



RESEARCH PAPER OF EUTHANASIA WITH SPECIAL REFERENCE TO COMMON CAUSE V. UNO AIR 2018

Dr. Kailash kumar kurmi

Assistant Professor, Law Centre-2, Faculty of Law, University of Delhi

INTRODUCTION

Euthanasia, the meaning of which is “painless killing of a patient suffering from an incurable and painful disease with assistance by the medical professionals” has been a debated subject throughout the world. It is called Assisted Suicide because suicide is committed with the aid and assistance of others. Countries like Switzerland, Germany, Japan and some states in the United States of America permit assisted suicide while the nations like Mexico and Thailand recognise it illegal.

On 9th march, hon’ble Supreme Court in *Common Cause v. Union of India Air 2018*¹, ruled that Passive Euthanasia is legal and allowed the ‘living will’ for the same. Although passive euthanasia under special circumstances was already made legal in 2011 in *Aruna Shanbaug v. Union of India*.²

There are two types of Euthanasia one being the Active while another is Passive. Passive Euthanasia means letting a patient die who is terminally-ill or in a vegetative state depending completely on life support and cannot live without medical treatment. So, that medical support is withdrawn. While Active Euthanasia refers to actively ending the life of a terminally-ill patient.

Now the question is, can a terminally-ill patient decide as when he has to die. The answer is no. Because this will be called Active Euthanasia. What he can do is to ‘write a living will’ which should explain that when he reaches irreversible stage where one is only alive because of medical support, you want doctor to pull the plug and let you die.

Further the question comes what is the living will. ‘Living Will’ is a document that a patient writes in his normal state of mind seeking passive euthanasia if he reaches an irreversible vegetative state in case of permanent illness’. Supreme Court has legalized this living for passive euthanasia.

It becomes further important to understand three classes of Euthanasia i.e., Voluntarily, Non-Voluntarily and Involuntarily. Voluntarily euthanasia means euthanasia performed with patient’s consent. Non-Voluntarily euthanasia means euthanasia performed on patients unable to give the consent such as minors, insane, idiot etc. Involuntarily euthanasia means euthanasia performed on a patient against his will.

Voluntarily euthanasia for passive consent is legal whereas involuntarily euthanasia is illegal. Now the question comes about the non-voluntarily euthanasia which can only be performed by fulfilling the advances medical directives laid down by the Supreme Court in *Common Cause v. Union of India AIR 2018*.

Advance Medical Directives requires that the decision to discontinue the life support of the patients who have gone to permanent vegetative state ‘without making a living will’ can only be taken by the parents, spouse, other close friends and in absence of any of them by the next friends. It can also be taken by a panel of doctors. However, the decision requires approval from the concerned high court.



What if there is no Living Will?

The procedure and the safeguard must be the same as are applied in cases of Advance Medical Directives with certain additional requirements or conditions. The additional requirements are that doctors may inform the hospital which in turn shall constitute a Medical Board which shall discuss the condition of the patient with the family physician as well as the family members and record the minutes of the discussion in writing.

The family members shall be apprised with pros and cons of withdrawing or refusing the further medical treatment to the patient and if they give consent in writing, then the Hospital Medical board shall certify a course of action to be taken.

FURTHER COURSE OF ACTION TO BE TAKEN BY THE HOSPITAL

Hospital shall inform the jurisdictional District Magistrate who shall then constitute a Medical Board comprising the Chief District Medical Officer as the chairman and three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care.

If the board approves withdrawal of the life support, intimation shall be given to JMFC and the family members of the patient. Further the Magistrate shall verify the medical reports, examine the condition of the patient and discuss the same with the family members and if satisfied in all respects, he may endorse the same to the Medical Board.

IN CASE OF CONFLICTING OPINIONS

The nominee of the patient or the family members or treating doctor or the hospital staff can seek permission from the High Court to withdraw life support.

