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*Submitted in partial fulfilment of the requirement for the award of the degree of*

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ON THE TOPIC

# *"RIGHT TO AUTONOMY AND DIGNIFIED LIFE UNDER ARTICLE 21 IN THE CONTEXT OF EUTHANASIA: A CRITICAL APPRAISAL"*

Under the Guidance and Supervision of

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# CERTIFICATE

This is to clarify that **Kuldeep Verma**, student of **LL.M** bearing **REG NO**; **LM0120009** has submitted his LL.M dissertation work under my guidance and supervision. His work was satisfactory and was done by him diligently. I am hereby giving approval for the same.

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Date: 11th October 2021

# DECLARATION

I declare that this Dissertation titled "Right to Autonomy and Dignified Life Under Article 21 in the Context of Euthanasia: A Critical Appraisal" is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Dr. Aparna Sreekumar, and is an original, bona fide and legitimate work. It has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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# ABBREVIATIONS

| ABBREVIATIONS | FULL FORM |
|---|---|
| ART. | ARTICLE |
| IPC | INDIAN PENAL CODE |
| U.N | UNITED NATION |
| SCC | SUPREME COURT CASES |
| AIR | ALL INDIA REPORTER |
| CrLJ | CRIMINAL LAW JOURNAL |
| Ibid | IBIDEM (SAME) |
| Supra | PREVIOUSLY CITED |
| V. | VERSUS |
| S. OR SEC. | SECTION |
| P. | PAGE |
| Pvt. | PRIVATE |
| Ltd. | LIMITED |
| Co. | CORPORATION |
| Vol. | VOLUME |
| Iss. | ISSUE |

## LIST OF CASES

*Pretty* v. *United Kingdom*, [2002] All E.R. (D) 286 (Apr.).

**Q**

*Quill* v. *Vacco et al*, 521 U.S. 793 (1997).

**R**

*Rajesh Yadav* v. *State of UP*, 2019 SCC All 2555.

*R (on the application of Pretty)* v. *Director of Public Prosecutions*, [2001] UKHL 61.

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*Sunil Batra* v. *Delhi Authority*, (1980) 3 SCC 488.

*Shabnam* v. *Union of India & Ors*, (2015) 6 SCC 702.

*Smt. Selvi & Ors.* v. *State of Karnataka*, AIR 2010 SC 1974.

*State of Maharashtra & Anr.* v. *Indian Hotel and Restaurants Association*, (2013) 8 SCC 519.

*Smt. Kiran Bedi* v. *Committee of Inquiry & Anr*, 1989 AIR 714.

*Shantistar Builders* v. *Narayan K Totame*, (1990) 1 SCC 520

*State of Maharashtra* v. *Maruti Sripati Dubal*, Cri LJ 743 in 1987.

*State* v. *Sanjay Kumar Bhatia*, 1985 SCC OnLine Del 134.

*Spring Meadow Hospital* v. *Harijol Ahluwaliya*, AIR 1988 SC 180.

*Suchita Srivastava* v. *Chandigarh Administration*, (2009) 9 SCC 1.

*Schloendorff* v. *New York Hospital Trust*, 211 N.Y. 125 (1914).

**T**

*Thomas Master* v. *Union of India*, 2000 SCC OnLine Ker 430.

**U**

*U.P. Avas Vikas Parishad* v. *Friends Coop. Housing Society Limited*, AIR 1996 SC 114.

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# CHAPTER 1

# INTRODUCTION AND BACKGROUND

## INTRODUCTION

*"Life is Pleasant. Death is peaceful. It's the transition that's troublesome."*

- Matthew Arnold[1]

Human life is considered to be the most precious gift from God. The creator gave the human soul the ability to gain, conceive and achieve the highest, which is not similar to any other living beings. In the human soul, the attributes of the divine can be perceived. Hence, human life is not comparable to any other living beings on earth. A life that is born is bound to die. However, every human life has the right to live and die with dignity. In the words of Tennyson, no life that breaths with human breath have ever truly longed for death.[2]s

Nevertheless, Dr. Christian Bernard said – "Death is not always an enemy. At times it is the best medical treatment. Death stops suffering where medicine might only prolong the pain. Death can be the surest healer". The principle of 'Vitalism' holds that human life is an absolute moral worth, and because of its absolute significance, it is incorrect either to shorten the life of a patient or to omit to strive to length it. Thus, the vitalist school of thought requires human life to be preserved at all costs. The term „euthanasia, " which is the subject matter of this dissertation work, deals with the concept of life and death of a human being. The aspect of euthanasia is only a mechanism to exit from life in a dignified manner.

Perhaps the most basic canon of the Indian Constitution, as also evident from the Preamble, is respect for the liberty of the individual. This broadly implies that individual right to bodily autonomy and self-determination is protected by the highest law of the country. A good number of judicial pronouncements have also read the exercise of personal autonomy and independent choices of an individual into Article 21 of the Constitution which recognizes the right to life and personal liberty for all the persons in the country.

[1] http://www.uni-due.de/lyriktheorie/texte/1880_arnold1.html

[2] *"Alfred Tennyson Quotes." Quotes.net.* STANDS4 LLC, 2021. Web. 28 Apr. 2021. <https://www.quotes.net/quote/38860>.

Personal autonomy is often viewed as comprising three separate categories, i.e., the autonomy of thought, the autonomy of will, and the autonomy of action. Taken together, these circumscribe the notion that an individual is able to think, make decisions and act accordingly in his interest. Under the constitutional scheme, this inalienable right to personal autonomy and self-determination rests with a person till his death, a destination that everyman shares. Thus, a 'dignified death' is an essential element of a 'dignified life', which forms a fundamental right under Article 21. Dignified death viz-a-viz *euthanasia* - the intentional killing of a patient, by act or omission, as a part of his medical care is unquestionably one of the most pressing issues confronting modern times. Some of the questions raised include: is it wrong for a doctor to intentionally kill a patient even if the patient is suffering a terminal and incurable illness and asks for death? Does the respect for his autonomy not require that his request be fulfilled? Does a patient enjoy a right to die in certain circumstances, and if so, what are those circumstances? Are some lives not worth living, and if so, which and why? Is there a difference between killing a patient and letting him die? Do the relatives of a patient who is in a permanently vegetative state with almost no hope for recovery have the right to ask for his life-supporting treatment to be withdrawn or his death be hastened through an affirmative means? Can euthanasia be safely regulated?

Euthanasia is a complex moral and legal issue which involves diverse and contrary opinions on the question of personal autonomy and dignified death. On one hand there are arguments which advocate the ending of incurable sufferings of a patient through it whereas on the other, it is stated that the physical integrity of an individual must be defended from any sort of invasion.

It has become a debatable issue in the 21st century as different cultures grapple with the myriad of ethical, religious, and legal factors that go into helping someone die legally. Euthanasia, which can be defined simply as a "good death" or perhaps a "healthy death", has become a global problem at the end of life that is of particular concern to the elderly, although the term covers all age groups. Regardless of how it is used, the word "euthanasia" always evokes strong emotions. While for some people euthanasia is a manifestation of individual autonomy combined with responsible control over one's destiny, a compassionate response to a person's immense suffering or a clinical need to act in the patient's best interests means or is simply means for others euphemism for murder, assault, and violation of the human right to life contradicts the doctrine of the sanctity of life. It contributes to the abuse of vulnerable people.

In the legal sphere, the issue which arises is whether the law has any role to play in deciding the questions left unanswered or disputed. Does it pave the way towards the solution or does it make the questions even more complex as it involves the role of the state? If yes, what are the limitations which the legislators, enforcement agencies, and the judges must recognize?

In almost all civilized democracies, the organic law, i.e., the Constitution, has a crucial role to play when any matter involves the questions of freedom, dignified life, and autonomy of an individual. Constitutional jurisprudence, which begins its journey from the principle of limited government, unquestionably reserves the power to adjudicate upon the issues relating to the rights which an individual possesses throughout his entire life.

## MEANING OF EUTHANASIA

The term Euthanasia originated from the ancient Greek word 'Eu' (Good) and 'Thanatos' (death), that means 'Good Death.'[3] As per the Oxford English Dictionary, the word euthanasia means the painless death of a patient suffering from an incurable and painful disease or a person who is in an irreversible coma that cannot be recover.[4] The Stedman's medical dictionary Defines Euthanasia more descriptively. It defines the act or omission of taking the life of a patient suffering from a terminal illness or an incurable condition, as by lethal injection or by the termination of extraordinary medical treatment.[5] Another broader definition of Euthanasia is provided by the House of Lords Select Committee on 'Medical Ethics' in England, according to which Euthanasia is "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering."[6] Euthanasia is a broader aspect of mercy killing. Mercy killing is the ending of the life of an unbearably suffering patient by the physician on the willingness of the patient.

The term "euthanasia" first time use in the Modern Age is attributed to the philosopher Francis Bacon in the early 17th century, who stated that euthanasia referred to a relatively easy descent from life to a painless death. Three hundred years later, however, euthanasia assumed an unfavourable contract with the introduction of the Nazi euthanasia program, developed during World War II to remove a life of inadequacy, including people with diseases and disabilities. In the 1960s, in response to advances in medical technology and its intensive use, a fierce debate ensued in the Netherlands. At the time, the term euthanasia was placed in the particular

[3] Lewy G., *Assisted suicide in U.S. and Europe*. New York: Oxford University Press, Inc; 2011
[4] Oxford dictionary online at http://oxforddictionaries.com.
[5] Stedman's Online Medical Dictionary at http://www.stedmans.com.
[6] 241st law commission report, Passive Euthanasia- Relook, available at http:// lawcommissionofindia.nic.in/

context of backlash against heroic treatment. Concerns focused on what could best be done in a life-or-death situation where the patient's wishes were paramount. Until the late 1970s, the term euthanasia was named a broad category of problems.

## TYPES OF EUTHANASIA

While considering the kinds of euthanasia, it is essential to figure out the parties involved in the process therein, i.e., the patient and the medical practitioner. For a patient, euthanasia can be classified into the following two categories:

1. Voluntary Euthanasia

   In voluntary euthanasia, the patient in his conscious state of mind either consents to the administration of any medical process through which his life may be ended or voluntarily requests for the administration of such process. The euthanasia is called "voluntary" when his consent is obtained at a stage where he is suffering from a great deal of pain but is capable of making reasonable decisions.

2. Involuntary Euthanasia

   Euthanasia is "involuntary' when the life of a patient is brought to an end without his consent either because he may be incapable of giving it or may even not be in a capacity to understand what he is going through or what would happen to him. In this case, the decisions are made by the family members or close friends of the patient, or even sometimes by the medical practitioner and the patient is killed without his knowledge.

For a medical practitioner, euthanasia can either be "active" or "passive". The distinction between these has been explained by the Supreme Court of India in **Aruna Ramachandra Shanbaug v. Union of India**[7]

1. Active Euthanasia

[7] (2011) 4 SCC 454

Active euthanasia comprises necessary medical procedures, such as administering a lethal substance, e.g., Sodium Pentothal, through which a patient dies painlessly in a short period of time. Hence, it requires an affirmative action by a medical practitioner through which the life of a terminally ill patient can be brought to an end. However, this is illegal in India and is a criminal offence under the Indian Penal Code.

2. Passive Euthanasia

Passive euthanasia involves withholding of the medical treatment which would ensure the continuance of a patient's life, for example, discontinuance of life saving antibiotics, withdrawal of heart-lung machine from a patient who is in coma. Thus, passive euthanasia can be described as a deliberate omission where all the medical assistance provided to the patient for lengthening his life is terminated. In India, passive euthanasia is legal, however, there is no legislative sanction regulating the same.

## SIGNIFICANCE OF STUDY

Euthanasia has become a vital issue for the whole world, but there are no universal applications to tackle this issue. There are many countries where both passive and active euthanasia legalized through legislation or by judicial pronouncements. In India, euthanasia has been a matter of serious adjudication for the courts of law. In a nearly recent judgment of **Common Cause (A Regd. Society) v. Union of India,**[8] the Supreme Court has allowed passive euthanasia and living will, stating that the right to die with dignity is a fundamental right enshrined under the Constitution of India and has issued specific essential guidelines. However, the matter remains complex and to a certain extent in the air as no legislative sanction has been given to this effect. The most severe issue with euthanasia in India is the horror of premature and unwanted deaths of hundreds of people who die for want of medical resources or who are either allowed to die or killed just because others opine that their lives are no more worth living.

## RESEARCH OBJECTIVE

- To understand the relevance and importance of the concept of euthanasia.
- To study the international approaches towards legalization of euthanasia.
- To examine the judicial approach towards the right to die under Article 21 of the Constitution.

[8] (2018) 5 SCC 1.

- To examine the need for a legislative sanction in respect of euthanasia.

## RESEARCH PROBLEMS

- What are the judicial interpretations on right to die as a part of right to life?
- Where does the international community stand on the points of euthanasia?
- What are the pros and cons to legalizing euthanasia?
- What are the drawbacks of dealing with the issue of euthanasia without an appropriate legislative sanction?

## HYPOTHESES

- Voluntary euthanasia must be recognized as a fundamental right under Article 21.
- The Legislature must enact a law in respect of euthanasia and the guidelines of the Supreme Court in **Common Cause (A Regd. Society) v. Union of India,**[9]must no more be used as a substitute thereof.

## RESEARCH METHODOLOGY

The researcher shall be employing a method of both doctrinal or non-empirical research for conducting the study- much of material collected from the internet resources. The data and material are taken from the books, case laws, journals, law commission reports, and various essential documents to conduct the study. The research work totally based on analytical study.

## CHAPTERISATION

- Introduction & Background
- Concept of Dignified Life and Dignified Death in the Context of Article 21 of the constitution.
- International perspectives to Deal with Concept of Euthanasia
- Judicial Approach to Euthanasia in India
- Conclusion and suggestions.

