Page 1448 - 1456 **DOI:** *https://doij.org/10.10000/IJLMH.112664*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

Euthanasia and Constitutional Validity: Comparative Study Between India and Canada

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ABSTRACT

Understanding about rights associated with Life goes back a long way. The issue of the Right to Life and Euthanasia is much of the time brought up in the present society, which is a topic of discussion in fields like medication, science, law, sociology and many more branches of human Life. The word Euthanasia applies to a variety of issues surrounding the determination of whether or not a person who may survive with the assistance of life support or in a reduced or weakened capacity should be allowed to die. In certain situations, it also refers to the notion that a person with a terminal disease who is in a critical condition must be terminated, allowed to end treatment, or aided by a medical professional in dying before death may otherwise occur, i.e. assisted dying where people have option and power at the end of life to let go of their suffering.

However, there are an exodus amount of legal, medical and social issues associated with Euthanasia. Despite the fact that at present, only partial Euthanasia is allowed in India, that too in rare of rare cases, the word itself is still a conflicting concept before the courts, often in conjunction with the terms death with dignity or violation of Right to Life. Within the scope of this research article that deals with Euthanasia and constitutional validity: a comparative study between India and Canada, the paper aims to further the discussion and concludes with its reliable solution to mitigate procedural and even substantial loopholes in the context of India and, highlights the possible solution.

Keywords: *Euthanasia, Life, Medical, Rights, Dignity, Assisted dying.*

I. EUTHANASIA: AN IDEA, A CONCEPT

"The real question is not whether Life exists after death. The real question is whether you are alive before death."

— Osho

The hypothesis of pain and pleasure is introduced as a test that can be utilized to shape

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 [ISSN 2581-5369]

sanctions. Be it law or a social custom. Irrefutably, joy and torment are connected, yet now and again, the agony is too extraordinary to even consider portraying not exclusively to the individual, yet additionally to their loved ones, just as the remainder of society. There are exodus amount of stories all around the world that give us a reasonable thought regarding the way that occasionally individuals with terminal sickness would prefer to get a kick out of the chance to accept passing 'calmly' than sticking on to Life loaded up with obstinate agony and suffering.

Euthanasia is the philosophy of putting an end to a subject matter despite intolerable suffering and misery where death is assured.[3] Legally ending one's Life by means of Euthanasia has been under a great deal of discussion. This discussion centres across intricate and dynamic angles like legal ground, wellbeing, Human rights, moral and religious ground, social parts of the general public and health care dynamics. Euthanasia, also called mercy killing, is the act or practice of painlessly putting to death persons suffering from a painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures.[4] It is essential to understand other subcategories before taking a stand.

Active voluntary Euthanasia: where the medical intervention takes place, at a patient's request, in order to end the patient's Life.[5]

Passive involuntary Euthanasia - when medical treatment is withdrawn or withheld from a patient, not at the request of the patient, in order to end the patient's Life.[6]

Active involuntary Euthanasia is when medical intervention takes place, not at the patient's request, in order to end the patient's Life.[7]

With regards to passive Euthanasia the acknowledgement level among the majority is far more than active Euthanasia as it straightforwardly retains the doctor with the duty to embed a deadly substance into the patient's body to aid them to pass away.

There are nations that have passed legislation sanctioning assisted suicide and active Euthanasia. Among which the first country to legalize Euthanasia was the Netherlands in 2001,

[3] "Euthanasia - A dignified end of life Academicjournals.org, https://academicjournals.org/article/article1380895703_Goel.pdf (Accessed June 18 , 2021)

[4] Britannica, the Editors of Encyclopaedia. "Euthanasia". Encyclopaedia Britannica, 27 Dec. 2019, https://www.britannica.com/topic/euthanasia. (Accessed 20 June 2021.)

[5] Natasha Cica, Euthanasia - the Australian Law in an international context, part I, Preface, Pg III, 1996-97, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/9V230/upload_binary/9V230.pdf;fileType=application%2Fpdf#search=%22library/prspub/9V230%22. (Accessed 28 June 2021.)

[6] Ibid

[7] Id at 3

followed by Belgium in 2002. However, there are many anti-euthanasia activists who believe that legalizing Euthanasia would create a "slippery slope" effect, leading to an upsurge in non-voluntary Euthanasia. It is important to mention a specific case, Michigan v. Kevorkian[8]; in the state of Michigan, the USA banned Euthanasia and assisted suicide after Dr Kevorkian was found recklessly assisted in suicides.

