

**LAWFOYER INTERNATIONAL**  
**JOURNAL OF DOCTRINAL LEGAL**  
**RESEARCH**

**(ISSN: 2583-7753)**

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**Volume 2 | Issue 2**

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**2024**

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# THE JOURNEY OF LEGALIZED PASSIVE EUTHANASIA IN INDIA

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## I. ABSTRACT

India is a quasi-federal and democratic country. A country which has rigid and written constitution. The constitution has different features and one such feature is that it provides different fundamental rights to a person. One such important fundamental right is Article 21 which states right to life and personal liberty. The article may seem to be short but its interpreted in wider sense through judicial interpretation and pronouncements. Right to life also includes right to live with dignity as well as right to die with dignity and right to die with dignity welcomes the legalized passive euthanasia to all the Indian citizens. Therefore, this article will provide the remarkable journey of legalized passive euthanasia in India. It will critically analyse the concept of euthanasia and will provide the different kinds of euthanasia. It will provide the evolutional journey of euthanasia from the year 1986 to year 2018. The evolutional journey will be cited by different cases as to how the concept of euthanasia was curbed and shaped by the Indian legal system. It will also explain the inter-relation between euthanasia and right to die with dignity and how the courts in India has interpreted both. It will try to differentiate between euthanasia and suicide and how the Indian society and medical fraternity reacts to it. It will also explain the concept of living will and how it is used in medical ethics. Lastly, it will try to explain as why right to die is excluded from Article 21 and what is the reaction of Indians towards euthanasia whether they are in favour of it or are against of it.

## II. KEYWORDS

Active euthanasia, passive euthanasia, right to live with dignity, right to die with dignity

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### III. INTRODUCTION

*Article 21: protection of life and personal liberty:- No person shall be deprived of his life and personal liberty except procedure established by the law<sup>2</sup>.*

It means that no one has the right to deprive another person's right which is related to his life and personal liberty except law who has the power to establish a procedure whether the person must be deprived of their right to life or not.

The journey from Maruti Shripati Dubal v. State of Maharashtra (1986)<sup>3</sup> to Common Cause Vs UOI (2014)<sup>4</sup> has curbed the practice of euthanasia and has drawn a clear distinction between active and passive euthanasia and has also made clear the difference between attempt to suicide and right to die with dignity. But before starting with journey of the cases, it's important to understand the meaning of the word "Euthanasia". The term "Euthanasia" means 'mercy killing'<sup>5</sup> and euthanasia can be of two types that are (I) voluntary and involuntary euthanasia and (II) active euthanasia and passive euthanasia.

In voluntary euthanasia, a patient suffering from an incurable disease provides their expressed consent to the medical practitioners in order to end their life whereas, in involuntary euthanasia, a person who has permanently become incompetent to take such kind of decisions, then if the doctor thinks fit to end the patient's life as of the pain they're suffering, they can ask the patient's family members to make decision on behalf of them.

In active euthanasia, a person is killed through certain dose or drug and such drug has been prohibited by the law under NDPS Act, 1985<sup>6</sup> and hence, active euthanasia has not gotten legalized in India. On the other hand, passive euthanasia includes cutting down the ventilator wires in order to kill the person slowly. Therefore, passive euthanasia is legalized in India.

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<sup>2</sup> INDIA CONST. art 21.

<sup>3</sup> Maruti Shripati Dubal v. State of Maharashtra, 1987(1)BOMCR499

<sup>4</sup> Common Cause v. UOI, AIR 2018 SUPREME COURT 1665

<sup>5</sup> SCHOOL OF MEDICINE, <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia> (last visited 16th May, 2024)

<sup>6</sup> Narcotic Drugs and Psychotropic Substances Act, 1985, Acts of Parliament, 1985 (India).

