A

DISSERTATION ON

AN ANALYTICAL STUDY OF EUTHANASIA IN INDIA WITH REFERENCE TO ARUNA SHANBAUG'S CASE

SUBMITTED IN THE PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE DEGREE OF

MASTER OF LAW

SUBMITTED BY

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L.L.M. 1 YEAR COURSE

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UNDER THE GUIDENCE OF

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CERTIFICATE

This is to certify that the entire work embodied in the practical paper titled AN ANALYTICAL STUDY OF EUTHANASIA IN INDIA WITH REFERENCE TO ARUNA SHANBAUG'S CASE has been carried out by RUCHA DHANANJAY KULKARNI under my supervision and guidance in the Department of Law, New Law College, Bharati Vidyapeeth Deemed University, Pune for the L.L.M. 1 YEAR Course.

Place:-Pune

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(ResearchGuide)

DECLARATION

I hereby declare that the entire work embodied in the practical paper titled AN ANALYTICAL STUDY OF EUTHANASIA IN INDIA WITH REFERENCE TO ARUNA SHANBAUG'S CASE is written by me and submitted to New Law College, Bharati Vidyapeeth University,Pune. The present work is of original nature and the conclusions are based on the data collected by me. To the best of my knowledge this work has not been submitted previously, for the award of any degree or diploma, to this or any other university.

Place: Pune

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RUCHA D. KULKARNI

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Place: Pune

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RUCHA D. KULKARNI

L.L.M. (1 YEAR)

TABLE OF ABBREVIATIONS

A.I.R.……All India Reporters

All Cr R.……...All India Criminal

All LJ……...All India Law Journal

Cr L.J……...Criminal Law Journal

Cri.……Crime

Crim. L.R.…….Criminal Law Review

Del.……Delhi

Edi.……....Edition

S.C.……Supreme Court

S.C.D.……Supreme Court Division

S.C.J…….Supreme Court Journal

IPC……....Indian Penal Code

Cr P.C……...Criminal Procedure Code

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32. Re C (Adult: Refusal of Medical Treatment), 1994 (1) All ER 819
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34. NHS Trust v. S 1994 (2) All ER 403(CA).
35. Ms. B v. An NHs Hospital Trust 2002 EWHC 429.
36. Re S (Adult Patient: Sterilization) 2001 Fam 15 (CA).
37. Re GF 1992 (1) FLR 293.
38. NHS Trust v. T (2004) EWHC 1279; Doncaster & Basset Law Hospitals NHS Trust v. C, (2004) EWHC 1657.
39. Re (Adult: Refusal of Medical Treatment) 1992 (4) All ER 649.
40. Re MB (Medical Treatment) 1997 (2) 426.
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42. NHA Trust v. D, (2003) ESC 2793.
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1. INTRODUCTION to RESEARCH:

‘Research’, in simple terms, can be defined as ‘systematic investigation towards increasing the amount of human knowledge’ and as a ‘process’ of identifying and investigating a ‘fact’ or a ‘problem’ with a view to acquiring an insight into it or finding an apt solution therefore. An approach becomes systematic when a researcher follows certain scientific methods.

In this context, legal research may be defined as ‘systematic’ discovery of law on a particular point and making advancement in the science of law. However, the finding of law is not so easy. It involves a detailed study and research of legal materials, statutory, subsidiary and judicial pronouncements. For making advancement in the science of law, one needs to go into the ‘underlying principles or reasons of the law’. These activities warrant a methodical approach. A scientific method needs to be applied by the researcher. So, writing is just an instrument of communicating the researcher's findings and conclusions to the audience or readers, or consumers of the research product.

Writing a critical work is not an easy job as it requires continuation. It is the integral part of the research process. It should start soon after the commencement of the research project, and continue to and beyond its completion. It begins as soon as you start thinking about and reading around your research. Finally, the researcher has to prepare the report of what has been done by him/her.

The topic of my dissertation is ‘An analytical study of Euthanasia in India with reference to Aruna shanbaug’s case’. The word ‘Euthanasia’ is a derivative from the Greek words ‘eu’ and ‘thanotos’ which literally mean “good death”. It is otherwise described as mercy killing. The death of a terminally ill patient is accelerated through active or passive means in order to relieve such patient of pain or suffering. It appears that the word was used in the 17th Century by Francis Bacon to refer to an easy, painless and happy death for which it was the physician’s duty and responsibility to alleviate the physical suffering of the body of the patient. The House of Lords Select Committee on ‘Medical Ethics’ in England defined Euthanasia as “a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering”. The European Association of Palliative Care (EPAC) Ethics Task Force, in a discussion on Euthanasia in 2003, clarified that “medicalised killing of a

person without the person's consent, whether non-voluntary (where the person in unable to consent) or involuntary (against the person's will) is not euthanasia: it is a murder. Hence, euthanasia can be only voluntary".

We are here concerned with analytical study of euthanasia in India. The study is highlighted with reference to the decision of the Supreme Court of India in *Aruna Ramachandra Shanbaug vs. Union of India*. Active euthanasia involves putting down a patient by injecting the him with a lethal substance e.g. Sodium Pentothal which causes the patient to go in deep sleep in a few seconds and the person dies painlessly in sleep. Thus it amounts to killing a person by a positive act in order to end suffering of a person in a state of terminal illness. It is considered to be a crime all over the world (irrespective of the will of the patient) except where permitted by legislation, as observed earlier by the Supreme Court. In India too, active euthanasia is illegal and a crime under Section 302 or 304 of the IPC. Physician assisted suicide is a crime under Section 306 IPC (abetment to suicide)[1]. **Passive euthanasia,** otherwise known as 'negative euthanasia', however, stands on a different footing. It involves withholding of medical treatment or withholding life support system for continuance of life e.g., withholding of antibiotic where by

[1] *Ibid* at 481

doing so, the patient is likely to die or removing the heart–lung machine from a patient in coma. Passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained (*vide para 39 of SCC in Aruna's case*). The core point of distinction between active and passive euthanasia as noted by the Supreme Court is that in active euthanasia, something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. To quote the words of learned Judge in *Aruna's case,* about passive euthanasia, "the doctors are not actively bringing about death of anyone; they are simply not saving him". The Court graphically said "while we usually applaud someone who saves another person's life, we do not normally condemn someone for failing to do so". The Supreme Court pointed out that according to the proponents of Euthanasia, while we can debate whether active euthanasia should be legal, there cannot be any doubt about passive euthanasia as "you cannot prosecute someone for failing to save a life".

Passive euthanasia is further classified as voluntary and non-voluntary. Voluntary euthanasia is where the consent is taken from the patient. In non voluntary euthanasia, the consent is unavailable. When a person ends his life by his own act it is called "suicide" but to end life of a person by others though on

the request of the deceased is called “euthanasia” or “mercy killing”. We can ask the question about the attitude towards the annihilation of life viewed by different religions like Hindu, Muslim, Christian and Sikh. Though the purpose of suicide and euthanasia is same i.e., self-destruction but there is a clear difference between the two. The discussion will include the legal position in India i.e., the foundation document- the Constitution of India, the Indian Penal Code and other laws in vogue, so also the position of different countries of the world. Although the Supreme Court has already given its decision on this point but still we can touch all the features of the issue which we need to analyze carefully.

2. HYPOTHESIS OF THE RESEARCH:-

'Hypothesis' is derived from two words: '*hypo*' means 'under', and 'thesis' means an 'idea' or 'thought'. Hence, hypothesis means 'idea' underlying a statement or proposition.

