

OUTLINING EUTHANASIA AND THE COUNTRIES WITH EXISTING STATUTORY FRAMEWORK TO POSITIVELY REGULATE 'ACTIVE EUTHANASIA'

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Abstract

Euthanasia (Mercy Killing) is the practice of terminating the life of an individual to bring an end to their suffering. Compassion is integral to the practice of Euthanasia but the varying sense of bioethics and morality across different countries of the world has led to the variance in the legislations governing this intricate concept in different jurisdictions. This article aims towards outlining Euthanasia and its classifications while mentioning the countries which have statutory framework in place for positively regulating 'Active Euthanasia' which entails compassionate ending of a patient's suffering through deliberate steps (like administering a lethal injection).

Keywords: *Euthanasia, Mercy Killing, Suicide, Physician Assisted Suicide.*

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1. INTRODUCTION

The concept of 'Euthanasia' (etymologically derived from the Greek phrase for 'Good Death') is not new to the scholars of Law and in the simplest terms can be defined as the act of deliberately ending someone's life to put them out of their misery.¹ Owing to the presence of varying degree of intricacies in socio-legal fabrics across legal systems, which is further complicated by the existence of countless view points in the moral outlook of individuals, the concept of Euthanasia despite its conspicuously noble intent of 'Mercy Killing' i.e. bringing an end to an individual's suffering, is quite difficult to legislate upon in its entirety.² It is one of the most deliberated upon concept in the modern Bio-Ethics.³

2. CLASSIFICATION OF EUTHANASIA

A. Classification On the Basis of Dying Individual's Informed Consent

Based upon the degree of informed consent furnished by the dying individual in the euthanizing action, the act of Euthanasia can broadly be classified into three categories:⁴

1) Voluntary Euthanasia

2) Non-Voluntary Euthanasia

3) Involuntary Euthanasia

'Voluntary Euthanasia' entails ending the life of an individual in the presence of their informed and manifested consent and covers within itself a range of scenarios, such as those involving request from an individual: to help them with ending their life; to refuse or request to discontinue an ongoing medical/diet treatment and support; or, to basically deciding to end their life.⁵

'Non-Voluntary Euthanasia' involves the cases of the individuals who are incapable of deciding about ending their life and therefore there is no way for them to communicate their decision and provide their consent. It includes (but is not limited to) the cases where an individual, is in Coma (or Persistent Vegetative State); is too young (baby); is clinically senile (disorientated); severely

¹ Robert Young, "Voluntary Euthanasia" in Edward N. Zalta (Ed.) *The Stanford Encyclopaedia of Philosophy* (Summer 2022 Edn); available at: <https://plato.stanford.edu/archives/sum2022/entries/euthanasia-voluntary/>

² Helga Kuhse, Bioethics News, *Background Briefing* Vol.11, July 1992 p. 40

³ P Borry, P Schotsmans & K Dierickx, 'Empirical Research in Bioethical Journals. A Quantitative Analysis', *Journal of Medical Ethics*, Vol 32 (4) 2006 pp. 240-245

⁴ *Supra* note 2.

⁵ Voluntary and Involuntary Euthanasia, (Ethics Guide By BBC), available at: <https://www.bbc.co.uk/ethics/euthanasia/overview/volinvol.shtml>

mentally challenged; severely brain damaged; or, so extremely disturbed that they are capable of causing self-harm are to be protected from their own being.⁶

‘Involuntary Euthanasia’ can be defined as the act of euthanizing an individual who despite their capability to provide an informed consent, did not consented to ending their life, either because they wanted to live or because their consent was never procured to begin with.⁷ This form of Euthanasia is presently punitive across jurisdictions and barring a few extenuatingly clear cases, its criminality is unanimously established across the prevalent legal spectrum. Often quoted example of Involuntary Euthanasia includes A shooting B to avoid B from suffering after falling into the hands of a sadistic torturer.⁸ But such examples are rare and fear of inadvertent legalization of Involuntary Euthanasia cases is often cited as an argument for not changing the illegality of (primarily Voluntary) Euthanasia across various legal systems, where the debate of legalizing it is still ongoing.⁹

