Page 3017 - 3032 **DOI:** *https://doij.org/10.10000/IJLMH.114749*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

Legal and Ethical Perspectives on Euthanasia: A Comparative Study of India and Canada

BHAGYAMMA G.[1] AND DR. RAMESH[2]

ABSTRACT

This comparative study explores the legal and ethical perspectives on euthanasia in India and Canada. Euthanasia, also known as assisted dying, is a complex and controversial issue that raises questions about autonomy, dignity, suffering, and the role of healthcare professionals in end-of-life decision-making. In Canada, euthanasia is legal under certain circumstances, following the Supreme Court's decision in the Carter case in 2015. The Medical Assistance in Dying (MAID) Act came into effect in 2016, which allows eligible patients to receive medical assistance in dying with the supervision of a medical practitioner. However, the law has strict criteria for eligibility, and there is ongoing debate about expanding its scope. In India, euthanasia is illegal under the Indian Penal Code. However, there have been several high-profile cases in recent years that have brought the issue to public attention, such as the Aruna Shanbaug case in 2011. The debate in India has focused on the right to die with dignity and the need for a legal framework that addresses end- of-life care and decision-making. This study compares the legal frameworks and ethical perspectives on euthanasia in both countries, examining the cultural and historical factors that shape attitudes towards end-of-life care. It explores the role of religion, family, and social values in shaping public opinion and policy and considers the impact of globalisation and changing demographics on the debate.

Keywords: *Euthanasia, Assisted dying, Legal framework, Ethical considerations.*

I. INTRODUCTION

In India, the Supreme Court recognized the right to die with dignity as a fundamental right under Article 21 of the Constitution.[3] However, active euthanasia remains illegal in the country. Passive euthanasia, on the other hand, is allowed under certain circumstances, such as when a terminally ill patient is in a vegetative state with no chance of recovery. In such cases, the patient or their close family members can approach the courts for permission to

[1] Author is a Research Scholar at Department of Studies in Law, University of Mysore, India.
[2] Author is a Professor at Department of Studies in Law, University of Mysore, India.
[3] No person shall be deprived of his life and liberty except according to due procedure by law.

 [ISSN 2581-5369]

withdraw life support. In Canada, euthanasia was legalized in 2016 with the passing of the Medical Assistance in Dying (MAID) law.[4] Under this law, patients who are suffering from a grievous and irremediable medical condition can request medical assistance to end their lives. The request must be made voluntarily and with informed consent, and the patient must be capable of making the decision. From a legal perspective, the criminal procedures for euthanasia differ in India and Canada. In India, euthanasia is largely illegal,[5] and those who assist in an act of euthanasia can be charged with murder or abetment to suicide. In cases of passive euthanasia, however, the Supreme Court has provided guidelines for theprocedure, which involves obtaining permission from the High Court and a team of doctors.

In Canada, medical practitioners who assist in euthanasia must follow a set of guidelines, including assessing the patient's eligibility, obtaining informed consent, and ensuring that the procedure is carried out safely and effectively. Failure to follow these guidelines can result in criminal charges. From a moral standpoint, the issue of euthanasia is complex and controversial. Some argue that allowing euthanasia is a compassionate choice that allows individuals to end their suffering and maintain their dignity.

Others argue that it goes against the sanctity of life and that it is the duty of medical professionals to preserve life. Therefore, euthanasia is a topic that continues to be debated in legal and moral spheres.[6]While it is largely illegal in India, passive euthanasia is allowed under certain circumstances.[7] In Canada, euthanasia was legalized in 2016, with medical practitioners required to follow a set of guidelines. The morality of euthanasia remains a contentious issue, with arguments both for and against it. The study also examines the ethical considerations that underpin the debate, such as the principles of autonomy, beneficence, and non-maleficence, and the tension between respecting patients' wishes and protecting vulnerable populations. It considers the role of healthcare professionals in end-of-life care and decision-making, and the ethical implications of assisted dying for medical practice.

