

# Right to die should be legalized as a fundamental human right in Sri Lanka.

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**Abstract:** Many nations throughout the world are debating and considering whether or not to recognize the right to death as a fundamental human right. The debate over the legality of the right to die has special significance in Sri Lanka, a country that is profoundly entrenched in cultural values of compassion, empathy, and respect for human autonomy. This qualitative research based on primary and secondary sources argue for and against making the right to death a fundamental human right in Sri Lanka, with particular emphasis on legal ramifications and countries where euthanasia, the right to die is legalized and/or criminalized. Furthermore, this research provides with recommendations that need to be implemented in Sri Lanka and further discusses the right to die as a fundamental human right. Hence, the study has provided an in-depth comparison with the international arena of law on euthanasia and why voluntarily passive euthanasia should be legalized in Sri Lanka.

**Keywords:** euthanasia, Sri Lanka, right to die.

## I. INTRODUCTION

The essential need for self-determination and the pursuit of a life of significance and dignity lies at the heart of the human experience. When confronted with terminal disease, extreme pain, or the loss of personal autonomy, individuals may become stuck in a condition of misery that calls into question their core beliefs about life and death. In such cases, the concept of the right to die emerges as a deep ethical quandary, challenging us to rethink our values, challenge existing conventions, and confront the complexity of compassion and autonomy.

The right to die is a concept that holds that humans have the right to end their lives or commit voluntary euthanasia. "Euthanasia" is derived from the Greek words "eu" (good) and "thanatos" (death). Instead of subjecting someone to a slow, painful, or humiliating death, euthanasia allows the patient to have a comparatively "good death." Occasionally individuals associate euthanasia with assisted suicide, physician-aided death, physician-assisted suicide, and mercy killing. However, legal and medical professionals define these terms differently.

The concept was initially used by Greek poets around 400 BC, and it was then embraced by Greek and Roman philosophers and historians to signify a death that occurs suddenly and without severe and prolonged suffering. The term 'euthanasia' was not used for any medical or non-medical effort to speed up a patient's death or end his or her suffering. Prior to Hippocrates, euthanasia was a normal procedure, and physicians assumed they had the ability to end the lives of patients for whom they had given up hope of recovery, without their permission. However, such involvement could not have been frequented in antiquity, because helping a patient's suicide was clearly forbidden in the so-called Hippocratic oath. Whoever took this oath pledged to 'provide no fatal medicine to anyone if asked, nor advise any such counsel.'

The execution of a seriously deformed newborn in Nazi Germany on July 24, 1939, was regarded as the first "state-sponsored euthanasia" in a BBC "Genocide Under the Nazis Timeline." During the Nazi administration that ruled Germany from 1933 to 1945, the notion of Euthanasia was utilized against various portions of the community who were deemed undesirable, an attitude that eventually led to the crimes and slaughter of World War II. Furthermore, Hitler's sanctioned euthanasia program, Aktion T4, resulted in the killings of around 70,273 persons against their will for the ostensible "good of the country." (Nissanka, 2022)

## II. METHDOLOGY

The study used a qualitative paradigm and incorporated both primary and secondary sources data from social, legislative, and academic activities. This study adopted an experimental research design to investigate the legal framework of euthanasia in Sri Lanka and around the world. The study's primary focus is on Sri Lanka, with special attention given to their legislative rules and regulations, with the goal of legalizing the right to die as a fundamental human right in the country. To achieve a comprehensive and full understanding of the topic, the research integrated several literature-gathering approaches such as websites, books, legislations, case laws, reports, blogs, online newsletters, online articles, and research publications. The results of the research can be deemed valid and reliable due to the careful selection of sources and the use of standardized data collection processes.

### III. DISCUSSION

#### A. Types of euthanasia

Euthanasia can be classified under many different categories. Euthanasia refers to a variety of practices. When the person's agreement is taken into account, it can be characterized as voluntary, non-voluntary, or involuntary, and based on the physician's involvement, it can be classified as active or passive euthanasia.

Voluntary euthanasia is the voluntary termination of a person's life in order to reduce their suffering. However, this request can be made prior to the beginning of disease in the form of a living will or an advanced directive, or it can be made during the course of the illness. According to *Cruzan v. Director, Missouri Department of Health*, passive volunteer euthanasia is permissible in the United States. When a patient causes their own death with the help of a physician, the phrase assisted suicide is frequently used instead. Assisted suicide is permitted in Switzerland, as well as California, Oregon, Washington, Montana, and Vermont in the United States.