The Hypothesis is as follows:

- Euthanasia is a conflict between Life and Death.
- Though the Indian Constitution grants equality to everyone, either ill or healthy but in the context of Euthanasia it does not permit to avail voluntary death.
- Indian law is based on 'Ahinsa'. Voluntary death is taken as an attempt to suicide leading to criminal offence and has been subjected to criticism, vilification and condemnation.
- Passive euthanasia, which is allowed in many countries, has legal recognition in India.
- When someone unconscious or of unsound mind and is a terminally sick patient passive euthanasia can be lawfully granted without his consent.

3. OBJECTIVES AND AIMS OF THE RESEARCH

Research is undertaken with a view to arrive at a statement of generality. Generalizations drawn from the study have certain effects for the established corpus of knowledge. It may add credence to the existing accepted theory or bring certain amendments or modifications in the accepted body of knowledge.

The discovery of truth is the foremost object of any research. The researcher acquires knowledge from the research made or prepared by him/her. It is source of acquiring knowledge or establishing the truth about a particular thing or object. One of the objectives of research is to gain familiarity with a phenomenon or to achieve new insights into it.

Thus the objectives of the present research are as follows;

- The main goal of the research is to know about the conventions about euthanasia
- To study the legislation in some countries relating to euthanasia
- To study and understand the meaning of brain death
- To study and analyze Euthanasia in the intentional premature termination of another person's life either by direct intervention (active euthanasia) or by withholding

life-prolonging measures and resources (passive euthanasia), either at the express or implied request of that person (voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia).

- To study the principle of Causing the death of a person, who is in a permanent vegetative state with no chance of recovery, by withdrawing artificial life-support is only an ‘ omission (of support to life) and not an act of killing’

4. IMPORTANCE OF THE RESEARCH:-

This research will be important from the following point of view…

A) Social Welfare:-

Social welfare can be achieved through socio-legal research. This research being of socio-legal significance helps us to judge the magnitude of social evils of euthanasia.

B) Comparative Study:-

As we know that legislature considers the law prevailing in other countries at the time of law making. This research is important to find out what the law is in other countries.

C) Law Reforms:-

There are various tools for law reforms. Research is an important tool for any project of law reform. So this research may be important from the point of view of law reforms in relation to Euthanasia.

D) Effectiveness:-

This research will be helpful in laying down effective policies and principles to make the law on euthanasia an effective instrument in protecting miss organization of in the machinery engaged.

5. SELECTION OF RESEARCH WITH REASONING:-

The researcher has selected this research problem as it has a vested social interest. Following are the reasons for selection of this research problem:

1) The problems are worth studying and hence need a focused study.

2) This research problem has social and legal significance.

3) The researcher has interest and intellectual curiosity in the topic.

4) This research is of practical importance.

5) This research problem requires solution on complex issues involved.

6) Availability of resources, literatures, articles helps me in selecting this research problem.

7) This research problem may furnish a basis for future study.

8) This research problem may meet out social needs of the concerned parties.

6. SCOPE OF RESEARCH:-

Euthanasia has its pros and cons. It is discussed country wide. The awareness required for the subject must be extensive and needs studious approach. Unfortunately it is minimal on national front; therefore the scope of the research problem is limited to Indian scenario.

The judiciary is the most functional body on the subject. Supreme Court has acknowledged the distinction between the "act of killing" and "not saving one's life". Accordingly, the court also emphasized two distinct types of Euthanasia: Active Euthanasia and Passive Euthanasia.

This research also extends to…

A) The constitutional provisions.

B) The Indian penal code

C) International perspectives of euthanasia.

The research being a socio legal research is also useful in changing society's view. Many complex issues can be addressed through this. The needs of every party involved can be recognized.

6. RESEARCH METHODOLOGY: -

Legal research can be classified in various ways. It can be divided on the basis of nature of data collection, interpretation of already available data, tools of data connection, purpose and other such criteria.

The purposive research is divided as:-

1. Empirical i.e. Non-doctrinal and

2. Non-empirical i.e. Doctrinal

For the purpose of this research problem researcher has selected doctrinal research methodology as many things can only be studied in empirical conditions. Being a social issue the research has got the status of socio legal research. Hence, the researcher thinks doctrinal method will hold the research in proper manner. Researcher has studied the relevant literature available in books, case laws and Internet.

Research Methodology is a systematized investigation to gain new knowledge about the phenomena or problems. But in its wider séance 'Methodology' includes the philosophy and practice of the whole research process. Euthanasia with reference to Aruna Shanbaug's case provides standards. The researcher has used the following sources for the research.

1. All India Reporters,

2. Law Journals,
3. Articles, Essays, and Case Laws on the research problems, and
4. News Papers.

CHAPTERISATION:

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CHAPTER 1
INTRODUCTION
1.1 Introduction

Euthanasia and its procedure entail complicated issues regarding legal and procedural compliance in countries across the world. Every adult of sound mind has a right to determine what should be done with his/her person. It is unlawful to administer treatment on an adult who is conscious and of sound mind, without his consent. Patients with Permanent Vegetative State (PVS) and no hope of improvement can not make decisions about treatment to be given to them. It is ultimately for the Court to decide, as parens patriae, as to what is in the best interest of the patient. An erroneous decision not to terminate results in maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient's intent, changes in the law, or simply the unexpected death of the patient despite the administration of life-sustaining treatment, at least

create the potential that a wrong decision will eventually be corrected or its impact mitigated.

Every human being desires to live and enjoy the life till he dies. But sometimes a human being wishes to end his life in the manner he chooses. To end one's life in an unnatural way is a sign of abnormality. When a person ends his life by his own act we call it "suicide" but to end a person's life by others on the request of the deceased, is called "euthanasia" or "mercy killing".

Euthanasia is mainly associated with people with terminal illness or who have become incapacitated and don't want to go through the rest of their life suffering. A severely handicapped or terminally ill person supposed to have the right to choose between life and death. This right of a patient with terminal illness can not be equated with an able bodied, sane person's right. Euthanasia is a controversial issue which encompasses the morals, values and beliefs of our society.

Euthanasia has been a much debated subject throughout the world. The debate became increasingly significant because of the developments. In Netherlands, Belgium, Colombia and Luxembourg euthanasia is legal. Switzerland, Germany, Japan and some states in the United States of America permit assisted suicide while in nations like Mexico and Thailand it is illegal. In

India passive euthanasia is legal, while debate goes on about legalizing active euthanasia.

1.2 Meaning of Euthanasia

The term euthanasia comes from the Greece words “eu ”and “thanatos ”which means “good death”[2] or “easy death ”.It is also known as Mercy Killing. Euthanasia is the intentional premature termination of another person’s life either by direct intervention (active euthanasia) or by withholding life-prolonging measures and resources (passive euthanasia). It is either at the express or implied request of that person (i.e.,voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia).

According to Black’s Law Dictionary (8th edition) euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy. Encyclopedia of ‘Crime and Justice’, explains euthanasia as an act of death which will provide a relief from a distressing or intolerable

[2]Lewy G. 1. Assisted suicide in US and Europe. New York: Oxford University Press, Inc; 2011.

condition of living. Simply euthanasia is the practice of mercifully ending a person's life in order to release the person from an incurable disease, intolerable suffering, misery and pain of the life. Euthanasia can be defined as the administration of drugs with the explicit intention of ending the patient's life, at the patient's request. Euthanasia literally means putting a person to painless death especially in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap[3]. Euthanasia or mercy killing is the practice of killing a person for giving relief from incurable pain or suffering or allowing or causing painless death when life has become meaningless and disagreeable[4].In the modern context euthanasia is limited to the killing of patients by doctors at the request of the patient in order to free him of excruciating pain or from terminal illness. Thus the basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering.

