alleviate a person suffering from terminal illness whereas suicide is a form of death which can be avoided if that person is motivated in life.

The Bombay High Court in ***Maruti Shripati Dubal***[16] has endeavoured to make a distinction between suicide and mercy killing. As indicated by the court, suicide in nature is an act of self-executing or ending one's own life without help from others. Whereas, euthanasia implies the intervention of others human factors to end the life. Euthanasia thus can't be considered different from suicide. Mercy killing is only a form murder, whatever be the condition in which it is executed.

[15] Meriam Webster Dictionary
[16] Maruti Shripati Dubal v. State of Maharashtra, Criminal Appeal No. 130 of 1987

The Supreme Court of India in ***Gian Kaur v. State of Punjab***[17] clearly held that mercy killing is not legitimate in our nation. The court, in this case, referred to the decision given by the House of Lords in ***Airedale***[18] case, where it acknowledged that withdrawal of life supporting frameworks based on complete medical opinion, would be legal in light of the fact that such withdrawal would just permit the patient for whom it is impossible to die a normal death, where there is not anymore any reason to delay death.

V. LEGAL PERSPECTIVE ON EUTHANASIA IN INDIA

Indian Constitution has been inspired by various countries all over the Globe. Our Constitution is considered to be the *Supreme lex* of the land. It is an umbrella which covers underneath various rights, duties and laws. Every nation comprises of a society where its citizens tends to follow various social and religious principles. The people are governed through these principles. Among such different principles one such principal is universal in nature which governs every person on earth and i.e., The Principal of Sanctity of human life. Euthanasia has been a debated subject in legal arena for a long time.

This article in the Indian Constitution guarantees "Right to life"[19]. It is the heartbeat of our Constitution and occupies an integral place as a fundamental right. The main ideology behind bringing this article was to prevent encroachment of personal liberty of the individuals and not to deprive them of their basic right to life under certain exceptions. This article has a very broader sense and thus has invited a lot of arguments and opinions on it. With the passage of time the Supreme Court has time and again interpreted this article and made certain changes to it as needed by time and has expanded its interpretation post Maneka Gandhi era. It has been argued by some that right to life also includes the right to die. Some argue that Right to life means to live a dignified life and thus does not include death. It is even argued that this article is meant to protect life and the concept of euthanasia is contrary to it.

In ***Gian Kaur v. State of Punjab***[20] court overruled the ***P. Rathinam's*** case and held that the "right to life" is protected by the Constitution and does not include the "right to die". In this case the Supreme court did not look into the issue of Euthanasia and distinguished between right to die (unnaturally) and right to die with dignity (naturally). The court even upheld the constitutional validity of S. 306 & 309 of IPC.

[17] Dhruv Desai, *Suicide and Euthanasia*, Legal Service India http://www.legalserviceindia.com/article/l265-Suicide-&-Euthanasia.html (last visited May16,2020)
[18] Airdale NHS Trust v. Bland, 1993(1) All ER 821 (HL)
[19] Article 21 of the Indian Constitution
[20] Gian Kaur v. State of Punjab 1996 (2) SCC 648

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In ***P. Rathinam's*** case the Supreme Court held that Attempt to Commit Suicide[21] as unconstitutional as it violated Right to life[22] because it includes right to die. The civilised society needs to deal with such a delicate issue not by providing punishment to the person but providing them mental support and encouragement and bringing out ways to deviate their mind.

Judicial Trends in India

In India the contention whether the 'right to live' includes within its ambit the 'right to die' came for consideration for the first time in the year 1987. It was in the case of ***State of Maharashtra v. Maruti Shripati Dubal*** , wherein the Bombay High Court held that, Everyone should have the freedom to dispose of his life as and when he desires.[23]

There had been conflicting decisions of various courts all over India where the Andhra Pradesh High Court in ***Chhena Jagadesswer v State of Andhra Pradesh[24]*** held that an attempt to commit suicide[25] is legal and constitutionally valid.