When the patient's consent is unavailable, non-voluntary euthanasia is applied. Child euthanasia, for example, is banned worldwide but decriminalized in the Netherlands under the Groningen Protocol in very specified circumstances. Under some conditions, passive forms of non-voluntary euthanasia (i.e. withholding treatment) are permitted in a few nations. That exists, the patient delegated decision-making authority to a physician or a relative through proxy. On the patient's request, the physician or a relative makes the decision on his behalf. "Suicide by proxy" is the term for this. In this case, someone directly or indirectly ends the life of another person because they believe it is in their best interests to relieve pain and suffering caused by an incurable or terminal ailment. If there is no prior proxy, relatives and physicians can seek a court order to end the patient's life in the best interests of the patient and to allow the patient to die with dignity. This is used in cases where a patient is killed for his own good and the patient is unable to express his or her opinion, such as in people in a permanent vegetative state. As a result, this is also known as "Mercy killing."

When euthanasia is done on a person who would be able to provide informed permission but does not, either because they do not want to die or because they were not asked, this is known as involuntary euthanasia. This occurs when someone kills a sick person without the sick person's knowledge. This region's opinion about the practice changed as well. The Voluntary Assisted Dying Act was reinstated in the region in 2019, legalizing physician-assisted suicide in a wide portion of Australia. It is performed against the patient's will, and the physician decides on his own to end the patient's life without a personal or proxy invitation, and thus amounts to homicide, whether active or passive.

Active euthanasia happens when medical personnel or another person purposefully causes the patient to die. For

example, administering a deadly dose of a medicine to a patient. Euthanasia is sometimes referred to as "aggressive" euthanasia. The physician determines the patient's death date and time here. Active euthanasia, on the other hand, is both illegal and unethical.

Passive euthanasia happens when a patient dies because medical practitioners either do not do what is necessary to keep the patient alive or stop doing what is necessary to keep the patient alive. For example, turn off life-support machinery, unplug a feeding tube, do not perform a life-extending operation, and do not provide life-extending medications.

#### B. Difference between euthanasia and assisted suicide

Euthanasia and assisted suicide are two different types of assisted death. Euthanasia is performed by administering the patient a deadly dose of suitable medication at his explicit request by the attending physician. For example, lethal injection administered by a doctor.

Assisted suicide is the deliberate use of another's knowledge, methods, or both to commit suicide while receiving help from them. Both actions are optional and carried out with the patient's complete agreement. The primary distinction between assisted suicide and euthanasia is administered by a physician and assisted suicide is prescribed by a physician.

#### C. Which countries already legalized euthanasia

Euthanasia also known as assists dying is a highly debated topic that involves intentionally killing or ending a person's life. Over the years, several countries have grappled with moral, ethical, and legal implications of euthanasia. The legality of euthanasia varies depending on the country. As of 2023, Belgium, Colombia, Netherlands, Luxemburg, Canada, New Zealand, Spain, Portugal and all six states of Australia have legalized euthanasia.

Netherlands was the first European Country to decriminalize euthanasia by a law passed in 2001 entitling the *Law for the Termination of Life on Request and Assisted Suicide*. In Netherlands euthanasia is legal if a patient is enduring an unbearable pain or suffering and there is no improvement. According to the Netherlands jurisdiction any person age of 12 can request for euthanasia but the parental consent is required if the person is under 16 years. (A Stef Groenewoud, n.d.) In 2016 Mark Langedijk was given the opportunity to receive medication that would ultimately end his life after struggling with alcoholism, depression, and anxiety for years. Aurelia Brouwers was allowed to end her life on account of psychiatric illness by the Netherland government.

Colombia became the first Latin American country decriminalize euthanasia in 1997 under the expanded right to dignified death by High Court. Promptly, the number of euthanasia deaths have increased in Colombia from 4 deaths

in 2015 to 99 deaths in 2022. (Campaign for dignity in dying, n.d.)

There is also the Sarco pod, which was invented as a euthanasia device in 2017 by euthanasia advocate Philip Nitschke. In 2021, Nitschke revealed that he sought and acquired legal advice on the legality of the device in Switzerland. A suicide machine consisting of a 3D-printed detachable capsule put on a stand containing a canister of liquid nitrogen to die through inert gas asphyxiation. "Sarco" is an abbreviation for "sarcophagus." It is used in concert with an inert gas (nitrogen) to rapidly decrease oxygen levels, preventing panic, suffocation, and struggling before unconsciousness, also known as the hypercapnic alarm reaction caused by high carbon dioxide concentrations in the blood.

