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Euthanasia: A Study of Right and Wrong

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ABSTRACT

Every person wishes to live and experience life to the fullest extent possible before passing away. But occasionally, a person may wish to end his life through non-natural means. A symptom of abnormality is to end one's life in an unusual way. When a person takes their own life, it is referred to as "suicide," but when another person terminates a person's life at the deceased's request, it is referred to as "euthanasia" or "mercy killing."

Most often, euthanasia is connected with those who are suffering from a fatal illness or have become incapacitated and don't want to spend the remainder of their lives in pain. The option to live or die should be available to those who are seriously ill or disabled. All people should have the option to live or die; it shouldn't just be reserved for healthy, able-bodied people. Euthanasia is a contentious topic that touches on our society's morality, values, and beliefs.

The practise of euthanasia has generated considerable controversy worldwide. Since euthanasia has been legalised in the Netherlands and England recently, the argument has gained in importance. As a result, there is currently intense debate about whether or not to emulate the Dutch model in many countries throughout the world. In a recent case involving Aruna Shanbaug, our Supreme Court made a judgement approving passive euthanasia in India.

I. INTRODUCTION

One of today's most important social issues is euthanasia. It has been the subject of contentious discussions and is surrounded by moral, ethical, and practical issues. It involves adhering to various legal and procedural requirements in many nations. Every adult with capacity for decision-making has the right to choose what should be done with them. Nobody can treat such an adult without his or her agreement, but the issue arises when an individual is in a persistent vegetative state and has no chance of recovery because they are unable to decide what treatments they should receive. The decision regarding the patient's treatment must be made by his or her family. After that, the court, acting in the parens patriae capacity, has the final say over what is in the patient's best interests. The status quo is maintained when a mistaken decision is made not to end the patient's life; however, the possibility of subsequent developments, such

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as improvements in medical science, the identification of fresh evidence regarding the patient's intent, modifications to the law, or even just the patient's untimely death despite the administration of life-sustaining treatment, at least raises the possibility that a mistaken decision will eventually be corrected or its effects will be lessened. Every person wants to live and enjoy life till they pass away. However, a person may occasionally desire to put an end to their existence however they see fit. A symptom of abnormality is to end one's life in an unusual way. Suicide is when a person takes their own life, but euthanasia or "mercy killing" is when someone else terminates a person's life at the deceased's desire.

Most often, euthanasia is connected with those who are suffering from a fatal illness or have become incapacitated and don't want to spend the remainder of their lives in pain. A person with a severe disability or a terminal illness should be able to choose between life and death. This right of a patient with a terminal disease cannot be compared to the right of a healthy, rational individual. Euthanasia is a contentious topic that touches on our society's morality, values, and beliefs.

The practise of euthanasia has generated much debate on a global scale. The developments raised the importance of the discussion. India has legalised passive euthanasia, however there is ongoing discussion over legalising active euthanasia.

II. HISTORICAL BACKGROUND OF EUTHANASIA

N.D.A. Kemp, a renowned historian, discusses the history of euthanasia. He asserts that euthanasia became a topic of discussion in the modern era in 1870. Long before that, the subject had been debated and exercised. Ancient Greece and Rome both practised euthanasia. In Marseilles, hemlock, a deadly plant, was used to hasten death, as it was on the island of Kea. Greek philosophers Hippocrates opposed euthanasia, but Socrates and Plato were in favour of it. He objected to any technique that would result in a person's death. Both Christian and Jewish faiths forbid euthanasia. Thomas Aquinas criticises the practise and claims that it goes against man's natural instinct for survival. Divergent viewpoints on the subject show disagreement between contending scholars.

While it was a common practise throughout the Age of Enlightenment, Protestantism embraced euthanasia and suicide. These terms are recognised and identified across all cultures and methodologies. They are compared as sins at times and regarded as acts of bravery at other times. Between them, there is barely a difference at all. Early in the 19th century, this term started to be used to describe hastening death and destroying supposedly pointless lives; today, it is used to describe purposefully ending the life of someone who has an incurable illness. Some

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individuals favour the right to die. Euthanasia is opposed on the grounds that it violates cultural norms of ethics, morality, and law. Euthanasia in any form is seen as homicide.

In complicated instances, it might be challenging to distinguish between homicides and murder. In ancient India, taking one's own life was not regarded as deviant behaviour. According to Hindu legend, Lord Rama's suicide is known as Jal Samadhi. Its name during the reign of Lord Buddha was Maharparinirvaan. Lord Mahaveer's circumstances were comparable. By using Prayopavesa, Swatantraveer Savarkar and Acharya Vinoba Bhave renounced their lives. Literally, it means to decide to fast till death. Gandhi agreed with the concept of intentional dying. These academics were in favour of death through natural causes.

Beliefs like Hinduism, Jainism and Buddhism recognize willful death. The concept has philosophical background. Thus, the right of death existed in earlier times.

