

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 6

2025

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Legalisation of Active Euthanasia in India: An Analytical Study

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ABSTRACT

Euthanasia has emerged as a crucial topic of discussion in fields including human rights, ethics, health, law, and religion. Generally defined as the deliberate taking of a life to end suffering the right to die with dignity is still up for debate, although the right to life is acknowledged by all. Despite being hotly debated, Active euthanasia is being re-examined in many countries as a valid extension of the right to die with dignity. Where in India the continued criminalization of active euthanasia under the Bhartiya Nyaya Sanhita creates a normative and practical divide between criminal law and constitutional morality, where the Supreme Court has recognized advance directives and passive euthanasia as part of Article 21 guarantee of a dignified life. This abstract makes the case that India should adopt a strictly controlled framework allowing active euthanasia under specific conditions in light of comparative foreign practice i.e. Netherland, Luxembourg, Australia and Canada. A controlled form of active euthanasia would align India's constitutional values to dignity, autonomy, and physical integrity with international human rights discourse, given the country's pluralistic society and resource-constrained healthcare system. In order to reframe euthanasia as an exercise of dignified self-determination at the end of life rather than as the destruction of life, this Article suggests a rights-based, safeguards-driven legislative framework for active euthanasia that draws from international best practices while remaining sensitive to Indian social, cultural, and religious contexts.

Keywords: Euthanasia, Dignity, Autonomy, Physical Integrity, Pluralistic society

I. INTRODUCTION

The difference between life and death is that life means to live freely with dignity and death is end of life. Only females can give birth to a person and also death is an irreversible process in which a person does not come back to life. In respect of death various laws i.e. moral and legal laws gives the same meaning as moral ethics does not allow a person to take life from any person and also law also does not allow to take anyone's life.

In different era like in ancient and modern era, in ancient era the taking of another person life

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is called homicide and the punishment for homicide in that era were very harsh and immoral so the ancient laws were becoming. In modern era the laws relating to homicide is justifying but the punishment differ from country to country, for example in India the law homicide which is newly known as murder or culpable homicide not amounting to murder is criminalised under Bhartiya Nyaya Sanhita 2023 with section 103 and 105 where the punishment for murder is death or Imprisonment of life and for culpable homicide not amounting to murder is imprisonment for life or imprisonment for the term which may be extend to ten years and shall also be liable for fine respectively.

II. EUTHANASIA

In 17th century English philosopher Sir Fransis bacon coined a term euthanasia which means “Eu” means good and “Thanatos” means death and the ultimate meaning is “Good Death” euthanasia also called as mercy killing. Generally, in medical terms the euthanasia is used as if a person is unable to recover himself or herself and the disease is irrecoverable then by stopping his medical treatment or by giving lethal injection may provide him good death as to relief him from incurable disease or irrecoverable injury. The law relating to euthanasia have different approach in different countries as some countries legalise it and some countries criminalise it.

Types of Euthanasia

As euthanasia have two types are as follows

- **Active Euthanasia**

Active Euthanasia means killing of diseased or injured person who cannot irrevocable and incurable respectively then the person is given with lethal injection to give him a good death.

- **Passive Euthanasia**

Passive euthanasia means killing of diseased or injured person who cannot recover and curable himself then the person’s life sustainable or ventilators would be stopped in order to give him good death.

- **Assisted Euthanasia**

In this type of euthanasia, the person is informed that the by doing this act he would die and the final act performed by the person is called assisted euthanasia

- **Voluntary Euthanasia**

In this type of euthanasia, the informed consent is taken and then the person is allowed to take his own life.

- **Involuntary Euthanasia**

This type means that if the person is not able to give consent, then the third party on the behalf of that person (generally guardian or relative) gives consent to take his own life.

Some countries have accepted euthanasia and some have accepted partial euthanasia i.e. **Countries that Criminalised Active euthanasia** are United States and India and **Countries that have decriminalised euthanasia** Netherlands and Belgium becomes first countries to legalise the active euthanasia in 2002 and after those other countries i.e. Luxembourg (in 2009), Colombia (in 2015), Canada (in 2016), Spain (in 2021), New Zealand (in 2021) and Australia (all Australian states have legalized euthanasia). These countries have their right to die with euthanasia.

