

# A Study on the Legal Status of Euthanasia in India

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*“One should die proudly when it is no longer possible to live proudly.”*

.....Friedrich Nietzsche

**Abstract:** Life and death are inseparable. It is the law of nature. Thus, every human being wishes to live and enjoy the fruits of life till he dies. But sometimes, human beings end one's life by the use of unnatural means. When one's ends his life by his own act we call it "Suicide" but if on his request some others person end up his life then it is called "euthanasia". The concept of euthanasia is one of the spark heated debate and it is based on the philosophy of humanism and compassion. The principle of euthanasia recognizes self-determination of an individual freedom of choice to live or to die with dignity. This paper seeks to throw light on the current legal status of euthanasia in India.

**Keywords:** Euthanasia, Mercy Killing, Status, India

## INTRODUCTION

The concept of euthanasia is not a new issue rather an old one, with its roots in classical thinking. It is the practice of killing a person for giving relief from incurable pain or suffering and allowing painless death when life has become worthless and disagreeable. Euthanasia is basically an intentional premature termination of another person's life for reason of mercy.

The word "euthanasia" was first coined by an English philosopher and statesman Sir Francis Bacon in the early 17<sup>th</sup> century to refer to an easy, painless and happy death for which it was the physician's duty and responsibility to alleviate the physical suffering of the body of the patient. The etymological meaning of the term "Euthanasia" has been derived from the Greek words "EU" and "THANATOS". The words "EU" mean "well or good" and "THANATOS" means "death". Thus, the term "euthanasia" literally means "good death" or "easy death". It is the practice of mercifully ending the life of an insufferably patient by the physician upon the request of the patient's in order to relieve oneself from prolonged suffering. The practice of euthanasia is also popularly known as "Mercy Killing".

## DEFINITION OF EUTHANASIA

The following are some of the important definition of euthanasia-

1. **Oxford English Dictionary-** "Euthanasia means the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma."
2. **Black's Law Dictionary (8<sup>th</sup> edition)-** "Euthanasia mans the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one, for reason of mercy."
3. **World Health Organization-** "Euthanasia is a deliberate act undertaken by one person with the intention of either painlessly putting to death or failing to prevent death from natural causes in cases of terminal illness or irreversible coma of another person."
4. **Encyclopaedia of 'Crime and Justice'-** "Euthanasia means an act of death which will provide a relief from a distressing or intolerable condition of living."
5. **The British House of Lords Select Committee on Medical Ethics-** "Euthanasia is a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering."

Thus, from the above definition it can be said that euthanasia is an act of deliberately killing human being by a direct action in order to free that person from excruciating painful life so that he can live as well as die with dignity. The key fundamental purpose behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering.

## CLASSIFICATION OF EUTHANASIA

Euthanasia may be classified into three categories. They are as under-

1. Voluntary euthanasia,
2. Involuntary euthanasia; and
3. Non-Voluntary euthanasia

- **Voluntary euthanasia-** When euthanasia is performed with the expressed desire and consent of the patient it is called voluntary euthanasia. Here, consent should be free from all sense of coercion. In voluntary euthanasia it is generally agreed that request must come from the person who is either-
  - a. In excruciating pain; or
  - b. Is suffering from an illness which is agreed as being terminal.
 In the case of voluntary euthanasia, the patient may request for termination of life prior to the development of the illness in question or during its course.
- **Involuntary euthanasia-** When the life of the competent patient is brought to an end against his express will then it is termed as involuntary euthanasia. This is a criminal act of murder. Involuntary euthanasia serves as an example for those who would invest medical professional with more or unfettered powers over life and death.
- **Non-voluntary euthanasia-** When the person concerned is unable to express his will due to mentally incompetent but other considers that it is in his best interest to end his life at this time is called as Non-voluntary euthanasia.