Euthanasia has long been seen by Western religion as a dishonest use of heavenly authority. Christians have held the conviction that every person owes his or her existence to the people who kindly brought him or her into this world since the fifth century B.C. The processes of life that God created include birth and death. Therefore, as they should be respected, no person has the right to decide when and how to pass away. Euthanasia and suicide are forbidden in Islam because it does not recognise any form of justification for murdering someone.

III. TYPES OF EUTHANASIA

"Euthanasia" is the practise of ending a sick person's life to end their misery. The majority of times, euthanasia is performed because the person begs for and requests relief; nonetheless, there are some situations where euthanasia is performed where a person is unable to make such a request. According to whether a person grants consent, euthanasia can be broadly categorised under the following headings:

a) Active Euthanasia

b) Passive Euthanasia

c) Voluntary Euthanasia

d) Involuntary Euthanasia

e) Non-Voluntary Euthanasia

Whether or not the non-voluntary killing of patients can be regarded as euthanasia, regardless of intent or the patient's circumstances, is a topic of debate in the medical and bioethical literature. According to Beauchamp and Davidson, one of the requirements to legitimise

euthanasia was not thought to be the patient's permission. Others, though, consider permission to be crucial.

Active Euthanasia

It is a Commission action. involves taking steps to end a life and is the same as mercy killing. Any medical intervention intended to hasten the death of a terminally ill patient with the goal of alleviating that person of excruciating agony is referred to as active euthanasia. Using a deadly amount of a medicine on purpose, for instance, to put an end to a torturous and protracted dying process

Active euthanasia, to put it simply, is when a patient intentionally dies due to the actions of a medical practitioner or another individual.

Passive Euthanasia

It is a failure to act. It refers to ceasing to use extraordinary life-sustaining techniques or not doing so. For instance, failing to do CPR on a patient who is dying or who is incapable (e.g., a severely defective new born infant). "Letting die" refers to allowing a continuous inner organismic process of disintegration to take place without supporting or sustaining vital processes. Other techniques include stopping a feeding tube, forgoing a life-extending operation, withholding life-extending medications, etc. Extubating (removing from a ventilator) a patient who is terminally sick is not killing in the traditional sense of the word even when it results in death. Extubation simply affects when death will occur; it does not cause death to occur.

Voluntary Euthanasia

In cases of voluntary euthanasia, a person's direct response to a patient's request results in death. At the patient's request, voluntary euthanasia refers to the intentional delivery of life-ending medications in order to end a patient's painless suffering from an incurable illness. Those who are experiencing unbearable or unrelenting agony or who have a fatal illness must request voluntary euthanasia. The principle of self-determination and the right to self-autonomy is the major justification for the legalisation of active voluntary euthanasia. Conferring to the two concepts every human being has intrinsic worth and deserves to be respected; he or she also possesses fundamental freedoms, including the right to make the final decision.

This includes cases of:

- Seeking assistance for dying
- Refusing heavy medical treatment

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- Asking for medical treatment to be stopped
- life support equipment to be switched off
- Refusal to eat or drink or deliberate fasting.

Involuntary Euthanasia

Involuntary euthanasia, which is when someone is put to death without their will, is frequently regarded as murder. Since both sides typically think that this form of euthanasia is improper, it is rarely discussed. In this instance, the patient is capable of making decisions and giving consent, but she chooses not to pass away, therefore the same is done. It sounds quite barbaric and is highly unethical. People who were physically unable or mentally retarded were killed in gas chambers during World War II by Nazi Germany.

Regarding its method, euthanasia can be further divided into two categories. They are active and passive euthanasia, respectively.

Non-Voluntary Euthanasia

It alludes to taking the life of someone who has the mental capacity to decide for themselves whether or not to die, such as a comatose patient. Patients who have not expressed their desire to pass away in their Wills or through advance indications may experience this. Examples include serious accident scenarios where the patient loses consciousness and enters a coma. In these situations, the final choice is frequently made by the family.

The person is unable to express their wishes or make decisions. This comprises instances where:

- The person is in a coma
- The person is too young (e.g., a young baby)
- The person is absent-minded
- The person is mentally challenged
- The person is severely brain damaged

IV. REASONS FOR EUTHANASIA

There are examples from the Hindu religion's early days in India where monks encouraged people to give up their bodies (kaya) in order to achieve eternal rewards and further their search for God. The right to make a claim stems from the freedom to make one's own decisions. Everyone benefits from having the freedom to determine their own fate and live however they please. Similar to this, it is argued that everyone should have the option to take their own life if

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circumstances make it simpler to pass away than to remain living. As a result, he will be relieved of his agonising condition and life after death. It can be analysed as a method of providing health care via death. It puts an end to a life that is not worthy of being lived.

Euthanasia is the deliberate killing of a dependent person for the purported benefit of that person. Supporting euthanasia has its justifications. People will defend its use in certain situations. Euthanasia is performed for a variety of reasons. Among them are:

(a) Unbearable pain.

(b) Demand of "right to commit suicide"

(c) Should people be forced to stay alive?

