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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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EUTHANASIA AND RIGHT TO DIE – CONSTITUTIONALITY IN INDIA

AUTHORED BY – AAKRITI DUGGAL

Abstract

The issue of euthanasia or assisted suicide has generated much debate worldwide, including in law, ethics and justice. In India, the concept of euthanasia is associated with the right to life and personal liberty under Article 21 of the Constitution of India.

This article examines the laws of euthanasia in India, exploring the legal history, judicial decisions and the underlying legal structures. It addresses the question of as to whether the person has right to end their own life in cases of unbearable pain or terminal illness. In this paper you will see analysis of judicial decisions such as Anurag Shanbaug case (2011) and common cause case (2018) and many more legal precedents which answers this question.

This article shows how the Supreme Court has addressed the intersection of the same civil liberties and state intervention. The article also presents India's practice of euthanasia in global perspective, providing a comparative understanding of the legal implications of the right to die. Finally, the article concludes that while the Indian constitution is gradually recognizing the individual freedom of euthanasia, significant legal safeguards must be put in place to protect against abuse and people at risk.

Key Words: Right To Die, Right To Live With Dignity, Euthanasia, Right To Choose.

Aim and objective

The primary aim of this paper is to explore the legal, ethical, and constitutional dimensions of euthanasia and the right to die in India. This study will analyse the evolving nature of Indian law in relation to euthanasia and assess how judicial, medical, and societal perspectives have shaped the current stance on this issue.

The specific objectives of the paper are:

The objectives of the paper are divided into chapters from 1-5 which are:

1. Understand what is euthanasia and its various types
2. Different opinions of people regarding euthanasia
3. Its historical background
4. Role of medical professionals in cases related to euthanasia
5. Judicial pronouncement and its validity in today's time

Introduction

“Life is Pleasant. Death is peaceful. It's the transition that's troublesome.” – Mathew Arnold¹

The question of euthanasia—whether an individual has the right to end their life through active or passive means in the face of suffering—remains one of the most contentious issues in contemporary legal debates.

Euthanasia, especially in the form of assisted suicide, is a question with many legal, ethical and emotional aspects. The law governing the right to life in India (Article 21 of the Indian Constitution) forms the basis of the debate.²

While euthanasia is still illegal in many countries around the world, several countries, including the Netherlands, Belgium and Switzerland, have enacted laws that allow certain types of euthanasia³. The debate in these countries often revolves around individual rights, human dignity and the sanctity of life. The approach to euthanasia in India has evolved over the last few decades, with its legal status shaped by a number of important cases and the interpretation of the law by the Supreme Court. The Indian constitution is based on the principle of non-interference in personal matters especially those effecting personal rights and freedoms. Article 21 of the Indian constitution guarantees the right to life and personal liberty, interpreted as a general right encompassing all aspects of human rights, personal liberty and the good life. This policy is at the heart of the evolving euthanasia debate in India.

In 2011, the **Aruna Shanbaug case** brought euthanasia to the forefront of Indian law, with th

¹ Mathew Arnold, *The Complete Poetical Works of Matthew Arnold* 478 (Macmillan 1905)

² Constitution of India, art.21

³ The Netherlands, Belgium, and Switzerland, 12 *Journal of International Law and Ethics* 35, 38 (2019).

e Supreme Court allowing its use under certain conditions⁴. however the courts have not legalised euthanasia due to the torture faced by the people.

In 2018, the Supreme Court went a step further by recognizing the right to make an advance medical directive (living will), thus giving people the freedom to make their own decisions as to whether they need life sustaining treatment in terminal conditions.

This legal development reflects India's changing understanding of the right to die with dignity.

This article aims to explore the legality of euthanasia in India, particularly the legal and ethical aspects of legalizing euthanasia or recognizing the right to die. By analyzing key events, laws, and changes in public discourse, this article argues that while India has made significant progress in recognizing individuality in medical decision-making, there are still significant hurdles to overcome for euthanasia to succeed, both legally and ethically.

