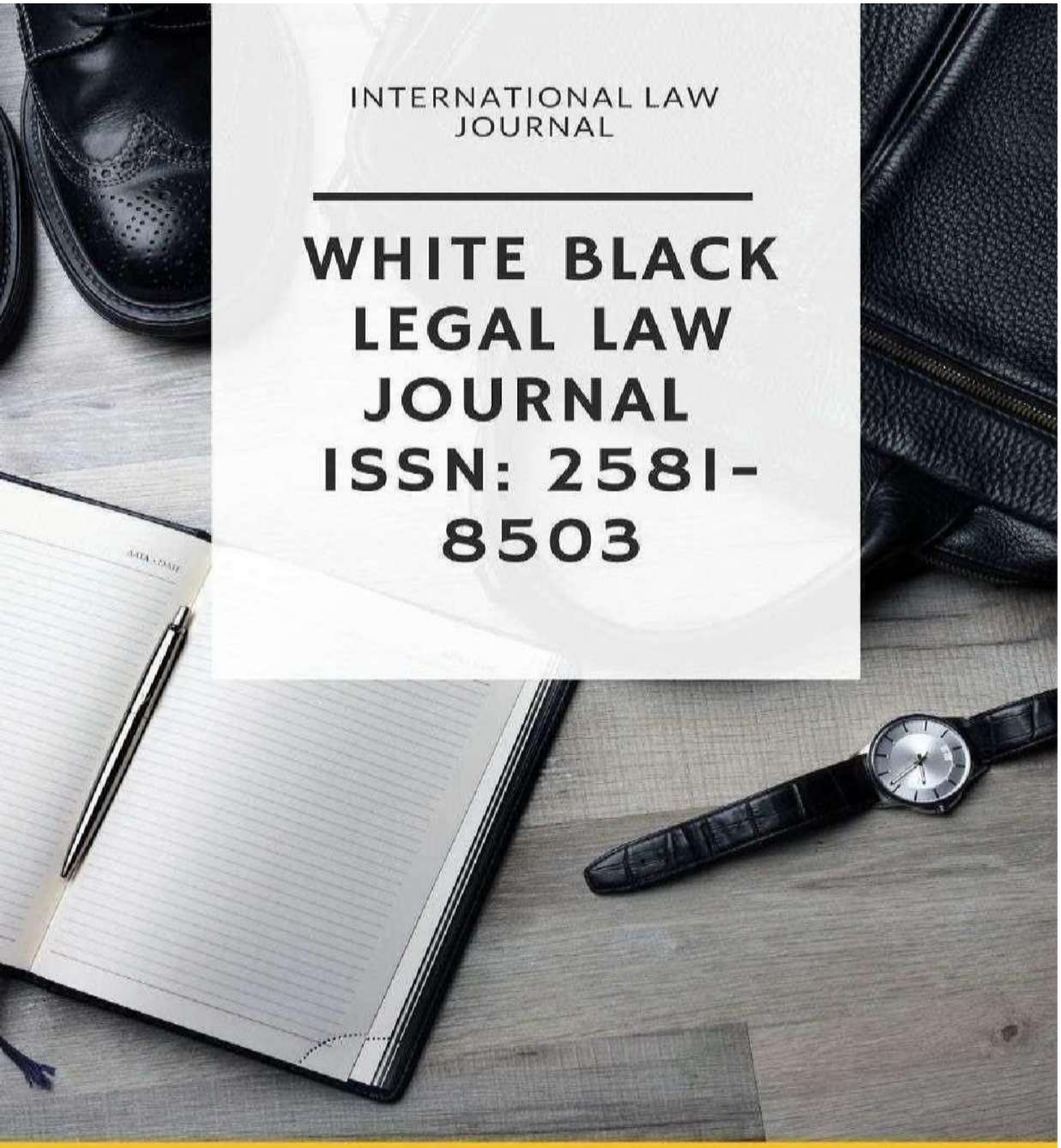

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RIGHT TO DIE IN INDIA: LEGAL AND ETHICAL PERSPECTIVES OF EUTHANASIA

AUTHORED BY - SHAURYA UPRETI[1]

ABSTRACT

The right to die and euthanasia have sparked intense legal, ethical, and philosophical debates worldwide, with various jurisdictions taking divergent stances on whether individuals possess the autonomy to end their lives under circumstances of terminal illness or extreme suffering. In India, the acknowledgement of the right to die has progressed slowly, mainly influenced by significant court decisions instead of changes in the law. This article examines the historical, legal, and ethical aspects of euthanasia in India, focusing on key Supreme Court judgments in *Common Cause v. Union of India (2018), Aruna Shanbaug v. Union of India (2011),* and *Gian Kaur v. State of Punjab (1996),* which paved the way for the acknowledgment of passive euthanasia and the right to a dignified death.