V. CLASSIFICATION OF EUTHANASIA

The researcher has already dealt with the kinds of Euthanasia i.e., Active and Passive and will now deal with further classifications of Euthanasia which are as follows:

(a) Animal Euthanasia

(b) Child Euthanasia

(c) Euthanasia in case of Mental Patients

(d) Euthanasia in case of Adult Patients

1. Animal Euthanasia

The act of killing an animal is known as animal euthanasia. It is a kind deed. When urgent medical attention is not effective, this kind of technique is used. Some of the reasons for euthanasia include procedures connected to laboratory testing, inability to support the animal, and incurable (and exceptionally painful) ailments or diseases.

The euthanasia treatments are designed to be as painless as possible. This procedure is frequently described in euphemistic terms for domesticated animals, such as "put down," "laid down," "put to sleep," or "put out of its/his/her pain."

2. Child Euthanasia

Child euthanasia is a contentious type. When a child suffers a serious disease or was born with birth problems, this may occur. Between this kind of infanticide and euthanasia, there is a fine line. Regarding the motivation for killing the child, there are differences in the two incidents. The originator of situational ethics and an advocate for euthanasia, Joseph Fletcher, suggested that infanticide be legalised in cases of serious birth abnormalities.

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The House of Lords decision in the Airedale case, which held that in circumstances of incompetent patients, doctors must act in the patient's best interests by withdrawing mechanical life support if required, was the foundation for a number of UK cases.

VI. EUTHANASIA IN CASE OF MENTAL PATIENTS

Although parens patriae jurisdiction was unavailable in Mental Patient: Sterilization because the patient was not a minor, Lord Brandon of Oakbrook nonetheless used the inherent authority doctrine and the same test, i.e., the "best interest of the patient." In this case, the 36-year-old woman was mentally impaired and unable to give her permission to surgery.

The woman fell pregnant. The medical professionals believed that she wouldn't be able to handle the pregnancy and childbirth.

Sterilization was the best option in her best interests because all other kinds of contraception were inappropriate and it was thought undesirable to restrict her freedom of movement in order to prevent subsequent sexual activity. Her mother, who shared the same opinion, asked the court to rule that since her agreement was not required, the procedure would not constitute an illegal act. The Court of Appeal and the trial judge both approved of the woman's sterilisation. The House of Lords upheld the judgement following an appeal.

The Bolam v. Friern Hospital Management Committee case was brought up in the House of Lords; it stated that the Court could declare a procedure to be in the patient's best interests under its "inherent" authority if the patient was an adult but unable to give informed consent and it was intended to lessen the risk of her becoming pregnant. The trial judge and the Court of Appeal decided that the Court could grant permission under inherent jurisdiction, notwithstanding the fact that parens patriae jurisdiction was legally eliminated in England for cases involving mentally ill people.

The House of Lords determined that even though the parens patriae jurisdiction was unavailable due to the fact that it had been formally abolished in cases involving patients who were mentally ill, the Court still had inherent jurisdiction to declare that sterilising F under the current conditions would be legal if it served the patient's interests.

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(A) Euthanasia in Case of Adult Patients

A 68-year-old male patient with paranoid schizophrenia contracted gangrene in a foot while being held in a guarded institution for the duration of a 7-year prison sentence. He was sent to a general hospital, where the consultant surgeon said that his prospects of survival were below 15% and that he would almost certainly would away if the leg below the knee was not amputated. C objected to themputation. A solicitor was called while this was happening. Despite considerable improvement brought on by the medicines, an amputation was still required. It was impossible to rule out a future gangrene attack. The hospital administration asked the court for authorization to amputate the patient's leg below the knee, arguing that his choice to refuse an amputation was influenced by his mental state and that he was unaware of the potential for fatal consequences.

The High Court was asked to determine whether his competence had been affected by his ongoing mental illness and if he understood the nature and purpose of the situation adequately. and effects of the preferred medical treatment. This was the test of competency, known as the C-Test.

Thorpe, J. described competency of patient as follows that he considers Dr. E's analysis helpful of the decision making process into three stages: first, comprehending and retaining treatment information, secondly, believing it and thirdly, weighing it in the balance to arrive at choice (C-Test).

Given the facts, it was decided that amputation was not necessary because his schizophrenia did not significantly impede his ability to make decisions. His right to self-determination was nevertheless believed to be legitimate.

Butter Sloss, J.'s landmark 2003 decision in An NHS Hospital Trust v. S found that "S," who was 18 at the time, was born with the hereditary condition velo-cardiac facial syndrome, as well as "global development delay" and "bilateral renal dysplasia," and had been receiving hemodialysis since May 2000. He had a severe learning deficit and experienced issues as a result of his inability to fully comprehend the medical care he was receiving. His autism was identified. He had a mild immunological weakness, a predisposition to blood clotting, and epilepsy. It had been determined that he had the mental capacity of a 5- or 6-year-old child. He obviously lacked the mental capacity to make choices concerning his medical care. The hospital contacted the court to ask for a ruling that S should not receive peritoneal dialysis and that the hospital could not perform kidney transplants since doing so would not be in S's best interest. Only hemodialysis could be continued in the near future, and only palliative care should be

provided if it is no longer available. The parents wanted the kidney transplant to proceed despite the hospital's request. His mother made the kidney donation offer. The Official Solicitor, who was acting on behalf of S, requested that all types of hemodialysis be taken into consideration and held out on making a kidney transplant a viable option.