II. EUTHANASIA IN INDIA

In Canada, euthanasia is legal under specific circumstances.[8] The Supreme Court of Canada

[4] Health Canada, *Medical assistance in dying*, (2016), https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html (last visited Apr 20, 2023).
[5] Vinod K. Sinha, S. Basu & S. Sarkhel, *Euthanasia: An Indian perspective*, 54 INDIAN J. PSYCHIATRY 177 (2012).
[6] 'Euthanasia - MU School of Medicine' <https://medicine.missouri.edu/centersinstitutes-labs/health-ethics/faq/euthanasia> accessed 14 April 2023.
[7] Andreas Fontalis, Efthymia Prousali and Kunal Kulkarni, 'Euthanasia and Assisted Dying: What Is the Current Position and What Are the Key Arguments Informing the Debate?' (2018) 111 Journal of the Royal Society of Medicine 407.
[8] Who can die? Canada wrestles with euthanasia for the mentally ill, BBC NEWS, Jan. 14, 2023, https://www.bbc.com/news/world-us-canada-64004329 (last visited Apr 20, 2023).

 [ISSN 2581-5369]

legalized physician-assisted dying in 2015 in the case of ***Carter*** v. ***Canada,*** [9]stating that the criminal code provisions prohibiting physician-assisted dying were unconstitutional.[10] The court gave the Canadian government one year to draft legislation to reflect its decision. In 2016, the Canadian government enacted Bill C- 14, which established eligibility criteria for medically assisted dying. To be eligible, a person must have a grievous and irremediable medical condition, including an illness, disease or disability, that causes enduring suffering that is intolerable to the person in their circumstances. The person must also be able to provide informed consent to receive medical assistance in dying. The legislation also sets out a process for medical professionals to follow when administering medical assistance in dying, including the need for two independent medical assessments, a 10-day waiting period after the initial request, and a requirement that the person making the request must have the mental capacity to consent to the procedure at the time it is carried out. Euthanasia is a controversial and complex topic in India.

The country has not yet enacted any law that explicitly permits euthanasia, although there have been some legal developments over the years. In 2011, the Supreme Court of India recognized passive euthanasia as legal in certain circumstances.

This means that if a person is in a permanently vegetative state or suffering from an incurable disease, and if their family or doctors make the decision to withdraw life support, it is not considered a criminal offense.

However, active euthanasia, which involves actively taking steps to end a patient's life, is still illegal in India. There have been several high-profile cases that have brought the issue of euthanasia to the forefront of public discourse in India, including the case of Aruna Shanbaug, a nurse who was in a vegetative state for 42 years beforeshe passed away in 2015.[11]

Religious and cultural beliefs also play a significant role in the debate over euthanasiain India.[12] Many people in India believe that human life is sacred and that ending it prematurely, even if it is to alleviate pain and suffering, is immoral. Some religious groups also view euthanasia as a form of suicide, which is forbidden in their faith. There are different categorizations of euthanasia, including voluntary, non- voluntary, and involuntary, as well as

[9] Carter v. Canada (Attorney General) - SCC Cases, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do (last visited Apr 20, 2023).
[10] Supreme Court of Canada Ruling' <https://www.justice.gc.ca/eng/cj-jp/ad-am/scccsc.html> accessed 14 April 2023
[11] Aruna Shanbaug: Brain-damaged India nurse dies 42 years after rape, BBC NEWS, May 18, 2015, https://www.bbc.com/news/world-asia-india-32776897 (last visited Apr 20, 2023).
[12] Vinod K Sinha, S Basu and S Sarkhel, 'Euthanasia: An Indian Perspective' (2012) 54 Indian Journal of Psychiatry 177.

 [ISSN 2581-5369]

active and passive euthanasia. Voluntary euthanasia is conducted with the explicit consent of the patient, who may be suffering from a terminal illness or a debilitating condition that causes unbearable pain or suffering. Non-voluntary euthanasia is carried out without the explicit consent of the patient, but with the belief that it is in their best interests, such as in cases where the patient is in a persistent vegetative state. Involuntary euthanasia, as you mentioned, is when euthanasia is carried out against the will of the patient, often without their knowledge or consent. This is generally considered to be unethical and illegal in most countries.