B. Classification On the Basis of Euthanizing Manner

On the basis of the manner in which the euthanizing action is performed, the above mentioned three categories of Euthanasia can further be sub-categorized into the following two categories:¹⁰

1. Passive Euthanasia
2. Active Euthanasia

Passive Euthanasia, can be explained as a euthanizing act in which the treatment/procedure required for the furtherance of life is withheld out of compassion, ultimately leading to the death of the individual involved.¹¹ It does not involve an active act of taking someone’s life and rather manifests ‘not saving’ the life of the said individual.¹² In simplest terms, Passive Euthanasia is more of an omission and less of an act.

On the other hand, Active Euthanasia is considered to have taken place if deliberate steps are taken to end a patient’s life for compassionate reasons and would actually cover the scenarios like giving lethal injection to do so.¹³ As it is obviously opposite to the passive Euthanasia in

⁶ *Ibid.*

⁷ Jennifer Jackson, *Ethics in Medicine* Polity Press, Cambridge, 2006 p. 137

⁸ *Supra* note 2.

⁹ N Harris, “The Euthanasia Debate”, *Journal of the Royal Army Medical Corps* (2001) pp. 147, 367-370.

¹⁰ J Rachels, “Active & Passive Euthanasia”, *The New England Journal of Medicine* (Vol. 292 (2) 1975) pp. 78-80; available at: <https://doi.org/10.1056/NEJM197501092920206>.

¹¹ *Supra* note 9.

¹² *Aruna Ramchandra Shanbaug v. Union of India*, 2011(3) SCALE 298

¹³ *Supra* note 9.

nature, it involves a conscious action to end life and deviates from an omission to save life. And interestingly enough, there can be circumstances such as those involving the usage of increasingly lethal doses of pain-management medicines, to sustain an individual's life and it creates a dilemma as to whether such administration of drugs shall be classified as Active form of Euthanasia or Passive form of Euthanasia.

3. WHAT DIFFERENTIATES EUTHANASIA FROM 'PHYSICIAN ASSISTED SUICIDE'?

At this juncture in this write-up, i.e. right before unearthing the heterogeneity across legal systems of the world that surrounds the debate on Euthanasia, it is prudent to mention that how different it is from 'Physician Assisted Suicide' which involves the assistance from a Medical Practitioner to an individual in taking their life.¹⁴ 'Physician Assisted Suicide' is another bioethically debatable method of ending an individual's life and the jurisprudence surrounding it can fundamentally be different from the legal discourse surrounding Euthanasia.¹⁵

Core difference between Euthanasia and PAS lies in the fact that while Euthanasia is an act involving the compassionate ending of the life of one individual by other individual/s, Physician Assisted Suicide involves an action on behalf of a qualified physician (medical practitioner) as assistance to an individual, thereby enabling the said individual to 'commit suicide' i.e. to end their own life.¹⁶ It would also include any deliberate act of counselling by the Physician regarding the fatal doses of a toxic substance; prescribing the same; and of course supplying it to the concerned individual.¹⁷

The legal provisions regarding Physician Assisted Suicide can differ from the same for Euthanasia across various legal systems; e.g. despite Euthanasia being illegal in the United States of America, Assisted Suicide is legal in its 10 out of 50 states, namely: Hawaii, New Jersey, Maine, Vermont, California, Colorado, District of Columbia, Oregon, Washington and

¹⁴ E J Emanuel, B D Onwuteaka-Philipsen & John W Urwin, "Attitudes and Practices of Euthanasia and Physician Assisted Suicide in The United States, Canada, And Europe" *JAMA*, Vol. 316 (1) 2016 pp. 79-90.

¹⁵ Jagadish Rao Padubidri, Matthew Antony & Tanya Singh, "Euthanasia: A Good Death or An Act of Mercy Killing: A Global Scenario", *Clinical Ethics*, 17(2) 2022 pp. 118-121.