1.3 Historical background of euthanasia

Well known historian N.D.A. Kemp talks about euthanasia's origin. He says that the contemporary debate on

[3]Dr. Parikh, C.K. (2006). Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology. 6th Edition, Page 1.55. Ne Delhi, CBS Publishers & Distributors.
[4]Nandy, Apurba. (1995). Principles of Forensic Medicine, 1st Edition, Page 38.Kolkata, New Central Book Agency (P) Ltd.

euthanasia started in 1870. The topic was discussed and practiced long before that. Euthanasia was practiced in Ancient Greece and Rome: on the island of Kea, hemlock a poisonous plant was in use as a means for quickening death, a technique also followed in Marseilles. The Greek philosophers Socrates and Plato supported euthanasia while Hippocrates disapproved it. He was against such practice which would lead to death of a person.

Euthanasia is not accepted in Judaism and Christian traditions. While criticizing the practice Thomas Aquinas says that it is against man's survival instinct. Mixed opinions on the matter demonstrate discord between arguing scholars.

Protestantism supported suicide and euthanasia while it was an accepted practice during the Age of Enlightenment. Every culture identifies and recognizes these terms from different approaches. Sometimes they are equated to sins, while on some instances they are recognized as acts of valor. There is a this line of difference between them.

In early 19th century this word came to be used in the sense of speeding up the process of dying and the destruction of so-called useless lives and today it is defined as deliberately ending the life of a person suffering from an incurable disease. Some are supportive of right to die. The argument against

euthanasia states that it is against ethical, moral and legal norms of our culture. All forms of euthanasia are considered homicide. It is difficult to show distinction between homicides and murder in complex cases. Ending one's life is not recognized as an abnormal practice in Ancient India. Hindu mythology describes the suicide by Lord Rama as Jal Samadhi. In the times of Lord Buddha it was called Maharparinirvaan. Similar was the case of Lord Mahaveer. Swatantraveer Savarkar and Acharya Vinoba Bhave renounced their lives resorting to Prayopavesa. It literally means resolving to die through fasting. Mahatma Gandhi also supported the idea of willful death. Scholars like these approved death by peaceful means.

Religions like Hinduism, Jainism and Buddhism recognize willful death. The concept has philosophical background. It talks about an endless circle of life and death and attaining salvation. The notion of ending the life after the purpose of the birth is fulfilled was accepted by these schools of thought. Hindu saint Dnyaneshwar concluded his mortal life after his work was over. Thus, trace of right to die existed in earlier times.

The western religion has always viewed euthanasia as dishonest exercise of divine privilege. Right from 5th century B.C. it has been the belief of Christians that every human owes his existence to the persons who have graciously brought him or

her into this world. Birth and death are part of the process of life which God has created. So, humans should respect them and, therefore, no human being has the authority to choose the time and manner of his death. Islam does not accept any kind of justification for the killing of person and thus euthanasia and suicide are prohibited in Islam.

1.3.1. Euthanasia- its meaning and Definition

Its meaning and definition 'Euthanasia' is a Greek word. It is a combination of two words eu-good or well and thanatos-death means 'to die well.' Thus, 'Euthanasia' is defined as the 'termination of human life by painless means for the purpose of ending physical suffering. Sometimes, euthanasia is also defined as killing a person rather than ending the life of a person who is suffering from some terminal illness, also called as 'mercy killing' or killing in the name of compassion.[5]

According to J.S. Rajawat, Euthanasia is putting to death a person who because of disease or extremely old age or permanent helplessness or subject to rapid incurable degeneration and cannot have meaningful life.[6] It may also be defined as the act of ending life of an individual suffering from a

[5] Angkina Saikia, Euthanasia 'Is It Right To Kill' or 'Right To Die', Cr LJ 356 (2012).
[6] J.S. Rajawat, Euthanasia, Cr 14 321 (2010).

terminal illness or incurable condition, by lethal injection or by suspension of life support.

1.3.2. Classification of Euthanasia

'Euthanasia' is the termination of an ailing person's life in order to relieve him of the suffering. In most cases, euthanasia is carried out because the person seeks relief and asks for it, but there are cases called euthanasia where a person can't make such a request. Broadly, Euthanasia may be classified according to whether a person gives informed consent under the following heads:

(a) Voluntary Euthanasia

(b) Non-Voluntary Euthanasia

(c) Involuntary Euthanasia

There is a dispute amid the medical and bioethical literature about whether or not the non-voluntary killing of patients can be regarded as euthanasia, irrespective of intent or the patient's circumstances. According to Beauchamp and Davidson consent on the part of the patient was not considered to be one of the criteria to justify euthanasia.[7] However, others see consent as essential.

[7] Beaucham Davidson, The Definition of Euthanasia, Journal Medicine and Philosophy, 294 (1979).

- Voluntary Euthanasia

When euthanasia is practiced with the expressed desire and consent of the patient it is called voluntary euthanasia. It is primarily concerned with the right to choice of the terminally ill patient who decides to end his or her life, choice which serves his/her best interest and also that of everyone else connected to him.

This includes cases of:

- Seeking assistance for dying
- Refusing heavy medical treatment
- Asking for medical treatment to be stopped or life support equipment to be switched off
- Refusal to eat or drink or deliberate fasting.

- Non Voluntary Euthanasia

It refers to ending the life of a person who is not mentally competent to make an informed decision about dying, such as a comatose patient. The case may happen in case of patients who have not addressed their wish of dying in their Wills or given advance indications about it. Instance can be enumerated, like severe cases of accident where the patient loses consciousness and goes into coma. In these cases, it is often the family members, who make the ultimate decision.

The person cannot make a decision or cannot make their wishes known. This includes cases where:

- The person is in a coma
- The person is too young (e.g. a young baby)
- The person is absent-minded
- The person is mentally challenged
- The person is severely brain damaged

- Involuntary Euthanasia

Involuntary euthanasia is euthanasia against someone's wish and is often considered as murder. This kind of euthanasia is usually considered wrong by both sides hence rarely discussed. In this case, the patient has capacity to decide and consent, but does not choose death, and the same is administered. It is quite unethical and sounds barbaric. During World War II, the Nazi Germany conducted such deaths in gas chambers involving people who were physically incapable or mentally retarded.

Euthanasia can be further classified in two regarding its manner. They are active euthanasia and passive euthanasia.

a. Active Euthanasia

Active euthanasia involves painlessly putting individuals to death for merciful reasons. A doctor administers lethal dose of medication to a patient. Active euthanasia involves the use of lethal substances and it is where the controversy begins. A person can not himself cause his death but requires someone else's help with some medication causing death.

As already stated above active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide).

b. Passive Euthanasia

Euthanasia is passive when death is caused by turning off the life supporting systems. Withdrawing life supporting devices from a terminally ill patient which leads eventually to death in normal course is a recognized norm. In "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him[8].

Passive euthanasia requires the withholding of common treatments, such as antibiotics, necessary for the continuance of life. Passive euthanasia is described when the patient dies

[8]Aruna Ramchandra Shanbaug v. Union of India, 2011(3) SCALE 298; MANU/SC/0176/2011

because the medical professionals refrain from doing something necessary to keep the patient alive, such as:

- Switch off life-support machines
- Disconnect a feeding tube
- Not to carry out a life-extending operation
- Not to give life-extending drugs

1.4 Reasons for Euthanasia

Euthanasia is the intentional death caused by act or omission of a dependent human being for his or her alleged benefit. There are certain reasons behind advocating euthanasia. People under circumstances justify its use.

There are various reasons for euthanasia. Some of them are:

(a) Unbearable pain.

(b) Demand of "right to commit suicide"

(c) Should people be forced to stay alive?