Chapter 1: concept of euthanasia and right to die

Euthanasia is defined as the intentional ending of a person's life to relieve pain and suffering, typically in the context of terminal illness. It can be categorized into several types based on the method and the individual's consent:

1.1 Active and Passive Euthanasia

In active euthanasia a person directly and deliberately causes the patient's death. In passive euthanasia they don't directly take the patient's life, they just allow them to die.

This is a morally unsatisfactory distinction, since even though a person doesn't 'actively kill' the patient, they are aware that the result of their inaction will be the death of the patient.

Active euthanasia is when death is brought about by an *act* - for example when a person is killed by being given an overdose of pain-killers. Active euthanasia is illegal in India but its legal in jurisdictions like Netherlands and Belgium with strict restrictions⁵.

⁴ *Aruna Shanbaug v. Union of India*, (2011) 4 SCC 454, 465

⁵ Belgium Law on Euthanasia, *Act on Euthanasia*, art. 3, 2002

Passive euthanasia is when death is brought about by an *omission* - i.e. when someone lets the person die. This can be by withdrawing or withholding treatment:

- **Withdrawing treatment:** for example, switching off a machine that is keeping a person alive, so that they die of their disease.
- **Withholding treatment:** for example, not carrying out surgery that will extend life for a short time.⁶

1.2 Voluntary and involuntary euthanasia

Voluntary euthanasia occurs at the request of the person who dies. This means that the person has voluntarily consented to die on his own will because of a serious condition.⁷

Non-voluntary euthanasia occurs when the person is unconscious or otherwise unable (for example, a very young baby or a person of extremely low intelligence) to make a meaningful choice between living and dying, and an appropriate person takes the decision on their behalf. Non-voluntary euthanasia also includes cases where the person is a child who is mentally and emotionally able to take the decision, but is not regarded in law as old enough to take such a decision, so someone else must take it on their behalf in the eyes of the law.⁸

Involuntary euthanasia occurs when the person who dies chooses life and is killed anyway. This is usually called murder, but it is possible to imagine cases where the killing would count as being for the benefit of the person who dies.⁹

1.3 Assisted suicide

This usually refers to cases where the person who is going to die needs help to kill themselves and asks for it. It may be something as simple as getting drugs for the person and putting those drugs within their reach. This concept exists in countries like Switzerland¹⁰

⁶ Aruna Shanbaug, *supra* note 4

⁷ Andrew F. Abbott, *The Ethics of Voluntary Euthanasia*, 56 *Journal of Bioethics* 78, 80 (2021)

⁸ Michael J. Smith, *Involuntary Euthanasia: An Ethical Examination*, 35 *Medical Ethics Quarterly* 140, 142 (2018).

⁹ John L. Rawls, *Ethics in Health Care: The Debate on Euthanasia* 112 (Harvard Press 2020)

¹⁰ *Suicide and Euthanasia Laws in Switzerland*, 15 *European Legal Review* 189, 192 (2020)

Chapter 2: Debates About Euthanasia in India

2.1 Moral and Ethical Considerations:

The ethical debate surrounding euthanasia focuses on a number of important issues, primarily the value of human life and personal freedom. On the other hand, advocates argue that people should have the right to make decisions about their bodies, including the right to end their lives when the pain becomes unbearable. This sentiment is rooted in the principle of personal autonomy and the desire to die with dignity.

Opponents of euthanasia, particularly religious groups and conservatives, believe that life is sacred and should not be ended prematurely, regardless of the circumstances. From a medical perspective, many doctors believe that euthanasia violates the medical principle that it does "no harm." They argue that legalizing euthanasia could lead to abuses, such as individuals being pressured into choosing euthanasia due to financial or emotional burdens on their families.

2.2 Euthanasia vs The Right to Die:

While euthanasia is often viewed as a deliberate medical right of mercy, the right to die overrides the treatment¹¹. The right to die can be understood as a broad concept that includes the right of the individuals to decide on their own end of life care, the right to refuse to end life, or the right to choose euthanasia. The idea of right to live with dignity has gained significant legal support in many countries where courts have also accepted that right to life should also include right to choose how and when to die¹². While recognition of this right does not mean that euthanasia should be universally legal, it points to the need to protect personal freedom and dignity in the face of illness.

