

**Euthanasia the evolving concept in India and its legal terminology**

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## TABLE OF CONTENTS

INTRODUCTION.....	3
RESEARCH DESIGN.....	5
a) Research Problem.....	5
b) Research Methods.....	5
c) Research Aim and objectives.....	5
d) Research Questions.....	5
ANALYSIS.....	6
Legal Aspect.....	6
What Is Euthanasia and right under Art 21 of the Constitution.	
1. Decriminalization of suicide in India	
2. Active and Passive Euthanasia legal efficacy	
Euthanasia the concept toward Art 21 Right to live and die with dignity	
Bibliography.....	13

## **Euthanasia the evolving concept in India and legal terminology**

### **INTRODUCTION**

The concept of Euthanasia both passive and active has been the topic of debate in India. Which was brought into the streamline of legal field by the case of Gian Kaur v. State of Punjab in 1996. After this there were several other cases in which the Supreme Court of India pronounced its discretion regarding the concept of Euthanasia, legalizing some of its part and also differentiating it from suicide.

The Supreme Court of India also pronounced that the concept of punishing the suicide offenders is not only violation of the constitutional rights under article 21 of the constitution but also detrimental to the mental health of the persons who have tried to commit suicide hence it was decriminalised and the offender of this suicide attempts were recommended to attend mental healthcare and the government was directed to ensure that no such individual who has attempted suicide shall be put in jail.

There are several viewpoints on the concept of euthanasia should it be allowed and differences between euthanasia and suicide which we are going to dwell.

## **RESEARCH DESIGN**

- a) **Research Problem** – Whether the current legal framework is capable of meeting the demands and outcomes intended regarding euthanasia and suicide.
- b) **Research Methods** – The researcher has applied doctrinal research methodology to include the data in the paper.
- c) **Research Aim and objectives** – To evaluate law related to suicides and euthanasia.
- d) **Research Questions** – Researcher will analyse the following questions
  1. What is suicide, euthanasia ?
  2. What is the Indian legal system regarding euthanasia ?
  3. What are international viewpoints on euthanasia and suicide ?

## ANALYSIS

*“We should relieve suffering when we can, and be with those who suffer, helping them to bear their suffering, when we can't. We should never deal with the problem of suffering by eliminating those who suffer.”*

They say – “There is law. There are people. There are conflicting interests and priorities. Then, there is competition in the system. Law is the only tool in the hands of the state to manufacture and sustain any system.”

The Judgement by the Supreme Court of India in the common cause versus the union of India case of 2018 legalised the passive euthanasia as the right to live under article 21 of the constitution of India. Although the active euthanasia is still not legal or of good moral in the country.<sup>1</sup>

The passive euthanasia is not similar to suicide, it is a process or concept of withdrawal from life support or medication to the accept the natural death in case the person is suffering from fatal disease or is in a condition that he is hopeless of his life ,where as the suicide is an attempt to take our own life.

The attempt to suicide has been decriminalised but the abetment to suicide and to help in committing a suicide remained criminal offense under article 309 of Indian Penal code , the attempt to suicide has been decriminalised by the Mental health Act, 2017.

Here, Medical Health Act 2017 decriminalises the attempt to suicide but the person who tried to commit the suicide are recommended to consult with a mental health care specialist and the person who has committed the act of abetment to commit suicide is charged under section 309 of Indian Penal Code and is punishable for not more 10 year of imprisonment and fine.

### **Legal Aspect**

Sections that are relevant for the project are –

**“ Article 21 of the Constitution of India:** *No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

The right of life granted by the constitution of India under article 21 state that the person has a very right to live with dignity and to die with dignity according to the recent judgement of the Supreme Court of India this article also encompasses there right after person to die but we right die is not fully functional as only the passive euthanasia is valid as per law of the land.

The right under article 21 of the constitution of India is not only granted to the citizens of the India but also to anybody present on this land, it is a universal right and cannot be violated against anyone except for procedure established by law.

**“The Mental Healthcare Act, 2017** *We envisage a society in which mental health problems are an acceptable and in some ways valued part of the human experience.*”<sup>1</sup>

The mental healthcare act 2017(MHCA) has changed the Indian perspective and approach to the suicide victims or suicide attempters, previously the laws in India had a punitive functioning toward these persons who have or had tried committing suicides. But this act admitted that the person committing suicide requires mental healthcare and shall not be punished as it leads to serious consequences and even more degradation of their psyche.

This act Decriminalises the act attempt to suicide but under article 309 of Indian Penal Code the Batman to the suicide and help bring in the suicide remains the criminal offence. MHCA makes the suicide attempt non punitive and grants the person who attempted the suicide right to mental healthcare and right to chose specific of mental healthcare he/she wants to receive maintain confidentiality of the the person and his medical condition to grant his dignity and treat him with respect.

In simpler words, this act not only provides the suicide attempters a second chance at life but also shower light on the Mental healthcare and concept of mental health which has much attached stigma to it in India.

