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BATTLE OF INDIVIDUAL AUTONOMY, EUTHANASIA AND LAWLESSNESS:A COMPARATIVE STUDY WITH REFERENCE TO INDIA, NETHERLANDS AND AUSTRALIA

NAMRATA CHAKRABORTY
RESHMA RENU
SONAKSHI KUMAR
(Symbiosis Law School Pune)

Abstract

The emergence of right to life and liberty as an inherent human right is also annexed with a conflict over the right to a dignified death and autonomy. With a constant worldwide demand of validating right to die as a voluntary will for the terminally-ill patients, voluntary active / passive euthanasia and physician-assisted suicide are also debated as a form of its execution. The present research paper thus travels in Australia, India and Netherlands to understand the progress of autonomy and right to die regulations prevalent in these countries and extent of their infections by various ethical and religious dogmas.

Keywords: *Right to die, Euthanasia, Autonomy, Assisted-suicide, Living Will*

Introduction

In the wake of modernization and globalization when the world witnesses a widespread protest to preserve the inherent human rights in almost each and every developing as well as developed nations, the wordings 'Individual Autonomy' stand as the prime importance over the aged moral views ruling the societies and mind-sets. One of such examples is the domain of right to die, which is yet to bear the fruits of uniformity due to the absence of a universal and mutual approach to its legalization. The keywords annexed to this domain form a triangle with a centroid as the question of Ethics and the three angles as Euthanasia, Right to Die, Living Will. While setting this domain as a motion for debate, the world is segregated into two advocates of the contrasting ideologies. Irrespective of the country where the practice of euthanasia is legalized or not, one side of the debate consists of the proponents of an ideology that the right to die negates the essence and sanctity of right to life and can therefore be regarded as validating assisted suicide, active as well as passive euthanasia etc. On the other hand, the

opponents demand a dignified right to die by prioritizing the essence of 'will / autonomy' or 'meaningful human existence', and connecting the same with the very notion of 'Right to personal liberty'. The present research article proposes an endeavour to critically analyse the legal position of right to die in accordance with the moral, religious and legal latitudes of India, Netherlands and Australia. The rationale behind taking these three nations for comparative study is their differential approaches in this context, which ultimately cover the systems followed by all other nations under its ambit.

As the due recognition of individual autonomy is subjected to constant battle throughout all over the world, the 20th and 21st centuries portray the emergence of liberal thinkers, thereby tending towards the legalization of euthanasia. Netherlands being one of the proponents of right to die has gradually evolved from a strict penal regime to a regime of individual autonomy by validating assisted suicide, passive euthanasia etc. in its judgments and stipulating certain restrictions in the legislations to that effect. India, on the other hand, has welcomed the legality of passive euthanasia in recent times, while remaining silent on legalization of assisted suicide and active euthanasia at the same time. A comparative study between Netherlands and India identifies a clear absence of an effective legislation in India to implement the passive euthanasia judgment in reality, unlike the case of Netherlands. Further, delving deeper into the system prevailing in Australia, it begins with legality and ends with an absolute prohibition on right to die, by means of the federal Parliament overturning the 1996 Northern Territory legislation.

Therefore, the sheer lack of uniformity persisting among communities and nations over a specific sphere is the reason for this comparative study. By addressing the diversified views adopted by different societies in the question of medical ethics and law, the present research article proposes to bring certain reforms in the Indian position of Right to die while clearing the cloud through the lessons learnt from this analytical study.

Statement of Problem

Keeping right to life as an origin of the debate over right to die, the world is segregated into two divisions to combat the battle of individual autonomy, prompted by the recognition of living will of the terminally-ill patients and right to choose a dignified death. Although over the ages, several arguments concerning ethical, religious and historical perspectives have attempted to shape the viability of practices like euthanasia and assisted dying as a form of mercy killing and right to die, the dawn of 21st Century and globalisation highlight the necessity of a regime of autonomy and dignified existence over the aged

sanctity of life doctrine. An enormous progress and upliftment of autonomy have been witnessed in the countries like Netherlands and Belgium where the effective interpretation of judiciary and the subsequent implementation of pro-euthanasia and assisted dying legislations reflect a harmonious functioning to develop the restrictive liberalism over the conservative dogma. On the other hand, there are countries like Australia and India, where the citizens are yet to bear the fruits of liberalism. After maintaining a track record of anti-euthanasia advocacy, the recent developments in India and Australia ultimately show a ray of hope in terms of passing judgments by Supreme Court of India and implementing a legislation by the state of Victoria in Australia. But considering the enforcement of Supreme Court guidelines, the absence of a legislative willingness and legal vacancy reflect the fate of right to die hanging on the rope. Besides, in Australia, the scenario remains as dormant as the establishment of a nationwide right to death regime is still a undeveloped road to wander.

