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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EUTHANASIA: A STUDY OF ONE'S WILL TO RIGHT TO LIVE AND DIE

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Abstract:

Death is very inevitable aspect of one's life cycle. The will to live and die is a choice of one's competency. The debate over the choice of an individual death has raised concern in many areas. People who suffer from terminal sickness, psychological, political, legal, social, and relationship traumas are the areas in which an individual thinks or wants to opt for Assisted Suicide (Proponents of Physical Assisted Suicide), euthanasia, or suicide. With the advancement in medical, social, and legal fields the improvement of one's individual life is developing. But the social thinking and issues of moral and immoral, ethical, norm, and values are raised and the ground of the 'right to die' has been questioned. The basic point of assisted suicide and euthanasia is basically to give a person mercy killing and to relieve his or her agony. With time differences types of euthanasia have been classified as voluntary, involuntary, non-voluntary, active, and passive euthanasia. India is also one of the countries in which euthanasia was raised but in 2017, the Supreme Court clarified and passed the judgement in support of allowing passive euthanasia and the 'right to die'.

Keywords: Proponents of Physical Assisted Suicide (PAS), voluntary euthanasia, involuntary euthanasia, non-voluntary euthanasia, active euthanasia, passive euthanasia, right to die.

Introduction:

Euthanasia was first coined in the 17th century by 'Sir Francis Bacon'. It is derived from the Greek word "euthanatos" in which "eu" means 'good' and "thanatos" means 'death.' The term euthanasia means the practice of killing somebody without pain or mercy killing. Sometimes euthanasia can also be co-related or can also be known as a 'Proponent of Physical Assisted

Suicide' (PAS). With the modernization and advancement in the medical and legal field, the improvement in one's life is very evident. But there are still many people who suffer from terminal sickness, pains, and incurable diseases like cancer, AIDS, etc.¹ The mercy killing or painless death of euthanasia is often or mainly used for people who have terminal sickness and incurable disease. Sometimes it is also misunderstood in a suicidal manner. Especially people who suffer from social, legal, political, or psychological traumas often opt for suicide. Countries like the Netherlands allow the process of euthanasia for people who have terminal sickness to relieve their unbearable pain. However, many countries have considered euthanasia as an illegal practice. Sometimes people who are suffering from psychological traumas, social coercion, and depression also ask for this process or attempt suicide. Euthanasia has been derived mainly in two parts which are Active euthanasia and Passive euthanasia. A country like India allows the process of passive euthanasia. However, its jurisdiction does not allow the process of active euthanasia and it is considered illegal. There have been several judgements in India that have raised the question of euthanasia whether it should be legalized or considered illegal and different judgments have been passed and given through the years by the Courts. With this, several questions have also arisen people who suffer from terminal sickness, or incurable disease, and those who cannot bear the finances of the patient, opt for active euthanasia? Is the concept of euthanasia and society interconnected? People who commit suicide should be punished? Do euthanasia or assisted suicide mark questions on the grounds of social or medical moral ethics and values? Does Article 21 of the Constitution of India also include the 'Right to die' along with the 'Right to life'? People who commit suicide due to depression, societal pressure, family, or relationship coercion, do they have the right to die?

Context/Brief:

Definition of euthanasia: "Euthanasia is the practice of ending the life of the patient to limit the patient's suffering."² Further, euthanasia can be classified or categorized into voluntary, non-voluntary, involuntary, active, and passive euthanasia. Many times, people often get confused between physician-assisted suicide and euthanasia. Euthanasia can be administered by a physician or third party, but physician-assisted suicide is different, in this patient himself administered by the doctor's recommendation.

¹Vinod K. Sinha, S. Basu, and S. Sarkhel, Euthanasia: An Indian Perspective, <https://www.ncbi.nlm.nih.gov/pmc/article/PMC3440914/>, last visited on 5th September, 2023.

² Euthanasia, <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia>, last visited on 6th September, 2023.

- i. **Voluntary euthanasia:** Voluntary euthanasia is always by the consent of a patient suffering from agony. It is also considered active euthanasia and is performed in countries like Belgium, Netherlands, etc.
- ii. **Non-voluntary euthanasia:** When a patient is unable to give their consent then the other person, family member, relative, or guardian often makes decisions on behalf of them.
- iii. **Involuntary euthanasia:** This procedure is conducted against the will of the patient and it can also be considered murder or a criminal offence.
- iv. **Active euthanasia:** It is the same as voluntary euthanasia in which a physician or medical practitioner intentionally injects a little substance to end a sufferer's life.
- v. **Passive euthanasia:** Passive euthanasia is very different from other type of euthanasia. Under this treatment the patient himself or the family of the patient (in case of coma or brain death) withdraw the treatment due to financial issues or not being able to maintain the life or not being able to care. This is the only type of euthanasia that is legalized in India.³

The idea or concept of “right to die” has been debatable all over the world. In euthanasia, there is one term used which says mercy killing, which means that when someone intentionally kills somebody or by the consent who is suffering from terminal sickness or incurable disease or pain in a manner to end his or her suffering one tends to end the sufferer's life.

