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# Interpretation Perspective With Regards to Right to Life and right to Die

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# Interpretation Perspective With Regards to Right to Life and Right to Die

*By: Muskaan Halani*

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# DECLARATION

I, ***Muskaan Halani***, confirm that the work for the following research paper titled "Interpretation perspective with respect to right to life and right to die" was solely undertaken by myself under the guidance of Adv. Anirudha Joshi, the professor for the following subject. All sections of the paper that use quotes or have footnotes or describe an argument or concept developed by another author have been referenced, including all secondary literature used, to show that this material has been adopted to support my research. I assert that the statements made and conclusions drawn are on outcome of my own research and that the work contained in the research is original. I have also followed the guidelines provided by the university in writing this research paper.

## ABSTRACT

*When a person decides to die, it is never an easy decision because basic human instinct is survival, we try everything in our power in order to ensure that we do not hurt or harm ourselves. Therefore the decision to die is only taken due to a mental illness or when the suffering in life makes it impossible to live a normal life and there is no chance of recovery. This is when euthanasia is discussed. Euthanasia is controversial because it might make one choose between the right to life and the right to die and hence the paper is based on the debate between right to life and right to die and whether euthanasia should be made permissible by law. The paper examines the views of different countries on these rights with the help of rules of interpretation. It examines how the interpretation or views of these countries have changed over the year. The paper also provides arguments for and against euthanasia and then provides recommendations on the basis of those arguments.*



## KEYWORDS

Euthanasia, Mercy killing, Suicide, Voluntary euthanasia, Consent for killing, Passive euthanasia, Active euthanasia, Right to life, Right to die.

## INTRODUCTION

*"I'm not afraid of being dead. I'm just afraid of what you might have to go through to get there."-Pamela Bone.*

The above quotation talks about the suffering which one might go through while they wait to die and that brings about the discussion of the two most fundamental rights in any person's life, the right to life and the right to die. While there are some scholars who believe that right to life and right to die are two sides of the same coin and that they both can be enforced. The logic behind that is, if an individual has the right to life; they should also have the right to die with dignity as a part of their right to life. While other scholars believe that these rights cannot coexist because the right to life includes the state's duty to protect the lives of all citizens and hence right to die cannot be given to any citizen. Article 21 of the Indian Constitution guarantees the right to life to everyone. This right to life has been deciphered by the Indian judiciary in different manners in order to incorporate several other rights within the right to life, for example, the right to live with dignity, right to work, right to food, right to education and there are several other rights included and guaranteed under Article 21. However the right to die is not explicitly included in it. The Right to die is the idea that an individual should have the right to die when he chooses to do so. This right is generally associated with individuals who are terminally ill and have no hope to recover and therefore they want to die instead of living a life full of suffering. This welcoming of death due to a terminal illness is also known as euthanasia. The right to die could also be said to include the right to commit suicide but this paper would not be address that issue as most countries including India no longer consider suicide a crime.

There is however a difference between suicide and euthanasia. Suicide is defined as " means the act of killing yourself deliberately. Therefore, suicide could be termed as the intentional termination of one's life by self-induced means for various reasons[1]". The concept of euthanasia may seem similar but it is in fact different from suicide. Euthanasia is defined as "It means the act or practice of killing or bringing about the death of a person who suffers from an

[1] Oxford Advanced Learner's Dictionary of Current English. (2000). Sixth Edition

incurable disease or condition, especially a painful one, for reasons of mercy"[2]. The term Euthanasia is taken from the Greek roots of "eu" which signifies "well or good" and "thanatos" which signifies "death" implying that euthanasia means good death. Euthanasia has been characterised as the administration of medications which could take away a patients' life, at the patient's own solicitation or request[3]. Euthanasia in a real sense implies putting an individual through a painless death particularly if there should arise an occurrence of hopeless misery or when life gets purposeless because of mental or physical impairment. In accordance with the present understanding, euthanasia is restricted to the executing of patients by doctors in order to free them of horrendous torment or from a terminal ailment. In this way the essential goal behind euthanasia is to guarantee a less agonising death to an individual who is regardless going to die after a significant period of suffering. However the concept of right to die is rather an old one. In ancient Greece and Rome helping other people die or killing them was viewed as allowable in certain circumstances. For instance, in the Greek city of Sparta babies with serious birth defects were executed[4].

The topic of Euthanasia has brought about discussion on right to die again in the contemporary world. Euthanasia, as we as a whole know is an extremely questionable theme in the present world. There have been heated discussions, not only inside courtrooms, but also among elites, scholarly people, academicians and the general public. The Judiciary has been eager to see the discussion over the presence of a "right to die" as one which is included in the right to life, while legislature's have been pushed to administer laws for both for and against allowing of euthanasia. The views of several countries have changed over the last decade on the topic of euthanasia. The interpretations of several previously existing rights such as the right to life have changed and some countries have made euthanasia legal as a part of right to life. While some countries have established new statutes and laws to ensure that euthanasia is practice legally and within bounds.