The distinction between active and passive euthanasia is also important, as passive euthanasia involves the withholding of common treatments or life-sustaining measures, while active euthanasia involves the use of lethal substances to end a patient's life. In India, passive euthanasia was legalized in 2011 by the Supreme Courtin the Aruna Shanbaug case.[13] The Court ruled that patients who are terminally ill or ina persistent vegetative state could choose to have life support withdrawn, but that active euthanasia was still illegal. It's important to note that the laws and regulations around euthanasia vary widely from country to country, and the ethical and moralconsiderations surrounding this issue continue to be debated by legal experts, medicalprofessionals, and the public. The right to die came up for the first time in the case of ***Maruti Shripathi Dubal*** v ***State of Maharashtra***[14], where it was said that rights have both positive and negative connotations, and if the law is absolute, then the 'right to life' that was guaranteed under Article 21 also includes the 'right to die'.[15] ***P. Rathinam*** v ***Union of India***[16] also upheld this view, saying that Section 309 of the Indian Penal Code is unconstitutional.[17] This makes sense, as the right to life should also include the right todie with dignity and lead a dignified life until death.[18] However, in the case of Gian Kumar v State of Punjab[19], the court upheld the validity of S. 309 and said that the right to die is 'inconsistent' with the right to life.[20]

Prior to the Aruna Shanbaug case, euthanasia was largely illegal in India, although there were some supporters of the practice who believed that it should be legalized under certain

[13] Devina Srivastava, *The Right to Die with Dignity: The Indian Supreme Court Allows Passive Euthanasia and Living Wills | OHRH*, https://ohrh.law.ox.ac.uk/right-to-die-with-dignity-a-fundamental-right-indian-supreme-court-allows-passive-euthanasia-and-living-wills/ (last visited Apr 20, 2023).
[14] 1987 (1) Bom CR 499.
[15] Ibid.
[16] AIR 1994 SC 1844.
[17] If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine.
[18] LILY SRIVASTAVA, LAW AND MEDICINE, 225, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).
[19] AIR 1996 SC 946.
[20] Supra Citation 6.

 [ISSN 2581-5369]

circumstances. In 2008, the Law Commission of India released a report recommending that the government consider legalizing passive euthanasia, specifically in cases where a patient was suffering from a terminal illness or was in a persistent vegetative state. The Commission noted that the right to life includes the right to a dignified death, and that patients who are suffering from unbearable pain or who have no chance of recovery should be allowed to die peacefully and with dignity. The Commission's recommendations ultimately led to the landmark decision by the Supreme Court in the Aruna Shanbaug case in 2011,[21] which legalized passive euthanasia in India under specific conditions. The Court's decision was based on the constitutional right to live with dignity, and it has been seen as a significant step forward in the debate over euthanasia in India.[22]

In the case, Aruna Shanbaug was a nurse who was brutally assaulted and raped by a ward boy at the hospital where she worked in 1973. The assault left her in a persistent vegetative state, and she remained in that state for 42 years until her death in 2015. During that time, she was cared for by hospital staff, and her case became a focal point for the debate over euthanasia in India. In 2011, the Supreme Court of India heard a petition seeking permission to withdraw life support from Shanbaug, as her condition was not improving and she was in a state of constant pain and suffering. The Court ultimately rejected the petition, but it did allow for passive euthanasia in cases where a patient is in a persistent vegetative state and has no chance of recovery. The Court's decision in the Aruna Shanbaug case was based on the principle of the right to die with dignity, and it established guidelines for allowing passive euthanasia in certain circumstances. The decision has been seen as a significant step forward in the debate over euthanasia in India, although the issue remains a contentious one and continues to be debated by legal experts, medical professionals, and the public.[23]

The Supreme Court's decision in the Aruna Shanbaug case also laid out guidelines for the practice of passive euthanasia in India, which continue to be legally binding. Under these guidelines, passive euthanasia is allowed in cases where a patient is in a persistent vegetative state or is suffering from an incurable illness that has left them in a state of constant pain and suffering. In such cases, the patient or their family members can make a request to the hospital to withdraw life support, and the decision will be made by a medical board.

[21] lawcirca, 'Aruna Ramchandra Shanbaug v. Union of India Case Analysis (Passive Euthanasia) - Law Circa' (25 November 2020) <https://lawcirca.com/arunaramchandra-shanbaug-v-union-of-india-case-analysis-passive-euthanasia/> accessed 14 April 2023.

[22] LILY SRIVASTAVA, LAW AND MEDICINE, 226, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).

[23] Rebirth for Aruna, say joyous Mumbai hospital staff, DECCAN HERALD, March 7th , 2011.