Historically, the idea of merciful death is not that is something new to know a person who is gravely injured or terminally sick, and his or her death is not evitable and because of inevitable death in that situation, the suffering of one is much greater than the or she does not even want to live. In the 19th century the use of ‘morphine’ came into existence in a manner to kill or resist pain and agony. This led to the belief in a less painful that process and it was found that painless death is possible. Later, surgeons began to use ‘chloroform,’ which is used to knock down a person unconscious. After 1885, ‘The American Medical Association’ started to oppose voluntary

³ Euthanasia or Mercy Killing – Moral dilemma, <https://byjus.com/free-ias-prep/euthanasia-or-mercy-killing/>, last visited on 6th September, 2023.

euthanasia which led to today's condition of those who are suffering.⁴ Euthanasia, the right to die, has always been questioned on the grounds, of 'moral and ethical values' by society and by the law. The meaning of 'Proponents of Physical Assisted Suicide'⁵ and mercy killing euthanasia is also associated with 'assisted suicide' (except passive euthanasia). A country like the Netherlands had become the first country to legalize euthanasia for people.⁶ Later the practice of euthanasia was also legalized in countries like Luxembourg, Belgium, Columbia, and Canada (only for people who are above the age of 18 years). But in the rest of the country's right to die or so, euthanasia is still illegal. A country like India is part of not legalizing euthanasia. Euthanasia is derived or described mainly in two parts, which are passive euthanasia, and active euthanasia in India, our jurisdiction allows passive euthanasia, and active euthanasia is considered illegal. Switzerland, Germany, and a few States of the U.S. are some other countries that practice limited use of euthanasia.⁷ Death is both evitable and inevitable, either natural or suicidal, or even by euthanasia, the concept of the 'right to die' covers all, but still, the obligation of moral, ethical, and legal grounds arises which always puts a question in mind whether it is right or wrong?

Ethical and Moral grounds:

On ethical and moral grounds there are four principles laid down which are autonomy, beneficence, non-maleficence, and justice.

Autonomy, says that it is important to set in mind that it is essential to care for a dying patient, but it does not put any obligation.

Beneficence and Non-medications, both the principles talk about preventing harm to the patient or doing good, which is considered with assisted suicide.

Justice describes that individuals are entitled to legitimacy, but it is also considered the abbreviation of society⁸ i.e., "morally, it is the family's interest that always comes before the

⁴Anna Hiatt, The History of Euthanasia Movement, <https://daily.jstor.org/history-euthanasia-movement/>, last visited on 8th September, 2023.

⁵Vinod K. Sinha, S. Basu, and S. Sarkhel, Euthanasia: An Indian Perspective, <https://www.ncbi.nlm.nih.gov/pmc/article/PMC3440914/>, last visited on 9th September, 2023.

⁶Report No. 196,

<https://www.advocatekhaj.com/library/lawreports/medicaltreatment/122.php?Title=&STitle=Euthanasia%20however%20permitted%20in%20a%20few%20countries#:~:text=Only%20one%20or%20two%20State,controlled%20by%20regulations%20and%20li,itations.>, last visited on 9th September, 2023.

⁷Krishanu, Euthanasia in India, <https://www.legalserviceindia.com/article/787/Euthanasia-in-india.html>, last visited on 10th September, 2023.

⁸Basil Varkey, Principles of Clinical Ethics and Their Application to Practice, <https://pubmed.ncbi.nlm.nih.gov/32498071/#:~:text=The%204%20main%20ethical%20principles,justice%2C%20a re%20defined%20and%20explained.>, last visited on 11th September, 2023.

individual's interest.”⁹

The principles also say that it is morally permissible to let someone die as they desire and there is no moral obligation which says to prevent one's life from dying. On the contrary, sometimes it is also seen as the sanctity of life in a way in which religious proponents argue that it is in the hands of nature and God to give and take the cause of life and death. Given society or societal ethics and values, it is also seen as murder or an action of intentional killing, and not as a mercy killing. Given societal norms values and ethics, people do not see the consent of patients or the condition of one's family to bear suffering. Many times, the autonomy of patients in the process of euthanasia was not involved and consent of an expert was taken as prior because terminally ill patients are sometimes considered unsound-minded and rational-minded, and this puts a moral obligatory mark on grounds of medical advancement.

Legal grounds:

Does the legal system of India allow euthanasia or assisted suicides? Does Article 21 include right today?