¹⁶ B Vanovic, V Turanjanin & A Miloradovic, "An Ethical Review of Euthanasia and Physician-Assisted Suicide", *Iranian Journal of Public Health* Vol. 46 pp.173-179.

¹⁷ St Murphy, "Canadian Medical Association And Euthanasia And Assisted Suicide In Canada: Critical Review Of CMA Approach To Changes In Policy And Law, 2018, available at: <http://dx.doi.org/10.2139/ssrn.3255699>.

Montana.¹⁸ But going into the fine points of Physician Assisted Suicide is beyond the scope of this article.

4. JURISDICTIONS WHICH ALLOWED ACTIVE EUTHANASIA IN PARTICULAR CASES

The legality of Euthanasia is fluctuating across different countries of the world and extent of its legality within an individual country is also a subject-matter of variety.¹⁹ In the light of this, here is an outline of countries which have taken the initiative to legalize ‘Active’ Euthanasia, at least in certain qualified circumstances:

1. AUSTRALIA

Voluntary Assisted Dying is legal across all the states of Australia (barring a few territories) and as of 2023, almost 97% of Australian population is living in a society where it is legal, subject to a series of laws to this effect.²⁰ Albeit these laws are restrictive in the approach, they do permit Voluntary Assisted Dying in cases where an individual is medically diagnosed with an agonizing medical condition that is advanced, untreatable, permanent and causes unbearable suffering, and is most likely to cause that individual’s death in the upcoming six months (twelve months in case of neurodegenerative patients).²¹ Prior to the passing of such enabling laws, acts of Assisted Dying were considered criminal in nature across Australia.²²

2. BELGIUM

Euthanasia is legal in Belgium and became so when the Belgian House of Representatives (the Lower House of the Belgian Parliament) passed the ‘Belgian Euthanasia Act, 2002’ and which came into effect on September 23rd, 2002.²³ The Act was already passed by the Belgian Senate (the Upper House of the Belgian Parliament) in the preceding year.²⁴

¹⁸ *Supra* note 15.

¹⁹ *Supra* note 15.

²⁰ Eliana Close, Lindy Willmott, Ben P. White, “Voluntary Assisted Dying: Peak Bodies Must Provide Practical Guidance”, *Internal Medicine Journal* Vol. 52(6), 2022, pp. 926-931, *available at*: <https://doi.org/10.1111/imj.15805>.

²¹ A H Mallon, “Assisted Dying as A Global Public Health Priority” In: P Liamputtong (Eds)” *Handbook of Social Sciences And Global Public Health*” Springer, 2006) pp. 1-25, *available at*: https://doi.org/10.1007/978-3-031-25110-8_32

²² *R v. Justins* [2011] NSWSC 568

²³ M Adams & H Nys, “Comparative Reflections on The Belgian Euthanasia Act 2002”. *Medical Law Review*, Vol. 11(3) 2003, pp 353-376; *available at*: <https://doi.org/10.1093/medlaw/11.3.353>

²⁴ *Ibid*.

Post passing of this law which legalized Euthanasia in Belgium, it was observed that most individuals who resorted to the ending of their lives in this discourse, were in extreme pain and majority of them were terminally ill.²⁵

3. CANADA

In Canada, Medical Assistance in Dying (or MAiD) is the umbrella term for Assisted Suicide and Euthanasia.²⁶ In 2015, the Supreme Court of Canada in a landmark judgment observed that a complete ban on Euthanasia and Assisted Dying is against the Constitutional rights of life, liberty and security of an individual.²⁷ In response to this, the Parliament of Canada enacted Bill C-14 in 2016, allowing for Euthanasia and Assisted Suicide in cases of capable and consenting adults who have any serious physical condition (disease, illness, or disability), with a “Reasonably Foreseeable Natural Death” (RFND) and an irreversible decline of capability, and intolerable psychological and/or physical suffering.²⁸