1.4.1 Unbearable Pain

Patients who suffer from unbearable pain which is beyond treatment or improvement desire peaceful death. It is life with less dignity or sometimes absence of dignity. Medical sciences have reached its peak in inventing life saving drugs and

treatments. Numbing the severe pain caused by illness until recovery is acceptable, but depending on painkillers for the rest of your life is not a welcome choice. If such choice becomes a necessity of day to day living then the patient tends to develop the tendency towards putting an end to his life. But death is not a solution on the patient's troubles.

Sentiments and emotions must not make judgments in such cases. Doctors do not advocate euthanasia in these circumstances. Passive euthanasia is justifiable in case of patients with Permanent Vegetative State (PVS)

1.4.2 Demand of "right to commit suicide"

The word right sounds absolute finality in the required choice. Sometimes it is confused with fundamental right of life granted under Article 21 of the Constitution of India. That is not the case here. This is about the procedural right needed on the patient's part. The rights of the relatives and medical professionals are also considered. The terms must not be misunderstood with the right to die in general sense. In other words, euthanasia is not about the right to die. It's about the right to bring about someone's death. Further it is not about giving recognition to the right but to make legal provisions for smooth and harmonious procedure of conducting euthanasia. Euthanasia

and suicide should not be used together. These terms do not have common ingredients. Suicide is a sad, individual act. Euthanasia is not about a private act. It's about letting one person facilitate the death of another.

1.4.3 Should people be forced to stay alive?

This is the third important question regarding the timing of administering of euthanasia. One should not be forced to stay alive. Law and medical ethics require that every possible means must be resorted to to keep a person alive. Persistence, against the patient's wishes, that death be postponed by every means and manner available is contrary to law and practice. It would also be unkind and inhumane. There comes a time when continued attempts to cure are not compassionate, wise or medically sound. Then 'only' all interventions ought to be directed to alleviating pain as well as to provide support for both the patient and the patient's loved ones.

These reasons are of indicative and directive in nature. One can not make them mandatory while considering euthanasia. Every case is different therefore same yardstick cannot be applied to each case.

1.5 Religious Views on Euthanasia

There are various religious views on euthanasia which are diverse and modify according to changing age of mankind.

1.5.1 Buddhism

There are mixed views among Buddhists on the issue of euthanasia, most are critical of the procedure.

Compassion is a valued virtue of Buddhist teachings. It is used by some Buddhists as a justification for euthanasia because the person suffering is relieved of pain.[9] However, it is still immoral "to embark on any course of action whose aim is to, destroy human life, irrespective of the quality of the individual's motive."

In Theravada Buddhism a lay person daily recites the simple formula: "I undertake the precept to abstain from destroying living being."[10] Thus, it is reasonable to conclude that this opposition to euthanasia also applies to physician-assisted death and other forms of assisted suicide.

1.5.2 Christianity

[9] Dames Keown, "End (2005). of Life: The Buddhist View", Lancet, 366
[10] This is first of the Five Percepts. It has various interpretations.

Catholic teaching condemns euthanasia as a “crime against life” and a “crime against God”. The teaching of the Catholic Church on euthanasia rests on several core principles of Catholic ethics, including the sanctity of human life, the dignity of human person, concomitant human rights, due proportionality in casuistic remedies, the unavoidability of death, and the importance of charity.[11]

Protestant denominations vary widely on their approach to euthanasia and physician assisted death.

1.5.3 Hinduism

There are two Hindu approaches on euthanasia. It is a double edged sword. By helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations. On the other hand, meddling with life and death of a third person is not humanly, which is a bad deed. However, the same argument suggests that keeping a person artificially alive on a life-support machines would also be an appalling thing to do.

Hinduism does not advocate actions leading to death of a person. According to it euthanasia is not an act of sin, but the myths and issues attached to it make it sound a merciless act, a sin. A Sanyasi or a Sanyasini, wish to depart the mortal life, are

[11] Declaration on Euthanasia roman-www.vitican.va/romancuria/euthanasia.

permitted to end his or her life with the hope of reaching Moksha i.e.; emancipation of the soul.

1.5.4 Muslim

Muslims are against euthanasia. They believe that human life is sacred because it is given by Allah, and that Allah chooses how long each person will live. Human beings must not interfere in these divine powers. It is a strict obligation on the part of human beings not to end the precious and sacred life.

a) Life is sacred -

Euthanasia and suicide are not reasons allowed for killing in Islamic teachings. According it life is precious and sacred, which Allah will choose to end when, how and where etc. It is not right to meddle in godly work.

b) Suicide and euthanasia are explicitly forbidden–

As per the preaching, Allah will be merciful and forgiving if you restrain from committing such a disgraceful act.

1.5.5 Jainism

Mahavira Varadhmana explicitly allows a shravak (follower of Jainism) full consent to put an end to his or her life if the shravak feels that such a stage would lead to moksha. Salvation can be achieved through self sacrifice.

1.5.6 Judaism

Jewish medical norms are divided on the belief about ending one's life. Usually, Jewish thinkers strongly disapprove voluntary euthanasia, but there are few thinkers who support and advocate voluntary euthanasia in limited circumstances and selected situations. It can be said that there is division of thought in Judaism.

1.5.7 Shinto

In Japan, the dominant religion is Shinto. 69% of the religious organizations agree with the act of voluntary passive euthanasia. In Shinto, prolonging the life using artificial means is a disgraceful act and hence against life. There are mixed views on active euthanasia. 25% Shinto and Buddhist organizations in Japan support voluntary active euthanasia.

1.6 EUTHANASIA AND SUICIDE

Suicide and euthanasia cannot be treated as one and the same. These are terms are interchangeable either. They involve different acts and mental state. In order to understand euthanasia it is important to understand the distinguishing features of them. 'Suicide as mentioned in Oxford Dictionary[12]means the act of killing yourself deliberately. Therefore, suicide could be termed as the intentional termination of one's life by self- induced means for numerous reasons. People commit suicide for common reasons like frustration in love life, failure in examinations or getting a good job, or due to mental depression. Euthanasia is nowhere defined. No religious books show evidence about it. The concept has not been much addressed. Preferring euthanasia over life is as good as committing suicide in sophisticated manner. Here lies the basis for opposition to euthanasia. Legal perspective to suicide has different dimensions. In Indian law intention is the basis for penal liability. An act is not criminal if there is commission or omission without the intention. The law of crimes in India is based on the famous Latin maxim, "Actus non facit reum nisi

[12] Oxford Advanced Learner's Dictionary of Current English. (2000). Sixth Edition.; Oxford University Press.

mens sit rea." Here two terms are essential. One is actus reus (guilty act) and second is mens rea (guilty mind). Commission of a crime requires presence of the elements. While in euthanasia the guilty mind is of the person who consents for euthanasia, while the act of crime is fulfilled by someone else. Separations of the essentials create complications. Conditions for incidence of crime are absent. But the Indian law is very clear on this point. One may argue that giving the consent absolves a person from liability or he may plead the defense of "volenti non fit injuria." Law relating to consent as contained in Indian Penal Code is exhaustive and leaves no ambiguity in its explanation. Section 87[13] of the Indian Penal Code clearly lays down that consent cannot be pleaded as a defense in case where the consent is given to cause death or grievous hurt.

The Bombay High Court in *Maruti Shripati Dubal's* case[14]has attempted to make a distinction between suicide and euthanasia or mercy killing. According to the court the suicide by its very nature is an act of self killing or termination of one's own life by one's act without assistance from others. But

[13]**87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.**—Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

[14]Maruti ShripatiDubal v. State of Maharastra; 1987 Cri.L.J 743 (Bomb)

euthanasia means the intervention of other human agencies to end the life. Mercy killing therefore cannot be considered on the same footing as on suicide. Mercy killing is nothing but a homicide, whatever is the circumstance in which it is committed.