[9] (2018) 5 SCC 1

## CHAPTER- II

## CONCEPT OF DIGNIFIED LIFE AND DIGNIFIED DEATH IN THE CONTEXT OF ARTICLE 21 OF THE CONSTITUTION

### INTRODUCTION

*"I have had a good life and I would dearly like a good death . . . my last wish is to die with dignity"*[10]

Human association has always endeavoured to cherish some fundamental human rights, the "right to life" being an inalienable right because without this basic right, exploration of other dimensions of human life becomes nearly impossible. This means that as such a person has the right not to be murdered by another person. However, the issue next is whether the individual who enjoys the "right to life" has the "right not to live", that is, the "right to die" as well. This may also include "right to die with dignity for a dead man" but the "right to die with dignity" does not really entail the "right to die" as unexpected death. The legitimization of passive euthanasia[11] in the country has been one of the most contentious topics in this respect in the past years. According to the Black's Law Dictionary, "euthanasia" is "the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy". It is the use of medicines which are explicitly intended to terminate the life of a patient at the patient's request.[12] The discussion on euthanasia is thus about the contradiction between both the values enshrined in Article 21[13] in the Indian Constitution and whether the so-called 'right to live with dignity' encompasses the 'right to die with dignity'. Every human life is precious. Each step must be taken to protect the life of a person. It is not a matter of easy reasoning that a person should be allowed the option of ending his own life. The right to die[14] has become a significant subject for public discussion and is growing in significance in the recent years. The right to death or to terminate life on its own means the choice of persons to choose a human who is in a terminally sick state at the end of their lives or because of a horrific accident in comatose or permanent vegetative condition. The Supreme Court of India has considered passive euthanasia as a basic right to die with

[10] C Taylor-Watson in Margarette Driscoll "After a Good Life, Why Can't we Choose a Good Death?" *The Sunday Times* Jan 15 1995.
[11] Brody, Baruch. (1998). Life and Death Decision Making, New York; Oxford University Press.
[12] INDIAN CONST., Art. 21.
[13] JOSEF KURE, EUTHANASIA– "THE GOOD DEATH" CONTROVERSY IN HUMANS AND ANIMALS 6( Janeza Trdine, Croatia 2011).
[14] S.K.Kapoor, Gray Matter, 'Right to Die'? Hindustan Times, April 8, 2007, at A.8.

dignity. In this chapter we will analyse the current legislation on the right to die with right to life dignity in India. The researcher also analyses the Indian law on current court declarations on the right in India to die with dignity.

## GENERAL

Statutory provisions are of recent phenomenon in most democratic nations that may go beyond at most a few hundred years. Many of these statutes acknowledge and make explicit human rights protections. Even democratic countries that have no formal constitutions appreciate and implement human rights. Such instances would be the United Kingdom and Israel. These rights are founded on the dignity of human beings. However, it goes back thousands of years as far as the idea of human dignity is involved. Traditionally, as a notion, human dignity has come from many faiths which are considered an essential part of their theological perspective. Later, the ideas of philosophers who established human dignity in their reflection were also impacted.

## ARTICLE 21

The right to life is without a question the most important of all rights. All those other rights give value to life and rely on the life itself for its functioning. Since personal freedoms can only be attached to living beings, one might assume that in some way the right to life itself is fundamental because none of the other rights would have been valuable or useful without it. If Article 21 was read in its original meaning, there'd have been no fundamental human rights worth mentioning. This section examines the right to life as understood and implemented by the Indian Supreme Court.

Article 21 of the Indian Constitution reads as under:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The expression “life” is not only a bodily respiratory act under Article 21 of the Constitution. It does not simply mean an animal existence or continuous hardship through life. It includes the right to live with dignity, the right to health, the right to air free from pollution and so on.

## MEANING OF LIFE

Philosophers over centuries have attempted to give objective, subjective or even supernatural or unexplainable meanings to the expression “life”. However, in the era of industrialization, it has taken a complete shift as far as the parameters of survival of a human being is concerned.

As stated before, it is not only the biological act of breathing or simple animal existence or continuous hardship in life but also is it inclusive of the right to life with human dignity, the right to survival, the right to health, the right to air free of pollution, etc.

Our entire identity, without which we cannot survive as human beings, relies on the right to life which makes the life of a man significant, full, and worthwhile. It is the only Article in the Constitution that has been interpreted as widely as possible. Thus, the fundamental and minimal needs of a person form the fundamental notion of the right to life.

**LIBERTY**

Liberty forbids impairment of the above-mentioned rights unless in accordance with a legal process. Article 21 relates to the 1215 Magna Carta, Article 40(4), Eire 1937 Fifth Amendment to the American Constitution and Article XXXI of the 1946 Constitution of Japan.

It is also essential for democracy, since it applies to natural people and not to citizens alone. Every individual, citizen or foreigner, has the right. Even a stranger may thus claim this privilege. Nevertheless, as stated in Article 19(1), it does not allow an alien to stay and establish in India.

For Article 21, this Article is all telling. The first section understands the meaning and idea of the right to life as the court understands it. Furthermore, the work will outline the understanding and the exercise of the right to life and the right to live with dignity on a series of breaches of the human body, image and fairness.

**PROCEDURE ESTABLISHED BY LAW**

As we saw, the expression "procedure established by law" is used explicitly in the Indian Constitution. The due process of law is much more important, yet the Indian Constitution does not expressly state it. In the United States of America, the concept of due process is observed while the Indian constitutional architects deliberately left it out. However, in the most recent decisions of the Supreme Court, the element of "due process" is again evident. Let's look in depth at the difference. This implies that, provided the proper process has been followed, a legislation lawfully passed by the legislature or body involved is legitimate. According to this concept, a person may be deprived of life or personal freedom in accordance with the legal process. Procedure established by law implies the legally passed legislation is legitimate even if it is in violation of the norms of justice and fairness. Strict adherence to the legal process may create the danger of compromise to people's lives and personal freedoms because of unfair

legislation passed by the legislature. The Supreme Court emphasized the significance of the due process of law to prevent this scenario.

## THE CONCEPT OF HUMAN DIGNITY IN RESPECT OF ARTICLE 21

- Philosophical aspect

The philosophy of Kant[15] has influenced the contemporary basics of individual dignity. The moral philosophy of Kant is separated into two sections: ethics and law (jurisprudence). Human dignity has been discussed inside his ethical theory and is not included in his jurisprudence. The case-law of Kant is based on the idea of the right of an individual to liberty as a human being. As per Kant, when a human being acts forcibly, a rational agent legalizes his own will, an individual behaves morally. This autonomous obligation is not subject to any rights or compulsion and is not related to other rights. For Kant, ethics involves obligations on itself and many others (e.g., to improve one's skills) (e.g., to contribute to their happiness). This capacity is the integrity of the individual being. This makes that person distinct from an item. It makes these people an end & protects him from becoming a simple means in another's hands. In his First Justice H.R. Khanna Memorial Lecture,[16] Professor Upendra Baxi pointed out with great aptness that conceptions of integrity, like the conception of social privileges, are to be the West's presents to the remainder, but this perspective is built upon the prescription of cluelessness of the abundant traditions in non-European countries. He clarifies Eurocentric ideas on human decency by emphasizing that he regards dignity as an individual (moral agency) and as liberty (freedom of choice). Dignity should here be regarded as 'empowerment' in the sake of respect for human dignity, namely:

(i) respecting the ability of yourself as an agent to make your own free choices;
(ii) compliance with such options;
(iii) regard for the necessity to have a context and circumstances

One may work as a free and informed decision source

- Jurisprudential aspect

In the ***Common Cause Case,*** [17] the Supreme Court illustrated the application of the proportionality doctrine when it must balance all aspects with same right, that is, the right to

[15] See Toman E. Hill, Humanity as an End in itself (1980) 91 Ethics 84.
[16] Delivered on 25th February, 2010 at Indian Institute of Public Administration, New Delhi.
[17] Common Cause (A Registered Society) v. Union of India (2018) 5 SCC 1.

life in accordance with Article 21 of the Constitution. The right to life establishes, on the one hand, a powerful public interest, which safeguards human life, while, on the other, ensuring that personal independence takes choices in relation to its own body.

In this decision, the Supreme Court made a careful examination of the societal, moral, economical and philosophic elements of the right to die. It had thus beautifully created exception to the concept of holiness in life in situations when the life of a person was lost, and the length of life is in no manner in its maximum benefit. The comparative jurisprudence of many nations referenced by the court was of considerable value to this decision in carrying out this task. The Bench member thoroughly looked at international jurisprudence.

The Constitution Bench has opened the door for the right, via passive euthanasia, to die with dignity as a fundamental right. The courts established specific Advance Guidelines for sick and dying or permanently vegetative individuals. It also provided some recommendations for people who did not have an Advance Directive.

While this option to die with dignity is of great benefit to many people, there's certain opportunities to abuse this privilege. The low state of education and legal knowledge among all the Indian people may make the greedy heirs abuse these guidelines.

The acknowledgment of the rights of seriously ill people to die with dignity is just one side of the coin. The issue of how the individuals claiming to take on death for different urgent reasons such as age, misery, or lack of chance to die with dignity in India would be understood and determined remains unresolved.

- Constitutional values regarding human dignity

There is obviously no explicit reference of human dignity because no such term is used in the above-mentioned Article. But, in the same veins as the American Supreme Court, the Indian Supreme Court inserted a judge-made concept of human dignity into such provisions of the Constitution. As would be seen below, it is the idea of human dignity that has always been at the front and background of the Supreme Court in defining and providing real importance to the basic rights contained in Part III of the Constitutions of India (which are nothing but human rights). For the Indian Supreme Court has interpreted "the right to life," as entrenched in Article 21 as "the right to live dignified lives." And it is connected to the right as a human being to develop. Similarly, free expression, in interpretation of Article 14 of the Constitution, is utilized as lodestar to equal and to fight blatant treatment and to establish a clear link and link among

integrity, equality and unjust treatment according to Article 14. The fundamental principle of our Constitution is that every individual in the country should have the same chance to develop as a human being regardless of race, caste, religion, community and social position. Granville Austin[18] identified three distinctive threads of Indian Constitution, during an analysis of the Indian Constitution in the first 50 years: (I) the protection of national unity and integrity, (ii) institutionalization and ethos of democratic; and (iii) support for social reforms. The beaches rely on one other and are interwoven together with what he eloquently characterizes as "a continuous web." And social changes cannot take place unless every person of our nation is able to maximize his or her potential. The Constitutional, while drawn up by the Regional Parliament, was designed for the Indian people, and thus the people themself are given the expression "We The People" in the opening lines. The most significant gift provided by this Constitution to the ordinary citizen is "basic rights", which may also be termed human rights.

- Judicial interpretation

The Supreme Court has given art. 21 a new meaning in ***Maneka Gandhi* v. *Union of India*.**[19] The Court ruled that the right to life given is not only a bodily right, as well as the chance to live with basic humanity dignity within its scope.

In ***Bandhua Mukti Morcha* v. *Union of India***[20] we find different wide definition of life for dignity. The Court, which characterized Article 21 as the core of basic rights, interpreted it more widely.

- Is Concept of Euthanasia being dignified death

The term euthanasia derived from the Greek word eu, that means "good," and Thanatos, that means "death,". It primarily referred to a "good" or "painless" death.[21] Euthanasia is described as the practice of another person administering a deadly agent to a patient in order to alleviate the patient's unbearable and incurable pain.[22] Generally, the physician's motivation is compassionate and aimed towards alleviating pain. Euthanasia is carried out by doctors and may be classified as "active" or "passive." Active euthanasia is that where a physician

[18] Working a Democratic Constitution: The Indian Experience by Granville Austin Published by Oxford University Press, Delhi 1991.
[19] AIR 1978 597.
[20] AIR 1984 802.
[21] Nadeau R. Gentles, Euthanasia and Assisted Suicide: The Current Debate. Toronto: Stoddart Publishing Co. Limited; 1995. Charting the Legal Trends; p. 727.
[22] Decisions near the end of life. Council on Ethical and Judicial Affairs: American Medical Association. JAMA. 1992; 267:2229- 33.

intentionally or willfully terminates patient's life by lethal injection or other substance. Passive euthanasia refers to withholding or removing life support system like oxygen, ventilator etc. Euthanasia further classified into three sub-categories such as; Voluntary euthanasia, Involuntary euthanasia and Nonvoluntary. Voluntary euthanasia is a kind of euthanasia that carried out at the desire of patient. Involuntary euthanasia, often referred to as "mercy killing." is the act of ending the life of the patient who has not sought it in order to alleviate his or her pain and suffering. Nonvoluntary euthanasia occurs when patient is unable to agree.

Although it imposes humiliation on the others, it is a character defect, an inability to respect their basic humanity, it does not destroy their dignity in its minimum or complete meaning. If somebody is subjected to unintended euthanasia or lies about both the diagnostic of him, he is incorrect, faced; but in the face of this humiliation, he may continue living his life and die his death, with (more or lesser) dignity. Christ (and other martyrs) endured tremendous unworthiness yet with dignity died, not least. Muhammad Ali is occasionally lauded for his dignity in the face of his Parkinson's illness. Individuals die with dignity, whichever the conditions under which they die: indignity is experienced; dignity is earned.

Therefore, a decent death will be achieved. Anyone who leads a wonderful life would die in that manner. Virtually. For the remainder of us, dying with dignity, like life with dignity, would be something that we want to accomplish, but only partly. In individuals who lose their thinking abilities, the capacity to die with dignity may also be lost – for example, via dementia-inducing diseases. Similarly, severe pain or other suffering may impair someone's capacity to think and choose and thus die with dignity.

It thus appears that health workers cannot guarantee that somebody dying with respect. But at the other hand, they may serve without humiliation to death. This will entail ensuring that they support the autonomy of individuals and the application of human reason as much as feasible. It also involves eliminating obstacles to dignity, such as (controllable) pain, that may be eliminated. On some situations, medical professionals contribute with dignity indirectly to death. Turning to my previous example of the guy who died in tremendous agony, health care providers might have eliminated unworthiness, thus helping him die without unworthiness. In the end, however, his strength of character was to have a dignified death; in other words, he

had a dignified death in the face of unworthiness. Indeed, the unworthiness made it possible for him to show his dignity. Hence Euthanasia is not a dignified death.[23]

## THE EXPANDING HORIZONS OF HUMAN DIGNITY

- RIGHT OF PRISONERS

The Supreme Court ruled that even prisoners should be treated with human dignity and that they should not be deprived of their rights just since they are detained as sub trial or even convicted in prisons ***DK Basu*** v. ***State of West Bengal***[24], ***Sunil Batra*** v. ***Delhi Authority***[25], etc.

