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# Legalization of Euthanasia

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## ABSTRACT

*Euthanasia is one of the most prevailing issues that has been a subject of intense debate. Euthanasia has been an issue in human rights discourse because it affects both ethical and legal issues concerning both patients and health care providers. Patients who are suffering from terminal diseases face pain because it gradually worsens until it takes the life of the individual. So, the main question arises whether an individual suffering from a severe disease should be given assistance in killing themselves or they should be left to suffer the pain and die a natural death. This question was answered in the Aruna Shanbaug case where the judgement made it clear that passive euthanasia will only be allowed when the individual is in the persistent vegetative state or terminally ill. Euthanasia is a controversial issue because it involves the termination of human life. This paper deals with the concept of Euthanasia, its history, types and the legal status in India followed by the case of Aruna Shanbaug. This judgement broadens the concept of euthanasia and has paved the way for medico-legal challenges in the area of health and life.*

**Keywords:** *Euthanasia, passive euthanasia, right to die, Aruna Shanbaug case, right to life.*

## I. INTRODUCTION

Euthanasia is derived from a *Greek word*<sup>2</sup> which means “good death”. Euthanasia is the practice with the express intention of ending a life to relieve pain and suffering. Euthanasia in other words is also called mercy killing. When a person is suffering from a painful and incurable disease or is withdrawing life from artificial life support system then however physicians may lawfully and legally decide that they can relieve pain which will shorten the patient’s life. This process is only followed if there is the patient’s free will and also the family needs to agree upon the decision. Euthanasia cuts across complex and dynamic aspects of the civilized society. These aspects can be legal, health, religious, spiritual and social. The main objective of the study is to discuss the legalization of euthanasia from the medical and rights given to a person, i.e., the human rights points of view, supporting the study with certain landmark judgements.

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<sup>2</sup> ευ, *bene*, well, and θάνατος, *mors*, death

## II. HISTORY

Euthanasia was primarily practiced in Ancient Greece and Rome. In the early modern period the term euthanasia was used in the sense of supporting someone as they died in order to make life painless and easier by not suffering in exceptional cases.

In the 18<sup>th</sup> century *Zedlers Universallexikon* stated, *Euthanasia: a very gentle and quiet death, which happens without painful convulsions.*<sup>3</sup>

In 1938, a society called The Euthanasia Society of America (ESA) was founded in New York. Its main aim was to gain social and legal acceptance for the “right” to kill people with defectives which are incurable. In the year 1939, ESA made its first attempt to legalize voluntary euthanasia.

In the year 1976, The New Jersey Supreme Court decided the first “right to die” case. The case was about a young woman named Karen Ann Quinlan who had a severe brain damage and was on ventilator for several months. Her parents wanted the ventilator to be removed so that she would die but the hospital refused to do so. The court gave the decision in the favor of her parents that *“the decision of another person to refuse treatment for an incompetent patient was the same as patient’s decision.”*<sup>4</sup>

In India passive euthanasia was made legal under strict guidelines since March 2011. Patients must have a consent and either be terminally ill or in a coma state. The decision was made in a case of Aruna Shanbaug who had been in a coma state until her death in 2015.

## III. TYPES OF EUTHANASIA

1. **VOLUNTARY EUTHANASIA:** Voluntary Euthanasia is the practice of ending a life in a painless manner. Voluntary Euthanasia is legal in Belgium, Canada and the Netherlands.
2. **INVOLUNTARY EUTHANASIA:** Involuntary Euthanasia occurs when it is performed on a person without consent. It is widely regarded as a crime and is illegal in most countries.
3. **NON-VOLUNTARY EUTHANASIA:** When the patient is unable to give his/her consent and another person takes the decision on their behalf.

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<sup>3</sup> *Euthanasia*, en.wikipedia.org/wiki/Euthanasia, (March 24, 2021, 8.30PM),

<sup>4</sup> Suresh Bada Math and Santosh K. Chaturvedi, *Euthanasia: Right to life vs right to die*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/>, (March 24, 2021, 8.45PM)

#### IV. EUTHANASIA IN INDIA

Though the Supreme Court of India has recognized the right to die with dignity as one of the fundamental right but major hurdles are posed by religious communities. The issues can be related to legal, social, religious and also spiritual.

“In Hinduism Atma – gatha meaning suicide or the intention to kill voluntary oneself is prohibited. Muslims in India also don’t favor euthanasia. They believe that no one has a right to die before the time decided by the God.”