The paper begins by tracing the historical context of euthanasia, examining its roots in ancient civilizations such as Greece, Rome, and India, where voluntary death was, under specific circumstances, considered an acceptable practice. Significant decisions from the courts that progressively expanded the meaning of Article 21-which protects the right to life-to include the right to die with dignity serve as an insight into the development of legal doctrine.

The paper highlights the urgent need for a legislative framework to accompany judicial guidelines, particularly in light of the *Mental Healthcare Act, 2017*, which decriminalized attempted suicide but did not fully resolve the legal contradictions surrounding euthanasia. Ethical factors such as the importance of life, patient independence, and the responsibilities of medical providers in end-of-life treatment are carefully reviewed.

Keywords: *Right to die, euthanasia, right to life, legal, moral, life support, medical.*

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I. INTRODUCTION

"I am master of my fate; I am the captain of my soul"

-William Ernest Henley[2]

The idea of the "Right to Die" poses one of the most challenging dilemmas in the realms of legal jurisprudence, ethical philosophy, and medical science. Fundamentally, the issue of whether an individual possesses the legal entitlement to take their own life when confronted with a terminal disease, unbearable pain, or irreversible medical problems is at the heart of the right to die issue. This issue becomes increasingly relevant in today's world, where medical advancements have dramatically extended life expectancies but have also created situations where individuals are kept alive artificially, often in conditions of severe pain and diminished quality of life.

The ongoing debate about the right to die encompasses multiple dimensions-legal, medical, philosophical, and moral. At the heart of this debate is the question of whether a person has the right to die with dignity, free from unnecessary suffering. Does an individual have the right to choose death over life when their condition becomes unbearable, or does society, through its laws, have a responsibility to preserve life at all costs, regardless of personal suffering? In essence, the discussion is about balancing individual autonomy and the sanctity of life, two powerful but often conflicting principles.

Globally, Different reactions have arisen regarding the issue of euthanasia and the right to die, with countries like the Netherlands, Belgium, and Switzerland legalizing different forms of euthanasia. In contrast, others, such as India, have traditionally held more conservative stances, guided by religious, cultural, and legal philosophies that emphasize the sanctity of life. However, the tide has been slowly turning, and recent legal developments in India have marked a significant shift in how the right to die is viewed.

For a long time, Indian law regarded euthanasia and suicide as criminal offenses, reflecting a societal consensus that life, regardless of its quality, must be preserved. However, over the past few decades, a growing movement advocating for the assumptions have been challenged by the right to die with dignity. The pivotal moment came in 2018, when the apex Court of India,

[2] William Ernest Henley, A Book of Verses 56-57 (Scribner, New York 1988).

recognized the legitimacy of advance medical directives, sometimes known as "living wills," and passive euthanasia in its landmark decision in *Common Cause v. Union of India*.[3] The right to die with dignity in some situations is now included by Article 21, which guarantees the right to life, as a result of this ruling.

The introduction of passive euthanasia in India, as well as the recognition of advance directives, represents a profound shift in the legal landscape surrounding the right to die. This paper will explore how these changes came about, focusing on the historical, legal, and ethical aspects of euthanasia in India. It will examine how the judiciary has played a pivotal role in shaping the discourse, beginning with the *Gian Kaur judgment*[4], which upheld the criminalization of suicide, to the progressive decisions in *Aruna Shanbaug*[5] and *Common Cause*[6], which recognized the right to die. This paper will also delve into the ongoing moral debate, where the sanctity of life is weighed against an individual's autonomy and right to choose their own destiny.

Furthermore, this paper will discuss the international context of euthanasia laws, comparing India's stance with countries where euthanasia has been legalized and institutionalized. It will argue that while India has made significant progress through its judicial decisions, there remains a pressing need for comprehensive legislation to provide clear guidelines and prevent potential abuses. The journey toward a legal and ethical consensus on euthanasia in India is far from complete, but the steps taken thus far reflect an evolving understanding of what it means to live-and die-with dignity.