Hemodialysis was believed to be possible, nevertheless. Peritoneal dialysis should be administered if it couldn't be delivered for a longer period of time. His best interests did not lie in a kidney transplant.

VII. LEGAL ASPECTS OF EUTHANASIA

Among other things, euthanasia is a hotly contested topic in the legal community. Euthanasia is defined as "inducing the painless death of a person for reasons deemed to be merciful." There are four types of euthanasia: direct and voluntary, indirect and voluntary, direct but involuntary, and indirect and voluntary. Direct and voluntary euthanasia is decided upon and carried out by the patient.

Euthanasia that is voluntary but indirect is predetermined. Direct yet unwilling euthanasia is carried out on the patient without permission. The decision to terminate life support by a hospital constitutes indirect and involuntary euthanasia. The history of euthanasia can be traced back to the ancient Greek and Roman cultures. In ancient civilizations, aiding in the demise of others was occasionally acceptable. In these prehistoric communities, voluntary euthanasia was acceptable. As time went on, religion developed and a sacred sense of life emerged. Any type of euthanasia was viewed as wrong. The topic of how to handle euthanasia cases has several legal consequences and issues.

To handle the situations that result in death by compassion, state involvement became necessary. The State would always have the authority to firmly establish what rights its citizens have under a modern or welfare state. Euthanasia should either be legalised outright or within a thorough legal framework, depending entirely on the state's perspective. This is a fundamental, fundamental problem with authorising euthanasia and making it legal.

One cannot keep making recommendations for what the State or legislature should do. Euthanasia legalisation is a controversial topic that requires careful consideration. The key parties involved in this subject are medical and paramedical experts, human rights activists, lawyers, and patients and their loved ones. Their participation is essential in providing the matter with a legal and procedural foundation. There is practically little knowledge of euthanasia and its practises in India. While the urban population has a very high level of ignorance, the rural population is relatively new to the issue. The State and its apparatus have a

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significant task ahead of them in educating the public about it. In addition to legal issues, social, ethical, and religious concerns must be addressed. India is a case of population explosion, where citizens' basic requirements must be met. Literate people can recognise the reality of the issues raised by the topic. The issue is complicated, and it has wide-ranging medical and legal repercussions. One may provide fundamental principles while making initiative suggestions. Understanding the State's goal in authorising euthanasia is essential. The current administration has gone a step further by embracing the suggestion to decriminalise Section 309 of the IPC, however legalising euthanasia is a risky move for a country like ours. As attorneys, we can advocate for the creation of a panel made up of professionals who can assess the problem's criticality. The panel may provide recommendations and make proposals. Drafts can include specific descriptions of the legal and medical processes. It is possible to think of the appointment of a regulator to handle the entire scenario including patient euthanasia. A referendum may be used to determine the public's support and acceptability in India. The medical procedures and their results greatly influence how individuals feel about euthanasia. Cut practise and other malpractice in the medical field must be prevented. The judiciary's viewpoint is crucial. It has categorically objected to active euthanasia being legal. Multiple requirements must be rigorously followed. In conclusion, the machinery involved has to be examined; flaws must be found and fixed. For some people, talking about how to perform euthanasia would be repulsive and inhumane. However, a constructive debate won't cause harm. In India, euthanasia can be performed using cutting-edge techniques. Removing the patient's life support is allowed when the higher brain centres stop working.

Patients have the choice of passive euthanasia but not aggressive euthanasia. Passive euthanasia is used when there is no way to halt the dying. An intentional death is referred to as active euthanasia. One of the fundamental techniques of euthanasia is the withholding of food and water. Many see this as harsh because of how it affects the victim. It causes nausea, vomiting, heart problems, dejection, dry skin, and shortness of breath. Euthanasia is controversial for a number of reasons, as one can see.

Legalizing euthanasia is still up for discussion in both Europe and the United States. Euthanasia is supported by the idea that everyone has the freedom to make any decision they want, as long as no one else's rights are violated. Legalizing euthanasia is opposed because it would encourage disrespect for human life. The use of euthanasia might then be prohibited. Euthanasia proponents occasionally cite economic justifications for their positions. It costs the family or the government money to keep terminally ill individuals on life support, and if they pass away in the end, it is a waste of resources. The majority of thinkers agree on five principles for

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analysing euthanasia. These ideas include:

(a) The principle of motive, i.e., each action is evaluated according to its motivation.

(b) The principle of certainty, i.e., uncertainty cannot nullify, alter, or modify a certainty.

(c) The principle of injury, i.e., a person shouldn't hurt or be hurt by other people.

(d) The principle of hardship, i.e., relaxation of the norms and requirements is mitigated by hardship.

(e) The principle of custom, i.e., what is normal is a court decision.