Existing Legal Framework in Australia, India and Netherlands

Australian Position

While the battle of individual autonomy is axiomatic worldwide against the aged old taboo on recognizing the right to death and practicing the Euthanasia and Assisted Suicide, the Commonwealth nation is no exception to it. Holding a mixed history of liberalism and conservatism in the context of euthanasia and assisted dying, the existing legal framework in Australia demands a revisit in this regard.

As of the status in 2020, Victoria is the only state in Australia which has legalized the limited voluntary assisted dying under the recently enforced VAD Act or the Victorian Voluntary Assisted Dying Act 2017[1]. The VAD Act although was passed by the state Parliament in 2017, it came into effect on June 19, 2019 - thereby legalizing the voluntary assisted dying and restricting its practice to end the intolerable suffering of the terminally-ill patients (and subjecting to several guidelines regarding the request of death and assessment by the medical practitioner as well as the prerequisite eligibility criteria[2] i.e.

- Must not be less than 18 years of age,
- holding citizenship or permanent residentship in Australia or being ordinarily resident in the Victorian state,
- possessing decision making capacity in regard to VAD, and

[1]Voluntary Assisted Dying Act 2017, Act No. 61/2017 (as amended in 2020, w.e.f. 19.06.2020).
[2]*Id.* at S. 9(1).

- Suffering from or diagnosed with an incurable and intolerable disease / illness / medical condition with a further life expectancy not more than 6 months, which is further extended up to 12 months in case of a neurodegenerative medical condition.

While the state of Victoria enforced the Act, a trail of historical evolution of the euthanasia and assisted suicide legislations in different states of Australia has been drawn herein.

The first legislation on the right to die and mercy killing was enacted by the Northern Territory of Australia through the passing of Rights of the Terminally Ill Act (RTI)[3] in 1996. Under this legislation, the right to die was legalized and doctors were permitted to assist the terminally ill patients seeking for death, subject to the certification and other criteria. It was further followed by the renowned case '***Wake v. Northern Territory***'[4] (1996) in a Constitutional challenge was filed on ground of violation of fundamental rights and separation of powers by enforcement of the said RTI Act, as the law passed by the Parliament of Northern Territory indirectly violating the fundamental rights required a judicial intervention prior to its enforcement. On dismissal by the Supreme Court of the Territory, the High Court of Australia granted special leave to hear the challenge on preferring an appeal before it.

The events took a major overturn as the Federal Parliament took over the issue from the High Court by imposing a stay on the ongoing case proceeding. Subsequently. the RTI Act was overruled by the Federal Parliament through the Euthanasia Laws Act 1997[5] which prohibited any law legalizing euthanasia, assistance suicide and mercy killing, and accordingly amended the existing statutes in Australian Capital Territory, Northern Territory and Norfolk Island.

Until 2009, the legislative status over the legalization of euthanasia, right to die and physician-assisted suicide were standstill in the post - 1997 Australia, although the debate and discussion over the validity of right to voluntary and dignified death were ongoing and incessant. Consequently, in 2009, two state

[3]Andrew L. Plattner, "*Australia's Northern Territory: The First Jurisdiction to Legislate Voluntary Euthanasia, and the First to Repeal It*", DePaul Journal of Health Care Law, Volume 1 Issue 3 Spring 1997: Symposium - Physician - Assisted Suicide, November 2015, available at https://core.ac.uk/download/pdf/232971051.pdf (last visited on December 10. 2020).
[4]*Wake v. Northern Territory*, (1996) 109 NTR I (Austl.).
[5]Euthanasia Laws Act 1997, Act No. 17 / 1997.

Bills named the Dying with Dignity Bill 2009[6] as well as the Consent to Medical Treatment Bill 2008[7] were placed respectively before the Tasmanian State and the South Australian Parliaments. However, both the Bills were defeated on an average narrow margin.

Despite all the repeated attempts and failures in introducing mercy killing bills, the first Australian state to pass a legislation supporting the voluntary assisted dying, after 20 years of the repeal of the world's first legislation on voluntary euthanasia (Northern Territory's RTI Act), was the Victorian State, through its VAD or Voluntary Assisted Dying Act 2017[8] (as amended till 2020).

With the gateway opening the recognition of voluntary assisted dying, various states in Australia have now started attempting to equalize themselves with the other industrialised countries like USA, Netherlands etc. on this footing. Soon after the successful and widely welcomed passage of the Victorian VAD law, a Join Select Committee has been established in the Western Australian so as to address the issues with regard to informed decisions over the right to die choices. The report released by such Committee titled as 'My Life My Choice'[9] (2018) has approved the cogency behind adopting legal provisions towards the decriminalizing of voluntary assisted dying, in spite of receiving objections from the Australian Medical Association[10]. The report has also sought for formation of an ideal model on voluntary assisted dying, on the basis of various laws and reforms introduced by various other countries over the decades.