Euthanasia can further be classified in two types' viz.,

1. Active euthanasia and
2. Passive euthanasia.

- **Active euthanasia-** A deliberate life shortening act is called active or positive euthanasia. In active euthanasia, death is caused by administering a lethal injection or drugs by the physician at the request of the patient.
- **Passive euthanasia-** Intentional omission of life lengthening act is called passive or negative euthanasia. Passive euthanasia is also known as letting-die. Passive euthanasia occurs when medical practitioners do not provide or remove patients from life sustaining treatment. This could include withholding of life extending drugs or disconnecting life support machines or feeding tubes or not carrying out life saving operations. In passive euthanasia, the omission of the physician is not treated as the cause of death; instead, the patient is understood to have died. Here, the physician is not actively killing anyone but simply not saving the patient.

## HISTORICAL BACKGROUND OF EUTHANASIA

Euthanasia is not something new or unknown to human civilization. It is believed that the practice of euthanasia was started in ancient Greece and Rome around 5<sup>th</sup> century before Christianity. For instance- Hemlock, a highly poisonous biennial herbaceous flowering plant, was employed as a means of hastening death on the island of Kae. In ancient Greece, suicide of the patient who was suffering from terminal diseases was made easy and for this reason the physician gave a poisoned drink to the patient for ending his life. Socrates, Plato and Seneca are the main supporter of euthanasia. Plato wrote- "Mentally and physically ill persons should be left to death; they do not have the right to live."

The first objection to euthanasia came from the Hippocrates Oath which says that "I will give no deadly medicine to anyone if asked, nor suggest any such counsel." The first attempt to legalize euthanasia began in the USA in the first years of the 20<sup>th</sup> century. The first country in the world to legalize euthanasia is Neitherland in 2001 followed by Belgium in 2002. In India, the Supreme Court of India had legalized passive euthanasia on 9<sup>th</sup> March 2018.

Euthanasia is not accepted in Sikh, Judaism, Islam and Christian traditions. They believe that the life of a human being is sacred because it is given by the Almighty God. Birth and death are the part of life processes which God has created. Thus, none should interfere in God plan but accept and act it so as to make the best that fate has given them.

However, religions like Hinduism, Jainism and Buddhism recognize wilful death. The history of Vedic age is replete with numerous examples of suicide committed on religious grounds. The epics of Mahabharata and the Ramayana also had instances of religious suicide. Hindu mythology describes the suicide by Lord Rama as "Jal Samadhi" (water mausoleum). In the times of Lord Buddha it was called "Mahaparinirvana" (Nirvana). Similar was the case of Lord Mahavira. Swatantraveer Savarkar and Acharya Vinoba Bhave renounced their lives resorting to "Prayopavesa" (literally means resolving to die through fasting). Govardana and Kulluka, while writing commentaries on Manu observed that "a man may undertake the Mahaprastha (great departure) on a journey which ends in death when he is incurably diseased or meets with a great misfortune, and that, it is not opposed to Vedic rules which forbid suicide."<sup>1</sup> All these records reveal that the practice of euthanasia is not recognised as an abnormal act in primeval India.

## EUTHANASIA AND MURDER

In common parlance the term 'murder' means killing of another human being in an unlawful manner. A person is said to commit murder if any one of the following essentials is fulfilled-

<sup>1</sup> Laws of Manu, translated by George Buhler, Sacred Books of the East by F. Maxmuller 206 Vol. 25 (1967 reprint).

- i. There must be intention to caused death; or
- ii. There must be intention to cause bodily injury knowing that the injury caused is likely to cause death; or
- iii. There must be intention of causing bodily injury sufficient in the ordinary course of nature to cause death; or
- iv. There must be knowledge that the act is-
  - a. Imminently dangerous that in all probability it will cause death or bodily injury which is likely to cause death, and
  - b. Done without any justification for incurring the risk of causing death or the injury.

However, there is an exception to it i.e., if the offence is committed on-

- i. Grave and sudden provocation; or
- ii. Right of private defence; or
- iii. Lawful exercise of power by Public servant acting in good faith, or
- iv. Sudden fight; or
- v. Consent, the accused shall not be held liable for murder under section 302 but shall be held liable under section 304 i.e. culpable homicide not amounting to murder.