(A) Legal Aspects of Euthanasia in India

In India, there is no law or statute that declares the legality of mercy killing or permits it. The Medical Treatment of Terminally Patients (Protection of Patients and Medical Practitioners) Bill was prepared as part of the proposal to enact a law on the subject of passive euthanasia in the Law Commission of India's 241 Report, "Passive Euthanasia - A Relook." In June 2014, the aforementioned Bill was forwarded to the Ministry of Health and Family Welfare's technical division (Directorate General of Health Services-Dte. GHS) for review. Numerous experts attended meetings that were called and presided over by the special director general of the health service. Then, on May 22, 2015, more sessions were convened to examine the Bill, with the Secretary of the Ministry of Health and Family Welfare serving as the meeting's chairman. Finally, the expert committee advocated creating legislation regarding passive euthanasia.

Due to many tragic scenarios illustrated in varied facts and circumstances, mercy killing or euthanasia has long been a subject of legal and social concern. The right to die has occasionally been asserted to fall under the umbrella of the Indian Constitution's article 21 right to a dignified existence. When a patient's dying process results in a protracted delay and intolerable suffering for both the patient and his loved ones, it is suggested that the patient should be permitted to meet his death so that he might be freed from misery and anguish. It is argued that the right to dignity in death and the right to life are interdependent. Nevertheless, the Indian Parliament has not yet created a law in this area. The country's highest court has occasionally provided interpretations of the term "euthanasia." A two-judge Supreme Court panel ruled that attempting suicide is not against the law and that people have a right not to live forced lives. However, the Supreme Court's constitutional bench rejected this viewpoint. Passive euthanasia is currently permitted in India according to a ruling by the highest court.

It is not possible or advisable to study India's legal system in isolation. India's constitution was derived from those of several other nations, and the courts frequently cited numerous foreign

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judgments. Euthanasia is unquestionably prohibited in India. Euthanasia and mercy killing plainly fall within clause first of Section 300 of the Indian Penal Code, 1860 since there is a purpose on the part of the doctor to end the patient's life in these situations. However, because Exception 5 to the aforementioned Section would be attracted in these situations where the deceased had given their legitimate agreement, the doctor or medical professional would be subject to punishment under Section 304 for culpable homicide that did not amount to murder. However, only instances of voluntary euthanasia (in which the patient gives his or her agreement to die) would fall under Exception 5 to Section 300. According to proviso one of Section 92 of the IPC, cases of non-voluntary and involuntary euthanasia are invalidated and are therefore illegal. The legal situation regarding assisted suicide is also fairly clear in India. Suicide is not a "right" that is recognised in India; instead, it is a crime that is punishable by the India Penal Code, 1860. Sections 305 (Abetting suicide of child or mad person), 306 (Abetting suicide), and 309 (Attempting suicide) of the aforementioned Code all contain provisions for punishing suicide. Its constitutionality has been questioned in relation to Section 309 of the IPC. The Indian Constitution upholds the right to life as a crucial human right. In India, the right to life is protected by Article 21. It is maintained that Article 21's right to life also encompasses the right to death. Therefore, a person has the legal right to commit a mercy killing.

The "right to life" protected by Article 21 of the Constitution does not include the "right to die," as was decided by a five-judge Supreme Court panel in Gian Kaur v. State of Punjab. According to the Court, Article 21 is a clause that ensures "protection of life and personal liberty" and under no circumstances can the end of life be inferred from it. The current system, which is governed by the Indian Medical Council Act of 1956, unintentionally addresses the current problem. A code of ethics for medical practitioners may be prescribed by the Medical Council of India under section 20A read with section 33(m) of the aforementioned Act. The Medical Council of India has modified the code of medical ethics for practitioners using their authority. Euthanasia has been deemed unethical, with the exception of situations where the life support system is utilised solely to maintain the body's cardio-pulmonary functions. Life support systems may be discontinued in these situations, subject to doctor certification. In Maruti Shripati Dubal v. State of Maharashtra, the Bombay High Court considered the constitutionality of section 309 and determined that it violated both Article 14 and Article 21 of the Constitution.

The Section was determined to be discriminatory in nature, arbitrary, and to contradict the equality protected by Article 14 of the Constitution. The right to die or have one's life taken away has been construed to be a part of Article 21. As a result, it was determined that it violated Article 21. In Maruti Shripati Dubal's case, the High Court of Bombay ruled that Articles 14

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(Right to Equality) and 21 (Right to Life) of the Constitution were violated by Section 309 of the Indian Penal Code (IPC), which deals with penalty for suicide attempts.