Moreover, Luxembourg and Canada have allowed both euthanasia and assisted suicide especially for adults suffering from grievous and irremediable condition. The state of Victoria of Australia passed laws in 2017 regarding voluntary euthanasia after 50 failed attempts in 20 years. Under Australian law a patient must be an adult with the capacity of decision making, must be a resident of the state and must have had intolerable pain or suffering by an illness.

However, the majority of the states have criminalized euthanasia or have not recognized euthanasia as legal or ethical. USA has reported a bulk of cases and judicial decision regarding euthanasia. In *Cruzan v Director Missouri Department of Health 1990*. Following a car accident, Nancy Beth Cruzan was declared to be in a "persistent neurological state." Her parents tried to wean her from life support after she had been kept alive for several

weeks by artificial feedings, but state hospital staff would not do so without a court order. Despite a state trial court's approval, the Missouri Supreme Court overturned the decision. In the case of *People v Kevorkian 2001*, 52-year-old Thomas Youk was suffering from a disease and upon his request his physician Jack Kevorkian administered lethal drug to Youk that caused his death as a result. Kevorkian had filmed Youk's death and the trial court jury convicted Kevorkian a second-degree murder despite his claims on committing a mercy killing.

In the United Kingdom, euthanasia is still outlawed. Palliative care and end-of-life care have received much of the attention, with an emphasis placed on the significance of pain relief and providing the necessary medical care. Pursuant to The Medical Decision-Making Case (1993), encouraging suicide is still a crime. Due to concerns about patient vulnerability, potential coercion, and the sanctity of life, the House of Commons rejected a proposed bill to allow assisted dying in England and Wales in 2021.

Euthanasia is not entirely allowed in Australia either. The Voluntary Assisted Dying Act, which was passed by the state of Victoria in 2017, allows euthanasia under very specific guidelines. Similar legislation is being actively discussed in other states. With the enactment of the Euthanasia Laws Act (1997), the Commonwealth Parliament invalidated the Northern Territory's Rights of the Terminally Ill Act (1995), which had briefly authorized euthanasia. The complicated nature of euthanasia arguments is highlighted by the Australian legal system, which combines state and federal factors.

	<i>Self-administer only</i>	<i>self or active assistance</i>	<i>Terminal conditions</i>	<i>Serve chronic physical conditions</i>	<i>Serve chronic mental conditions</i>	<i>Advance directive (physical)</i>	<i>Advance directive (dementia)</i>	<i>Year introduced</i>
<i>Austria</i>	✓		✓	✓		✓		2021
<i>Belgium</i>		✓	✓	✓	✓	✓		2002
<i>Luxembourg</i>		✓	✓	✓	✓			2009
<i>Netherlands</i>		✓	✓	✓	✓	✓	✓	2002
<i>Spain</i>		✓	✓	✓	✓			2021
<i>Switzerland</i>	✓		✓	✓	✓			1942/ 1980s
<i>Canada</i>		✓	✓	✓	✓			2016
<i>Colombia</i>		✓	✓	✓	✓			2015
<i>11 US states</i>	✓		✓					<i>Various</i>
<i>Australia</i>		✓	✓					2022
<i>New Zealand</i>		✓	✓					2021

Table 1: Medically assisted dying legislation.  
Source: various sources, 20 first, 2022

Euthanasia is prohibited in Germany, with the exception of passive euthanasia, in which case treatment may be discontinued if it is in the patient's best interest. This strategy has historical roots in Germany because of the horrific Nazi euthanasia practices that took place there

during World War II. In 2010, the German Federal Court issued a ruling that reiterated the value of human autonomy while also maintaining that active euthanasia is still unlawful in order to protect those who are suffering from abuse. India currently forbids euthanasia. The matter was

debated by the Indian judiciary, which resulted in the landmark decision in the *Aruna Shanbaug case (2011)*. The Supreme Court of India created a legal foundation for end-of-life decisions by allowing passive euthanasia in exceptional circumstances. However, active euthanasia is still illegal because of serious ethical and legal questions it raises about the worth of human life and the possibility of abuse.