The Parliament further widened the ambit of its provisions regarding Euthanasia by passing the Bill C-7 in 2021, which removed the requisite of RFND as laid by the C-7 Bill and opened a new path for persons with disabilities who are not approaching their natural death, to be covered under the MAiD provisions.²⁹ It is crucial to note that Canada effectively discourages ‘suicide tourism’ and only allows MAiD for those who have access to the Health Insurance regimen of the country.³⁰

4. COLOMBIA

In the year 1997, The Constitutional Court of Colombia had legalized Voluntary Euthanasia for terminally ill patients who have given clear permission to do so and this judgment is still

²⁵ Tinne Smets, Johan Bilsen, Joachim Cohen, Mette L Rurup & Luc Deliens, “Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases”, *Medical Care*, Vol 48 (2) 2010 pp. 187-192; available at: <https://doi.org/10.1097/MLR.0b013e3181bd4dde>

²⁶ Darryl Pullman, “Slowing the Slide Down the Slippery Slope of Medical Assistance In Dying: Mutual Learnings For Canada And The Us”, *The American Journal On Bioethics* Vol 23(11) 2023 pp 64-72.

²⁷ *Carter v. Canada* (Attorney General), 2015 SCC 5 (CanLII)

²⁸ Ramona Coelho, John Maher, K. Sonu Gaiind & Trudo Lemmens, “The Realities of Medical Assistance in Dying in Canada” *Palliative & Supportive Care* Vol 21(5) 2023 pp. 871-878; <https://doi.org/10.1017/S1478951523001025>

²⁹ Trudo Lemmens, “When Death Becomes Therapy: Canada’s Troubling Normalization Of Health Care Provider Ending Of Life”, *The American Journal On Bioethics* Vol 23 (11) 2023 pp 79-84; <https://doi.org/10.1080/15265161.2023.2265265>

³⁰ Konstantin Tretyakov & I Glenn Cohen, “Medical Assistance in Dying And ‘Suicide Tourism’ To Canada: Bill C-14 From A Comparative Perspective” *Journal of Ethics in Mental Health* (2016) Harvard Public Law Working Paper No 16-44, available at: <https://ssrn.com/abstract=2816582>.

considered debatable in the country from the date it was pronounced.³¹ It made Colombia to be the first country in the Latin-American sphere that neutralized the penalty for Assisted Suicide.³² The same Court then extended the same right to ‘non-terminal patients’ as well, through its judgment in July, 2021.³³

5. LUXEMBOURG

In the year 2009, the Parliament of Luxembourg passed the ‘The Law On Euthanasia And Assisted Suicide’ (In French: Loi sur l’euthanasie et l’assistance au suicide) which led to the decriminalization of Euthanasia in the country.³⁴ The law also has a detailed portion dedicated to palliative care enshrined in it.³⁵ Any individual who anticipates acute physical pain and suffering in the future or is unconscious and/or incompetent but have manifested their desire to be euthanized while they were conscious and competent while manifesting said desire, can be legally subjected to Euthanasia.³⁶

As a safeguard and to prevent abuse of the law, it is made statutorily mandatory that the consultation will be sought from a competent independent physician (different from the physician treating the Patient and the Patient themselves) and who would endorse that there is no other better outcome than Euthanasia or Assisted Suicide to end the Patient’s suffering.³⁷

6. NETHERLANDS

The ‘Termination of Life on Request and Assisted Suicide (Review Procedures) Act’ which was passed by the Dutch Parliament in 2001 and came into enforcement from April 1st, 2002, is the core legislation which legalized Euthanasia and Assisted Suicide in Netherlands, when the criteria

³¹ Mike Ceaser, “Euthanasia In Legal Limbo In Colombia”, *The Lancet* Vol. 371, 2008 pp 290-91; *available at*: [https://doi.org/10.1016/S0140-6736\(08\)60150-6](https://doi.org/10.1016/S0140-6736(08)60150-6).