The paper is therefore going to explain various different forms of euthanasia. It will also talk about and explain different rules of interpretations and talk about the countries which follow

[2] Black's Law Dictionary (8th ed.).

[3] Brody, Baruch. (1998). Life and Death Decission Making, New York; Oxford University Press.

[4] Laws of Manu, translated by George Buhler, Sacred Books of the East by F. Maxmuller (1967 reprint). Vol. 25,

those rules while interpreting the euthanasia. This would include how interpretation of laws or rights related to euthanasia have changed over the years and how different rules of interpretation were used to in past which made euthanasia illegal and which rules of interpretation are used in the present times where euthanasia is being made legal. It would also include countries in which euthanasia is still illegal and which rules of interpretation are used by those countries and it would include countries in which only passive euthanasia is practiced and which rule of interpretation they use to interpret the laws related to the issue. The paper would also address the authors opinion on euthanasia and reasons why it should or should not be legalised. The paper would conclude with recommendations that can be implemented in order to balance the right to life and right to die.

## OBJECTIVE OF THE PAPER

1. The paper aims to understand how views of different nations have changed about euthanasia
2. It also aims understand how various countries have used rules of interpretation in order to decide on the issue of euthanasia.
3. It aims to understand which rules of interpretation were used in past by those nations
4. It also aims understand which rules of interpretation are currently being used by the nations
5. The paper aims to determine if right to life would include to right to die
6. To understand the reason why terminally ill patients should be allowed to die with the help of a doctor and how that is included in the right to die
7. The paper aims to understand role that rules of interpretation have played in order to enforce or take away the right to die

## HYPOTHESIS

"The rules of interpretation affect the legality of euthanasia" and " the rules of interpretation help balance between the right to life and the right to die"

The said paper is based on how rules of interpretation are used in various countries to interpret the right to life against the right to die and hence the paper will be able to prove the above two hypothesis by showing how rules of interpretation affect euthanasia as well as the right to life and die

## RESEARCH QUESTIONS

1. What is the difference in the views of countries on euthanasia in the past and present?
2. What role has the rules of interpretation played in changing these views?
3. Which rules of interpretation were used in the past by various countries?
4. Which rules of interpretation are used currently by various countries?
5. Should euthanasia be legalised?

6. What are the reasons for it to be legalised?
7. What are the recommendations that can be implemented in order to balance the right to life and right to die?

## RESEARCH METHODOLOGY

The research methodology used in the paper is doctrinal research. The research is mainly focused on case laws, statutes, books and other legal sources. Since the paper is focused on how laws about euthanasia of various countries have changed over the years, doctrinal research would be the most appropriate form of research methodology. The paper is also focused on applying various rules of interpretation to understanding this change and therefore a non-doctrinal method was not necessary. The scope of the research under the doctrinal method is wide enough to answer all the research questions and fulfil all the objectives mentioned above and that is the reason I have chosen this methodology of research.

## REVIEW OF LITERATURE

Lukas Radbruch, Carlo Leget, Patrick Bahr,Euthanasia and physician-assisted suicide: A white paper from the European Association for Palliative Care, Palliative Medicine 2016, Vol. 30(2)

The paper is based on the views of Euthanasia in various different countries of Europe. It defines various important terms under euthanasia and explains it different forms. It talks briefly about the history of euthanasia laws in various countries not just in Europe but around the world as well. It talks about counties in which euthanasia is legal and the laws which govern it in those countries. It provides statistics to show how many people have benefited from euthanasia being legal in those countries. It also talks about issues which are faced in those countries on an organisational level at least. It explains how some medical professionals are still against it and the reasons for that as well.

Vinod Srivastava, Euthanasia: a regional perspective, Ann Neurosci. 2014 Jul; 21(3): 81–82

The paper is generally based on the Indian perspective of euthanasia. It compares the position of euthanasia in India to various other countries in which euthanasia is either legal or illegal. It also takes into account Gandhi's perspective on it. It talks about even though Ahimsa played a very big roles in Gandhiji's life, he still believed in providing people with a mercifully death and hence he supported Euthanasia as well. The paper talks about why euthanasia is considered as a controversial topic especial in India.

