

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Euthanasia around the World: The Ethical, Legal and Medical Implications

ISHANI CHAKRABARTY¹

ABSTRACT

In the modern era, there is an intense focus on the foundation of individual autonomy. Citizens are given certain rights upon birth that cannot be alienated, including the right to life. Today, there is a great discussion on whether the right to life includes the right to death, as the same falls under the ambit of individual autonomy. Many are of the belief that the bodily autonomy one experiences in life should extend to their at death as well

It is a well-settled principle in the medical community that it is a physician's duty to not only extend a patient's life but to also free them from severe pain.² As they are experts in the field of medicine, they should know best when and where they can and cannot save a life or mitigate suffering effectively. Nevertheless, this principle still makes it unclear whether they are suitable to deal with the active euthanasia or assisted suicide of a patient. If a patient expresses the desire to no longer receive treatment, what does a doctor do- fulfil the patient's desire by assisting in their demise or go against the patient's wishes by pumping them with medication?

This lacuna between a patient's autonomy and their "right to life" deserves to be explored in depth.

I. INTRODUCTION

Euthanasia can be defined as "an act or method of causing death painlessly, so as to end suffering."³ There are two kinds of euthanasia- active and passive. Active euthanasia is the intentional termination of a life to relieve agony, whereas passive euthanasia is death as a result of omitting or forgoing a life-preserving measure.⁴ Active euthanasia is removing one's life, while passive euthanasia is removing the object that gives one life.

Euthanasia can be further classified as voluntary, involuntary and non-voluntary.⁵ Voluntary euthanasia is euthanasia performed on a patient who requested it. Involuntary euthanasia is

¹ Author is a student at Symbiosis Law School, Pune, India.

² B A Rich, 'Physicians' legal duty to relieve suffering' (2001) 175 West J Med 151.

³ Webster's New World Dictionary of the American Language (1988).

⁴ Orłowski JP, Smith ML and Van Zwiene J, 'Pediatric Euthanasia' (1992) 146 Am J Dis Child 1444.

⁵ Goldman & Cecil, *Goldman's Cecil Medicine* (23rd edn, Saunders 2008).

euthanasia performed on a patient who did not request it. Non-voluntary euthanasia is euthanasia performed on a patient unable to express consent.

Marcozzi defined euthanasia to be the “painless suppression of the suffering or of that who is deemed to be suffering who may suffer unbearably in the future”⁶. While this definition fails to include the term ‘death’, it fittingly illustrates the purpose of euthanasia, which is the ending of one’s misery in order to preserve their esteem.

II. ETHICAL DILEMMAS

Historically, the core argument against euthanasia was that God gave humankind life, and only he could take it away.⁷ Over the years, the argument has become less religious and more scientific but still falls under the purview of “ethics”.

In 1976, the Council of Europe affirmed that doctors must strive to alleviate suffering and have no rights, even in seemingly hopeless cases, to intentionally quicken the natural process of dying.⁸ In 1987, the World Medical Association recalled that “euthanasia, that is to say ending the life of a patient by a deliberate act, even its request or to that of his relatives, is unethical”.⁹

The most prominent modern argument against euthanasia is that it is necessary to respect human life as a Basic Good.¹⁰ The value of life decreases when it can be taken away easily through euthanasia. A patient’s life is important and precious, no matter how sick or inept they are.¹¹ Euthanasia eliminates all chances of healing and leading a better life.

On the other hand, those who are pro-euthanasia believe in ending a person’s life painlessly, so they escape the agony. The foundation of their arguments rests upon an ethical treatment of human life to alleviate struggle and pain. Human life is only as precious as its quality.

III. THE INTERNATIONAL LEGAL PERSPECTIVE

The Universal Declaration of Human Rights asserts that everyone has the right to life, liberty and security.¹² According to the European Court of Human Rights, the right to life¹³ cannot be interpreted to confer the opposite right, i.e. the right to death. Moreover, it cannot generate a

⁶ Marcozzi, ‘II Cristiano Di Fronte All’ Eutanasia’ (1975) IV La Civiltà Cattolica 322.

⁷ *The Bible*.

⁸ Conseil De L’europe, ‘Recommandation 779’ (1976).

⁹ C. Byk, ‘The Legal Situation Of The Patient’ (1997) In Proceedings of the Bordeaux colloquium.

¹⁰ Neil M. Gorsuch, ‘The Right To Assisted Suicide And Euthanasia’ (1999) 23 Harv J Law Public Policy 599.

¹¹ Ali Ahsan, ‘Euthanasia Kills Sanctity of Life’ (*The Crimson*, 1996) <<https://www.thecrimson.com/article/1996/12/17/euthanasia-kills-sanctity-of-life-pbtbhree/>> Accessed 16 December 2021.

