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The Role of Consent in Euthanasia: Autonomy vs. Paternalism

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ABSTRACT

The brief examines the place of autonomous decision-making in the legal regulation of euthanasia in India. It is a detailed exposition of the functioning of the notion of consent in the legislative and judicial frameworks on euthanasia, the debate being around striking the right balance between facilitating the individual patient and protecting her from self-abuse and other forms of mistreatment through paternalistic state intervention. It is argued that, if India's pluralistic context presents challenges of their own, the end-point vis-à-vis facilitating the individual's right to make autonomous choices ought not to be liable to derision on that ground: namely, that they're hopelessly behind the West. The focus of the essay to some extent rests on the role of consent under the right to choose, as elaborated across two landmark decisions of the Supreme Court that have shaped the legal debate: the Aruna Shanbaug case and the passive euthanasia case. While the former is regarded in the essay as having served as a kind of catalyst for facilitating the acceptability of consent, autonomy and choice in delinked euthanasia, once the principle of informed consent and the consent requirement enters the legal discourse through the door of therapeutic nihilism, it creates a domino effect and gains legitimacy from cascading down across different jurisprudential contexts. The essence of the essay is also focused on legislative attempts at codifying the status of advance directive or living wills (ADLW) bids through the Medical Treatment of Terminally Ill Patients Bill. Although the Bill has not yet been adopted into law, what it sets out is a process through which a patient may be able to convey her preferences about her end-of-life decisions. Keeping in view the uncertain terrain on which this balance must be maintained, the author attempts to see what steps may be taken to provide a firmer foothold in the Indian legal discourse on human rights and medical ethics.

Keywords*: Euthanasia, consent, autonomy, paternalism, India, passive euthanasia, legal framework, Aruna Shanbaug, living wills, right to life.*

I. INTRODUCTION

Euthanasia, or 'right to die' as it is popularly referred to, stands at the epicenter of intense legal,

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 [ISSN 2581-5369]

moral and philosophical debates the world over. Talk of the same naturally triggers off fierce passions in India, as issues of the issue acquire added layers of complexity by dint of being embedded in the maze of cultural, religious and legal nuances that already define the nation. The very term euthanasia widens the scope of theological possibilities by breaking the conventional mould of legal thinking, both on individual autonomy as a right and state paternalism as a duty. This discourse reaches a crescendo when the idea of consent is unpacked as pertaining to the question of euthanasia, making it seem like a terribly animated scatter graph where the ideas of self-determination confront the impulses of the protective state. Here the present article attempts to dissect this complexity, as it manifests itself at the Indian legal landscape, by looking at how consent is integrated into legislative and judicial attitudes on euthanasia, and what are the broader ramifications of the same for the human freedom and social norms.

While it is legal in various forms and to varying degrees in several countries around the world, it is always governed by an individual set of regulations. Some of the countries with the greatest experience and legal practice of euthanasia include Belgium (which legalized both passive and active euthanasia in 2002), the Netherlands (which formalized a decades-long practice in 2002), and Canada (which began to implement it on a national scale with the passage of Bill C-14 in 2016). Each of these countries has established protocols that seek to balance patient autonomy and the duty of medical practitioners not to kill. Patient consent is usually very specific and supported by a range of compliance measures to ensure that the patient's wishes are indeed the result of autonomous decision-making

(A) Euthanasia

'Euthanasia', derived from the Greek death. From a legal standpoint, euthanasia is categorized into passive euthanasia in which medical treatment necessary for continuation of life is withheld or withdrawn, and active euthanasia in which steps are taken to cause the death of a patient. Indian law recognizes only the former, which too is under strict controls.

(B) Autonomy

A competent adult's autonomy in this context refers to the ability or capacity and the corresponding right of an adult, who either has the ability or who could reasonably be expected, to understand information about medical treatments and procedures, to weigh the pros and cons of receiving those treatments and procedures, and to make a voluntary choice free from coercion about whether to accept, refuse or postpone a treatment. Principles of medical ethics, and hence legal principles related to decision-making at the end of life, rely upon the idea that autonomous

 [ISSN 2581-5369]

adults can choose not to be subjected to medical interventions they deem to be against their interests or detrimental to their quality of life.

(C) Paternalism

Yet paternalism always infringes on individual autonomy by ordering the individual's welfare according to the subjective judgment of society, even if the individual does not recognize the nature of their welfare. It is paternalistic legal approaches to euthanasia that attempt to protect euthanasia's from impulsive or uninformed decisions at the end of life.