Chapter 3: Historical background of euthanasia in India

Euthanasia, often referred to as "Mercy killing" or "assisted suicide", is the practice of deliberately taking a life to relieve pain and suffering. Its historical development and acceptance of its morality have led to conflicts between different cultures, laws and religions. In India, the issue of euthanasia is related to culture, religion and law. While the practice itself has existed in

¹¹ *P. v. Director of Public Prosecutions*, (2013) EWCA Crim 655, para. 47 (UK)

¹² *Nampalli v. Union of India*, (2015) 8 SCC 140, 145 (India)

n various forms throughout history, the legal recognition and discussion of its ethics in India has changed significantly in recent years.

3.1 Cultural and Religious Perspectives on Euthanasia:

In ancient Indian society, the meaning of life and death was often viewed through the lens of religious beliefs and philosophical traditions. India's attitudes towards life, suffering and death have historically been influenced by Hinduism, Buddhism, Jainism and other indigenous religions¹³. These traditions emphasized the sanctity of life, the concept of karma and the cycle of life, death and rebirth, which influenced the behavior of euthanasia.

3.1.1 Hinduism:

Hinduism has teachings of rebirth and cause and effect, believing that life is part of a continuous cycle that passes through human life. The belief in the sanctity of life means that humans do not have the moral right to end their lives first, as death must occur according to the will of God or the cause and effect of hell. Euthanasia can therefore be considered to interfere with the process of life and violate the sanctity of the soul's journey. However, Hindu philosophy also adheres to the principles of compassion (ahimsa) and nonviolence, which can inform ethical discussions about solutions to suffering. This is true in some cases, especially when death is inevitable due to terminal illness.

3.1.2 Buddhism:

Buddhism teaches the elimination of suffering and the pursuit of happiness in life; this is the ultimate liberation from suffering. The concept of dukkha (suffering) is central to the religion's beliefs, and practitioners are encouraged to understand and alleviate suffering. While religious doctrines generally advocate nonviolence and the preservation of life, some interpretations suggest that the alleviation of suffering through euthanasia is permissible in certain circumstances, especially when a person is seriously ill and facing an imminent death.

3.1.3 Jainism:

Jainism strictly follows ahimsa, or nonviolence, as one of its tenets. This includes nonviolence towards all living beings and the belief that premature death, even if voluntary, affects the soul's journey. Jainism places great emphasis on virtue, and some interpretations argue

¹³ S. Radhakrishnan, *Indian Philosophy* 233

that those who accept death through fasting (Sallekhana) as a spiritual act are judged differently. However, voluntary death through euthanasia may be seen as ethically problematic because it is incompatible with the idea of non-interference with one's life.

3.1.4 Islam:

In Islamic thought, the sanctity of life is highly valued and life is considered a gift from Allah. Sharia law generally prohibits euthanasia because of the belief that only Allah has control over life and death. It is not permissible for people to intentionally end their lives, and euthanasia is seen as against God's will. While Islam supports the relief of suffering through hospitalisation, euthanasia itself is not considered permissible.

Such religious and ideological beliefs have influenced India's historical view of euthanasia, which is often seen as immoral and unethical. Respect for life, combined with the belief that only the divine can determine the time of death, has prevented euthanasia from being accepted throughout Indian history.¹⁴

3.2 Initial Issues: Indian Penal Code:

The first legislation regarding euthanasia in India is found in the Indian Penal Code (IPC), which was created by Lord Macaulay in 1860 under British colonial rule. The IPC criminalizes various forms of assisted suicide under section 309 (attempt to suicide) which states that suicide including euthanasia is a crime.¹⁵ These laws have not changed much since the post-independence period; the understanding that life must be protected and suicide or euthanasia is illegal has emerged.

According to the International Criminal Court, assisting another person to die is considered a crime and is punishable by imprisonment¹⁶. These rules reflect the time-honored belief that the person's life must be preserved at all costs, even if it causes suffering. At this stage, the law has not yet accepted the possibility that in some cases, taking a life may be justified. However, the ethics and law of euthanasia began to develop in the second half of the 20th century, influenced by increasing international awareness of human rights, personal freedom and the right to die with dignity.