In D.K. Basu, the Court set forth the process to be observed even at the moment a person is detained to ensure that the proper dignity of the person apprehended is preserved. Most significantly, the Court ordered that such a person should not be shackled if the criminal is hardened and, in such case, the Judicial Magistrate involved must also obtain prior authorization. The constitutional requirement that underlies our view must first be laid out in this habeas corpus procedure. The rule of law finds its Waterloo, whenever the minions of the state turn scofflaws; thus, as the sentinel of the country and the language of the Constitution, the Court smashes the violators with its letter and guarantees the respect of human rights beyond iron bars and jail guards. This case is a symptom, symbol and indication for the rights of people in jail. When trauma to jail dominates, prison justice has to be vigilant and thus we must extend the authority of our 'Habeas.' Jurisprudence cannot sleep when punitive justice must itself become testimony to torture." The Supreme Court has upheld some rights of even those convicted of death in ***Shabnam*** v. ***Union of India & Ors***[26], stating that they cannot be enforced until all possible constitutional and legislative procedures are exhausted. The Court held the following: "Once we acknowledge this element of human dignity, it will not stop with the pronouncement of the death sentence, but will continue well beyond that and stay valid until such a prisoner has reached his destiny. Consequently, the proceedings from the affirmation of the death sentence of the High Court to the execution of such a punishment must be conducted in a manner that is fair and lawfully acceptable to the prisoner. There are numerous aspects to this right to human dignity. Human dignity, first and primarily, is the humility of every human being as a human being. Additional aspect that should be emphasized in this instance is that human dignity is violated if an individual is equipped with life, bodily

[23] J Gilbert, personal communication, 2001.
[24] AIR 1997 SC 610.
[25] (1980) 3 SCC 488.
[26] (2015) 6 SCC 702.

or mental wellbeing. Torture, degradation, compulsory labour, etc. all violate human dignity. It is in this framework that many of the rights of the convicted stem from his human dignity. These might include assumption that each and every accused is innocent unless found guilty in court; the right to justice and to quick trial; the right to legal assistance, all elements of the dignity of human being. Even after conviction, permitting human circumstances in prison is a component of human dignity when a person spends life in prison. Prison reforms or jail reforms are inspired by human dignity jurisprudence in order to make prisoners rehabilitated to lead a normal life and integrate them into society after serving the prison sentence.

In ***Smt. Selvi & Ors.*** **v.** ***State of Karnataka***[27], a three-judge bench, in addition, stated that the mandatory government of the impugned methods constituted the impugned management of many research method, notably, narcoanalysis, polygraph exam and the Brain Electrical Activation Profile test for the improvement of federal criminal efforts. Similarly, the courts deprive custodial torture or custodial death and false encounters of human dignity. Even individuals suspected of any crimes and pursuant to inquiry cannot thus be abused. The Supreme Court observed that there are numerous facets of inhumane treatment. It may essentially encompass actions that are meant to cause bodily hardship or significant mental anguish. It should include a therapy that induces shame and forces a person to behave beyond his will or conscience. In ***Arvinder Singh Bagga*** **v.** ***State of U.P. & Ors***.[28], torturing was seen to not only be a physical one, but also to comprise of psychological and mental torment intended to make fears to yield to police demand.

It has also resulted in the creation of compensating jurisprudence, wherein individuals under detention or the kith and family of those who were killed under police custody or false encounters are awarded recompense by exercising powers under written jurisdiction as in ***Dr. Mehmood Nayyar Azam*** **v.** ***State of Chhattisgarh & Ors***.[29]

- RIGHT OF CHOICE

It is only through the lens of basic human rights jurisprudence that the Court has been able to provide individuals the freedom to make personal decisions, particularly those regarding personal fulfilment, independence, and self-realisation. For instance, the Supreme Court's judgments in ***State of Maharashtra & Anr.*** **v.** ***Indian Hotel and Restaurants Association***[30]

[27] AIR 2010 SC 1974.
[28] AIR 1995 SC 117.
[29] (2012) 8 SCC 1.
[30] (2013) 8 SCC 519.

(Bar dancers' case) and ***Charu Khurana & Ors*. v. *Union of India & Ors.***[31] (Female make-up artists in Bollywood) respect the reputation of female, which include sex workers who are raped, and condemn female feticide and honor killings as in ***Arumugam Servai* v. *State of Tamil Nadu***[32]

- TRANSGENDERS RIGHTS

Transgender rights, which include the right to self-determination of sex, are also founded on human dignity. Recognizing this right, the Supreme Court in ***National Legal Services Authority*** v. ***Union of India & Ors***.[33] defined human dignity as follows: ". The fundamental concept of personal dignity and freedom is shared by all countries, especially those with democratic institutions. Democracy demands us to recognize and nurture the human spirit, which is accountable for all human development throughout history. Democracy is also a means through which we try to improve the quality of life for the populace and to provide chances for each individual to develop his or her individuality. It is predicated on the principles of mutual understanding and cooperative living. If democracy is founded on the acknowledgement of man's uniqueness and dignity, it follows that we must recognize a human being's right pick his or her sex/gender personality, that is an integrated component of his or her character and one of the most fundamental components of self, dignity, and freedom. Indeed, there is a growing awareness that the ultimate barometer of a nation's progress is not economic prosperity but human dignity."

- RIGHTS OF DISABLED

While interpreting different sections of the 1995 Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act (the 'Disability Act' for short). The Indian courts have shown appropriate attention to the requirements of handicapped people, ensuring that those with impairments may also reach their full capabilities free of such harassment and discrimination. Rather than clogging this briefing with many similar decisions, I would like to draw your attention to a recent judgement dated 12 May 2016 in ***Jija Ghosh & Another*** v. ***Union of India & Ors***.[34]. In that case, the petitioner, an Indian resident with cerebral palsy, is a renowned disability rights campaigner. She was supposed to travel from Kolkata to Goa on 19 February 2012 to attend an international symposium on disabilities problems. After

[31] (2015) 1 SCC 192.
[32] (2011) 6 SCC 405.
[33] (2014) 5 SCC 438.
[34] (W.P. (C) No. 98/2012).

already being boarded on the aircraft, she was informed that she was not permitted to travel to Goa owing to her handicap. The Airlines' actions were determined to be unlawful and in breach of the Directorate General of Civil Aviation's 'Civil Aviation Guidelines' dated 1st May, 2008, as well as Aircraft Rules.

The Court stated: ". It is undisputed that the Pilot and Crew members of airlines are tasked with the responsibility of improving the protection of all travellers, and a choice may be made to de-board a specific passenger in the greater health and safety of other co-passengers. The issue seems to be whether such an occurrence occurred during Jeeja Ghosh's de-boarding. Whether the airlines made this choice after proper thought and medical advice? Regrettably, the answer is definitely 'NO.' Jeeja Ghosh is a cerebral palsy patient. However, her illness did not need the use of assistive equipment or assistance. She had requested help with her luggage from the check-in desk during security check-in. She arrived on her own to board the plane. This was noted not only by the check-in staff, but also from the security officers who frisked her and the attendant who helped her in bringing her luggage up to the plane. Even if we believe that there was any blood or froth flowing from the edges of her lips when she was sitting on the plane (which she has adamantly denied), nobody bothered to engage with her either ask her why. There was no physician called to evaluate her health. Without warning or explanation, the decision has been made to de-board her without establishing whether her health precluded her from flying. This obviously constitutes a breach of Rule 133-A of the 1937 Rules and the 2008 CAR standards. As per the Court, the above situation breached the Rule of human dignity and emphasized the additional nodes: ". Equity is based on two complimentary principles in international humanitarian law: non-discrimination and fair distinction. The non-discrimination concept is aimed at ensuring that everyone enjoys and exercises all its rights and freedoms equitably. Prejudice arises because of the unjustified denying of equal participation possibilities. This results, for instance, to the marginalization and denial of access when public services and infrastructure are set up out of the reach of people with disabilities. Equally does not only mean the prevention of discrimination (e.g. protecting people from adverse treatments by establishing legislation opposing discrimination) but also the remediation of prejudice towards groups experiencing systemic social discrimination. Specifically, this involves accepting the idea of positive rights, effective change and stable housing. The development of global standards specifically related to special needs and movements to classify the rights of disabled people as representatives of the universal human rights segment has been mirrored in the transformation of the condescending strategy and

paternalism method of disabled people as displayed in the medical model. {See - United Nations Consultative Expert Group Report Conference on International Standards and Disability Standards 10-2-2001

- RIGHT TO REPUTATION OF INDIVIDUAL

Personal identity enjoying right is yet again based on dignity, which has been acknowledged in ***Smt. Kiran Bedi* v. *Committee of Inquiry & Anr***.[35], in which such a Court repeated an opinion of the judgement in ***D.F. Marion* v. *Davis***.[36] "The right to a private, unassailed character for vicious defamation is old and is needed in modern culture. Solid reputation is a component of self-security, as well as the ability to enjoy life, freedom and property under the Constitution." The Supreme Court did not recognize defence on free expression, in a path-breaking recent decision of ***Devidas Ramachandra Tuljapurkar* v. *the State of Maharashtra & Ors***.[37] in which the poem 'Gandhi Mala Bhetala' ('I met Gandhi') insulted the honor of the Country's Father. The Judge dismissed quashing the FIR against poet pursuant to section 292 of the Indian Penal Code (i.e. obscenity). It noted in the proceedings a test set out in ***Vereinigung Bildender Kiinstler* v. *Austria*[38] *by the Court of Human Rights (ECHR)*[39]**, in which the Court sought to adjust the dignity of the human person rights and the right of speaking. It is not, in our viewpoint, the abstract or undefined sense of social dignity – a notion that also, by itself, can be risky as it is justified by the haphazardly infringement of fundamental freedoms – but the tangible notion of the 'universal human dignity of others' which played a central role in this case' The Court therefore agreed that creative expression is beyond professional values and that it cannot indeed not prevail over or overshadow respect for the laws concerning preventing crime or wellness or moral safeguards; that the limitations of liberty are surpassed whenever the image of an individual (world famous or not) is considerably distorted by entirely imaginary elements – without it . When creative freedom is not limitless and if other rights and reputation are concerned; In cases where human dignity conflicts, creative freedom must always be subjugated to individual rights.

## QUALITY OF LIFE

- Right to Health

[35] 1989 AIR 714.
[36] Marion v. Davis, 217 Ala. 16, 114 So. 357 (Ala. 1927).
[37] (2015) 6 SCC.
[38] No. 68354/01, ECHR 2007.
[39] Application No. 68354 of 2001, decided n 25-01-2007 (ECHR).

The DPSP is simply a governmental directive. This is non-justiciable. No individual may argue that these instructions have not been fulfilled. Article 21 refers to "no one should be deprived of his life and personal freedom unless by law." The right to live implies much more than wildlife and encompasses the right to life in consistent with principles of human dignity and respect. In several instances, the Supreme Court ruled that the right to health and medical treatment is an important right under Article 21, since health is necessary if the lives of workers are to be meaningful and purposeful, and consistent with human dignity. Article 23 relates indirectly to health. Article 23(1) bans human trafficking. It is widely recognized that trafficking of women is a significant role in the spread of AIDS. Article 24 relates to forced child labour, "no child under the age of 14 is hired for work in any industry or mine or for other dangerous job. This essay thus addresses the importance of child health. In additional to constitutional remedies, awareness of the respective late health regulations contributes to the substance of the right tBo health. The legal ban on commercialized human organ transplantation and the efficient enforcement of consumer protection Act to address poor medical services have energized the right to health.[40]

- JUDICIAL RESPONSE TOWARDS RIGHT TO LIFE AND MEDICAL HEALTH

The Indian judiciary started playing a really productive role in public-interest disputes, which offer the justice department the ability to examine the economically and environmentally circumstances of victimized, poor and underprivileged people, by means of a PIL, in accordance with Article 32 of the Constitution, and the Supreme Court has guided the government to maintain the basic right to life and freedom. The Court further noted that a basic right is meant to promote the concept of political freedom and prevent the formation of autocratic leader, but it is worthless unless it has been enforced by courts. However, it does not imply that the Directive principles are less essential than basic rights or are not obligatory upon the different parts of the supreme court's gaze, while increasing the reach of Article 21. **Paschim *Bangal Samity & Others Khet Mazdoor* v. *State of West Bengal & Others***[41] ruled that the main government's responsibility in a welfare system is to safeguard public welfare. Furthermore, the government has a responsibility to provide those citizens with sufficient medical facilities. The government fulfils its duty by giving healthcare care to individuals who need these services. Article 21 imposes a duty on the State to preserve the right of every individual to live preserving human lives is thus very important. The state-run governmental

[40] Spring Meadow Hospital v. Harijol Ahluwaliya, AIR 1988 SC 180.
[41] 1996 SCC (4) 37.

hospitals are obliged to provide medical aid to protect human life. If a government hospital does to give a person who is in need of such care with timely hospital attention, it will violate its right to life under Article 21.

- Right to Food

Right to Food is intrinsic in dignified life, and Article 21 of the Indian Constitution, that further assures the basic right to freedom of expression freedom, should really be perused with Articles 39(a) and 47 in order to determine the phenomenon of the obligations of the State with a view to ensuring that this Right is implemented effectively.

Article 47 of the Constitution, as an underlying prerequisite of management of public affairs, requires the Government to focus its initiatives on ensuring that all of its citizens have the right to sufficient ability to make a living means, whilst Article 39(a) of the Constitution states that the State must increase its people's nutritional level and living standards as an ultimate responsibility. The Constitution thus establishes the right to food protected by the constitutional remedy provided for by Article 32 of the Constitution as a fundamental right to be enforced.

The national human rights Commission thus also took the opinion that there is still a basic right to be free of hungry and that hungry is a severe rejection and breach of that right. The Committee found that "misgovernment," as a result of errors of omission and commission on the part of the public servants that are the rationale of malnourishment deaths reported in various regions of the country, was directly concerned with this in accordance with the provisions of the Human Rights Act of 1993.

People in poverty and famine have frequently experienced long-term malnutrition. Although their fatalities could not have been associated with hunger in precisely clinical terms, the sad fact remains that they were frequently killed by protracted malnourished and the continuity of anguish, which made them were unable deal with common infections such as pneumonia and diarrhea. The Commission found this scenario all the more distressing given that the Food Corporation of India's granaries were overflowing.

In agreement with the opinion of the petitioner, Dr. Amrita Rangasami, Director, Center for the Study of Relief Administration, the Commission has therefore stated that current practice of insisting on death as evidence of hunger is incorrect and has to be rejected. He noted that there are clear political consequences with regard to the responsibilities of the State. The right to food entails the right to food at enough nutritional levels, and the quantity of relief must

reach these levels to guarantee that this right is effectively protected and does not remain a theoretical notion.

The spectrum of suffering is often seen as the indispensable component for hunger. The Commission also considered it worthwhile to take the petitioner's opinion that public policy and relief codes require a paradigm change in this area and that the transition from the field of kindness to the field of the right of a citizen has to be made. The present concepts of disaster and the rationale for its predominance by the Government of India have restricted assistance to the short term. In comparison, a human rights-based approach to food and nutrition implies the recognition as 'claim holders' of the recipients of relief programmes. From this standpoint, the predominance of hunger-threatening anguish is an injury that requires punishment of the State. The Commission considered that the remedy provided according to Article 32 of the Constitution had no less effect on organizations than individuals.

At the end of its operations in this regard, the Commission noted that it took place at a time whenever the government and civil society were widely demanded that everything be done to eliminate poverty and hunger, which constitutes an offence against the dignity and value of the human person. The Millennium Development Goals (MDG) of the UN are primarily committed by all Heads of State and Government to reduce the percentage of the world's impoverished and people living in famine by 2015. India has a particular duty in this respect, given the conditions of our nation. The persistence of severe poverty and hunger is inconsistent today since it does not only oppose respect for human rights, but also weakens the chances of harmony and peace within such a State. For all these considerations, the Commission will seek to participate thoroughly with the questions addressed in the forthcoming hearings.

