

SARASWAT

**“Euthanasia : Mercy Killing
or Mercy Living!!!!!!”**



Edited By
Dr. Prema Hallikeri



Smt. K.G. Mittal College of Arts and Commerce

An ISO 9001 : 2008 Certified

Nahar Nagar, Malad (West), Mumbai - 400 064.

Website: www.kgmittalcollege.com

© No part of this publication should be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording and/or otherwise without the prior written permission of the editors and the publisher.

ISBN: 978-93-5202-815-3

Information contained in this work has been received from respective research scholars/paper author/s. For information published herein, *Smt. K.G. Mittal College of Arts and Commerce*, and *Himalaya Publishing House Pvt. Ltd.* are not responsible. Authors are solely responsible for any damages arising out of use of this published information work.

Printed and Published by:

Mrs. Meena Pandey

HIMALAYA PUBLISHING HOUSE PVT. LTD.,

"Ramdoot", Dr. Bhalerao Marg, Girgaon, Mumbai - 400 004.

Phones: 23860170 & 23863863, **Fax:** 022-23877178

E-mail: himpub@vsnl.com, **Website:** www.himpub.com

For:

Smt. K.G. Mittal College of Arts and Commerce,
Malad (West), Mumbai - 400 064.

Printed by: Rose Fine Art, Mumbai. On behalf of HPH.

ISBN: 978-93-5202-815-3

LEGALIZATION OF EUTHANASIA IN INDIA

Prof. Madhavi Nighoskar
Prahladrai Dalmia Lions College of
Commerce and Economics,
Malad, Mumbai - 400064.
E-mail: mnig20@yahoo.co.in

Prof. Subhashini Naikar
Prahladrai Dalmia Lions College of
Commerce and Economics,
Malad, Mumbai - 400064.
E-mail: subhicool@gmail.com

“No life that breathes with human breath has ever truly longed for death.”

Abstract

The term euthanasia comes from the Greek words “eu” meaning “good” and “thanatos” meaning “death”; which combined means “well-death” or “dying well”. It refers to the practice of ending life in a painless manner. It may be defined as intentional killing by act or omission of a dependent human for his or her alleged benefit. The keyword here is “intentional” because if death is not intended then there is no act of euthanasia. Euthanasia, Mercy Killing or Physician-assisted Suicide may be referred to as murderous by some and merciful by others and hence it is always surrounded by controversy which arises from serious moral and legal issues involved in it.

This research aims to provide a critical analysis into the life ending decisions of people (patients) and the legal and ethical debate that arises out of this act.

The implications of the distinction between legalizing euthanasia and the resulting effects are of paramount importance to the potential criminal liabilities and this raises a number of sensitive and controversial issues.

Euthanasia

The term euthanasia comes from the Greek words “eu” meaning “good” and “thanatos” meaning “death”; which combined means “well-death” or “dying well”. It

refers to the practice of ending life in a painless manner. It may be defined as intentional killing by act or omission of a dependent human for his or her alleged benefit. The keyword here is "intentional" because if death is not intended, then there is no act of euthanasia. Euthanasia, Mercy Killing or Physician-assisted Suicide may be referred to as murderous by some and merciful by others and hence it is always surrounded by controversy which arises from serious moral and legal issues involved in it.

Origin

Hippocrates mentions euthanasia in the Hippocratic Oath, which was written between 400 and 300 B.C. The original oath states: "To please, no one will I prescribe a deadly drug nor give advice which may cause his death". Despite this, the ancient Greeks and Romans generally did not believe that life needed to be preserved at any cost and were, in consequence, tolerant of suicide in cases where no relief could be offered to the dying or, in the case of the Stoics and Epicureans, where a person no longer cared for his life. English Common Law from the 1300s until the middle of the last century made suicide a criminal act in England and Wales. Assisting others to kill themselves remains illegal in that jurisdiction. However, in the 1500s, Thomas More, in describing a utopian community, envisaged such a community as one that would facilitate the death of those whose lives had become burdensome as a result of "torturing and lingering pain".

