EUTHANASIA

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INTRODUCTION

Euthanasia, also known as "mercy killing," is the act or practise of putting people who have a severe and incurable illness or a physically debilitating ailment to death without causing them any pain or allowing them to pass away without medical attention or mechanical life support. Because most legal systems do not have a specific provision for it, it is commonly seen as either suicide (if carried out by the patient themselves) or murder (if performed by another).[1] Physicians, on the other hand, have the legal authority to refuse to prolong life in circumstances of great agony, and to prescribe painkillers even if this shortens the patient's life. Socrates, Plato, and the Stoics all held the view that euthanasia is morally justifiable. It is condemned by orthodox Christian doctrine, primarily because it is regarded to violate the Ten Commandments' prohibition on murder.

Sl. no.	*Type of euthanasia*	*Definition*
1	Active euthanasia[8]	Is identical to mercy killing and involves taking action to end a life. Active euthanasia is defined as any treatment initiated by a physician, with the intent of hastening the death of another human being, who is terminally ill, with the motive of relieving that person from great suffering. For example, intentionally giving a person a lethal dose of a drug to end a painful and prolonged period of dying.
2	Passive euthanasia[8,9]	Passive euthanasia is allowing the patient to die when he or she could have been kept alive by the appropriate medical procedures. Passive euthanasia is defined or considered as discontinuing, or not starting a treatment at the request of the patient.
3	Voluntary (statutory) euthanasia[10,11]	Voluntary euthanasia is when the decision to terminate life by the physicians corresponds with the patient's desire to do so and the patient willfully gives consent of its implementation.
4	Involuntary euthanasia[10,11]	Involuntary euthanasia is when the decision to end life is implemented against the patient's wishes. Nonvoluntary euthanasia refers to cases where patients are unable to make their decisions, for example, a person who is brain dead and in a permanent or irreversible coma.
5	Physician-assisted euthanasia[9-13]	The deliberate termination of life, by someone other than the patient, at the patient's request and PAS as intentionally helping a patient to end his or her life at his or her request.
6	Legitimate medical euthanasia	This means providing treatment (usually to reduce pain) that has the side-effect of speeding the patient's death. It is based on the doctrine of "dual effect" and concerns the use of lethal dosing, or terminal sedation, by some medical professionals. Administration of terminal sedation, i.e., lethal dosing, to a competent, terminally ill patient by the physician, which by its "dual effect" may hasten the patient's death, is both ethical and legal as long as the terminal treatment is intended to relieve the pain and suffering of an agonizing terminal illness (editorial classification of euthanasia).

C. Killick Millard created the Voluntary Euthanasia Legalization Society in England in 1935, launching the organized push for euthanasia legalization (later called the Euthanasia Society).

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[1] Euthanasia

In 1936, the society's bill was defeated in the House of Lords, and in 1950, a motion on the same subject was defeated in the House of Lords. The Euthanasia Society of America was founded in 1938 in the United States.

I. OBJECTIVE OF RESEARCH

The author was compelled to pursue this research subject in an objective manner because of the Aruna Ramchandra Shanbaug case and the fight of Euthanasia through the years. The global trends in laws globally also played a great role in the building of this research.

II. RESEARCH QUESTION

Should active euthanasia be legalized in India?

III. RESEARCH METHODOLOGY

- **Internet Surfing**

  For the project I surfed the internet about the concept of Euthanasia and its debates over the years. Went through the Wikipedia and different viewpoints written by many doctors and legal journals.

- **Assessing**

  Assessed the concept of Euthanasia in view of Jurisprudence. I also assessed the ideological views regarding the religious and legal aspects through the journals and articles.

- **Research Methodology Used**

  Though the research methodology primarily made use of qualitative means, in the sense of usage of a multitude of research papers, journal articles, newspaper articles, online blogs and books, etc., it also made use of secondary quantitative resources by citing pre-existing research papers made by different professors and professionals.