So far as the concept of killing human being is concerned there are two kinds of killing i.e., firstly the murderer has informed consent of the person killed and secondly the murderer does not have the informed consent of the person killed. Here, the first killing comes under euthanasia and the second under murder. Euthanasia becomes murder only when there is no consent of the patient. The proponents of euthanasia feel that Physician Assisted Patient Activated Suicide is not murder but Physician Activated Patient Request is equivalent to murder because in the later case the physician has actively participates in the process of killing the patient. Assisted Suicide is distinguished from active euthanasia in the sense that in the former, the patient's must take premeditated steps to bring about his/her own death. Here physician may provide assistance but it is the patient who commits the act of suicide. But in active euthanasia it is the physician who ends the life of the patient. However, for the pro-life proponents, euthanasia is equivalent to murder because it is the act which deliberately ends the life of a patient at patient's own request or at the request of his kith and kin.

## EUTHANASIA AND SUICIDE

The concept of euthanasia and suicide are both factually and legally disparate thus it cannot be treated as the same thing. The term suicide as define in Oxford Dictionary means "the act of killing yourself deliberately." Hence, suicide means intentional termination of one's life by self induced means for various reasons like frustration, failure, depression and so on.

In order to make out the difference between suicide and euthanasia attempt was made by the Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*,<sup>2</sup> by stating that- "Suicide by its very nature is an act of self-killing or termination of one's own life by one's own act without assistance from others. But euthanasia means the intervention of other human agency to end the life. Euthanasia therefore cannot be considered in the same footing as on suicide. Euthanasia is nothing but a homicide, whatever is the circumstance in which it is committed."

In *Naresh Marotrao Sakhre v. Union of India*,<sup>3</sup> the Bombay High Court had once again made the same observation and states that euthanasia and suicide are both factually and legally distinct.

Under the Indian law, intention is the basis for penal liability. Thus, an act itself cannot be considered as a criminal act if it is not committed with guilty intention based on the maxim "*Actus non facit reum nisi men sit rea*" (meaning the act by itself does not constitute guilt unless done with guilty intention). So now, by applying the said maxim, in cases of euthanasia one may conclude that since the victim has given the consent to die thus, the accused is not liable for any offence. But the most striking question to this point is that- Does giving consent for killing a person absolve the offender from his criminal liability? At this point the Indian law is very clear as one may argue that giving consent absolves a person from liability or he may plead the defence of "*Volenti non fit injuria*" (meaning to a willing person, injury is not done) but consent cannot pleaded as a defence in case where the consent is given to cause death or grievous hurt. The Law relating to consent is very exhaustive and leaves no room for ambiguity under the Indian Penal Code. Section 87 of the Indian Penal Code had clearly states that "nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm."

## CURRENT LEGAL ASPECTS OF EUTHANASIA IN INDIA

In India, the principle of sanctity of life has been placed on the highest pedestal and has attained the status of an inalienable and inherent right. Under the Constitution of India 'the right to die' is not a fundamental right guaranteed under Article 21 of the Constitution and this led to the widest possible interpretation in the hands of the judiciary. In India, the contention whether 'right

<sup>2</sup> *Maruti Shripati Dubal v. State of Maharashtra* (1987) Cri LJ 783 Bombay.

<sup>3</sup> *Naresh Marotrao Sakhre v. Union of India* (1995) Cri.L.J 95 (Bomb).

to life' includes within the ambit of 'right to die' came into consideration for the first time before the Bombay High Court in the year 1987 in the case of *State of Maharashtra v. Maruti Shripati Dubal*<sup>4</sup>. The challenge in this case was based on the unconstitutionality of Section 309 of the Indian Penal Code. In this case the Court had observed that "right to life as enshrined in Article 21 includes right to die" and held that "everyone should have the freedom to dispose of his life as and when he desires." Consequently, the court upheld that "the provisions of Section 309 were being arbitrary and ultra-vires the constitution.....being violative of Articles 14 and 21 of the Indian Constitution thereof and must be struck down."