(D) Consent

Consent is the voluntary agreement of a person who is capable of giving an informed decision about her own healthcare. In the euthanasia context, consent must be competent, free and fully informed, and expressive of the person's cherished goals without any overbearing pressure..

II. THE CONSTITUTIONAL FRAMEWORK IN INDIA

All law in India is derived from the Constitution which remains the supreme law of the country. The constitutionality, moral rectitude and legal and ethical ramifications of decisions to end one's life (and to assist in that decision) find expression in the way euthanasia is approached in India. The Constitution is the lens through which the question of euthanasia in India is framed in legal and ethical terms. At the heart of the framing lies Article 21, which states that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. This article should affect the legality and ethics of euthanasia in line with the Constitution. To understand why this might not be the case, it is important to understand how constitutional rights work in a jurisprudential milieu.

(A) Article 21 and the Right to Life

Article 21 reads as follows: No person shall be deprived of his life or personal liberty except according to procedure established by law. The above Article has been generously interpreted by the Indian Supreme Court to also mean the right to live with human dignity, and all that goes with it, viz: the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life, such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one's own views in diverse forms and freely moving about and mixing and commingling with the human race.

The scope of Article 21 has been enlarged to include many quality-of-life rights, including the right to health, to environment and to a dignified death. This expansive approach has paved the way for the judiciary to include passive euthanasia as an adjunct to law in some circumstances,

 [ISSN 2581-5369]

and come to treat quality of life as being included within the right to life itself.

(B) The Right to Die Debate

The right to die is perhaps the most contentious of human rights disputes in contemporary India. Section 309 of the Indian Penal Code stipulates that suicide is a crime: attempting to commit suicide is a criminal offence, and encouraging or forcing someone to commit suicide is even more serious. However, attempts at suicide is not an offence, the caveat being that suicide will always remain seen as an act of moral turpitude, which goes some way to show the paternalistic orientation of the right to life under Indian law. The paternalistic inclination is now under strain in recent judicial trends, and here the possibilities of a right to die with dignity has opened up through the politics of passive euthanasia and the acceptance of advanced directives such as living wills, but always under the strictest of guardrails.

III. SUPREME COURT JUDGMENTS ON EUTHANASIA AND CONSENT

The Supreme Court of India has been, up until now, the one to shape the euthanasia legal scenario in India, with important judgments of great scope that, over the years, have set the foundational fingers of euthanasia legality and procedure.

1. Aruna Shanbaug case: A Paradigm Shift

Public attention to the case of the vegetative nurse Aruna Shanbaug is also viewed by many a commentator as a turning point in the euthanasia jurisprudence in India. As the vegetative consequence of the rape, Aruna Shanbaug became the face of the case against passive euthanasia in India. In 2011, when the requests for euthanizing Aruna were petitioned in her case, the Supreme Court of India pronounced this brief yet landmark judgment establishing the norms of passive euthanasia by noting that: There can be no doubt that passive euthanasia can be permitted; but to start with such passive euthanasia can be permitted only with the sanction of the High Court concerned; Proceeding further to list out the guiding principles for passive euthanasia, the court observed that: Consent might have to be obtained both for living will as well as passive euthanasia. In case where the person who is desirous of such relief is incompetent to give consent as in the instant case of Aruna, the Court has to be satisfied about the consent. This can be done by asking the near relative of the patient or by any such 'next friend' of the patient.

2. Common Cause (A Regd. Society) v. Union of India: Legal Recognition of Living Wills

Further judicial relief to Indian patients came in the recent case of Common Cause v. Union of India where the Supreme Court recognised the authority of an advance medical directive, also

known as a living will. Under it, a person has the right to record her choice as to the extent of medical intervention she would want in her end-of-life care if she was in a terminal state or otherwise unable to make a free and informed choice or act while she still had the capacity to do so. The judgment further codified the principle of autonomy by recognising a person's expression of her treatment choice in advance of such a decision, helping secure the consent of such person in advance of any decision to withhold or reject medical treatment to a specified state or situation.

This judicial reasoning reflects a fine balance between respect for autonomy and paternalistic intervention in decisions that nurture the welfare of individuals and society. Courts have embraced the end decision ideal of autonomy, with adequate guard rails for abuse and the requirement of informed, authentic decisions.

With its embracing of passive euthanasia and the live will penumbra, the Indian judiciary takes another step towards an autonomy-based regime. But it retains the paternalistic edifice of judicial oversight and strict, parliament-enforced procedural protocols, designed to keep the powerless protected and keep consent free and informed.