 [ISSN 2581-5369]

However, the guidelines also require that certain conditions be met before passive euthanasia can be allowed. For example, the medical board must be satisfied that the patient is in a state of irreversible coma or has no chance of recovery, and the request for euthanasia must be made by a close family member or a person who is legally authorized to act on the patient's behalf. The guidelines have received mixed reactions from the public and from legal and medical experts. Some have praised them as a step forward in the debate over euthanasia in India, while others have criticized them as being too restrictive and not allowing enough autonomy for patients and their families. However, they remain the legally binding guidelines for the practice of passive euthanasia in India, and they have set an important precedent for future cases involving end-of-life care.[24]

Following the techniques that were used in the Vishakha case[25], the apex court lay down guidelines that are as follows: The above committee should examine the patient and consult the record of the patient as well as take into account views of the hospital staff before submitting its report to the court, which will also issue notices to the State and to relatives. A copy of the committee's discussion is given to them. After hearing this, the court should make a decision. It should be speedy at the earliest and it should be in the best interests of the patient.[26]

This procedure is legally binding as stated by the Supreme Court. Under these guidelines, the distinction between active and passive euthanasia is made clear, as no lethal substance is being used to end a person's life. However, the law differs in Canada, where euthanasia was very recently legalized in its entirety. In order to discontinue life support, a decision must be made by the patient's parents, spouse, close relatives, or a next friend acting in the best interest of the patient. Alternatively, the decision can be made by the attending doctors. However, if such a decision is made, it requires approval from the relevant High Court, as established by the Airedale case. The Chief Justice of the High Court should immediately establish a panel of at least two judges to decide whether or not to grant approval. The panel should also nominate a committee of three reputable doctors to assess the patient's condition and provide a report. Before giving a verdict, notice of the report should be given to the patient's close relatives and the State.

[24] LILY SRIVASTAVA, LAW AND MEDICINE, 227, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).
[25] AIR 1997 SC 3011.
[26] LILY SRIVASTAVA, LAW AND MEDICINE, 230, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).

 [ISSN 2581-5369]

III. EUTHANASIA IN CANADA

Euthanasia, or medically assisted dying, was illegal in Canada until 2016 when the federal government passed Bill C-14,[27] which legalized it under certain conditions. Before this, the act of intentionally causing the death of another person, even at their request, was considered murder under the Criminal Code of Canada. The legalization of medically assisted dying in Canada was a result of a Supreme Court of Canada ruling in 2015 that struck down the ban on physician-assisted dying. The court ruled that the ban violated the Canadian Charter of Rights and Freedoms, as it infringed upon a patient's right to life, liberty, and security of the person. After the ruling, the federal government created a special joint committee of parliamentarians to study the issue and make recommendations on how to implement the court's decision. This led to the passing of Bill C-14, which established a framework for medically assisted dying in Canada. The law outlines specific criteria that must be met before a patient can receive medically assisted dying. The patient must be a competent adult who has a serious and incurable illness, disease, or disability; who is in an advanced state of irreversible decline in capability; who is enduring intolerable suffering; and who has given informed consent. The request for medically assisted dying must be voluntary, made in writing, and witnessed by two independent witnesses. It is worth noting that there are still some debates and controversies surrounding medically assisted dying in Canada, including concerns about access, eligibility criteria, and the rights of medical practitioners who may have moral objections to participating in the process.

There are a number of provisions in Canada's Criminal Code that relate to euthanasia,such as Section 14[28] and Section 241[29].In 1992, a woman named Sue Rodriguez challenged the validity of Section 241 of the Canadian Criminal Code. Rodriguez,who was suffering from ALS, felt that the section essentially prevented people who were terminally ill from using euthanasia to end their suffering. Rodriguez's case was heard by the British Columbia Supreme Court, where sheargued that Section 241 violated her rights under the Canadian Charter of Rights and Freedoms, specifically her right to life, liberty, and security of the person. However, the court ruled against her in a two-to-one decision.

Rodriguez appealed the decision to the Supreme Court of Canada, where she argued that the

[27] Ricarda M Konder and Timothy Christie, 'Medical Assistance in Dying (MAiD) in Canada: A Critical Analysis of the Exclusion of Vulnerable Populations' (2019) 15 Healthcare Policy 28.

[28] No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

[29] Everyone who: (a) counsels a person to commit suicide, or (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment fora term not exceeding fourteen years.

 [ISSN 2581-5369]

ban on physician-assisted dying was discriminatory and violated her rights. However, she lost again in a five-to-four decision. The majority of the court held that allowing the vulnerable to have an option to commit suicide would erode the belief in the sanctity of human life. They also argued that the prohibition on physician-assisted dying was necessary to protect vulnerable people from abuse and to maintain respect for human life.

