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Examining Euthanasia: Comparative Analysis of the Right to Die in Legal and Ethical Contexts

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ABSTRACT

God's most precious creation in this world is life. Despite the advancement of science, the mysteries of life and death remain unsolved. Life is not something that can be created, which is why taking it away is a legal offence. There are situations where the law is uncertain about matters of life and death. Mercy killing or euthanasia is one such case, which is also termed as "Ichha Mrityu" in India.

One of the most controversial ethical and legal topics in modern society is euthanasia. The deliberate ending of an individual's life with the aim of mitigating suffering. The right to die, which includes both voluntary euthanasia and assisted suicide, has sparked impassioned debates across the globe. Euthanasia supporters argue that it enables individuals to end their suffering and pass away with dignity & peace, on the other hand, critics argue that the act infringes on the holy nature of life and hampers the value of human existence.

To keep the interests of the citizens of India on utmost priority, the Apex Court has always interpreted the constitutional provisions in its broader aspects. In addition to that, the Apex Court also recognises that Article 21 of COI has a very wide scope and the "right to die with dignity" is within its ambit. In Aruna Ramchandra Shanbaug Case, after considering the legality of euthanasia, the Apex Court ruled in favour of legalising passive Euthanasia and formulated a set of guidelines which need to be followed in such cases.

This Article tries to put forward a comprehensive comparative analysis of the right to die by putting forward the diverse legal frameworks, ethical perspectives, and cultural attitudes surrounding this complex issue.

Firstly, this article deals with the concept, background and evolution of euthanasia. Secondly, this article deals with legal aspects of Euthanasia highlighting the significant variations in legislation across different jurisdictions. This paper examines the real-world consequences and societal consequences of these legal distinctions, illuminating the challenges and benefits associated with each approach. Thirdly, the article deals with the influence of cultural and societal factors on the right to die. It shows how cultural and

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societal factors interact with legal and ethical considerations, leading to diverse perspectives on euthanasia worldwide.

Furthermore, this article includes a comparative analysis of different jurisdictions where euthanasia or assisted suicide is legal. Lastly, By examining the varying legal frameworks, ethical arguments, and cultural attitudes, this article provides a comprehensive overview of the right to die, offering insights into the challenges and opportunities for addressing this contentious issue.

Keywords: *Euthanasia, Passive Euthanasia, Mercy Killing, Right to Die, Dignity.*

I. INTRODUCTION

“I am the master of my fate; I am the captain of my soul”³

Earth stands out among the planets in the solar system due to its unique combination of water, air, sunlight, and other elements, but its most distinctive feature is the presence of life—a mysterious phenomenon that has captivated human inquiry across scientific, philosophical, and theological realms. Despite being an integral part of the life cycle, death is often met with denial, and individuals assert their right to live fully.

However, there are cases where individuals contemplate unnatural means to end their lives, termed "suicide." On the other hand, "euthanasia" or "mercy killing" refers to *“intentionally terminating a person's life with their consent and assistance from others, offering a gentle and painless exit—a death with dignity, aimed at alleviating prolonged suffering”*.

The ethical quandary surrounding euthanasia centres on the delicate balance between empathy and humanity, asserting that individuals should have autonomy over their lives. Supporters contend that individuals confronting terminal illnesses or profound disabilities should possess the autonomy to decide between life and death, emphasizing the desire for a dignified end to cease unrelenting pain.

Euthanasia debates delve into ethical, moral, and individual belief systems, gaining significance with their legalization in various countries, including India, Canada, and England. A landmark judgment by the Apex Court legalized passive euthanasia, allowing the discontinuation of life-sustaining measures with the individual's and family member's consent⁴. The court also introduced the 'Concept of living will' to safeguard against undue advantage. This ongoing discourse reflects evolving perspectives on the sanctity of life and individual autonomy⁵.

³ William Ernest Henley, *A Book of Verses* 56-57 (Scribner, New York, 1988).

⁴ Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

⁵ Common Cause vs Union of India, 2014 SCC 5 338.

