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## EMBRACING FREEDOM: DISCUSSING THE QUESTION OF PASSIVE EUTHANASIA IN THE BACKGROUND OF RIGHT TO DIE WITH DIGNITY

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*Archana Prakash, LL.M., Govt. Law College, Thiruvananthapuram.*

### *Abstract*

Euthanasia can be defined as the practice of intentionally ending the life of a patient who is suffering from an incurable disease or in an irreversible coma condition. Euthanasia has several forms, but in legal parlance it is recognized as two distinct types, i.e.; active euthanasia and passive euthanasia. In 2005, an NGO named Common Cause approached the Hon'ble Supreme Court of India with revolutionary prayers and in 2018 the court reiterated the position laid down in *Gian Kaur v. State of Punjab*<sup>1</sup> stating that the right to live with dignity enshrined under Art. 21 of the Indian Constitution includes the right to die with dignity and gave sanction for passive euthanasia under strict formalities. The court also declared that living wills executed by a terminally ill patient when in sound mind and good condition can be considered as a valid document and in 2023, the Supreme Court of India eased the rules for [passive euthanasia](#) with the primary vision to make the process less difficult and less time-consuming. In September 2024, the Union Health Ministry released draft guidelines titled 'Draft Guidelines for Withdrawal of Life Support in Terminally Ill Patients' aiming to provide a structured framework for implementing passive euthanasia. The present research aims to showcase the concept of euthanasia as a freedom of individual in the light of supreme court's stances on right to die with dignity, with special reference to the case, *Common Cause (A Regd. Society) v. Union of India and Anr*<sup>2</sup>. The goal of the research is to find out whether the court's decision in legalizing passive euthanasia expanded the jurisprudence of freedom as a right in the modern era and whether it is really suitable in Indian context or not.

**Keywords:** *Active Euthanasia, Passive Euthanasia, Living Will.*

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<sup>1</sup> (1996) 2 SCC 648

<sup>2</sup> AIR 2018 SC 1665

## 1. INTRODUCTION:

Departing from life is a complicated matter as life is an occurrence that one would ideally want to shield from negative influences that attempt to attack the ethicality and power from any aspect until the very end. However, it is inevitable that there comes a stage in life when the vitality of life is solidified and the vibrant hues of existence become blurred. In such instances the crucial question that needs to be answered is whether an individual who is in a completely vegetative state, unable to comprehend the surroundings, should continue to receive ongoing treatment that has emerged overtime or if their individual dignity should be considered, and steps taken to facilitate the smoother process of departure.<sup>3</sup> This is where the relevance of euthanasia arises. It involves the procedure of ceasing the life of a patient to end their suffering caused by a terminal illness and enduring torment.

The word “Euthanasia is of Greek origin combining the words like “eu” (meaning “good”) and “Thanatos” (meaning “death”). The concept behind euthanasia is to provide a comparatively good death instead of subjecting someone to an undignified and painful one.<sup>4</sup> In democratic India, euthanasia was not permitted for a long time. However, the situation changed after the landmark judgement in the case of *Common Cause (A Regd. Society) v. Union of Indian and Anr.*<sup>5</sup> In 2018, a constitutional bench of the Hon’ble Supreme Court of India recognised the right to die with dignity as a fundamental right and established formalities for terminally ill patients to enforce this right. In 2023, the Supreme Court further eased the norms to make the right to die with dignity more accessible<sup>6</sup> and in 2024, the Union Health Ministry released the 'Draft Guidelines for Withdrawal of Life Support in Terminally Ill Patients,' aiming to provide a structured framework for implementing passive euthanasia.<sup>7</sup>

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<sup>3</sup> *Common Cause (A Regd. Society) v. Union of India and Anr* AIR 2018 SC 1665

<sup>4</sup> Soumya Ranjan, *Euthanasia: A Boon or a Scourge*, 2.4, JUS CORPUS LAW JOURNAL (JCLJ), 2271, 2272, 2022