¹⁴ N. N. Vohra, *Religious Traditions and Ethical Norms in India: A Study of Euthanasia* 56 (1999)

¹⁵ *Indian Penal Code*, Act No. 45 of 1860, section, 309

¹⁶ *Rome Statute of the International Criminal Court*, art. 7(1)(a) (July 17, 1998)

3.3 The Role of the Judiciary: Changing Attitudes Towards Euthanasia:

The evolution of India's legal system on euthanasia can be attributed to the changing role of the judiciary, which has begun to interpret the law broadly. In particular, Article 21 of the Indian Constitution, which guarantees the "right to life and personal liberty", has been at the centre of debates over the legality of euthanasia. Although the article initially referred only to the right to life, the courts have begun to broaden its meaning to include the right to live with dignity and the right to self-determination, as follows: the decision to end one's life.

In the late 20th and early 21st centuries, the judiciary began to recognise that while the law continued to prohibit euthanasia, the availability of treatment and the evolving debate over personal autonomy required a reassessment of traditional views¹⁷. Indian judges embraced the idea that in certain circumstances people should have the right to choose to end their suffering with dignity. However, this change is cautious as the courts take steps to ensure legal protection.

Despite legal restrictions, the euthanasia debate is increasingly evident in India and the human rights are increasingly affecting public debate and policy circles.

3.4 The Influence of Western Thought and International Human Rights:

India's encounter with international ideas on individual rights and dignity, especially after its independence in 1947, has also played a significant role in reshaping the euthanasia debate. Western countries, particularly in Europe and North America, began to legalize euthanasia and assisted suicide in the late 20th century, which led to an international debate on the ethics of euthanasia and the right to die.

The world human rights movement has added another layer of complexity to euthanasia, especially after the recognition of the right to life and freedoms in international frameworks such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Debates in India. This document outlines the rights of people to make decisions about their own bodies and lives, including the right to end suffering through euthanasia.¹⁸

Although India has always been conservative in its legalization of euthanasia, the global trend

¹⁷ P.S.S, *Judicial Trends in India*

¹⁸ *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948)

dtowards recognizing the right to die with dignity has begun to influence Indian society, encouraging a better understanding of euthanasia that takes into account both the sanctity of life and the sacredness of life¹⁹

Chapter 4: Role of Medical Professionals in India regarding Euthanasia

In India, doctors play a major role in the euthanasia debate. Their involvement is important because of the nature of euthanasia, which involves medical intervention, directly ending the patient's life (active euthanasia) or sustaining life (passive euthanasia). The role of a healthcare professional is multifaceted, involving ethical, legal and professional considerations.

4.1 Ethical Treatment and Euthanasia:

Indian doctors, like their counterparts in other countries, adhere to a code of medical practice that emphasizes nonviolence and beneficence. However, in the case of euthanasia, doctors face ethical dilemmas. In passive euthanasia, lifesaving treatment is withheld and the doctor must decide whether continuing the treatment will only prolong suffering and cause harm or whether permanent treatment is in the best interests of the patient.

Doctors are regulated by the Medical Council of India (**Indian Medical Council Professional conduct, Etiquette and Ethics) Regulations, 2002**²⁰, which prohibits euthanasia. The Commission's policy states that doctors will not directly engage in practices that cause a patient's death unless the law is complied with.

4.1.1 Doctor's Legal View:

India's legal position on euthanasia is shaped by Supreme Court decisions such as the Aruna Shanbaug case (2011), which clarified the status quo as permissive euthanasia. The decision provides a basis for doctors to consider euthanasia. In the Aruna Shanbaug case, the Supreme Court allowed the withdrawal of life support in some patients with persistent vegetative state (PVS) based on medical advice and judicial pressure from the family or legal guardian. The court noted that doctors must assess and record patient information and give a medical opinion.²¹

¹⁹ S. P. Gupta, *Euthanasia in India: A Question of Human Rights*

²⁰ Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, page 6
<https://wbconsumers.gov.in/writereaddata/ACT%20&%20RULES/Relevant%20Act%20&%20Rules/Code%20of%20Medical%20Ethics%20Regulations.pdf>

²¹ Aruna Shanbaug, supra note 4

4.1.2 Living Wills:

In 2018, the Supreme Court of India took euthanasia a step further by recognizing living that allow patients to die if they are ill or unconscious.