(A) Statement of Problem

The 'Right to die' is a contentious issue surrounded by numerous contradictions. In India, the legal stance on euthanasia and its various forms remains unclear. Although the Apex Court has approved passive euthanasia, it lacks a legal foundation. The status of the right to die is ambiguous, both in terms of being recognized as a human right and gaining widespread acceptance.

(B) Research Objectives

- Examining the constitutional provisions and legislations pertaining to the Right to Die in India, as well as in other global jurisdictions.
- Analysing and contrasting the legal standing of euthanasia in India in comparison to other regions worldwide.
- To study the role and significance of Judicial activism in support of Euthanasia in India.
- To evaluate the reasons why euthanasia is favoured by some and not by others.

(C) Research Methodology

- Research Method- Doctrinal Research Methodology
- Secondary Sources- Online Articles, Books, Journals, Legal Research Papers
- Citation Method: Bluebook- A Uniform System of Citation (20th ed.)

II. EXPLORING EUTHANASIA: PERSPECTIVES ON DEFINITION, DISTINCTIONS & RELIGIOUS BELIEFS

(A) What is Euthanasia and its Types

Euthanasia, commonly known as "Mercy Killing," encompasses various interpretations depending on context and usage. In general terms, it refers to a painless or contented death or the relief of suffering in the face of incurable pain or disease. Cambridge Dictionary defines euthanasia as '*the act of ending the life of someone terminally ill who no longer wishes to endure suffering*'⁶. Essentially, it involves freeing an individual from relentless, incurable pain, with no personal gain for the one carrying out the act.

'Black's Law Dictionary' elaborates on euthanasia as '*the act or practice of causing the death of a person suffering from an incurable and often painful disease, motivated by mercy*'. The 'Encyclopaedia of Crime and Justice' characterizes euthanasia as a merciful act that provides

⁶ Euthanasia, Cambridge Dictionary (4th ed. 2013).

relief from an intolerable condition of living, involving the deliberate and compassionate ending of a person's life due to incurable disease or unbearable suffering.

Draper offers a nuanced definition, emphasizing that “*euthanasia involves one person intentionally causing the death of another, using the most gentle and painless means, driven solely by the best interests of the person who dies*”. Euthanasia is generally limited to individuals in a state of permanent vegetative condition, and its implementation requires the approval of either the patient or their closest relative, delegated to doctors⁷.

The debate surrounding euthanasia has persisted globally, with varying legal stances. While some countries, like the ‘United Kingdom’, deem it illegal, others, including the ‘Netherlands’, ‘Canada’, ‘Colombia’, and certain U.S. states, have legalized it. The Supreme Court of India legalized Passive Euthanasia in 2018 through guidelines⁸.

Euthanasia is a complex issue, marked by various types categorized according to consent-

- a. **Voluntary Euthanasia** occurs when a patient actively desires or requests to be killed to alleviate suffering.
- b. **Non-Voluntary Euthanasia** provides for a patient who is unconscious or incapable of deciding between life and death, with another rational individual deciding to end their suffering.
- c. **Involuntary Euthanasia**, is conducted against the patient's will or without their consent.

Within medical and bioethics discourse, an ongoing debate questions whether the killing of an individual, with or without consent, should be classified as euthanasia. Some argue that any form of killing without explicit consent is illegal, making consent a crucial factor.

Euthanasia is further categorized based on the means of death-

- a. **Active Euthanasia**, also known as ‘positive’ or ‘aggressive’ euthanasia, involves causing death by administering drugs or lethal injections, deemed illegal in all forms.
- b. **Passive Euthanasia**, termed ‘negative’ or ‘non-aggressive’ euthanasia, entails withdrawing basic life necessities and medical treatment to facilitate death or relieve the individual from pain and suffering.

While passive euthanasia has been legalized in India, concerns persist, with some viewing it as

⁷ Shreyans Kasliwal, "Should Euthanasia be Legalised in India?," <http://www.ebc-india.com/lawyer/articles/592.htm> (last visited Oct. 30, 2023).