³² Luke Taylor, “Colombia Becomes First Latin American Country to Decriminalize Assisted Suicide”, *British Medical Journal* Vol.377 2022 p. 1219; *available at*: <https://doi.org/10.1136/bmj.o1219>.

³³ Joe Parkin Daniels, “Colombia Euthanasia Cases Prompt Regional Debate”, *The Lancet* (2022, Volume 399, Issue 10322) p. 348; *available at*: [https://doi.org/10.1016/S0140-6736\(22\)00098-8](https://doi.org/10.1016/S0140-6736(22)00098-8).

³⁴ Rory Watson, “Luxembourg is to Allow Euthanasia From 1 April”, *British Medical Journal* Vol. 338 2009 p. 1248; *available at*: <https://doi.org/10.1136/bmj.b1248>.

³⁵ Jocelyn Downie, Mona Gupta, Steffano Cavalli & Samuel Boulin, “Assistance In Dying: A Comparative Look At Legal Definitions” *Death Studies* Vol. 46 (7) 2022 pp. 1547-1556; *available at*: <https://doi.org/10.1080/07481187.2021.1926631>.

³⁶ MJ Shariff, “Assisted Death and The Slippery Slope-Finding Clarity Amid Advocacy, Convergence & Complexity” *Current Oncology* Vol.19(3) 2012 pp. 143-54

³⁷ *Ibid*.

established in this statute is met.³⁸ As per the criteria laid out in the Act, a physician is allowed to euthanize/assist in suicide without fearing prosecution when following conditions are met:³⁹

- (i) The suffering of the patient is unbearable and showing no sign of reducing.
- (ii) Request of the patient is voluntary and persistent.
- (iii) Patient is well aware of their medical condition and outcomes.
- (iv) There is no alternative to death as being the only way the patient's suffering.
- (v) Consultation and seconding of the decision by an independent physician.
- (vi) The termination of life shall be done with proper care, by either Doctor or patient, in the presence of a Doctor.

Furthermore in 2004, the country also shaped 'The Groningen Protocol', which provided for the criteria to be met for euthanizing critically sick infants.⁴⁰

7. NEW ZEALAND

In New Zealand, a request to allow Voluntary Euthanasia made by a competent individual can now be allowed under the 'End of Life Choice Act of 2019', which came into force from September 7th of 2021, after a binding referendum among the public of New Zealand, which held alongside the General Elections in New Zealand in the year 2020.⁴¹

As per the criteria, only the citizens of New Zealand who are aged eighteen years or more, and; are suffering from terminal illness, and; who in the expert opinion of physicians are likely to die within six months because of the said illness, can request for the ending of their life under the 'End of Life Choice Act of 2019'.⁴² But at the same time, it is really important to highlight that

³⁸ Pauline S. C. Kouwenhoven, Ghislaine J. M. W. van Thiel, Agnes van der Heide, Judith A. C. Rietjens & Johannes J. M. van Delden, "Developments In Euthanasia Practice In The Netherlands: Balancing Professional Responsibility And The Patient's Autonomy", *European Journal of General Practice* Vol 25(1) 2019 pp. 44-48; available at: <https://doi.org/10.1080/13814788.2018.1517154>

³⁹ JA Rietjens, PJ van der Maas, BD Onwuteaka-Philipsen, JJ van Delden & A van der Heide, "Two Decades of Research on Euthanasia from the Netherlands. What Have We Learnt and What Questions Remain?" *Journal of Bioethical Inquiry* Vol 6 (3) 2009 pp. 271-283; available at: <https://doi.org/10.1007/s11673-009-9172-3>.