<sup>5</sup> AIR 2018 SC1665

<sup>6</sup> Krishnadas Rajagopal, *Supreme Court Eases Procedure for Terminally Ill Patients to Withdraw Medical Treatment*, THE HINDU (Feb 04, 2023, 07:53 IST), <https://www.thehindu.com/news/national/supreme-court-eases-procedures-for-terminally-ill-patients-to-withdraw-medical-treatment/article66466280.ece>

<sup>7</sup> Express News Service, *Govt comes up with a new draft guideline on passive euthanasia*, THE INDIAN EXPRESS, (Sep. 30, 2024, 12:13 IST) <https://indianexpress.com/article/cities/delhi/govt-comes-up-with-new-draft-guidelines-on-passive-euthanasia-9593697/>

The judgement in the case of *Common Cause (A Regd. Society) v. Union of Indian and Anr.*<sup>8</sup> is considered a milestone in realising the right to die with dignity. Through this ruling, the supreme court of India recognised the validity of an Advanced Medical Directive and extensively discussed its contents. The judgement also emphasized the importance of right to self-determination, bodily privacy and individual autonomy of patients while examining passive euthanasia in light of Art. 21 of the Indian Constitution.

To analyse the expanded jurisprudence of freedom in relation to euthanasia, it is essential to consider the global perspective. The number of countries allowing euthanasia, usually under strict guidelines, is growing now. Switzerland, the Netherlands, Spain, Australia, Belgium, Canada, U.S.A etc allowed euthanasia, may be in different ways, to ensure the dignified death of an individual. Landmark decisions like *Airedale N.H.S. Trust v. Bland*<sup>9</sup> (UK), *Cruzan v. Director, Missouri Department of Health*<sup>10</sup> (USA), *Hunter and New England Area Health Service v. A*<sup>11</sup> (Australia) and *Carter v. Canada* (Attorney General)<sup>12</sup> have garnered significant global attention in the euthanasia debate. In India, the discussion on euthanasia dates back to 1928 when Mahatma Gandhi advocated for a positive outlook on life while addressing the pain suffered by a calf in his ashram.<sup>13</sup> Subsequently, the plight of Aruna Shanbaug<sup>14</sup> prompted detailed discussions on the topic, ultimately leading to the legal sanction of passive euthanasia. The principle of sanctity of life was a matter of concern for the court, but stated that it is not an absolute one.

As far as the Indian situation is concerned there is a possibility to misuse the provision which meant to ensure the freedom of self-determination and bodily autonomy of individuals. So utmost care and caution is necessary to ensure that unnecessarily no one is deprived of his right to life in the guise of euthanasia.

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<sup>8</sup> AIR 2018 SC1665

<sup>9</sup> 1 (1993) 2 WLR 316; (1993) 1 All ER 821, HL

<sup>10</sup> 111 L Ed d 224; 497 US 261 (1990); 110 S.Ct. 2841 (1990)

<sup>11</sup> [2009] NSWSC 761

<sup>12</sup> 2015 SCC 5

<sup>13</sup> Anandakrishnan G, *Euthanasia, Supreme Court Order Draws on Gandhi's View*, THE INDIAN EXPRESS (Mar. 11, 2018, 05:55 IST) <https://indianexpress.com/article/india/euthanasia-supreme-court-order-draws-on-gandhis-views-5093556/>

<sup>14</sup> *Aruna Ramachandra Shanbaug v. Union of India & Ors.* (2011) 4 SCC 454

## **2. WHETHER RIGHT TO LIVE WITH DIGNITY IS INCLUSIVE OF RIGHT TO DIE WITH DIGNITY?**

Under Article 21 of the Indian Constitution the life and personal liberty of every individual is protected. It clearly states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”<sup>15</sup>. The concept of right to life does not imply mere animal existence. The Hon’ble supreme court has increased the ambit of the said constitutional provision through a series of decision.