⁸ Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

a potential threat to constitutional provisions safeguarding the right to life. This legal shift challenges the 'right to life' by introducing the conflicting concept of the 'right to die'. Despite drawbacks and controversies, passive euthanasia can be seen as a form of relief for those enduring immense suffering, offering them the option to end their lives and alleviate pain. The Supreme Court's judgment has introduced a new dimension to the authorization of euthanasia in India.

(B) Euthanasia vs. Suicide

The ongoing discourse revolves around the question of whether the 'right to live' implies an inherent 'right to die'. Divergent opinions on this matter range from advocating for euthanasia as a means to provide individuals with a dignified end to their suffering, to opposing it on grounds that the timing of one's death should be determined by a higher power and that humans lack the authority to decide on their demise.

Supporters of euthanasia argue that it grants people the opportunity to face their terminal illnesses with dignity, freeing them from prolonged suffering. Conversely, opponents contend that life, once given, should be lived to the fullest, facing challenges as an integral part of the human experience. Concerns are raised that permitting euthanasia might inadvertently endorse suicide, prompting calls for stringent guidelines to regulate its practice.

Drawing a fine line between euthanasia and suicide, it is noted that euthanasia involves a patient's consent and is executed through medical professionals with the intent of alleviating terminal illness-induced suffering. In contrast, suicide is portrayed as a more negative act, characterized by voluntary and intentional self-destruction, often linked to personal failures or overwhelming despair. Both actions involve intention, but euthanasia aims to relieve suffering, while suicide is viewed as an avoidable outcome with proper motivation and support⁹.

Legal perspectives also contribute to the debate. The Bombay High Court distinguishes between suicide and mercy killing, emphasizing that suicide is a self-executed act, while euthanasia involves external intervention to end life.

The ethical and legal complexities surrounding euthanasia continue to fuel discussions globally, with varying perspectives on the balance b/w the "right to live" and the "right to die", as well as the distinction between euthanasia and suicide.

(C) Religious Beliefs in India on Euthanasia

Euthanasia, originating from the Greek terms "eu", signifying good or well, and "Thanatos",

⁹ Maruti Shripati Dubal v. State of Maharashtra, 1987 (1) BomCR 499.

denoting death, involves facilitating a person's painless death, especially in instances of severe illness or when life becomes devoid of purpose due to mental or physical disability¹⁰.

India has embraced the concept of voluntary death or mercy killing, aligning with ancient civilizations. Within Indian culture, the notions of nirvana and samadhi trace back to the Mahabharata and Ramayana periods, where the Pandavas renounced their kingdom and chose the path leading to death. Although the terms "Nirvana" and "Samadhi" may not be found in the English Dictionary, they hold significant cultural relevance in India. Manusmriti, for instance, outlines a perspective on voluntary death: "*When the head of the household is old, has experienced all the joys of life, and is content with his achievements, he should renounce everything to seek eternal peace, sustaining himself only on air and water until his body eventually gives up*"¹¹.

In contemporary times, a notable example is Acharya Vinoba Bhave. In 1982, when he fell ill, Bhave chose to end his life, rejecting food and medicine during his final days. He opted to starve himself, passing away on November 15, 1982.

Jainism also incorporates the practice of voluntary death, known as "Santhara." In this tradition, Jains voluntarily abstain from food and drink, choosing to endure starvation until death, as it is believed to secure a place in heaven after death.

III. RIGHT TO DIE AND ITS RECOGNITION AS HUMAN RIGHTS

In the sphere of international human rights principles, the concept of a "Right to Die" is conspicuously absent, with an emphasis instead on the obligation of states to protect life. This stance is evident in key international instruments:

- a. The "*Universal Declaration of Human Rights, 1948*", declares the "Right to life, liberty, and security of person" for everyone¹².
- b. The "*International Covenant on Civil and Political Rights*" asserts the inherent "Right to Life", safeguarded by law, with a prohibition against arbitrary deprivation of life¹³.
- c. **Article 2** of the "*European Convention for the Protection of Human Rights*" establishes the "Right to Life". While the court clarifies that this article does not confer a "Right to

¹⁰ Kusum R Gandhi, *Euthanasia: A Brief History and Perspectives in India*, ResearchGate https://www.researchgate.net/publication/320829903_Euthanasia_A_Brief_History_and_Perspectives_in_India, (Last visited Oct 25, 2023)

¹¹ Rema Nagarajan, *Indian culture had place for voluntary death*, Times of India (Jul 17, 2014, 01:35 IST), http://timesofindia.indiatimes.com/articleshow/38504764.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

¹² Universal Declaration of Human Rights (UDHR) art. 3.

