**EUTHANASIA: RIGHT TO DIE VIS A VIS ARUNA SHAUNBAUG CASE**

Amarnath Gupta

**Abstract**

Euthanasia mostly termed as mercy killing is quite a controversial topic .The topic has its firm root in old Greek and Roman civilization. As the technology is developing so the issue is coming in picture that whether a person has right to choose his course of death or not. In this article definition of euthanasia, its typology :voluntary, non voluntary and involuntary is discussed. Forms of Euthanasia: Active and Passive.

The case of Aruna Shaunbaug is discussed for the matter of fact stressing the new change which has come in India regarding the view on Euthanasia. The exercise of autonomy and its importance is mentioned through philosophers and their views on life and taking of one’s life is shared.

The discussion that a person is entitled to take his life when the illness becomes incurable exercising the autonomy or the view that taking such life is nothing but going against the medical ethics.

*The woods are lovely dark and deep but I have promises to keep and miles to go before I sleep and miles to go before I sleep.[[1]](#footnote-2)*

Lines of a poem beautifully written by Robert Frost where he talks about keeping his promise but What if he was affected by such an incurable disease that he could not keep his promise as he would not be able to go and have found himself in urge to go for a peaceful for eternity.

**Introduction**

The origin of the word ‘Euthanasia’ has its base from two greek root words “Eu” + “Thanatos” which coming together gives the meaning “Good Death”.[[2]](#footnote-3) It in general means killing of a person for the benefit of that person only. Usually, people who have incurable situation go under euthanasia. The Merriam Webster Dictionary defines euthanasia as the act or practice of killing someone who is very sick or injured in order to prevent any more suffering.[[3]](#footnote-4) In general, it’s a form of suicide. There are two types of Euthanasia, i) Active Euthanasia- To assist in death of someone who is suffering from terminal illness. ii) Passive Euthanasia- with full intention not doing anything to prevent death of someone who is terminally ill. The second definition came in usage when technology developed and it became easier to prolong life of individuals.[[4]](#footnote-5) Andrew C. Verga, defined euthanasia as “the causing of an easy or painless death to a patient who is dying of a terminal illness”[[5]](#footnote-6)

**Types of Euthanasia:**

**Voluntary Euthanasia**

This refers to showing of intention by the patient to end his life by someone else on the request of the patient himself. These cases are generally referred as mercy killing in which the life of patient is taken on his consent which needs to be express and voluntary. It may be given verbally or in writing like a living will.[[6]](#footnote-7) This implies when the life becomes unbearable can a person take his own life through assistance. The ethical question is how much right does an individual have on his body to decide whether to continue with his life or finish it? Is there any way through which taking of one’s life become legal?

**Involuntary Euthanasia**

This is another kind of euthanasia in which the subject may choose life but is killed anyway. This can be counted as murder as the person gets killed against his wishes maybe for his own benefit.[[7]](#footnote-8)

**Non Voluntary Euthanasia**

This type of Euthanasia is concerned with subjects whose consent is unavailable because of his condition or illness and is not in a state to make meaningful choices. Thus, family, relatives or friends take decision on their behalf. Although it is different from involuntary euthanasia[[8]](#footnote-9).

Euthanasia is further divided into two categories: Passive Euthanasia and Active Euthanasia.

**Passive Euthanasia**

It entails withholding of medical treatment for continuance of life, like withholding or withdrawing the ordinary means of treatment or life supporting systems which has kept the person alive.[[9]](#footnote-10)

**Active Euthanasia**

It is about deliberately killing a person by using lethal substances or forces to kill a person. It is a direct method to end the agony of the person through some means, like by administering lethal injection to kill a person.[[10]](#footnote-11)

While there is no legal difficulty in the case of the former, the latter poses several problems, which is known as Active Euthanasia. Active Euthanasia is crime all over the world except where permitted by legislation. In India, active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is crime under section 306 IPC (abetment to suicide).