The High Court then can constitute an independent Committee of doctors. The High Court in such cases shall render its decision at the earliest, ascribing reasons specifically keeping in mind the principle of **“best interests of the patient”**

PREVIOUS STANCES OF THE SUPREME COURT ON EUTHANASIA

1996-Supreme Court in *Gian Kaur v. State of Punjab*⁴ held that both Euthanasia and assisted suicide are not legal in India. It further held that right to life under Article 21 of the Constitution does not include right to die.

2011-Supreme Court in *Aruna Shanbaug v. Union of India*⁵ held that passive euthanasia can be allowed under exceptional circumstances under strict monitoring

2014- A three judge Bench of the Supreme Court termed the judgment in *Aruna Shanbaug* case to be ‘inconsistent in itself’ and referred the issue of euthanasia to its five-judge constitutional Bench.

2018- A constitutional Bench, led by former chief justice of India Dipak Mishra, upheld that the fundamental right to life and dignity includes ‘*right to refuse treatment and die with dignity*’ The fundamental right to a ‘*meaningful existence*’ includes a person’s choice to die without suffering.



LEGISLATIVE ACTION

The parliament has brought Medical Treatment of Terminally-Ill Patients (Protection of Patients & Medical Practitioners) Bill⁶ in line with the recommendation of the Law Commission of India. It states that the life support can be withdrawn for patients in persistent vegetative state or suffering from an irreversible medical condition. Though the draft is against the concept of Living will.

EUTHANASIA WORLDWIDE

Netherlands was the first country to recognise euthanasia. Today euthanasia is legal in Belgium, Colombia, Luxembourg, Canada and India. Whereas Assisted Suicide is legal in Switzerland, Germany, Japan and some states of the United States.

Justice Chandrachud observed that *“Modern medical science should balance its quest to prolong life with need to provide patients quality of life. One is meaningless without the other.”*⁷

OPINION OBTAINED ON EUTHANASIA THROUGH SURVEY

This chapter is based on the survey conducted with the students of Law to extract their views on Euthanasia. The Primary data is collected through a structured questionnaire. It was distributed to people from different professional background that includes students, teachers, advocates, govt. employees, business and judges. These respondents include men and women of different age groups and different streams of the society. The questionnaire contained 10 close-ended and 1 open-ended questions to evaluate different perspective and their view on Euthanasia.

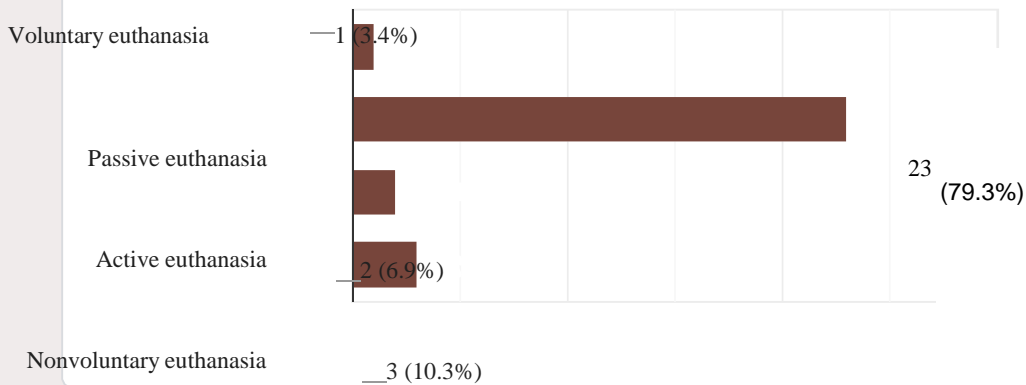
The survey was created to obtain the opinion of the public on Euthanasia within a targeted domain. While the survey included 10 closed ended questionnaires, respondents were given one open ended question to express their views freely on Euthanasia.

Therefore, the following charts and columns showed three different categories: Educational qualification, Gender and Profession, providing views on euthanasia from different age, profession and gender groups concerning their understanding towards the subject.