¹³ International Covenant on Civil and Political Rights (ICCPR) art. 6(1).

Die" or the autonomy to choose death over life, it also acknowledges that the state's obligation does not prevent the legalization of euthanasia, provided robust safeguards are in place¹⁴.

- In *Hass v Switzerland*, the “European Court of Human Rights” highlighted Article 2's duty for authorities to protect vulnerable individuals, affirming that the state must intervene if an individual's decision to end their life lacks freedom and full understanding¹⁵.
- In the *Lambert and others v. France case*, where a patient was in a chronic vegetative state, the ‘European Court of Human Rights’ ruled that the state could cause the death of a patient in a minimally conscious state, subject to legal provisions¹⁶.
- d. The “*International Covenant on Civil and Political Rights*” mandates states to protect the dignity and integrity of individuals, fuelling debates on whether positive state obligations necessitate the legalization of active euthanasia in situations where the only alternatives are enduring unbearable pain or choosing to end one's life¹⁷.
- e. **Article 10** of the “*Convention on the Rights of Persons with Disabilities*” underscores the protection of life rather than recognizing death as an option. UN treaties reject the notion of a ‘right to die’ and instead advocate for the safeguarding of the sick and disabled, as seen in Article 23 of the “*Convention on the Rights of the Child*”, emphasizing the right of mentally or physically challenged children to enjoy a full and dignified life with self-reliance and community participation¹⁸.

IV. INTERNATIONAL SITUATION OVER EUTHANASIA

The legal aspects surrounding euthanasia, along with its global practice, have become increasingly prominent and remain a significant subject of debate, especially in the latter portion of the 20th century. Various instances of suicide and euthanasia in different countries have been highlighted below.

- **Netherlands:** In April 2002, the Netherlands made groundbreaking strides by becoming the first European nation to legalize both euthanasia and assisted suicide. The legal framework guiding euthanasia in the country is established by the “Termination of Life on Request and Assisted Suicide (Review Procedures) Act” of 2002, which outlines

¹⁴ Pretty v. United Kingdom, Eur. Ct H.R., Chamber, Application No. 2346/02, 29 April 2002.

¹⁵ Hass v. Switzerland, Eur. Ct. H.R., Grand Chamber, Application no. 31322/07, 20 January 2011.

¹⁶ Lambert and Others v. France, Eur. Ct. H.R., Grand Chamber, Application no. 46043/14, 5 June 2015.

¹⁷ International Covenant on Civil and Political Rights (ICCPR) art. 7.

¹⁸ Convention on the Rights of the Child, art. 23.

criteria for due care that, if met, shield physicians from punishment. While the Netherlands Penal Code imposes penalties for causing death upon request or assisting suicide, physicians are granted immunity if they adhere to specified conditions.