The problem of respecting fundamental human rights is frequently raised in today's society, which is characterized by rapid progress in fields such as medicine, biology, chemistry, and, most notably, informatics. The interest sparked by this issue stems from the unmistakable understanding of the value of basic freedoms and privileges, an immensely complicated organization without something we can speak of a truly democratic society, and a crucial concept – in order to support individual liberty at the national and international levels.[9]

II. ARTICLE 21 RIGHT TO LIFE AND EUTHANASIA

One of the most essential fundamental rights, the Right to Life, has been understood by our Constitution and courts to entail the Right to live a meaningful life, i.e. a life of dignity and worth, until natural death. From the cradle to the grave, every aspect of existence has been touched. In the Indian Constitution, the Right to Life has a much broader scope and legal meaning. Part III of the Indian Constitution, titled "Fundamental Rights," guarantees some basic, natural, and inalienable rights to the Indian people. These rights have been proclaimed necessary in order to ―preserve human liberty, develop human personality, and foster an efficient social and democratic life.**[10]**

The present world, where the recognition of basic fundamental rights, human rights and basic freedoms, places colossal requests on the courts to set standards to meet the new world challenges. Judges stand firm on an unmistakable footing in human development. Is there a more honourable duty than pronouncing law and upholding it? The moral doctrine of fundamental rights aims at identifying the fundamental preconditions for each human being leading a worthy life. Human rights in context to Right to die aim to identify both the necessary negative and positive prerequisites for leading a good life, such as the Right to health care.

There is no legislation as of now or statute which allows and affirms the legitimacy of mercy killing in India. With the passage of time, there have been numerous interpretations of the term

[8] Michigan V. Kevorkian, Et Al., 1994 Wl 700448 (Mich.)
[9] Coman Varvara et al., The Rights Of Life (7) (2012), https://www.researchgate.net/publication/231814766_The_Right_to_Life (Accessed June 22, 2021)
[10] M.P. Jain, Indian Constitutional Law, 457 (1987).

"right to life" by different Indian Judges through various cases.

Article 21, which talks about the Right to Life in Indian Constitution, is one of the most interpreted by the judges of various courts in different cases in relation to the reliability of Euthanasia in context to India. According to Article 21 of the Constitution of India, "no person should be deprived of his life or personal liberty except according to the procedure established by law". The Indian Penal Code, 1860 punishes the attempt to suicide through section 309 of the Code. Nonetheless, it would be very vague to assume the situation under which the person who attempted suicide had been suffering from some mental health problem or even financial distraught which made his Life painful and an individual being punished for the same, which is questionable both morally and legally.

One of the most essential fundamental rights, the Right to Life, has been understood by our wise court to entail the Right to live a meaningful life, i.e. a life of dignity and worth, until natural death. From the cradle to the grave, every facet of existence has been touched. In the Indian Constitution, the Right to Life has a much broader scope and legal meaning. The activist and pragmatic judicial rulings have greatly increased their amplitude and magnitude in recent years. As a result, the Right to Life is in a time of transformation in India, with the goal of accelerating the momentum and cause of human rights jurisprudence.[11]

To settle that legal dilemma, two judges Bench of the Supreme Court of India, in the P. Rathinam[12] decriminalized attempted suicide by holdings. 309 of IPC unconstitutional being a violation of Article 21 of the Indian Constitution and also held that the Right to die is an inseparable component of the Right to Life. The judgement set down in the P. Rathinam couldn't be supported for longer as a point of reference since the Apex Court in Gian Kaur[13]brought s. 309 of IPC back to Life by declaring that the Right to die is not an integral part of the Right to Life.

In the Gian Kaur case, the apex court held that Article 21 speaks of Life with dignity and only aspects of Life which make it more dignified could be read into this Article, thereby pointing out that the Right to die was inconsistent with it. Further, in a general approach, the Right to die can be assumed as the Right to end one's own Life. This brings up the methods in which Life can be bought to end via suicide and Euthanasia.

The Division Bench of the Bombay High Court, speaking through P.B. Sawant J., observed in

[11] Zahida Begum v. Mushtaque Ahamed, AIR 2006 (1) KarLJ 299
[12] P. Rathinam v. Union of India (1994) 3 SCC 394.
[13] Gian Kaur vs. State of Punjab, (1996) 2 SCC 648 : 1996 AIR 946.

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Maruti Shripati Dubai v. Stale of Maharashtra,[14] "Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own self and without the aid or assistance of any other human agency." Euthanasia, on the other hand, refers to and implies the intervention of another human agency to end a life. Thus, mercy killing is not suicide, and a try at mercy killing is not covered by Sec. 309.

The issue of Euthanasia came to high stage discussion in India after a few significant cases, including that of Aruna Shanbaug[15], a nurse who went through 42 years in a vegetative state because of a fierce rape. She was in bed consistently and was dealt with by the clinic staff.