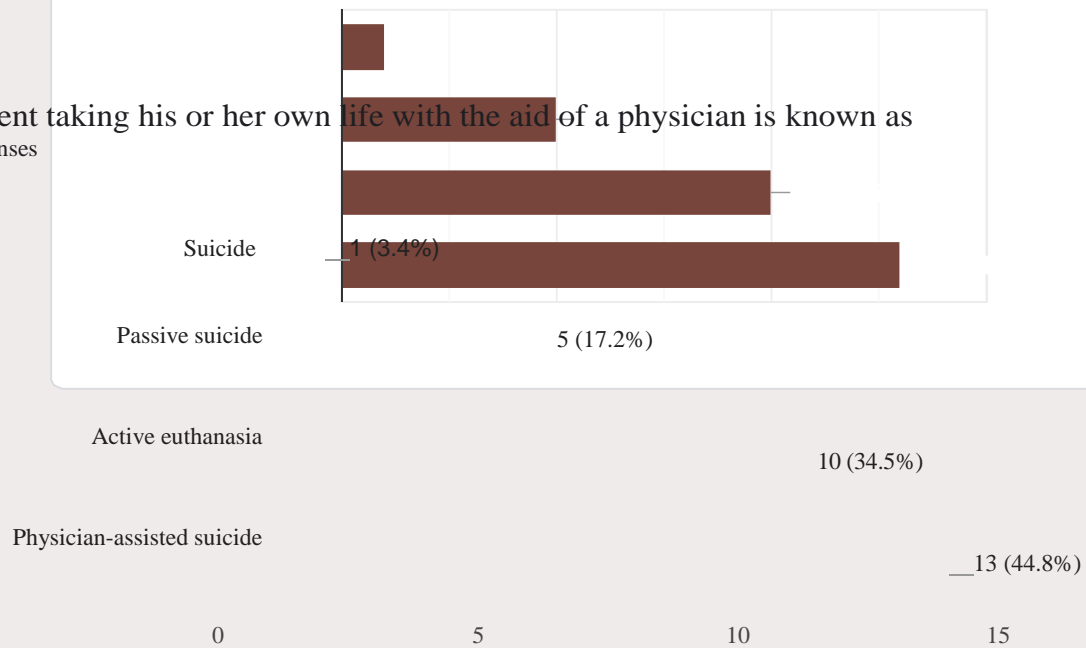
A collection of 29 responses have been attached below via graphical presentation.



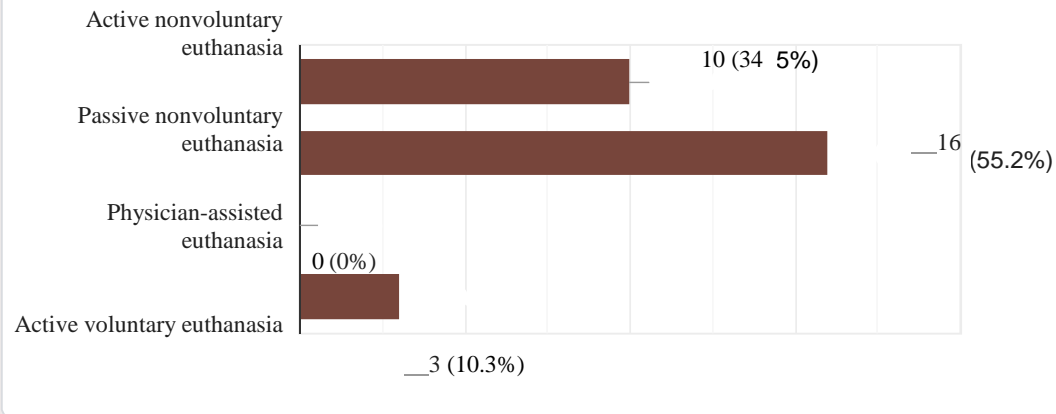
Allowing someone to die by not doing something that would prolong life is called?
29 responses