In *Peoples Union for Democratic Rights v. Union of India*<sup>16</sup> the court decided that non-payment of a minimum wages to the workers is violative of Art 21, because it denies the right to live with basic human dignity. Through cases like *Chameli Singh v. State of Uttar Pradesh*<sup>17</sup>, the right to shelter was recognized as part of Article 21 and *Olga Tellis v. Bombay Municipal Corporation*<sup>18</sup> expanded the scope to include the right to livelihood. The right to privacy, right to pollution free environment, right to health and medical care etc enlarges the colour and shade of Art. 21 of the Indian Constitution. In short, it can be understood that right to life includes the right to live with human dignity and that right should exist till the end of the natural life. So right to live with dignity is inclusive of right to die with dignity and it is a very precious freedom for an individual to choose the time of his death when suffering with infinite pain and agony.

### **a. TIMELINE: EUTHANASIA AND RIGHT TO DIE WITH DIGNITY**

The discussion should commence with the first significant effort to recognize euthanasia, which took place in 1971. In its 42nd Report, the Law Commission of India recommended the removal of Section 309 from the Indian Penal Code, 1860, which criminalizes attempted suicide. The judicial progression began with the case of *P. Rathinam v. Union of India*<sup>19</sup>. The petition challenged the constitutionality of Section 309 of the Indian Penal Code and while deciding the case the court visualizes the petition in the light of Art 19 as it gives right to freedom of speech and expression & the right not to speak. Likewise, the court opined that right to life

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<sup>15</sup> INDIA CONST art. 21

<sup>16</sup> AIR 1982 SC 1473

<sup>17</sup> 1996 (2) SCC 549

<sup>18</sup> AIR 1986 SC 980

<sup>19</sup> 1994 3 SCC 394

provided under Art. 21 includes right not to live and declared that section 309 of the Indian Penal Code is unconstitutional.

The decision made by the court in the aforementioned case was overruled in *Gian Kaur v. State of Punjab*<sup>20</sup>. The facts of the case notify that Gian Kaur and her husband were convicted by a Trial Court under Section 306 of the Indian Penal Code for abetment of suicide. It is clear from the plain reading of the law that Section 306 of IPC punishes anyone who abets the commission of suicide and Section 309 punishes anyone who attempts to commit suicide. It was asseverated by the convicts that, as held in *P. Rathinam v. Union of India*,<sup>21</sup> Article 21 of the Indian Constitution includes the right to die, so a person abetting suicide is merely assisting or helping a person in the enforcement of a freedom provided under Article 21. In light of this contention here, the constitutional bench held that right to life does not include right to die or right to be killed.

Later, in the year 2006, the Law Commission of India in its 196th report proposed that there must be legal provisions to protect patients who are terminally ill and who do not wish to continue treatment from the egregious version of Section 309 of the Indian Penal Code. Further, the report also pushed for the protection of doctors who act in line with the will of the patient, or who makes the decisions for the terminally ill patients in regard to their best interests from chastisement provided under Section 306 of the IPC or Section 299 which deals with culpable homicide. Here the report clarified that the patients should seek the human facility of euthanasia only when the medical field is of the opinion that the patient is in a permanent vegetative situation and the only probability is his/her death.<sup>22</sup>

Two years later, in 2008, the Law Commission of India published its 210th Report, strongly recommending the striking down of Section 309 of the IPC as an inhumane provision. The report emphasized the decriminalization of attempted suicide and stated that it is a reflection of the person's mental state, which requires proper attention and support to restore them to a normal rhythm of life. The report presented that punishment is not a remedy as it does not help someone who is already broken; instead, it is unjust and counterproductive.

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<sup>20</sup> 1996 2 SCC 648

<sup>21</sup> 1994 3 SCC 394

<sup>22</sup> Tia Jose, Keshavdev J.S, *Examining Euthanasia: is there an Answer?* 4.2, NLIU LAW REVIEW (NLIU LR), 73, 79-80, 2015

The centre of attention should be on preventing suicides and escalating access to appropriate medical care for individuals who have attempted suicide. Unfortunately, punishment cannot serve this purpose effectively.<sup>23</sup>