The legal system of India does not allow active euthanasia or attempts to suicide in any manner. In law, active euthanasia, and attempted suicide are both considered offences. But there were important cases and judgments given by the Courts in which they stated the legalization of euthanasia and the meaning of euthanasia and stated the exception where euthanasia can be granted and with this, the 'right to die' was also explained by the Court under Article 21.¹⁰ If we see the grounds of suicide where the person who attempts suicide is to be punished under “**Section 306 and 309 of IPC (Indian Penal Code)**” was reciprocated by “**Mental Health Care Act 2017**”. The conflict between IPC's Section 309 and Mental Health Care Act 2017 recently came to an end. Section 309 of the IPC states that the “person who attempts to commit suicide and does any such act shall be punished by imprisonment of one year”. In counter, MHCA, 2017 says “any person who attempts to commit suicide shall be presumed and he or she shall not be punished”. It further states that a person who has attempted suicide or any such act is already passing through depression, mental stress, and psychological traumas, and putting him or her in imprisonment, will only put more agony and suffering on that person and his or her life. The Mental Healthcare Act 2017 further states that it is the government which have a 'duty to care' and provide

⁹ Felicia Kulp, Euthanasia: An Ethical Decision, <https://english.umd.edu/research-innovation/journals/interpolations/interpolations-spring-2009/euthanasia-ethical-decision#:~:text=For%20euthanasia%2C%20this%20means%20that,as%20its%20death%20is%20painless.>, last visited on 12th September, 2023.

¹⁰ Fundamental Right, Constitution of India

appropriate treatment, therapy, and rehabilitation to cure one's mental health. Section 309 of IPC has still been a punishable offence Act but MHCA, 2017¹¹ has created another exception or even overruled the Section. In simpler meaning Mental Health Care Act, of 2017 has decriminalised attempts to suicide.¹²

In 2016, the bill was passed considering the legalizing of the practice of passive euthanasia, named **“Medical Treatment of Terminally Ill Patient Bill, 2016”**. The purpose of the bill was to protect the patient and medical practitioner from any liability in the context of withdrawing or withholding from medical treatment which includes a life support system for the patients who are terminally ill. The Medical Treatment of Terminally Ill Patient Bill, 2016 further includes *Clause* and *sub-clause* which states;

Clause 3: “It states that every patient who is competent which also include minor above the age of 16 years, if he or she is terminally ill then they have the right to make the decision and can express their desire to the medical practitioner who is attending once situation for withdrawing medical treatment of the patient.”

Clause 3(2): “It stated that the minor patient who is above the age of 16 years, the concerns should be taken or given by guardian, or by his or her parents.”

Clause 7 and 8: “It confers immunity of medical practitioner and of patient in any criminal and civil liability.”

Clause 9: “It states that if the patient is incompetent or even competent and he or she has not confirmed by informed decision, the guardian or parent or spouse of the patient can file a case in High Court and such cases, the court has to pass or issue judgment within a month.”

Clause 11: “It clarifies about Advanced Medical Directives as void and states that it will not be binding on any medical practitioner.”

Clause 12: “It states that Medical Council of India can prepare and issue guidelines to guide the medical practitioner in a matter of withdrawal of treatment of a competent or incompetent patient who is suffering from terminal sickness”

In contrast, there are some shortcomings of bills which are in *Clause 9* of the bill, it can be potentially misused and run against the Fundamental right of that individual. The bill also creates an irrational distinction between a patient who is competent and incompetent, even if they express their decision earlier in way of advance directives. The choice of the High Court also puts an

¹¹ Mental Health Care Act, 2017

¹²Nidhi Jacob, Explained: Is Attempt to Suicide a Punishable Offence in India?,<https://www.factchecker.in/explained/explained-is-attempt-to-suicide-a-punishable-offence-in-india-836440>., last visited on 12th September, 2023.

unrealistic burden on medical practitioners and relatives, and in such cases, the High Court is also unlikely to deliver swift judgment. Other than this the error of drafting and excluding active euthanasia for suffering individuals defies one's dignity.¹³

Alternatives of Euthanasia:

Other than voluntary, involuntary, non-voluntary, active, and passive euthanasia, hospice and refusal of treatment are the two alternatives that are in practice in many countries.

Hospice: In hospice, the medical staff takes the responsibility of terminally ill patients. Palliative drugs are used for the patient so he or she does not suffer through agony or pain (**Aruna Shanbaug V. Union of India, 2011**).¹⁴

Refusing treatment: Refusing treatment is practised in the U.K., where an adult patient has the right to refuse treatment as long, as they have any of their capacity and while they are in the state of sound mind.¹⁵

Landmark Cases:

There has been landmark judgment in cases under which the concept of euthanasia and the right to die has been stated by the Courts.

Gian Kaur V. State of Punjab, 1996¹⁶

In 1996. Harbans Singh and his spouse Gian Kaur were charged with abetting the suicide of their daughter-in-law Kulwant Singh. They were accused of ruthlessly pouring kerosene on her with an obvious intention of seeing her dead, this case was initially challenged by the trial court.