[6]Lorana Bartels, Margaret Otlowski, "*Right to die? Euthanasia and the law in Australia*'. Thomson Reuters, Journal of Law and Medicine, (2010) 17 JLM 532, available at https://www.researchgate.net/publication/42437933_Right_to_die_Euthanasia_and_the_law_in_Australia (last visited on December 10, 2020).

[7]Willmott, White, Stackpoole, Christpher, Purser, Kelly, McGee, Andrew, '*(Failed) Volunatry Euthanasia Law Reform in Australia: Two Decades of Trends, Models and Politics*', University of New South Wales Law Journal, 39(1), pp. 1-46, available at https://eprints.qut.edu.au/95429/1/Failed%2BVoluntary%2BEuthanasia%2BLaw%2BReform%2BUNSWLJ.pdf (last visited on December 10, 2020).

[8]*Supra* Note 11.

[9]Joint Select Committee on End of Life Choices, Parliament of Western Australia, *My Life, My Choice,*Report 1, August 2018) 203, available at https://ww2.health.wa.gov.au/-/media/Files/Corporate/Reports-and-publications/End-of-life/End-of-Life-My-Life.pdf (Last visited on December 11, 2020).

[10]Australian Medical Association, *AMA Position Statement: Euthanasia and Physician Assisted Suicide* (2016), available at https://ama.com.au/sites/default/files/documents/AMA_Position_Statement_on_Euthanasia_and_Physician_Assisted_Suicide_2016.pdf (Last visited on December 11, 2020).

Indian Position

Article 21[11] of the Indian Constitution is where the whole debate of euthanasia gravitates in India. Although the Supreme Court of India through its various precedents interpreted the multifaceted branches of Article 21 thereby including right to health, environment, choose life partner and so on; but the question may be posed - does it also include Right to Fie?

Right to Life does not mean bare existence and just breathing, but also includes having a satisfied and qualitative life. Hence it is argued that if a person is not even living up to the minimum mark of a dignified and qualitative life, then he must put an end to such a torturous existence.[12] One side of the argument debates that relieving a person from suffering rather than preserving his life is choice and on the other hand, the rest of the party argues that it is against the moral values and the fact that life itself is considered as a gift. Further, Article 21 most definitely reckons personal liberty and is often meant to stipulate that one should be free to deal with his body in any manner that he wishes. Nevertheless, the Indian Penal Code punishes the abatement of suicide[13] and attempt to commit suicide[14], and these are the two important provisions in the legal aspect of Right to Die.

In one of the important cases on the subject, the Indian judiciary to some degree has explained the scope of euthanasia in India. The constitutional legitimacy of Section 309 of the IPC was in question in ***Maruti Shripati Dubal v. State of Maharashtra***[15]. In this case against the appellant, a constable suffering from mental disorder tried committing suicide, it was argued on his behalf that Article 14 and Article 21 of the Constitution were in breach of Section 309 of the IPC.

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[11] Article 21, The Constitution of India, 1949 - No person shall be deprived of his life or personal liberty except according to procedure established by law.

[12] Reference is also made to Manu's code, which permits suicide in certain circumstances. When the personcompletes all his duties towards the world, he is advised to walk in the north-eastern direction, subsisting onlyon water and air, until his body sinks to rest. A Brahmana, having got rid of his body by this way, is exalted inthe world of Brahmana. George Buhler (Translation), *Laws of Manu*, MAX MULLER (Ed.), SACRED BOOKSOF EAST 204 (Vol. 25, 1967).

[13]Indian Penal Code 1860, Section 306 – If any person commits suicide, whoever abets the commission of such suicide, shall bepunished with imprisonment of either description for a term which may extend to ten years, and shall also beliable to fine.

[14]Indian Penal Code 1860, Section 309 – Whoever attempts to commit suicide and does any act towards the commission of *such offence*,shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

[15] Maruti Shripati Dubal v. State of Maharashtra, 1987 Cr L J 743 (Bombay).

According to the Court, Article 21 not only safeguards one's life from being depreciated but also provides the right to live a dignified life. So basically, Article 21 logically suggests Right to Life but it also includes Right to Die and Right to end someone's life in certain cases. In addition, any fundamental right has a negative as well as positive view. Hence, Article 21 also has a different, not negative *per se*, view to it. Keeping this in mind and taking the above statement in consideration, Section 309 is violative to Article 21. However, the Bombay High Court drew a fine line between suicide and euthanasia. Suicide is self-destruction and euthanasia is involvement of a third party to end one's life. Euthanasia is nothing but homicide, according to the Bombay High Court.

