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PASSIVE EUTHANASIA: PUTTING END TO MISERY- Jasmine Dhakarwal¹**ABSTRACT**

Passive euthanasia is commonly defined as withholding or discontinuing treatment with the intention and expectation that death will occur sooner rather than later, based on the idea that an early death is in the patient's best interests. It has been a topic of profound moral and legal debate worldwide. It revolves around the idea that people who are terminally ill or suffering from untreatable conditions should be allowed to have the liberty to make verdicts about their own lives, inclusive of their ability to end their lives in a civilized and decent manner. Whereas Active Euthanasia, in contrast to passive euthanasia, presupposes an active intermediation to end a person's life with substances or external force. The principle of Passive is being recognized worldwide. In India, a significant milestone was achieved when the Supreme Court, in a groundbreaking decision, recognized the Right to Passive Euthanasia in a landmark judgment, paving the way for individuals to have control over decisions about end-of-life.

This short article discusses the notion of Passive Euthanasia or assisted dying, elucidating intentionally letting a person die to end his misery motivated solely by the best interest of the person who dies. The article proposes how the right to die with dignity is bracketed with passive euthanasia and how it is linked with Article 21 of the Indian Constitution. Furthermore, it discusses Passive Euthanasia in light of the Aruna Shanbaug case and confabulates the Supreme Court's landmark decision of Common Cause (A Regd. Society) v. Union of India² and how this

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² Common cause (A Regd. Society) v. Union of India, 2018, 5 SCC 1, AIR 2018 SC 1665

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ruling has sparked moral and ethical debates in the country. Lastly, the article concludes with how passive euthanasia is an essential climacteric of end-of-life choices.

INTRODUCTION

The phrase ‘Euthanasia’ was formulated by Sir Francis Bacon to allude to an easy, painless, and cheerful death in which it was the duty and responsibility of the medical officer to alleviate the physical suffering of the patient. It is derived from two Greek words, ‘EU’ and ‘Thanatos’, which means good death. Passive euthanasia means ending a person’s life by removing medical treatment purposefully to relieve him from unending pain. People have different opinions regarding Passive Euthanasia. For some, it is a way of providing relief to others, while to others, it is just another way of killing a person in the name of ‘relief.’

The world has seen many debates and arguments for centuries regarding the view that whether Passive Euthanasia should be legalized or not. The principal grounds for these debates and arguments are moral, religious, and ethical considerations that bind a country into a stiff position on whether to take a step toward its legalization. At the global level, many countries have accepted Passive Euthanasia and have taken an approach to legalize it. The Netherlands was the 1st country in the world to legalize passive euthanasia and assisted suicide in April 2002 by passing “The Termination of Life on Request and Assisted Suicide (Review Procedures) Act of 2002.”³, paving the way for other countries to galvanize from this move. Afterward, many countries such as Australia, Belgium, Luxembourg, Spain, Quebec, Italy, Sweden, France, the US, and Germany amended their respective constitution, making way for Passive Euthanasia in their countries and thus providing relief to people suffering from irrecoverable diseases. In 2018, India also became one of the countries that have recognized the concept of passive euthanasia.

RIGHT TO DIE WITH DIGNITY

The right to die with dignity encompasses the principle that individuals who are terminally ill, agonizing from irremediable illness, or living in a way of irreversible incapacity must have the right to make decisions about their own lives and deaths. It is an inherent privilege of a person to

³*Euthanasia, assisted Suicide and non-resuscitation on request in the Netherlands*, Government of Netherlands (June 26, 2024), <<https://www.government.nl/topics/euthanasia/euthanasia>>

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die with respect when faced with excruciating pain or loss of quality of life owing to an incurable condition.

The right to die with dignity is frequently linked to debates about euthanasia, suicide, or the discontinuation of life-sustaining care. However, in the landmark judgment of *Gian Kaur v State of Punjab*⁴, the Supreme Court held that the right to life is a natural right embodied in Article 21⁵ but suicide is an unnatural end to life and therefore opposed and conflicts with the concept of the right to life. Notwithstanding, the right to die also includes the larger concept of providing complete palliative care and support services requirements, therefore improving the quality of those suffering from vegetative state and chronic disease.

Consequently, the legitimization of passive euthanasia by the Supreme Court in the landmark judgment of *Common Cause (A Regd. Society) v. Union of India and Anr.* (2018)⁶, acknowledges the importance of an individual's autonomy. This verdict by the Supreme Court is an intensifying step that liberates people's loved ones from the guilt of having to make arduous decisions and doctors of the dread of being tried for culpable homicide.