III. JUSTIFICATION

Euthanasia is required worldwide in order to alleviate suffering, preserve autonomy and dignity, solve moral, medical, and societal issues related to end-of-life care. Despite the ongoing controversy, some nations are reevaluating their legal frameworks in light of social demands, medical ethics, and human rights. So, the objectives of euthanasia are as follows

1. Relief from severe Pain

Hospitalize treatment is not always able to reduce the extended suffering endured by many people with fatal conditions, such as advanced cancer, Amyotrophic Lateral Sclerosis, or organ failure. Euthanasia is viewed as a means of enabling people to pass away with honour as opposed to enduring ongoing suffering and without losing their independence to end their lives.

2. Human Dignity and Autonomy Rights

The right to make choices about own body and life is becoming more widely acknowledged on a global scale. The purpose is that the individuals should have the same freedom to decline medical care as they do to decide how and when to pass away.

3. Promote a dignified death

To enable a person to pass away with honour, frequently by avoiding a protracted, dependent, and unhappy life

4. Flexibility in Culture and Religion

Views on death and suffering vary throughout cultures and faiths. Globally, the movement for euthanasia is influenced by the need to respect individual freedom.

IV. INDIAN PERSPECTIVE

After India got independence on 15th august 1947, the chairman of drafting committee in the constituent assembly proposed and legalized THE CONSTITUTION OF INDIA 1950 in which fundamental rights were introduced and onto it Article 21 states that protection of life and personal liberty, in which a person can enjoy right to life with dignity but in relation to right to die Indian courts got struck in the question that whether right to life also includes right to die because as per Section 309 of Indian penal code 1860 attempt to commit suicide is punishable offence where simple imprisonment of one year or with fine is there. Also, this question was firstly initiated before Bombay high court where the validity of section 309 was questioned in *State of Maharashtra v. Maruti Shripati Dubal AIR1997 SC411* where the Bombay high court struck the contrary between section 309 of IPC and inclusion of right to die under article 21 of Indian constitution the Bombay high court took 11 years to decide that section 309 is constitutional.

In 1988 Andhra high court stated in *Chenna Jagadeeswar v. State of Andhra Pradesh 1988 Cr LJ 549* held that under Article 21 right to life does not include right to die and section 309 of Indian penal code is constitutional.

In *P. Rathinam v. Union of India (1994)* the supreme court cited that section 309 is constitutional but also cited that Article 21 must also include right to die.

In 1996 *Gian Kaur v. State of Punjab (1996) 2 SCC 648* the supreme court in five judges bench overruled the judgement of the judgement of supreme court in P. Rathinam case and passed a judgment that section 309 and 306 is constitutional and right to life under article 21 does not include right to die. Additionally, the court upheld the ruling of the Andhra Pradesh high court in the aforementioned case, declaring that section 309 of the Indian Penal Code did not violate articles 14 and 21 of the Indian Constitution.

In 2011 the case of euthanasia was again initiated and the supreme court with two judges bench (Justice Markandey katju and justice Gyan Sudha Misra) in its landmark judgement of **Aruna Ramchandra Shanbaug v. Union Of India AIR 2011 SC 1290** firstly recognized the passive euthanasia and also clearly stated that there would be no involvement of active euthanasia (lethal injection), as the supreme court clearly stated that active euthanasia is illegal in India and give guidelines as:-

- a) The decision to discontinue life support should be either by parents or the spouse or other close relatives or in absence of above relations the decision should be of person's next friend. also, the decision should be given Bonafide and not malafide.

- b) A petition can be made to the high court to pass suitable orders under article 226 of the Indian constitution by giving permission to remove life support of the patient
- c) The process for applying passive euthanasia in high court should be
 - The Chief Justice of the High Court must assemble a bench of at least two judges to decide the case after receiving such an application.
 - Three reputable medical professionals—a neurologist, psychiatrist, and a physician—should be chosen by the bench to examine the patient. Also, the State and the patient's immediate family members should be notified.
 - Choosing What's Best for You the High Court would determine whether it is in the patient's best interest to remove life support after hearing from all parties and taking medical advice into account.