Further, in '***Aruna Ramchandra Shanbaug v. Union of India***'[16] the Apex Court rrecognized the legality of passive euthanasia for the patients in permanent vegetative state, followed by the 2018 judgment in ***Common Cause v. Union of India***, wherein the Court reiterated such legality and issue guidelines to prevent the abuse from exercising the 'living will' of the terminally-ill patients.[17]

In India, till date the only regulatory standard exists is the Indian Medical Council (Professional Behavior, Etiquette and Ethics) Rules, 2002[18], wherein Regulation 6.7 applies to the following protocol to be followed in euthanasia by the medical practitioners:

- Under the specific circumstances, withdrawal of life-supporting devices sustaining cardiopulmonary function, shall be determined by a team of doctors and not by the physician alone,
- The said team shall consist of the concerned doctor in-charge of the patient, CMO or Chief Medical Officer of the hospital, another doctor nominated by the hospital staff or based on theTransplantation of Human Organ Act, 1994[19].

Position in Netherlands

Netherlands is a country which has legalized the practice of euthanasia and assisted suicide with effect from 2002. Euthanasia in Netherlands is defined as 'deliberate termination of life of a person on his request by another person. In Netherlands, termination of life can take in two forms:

- The physician administers a lethal drug in case of euthanasia.

[16]Aruna Ramchanadra Shanbaug v. Union of India, (2011) 4 SCC 454.
[17] Common Cause (A Registered Society) v. Union of India, (2018) 5 SCC 1.
[18]Indian Medical Council (Professional Behavior, Etiquette and Ethics) Rules, 2002Published on 6 April 2002 in part III section 4 of the Gazette of India.
[19] Transplantation of Human Organs and Tissues Act, 1994, Act No. 42 of 1994, Acts of Parliament (India).

- In case of assisted suicide the physician supplies the lethal drug administered by the patient.[20]

Euthanasia in Netherlands is regulated by 'The Termination of Life on Request and Assisted Suicide (Review Procedures) Act" of 2001[21]. The Act provides with legalizing euthanasia if all the provisions of the Act are observed and fulfilled. According to the Dutch Penal Code, euthanasia is a crime but does not fall in the category of murder. The legal debate regarding the law of Euthanasia occurred after the '***Postma Case***' in 1973[22]. The case is reported to change the shape of Dutch laws for euthanasia and its practice. The case shook the strong Christian values for the countries. Postma and his wife were in support of ending one's own life at his choice but they held their peace. Until, the mother of his wife was severely handicapped and constantly asked her daughter and her husband who were physicians in the village of Noordwolde. Eventually, they agreed injected her with 200 mg of morphine and she died. They were convicted but their actions led to the medical victory in its own way.[23]

The Act has been a success for twenty years now and the law lays down the following conditions for the practice of euthanasia:[24]

- The suffering of patient is unbearable and hopeless and the patient must be well aware of his medical conditions and all the options at his recovery.
- The patient who seeks the request must give his voluntary approval and his request must persist in time.
- One physician other than the one in-charge at the case must confirm to the patient's condition and death to be carried out as per the approved manner,
- The patient must be atleast 20 years old and patients of 12 to 16 years need the consent of their parents.
- Setting up a committee is essential to examine and affirm the process and a public prosecutor shall be involved on non-compliance.

[20] Buiting H, van Delden J, Onwuteaka-Philpsen B, et al. "*Reporting of euthanasia and physician-assisted suicide in the Netherlands: descriptive study*"(2009), available at https://pubmed.ncbi.nlm.nih.gov/19860873/ (last visited on Dec 12, 2020).

[21]The Termination of Life on Request and Assisted Suicide (Review Procedures) Act" of 2001, w.e.f. April 1, 2001.

[22] Postma's Case, January 2007 BMJ Clinical Research 334(7588).

[23] Rietjens JA, van der Maas PJ, Onwuteaka-Philipsen BD, van Delden JJ, van der Heide A. "*Two Decades of Research on Euthanasia from the Netherlands. What Have We Learnt and What Questions Remain?*",(September 2009), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2733179/ (last visited on December 12, 2020).

[24] Janssen, André (2002). "*The New Regulation of Voluntary Euthanasia and Medically Assisted Suicide in the Netherlands*". Int J Law Policy Family. **16** (2): 260–269.