### **What is Euthanasia ?**

Euthanasia is derived from Greek word ***Eu*** means good and ***Thanatos*** means death. It is practice of ending the life of the person to grant him relief from the pain and suffering. The person would be either terminally ill or experiencing the greatest of the pain making him lose the will to live or is in a condition where his death is certain like cancer of 3<sup>rd</sup> or 4<sup>th</sup> stage.

Euthanasia can be classified into several types some of them are

- Active euthanasia: The person who is terminally ill or suffering from unbearable pain is given poison or drug to shorten his life it is known as active euthanasia. This type of euthanasia is criminal offence in India under Art 309 of IPC .
- Passive euthanasia: The person who is terminally ill or suffering from unbearable pain withdraw his life or medication to accept his death naturally is known as passive euthanasia.
- Voluntary euthanasia: The person who is terminally ill or suffering unbearable from pain requests to end his life then it is know as voluntary euthanasia.
- Involuntary euthanasia: The person who is terminally ill or suffering unbearable from pain is unconscious or his wishes are unknown and euthanasia performed on such person is against their will. This form of euthanasia is also criminal offence in India.
- Indirect euthanasia: The person who is in a condition where he is suffering from fatal health disorders is provided with medication to relieve his pain but the medication has several side effects that causes shortening of his life is known as Indirect euthanasia.
- Assisted suicide: The person who is terminally ill or suffering unbearable from pain asks for the help to kill himself it is known as Assisted Suicide. It is criminal offence under section 309 of IPC.

The Euthanasia and Suicide are not much different, in euthanasia the person has lost his will to live due to his physical or health conditions whereas in the Suicide the person can be physically fit but has lost his will to live due to his circumstances. The person who attempts are mentally unstable and they need the Mental healthcare care for rehabilitation.

### **Evolution of Law in views of Euthanasia.**

The concept of euthanasia is of civil nature in India and hence, the evolution or the progression in law related to this matter is based of judgment pronounced by the High Courts or the Supreme Court of India.

In a judgment by the two judges bench of the Supreme Court of India , it was held that a person has a right not to live a forced life and attempt to suicide is not illegal.<sup>1</sup> but this judgment was overruled by the judgment of the constitutional bench of Supreme Court of India which leaf to section 306 and 309 of IPC to remain constitutionally valid. <sup>2</sup>

Five judges bench of the Supreme Court revised the legal position laid down in the Gian Kaur (Supra) and has held that a person has right to live with dignity up to the point of death I.e. right to die with dignity. This right is enshrined under article 21 of constitution of India.

This right grant permission to the person of sound mind who has right thinking capabilities as well as capabilities of understanding to refuse medical treatment and embrace the natural death.<sup>2</sup>

If a person is not in a condition in which he/she cannot make informed decisions can also exercise his right to euthanasia through hiring a competent medical expert on behalf of himself/herself, which will be implemented by court of law.

Passive euthanasia can be legal but the permission to grant such is the domain of the legislature and matter of policy.

### **International view on Euthanasia and Suicide**

International community is very steady in dealing with such conditions as euthanasia and suicide while in our community there is stigma and punitive approach which has some what changed over after decades of debates and deliberation.

Under English law , suicide is not an offence after 1961 but mercy killing in the form of euthanasia is treated as murder and assistance to committing suicide is statutory offense and punishable by upto 14 years of imprisonment. In the R (*on the application of pretty*) v. Director of public prosecution , the house of lords held that the right to life and other human rights contained in the European convention and enforced in England by Human Rights Act , 1998 will not make the state obliged to legalize the assistance to suicide. Canada and United States of America have similar view point on this matter.

The first law that permitted medically assisted euthanasia of the voluntary form is The Rights of Terminally Ill Act passed by the Parliament of Australia's Northern Territory. This act allows a person incurably sick to end his life after he/she is confirmed to medically ill and sane by a medical expert and a psychiatrist.

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<sup>2</sup> R(*on the application of pretty*) v. Director of Public Prosecution , (2002) 1 ALL ER 1 (HL).

Rodrigues v. AG of Canada, (1994) 2 LRC 136  
Northern Territory v GPO ,(1999) 73 ALJR 470 ,p 480.

This law was overridden by another law enacted by the Commonwealth Euthanasia Act, 1997, which further simplified and more extensively granted and discussed the right to take Euthanasia.

Currently, India does not have such clear law regarding Euthanasia and it has only allowed passive euthanasia in the country, which is also subjected to prior permission from the government.

## **Conclusion**

Euthanasia is a concept which has emotions and stigma attached to it , In India even ending own life is seen as mental instability and hence , our approach to such was punitive in nature from the beginning and this case is similar with suicide but the changing time and view of society requires the laws to change as such MHCA : Mental Healthcare Act , 2017 decriminalised the attempt to suicide but in relation to the concept of euthanasia there is not much of the progress , although Supreme Court and High Courts of India had and have laid down many judgements pronouncing different guidelines and allowing passive euthanasia but there is no clear framework for the same.

It is a high time when the world around us has already accepted the concept of euthanasia we should also make clear regulations regarding it and make sure no one suffers the pain if he/she does not want to.

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