II. HISTORICAL CONTEXT

Euthanasia, originating from the Greek words "eu" (meaning good) and "thanatos" (meaning death), historically refers to the practice of enabling a person to die a painless, peaceful death. While contemporary debates often centre on voluntary euthanasia—where a terminally ill patient actively seeks to end their life—the concept has evolved significantly over the centuries, shaped by social, cultural, and religious values. The historical underpinnings of euthanasia reveal a complex interplay between compassion for the suffering and the moral imperative to

[3] [2018] 208 (SC).
[4] [1996] 946 (SC).
[5] [2011] 454 (SC).
[6] [2018] 208 (SC).

preserve life, themes that continue to resonate in modern discussions on the right to die.

The concept of euthanasia is not new, having existed in various forms throughout human history. In ancient civilizations, particularly in Greece and Rome, euthanasia was often seen as an acceptable practice under certain circumstances.[7] These societies were relatively open to the idea that, in cases of incurable illness or severe physical suffering, ending life prematurely could be an honourable and humane choice. For instance, the ancient Greeks believed in "a good death," which aligned with their ideals of rationality and individual choice. Philosophers like Socrates and Plato discussed the notion of voluntary death, considering it a dignified escape from unbearable pain or dishonour.

However, with the rise of organized religions, particularly Christianity, Islam, and Judaism, attitudes toward euthanasia underwent a significant transformation.[8] According to these religions, life was a priceless gift from God that could only be taken away by the divine. Thus, any form of suicide or euthanasia became morally reprehensible, a violation of divine will. In Christian theology, for example, Preservation of life was a top priority, and pain, particularly in the final stages of life, was frequently seen as a trial of faith or a method of spiritual cleansing. In India, the ancient Hindu concept of life and death also had a bearing on attitudes toward voluntary death. Hinduism, with its belief in reincarnation, karma, and moksha (liberation from the cycle of birth and death), offered a unique perspective on death. Voluntary death, or prayopavesa-a form of fasting unto death—was considered an acceptable practice in certain situations, particularly for those who had fulfilled their duties in life and sought spiritual liberation. It was not seen as a form of suicide but as a conscious decision to end life when it was no longer productive or meaningful.

For instance, in Hindu mythology, Lord Rama, one of the principal deities, is said to have walked into the river Saryu to embrace death when he felt his purpose on earth was complete. Similarly, the Jain tradition practices Sallekhana, a ritual fasting to death, which is viewed as a dignified way to renounce the physical body when death is imminent.[9] These practices illustrate that, in ancient Indian culture, the idea of choosing death under certain conditions was

[7] Jay Thareja and Satyam Thareja, 'Euthanasia; The Last Right' [2009] Criminal Law Journal 154.
[8] MD Singh, 'Euthanasia: How Merciful Is the Killing' (2001) X Amritsar Law Journal 54.
[9] Kusum, 'The Right to Die: Indian Perspective: Bal Krishna', *SUICIDE: Some Reflections* (Regency Publications 1995).

not entirely alien, though it was vastly different from the modern notion of euthanasia.

III. EUTHANASIA: CONCEPT AND MEANING

Euthanasia is described by the Oxford Dictionary as causing a person who is suffering from an agonizing or incurable sickness to die.[10] Euthanasia is described as an act of death that would relieve a person from a stressful or unbearable state of life, according to the Encyclopedia on Crime and Justice.[11] Roedy Green[12] provides a concise explanation of euthanasia, breaking it down into four main categories: physician-assisted suicide (PAS), often known as "phaspacts," murdering a terminally ill patient at his request, and a nice and peaceful death. Furthermore, the House of Lords Select Committee on Medical Ethics states that euthanasia is defined as a deliberate action done with the specific intention of relieving someone from pain and distress. Considering various national viewpoints, the Netherlands defines euthanasia as the deliberate taking of a sick patient's life at that patient's request to the treating physician. More specifically, euthanasia is defined under the Belgium Euthanasia Act, 2002 as the deliberate taking of a life by a person other than the one who is being killed, at that person's request. Therefore, the simplest definition of euthanasia is a phrase used to denote a painless death.