Ethical Debate over Euthanasia and Assisted Dying

Setting up a debate in favour or against the the legality of right to die by way of euthanasia and assisted dying or mercy killing, following are some of the longstanding moral and ethical aspects prevailing:

1. **Principle of Beneficence:** The principles signifies 'doing good' or promotion of wellness. Although at the first instance it may seem conflicting the respect of autonomy underlying the euthanasia and assisted dying, while delving deeper into arguments revolving around the principle, it is observed that promoting such wellness is equalized with alleviation of more pain or suffering of the terminally-ill patients by resorting to a painless choice of euthanasia and assisted suicide. The principle is ultimately interpreted in such a manner as to confer the power on the medical practitioners to perform any such practice for the benefit of the patient and therefore, alleviation of pain has been assumed as 'doing good' to terminally-ill patients who otherwise tend to experience incurable and intolerable suffering. However, the interpretation of this principle is subject to various conflicts, both favoring or contradicting the right to die.[25]

2. **Principle of Autonomy**: By using the word 'autonomy', a sense of freedom flowing from the grips of constraints like coercion or undue influence or manipulation is projected. As right to life emerges as an inherent human right in almost all the human right instruments, it is backed by the basic notion of meaningful and dignified existence which in turn vary according to the choices and basic needs of an individual.[26] Autonomy presupposes the adequate respect towards individual choice in their capacity of decision-making on their own affairs. Without establishing the concept of individual autonomy, the protection of human rights becomes futile.

3. **Non-malfeasance:** Although the principle of non-malfeasance literally signifies not to cause harm and apparently denies the endorsement of euthanasia as well as physician-assisted suicide, some critics

[25]Russell Fulmer, *Physician-Assisted Suicide, Euthansia, and Counselling Ethics*, Article 53, Ideas and Research You Can Use: VISTAS 2014, available at https://www.counseling.org/docs/default-source/vistas/article_53.pdf?sfvrsn=10 (Last Visited on December 15, 2020).
[26]Joseph Raz, The Morality of Freedom, 371(1988), Oxford University Press, ISBN 0198247729.

while applying a different perspective to it, argues the application of this principle to the legality of euthanasia and assisted suicide by way of construing that the principle also prevents a terminally-ill patient from continuing with extreme physical harm or pain.[27] Therefore, application of this principle is subject to various presumptions and utilized by pro and anti-euthanasia advocates at the same time.

4. **Absence of a moral obligation to live:** Despite right to life being protected as an inherent human right, a request to opt for euthanasia evinces that fact that there is an absence of dignified life and which is why a tendency towards opting death as a resort has been developed. The principle of self-determination at this juncture shapes the argument further in terms of interpreting right to life as a right to life with dignity and in absence of any dignity or basic standards of such life, right to choose death by such terminally-ill patient is entitled to receive same protection on itself. However, such exercise of self-determination must be coupled with a respect to self-autonomy and not extending to inflict harm to others. Further, voluntary will must be an essence behind such request for mercy killing and to be founded on the principle of tolerance[28].

5. **Slippery Slope Argument :** One of the renowned anti-euthanasia arguments is the slippery slope argument, origin of which is highly debatable and provides various assumptions concerning the source of it[29]. The reasoning behind the word 'slippery slope' (***represented in Fig. 1.1***) in the context of euthanasia refers to the society moving towards a fallacy or slippery slope by resorting to greater sins e.g. the destruction of moral values in preserving the life. The slippery slope argument portrays that the legalization of voluntary active euthanasia gradually leads to form a human tendency to tend towards the practice of involuntary euthanasia and results into validating the unlawful and immoral ways of causing death to the patients even without obtaining their consent. Therefore, providing a scope to open the gateway of right to death through euthanasia and assisted suicide shall automatically confer an unbounded autonomy upon the medical professionals, government and the patients to choose the easiest route instead of attempting to preserve the value of life and minimize the suffering through palliative care.

[27] *Supra* Note 1 at Page 3
[28] H.M. Dupuis, *Euthanasia in the Netherlands: Facts and moral arguments*, Annals of Oncology 4, 447-450, 1993, Kluwer Academic Publishers, available at https://www.annalsofoncology.org/article/S0923-7534(19)64820-9/pdf (Last visited on December 15, 2020).
[29] *Id.* at Page 450.