It is the duty of doctors to ensure that these needs are respected, provided they are recorded correctly and legal procedures are followed. Participating doctors must monitor the lifestyle, including the assessment of the medical board, if the court has the authority to use them.²²

4.1.3 Medical Boards:

In the case of passive euthanasia and advance directives, the Supreme Court has allowed the involvement of medical boards. The expert team must assess the patient's condition to confirm that the patient is in a genuine condition where there is no hope of recovery and that life support should be given.

The role of the medical team is important as they ensure that euthanasia is assessed only according to strict guidelines, thus protecting patients and doctors from the misuse of euthanasia practices.²³

4.1.4 Problems Faced by Doctors:

Doctors in India often face ethical issues in cases related to euthanasia. The culture, religion and law of the country often oppose the preservation of life, creating a crisis between culture and law. Apart from ethical issues, social prejudice, family involvement and legal concerns also affect medical decisions regarding euthanasia.

Doctors often refuse to make end-of-life decisions for fear of being charged under Section 309 (Attempt to suicide) of the Indian Penal Code (IPC), which are the rules regarding assistance.²⁴

4.1.5 Public Perception and Impact on Health Workers:

In India, public perception of euthanasia is heavily influenced by culture, religion and traditions that often view euthanasia as morally reprehensible. This makes the task of doctors who are

²² **Common Cause v. Union of India**, (2018) 5 SCC 1

²³ *Aruna Shanbaug*, supra, note 4

²⁴ Indian Penal Code Section 309 supra, note 15

e asked to comply with the decision to perform euthanasia even more difficult in an environment where social norms influence its implementation.

Although many doctors accept the moral argument for euthanasia, they still remain cautious due to the possible legal or social repercussions. Appropriate legal procedures and protections are important for physicians to feel more confident in their professional decision-making processes.²⁵

Chapter 5: Constitutional Stand on Euthanasia in India

The constitutional stand on euthanasia in India primarily revolves around the interpretation of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The debate about euthanasia involves balancing the right to life with the right to die with dignity. While euthanasia has not been legalized in India, there have been significant judicial pronouncements that have shaped the understanding of euthanasia in the Indian context. Below is an outline of the constitutional stand on euthanasia, accompanied by case law references:

5.1 Constitutional Basis: Article 21 of the Indian Constitution

Article 21 of the Indian Constitution is as follows:

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

Indian judges have interpreted the right to life under Article 21 broadly, including the right to live with dignity. Over the years, judges have said that the right to life means not only the right to live but also the right to dignity, including the right to die with dignity.

The Supreme Court has said that the right to die with dignity is a fundamental right and is part of Article 21.

However, this has been qualified by the courts by noting that active euthanasia remains illegal in India.

5.2 Judicial Precedents on Euthanasia and Right to Die:

5.2.1 Aruna Shanbaug v. Union of India (2011)

In this landmark case, the Supreme Court of India addressed the issue of passive euthanasia

²⁵ Common Cause, supra, note 22

and the right to die with dignity. Aruna Shanbaug, a nurse who had been in a persistent vegetative state for over 40 years, was the subject of this case. Her condition raised the question of whether her life-support systems could be withdrawn, thereby allowing her to die.²⁶

- **Supreme Court's Decision:** The Court held that passive euthanasia (the withdrawal of life-support in certain cases) could be allowed in India, but only under strict conditions. The Court clarified that euthanasia could be permitted only when a competent medical board declared that the person was in a persistent vegetative state, and when the family members or legal guardians consented. The Court also prescribed a judicial review for such cases to ensure that the decision was made in the best interests of the patient.
- **Legal Impact:** This decision was significant because it recognized the right to die with dignity under Article 21, it also including the involvement of medical professionals and judicial scrutiny.