HISTORY

The most contentious issue in today's health care is assisting a seriously ill person in dying according to his wishes. Euthanasia, like cloning and body donation, has sparked heated debate

because of changing medical attitudes. The potential to keep a dying person alive with the use of modern technology has prompted concerns about the critically ill patient's right to die among his doctors, lawmakers, and the public. Euthanasia has a long and illustrious history. Before Hippocrates, euthanasia was a widespread practice, and doctors felt they had the authority to kill patients for whom they had given all hope of recovery without their consent. Euthanasia was accepted as a component of their medical practice. This act of murdering, according to Hippocrates, was a barrier to the creation of confidentiality between physicians and patients. This led to the adoption of the lines "I will provide no fatal medicine to anyone if asked, nor recommend any such counsel" in The Hippocratic Oath. [2]Euthanasia has a tainted history, thanks to the Nazis. The euthanasia program, known as Aktion T4, was aimed at residents of institutions and hospitals that cared for mentally ill and psychiatric patients. In October 1939, Hitler signed a directive allowing doctors to offer "mercy death" to "incurable" patients, exemplifying the philosophy of "life unworthy of life." The practice started with the execution of children under the age of three who had "severe hereditary disorders," such as "suspected idiocy," Down syndrome, and those born with various deformities. Parents and legal guardians were initially asked for their assent, but it was couched in euphemisms that their children would be sent to "special sections and treatment centers" for better care. These facilities included psychiatric or care facilities that had been expressly modified for the execution of people and the disposal of their bodies. The children would be swiftly assessed and given deadly injections once they arrived. Parents were informed that their children or grandchildren had died of pneumonia or another ailment. [3]

When the war broke out, the program was expanded to include older youngsters and those who had no disabilities but were difficult or juvenile delinquents. Children of Jewish ancestry were also rounded up. The program was then expanded to cover adults, as well as places outside of Germany and other illnesses, including epilepsy, Huntington's chorea, and severe syphilis. In addition, the program began to use enhanced means of killing, such as carbon monoxide gas, which was first used in 1940 for more efficient and faster outcomes. Doctors carried out and monitored the executions, and brain samples from the victims were transferred to research facilities. People were not in pain or facing any grave sickness in Nazi Germany, where they

[2] Foot, Philippa. "Euthanasia." *Philosophy & Public Affairs*, vol. 6, no. 2, Wiley, 1977, pp. 85–112, http://www.jstor.org/stable/2264937.
[3] Kessler, Karl. "Physicians and the Nazi Euthanasia Program." *International Journal of Mental Health*, vol. 36, no. 1, Taylor & Francis, Ltd., 2007, pp. 4–16, http://www.jstor.org/stable/41345197.

were executed against their will. They were slaughtered - assassinated – for the ostensible "good of the country," rather than for their own personal benefit. [4]These incidents sparked public and medical debates about mercy killing, leading to the legalization of euthanasia in various countries. Euthanasia proponents claim that decisions about life and death should be made by the person who is concerned. If they are in an unpleasant condition with no hope of change, people have the freedom to choose when they want to die. In 1996, the Northern Territory of Australia became the first jurisdiction in the world to allow euthanasia. 7 The Dutch upper chamber of parliament decided to legalize euthanasia on April 10, 2001, becoming the Netherlands the first and only country in the world to do so at the time. It produced a series of criteria that reflect the criteria developed by the courts in order to provide direction to the profession as to when euthanasia would be permissible: (1) The patient's request for euthanasia must be entirely voluntary, well-considered, and persistent; (2) the patient must be experiencing intolerable suffering (physical or mental), with no prospect of improvement and no acceptable solutions to alleviate the patient's situation; (3) euthanasia must be performed by a physician after consultation with an independent colleague who has experience in this field; and (4) euthanasia must be performed by a physician after consultation with an independent colleague who has experience in this field.

LEGAL STATUS IN INDIA

Only passive euthanasia is legal in India. In a recent Common Cause case, it was decided that a person's "right to die with dignity" is a basic right. It is available to patients who are suffering from incurable, long-term illnesses and have entered a state of permanent vegetative state, where there is little or no possibility of recovery and the patients are kept alive by external devices and machines such as cardiopulmonary machines. Passive euthanasia may be permitted in such circumstances. This was not always the case, as even passive euthanasia was illegal in India. The doctors who caused euthanasia fell under the purview of Exception 5 of Section 300 of the Indian Penal Code, because they had the required 'intention' of causing death of the concerned patient; in cases of voluntary euthanasia, the said doctor, or such person causing euthanasia, would be liable to punishment for culpable homicide not amounting to murder, under Section 304 of the Penal Code, because there was a valid consent. However, this position is only applicable in circumstances of voluntary euthanasia, in which the patient consents to

[4] Kessler, Karl. "Physicians and the Nazi Euthanasia Program." *International Journal of Mental Health*, vol. 36, no. 1, Taylor & Francis, Ltd., 2007, pp. 4–16, http://www.jstor.org/stable/41345197.