In above case the supreme court recognises the passive euthanasia but in 2018 the supreme court in its landmark judgement of *Common Cause v. Union of India AIR 2018 SC 1665* declared that under Article 21 of the Indian constitution right to life with dignity also include right to refuse treatment and die with dignity also gives guidelines as

- Any adult of sound mind can make a **living will**.
- It must be:
 - a) Voluntarily signed.
 - b) In writing.
 - c) Signed before two independent witnesses.
 - d) Countersigned by a Judicial Magistrate of First Class (JMFC).
- If the Board declares that the patient's condition is irreversible, the matter is then sent to the jurisdictional Collector, who is another Medical Board
- If the patient is in a persistent vegetative state (PV.) or becomes terminally ill, the treating physician must consult the living will.
- The decision must then be certified by the **JMFC** to ensure there is no foul play.
- If no living will exist, relatives or doctors can apply to the High Court for approval (similar to *Aruna Shanbaug* guidelines).

In other words, passive euthanasia was declared a fundamental right in Indian constitution.

V. EUTHANASIA IN ANOTHER COUNTRIES

A. Netherlands

Netherlands was the first country to legalise the euthanasia in its country in every perspective the definition of the euthanasia is same as means “Good Death”. In this country the assisted suicide which is defined above and termination of life on request is just same as voluntary active euthanasia which is also defined above and there is also a penal code namely Dutch Criminal Code which also penalise or criminalise all the unlawful acts, so euthanasia is also criminalise under section 293 and 294 of the Dutch Criminal Code which means assisted suicide and euthanasia (the taking of a person's life upon request) are penalise and punishment shall be twelve-year imprisonment or the fine of fifth category and three years punishment with fourth category fine respectively. but there is an exception that only when a doctor who has met the six statutory due care requirements performs the procedure then the offense committed is lawful. The Termination of Life on Request and Assisted Suicide (Review Procedures) Act establishes these standards. additionally, the municipal pathologist is also informed by the physician.

The request for euthanasia is requested by the patient personally and another person on the behalf of that patient is not acceptable and the request would be in free consent and not undue influence of any other person and the request is not mandatory to give in written form; oral request can be sufficient. Also to verify the free consent the physician must satisfy that the patient's request must be in a free will and not influence of any other person.

- **Minor**

In case of minor, this country allows minor to request for euthanasia after the age of 12 years with the few guidelines i.e.

- a) The child must capable and sound enough to understand what is best for him to his situation
- b) If the child is 12 – 15 years then the consent of the parents or guardian of the child is mandatory
- c) If the child is 16 -17 years, then the consent of the parents or guardian is not mandatory but the parents or guardian must be consulted.

- **Due Care Standards**

According to the Termination of Life on Request and Assisted Suicide (Review Procedures) Act mandates that the physician must

1. Be satisfied that the patient's consent is free and voluntary.
2. Be satisfied that the patient's suffering is incurable and no chance of getting cured
3. Have provided the information to the patient about their suffering or condition
4. Have to an end with the patient consultation that there is no alternative left for him for his condition
5. have spoken with at least one additional, independent doctor who needs to examine the patient and provide a written assessment on whether the due care requirements outlined in (1) to (4) have been met
6. Have taken the appropriate medical precautions and care when ending the patient's life or helping them commit suicide.

- **Review**

Any doctor who performs euthanasia is required to report the procedure in detail to the municipal pathologist. After looking into the death, the municipal pathologist is required to notify one of the five regional euthanasia review committees in the Netherlands along with any related documentation. This committee determines whether the doctor met all due care requirements when conducting euthanasia by reviewing the reports and the euthanasia process.

Also, the committee must notify the Public Prosecution Service and the Health and Youth Care Inspectorate of its conclusions if it determines that the doctor did not meet one or more due care requirements. After then, these bodies decide what further has to be done.