*The whole thing was discussed in the case of Aruna Shaunbaug which became a landmark case for India as it for the first time gave legal affirmation to passive euthanasia though active was not accepted and the legislature was directed to enact rules for the same.*

In *Aruna Shaunbaug v Union of India****[[11]](#footnote-12),*** Ms. Aruna Shaunbaug, aged sixty was working as a nurse in KEM Hospital where she was attacked and brutally raped and suffocated at the age of twenty three; and since then, she had failed to fully recover. The incident had left her in a persistent vegetative state and was taken care by the staff of the same hospital and was given exceptional care but in 2010 her situation got worse when she was infected with malaria. In light of the facts Pinki Virani claiming to her friend brought this petition to seek for an order to stop the further intake of food through food tubes and to allow Aruna to die of starvation. The court arranged for various tests and team of three doctors was appointed for the same. They studied Aruna Shanbaug’s medical history in detail and opined that she is not brain dead. She reacts to certain situations in her own way.

When a person is in a permanent vegetative state (PVS), should withholding or withdrawal of life sustaining therapies be permissible or `not unlawful’?

If the patient has previously expressed a wish not to have life-sustaining treatments in case of futile care or a PVS, should his/ her wishes be respected when the situation arises?

In case a person has not previously expressed such a wish, if his family or next of kin makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?

In the present case the court discussed about Euthanasia and it’s typology which are already discussed above. The court discussed about various case related to right to life and came to conclusion that till now right to life did not include right to die but Right to life includes right to live with human dignity and a person who is in a persistent vegetative state should have the right to die and if the person is not in a state to give his or her informed consent then it can be given by parents, family, relatives, next friends. It is ultimately the court to decide, as Parens Patriae as to what is in the best interest of the patient, though the wishes of close relatives and next friends and opinion of medical practitioners should be given due weight in coming to its decision. The case of Airdale[[12]](#footnote-13) which was highly relied in this case had held that the status of Parens Patriae is the duty of Sovereign. The court being its wing has inherited the status.

Two of the cardinal principles of medical ethics are patient autonomy and beneficence. Autonomy means the right to self-determination, where the informed patient has a right to choose the manner of his treatment. To be autonomous the patient should be competent to make decisions and choices. In the event that he is incompetent to make choices, his wishes expressed in advance in the form of a Living Will, OR the wishes of surrogates acting on his behalf ('substituted judgment') are to be respected. The surrogate is expected to represent what the patient may have decided had he / she been competent, or to act in the patient's best interest. It is expected that a surrogate acting in the patient's best interest follows a course of action because it is best for the patient, and is not influenced by personal convictions, motives or other considerations. Beneficence is acting in what is (or judged to be) in patient's best interest. Acting in the patient's best interest means following a course of action that is best for the patient, and is not influenced by personal convictions, motives or other considerations.

The court gave temporary guidelines for the approval of cases of passive Euthanasia until parliament makes any law in this regard:

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
2. Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale's case (supra).HC can give the approval of withdrawal of life support system under Article 226 of the Indian Constitution.

According to Austin,” Law is the general command of a sovereign backed by a sanction”. In other words the source of law is the will of the sovereign and the sovereign is empowered to punish those who violate the law. According to chief proponents of this school, namely Bentham, Holland, Salmond, Kelson and Hart, the law should be analyzed ‘as it’ exists today and a general distinction must be observed by systematizing the law ‘as is’ and the law as it ‘ought to be’. This theory analyzes the principles of law and reduces them to their fundamentals. It takes into account the developed legal system and analyzes the basic concepts to bring out their relationship with one another.[[13]](#footnote-14)

**Right to Die and Indian Constitution**

Right to die is not a fundamental right under Article 21.Whether the right to die is included in Article 21 of the Indian Constitution came up for consideration for the first time before the Bombay High Court is *Maruti Shripatrhi Dubal v State of Maharshtra*,[[14]](#footnote-15)case. The court held that the right to life guaranteed by Article 21 includes the right to die but did not clearly explain how even at the level of plain logic, life includes death. Apparently the two cannot co-exist. Death is the absence of life.

In *P.Rathinam v. Union of India*[[15]](#footnote-16), the SC upheld section 309 of the IPC which makes attempt to commit suicidean offence, under Article 21 of the constitution. However on March 21, 1996 in *Gian Kaur v State of Punjab*[[16]](#footnote-17)*,* a five judge Constitution bench of the court overruled Rathinam and upheld the validity of Section 309 of the penal code. It held that right to life under Article 21 of the Constitution does not include right to doe or right to be killed. The right to die is inherently inconsistent with right the right to life.