IV. LEGISLATIVE FRAMEWORK IN INDIA REGARDING EUTHANASIA

The legal status of euthanasia is part of the sociolegal fabric of India's penal and civil laws at the intersection of morality, law and ethics, and in a way that courts of law are supposed to adjudicate competing values of individual autonomy, social mores and medical ethics. The legal framework for euthanasia in India was defined in the first instance by the Indian Penal Code and judicial decisions on the law and morality of what is permissible and impermissible at the end of one's life.

1. Indian Penal Code and Euthanasia

The IPC, the foundation of criminal law in India, though silent on euthanasia, has some sections that cover issues related to euthanasia by discussing suicide and abetment of suicide.

Analysis of IPC Sections 306 and 309

- Section 306 (Abetment of suicide): Criminal liability will be imposed on any person who abets the commission of suicide. For many decades, this section lay at the heart of cases that touch upon, or perhaps involve, assisted suicide.
- Section 309: Attempt to commit suicide: whosoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

 [ISSN 2581-5369]

Although it has consistently failed to be effectuated in the law, several attempts have been made to delete this section, arguing that the issue of suicide is of mental-health more than penal concern.

These provisions, though they do not directly concern euthanasia, draw the boundaries within which debate over assisted dying must occur, emphasizing the general prohibition on the facilitation of death.

Legal Distinction Between Suicide and Euthanasia

The legal difference between suicide and euthanasia in India depends on the role of doctors versus the individual action of taking one's life. Suicide, a common reason for prayer or happiness in public, is usually construed as a solitary act that might signal a mental health disorder. Euthanasia, on the other hand, is a patient's consent to medical intervention that can ease unbearable suffering with no prospect of a cure.

2. The Medical Treatment of Terminally Ill Patients Bill, 2016

This bill has not passed into law but, even if signed by the President and hence legislated, it sanctions medical treatment of terminally ill patients and, through the concept of passive euthanasia, envisages its application in the following circumstances. It codifies the largely case-based judicial principles.

The bill describes conditions and procedures regarding medical treatment for terminally patients, including giving consent to withhold or withdraw medical treatment by either the patient themselves or the patient's legal guardians in the case that the patient is not able to give consent. The treating doctor must consult with a medical board to determine if interventions will be undertaken, noting that consent by the patient or legal guardian must be informed, voluntary and not obtained through force or coercion.

Legal Status of Advance Directives or "Living Wills"

Part of the foundation of that law is the official recognition of advance directives or 'living wills', which allow a person to express wishes about medical treatment in anticipation of a future illness from which he or she may not recover. Such recognition of living wills provides support for individual autonomy in the form of the opportunity to specify in advance one's wishes about how to end one's life.

3. Comparison with Legislation in Other Jurisdictions

Comparing India's approach with other jurisdictions highlights a spectrum of legal responses to euthanasia:

 [ISSN 2581-5369]

- Netherlands and Belgium: Both passive (withdrawing life-support) and active (the administration of a lethal dose) euthanasia have been legalized in these countries for some decades and strict consent protocols guarantee the individual's decision is clearly voluntary and informed.
- United States: The United States has a mixed approach, with some states like Oregon and California permitting physician-assisted dying (as somehow legally distinct from suicide) under the Death with Dignity Acts, and with very exacting controls about consent and criteria for eligibility.
- Canada: Canada's Medical Assistance in Dying (MAID) law allows for both alternate forms of CE and focuses heavily on the need for patient consent and stringent procedural legal protections for the vulnerable.

Key Case Laws Shaping Euthanasia in India

Courts on India's highest bench have been engaging with the problem of how to create a political consensus on the right to euthanasia by resolving fundamental issues through a line of judgments each concerned with a different aspect of a morally contentious situation, each applying to the minutiae of actual case scenarios. What these judgments clearly illustrate is the extent to which Indian courts are willing to admit the competing claims of autonomy and paternalism to influence their decisions in cases of euthanasia.

V. IMPACT ON LEGAL AND MEDICAL PRACTICE

Following these judgments, there has been a noticeable shift in hospital policies across India:

- Standard Operating Procedures (SOPs) for handling requests for withdrawal of life support: Several hospitals have drafted guidelines and SOPs to handle such requests; these help everyone ensure that the decision is taken in a legal and an ethical manner.
- Legal Requirements Training: More training for medical practitioners about legislative requirements and the importance of obtaining consent to provide end-of-life care. They must know what they are doing because the law allows them to do it.