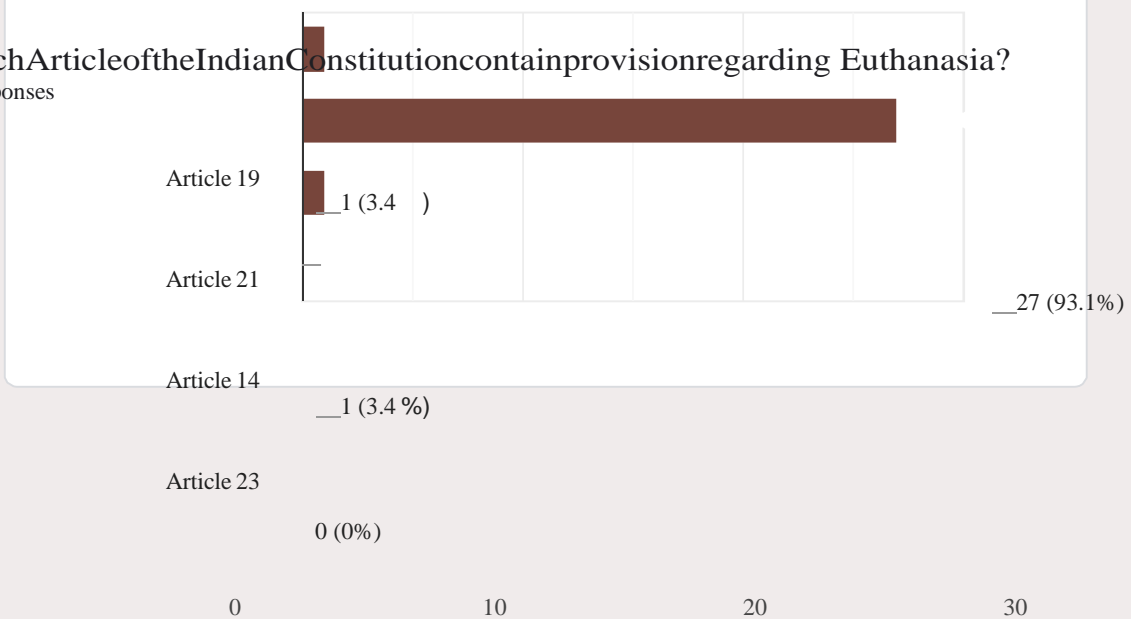
A patient taking his or her own life with the aid of a physician is known as
29 responses



Withholding or withdrawing life-sustaining measures without the consent of the patient is known as
 29 responses



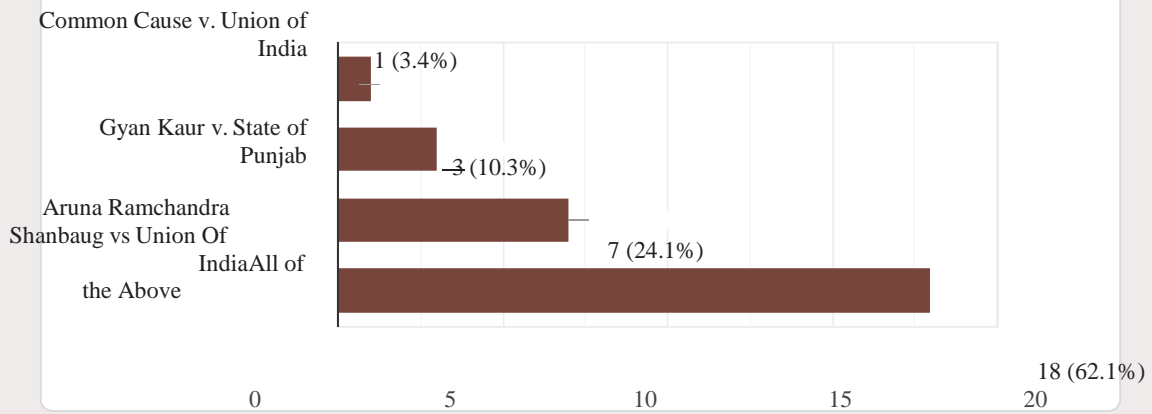
Which Article of the Indian Constitution contains provision regarding Euthanasia?
 29 responses