But then, in ***P. Rathinam v Union of India***[26] the Supreme Court of India for the first time formulated fifteen questions and raised the issue "whether an Indian citizen residing in India has a right to die?" At the end of judgment, it was held that "Attempt to commit suicide" is outdated, cruel and an irrational provision[27]. Therefore it is violative of Article 21 of the Constitution of India and it is void and unconstitutional.

In ***Gian Kaur vs State of Punjab[28]*** which is a landmark judgement in the Euthanasian history as the decision which was made in ***P. Rathinam's*** case was overruled in this case. It was held by the Apex Court that 'Right to life' does not include the 'Right to die' and also explained that Article 21 does not allow to cut short the natural span of life of a person. It included providing a dignified life till death which included a dignified form of death.

In ***Naresh Marotrao Sakhre v. Union of India***,[29] it was held that, Euthanasia and suicide are different. Mercy killing thus is not suicide and an attempt for mercy killing is not covered by

[21] Section 309 of Indian Penal Code, 1860
[22] Article 21 of the Indian Constitution
[23] Supra note 15
[24] Chhena Jagadesswer v State of Andhra Pradesh, 1988 Crl. L.J. 549.
[25] Supra note 19
[26] P. Rathinam v Union of India, 1994 SCC (3) 394
[27] Dr. Sonali Abhang, *A Socio-Legal Impact of 'Euthanasia' In India-Suggested Reform*, 5, International Organisation of Scientific Research http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue9/Version-5/A2209050111.pdf (Last visited May 16, 2020)

[28] Supra note 18
[29] Dr. Shaikh Sahanwaz Islam, *Indian Judicial Approach Regarding Right to Die*, Legal Service India http://www.legalservicesindia.com/article/1846/Indian-Judicial-Approach-Regarding-Right-to-Die.html (Last visited May 20,2020)

the provisions of S.309 IPC. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is committed.

In ***Aruna Ramchandra Shanbaug vs Union Of India & Ors***[30]case being an epic case where a revolution was brought in the medical world by allowing Passive Euthanasia with some restrictive guidelines. This landmark case made passive euthanasia legal in India. Our judiciary has dealt with the issue of euthanasia in a very extensive manner wherein various controversial aspects have been closely examined and dealt with possible solutions for the same so that no undue advantage is taken.

The Supreme Court has itself clarified and directed that passive euthanasia is allowed on the condition that if the doctors act on the basis of expert medical opinion which has been appointed by the Apex Court and on the green signal of the court they could withdraw life support which is in the patient's best interest. Invoking the Parens Patriae principle (Latin for "parent of the nation", where the Court can step in and serve as a guardian) it held that the Court will be the ultimate decider of what is best for the patient.[31] This power of allowing passive euthanasia is not only limited to the Apex Court but has also been extended to High Courts under Article 226 of the Constitution which empowers the court to issue directions or order to any person.

Another epic judgement in Common Cause vs Union of India[32]wherein the five judge bench held that right to die with dignity is a fundamental right and comes within the ambit of Article 21 of the Constitution. It also laid down that an individual has every right to decide when to remove life support and pressed on the need of creating a living will.

The Apex Court further brought certain proposal regarding the procedure for execution of living will and also provided the guidelines thereof to give effect to passive euthanasia.

Therefore, this judgement brought a great relief for the patients who have been suffering from long term illness, chronic diseases and incurable diseases which is meant to prolong life through medications. Thus, the court is in right direction by declaring the Right to die with dignity as a fundamental right which would bring an end to the long term pain and sufferings of the people.

RECOMMENDATIONS OF LAW COMMISSION OF INDIA: The 196th Report of the Law Commission on 'Medical Treatment to Terminally Ill Patients (Protection of Patients and

[30] Supra note 1
[31] *Right to Die*, Supreme Court Observer, https://www.scobserver.in/court-in-review/right-to-die?slug=aruna-ramachandra-shanbaug-v-union-of-india (Last visited May 20, 2020)
[32] Supra note 2

Medical Practitioners) was chaired by M. Jagannadha Rao.[33] This report was made for patients suffering from terminal illness or who are in persistent vegetative state by allowing them to die a natural death.