The discussion relating to euthanasia regained momentum in 2011 with the case of *Aruna Ramchandra Shanbaug v. the Union of India*.<sup>24</sup> Aruna was brutally raped and strangled by the sweeper of the hospital in which she worked as a nurse. Due to strangulation, later on, she went into a permanent vegetative state and once Ms. Pinki Virani filed a petition under Article 32 to end her miserable life by using the chance of euthanasia. She argued that as far as Art 21 is inclusive of right to die, Aruna can be euthanized to have a dignified death. The Court recognized passive euthanasia while deciding the case at hand and also provided some guidelines on this issue. However, active euthanasia remained strictly prohibited. The court established that the decision to discontinue the life of the patient should be taken only at the best interest of her and invoked the principle of *Parens Patriae*, to prevent any misuse. Even though Aruna was denied passive euthanasia, the case became a landmark judgement regarding passive euthanasia.<sup>25</sup>

After the involvement of the Indian Psychiatric Society, the Law Commission of India, and the enactment of the Mental Healthcare Act 2017, the current stance on euthanasia in India was established through the case of *Common Cause (A Regd. Society) v. Union of India and Anr.*<sup>26</sup> in 2018. Furthermore, the Supreme Court eased the norms for passive euthanasia in 2023<sup>27</sup> and in 2024, the Union Health Ministry released the 'Draft Guidelines for Withdrawal of Life Support in Terminally Ill Patients,' aiming to provide a structured framework for implementing

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<sup>23</sup> Khadija Khan, *The New IPC Removes the Punishment for Attempting Suicide- or does it? Here's What the Proposed Nyaya Sanhitha Says*. THE INDIAN EXPRESS, (Aug 13, 2023, 17:39 IST) <https://indianexpress.com/article/explained/explained-law/new-ipc-removes-punishment-attempting-suicide-8889717/>

<sup>24</sup> (2011) 4 SCC 454

<sup>25</sup> Payodhi Daschaudhari, *Case Comment: Aruna Ramchandra Shanbaug v Union of India*, 3.1, JUS CORPUS LAW JOURNAL (JCLJ), 2092, 2092-2098, 2022

<sup>26</sup> AIR 2018 SC1665

<sup>27</sup> Khadija Khan, *What is a Living Will and the New Supreme Court Order for Simplifying Passive Euthanasia Procedure?* THE INDIAN EXPRESS (Jan. 27, 2023 06:50 IST) <https://indianexpress.com/article/explained/explained-law/passive-euthanasia-india-laws-supreme-court-changes-in-living-will-guidelines-8404919/>

passive euthanasia.<sup>28</sup> Passive euthanasia is now recognized as a means to achieve a dignified death, falling within the ambit of Article 21 of the Indian Constitution.

b. INDIVIDUAL DIGNITY, INDIVIDUAL AUTONOMY AND RIGHT TO SELF DETERMINATION

With the enactment of the Universal Declaration of Human Rights in the year 1948, dignity of individual has been recognized as an important facet of human rights internationally. The preamble of UDHR itself states that “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”<sup>29</sup> and under Art. 1 of the document unequivocally manifests that “All human beings are born free and equal in dignity and rights”<sup>30</sup>. The principles set out in the preamble have august importance all over the world, thereby all the states take it as their responsibility to protect the dignity of individual which is the bedrock of all other rights.

In the latest nine-Judge Bench decision in *K.S. Puttaswamy and anr. v. Union of India and ors.*<sup>31</sup>, intrinsic aspect of dignity has been reaffirmed to be a component under Art. 21 along with the dimension of the right to privacy. Likewise, the Constitution Bench in *M. Nagaraj M. Nagaraj and ors. v. Union of India and ors.*<sup>32</sup> stated that “It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction”. Intrinsic living entails living with dignity and the preamble of Indian Constitution itself gives utmost importance to assuring the dignity of individual and unity and integrity of the nation. The same was reiterated in the notable case named *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>33</sup> in the manner that right to life includes the right to live with human dignity and all that goes along with it includes the necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self etc.