(A) Legal Guidelines for Practitioners and Patients

a. For Practitioners

Following the Supreme Court Guidelines:

- Doctors must, under the strict guidelines of the Supreme Court, not only verify the authenticity of the living will and ensure that it conforms to the legal standards, but also

ensure that fulfillment of the values outlined in the living will is permissible.

- Consultative Process: Practitioners must consult with a board of medical professionals and, in some cases, obtain approval from the High Court prior to deciding upon acts of euthanasia.

b. For Patients

- Drafting A Living Will: Patients are told how to draft a living will and what it will entail. This is where technology steps in and, if done right, it's significant. I already depend on a well-wrought app to remind me to take my blood thinners three times a day, every day, ad infinitum. But the ideal device – or app – with all the best intentions, all the risks mitigated, all the false links edited out of the accompanying webpages, as Novick described, wouldn't feel like data. It wouldn't feel as if we were endorsing troops on Iwo Jima or urging Facebook friends to like gay teens. It wouldn't make us feel fake or fraudulent. It wouldn't reduce the precious moment between a loving parent and child near the end of life to opportunistic grab-bags of specific instructions. Whether it will be this way isn't certain. But it's a start. For yet more information about living wills, you can go here: whenilldie.org.
- Legal Awareness: patients and their families are also aware of the rights they have and the steps involved in making end-of-life decisions, so that patients can make these decisions in an informed manner.

(B) Autonomy vs. Paternalism: Legal and Ethical Analysis

India's debate over euthanasia has pitted the good of the autonomous individual against that of the paternalistic medical practitioner. Autonomy holds that patients have the right to self-determination – the right to decide what should or should not be done to their life or body. Paternalism, on the other hand, is defined as actions of the state or medical practitioners that might override individual choices and promote what is considered the good for that patient, including decisions about his or her own body. Patients rightly fear that some medical professionals might be motivated not by altruism or even scientific concerns but by their instinct for dominance and control, relishing in the wielding of their physician's (near) royal power.

(C) Philosophical Underpinnings

The philosophical discourse that opposes autonomy to paternalism in medicine lies on the normative assumptions of ethical theories that stress individual rights and welfare. Autonomy is grounded in liberal individualism that champions overall belief in and valuing of self-

determination for purposes of maximizing freedom from external constraint. Paternalism, on the other hand, is premised on beneficence, which justifies interference with another person's freedom for that person's own good, based upon general claims about moral or religious duties.

(D) The Principle of Autonomy in Medical Ethics

The concept of autonomy takes center stage in contemporary medical ethics, resting upon a commitment to the principle that reasonable people are entitled to determine for themselves what shall and shall not be done to their bodies (even if they die as a result). This principle is embodied in a host of international human rights instruments and medical codes of ethics, all of which maintain that it is a fundamental obligation for competent adults to be able to decide freely either to accept medical treatment or to refuse it.

(E) The Concept of Paternalism: Justifications and Criticisms

Paternalism in medical practice can be justified on several grounds:

- Protection from harm: In many ways, this is the easiest justification for paternalism. If we adhere to the notion that we generally ought to avoid doing things that could result in serious harm to ourselves – say through our own rash, imprudent, uninformed choices – and if we think that some patients are not capable of forming the complex understandings that would render their choices informed, then in those instances we can give the detectives a break.
- Best interest: Nowhere is medicine's paternalistic origins more blatant than when physicians invoke acting in the patient's best interest, an idea most often invoked when their patients lose their capacity to make their own decisions.

Paternalism is taken to violate important rights people possess, as well as to have a tendency to lead to abuses of power on the part of the state or the doctor. In this way it is said to violate important individual freedoms and the dignity of the human person. Paternalism, it might be claimed, is based on a traditional medical model of a relationship between the doctor and the patient, one that is incompatible with the more modern approach of patient-centred care.

(F) Application in the Context of Euthanasia

The use of the concepts of autonomy and paternalism assumes greater legal and ethical weight. They find manifest expression in euthanasia, which literally means 'good death'. They pertain to assistance provided to someone who wants to end their life, on the ground that its continuation would are negative and its end would be positive. In India, except for those who have foregone active euthanasia, the use of autonomy and paternalism in euthanasia has mostly been from a

 [ISSN 2581-5369]

paternalistic standpoint. This is because of the emphasis the Indian judiciary has placed on the sanctity of life principle. However, the recent recognition of passive euthanasia and living will has tended to shift the balance more in favor of respecting patient autonomy.