¹² UN General Assembly, ‘Universal Declaration of Human Rights 1948’ 3A.

¹³ The European Union, ‘The EU Charter of Fundamental Rights 1953’ 2A.

right to self-determination by giving an individual the option to choose death over life.¹⁴

There is no “right to death” under international law.¹⁵ Nevertheless, many nations have interpreted their regional right to life to include the right to death, which has led to many nations legalizing euthanasia. Passive euthanasia is permitted in countries including Chile, Germany, Japan, Sweden and South Korea. Active euthanasia is less common but is allowed in Spain, Switzerland and parts of Australia, to name a few.

*Cruzan v. Director Missouri Department of Health*¹⁶ was the first-ever “right to die” US case. It dealt with the principle of informed consent and the right to physical integrity. It established that the right to die was not guaranteed by the US Constitution.

On the other hand, the Canadian Supreme Court held in *Carter v. Canada*¹⁷ that mentally competent adults who are suffering intolerably have the right to a doctor’s help in dying as it was more humane than suicide or slow, painful death.

IV. THE INDIAN LEGAL PERSPECTIVE

India is one of the only Asian countries that has legalized euthanasia, currently permitting only passive euthanasia.

There has been an ongoing debate around whether the right to life expressed by Article 21 of the Constitution includes the right to death, especially since the right to life is diametrically opposed to the right to death. Since the right to life under the provision entails the right to live with dignity, it is argued by many that those in certain medical states are incapable of living with dignity, which is why they must be allowed the choice of euthanasia.

Up until recently, the Indian Penal Code¹⁸ punished anyone who attempted to commit suicide and commit any act towards the commission of such offence with a fine and/or imprisonment. However, the recent Mental Healthcare Act significantly reduced the scope of the provision, stating any person who attempts suicide shall be alleged to have been under drastic stress. They will not be tried and punished under the Code unless it is proven that they were not under severe stress.¹⁹

The conversation around euthanasia first started in the 1980s in the case of *Maruti Shripati*

¹⁴ *Pretty v United Kingdom* (2002) 35 E.H.R.R. 1 §§ 39-40.

¹⁵ Van Den Akker, et al., ‘Euthanasia and International Human Rights Law: Prolegomena for an International Debate’ (1997) 37 Med Sci Law 289.

¹⁶ *Cruzan v Director Missouri Department of Health* 497 U.S. 261 (1990).

¹⁷ *Carter v Canada* 2015 SCC 5.

¹⁸ The Indian Penal Code 1860, s309.

¹⁹ The Mental Healthcare Act 2017, s115(1).

*Dubal v. the State Of Maharashtra*²⁰. The Bombay High Court stated the following-

“There is nothing unnatural about the desire to die and hence with the right to die. Whatever the circumstances which induce a person to end or terminate his or her life, the act of termination of life is the act of that individual. It is no less his than his act of living.”

This discussion on the right to death skyrocketed due to the *Aruna Shanbaug* case²¹ wherein a woman had been left in a vegetative state for thirty years after being sodomized. Her friend requested that she be euthanized, arguing that there was no dignity left in her life given her condition. The medical staff that took care of her were against the plea of euthanasia, arguing that her life was not worthless considering she could still hear and feel her surroundings.

Eventually, the Court did not permit her to be euthanized. Nevertheless, as a consequence of the case and the discussion, it generated in euthanasia, guidelines surrounding passive euthanasia were passed-

- i) The decision to cease life support has to be made by the parents, spouse or other close relatives. In their absence, the decision could be made by a person or people acting as a “next friend”. The decision could also be taken by the doctors treating the patient
- ii) This decision requires the presence of two witnesses, must be counter-signed by a judicial magistrate of the first class and be approved by a medical board set up by the respective hospital.

V. ISSUES WITH ACTIVE EUTHANASIA

Active euthanasia is a high-risk practice. If not contained, it could be misused to the extent of tiptoeing between euthanasia and murder.

1.) Euthanasia as an escape

Studies have shown that modern hospitals are rather “cost-effective”²² and have other priorities to handle in addition to the welfare of patients. This rings especially true in the COVID-era, which witnessed a stifling shortage of necessities such as oxygen cylinders, beds etc. Many doctors would suggest euthanasia to older patients in order to preserve medical resources for younger ones.

Moreover, many unjust professionals would propose euthanasia at the beginning of treatment in order to escape the process of having to actually cure the patient. The choice of euthanasia

²⁰ *Maruti Shripati Dubal v State of Maharashtra* (1986) 88 BOMLR 589.