Judgment: In this case, the court held that Article 21 of the Indian Constitution which states the 'right to life and personal liberty' does not include the 'right to die' as it is against the will of the individual and first and most important is that it is against the rule of nature and rule of God. Court also held that section 309 of IPC which gives punishment to the person who commits suicide does not violate Article 21 and therefore it is constitutionally valid.

¹³ Euthanasia And The Indian Legal Framework: A Critical Analysis, <https://deshkaanoon.in/euthanasia-and-the-indian-legal-framework-a-critical-analysis/>, last visited on 13th September, 2023.

¹⁴ Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

¹⁵ Sarala Jayakumar, A Critical Analysis Of Mercy Killing: A Good Or Harm To Humanity, <https://www.legalserviceindia.com/legal/article-6715-a-critical-analysis-of-mercy-killing-a-good-or-harm-to-humanity.html>, last visited on 14th September, 2023.

¹⁶ Gian Kaur v. State of Punjab, 1996 SCC (2) 648.

*Aruna Shanbaug V. Union of India, 2011*¹⁷

Aruna Ramchandra Shanbaug was a nurse at 'King Edward Memorial Hospital' in Mumbai. On November 27, 1973, a hospital staff (sweeper) assaulted and raped her.

Judgment: This judgment has dealt with passive euthanasia and the right to die and the Supreme Court passed the judgment which held that passive euthanasia can be applied for a person who is in a permanent vegetative state. Further Supreme Court states that in extreme circumstances and under strict supervision passive euthanasia could be permitted.

*Common Cause V. Union of India, 2018*¹⁸

Judgment: In this case, the writ petition was filed by Article 21, which states the 'right to live with dignity' and guarantees that those people who are in a vegetative state or who are terminally sick might seek for advance medical directive and assisted suicide. This landmark judgment given by the Supreme Court finally held and considered the 'right to die with dignity' as a fundamental right under Article 21 and further states the use of advanced medical directives for such conditions. With these Court also held that a person has the 'right to refuse treatment.'

Article 21 states that "every person has right to life and personal liberty", the question that arises here is whether it also gives liberty to a person who wants to die. Does Article 21 include the 'right to die' and 'die or death with personal liberty and dignity'?

The 'right to die' and 'death with dignity' have been included in Article 21 after the judgment of **Common Cause V. Union of India, 2018**¹⁹ and it also held that people who attempt suicide will no further be deceived by authority or punished by authority because it is only put stigma and pressure to people who are suffering from traumas, depression, mental issues or mental illness, and stress. In 2017, the Mental Health Care Act was introduced to help such people.

Conclusion and Suggestion:

Euthanasia can be considered a terrible and immoral act, but its purpose is not to kill or take someone's life but to relieve the agony of one who is suffering from death. Yes, it can also be used for one's personal objective or bad intentional objective and to one's will (property) illegally. In India, the concept of active euthanasia is not legalized by the law and judiciary, but in the case of passive euthanasia, a permissive legalizing step has been taken after the case of **Aruna**

¹⁷ Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

¹⁸ Common Cause V. Union of India, (2018) 5 SCC 1.

¹⁹ Common Cause V. Union of India, (2018) 5 SCC 1.

Ramchandra Shanbaug.²⁰ With this, the concept of the right to die with dignity is also recognized by the Supreme Court, especially for those who are in a vegetative state, and permitted passive euthanasia for them. After a long period, the Supreme Court has recognized the 'right to die' and Article 21 as a component of 'fundamental right'.²¹ It was considered progress in the field of both the legal and medical fields. There will be hurdles in adopting new ways of methods, but now it is time to implement the unfilled law by legalizing the practice of euthanasia completely in India, the agony of people and their family which they suffer can come to an end. Though the bill related to the practice of passive euthanasia has been passed (Medical Treatment of Terminally Ill Patients Bill), it does not support the practice of active euthanasia and has many flaws. The view of accepting and not accepting both are correct, but in the way of progress, the new way must be adopted and developed for the practice of euthanasia and to end the suffering pain, and agony of the individual.²² And bringing the law is not enough, but the strict implementation of that law's action is most important, to ensure that it never gets negative use.

²⁰ Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.

²¹ CLEARIAS TEAM, Ethics of Euthanasia, <https://www.clearias.com/ethics-of-euthanasia/#:~:text=a%20lethal%20injection.-,Euthanasia%3A%20Voluntary%2C%20Non%2DVoluntary%2C%20and%20Involuntary,Colombia%2C%20Belgium%2C%20and%20Luxemburg.>, last visited on 15th September, 2023.

²² Euthanasia Laws in India and Other Nations, <https://legalbots.in/blog/euthanasia-law-in-india-and-other-nations.>, last visited on 15th September, 2023.