- Right to Shelter

The right to shelter is an essential right given to Indian people in accordance with Article 21 of the Indian Constitution. This privilege was "expanded" by the Honorable Supreme Court under Article 21 via several historic judgements.

Allahabad HC has just additionally declared, as a basic right to refuge, a right to all the facilities required for the livelihood and development of people in case of ***Rajesh Yadav* v. *State of UP.***[42]

[42] 2019 SCC All 2555.

Article 21- "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Some of the landmark judgments of the Supreme Court on shelter rights are as follows:

The Supreme Court held in ***Olga Tellis* v. *Bombay Municipal Corporation***[43] that right to life encompasses the right to livelihood and shelter since these constitute an essential component of the right to life provided for in Article 21. This historic decision has broadened the ambit of Article 21 to include and livelihood.

With respect to ***Shantistar Builders* v. *Narayan K Totame***,[44] the court ruled that the right to adequate accommodation and a pleasant environment was important.

In the circumstance of ***U.P. Avas Vikas Parishad* v. *Friends Coop. Housing Society Limited***[45], Court found that the privilege of refuge was maintained to be the fundamental human right deriving from the privilege to household provided for in Article 19(1)(e) of this Convention and the right to life assured in Article 21 in order to make this right important for the poor.

In the matter of In ***Chameli Singh* v. *State of U.P.***,[46] the Court examined and concluded that the right to refuge is a basic right of every person, and that Article 21 of the Constitution of India, in its scope, includes the right of refuge for the betterment of the right to life.

- Right to livelihood

Essential housing, food, education, employment and medical care may be included in living conditions. As stated previously, the perspective of the court continued to change over time. The Supreme Court in ***Olga Tellis* v. *Bombay Municipal Corporation***[47], often referred as "Pavement Dwellers Case", a five-judge Court bench, now implies 'right to exist,' since no one can survive without livelihoods, i.e. the means of life.

Where the right to live is not dealt with as component of the constitutional right to life, the simplest method of forfeiture of his life and liberty would be to depriving him of his livelihoods to the point of being abrogated.

[43] (1985) 3 SCC 545.
[44] (1990) 1 SCC 520.
[45] AIR 1996 SC 114.
[46] 1996(2) SCC 549.
[47] AIR 1986 SC 180.

The Court stressed in ***M. Paul Anthony* v. *Bharat Gold Mines Ltd***.[48] that, when a govt employee or a public official is suspended until an administrative disciplinary survey against him would be completed, a sustenance payment must be given to him. The Court has stressed that in this instance a servant of the Government is not using his right to life and other basic rights.

But if a person is of the right according to the process set out in law, which must be fair and just and which is in the broader public interest, the argument for a deprivation of the right to livelihood referred to in Article 21 is untenable.

The Judge stated that the government possesses property in performance of its duties of executive action for a public purpose. The landowner gets compensated for instead of land and the claim of deprivation of the right to subsistence under Article 21 is thus untenable.

In ***M. J. Sivani* v. *State of Karnataka & Ors***,[49] the Supreme Court held that the right to life under Article 21 protects life, however a rider has no influence over public morality or public order or that his exclusion cannot be excessively predicted, or spread to lawyers, businesses or trade that are harmful to the public interest. Consequently, it was ruled that video games regulation or ban of some computer games of sheer coincidence or mixed opportunity are not in violation of Article 21 and the process is either irrational, unfair or unfair.

The Supreme Court in ***Chameli Singh* v. *Uttar Pradesh***[50] had ruled that the ability to shelter is a basic right accessible to all citizens, and Article 21 of India's Constitution said that it includes the right to housing to increase the meaning of the right to life.

**SANCTITY OF LIFE**

- Right to Self -determination and Personal Autonomy

Our constitution is a beautiful result of our national struggle for self-determination and clearly states our right, but no reference is made in our constitutional or statutes of the right to self-determination. Nor is India's position on the right to self-determination well stated. To determine India's stance or status on this issue we must study India's opinions on the International Forum The statement issued by India in 1979, once it became a party to both human rights conventions, assisted to comprehend India's stance on the right to self-

[48] (1999) 3 SCC 679
[49] 1995 (3) SCR 329.
[50] 1995 Supp (6) SCR 827.

determination. Government made both covenants a statement in Article 1. The Proclamation announced that the State of the Republic of India proclaims that the phrases "the right of self-determination" in this article just extend to persons subject to foreign control and that they do not implement to constitutional independent States, or to a section of a nation or people... which is the very basis of national integrity. The statement restricts only the extent of the right to specific settings and that foreign control like colonialism plainly opposes its applicability in post-colonial and other circumstances. An official declaration from the Indian Administration may be accepted despite the change in political groups and state. This is India's legal standing both internally and outside and no alternative explanation can be found in the Indian Constitution. In no scenario in India can this privilege be extended, since it may be claimed that there is no condition of foreign dominance, because India has been liberated from colonialism. Nations such as Bangladesh and Indonesia have adopted similar views on Article 1. However, countries like France, Germany, the Netherlands and Pakistan objected to the statement by India which limits the scope of the right to self-determination.[51] India also had expressed a similar opinion before this announcement. When the 1970 Declaration of Friendly Relations was drawn up, India said that it did not apply to sovereign and independent nations, to integral portions of their land, or to a segment of the people or country.

- Right to Die

Article 21 of the Indian Constitution states that 'no individual would be stripped of his own existence or of individual liberty unless in accordance with the process laid forth by law. Article 21's right to liberty will not include the choice to die. Le droit à la vie is a basic instinct. The issue of the privilege of death for the first occasion now appears just before High Court of Bombay in the ***State of Maharashtra* v. *Maruti Sripati Dubal***.[52] Therefore in this instance the court says that Right to Life includes the right to die and therefore making unconstitutional Section 309 of the Indian Penal Code of 1860. However, in the ***Gian Kaur* v. *State of Punjab***[53], the Supreme Court ruled that the right to life will not come under the right to death or to be murdered. Therefore, a suicide attempt is a crime punished by Article 309 of the Indian Penal Code and is illegal with regard to Indian Constitution Art. 21. right to life is a natural right and the right to death is not a constitutional right that nobody has the

[51] Hampson 2002.
[52] Cri LJ 743 in 1987.
[53] (1996)2, SCC 648.

power to terminate life unnaturally. In ***Aruna Ramchandra Shanbaug* v. *Union of India***,[54] the Supreme Court ruled in its decision that passive euthanasia alone is allowed in India; meaning that if an individual is simply ventilated in such instance, a patient may be withdrawn off the ventilator. Even in India it is not accepted and unlawful, whether that be voluntarily euthanasia, unintentional euthanasia or non-volume euthanasia, and it is a criminal offence according to the Indian Penal Code, excluding passive euthanasia.

- Living Will

In addition to supporting the interests to self-determination of the person, a living will have many benefits. First of all, it means making sure that the misuse of assisted suicide is prevented by trying to make the patient's wishes tied to doctors (if the patient's desires are proved). The need for a living will result to simpler and much more dependable judgement with ample proof of the choice of the patient. Secondly, a life also will vindicate a doctor activity of removing diagnosis by having evidence of a client motives. This protects a doctor from homicide accusations.

Thirdly, living will can help to ensure a sense of control over death in patients and their loved ones, which is an important psychosocial result of an AMD. Dying, once crucial to religious and social living, has indeed been made socially unacceptable, making it very difficult to believe about. People usually refuse to think of their loved ones' deaths. AMDs can help to encourage people to come over from their danger and stay strong the decisions that need to be taken. Fourth, as Dworkin has tried to point out, often these patients recognize that their hardship creates their family members distress and they are consequently willing to lessen the risks on others. Eventually, death choices are strongly shaped by historical and practice performance. In order to maintain patient autonomy, doctors must give proper acknowledgement to the wishes of a patient. A judgement made by the high court, which was informed by a group of medical professionals who did not deal with the client or the doctor who treated him, is emotionless. It may have nothing to do with whatever the patient had selected if she'd been aware. The variety of Indian traditions and people have been created much. A study of views among individuals of Chinese ancestry showed that they possessed a global perspective, which in opposition to autonomy and independence valued interconnectedness, empathy and care. Nevertheless, for many others the autonomy principle may be a dominating ethical factor in their system of values. However, an impartial party's

[54] (2011)4 SCC 454.

judgement such as the court may not take into account those complicated ideals by which a person wants to live and probably die. This choice may therefore be an imposition of the decision makers' views rather than a representation of the patient's values. This is certainly detrimental to the right to a dignified death, a fundamental component of which is the possibility of dying accordingly to one's own ideals.

## CONCLUSION

Jurisprudentially, then, if anyone were to dispute about 'Why is the validity of human rights?' the response would be that human dignity is rooted in and justifies human rights. There is little question that the debate on dignity dates back to Kant, who took the forefront after the Second World War and had a much wider significance in recent decades. Dignity as the centerpiece of human rights is not only recognized by jurists, but imprimatur is also granted by courts. This human rights narrative from its beginnings hundreds of years ago is rooted in "dignity" and has been eloquently summarized by Professor Dr. A. Lakshmi Nath and Dr. Mukund.[55] The Author wishes to end by stating that if human decency is to be preserved, it is the only court that is active in defining the word "dignity" or in instilling different multilateral cooperation and pronouncements that speak, as in many instances, on the protection of human dignity. The court is the only one that can preserve it, since dignity cannot be codified. Moreover, as lengthy as the idea of rights and dignity of the individual and of person is confined to free from pain, torture, neglect, impoverishment, suppression and hardship or other forms of oppressive or depraved authority, this would not be hard to advocate a legal or political moral to act with respect. However, certain philosophical difficulties may emerge when respect for individuals is understood to include demands for positive social goods and services such as food, clean air, effective transportation and economical systems, medical drinking water, livelihoods, sufficient food and so on. As we saw above, many of the assertions may be pushed easily.

[55] Dr. A. Lakshminath and Dr. Mukund Sarda, From Human Rights to Human Dignity- An Unending Story', 5 CNLU L. J. 16 (2015).

# CHAPTER – III

## INTERNATIONAL PERSPECTIVE TO DEAL WITH CONCEPT OF EUTHANASIA

## INTRODUCTION

The term 'Euthanasia' finds its origins from two Greek words, 'eu' which stands for good or well and 'Thanatos, the name of the Greek god of death. It thus translated to mean a good death. In recent years, it has been used as a term to mean 'the bringing about of a gentle and easy death for someone suffering from an incurable and painful disease or in an irreversible coma'[56]

This research work shall attempt to examine the different perceptions and perspectives that are held in respect to Euthanasia, across the different nations of the world specifically the following- the Kingdom of the Netherlands, the Kingdom of Belgium, the Commonwealth of Australia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Dominion of Canada. Such an analysis will consider elements like the background of the nation in relation to euthanasia and the present legal position. The entire research shall then delve into the major judicial pronouncements in respect to euthanasia both historically, as well as in recent times. Finally, the research will conclude by examining the Indian scenario as well as the suggestions of the Indian Law Commission on the matter.

As this research work shall concern itself with the different levels of acceptance of euthanasia across different jurisdictions, it is important that we clarify the distinction between terms like active euthanasia, passive euthanasia and other types of euthanasia.

1. Active euthanasia entails murdering an individual using 'active' measures, such as introducing a deadly amount of a medicine. This method is often termed as "aggressive" euthanasia.[57]
2. The intentional removal of non-natural life-support mechanisms, like ventilators from a patient's being is termed Passive euthanasia.[58]
3. Mercy-killing[59]: The term "mercy-killing" refers to active, involuntary or nonvoluntary euthanasia administered by someone else. To put it another way, someone kills

[56] Judy Pearsall & Bill Trumble, Oxford English Reference Dictionary (2002).

[57] Fenigsen Richard, *A case against Dutch euthanasia*, 19 The Hastings Center Report (1989).).

[58] Ibid.

[59] Mercy Killing, LII / Legal Information Institute (2020), https://www.law.cornell.edu/wex/mercy_killing (last visited Jul 10, 2021).

individual without their consent in order to put an end to their misery. Some ethicists believe.

**NETHERLAND**

'Euthanasia' is usually defined broadly, comprising all decisions (by doctors or others) aimed at hastening or bringing about the death of a person (by act or omission) in order to prevent or reduce that person's suffering (whether or not on his or her request). In the Netherlands, the phrase has a narrower connotation, referring only to the deliberate ending of a person's life at the request of another person (i.e., active, voluntary euthanasia). In this narrow sense, this contribution is concerned with the regulation and practice of euthanasia. Euthanasia has also drawn a lot of attention and sparked a lot of debate in the Netherlands in this regard.

Of course, this isn't to argue that euthanasia is the most essential, let alone the only, consideration when it comes to medical decisions about end-of-life care. Non-Treatment decisions are also a hot topic in the Netherlands. However, in terms of these decisions, the situation in the Netherlands does not appear to be very different from that in most other countries.

The practice of euthanasia in the Netherlands has been addressed in this way, as it is founded on the right to self-determination.[60] Thousands of cases of euthanasia are carried out in the Netherlands each year[61], and the doctors who carry them out almost always go unpunished.[62] The first case involving euthanasia was determined by the District Court of Leeuwarden in 1973.[63] Here, the attendant gave her mother, who was 78 years old and had been incapacitated by a stroke, a deadly dose of morphine.[64] The physician's mother had voiced her desire to die

[60] Supra Note.

[61] Fenigsen Richard, *A case against Dutch euthanasia*, 19 The Hastings Center Report (1989).

[62] Ibid.

[63] Netherlands District Court, Leeuwarden, *Euthanasia case, Leeuwarden-1973*, 3 Issues in law & medicine (1988).

[64] Ibid.

several times.[65] Despite the fact that the physician was found guilty, she was only subjected to one week in prison.[66] They concluded that if specific requirements are met, active euthanasia, with consent of the individual, isn't a penal offence.[67] These are:

a) individual must have incurable ailment;
b) Pain from such ailment must be intolerable[68];
c) Written expression of will[69] ;
d) Determination of dying phase by attendant or expert physician.[70]

A judge at Leeuwarden ruled assuming an individual met these criteria, the attendee could use drugs to relieve the individual's pain.[71] The court, on the other hand, distinguished between medicine given to ease pain and having as a side consequence the individual's death[72] and substances induced in large doses with the intent of causing death.[73]

In every case determined in the Netherlands between 1973 and 1983, the courts demanded two prerequisites before allowing euthanasia.[74] First and foremost, the individual's wish to die must be the result of his or her own free choice.[75] Second, the sufferer must believe that the situation is unacceptable.[76] Some courts tacked on a third requirement that such a decision must be based

[65] Ibid.

[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Ibid.

[70] Ibid.