In Naresh Marotrao Sakhre's case[15] the Bombay High Court also observed that suicide by its very nature is an act of self killing or self destruction, an act of terminating one's own life and without the aid and assistance of any other human agency. Euthanasia or mercy killing on the other hand means and implies the intervention of other human agency to end the life. Mercy killing is thus not suicide. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.

Herein, the concept of assisted suicide is also involved, which can be defined as providing an individual with the information, guidance and means to take his or her own life with the intention that it will be used for this purpose. Assisted suicide is distinguished from active euthanasia in the sense that in the former, person must take deliberate steps to bring about his or her own death. Medical personnel may provide assistance, but the patient commits the act of suicide while in active

[15]Naresh Marotrao Sakhre v. Union of India; 1995 Cri.L.J 95 (Bomb)

euthanasia, it is the doctor who ends the life of the patient. When a doctor helps people to kill themselves it is called 'doctor assisted suicide'.

The Supreme Court in *Gian Kaur v. State of Punjab*[16], clearly held that euthanasia and assisted suicide are not lawful in our country. The court, however, referred to the principles laid down by the House of Lords in *Airedale*[17]case, where the House of Lords accepted that withdrawal of life supporting systems on the basis of informed medical opinion, would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a normal death, where there is no longer any duty to prolong life.

The selective cases decided on commission of suicide as an offence or as a constitutional right can be enumerated here briefly. Though their focus diverts from the issue at hand, but they are relevant in a peculiar manner. Sometimes euthanasia is equated with the right to die. Some argue that, as we have right to life and personal liberty guaranteed under the Constitution of India, we have right to death embedded in it as well. This is a

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[16] 1996 AIR 946, 1996 SCC (2) 648

17.Airedale N.H.A. Trust v. Bland, 1993 (2) W.L.R. 316 (H.L.)

gallant argument. The matter can only be addressed and decided upon by the judiciary.

The High Court of Bombay in *Maruti Shripati Dubal's* case[18] held Section 309 (punishment for attempted suicide) of the Indian Penal Code (IPC) as violative of Articles 14 (Right to Equality) and 21 (Right to Life) of the Constitution. The Court held section 309 of the IPC as invalid and stated that Article 21 to be construed to include right to die. In *P. Rathinam's* case[19], the Supreme Court held that section 309 of the IPC is violative of Article 21 of the Constitution as the latter includes right to death. The question again came up in *Gian Kaur v. State of Punjab*[20]case. In this case a five judge Constitutional bench of the Supreme Court overruled the *P. Rathinam's* case[21] and held that right to life under Article 21 does not include right to die or right to be killed and there is no ground to hold section 309, IPC constitutionally invalid. The true meaning of life enshrined in Article 21 is life with human dignity. Any aspect of life which makes a life dignified may be included in it but not that which extinguishes it. The right to die if any is inherently inconsistent with the right to life as is death with life.

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[18]Maruti ShripatiDubal v. State of Maharastra; 1987 Cri.L.J 743 (Bomb)
19. P. Rathinam vs. Union of India and Anr., 1994) SCC 394

[20] 1996 AIR 946, 1996 SCC (2) 648

Recent developments must be observed here. The Government has decided to decriminalize the section 309 by deleting it from the Indian Penal Code. 18 state governments and 4 union territories have supported the recommendation of the Law Commission of India.

CHAPTER 2

Euthanasia and its types

2.1 Euthanasia and its types

Euthanasia may further be classified into 4 other categories also. These are:

(a) Animal Euthanasia

(b) Child Euthanasia

(c) Euthanasia in case of Mental Patients

(d) Euthanasia in case of Adult Patients

2.1.1 Animal Euthanasia

Animal Euthanasia is the act of putting an animal to death. It is a humane act. This type of procedure is followed in cases where resorting to acute medical treatment doesn't help. Reasons for euthanasia include incurable (and especially painful) conditions or diseases,[22] lack of resources to continue supporting the animal or laboratory test procedures. Euthanasia methods are designed to cause minimal pain and distress. In domesticated

[22] Report of the AVMA Panel on Euthanasia, 2000. 23

animals, this process is commonly referred to by euphemisms such as “lay down”, “put down”, “put to sleep”, or “put out of its/his/her misery”.

Reasons for Euthanasia

The following are the reasons for euthanasia:

2.1 Terminal illness -

2.2 Rabies;

2.3 Behavioral Problems (usually ones that cannot be corrected) –

e.g., aggression;

2.4 Illness or broken limbs that would cause unbearable suffering for the animal to live with,

2.5 Old age - weakening leading to loss of major bodily functions, resulting in severe impairment of the quality of life;

2.6 Animal Testing: this means employ of animals to various behavioral or drug testing. Before, during or after use in testing, animals may be .euthanized. Examination of dissected animal is a common activity done in research.

In case pets of domestic animals euthanasia is normally performed in a veterinary clinic or hospital or in an animal

shelter and is usually carried out by a veterinarian or a veterinarian technician working under the veterinarian's supervision.

Large animals which sustain accidental injuries are put down at the respective sites. In hopeless cases like brutal injuries to horses, cattle etc are dealt with at places where they occurred.

Some animal rights organizations such as People for the Ethical Treatment of Animals support animal euthanasia in certain circumstances and practice euthanasia at shelter that they operate.[23]

2.1.2 Child Euthanasia

Child euthanasia is a contentious type. This may happen in cases where the child has birth defects or is suffering from terminal illness. There is a thin line of difference between this type of euthanasia and infanticide. Both the cases involve distinctiveness as to the intention behind bringing about the death of the child.

Joseph Fletcher, founder of situational ethics and a euthanasia proponent proposed that infanticide be permitted in

[23] "Animal Rights Uncompromised: 'No-Kill' shelter" PETA; httP:ii en.wilkipedia.org.

cases of severe birth defects. Fletcher says that unlike the sort of infanticide perpetrated by very disturbed people, in such cases child euthanasia could be considered humane; a logical and acceptable extension of abortion.[24] American bioethicist Jacob M. Appel goes one further, arguing that pediatric euthanasia may be a step ethical even in the absence of parental consent.[25]

In the Netherlands, euthanasia is technically illegal for patients under the age of 12. The doctors in the United Kingdom have recommended that rights be given to the medical practitioners of restrain in medical treatment to the children with several birth defects. It is yet to be seen that those have been made legal.

Airedale[26] case decided by the House of Lords, was followed in a number of cases in UK and it was pointed out that in the cases of incompetent patients, if doctors act on the basis of informed medical opinion, and withdraw the artificial life-support systems if it is in the patient's best interests, then they said action cannot be characterized as an offence under criminal law.

[24] Joseph Fletcher "Infanticide and the ethics of loving concern", 22 (1978).
[25] JM Appel,"Neo-natal Euthanasia: Why Require Parental Consent?" Journal of Bioethical In 477 (2009).
[26] Airedale NHS Trust v. Bland, 1993 (1) All ER 821 (HL).

In another case, Ward of Court, Re A[27], the ward born in 1950, suffered irreversible brain damage as a result of anesthesia during 1972 and for several decades, the ward was invalid, the mother of the child was appointed in 1994 by the Court to be guardian of person and estate of the child and in 1995 she sought directions from the Court for withdrawal of all artificial nutrition and hydration and to give necessary directives as to the child's care.

2.1.3 Euthanasia in case of Mental Patients

In re F (Mental Patient: Sterilization)[28], the patient was not a minor, hence parens patriae jurisdiction was not available, but even so, applying the inherent power doctrine, the same test, namely, the test of "best interest of the patient" was applied by Lord Brandon of Oakbrook. Here the 36 years old woman was mentally handicapped and unable to consent to an operation. She became pregnant. The hospital staff considered that she would be unable to cope with the pregnancy and giving birth to a child. Since all other forms of contraception were unsuitable and it was considered undesirable to limit her freedom of movement in order to prevent further sexual activity, the suitable option in her best interest was sterilization.