Many medical practitioners say that passive euthanasia is already a common event in many hospitals all around the country. The family of the terminally ill patients choose to withdraw the treatment because of huge expenditures involved in the treatment. Despite of the treatment and care many patients mainly elderly people opt for euthanasia to get relieved of the pain they suffer. *According to Roopkumar Gurushani, Consultant Neurologist, P.D. Hinduja Hospital, Mumbai, taking charges of one’s last days is a basic human right but there is a lot left to do. The Supreme Court judgement is one step forward in handing control over to the individual. “All doctors should be aware of the basic principle of palliative care so that we can offer care when cure is no longer possible.”*<sup>5</sup>

#### V. LEGAL ASPECTS OF EUTHANASIA IN INDIA

In India, euthanasia was without no doubt was illegal. As in the case of mercy killing the doctor has an intention to kill the patient. While according to our Constitution Section 300 of the Indian Penal Code, 1860 taking away a life is clearly illegal. The only difference would be there is a valid consent of the dead person or the deceased. But this is only in the case of voluntary euthanasia which would come under the exception of section 300. “Right to die” is not an available right in India. Whereas “Right to Life” has been granted by the Constitution in Article 21. When it was argued that right to life also includes the right to die, therefore a decision of five judge bench of the Supreme Court in *Gian Kaur v State of Punjab*<sup>6</sup> it gave the judgement that Article 21 of the Indian constitution does not include the “right to die”.

The Bombay High Court in one of its landmark judgements of *Maruti Shripati Dubal v State of Maharashtra*<sup>7</sup> held that Article 21 and 14 were violated as it was interpreted to include the right to take away one’s life.

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<sup>5</sup> Neetu Chandra Sharma, how will India accept passive euthanasia? [Livemint.com/How-will-India-accept-passive-euthanasia.html](http://Livemint.com/How-will-India-accept-passive-euthanasia.html), (March 25, 2021, 9.30AM)

<sup>6</sup> *Gian Kaur v State of Punjab* 1996(2) SCC648: AIR 1996 SC 946

<sup>7</sup> *Maruti Shripati Dubal v State of Maharashtra* 1987 Cri.L.J.743(Bom)

Article 21 guarantees to protect the life and personal liberty of an individual and it would not extend to take the life of an individual. The medical council of India has amended the code of medical ethics for the doctors that under this euthanasia is classified as unethical other than cases where life support system is used. If such cases arise then the doctors were subjected to remove the life support system of the patient suffering.

## VI. A LANDMARK VERDICT- THE ARUNA SHANBAUG CASE

Aruna Ramchandra Shanbaug was born on 1<sup>st</sup> June 1948 at Haldipur, Karnataka. In the year 1973 when she was working as a junior nurse at King Edward Memorial Hospital, Mumbai, Aruna was sexually assaulted by a ward boy on the night of 27<sup>th</sup> November. She was resulted in brain stem contusion injury and *cortical blindness*.<sup>8</sup> The attack paralyzed her and she was in a vegetative state for the next 42 years.

A petition was filed in the Supreme Court. The staff members of the hospital filed their petitions in the case, opposing euthanasia for Aruna. Because of the disparities in the petitions filed by both petitioner and respondent, the court decided to appoint a team of three outstanding doctors to report on the health conditions of Aruna. In the case, the consent was necessary of the patient to be fully aware but when a person is not in a position to understand the consequences, the person acting in the patient's best interest is considered.

*The Hon'ble Division Bench of the Supreme Court of India comprising Justice Markandey Katju and Justice Sudha Mishra delivered the historic judgement on March 7, 2011 allowing passive euthanasia in certain conditions.*<sup>9</sup> But before doing so the bench was asked to seek the opinion of three eminent doctors which to be nominated by the bench, the state and also close relatives such as parents, spouse and siblings. However, Aruna was denied euthanasia because the matter was not all the same and if any cases happens in future the hospital can approach the High Court under the procedure published. Aruna took her last breath on 18<sup>th</sup> May 2015 due to pneumonia after being in a vegetative state for almost 42 years. The case resolved issues around legalization of euthanasia and also made the case a landmark judgement in the area.

## VII. CONCLUSION

When the Supreme Court gave a big judgement in Aruna's case<sup>10</sup> by legalizing passive euthanasia it allowed that a person must not only live their life with dignity but also die with

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<sup>8</sup> Total or partial loss of vision

<sup>9</sup> Mounica Kasturi, Aruna Ramchandra Shanbaug v. Union of India: Case Analysis, [www.lawctopus.com/academika/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/](http://www.lawctopus.com/academika/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/), (March 25, 2021, 3.30 PM)

<sup>10</sup> Aruna Ramchandra Shanbaug vs Union of India (2011) 4 SCC 454

dignity. A person cannot be left to continue suffering in a state where one doesn't want or wish to live and so by making passive euthanasia legal there is no violation of right to life. Other than focusing on ethical and religious beliefs there is the need to concentrate on health status which will help the individual to get relieved from the suffering as well as the family to regain its quality of life. However, one of the major issue still remains, the misuse of the law in our country. It however stops the people from having a bad quality of life and takes into the consideration the pain and misery of the patient. The only measure to be taken is the proper implementation of the law and not unnecessary misuse of the law. However, right to die with dignity is justifiable.

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