The court didn't permit the withdrawal of Life-saving measures and denied taking care of the casualty subsequent to considering the report given by specialists. Moving back of treatment with the aim of causing the demise of the casualty is considered passive Euthanasia. The Court in the Aruna Shanbaug had observed: "In our opinion, if we leave it solely to the patient's relatives or to the doctors or next friend to decide whether to withdraw the life support of an incompetent person, there is always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or otherwise grab the property of the patient.[16]

III. CANADA AND ITS STANCE ON EUTHANASIA

The Canadian Charter of Rights and Freedoms (the Charter) lays basic rights and freedoms that are considered essential to preserving Canada as a free and democratic country. Section 7 of the charter entails that the laws or state actions that interfere with the Life, liberty and security of the person conform to the principles of fundamental justice in relation to the Right to Life, which also raises the issue of Euthanasia. Concerns about autonomy and quality of Life are properly treated as liberty and security interests as well as it is involved where the law or state action imposes death or an increased risk of death, either directly or indirectly, as highlighted in one of the most landmark cases of Carter v. Canada.

The Right to die—the Right to choose the time, place, and manner of one's own premature death—continues to spark controversies in Canada and around the world. Canadian legislature passed a bill legalizing medical assistance in dying through lethal injection or a prescription of a lethal dose of medication.[17] Euthanasia in Canada is called medicinally assisted dying and developed the law along with assisted suicide to end the agony of terminally ill patients and

[14] Maruti Shripati Dubai v. Stale of Maharashtra 1987 Cri LJ 743‖
[15] Aruna Ramachandra Shanbaug v. Union of India, 1 (2011) 4 SCC 454; AIR 2011 SC 1290
[16] Ibid at para 127
[17] Bill C-14, An Act to Amend the Criminal Code and to Make Related Amendments to Other Acts (Medical Assistance in Dying), S.C. 2016, c 3 (Can.).

discharge them of never-ending pain, suffering and misery.

In its landmark case on the Right to die, *Carter v Canada*[18] the Supreme Court of Canada ruled that the criminal prohibition on physician-assisted suicide and Euthanasia for certain persons in certain circumstances violated their rights to Life, liberty, and security of the person in sec. 7 of the *Canadian Charter of Rights and Freedoms* and thus was unconstitutional. The Supreme Court in effect overruled its earlier judgement, *Rodriguez v British Columbia (Attorney General)*, which sustained the prohibition as constitutionally valid, on the basis of changes in *Charter* jurisprudence and in the societal facts since *Rodriguez* was decided.

Initially presented a bill in considering the legitimization of Euthanasia in Canada went in vain due to the dissolution of parliament in 2015. However, a motion was presented by the government under Justin Trudeau, leader of the Liberal Party of Canada, with a purpose to review the report of the panel on the legislative response on Carter v. Canada and to consult various stakeholders, including citizens on physician-assisted dying.

Present set in an area of Euthanasia and assisted suicide in Canada have opened a few topics for discussion, including a number of justifications, including freedom of choice of individuals, the argument that the law[19] violates the Right to Life and the dispute between withholding or withdrawing treatment and assisted suicide does not stand up to examination, as there is really no moral distinction between acts and omissions if such complications arise.

IV. COMPARATIVE ANALYSIS BETWEEN INDIA AND CANADA

Canada is one of the countries that have made medical assistance in dying offered to patients whose perception of quality of Life trumps the objective criteria of Quality of Life under the light of the Charter of Rights and Freedoms, part of Canada's Constitution, whereas in India, the Supreme Court in March 2011 held that passive Euthanasia could be permitted under the provision of Article 21 of the Constitution of India which embraces Right to Life with Dignity including Right to Die with Dignity in case of exceptional circumstances and under strict monitoring of the apex court.

The Law Commission of India has observed that "... on a reasonable interpretation, Article 21 does not forbid resorting to passive Euthanasia even in the case of an incompetent patient provided that it is considered to be in his best interests, on a holistic appraisal. The doctors' duty to make an assessment and the High Courts' duty to take stock of the entire situation is

[18] Carter v. Canada (Attorney General), 2015 SCC 5
[19] Section 15 of *Canadian Charter of Rights and Freedoms (Charter)*

directed towards the evaluation of best interest, which does not really clash with the Right to Life content under Article 21.[20]

Euthanasia is legal both in India and Canada as per the relation to constitutional justification, but there is a specific legislation Bill C-14 that deals with Euthanasia (voluntary and involuntary) in Canada, making it more reliable which is absent in the case of India. Instances of the bill being passed in the parliament of India of Euthanasia and related provision of a living will are constantly on the discussion floor, but no exclusive legislation has been passed yet.