The Process of Euthanasia

1. Euthanasia is carried out by a doctor, who inserts a lethal injection into the patient, using a needle.
2. When euthanasia is performed with the patient's consent, it is called voluntary euthanasia.
3. When euthanasia is performed without the patient's consent, it is called non-voluntary or non-choice euthanasia.
4. The third form of euthanasia is called involuntary euthanasia, where the doctor performs euthanasia against the patient's wishes.

The Following are Not Euthanasia

1. Stopping a medically futile treatment where the burden of that treatment would outweigh the benefits.

2. Giving treatments aimed at relieving pain and other symptoms even when the treatment may very occasionally carry some foreseeable risk of shortening life.
3. When a mentally competent person chooses to refuse treatment. Doctors cannot force patients to have treatment against their will. If the patient then dies, it is not euthanasia.

Demand of Euthanasia in India

The Indian Constitution says that the "Right to Die" is not a fundamental right under Article 21. The question whether the right to die is included in Article 21 of Constitution came for consideration for the first time before the Bombay High Court in *The State of Maharashtra v. Maruti Shripathi Dubal*. The Court held that the right to life guaranteed by Article 21 includes the right to die, and consequently the Court struck down Section 309 IPC, which provides punishment for attempt to commit suicide as unconstitutional. The judges felt that the desire to die is not unnatural but merely abnormal and uncommon. They listed several circumstances in which people may wish to end their lives, including disease, cruel or unbearable condition of life, and a sense of shame or disenchantment with life.

Passive euthanasia is legal in India. On 7 March 2011, the Supreme Court of India legalized passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The decision was made as part of the verdict in a case involving Aruna Shanbaug, who has been in a vegetative state for 37 years at King Edward Memorial Hospital. The High Court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the Court stated that its decision becomes the law of the land until the Indian Parliament enacts a suitable law. Active euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries.

Indian Law on Euthanasia (Legalities)

The legal aspects of euthanasia are understood by very few people.

The law, though active in many countries, has been a sleeping giant in India, as euthanasia goes on behind closed doors. The law awoke from its slumber in 1994 by way of a petition filed by P. Rathinam directed against the constitutional validity of Section 309 IPC, which deals with punishment for attempt to commit suicide. (Incidentally, suicide is legal in all states of USA.) The Supreme Court ruled in

favour of the petitioner, thereby legalizing suicide and rendering as unconstitutional punishment for abetting of suicide. In this case, a corollary was drawn (as a passing reference or in legal terms an *obiter dictum*) between euthanasia and suicide. The judgement stated that in cases of passive euthanasia, the consent of the patient (if he be in sound mental condition) is one of the pre-requisites. So, if one could legally commit suicide, he could also give consent for being allowed to die. It went on to say that if suicide was held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point. This judgement came as a shot in the arm for people supporting euthanasia.

However, whatever progress was there came to a grinding halt in 1996, and the state of confusion returned. The same court now upheld the constitutional validity of Sections 309 and 306 thereby legalizing the same. A judgement totally contradictory to the earlier one. This presented a picture of the confusion that prevails in our apex judiciary as far as euthanasia is concerned. The primary basis for taking such a contention was Article 21, which states that all Indians have a right to life and personal liberty. The judgement accepted the view that in a terminally ill patient (one in a Permanent Vegetative State - PVS), mercy killing does not extinguish life, but accelerates conclusion of the process of natural death that has already commenced. But it goes on to say that the scope of Article 21 cannot be widened enough so as to include euthanasia. In the concluding remarks, assisted suicide and abetting of suicide were made punishable, due to "cogent reasons in the interest of society."

So far, there has been no reported case of euthanasia *per se*, but if it does come up, the prosecution will have a definite advantage. The law as of now is still quite ambiguous on the topic of euthanasia, but we can hope that some concrete steps shall be taken to resolve this burning problem.

At a stage where Euthanasia has still not been legalized in India, a person indulging in its practice will be charged under IPC Sections 302, 306 and 309 and be accused of culpable homicide and abetment of suicide. This law is applicable to the doctor administering euthanasia, the person who gives his consent on administering euthanasia and all those who are directly and indirectly involved in the practice.

Research Design

Hypothesis

The research 'Legalization of euthanasia in India and its critical effects on the society as whole' aims to provide a critical analysis into the life ending decisions of people (patients) and the legal and ethical debate that arises out of this act.