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<sup>28</sup> Bharti Mishra Nath, *Opinion: Draft Guidelines on Passive Euthanasia: A Way Forward*, NDTV, (Oct. 02, 2024, 17:56 IST), <https://www.ndtv.com/opinion/draft-guidelines-on-passive-euthanasia-a-way-forward-6700686>

<sup>29</sup> UNIVERSAL DECLARATION OF HUMAN RIGHTS, *Preamble*

<sup>30</sup> UNIVERSAL DECLARATION OF HUMAN RIGHTS *art. 1*

<sup>31</sup> (2017) 10 SCC 1

<sup>32</sup> (2006) 8 SCC 212

<sup>33</sup> (1981) 1 SCC 608

Similarly in the case named *National Legal Services Authority v. Union of India and ors*<sup>34</sup>, the Hon'ble Supreme Court has held that the true measure of development of a nation lies in its commitment to human dignity.

Regarding the discussion on euthanasia, while dealing with the Gian Kaur case,<sup>35</sup> the court confirmed that right to live with dignity includes the most relevant right to die with dignity. So, for a terminally ill patient who suffers beyond limit and hardly living should not be subjected to prolongation of life where there is no cure for the state of the patient and death is the most probable end. If such a person is allowed to continue the battle with life, the dignity of life is denied to him as there is no other choice but to suffer the unhelpful treatment which destroys the concept of bodily autonomy and right to privacy of such a patient. Here actually the nature's dominion is restored without subjecting the patient to treatment which is the product of development in the medical field or modern innovative technology.

John Rawls emphasizes that autonomy is all about choice and self-determination can only be exercised through the process of choosing<sup>36</sup>. The right to self-determination can be understood as a right of a human being to choose how he/ she could live their life and it is absolutely based on their freedom and it is their individual autonomy. Everyone after attaining a certain age has the right to take decision upon their body and life and it should be completely out of the interference from others. When making decisions regarding the health and medical care, a person can use his self-determination and autonomy to decide whether to pursue treatment, which treatment to opt for, duration of the treatment etc in line with their personal values and opinions. The best interest of the patient should be reflected while deciding the treatment and the sanctity of life should go with the right to self-determination. If the patient is unable to make decision by themselves, the wishes of the surrogates representing the best interest of the patient should be respected and the decision of the treating doctor should also carry a significant weight.

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<sup>34</sup> (2014) 5 SCC 438

<sup>35</sup> *Gian Kaur v. State of Punjab* (1996) 2 SCC 648

<sup>36</sup> JOHN RAWLS, *POLITICAL LIBERALISM* 32, 33, (New York: Columbia University Press, 1993)



The discussion on euthanasia in the light of dignity, autonomy and self-determination makes it clear that the right to live with dignity is inclusive of right to die with dignity and it rest with the ultimate freedom of an individual.<sup>37</sup>

### **3. CASE ANALYSIS: COMMON CAUSE (A REGD. SOCIETY) v. UNION OF INDIA AND ANR (AIR 2018 SC 1665)**

In 2005, an NGO named Common Cause approached the Hon'ble Supreme Court, seeking a declaration that the fundamental right to live with dignity under Article 21 includes the right to die with dignity, and requested directions for the adoption of suitable procedures for executing "Living Wills." These Living Wills would allow a person, while in sound mind and good health, to express their wish to not be kept alive with the help of ventilators if doctors determine that they cannot be sustained without life support. Prior to this the society wrote letters to the Ministry of Health and Family Welfare regarding passive euthanasia, but received no response and thereby filed the Public Interest Litigation. The writ petition preferred under Art 32 of the Constitution of India requested that the right to live with dignity is a person's right till the end so it can be extended to include the right to have a dignified death. And that the modern technology has created situations where the life of a patient is unnecessarily prolonged causing distress and agony to the patient and their relatives. The petitioner further contended that legalizing living wills would enable a person experiencing persistent pain and suffering to express their wishes regarding medical treatment and authorize their family or close friend to discontinue such treatment. The court widely discussed the questions raised such as whether the right to die falls within the purview of right to life, whether passive euthanasia can be permitted for terminally ill patients in India and whether living wills can be considered as a valid document. Ultimately, the court concluded in favour of passive euthanasia.<sup>38</sup>

#### **a) THE REAL PICTURE OF JUDGEMENT:**

The respective case was heard by a constitutional bench and it reaffirmed that right to die with dignity is inclusive of right to live with and emphasized the paramount importance of