Mark Dimmock and Andrew Fisher,Ethics for A-Level, Chapter Title: Euthanasia
Open Book Publishers

The paper is on ethics of euthanasia. It first explains the various important definitions under euthanasia which help explain the different types of euthanasia. It then provides for reasons or situations in which the author considers euthanasia as permissible. The author explains the situations in dept and then provides for valid reasons why euthanasia should be allowed in those situations. There are also situations in which the author thinks euthanasia should not be allowed and the author provides reasons for those as well. Therefore the author clearly shows the pros and cons of making euthanasia legal. Even though most of the pros or cons are from an ethical point of view, they provide a very clear understanding of why one would legalise euthanasia or why one would want to keep it illegal. The author in the end also provides situations from countries in which euthanasia is legal but there Is gap between the law and its implementation.

## CLASSIFICATION OF EUTHANASIA

Euthanasia is classified into different forms depending on how it is carried out. It is essential to know the various forms of euthanasia, as only some of them are legal in countries while other forms are illegal in most countries. Knowing the various forms will also help understand how the different rules of interpretation are applied later on in the paper. The various forms of euthanasia are:

a. **Voluntary Euthanasia :** Voluntary euthanasia happens when an individual settles on their own decision to have their life ended in order to ensure that they do have to face any future suffering. It is voluntary when the euthanasia is performed with the want and consent of the patient. Voluntary euthanasia is considered with giving a terminally ill patient the right to choose when they wish to die keeping their best interest in mind.

b. **Non-Voluntary Euthanasia**: Non-voluntary euthanasia takes place when the choice with respect to a peaceful death is made by someone else, on the grounds that the person to be euthanised cannot or is not in the state to make that choice for themselves. This type of euthanasia is most normally connected with babies or patients in a state of coma who cannot make that choice for themselves, because of their age or their condition. It alludes to ending the life of an individual who isn't intellectually equipped to make an educated decision about their own death, for example, a comatose patient. In Non-Voluntary euthanasia the patient has left no such living will or given any explicit instructions as the patient might not have foreseen any such mishap or projection. In instances of non-voluntary euthanasia, it is frequently the relatives, who make that choice for the patient[5].

c. **Involuntary Euthanasia:** when the patient is executed without a communicated wish to do so, it is considered involuntary euthanasia. It alludes to cases wherein a competent patient's life (a patient not in coma) is finished against their desires which are in fact opposite euthanasia; and would plainly add up and be considered as murder.

[5] Nandy, Apurba. (1995*) Principles of Forensic Medicine*, 1st Edition, Page 38. Kolkata, New Central Book Agency (P) Ltd

The above offers a distinction between various kinds of euthanasia with respect to the individual who is making choice. Also, we can distinguish between various sorts of euthanasia depending on the method used to end a life.

a. **Active Euthanasia:** It is also known as Positive Euthanasia. Active euthanasia includes providing a merciful death to an individual by providing a painless death, as when a doctor administers a deadly portion or a lethal injection to a patient. If an individual is actively euthanised it implies that their death was brought about by outside mediation instead of a natural death[6].

b. **Passive Euthanasia**: Passive euthanasia happens when an individual is permitted to die because of the intentional withdrawal of treatment that may keep them alive. In this way, an individual who is passively euthanised is permitted to die by means of regular causes despite the fact that methods or medicines to keep them alive may be accessible. An individual who has a ventilator machine turned off, for instance, dies by means of regular causes yet just because of a choice to permit a natural death to take place. Euthanasia is passive when death is caused on the grounds that a treatment that is continuing the life of the patient is held off and the patient dies subsequently thereof. In "passive euthanasia" the doctors are not actively murdering anybody; they are essentially just not saving him. In most countries passive euthanasia is made legal.

c. **Physician Assisted Suicide**: Physician Assisted Suicide is a suicide committed with the guidance of someone else, in this case a doctor. It includes a specialist purposely and intentionally giving an individual information or means or both needed to commit suicide. It is done by giving guidance about deadly dosages of medications, recommending such deadly portions or providing the medications.

In different countries various combinations of the types of euthanasia are permitted for example Voluntary and Active Euthanasia is legal in Belgium whereas in India only Passive Euthanasia is legal. Therefore understanding and knowing the various types of Euthanasia was essential to understand what kind of euthanasia is permitted in various countries.

[6] Dr. Parikh, C.K. (2006). Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology. 6th Edition, Page 1.55. Ne Delhi, CBS Publishers & Distributors

## RULES OF INTERPRETATION

There are various rules of interpretation used by the judiciary or lawyers or law makers while interpreting statutes, laws or issues in a case. It is essential to understand these rules as it will help us understand how these rules were used by nations while interpreting or dealing with the issue of euthanasia. It will help us see how a change in the rule of interpretation changes the legality or the view of a nation on euthanasia. The rules of interpretation which are used in this paper are:

a. **Literal Rule:** Literal rule of understanding is the essential rule. Under this rule of interpretation the Courts decipher the resolutions in a literal and standard sense. They decipher the expressions of the law in a manner that is generally used and understood by all. The laws are meant to be understood in such a way like there is no other interpretation aside from the literal meaning.The literal rule of legal understanding should be the principal rule applied by judges. Under the literal rule, the expressions of the law are given their common or standard meaning and applied without the adjudicator looking to put a gleam on the words or try to figure out the statute. The jurist Jervis, has depicted the significance of literal rule in Abley v Gale[7] and has stated "Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral."