⁴⁰ Eduard Verhagen & Pieter J.J. Sauer, "The Groningen Protocol--Euthanasia in Severely Ill Newborns", *The New England Journal of Medicine* Volume 352, 2005 pp. 959-962; available at: <https://doi.org/10.1056/NEJMp058026>

⁴¹ S Richardson, "An International Expansion in Voluntary Euthanasia/Assisted Dying: The Implications for Nursing" *International Nursing Review* Vol 70 (1) 2022 pp. 17-21; available at: <https://10.1111/inr.12807>

⁴² J Young, J Snelling, S Beaumont, et al "What Do Health Care Professionals Want To Know About Assisted Dying? Setting The Research Agenda In New Zealand" *BMC Palliative Care* Vol 22 (1) 2023; available at: <https://10.1186/s12904-023-01159-8>.

‘Assisted Suicide’ is still criminally punishable in New Zealand and tantamount to aiding and abetting of a suicide.⁴³

8. SPAIN

Through ‘Organic Law for the Regulation of Euthanasia’ (LORE), Spain gave effect to the countrywide legalization of Euthanasia and Assisted Suicide and laid down the guidelines and criteria to be adhered to for the same.⁴⁴ It was passed on March 18th 2021 and came into effect on June 25th 2021.⁴⁵

As per LORE, patients suffering from severe and incurable disease (such as Cancer); or, a severe, chronic, and disabling suffering (such as Amyotrophic Lateral Sclerosis), which cannot be better handled by any other method, are eligible to seek permission and/or assistance to end their life.⁴⁶ But this has sparked a debate, questioning the inclusion of ‘mental suffering’ as one of the eligible criteria for requesting Euthanasia/Assisted Suicide in Spain, as those opposing the said inclusion opine that there can be certain mental disorders which can hamper the decision-making competence of the patient making the request.⁴⁷

In the first five months of the legalization of this Euthanasia/Assisted Suicide practice in Spain, a total of 173 requests for Euthanasia/Assisted Suicide were presented before the authorities, out of which 75 were carried out and remaining 98 were not carried out for reasons such as withdrawal/rejection of request, death during the decision-making period etc.⁴⁸

5. CONCLUSION

Despite its long history of origin and near consistent global presence as a concept, Euthanasia and the long list of laws regulating it in various countries tend to vary a lot in letter and spirit. The difference is while primarily due to the varying sense of morality, it also points out towards

⁴³ Section 179, New Zealand Crimes Act of 1961

⁴⁴ YA Picón-Jaimes, ID Lozada-Martinez, et al, “Euthanasia and Assisted Suicide: An In-Depth Review of Relevant Historical Aspects”, *Annals of Medicine & Surgery* Vol 11 (2), 2022 p. 75; <https://doi.org/10.1016/j.amsu.2022.103380>

⁴⁵ *Ibid.*

⁴⁶ Mercedes Martínez-León, Jorge Feijoo Velaz, et al, “Medico Legal Study of The Organic Law of the Regulation of Euthanasia in Spain Compared to The Rest of The Countries That Regulate Euthanasia and/or Assisted Suicide”, *Spanish Journal of Legal Medicine* Vol. 48(4) 2022 pp. 166-174; *available at:* <https://doi.org/10.1016/j.remle.2022.01.006>.

⁴⁷ Sergio Ramos-Pozón, Núria Terribas-Sala, et al, “Persons with Mental Disorders and Assisted Dying Practices in Spain: An Overview”, *International Journal of Law & Psychiatry*, Vol. 87(101871) 2023; *available at:* <https://doi.org/10.1016/j.ijlp.2023.101871>.

⁴⁸ Luis Espericueta, “First Official Report on Euthanasia in Spain: A Comparison With The Canadian And New Zealand Experiences”, *Medicina Clínica (English Edition)* Vol. 161 (10) 2023 pp 445-447; *available at:* <https://doi.org/10.1016/j.medcle.2023.06.021>.

the lack of international statutory framework that can serve as a baseline guiding light to the countries aiming to take steps towards installing a legislative mechanism in this regard. We need a widespread dialogue among stakeholders with polarizing outcome on the regulation of Euthanasia, so that the human rights of those with terminal illness and/or inadvertent ongoing/prospective suffering can be safeguarded, without leaving any statutory loophole open for misuse.