Consent Mechanisms in Euthanasia Decisions

In euthanasia, the issue of consent is especially fraught due to the irreversibility of the decision, and the imposition of a potentially vulnerable patient:

- Informed Consent: The patient must be as well informed as possible about their own medical condition, prognosis and the consequences of their decisions. In my view, this means he must be told what his condition is, what his prognosis is, and the consequences (physical, psychological) of his decision to opt for euthanasia.
- Competence: The patient must be competent to make such a drastic decision. This typically involves psychological evaluations to determine that the patient is not suffering from diminished mental capacity that would negatively affect their decision-making abilities.
- Voluntariness: Consent must be freely given, without coercion or undue influence from family members, medical personnel or others.

(G)Ethical Dilemmas and Legal Challenges

The balancing act between autonomy and paternalism presents numerous ethical dilemmas and legal challenges:

- Ethical challenge: identifying what counts as a reason to override a patient's wishes (supposedly for their own good) in the first place is an enormous ethical problem, especially in cultures in which the individual is always embedded in the family, and the family decides together what to do.
- Legal challenges: the law has a challenge to keep evolving in order to maintain the self-determination of a person yet still be reflective of societal ethics. This includes defining guidelines within these laws that minimize abuse of euthanasia and develop adequate consent mechanisms that are robust and transparent.

VI. CHALLENGES AND CRITIQUES

Apart from the practical challenges, the consent-based euthanasia is also criticized on grounds of legal ambiguity and cultural, religious and societal inroads into the concept and practice of euthanasia.

(A) Implementing Consent-Based Euthanasia

Since a consent-based euthanasia regime in India will necessarily have to be structured a certain way, there are a host of ethical, legal and procedural hurdles that will have to be overcome. A consent-based scheme will have to have a robust, failproof consent regime with the person's consent being clear, free, competent and uncoerced.

Practical Difficulties and Legal Ambiguities

- Competency Assessment: Among the most pressing practical challenges is to interpret a patient's competence to consent, particularly when he or she is in severe pain, has a terminal illness, or has cognitive impairment. Ambiguity about who can make the evaluation, and what standard should be used, hinders consent.
- Documentation and Witnessing: With the requirement that consent for euthanasia have to be documented and witnessed, that too needs to be formalized. The Indian judiciary has carried out the passing of Acts – like the Maharashtra Private Medical Establishments (Regulation of Advertising and Registration) Act, 2008 – which goes a certain way in imposing the need for medical practitioners to record and verify aspects of a doctor-patient relationship, but there is no overarching legislation that outlines these protocols, and therefore no framework in which to interpret consent.
- Revocation of consent: It must provide for revocation of consent, especially with respect to the more widely used method of expression, the living will or advance directive. Revocations must themselves be simple and easy to use, so that patients' wishes for end-of-life care can be changed as often as they wish, should they wish.

(B) The Role of Family and Society in Consent Processes

Perhaps most importantly for anyone contemplating euthanasia in India, the strong role of family and societal expectations forces any consideration of euthanasia through the lens of complex consent processes. While people can take their own decisions about medical interventions, decisions around healthcare do not always reflect the wishes and preferences of individuals; rather, they are influenced by family members who might hold different beliefs towards euthanasia, for emotional, cultural or religious reasons..

Cultural, Religious, and Societal Considerations

- Cultural sensitivities: In family-oriented cultures such as India, the desire for euthanasia or community prejudice can be strongly affected by family sensibilities. Strong collectivist pulling of the Indian socio-cultural matrix puts the family at the center of the

 [ISSN 2581-5369]

decision-making process, and might render the individual's consent unworkable.

- Religious Beliefs: Given India's complex religious landscape, one can also identify potential influences arising out of the religious reasons associated with the sanctity of life and death — such as beliefs in the all-encompassing nature of the cosmos in Hinduism and the destiny of life in case of Muslims that hold a favorable view on euthanasia. For example, in Hinduism, the doctrines of samsara and karma, as well as the belief in the natural end of life, influence attitudes. In fact, it is intriguing to note that in India, Hindu scholars have been advocating for the right to die with dignity even before it became an established political movement in Western nations such as the Netherlands, the United States, Belgium, Israel, Canada, Australia and Brazil. Jains, on the other hand, support voluntary passivity in the face of terminal illness as a form of spiritual cleansing.