- These conditions include the voluntary nature of the patient's request, which can be expressed personally or documented in writing if the patient is unable to communicate, provided they are at least 16 years old. The patient's suffering must be considered unbearable with no prospects of improvement. Furthermore, the patient should be informed, conscious, and aware of their condition and available options, with both the physician and patient concluding that no reasonable alternatives exist¹⁹.
- Physicians following the 'Dutch Criminal Code' and euthanasia review committee protocols are shielded from prosecution. They are required to notify a regional review body in cases of non-natural deaths. Notably, the Dutch government has initiated plans to allow euthanasia for terminally ill children under the age of 12²⁰.
- **Belgium:** In 2002, euthanasia was legalized. Subsequently, in September of the same year, the Belgian Parliament implemented the "Belgium Act on Euthanasia", which defines euthanasia as the "intentional termination of life by someone other than the person concerned at the latter's request". The conditions for approving euthanasia were stringent, requiring that the patient is of legal age, has made a voluntary and well-considered request, possesses the capacity to give consent and endure intolerable physical or mental suffering. All such procedures had to be conducted under the supervision of authorities to ensure compliance with essential requirements.
- **United States of America:** The earliest explicit prohibition of assisted suicide in the USA was established in New York in 1828. Dudley Field, leading a New York commission, formulated a penal law between 1857 and 1865 that specifically criminalized "aiding" suicide and supplying lethal means to another person with knowledge of their intent to use such means for self-inflicted death. In cases like *Washington v. Glucksberg*²¹ and *Vacco v. Quill*²², the US Supreme Court unequivocally declared euthanasia as entirely illegal, aligning with the provisions of the U.S. Constitution.

¹⁹ Dutch law on Termination of life on request and assisted suicide, WFRTDS, <https://wfrtds.org/dutch-law-on-termination-of-life-on-request-and-assisted-suicide-complete-text/> (Last visited Nov. 7, 2023).

²⁰ Dutch government backs euthanasia for under 12s, DW News, <https://p.dw.com/p/3juGc> (Last visited Nov. 6, 2023).

²¹ *Washington v. Glucksberg*, [1997] U.S. 702.

²² *Vacon v. Quill*, [1997] U.S. 793.

- Although active euthanasia remains prohibited in the US, patients retain the ‘right to refuse medical treatment’. In addition, patients are free to seek various treatments to alleviate their pain and suffering, even if it accelerates the process of death, categorized as passive euthanasia, which is not illegal. Only four states—Oregon, Montana, Texas, and Washington—have incorporated euthanasia provisions into their legal frameworks.
- **Albania:** In 1999, Albania legalized euthanasia, specifically endorsing voluntary euthanasia under the provisions of the ‘Terminally Ill Act of 1995’. Additionally, passive euthanasia is considered lawful when authorized by 3 or more family members.
- **Switzerland:** As per Article 115 of the ‘Swiss Penal Code’, suicide is not considered a criminal act. Assisted suicide becomes a crime only when motivated by selfishness, and it doesn't mandate the inclusion of a physician or the patient being terminally ill. The crucial factor is that the intent should be unselfish. While euthanasia is prohibited in Switzerland, physician-assisted suicide is legally permitted.
- **Sweden:** In Sweden, a 2015 law granted patients the autonomy to participate in any medical decision, and doctors are prohibited from legally objecting to any procedure, including assisted suicide. Nevertheless, the absence of clear laws and subsequent legal uncertainty has led to a prevalence of assisted suicides in the country.
- **Canada:** In 2016, Canada legalized euthanasia, also known as "medically assisted dying," along with assisted suicide. It also amended its Criminal Code, decriminalizing assisted dying and affirming an individual's ‘right to live and die with dignity’²³. In the case of *Carter v. Canada*²⁴, the Apex Court held that legalizing euthanasia would not violate the Charter of Rights. Additionally, Parliament passed a specific bill, C-14, in 2016, legalizing both ‘physician-assisted euthanasia’ and ‘physician-assisted suicide’²⁵.
- **Australia:** The Northern Territory of Australia made history in 1996 by becoming the first jurisdiction to give recognition to euthanasia with the ‘Rights of the Terminally Ill Act’, affirmed by the Supreme Court. Although federal law in 1997 initially prohibited voluntary euthanasia and assisted suicide across all territories, this restriction was repealed in December 2022 through the Restoring Territory Rights Act. By May 2023, all Australian states had implemented legislation allowing assisted suicide, commonly

²³ Akanksha Surana, *A Comparative Study of Euthanasia in India and Canada: A Critique*, 4 IJLMH. 757- 773 (2021).

²⁴ *Cater v. Canada*, 2012 BCSC 886.

²⁵ *Malette v. Shulman*, 1990 CanLII 6868 (ON CA).

known as "voluntary assisted dying."