Closely following the case of *Maruti Shripati Dubal* was that of *Chenna Jagadeeswar v. State of Andhra Pradesh*,<sup>5</sup> wherein the Andhra Pradesh High Court had held that "right to die is not a fundamental right within the meaning of Article 21 and hence Section 309 of the Indian Penal Code is not unconstitutional."

The opposing views of different High Courts were placed to rest by a division bench of the Supreme Court in the case of *P. Rathinam v. Union of India*.<sup>6</sup> In this case the apex court agrees with the view expressed in *Maruti* case and held that Section 309 of the I.P.C. violates Article 21 of the Constitution and hence void. It further held that "Section 309 of I.P.C. should be effaced from the face of the statute book not simply to keep abreast with the global developments on the treatment to be meted out to those attempting suicide, but also to humanise our penal laws." In this case Justice B. L. Hansaria had observed that "the right to life which Article 21 speaks of can be said to bring in its trail right not to live a forced life." However, the apex court had rejected the plea that euthanasia should be permitted by law because in euthanasia a third person is either actively or passively involved.

However, in the case of *Gian Kaur v. State of Punjab*,<sup>7</sup> the five constitutional benches had overruled the *P. Rathinam* case and univocally held that "right to life under Article 21 does not include therein the right to die or the right to curtail the natural span of life. The right to life is a natural right whereas suicide is an unnatural termination of life, thus, it is incompatible and inconsistent with the concept of right to life. The concept of right to die is distinct from the principle of sanctity of life."

In India, passive euthanasia was for the first time allowed by the Supreme Court in the case of *Aruna Ramchandra Shanbaug v. Union of India*<sup>8</sup> on 9th March 2011 under certain circumstances. In this case the Court had ruled that "the general legal position all over the world seems to be that while active euthanasia is illegal unless there is legislation permitting it, passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained." The following are the guidelines laid down by the Hon'ble Supreme Court regarding passive euthanasia-

1. Firstly, a decision to discontinue life support should be taken either by the parents or spouse or other close relatives. In the absence of any of them, decision can be taken by a person or a body of persons acting as a next friend or doctors attending the patient but in such case the decision should be bonafide one and in the best interest of the patient.
2. Secondly, the Supreme Court had made it obligatory to take the approval from the High Court concerned even if the decision is taken by near relatives or doctors or next friend for withdrawing the patient life support because in India the possibility of mischief being done by relatives or others for inheriting the property of the patient cannot be ruled out.
3. Thirdly, the court had laid down the procedure to be adopted by the High Court when such an application is filed. The court propounded that a bench of at least two judges should decide this application, after taking opinion from a committee of three reputed doctors to be nominated by the bench after careful examination of the patient by those doctors. The court also directed that notice should be issued to the State and close relatives, next friend and after hearing them the High Court shall decide the application.

However, in the present case, the Supreme Court did not allow *Aruna Shanbaug*, a 63 years old woman who has spent her 37 years in hospital bed in a Persistent Vegetative State (PVS) state after an unfortunate assault on her, to conduct euthanasia because of the noble spirit, outstanding and unprecedented dedication of Hospital staff in taking care of *Aruna*. In this point the court had viewed that "the fundamental ground for refusing to entertain the prayer for termination of life was based on the facts that as the parents of *Aruna* were already dead and other close relatives were not interested in her, it is the K.E.M Hospital, Mumbai who have the best *locus standi* in making decisions for her and not Ms. Pinky Virani, a next friend of *Aruna*, who has filed the petition on behalf of *Aruna*."

*Aruna Shanbaug* breathed her last on 18<sup>th</sup> May 2015 due pneumonia after being in a PVS for nearly 42 years. Although, passive euthanasia was dismissed by the apex court in *Aruna* case but it has cleared the way for many suffering who want to die with dignity.

#### **The 241<sup>st</sup> Report of the Law Commission of India on Passive Euthanasia**

After the judgment of *Aruna Shanbaug* was delivered, the Law Commission of India submitted its 241<sup>st</sup> Report on Passive euthanasia in which it has rightly highlighted the clarification provided by the European Association of Palliative Care (EAPC) Ethics Task Force in a Discussion on euthanasia in 2003 to the effect that medicalised killing of a person without the person consent, whether non-voluntary or involuntary is not euthanasia; it is a murder. The 241<sup>st</sup> report points out that a rational and

<sup>4</sup> *Maharashtra v. Maruti Shripati Dubal*, AIR 1987 Cr LJ 549.