²¹ *Aruna Ramchandra Shanbaug v Union Of India* (2011) 4 SCC 454.

²² Daniel P Sulmasy et al., ‘Physician Resource Use and Willingness to Participate in Assisted Suicide’ (1998) *Arch Intern Med.* 974.

could even be misproposed to people who are not even sick.

2.) **Scope for malpractice**

Medical negligence causes great harm to its victims and can often be fatal. In the event of deadly negligence or malpractice, it would not be difficult for doctors to lie to the patient's family and friends about their negligence by claiming that their death as a result of voluntary euthanasia instead. Even though the current Indian laws require the permission of a Judicial Magistrate Of The First Class for administering euthanasia, given how corrupt the system is, it would not be difficult for certain doctors to fake such permission or obtain it unlawfully.

3.) **A slippery slope**

Voluntary euthanasia is the start of a slippery slope that would lead to involuntary euthanasia and, eventually, the intentional killing of people who are deemed undesirable and unnecessary. The limits on euthanasia gradually erode.²³ As much as this sounds like a reach, the same has, in fact, occurred.

In the 1980s, the Netherlands ceased prosecuting physicians who committed voluntary euthanasia, thereby legalizing active euthanasia. The dire consequences of this decision became evident a decade later as more than half of acts of euthanasia were no longer voluntary. Instead of pacifying the situation, the nation made euthanasia legal in 2001 and, in 2004, decided to allow children to be euthanized as well. Presently, the situation has become dreadfully worse as social factors like financial resources and social skills²⁴ qualify as unbearable and lasting suffering under the Euthanasia Act²⁵, meaning those who are facing circumstances that are not permanent are permitted to undergo active euthanasia.

Thus, euthanasia should indeed be permitted, but in a manner that is highly strict and restrictive. We must ensure that the right to death does not become a right to kill.

VI. SUGGESTIONS

Laws regulating active euthanasia can be framed only once it has been established that there has been no misuse of the passive euthanasia laws currently prevailing. The current laws governing passive euthanasia must thus be implemented strictly.

Allowing the practise of active euthanasia in an unbiassed method will necessitate numerous

²³ Daniel P Sulmasy, et al., 'Non-faith-based arguments against physician-assisted suicide and euthanasia' (2016) 83 *Linacre Q.* 24.

²⁴ 'Guidelines for the Practice of Euthanasia and Physician-Assisted Suicide' (*KNMG*, 2012) <<https://www.knmp.nl/downloads/guidelines-for-the-practice-of-euthanasia.pdf>> accessed 14 December 2021.

²⁵ Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2001.

changes in strategies, movements and policies. Additionally, it will have to involve a multitude of people and bodies that have roles and experience in making and implementing health-based decisions. The Ministry of Health, for example, would be capable of framing or at least supervising the drafting of such regulations. Private entities from different parts of the country would be suitable to collaborate for the same as well.

The following guidelines, which are currently implemented in Japan²⁶, could be used as a template for framing guidelines on active euthanasia when the time came-

- i) the patient must be enduring unbearable physical pain
- ii) death must be inevitable and nearby
- iii) consent cannot be assumed and must only be given by the patient themselves
- iv) the physician must have ineffectively depleted all other remedial options

Canada is a nation that has not fallen down the same slippery slope as other nations that have legalized active euthanasia. It has maintained the stringency of its active euthanasia laws. This could be attributed to the fact that the core necessity to be euthanized is that one must be in a condition that will not improve regardless of the level of treatment they receive. Additionally, those administering euthanasia make it a point to repeatedly ask the patient whether they are certain of their choice. This makes it easier to reject euthanasia if the patient changes their mind. This principle could be utilized in the event that active euthanasia became legal in India.

VII. CONCLUSION

Before we can implement the right to death copiously, it is necessary to ensure that the right to life exists to its potential. As was famously held, “the right to life is not mere animal existence”.²⁷ There has to be a degree of meaning preserved in life. Rather than waiting for life to be drained completely from a person who has one foot in the grave, it is better for all parties if they could have it taken out quickly and painlessly, thereby keeping their dignity intact. Experiencing the slow, painful death of a human is agonizing not only to the person but to their family members, who will have to help them eat, walk, use the toilet, etc. Instead of remembering the strong, capable person they once knew, they instead will remember a vegetable who needed assistance with basic activities. Thus, it is better to end a life with some bitterness instead of allowing it to be an endless bitterness.

²⁶ Motomu Shimoda, ‘Death With Dignity, In The Japanese Context’ (2005) 16 Bioethics 125.

²⁷ *Maneka Gandhi v Union of India* 1978 SCR (2) 621.