V. EUTHANASIA IN INDIA

The Indian Constitution, influenced by various global sources, stands as the paramount legal document, encompassing a wide range of rights, duties, and laws. Within the societal framework of nations, citizens often adhere to diverse social and religious principles that govern their conduct. Amid these principles, a universally applicable concept prevails—the principle of the paramountcy of human life. Euthanasia has long been a topic of legal contention, and mercy killing has raised legal and social concerns due to distressing situations depicted in various scenarios.

The right to die has, at times, been asserted to come within the ambit of the “right to life with dignity” under Article 21 of the COI²⁶. Advocates argue that when the dying process causes prolonged and unbearable suffering, individuals should be allowed a dignified release from pain. The contention is that the right to die can’t be separated from the ‘right to live with dignity’. Despite the absence of specific legislation by the Indian Parliament on this matter, the judiciary has periodically interpreted the concept of euthanasia. Currently, as per the apex court's decision, passive euthanasia is legalized in India²⁷.

The legal journey of Euthanasia as the ‘Right to die’ in India through judicial activism-

- The inquiry into whether the “right to live” incorporates the “right to die” emerged in India in 1987. The Bombay High Court, in the case of the *State of Maharashtra v. Maruti Shripati Dubal*, affirmed that individuals should possess the liberty to determine the disposition of their lives according to their preferences.
- Across India, different courts issued conflicting decisions on the matter. In *Chhena Jagadeswer v State of Andhra Pradesh*²⁸, the High Court of Andhra Pradesh stated that an attempt to commit suicide is legal and constitutionally valid.
- The Supreme Court accepted the “Right to die” as a component of Article 21 in the case of “*P Rathinam v Union of India*”²⁹. The court held that “Any person cannot be compelled to live to his detriment or dislike therefore right to life includes the right to die”. It was also a conclusion drawn by the state that penal laws in India should be more humane.

²⁶ INDIA CONST. art. 21.

²⁷ Common Cause v. Union of India, (2018) 5 SCC 1.

²⁸ Chhena Jagadeswer v State of Andhra Pradesh, 1988 CrL. L.J. 549.

²⁹ P Rathinam v Union of India, AIR 1994 SC 1884.

- In ***Gian Kaur v State of Punjab***³⁰, the court overturned P Rathinam, ruling that abetting the right to die, considered a Fundamental right, is punishable under Section 306 of the IPC. The court rejected the analogy in P Rathinam, stating that ‘*the right to life does not inherently include the right to die*’. Sections 306 and 309 of the IPC were upheld, emphasizing that Article 21 doesn’t include the “right to die”. The court highlighted the “Right to life” and specified it doesn’t entail the “Right to die”, emphasizing a dignified life until a natural death.
- The ***Aruna Ramchandra Shanbaug v. Union Of India & Ors***³¹ case represents a pivotal legal development that brought about a significant transformation in the medical landscape by authorizing Passive Euthanasia within specific limitations. This landmark case effectively legalized passive euthanasia in India. Aruna Shanbaug, who had been in a coma since 1973 following a sexual assault, became the focal point of the case when a friend urged the Apex Court to instruct the hospital authorities to discontinue feeding Ms Shanbaug, allowing her to peacefully depart from this world.
- The case extensively deliberated on passive euthanasia, invoking the Principle of Parens Patria, which grants the court the authority to act as the. This authority is vested in the High Court under Article 226. The Court deemed active euthanasia illegal while permitting passive euthanasia, subject to the guidelines established by the High Court.
- In the pivotal case of ***Common Cause vs Union of India***, a five-judge bench asserted that the “right to die with dignity is a fundamental right safeguarded under Article 21 of the Constitution”. The court, highlighting individual autonomy, emphasized the right to decide the withdrawal of life support and stressed the significance of creating a living will.
- Furthermore, the Supreme Court not only proposed specific measures for implementing living wills but also provided guidelines for the practice of passive euthanasia. This judgment has been well-received, especially by patients facing prolonged illnesses, chronic diseases, and incurable conditions involving extended medication use. By acknowledging the ‘Right to Die with Dignity’ as a fundamental right, the court has taken a substantial stride in alleviating the prolonged pain and suffering experienced by individuals in such circumstances.