<sup>5</sup> *Chenna Jagadeeswar v. State of Andhra Pradesh*, (1988) Cri.L.J. 549.

<sup>6</sup> *P. Rathinam v. Union of India*, (1994) 3 S.C.C. 394.

<sup>7</sup> *Gian Kaur v. State of Punjab*, (1996) 2 S.C.C. 648.

<sup>8</sup> *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 S.C.C. 454.

humanitarian outlook should have primacy in such a complex matter. Recognizing that passive euthanasia, both in the case of competent and incompetent patients, is being allowed in most of the countries subject to the doctor acting in the best interest of the patient, the report summarized the board principles of medical ethics which shall be observed by the doctor in taking the decision. The said principles as obtained in the report are the patient's autonomy and beneficence which means following a course of action that is best for the patient uninfluenced by personal convictions, motives or other considerations. The report also refers to the observations made by Lord Keith in *Airedale* case providing for a course to safeguard the patient's best interest. As per the said course, which has also been approved by this Court, the hospital/ medical practitioner should apply to the Family Division of the High Court for endorsing or reversing the decision taken by the medical practitioners in charge to discontinue the treatment of a PVS patient. With respect to the ongoing debates on legalizing euthanasia, the Report reiterates the observations made in *Airedale* that euthanasia other than passive euthanasia can be legalized by means of legislation only.

The Court noticed that there is no legal framework regarding Advance Medical Directives in India thus, in order to protect the rights of citizens as enshrined in Article 21 of the Indian Constitution, in exercise of the power under Article 142 of the Constitution and the law stated in *Vishaka V. State of Rajasthan and Others*<sup>9</sup> it issued comprehensive guidelines and safeguards pertaining to Advance Directives. The said guidelines are to remain in force till the parliament introduces legislation in this regard. The guidelines are as under-

**1. Who can execute the Advance Directive and how?**

- a. The Advance Directive can be executed only by an adult who is of a sound and healthy state of mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document.
- b. It must be voluntary executed and without any coercion or inducement.
- c. It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering.

**2. What should it contain?**

- a. It should clearly indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to.
- b. It should mention that the executor may revoke the instructions/authority at any time.
- c. It should disclose that the executor has understood the consequences of executing such a document.
- d. It should specify the name of a guardian or close relative who, in the event of the executor becoming incapable of taking at the relevant time, will be authorised to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive.

**3. How should it be recorded and preserved?**

- a. The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the concerned District Judge.
- b. The witnesses and the jurisdictional JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.
- c. The JMFC shall inform the immediate family members of the executor, if not present at the time of execution, and make them aware about the execution of the document.
- d. The JMFC shall handover copy of the Advance Directive to the family physician, if any.

**4. When and by whom can it be given effect to?**

- a. In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness of the same from the jurisdictional JMFC before acting upon it.
- b. The instructions in the document must be given due weight by the doctors. However, it should be given effect to only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is no hope of him/ her being cured.
- c. If the physician treating the patient (executor) is satisfied that the instructions given in the document need to be acted upon, he shall inform the executor or his guardian/ close relative, about the nature of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. He must also ensure that he believes on reasonable grounds that the person in question understands the information provided and has come to a firm view that the option of withdrawal or refusal of medical treatment is the best choice.
- d. The physician/ hospital where the executor has been admitted for medical treatment shall then constitute a Medical Board consisting of the Head of the treating Department and at least 3 experts from different fields, with experience of at least 20 years. This Medical Board shall visit the patient in the presence of his guardian/ close relative and form an

<sup>9</sup> *Vishaka V. State of Rajasthan and Others* (1997) 6 SCC 241.

option on whether or not to certify carrying out the instructions of withdrawal/ refusal of further medical treatment. This decision shall be regarded as a preliminary opinion.