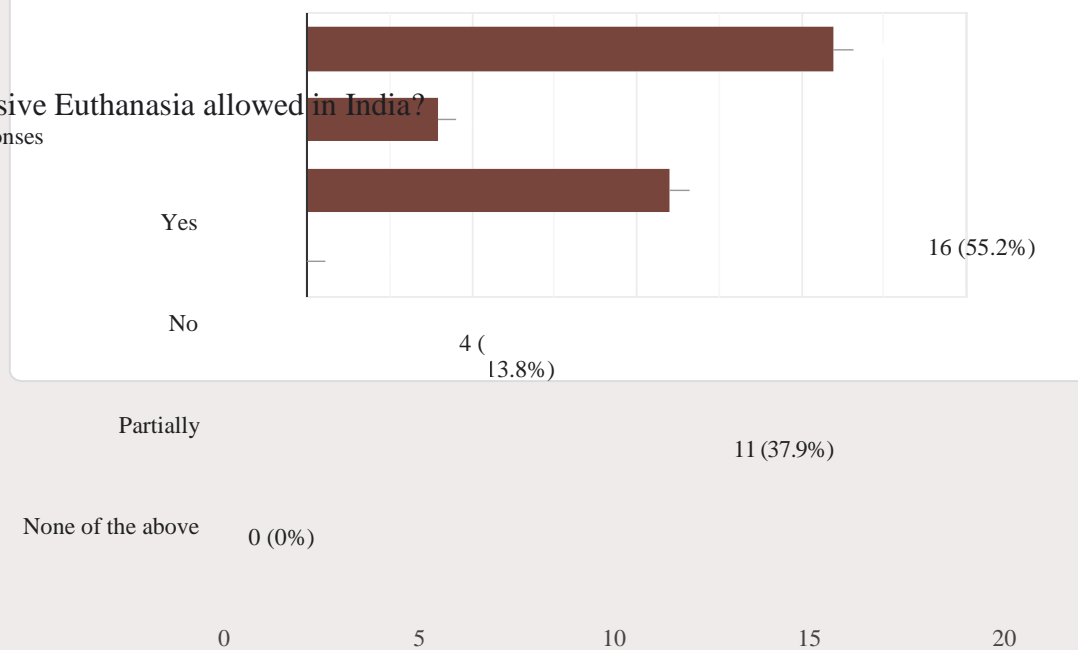
Which of the following case is related to Euthanasia?

29 responses



Is Passive Euthanasia allowed in India?