³⁰ Gian Kaur v Union of India, 1996 (2) SCC 648.

³¹ Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

VI. RECOMMENDATIONS OF THE LAW COMMISSION OF INDIA

(A) Law Commission Report 2006

- i. The report titled “Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)”³².
 - ii. It recommends the establishment of a legal framework for protecting terminally ill patients who decline artificial nutrition, hydration, or life support under Section 309. It proposes protection for doctors supporting such patient decisions, shielding them from Section 306 IPC and Section 299 IPC repercussions.
 - iii. The report distinguishes between competent and incompetent patients, with the latter requiring a defined procedure involving a board of three medical experts to decide on treatment withdrawal. In cases of disagreement, the majority opinion prevails.
 - iv. The committee suggests comprehensive guidelines by the Medical Council of India for various scenarios where medical treatment can be withdrawn. For incompetent patients, the doctor must seek written consent from parents or relatives, with the option to move to the High Court in case of disagreement.
- **In 2008, the Law Commission submitted a report on “Humanization and Decriminalization of Attempt To Suicide”** - The report deems Section 309 of IPC as inhumane, asserting that suicide is a result of mental illness, warranting treatment, not punishment. While abetment to suicide should be punished, the commission recommends the removal of Section 309 IPC from the statute books.

VII. COMPARATIVE ANALYSIS

Comparison between India, Netherlands, Australia & Canada

BASIS	INDIA	NETHERLAND	AUSTRALIA	CANADA
Active Euthanasia	Illegal	Yes	Yes, through 2019 legislation in Victoria.	Yes
Passive Euthanasia	Legal	Yes	Legal by Common Law	Yes

³² Law Commission of India, Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), Report No. 196, 2006.

Existence of legislation	NO	Yes	Yes, In the State of Victoria	Yes
Related Legislations/ Constitutional provision	Article 21 Constitution of India	Article 293, Dutch Penal Code	-Rights of Terminally Ill Act 1995 -Euthanasia Act 1997 -Victorian Voluntary Assisted Dying Act 2017	Bill C-14 Bill C-7 (MAiD Law)
Current Status	Permitted by the Supreme Court in the Aruna Shanbaug case in 2009. However, it still lacks legislative backup. No bill has been brought up in Indian Parliament to address this issue.	Euthanasia and active Voluntary Euthanasia are allowed making the Netherlands the most Liberal nation.	In all Australian States, legislation allowing for voluntary assisted dying (VAD) has been enacted. This includes Victoria, Western Australia, Tasmania, South Australia, Queensland, and New South Wales.	Since 2016, Canada has implemented its medical assistance in dying program, commonly referred to by the acronym 'MAID,' catering to adults facing terminal illnesses. In 2021, amendments to the law extended its scope to encompass individuals with serious and chronic physical conditions, even when such

				conditions are not deemed life-threatening.
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VIII. THE CONTRADICTIONARY VIEWS: WHETHER RIGHT TO DIE IS A RIGHT OR NOT?

Diverse ideologies surround the right to euthanasia, with opposing arguments against its support. Detractors present several concerns:

- A. **Elimination of Non-Essentials:** Critics argue that legalizing euthanasia may lead to the elimination of terminally ill individuals, potentially resulting in misuse. They contend that this approach undermines the concept of palliative care.
- B. **Against the Notion of Welfare State:** Opponents assert that the “Right to life”, as per Article 21 of COI, obligates the state to safeguard lives. They argue that supporting euthanasia contradicts the state's duty to protect lives and could lead to reduced investment in healthcare, as observed in countries like Holland.
- C. **Remediable Mental Illness:** Critics claim that mental illnesses, a common factor in suicidal tendencies, are treatable. They advocate for psychiatric interventions to address mental health issues instead of resorting to euthanasia.
- D. **Declining Morality in Society:** Concerns about declining morality and the potential misuse of euthanasia are raised, given the existing societal challenges. The fear of 'Killing Mercy' amid 'Mercy Killing' is acknowledged, emphasizing the need for careful consideration³³.
- E. **Poverty:** Financial constraints leading to the inability to pay medical bills may drive individuals to opt for euthanasia. Critics argue that life should not be sacrificed due to economic hardships.
- F. **Religious Beliefs:** Euthanasia contradicts Indian scriptures, which consider human life a sacred gift. Religious beliefs in India prohibit individuals from taking their own lives. In addressing these concerns, the Indian Medical Council Regulations of 2002³⁴ discuss euthanasia within the framework of “*The Transplantation of Human Organ Act, 1994*”. The multifaceted debate continues, encompassing ethical, societal, and religious