It's important to understand that a person's life is precious and there is also a saying that "you are born as a human after seven lives." Then why people are opting to end their lives. The answer lies in the question. The life shall be precious. Some people suffer from chronic diseases while some people get bed-ridden and when they see that they are the sufferers and are also making their family suffer. They just feel like ending all their pain. Once, a person becomes incapable of doing anything and when the person starts to realise that he's nothing but a painful burden to the whole society due to his disability, at that point of time, he would feel like ending his life and therefore, the cases which were to be discussed shall include different judicial interpretations where the court has granted right to die with dignity and also some cases where the court has held that the case is not about right to die with dignity but an attempt to suicide under Section 309 of IPC<sup>7</sup>.

#### IV. JOURNEY OF EUTHANASIA

##### A. Maruti Shripati Dubal Vs State of Maharashtra<sup>8</sup>

###### ➤ Facts:

In this case, the petitioner was a police inspector but got mental disorder that is schizophrenia after he got involved in a car accident. The petitioner tried to kill himself by lighting himself in kerosene and fire which he failed to do so. The police filed a chargesheet accusing him under section 309 of IPC.

➤ **Issues raised:** Shall section 309 of IPC, 1860 be held invalid as it violates the articles 14, 19 and 21 of Indian constitution?

###### ➤ Judgement:

The court referred to the cases of *Maneka Gandhi*<sup>9</sup> Vs UOI and *Sunil Batra Vs Delhi Administration*<sup>10</sup> and held that the section 309 of IPC was clearly contradictory to the articles 19<sup>11</sup> and 21 of Indian constitution. Further, they also laid down that the

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<sup>7</sup> Indian Penal Code, 1860, § 309, Acts of Parliament, 1860 (India).

<sup>8</sup> Maruti Shripati Dubal v. State of Maharashtra, 1987(1)BOMCR499

<sup>9</sup> Maneka Gandhi v. UOI, AIR 1978 SC 597

<sup>10</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 409

<sup>11</sup> INDIA CONST. art 14.

definition of suicide is nowhere mentioned in the statute leading to ambiguity. Therefore, it also violates the article 14<sup>12</sup> of Indian constitution. Furthermore, the court held that the aforesaid provision is unconstitutional as its inconsistent with the articles 14, 19 and 21 of constitution, the petition was dismissed, and he was not held guilty under section 309 of IPC.

### **B. P.Rathinam Vs UOI<sup>13</sup>**

#### **➤ Facts:**

In this case, P. Rathinam along with other filed a petition challenging the constitutional validity of section 309 of IPC. They further stated that the aforesaid provision was inconsistent with the articles 14, 19 and 21 of Indian constitution and to make the provision null and void.

#### **➤ Issues raised:**

- Is it morally correct to commit suicide?
- Does suicide have negative societal repercussions?
- Is it against the law to commit suicide?

#### **➤ Judgement:**

The apex court held that *1. Section 309 of the Indian Penal Code, 1860 that is attempt to commit suicide) is violative of Article 21 of the Indian Constitution (right to life and personal liberty). The Court stated that Section 309 of the Penal Code should be repealed in order to make the existing penal rules more moral and humane. It's a cruel rule that could lead a person for being punished twice for suffering misery and feeling mortified for failing to commit suicide. 2. The Court further stated that the term "life" in Article 21 is a broader term and refers to the right to live in human dignity rather than simply existing as a normal animal. Therefore, the right to live is followed by the right not to live a forced life. A person's right to life cannot be taken away from him or made to be something which he doesn't like to be."*

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<sup>12</sup>INDIA CONST. art 19.

<sup>13</sup> P. Rathinam v. UOI, AIR1994SC1844

## V. Gian Kaur Vs State of Punjab<sup>14</sup>

### ➤ Facts:

The court in this case overturned the judgement of P.Rathinam Vs UOI. Gian Kaur and her husband were found guilty u/s 306<sup>15</sup> (abetment to suicide) and 309 (attempt to suicide) of IPC as they were trying to aid their daughter to commit suicide.

### ➤ Issues raised:

- Shall section 306 of IPC be held constitutionally valid?
- Is section 309 of IPC inconsistent with the articles 14, 19 and 21 of Indian constitution?