[71] Barry Bostrom, *Euthanasia in the Netherlands: A Model for the United States?* Issues in Law and Medicine 467, 482 (1985).

[72] Ibid.

[73] Ibid.

[74] M.A.M. de Wachter, Active Euthanasia in the Netherlands, 262 JAMA 3316, 3317 (1989).

[75] Ibid.

[76] Ibid.

on 3rd party consultation and approval.[77] Since 1984, the courts' criteria have been harmonized to encompass all three factors.[78]

The Dutch Medical Association (KNMG) updated and revised the judicial rules in collaboration with the Nurses' Union.[79] The individual mustn't be approaching death owing to a deadly illness, and the individual's requests must be written, according to their criteria.[80] The criteria of the Nurses' Union thus constitutes a limited to the abuse of euthanasia measures.[81] However, as compared to some legal proposals for euthanasia, the standards appear to be limited in their requirements, according to one authority.[82]

The Dutch Supreme Court heard the first euthanasia case in 1984.[83]

Here a practitioner had been accused of terminating his patient's life at his behest. The Court ruled in favor of the defendant, determining that the patient had the right self-determine.[84] This decision was however, subsequently, overturned.[85] The Dutch Supreme Court overturned the ruling. The case was then submitted to the Hague High Court by the Supreme Court.[86] The SC requested an evaluation of euthanasia, in case of necessity, on a fact-based approach. In 1986, the Hague High Court ruled in favor of the doctor, acquitting him.[87]

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[77] Ibid.

[78] Ibid.

[79] Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst (KNMG) [The Royal Netherlands Association for the Promotion of Medicine] and Het Beterschap belangenvereniging voor verpleegkundigen en verzorgenden (Recovery, Interest Association of Nurses and Nursing Aids], reprinted in Guidelines For Euthanasia, 3 Issues in Law and Medicine 429, 431-33 (1988).

[80] Supra 79.

[81] Ibid.

[82] Ibid.

[83] J.K.M. Gevers, Legal Developments Concerning Active Euthanasia On Request in the Netherlands, I BioErtncs 156, 159 (1987).

[84] Feber, De wederwaardigheden van artikel 293 van het Wetboek van Strafrecht vanaf 1981 tot heden [The Vicissitudes of Article 293 of the Penal Code from 1981 to the Present], in Euthanasie Knelpunten In Een Discussie [Euthanasia: Bottlenecks in a Discussion] 54-81, reviewed in Abstracts, 3 Issues in Law and Medicine 455, 456 (1988).

[85] Ibid., 457.

[86] Ibid.

[87] Ibid.

The court ruling, some believed, broadened the category of people who can be euthanized by demanding that individual choose to "die with dignity."[88]

## BELGIUM

Belgium approved euthanasia in 2002, which is defined as a physician's deliberate ending of life at the individual's explicit request.[89] For a person to have been eligible for this option, his consent must have been ascertained on written request with full mental capacity and awareness in respect to his medical options.[90]

An obligatory notification procedure was established into the Act to ensure propriety and compliance, as well as to enable social control and programming.[91] Physicians must notify each plea of euthanasia to the FCEC on Euthanasia by filling out and submitting a statement within 4 days(working) of the individual's death via euthanasia.[92] The committee evaluates the form and evaluates whether or not euthanasia was carried out in line with the law. Only unattributed material is assessed at first; if the committee has any doubts about the legality of the information, anonymity can be revoked by a majority vote, and the reporting physician can be asked for additional information. The matter is transferred to the public prosecutor if the committee determines that the legal conditions were not met by a two-thirds majority.[93]

The legal background in the case of Belgium is however quite shallow. In the sense that while the framework is rather developed occurrences where in criminal punitive measures were brought against 3 doctors for facilitating the euthanasia of an ailing woman with a progressively deteriorating disease.[94]

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[88] Ibid.

[89] The Belgian Act on Euthanasia of May, 28th 2002, 9 Ethical Perspectives 182-188 (2002).

[90] Luc Deliens & Gerrit van der Wal, *The euthanasia law in Belgium and the Netherlands*, 362 The Lancet 1239-1240 (2003).

[91] Tinne Smets et al., The medical practice of euthanasia in Belgium and The Netherlands: Legal notification, control and evaluation procedures, 90 Health Policy 181-187 (2009).

[92] Ibid.

[93] Ian Kennedy & Andrew Grubb, Medical Law. Text with Materials. Second Edition (1994).

[94] Raf Casert, Belgian court acquits 3 doctors in landmark euthanasia case AP NEWS (2020), https://apnews.com/article/bd4a489924bac998ef0af3f3e446f3b7 (last visited Jul 10, 2021).

## AUSTRALIA

In terms of euthanasia, Australia's legal history is fairly diverse throughout its district-like jurisdictions. There is no case law in Australia that particularly addresses passive voluntary euthanasia. The enforcement of the simplest legal norms governing the medical interaction and the rendering of medical treatment in general is used to analyze the common law position. In summary, competent adult individuals in Australia have the legal right to refuse any type of medical treatment, including any treatment that is required to keep the individual alive. Children very definitely do not have the same rights as adults under common law.

Legislation also has an impact on the legal position of passive voluntary euthanasia in Australia. The Consent to Medical Treatment and Palliative Care Act, 1995[95] and the Natural Death Act, 1988[96] recognizes a legally competent person's right to refuse medical treatment based on advance notice, especially, artificial life-extension, in 4 main Australian jurisdictions: South Australia, ACT, the Northern Territory, and Victoria. The statutes accomplish this by recognizing two distinct mechanisms for expressing anticipatory refusals:

- Advance notices sometimes known as 'living wills' [97] (acknowledged by all jurisdictions);
- Healthcare decisions could now be made based on Persisting attorney privilege, in certain jurisdictions.

## UNITED KINGDOM

Living wills are not recognized in the United Kingdom under law. Such representative privileges cannot be medical.[98] Previously 2 unsuccessful attempts were made at legitimizing this right. The 1st one, a bill to the House of Lords by Baroness Wootton of Abinger in 1976 aimed "to broaden and declare the rights of sufferers to be rescued from incurable agony," the Incurable Patient's Bill stated. It included a section that said that "a written request by an

[95] Medical Treatment and Palliative Care Act 1995 (SA) (Austl.).

[96] Natural Death Act 1988 (NA) (Austl.).

[97] *Hansard* (House of Lords), 9 May 1994, vol 554, col 1363.

[98] Ian Kennedy & Andrew Grubb, Medical Law. Text with Materials. Second Edition (1994).

individual to have his life prolonged in the case of brain damage is to be regarded in that event as a present denial" of such treatment in the event of brain damage."[99] Following the House of Lords' ruling in the landmark case of ***Airedale NHS Trust* v. *Bland***[100], a Select Committee was formed to look at the relevant legislative concerns involved in the right to euthanasia in the British context.

The Select Committee's report was released in January 1994. It "strongly endorsed the right of the competent individual to refuse consent to any medical treatment, for any reason"[101] and concluded that "it may well be impossible to give advance directives in general greater force without depriving individuals of the benefit of the doctor's professional expertise, as well as new treatments and procedures that may have become available since the advance directive was signed."[102]

This opinion was subsequently supported by the British government.[103] It also confirms agreement, for the most part, with the Committee in respect to advance medical institutions and the establishment of professional standard of manual in respect to euthanasia. The publication and drafting of such a report were however the purview of the Law Commissions of England/Wales and Scotland.[104]

The Law Commission published a report in February 1995 on the law governing how decisions on behalf of mentally ill persons can be made.

The Law Commission proposed the drafting of a statute to:

[99] Medical Treatment (Advance Directives) Bill 1976, HL Bill [226] cl. 3 (Gr. Brit.).

[100] [1993] 2 WLR 316.

[101] A. Sommerville, *Euthanasia: the institutional response*, 52 British Medical Bulletin 308-316 (1996).
[102] Ibid.
[103] Medical Ethics: Select Committee Report (Hansard, 9 May 1994), House of Lords (1994), https://api.parliament.uk/historic-hansard/lords/1994/may/09/medical-ethics-select-committee-report (last visited Jul 10, 2021).

[104] Ibid.

i) Acknowledge advance medical directives to establish persisted power of attorney. The annexure of the report, included a draught legislation, the Mental Incapacity Bill, to give effect to its recommendations.

ii) Refuse a doctor's right to deliver medical treatment to a competent major if such advance notice of refusal exists. Such an advance refusal was defined as "a refusal by a person who has reached the age of 18 and has the necessary capacity of any medical, surgical, or dental treatment or other procedure, being a refusal intended to take effect at any later time when he may be unable to give or refuse consent."[105]

iii) Other proposals made by the Law Commission in respect to "advance refusals of treatment" included:

- Unless any other contrary evidence is apparent, it must be assumed advance rejection doesn't apply when those who care of the patient believe such refusal jeopardizes the person's life or the life of their unborn child.
- Basic healthcare like care to preserve bodily hygiene and relieve acute discomfort, as well as direct oral feeding and hydration, should not be precluded by an advance non-acceptance of treatment.
- The decision of a court in respect to the status of the advance refusal must not halt the pursuit of any action needed to prevent death or worsening of conditions, pending a binding decision.
- No penalty can be imposed for withholding treatment if the practitioners has reasonable reason to believe an advance refusal of service by the patient persists.[106]
- The Law Commission also suggested the creation of a new type of power of attorney known as a "continuous power of attorney." A continuing power of attorney could only be created by someone who had reached the age of eighteen. Such an agent in case of patient incapacity shall have the right to make decisions for the patient in medical matters. This ability would be limited by specific parameters.

[105] House of Lords - Assisted Dying for the Terminally Ill Bill - Minutes of Evidence, Publications.parliament.uk (1995), https://publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/4090902.htm (last visited Jul 11, 2021).

[106] The Law Commission, Mental Incapacity: -Item 9 of the Fourth Programme of Law Reform: Mentally Incapacitated Adults, London, HMSO, 28 February 1995, paras 5.36 and 11.33.

## UNITED STATES OF AMERICA

The US for the largest part prohibits or condemn euthanasia. Laws however are not standardized owing to state legislature variances. Various measures have been attempted in the past to grant legal legitimacy to euthanasia, but each of these have failed.

Currently, Oregon constitutes the only territory which explicitly allows euthanasia via statute.[107] The validity of euthanasia as a process was only recently considered in the US in the matters of **Compassion in *Dying* v. *State of Washington***[108] and ***Quill* v. *Vacco et al***[109], which tested the constitutional validity of statutes that restricted the right to a good death. Both of these cases have been examined below.

### *Compassion in Dying* v. *State of Washington*[110]

This matter challenged the constitutionality of the Washington statute that prohibited the assistance of suicide. The Petitioners thus filed a lawsuit, claiming such statutes to be constitutionally invalid, on the following basis:

The rule impermissibly hindered critically ill people from relying on the rights afforded to them under the 14th amendment which made it illegal for a government to deprive "any person of life, liberty, or property without due process of law" until and unless such deprivation was justified by legitimate state interests. The SC determined that the purpose of this right was to limit the government's ability to interfere with the personal matters of the patient, like fields like abortion, contraception or other issues of medical privacy and freedom. [111] This fundamental protection was based on the following rationale

- These issues were some of the most personal and private decisions of one's lifetime and the ability to make them with dignity was one of the core elements of the 14th amendment. The court concluded that such decisions when limited by the force of the

[107] Baron et al, 'A Model State Act to Authorize and Regulate euthanasia' (1996) 33 Harvard Journal of legislation 1.

[108] Compassion in Dying v. State of Washington (1994) 850 F Supp 1454.

[109] Vacco v. Quill, 521 U.S. 793 (1997).

[110] 850 F. Supp. 1454 (1994).

[111] Moore v. City of East Cleveland (1977) 431 US 494.

state, would fail to guarantee the freedom of personhood to the patient.[112] This was further upheld by the 9th Circuit Court of Appeals by a substantial 8:3 margin.

- The majority of the judges came to this result after a two-stage legal investigation. They first identified a liberty interest in choosing one's own death time and manner. This was sometimes referred to as a "constitutionally recognized 'right to die.'" After looking at historical attitudes toward suicide, current societal attitudes toward euthanasia and the manner of death, and previous Supreme Court decisions addressing the scope of the liberty interest under the Due Process Clause, they came to the conclusion that this liberty interest exists.
- This case relied primarily on 2 SC cases namely, ***Planned Parenthood* v. *Casey***[113], on the basis that such a decision was important to her personal dignity and autonomy. The court identified that no decision identified more with the personal and delicate nature of the 14th amendment, more than that to take one's own life.
- ***Cruzan* v. *Director, Missouri Department of Health***[114], was the other case cited by the majority. This saw a constitutional challenge of a similar prohibition legislation in the state of Missouri, which demanded that life extending measures like ventilator services could not be withheld in the absence of clear evidence suggesting the desires of the individual. This case was concluded by a razon thin difference if 5:4. 4 judges of the majority further disregarded the presence of a competent person's constitutionally guaranteed right to refuse any undesirable medical treatment in reaching this result.[115]

In **Compassion in *Dying* v. *State of Washington***[116], the majority of the US Court of Appeals noted that Cruzan "stands for the idea that there is a due process liberty interest in refusing undesired medical assistance, including the provision of food and water by artificial means."

[112] Pierce v. Society of Sisters (1925) 368 US 510.

[113] Planned Parenthood v. Casey, 505 U.S. 833 (1992).

[114] Cruzan v. Director, Missouri Dept. of Health, (1990) 497 US 261.

[115] Ibid., 278.

[116] Supra 105.

The majority determined the restriction's legality by evaluating the individual's right to liberty against six countervailing and justifiable governmental interests.[117] They were as follows:

- The state's more focused involvement in suicide prevention-

The Court deemed that there existed a vested state interest in suicide prevention, but that this interest was significantly diminished considering the circumstances of the critically ill who wished to die. This decision was based on the fact that these individuals were likely beyond the point of no return and couldn't be rehabilitated. They even questioned the interest so stated, specifically whether such deaths can be considered suicide as the other decisions to hasten death were not.[118]

The deterrence argument was disregarded as well due to ineffectiveness.

- The interest of the state in avoiding third-party engagement and preventing the use of arbitrary, unjust, or undue influence-

It was decided that the state did possess an interest to halt euthanasia to prevent the devaluation of life in society. Such interest was subverted when juxtaposed by the opinion of a medical expert.

The majority also addressed the issue that legalizing euthanasia would place excessive pressure on vulnerable people to commit suicide.

The court dismissed the argument for potential forced euthanasia of minorities. The court did however consider the protection of such interest from 3rd party activities. This fear however was not considered sufficient to prohibit euthanasia as a whole. Despite this, the majority agreed that while actions can be made to reduce the risk of individuals being subjected to undue influence, the risk cannot be completely removed. As a result, the majority found that this state interest carries "more than minimal weight" in this situation, and that it should be taken into account when weighing the competing interests of the state and the individual.