IV. KINDS OF EUTHANASIA

On the basis of Procedure[13]

- **Active Euthanasia:** Active euthanasia is the term for an act that intentionally reduces a person's life expectancy. The method by which the patient's life is ended painlessly is known as active euthanasia. Only at the patient's wish may this kind of death occur.

  The three requirements for active euthanasia are as follows:
  - the patient must be experiencing excruciating pain and an incurable illness;
  - the patient must have requested this treatment; and
  - the patient must have tried every other course of action that could have spared their life.

[10] 'Euthanasia Noun - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.Com' <https://www.oxfordlearnersdictionaries.com/definition/english/euthanasia#> accessed 30 September 2024.

[11] 'Euthanasia | Encyclopedia.Com' <https://www.encyclopedia.com/medicine/divisions-diagnostics-and-procedures/medicine/euthanasia> accessed 30 September 2024.

[12] Shalini Marwaha, 'Euthanasia, Personal Anatomy and Human Rights: An Intricate Legal & Moral Global Perspectives' (2004) XII Amritsar Law Journal 96.

[13] J Rachels, 'Active and Passive Euthanasia' [1986] New England Journal of Medicine 124.

- **Passive Euthanasia:** In a case of passive euthanasia, the patient dies because the doctor either does nothing to prolong the patient's life or does not carry out the action that could have prolonged the patient's life. These actions typically involve disconnecting the feeding tube, turning off the life support equipment, stopping the administration of unusual medications, etc. The aforementioned surgery is typically implemented for individuals who are terminally sick, in anticipation of their imminent demise. These procedures are frequently used for patients who have severe brain injury, are in a profound coma, and have no possibility of emerging from their condition.

On the basis of Consent

- **Consensual Euthanasia:** It describes situations in which the patient expresses a desire for his own death, either by active or passive euthanasia. Therefore, in order to use this type of euthanasia, the patient or his legal representatives must make the request.[14]
- **Non-Voluntary Euthanasia:** It occurs when euthanasia is performed on a patient without that patient's agreement. The most noteworthy instance of this type of euthanasia, which is prohibited worldwide, is child euthanasia.
- **Involuntary Euthanasia:** Other names for this type of euthanasia are "Murder" and "Medical Zed Killing." The best illustration of this kind of euthanasia is when a capable adult or a minor acting as their proxy rejects the practice after being made aware of its potential repercussions. In this case, the patient's death would still be considered involuntary euthanasia or plain murder.

V. CONSTITUTIONAL REFLECTIONS

The Indian Constitution[15], like the Constitutions of all other nations, is not a regular law; rather, it is a special legal sanction that establishes the limits and fundamental principles of the state's organs and declares the citizens' fundamental rights to be enforceable in court. These rights are the embodiment of the concept of human dignity. An individual's human dignity is protected by the law. The arguments around euthanasia are predicated on the concept of human dignity, which includes the right to a dignified and appropriate dying. Article 21[16] protects a person's life with dignity but simultaneously forbids him the right to a dignified death. The value of a good life has been elevated to the top in India. The Indian Constitution not only mandates that

[14] MD Singh, 'Euthanasia: How Merciful Is the Killing' (2001) XII Amritsar Law Journal 53.
[15] The Constitution of India 1950.
[16] India Const art 21- Protection of life and personal liberty.

every person have access to health care, but it also guarantees the right to life.[17] This constitutional provision is derived from the Directive Principles of State Policy[18] and the Fundamental Rights.[19] Having the right to die with honour is a component of the right to life.[20] Topics such as "Right to die" and "Euthanasia" can only be effectively debated in relation to a certain social reality. When discussing these problems within the framework of Indian culture, it's important to remember the frequently disregarded viewpoint of the 200 million or so impoverished people who live in the lower strata of society and whose basic needs for food, shelter, healthcare, education, and other necessities aren't currently sufficiently met. Even those who still advocate for the fundamental right to life, even if their focus is solely on basic physical survival, should be considered while discussing the "Right To Die"[21] issue.