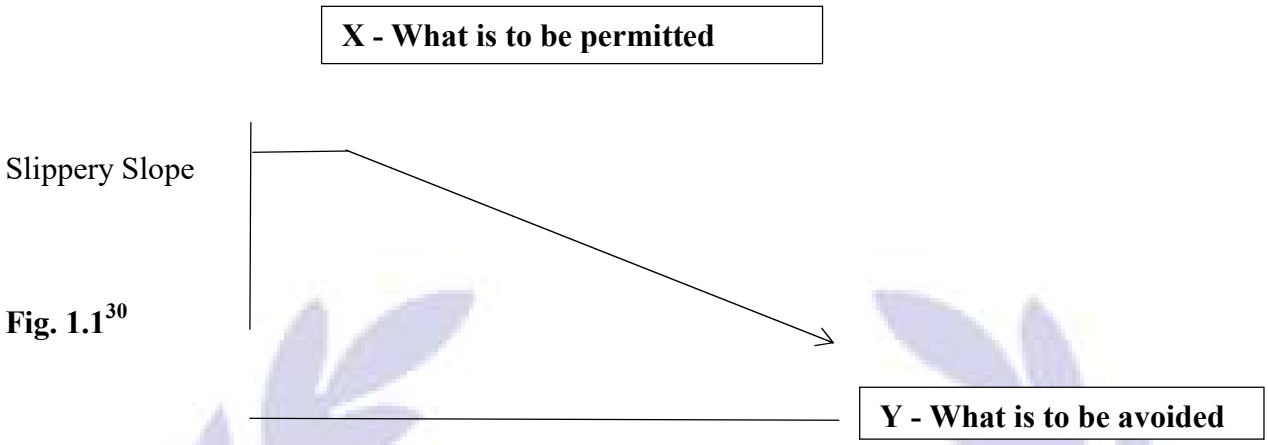

Fig. 1.1[30]

6. Palliative Care as the substitute means: Often, the anti-advocates of right to die claim the significance and relevance of palliative care as an alternative means to heal the suffering of the terminally-ill patients, instead of resorting to euthanasia or assisted dying as the means to end the suffering. Palliative care includes the injecting sedative into the terminally ill patients in order to reduce the pain and withhold them in an unconscious state of mind.In this backdrop, countries like Luxembourg[31], Belgium[32] and Oregon[33] in the USA have started considering the Palliative care as an alternative recourse along with their legislations and guidelines on physician-assisted deaths.

7. Essence and Sanctity of Life : As right to life emerges as the inherent and inalienable human right protected in Article 3 of the UDHR[34] or Article 6 of the ICCPR[35], such inalienability is alienated by the

[30]M.J. Shariff, *Assisted Death and the Slippery Slope - Finding Clarity amid advocacy, convergence and complexity*, Curr Oncol. 2012 Jun; 19(3): 143–154, doi : https://dx.doi.org/10.3747%2Fco.19.1095, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3364764/#b31-conc-19-143 (Last visited on December 15, 2020).

[31]Grand Duchy of Luxembourg, A46, Law of March 16, 2009, on palliative care, advance directives, and end-of -life support and amending: … pp. 610–14.
Available at: http://www.legilux.public.lu/leg/a/archives/2009/0046/a046.pdf (Last visited on December 15, 2020).

[32]*Act of 14 June 2002 on Palliative Care* [Belgian Dutch], *Belgisch Staatsblad* 22.10.2002.

[33]Steinbrook R, Physician-assisted Death: From Oregon to Washington State, *N. Engl. J Med*. 2008 Dec 11; 359 (24) : 2513-5.

[34]United Nations General Assembly, Universal Declaration of Human Rights, 1948, Article 3: *Everyone has the right to life, liberty and security of person*.

[35]United Nations General Assembly, International Covenant on Civil and Political Rights, 1966, Article 6 (Right to life is recognized by the UN HRC) as cited in :
UN Human Rights Committee, *General comment no. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life*, adopted on 30 October 2018, enforced on 3 September 2019, CCPR/C/GC/R.36/Rev.7,
available at

concept of euthanasia or assisted dying as a form of right to death. Despite having its longstanding religious origin, the sanctity of life and essence of human existence gain popularity in recent times in light of the ethical euthanasia debate and employs a value and respect towards its preservation than the assisted diminution.

8. Inability to Provide Free Consent: The notion of individual autonomy stands upon the free will or consent towards the performance of an act. The fact that the validation of voluntary active euthanasia and physician-assisted suicide/dying are verified upon the consent or request of the terminally ill patients, creates a substantial doubt on the accuracy of such consent, considering the nature and gravity of such illness and accordingly, presence of an irrational mind[36] incapable to form a rational judgment in this regard.

Religious and HistoricalArguments on Euthanasia

There are many powerful opinions for and against euthanasia from the view of religion. Religion is one of the most powerful influences in almost every matter of an individual. Around the world and throughout history, people and societies have turned themselves to religion for answers to difficult questions. One question that fits into this category is whether it is correct for a person to kill himself. The other question is whether it is right for a person to assist another person who wants to end his life and end his suffering. Of course, the world turns their head towards religion to seek for these answers but not always are they provided with answers. This is why, till now the dilemma of euthanasia is unsettled.