The court made it clear that the “Right to life” including right to live with human dignity would include the existence of such right till the end of natural life. This also includes right to a dignified life up to the point of death, including a dignified procedure of death. This may include the right of a dying man to die with dignity, when his life is ebbing out. However, according to the court, the ‘Right to Die’ with dignity at the end of life is not confused with the ‘Right to Die’ an unnatural death.

Though in the case of person who is terminally ill and there is no scope of his recovery and he is solely dependent upon others, their process of death can be accelerated by withholding or withdrawing the primary source of life support system.[[17]](#footnote-18)

**The Philosophers**

***Plato***

Plato[[18]](#footnote-19) has taught us that that Asclepius, the god of healing and medicine, his belief was that in cases where the chances of saving a person is very less and the life expectancy of the person is very short, there is no proper remedy left then the physician had the right to refuse to administer medicine to such person as it will serve no purpose to the person or the society.[[19]](#footnote-20)

Plato believed in the positivity of life and thus he was not in favour of the term known as Active Euthanasia and it is visible from his *Laws*[[20]](#footnote-21) in which he mentions that a doctor should be punished with death if he administers some kind of drug to terminate the life of a person. He showed displeasure for suicide *in Phaedos* as the act is against the will of the God.[[21]](#footnote-22)Though he was not in favour of suicide but he was tolerant towards a person who is in intolerable condition as those people get not that of a good life and become victim of their misfortune.[[22]](#footnote-23)As per him patients not able to live a normal life because of their sufferings should not be allowed to get treatment for prolongation of their life.[[23]](#footnote-24)

***Aristotle***

*Eudemian Ethics IV*[[24]](#footnote-25) and *Nichomachean Ethics V*.[[25]](#footnote-26) These are such two books in which Aristotle had discussed indirectly about Euthanasia and had mainly stressed on suicide. In these books he basically discussed the point that those who seek death before time are weak and in them those who seek death because of life, love failure or sorrow are cowards.

If we see the viewpoint of both Plato and Aristotle it is not on ethical point but on legal point. Like taking one’s life is injustice as it is forbidden by law. Although he has no issues if a lawbreaker takes his own life as it was the best he can do because of him the society suffered and was unjustly treated.

***Hippocrates***

He was the father of medicine and was against Active Euthanasia. The code implies a duty on the doctors to lessen the pain of the patients and prolong their life as well. [[26]](#footnote-27)Though it is not that he is against all kinds of Euthanasia as in his work *The Art*[[27]](#footnote-28) it can be presumed that he favoured passive euthanasia when the person becomes severely ill (by not treating them when the disease becomes incurable) .It is futile to treat someone in whose case medicine become powerless. This can be deduced that either he is suggesting that there should be an effective medicine to cure the disease or respect should be seen to the course of nature.[[28]](#footnote-29)

***Immanuel Kant***

In his work The Foundations of the Metaphysics of Morals he has given an account on moral duty. Like for undertaking a duty there should be goodwill, the reason should not be fear. He believed in reason and not observations. He is a firm believer in goodwill and by that he does not undermine other traits, he just points out the point that will is important to decide whether an act is good or bad.[[29]](#footnote-30)The value of good is intrinsic even though it fails to bring out positive results. Then what is will? It is to act according to the principles and thus his idea of goodwill focuses on duty as it has the moral worth. Without duty we have no moral worth. Therefore to have the moral worth one need to act in accordance with duty not out of feelings/ power.[[30]](#footnote-31)Thus, Goodwill and duty goes together, goodwill is obligation for duty but what determines duty is categorical imperative.Any Kantian decision about euthanasia, like any decision about an ethical issue, must obey the three principles of the categorical imperative, a set of rules that govern all moral laws. The principles are: He has talked about maxims which are intention to determine an action of the person. The maxim should be universal in nature.[[31]](#footnote-32)As he believes in universal law thus euthanasia would not be supported by him as a moral rule to be universal it should be categorical in nature not hypothetical and hypothetical imperative advocates about ‘I’ and Kant does not recognise it’s use in this context. Another principle of the categorical imperative is that people should be treated as ends, rather than only means to ends: they should be valued as persons themselves for the reason that they are persons, not for any other. To get to an ethical conclusion a person should use reason and categorical imperative and do their moral duty. Men are rational beings and are end in themselves not as means like non rational beings (things).