They may also choose to prosecute the doctor or file a disciplinary complaint against them. If found guilty of conducting euthanasia illegally, a doctor faces the following penalties:

in the case of termination of life on request: up to 12 years in imprisonment, or a fine.

in the case of assisted suicide: up to 3 years in imprisonment, or a fine.

Case laws

Schoonheim Case (1984, Supreme Court)

In this landmark judgement of Dutch Supreme Court made a significant ruling about the legality of euthanasia, creating the defence of "necessity" for doctors who carry out life-ending procedures in accordance with stringent guidelines. The Dutch Supreme Court heard the first case involving euthanasia.

In this case, a doctor was charged with taking the life of a 95-year-old patient at her explicit request. The Supreme Court passed the judgement of releasing the doctor and quoted that

essentially recognizing a "conflict of duties" (or force majeure) defence: the need to alleviate suffering may trump the general criminal ban provided particular requirements ("due care") are satisfied.

This case eventually served as the foundation for the Termination of Life on Request and Assisted Suicide (Review Procedures) Act (a statutory euthanasia statute in force since 2002).

Infant (Neonatal) Euthanasia Cases (1995)

Two different Dutch court cases from 1995 involving physician who gave lethal injection to babies' disability.

The courts acknowledged "necessity" or "legal necessity," which is comparable to the force majeure argument. In other words, the doctors claimed that their professional obligation to lessen the suffering and justified their actions even in the absence of an explicit request from the children.

The Brongersma/Sutorius Case 2002

In this Dutch landmark judgement, the supreme court held that although the doctor is found for assisted suicide but does not given any punishment as the doctor committed this act in the good faith towards his client.

Also, after this judgement its sparks the passage of the 2001 statute that legalized euthanasia under certain restrictions and made a substantial contribution to legislative change.

Advanced dementia ruling 2020

The Dutch supreme court held that even if the patient is no longer able to make the decision at the time of the act, the doctors can end a patient's life but if they have a proper documents and competent request for euthanasia.

B. Luxembourg

Luxembourg is another country to legalize the euthanasia in 2009. Luxembourg legislation offers the patient to die when their suffering becomes incurable by offering assisted suicide and euthanasia. In this way the legislature gives freedom to the patient that how he wants to end his life also by accepting the request of patient by the physician, they were also protected from any legal obligations. Indeed, there are strict legal provisions for ensuring the control of medical procedures to end their lives voluntarily.

The euthanasia is defined as a medical act whereby a doctor intentionally ends the life of another person, at that person's express and deliberate request. In every such case, the doctor must meet

specific formal and procedural requirements (such as interviewing the patient many times) before performing assisted suicide or euthanasia.

- **Who Can Request**

The request for euthanasia and assisted suicide can make anyone who

- a) Attains the age of 18
- b) Has an incurable suffering and irreversible medical condition arising out by any reason.
- c) Wishes to make end-of-life arrangements (means:- when a person wishes to decide or arrange his or her final stage of life for e.g. – funeral, medical wishes etc)

Also, the patients who resides in abroad but have any general practitioner in Luxembourg may make end of life arrangement.

- **Requirements**

In Luxembourg there shall be requirements to follow for request of assisted suicide or euthanasia i.e.

- a) Be aware when the request is made
- b) Be of a legal age and the ability to make their own judgments (i.e., they must not have any judicial approach of incapability of that patient)
- c) Make the decision in a free will and not any undue pressure of anyone
- d) Have an incurable medical condition in which no other option available for any type of cure

Here in this country Minors are not allowed to request for assisted suicide or euthanasia either by his parents or guardian.

- **End of Life Arrangement**

The term "end-of-life arrangements" refers to a request for euthanasia or assisted suicide made in advance, anticipating the possibility that the patient may experience the irreversible consequences of a serious accident or illness, which are deemed irreversible from the perspective of scientific knowledge at the time, or that they may eventually find themselves in an irreversible state of unconsciousness.

Any individual who is of legal age and fully capable of making decisions for themselves may, in advance make end of life wishes also, including the conditions under which they would like to end their life.

A person of legal age of the individual's choosing may formally documented their desires in front of two witnesses if the individual is physically unable of writing and signing their end-of-life agreements. The end-of-life preparations must then state that the patient is unable to write and sign the agreement and provide an explanation for this in the document.