- e. In the event the Hospital Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the physician/ hospital shall inform the jurisdictional Collector about the proposal. The jurisdictional Collector shall then constitute a second Medical Board comprising the Chief District Medical Officer of the concerned district as the Chairman and 3 expert doctors with experience of at least 20 years. They shall jointly visit the hospital where the patient is admitted and if they concur with the initial decision of the first Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive.
  - f. The Board constituted by the Collector must ascertain the wishes of the executor if he is in a position to communicate and is capable of understanding the consequences of withdrawal of medical treatment. In the event the executor is incapable of taking decision or develops impaired decision-making capacity, then the consent of the guardian nominated by the executor in the Advance Directives should be obtained.
  - g. The Chairman of the Medical Board nominated by the Collector, that is, the Chief District Medical Officer, shall convey the decision of the Board to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment. The JMFC shall visit the patient at the earliest and, after examining all aspects, authorise the implementation of the decision of the Board.
  - h. It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.
- 5. What if permission is refused by the Medical Board?**
- a. If permission to withdraw medical treatment is refused by the Medical Board, the executor of the Advance Directive or his family members or even the treating doctor or the hospital staff can approach the High Court by way of writ petition under Article 226 of the Indian Constitution.
  - b. If such application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent Committee consisting of 3 doctors with experience of at least 20 years.
  - c. The High Court shall hear the application expeditiously after affording opportunity to the State Counsel.
- 6. Revocation of Advance Directive**
- a. An individual may withdraw or alter the Advance Directive at any time she has the capacity to do so, and by following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.
- 7. Where there is no Advance Directive**
- a. The Court has held that the same procedure and safeguards that apply in cases where an Advance Directive exists will be followed when there is no Advance Directive. However, the Court has prescribed an additional procedure to be followed in such cases.
  - b. In cases where the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is incurable or where there is no hope of being cured, the physician may inform the hospital which, in turn, shall constitute a Hospital Medical Board. This Board shall discuss with the family physician and the family members and record the minutes of the discussion in writing. During the discussion, the family members shall be apprised of the pros and cons of withdrawal or refusal of further medical treatment to the patient. If they give consent in writing, then the Hospital Medical Board may certify the course of action to be taken. Their decision will be regarded as a preliminary opinion.
  - c. The rest of the procedure will remain the same as is followed in case there is an Advance Directive.

## GLOBAL PERSPECTIVE ON EUTHANASIA

The trends of euthanasia have gained importance in various parts of the world with several instances. Controversy over euthanasia differs from country to country, society to society and culture to culture. The following account will presents some of the legal status of euthanasia in different countries-

- 1. Netherlands-** Netherlands is the first country in the world to legalize euthanasia and Physician Assisted Suicide on April 2002. In Netherlands, euthanasia is regulated by the "*Termination of Life on Request and Assisted Suicide (Review Procedure) Act, 2002*". The Act states that "euthanasia and Physician Assisted Suicide (PAS) are not punishable if the attending physician acts in accordance with the criteria of due care". It legalizes euthanasia and PAS in very specific cases, under very specific circumstances.

According to the Penal Code of Netherlands, "killing a person on his request is punishable with 12 years imprisonment or fine and for assisting a person to commit suicide is punishable with 3 years imprisonment or fine." Regardless of this provision, the Courts of Netherlands have come to interpret the law by providing defence of necessity in charges of voluntary euthanasia and PAS. The criteria's laid down by the Court in determining the defence of necessity in the case of euthanasia have been summarized by Mrs. Else Borst-Eilers, the D66 Minister of Health, as follows-

- a. The patient's suffering is unbearable with no prospect of improvement.
- b. The patient's request for euthanasia must be voluntary and well considered.
- c. The patient's must be fully aware of his/her condition, prospects and options.

- d. There must be consultation with at least one other independent doctor who needs to confirm the conditions.
- e. The death must be carried out in a medically appropriate fashion by the doctor or patient, in which case the doctors must be present.
- f. The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents).