[27] (1995) ILRM 401 (Ireland Supreme Court) (Appeal against the or of Lynch, J. of the High Court).
[28] (1990) 2 AC 1.

Her mother who was of the same view moved the Court for a declaration that such operation would not amount to an unlawful act by reason of the absence of her consent. The trial judge and the Court of Appeal accepted that the lady be sterilized. On appeal, the House of Lords affirmed the decision.

The House of Lords referred to Bolam v. Friern Hospital Management Committee;[29] where it was held that it was open to the Court under its 'inherent' jurisdiction to make a declaration that a proposed operation was in the patient's best interests, where the patient was an adult but unable to give informed consent, where the purpose was to prevent the risk of her becoming pregnant.

Though parens patriae jurisdiction was abolished in England by statute in the case of mentally ill patients, the trial judge and the Court of Appeal held that the Court could give consent under inherent jurisdiction.

The House of Lords held that though the parens patriae jurisdiction was not available because it was abolished in the case of mentally ill patients by statute, the Court still had inherent jurisdiction to grant a declaration that sterilization of F in the prevailing circumstances, would not be unlawful if it was in the best interest of the patient.

[29] 1957 (1) WLR 582.

The judge quoted from her judgment in Re A: (male Sterilization) case,[30] where it was held that, the duty of the doctors was secondary. He must act in the best interest of a mentally incapacitated patient.'[31]

Best interests are not necessarily medical; they include emotional and all issues essential to live a dignified life.

2.1.4 Euthanasia in case of Adult Patients

A 68 years old male patient was suffering from paranoid schizophrenia, developed gangrene in a foot during his confinement in a secure hospital while serving a 7-year term of imprisonment. He was removed to a general hospital where the consultant surgeon opined that if the leg below the knee was not amputated, there were 15% chances of survival and he would most likely die. C refused amputation. In the meantime a solicitor was called. There was some improvement due to drugs; still there was a need for amputation. A fresh gangrene attack at a future date could not be ruled out. The hospital authorities moved the Court for permission to amputate the leg below knee, contending that decision of the patient refusing amputation was

[30] 2001 (1) FLR 549 (555).
[31] Re F (Mental Patient: Sterilizati

impaired by his mental illness and that he failed to appreciate the risk of death."[32]

The question came before the High Court that whether his capacity had been so reduced by his chronic mental illness and that he did not sufficiently understand the nature, purpose and effects of the preferred medical treatment. This was the test of 'competency'. (Known as C-Test).

Thorpe, J. described competency of patient as follows:

> "I consider helpful Dr. E's analysis of the decision-making process into three stages: first, comprehending and retaining treatment information, secondly, believing it and thirdly, weighing it in the balance to arrive at choice." (C-Test)

On facts, it was held that amputation should not be made as his decision-making was not so impaired by his schizophrenia. The presumption in favor of his right to self-determination was not displaced.[33]

Butter Sloss, J. in another landmark judgment in the year 2003 in An NHS Hospital Trust v. S,[34] held where "S", aged 18, was born with a genetic condition, velo-cardiac facial syndrome, and was suffering from 'global development delay' and 'bilateral

[32] Re C (Adult: Refusal of Medical Treatment), 1994 (1) All ER 819
[33] Re T (Adult: Refusal of Medical Treatment), 1992 (4) All ER 649 and Airedale, 1993 (1) All ER 821 (HL).
[34](2003) EWHC 365 (FAM); HE v. Hospital NHS Trust, (2003) EWHC 1017.

renal dysplasia'. He had been under hemodialysis since May, 2000. He had severe learning disability with problems arising from limited understanding of medical treatment he was receiving. He was diagnosed as autistic. He suffered from epilepsy, a tendency to blood-clotting and had a moderate immuno-deficiency. His mental capacity had been assessed as that of a 5 or 6 year old child. He clearly did not have the capacity to take decisions about his medical treatment.

The hospital approached the Court seeking a declaration that the hospital could not perform kidney-transplantations since that would not be in S's best interest - and that S should not undergo peritoneal dialysis. Only hemodialysis could be continued in the foreseeable future and if it no longer be provided, no other form of dialysis should be given except palliative care. The parents opposed the plea of the hospital and wanted the kidney transplantation to go on. His mother offered to donate a kidney. The Official Solicitor, representing S, wanted all forms of dialysis should be considered and he reserved his views on suitability of kidney transplantation.

However, it was held that hemodialysis could be given. If it could not be given for a longer time then peritoneal dialysis should be given. The transplantation of kidney was not in his best interests.

CHAPTER 3

LEGAL ASPECTS OF EUTHANASIA

3.1Legal Aspects of Euthanasia

Euthanasia is a highly debated subject amongst other in the legal world. Euthanasia is "inducing the painless death to a person for reasons assumed to be merciful. There are four types of euthanasia: Voluntary and direct, Voluntary but indirect, direct but involuntary, and indirect and involuntary. Voluntary and direct euthanasia is chosen and carried out by the patient. Voluntary but indirect euthanasia is chosen in advance. Direct but involuntary euthanasia is done for the patient without his or her consent. Indirect and involuntary euthanasia occurs when a hospital decides that it is time to remove life support. Euthanasia can be traced as far back as to the ancient Greek and Roman civilizations. It was sometimes allowed in these civilizations to help others die. Voluntary euthanasia was approved in these ancient societies. As time passed, religion improved, and life was viewed to be sacred. Euthanasia in any form was perceived as wrong. A number of legal considerations and implications are involved in the issue of handling cases of euthanasia. Involvement of the State became obligatory to deal with the situations leading to death by mercy. In a modern or welfare

State, it would always be the State which can firmly decide about the rights of its people. Whether to have a comprehensive legal framework for the procedure of euthanasia, or not to make it legal at all, is totally dependant on the State's view. This is a basic, grass root issue in approving euthanasia and its legality. One can not go on suggesting what the State or legislature must do about it. The issue of legalizing euthanasia is quite bold and must be considered critically. Medical and paramedical professionals, human rights advocates, lawyers, medical patients and their relatives, friends etc. are the main stakeholders in this issue. Their involvement is vital while giving the issue a legal and procedural basis. Awareness about euthanasia and its manners are very low in India. The rural population is quite novel to the problem while the ignorance of urban population is fairly high. Educating people about it is a huge task ahead for the State and its machineries. Apart from legal problems, the social, ethical and religious matters need to be addressed. India is a case of population explosion, where basic needs of the citizens require attention. A literate population can understand the veracities of the problems offered by the issue. The problem is complex and its medical and legal consequences are expansive.

While suggesting initiative steps one can offer basic guidelines. It is crucial to realize the State's intention about

legalizing euthanasia. The present government has taken a step further in accepting the recommendation of decrimalization of Section 309 of the IPC, but making euthanasia legal is a bold step for a nation like us. As a lawyer we can suggest that formation of panel consisting of experts who can study the criticalities of the problem. The panel can make suggestions and offer recommendations. The legal and medical procedures can be detailed into a draft. Appointment of a regulator can be considered to look after the whole situation involving euthanasia of a patient.

A referendum can help decide the approval and acceptance of the public in India. The medical treatments and effects have a large impact on how people view euthanasia. Malpractices in medical profession like cut practice must be avoided. The opinion of the Judiciary matters a lot. It has strictly objected to the legality of active euthanasia. Several dimensions must be strictly observed. To conclude, the machinery involved must be inspected; drawbacks must be identified and corrected.