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<sup>37</sup> Vinod K Sinha, S. Basu, S. Sarkhel, *Euthanasia: An Indian Perspective*, 54(2) INDIAN JOURNAL OF PSYCHIATRY (INDIAN J PSYCHIATRY) 177, 177-183, 2012

<sup>38</sup> Rohitesh Tak, *Right to Die Vis-à-Vis Right to Life' -An Analysis of the Supreme Court Approach Towards Passive Euthanasia*, 9.1, NLIU LAW REVIEW (NLIU LR), 250, 2750 282, 2020

distinguishing between active and passive euthanasia, where active euthanasia requires an external action whereas passive euthanasia is the act of withdrawal of life support system and allowing nature to take its course. While delivering the judgment in the Aruna Shanbaug case,<sup>39</sup> the court held the view that passive euthanasia could only be introduced through legislation. However, the court clarified in this case that such an opinion was erroneous and that passive euthanasia could be introduced even without legislation.

Regarding the issue of Living Wills, the court held that it is high time to accept the concept of Advance Medical Directives in the country. It is actually a step towards the protection of bodily autonomy, bodily integrity and right to self-determination of an individual. The directive should be a clear, voluntary, and written document free from coercion or force. It should clearly state how and when decisions related to withholding or withdrawing medical treatment can be made. There is a lengthy procedure involved in recording and preserving the document, which requires the involvement of multiple authorities. If the executor of the Living Will is terminally ill and receiving prolonged treatment with the support of technology, steps can be taken to give effect to the document. While taking a decision on this matter the best interest of the patient should be reflected.<sup>40</sup>

Right to life and liberty as given under Article 21 of the Constitution is meaningless unless it connects with freedom. The case discussed the right to privacy and its relation to autonomy and liberty. While delivering the judgement the court used the power provided under Art 142 of the Constitution of India. Later on, July 19th, 2019, the Indian Society for Critical Care filed an application requesting modification of some guidelines prescribed in the 2018 Judgement.

They stressed the need to simplify the procedure for terminally ill patients to exercise their right to die with dignity.<sup>41</sup>

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<sup>39</sup> *Aruna Ramachandra Shanbaug v. Union of India & Ors.* (2011) 4 SCC 454

<sup>40</sup> *Vini Singh, On Advance Directives and Attorney Authorisations — An Analysis of the Judgment of the Supreme Court in Common Cause (A Regd. Society) v. Union of India*, 4.2, COMPARATIVE CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW QUARTERLY (CALQ) 23, 32-34, 2018

<sup>41</sup> SUPREME COURT OBSERVER, <https://www.scobserver.in/cases/common-cause-euthanasia-and-the-right-to-die-with-dignity-case-background/> (last visited Feb.26, 2025)

b) THE CHANGES BROUGHT IN 2023

The Supreme Court of India eases the rules for passive euthanasia with the primary vision to make the process less difficult and less time-consuming. Previously the guidelines from the supreme court seems to be very difficult and there were large number of formalities that need to be followed. For instance, in the past, it was required for a living will to be attested or countersigned by a Judicial Magistrate (JFCM). However, the court has now revised this rule, stating that attestation by a notary or a gazetted officer is sufficient for a person to create a valid living will or advance medical directive. Furthermore, previously it was necessary that the Judicial First-Class Magistrate should hand over a copy of the living will to district court concerned, but now the Supreme Court stated that the document will be a part of the National Health Digital Record which can be accessed by hospitals and doctors from any part of the country at any time. Additionally, the primary medical board is necessary to be composed of three doctors including the treating physician. The board, whether it is a primary or secondary board, should make a decision regarding the withdrawal of further treatment within 48 hours. This time limit is not specified in the 2018 judgment. In summary, the modified guidelines issued by the Supreme Court have made the right to die with dignity easier and more accessible for individuals suffering from terminal illnesses.<sup>42</sup>

c) DRAFT GUIDELINES ON PASSIVE EUTHANASIA, 2024

The Union Health Ministry's draft guidelines on passive euthanasia, titled *Guidelines for Withdrawal of Life Support in Terminally Ill Patients*, propose a structured legal framework for withdrawing life support from terminally ill patients under specific conditions, such as brainstem death, poor prognosis, or informed refusal by the patient or their kin.