#### *D. Arguments proposing and opposing euthanasia.*

The benefit of euthanasia is that it allows people to die with dignity. Advocates say that when faced with a terminal illness or terrible pain, having the right to choose the time and manner of one's own death helps preserve one's dignity. Due to the ethical concerns of euthanasia, which include those related to individual autonomy, the value of human life, the role of healthcare professionals, the potential for abuse or unintended consequences, and religious and cultural beliefs, conducting euthanasia can be a complex and difficult process. As a result, there are some opposing and advocating arguments on euthanasia.

Universally accepted 'Right to life' is a natural right but suicide is an unnatural termination or extinction of life and, therefore, incompatible, and inconsistent with the concept of 'right to life'. It is the State's responsibility to protect life, and it is the physician's responsibility to offer care while not endangering patients. If euthanasia becomes legal, there is great concern that the state will refuse to invest in health (working toward the right to life). Opponents of euthanasia claim that if we accept "the right to die with dignity," persons with terminal and debilitating illnesses will be excluded from our civilized society.

In an era of dwindling morals and justice, there is a risk that family members or relatives will use euthanasia to inherit the patient's property. 'Mercy killing' should not result in 'killing mercy' in the hands of great medical experts. Suicide attempts and completions are common in patients suffering from depression, schizophrenia, and substance abuse. It has also been observed in patients with obsessive compulsive disorder. As a result, it is critical to analyze the mental state of the person seeking euthanasia. Suicide attempts are regarded as a psychiatric emergency and a desperate plea for help or assistance in classical teaching. Several guidelines for the treatment of suicidal individuals in psychiatry have been developed. As a result, attempted suicide is regarded as an indication of mental disorder.

Supporters of the "right-to-die" claim that persons with incurable, degenerative, crippling, or debilitating diseases should be permitted to die with dignity. This argument is also supported for persons who have a persistent debilitating illness that is not terminal, such as severe mental illness. Most such petitions are made by sufferers, family members,

or caregivers. Many argue that because the right to life includes the right to self-determination, relief from suffering, and patient autonomy, a patient has the right to choose whether to live with suffering or die with dignity.

Many individuals in a prolonged vegetative state or with chronic illness do not want to be a burden on their family and friends. Euthanasia can be viewed as a means of upholding the 'Right to Life' by honoring the 'Right to Die' with dignity.

The use of euthanasia in terminally ill patients provides a chance to promote organ donation. This, in turn, will benefit numerous organ failure patients awaiting transplantation. Euthanasia not only provides a 'right to die' for terminally sick patients, but also a 'right to life' for organ transplant recipients.

The right to refuse medical care, including therapy that preserves or prolongs life, is extensively recognized in the law. A patient with blood malignancy, for example, can refuse therapy or refuse nasogastric tube feedings. The recognition of the right to refuse treatment opens the door to passive euthanasia. Many contend that enabling medical abortion before 16 weeks is a sort of active involuntary euthanasia. In Holland, the question of mercy killing of defective kids has already been discussed.

#### *E. Sri Lankan perspective and legal background regarding euthanasia*

There is no explicit legislation in Sri Lanka that enables or controls euthanasia or assisted suicide. As a result, even with the individual's consent, any sort of intentional termination of life is typically deemed illegal in Sri Lanka. Sri Lankan penal code makes any kind of abetment or assisting in suicide illegal. According to article 299 of the Sri Lankan penal code, if somebody commits suicide, anyone who assists in the commission of such suicide will be punished with death. Article 300 stipulates that anyone commits any act with such intent or knowledge and under such circumstances that if he causes death as a result of that act, he is guilty of murder. As a result, in Sri Lanka, a physician could be convicted of murder if he supports a patient in an act of euthanasia by any means, even in good faith.

And if a patient attempts suicide with or without the assistance of a physician and does not die, he or she could be punished under Article 302, which states that "whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Article 303-306 of Sri Lankan penal code only instance where the Sri Lankan legal system permits for the artificial loss of human life. However, in Sri Lankan legislation, there are certain exceptions. Under article 303 whoever is doing a miscarriage should only do it with bona fide intention in order to save the life of the mother. Causing the death of a fetus is a crime punishable by imprisonment of any sort for a duration up to three years, a fine, or both.

Even if the woman becomes pregnant as a result of rape, she lacks the legal authority to terminate the unborn or obtain an abortion. Abortion laws in Sri Lanka remain stringent, and abortion is banned unless the mother's life is in danger.