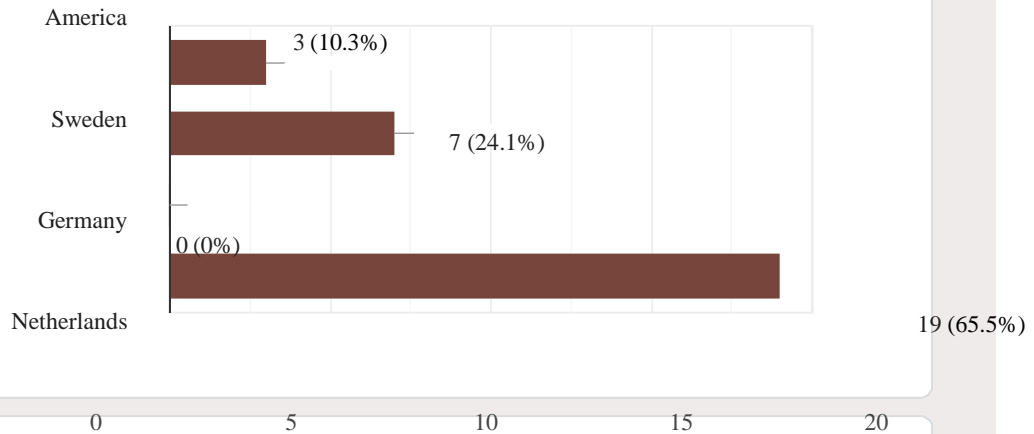
29 responses





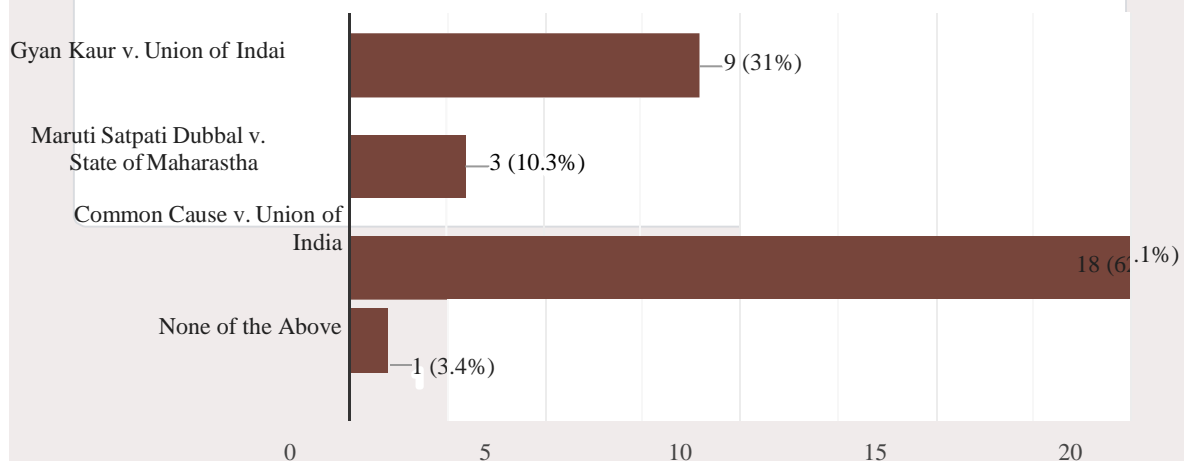
Which was the first country of the world to legalize euthanasia?

29 responses



In which case, hon'ble Supreme Court of India laid guidelines regarding advanced medical directives?