b. **Golden Rule:** It is a modification of the literal rule of interpretation. The literal rule emphasis on literal words utilized in the statute which may frequently prompt vagueness and ridiculousness. The golden rule attempts to evade peculiar and absurd outcomes emerging from literal translation. Keeping in mind the consequences, the grammatical meaning of such words is generally changed. The court is typically keen on conveying equity and to anticipate the results of their choices the golden rule is normally applied. The spirit of the law is considered rather than just the grammatical words used[8]. Language of the law is generally how the intention of the legislatures which formed the law is found.

[7] 20 L. J. C. P (N. S) 233 [1851]

[8] *R v Allen* (1872) LR 1 CCR 367

This rule of interpretation is utilized based on caution of the judges on giving due thought to the outcomes of the judgment given by them.

c. **Rule of Harmonious Construction:** When there is a contention between at least two statutes or at least two parts of a given statute, then the rule of harmonious construction should be used. The rule follows a straightforward reason that each law has a reason and expectation according to the statute and therefore it should be read all in all or as a whole. For the situation where it will be difficult to harmonise both the laws that are in conflict, the court's decision with respect to the interpretation will win. The rule of harmonious construction is the thumb rule to interpret any law. The construction which maintains a strategic distance from irregularity or harmony between the different segments or parts of the statute ought to be received. The Courts ought to maintain a strategic distance and avoid "a head on conflict" between the statutes, in the expressions of the Supreme Court. The rule of harmonious construction has been briefly clarified by the Supreme Court hence, "When there are, in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted, that if possible, effect should be given to both[9]". A construction which makes one segment of the law a dead letter ought to be stayed away from. Harmonious Construction should be applied to legal rules and courts ought to stay away from unintended outcomes.

[9] CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57, p. 74.

## VIEWS OF VARIOUS COUNTRIES ON EUTHANASIA

As stated earlier the views and laws of several countries have changed over the past decade and rules of interpretation have been one of the reasons for that change. As different rules of interpretation were used to interpret the old laws related to euthanasia or the right to die, the views of these nations changed and some countries have made euthanasia legal. The views on various different countries on euthanasia are:

### INDIA

Article 21 of the Indian Constitution states " No person shall be deprived of his life or personal liberty except according to procedure established by law" . This article of the Constitution provides the right to life however the right to die is not explicitly given in the section. The courts have interpreted this article several times in order to include several rights within this right to life like the right to clean air, or the right to food etc Whether or not article 21 includes the right to die or not has been debated in court several times and the interpretation have changed over the years. In a 1987 case of Maruti Shripati Dubal vs State Of Maharashtra[10], the Bombay High Court has stated " The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere. Freedom of business and occupation includes freedom not to do business and to close down the existing business. If this is so, logically it must follow that right to live as recognised by Art. 21 will also include a right not to live or not to be forced to live. To put it positively it would include a right to die, or to terminate one's life". In this case the constitutional validity of Section 309 of the Indian Penal Code was challenged, this section made attempt to suicide a crime. Therefore the court in this judgement used the *golden rule of interpretation* keeping in mind the consequences of not including the right to die in Article 21, which would be punishing an individual for attempting to take his own life which generally happens due a mental illness. The court did not just look at the literal meaning of the words in Article 21, which provides a positive right, the court saw the consequences. Therefore in this right to die was included in the right to life guaranteed under Article 21. However this judgement was overturned by the Supreme Court in the case

[10] 1987 (1) BomCR 499

Gian Kaur v. State of Punjab[11] . In this the Supreme Court stated that the right to life does not include the right to die. The court used the literal rule of interpretation and stated " Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in protection of life" therefore here the literal meaning of words in the statute were taken and hence the court stated that right to life is not a part of right to die. The Supreme Court has however made the right to die with dignity a right within the right to life in 2018 in the case of Common Cause (A Regd. Society) v. Union of India & Anr[12].