The principles laid down in this report is universal in nature as the Courts in countries like UK, USA, Ireland, Scotland, Canada, Australia and New Zealand also follow the same for Competent Patients.

Every terminally ill patient who is competent enough to make a decision regarding his health while he is terminally ill then they have the right to refuse the treatment and the doctors are bound by it and according to law they wont be liable for 'Attempt to Commit Suicide'[34] nor is the doctor guilty of 'abetting suicide'[35] under Indian Penal Code.

The Report laid down certain guidelines for incompetent patients too who are not capable enough to make decision on their own are as follows:

1. It is not on the discretion of the doctor to withdraw or withhold the medical treatment of the terminally ill patients unless they have obtained the opinion of three experts and if required a 'Bolam Test'[36] could also be conducted to justify the condition of the patient.

2. Secondly, the doctors at their own discretion cannot select the experts but they are bound to choose the experts from the panel made by the Director General of Medical Services for Union Territories and the Directors of Medicine (or other authorities holding equivalent posts) in the States.[37] The doctor is bound by the decision of the expert panel and cannot work on their own terms.

3. Thirdly, the doctors dealing with terminally ill patients have to maintain a register of incompetent patients with details including their age, sex, name, address and what is the best interest of the patient and the reasons for withdrawing medical treatment from the patient. Further, it is the duty of the doctor to inform either the patient (if they are conscious) or their family about his decision to withdraw the medical support and if they desire they could be given 15 days' time to move to High Court to get further orders and if no order is received he can proceed with the same.

[33] Law Commission of India, https://en.wikipedia.org/wiki/Law_Commission_of_India, (last visited May 20, 2020)
[34] Section 309 Indian Penal Code, 1860
[35] Section 306 Indian Penal Code,1860
[36] Law Commission of India Reports, https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-196-medical-treatment-to-terminally-ill-patients-protection-of-patients-and-medical-practitioners-2006/, (last visited May 21, 2020)
[37] Ibid

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4. Lastly, the authorities like Director General of Medical Services for Union Territories and the Directors of Medicine shall be served with a copy of the register which contains information about terminally ill patients by the doctor maintaining it and the information has to be kept confidential even after the closure of the case.

VI. EUTHANASIA IN CANADA

Euthanasia in Canada is called medicinally assisted dying and became lawful alongside assisted suicide in June 2016 to end the pain of terminally ill patients and relieve them of never ending pain, trauma and suffering. The Court gave its historic judgement and made physician assisted Euthanasia and physician assisted suicide legal in Canada. The court further amended the Section 241(b) and Section 14 of the criminal code which prohibited assisted dying and concluded that it is the choice of the individual to live and die with dignity.

The Supreme Court of Canada in Cater vs. Canada[38] held that euthanasia is to be made legal in the country as it does not violate Charter of rights. As judiciary legalised Euthanasia, the Parliament further passed Bill C-14, in June 2016 and amended the Canadian Criminal Code to legitimize both physician assisted euthanasia (PAE) and physician assisted suicide (PAS), and the methodology to administer them in Canada. It further introduced laws to make sure that it is not misused as it is concerned with life and death of the individual.

Neither euthanasia nor assisted suicide is accessible to minors, nor on the grounds of terminal illness, or any condition which can be treated in due course. To avert its misapplication in the country, it is made accessible just to citizens qualified for Canadian medicinal services. Any official request for mercy killing shall not be permitted and patients cannot plead for Euthanasia in advance if their condition worsens in future (for example, in instances of Alzheimer's ailment where patients want to die after they achieve advanced state of illness and suffering).