VI. RIGHT TO DIE IN INDIA: LEGAL DEVELOPMENTS

In India, the journey towards acknowledging the right to die with dignity has been tumultuous, primarily because the courts have been involved in the decision-making instead of proactively changing laws. The growing number of court cases pertaining to the interpretation of Article 21 of the Constitution, which protects the right to life, gave rise to a discussion on euthanasia in India. But for a very long time, this right was only understood to include the right to life, not the right to terminate one's own life. The pivotal moment was marked by a number of court rulings that gradually expanded the concept of the right to life to encompass the right to pass away with dignity.

Early Judicial Responses

The Supreme Court's decision in *Gian Kaur v. State of Punjab (1996)* initially influenced the legal situation concerning the right to die in India.[22] Due to its focus on the legitimacy of Section 309 in the Indian Penal Code (IPC),[23] which makes attempted suicide illegal, this case is of extreme significance. The petitioners in Gian Kaur argued that the right to die is implicit within the right to life, and therefore Section 309[24], which penalizes suicide attempts, was unconstitutional.

[17] ibid.
[18] India Const Part IV.
[19] India Const Part III.
[20] ibid.
[21] ibid.
[22] [1996] 946 (SC).
[23] Indian Penal Code 1860, s 309.
[24] ibid.

However, The argument was turned down by the Supreme Court, which stated that the right to die was not encompassed in Article 21's provision regarding the right to life.[25] The court reasoned that life was a fundamental right, and taking one's life could not be construed as a constitutional right. Thus, Section 309[26] remained valid, reaffirming the state's authority to penalize those who attempted suicide. This decision also indirectly impacted the discourse on euthanasia, reinforcing the notion that life must be preserved, regardless of circumstances.

Although Gian Kaur upheld the constitutionality of penalizing suicide attempts, it left the door open for a future reassessment of the right to die with dignity.[27] The court recognized that the right to life does not encompass the right to intentionally end one's life, there could be situations, particularly concerning terminally ill patients, where the withdrawal of life support may be considered lawful under certain conditions.

Aruna Shanbaug and the Recognition of Passive Euthanasia

The turning point in India's euthanasia debate came with the 2011 case of *Union of India v. Aruna Ramchandra Shanbaug*.[28] After being brutally attacked, For over three decades, Aruna Shanbaug, a nurse at King Edward Memorial Hospital in Mumbai, has remained in a vegetative state. A petition was filed by journalist Pinki Virani, seeking permission for the withdrawal of life support for Aruna, effectively requesting the court to legalize euthanasia.

In its judgment, the Supreme Court ruled against active euthanasia, where a doctor or third party administers a lethal substance to end a patient's life. However, the court took a more nuanced stance on passive euthanasia, which involves withdrawing or withholding medical treatments that are keeping the patient alive. The court allowed passive euthanasia under strict guidelines, marking the first instance in Indian legal history where the judiciary recognized the concept of dying with dignity.

The court established a framework for passive euthanasia, requiring that it be authorized by the High Court in each specific case, and that decisions be made with the input of medical experts and the patient's family. This judgment was groundbreaking, as it allowed Indian law to

[25] India Const art 21.
[26] ibid.
[27] India Const art 21.
[28] [2011] 1290 (SC).

acknowledge the right of terminally ill or permanently vegetative patients to die with dignity, while ensuring safeguards against misuse.

The Common Cause Case (2018) and Living Wills

Building upon the principles laid out in Aruna Shanbaug, the Supreme Court further expanded the scope of the right to die in its 2018 decision in *Common Cause v. Union of India*.[29] The validity of advance medical directives, also referred to as "living wills," which allow people to designate the sort of medical care they want to receive in the event that they become incapacitated or unable of making decisions, was at issue in this case.

The Supreme Court recognized the right to a dignified death, allowing prior medical directives, and acknowledging passive euthanasia in a historic decision. The court underlined that the right to a dignified death is included in Article 21 of the Constitution safeguards the rights to life and personal freedom. The ruling acknowledged that when one's quality of life is irreversibly harmed, one's right to die with dignity also applies, signalling a dramatic change in Indian jurisprudence.

The court also provided detailed guidelines on the implementation of living wills, ensuring that they would not be misused. These guidelines require that a living will must be executed by a person in sound mental health, witnessed by two independent witnesses, and verified by a judicial magistrate. Additionally, in cases where the living will is invoked, a medical board must confirm the terminal nature of the illness before life support can be withdrawn.