- The state's interest in maintaining the medical profession's integrity-

[117] Natasha Cica, Euthanasia - the Australian Law in an International (2021), https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp9697/97rp4#magic_tag_39 (last visited Jul 10, 2021).

[118] N. Cica, Euthanasia - the Australian Law in an International Context; Part 1: Passive Voluntary Euthanasia, Canberra, Department of the Parliamentary Library, 1996.

The majority couldn’t rationalize the argument of a potential compromise of medical ethics when such individuals were permitted to carry out voluntary euthanasia. The Court actually found the contrary wherein this would enable doctors to better fulfill their obligations to their patients.

The majority also determined that decriminalizing euthanasia would not jeopardize individual doctors' personal integrity. Instead, decriminalization would allow doctors and individuals to make decisions and behave in accordance with their own moral beliefs.

It was held that doctors whose views didn’t allow for this procedure were free to refuse rendering it, while those who were willing, could render it. Further a medical professional with similar views would likely benefit the Patient.

- The denial of such right might result in the abuse and forced broadening of action, which would be detrimental:

It was held that the denial of the right to euthanasia could end up as a slippery slope. This viewpoint was dismissed by the majority as "nihilistic" and unsubstantiated by actual facts. It refuted claims that the Netherlands' experience supported the ‘slippery slope' thesis. It acknowledged that the recognition of any right opens the door to abuse, but noted that the Supreme Court "has never refused to recognize a substantive due process liberty right or interest simply because there were difficulties determining when and how to limit its exercise or because others might attempt to use it improperly someday."

The Court emphasized that the question before it in this case was solely whether it was unconstitutional to restrict doctors from providing lethal medicines to critically ill individuals who wanted to die sooner. The Court, however concluded that the recognition of a person’s right to choose euthanasia might result in the legal recognition of such a person’s right to euthanasia in the future.

In the specific case of terminally ill patients, the Court concluded that these interests were too weak to subsume a right so significant as the right to die in this case was very strong in its consonance with state interest. It also affirmed a special interest for the state in the prevention of decisions based on coercion or abusive treatment. It was found that the state has broad authority to restrict a critically sick person's exercise of freedom to determine time and circumstances death and that the State could not legally prohibit or restrict it. Thus, the law hadn’t passed the Due process burden of the 14$^{th}$ Amendment

They also decided that it was not necessary to determine the consonance of the Act with the Equal protection under law clause as it had already failed the prior test. It also disagreed with the reasoning of Lee v. State of Oregon, a case at the District Court of the State of Oregon, specifically in how the Court denied constitutional validity to the Oregon- Death with Dignity Act, under the Equal Protection Clause. [119]

***Vacco et al.* v. *Quill*[120]**

***Quill* v. *Vacco et al***.[121] was a crucial judgement in respect to the legal validity of euthanasia, rendered on the 2nd of April 1996 by the Second Circuit Court of Appeals.

The elements of the New York Penal Law that criminalized euthanasia were under consideration in this second instance. The restrictions were said to be illegal because they forbade doctors from providing fatal drugs to be self-administered by a mentally competent, critically ill adult in the latter stages of their disease. Three doctors and three critically sick individuals filed the legal challenge.

The Bench in the 2nd Circuit Court of Appeals couldn't acknowledge that the laws in question had infringed any liberty under the Due process clause, affirming the right of competent individuals in cases of critical, deteriorating ailments to pursue euthanasia. Such a right however had to be asserted carefully in the future, as it hadn't been constitutionally sanctioned.[122]

While the Judges had termed the New York Legislations to be invalid under the US Constitution, they claimed such decision accorded differential treatment to fundamentally similar people.

This was due to the fact that the state of New York allowed the terminally who had been attached to life support to hasted their deaths by detaching the machines in question. This right however was not extended to the hastening of death with the self-administration of drugs, meaning active suicide.

[119] Lee v. State of Oregon, 891 F. Supp. 1439 (D. Or. 1995).

[120] 521 U.S. 793

[121] Supra 106.

[122] No. 94-35534, 1996 WL 94848 (9th Cir. Mar. 6, 1996) (opinion by Reinhardt, J.), reu'g 49 F.3d 586 (9th Cir. 1995).

The New York statutory restrictions should be knocked down, according to the third judge in this case. His rationale, on the other hand, was not in line with the majority's. He came to the conclusion that the constitutionality of the legislative restriction was 'very dubious' under both the Procedural propriety and the Equality under law clauses, but not manifestly unlawful under either. The strength of the state interests engaged in the restriction was crucial to its constitutional legality, but the New York legislators hadn't supplied recent and explicit statements describing the state interests the legislation meant to preserve. As a result, the Court was willing to declare these specific statutory prohibitions unlawful, but took no judgement on the constitutional legitimacy of comparable laws passed in the future and accompanied by clear explanations of the legislators' goals. The Second Circuit Court of Appeals' judgement is expected to be appealed.[123]

## CANADA

The Canadian Criminal Code prohibits both euthanasia and active voluntary euthanasia. In the well-publicized Rodriguez case, the Supreme Court of Canada considered the constitutional validity of the banning of euthanasia.[124]

Sue Rodriguez, a capable 42-year-old woman with amyotrophic lateral sclerosis, was the petitioner. This incurable disease causes paralysis by destroying cells in the spinal cord and brain stem. Due to a loss of control over the lungs and diaphragm, it frequently results in death by asphyxia. Because the condition usually has little effect on mental function, victims tend to stay competent and aware of their physical decline.

Sue Rodriguez desired the ability to choose to die if and when she no longer wished to live with her sickness. She expected this to happen when she didn't have the physical ability to take her own life. She asked the court to rule that it was legal for a doctor to "put up technological mechanisms by which she may, by her own hand, at the moment of her choosing, end her agony rather than prolong her death." She contended that Section 241(b) of the Criminal Code of

[123] R Dworkin, Sex, Death and the Courts (1996).

[124] Criminal Code (R.S.C., 1985, c. C-46).

Canada, which made euthanasia illegal[125], was unconstitutional to the extent that it barred a critically sick person from dying with the help of a physician.

She claimed that the ban in section 241(b) infringed on her rights under several parts of the Canadian Charter of Rights and Freedoms (hereinafter referred to as "the Charter"):

a) Section 7 - The right to life, liberty, and security of the person, as well as the right not to be deprived of them unless with fundamental principles of justice. Personal autonomy and the freedom to make decisions about one's own body are included in the right to personal security.[126] Ms. Rodriguez stated that a person's right to determine the method, time, and circumstances of his or her own death must be included in this right.
b) Section 12 - the Right to freedom from excessive punishment.
c) Section 15(1) - the right to equality under law, including freedom from discrimination based on physical impairment. Ms. Rodriguez contended that the prohibition on euthanasia infringed on this right as it halted people who were physically incapable to terminate their life without aid from choosing death, even though that course was in theoretically open to others without breaking the law.

The BC Supreme Court, the BC Court of Appeal, and, finally, a miniscule majority (5:4) of the Supreme Court of Canada rejected the claim.

## SUGGESTIONS OF LAW COMMISSION REPORT- INDIAN SCENARIO

In its 196th Report, the Law Commission of India suggested that a law be enacted to safeguard critically ill individuals who refuse medical care, artificial feeding, or hydration from being prosecuted under Section 309 of the Indian Penal Code. Furthermore, clinicians who obey such an individual's decision, or who make such a decision for incompetent individuals in their best interests, shall be shielded from penalty under Section 306 or Section 299 of the IPC.

Doctors' activities must be declared "lawful." Under Entry 26 of List III of the Constitution's Seventh Schedule, Parliament can enact such legislation. The law should be termed "The

[125] Ibid.

[126] Morgentaler v. R (1988) 44 DLR (4th) 385 (Supreme Court of Canada).

Medical Treatment of critically Ill Patients (Protection of Patients, Medical Practitioners) Act," according to the Law Commission. The 'patient' must be suffering from a 'terminal sickness,' according to the report. It is a sickness, injury, or degeneration of a physical or mental condition that causes tremendous agony and suffering and, in the opinion of a reasonable medical professional, will inevitably result in the individual's untimely death. It could also be an individual's prolonged and irreversible vegetative state.

A 'competent patient' and an 'incompetent patient' were also defined un the report. An 'incompetent patient,' according to the study, is a minor, a person of unsound mind, or an individual who is unable to understand the facts needed to make a decision, or who is unable to articulate his or her decision. Following that, it was suggested that the doctor should not withhold or withdraw treatment without first seeking the advice of a panel of three qualified medical practitioners. If there is a disagreement between the three experts, the majority opinion must take precedence. Although the doctor must consult the individual's family, he is the best person to make a clinical choice based on his qualified medical judgement. The report proposed that the Medical Council of India develop guidelines outlining the circumstances under which medical treatment withdrawal can be permitted. In the case of incompetent individuals or individuals who have not made an informed decision, the doctor must notify the individual (if he is conscious) and his or her parents or relatives in writing before withholding or discontinuing medical treatment. They can go to the High Court if they don't agree with the doctor. In this case, the doctor must delay the decision for fifteen days. The doctor can proceed with the judgement if no directives from the High Court are received within 15 days.

The individual, his or her parents, relatives, doctors, or hospitals can all file a complaint with the High Court. The High Court's pronouncement must be beneficial to the individual, the physician, and the hospital. When a petition is filed in the High Court, the court must issue an order as soon as possible to keep the identities of all parties involved discreet, thereby protecting the stakeholders from any social fallout.

## CONCLUSION

Clearly, Euthanasia constitutes a rather controversial issue globally, with regions having its own unique takes on the matter. In such an instance, the manner in which each of these jurisdictions have rationalized answers to what can only be termed a difficult question, would be critical in governments arriving at a suitable answer for this issue. Overall, it appears that

regimes are taking a more favorable approach towards the euthanasia to afford people a dignified death, where this will lead us is however, a question only time can answer.

## CHAPTER - IV

## JUDICIAL APPROACH TO EUTHANASIA IN INDIA

### INTRODUCTION

The concept of 'individual autonomy' has gained considerable importance with legal advances. It is considered in several countries as a crucial part of human dignity. The Supreme Court of India, by means of the privacy, dignity and autonomy matrix proposed in the ***Puttaswamy***[127] ruling, recognised the idea of individual autonomy under Article 21.

The acknowledgement of individual autonomy in accordance with Article 21 of our Constitution will probably have several already apparent ramifications. The case of "***Common Cause (a Regd. Society)* v. *Union of India***," is an ode to individual autonomy since it allows persons to make living wishes and lawyers permits and indicates their choice of discontinuing treatment when in a vegetative situation which is terminally or permanently ill.

Suicide and Euthanasia are two different things. They cannot be used interchangeably. In this chapter, we will study both topics in exhaustive manner. We will come to know the opinion of the Court in respect of Section 309 of the IPC, which gives punishment to those who try to commit suicide. We will study the case of ***Common Cause* v. *Union of India***[128] in great detail wherein the Court relied on "*the principle of 'best interest of the patient.' It provided stringent safeguards concerning the execution of living wills and authorisations to prevent any possible misuse*."

### SUICIDE

Suicide refers to the act of taking one's own life intentionally. The term 'suicide' refers to all those deaths which have resulted from the intentional act of the victim himself. A person commits such an act when he has an emotional or mental weak moment and thinks that life is tough to deal with.[129] The Law Commission of India (2008)[130] defines suicide as a deliberate act of the victim to end his physical existence. A person goes on killing himself voluntarily

[127] Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1
[128] Common Cause (a registered society) v. Union of India (2018) 5 SCC 1.
[129] Emile Durkheim (1951, rep. 1997) Suicide: A Study in Sociology, Glencoe Illinois: The Free Press
[130] Law Commission of India, Government of India (2008) "Humanization and Decriminalization of Attempt to Suicide" Report number 210.

even though he has complete control over his mind. He terminates his life without the help of any other person.

Suicide has not been defined in our Indian Penal Code. According to Section 309[131] of the Indian Penal Code, a person who tries to commit suicide or does any act to kill himself would be "*punished with imprisonment, which may extend up to 1 year or fine, or both*". Suicide, as an offense, has been categorized as bailable and cognizable. It is triable by any Magistrate and also non-compoundable.

According to Article 21 of our Constitution, every citizen of the country has the right to life and liberty. Article 21 covers the right to life and liberty, but it does not talk about the person's right to die. "*Suicide does not fall under the purview of the constitutional right to life. Chapter XVI of the Indian Penal Code talks about the offenses affecting the human body, and suicide is considered a crime under that same category*." The maxim "Actus non facit reum nisi mens sit rea" means an act is insufficient to make a person guilty for a crime; a guilty mind is an essential element. When a person commits suicide, he has a guilty mind, and thus, the act becomes a crime. Suicide has been made punishable under Section 309 of the IPC because the people's lives are valuable to them and the state, which is trying its best to protect it. People have different opinions on Section 309. Some say that it should be retained, while some think that it should be deleted. Courts have also given contradictory judgments while dealing with whether the right to life includes the right to die under Article 21.

## LAW COMMISSION REPORTS

The Law Commission recommended that we should do away with Section 309 of the Indian Penal Code. The Commission said that when a person is trying to take his own life, it is because of some deep unhappiness, and should not be punished. It also said that punishing a person for such an act would further inflict more pain on him, and thus, Section 309 should be scrapped off.

The Law Commission's 42nd report[132] recommended that Section 309 should be repealed. The Commission found this Section to be monstrous and said that imposing punishment on a person already finding it difficult to cope with his life does not make sense. The Commission examined

[131] Section 309, Indian Penal Code, 1860.
[132] Ministry of Law, Government of India (1971) (2017, September 24) Law Commission of India, Forty-Second Report.

the Dharmashashtras, which allowed the taking of one's own life. The Commission also discussed the Suicide Act of 1961 in Britain. It is said that Section 309 is very harsh and unjustifiable. "*The Indian Penal Code Bill of 1978 provided for the omission of this Section. The Lok Sabha could not pass the bill because it was dissolved, and thus, the bill lapsed*."

In 1977, the Law Commission, in its 156th report, recommended the retention of Section 309 due to the rise in terrorism and human bombs in different parts of the country. The Commission thought that suicide should be made punishable so that cases of narcotic drug trafficking, etc., could be controlled. However, in 2008, this issue arose again. In the 210th report[133] of the Law Commission, it was recommended that suicide should be decriminalized. A person who has decided to take such a harsh step must have been suffering a lot, and thus, he needs treatment and care and not the punishment mentioned under the Section.

The reason why the authorities have failed to decriminalized suicide is because of the contradictory legal opinions. While the Law Commission thinks that a person who is not mentally and emotionally well and is unhappy with his life and goes on taking his own life should be treated with care and treatment, the Constitutional Bench in the case of Gian Kaur[134] held the validity of this Section saying that the Constitution, which gives the right to life to a person does not mean that it also gives the right to take one's own life.