Despite the ruling, Rodriguez's case sparked a national debate on the issue of euthanasia and physician-assisted dying in Canada. Her advocacy for the right to die with dignity, and the subsequent legal challenge, contributed to the eventual legalization of medically assisted dying in Canada in 2016.[30] In Rodriguez's case, she argued that the ban on physician-assisted dying violated her rights under Section 7 of the Canadian Charter of Rights and Freedoms, which protects the right to life, liberty, and security of the person. She did not argue that her equality rights under Section 15(1) were infringed.[31] In the Supreme Court of Canada's decision in Rodriguez's case,[32] it was held that the prohibition on physician-assisted dying did violate Section 7 of the Charter. However,the court also held that the violation was justified under Section 1, which allows reasonable limits on Charter rights if they can be demonstrably justified in a free and democratic society.

The court found that the prohibition on physician-assisted dying was justified becauseit served the important purpose of protecting vulnerable people, and because allowing physician-assisted dying could undermine the state's interest in preserving life and preventing suicide. Therefore, it was not Mr. Justice Sopinka who assumed that the plaintiff's equality rights were infringed, nor was it held that such infringement was justified under Section 1. Instead, it was the violation of Rodriguez's rights under Section 7 that was held to be justified under Section 1.[33] There were certain decisions to the contrary which said that denying the patient a choice was violating principles of fundamental justice, but by and large, the stance that the court took was along the lines ofjustifying the section. However, nearly 20 years after this decision, in the case of Carter v Canada (Attorney General).[34]

The Supreme Court of Canada's decision in Rodriguez's case held that the ban on physician-assisted dying violated Section 7 of the Canadian Charter of Rights and Freedoms, not Section

[30] Martha Butler, Marlisa Tiedemann, Julia Nicol, Dominique Valiquet, Euthanasia and Assissted Suicide in Canada, 68 LIBRARY OF PARLIAMENT, 6 (2010).
[31] '***Rodriguez*** v. ***British Columbia*** (Attorney General) - SCC Cases' <https://scccsc.lexum.com/scc-csc/scc-csc/en/item/1054/index.do> accessed 1
[32] J Melvin, 'Rodriguez vs. Attorney General of Canada (Trial Court Opinion)' (1993) 9 Issues in Law & Medicine 309.
[33] *Ibid.*
[34] 2015 SCC 5.

15. In its decision, the court did not overturn its previous ruling in the case of Sue Rodriguez. Instead, the court found that the circumstances had changed since the Rodriguez case was decided in 1993, and that the prohibitionon physician-assisted dying could no longer be justified in a free and democratic society.

The court found that the prohibition on physician-assisted dying violated Section 7 of the Charter, which protects the right to life, liberty, and security of the person. The court held that the prohibition had a "significant" and "adverse" effect on the rights of those who were seriously and incurably ill, causing them to suffer "pain, physical and psychological" and "deprivation of enjoyment of life." The court also rejected the argument that the prohibition on physician-assisted dying was necessary to protect vulnerable people, finding that there were adequate safeguards that could be put in place to protect vulnerable individuals from abuse.

Therefore, it was not Section 15 of the Charter that was found to be violated in the Rodriguez case, but rather Section 7. Additionally, the court did not rule against its previous decision in Rodriguez's case, as the circumstances and legal landscape had changed significantly between the two cases.[35] Following the court's decision, the federal government requested a 12-month extension to allow time for a new law to be developed. However, as you mentioned, the Conservative government was replaced by the Liberal government in 2015, and a motion was passed to grant a further six- month extension. On January 15, 2016, the Supreme Court granted an additional four-month extension to allow for the implementation of the new law. During this time, guidelines were developed to ensure that medically assisted dying could be provided in a safe and ethical manner.