A discussion on the manner of conducting euthanasia might be revolting and barbaric for some people. But a healthy discussion won't do damage. In India, sophisticated methods can be used to carry out euthanasia. It is legal to turn off a patient's life support when the higher centers of the brain stop working.

Patients are allowed to choose passive euthanasia but cannot choose active euthanasia. Passive euthanasia is when nothing can be done to prevent death. Active euthanasia is when one deliberately causes death. One of the main forms of euthanasia is the process of withholding food and fluids. Many see this as cruelty due to its effects on the patient. It causes nausea, vomiting, heart problems, depression, dry skin and shortness in breath. As one can see there are many aspects and issues that make euthanasia controversial."[35]

Controversies on legalization of euthanasia in Europe and America are continuing. The argument for legalizing euthanasia[36] is that the individual's freedom entails liberty or choice in all matters as long as the rights of any other person are not infringed upon. The argument against legalizing euthanasia is that it will lead to disrespect for human life. Euthanasia can then be abused for criminal purposes. A financial motive is sometimes advanced in favor of euthanasia. It costs money to the family or the government to keep terminally ill people on life support which will be wastage of resources if they eventually die.

[35] http.://www.angelfire.com., visited on 21st Feb, 2012.
[36] http.:// www.missionislam.com., visited on 21st Feb 2015.

For the purpose of analyzing euthanasia, 5 principles are recognized by most of the theorists. These principles are:

(a) The principle of motive, i.e., each action is judged by the intention behind it.

(b) The principle of certainty, i.e., a certainty cannot be voided, changed or modified by uncertainty.

(c) The principle of injury, i.e., an individual should not harm others or be harmed by others.

(d) The principle of hardship, i.e., hardship mitigates easing of the rules and obligations.

(e) The principle of custom, i.e., what is customary is a legal ruling.

(a) The Principle of Motive or Intention –

The principle of motive is invoked in three situations:

(a) There is no legal distinction between active and passive euthanasia because the law considers only the intention behind human actions. The physician who advises, assists, or carries out euthanasia at the instruction of the patient in full knowledge of the underlying intention of committing a crime.

(b) The physician involved in euthanasia either as an active participant or an advisor may have intentions relating to self-interest and not the interest of the patient or those of religion. These could include trying to get rid of a difficult medical case cutting costs of intensive and expensive terminal care, or possible ulterior material, political, or social motive.

(c) Members of the family may have the intention of hastening death in order to inherit the deceased's estate. They may also want to avoid the costs of terminal care.

Thus, the general principle of the law is to give priority to prevention of evil over accrual of a benefit. Thus, euthanasia is forbidden because of the potential evil inherent in it.

(b)The principles of Certainty -

The principle of certainty is also invoked in three situations:

(i) Definition of death requires that there should be no doubt at all about death, means there should be complete cardio-respiratory failure. There is no doubt about its irreversibility. Brain death, partial and complete, is still controversial and it is possible that new medical technology could reverse brain death. The implication of brain death is that once a person is declared dead with certainty, the withdrawal of life support does not constitute homicide and is not a case of euthanasia.

(ii)There is doubt about the legality of the living Will because it is made by a person in perfect health. The same person could have different opinions when he suffering from terminal or severe illness. It is, therefore, untenable that in the case of euthanasia the living will is accepted without restriction.

(c) The Principles of Injury -

The principle of injury, asserts that no one should be hurt or cause injury to others. Decisions on euthanasia hurt patients in their life and health. The family is also hurt emotionally and psychologically by the death of the patient. The converse argument could be made that continuation of the pain and

suffering of the patient under life support in terminal care, the emotional and psychological burden on the patient and the family, and the material costs of expensive terminal care constitute an injury to all involved. The law requires that any injury should be mitigated to the extent possible. However, one injury cannot be removed by another injury of similar magnitude. A lesser injury can be removed by a bigger one but not at the cost of death by euthanasia.

(d) The Principles of Hardship -

The principle of hardship could be invoked wrongly in euthanasia situations.

The pain and suffering of terminal illness are not among the hardships recognized by classical jurists. In general, in cases of hardship where a clear necessity is established, the prohibition can be allowed at least temporarily until the hardship is relived. A necessity is defined in law as what threatens any of the five purposes of the law namely religion, life, intellect, progeny and

wealth. Euthanasia cannot be accepted as a necessity since it destroys and does not preserve two of the purposes of the law: religion and life.

(e) The Principles of Custom -

The principle of custom has several applications in euthanasia. Custom is defined as what is uniform, wide-spread, predominant and not rare. Once a custom is established it must be accepted until there is evidence to the contrary. Custom has the force of law. It is invoked in the two situations:

(i)Definition of death is based on custom and precedent. The traditional definition of cardio-respiratory failure is the only one that fulfils the criteria of custom and will have to be accepted until a better definition evolves and gains wide acceptance.

(ii)The role of the physician has customarily been known to be preservation of life. It is, therefore, inconceivable that they could be involved in any form of euthanasia that destroys life.

Thus, euthanasia like other controversial issues is better prevented than waiting to resolve its present problems. So there is no legal basis for euthanasia. Physicians have no right to interfere with the fate which the God decides. Diseases will take

its natural course until death. It is, therefore, necessary that the physicians must concentrate on the quality of the remaining life and not reversal of death. Life support measures should be taken with the intention of quality in mind. However, ordinary medical care and nutrition cannot be stopped. This can best be achieved by the hospital having a clear and plain public policy on life support without regard to age, gender, religion or race.

3.2 Legal Aspects of Euthanasia in India

The legal position of India cannot and should not be studied in isolation. India has drawn its constitution from the constitutions of various countries and the courts have time and again referred to various foreign decisions.

In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to end the life of the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is a valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or the medical professional would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck down by proviso one to Section 92 of the IPC and thus be rendered illegal. The law in India is also very clear on the aspect of assisted suicide. Right to suicide is not a “right” available in India – it is punishable under the India Penal Code,

1860. Provision of punishing suicide is contained in sections 305 (Abetment of suicide of child or insane person), 306 (Abetment of suicide) and 309 (Attempt to commit suicide) of the said Code. Section 309, IPC has been brought under the scanner with regard to its constitutionality. Right to life is an important right enshrined in Constitution of India. Article 21 guarantees the right to life in India. It is argued that the right to life under Article 21 includes the right to die. Therefore the mercy killing is the legal right of a person. After the decision of a five judge bench of the Supreme Court in ***Gian Kaur* v. *State of Punjab***[37] it is well settled that the "right to life" guaranteed by Article 21 of the Constitution does not include the "right to die". The Court held that Article 21 is a provision guaranteeing "protection of life and personal liberty" and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33(m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners. Exercising these powers, the Medical Council of India has amended the code of medical ethics for medical practitioners.

[37] 1996 (2) SCC 648 : AIR 1996 SC 946

There under the act of euthanasia has been classified as unethical except in cases where the life support system is used only to continue the cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of doctors, life support system may be removed.

A person attempts suicide in a depression, and hence he needs help, rather than punishment.

The Bombay High Court in **Maruti Shripati Dubal v. State of Maharashtra**[38] examined the constitutional validity of section 309 and held that the section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14. Article 21 was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article 21.