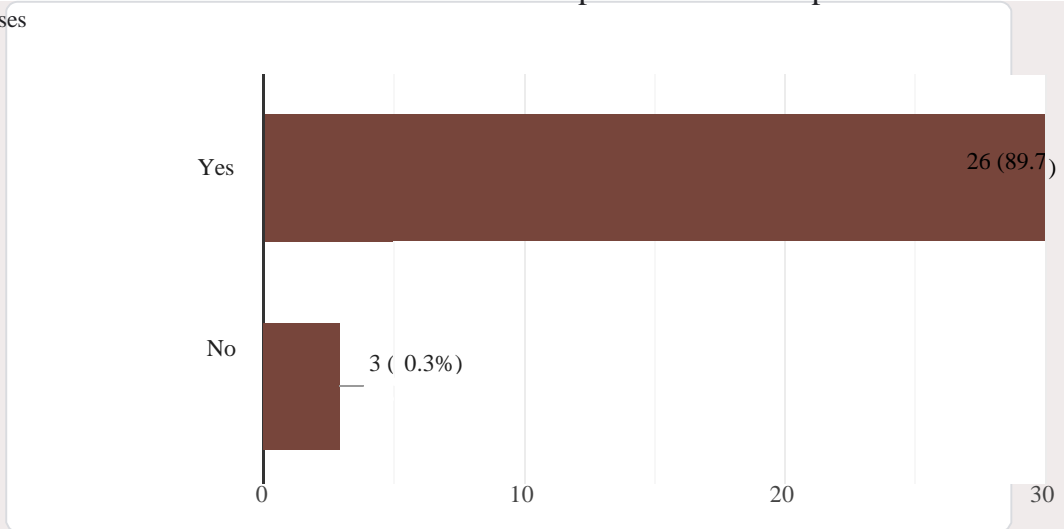
29 responses





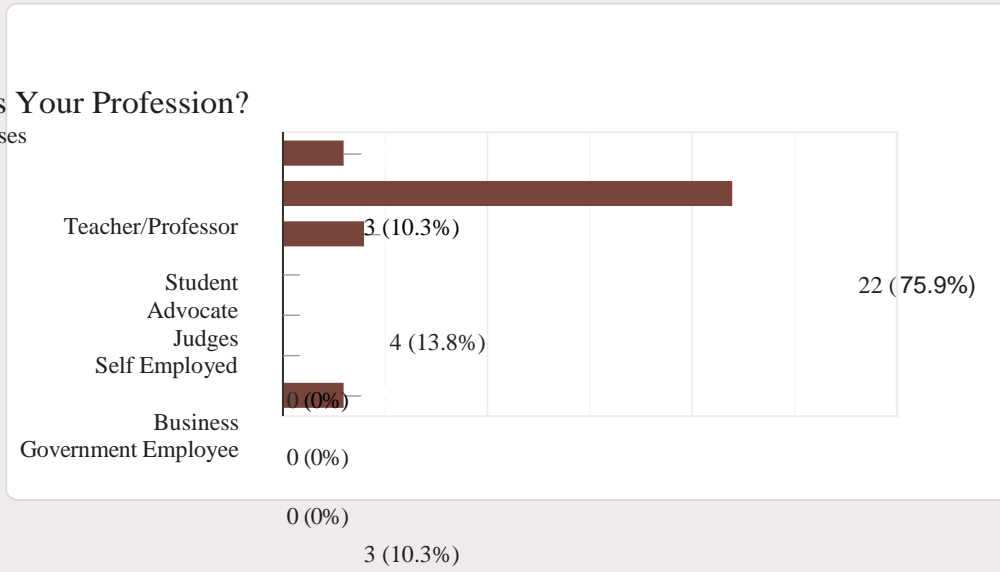
Should Euthanasia be allowed as a means to end the painful life of the patients?

29 responses



What is Your Profession?

29 responses





PROBLEM BASED ANALYSIS

The first question that I as a researcher observed is that most of the people who are not familiar with the Law or the similar profession are unaware about the Euthanasia. Secondly, it was observed that Indian society is structured in such a way that the people are emotionally attached to each other. Even after explaining them about the Euthanasia, majority of them didn't favour euthanasia as they considered it as against their moral duty, sonhood, brotherhood and so on. Thirdly, the problem of euthanasia is associated with the practices which is very new to India and people are not yet ready to accept it as a means to end the suffering of their loving and caring one. Fifthly, it is often observed that if anything is practiced for a long with continuity then it becomes a trend and society starts recognizing it as a custom or law and the concept of euthanasia is new to Indian Society. Sixthly, Indian society is not ready to accept it due to lack of education and awareness amongst the people. Seventhly, the process of euthanasia is not easy which also creates complications among the general people.

CONCLUSION

For the time being, euthanasia will remain just a topic of discussion and debate but gradually as the society will move forward and new development will be brought by science and technology, it will definitely play a major role in the medical history. Currently, where a section of society recognises euthanasia while others do not even understand it. The survey conducted was mostly with the legal professionals so they have favoured euthanasia. But when I discussed it with the other groups of non-legal background, their responses were mixed and majority of them didn't support the euthanasia. Change will come with the changing time and circumstances.

References

- [1] <https://indiankanoon.org/doc/184449972/>
- [2] <https://indiankanoon.org/doc/235821/>
- [3] <https://www.tribuneindia.com/news/archive/nation/sc-lays-down-detailed-guidelines-for-living-will-555324#:~:text=in%20the%20verdict,-,The%20person%20making%20a%20living%20will%20has%20to%20be%20an,Magistrate%20in%20front%20of%20witnesses.>
- [4] <https://www.judicere.in/smt-gian-kaur-v-the-state-of-punjab/>
- [5] <https://www.lawctopus.com/academike/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/>
- [6] <http://164.100.47.4/billstexts/lbilltexts/asintroduced/2656.pdf>
- [7] <https://aishwaryasandeep.com/2021/06/03/right-to-life6/>