### ➤ Judgement:

The court held that the petitioners were abetting to kill their daughter through suicide and such type of death is not about right to die with dignity but about right to die in unnatural manner which is considered illegal in the eyes of law as well as to the society. Therefore, it promoted assisted suicide and the court held that section 306 and section 309 of IPC are constitutional, and it doesn't violate the articles of 14, 19 and 21 of Indian constitution.

## VI. Aruna Ramchandra Shanbaug Vs UOI<sup>16</sup>

### ➤ Facts:

In this case, the petitioner was a nurse at a particular hospital and was attacked and consummated during her menstruation by one of the hospital staffs for which she was hospitalised. Her brain started malfunctioning and the nurses were happy to assist her with euthanasia but the doctor didn't opt for euthanasia. She was in her vegetative state and was in the same illness condition for a period of 42 years.

### ➤ Issues raised:

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<sup>14</sup> Gian Kaur v. State of Punjab, 1996 AIR 946

<sup>15</sup> Indian Penal Code, 1860, §306, Acts of Parliament, 1860 (India).

<sup>16</sup> Aruna Ramchandra Shanbaug v. UOI, 2011 (4) SCC 454

- Is withdrawing of life support be considered lawful when a patient is in persistent vegetative state? (PVS)

➤ **Judgement:**

This was a landmark case which shaped the concept of euthanasia and provided the clarity of euthanasia in medical ethics. The court relying upon this case legalized passive euthanasia and stated that a person in their vegetative state can die through mercy killing or passive euthanasia. It was included in the medical ethics, discouraging Hippocratic oath.

## VII. H.B. Karibasamma Vs UOI<sup>17</sup>

➤ **Facts:**

The petitioner was suffering from slip-disc problem since past eleven years. She consulted different doctors to get rid of the ailment but due to her old age, the doctor found the disease to be incurable as her body wouldn't cope up with the surgery. The petitioner was suffering from bodily pain due to the ailment, mental stress and as well as financial stress. The petitioner tried her best to get rid of the painful ailment but failed to do so.

➤ **Issues raised:**

- Shall the petitioner be tagged as a patient in their persistent vegetative state so that she can opt for euthanasia?

➤ **Judgement:**

The Karnataka high court pronounced that the petitioner wasn't in a persistent vegetative state so passive euthanasia can't be administered to her. The court purely relied on the case of Aruna Shanbaug and declared their judgement.

## VIII. Common Cause Vs UOI<sup>18</sup>

➤ **Facts:**

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<sup>17</sup> H.B. Karibasamma v. UOI, Writ Petition No 23630 of 2010 (GM-RES)

<sup>18</sup> Common Cause v. UOI, AIR 2018 SUPREME COURT 1665

This is an important landmark case which actually shaped euthanasia and provided adequate guidelines as to when a person can opt for euthanasia.

In this case, common cause, a well-renowned organization filed a writ petition under Article 32<sup>19</sup> in Supreme court pleading to include right to die with dignity under the purview of Article 21. The case was led by a three-judge bench but prior to that, a five-judge bench has already announced that right to die with dignity is included under the purview of Article 21.

➤ **Issues raised:**

- Does Article 21 include the right to die?
- Can euthanasia be considered constitutionally valid through legislation?
- Is there any difference between active and passive euthanasia?

➤ **Judgement:**

The court in this case laid down the distinction between active euthanasia and passive euthanasia. It stated that active euthanasia is ending a person's life while passive euthanasia is omitting a procedure which could've actually saved the person's life. To make it simple, active euthanasia means killing a person directly while passive euthanasia is in indirect manner which can't be termed as 'killing'.

The court also sympathized with the status of those people who are suffering chronic or incurable diseases and are under persistent vegetative state and declared that not providing them with euthanasia will be unjust and unfair to them. Therefore, to sum it up, the court ordered that the right to die with dignity also comes under the right to life and personal liberty.

