



DOCTRINE OF WAIVER IN PASSIVE EUTHENASIA IN INDIA

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ABSTRACT

Passive euthanasia is a topic that has been a subject of legal, moral and ethical debate in India. The concept of passive euthanasia involves withholding or withdrawing medical treatment or life-support measures from a terminally ill patient, with the intent of allowing the patient to die a natural death. In India, the legal position on passive euthanasia has undergone significant changes in recent years. In 2018, the Supreme Court of India recognized the right to die with dignity as a fundamental right under the Constitution of India. The court also upheld the validity of passive euthanasia and laid down detailed guidelines for its implementation. The court's decision was based on the principle of autonomy and the right to self-determination of an individual.¹ The concept of waiver is an important aspect of passive euthanasia in India. The doctrine of waiver provides that a person can waive his/her right to life and allow passive euthanasia to be carried out in the event of a terminal illness. This doctrine has been recognized by the courts in India and has been used to allow passive euthanasia in certain cases. In this paper, we will explore the legal position on passive euthanasia in India and the application of the doctrine of waiver in such cases.

What is Passive Euthanasia?

Passive euthanasia is a type of euthanasia where medical treatment or life support measures are withheld or withdrawn from a patient who is terminally ill, with the intention of allowing

¹ *Common Cause (A Regd. Society) v. Union of India & Anr.* (2018).



the patient to die naturally. The term "passive" distinguishes it from "active euthanasia," which involves taking active steps to end a patient's life, such as administering lethal drugs.

Passive euthanasia is often used in cases where a patient is suffering from an incurable or irreversible medical condition and is unlikely to recover. In such cases, the continuation of medical treatment or life support measures may only prolong the patient's suffering without providing any meaningful benefit.

The legality of passive euthanasia varies across different countries and jurisdictions. In India, the Supreme Court has recognized the validity of passive euthanasia in certain circumstances, subject to strict guidelines.

Passive euthanasia is often a controversial topic, with ethical and moral considerations being at the forefront of the debate. Proponents argue that allowing a terminally ill patient to die with dignity is a compassionate act, while opponents argue that it is a violation of the sanctity of life.²

Passive euthanasia is a highly debated topic globally and is defined as the process of withholding or withdrawing life-sustaining treatment from a terminally ill patient, leading to their natural death. This is different from active euthanasia, where a person takes affirmative steps to end another person's life.

The debate around passive euthanasia is based on the ethical, moral, and legal considerations involved. Some argue that it is a compassionate act to allow terminally ill patients to die with dignity, free from pain and suffering, while others argue that it goes against the principles of medical ethics, which require healthcare providers to preserve life at all costs.

In India, the legal position on passive euthanasia has evolved over the years. In 2018, the Supreme Court of India recognized the right to die with dignity as a fundamental right under the Indian Constitution and upheld the legality of passive euthanasia. The court laid down detailed guidelines for the implementation of passive euthanasia, requiring a committee of medical professionals to make the decision, and ensuring that the patient's wishes are taken into account.

The concept of informed consent is critical to the decision-making process in passive euthanasia. Informed consent refers to the process of ensuring that the patient fully understands the nature of their condition, the available treatment options, and the possible consequences of each option. The patient must also be informed of their right to refuse treatment and make an informed decision about their care.

² Ranjan, M., & Mehta, Y. (2018). Euthanasia: An Indian Perspective. *Indian Journal of Anaesthesia*, 62(10), 741–748.



The debate around passive euthanasia is likely to continue, and the legal, moral, and ethical implications will need to be considered carefully. As medical technology advances, the boundaries between life and death become increasingly blurred, making it even more important to have a clear and informed understanding of passive euthanasia.³

Legal Position on Passive Euthanasia in India

The legal position on passive euthanasia in India has evolved over the years. In 2011, the Supreme Court of India delivered a landmark judgment in the Aruna Shanbaug case, which held that passive euthanasia could be allowed under certain circumstances, such as in cases where the patient is in a vegetative state with no hope of recovery.

Subsequently, in 2018, the Supreme Court of India passed another landmark judgment in the Common Cause v. Union of India case, in which it recognized the right to die with dignity as a fundamental right under the Indian Constitution. The court held that passive euthanasia is permissible in certain circumstances, subject to strict guidelines and safeguards.

The court laid down detailed guidelines for the implementation of passive euthanasia, requiring a committee of medical professionals to make the decision, and ensuring that the patient's wishes are taken into account. The guidelines also require that the decision to withhold or withdraw treatment must be based on informed consent, and that the decision-making process must be transparent and accountable.

The Supreme Court's judgment in the Common Cause case has been widely welcomed by medical professionals, patients' rights groups, and legal experts, as it provides much-needed clarity on the legal position on passive euthanasia in India.⁴

Doctrine of Waiver in Passive Euthanasia in India

The doctrine of waiver is a legal principle that allows an individual to voluntarily waive their legal rights. In the context of passive euthanasia, the doctrine of waiver allows terminally ill patients to waive their right to life-sustaining treatment, and thereby consent to passive euthanasia.

In the landmark judgment in the Common Cause v. Union of India case, the Supreme Court of India recognized the doctrine of waiver in the context of passive euthanasia. The court held that terminally ill patients who are of sound mind and capable of making an informed decision have the right to refuse medical treatment, including life-sustaining treatment, and consent to passive euthanasia.