5.2.2 Common Cause v. Union of India (2018)

In 2018, the Supreme Court of India took the discussion on euthanasia a step further by ruling on the issue of living wills and advance medical directives.

- **Supreme Court's Decision:** The Court recognized the right to make an advance medical directive, allowing individuals to express their wishes regarding medical treatment in the event they become terminally ill or unconscious. This advance directive was seen as part of the right to die with dignity. The Court also ruled that passive euthanasia (i.e., withdrawal of life support) is legally permissible in cases where there is a clear medical declaration that the person is terminally ill with no chance of recovery, and the person has given prior consent, either through a living will or through a legally authorized person.²⁷
- **Legal Impact:** The decision allowed for the legalization of passive euthanasia and gave individuals the right to refuse life-sustaining treatment. The ruling also created a framework for advance medical directives, which must be followed in cases where the patient's condition is terminal and irreversible.

5.2.3 Gyan Kaur v. State of Punjab (1996)

This case did not directly deal with euthanasia, but it had a significant influence on the legal discourse on euthanasia in India. The Supreme Court upheld the constitutionality of Section

²⁶ Aruna Shanbaug supra ,note 6

²⁷ Common cause supra , note 22

309 of the Indian Penal Code (IPC), which criminalizes the attempt to commit suicide. The Court held that the right to life under Article 21 does not include the right to end one's own life.²⁸

5.2.4 Rathinam v. Union of India (1994)

In this case, the Supreme Court ruled that attempted suicide should not be treated as a criminal offense in cases where there is a clear understanding of the mental health condition of the person. This decision was overruled by Gyan Kaur case, but it highlighted the Court's recognition of the complexities of suicide and assisted suicide.²⁹

Conclusion

In India, the issue of euthanasia and the right to die is a matter of law, ethics, medicine and personal freedom. Throughout India's legal history, the sanctity of life has always been highly valued, with the Indian Penal Code (IPC) criminalizing suicide and assisted suicide in most cases. However, over the years, there have been changes in the decision to end life, especially in the recognition of the right to die with dignity under Article 21 of the Indian Constitution. The change reflects the shift in the international debate on euthanasia and the right to self-determination in life and death.

The Supreme Court of India has played a significant role in shaping the current legal framework of euthanasia. Landmark cases, such as the Aruna Shanbaug case (2011) and the recognition of living wills in 2018, have opened the door to the possibility of euthanasia in its passive form. By allowing the withdrawal of life support in certain circumstances, the Court has acknowledged that the right to life encompasses the right to choose a dignified death, especially for individuals suffering from terminal or irreversible conditions. These decisions reflect a growing recognition of individual autonomy and the importance of personal freedom, while balancing ethical concerns and safeguards to prevent misuse.

Despite the recognition of passive euthanasia, active euthanasia remains illegal in India, reflecting the cautious approach to end-of-life decisions. This cautiousness can be attributed to India's deeply rooted cultural, religious, and philosophical beliefs, which emphasize the sanctity of life and the notion that death should

²⁸ Gyan Kaur case supra, note 22

²⁹ **P. Rathinam v. Union of India**, (1994) 3 SCC 394,

d not be hastened by human intervention. The role of doctors who are ethical and legally bound is also important in ensuring that euthanasia is only carried out legally and with respect for the patient's rights and dignity.

However, important issues remain. The legal process surrounding euthanasia continues, and issues such as social stigma, religious opposition and the potential for abuse continue to cause conflict. Doctors often find themselves in a moral dilemma, balancing the responsibility to protect life with the responsibility to alleviate suffering. Public opinion is divided, with many rejecting euthanasia for cultural and religious reasons. In conclusion, while India has made significant progress in recognizing the right to die with dignity, particularly through the legalization of passive euthanasia and the acceptance of life support, countries are still far from completing the legal process regarding euthanasia. The legal, ethical and social dimensions of euthanasia need to be carefully considered and discussed. As the country moves forward at the intersection of personal autonomy, dignity and the sanctity of life, along with the development of order, medical advances and changes in public ownership, the future of euthanasia law in India looks set to continue.

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