(C) Influence on Perceptions of Euthanasia and Consent

Euthanasia is a complex issue with powerful social, religious and moral undercurrents. Conflicts within legal frameworks and within moral dilemmas are inherent to it. Ripples from any societal issue are inherently complex and reach all facets of a culture, especially in societies that value autonomy.

In India, euthanasia is generally acceptable and legal under specific conditions:

- It is only permitted for individuals who have incurable diseases.
- Informed by an evaluation of the patient's particular situation and guided by agreed norms and rules to be drawn up in advance of the terminal condition, the question of whether to implement euthanasia must then be weighed and decided.

However, the acceptance of euthanasia in India is nuanced and varies widely:

- They argue it should be allowed, in particular, if the patient's condition is irreversible and the patient lives only in extreme suffering.
- Others oppose euthanasia on religious and moral grounds, believing it to be fundamentally wrong.

The discussion also spreads to the possible impact of euthanasia on wider sections of the population. The elderly and those with disabilities can be particularly sensitive to claims that euthanasia for these groups is needed because they are a burden to society and to their families. They often fear that they will be the ones to suffer from social pressure to consent to euthanasia, whether due to their increased likelihood of experiencing illness and pain, or because euthanasia

 [ISSN 2581-5369]

is increasingly seen as problematic for society at large. Some will argue that, given these worries about euthanasia and the fact that these same vulnerable groups are also the ones that seem to present us with the greatest challenges in upholding the principle of voluntariness (whether in consent to euthanasia or in refusals of euthanasia), we ought to have even stricter safeguards in place in these cases than in others.

(D) Suggestions for Policy and Practice

Given the complex legal and ethical climate surrounding euthanasia in India, reform in policy and practice needs to address the legal grey areas surrounding euthanasia, provide for clear mechanisms of consent, and help health-care professionals with discerning and making ethically defensible choices reflective of patients' autonomy.

- Statutory Definition of Euthanasia: To remove present ambiguities, introduce a statutory definition of euthanasia and its variants – passive euthanasia, active euthanasia, voluntary euthanasia, non-voluntary euthanasia, and involuntary euthanasia – in Indian law.
- Detailed, careful legislative framework that specifies in detail how euthanasia is performed, including requirements regarding consent and safeguards; in particular that a detailed and prudent assessment is done about whether the patient is capable of giving consent, whether consent is freely given, and what the procedure is for withdrawal of consent.
- Statutory regulation of living wills: Provide clear statutory guidance on the form for creating, executing, and revoking living wills, and make such guidance easily accessible and intelligible to the lay public to encourage its mass implementation.
- Verification of consent: Develop rigorous protocols for obtaining and verifying informed consent in assisted dying cases to ensure that it is not procured under duress and that all high-quality information about the meaning and consequences is made available to those considering it.
- Third-party review: Mandatory review by a review board or ethics committee for all euthanasia decisions with additional review authority for contested decisions, to ensure compliance with protocol, notably with respect to consent and ability to weigh the decision.
- Legal Regime and Options for Withdrawal of the Consent: Provide clear provisions for any patient to withdraw a consent given for any reason or no reason at all, and

 [ISSN 2581-5369]

convey such provisions to all patients planning to choose euthanasia.

- Patient-Centred Care: Promote a patient-centred care approach in which the healthcare provider seeks to understand, respect, and incorporate the patient's personal values, preferences, and needs into the decision-making process.
- Transparency and Communication: Increase transparency and communication between providers and patients to encourage informed consent and the awareness of medical options and their outcomes.
- Training programmes: Establish training programmes for carers and other healthcare professionals on issues of euthanasia ethics, including respect for autonomy, consent, and end-of-life care.
- Awareness campaigns: Since although euthanasia is legal in a handful of countries across the globe, very few healthcare professionals or members of the public understand the processes involved, awareness campaigns are a crucial element of any proposed programme of legalisation. It should be noted that such campaigns should encompass all the realms involved in euthanasia: ethical, legal and practical.
- Ethics Committees: Give ethics committees a leading role on the euthanasia team in hospitals and medical institutions. These committees should share the work of clarifying rules, mentoring and probing the euthanasia team, and becoming a readily available consulting resource to help thinking through ethical dilemmas with treating teams and families.

VII. CONCLUSION

The debate on euthanasia in India, influenced by our legal and ethical shape, has also been marked by a careful balancing of individual autonomy and societal paternalism. The courts have been instrumental in a gradual acceptance of euthanasia, first in the form of passive euthanasia, and have increasingly accepted even active euthanasia. The role of the courts has been significant through a series of rulings allowing for passive euthanasia by accepting the presence of consent, and by specifying rigorous safeguards against abuses. The judiciary, led by the way of law, has led the way by gradually accepting and making passive euthanasia an option in an increasing number of cases. The Supreme Court of India has played a key role through its landmark judgments. It first recognised passive euthanasia in extremely restricted circumstances, and later upheld the need for strict conditions in administering euthanasia.