When connected to euthanasia the theory has loose ends as it is plainly illegal for being not universal in nature as the act won’t be categorical but if some reason based conclusion is made in this regard apart from emotion based then the nature will change and it will become legal.

***Ronald Dworkin***

Dworkin has discussed about euthanasia in detail in his work, Life’s Dominion, he has given favourable argument regarding physical assisted suicide through the concept o human dignity. He has defined human dignity as as ‘‘the moral right – and the moral responsibility – [of humans] to confront the most fundamental questions about the meaning and value of [our] own lives for [our]selves, answering to [our] own consciences and convictions’’[[32]](#footnote-33) It can be followed up by like this if our morality makes us raise such questions then our dignity makes us act on the answer given. If a person finds his life is nothing but burden then he finds the answer in ending it. If we go by this then a society which treats its citizen with dignity allow them to take their life. But Dworkin has even given the view that to treat with dignity means to treat a person like parents. As per him life has intrinsic value[[33]](#footnote-34) and it’s central aspect is dignity. Human life may be considered sacred or inviolate because of the creative energy that parents, family, and the individual himself has put into creating and shaping that life. He talks about moral and and legal right of an individual to terminate an innocent life. He talks that a person has the right to decide about his life and to treat with dignity means one should not intervene but it is not necessary people always make choices which are best for them or act for their critical interest thus sometimes treating with dignity means coercively interrupting in the life of people to protect the sanctity and intrinsic value of life. This view contradicts with his view that to live with dignity means finding answers to questions of importance and act in accordance with that. He did not address this question and suggested that the self determination of people and their critical interest will rarely conflict. The occurrence of a situation where to protect the critical interest of a person curtailing of his self determination will be a rarescenario. His theory of integrity explains to some extent where the intervention by other sources is justified and where not:

*Any surviving child is shaped in character and capacity by the decisions of parents and by the cultural background of community. As that child matures, in all but pathological cases, his own creative choices progressively determine his thoughts, personality, ambitions, emotions, connections, and achievements. He creates his life just as much as an artist creates a painting or a poem. (p. 83)*

If a person is competent and makes directives about himself in future when he won’t be able to take decisions.[[34]](#footnote-35)If a person has not left any living will then family or someone who can righteously take decision on his behalf about what should be the shape of his previous life.[[35]](#footnote-36)

He supports the moral view that a person who has chances to live should not make wrong choice but if a person is suffering from an incurable disease then in his best interest it would be right

*That he remains a person, and that the overall value of his life continues to be intrinsically important are decisive truths in favor of his right to dignity….We mark his moral standing and we affirm the importance of the life he has lived, by insisting that nothing be done to or for him that, in our community’s vocabulary of respect, denies him dignity.*[[36]](#footnote-37) (At 237)

Autonomy deserves respect as it defines the imperative and critical interests, morals and values and thus defines an individual.”Autonomy allows each one of us to be responsible for shaping our lives according to our own coherent or incoherent- but in any case distinctive- personality” (at 224)

A person has right to act as per the autonomy till he can give his meaningful view and in case where he is incompetent then the person’s living will come into play and his past exercised autonomy are given more importance than his current best interests.[[37]](#footnote-38)

**Status of active Euthanasia in India with regard to view of Philosophers**

It is very clear from the above literature that Life is considered very moral issue in India and Right to life guaranteed under Article 21 does not include right to die then how Passive Euthanasia is allowed but Active Euthanasia is not recognized by the Court. In the case of Aruna Shaunbaug[[38]](#footnote-39) the reason was quite clear that when passive euthanasia is allowed then majors are not taken to prolong the life of the patient and he is terminally ill but Active euthanasia would be a choice made to take his life because the person thinks that his life is suffering and is burden even though there are remedies available to the ailment.