The guidelines emphasize a "considered decision" by doctors and require validation by a Primary and Secondary Medical Board. While aimed at reducing unnecessary suffering and economic burdens, the guidelines have drawn criticism from the Indian Medical Association

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<sup>42</sup> Khadija Khan, *supra* note 28

(IMA), which argues they could expose doctors to legal scrutiny and stress. The document also reinforces that **active euthanasia remains illegal** in India.<sup>43</sup>

d) PASSIVE EUTHANASIA: A NEW HOPE OF RELIEF

The foundational concept in criminal law is contained in the Latin expression 'actus non facit reum nisi mens sit rea', which means “an act does not render a man guilty of a crime unless his mind is equally guilty,”<sup>44</sup>. When performing passive euthanasia, the medical professionals are helping the patient to have a dignified death where there is no ray of hope for the recovery. Therefore, the act of the doctors does not amount to a crime due to their lack of criminal intention. Similarly, a patient refusing medical treatment is simply allowing the disease to restore the nature’s dominion and if in the process, death occurs, it is just because of the disease and not by any deliberate acts. Hence, passive euthanasia does not amount to a crime in any aspect. **Section 92 of the Indian Penal Code<sup>45</sup> (Section 30 of the Bharatiya Nyaya Sanhita)<sup>46</sup> states that a decision made in good faith falls under general defence. Therefore, a medical professional's decision not to prolong the indignity of life through artificial life support does not constitute a crime, particularly when the best interest test has been applied and medical knowledge indicates no possibility of recovery.**

India is passing through the stage of demographic dividend<sup>47</sup> and in order to reap the fruits of this positive phase, it is crucial to utilize the human resources to their fullest potential. If a member in a house is in a permanent vegetative state, someone in the household must stay behind to care for the patient. Here a very valuable human capital is wasted for a no hope situation. In such cases, passive euthanasia offers the possibility of a dignified death for the patient while enabling the more effective utilization of caregiver human capital.

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<sup>43</sup> Bharti Mishra Nath, *supra* note 29

<sup>44</sup> Shivaan Devgan, *Balancing Act: Strict Liability in Criminal Law and its Constitutional Implications*, 4.4, JUS CORPUS LAW JOURNAL (JCLJ), 1220, 1221, 2024

<sup>45</sup> Indian Penal Code, 1860, § 92, No. 45, Acts of Parliament, 1860 (India).

<sup>46</sup> Bharatiya Nyaya Sanhita, 2023, § 30, No. 45, Acts of Parliament, 2023 (India)

<sup>47</sup> Hemanth Adlakha, *Demographic Dividend and Unemployment Problems in India, China*, THE INDIAN EXPRESS (June 08, 2023, 19:20 IST) <https://indianexpress.com/article/explained/india-china-demographic-dividend-and-unemployment-problems-8651054/>

The substantial resources of skills, labour, money, medical equipment, and hospital infrastructure allocated to a patient in a permanent vegetative state can be more productively employed to improve the condition of other patients who, with more attentive care, may be able to regain their quality of life.

Passive euthanasia promotes organ transplantation and provides individual the right to die with dignity. The medical staff who is in charge for the care of a terminally ill patient will be more in a strain situation because despite their best efforts, the condition of the patient will never improve. This can also affect the mental condition of the medical staff even. While analysing all these factors it is obvious that passive euthanasia is a new ray of hope and to ensure its proper implementation, the prevailing societal mindset, which often compels individuals to pursue treatment at any cost, should be challenged and reconsidered.

#### **4. WAY FORWARD: CONCLUSION**

Euthanasia can be seen as a means to safeguard individual dignity, which should extend until the end of natural life. In recognizing this, the court has given legal recognition to passive euthanasia. However, discussions on euthanasia naturally bring about considerations of its advantages and disadvantages. It is often criticized by the public, who argue that humans have no right to take a life bestowed by God. However, through passive euthanasia, one is not interfering in God's domain but rather restoring it by simply withdrawing life support systems, which are products of human invention. It is not the first time that individuals have attempted to determine the timing of their own deaths.