#### *F. Why euthanasia should be legalized in Sri Lanka.*

Article 11 of Sri Lankan constitution sets out fundamental human rights including freedom of torture while the right to die remains under the table when the patients suffer with unbearable suffering that can be equalized to torture. Some terminally ill people experience unbearable suffering and would want to pass away peacefully rather than having their lives artificially prolonged by costly, uncomfortable, or incapacitating treatments. Since they may be reluctant to commit suicide themselves or could be physically unable to do so, it would be ideal for them if the doctors offered some sort of long-term remedy for the suffering and extended life.

Furthermore, suicide is one of the main causes of death in Sri Lanka, posing an enormous burden on the individual, family, healthcare delivery system, and society at large. Suicides due to chronic sickness and physical limitations, according to Sri Lanka Police records from 2005 to 2011, suggest that people with terminal illnesses committing suicide is on the rise, particularly among those over the age of 60. The people most affected by these laws are primarily doctors whose patients are terminally sick and irreversibly ill, as well as the families who must bear the burden of the costs. Most doctors are unsure of when to remove a patient from life support, and the patients must undergo significant discomfort in order to die naturally. There are also senile elderly people who have lost the will to live longer and simply live till death comes to them naturally. The "normalization" of suicide as a medical option lays the groundwork for a culture that supports euthanasia as a "cure" for suicidal sadness. Allowing people to "die with dignity" is preferable to forcing them to live their lives in pain. As a result, it should be permissible to euthanize someone who gives their full consent. Death is a natural part of life, and no laws should be passed to prevent it if a person choose to do so. If a patient is in excruciating physical pain and death is foreseeable and imminent, he or she must be permitted to seek euthanasia. It may help to reduce the number of suicidal deaths in Sri Lanka.

Euthanasia opponents frequently express concerns about the possibility of abuse and misuse of such a policy. Euthanasia can be made legal as long as strict guidelines and protections are in place to make sure that only those who truly need it can access it. Euthanasia can only be an option for individuals in dire situations by implementing a well-regulated system with tight qualifying requirements, numerous medical consultations, and legal control. This will avoid any legal abuse. Legalizing euthanasia in Sri Lanka would uphold the principle of individual autonomy, granting patients the right to make decisions regarding their own lives and deaths. It recognizes that people with terminal illnesses ought to have the option of choosing a dignified death over continuing to experience pain and suffering. Respecting autonomy enables people to have control over their own bodies and futures and is consistent with the fundamental idea of self-determination.

#### IV. RECOMMENDATIONS AND CONCLUSION

It has been argued that voluntary passive euthanasia should be legalized in Sri Lanka under strict guidelines following thorough and critical study of numerous pieces of research. In order to ensure that the practice is carried out in an ethical and responsible manner, Sri Lanka should enact comprehensive law that addresses euthanasia expressly and specifies the eligibility conditions, procedural requirements, and safeguards.

- The law should clearly identify the circumstances under which euthanasia may be considered, such as a terminal illness with little possibility of recovery and intolerable pain that cannot be properly alleviated by palliative care. It should also expressly forbid euthanasia for non-fatal situations
- Establish a comprehensive evaluation procedure that includes extensive medical and psychological screenings. To ensure an appropriate assessment, the patient's condition and prognosis should be evaluated by a number of independent medical specialists.
- To prevent misuse and crimes, an informed consent should be guaranteed by the patient orally and in writing and the death should be the best interest of the patient not any other parties.
- Implement an in-depth reporting system to track and keep track on euthanasia cases, providing accountability, openness, and the gathering of information for analysis and study. This reporting method ought to protect confidentiality while delivering vital data to evaluate the results and efficacy of euthanasia laws.

In conclusion, recognizing the right to die as a fundamental human right is a significant step towards ensuring individual autonomy, compassion, and dignity at the end of life. Sri Lanka, a country known for its deep-rooted cultural values

of compassion and empathy, should consider legalizing the right to die as a humane response to the suffering of terminally ill individuals. By legalizing euthanasia and allowing individuals to have control over their own destiny, Sri Lanka would affirm its commitment to upholding fundamental human rights and valuing the principles of compassion and individual choice. In embracing the right to die as a fundamental human right, Sri Lanka would join other nations that have recognized the importance of individual autonomy, compassion, and dignity in end-of-life decisions. Ultimately, the legalization voluntarily passive euthanasia, the right to die as a fundamental human right in Sri Lanka would be a profound testament to the nation's values, providing individuals with the opportunity to have a peaceful, compassionate, and dignified end to their lives.

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