Now when the question of Euthanasia arises, Active Euthanasia is undoubtedly illegal as it would be considered as murder under Section 302 of IPC[13]. However the Supreme Court in the case of Aruna Ramachandra Shanbaug v Union of India has made only passive euthanasia legal. In this case the court used the harmonious rule of construction in which two rights, the right to life and right to die which are contradictory were balanced to give effect to both. The court applied the rule of harmonious construction by clearly stating the difference with Active and Passive euthanasia. The court has stated " The difference between "active" and "passive" euthanasia is that in active euthanasia, something is done to end the patient's life' while in passive euthanasia, something is not done that would have preserved the patient's life. An important idea behind this distinction is that in "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him." Therefore here the court meant that allowing active euthanasia would be against the right to life but allowing passive euthanasia not taking away the right to life, it is simply "not saving him" thereby giving him his right to die in peace. The court also applied the rule of harmonious construction by ensuring that the right to life is still intact while providing the patient with a right to die. This was done by putting restrictions on when passive euthanasia is allowed and the procedure to be followed in case of passive euthanasia. The approval of the High Court needs to be given under Article 226 for the withdrawal of a life supporting machine and the bench needs to consist of at least two high court judges and both of them need to give their approval. This therefore ensures that the right to life is protected as well as the right to die is ensured and hence both the rights are harmoniously balanced.

[11] (1996)2 SCC 648

[12] (2018) 5 SCC 1

[13] Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454,

Therefore in India passive euthanasia has been made legal however the legislature has yet not formulated any statute on it.

**NETHERLANDS**

In Netherlands before 2002 euthanasia was considered a crime according to the Dutch Penal code. Section 293 of the code states "Any person who terminates the life of another person at that other person's express and earnest request, shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category[14]" and Section 294 states " Any person who intentionally incites another person to commit suicide shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fine of the fourth category[15]" and even though it has been a crime according to the penal code the judiciary of Netherlands has been interpreting these laws in various ways. In the case of Ms. Postma[16], a doctor who, on the request of her terminally ill 78 year old mother terminated the life of her mother by injecting her with a lethal injection. The court found her guilty but only sentenced her to a week in imprisonment and a year of prohibition. The court followed the Golden rule of interpretation where even though she could be sentenced to 12 years in jail they did not sentence her to it because they saw the consequences of the act. They did not follow the black letters of the law but instead understood the situation and reasons for her act and hence in order to provide justice, they gave a more lenient sentence. This case was the first instance in which euthanasia first created a debate in Netherlands. The first case in which criminal liability was given to a doctor for performing euthanasia was the Schoonheim case[17]. Schoonheim was a doctor who performed euthanasia was his 95 year old patient at the request of the patient. The defence taken by him was medical exemption and the conflict between two of his duties, his duty to not violate section 293 and his duty to listen to his patient and release her of her suffering. The Supreme Court accepted this defence and stated "duty to relieve suffering trumps one of the traditional duties of the doctor—the duty not to kill[18]" however the defence of "medical exemption" was not accepted. Here the Supreme Court used the rule of harmonious

[14] Section 293, Dutch Penal Code

[15] Section 294, Dutch Penal Code

[16] Nederlandse Jurisprudentie 1973, no. 183;

[17] Nederlandse Jurisprudentie 1985, no. 106,

[18] Nederlandse Jurisprudentie 1987, no. 608.

construction where it balanced out the right to die with the right to life by accepting that right to die of a patient recreates a duty on the doctor to relieve suffering but court did not accept medical exemption as that would completely make right to life irrelative as any doctor could use it as a defence later.

In 2002 Termination of Life on Request and Assisted Suicide (Review Procedures) Act was made law by royal decree of Queen which has made euthanasia legal in Netherlands however there are certain restrictions where the rule of harmonious construction is used in order to balance right to life and right to die. Firstly the definition of euthanasia would be " Euthanasia" [euthanasie], in its strictest sense, is the intentional killing by a physician of a patient requesting death[19]." Therefore only Voluntary euthanasia is legal in Netherlands which means only when the patient himself wants to use his right to die he can, no one can enforce this right thereby indirectly protecting the right to life. A proviso was added to Section 293 which states " The action mentioned in section 1 is not punishable if it has been performed by a physician who has complied with the requirements of carefulness (see chapter 2 of the bill) and who has informed the municipal coroner[20]". Therefore there is a proper procedure that a doctor needs to follow and there are requirements of carefulness that a doctor needs to fulfil to ensure he is not going to be prosecuted. Some requirements of carefulness include " physician also fulfils the duty of notification, which means that the municipal coroner has to be informed as soon as possible and that the attending physician is required to submit a written report which must be compiled on the basis of a specific model form[21]". This ensures that right to life is not unreasonably going to be violated but also ensures the right to die is given to a patient thereby balancing these two rights.

Therefore active and passive euthanasia is legal in Netherlands but it has to be voluntary euthanasia.

**FRANCE**

[19] Ministerie van Justitie [The Ministry of Justice] offers the following definition in answer to the question of "What is euthanasie?" ["What is euthanasia?"].