The implications of the distinction between legalizing euthanasia and the resulting effects are of paramount importance to the potential criminal liabilities and this raises a number of sensitive and controversial issues.

The key points to be highlighted in this study are as follows:

1. **Ethical debate:** The three competing paradigms of 'Vitalism' (a doctrine that ascribes the functions of a living organism to a vital principle, distinct from chemical and physical forces), 'Sanctity of life' and 'Quality of life'.
2. **Competence:** How can a patient influence the manner of his/her death? The concept of patients' 'best interests' when they are incompetent to decide for themselves.
3. **Distinction between 'act' (with consent; a positive act) and 'omission' (without proper consent).**
4. **Liabilities for the third party** (physicians, the authority who gives consent), assisting the suicide of another.
5. **A comparison between policies governing euthanasia in other countries with the Indian regulations on euthanasia.**

An 'Explanatory Research' is to be carried out to understand and decipher "What is going on?" At a very natal stage, a basic hypothesis drawn is that why euthanasia is still not legal in India when around 7 major countries around the world have already framed laws to govern it.

Data Collection

Data on the various aspects euthanasia were collected through secondary data sources from research reports on euthanasia and the book 'Freedom to Die: People, Politics and The Right-to-die Movement', by Derek Humphrey.

Here, we have used a primary data collection method also.

The methods of data collection were:

- Questionnaire
- Interviews

Sampling Methods

Quota Sampling

Quota sampling method has been applied to conveniently select a sample of 25 Doctors and 15 Lawyers from the population that together formed an overall computed population of 40 samples.

Snowball Sampling

From the computed sample of doctors and lawyers, we researchers got the reference (snowball sampling) of terminally ill patients who were willing to voice their opinions on this issue. The sample computed through Snowball Sampling amounted to nine.

The Situation in Netherlands Compared to the Current Situation in India

Netherlands has several unique features that have contributed to the legalization of euthanasia, probably the most important one being several decades of debate about euthanasia rooted in society. The Dutch health care system has several attributes that shaped a context of safeguards in which the legalization of euthanasia could take place, such as the fact that virtually everyone is covered by health insurance. Further, health care, including home care in case of chronic or terminal disease, is freely accessible and affordable to all. This gives no ground for the sometimes heard fear that euthanasia can be (mis) used in case of high costs of medical care. Also, the general structure of the Dutch health care system is quite unique, with the Dutch general practitioner as a core of primary care. Euthanasia is in the large majority of cases performed by general practitioners, who often know the patient for a long time, which might enable the physician to judge whether the patient fulfills the first three, patient-related, criteria of due care. These factors suggest that exporting the Dutch legalization process to other countries is not straightforward.

Arguments over Euthanasia

Arguments against Euthanasia

- Overview of arguments against euthanasia
- Against the will of God
- Sanctity of life
- The slippery slope
- Devalues some lives
- Patient's best interests
- Proper palliative care
- Fears about regulation
- It gives doctors too much power
- Pressure on the vulnerable

Overview of Anti-euthanasia Arguments

It's possible to argue about the way we've divided up the arguments, and many arguments could fall into more categories than we've used.

Ethical Arguments

1. Euthanasia weakens society's respect for the sanctity of life.
2. Accepting euthanasia accepts that some lives (those of the disabled or sick) are worth less than others.
3. Voluntary euthanasia is the start of a slippery slope that leads to involuntary euthanasia and the killing of people who are thought undestrable.
4. Euthanasia might not be in a person's best interests.
5. Euthanasia affects other people's rights, not just those of the patient.

Practical Arguments

1. Proper palliative care makes euthanasia unnecessary.
2. There's no way of properly regulating euthanasia.
3. Allowing euthanasia will lead to less good care for the terminally ill.

4. Allowing euthanasia undermines the commitment of doctors and nurses to saving lives.
5. Euthanasia may become a cost-effective way to treat the terminally ill.
6. Allowing euthanasia will discourage the search for new cures and treatments for the terminally ill.
7. Euthanasia undermines the motivation to provide good care for the dying and good pain relief.
8. Euthanasia gives too much power to doctors.
9. Euthanasia exposes vulnerable people to pressure to end their lives.
10. Moral pressure on elderly relatives by selfish families.
11. Moral pressure to free up medical resources.
12. Patients who are abandoned by their families may feel euthanasia is the only solution.
13. Increase in crimes such as abetment of suicide, homicide and organ donation rackets.