In terms of religious aspect, most of them reject the purpose of euthanasia. For some it is because they believe in the existence of God and they people in the absolute sanctity of life. However, an atheist may also recognize some dangers in legalizing euthanasia but they might also argue that an individual has a right to direct their own life and live according their own will. Many believers may also sympathize that

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en (last visited on December 15, 2020).

[36]Patterson R, George K. *Euthanasia and assisted suicide: A liberal approach versus the traditional moral view*. J Law Med. 2005 May;12(4):494-510.

a person should not live in agony and suffering, but the fact that life is sacred and that they believe that life is a gift, no matter how good the argument might be, they maybe never accept euthanasia.

Christianity

Christians are mostly against euthanasia. Their arguments are basically based on the fact that they belief that life is a gift given from God and that human beings are made in the image of God. "Life is a gift from God. All life is God." Christians believe that birth and death are a part of God's plan and we should respect it. No one has the authority to take life away from someone, not even the person himself. The fact that people believe that human beings are the image of god is also one of the reasons why they all stand against euthanasia and assisted dying. This doesn't mean that god made human beings to look like him, but this actually means that people and individuals have a unique capacity for rationale existence that allows them to see what is good. Proposing euthanasia to a human being means that the life of the person is worthless and no one has the right to regard anyone as worthless, not even themselves.

Hinduism

Most Hindus believe that every person has a soul that reincarnates in other different beings after the death of one. And these reincarnations are shaped by 'karma'. People believe that suffering is caused due to some bad deeds done in the past and that the suffering is just the karma for that. So to end that suffering euthanasia is wrong and that it'll attract bad karma, perhaps in the next life. On the contrary, some Hindus believe to end a person's life with good intentions, i.e. to end suffering or pain, is pretty much acceptable and maybe even deemed as a good deed.

In addition to this, older people or ill Hindus who believe it is their time to die actually stop eating or drinking, this actually at some point is euthanasia and assisted dying. Many Hindus may say that there is an alternative to euthanasia and that is to provide help to the dying. To support them spiritually and physically till they die naturally.

Islamic

Human life in Islamic believes is something which is valued unconditionally. In Islam, the idea of a life not worth living doesn't exist at all and it is not permissible to take lives even if it is to end misery. The

Prophet Mohammad said: "Among the nations before you there was a man who got a wound and growing impatient with its pain, he took a knife and cut his hand with it and the blood did not stop until he died. Allah said, 'My slave hurried to bring death upon himself so I have forbidden him to enter Paradise'" (Qur'an 4:29). So from the interpretations from Quran, the termination of life, be it killing someone else, suicide or helping someone to commit suicide is a crime and is completely unacceptable.

Historical Debate over Right to Die

Euthanasia was a valid practice in Ancient Greece and Rome. It was considered to be a way to hasten the death of a person. Socrates and Plato were the supporters of the practice of euthanasia. Suicide and euthanasia became more prevalent in the Age of Enlightenment.[37]

It was not until 1800s that the use of morphine became acceptable to treat the suffering of the persons in pain. In 1866 developed the use of chloroform for the same purpose. Samuel Williams, initiated the contemporary debate regarding euthanasia in 1870.[38] While Annie Besant came in favor of the practice there were people in against too. Kemp noted that the practice brings number of objections to the sanctity of the Christian beliefs and virtues.[39]

The early euthanasia movement in USA brought Ingersoll and Adler who argued in favor of voluntary euthanasia of adults suffering from irrevocable illness or fatal injury.[40] The bill was introduced in Ohio assembly to legalise the anesthetic to aid the patient seeking death, but the bill failed to pass. Jost argued that the ultimate control over death of an individual must belong to the state and that individual should not have such right to take his own life. Ezekiel Emanuel argues that, not all deaths are painful and that with effective pain relief there is an alternative to it. He also argues that the difference between active and passive euthanasia is morally significant and the allowance of euthanasia can bring society on a slippery slope which could have adverse consequences.[41]

[37]Gesundheit, Benjamin et. al."*Euthanasia: An Overview and the Jewish Perspective*". Cancer Investigation. (2006).
[38]Emanuel, Ezekiel (1994). "*The history of euthanasia debates in the United States and Britain*". Annals of Internal Medicine. **121** (10): 796.
[39]Nick Kemp (7 September 2002). *Merciful Release*. Manchester University Press.
[40]Dowbiggin, Ian *A merciful end: the euthanasia movement in modern America*. Oxford University Press (2003).
[41] Wesley J. Smith, *Forced Exit* (Forced exited.). New York: Times Books (1997).