The Supreme Court also granted a constitutional exemption to allow individuals who met the eligibility criteria for medically assisted dying to access it without fear of criminal liability while legislation was being developed. This exemption was designed to provide interim relief to individuals who were suffering from grievous and irremediable medical conditions and who met the eligibility criteria set out by the court in the Carter decision. The exemption allowed individuals who met the eligibility criteria to apply to a superior court for an exemption from the criminal law provisions prohibiting assisted dying. This led to several court cases, including ***X.Y.*** v. ***Canada (Attorney General)***[36] and ***A.B***. v. ***Ontario (Attorney General)***,[37]

[35] 2011 SCC 12.
[36] CanadianOxy Chemicals Ltd. v. Canada (Attorney General) - SCC Cases, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1696/index.do (last visited Apr 20, 2023).
[37] 2020 SCC 38 (CanLII) | Ontario (Attorney General) v. G | CanLII, https://www.canlii.org/en/ca/scc/doc/2020/2020scc38/2020scc38.html (last visited Apr 20, 2023).

 [ISSN 2581-5369]

which helped to clarify the scope and application of the exemption.[38], and *I.J.* v. *Canada* (Attorney General).[39] One of the cases that followed the Carter decision was the case of ***Lee Carter, et al***. v. ***Attorney General of Canada***, et al.[40] This case was brought by the family members of Kay Carter, who had travelled to Switzerland to access assisted dying because it was not available in Canada. The family argued that the prohibition on assisted dying violated Kay Carter's rights under the Canadian Charter of Rights and Freedoms. The British Columbia Supreme Court agreed with the family's argument and declared that the prohibition on assisted dying was unconstitutional. However, the court suspended its declaration of invalidity for one year to allow Parliament to develop legislation on the issue. During this one-year period, the federal government appealed the decision to the British Columbia Court of Appeal, which upheld the lower court's decision. The federal government then appealed to the Supreme Court of Canada, which ultimately struck down the prohibition on assisted dying in the Carter decision. Following the Carter decision, the federal government introduced legislation on medically assisted dying, which received royal assent on June 17, 2016. The legislation set out the eligibility criteria for medically assisted dying and established safeguards to protect vulnerable individuals.[41]

IV. COMPARATIVE ANALYSIS

Euthanasia is a highly controversial topic that has been debated and discussed around the world for decades.[42]India and Canada are two countries that have taken very different approaches to euthanasia. In India, euthanasia is still illegal, but in 2018, the Supreme Court recognized the legality of passive euthanasia, also known as withholding or withdrawing medical treatment that could prolong the life of a terminally ill patient. However, active euthanasia, which involves administering lethal substances to end the life of a patient, remains illegal. The issue is further complicated by religious and cultural beliefs in India that value human life and view euthanasia as immoral. In contrast, Canada has taken a more progressive approach to euthanasia. In 2016, the country passed legislation that legalized both passive and active euthanasia under specific circumstances. Patients must have a grievous and irremediable medical condition, and their death must be reasonably foreseeable. The law also requires a

[38] 2016 ONSC 2188.
[39] 2016 ONSC 3380.
[40] Department of Justice Government of Canada, *Legislative Background: Medical Assistance in Dying - Legislative Background: Medical Assistance in Dying*, (2016), https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p1.html (last visited Apr 20, 2023).
[41] O.P. v Canada (Attorney General) 2016 ONSC 3956.
[42] Suresh Bada Math and Santosh K Chaturvedi, 'Euthanasia: *Right to Life* vs *Right to Die'* (2012) 136 The Indian Journal of Medical Research 899.

medical practitioner to assess the patient's mental capacity and obtain informed consent from the patient or their substitute decision-maker. However, some critics argue that euthanasia laws in Canada can be too liberal and may put vulnerable populations, such as the elderly or disabled, at risk. Canada's government took a more active role in drafting the guidelines and the subsequent legislation for medically assisted dying. The guidelines and legislation were developed with input from healthcare professionals, legal experts, and the public, ensuring that they were comprehensive and addressed the practicalities of implementing the procedure. The Canadian government recognized the importance of balancing individual autonomy with protecting vulnerable individuals, and put in place safeguards to ensure that the decision to undergo medically assisted dying was made freely and with informed consent. The Canadian approach reflects a clear drive to provide individuals with the option of medically assisted dying, while also acknowledging the need for careful regulation and oversight.

The lack of clarity and specificity in the Indian guidelines may also be attributed to the fact that the courts have been hesitant to take a proactive approach towards legalizing euthanasia. In the past, the judiciary has mostly been reactive, responding to specific cases brought before it rather than actively promoting a legal framework for euthanasia. This has resulted in a lack of comprehensive legislation or guidelines for the practice, leaving many questions unanswered and leaving room for ambiguity and confusion. However, the landmark case of Aruna Shanbaug did provide some guidance and set some precedents for how euthanasia cases should be handled in India.