## **IX. CONSTRUCTION OF EUTAHANASIA**

Through the aforesaid cases, it can be construed that passive euthanasia is allowed and has gotten legalised by the Hon'ble Apex court whereas active euthanasia is not

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<sup>19</sup> INDIA CONST. art 32.



recognised and if any person is found to kill himself through active euthanasia but fails to do it then he'll come under attempt to suicide under section 309 of IPC, 1860.

It can also be seen that court has recognised right to die with dignity under right to life and personal liberty, but court hasn't allowed right to die under article 21 as right to die will promote and encourage people to commit suicide in minimal issues when it could've been sorted out through other options.

It can also be construed that court has given emphasis on 'life' as its precious and a creation by the Almighty but court on the other hand has also given permission to certain people who can end their life if they are suffering from a chronic and incurable disease and are under persistent vegetative state<sup>20</sup> (The term Persistent vegetative state *vis* PVS means when a person is declared brain dead and shows no signs of consciousness to the world) which is causing them pain and stress. In this way, court has tried its best to minimise the promotion of suicide by introducing passive euthanasia and can be opted by those people who have no reasons to live rather than to die.

There is a lot of difference between right to die with dignity and right to die. Just like a person who'd live with dignity should also die with dignity. The court has already mentioned that right to life is not like living just like a mere animal existence. There is difference between humans and animals and as a human, the person seeks for dignity in the society. So, if a person has an incurable or a chronic disease then the society will look down on him. Some will sympathize on him and that's how the person will wish to die rather than to live. Its normal to have thoughts like feeling burden to the family, no recognition in the society, financial hurdles, mental stress, etc. These are some ample reasons for which the person will feel demotivated and will wish to end his life. Therefore, the court has recognised right to die with dignity that is having a dignified death. After the grievous death of Aruna Shanbaug<sup>21</sup>, the court realised what a great mistake it was and thus, legalized passive euthanasia.

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<sup>20</sup> COMA AND PERSISTENT VEGETATIVE STATE, <https://www.health.harvard.edu/diseases-and-conditions/coma-and-persistent-vegetative-state> (last visited 21st May, 2024)

<sup>21</sup> Aruna Ramchandra Shanbaug v. UOI, 2011 (4) SCC 454

## **X. IS PRONOUNCING A PERSON GUILTY FOR ATTEMPTING TO COMMIT SUICIDE ETHICAL?**

The aforesaid question is a major question and has also been a source for debate. There were two contrasting opinions found in the society. On the one side, some people think that a person who tries to commit suicide should be held guilty as attempt to suicide is already a punishable offence under section 309 of IPC. But on the other side, some people question out whether section 309 of IPC is ethical or not. Now, let's try to understand it through detail-by-detail.

No person is above the law and if someone does, then he's an extraordinary man and will be punished for not obeying the law settled up by the society. This is the explanation to the former statement. Section 309 of IPC is already established in India in order to discourage suicide and to save a person's precious life. It's considered ethical as it provides punishment to those people who has tried to commit suicide. Thus, making them realise their importance of life. But how far is it ethical?

The latter part has questioned on the aforesaid statement and has voiced out whether a person who has failed to commit suicide and is punished under section 309 of IPC is justifiable. It is said so because no person will like to end their life unless and until such grievous or miserable situation would've happened to them but it's their bad luck that they are unable to kill themselves. So, providing them punishment under section 309 of IPC will only give them ignominy or loss. It's just like sprinkling salt on the burn. So, how can it be considered ethical? Law is for the good and betterment of the society rather than punishing a person who's already suffering badly. Law is a lesson and is not just about sanctions or punishments. Therefore, both the statements have not found their answer yet and is still under debate.

## **XI. HOW THE INDIAN SOCIETY AND MEDICAL FRATERNITY REACT TO EUTHANASIA?**

According to the current status, some people are in support of euthanasia while some people aren't in support of euthanasia. Starting with the former one.