Lawlessness and Right to Die: Comparative Analysis and Reforms Suggested

Taking India, Australia and Netherlands on a tour of comparative analysis, a clear distinction is observed in the context of presence of a lawlessness, lack of concerted efforts of judiciary and legislative. Further, the debate between recognition of certain forms of euthanasia and assisted suicide by India and Australia is still an ongoing concern which makes the issue regarding right to die as incessant. A revisit to the Dutch Legal System assists us to identify the continuous endeavours undertaken by Dutch Judiciary and Legislature harmoniously by means of diluting the Defence of Necessity Clause in Dutch Penal Code through judgments and amendments, in order to add certain exceptions to recognize physician-assisted dying and voluntary euthanasia, leading to passing of Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2001[42]. Further, a concerted and harmonious efforts by Dutch Courts and Legislative body to welcome legality of voluntary euthanasia and assisted suicide can be witnessed in terms of case-to-case interpretations and enactment of specific legislations with amendments with an aim to keep up with the pace of judiciary. What Netherlands has accomplished is not the scenario what India and Australia project. Although in Australia there is a new ray of hope on passing the VAD Act[43] by the Victorian State, travelling on a developed road of right to die is still a far-fetched dream for the Australian states as a whole.

While shifting focus towards India, the situation is quite complex as the pendulum constantly oscillates from the pro- to the anti - mercy killing propositions, even reflected in the judicial precedents as well. Looking through the prism of judicial track record in this respect, the conflicting colours are visible through various contradicting judgments of the Supreme Court and various High Courts in India, such as the cases like *Maruti Shripati Dubal*[44] or *P. Rathinam*[45] wherein the permissibility of euthanasia was welcomed through inclusion of right to death under right to life, and the cases like *Gian Kaur*[46]refuting such notionor the *Common Cause*[47] accepting the validity of passive euthanasia and concept of 'living will' of the terminally-ill patients. Even after 2 years after 2018 judgment, what sums up the current

[42]*Supra* Note 31.
[43]*Supra* note 11.
[44] Maruti Shripati Dubal, *Supra* Note 25.
[45]P. Rathinam v. Union of India, AIR 1994 SC 1844.
[46]Gian Kaur v. State of Punjab, AIR 1996 SC 946.
[47]Common Cause, *Supra* Note 27.

Indian position is a longstanding lawlessness and a clear avoidance to recognize active euthanasia or physician-assisted suicide. The core difference between the contemporary Australian, Dutch and Indian status lies in the lack of legislative willingness and confusion underlying the judicial mindset - which nonetheless creates a fear of criminal liability among the doctors and terminally-ill patients. Therefore, certain reforms have been suggested in this paper to bridge the persisting gaps between right to death and autonomy in India and Australia, according to experiences gained from Dutch developments:

1. Establishment of a dedicated National Level Committee to address the conflicts arising in mercy killing and its overlapping with Right to Life and Defence of Necessity,
2. The said National Level Committee shall be constituted of representatives of judicial bodies, the Ministry of Law & Justice, the Medical body and the few activists acting on behalf the autonomy of terminally-ill patients,
3. The said Committee shall continue to look upon the viability of legalizing active euthanasia and physician-assisted suicide, while at the same time, emphasize on drafting a specific legislation on the basis of existing higher court guidelines and considering the reasonable restrictions on such exercise of autonomy and free consent,
4. The necessary changes must be introduced in the Penal Code and other criminal laws in order to welcome the said specific legislation on mercy killing,
5. Like the Dutch system, a multilevel review committee must be established in order to conduct periodical monitoring of compliance of such legislation and the periodical report shall further be reviewed by the formerly mentioned National Level Committee for the purpose of introducing any necessary changes in the said law.

Conclusion

By no stretch of imagination, the right to die is one of the pressing issues across the world in the periphery of human rights and individual autonomy and surrounded by a constant complexity on account of multiple ethical, religious and historical dilemmas attached to it. With the passage of right to die and mercy killing legislations in several countries on one hand, and maintaining a conservative attitude over the exercise of death as a choice by several other countries on another hand, a defined legislative framework along with a concerted effort by the Government bodies is a required player in this incessant lack of uniformity. While conducting an analysis in this paper of various arguments from medical, ethical and religious viewpoint, it

has been observed that despite having a strong opposing arguments for invalidation of euthanasia and assisted suicide, a recognition of right to die in form of voluntary active as well as passive euthanasia and assisted suicide is of utmost necessity in order to reinforce the worldwide regime of living will and personal autonomy, provided that the same shall be subjected to specific circumstances and restrictions that the specific legislations shall stipulate for. Countries like India, Australia although have travelled a long way albeit slowly, there is still a long way to travel considering the longstanding legal vacuum in those countries as contrary to progressive countries like Netherlands in this domain.