The Supreme Court, in Gian Kaur,[43] It is important to note that while there may be cultural and societal differences between the two countries, ultimately the issue of euthanasia is a deeply personal and individual one that should not be solely dictated by government or cultural values. Rather, it should be a decision made between a patient and their medical team, with appropriate guidelines and safeguards in place to ensure that the decision is fully informed and voluntary. Furthermore, the lack of clear and specific guidelines in India has led to confusion and uncertainty in the medical community, with doctors often hesitant to provide end-of-life care for fear of legal repercussions. This can result in unnecessary suffering for patients and their families. Thus, while cultural and societal values may influence the approach to euthanasia in different countries, it is ultimately a complex issue that requires clear and thoughtful legislation and guidelines to ensure that the rights and autonomy of patients are respected and protected.

[43] Supra Citation 7.

 [ISSN 2581-5369]

It is true that religious beliefs and cultural values can play a significant role in shaping the laws and attitudes towards euthanasia in different countries. In India, where religion and spirituality are deeply ingrained in the culture, it is not surprising that there are strong objections to the idea of taking a life, even if it is to relieve suffering. However, it is important to note that not all Indians hold the same religious views, and there are many who believe that euthanasia should be allowed under certain circumstances. It is the responsibility of the government to balance these differing views and create laws that reflect the needs and values of the society as a whole.

In Canada, while there were also religious and ethical objections to euthanasia, the government was able to create laws that reflected the changing attitudes and needs of the society. This was due to a combination of factors, including public pressure, legal challenges, and political will. The government recognized that people have a right to autonomy and control over their own lives, including the decision to end their suffering when faced with a terminal illness or unbearable pain. Ultimately, the issue of euthanasia is a complex and multifaceted one that requires a nuanced and balanced approach. While cultural and religious values should be taken into account, they should not be the sole determining factor in creating laws and policies. The government should strive to create laws that reflect the needs and values of the society as a whole, while also protecting the rights and dignity of individuals. It is certainly important to consider the potential for misuse and abuse of any law or policy related to euthanasia. This is a delicate issue that requires careful consideration and implementation of appropriate safeguards to prevent any kind of exploitation. In India, where illiteracy is widespread and access to healthcare is often limited, there is a risk that the law could be misused by those with power or influence over vulnerable individuals. Therefore, it is necessary to have clear guidelines and proper training for medical professionals to ensure that they are not inappropriately influencing or coercing patients into making decisions about their end-of-life care. Furthermore, there is a need to establish a robust and impartial system of oversight to monitor the implementation of the law and ensure that it is being used appropriately. This could involve the creation of an independent regulatory body to oversee cases of euthanasia and investigate any allegations of abuse or malpractice. Such a system would also help to build trust among the public and ensure that the law is being used for its intended purpose.

V. CONCLUSION

In conclusion, while there are valid concerns regarding the implementation of euthanasia laws in India, it is important to recognise that the issue of end-of-life care is a complex and sensitive

 [ISSN 2581-5369]

one that requires careful consideration and discussion. It is important to continue the dialogue on this issue and work towards finding a solution that balances the needs of patients with the concerns of the wider society. In a nutshell, euthanasia is a complex and sensitive issue that requires careful consideration of legal, moral, and social factors. While India has made some progress towards legalising euthanasia, there are still many challenges that need to be addressed, such as religious beliefs, concerns about misuse, and the need for stricter guidelines. Canada's experience in legalizing euthanasia provides an example of how a country can navigate these challenges and create a framework that respects the dignity of human life while also recognizing the right to die with dignity. It remains to be seen whether India can follow suit and create a legal and ethical framework that balances the rights of individuals with the concerns of society as a whole.