The legalization of Euthanasia in Canada was influenced by various factors including the free will to end one’s life so that consisted pain and suffering can come to an end and die in peace and with dignity. Canada's assisted dying law incorporates legitimate protections for anticipating misuse and guaranteeing informed assent. Neither the law, nor the doctors included, can have any lawful say regarding mercy killing as it will be solely decided by the patient only. Assent must be more than once communicated, must be expressed and not implied even if it is one minute before death. Consent can be revoked any time and there will be no consequences for revoking and no restrictions as to how many times it may revoke.

[38] Cater vs. Canada , 2012 BCSC 886

In a leading judgement[39]of euthanasia where Canadian Court faced dilemma as to the accused party is actually responsible for the taking life of the patient or acted humanely by relieving her from endless pain and suffering. In this case father took his daughters life by administering her carbon monoxide and end her misery. Her father contended that she was in immense pain and torture. It was in her best interest to free herself from consistent torture so he did nothing wrong ion his part. After series of trials and appeal jury convicted him of first degree murder by saying that he cannot avail defence of necessity and is liable for killing her own daughter.

Another landmark case[40] where it was appealed to struck down the section 241(b) of the code, which prohibits a terminally ill individual to commit physician assisted suicide. The court rejected the argument by quoting that revoking the prohibition would be a weapon in hands of vulnerable individuals which will prove fatal for the citizens as whole. The prosecution appealed that the individual should have the freedom to decide when to die and control the method through which death can be achieved. The court also stated that allowing physician assisted suicide will crumble belief in humanity and will erode its faith.

In Whitler vs. Canada[41] the Court reconsidered their judgement given in previous cases and held that prohibiting physician assisted suicide is unjustified to people with disabilities. It is a burden and unacceptable as they have to suffer the effects of such prohibition for their entire life.

Quebec being the capital of Canada has legalized Euthanasia in their city in 2009. They weighed all the pros and cons thereby allowing assisted suicide in the province. They amended criminal laws and inserted clauses which define the right to die and craved proper penalties to ensure no abuse of such right given to the citizens. The judiciary have also played very important role in interpreting the right to die to conform to the set laws and regulations.

In Malette vs. Shulman[42] the court held that the patient has full right to refuse a particular treatment even in an emergency situation. The court directed that the doctors must adhere to the written instruction by the patient even if it proves harmful for the health of the individual. The court emphasized on the fact that right to die in based on the principle that will of the people is of utmost priority.

In Nancy B. v. Hotel – Dieu de Quebec[43] court contended that it is the final discretion of the

[39] R vs. Latimer, 2001 SCC 1
[40] Rodriguez vs. British Columbia, [1993] 3 SCR 519
[41] Withler vs. Canada, 2011 SCC 12
[42] Malette vs. Shulman, 1990 CanLII 6868 (ON CA)
[43] Nancy B. v. Hotel – Dieu de Quebec, 86 D.L.R. (4th) 385 (Que. S.C.)

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patient regarding whether they wish to continue the treatment or not. The court again emphasized the principle that the patient's wishes are to be given priority while deciding on which method patient has agreed to. It further added that illness should take its natural course and unreasonable behaviour shall not be tolerated from the doctor's side.

Proper guidelines have been issued under the bill passed in Canada so that no one can misuse this right and can be used in the best interest of the patients. To avail euthanasia under the Canadian laws, terminally ill patients have to submit written request to the doctors conveying his intention to die through physician assistance. The patients should be able to confirm that he is undertaking Euthanasia without any coercion and pressure. Furthermore he must clearly state that he is acting on his own will and no one is influencing his decisions regarding the same. The written communication must be done at least 10 days before to the doctor. Then, doctor and two medical experts will scrutinize the condition of the patient and will confirm that his health will not improve in the future and there is no alternate solution to save the terminally ill patient. The team of doctors will then inform the patient about all the possible choices available to him and has the option to revoke his consent at any stage even before a minute of administering Euthanasia.