the cause of death and is over the age of 18 at the time of agrees. Non-voluntary and involuntary euthanasia were excluded because they would be subject to the first provision of Section 92 of the Penal Code. In India, active euthanasia is illegal. One of the key arguments in favor of legalizing euthanasia in India, presented to the Supreme Court in the case of Gian Kaur v. State of Punjab, was that the Indian Constitution's 'right to life' encompasses the 'right to die' as well. The Supreme Court, however, rejected this argument, ruling that Article 21's 'right to life' does not encompass the 'right to die.'[5] It cannot be expanded to signify the same thing. As a result, the Supreme Court of the United States does not rule that euthanasia is unconstitutional. In Aruna Ramchandra Shanbaug v. Union of India, it was held that in the case of an incompetent person who is unable to make decisions about whether to withdraw life support, it is the Court alone, as *parens patrie*, who can make this decision in the case of an incompetent person who is unable to make decisions about whether to withdraw life support, though the opinions of close relatives, next friends, and doctors must be given due weight. [6]As a result, the Supreme Court ruled in this case that, while active euthanasia is unlawful, passive euthanasia is legalized under the criteria established in the case. Passive euthanasia was allowed in Common Cause (A Regd. Society) vs. Union of India (UOI) and Ors., a landmark euthanasia case in which the Supreme Court ruled that the "right to die with dignity" is a fundamental right. A sane adult human of conscious mind can refuse or decide against medical treatment. Instead of receiving treatment, he may choose to die naturally. The court has recognized 'passive euthanasia,' in which the doctor does not cause the death of the person, he simply does not save him, by stopping the ongoing treatment, or by disabling the life-support machines, through the support of which, the patient is alive. 'Active *euthanasia,'* which occurs because of administering and injecting a dose of lethal drug; of overdose of such a drug or medicine, which otherwise would not be lethal, but for the increase dosage, in the body of the victim, has been recognized in the Indian Courts, as of now. The courts hold that a person, or in this case, a doctor, cannot be penalized for failing to save a patient. However, an 'act' involves not only a positive act on the part of the offender, but also any 'omissions' of the legal responsibility that one is required to

[5] Mudur, Ganapati. "India's Supreme Court Says It May Sanction Euthanasia in the Future." *BMJ: British Medical Journal*, vol. 342, no. 7798, BMJ, 2011, pp. 621–621, http://www.jstor.org/stable/41150755.

[6] Bagcchi, Sanjeet. "Nurse Who Drove Debate on Euthanasia in India Dies after 42 Years in Vegetative State." *BMJ: British Medical Journal*, vol. 350, BMJ, 2015, https://www.jstor.org/stable/26519913.

perform. As a result, a person should be penalized not just for some overt crime, but also for failing to execute a legal responsibility owed to him by law.

LEGALIZATION OF ACTIVE EUTHANASIA IN INDIA

Euthanasia and physician-assisted suicide are considered murder or aiding suicide by pro-life advocates. Religious individuals think that life is holy and that it is a gift from God, and that we must protect it at all costs. The researcher believes that active euthanasia should be legalized for the following reasons:

I) Humanitarian Considerations

Euthanasia and physician-assisted suicide must be seen as a compassionate act toward a terminally ill patient and his family. Any additional treatment for a terminally ill person would simply delay their death, at the great cost of agonizing anguish due to the considerable treatment that they must take to extend their life by a few weeks or months. When the terminally sick patient's mortality is confirmed due to his incurable disease, the researcher believes that if the patient so desires, he should be permitted to terminate his life in dignity and relieve himself and his family of their suffering. Active euthanasia must be made legal only for terminally ill patients and only if they so choose. [7]It is immoral to force a person to suffer through the last moments of his life. He must be granted the right to die with dignity just as he is granted a right to live with dignity.

II) Alternative

A terminally ill patient is a rational, healthy human being. He must be given the freedom to make an informed and sensible decision about his life. He is the one who is going through the trials and tribulations. In its 196th report, India's Law Commission proposed that any "capable patient" with a terminal illness has the right to refuse medical treatment (including artificial nourishment and breathing), as well as the initiation or continuation of therapy that has already begun. If a competent patient makes an educated decision without being pressured or influenced, the doctor must be satisfied that the decision was made by a competent patient.