The Court declared Article 21 to be understood to encompass the freedom to die and declared section 309 of the IPC to be unlawful. The Supreme Court ruled in P. Rathinam's case that section 309 of the IPC violates Article 21 of the Constitution because that article contains the right to life. In the case of Gian Kaur v. State of Punjab, the issue was raised once more. A five-judge Supreme Court Constitutional bench found against P. Rathinam in this case and concluded that the right to life guaranteed by Article 21 does not encompass the right to death or the right to be killed and that there is no reason to deem section 309 of the IPC unconstitutional. Life with human dignity is the actual definition of life as it is stated in Article 21. Any feature that gives a life dignity may be a part of it, but not one that destroys it. Any right to death is fundamentally incompatible with the right to life, just as death is incompatible with life. Today, life is imprisoned or prolonged by the aid of cutting-edge scientific tools and medical care, and the patient must endure great anguish. The individual has the right to self-determination, which includes the freedom to accept or reject something. Where other options are accessible to him, he has the right to select the course of treatment. He ought to be able to decide for himself. In cases when he is unable to communicate owing to illness, he should have the option of expressing his preferences in advance through a living will or through the wishes of a surrogate speaking on his behalf. The surrogate is anticipated to act in the patient's best interest. The right to pass away in dignity was deemed by the court to be an integral aspect of society. Any person with mental ability should have the freedom to decline medical care, including the withholding of life-saving measures. The judgement also required the formation of committees with supervisory responsibilities. Here, recent events must be taken into account. Section 309 of the Indian Penal Code has been eliminated by the government in order to make it less punishable. The Law Commission of India's recommendation has received the backing of 18 state governments and 4 union territories.

VIII. POSITION IN INDIA AND JUDICIAL TREND

(A) Euthanasia in India

Since March 2018, tight regulations have made passive euthanasia permissible in India. Patients must be either terminally sick or in a vegetative state, and they must provide their agreement through a living will. The removal of life support from patients who are in a permanent vegetative state was made legal by the Supreme Court of India on March 9, 2018. The choice was made as part of the judgement in a case concerning Aruna Shanbaug, who passed away in

2015 after being in a persistent vegetative state (PVS). The Supreme Court of India issued a landmark decision on March 9, 2018, approving passive euthanasia throughout the nation. This decision was made in response to Pinki Virani's appeal to the Supreme Court in December 2009 in accordance with the "Next Friend" provision of the Constitution. It's a historic rule that gives people more freedom of choice against governmental, medical, or religious authority that views all pain as "destiny." In its 2011 Law, the Supreme Court outlined two unchangeable requirements for the legalisation of passive euthanasia: According to established international standards, feed can be tapered out and pain-relieving palliatives administered for (I) the brain-dead, for whom the ventilator can be turned off, and (II) patients in a persistent vegetative state (PVS). The same judgment-law also demanded that Section 309, the statute that punishes people who survive suicide attempts, be repealed. The Indian government announced its plan to accomplish this in December 2014.

The Supreme Court of India's three-judge panel, however, declared the Aruna Shanbaug case ruling to be "inconsistent in itself" on February 25, and it referred the euthanasia debate to its five-judge Constitution bench. The Supreme Court of India approved passive euthanasia in the nation on March 9, 2018. (Common Cause, 2015).

(B) Judicial Trend

We frequently encounter terminally sick patients, patients who are bedridden owing to severe injuries, and patients who are completely dependent on others in our daily lives. Such individuals are not in a decent condition. A rational, prudent guy would believe that choosing death over an agonising existence would be the best course. Physical and psychological decline occur quickly, but relief from such suffering takes more time. In these situations, people defend euthanasia. Every now and then, a case for legalising it is made. However, for the government or legislature, it is not an easy process. The misuse of euthanasia is the most concerning disadvantage of legalising it. A person possesses fundamental human rights from the moment of conception until the moment of birth. The term "right to life" refers to a person's fundamental right to life, notably the right not to be slain by another person. But if someone has the right to live, does that mean they also have the right to die, or is that even a question? The Indian Courts had varying viewpoints in response to this question.

(C) Aruna Shanbaug's Case

Aruna Shanbaug[2], was a 25 years old nurse, at KEM Hospital and dreaming of marrying her fiancé - a young doctor colleague. She was sexually assaulted on the night of November 27,

[2] Aruna Ramchandra Shanbaug v. Union of India, AIR 2011 SC 1290

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1973 by a ward boy named Sohanlal Walmiki. After strangling Aruna with a dog chain, he sodomised her. He left her there after taking her earrings, but not before leaving her laying there.

The following morning, a cleaner found Aruna lying in a pool of blood, unconscious. It was soon realised that she was cortically blind, paralysed, and voiceless due to the assault and subsequent asphyxiation with the dog chain. She also had damage to her cervical chord. She entered a coma from which she never recovered. Her family lost interest in her. For 37 years, she has received care from staff members of the KEM hospital. The woman no longer desires to live. Her condition has no possibility of improving, according to the physicians. Up until 1998, when journalist Pinki Virani published her story in the book "Aruna's Story," the world had forgotten about her.