³ Dhingra, R., & Kaur, H. (2017). Passive Euthanasia in India: A Legal and Ethical Dilemma. *Journal of Clinical and Diagnostic Research*, 11(10), LE01–LE03.

⁴ *Supra* 2.

The court emphasized that the decision to waive the right to life-sustaining treatment must be based on informed consent, and must be made voluntarily and without coercion. The court also held that the decision-making process must be transparent and accountable, and that the patient's wishes must be taken into account.

The doctrine of waiver is an important legal principle in the context of passive euthanasia, as it allows patients to make an informed decision about their end-of-life care, and to die with dignity.

What is the Doctrine of Waiver?

The doctrine of waiver is a legal principle that recognizes an individual's right to waive their legal rights voluntarily. In the context of passive euthanasia, the doctrine of waiver allows terminally ill patients to waive their right to life-sustaining treatment, such as ventilators, dialysis, or feeding tubes. This principle is based on the idea of patient autonomy, which emphasizes the importance of patients making their own choices about their medical treatment.

The doctrine of waiver is particularly relevant in cases of passive euthanasia because it allows patients to make a decision about their own treatment options when they are no longer able to express their wishes due to their medical condition. It recognizes that patients have the right to choose the kind of medical care they receive, even if that means choosing to forego life-sustaining treatment.

The doctrine of waiver operates on the principle that the patient is the best judge of their own interests and is in the best position to determine what medical treatment they should receive. By waiving their right to life-sustaining treatment, the patient is making a choice about the kind of medical care they receive and the manner of their death. This choice is based on their own values, beliefs, and preferences, and the doctrine of waiver recognizes and respects that choice.

In summary, the doctrine of waiver is a legal principle that recognizes the right of an individual to waive their legal rights voluntarily. In the context of passive euthanasia, the doctrine of waiver allows terminally ill patients to make an informed decision about their medical treatment options and to choose whether to forego life-sustaining treatment.⁵

Application of Doctrine of Waiver in Passive Euthanasia

⁵ Ranjan, M., & Mehta, Y. (2018). Euthanasia: An Indian Perspective. *Indian Journal of Anaesthesia*, 62(10), 741–748.



B. The application of the doctrine of waiver in passive euthanasia is based on the principle of informed consent. Informed consent requires that the patient be of sound mind and capable of making an informed decision. It also requires that the decision to waive the right to life-sustaining treatment be made voluntarily and without coercion. The decision must be based on a clear understanding of the consequences of the decision, including the risks and benefits of the different treatment options.

The principle of informed consent is crucial in cases of passive euthanasia because it ensures that the patient is making a voluntary and informed decision about their medical treatment options. The decision-making process must be transparent and accountable, and the patient's wishes must be taken into account.

The Indian Supreme Court has recognized the doctrine of waiver in the context of passive euthanasia and has laid down detailed guidelines for the implementation of passive euthanasia. These guidelines include the requirement for a committee of medical professionals to make the decision about whether to withhold life-sustaining treatment from a patient. The committee must include a medical superintendent, a treating doctor, and two independent medical experts.

The guidelines also require that the patient's wishes be taken into account when making the decision about whether to withhold life-sustaining treatment. The patient's wishes must be expressed clearly and unambiguously, and the decision to waive the right to life-sustaining treatment must be made voluntarily and without coercion.

In summary, the application of the doctrine of waiver in passive euthanasia is based on the principle of informed consent. It requires that the patient be of sound mind and capable of making an informed decision, and that the decision be made voluntarily and without coercion. The patient's wishes must be taken into account, and the decision-making process must be transparent and accountable.⁶

CONCLUSION

Passive euthanasia is a complex and controversial issue that raises important ethical and legal questions. In India, the legal position on passive euthanasia has evolved over the years, with the Supreme Court providing detailed guidelines for its implementation. The doctrine of waiver plays a critical role in the implementation of passive euthanasia, as it recognizes the patient's right to choose their own medical treatment options.

The doctrine of waiver allows terminally ill patients to make an informed decision about their medical treatment options and to choose whether to forego life-sustaining treatment. It

⁶ Common Cause v. Union of India, Writ Petition (C) No. 215 of 2005 (Supreme Court of India 2018)

operates on the principle of patient autonomy, which emphasizes the importance of patients making their own choices about their medical treatment. The doctrine of waiver requires that the patient be of sound mind and capable of making an informed decision, and that the decision be made voluntarily and without coercion. The patient's wishes must be taken into account, and the decision-making process must be transparent and accountable.

Overall, the doctrine of waiver is a crucial legal principle that recognizes the right of terminally ill patients to make informed decisions about their medical treatment options. Its application in cases of passive euthanasia ensures that patients are able to make a voluntary and informed decision about their end-of-life care, based on their own values, beliefs, and preferences.

REFERENCES

1. Common Cause (A Regd. Society) v. Union of India & Anr. (2018).
2. Ranjan, M., & Mehta, Y. (2018). Euthanasia: An Indian Perspective. *Indian Journal of Anaesthesia*, 62(10), 741–748.
3. Dhingra, R., & Kaur, H. (2017). Passive Euthanasia in India: A Legal and Ethical Dilemma. *Journal of Clinical and Diagnostic Research*, 11(10), LE01–LE03.
4. Supra 2
5. Ranjan, M., & Mehta, Y. (2018). Euthanasia: An Indian Perspective. *Indian Journal of Anaesthesia*, 62(10), 741–748.
6. Common Cause v. Union of India, Writ Petition (C) No. 215 of 2005 (Supreme Court of India 2018)