## **A. REASONS IN FAVOUR OF EUTHANASIA**

- A person knows what's best for him and what not. Therefore, he'd be provided with freedom whether he'd opt for death or to live just like a normal human being.
- When everything seems out of hand, then the person goes with the last option that is to end himself. Therefore, a person should opt for euthanasia if they are under insufferable or grievous pain.
- If a person has right to live in a dignified manner, then they also have right to die in dignified manner.
- A patient has to bear intolerable amount of pain and this is leading to a horrible experience. Thus, euthanasia is an appropriate option.

## **B. REASONS NOT IN FAVOUR OF EUTHANASIA**

- Hippocratic oath is one of the sole reasons as a doctor's duty is to save a patient's life at any cost but just because the patient suffers from intolerable chronic pain, the doctor has to end the person's life through passive euthanasia.
- Different religious beliefs and myths have created a different mindset in the society and they take euthanasia as unethical and immoral, thinking as if they have committed any kind of sin.
- Due to advance development in science and technology, the practice of medicine has been innovative and so, it has become rarest of rare cases where a patient opts for euthanasia.
- There is a high chance that people will promote or encourage suicide in the name of euthanasia leading to its misuse.

### C. WHAT DOES THE CONCEPT OF LIVING WILL SAY?

The concept of 'living will'<sup>22</sup> is closely interrelated with passive euthanasia. It is a lawful document which allows a patient to express their wishes and desires to medical practitioners in case they become incapable or incompetent permanently. In this way, the patient's wishes are respected and kept into consideration.

According to Government of India, they don't support the concept of living will as it can be easily manipulated, and people will misuse them in exploitative manner. Thus, violating the medical ethics and policy but according to the 241<sup>st</sup> law commission report, it mentioned that passive euthanasia should be allowed with certain restrictions and a legislative bill was also proposed to look after it (protection of patients and medical practitioners) bill,<sup>23</sup> 2006.<sup>24</sup>

## XII. CONCLUSION

Euthanasia is a clear meaning of "*If you can live with dignity, you can also die with dignity*". And that die with dignity strictly excludes right to die. In India, passive euthanasia has gotten interlinked with right to die with dignity which comes under the purview of Article 21. A paralysed or a permanently sick person suffers a lot and due to that reason, they think that it's better to end their life rather than to make their life like a living hell. Passive euthanasia has been recognised by the law as well as by the well-educated and influential members in the society. But, however, the people in suburbs and lower developed areas doesn't support the concept of mercy killing as they are influenced by the different myths and superstitious beliefs. Therefore, being the future citizen to the society, it's our duty to spread awareness among people and make them realise the importance of euthanasia. It's our duty to curb and shape the world through cognitive and analytical thinking rather than myths or superstitious beliefs and lastly, it's our duty to make people understand that euthanasia and suicide are two different concepts and not the same exact thing.

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<sup>22</sup> WHAT IS A LIVING WILL, <https://www.legalzoom.com/articles/what-is-a-living-will> (last visited 22nd May, 2024)

<sup>23</sup> Law Commission report, 2016, 241<sup>st</sup>, Acts of Parliament, 2016 (India).

<sup>24</sup> Protection of patients and medical practitioners bill, 2006, Acts of Parliament, 2006 (India).

### **XIII. SUGGESTIONS**

This article basically wants to showcase that how much India has developed in the field of medicine. The innovative law in India has curbed the euthanasia so properly that doctors don't feel like taking Hippocratic oath while providing euthanasia to those patients who are in need. Euthanasia is a blessing for those patients who are suffering from a permanent unbearable disease or are under persistent vegetative state. Therefore, this article just gives a review on the status of euthanasia in India and also praises the India's glory and victory both in the field of law and medicine.

### **XIV. REFERENCE**

- <https://www.parliament.nsw.gov.au/researchpapers/Documents/euthanasia/Euthanasia.pdf>
- [https://www.researchgate.net/publication/357097311\\_Euthanasia](https://www.researchgate.net/publication/357097311_Euthanasia)