Political Arguments

1. No system of safeguards could ever be foolproof. So, in practice, legalizing 'voluntary euthanasia' would result in legalizing involuntary euthanasia. This has been the experience in both Nazi Germany and, currently, in Holland.

2. Legalizing euthanasia will lead to murder in the name of euthanasia.

Religious Arguments

1. Euthanasia is against the word and will of God.
2. Euthanasia weakens society's respect for the sanctity of life.
3. Suffering may have value.
4. Voluntary euthanasia is the start of a slippery slope that leads to involuntary euthanasia and the killing of people who are thought undestrable.

Arguments Supporting Euthanasia

1. We need it - the compassion argument. Supporters of euthanasia believes allowing people to 'die with dignity' is kinder than forcing them to continue their lives with suffering.

2. We want it - the autonomy argument. Some believe that every patient has a right to choose when to die.
3. We can control it - the public policy argument. Proponents believe that euthanasia can be safely regulated by government legislation.
4. Every person has a right to live with at least a minimum dignity and when the state of his existence falls below even that minimum level then he must be allowed to end such tortuous existence. In such cases, relief from suffering (rather than preserving life) should be the primary objective of health care providers.
5. Regarding euthanasia, at the present juncture, the debate largely revolves around active euthanasia and not passive euthanasia. Supporters of euthanasia argue that society is obligated to acknowledge the rights of patients and to respect the decisions of those who elect euthanasia. It is argued that euthanasia respects the individual's right to self-determination or his right of privacy.

Summary and Findings

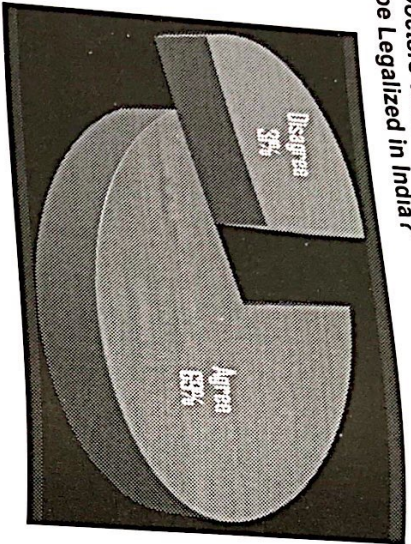
The research highlighted that majority of the population was in favour of *Legalizing Euthanasia in India*.

Parameters to be Kept in Mind

1. The patient's request is voluntary and well-considered.
2. The patient's suffering is unbearable and hopeless.
3. The patient is informed about his situation and prospects.
4. There are no reasonable alternatives.
5. Another independent physician should be consulted and
6. The termination of life should be performed with due medical care and attention.

Opinion of Doctors When They Were Asked about the Statement 'Should Euthanasia be Legalized in India?'

SARASWAT: EUTHANASIA: MERCY KILLING OR MERCY LIVING!!!