[20] Section 293, Dutch Penal Code

[21] Chapter 2, Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002

Euthanasia is illegal in France currently. Article 223 of the French Penal Code states " Inciting or helping another person to commit suicide is punished by three years' imprisonment and a fine of €45,000 where the incitement was followed by suicide or attempted suicide.[22]". However they have introduced a new law in 2016 after the case on Vincent Lambert. He was in vegetative state due a very serious car accident in 2008. There was a very long legal battle which involved the European Court of Human Rights as well. Earlier passive euthanasia was permitted in France if doctors thought that no further treatment could be given but in this case the parents of Lambert did not want to take him off life support whereas the doctors thought he would just suffer more if kept on life support. Due to all this debate a new law was passed in 2016 called "loi Léonetti-Claeys". According to this law a terminally ill patient instead of being euthanized would be put in a long continuous deep sedation until they died in order to decrease their suffering. This law made euthanasia illegal. This new law uses the golden rule of interpretation whereby the right to life on an individual is completely protected but at the same time the legislature has kept in mind the consequences of not providing a right to die, which is that a terminally ill patient would suffer until they died and therefore they introduced a law in which the right to life was protected but also that the patient is not suffering as a consequence of that right. The law is still a very controversial issue as there is no clarity as to what would be done if the patient is terminally ill but not in a vegetative state, would they still be allowed to be put in coma? The Lambert case would however be the first due to which a country has gone from euthanasia being legal to making it a crime and finding a middle path between the right to life and the right to die.

## UNITED STATES OF AMERICA

In the United States of America every state gets to have its own view on whether euthanasia is legal or illegal. Euthanasia is illegal is America however in nine states doctors can prescribe lethal drugs in order to assist suicide which is also known as physician assisted suicide. The 14th amendment of the American Constitution states " No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws[23]" In the case of Cruzan v

[22] Article 223, French Penal Code, 1994

[23] U.S. Const. amend. XIV, § 1

Harmon[24] the Supreme Court of Missouri has stated "The court held that the State of Missouri had a clear interest in preserving life, but "the state's interest is not in quality of life... [w]ere quality of life at issue, persons with all manner of handicaps might find the state seeking to terminate their lives. Instead, the state's interest is in life; that interest is unqualified[25]". In this case Curzan due to a vehicular accident was put in a vegetative state for 8 years however she was not considered terminally ill and could have lived for 30 years more. Her parents filed a petition in order to have her food and hydration withdrawn but the Supreme Court ordered against it. In this case the court clearly used the literal rule of interpretation whereby the court took the literal meaning of the words 'preserving life' and did not include quality of life as a part of preserving life while interpreting it. In this the right to life under the 14th amendment was completely protected while rejecting the right to die. But this was only in the state of Missouri. In the states of District of Columbia, Hawaii, Maine, New Jersey, Oregon, Vermont and Washington physician assisted suicide is legal, while in Montana and California there have been court rulings in favour of physician assisted suicide but there is yet no state law on it. There has also been ,one legal battles in order to ensure physician assisted suicide is legal in the states mentioned above. Let's take Washington as an example; in the case of Compassion in Dying v. State of Washington[26]The federal court had stated " the state of Washington has already decided that its interest in preserving life should ordinarily give way to the wishes of the patients. At least in the case of competent, terminally ill adults who are dependent on medical treatment[27]" In this case the court used the rule of literal interpretation and literally interpreted the words given in the 14th amendment and ensured right to die or physician assisted suicide was not permitted. However this decision was overturned by the U.S Supreme Court which ruled in favour of physician assisted suicide for the first time in the case of Washington v. Glucksberg[28] Supreme Court stated " terminal patients have options in addition to assisted suicide. Washington law permits physicians to minimize pain when withdrawing artificial life-support by administering medication that will hasten death even further. Also, Washington law permits physicians "to administer medication to patients in terminal conditions when the primary intent is to alleviate pain, even when the medication is so powerful

[24] Cruzan v. Harmon, 760 S.W. 2d 408, 411 (Mo. 1988)

[25] Ibidem at 420

[26] Compassion In Dying v. State Of Washington, 79 F.3d 790 (9th Cir. 1996).

[27] *Ibidem*, at 817

[28] 521 US 702 (1997)

as to hasten death and the patient chooses to receive it with that understanding" therefore in this the rule fo harmonious constitution was used where protected the right to life by ensuring that only terminally ill patients will be allowed physician assisted suicide whereas the right to die was also ensured to terminally ill patients. Thereby it balanced both the rights in order to give effect to both of them and not render any of them as dead letters. Irrespective of all of this Passive Euthanasia has been made legal by U.S Supreme Court in the case of Vacco v. Quill[29], wherein the court stated that " Everyone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment" however in the same case they also stated "no one is permitted to assist a suicide" therefore in New York assisted suicide is still not allowed. Therefore understanding the view of United States of America is complicated and the view is very ambiguous and vague as every state can determine whether its legal or not however 9 states have official made it legal

## ARGUMENTS FOR AND AGAINST EUTHANASIA

It is necessary to understand both sides of the coin before recommendations can be given and hence points for both, for and against the legalisation of euthanasia are given below.