India has a history of seeking the next world through religious practices such as Swachanda Mrityu, Prayapavasa, Santhara<sup>48</sup>, Mahaprasthana, and others<sup>49</sup>. Yet, certain reasons make it difficult to blindly accept euthanasia as a beacon of hope. One such reason is that the field of medicine advances every day, rendering what is considered right today a potential mistake tomorrow.

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<sup>48</sup> Millind Ghatwai, *The Jain religion and right to die by Santhara*, THE INDIAN EXPRESS, (Sep 02, 2015, 01:25 IST) <https://indianexpress.com/article/explained/the-jain-religion-and-the-right-to-die-by-santhara/>

<sup>49</sup> WIDOM LIBRARY, <https://www.wisdomlib.org/concept/mahaprasthana> (last visited, Feb 27, 2025)

In the past, there were no treatments or vaccines available for polio, but today there are. Suppose, today, by using every available means a person in a PVS is treated and finally the patient is euthanized because it is confirmed by the doctors that all means have been exhausted and patient cannot be saved. Exactly after a year, through the advances in the medical field, medicine is discovered to cure that person's illness. In such a situation it is not possible to bring back the person from the grave who is already euthanized. Here the right to life of a patient will get infringed with no way to rectify the situation. Therefore, utmost care and caution must be exercised before embracing passive euthanasia.

Recently, in the case of **Harish Rana v. Union of India and Ors**,<sup>50</sup> the Delhi High Court addressed a plea involving a 30-year-old man who had been in a vegetative state since 2013 due to severe head injuries. The petition sought permission for passive euthanasia, arguing that the patient's condition was irreversible and that his family could no longer provide adequate care. The court declined the request, noting that the patient was not on life support and could sustain himself without external aid. The decision emphasized that passive euthanasia involves withdrawing life support in cases of terminal illness, which did not apply in this situation.<sup>51</sup> From this, it is evident that passive euthanasia **cannot** be **simply** resorted to; the law and the judiciary are very careful in its application.

In villages like Reddiarpatti and countless others in Tamil Nadu, a practice known as "Thalikoothal" has been carried out for generations as a form of mercy killing. Even though mercy killing is considered a crime, it is practiced with the approval of society, and relatives or children aid in ending the lives of the elderly in various ways. The people living in these areas view it as their duty to help their elders escape suffering and agony caused by old age weakness.<sup>52</sup> In a country like India, where large number of people live in a socially and educationally backward condition, the introduction of passive euthanasia raises the possibility of misuse. Therefore, it is crucial to raise awareness and provide proper education on the topic.

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<sup>50</sup> 2024 SCC OnLine Del 4639

<sup>51</sup> Express News Service, *Delhi HC Refuses to Refer to Medical Board Man's Request to Undergo Passive Euthanasia*, THE INDIAN EXPRESS (July 08, 2024 19:13 IST)

<https://indianexpress.com/article/cities/delhi/delhi-hc-medical-board-man-request-passive-euthanasia-9440645/>

<sup>52</sup> Shinto Thomas, *Thalaikoothal: These Tamil Nadu hamlets can't watch the elders suffer. They kill them*, ONMANORAMA, (Mar.17, 2017, 08:24 IST). <https://www.onmanorama.com/news/nation/tamil-nadu-hamlets-cant-watch-elders-suffer-they-kill-them.html>

In 2018, the Government of India, honoured Dr. M.R Rajagopal with the Padma Shri award, for his distinguished service in palliative care. In the same year the Hon'ble Supreme Court ruled in favour of euthanasia which is a contradiction. It is important to give proper awareness on the benefits of palliative care and ensure that conditions that can be improved with palliative care should not be overlooked. The legislature should step in at the earliest and enact a comprehensive law on euthanasia and living will, so that there will be a proper statute to take care of the confusions that are expressed against euthanasia. In conclusion, the right to die with dignity in the light of passive euthanasia has expanded the jurisprudence of freedom. However, utmost care should be taken to prevent its misuse.