The ward child was given a 7-year sentence for robbery and attempted murder. Due to the anal rape's secrecy at the time—possibly out of concern for the victim's social consequences—he was not tried for rape. She described Shanbaug as having "brittle bones," which is a legal term for someone speaking on behalf of an incompetent person. Her skin is stretched out over a skeleton like "Paper Mache." Her fingers are bent and fisted towards her palms, her wrists are wrenched inward, and as a result, her growing nails frequently rip into the flesh. She is in a PVS (persistent vegetative state) and chokes on liquids. She then made the decision to petition the Supreme Court with a request to tell the KEM Hospital not to force feed her through the help of her "next buddy" and attorney Pinki Virani. Doctors at KEM Hospital disagree, claiming that she responds by changing her facial expression. Aruna is not in a coma, according to Dr. Pragna Pai, a former dean at KEM Hospital. I used to go and talk to her, Dr. Pai recounted. She would smile or start laughing as you told a story. When you start singing some prayers or shlokas, she would seem very serene and peaceful, as if she were also participating the prayers. The discussion around euthanasia in India is centred on Aruna's case. The Supreme Court has the unprecedented and challenging responsibility of ruling on the fate of a victim of a crime that was committed 41 years ago. On the one hand, it is the right to live, and on the other, it is death with dignity. The Indian Supreme Court granted the woman's request to end her life on December 17, 2010. The Supreme Court Bench, which was made up of Chief Justice K.G. Balakrishnan, Justice A.K. Ganguly, and B.S. Chauhan, consented to review the petition's merits and requested comments from the Union Government, the commissioner of the Mumbai Police, and the dean of KEM Hospital. In response to Aruna's friend Journalist Pinki Virani's request for euthanasia, the Supreme Court of India's Honorable Markandey Katju and Gyan Sudha Mishra, J. established a medical team to evaluate her on January 24, 2011. Aruna was examined by the three-person medical committee that was subsequently established in

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accordance with the Supreme Court's instructions, and they found that she met "most of the requirements for being in a PVS." On March 7, 2011, it rejected the plea against mercy killing. However, the Court approved passive euthanasia in India in its famous ruling. The Court established standards for passive euthanasia while dismissing Pinki Virani's request to kill Aruna Shanbaug. These regulations define passive euthanasia as the deprivation of care or nutrition that might prolong the patient's life. The judge claims that Ms. Shanbaug's CD, which he checked, demonstrates that "she is definitely not brain-dead. She uses sounds and actions to convey her likes and dislikes. When given her favourite snack, she beams. She becomes agitated when a large number of people enter her room and becomes quiet when softly caressed. After his decision, Ms. Virani released this statement. The Supreme Court of India has approved passive euthanasia as a result of the Aruna Shanbaug case, which means that Aruna's condition will deteriorate further with persistent diarrhoea because her body cannot handle much of that being put through the pipe; no catheter to catch body fluids and waste material that excrete themselves; and a lengthening of response time due to a "sinking". But because to this woman who was never given justice, no one in a comparable situation will have to endure more than 35 years of suffering. The judges commended them in their decision for the medical care they gave Ms. Shanbaug. But Ms. Shanbaug has permanently altered India's stance on the divisive topic of euthanasia. The decision in her case today permits passive euthanasia under certain conditions. As a result, other Indians can now assert in court their right to refuse medical care, such as taking a patient off a ventilator in the event of an irreversible coma. Passive euthanasia will "Only be allowed in circumstances when the person is in PVS (permanent vegetative state) or terminally sick," according to today's ruling.

Before determining whether passive euthanasia is appropriate in each case, the relevant High Court will assess the case's merits and send the matter to a Medical Board. And other Courts are to refer to Ms. Shanbaugh's case as a guideline until Parliament passes new legislation on assisted suicide. A member of the Indian Parliament from the Communist Party of India recently submitted a measure to legalise euthanasia in the Lok Sabha, the Lower House of the Indian Parliament, in November 2007. The Euthanasia Permission and Regulation Bill, sponsored by C.K. Chandrappan, a congressman from Trichur, Kerala, would permit the lawful death of any patient who is bedridden or judged incurable. The law would also enable euthanasia for anyone who need assistance to perform everyday tasks. "If there is no chance of recovery for a patient, it is only humane to let him to put an end to his pain in a dignified manner," the law states.

However, the High Courts have turned down euthanasia petitions in a number of instances. A retired teacher from Devanagere, who was 72 years old, requested euthanasia but had it denied

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by the High Court in Bangalore. Using findings from Nirnhans neurosurgery and psychiatric specialists, Justice Ajit Gunjal dismissed the plea of H.B. Karibasamma. According to accounts, Karibasamma doesn't experience pain or have any serious illnesses. She can stand up pain-free because her spine is in normal condition. She also doesn't have any mental health issues. Despite the fact that Karibasamma has declined to undergo any additional tests or medication, the study claims that she may benefit from psychological therapy "since she is elderly and feels she may become disabled in the future due to her multiple ailments and has no family support." Doctors evaluated Karibasamma and recommended Nimhans specialists after following the court's directive. Since 2003, Karibasamma has written to local officials, as well as the President and Prime Minister, requesting authorization for euthanasia. She claimed to have had a slip disc and had been bedridden for 10–11 years. According to Karibasamma, her monthly pension in 2010 was just Rs. 8968, which wasn't enough to cover her medical bills. Her pain is unbearable because doctors chose non-surgical treatment for her due to her advanced age. According to findings from neurosurgical and psychiatric specialists from Nimhans, she does not experience pain or have a serious illness, hence the High Court dismissed her request.