VII. COMPARATIVE ANALYSIS BETWEEN INDIA AND CANADA

Euthanasia has been legalized both in India and Canada thereby reliving the terminally ill patient of pain, misery and suffering. The main idea underlying legalization is to let individual decide what is best for them during their last days. Few comparison have been drawn between administration of Euthanasia in India and Canada.

- The Supreme Court of India allowed passive euthanasia as it considered right to die an essential element of right to life[44]. The court gave its historic verdict after highlighting the fact that as per the prevailing condition in the nation, it is legally not possible to grant approval for active euthanasia. They further emphasized that the right will not be absolute and shall be subject to restrictions. On the contrary the Canadian Court allowed both active and passive euthanasia in the country. They believed that if the patient's condition is not going to improve at a later stage, then it is of no use to let them bear all the suffering and never ending pain thereby legalizing physician assisted euthanasia and assisted suicide.

- In India, there is no time limit specified as to within which High court has to approve the application for euthanasia. The guidelines given by the court are silent regarding the time

[44] Supra note 1

frame within which application is to be sanctioned and the time period within which Euthanasia can be administered to the concerned patient. On the opposite the Canadian laws have been very clear regarding the time frame within which application is to be submitted to the doctors and the approval time. The 10 days time period has been framed to ensure that the procedure is carried out properly by analysing all the other alternate options available and to ensure that the process is not conducted negligently.

- The procedure of administering Euthanasia stated by the Apex court of the country is too complex and time consuming which can prove fatal for the terminally ill patient. Permission is to be taken from high court which in itself can delay the entire process. In Canada, the process is simplified as there requires approval from the concerned doctor and a medical expert. Thereby the process is easy and it can be executed without waiting for longer period.

- Euthanasia in India and Canada has been made legal but making it legal is not enough a proper law in this regard has to be made which is absent in the case of India. The Judiciary in India have taken the step forward to legalize it but to pass a bill and make it a law is the power of the parliament. As there is no proper law regarding euthanasia it is very difficult for the society to exercise their right in this regard because mere laying of guidelines does not bring a concrete solution to any problem thus a law needs to be passed for the betterment of the society. Whereas, in Canada the scenario is different and systematic as a proper bill (C-14) has been passed in the Canadian parliament to make it a law for the smooth functioning of the society.

- A medical directive which is made in advance by the person who is in a good condition makes such document in which they specify what action should be taken regarding their health when they are suffering from terminal illness or are in coma than such Advance Directives is known as living will. The access to such document or medical directive has been allowed in India by the Apex Court allowing patients to be passively euthanized if they suffer from terminal illness in future. But it is not so in the case of Canada where both passive and active euthanasia has been allowed. Living will is not allowed here as it has laid down proper laws in this regard and had given ample power to exercise the right of Euthanasia.

VIII. CONCLUSION & SUGGESTIONS

Euthanasia can be cited as the best example for freedom of choice of an individual where it has invited a lot of arguments for and against it. While some support euthanasia as the best procedure to relive a person from its unending suffering and on the other hand it is objected that it devalues human life. To choose life over death is very painful and with time the society

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has been trying to accept this radical change not just with the support of the judiciary but also bringing change in their mindset which can be found more often in older generations.

The Judiciary through its various verdicts finally allowed right to die as an integral part of right to life. They highlighted the fact that it is of no use to let terminally ill patient bear all the ongoing pain, trauma and suffering. The main idea behind this is to respect one own choice's and the freedom to decide for oneself in their best interest.

The apex court agreed to legitimize passive euthanasia for those patients who are in persistent vegetative state and will not recover anytime in future. The court also considered the legal position of mercy killings in other countries i.e. United Kingdom, United State of America and Canada. The bench unanimously agreed that dignity is the basic foundation of an individual's integrity and a man should have the freedom to choose between acceptance of medical treatment and rejection of it.