This judgment reflects a growing global trend towards recognizing individual autonomy in end-of-life decisions. By validating living wills, the Supreme Court empowered individuals to make choices about their medical treatment, ensuring that their wishes would be respected even when they are no longer in a position to communicate.

VII. CURRENT LEGAL FRAMEWORK: THE LEGISLATIVE GAP

Despite these progressive judicial rulings, India lacks comprehensive legislation on euthanasia. While passive euthanasia has been legalized through court judgments, there remains no statutory framework to regulate end-of-life decisions comprehensively. The judiciary's role in

[29] [2018] 1665 (SC).

framing guidelines for passive euthanasia and living wills has filled a significant gap, but the absence of formal legislation creates legal ambiguities and inconsistencies.

The Mental Healthcare Act, 2017[30]

One of the most recent legislative developments relevant to the right to die is the Mental Healthcare Act, 2017. This act decriminalized attempted suicide by presuming that individuals who attempt suicide are suffering from severe mental distress. Section 115[31] The Act clearly mentions that anyone who tries to commit suicide will be considered to be experiencing severe stress and will not face any punishment under Section 309[32] of the IPC. This represents a significant shift in how the law views individuals who attempt to take their own lives, focusing on rehabilitation rather than punishment.

Although the Mental Healthcare Act, 2017[33] has been lauded as a progressive step, it does not directly address the issue of euthanasia. The act's decriminalization of attempted suicide, however, lays the groundwork for further legislative reform that could eventually include provisions for euthanasia, particularly in cases involving terminal illness and incurable suffering.

The Medical Treatment of Terminally Ill Patients Bill, 2016

In 2005, a Common Cause organization petitioned the Hon'ble Supreme Court of India in Writ Petition[34] on behalf of the general public, asking for acknowledgment of medical treatment preferences in advance that patients desire in the event of a long-term unconsciousness, coma, or persistent vegetative state. The Indian government was instructed to bring the issue up for debate in Parliament after a five-judge bench declined to issue an order. As a result, the MHFW received a draft of "The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) bill" in 2016.[35] The bill mentioned earlier was just a duplicate of the original proposed legislation that was included to The Law Commission of India's 196th report in 2006 and then updated in 2012.

[30] The Mental Healthcare Act 2017, No 10, 2017.
[31] The Mental Healthcare Act 2017, No 10, 2017, s 115.
[32] Indian Penal Code 1860, s 309.
[33] The Mental Healthcare Act 2017, No 10, 2017.
[34] [2005] 215 W.P. (Civil).
[35] Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016, Bill No XXVII of 2016.

This bill seeks to regulate the practice of passive euthanasia and protect both patients and doctors from legal liability in cases where life support is withdrawn.

The bill proposes several safeguards to ensure that passive euthanasia is carried out ethically and legally. For instance, the patient's or their legal representative's consent, along with approval from a medical board, is necessary. Additionally, the bill provides legal immunity to medical practitioners who act in good faith, following the prescribed guidelines for passive euthanasia.

However, despite its potential to provide clarity and legal protection, the bill is still pending approval to become law. Its current status as a draft leaves a significant legislative gap in India's approach to euthanasia, particularly as the practice of passive euthanasia is governed solely by judicial guidelines rather than a comprehensive legal framework.

VIII. MORAL AND ETHICAL CONSIDERATIONS

The right to die raises profound ethical and moral questions, particularly in a society like India, where religious and cultural beliefs play a significant role in shaping public opinion. The debate surrounding euthanasia is deeply polarized, with strong arguments on both sides regarding the sanctity of life and the right to personal autonomy.

Sanctity of Life[36]

The sanctity of life concept, which maintains that life is intrinsically important and ought to be maintained at all costs, is frequently cited by those who oppose euthanasia. This view is supported by many religious traditions, including Hinduism, Christianity, and Islam, which regard life as a divine gift that cannot be taken away by human intervention. Euthanasia, from this perspective, is ethically wrong since it intentionally ends life, which is regarded as precious.

In the context of Indian society, where religious values are deeply entrenched, the sanctity of life argument carries significant weight. Many people think that legalizing euthanasia would create a slippery slope where vulnerable people-like the elderly or disabled-might be forced to

[36] J Keown, *The Law and Ethics of Medicine: Essays on the Inviolability of Human Life* (Oxford University Press 2012).

terminate their lives, diminishing the value of life.