## JUDICIARY ON ATTEMPT TO COMMIT SUICIDE

Section 309 has always been a topic of debate. We will discuss few cases and the decision given by the High Courts and Supreme Courts in this regard. Following are some of the notable judgments on this issue.

A. "State v. Sanjay Kumar Bhatia"[135]

In this case, a young fellow tried to commit suicide due to over-emotionalism. A division bench of the Delhi High Court opined that if the boy had succeeded in committing suicide, then he would have escaped the punishment under Section 309, but since he failed in his attempt, he will have to receive the punishment. Justice Rajinder Sachar said that Section 309 is an

[133] Law Commission of India, (n 3)
[134] Gian Kaur v. State of Punjab, AIR 1996 SC 946.
[135] State v. Sanjay Kumar Bhatia, 1985 SCC OnLine Del 134: 1985 Cri Q 931.

anachronism and does not belong to the society we live in today. The Section is very harsh on the person as it sends him to jail when he should be given psychiatric attention.

B. "Maruti Shripati Dubal v. State of Maharashtra"[136]

The Bombay High court struck down Section 309. The Court said that Article 21 not only includes' right to live' but it also incorporates 'right not to live' and 'right not to be forced to live. "Justice P B Sawant observed that the Section is very discriminatory if we compare it with Section 300 of the Indian Penal Code." While dealing with the crime of murder, the Legislature goes on making "*a distinction between culpable homicide amounting to murder and the one not amounting to murder*" and also mentions different punishment for the two, but while dealing with the offense of suicide, the Legislature acted lethargically and prescribed the same punishment irrespective of the circumstances in which the offense took place. The Court further said that the punishment mentioned under Section 309 is unnecessary. People who are suffering from mental disorders need medical attention, and if they are left to be rotten in jail, their condition will deteriorate.

C. "Chenna Jagadeeswar v. State of Andhra Pradesh"[137]

The high court of Andhra Pradesh affirmed the legality of section 309 and stated that Article 21's right to life does not include the right to die. Section 309 is not making it mandatory to punish a person trying to commit suicide; it only mentions the upper limit of the punishment if meted out.

D. "P. Rathinam v. Union of India"[138]

A division bench of the Supreme Court held Section 309 to be harsh and irrational. An act of suicide is causing no harm to the public, and thus, the state should not interfere with the personal liberty of the person. The Court said that a person should not be prosecuted for his failure to commit suicide because he will feel humiliated on getting punished for his failure to commit suicide. The punishment will serve as a double punishment for a person who is already going through a lot in his life. Section 309 was ruled void as it violates Article 21 of the Constitution. The right to live under Article 21 also includes the right not to live a forced life.

[136] Maruti Shripati Dubal v. State of Maharashtra, 1986 SCC OnLine BoM 278: 1987 Cri Q 743
[137] ChennaJagadeeswar v. State of A.P., 1987 SCC OnLine AP 263: 1988 Cri LJ 549.
[138] P. Rathinam v. Union of India, (1994) 3 SCC 394: AIR 1994 SC 1844.

E. "Gian Kaur v. State of Punjab"[139]

The decision given in P.Rathinam was overruled by a five-member Constitutional Bench of the Supreme Court. The Court "*upheld the constitutionality of Section 309 and said that the right to life granted by Article 21 does not include the right to die. The Court said that the right to life means a person has the right to live with dignity, and such right would exist till the time he is alive and dies naturally.*" The Court examined the judgments given in previous cases like P. Rathinam and concluded that Section 309 is constitutionally valid and does not violate Article 14 and Article 21.

F. Thomas Master v. Union of India[140]

The accused was an 80-year-old retired teacher. He wanted to end his life voluntarily and said that he had led a happy life and did not wish to live his life longer. He argued that he is voluntarily ending his life since his mission in life has ended, and thus, it does not amount to suicide. The Kerala High Court held that there is no difference between the right to end one's own life voluntarily and the concept of suicide ordinarily understood. The act of voluntarily putting an end to one's life would amount to suicide and is punishable under Section 309 of IPC. The reason behind voluntarily terminating one's life is not going to make any difference; it would still be considered suicide.

**EUTHANASIA**

In Gian Kaur v. State of Punjab, the Court override P.Rathinam's ruling and stated that there is no right to death or the right to suicide. The issue of the right to life is important to Euthanasia's discussion. "*The topic of Euthanasia becomes controversial because it involves the intention of termination of human life. There are people who are suffering from terminal diseases and have to go through much pain as the diseases gradually worsen and ultimately kills them.*" The pain is so unbearable that people sometimes think of ending their life rather than suffering from it. The question before us is whether these people should be left to cope with the unbearable pain or whether assistance should be provided in killing them.

"*Euthanasia is one of the most debated topics in the world. The question that has put everyone in a great dilemma is whether it should be legalized or not. People have contrary views and*

[139] Supra note 6
[140] Thomas Master v. Union of India, 2000 SCC OnLine Ker 430: 2000 Cri Q 3729

*arguments in this regard. Countries all around the world have different laws regarding Euthanasia. Euthanasia is legal in some countries while illegal in others. Euthanasia is an act where a third party puts an end to a person's life either actively or passively*."

The term euthanasia is made up of two ancient Greek words. 'Eu' means good, and 'thantos' means death. Thus, the meaning of the word is a good death. It is the deliberate termination of a patient's life suffering from an incurable condition by either injecting him or removing the life support system. The intention is to relieve him from the pain. It is also known as mercy killing. The person is in such a condition that there are no chances of his survival. He painlessly ends his life. Mercy killing is used for assisted suicide.

According to Stedman's medical dictionary, Euthanasia is an act by which a person suffering from incurable, painful diseases is put to death by artificial means. Let's go by the meaning given in Collins English Dictionary. Euthanasia is an act of killing a person by methods that do not cause any pain to the person to relieve him from an incurable disease.

There are different forms of Euthanasia; "Active Euthanasia, Passive Euthanasia, Voluntary, and involuntary Euthanasia" are some necessary forms. Active Euthanasia is when some specific steps are taken by the third party to cause the person's death. For example- The doctor injects the person with poison. Active voluntary euthanasia is legal in countries like Belgium and Netherlands.[141] Passive Euthanasia is when medical treatment is withdrawn to kill the patient. For example- Removal of dialysis machine of a patient requiring kidney dialysis to survive. Passive Euthanasia is legal in the US. When a person requests that actions be taken to end his life, this is called voluntary Euthanasia. For example- the patient asks the doctors to withdraw the medical treatment. Non-voluntary Euthanasia is when a person's life is ended without his consent. Due to his condition, he is not able to communicate his wishes and is not aware of things happening around him and acts on his behalf. When the death of the patient takes place with the help of a physician, then this is termed assisted suicide. It is legal in Switzerland, Montana, and Washington.[142] Involuntary Euthanasia is when the patient has expressed his views to the contrary. He says that he does not wish to die.

[141] Steinbock B. Introduction Killing and Letting Die 2nd edition Ed. Steinbock B Norcross A. New York; Fordham University Press, 1994.
[142] J. Kersy Anderson.p.210.

## DIFFERENCE BETWEEN SUICIDE, EUTHANASIA, AND ASSISTED SUICIDE OR MERCY KILLING

When we are talking about suicide, a person tries to end his life intentionally. The person attempts to kill himself due to depression or any other reason deliberately. On the other hand, in Euthanasia, the death of the person takes place with the help of another person. In Euthanasia, a third party plays an important role and aids the killing of the person either actively or passively. It is essential to notice that there is a distinction between assisted Suicide and Euthanasia. In assisted suicide, a person helps another in committing suicide by providing him the means to do so. When a doctor helps a patient in committing suicide by giving him lethal medication, then this is called physician-assisted suicide. The person committing suicide is in complete control of the action as he is the one who is performing the act leading to his death. The other person is simply assisting him in carrying out the act. On the other hand, Euthanasia may be active or passive.

## JUDICIAL DEVELOPMENTS IN RESPECT OF EUTHANASIA

We have already discussed few relevant cases related to Section 309 and the decision given by the Court in Gian Kaur v. State of Punjab. Now, we will deal with cases related to Euthanasia.

In "***Naresh Marotrao Sakhre* v. *Union of India***",[143] Justice Lodha observed that "*Euthanasia and Suicide are two different things. Suicide is the act of self-destruction without the aid of any other human agency, while on the other hand, euthanasia or mercy killing requires the intervention of a human agency to bring about the death of the patient suffering from an incurable disease.*" Euthanasia does not come under the category of suicide, and thus, the provisions of Section 309 are not applicable in cases of Euthanasia. Euthanasia is nothing but a homicide.

In 2004, the Andhra Pradesh High Court dismissed a 25-year-old man's petition who wanted to end his life and donate his organs. He was on the life support system for a couple of months and had no hopes of surviving. The Court relied on the judgment given in Gian Kaur v. State of Punjab and dismissed the writ petition.

[143] Naresh Marotrao Sakhre v. Union of India 1995 Cri L J 96 (Bom) 29 C.A

In ***Suchita Srivastava* v. *Chandigarh Administration***,[144] the Supreme Court refused to terminate a fetus of a mentally disabled woman who was a victim of rape.

***Aruna Ramchandra Shanbaug* v. *Union of India***[145]

Aruna Shanbaug was the first case in which the Court addressed the subject of allowing euthanasia. Aruna Shanbaug worked as a hospital nurse. The hospital workers raped her in a horrible manner. She turned into a permanent vegetative state as a result of the incident. The nurses and physicians at the hospital cared for her for a long period, but her health did not improve. Pinki Virani, a social activist, filed a writ petition seeking Euthanasia authorization. The Court ruled that she could not be designated as a next friend. However, on the main issue, the Court relied on the House of Lords' decision in "***Airedale NHS* v. *Anthony Bland***,"[146] as well as other international jurisprudence, and held that passive Euthanasia may be permissible in cases where a person is terminally ill or in a permanent vegetative state—provided certain safeguards are followed. The Court went on to analyse the patient's autonomy, stating that if the patient is cognizant and, in a position, to consent to Euthanasia, his view must be considered. If the sufferer is unable to express himself, his next closest friend's viewpoint will be considered.

The case was referred to the High Court, where a division bench convened a panel of three doctors to examine the patient. If the doctors believe that the patient will be able to survive if suitable care is provided, then Euthanasia is not permitted. If the doctors believe that the patient has no prospect of survival and that postponing the process of Euthanasia will only lead him to suffer excruciating pain, then passive Euthanasia may be permitted. Common Cause (A Regd. Society) v. Union of India[147]

In 2005, a registered non-governmental organization registered a PIL in the Supreme Court of India under Article 32 of the Indian Constitution to legalize passive Euthanasia and living will. The registered society wrote letters to several Government organizations but received no response; thus, was left with the option of filing a PIL in the Supreme Court. The petitioner contended that Article 21 provides a person with the right to live with dignity and such right is available to him till his death; thus, it would not be wrong to say that the right also includes the

[144] Suchita Srivastava v. Chandigarh Admn. (2009) 9 SCC 1.
[145] Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454.
[146] Airedale NHS v. Anthony Bland (1993) AC 789 HL.
[147] Common Cause (a registered society) v. Union of India (2018) 5 SCC 1.

right to have a dignified death. The petitioner also contended that modern technology has developed to such an extent that it has unnecessarily prolonged the life of a person who is in an irremediable condition. The unnecessary extension of life causes much pain to the patient as well as his family. The petitioner further contended that living will be legalized. If a person is suffering from persistent pain and finding it difficult to cope with it, he should be allowed to give his consent to end his life and order his family to stop the treatment.

***Issues:***

- "*Whether the right to life mentioned under Article 21 of the Constitution also includes the right to die?*
- *Whether passive Euthanasia should be allowed provided that the patient has given his consent?*
- *Whether there is any difference between active and passive Euthanasia?*
- *Whether a person has the right to refuse medical treatment given to him? Whether Can he ask for the withdrawal of the life support system?"*

***Arguments moved by the petitioners:***

- Every person has the right to self-determination. He should be allowed to choose his fate. If the patient does not want to go through the pain and wants to end his life, he should be allowed to do so.
- The advancement in the medical field has resulted in the development of drugs and medicines that prolong a person who has no chance of survival. This not only causes agony and distress to the patient but also to his family.
- It is better to die early and relieve oneself from persistent pain rather than go through much pain and live longer with the help of medication which only prolongs the life.
- A person should have the right to renounce treatment.
- In cases where a person is suffering from an incurable or debilitating condition, he should be allowed to die with dignity. In these types of situations, a heavy burden is placed on the family members of the patient. They suffer mentally, emotionally, and financially. They have to spend money on the patient's medical treatment even when there is zero percent of his survival.
- Passive Euthanasia is not only giving relief to terminally ill patients, but is also providing an opportunity to those who need organ donation.

***Arguments moved by the respondents:***

- Every citizen by birth inherits the right to life mentioned under Article 21 but when we talk about Euthanasia, it is a deliberate intervention done to end the life of a person, and thus, it is inconsistent with the concept of the right to life. It would be better to rely on the decision given in Gian Kaur to deal with this issue. The Court clearly stated that the right to life does not include the right to die. Therefore, passive Euthanasia should not be allowed.
- The state must protect the life of its citizens. If the Court legalizes passive Euthanasia, then it means that the state is undermining its duty of saving the life of its people.
- If Euthanasia is allowed, it will act as a discouragement for all those working for the cure of terminally ill patients. There would be no incentive for them to develop new medicines and treatments that can end the painful suffering of the patients.
- Euthanasia is not the solution to the suffering of terminally ill patients. There are alternatives available to this problem.

***Analysis:***

i. Concept of Euthanasia was discussed in length.

The matter was brought before a five-judge bench comprising Dipak Mishar CJ, D.Y. Chandrachud, A.K. Sikri, A.M. Khanwilkar, and Ashok Bhushan JJ.

The bench discussed the decision given by the Apex court in ***Puttaswamy***.[148] "*They tried to derive the right to die with dignity from the privacy-autonomy-dignity matrix mentioned under Article 21. In the Puttaswamy case, it upheld that a person has the right to issue advance directives and attorney authorizations to allow the withdrawal of life support technology if he is terminally ill or in a permanent vegetative state.*"[149] The Court had also given guidelines to ensure that these directives are not misused, and a proper balance between law and bioethics is maintained.[150]

The judges discussed the concept of advance directives in detail. They dealt with moral and jurisprudential issues relating to the concept of Euthanasia. Dipak Mishra C.J. and Khanwilkar

[148] Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1, ['Puttaswamy'].
[149] Supra note 19, at ¶¶187 and 202, 629.5, 629.10.
[150] Id at ¶¶197- 203, 508 -509.