They further introduced the concept of Living Will in India so that no one can misuse the right given under the law and it is being executed properly. Through living will they have protected the interest of the patient in order to make sure that no one takes undue advantage of it. Canada also legalized Euthanasia a few years back and they have crafted fully fledged law backing the legitimization. The procedure to be observed has been safeguarding by several measures to ensure best utilization of the right.

Few suggestions to improve the process of Euthanasia in India are as follows-

1. It is the dire need of the hour for the legislature to draft a law on Euthanasia as legal backing is required which will provide a strong footing to right to die in the country. The legislature has been neglecting their duty since a very long time and which forced judiciary to step forward and legalize it to end the consistent pain and suffering of patients in permanent vegetative state.

Scholars suggest that our country should make legislation by taking ideas from the models of other countries where Euthanasia has been made a law. Such laws would give us guidelines or proper measures on what should be practiced and what should be avoided. It is possible to legalize euthanasia effectively if proper laws have been enacted by the legislature of the country.

2. Proper guidelines must be drafted regarding the procedure as to how Euthanasia shall be administered. The rules issued by Supreme Court are not concrete enough to assure that this right will not prove disastrous for any individual fighting between life and death. If the process if not executed properly, there are chances that people may use it to fulfil their personal interest.

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The guidelines are vague and does not provide for neither any specific time frame within which application has to be sanctioned nor states any preventive measures to make sure that due care and caution is observed.

3. The sole opinion of the doctor regarding the administration of Euthanasia is dangerous as there are chances that he may misuse the powers given which may put an individual's life in danger. The Court has always analysed doctors decision very carefully to ascertain that no negligence was observed on the account on them. On the contrary, the sole deciding element in execution of the process of mercy killing is one them only which may lead to deadly consequences.

A medical expert shall be appointed by the court who will scrutinize the doctors decision regarding Euthanasia so that no loopholes can be found at a later stage. After scrutinizing by the expert, then it should go for approval to the concerned High Court.

4. Another issue that stems out is - making euthanasia a law because if it has been legalized then who or what factors would decide the criteria of suffering of an individual to bring an end to their pain. Should it be the sole opinion of the doctor or the relatives because giving sole power on the hands of the doctors or the relatives is quite risky too as it would not be clear whether they are acting in the best interest of the patient or not.

So, what should be done in such case? To bring an end to such a dilemma it is important to bring a Proper Redressal Mechanism which would deal solely with this issue of Mercy Killing only. A committee of two or more members should be setup where the members would comprise one from the judiciary and the other two would be senior and experienced doctors who would be bias on their decision and would weigh all the pros and cons before allowing euthanasia. Any aggrieved person could go directly to such a committee without even knocking the doors of the judiciary for faster and smoother functioning of the process because such cases are one in thousand and the judiciary being already overburdened with other issues would delay the process of euthanasia and would increase the suffering of the patient.

5. To keep a check on the misuse of the power by the doctor or the relatives and to ensure transparency, post mortem should be made mandatory after the procedure of Euthanasia has been conducted. Once completed and the patient is dead, post mortem should be carried out to administer the facts of the case and if any violation or misuse has been found then proper action should be taken to punish the offenders.

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6. India being the second most populous country in the world[45] has more number of illiterates than compared to literates which is also a driving factor on the legalization of Euthanasia because literate people are more practical than compared to illiterate people who are more emotional and thus the deciding factor cannot be on the grounds of emotions and sentiments. It is to be also noted that literates tend to choose the path of corruption more easily than compared to illiterates which is also one of the factors for transparency of the whole process of Euthanasia because corruption is like a termite which is present everywhere even in the healthcare sector which is eating up the whole system and thus endangering the life of the patients. Thus, for the best interest of the society we should leave this issue on the hands of the judiciary. The need of the hour is not just making it a law but we Indians need maturity to handle such a fragile issue by understanding its pros and cons thoroughly.

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[45] Internet World Stats, https://www.internetworldstats.com/stats8.htm, (last visited May 22, 2020)