But this judicial move reminds us of the change of attitude from a very paternalistic view to an

 [ISSN 2581-5369]

autonomy-linked perspective, the broader frame of the law, however, leads to a general approach of absolute respect for life, although, like before, the provision focuses on situations 'when it is clear that there is no hope of recovery and continuance of life would be tantamount to merely existing in a vegetative state'. The legal provisions continue to engage with the challenges of culture, religion and society that remain part of the Indian context and that trouble the process of consent at the end of life, and perhaps go against the will of a person about to leave.

There are significant practical challenges to the practical implementation of consent-based euthanasia in India – for instance, patient competency; provision of informed and voluntary consent; consideration of the socio-cultural environment in which the decision-making occurs; legally enshrined ambiguity about the proper method of documentation of consent, and about the revocation of such consent. The picture that emerges is one of legal ambiguity and instability reflected in a perception of 'legal interference'. The logical consequence is a call for clarity – primarily, a legislative 'fix'.

What steps can be taken to further this model? The scholarly consensus is that an appropriate measure would be to codify the definition of euthanasia in law, to develop complete procedural practices that emphasise patient free will and a patient-centred perspective, and that the ethics committees in the healthcare context would need to be reinforced further. These approaches would hopefully encourage the provision of euthanasia to be more transparent, informed and ethically founded, thus creating a balance between individual rights and ethical responsibilities of society.

To conclude, while India has taken important steps through its courts to establish the principle of consent and autonomous decision-making which underlies euthanasia, there is still room to develop a more complete euthanasia policy that is fully autonomous and ethically sound. Ultimately, the debates that are raging between the legislature and the judiciary — some more progressive than the other — and the vacillation in judicial interpretation of the legality or lack thereof of euthanasia that separate these developments only highlight the complexity, but also the importance, of the issue for the Indian legal and public sphere.

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 [ISSN 2581-5369]

VIII. REFERENCES

1. (2023). Right to die with dignity: Live and let die. *The Times of India*. Retrieved from https://timesofindia.indiatimes.com/india/right-to-die-with-dignity-live-and-let-die/articleshow/106242659.cms
2. Agarwal, A. (2023). Towards a 'Good Death': Uncovering the confusion in end-of-life-care law in India. *NUJS Law Review*, 16(1). Retrieved from https://nujslawreview.org/2023/09/28/towards-a-good-death-a-critical-analysis-of-euthanasia-within-the-indian-paradigm/
3. Australian Human Rights Commission. (2016). Euthanasia, human rights and the law. Retrieved from https://humanrights.gov.au/our-work/age-discrimination/publications/euthanasia-human-rights-and-law
4. Barnbaum, D. R. (1996). Euthanasia and counterfactual consent. Doctoral Dissertations 1896 - February 2014. 2281. Retrieved from https://scholarworks.umass.edu/dissertations_1/2281
5. CalendarToday. (2023). Euthanasia in India. Retrieved from https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/euthanasia-in-india/
6. Dhru, K. A., & Ghooi, R. B. (2023). Advance directives in India: Seeking the individual within the community. In D. Cheung & M. Dunn (Eds.), Advance Directives Across Asia: A Comparative Socio-legal Analysis (pp. 110–130). *Cambridge University Press.*
7. Goyal, S. (n.d.). Do we have a right to die? Retrieved from https://www.lawof.in/right-die-shalu-goyal-faculty-law-icfai-dehradun/
8. Gupta, K., & Chaturvedi, I. (2022). The critical analysis of passive euthanasia as a converging need in India. Retrieved from https://articles.manupatra.com/article-details/THE-CRITICAL-ANALYSIS-OF-PASSIVE-EUTHANASIA-AS-A-CONVERGING-NEED-IN-INDIA
9. Harish, D., Kumar, A., & Singh, A. (2015). Patient autonomy and informed consent: The core of modern day ethical medical. *Journal of Indian Academy of Forensic Medicine*, 37(4), 410. https://doi.org/10.5958/0974-0848.2015.00106.2
10. Jayanth, R. (2020). The Right to Die: Perspectives on Informed Consent and Medical Responsibility. Retrieved from https://sites.rutgers.edu/nb-senior-exhibits/wp-content/uploads/sites/442/2020/08/Rohan-Jayanth-final-pdf.pdf