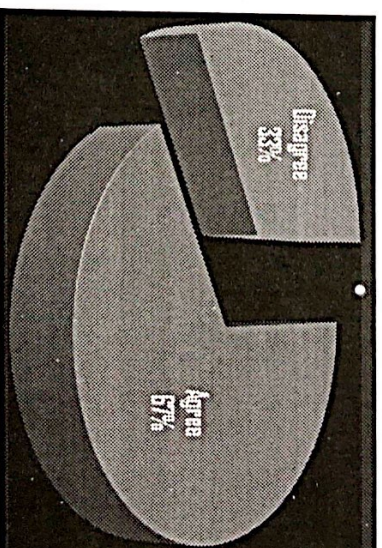
Synopsis of the Opinion of Doctors

1. Most of the doctors think that euthanasia has not been legalized in India because of various backgrounds like religious, traditional, ethical, political and moral issues.
2. We live in a country where we know how politics has an adverse influence without logic and practicality leads to manipulation.
3. When we talk about religion, in none of the religion killing is acceptable instead it's considered as a sin.
4. There is a possibility that making euthanasia legal it will create a lot of controversy, hurting people with such beliefs.
5. The ethical values of the doctors who take the Hippocratic Oath to try and save the patient's life how can they decide the end of the patient's life.
6. If the dead end stage is decided, there are chances that we will have to think as to who will attempt to invent newer drugs?
7. This empirical study on 'Legalization of Euthanasia' has contributed to the quality of the public debate, and to the regulating and public control of euthanasia and physician-assisted suicide.
8. No slippery slope seems to have resulted. Physicians seem to adhere to the criteria for due care in the large majority of cases. Further, it has been shown that the majority of physicians think that the Euthanasia Act will improve their legal certainty and contribute to the carefulness of life-

terminating acts. The transparency envisaged by the Act still does not extend to all cases.

9. Almost all unreported cases involve the use of opioids, and are not considered to be euthanasia by physicians. More education and debate is needed to disentangle in these situations which acts should be regarded as euthanasia and which should not.
10. Medical end-of-life decision making is a crucial part of end-of-life care. It should, therefore, be given continuous attention in health care policy and medical training. Systematic periodic research is crucial for enhancing our understanding of end-of-life care in modern medicine, in which the pursuit of a good quality of dying is nowadays widely recognized as an important goal, in addition to the traditional goals such as curing diseases and prolonging life.
11. Considering these backgrounds, there is a tremendous fear that if euthanasia is legalized, the law will not only create controversies but might also be "misused more than used."

Opinion of Lawyers When They Were Asked about the Statement 'Should Euthanasia be Legalized in India?'

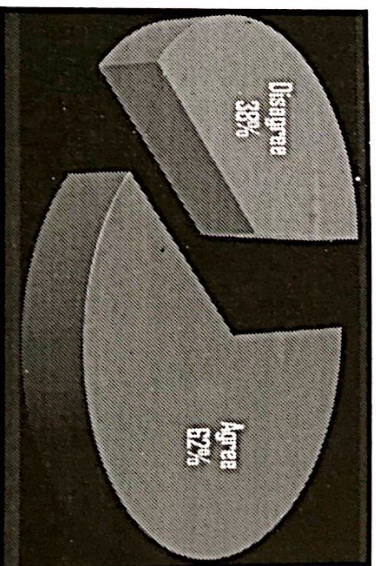


Synopsis of the Opinion of Lawyers

1. This is a legal issue which has not been decided yet even by the Supreme Court of India whether euthanasia/mercy killing should be made a constitution right under Article 21 of the Constitution of India "No person shall be deprived of his life or personal liberty."

2. In India, abetment of suicide and attempt to suicide are both criminal offences.
3. Euthanasia for no cure illness does not have a logical argument. Whenever there is no cure, the society and medical professionals become frustrated and the fellow citizen take extreme measures such as suicide, euthanasia or substance use.
4. If euthanasia is legalized, then commercial health sector will serve death sentence to many disabled and elderly citizens of India for meagre amount of money.
5. India is country which is closely guarded by its culture and humanitarian considerations. As an emerging discipline, the anthropology of consciousness cannot escape the investigation of cultural myths and practices concerning death and dying.
6. Many arguments also hinge on religious beliefs. Death is one of the most important things that religions deal with. Most religions disapprove of euthanasia.
7. Virtually, all religions state that those who become vulnerable through illness or disability deserve special care and protection, and that proper end of life care is a much better thing than euthanasia. To legalize euthanasia would fundamentally change the way we understand ourselves, human life and its meaning.
8. One of the big arguments against euthanasia is that it's irreversible: Once the patient is gone, we'll never know if their unexpected recovery was just around the corner, or if they might have gone on to lead a full and happy life despite their illness.

Opinion of Patients and/or their Family Members When They Were Asked 'Should Euthanasia be Legalized in India?'



Synopsis of the Opinion of Patients and/or their Family Members

1. Majority of them agreed that the issue of euthanasia is prolonged case and the government needs to take due consideration of legalizing it.
2. They also suggested that they would opt for euthanasia if it is legalized.
3. Almost all of them said that measures should also be taken to curb unethical practices after euthanasia is legalized.