[7] Singh, Subhash Chandra. "EUTHANASIA AND ASSISTED SUICIDE: REVISITING THE SANCTITY OF LIFE PRINCIPLE." *Journal of the Indian Law Institute*, vol. 54, no. 2, Indian Law Institute, 2012, pp. 196–231, http://www.jstor.org/stable/43953537.

III) Natural Law Perspective

Natural law theorists, as is widely known, regard law as a prescription that derives its ultimate authority from a 'purpose' morality, against which its 'law' character can be assessed. "Assuming that man's rights in a moral sense are also rights in the sense of the Constitution and the law can only lead to confusion." Law is composed up of basic and secondary rules, according to H.L.A. Hart. Primary rules compel people to do or refrain from doing things, regardless of whether they want to or not. Humans can use secondary rules to establish new primary rules, as well as to eliminate or modify existing ones (rules of change). As well as defining specific characteristics of a primary rule that indicate that it is supported by the social pressure it exerts (rule of recognition), or determining their occurrence or control in other ways (rules of adjudication). It is wrong to make terminally ill persons suffer and undergo the pain of their incurable disease. Law and morality, according to Hart, overlap and, in some situations, morality precedes law. Although there is a legislation prohibiting active euthanasia, it is subject to change. It must be modified. The Constitution gives us the authority to change laws to fit the current social circumstances.

IV) Utilitarian Justifications

The ethical philosophy of utilitarianism states that an action's moral worth is completely judged by its contribution to general utility. According to this viewpoint, people's happiness is exclusively decided by how much pleasure and misery they feel[8]. Active euthanasia should be permitted on the utilitarian grounds that the suffering of terminally ill individuals serves no purpose. Instead of bringing maximum delight to the greatest number of people, the patient's suffering simply brings grief and pain to those around them. J. S. Mill opined that “That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not an enough warrant.”[9]

V) Religious Justifications

We have followed age-old customs such as Jauhar, Sati, and Santhara throughout our culture. It is suicide in all these instances, regardless of the religious scriptures' explanations. Sati was

[8] Divya Sharma, Dr. Kuljit Kaur, Jurisprudential Aspects of Euthanasia: With Special Reference to India, International Journal of Law and Legal Jurisprudence Studies.
[9] Mill, John Stuart. "On liberty." A Selection of his Works. Macmillan Education U.K., 1966.

the practice of a wife burning herself on her husband's funeral pyre, whereas Santhara (now prohibited) was the practice of a person fasting till death. When compared to someone suffering from a chronic illness, the reasons for these activities appear insignificant. When someone can choose to murder themselves in the name of religion and centuries-old rituals and traditions, a terminally sick person who is suffering must be granted the same right.

VI) Medical Ethics

Dr. Jack Kevorkian, the most active proponent of physician-assisted suicide in the United States, argues: "Personal autonomy and self-determination, in my opinion, are the most important principles in medical ethics – or any sort of ethics. What matters is what the patient desires and considers to be of worth in his or her life. That is the most important thing."[10] Doctors cannot be held liable for such deaths, and active euthanasia should be viewed as a blessing for those who are suffering. It is like a doctor failing to fulfill his oath if he sees his patients suffer and realizes he is unable to cure them. A doctor's goal is to cure patients, not to watch them suffer.

VII) Economic Jurisprudence Theory

The goal of economic analysis of law is to apply economic principles to the legal decision-making process. If it maximizes his value, the "economic man" may be entirely rational while defying legal rules. The concept of justice is replaced in the economic analysis of law by the concepts of efficiency and wealth maximization. Patients who are considered terminally sick have reached the last stages of incurable diseases. Forcing individuals to live and suffer is not only a violation of their right to die with dignity, but it is also inefficient in terms of economic theory. The family and the state invest a significant amount of money and resources in the treatment of these people to alleviate their agony and extend their lives. This is not only unjust to the patients, but it is also a highly inept policy on the part of the government.

VIII) Postmodernism

Post-Modernists think that modern society's institutions, laws, literature, architecture, and arts, as well as any of its products, are all subject to deconstruction, which presents a variety of alternatives. They do not believe that civilization is based on any objective truths or natural principles. In other words, post-modernism asserts that there is no such thing as right or wrong;

[10] Jack Kevorkian and Paul Kurz, “Medicine: The Goodness of Planned Death” in Free Inquiry (Fall 1991)

everything is merely a matter of opinion. Active euthanasia, in the opinion of the researcher, should be authorized in India.