## ARGUMENTS IN FAVOUR OF EUTHANASIA

1. The first argument in the favour of euthanasia would be that the choice of the patients' needs to be acknowledged. In the event that we weigh social qualities against individual interest, we will plainly observe that here the interest of the individual will exceed the interest of the general public. Presently if the person who is under intolerable torment can't choose for himself then it definitely will hamper his interest. A patient will wish to take his life just in instances of inordinate desolation and would want to die an effortless death as opposed to carrying on with a hopeless life with that anguish and pain. In this manner, from an ethical perspective it will be smarter to permit the patient to die easily when he realizes that he will die eventually due to the terminal sickness.
2. All things considered it will unquestionably be an invalidation of his respect and common liberties. As to banter according to lawful perspective, Article 21 unmistakably provides for the right to live with dignity. Living with dignity would surely not include living in

[29] *Vacco v. Quill*, 117 S.Ct. 2293

suffering or waiting to die hence in the event that that standard is falling underneath that base level, at that point an individual should be given an option to take his life.

3. Another argument used in favour of euthanasia is that, in countries like India where there is a lack of funds and health services are not upto the to the mark. A patient who is in extreme pain and torment and has no wish to live, he is burden on the hospital as well because they have limited resources and those resources are being used on an individual no have no chance of recovery for example in the Aruna Shanbaug case, she was in the hospital abandoned by her family for a decade. Along these lines, the contention runs, when one needs to pick between a patient who has no chance of recovery and one who might have a chance at living a normal life, the latter should be favoured as the former is going to die regardless.
4. Euthanasia gives an approach to alleviate the terrible agony and enduring of a person. It diminishes the critical suffering that an individual goes through while waiting for death. It not just relives the horrendous torment of a patient yet in addition mitigates the family members of a patient from the psychological distress. Its point is selfless and helpful as it is peacefully putting to end the lives of people who are experiencing excruciating pain and serious illnesses. Along these lines, the intention behind this is to help as opposed to hurt.
5. It is contended that euthanasia regards the person's entitlement to self-assurance or his entitlement to protection. Impedance with that privilege must be advocated in the event that it is to secure fundamental social qualities, which isn't where patients enduring insufferably toward the finish of their lives demand euthanasia when no choices exist. Not permitting euthanasia would come down to compelling individuals to endure without wanting to, which would be unfeeling and a nullification of their basic liberties and nobility.

## ARGUMENTS AGAINST EUTHANASIA

1. There is an extreme resistance from the several religious groups and from individuals in the medical field. As indicated by them it's not giving 'right to die' should rather be called 'right to execute'. As per them it is absolutely against the clinical ethics. Clinical morals call for nursing, caregiving and mending and not finishing the life of the patient.
2. Likewise, one significant contention against euthanasia being authorized is that if such an individual were to be execute and guarantee that he did out of sympathy, who could claim otherwise? Regardless of whether euthanasia is authorized, who or what decides the rules

of determining how much anguish, the individual is confronting to permit him to grasp death. Would it be a good idea for it to be the proposal of the doctor that the patient so named can't be restored? Or then again should it be affirmed by the guardians or close to family members that the individual will be suffering from intense torment and enduring, which they can't withstand? Choices left in the possession of doctors or family members are extremely dangerous moreover. It may not generally be evident that family members and doctors are continually acting in the patient's eventual benefits.

3. Another most loved contention is that of the "elusive incline" or slippery slope. The dangerous slant contention, to put plainly, is that voluntary euthanasia would eventually in the long term lead to a slide down and ultimately we would wind up allowing even non-voluntary or involuntary euthanasia.
4. Religious speaking, the human life is the endowment of God and taking life isn't right and humans can't be given the option to fill the role of God. The person who endures torment is simply because of one's karma. In this way euthanasia degrades human life.

## AUTHORS OPINION AND RECOMMENDATIONS

It is essential to note that the recommendations given are given with respect to India only and not the other countries discussed above. A careful examinations of the contentions against euthanasia that have been summed up above, will in general show that all the discussion about euthanasia being an act of kindness and mercy, the resistance to euthanasia breeds from the dread of abuse of the privilege on the off chance that it is allowed. It is expected that putting the decision in the hands of a doctor would be putting a lot of power and privilege in his grasp and he may abuse such power. This dread stems also from the idea that the choice to put an end to your life put in the hands of non-legal individual in cases of euthanasia is it a doctor. We generally do no fear putting the decision of my life in the hands of a judge because in the end we know the judge is going to do justice or at least he is supposed to for instance, when we enable the judge to conclude whether to grant a death sentence or of life imprisonment.