³³ Gian Kaur V State of Punjab, 1996 (2) SCC 648.

³⁴ The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

dimensions.

Counter Arguments in Favor of Legalization of Euthanasia

“Isn’t euthanasia a route to be able to die with dignity, when life has become devoid of it and full of distress?”

- A. **Caretaker Hardship:** The profound suffering of terminally ill patients not only imposes emotional strain but also places significant financial burdens on family members or caregivers. This issue is exacerbated by inadequate healthcare facilities and insufficient state investment, particularly affecting marginalized individuals, undermining the celebrated ‘Right to Life’.
- B. **Refusal to Medical Treatment:** Article 21 of COI, empowers individuals to reject life-prolonging treatments and refuse interventions like nasogastric tube feeding. This right aligns with the principles of passive euthanasia.
- C. **Promotion of Organ Transplantation:** Advocating for the right to die in terminally ill cases supports the right to live for those awaiting organ transplants. Encouraging organ donation from terminally ill patients on the brink of death is a noble endeavour, fostering a positive contribution to saving other lives.
- D. **Divergence of State Funds:** Reallocating state funds, currently used for treating terminally ill patients, toward improving healthcare for the economically disadvantaged is crucial for societal betterment.

IX. CONCLUSION

“For those who are facing a terminal illness, who are in irremediable pain and suffering, and wish to exercise their right to die with dignity, a system should be available to them”

- Dr Jack Kevorkian

The right to life inherently involves the right to make choices, but the selection between life and death presents a complex dilemma. Taking one's own life is not within the purview of any government, private individuals, or even the individual themselves. Euthanasia introduces the element of choice, offering an option between enduring immense suffering or achieving a peaceful death. However, the practice is fraught with conflicting thoughts and encompasses social, legal, and ethical dimensions. Ethically, religious doctrines universally prohibit the taking of a life created by a higher power. Socially, proponents argue that euthanasia provides relief from unbearable suffering, allowing individuals to approach death peacefully and with dignity. Legally, there is a need to evaluate and legalize both passive and active euthanasia,

considering their respective advantages and disadvantages.

In India, the strive for legal backing for euthanasia continues, as evidenced by the 2018 judgment. Despite this progress, full legalization remains elusive. Australia, particularly the Victorian State, has taken strides toward granting its citizens the ‘right to die with dignity’, setting an example for other states to follow. However, the implementation of euthanasia laws demands careful consideration of security concerns to prevent potential misuse by patients, families, doctors, hospitals, or the state.

In Conclusion the author would like to suggest following recommendations for the incorporation of euthanasia into the legal framework involve addressing complexities while ensuring appropriateness for society:

1. Establishing an independent panel to assess each euthanasia case comprehensively, examining medical conditions, motives of those advocating for the patient's right to die, authenticity of procedures, treatment reports, and other relevant factors.
2. Not dismissing applications from individuals lacking locus standi, recognizing the unique situations of those without family or relatives.
3. Expediting the legal process for euthanasia cases through fast-track court proceedings to minimize additional suffering for the patient.
4. Exercising caution with an exclusive reliance on living wills, recognizing that conditions foreseen by the executor may not align with the actual situation.
5. Imposing mandatory post-mortem examinations after euthanasia procedures to prevent the abuse of authority by physicians or family members and promote openness.

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