Any change to the end-of-life arrangement must be legally documented with the National Control and Assessment Committee. The National Control and Assessment Committee must certify the patient's preferences once every five years from the date of filing, although there is no time restriction on how long an individual's end-of-life arrangements are valid.

C. Australia

Australia is another country to legalise euthanasia but, in this country, only voluntary assisted dying (VAD) is legalised and other type of euthanasia is still illegal. Voluntary assisted dying is the form of euthanasia in which a doctor or physician assists the patient on their request to end their life gives drug or any other form in which the patient end their life by its own. In Australia the states i.e. Victoria, Western Australia, Tasmania, South Australia, Queensland, and New South Wales have now legalized the euthanasia in the form of voluntary assisted dying. Also, a bill was passed in Australian capital territory on 5th June 2024 by the Australian parliament and the Act commenced on 3rd November 2025. Although in northern territory of Australia the euthanasia is still banned and a doctor or any person found assisting dying shall be charged with murder.

• Criteria

To request or access the voluntary assisted dying minimum criteria must be followed written in state and territory legislation and associated regulations i.e.:-

- a) Must be 18 years of age and must be citizen or permanent resident of Australia
- b) Also, the person must lived 12 months in Australia to request for VAD
- c) Have a decision-making capacity and must have free consent for request
- d) Must have incurable and irreversible disease in which there is no other option available for curability
- e) Different states can have different criteria for request of VAD

• Case laws

Carr v Attorney-General (Cth) [2023] FCA 1500

In this the Australian court determined that voluntary assisted dying" (VAD) is regarded as a

type of "suicide" which is mentioned under Commonwealth's Criminal Code Act 1995. This implies that any action that facilitates suicide, including those permitted by state VAD laws, may violate the federal Criminal Code. Due to the ruling's inclusion of state-approved VAD under federal "suicide" legislation, healthcare professionals may face legal ambiguity.

H Ltd v J & Anor [2010] SASC

The court upheld that, in the absence of legal representative, aged care homes are free to stop feeding residents who have given explicit instructions. The court created the option for a competent person to utilize an advance care directive to deny life-sustaining medical care, including food and drink. The notion of patient autonomy in end-of-life decisions was supported by this ruling.

R v. COX (1992) 12 BMLR 38

Boyes is a lady who suffers a lot of pain due to arthritis. she knows dr cox for 13 years and begged dr to kill her because there were lot of medication to her but it was all unsuccessful so the dr gave her sodium chloride and with heavy dosage she died. after her death dr was charged with murder

The jury held that although she was in lot of pain but the heavy dosage of sodium chloride is just double of dosage of lethal and by this statement the dr was held liable for the murder of Boyes.

R v. Dowdle (2018) NSWSC 240

Dowdle used a combination of sedatives and plastic bag asphyxiation to kill her 27-year-old son. Her adult son suffered serious injuries in a vehicle accident and, in part, had serious substance misuse issues as a result of the incident. Despite his verbal and physical abuse, Dowdle said that she killed him because she could not watch him suffer all the time. At the time, Dowdle herself was dealing with a significant depression condition.

Dowdle was charged with murder, but the allegation was altered to manslaughter after he entered a defence of significant impairment. Although such facilities were unavailable, the judge considered her persistent efforts to push for her son's access to proper care and facilities. He gave her a three-year jail term with a two-year non-parole period. Since she had already completed the two years of service, she was discharged right away.

D. Canada

Canada is one of the country which accept medical assisted in dying (MAiD) in June 2016. Medical assisted in dying is the form euthanasia in which doctor or nurse practitioner helps the

patient to end their lives only with the consent of patient and also with the free will of that person.

1. Eligibility

The person requesting MAiD should fulfil the minimum requirement in Canada i.e.

- a) At least 18 years of age
- b) Are eligible for fund health services in Canada
- c) is capable of making own health-related decisions
- d) possess a serious and incurable illness that is:
 - i) have received a diagnosis of a severe and incurable sickness, disability, or illness;
 - ii) endure irrecoverable bodily or mental suffering as a result of illness;

are submitting this request voluntarily, independent of outside pressure or influence.