PASSIVE EUTHANASIA AND ARUNA SHANBAUG CASE

Passive euthanasia is deliberately ending one's life, prompted solely by the best interest of the person who dies, through the intentional withholding of a life-saving substance or procedure. The legal recognition of passive euthanasia in India stemmed from the *Aruna Shanbaug* case⁷. In the previous case of *Gian Kaur's* case⁸, the honorable Apex Court rejected the recognition of the right to die within the right to life under Article 21⁹ of the Indian Constitution. The apex court, in the case of *Aruna Shanbaug*,¹⁰ held that there is a significant difference between the right to die and the right to die with dignity. The right to die shall incorporate taking away a person's natural life span, thereby causing death by unnatural means. However, the right to die with dignity shall encompass undertaking a procedure or causing a situation to facilitate the process of death in

⁴*Smt. Gian Kaur v. The State of Punjab*, 1996 AIR 946, 1996 SCC (2) 648

⁵Constitution of India 1950, art. 21

⁶*Common Cause (A Regd. Society) v. Union of India*, 2018, 5 SCC 1, AIR 2018 SC 1665

⁷*Aruna Ramachandra Shanbaug v. Union of India*, 2011, AIR 2011, 4 SCC 454

⁸*Smt. Gian Kaur v. The State of Punjab*, 1996 AIR 946, 1996 SCC (2) 648

⁹Constitution of India 1950, art. 21

¹⁰*Aruna Ramachandra Shanbaug v. Union of India*, 2011, AIR 2011, 4 SCC 454

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case of patients who are in a Permanent Vegetative State or under the effect of a coma for a lifetime. As a result, the acknowledgment of the right to die with dignity through passive euthanasia might be used to end the lifetime pain and mental affliction of individuals suffering from untreatable conditions. Subsequently, the apex court distinguished between active euthanasia (deliberate intervention to end life) and passive euthanasia (withdrawal of life-sustaining treatment). It held that active euthanasia is a violation of section 302 and section 304 of IPC. In contrast, passive euthanasia, on the contrary, is a means to end the distress and suffering of patients undergoing unbearable and prolonged agony.

The Supreme Court enlisted proper procedures and guidelines for allowing passive euthanasia in the “rarest of rare circumstances.”¹¹ It stipulated that decisions concerned with the withdrawal of the life support system must be made by a medical board and approved by the High Court under Article 226¹², ensuring that due process is followed and the patient’s best interest is considered.

SUPREME COURT’S LANDMARK DECISION

In 2018, the apex court of India clarified and broadened the scope of passive euthanasia in the “Common Cause Judgement.”¹³ The court ruled that the right to die with dignity is a fundamental right and an intrinsic part of the Right to life under Article 21¹⁴. The Indian constitution declares that an adult human being with the mental capacity to make an informed decision has the right to refuse medical care, including the withdrawal of life-saving technology.

The judgment also addressed the issue of advance directives, commonly known as “living wills.” The court declared clear evidence of this country's acceptance of advanced medical directives. It further held that the ability to execute an Advance Medical Directive was a step towards protecting the right to self-determination and bodily integrity. If patients cannot make an informed decision on the circumstance, a ‘best-interest’ position could be applied, allowing a

¹¹Tanisha Maheshwari, ‘Case analysis of Aruna Ramachandra Shanbaug v Union of India’, Manupatra (June 26, 2024), <<https://articles.manupatra.com/article-details/Case-analysis-of-Aruna-Ramchandra-Shanbaug-vs-Union-of-India>>

¹²Constitution of India, art. 226

¹³Common cause (A Regd. Society) v. Union of India, 2018, 5 SCC 1, AIR 2018 SC 1665

¹⁴Constitution of India, art. 21

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guardian to step in and make this decision on their behalf. This provision ensures that patient's autonomy and wishes are respected, even when they cannot communicate their desires.

ETHICAL AND MORAL DEBATES

The ruling has sparked intense ethical and moral debates within society. While some believe that passive euthanasia promotes human liberty and relieves persons of undue suffering, others are concerned about possible abuse and a slippery slope into active euthanasia. Critics contend that the risk of abuse, coercion, and devaluation of human life demands robust legal and ethical frameworks. Implementing strict guidelines and safeguards, such as requiring informed consent, ensuring mental capacity, and involving medical professionals, is crucial to ensuring this right's responsible and ethical exercise.

CONCLUSION

The apex court's acknowledgment of Passive euthanasia and the right to die with honor marks a significant milestone in the evolving landscape of end-of-life choices. Those suffering from chronic diseases have been suffering from persistent pain and suffering, and there is no cure, so the forum is correct in considering the liberty to die with dignity and assists them in reducing their pains and enduring persistent surgeries and care. They will be able to end their life in a dignified form. The 2018 judgment strikes an exquisite equilibrium between respecting one's autonomy and protection against potential misuse, ensuring that the decision to end an individual's life is made with compassion, ethics, and utmost regard for human dignity.

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