J. cited various poets and authors who propounded the idea that death with dignity is much better than an undignified continuation of life. They also considered the social aspect of this issue, such as the stigma that may attach to the doctors who, instead of saving the patient, are removing the life support system. There is a requirement to draft a new law regarding advance directives.[151] Sikri J. relied on various international instruments, precepts of various religions, and Mill's conception of individual autonomy to understand the concept of the right to die with dignity. [152] Chandrachud J. also analyzed the issue of Euthanasia in the context of interrelationship between medicines, ethics, and the principles of autonomy and dignity mentioned in our Constitution. He says that there is a need to evaluate this right from an individual perspective and from a societal perspective.[153] Bhushan J. said that the medical professionals should apply best interest's standard. The things which are in the best interests of the patient should be done. He referred to the writings of Plato and the Hippocratic oath and talked about life and death as mentioned in various religious teachings.[154]

The members then examined the judgments given in cases like Aruna Shanbaug and P. Rathinam. Chandrachud J. and Bhushan J. talked about Transplantation of Human Organs and Tissues Rules, 2014[155], which recognizes advance directive for transplantation of organs and Mental Health Care Act, 2017 that allows advance directives for persons who have mental illness. Mental Health Care Act talks about how the directives are to be implemented. The judges relied on the judgment given in Puttaswamy, wherein the Court said that dignity, privacy, and autonomy are interrelated and are essential for the foundation of the right to life. Decisions given by the Court in cases from Maneka to Puttaswamy have ingrained the concept of values and quality of life in our jurisprudence.[156]

ii. Comparative jurisprudence referred to by the Bench

The judges also referred the international jurisprudence to reach a meaningful conclusion. The decision of the "House of Lords in Airedale",[157] wherein it was held that "*passive Euthanasia is allowed for terminally ill patients or patients in a permanent vegetative state*". The Court

[151] Id at ¶¶176-179.
[152] JOHN S. MILL, ON LIBERTY, (1859).
[153] Supra note 19, at ¶¶399 and 521.
[154] Id at ¶606.
[155] § 24, Transplantation of Human Organs and Tissues Act, 1994.
[156] Maneka Gandhi v. Union of India, AIR 1978 SC 597.
[157] Supra note 18

further relied on "***R (on the application of Pretty)* v. *Director of Public Prosecution***",[158] wherein the Court said that patients' autonomy should be respected and assisted dying should be allowed. The Court further referred to the case of "***Cruzan* v. *Director, Missouri Department of Health***",[159] wherein the Court said that a physician is allowed to end a patient's life provided there is clear evidence showing that the patient wishes to end his life. The Court relied on the ruling given in "***Vacco* v. *Quill***",[160] wherein "*the Court distinguished between physician-assisted Suicide and the patient's refusal to the treatment*". The Court said that the latter is allowed as it is a part of individual autonomy. Chandrachud J. and Bhushan J. relied on the ruling given in ***Schloendorff* v. *New York Hospital Trust***,[161]wherein the Court said that a terminally ill patient has the right to direct the removal of life support as a part of his autonomy. Mishra C.J. cited the case of ***Carter* v. *Canada***,[162] wherein physician-assisted suicide was permitted when the patient was in irremediable condition. Chandrachud J. has elucidated upon the ECHR's rulings in ***Pretty* v. *the United Kingdom***, [163] ***Haas* v. *Switzerland***,[164] and ***Lambert* v. *France***[165]. The Court referred to the law of various countries on this issue.

***Ratio:***

The Court ruled that as part of the right to life provided by Article 21 of the Constitution, an individual has the right to die with dignity. As a result, the Court authorised the termination of life support in circumstances involving individuals suffering from terminal or incurable illnesses. The Court established a framework for the execution of advance directives as well as rules for implementing passive euthanasia.

**CONCLUSION**

The judgment given in ***Common Cause* v. *Union of India*** is the perfect example of the application of the doctrine of proportionality. The Court has succeeded in balancing two facets of the right to life under Article 21. While on the one hand, the right to life creates a duty on the State to protect the life of its citizens and on the other hand, it is also taking care of the

[158] R (on the application of Pretty) v. Director of Public Prosecutions [2001] UKHL 61.
[159] Cruzan v. Director, Missouri Department of Health497 U.S. 261 (1990).
[160] Vacco v. Quill521 U.S. 793 (1997).
[161] Schloendorff v. New York Hospital Trust211 N.Y. 125 (1914).
[162] Carter v. Canada (2015) SCC 5.
[163] Pretty v. United Kingdom [2002] All E.R. (D) 286 (Apr.).
[164] Haas v. Switzerland [2011] ECHR 2422.
[165] Lambert v. France[2015] ECHR 545.

individual autonomy to make any decisions concerning his/her own body. The court has done a proper analysis of the issues relating to euthanasia and came to a meaningful conclusion. The bench referred to a number of cases and finally decided that passive euthanasia can be practiced provided the guidelines are properly followed. The decision of the court is definitely a positive step taken to ensure individual autonomy.

## CHAPTER- V

## CONCLUSION AND SUGGESTIONS

The most widely accepted of all the choices pertaining to euthanasia is unquestionably in the form of voluntary refusal of lifesaving medical treatment. A primary justification for the person's prerogative to make such a decision is personal autonomy. The scope of the care that may be refused includes acute treatments as well as continual life support, and permissible refusal includes not only initial withholding but midstream withdrawal. Whether a person has the moral liberty to make a choice is an important dimension of moral judgment. The morally right choice also is important but is a different kind of judgment. Views on what is right can vary greatly, although who should have the prerogative—the moral right, the moral liberty—to make the choice is easier to determine. Health care providers and patients likely want to know which of a patient's potential choices are "morally protected—that is, what actions do they have a moral right to choose. This is still a moral judgment of actions, but the judgment is about the actions of others in respecting or not respecting a patient's choice.

To be specific, one use of "autonomy' is descriptive, referring to a capacity for decision making that someone does or does not have. Another is normative, referring to a value that people should encourage and respect or a principle that has weight in moral judgment. The two are related; as a value or principle, autonomy will have no weight—will not apply—without the mental capacity referred to by autonomy in its descriptive sense.

The question whether penalizing suicide is constitutionally permissible arose before the Supreme Court of India in ***P. Rathinam* v. *Union of India***[166]. The court held that an attempt to commit suicide indicated a psychological problem rather than any criminal instinct. After weighing every possible legal and moral aspects of treating an attempt to suicide as a criminal offence, the court struck down Section 309 of the Indian Penal Code as void.

[166] AIR 1994 SC 1844.

However, the above judgment was overruled in ***Gian Kaur* v. *State of Punjab***[167] in which the court stated that the constitutional right to life under Article 21 did not include the right to die and observed:

*"We find it difficult to construe Article 21 to include within it the 'right to die' as a part of the fundamental right guaranteed therein. 'Right to life' is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'."*

In this dissertation, the researcher first discussed in detail the meaning, concept and the types of euthanasia from the perspective of the patient as well as the medical practitioner. The debate on euthanasia revolves around the moral as well as the legal fulcrum of the right to bodily autonomy and self-determination. The moral arguments weighing over the sacredness and sanctity of life form the root contention against the legalization of euthanasia.

In the second chapter, the concept of "dignified life" and "dignified death" under Article 21 of the Indian Constitution has been discussed at length. Referring to some of the leading judicial pronouncements, it has been explained how the expression "right to life" used in Article 21 does not end with mere animal existence or continuous hardship though life but is impregnated with profound spheres which are indispensable for the growth of human personality. The right to life is inclusive of the right to live with the assurance of human dignity, the right to survival, the right to adequate health, etc.

Article 21 also recognizes the concept of liberty and states that the same cannot be taken away except by procedure established by law. The law which purports to take away the liberty of a person in the country must also be just, fair and reasonable as held in the landmark case of ***Maneka Gandhi* v. *Union of India***[168]. In this chapter, how Article 21 has been expounded by the courts to widen the horizon of human dignity in general has also been elucidated. These include recognition of the rights of prisoners, transgenders, people with disability, the right to

[167] AIR 1996 SC 1257.
[168] AIR 1978 SC 597.

reputation and choice of an individual, factors which affect the quality of individual life such as food, shelter, livelihood as well as medical care.

In the third chapter, the dissertation delves into the international position on the euthanasia in various countries of the world such as Netherlands, Belgium, Australia, the United Kingdom, the United States of America and Canada considering several elements like the backgrounds of these nations in relation to euthanasia and the present legal position. Though these countries stand at varying positions on this matter, there are also some similarities which are visible across these countries on the issue of right to die. Termination of life of the patients suffering from terminal illnesses is allowed in most of these countries through withdrawal or withholding of medical treatment. It must be noted that the liberty to terminate life is available only in those cases where the condition of the patient is such that the patient suffering from a life-threatening disease with no or little hope of recovery. Analysing the legal positions in these countries, one may easily note that the intention behind this is to reduce the pain and suffering caused to the patient. The chapter finally concluded by examining the scenario in India along with the suggestions of the Law Commission which suggested the enactment of a law to safeguard critically ill patients who refuse medical care, artificial feeding or hydration from being prosecuted under Section 309 of the IPC. It also suggested that clinicians who obey such decision of any individual or who make such decision for incompetent individuals in their best interests be shielded from any penalty under Section 306 or Section 309 of the IPC.

In the fourth chapter, the researcher looks into the judicial approach to euthanasia in India and the varying stances of the courts at different points of time. It examines the stand taken by the courts from the case of ***State* v. *Sanjay Kumar Bhatia***[169] **(**reported in 1985) and ***Maruti Dubal* v. *State of Maharastra***[170] (reported in 1986) till the recently decided ***Common Cause (A Regd. Society)* v. *Union of India***[171] where passive euthanasia has been given a free way with certain essential guidelines laid down by the court.

[169] 1985 SCC OnLine Del 134.
[170] 1986 SCC OnLine Bom 278.
[171] (2018) 5 SCC 1.

A nearly recent judgment of the Supreme Court in ***Justice K.S. Puttaswamy* v. *Union of India***[172] has set a benchmark on the issues of right to privacy, individual autonomy, human dignity and self-determination. Its impact can easily be seen in the ***Common Cause's*** case which expounded upon human dignity and its relevance under Article 21 of the Constitution.

This dissertation began with two hypotheses. The first hypothesis on which this research was carried out was that voluntary euthanasia must be recognized as a fundamental right under Article 21 of the Constitution. As held by the Supreme Court in ***Gian Kaur v. State of Punjab***[173], the "right to die" is not covered under Article 21 and is, therefore, not a fundamental right. Thus, the current Indian legal scenario does not recognize the "right to die" which is different from the "right to die with dignity", the latter being recognised as an integral part of the fundamental right to "dignified life". The difference between the two has been carved out by the Supreme Court itself in Gian Kaur has also upheld the distinction in the case of ***Common Cause***. The court has noted that the right to die with dignity can be recognized in cases when a patient is suffering from an incurable medical illness and his condition is unlikely to improve. In case of voluntary euthanasia, where the patient in his conscious state of mind either consents to the administration of any medical process or voluntarily requests for such medical process through which his life may be put to an end, therefore, forms an integral part of his bodily autonomy and self-determination which unquestionably demands that it must be recognized as a fundamental right of an individual. The first hypothesis, hence, stands proved.

The dissertation proceeded on the second hypothesis that the legislature must enact a law in respect of euthanasia and the guidelines laid down by the Supreme Court in the ***Common Cause's*** case must no more be used as a substitute thereof. It is a widely recognized principle that how a certain issue must be addressed in the society through state or any private machinery must be governed by positive law. This is because it is the law made by the legislature which can concretely establish as to how a certain act is to be carried out and in case of any negligence or deliberate misuse, a proper liability/penalty can be imposed on the wrongdoer. On the issue of euthanasia, for example, even though the Supreme Court has permitted the practice of advance directives and has laid down some guidelines on the issues such as: who can execute

[172] (2017) 10 SCC 1.
[173] (1996) 2 SCC 648.

the advance directive? How can it be executed? What should it contain? How should it be recorded and preserved? When and by whom can it be given effect to? What if permission is refused by the Medical Board? Whether it can be revoked, and if yes, then how? Where shall an advance directive be inapplicable? However, it also appears that the Court has also missed some of the important points which must be taken note of as far as advance directives are concerned, for example, there may be issues concerning the accuracy of an advance directive and the person who has executed the directive may not be the same person while it is to be implemented. On the other hand, the 2016 Bill drafted by the Ministry of Health and Family Welfare expressly prohibited the practice of advance directives. The procedural guidelines by the Supreme Court may also lead to problems of complexities due to excessive bureaucratic involvement. Moreover, it appears that the 2016 Bill too has several fallacies as it fails to encompass important issues of advance directives, palliative care, cooling off period, prevention of negligent acts and misuse of law, etc. Therefore, it stands clear that the Supreme Court guidelines as well as the draft Bill do not address some of the important aspects which raises the need for a new law that can govern these significant aspects in a suitable and balanced manner. The second hypothesis is hence, proved.

## SUGGESTIONS

The research conducted above has clearly established that the current legal position on euthanasia in India does not govern the issue of "death with dignity" as the Supreme Court guidelines as well as the 2016 draft Bill leave several important questions unanswered. What is highly needed is a balanced approach with simpler procedure and necessary safeguards for easier and effective implementation of advance directives and prohibiting the misuse therein. Some of suggestions which must be noted while enacting a new law on this issue are reproduced below:

1. Provisions related to advance directives and living will must be incorporated a competent individual can decide upon the medical course of action in case he becomes incompetent.
2. In case of more than one advance directive, the most recent one must be considered.
3. An advance directive must be in the form of a registered document which must be executed in the presence of at least 3 independent witnesses. This may ensure prevention of abuse of any advance directive.

4. The law must contain a clearer definition of "informed consent". The patient must be fully aware and informed about his medical condition and the consequences of any decision that takes.
5. The law must also ensure that the authorities in this regard are easily approachable and there is sufficient supervision of decisions taken by the medical practitioners.
6. It must also be ensured that in case of absence of any advance directive, euthanasia is carried out for an incompetent patient as well where the patient is suffering from an incurable illness and the medical practitioners are of the opinion that his condition is unlikely to improve. The opinion must also be recorded by the medical board of the respective district and euthanasia must be given only after consulting the family members of the patient.
7. The law must contain necessary checks and balances and ensure that it is used only for what it is intended for. It must provide for suitable liabilities/penalties for any act of negligence or deliberate misuse of law.

It is important to note that the legislative enactment on the issue of euthanasia shall unquestionably have to meet some practical needs in the medical field. It is therefore necessary that apart from discussions in parliament or any state legislative body, the other stakeholders such as doctors, paramedics, nurses, patients, families who have experienced such issues, etc. are thoroughly consulted and their opinions considered.

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# APPENDIX

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES**

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