Right to life includes health and the court is not ready to allow someone to take their life till the last ray of hope is available. Physical Assisted Suicide is treated u/s 309 of IPC as abetment to suicide which means active euthanasia is seen as a case of suicide.

Now if we consider Plato’s view he favours the death of a person by not administering him medicine or attending him when he has incurable disease as her serves no purpose to the society. Though suicide is not favored by him.

Aristotle has his own view about suicide, he favours death taken for the sake of love ones but dying because of failure or sorrow is seen by him as an act of cowardice. Hippocrates the father of medicine designed such code which has bound the doctors with the oath not to take someone’s life by administering lethal medicine but if a person is not curable then he can be left to meet his destiny. Kant on the other hand brought the point of morality and suggested to do duty in goodwill and should see the action taken is of cognitive imperative or hypothetic as the former talks about universalism which is accepted by Kant and the later talks about individuality which is not acceptable, thus can be concluded that his theory was a bit vague as if a proper discussion could change the point of individuality to universalism he would have accepted it. Dworkin talked about dignity, intrinsic value and sanctity of life. He favoured exercise of autonomy in which a person can self determine his critical interest but if that comes to the view of society that his decision is not serving his self interest then his decision can be intervened. He talked about priority of live will to decide person’s future when he will be incompetent how he want to shape his life .Thereafter, he supports to assist a person who is not competent though the stress on live will was on quite a greater extent

Thus, life is precious and losing hope and deciding to finish it is an act of cowardice. Active Euthanasia will make a scenario where people would advocate to finish their life before meeting their real end as said by Kant People are end in themselves not means to end. Active Euthanasia should not be supported. In Indian scenario till the legislation comes into picture the court has framed the directives so precisely that even in case of passive euthanasia the court plays the role of guardian and only after the approval of respective HC, passive euthanasia can be given.

**Conclusion**

Active Euthanasia is an act of self harm before fulfilling one’s purpose in life and can be nothing but near to suicide with someone’s help which our constitution does not allow. Although those who are in such a vegetative state that they can do nothing and their life is burden on themselves, they are allowed to take their life.

The sanctity of life should not include a person who is terminally ill and is burden on himself. Such person with incurable disease should not be compelled to forcefully lead a life of disgust. They should only be excluded from this right if there is an alternative remedy to address their problem if not then there is need to modify the definition of Right to Life by including Right to have a peaceful death in case of incurable disease.

The case of Aruna Shaunbaug is one of the landmark judgment which gave such terminally ill patients a hope to finish their life .With technical advancement a person life can be pronged but can’t be given that status of health which he has loss and when there is no cure there is meaning to just lead a purposeful life. Parliament needs to frame law keeping in mind every point especially it doesn’t get misused by others to take advantage of such state of those persons for their own benefit.