 [ISSN 2581-5369]

11. Kishore, R. R. (2015). Aruna Shanbaug and the right to die with dignity: the battle continues. *Journal of Healthcare Ethics & Humanities*. https://doi.org/10.20529/IJME.2016.009

12. Mahajan, R. (2024). Validity of euthanasia in India: constitutional and legal approach. Retrieved from https://www.lexology.com/library/detail.aspx?g=247c8c66-b3ed-4179-bfe1-7df289a0cde5

13. Majumdar, R. K. (2018). Informed consent of the patient constitutionalises his rights under doctrine of self-determination. *International Journal of Creative Research Thoughts*, 6(2). Retrieved from https://www.ijcrt.org/papers/IJCRT1892605.pdf

14. Math, S. B., & Chaturvedi, S. K. (2012). Euthanasia: right to life vs right to die. The *Indian Journal of Medical Research*, 136(6), 899–902.

15. McKenney, J. (2018). Informed consent and euthanasia: An international human rights perspective. *International Comparative Law Review*, 18(2). Retrieved from https://intapi.sciendo.com/pdf/10.2478/iclr-2018-0041

16. Minocha, V. R., & Mishra, A. (2019). Euthanasia: Ethical challenges of shift from "Right to Die" to "Objective Decision". Annals of the National Academy of Medical Sciences (India), 55, 110–116. Retrieved from https://nams-india.in/anams/2019/NAMS55_2_article110-115.pdf

17. Mishra, S., & Singh, U. V. (2020). Euthanasia and its desirability in India. *ILI Law Review Summer Issue* 2020, 208. Retrieved from https://ili.ac.in/pdf/sms.pdf

18. Nicolson, D., & Webb, J. (2012). Duties to the client: Autonomy and control in the lawyer-client relationship. In Professional Legal Ethics: Critical Interrogations. *Oxford University Press.* https://doi.org/10.1093/acprof:oso/9780198764717.003.0005

19. Pereira, J. (2011). Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls. *Current Oncology*, 18(2), e38–e45. https://doi.org/10.3747/co.v18i2.883

20. Rawat, L. S., & Ali, R. M. (2018). The concept of right to die in India: A critical analysis. *International Journal of Creative Research Thoughts*, 6(2). Retrieved from https://ijcrt.org/papers/IJCRT1812261.pdf

21. Sebastian, J., & Sen, A. (n.d.). Unravelling the role of autonomy and consent in privacy. *Indian Journal of Constitutional Law*. Retrieved from https://ijcl.nalsar.ac.in/wp-content/uploads/2020/08/9IndianJConstL1_SebastianSen.pdf

22. Sharma, P., & Ansari, S. (2015). Euthanasia in India: A historical perspective. *Dehradun*

Law Review, 7(1).

23. Shekhawat, R. S., Kanchan, T., & Setia, P. (2018). Euthanasia: Global Scenario and Its Status in India. *Science and Engineering Ethics*, 24, 349–360. https://doi.org/10.1007/s11948-017-9946-7
24. Sinha, V. K., Basu, S., & Sarkhel, S. (2012). Euthanasia: An Indian perspective. *Indian Journal of Psychiatry*, 54(2), 177–183. https://doi.org/10.4103/0019-5545.99537
25. Stanford Encyclopedia of Philosophy. (2024). Voluntary euthanasia. Retrieved from https://plato.stanford.edu/entries/euthanasia-voluntary/
26. Subramani, S. (2017). Patient autonomy within real or valid consent: Samira Kohli's case. *Indian Journal of Medical Ethics*. https://doi.org/10.20529/IJME.2017.038
27. Subramanya, T. R., & Arpitha, H. C. (2020). Right to die with dignity- an assessment of prevailing law on euthanasia in India. *Bangalore University Law Journal*, 2020. Retrieved from https://ssrn.com/abstract=4691235
28. Supreme Court of India. (2011). Aruna Ramchandra Shanbaug vs Union of India & Ors. *AIR 2011 SC 1290.*
29. Supreme Court of India. (2018). Common Cause (A Regd. Society) vs Union of India. *AIR 2018 SC 1665.*
30. The Wire Staff. (2018). Passive euthanasia now a legal reality in India. Retrieved from https://thewire.in/health/passive-euthanasia-now-a-legal-reality-in-india

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 [ISSN 2581-5369]