In Netherlands, active euthanasia is technically unlawful though it is considered defensible if the physician follows the guidelines.

2. **Belgium-** In Belgium, the practice of euthanasia was made legal with the enactment of the “Belgium Act on Euthanasia” on 28<sup>th</sup> May, 2002. The Act provide that an adult patients can wish to end their life if they are under horrendous physical or mental pain resulting from an accident or an incurable illness and the doctors who practices euthanasia commit no offence if they follows the prescribed conditions and procedure. The Act further states that for exercising euthanasia, the patient must have a legal capacity and the request is made voluntary and repeatedly with no external pressure.
3. **Luxembourg-** Luxembourg has also legalized the concept of euthanasia with the passing of Euthanasia and Assisted Suicide Law on 16<sup>th</sup> March, 2009. The law permits euthanasia and assisted suicide in relation to those with incurable conditions with the requirements including repeated requests and the consent of two doctors and an expert panel.
4. **United Kingdom-** The practice of euthanasia is a criminal offence in the United Kingdom. Section 2 (1) of the Suicide Act, 1961 states that “a person assisting an individual who wish to die commits an offence.”
5. **United States of America-** In the United States of America, active euthanasia is made totally illegal by the Supreme Court of United States in the cases of *Washington v. Glucksberg*<sup>10</sup> and *Vacco v. Quill*<sup>11</sup> but Physical-Assisted Death is legal in the States of Oregon under the Oregon Death with Dignity Act, 1997, Washington under the Washington Death with Dignity Act, 2008 and in Montana by the State judiciary. In Oregon and Washington only self-assisted dying is permitted. If the doctor administered assisted dying or any form of assistance to help a person commit suicide outside the provisions of the legislation remains a criminal offence.
6. **Australia-** The Northern Territory of Australia was the first country to legalize euthanasia in 1996 and the first to repeal the Act in 1997. The Northern Territory of Australia had legalized euthanasia by passing the Rights of the Terminally Ill Act, 1996. In *Wake v. Northern Territory of Australia*,<sup>12</sup> the Supreme Court of Northern Territory of Australia had held euthanasia legal but later the practice of euthanasia was made illegal by the Euthanasia Laws Act, 1997 by repealing the Northern Territory Legislation.
7. **Canada-** In Canada, Physical Assisted Suicide is illegal as per Section 241(b) of the Criminal Code of Canada. In *Sue Rodriguez v. British Columbia* (Attorney General)<sup>13</sup> the Supreme Court of Canada states that in the case of assisted suicide the interest of the State will prevail over individual’s interest.” Thus in Canada, patients have the right to refuse life sustaining treatments but they do not have the right to demand for euthanasia or assisted suicide.
8. **Germany-** In Germany, active assisted suicide is illegal though it is not so in the case of passive assisted suicide. Thus, if the doctors stop life-prolonging measures then it shall not be considered as a criminal offence in Germany.

## CONCLUSION

Euthanasia elicits a strong emotion as it is concerned with life and death issues. Human life is sacred thus we placed the sanctity of life on the high pedestal. But, sanctity of human life does not imply forced continuation of an existence in pain and suffering. Under the Indian Constitution right to life includes right to live with human dignity. Here, the term ‘dignity’ means dignity attaches throughout the life of the individual. Every individual has a constitutionally protected expectation that the dignity which attaches to life must subsist even in the culminating phase of human existence. Dignity of life must encompass dignity in the stages of living which lead up to the end of life. Dignity in the process of dying is as much a part of the right to life under Article 21. To deprive an individual of dignity towards the end of life is to deprive the individual of a meaningful existence. Hence, the Constitution protects the legitimate expectation of every person to lead a life of dignity until death occurs. Thus, where there is no hope for revival, priority shall be given to the Advance Directive and the right of self-determination. The concept of euthanasia is an act which leads to a good death because it focuses mainly on the fact that patient suffering ought to be prioritized over the patient life. It does not kill a patient but allowing the critically ill patients to end his own life on his wish to die peacefully. In euthanasia the quality of life is taken care of.

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