Autonomy and the Right to Choose[37]

On the other hand, supporters of euthanasia believe that individuals should have the freedom to make decisions about their own lives, such as the option to end their suffering in the face of a terminal illness or other untreatable conditions. The foundation of this argument is the idea of autonomy, which maintains that people ought to be allowed to make decisions about their own bodies and lives without intervention from the government or the wider community.

In the Common Cause ruling, the Indian Supreme Court acknowledged the importance of personal autonomy in end-of-life choices. The court stressed that it is against Article 21 of the Constitution to force someone to suffer unnecessarily for an extended period of time in order to fulfil their right to live in dignity.

The Role of Medical Ethics[38]

The medical community also plays a critical role in the debate on euthanasia. The Hippocratic Oath, which guides medical ethics, emphasizes the principle of "do no harm." While this has traditionally been interpreted as a prohibition against hastening death, modern interpretations of medical ethics recognize that prolonging life at all costs may sometimes cause more harm than good.

In situations where a patient is in the end stages of a terminal illness and experiencing pain, continuing aggressive medical treatment may violate the principle of non-maleficence by causing unnecessary pain and suffering. In such cases, passive euthanasia, which allows the natural process of death to take its course, may be seen as an ethical way to alleviate suffering and respect the patient's autonomy.

However, the ethical dilemma remains: how can we balance the need to protect life with the desire to respect an individual's right to die with dignity? The answer lies in creating robust legal and ethical frameworks that safeguard against potential abuses while respecting individual choices.

[37] R Dwarkin, *Taking Rights Seriously* (Harvard University Press 1978).
[38] R Gillon, 'Medical Ethics: Four Principles Plus Attention to Scope' [1994] BMJ 184.

IX. CONCLUSION

The recognition of the right to die with dignity marks a significant development in Indian legal jurisprudence. Medical directives and passive euthanasia have been made possible by the Apex Court's rulings in Aruna Shanbaug and Common Cause, which have given people more autonomy over their treatment as they near death. However, the absence of comprehensive legislation leaves many questions unanswered, particularly regarding the regulation and oversight of euthanasia practices.

As India moves forward, it is essential to develop a legislative framework that balances the sanctity of life with respect for individual autonomy. A comprehensive euthanasia law should provide clear guidelines for passive and active euthanasia, protect vulnerable individuals from coercion, and ensure that end-of-life decisions are made with informed consent and medical supervision.

The ethical and moral debates surrounding euthanasia will continue to shape public discourse, but the legal recognition of the right to die with dignity is an important step toward ensuring that individuals can make choices about their own lives and deaths. By addressing the legislative gaps and creating a robust legal framework, India can ensure that the right to die with dignity is exercised responsibly and ethically.

X. BIBLIOGRAPHY

1. Statutes

- The Constitution of India, 1950.
- Indian Penal Code, 1860.
- The Mental Healthcare Act, 2017.

2. Books

- William Ernest Henley, A Book of Verses 56-57 (Scribner, New York 1988).
- Kusum, 'The Right to Die: Indian Perspective: Bal Krishna', *SUICIDE: Some Reflections* (Regency Publications 1995).
- J Keown, *The Law and Ethics of Medicine: Essays on the Inviolability of Human Life* (Oxford University Press 2012).
- R Dwarkin, *Taking Rights Seriously* (Harvard University Press 1978).

3. Articles

- Jay Thareja and Satyam Thareja, 'Euthanasia; The Last Right' [2009] Criminal Law Journal.
- MD Singh, 'Euthanasia: How Merciful Is the Killing' (2001) X Amritsar Law Journal.
- J Rachels, 'Active and Passive Euthanasia' [1986] New England Journal of Medicine.
- MD Singh, 'Euthanasia: How Merciful Is the Killing' (2001) XII Amritsar Law Journal.
- R Gillon, 'Medical Ethics: Four Principles Plus Attention to Scope' [1994] BMJ.

4. Websites

- http://ereserve.library.utah.edu/Annual/PHIL/2500/Huster/ac.pdf
- https://link.springer.com/article/10.1186/s12910-020-00481-7
- https://www.scobserver.in/cases/common-cause-euthanasia-and-the-right-to-die-with-dignity-case-background/
- https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/
- https://clpr.org.in/blog/euthanasia-and-the-right-to-die-in-india/