In my opinion, a critically ill patient who experiences unendurable agony should be permitted to end his suffering. In reality, using important resources like medication, money, and essential facilities on an individual who has neither the craving nor the expectation of recovery is only a misuse of the equivalent. At this crossroads it would not be strange to make reference to that "right to die" even though not directly, it might be perused as the opposite of the right to life

ensured by Article 21 of the Constitution of India. The Supreme Court recently in the case of Aruna Ramchandra Shanbaug v Association of India[30] made passive euthanasia legal and set restrictions with respect as to when it is permissible yet active euthanasia isn't allowed under the law.

In my opinion voluntary euthanasia should be made legal, both active and passive euthanasia. This is on the grounds that however there might be a few instances of involuntary or non-voluntary euthanasia where one feel bad for the patient and sympathise with him and in which one may concur that letting the patient die was the most ideal choice, yet it is to be understood that it would be extremely hard to isolate each cases of involuntary or non-voluntary euthanasia and ensure that the patient would have ultimately wanted to die, that choice however should be made only by him in my opinion. Along these lines, it is accepted that there is a capability of abuse of power by either the doctors or the patients family itself. Permitting involuntary or non-voluntary euthanasia would result in far greater abuse of power rather than just trying to allow active euthanasia.

It is also to be understood that under the present criminal law system it is unimaginable to expect to incorporate only voluntary euthanasia without including the involuntary or non-voluntary euthanasia. Returning to the contention against euthanasia that any enactment legitimising voluntary euthanasia would eventually result in involuntary or non-voluntary euthanasia being allowed then the said recommendations are given:

1. It should be ensured that euthanasia is voluntary, i.e., the patient has himself requested for it and the due care procedure given in the Aruna Shanbaug case if duly followed
2. In case of voluntary euthanasia it should be ensured that the patient is mentally competent to make the request for euthanasia and this request is made repeatedly in order to ensure that it is actually what the patient truly wishes for.
3. In any case in which a patients explicitly request or consent either due to mental or physical disability to do so, a petition should be filed in court for involuntary or non-voluntary euthanasia and only once court gives an order in favour of it should it be allowed.
4. The procedure followed for euthanasia must be medically approved and generally it involves giving one injection which puts the patient in a coma and the second given to stop his heart.

[30] Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298 : MANU/SC/0176/2011

5. A judicial officer should be appointed in order to look into any case of euthanasia and ensure that it is done legally and that there is no mala fide intention involved incase it is involuntary or non-voluntary euthanasia
6. The officer appointed must initiate a penal action in case it if found that the case is not of euthanasia or if there doubt that it was not carried about properly.

## CONCLUSION

*"For those who are facing a terminal illness, who are in irremediable pain and suffering, and wish to exercise their right to die with dignity, a system should be available to them"-Dr Jack Kevorkian*

The existence of human life doesn't suggest that it should be constrained and continued even after the presence of agony and languish. Given that an individual has the option to lead a dignified life, he can't be compelled to live a lie full of torment. In the event that an individual experiences a serious infection or is terminally ill, it is ideal to free him of his agonizing life. Indeed, these cannot be considered as causing death but just quickening the journey towards death, which has just initiated. The suggestion only is that the legislature must provide and accommodate another option, if at the death bed the patient so wants to be euthanized and having consented to the essential conditions to it then he should be allowed to do so. And even though the court has made passive euthanasia legal, the court also has frameworks within which it works and therefore the legislature needs to step up and form a proper legislation on the issue of euthanasia. There have been numerous ups and downs along the legal battle of making euthanasia legal. Euthanasia is probably the greatest debate in this decade. In spite of the fact that the Indian Judiciary has authorised Passive Euthanasia', yet the legislature is a long ways behind to enact any law with respect to it. As I would see it Judiciary should likewise sanction Active Euthanasia so that individuals who need to end their life or somebody's life must exercise with this right without any restrictions.

No law could be destined or even expected to be free of a loophole, especially when there is probability of misuse, which would consist of people being killed in the name of euthansia when they themselves did not ask for it. Another scary truth about this misuse would be that it would be extremely difficult to defect it as euthanasia is generally considered as a merciful death. Thus even though it seems as the morally right thing to do, there is always a probability of misuse. But it should be remembered that every law can be misused and the advantages of making it legal are far greater than its disadvantages. However we need a law to legitimize euthanasia with satisfactory protections. The suggestions set down in the Reports of Law Commission of India and rules given in the Aruna's case are to be contemplated when any law on that point is to be outlined to forestall the malpractices and abuse of euthanasia.

Furthermore, in the event that the recommendations set down above are actualized, at that point the odds of abuse of euthanasia would be incredibly decreased.

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