1. Robert Frost, Stopping by Woods on a Snowy Evening, 1923. [↑](#footnote-ref-2)
2. Ted Honderich, The Oxford Companion to Philosophy,(Oxford University Press Inc. : New York, 1995) pdf edition, p.252 [↑](#footnote-ref-3)
3. The Merriam Webster Dictionary [↑](#footnote-ref-4)
4. Supra 3 [↑](#footnote-ref-5)
5. James Rachael, The Right to Die, (New York: Random House,1989), p. 36. [↑](#footnote-ref-6)
6. James Fieser and Bradley Dowden (eds) op cit. p. 304 [↑](#footnote-ref-7)
7. John E. Linville, Physician assisted suicide as a constitutional Right,Fall, 198, [Journal of Law Medicine and Ethics,1996] [↑](#footnote-ref-8)
8. Gerald Dworkin, Life’s Dominion: An Argument About Abortion, Euthanasia, and Political Freedom, 107 [Harv. Law Review.February,1994] [↑](#footnote-ref-9)
9. Penny Lewis, Rights Discourse and Assisted Suicide, 45, [Am. J.L. and Med. 2001] [↑](#footnote-ref-10)
10. Philip Edema Lecture Notes on ContemporaryIssues in Ethics at Don Bosco Institute of Philosophy and Education, Ibadan. P.3 [↑](#footnote-ref-11)
11. (2011) 4 SCC 454 [↑](#footnote-ref-12)
12. Airedale N.H.S. Trust v Bland, 1993 AC 789 [↑](#footnote-ref-13)
13. Lectures on Jurisprudence and Legal Theory, Prof.Dr.Rega Surya Rao. [↑](#footnote-ref-14)
14. 1987 CrLj 743 [↑](#footnote-ref-15)
15. (1994) 3 SCC 394 [↑](#footnote-ref-16)
16. 1996(2) SCC 648 [↑](#footnote-ref-17)
17. Supra 13 [↑](#footnote-ref-18)
18. Plato. Republic. The Greeks. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 92-5; line 407 [↑](#footnote-ref-19)
19. Hildebrand A. Greek Culture. New York: George Brazillere Publishers, 1966: 226-52 [↑](#footnote-ref-20)
20. Plato. Laws VI. The Greeks. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 80-81; line 993d [↑](#footnote-ref-21)
21. Plato. Phaedo. The Greeks. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 70-3. lines 61c-62c [↑](#footnote-ref-22)
22. Plato. Gorgias. The Greeks. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 266-7; line 512a [↑](#footnote-ref-23)
23. Plato. Republic II. The Greeks. Od Hatzopoulos, ed. Athens: Kaktos Publishers, 1992: 90-7; lines 406e-407e [↑](#footnote-ref-24)
24. The Loeb Classical Library. Aristotle. Eudemian Ethics. Rackham H, translator. Cambridge, Mass: Harvard University Press, 1982: 320-4; line 1230a [↑](#footnote-ref-25)
25. The Loeb Classical Library. Aristotle. Nichomachean Ethics. Vol V, XIX. Cambridge Mass: Harvard University Press, 1982: 253-322; lines 1116a, 1138a, 11-15 [↑](#footnote-ref-26)
26. By lessening the pain it is favouring Euthanasia but prolonging life it counters. [↑](#footnote-ref-27)
27. The Loeb Classical Library. Hippocrates. Vol II. Goold GB, ed. Jones WHS, translator. Cambridge Mass: Harvard University Press, 1995: 185-217 [↑](#footnote-ref-28)
28. Marketos SG, Skiadas P. Plato: The Most Important Proponent of Euthanasia in Ancient Greece. Athens: Asclepios, 1999/2000: 12; 32-35 [↑](#footnote-ref-29)
29. William H. Shaw, *Social and Personal Ethics,* (Wadsworth Publishing Company: California, 1993) p.42 [↑](#footnote-ref-30)
30. Shaw W. H., *Social and Personal Ethics,* (Wadsworth Publishing Company: California,

    1993),p.23 [↑](#footnote-ref-31)
31. Harry J.Gensler (ed.) et al, *Ethics: Contemporary Readings* (published by Routledge Taylor and Francis e-library: London, 2005) p.153 [↑](#footnote-ref-32)
32. Dworkin, R. (1993). Life’s dominion. New York: Knopf [↑](#footnote-ref-33)
33. Having resemblance to Kant’s. [↑](#footnote-ref-34)
34. As Dworkin puts it, “if one’s death is to express a virtue central to their lives,” such directives should be honored (at 213) [↑](#footnote-ref-35)
35. “If they have made no provision, the law should so far as possible leave decisions in the hands of relativesor other people close to them whose sense of their best interests-shaped by intimate knowledgeof everything that makes up where there best interest lies-is likely to be musch sounder than some universal, theoretical, abstract judgment born in the stony halls where interest groups maneuver and political deals are done” (at 213) [↑](#footnote-ref-36)
36. Dignity is a concept that applies even when a person’s best interests are not being served, as when a prisoner is incarcerated. It is thus more fundamental than beneficence and is not tied to experimental interests: “Dignity is central aspect of …..the intrinsic importance of human life” (at 236) [↑](#footnote-ref-37)
37. To Dworkin’s achievement he has given a solution to the conflict which most of other commentators have not done. [↑](#footnote-ref-38)
38. *Supra 13* [↑](#footnote-ref-39)