VI. PROCESS

The due process must be followed for performing MAiD in Canada i.e.

- a) The first step is to fill out form i.e. medical Assisted in dying form and submit to the assisted dying program. By signing this form, the patient gives consent that
 - a. requesting in writing to be evaluated for MAiD
 - b. he/she fit the requirements for eligibility
 - c. consenting in front of two individuals about the eligibility for MAiD
- b) the second step is that Two evaluations will be scheduled by the Assisted Dying Program or by medical team. The evaluation procedure ensures that patient:
 - a. Recognize all choice available to alleviate agony
 - b. Fulfil the qualifying requirements
 - c. are able to make this choice

the third step is Federal law mandates that evaluation period be at least ninety days. A predetermined evaluation time is not required for those whose natural deaths are reasonably anticipated. Also, patients are free to decide assisted death.

- c) The last step is the patient can choose the time and location of assisted dying once eligible. Additionally, the patient has option to have loved ones present when you receive your assisted dying.

Case laws**1. Truchon v. Attorney General of Canada (2019 QCCS 3792)**

Quebec Superior Court ruled that the "end of life" and "reasonable foreseeability of natural death" requirements for medical assistance in dying (MAiD) to be unconstitutional. The Canadian government amended its MAiD law with Bill C-7, which broadened eligibility to those whose natural death was not reasonably foreseeable, in response to this verdict, which was filed by patients with serious and incurable diseases who were refused MAiD.

2. Rodriguez v British Columbia (AG), [1993] 3 SCR 519

In this landmark judgement the supreme court of Canada held that the medical assisted in dying prohibited in Canada.

3. Carter v. Canada (2015) SCC 5

The supreme court of Canada held that adult who are competent enough can seek medical assisted in dying by overturning its own decision in 1993 ruling in Rodriguez v British Columbia. and also suspend its decision for 12 months as the supreme court directs parliament to make law or statute in medical assisted in dying.

4. In Canada (AG) v. E.F. (Alberta Court of Appeal)

The Alberta Court of Appeal upheld the Supreme Court's decision in Carter v. Canada, which permitted MAID in situations when a condition even one with mental roots causes severe and irreversible suffering without requiring a terminal disease. The court supported the lower court's judgment to give medical aid in dying (MAID) for a patient with a psychiatric-like disease The court rejected the Attorney General's appeal of the first decision, which claimed the sickness had a mental base and was not fatal.

5. W.V. v. M.V., 2024 ABKB 174 (Alberta Court of King's Bench)

In this case the eligibility of M.V 27-year-old daughter for MAID had been challenged by the father, W.V.. He claimed that because of her autism and other purported mental illnesses, she was incapable of giving her permission. The alberta court of king's bench ruled that the court should not question the clinical judgments made by doctors in determining MAID eligibility and set aside the injunction (i.e., declined to ban MAID). The court stated that there should be little judicial scrutiny of a MAID evaluation, particularly when it comes to medical professionals' clinical judgments.

VII. CONCLUSION

In conclusion, the underlying idea that every person deserves autonomy, dignity, and relief from excruciating pain is reflected in both active and passive euthanasia. While passive euthanasia is already recognized as a valid exercise of the right to die with dignity, there is increasing moral and legal support for giving active euthanasia the same consideration when stopping treatment is insufficient to relieve severe pain or prolongs suffering with no real chance of recovery. Supporting active euthanasia respects the person's informed decision to avoid a life characterized only by suffering, dependence, and loss of human dignity rather than diminishing the worth of life. However, keeping passive euthanasia in place guarantees that when treatment is no longer in the patient's best interests, families and medical personnel may avoid needlessly prolonging terminal circumstances.

Therefore, in addition to being in line with the constitutional ideals of autonomy and dignity, a humane, controlled, and ethically supervised method that acknowledges both active and passive euthanasia is also necessary for a compassionate healthcare system. In the end, all approaches have the same goal of enabling people to end their lives in harmony, dignity, and without undue pain.