Limitations Faced during the Study

1. Even though the questionnaire contained confidentiality factor, doctors and lawyers were still hesitant to give in their opinions freely.
2. Hidden motives were seen whereby most the doctors and lawyers did support euthanasia but rejected its legalization due to the fear of being involved in legal problems.
3. It was difficult for the professionals to spare time and energy to fill up the questionnaires.
4. Doctors being indifferent towards the issue due to the sensitivity of the topic.
5. Credibility of the research due to the lack of an efficient project guide.
6. Lack of resources and finance led to the selection of non-probability sampling methods like snowball sampling and quota sampling which resulted in the lack of computing.

7. Lack of control over the samples especially because Snowball Sampling was used. There was no clarity over the credibility of the samples computed through references.
8. The research was biased as the entire target population was not covered. The samples only accounted for doctors and lawyers who are directly related to the issue of euthanasia.
9. Lack of consensus over the issue as euthanasia in India is governed by certain religious and political aspects that cannot be controlled.
10. Other aspects regarding euthanasia were neglected as the focus was solely on legalization aspect.
11. It was difficult and inexplicability unethical of the researcher to question the family of the patients who are/were terminally ill.

Recommendations and Conclusion

"Efforts" (ideally efforts which may go in vain) are being taken to legalize Euthanasia in India, after using the laws of other countries (where euthanasia has already been legalized) as a base to frame regulations to govern the practice. The question is not why it has not been legalized in India as yet, but will it be "ethically implemented if it does come into practice." India is country which is closely guarded by its culture and humanitarian considerations. We may be emulating the western way of living, but there are certain beliefs and practices (which make us stand out from other cultures) from which we Indians will never deter. Then again is the serious issue of bureaucracy and people with maligned intentions; who might use "euthanasia" as a defense to the prosecution's argument of a homicide.

The research does suggest that euthanasia should be legalized; however, problems will arise when the wrong people will be victimized and passing a judgement will be based on biased conclusions instead of arguing on facts. Merely legalizing, it will still put the onus on the doctor as he would be the one administering or looking over the administration of euthanasia. Even though the family agrees upon using euthanasia as their only choice to accept destiny, doctors are bound by their own regulations and the mandatory Hippocratic Oath that gives them the right to counter those decisions.

What India lacks and it urgently requires is a holistic development, one that will be sustainable. Many parameters need to be considered before legalizing Euthanasia; and by that, it does not mean just political or religious aspects, but also the humanitarian aspects.

Every individual is entitled to live his life the way he wants to and every other individual needs to respect that and collectively live in harmony. Euthanasia may be a convenient way to put an end to all the sufferings, but a broader picture suggests that Euthanasia in India cannot be compared to Euthanasia being legalized elsewhere. The matter of legalizing it has been going on since 1994 and it has become a burning issue for those supporting Euthanasia. But what is known to many in the field of medicine is that Euthanasia is already being practiced behind closed doors; and these issues do not tumble out because there is no documented proof and even if there is, the law cannot help but reject it as it still has not been legalized.

In conclusion, legalizing euthanasia will do nothing good to the society as such if the approach of the system is to "only legalize" it. Efforts have to be channeled towards also amending the laws that govern medical practice and laws that govern crimes such as homicide and abetment of suicide.

References

The data required in conducting this research was collected from the following sources:

- **Book:**
 - > 'Freedom to Die: People, Politics and The Right-to-die Movement' by Derek Humphrey.
- **http Links:**
 - > <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3440914/>
 - > http://en.wikipedia.org/wiki/Religious_views_on_euthanasia
 - > http://en.wikipedia.org/wiki/Euthanasia_device
 - > http://www.eapenet.eu/LinkClick.aspx?linkid=ELW0ip_edmM%3D&tabid=752
 - > <http://commissiononassisteddying.co.uk/wp-content/uploads/2011/01/Evidence-from-Thomas-Croft-Euthanasia-and-Assisted-Suicide-a-Legal-and-Ethical-Dilemma.pdf>
 - > <http://www.spandan.com/index.php>
 - > http://en.wikipedia.org/wiki/Legality_of_euthanasia#cite_note-27