*****

 [ISSN 2581-5369]

VI. REFERENCE

- Aruna Shanbaug: Brain-damaged India nurse dies 42 years after rape, BBC NEWS, May 18, 2015, https://www.bbc.com/news/world-asia-india-32776897 (last visited Apr 20, 2023).
- Andreas Fontalis, Efthymia Prousali and Kunal Kulkarni, 'Euthanasia and Assisted Dying: What Is the Current Position and What Are the Key Arguments Informing the Debate?' (2018) 111 Journal of the Royal Society of Medicine 407.
- AIR 1994 SC 1844.
- AIR 1996 SC 946.
- Carter v. Canada (Attorney General) - SCC Cases, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do (last visited Apr 20, 2023).
- Canada: A Critical Analysis of the Exclusion of Vulnerable Populations' (2019) 15 Healthcare Policy 28.
- CanadianOxy Chemicals Ltd. v. Canada (Attorney General) - SCC Cases, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1696/index.do (last visited Apr 20, 2023).
- 2020 SCC 38 (CanLII) | Ontario (Attorney General) v. G | CanLII, https://www.canlii.org/en/ca/scc/doc/2020/2020scc38/2020scc38.html (last visited Apr 20, 2023).
- 2016 ONSC 2188.
- 2016 ONSC 3380.
- Devina Srivastava, The Right to Die with Dignity: The Indian Supreme Court Allows Passive Euthanasia and Living Wills | OHRH, https://ohrh.law.ox.ac.uk/right-to-die-with-dignity-a-fundamental-right-indian-supreme-court-allows-passive-euthanasia-and-living-wills/ (last visited Apr 20, 2023).
- Department of Justice Government of Canada, *Legislative Background: Medical Assistance in Dying - Legislative Background: Medical Assistance in Dying*, (2016), https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p1.html (last visited Apr 20, 2023).
- Everyone who: (a) counsels a person to commit suicide, or (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and

 [ISSN 2581-5369]

liable to imprisonment for a term not exceeding fourteen years.

- Euthanasia - MU School of Medicine' <https://medicine.missouri.edu/centersinstitutes-labs/health-ethics/faq/euthanasia> accessed 14 April 2023.
- Health Canada, *Medical assistance in dying*, (2016), https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html (last visited Apr 20, 2023).
- LILY SRIVASTAVA, LAW AND MEDICINE, 226, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).
- LILY SRIVASTAVA, LAW AND MEDICINE, 225, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).
- LILY SRIVASTAVA, LAW AND MEDICINE, 230, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).
- LILY SRIVASTAVA, LAW AND MEDICINE, 227, (New Delhi: Universal Law Pub. Co. Pvt. Ltd., 4th Edition, 2010).
- lawcirca, 'Aruna Ramchandra Shanbaug v. Union of India Case Analysis (Passive Euthanasia) - Law Circa' (25 November 2020) <https://lawcirca.com/arunaramchandra-shanbaug-v-union-of-india-case-analysis-passive-euthanasia/> accessed 14 April 2023.
- Martha Butler, Marlisa Tiedemann, Julia Nicol, Dominique Valiquet, Euthanasia and Assissted Suicide in Canada, 68 LIBRARY OF PARLIAMENT, 6 (2010).
- Melvin, 'Rodriguez vs. Attorney General of Canada (Trial Court Opinion)' (1993) 9 Issues in Law & Medicine 309.
- O.P. v Canada (Attorney General) 2016 ONSC 3956.
- Ricarda M Konder and Timothy Christie, 'Medical Assistance in Dying (MAiD) in
- ***Rodriguez*** v. ***British Columbia*** (Attorney General) - SCC Cases' <https://scccsc.lexum.com/scc-csc/scc-csc/en/item/1054/index.do> accessed 1
- Supreme Court of Canada Ruling' <https://www.justice.gc.ca/eng/cj-jp/ad-am/scccsc.html> accessed 14 April 2023
- Suresh Bada Math and Santosh K Chaturvedi, 'Euthanasia: *Right to Life* vs *Right to Die'* (2012) 136 The Indian Journal of Medical Research 899.
- Supra Citation 7.
- Vinod K. Sinha, S. Basu & S. Sarkhel, *Euthanasia: An Indian perspective*, 54 INDIAN J.

PSYCHIATRY 177 (2012).

- Vinod K Sinha, S Basu and S Sarkhel, 'Euthanasia: An Indian Perspective' (2012) 54 Indian Journal of Psychiatry 177.
- Who can die? Canada wrestles with euthanasia for the mentally ill, BBC NEWS, Jan. 14, 2023, https://www.bbc.com/news/world-us-canada-64004329 (last visited Apr 20, 2023).
- Rebirth for Aruna, say joyous Mumbai hospital staff, DECCAN HERALD, March 7th , 2011.
- AIR 1997 SC 3011.

*****

 [ISSN 2581-5369]