By the landmark case of Aruna Ramchandra Shanbaug v. Union of India, the Supreme Court in March 2011 held that passive Euthanasia could be given the nod in case of extraordinary circumstances and under strict monitoring of the apex court. The court has opined the decision concerning pulling the plug an individual could not be solely left to the will of the patient's relatives or the 'next friend' On the other hand; the Canadian Court allowed both active and passive Euthanasia in the country. They believed that if the patient's condition is not going to mend at a later stage, then it is of no use to let them endure all the suffering and never-ending pain, thereby authorizing physician-assisted euthanasia and assisted suicide.

The task of overseeing the procedure of Euthanasia stated by the Supreme Court in India is too multifaceted and overshadowing, which creates an unnecessary hurdle for the terminally ill patient and their family/friends and even hospital authorities responsible for the patient's condition.

In Canada, the procedure is rather simplified as it doesn't require approval from a whole bunch of authorizing just from the concerned doctor and a medical expert. Thereby the process is less time-consuming. However, the lack of proper authorities may result in the situation as Jack Kevorkian a reckless case of Voluntary Euthanasia, which highlights the fact that such critical cases require utmost care and guidance from both medical experts as well as courts final say on the matter to avoid any violation.

In both countries, the basic problem in dealing with applications of Euthanasia is that the courts making a resort to unwritten principles is the indeterminacy of the constitutional text in a wide range of situations in respect to the interpretation of the Right to Life. At the same time, critics complain about the articulation of unwritten principles associated with the hardship of medical situation on one side and the moral obligation to respect the natural course of Life on the other side. It is equivalent to the judiciary amending the Constitution in India; it is self-evident from various landmark cases like Aruna Shanbaug that courts must resort to interpretive aids to the

[20] Law Commission of India , 241st Report on 'Passive Euthanasia – A Relook',

text to make logic of it and to construct useful doctrines (partial Euthanasia in case of India and medically assisted dying in Canada) from it that can be applied to particular cases. So long as their use is closely observed and sanctioned by means of a consistent methodology, it can be said that the Indian Constitution had been a catalyst in framing Euthanasia as an acceptable concept in India. However, there is a legitimacy problem in those cases where courts face legal and moral tug to decide the sanctioning of the Right to die, be it the Constitution of India or Canada.

V. CONCLUSION AND SUGGESTION

Cases involving the question of constitutional Right to Life and Euthanasia involves observations from various perspectives and will find much to chew on. Legal aspects may meditate on the Court's rejection of a suggested "qualitative" approach to the life interest. Federalism will hold the implications for federal and provincial regulation of mercy killing and health more broadly, the government's power arising from its jurisdiction over the criminal law. The socio-legal perspective will focus more on medical practice in the deferred remedy's grey zone

The most important comparative point of view between the Indian Constitution and Canadian Constitution with respect to the Canadian Charter of Rights and Freedoms remains in effect, but will any prosecutor lay charges under it? Scholars of judicial politics may ponder over the fact that Canada's Conventional government had overruled legislation that the attorney general defended.

Discussion of judicial dilemma may explore the role of Chief Justice where recently Justice Chandrachud held "Life and death are inseparable. Every moment our bodies undergo change… Life is not disconnected from death. Dying is a part of the process of living." To top that, the comparative constitutional aspect, be it any of above discussed constitutional understanding of Right to Life we may take *Carter* as a motivating reflection on two relationships that an apex court of Canada navigates and shapes as it applies a bill of rights. Heavy reliance on evidence runs across both. This led to the need for an hour where it is high time to include the right to die under Right to Life with dignity through proper legislation in India

The first relationship is between the Supreme Court of Canada and the other branches of government. Both constitutions, via their respective courts, have always stood a stronghold on proportionality reasoning in complex cases involving Euthanasia. However, there has always been one or other debates whether such Right to die may or may not harbour terribly

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controversial that the blanket ban on assisted suicide limited liberty and security of the person. This comparative study highlights the loudest yet invisible elephant in the room, i.e. the question turned on what comparative laws would recognize as instances of the judicial assessment of proportionality in such cases.

It is obvious that many of the constitutional ideals are and will be challenged, discussed, debated and contested in different political arenas, in the legislatures, in media and in party forums. Ideals revolving around the allowance of Euthanasia in India as well as in Canada are variously interpreted and sometimes wilfully operated to ensemble short term interests. We must, therefore, examine whether or not a serious disconnection exists between the constitutional ideal and its expression in other countries that stand on the same issue. Sometimes, the same Right to Life as enshrined in article 21 is interpreted differently than other constitutions. We need to compare these differing interpretations for more insights. Since the expression of the ideal in the Constitution has considerable authority, it must be used to arbitrate in conflict of interpretation overvalues or ideals, especially in such area of law and society which deals with the aspect of Life and our Constitution is more than capable of introducing such remarkable changes.

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 [ISSN 2581-5369]