It is a positive step that deserves praise. The court in Aruna Shanbaugh's case has approved passive euthanasia but denies her request for aggressive euthanasia. Euthanasia legalisation is a difficult endeavour, as has already been mentioned. It is impossible to express the challenges that the judicial system, executive branch, and legislature face in handling them. India is a multicultural nation with a wide range of cultural and traditional traditions. When other serious issues need the attention and action of the government, this legislation is not urgently needed in India. Demanding euthanasia legislation is neither improper nor premature. The moral, ethical, and compassionate aspects of the practise of euthanasia are frequently violated in India due to the country's numerous medical issues and unethical procedures. It is possible to take into account passing legislation permitting euthanasia. But it creates issues in real life. The practise of euthanasia cannot be used on a large scale. Every situation is unique, so several criteria are needed. The prerequisites and conditions for performing euthanasia are not airtight containers. Consequently, it shouldn't turn into a sensitive subject. The Indian judicial system is sensible and examines each case individually. Euthanasia cannot be pushed or pressured into becoming lawful by any constitutional entity. The euthanasia proponents argue that India should model its legislation after other nations that already have it. These laws can serve as guides for what is permissible and what is not. These rules give the medical industry best practises and moral guidelines.

The case is strong, and legalising euthanasia in India is not impossible. The issue is that the

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circumstances in these states and India are not the same. It would be accurate to claim that our situation is entirely unique. In terms of territory, the nations that have allowed euthanasia are quite small. The local populace is more educated and aware of their rights and the risks associated with euthanasia. The equipment in use is also sophisticated. There are more illiterates than literates in the Indian population. The intelligent populace is not particularly liberal when it comes to euthanasia, and they may not support its legislation. We Indians deal with these matters emotionally, but our rational judgments must always take precedence. It is preferable to leave the situation in the hands of the judiciary until we are mentally and practically ready to accept it as a part of our lives.

IX. CONCLUSION

Saying that the debate regarding legalising euthanasia is settled and that an enactment is imminent may be overstating the case. Making a legislation does not address every issue that arises in daily life. Mercy killing is a rare occurrence and is not something that happens frequently. Medical professionals occasionally encounter cases of patients with chronic illnesses in which euthanasia is being contemplated. It is not a typical instance. It is realistic to consider euthanasia in the event that a patient is in a PVS state, but not always. It is impractical and will not advance the study's goals to evaluate each case. Analyzing the practical challenges of legalising euthanasia in India is crucial. The practise of euthanasia has become customary in nations where it is completely legal. The mechanism has a long history of overcoming challenges and establishing new standards. It is not the case that the technique is completely fool proof and without gaps in those countries. The nations and their people underwent a profound transformation in both the medical and human perspectives throughout that time. The thinking of the entire community has changed toward developing an opinion on choosing death over life. It is essentially revolutionary that this insight has been passed down through the generations. India requires the maturity to handle the situation and a clear awareness of its benefits and drawbacks. It is a substantial task.

The volume of patients with terminal illnesses and the seriousness of such circumstances determine whether euthanasia legislation is necessary. In India, it is not generally acknowledged. The demands a scenario would make in the future and the effects they would have are unknown facts. The Indian populace has not reached the level of development necessary for active euthanasia to be legalised. Let's imagine that India has a euthanasia law. Nobody can ensure that it will always abide by the law or that hospitals, doctors, and the general public won't use it improperly. What are the potential consequences of breaking the rules if the

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patients don't want to die and don't even consider it? The ease with which such misuse can be made unnoticed makes it a particularly dangerous characteristic. Therefore, despite the fact that mercy killing seems to be morally acceptable, it appears to be virtually hard to carry out.

Suicide has been made illegal as of Gian Kaur's case, however euthanasia is still not prohibited. Passive euthanasia was recently made legal by the Supreme Court's decision in the case of Aruna Ramchandra Shanbaug v. Union of India, which also noted that while passive euthanasia is legal under certain conditions, active euthanasia is illegal. In light of the discussion above, I think that voluntary euthanasia should be permitted in India as well. The legislature should intervene and enact a specific law that addresses all euthanasia-related issues. So, in order to legalise euthanasia with sufficient protections, we need a legislation. When a legislation on the subject is to be framed to stop the abuse and misuse of euthanasia, the recommendations stated in the Law Commission of India's Reports and the guidelines provided in the Aruna's Case must be taken into account. Additionally, the likelihood of euthanasia being used inappropriately would be significantly decreased if the aforementioned proposals were to be put into practise. Overall, numerous aspects will determine if the legislation is successful. Few of them are under our control and regulation. Eliminating all evil from the developed system is a difficult and important task. Reasonable and realistic approaches can be taken. We must take a wholesome and devoted approach if we are to achieve the goal.

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