COMPARISON WITH OTHER COUNTRIES

India is a country in the process of evolving. Its laws and society must be progressive. On active euthanasia, several governments around the world have adopted varied positions. The Netherlands was the first country in the world to legalize euthanasia and physician-assisted suicide in 2002. There were strict requirements: the patient had to be in excruciating agony, their sickness had to be incurable, and the demand had to be made in "full consciousness" by the sufferer. In the Netherlands, euthanasia is governed under the Termination of Life on Request and Assisted Suicide (Review Procedures) Act of 2002. Belgium was the next country to follow in the same year. Luxembourg became the third country to allow euthanasia in 2008, following the Netherlands and Belgium.[11] In Canada, "physician-assisted dying," or voluntarily active euthanasia, is lawful for anybody over the age of 18 who is suffering from a terminal condition that has progressed to the point where natural death is "reasonably foreseeable."

Assisting suicide is a felony in Switzerland, according to Article 115 of the Swiss Penal Code, if and only if the motive is selfish. Although physicians are more likely to have access to appropriate medications, the code does not grant them special standing in helping suicide. Physicians have been warned against prescribing lethal medications by ethical rules. The Swiss law is unique in that (1) the recipient does not have to be a Swiss citizen, and (2) no physician is required. Many people from other nations, particularly Germany, travel to Switzerland to be euthanized. Active euthanasia is prohibited in all 50 states, but physician-assisted death is permitted in Oregon, Washington, and Montana. Furthermore, comparable legislation exists in Washington and Montana. [12] India should take the same attitude as the countries mentioned above and legalize active euthanasia. However, the same can be governed through legislation. To prevent misuse, strict guidelines might be established.

[11] Green-Pedersen, Christoffer. "The Conflict of Conflicts in Comparative Perspective: Euthanasia as a Political Issue in Denmark, Belgium, and the Netherlands." *Comparative Politics*, vol. 39, no. 3, Comparative Politics, Ph.D. Programs in Political Science, City University of New York, 2007, pp. 273–91, https://doi.org/10.2307/20434041.

[12] Steck, Nicole, et al. "Euthanasia and Assisted Suicide in Selected European Countries and US States: Systematic Literature Review." *Medical Care*, vol. 51, no. 10, Lippincott Williams & Wilkins, 2013, pp. 938–44, http://www.jstor.org/stable/42568837.

CONCLUSION

In the case of Aruna Ramachandra Shanbaug v. Union of India, the plaintiff was Aruna Ramachandra Shanbaug. In India, passive euthanasia has been allowed. Why can't active euthanasia, which is like passive euthanasia, be legalized? Active euthanasia includes the performance of an act, whereas passive euthanasia does not, but the end consequence is the death of the terminally ill patient, thus relieving him of his pain and suffering. For someone who is already in suffering, passive euthanasia is a long and terrible process. Active euthanasia, on the other hand, is a speedier and more efficient way to achieve the same effects as passive euthanasia. When a more efficient approach that helps the patient is available, the patient should not be subjected to any further anguish by being forced to choose passive euthanasia and refuse treatment. This would also relieve the patient's relatives of the mental anguish of watching their loved one suffer on a regular basis. The Supreme Court reasoned in the Aruna Shanbaug case that by removing life-support equipment or allowing a patient to refuse treatment, he suffers and dies a natural death, as opposed to active euthanasia, which is murder because deadly doses are injected into the patient, causing instant death. The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill should be passed and turned into law, according to the Law Commission of India's 196th report. As a result, a legislative framework is needed to regulate passive euthanasia. Both aggressive and passive euthanasia are methods for achieving the same goal. The main difference between passive and active euthanasia is that passive euthanasia is more unpleasant and time-consuming. Active euthanasia does not need to be viewed as a form of murder. It can be viewed as a humanitarian act performed to relieve the agony of a terminally ill patient. If the Law Commission's proposed bill protects medical practitioners, it can be altered to protect medical practitioners who practice active euthanasia if it is allowed. Active euthanasia can be governed by specific standards, such as those set forth by the Supreme Court in the Aruna Shanbaug case. Patients who are terminally ill will benefit from active euthanasia. It is a far better option than passive euthanasia, which prolongs the patient's suffering before death. Considering the foregoing arguments, it is felt that the benefits outweigh the risks, and that active euthanasia should be authorized in India.