The High Court of Bombay in *Maruti Shripati Dubal's* case[39] held Section 309 (punishment for attempted suicide) of the Indian Penal Code (IPC) as violative of Articles 14 (Right to Equality) and 21 (Right to Life) of the Constitution. The Court held section 309 of the IPC as invalid and stated that Article 21

[38] 1987 Cri.L.J 743 (Bom.)
[39]Maruti ShripatiDubal v. State of Maharastra; 1987 Cri.L.J 743 (Bomb)
40.. P. Rathinam vs. Union of India and Anr., 1994) SCC 394

to be construed to include right to die. In *P. Rathinam's* case[40], the Supreme Court held that section 309 of the IPC is violative of Article 21 of the Constitution as the latter includes right to death. The question again came up in *Gian Kaur v. State of Punjab*[41]case. In this case a five judge Constitutional bench of the Supreme Court overruled the *P. Rathinam's* case[42] and held that right to life under Article 21 does not include right to die or right to be killed and there is no ground to hold section 309, IPC constitutionally invalid. The true meaning of life enshrined in Article 21 is life with human dignity. Any aspect of life which makes a life dignified may be included in it but not that which extinguishes it. The right to die if any is inherently inconsistent with the right to life as is death with life.

Recent developments must be observed here. The Government has decided to decriminalize the section 309 by deleting it from the Indian Penal Code. 18 state governments and 4 union territories have supported the recommendation of the Law Commission of India.

[41] 1996 AIR 946, 1996 SCC (2) 648

3.3 Human Rights and Euthanasia

The concept of human rights, derived from considerations of the nature of mankind, originated within a political context called natural rights, they developed as a proclamation of liberty, to be used to guarantee freedom from attacks on one's life, dignity or property. They were considered to apply equally to each individual, or to equivalent groups, they were unconditional and they imposed on others a duty to respect them. Originally, conceived as freedoms 'from' oppression and other injustices, they evolved to include, and largely become, freedoms 'to' have or do what may be wanted. More recently welfare rights have been added to natural rights. Natural rights did not come into existence only when or because they were articulated. If a natural right is genuine, it always existed, even before it had been discerned. Genuine rights cannot be created just by claiming them, unless it can be agreed they have always existed, in emerging form.

Now, the question arises "what are the rights?" After the end of the Second World War, when it had become apparent how extensively human rights had been lately so abused, the United Nations defined and proclaimed human rights, in the hope that they would thereby be better understood and secured.

Accordingly, in 1948, the Universal Declaration of Human Rights declared that the foundation of freedom, justice and peace in the world is the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. Further, 'everyone has the right to life' and 'all are equal before the law and are entitled without any discrimination to equal protection of the law.'

This Declaration was supplemented by more specific proclamations, including the 1966 International Covenant on Civil and Political Rights, article 6 of which states: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'.

Words such as 'equal', 'inherent', 'inalienable', without discrimination' and 'arbitrary', were meant to define the essence of natural rights, particularly that they do not depend on circumstances or personal preferences. Natural rights are not being taken away and, just as importantly, are not being given away or given up. The right to life is to be protected by law, invariably and equally, and life is not to be taken for reasons based on opinion.

The right to one's life is declared to be the fundamental natural right, on which every other right depends for its existence and its validity.

When an attempt is made to justify euthanasia by using claim about human rights, it will become problematic when they focus only on a single right i.e., right to life.

The common reason to want euthanasia legalized can be categorized as: seeking the compassionate relief from pain and suffering, providing protection for doctors who behave compassionately, showing respect for human rights and assisting in the containment of health costs.

There is a common presumption that there is a 'right to die' in the sense of an autonomous right to choose the time and manner of one's death. A request to this right will be euthanasia which is an adequate ground for legalizing the same. There is an ethical right to die, in the sense of a right to be allowed to die, when one is dying and it is in one's interest to die, by discontinuing or not commencing unwanted, burdensome and futile medical treatment, and by providing all necessary comfort. But this is not what is meant in the context of euthanasia.

A right to have one's life taken on request has never been recognized in code of ethics or the law of any country. Its

assumption conflicts directly with the genuine right to one's life, acknowledged and protectively enunciated in the Universal Declaration, to which most countries are signatories.

If the right to have euthanasia carried out on request were genuine, and a doctor was permitted to take the life of a patient who asked for it, the doctor would also be justified, and perhaps obliged out of compassion, in taking the lives of others in similar unfortunate circumstances. This may apply especially when, for any reason, patient could not ask. It could be thought discriminatory and unjust to withhold such a benefit, merely because it could not be requested, if there were also a right to that benefit.

Since the common good is a good for all, not a good for each, proposals for the legalization of euthanasia must, at the very least, include some attempt to find a balance between individual choice and the community's need for good order, social harmony and the protection of its vulnerable members.

Thus, euthanasia cannot be considered without reference to human rights, but all relevant rights should be considered. These will include the rights of every person to their life and to the standard of health care appropriate to their illness and, where the provision or quality of that care is demonstrably uneven, to the

right to distributive justice to protect the equal rights of all the sick. No right should be included unless its existence has been validated beyond questions.[43]

3.4 Suicide v. Euthanasia

Death is a subject that most people are uncomfortable with and refuse to talk about, but it is a reality that each one of us must face. This is due to the fact that we are naturally afraid of things that are uncertain and what becomes of us after death is very uncertain.

There are many causes of death; it may be the result of an accident, malnutrition, a disease, predation, or suicide and euthanasia.

Suicide is the act of killing oneself. It ranks number 13 on the leading causes of death in the world, with over a million people committing suicide every year.[44]

On the other hand, euthanasia which is the process of ending a life in order to stop pain and suffering can also fall into the category of suicide if it is voluntary. Voluntary euthanasia is done with the consent of the patient. The patient will ask the physician to assist him bring about his death. Also known as

[43] Brian Polland, Human Rights and Euthanasia, 1998 hap:// www.bioethics.org.au, visited on 8nd march, 2015.
[44] http://www.difference between.net, visited on 8th Mrch, 2015.

assisted suicide, voluntary euthanasia is legal in US States of Oregon and Washington and in the European countries of Belgium, Luxembourg, the Netherlands and Switzerland.

While the purpose of euthanasia is to end the pain and suffering of a terminally-ill person, a person that commits suicide can have several different reasons. Suicide is certainly committed out of despair or mental illness like depression and it also includes drug abuse and alcoholism.

Suicide is voluntary, means it is the persons' Will to end his life while euthanasia can also be involuntary or non-voluntary. Involuntary euthanasia is ending a person's life against his Will. Non-voluntary euthanasia is ending a person's life when he is unable to give his consent as in the case of child euthanasia.

In religious views, both kinds of death are wrong. Taking one's life is horrified the beliefs and teachings of religion like Christianity. For them life is sacred and it is an offence towards God to take one's life. However, Hindus consider it as a part of their culture.

Under Muslim laws, suicide and euthanasia are explicitly forbidden. According to them human life is sacred because it is

given by Allah, and Allah chooses how long each person will live. Human beings should not interfere in this.

Jewish law forbids euthanasia and regards it as murder. There is no exception to this rule and it makes no difference if the person concerned wants to die. However, if a patient is certain to die, and is only being kept alive by a ventilator, it is permissible to switch off the ventilator since it is impeding the natural process of death.

It is interesting to note that euthanasia was supported by the ancient Greek philosophers though they opposed suicide. Many other thinkers say that suicide is an act of cowardice whereas euthanasia is an act of mercy.

The legality of euthanasia is established by so many countries of the world whereas, suicide is illegal. Anyone who attempts suicide is strictly punishable under law.

Suicide arises from the lack of motivation to live. It is a harsh and sudden act. On the other hand, euthanasia is not a sudden and harsh act. It is a philosophical act. It takes place after a thorough deliberation with the patient and other people concerned.

Suicide on the other hand does not take place after a thorough deliberation. It takes place without consideration. It

takes place without a constructive thought. On the other hand, euthanasia takes place with a constructive thought.

Lastly, it is important to note that euthanasia is carried out in case of animals as well as human beings. On the other hand suicide is not applicable to animals.

Justice Lodha in Naresh Marotrao Sakhare v. Union of India[45] observed that euthanasia and suicide are different. "Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own self without the aid or assistance of any other human agency. On the other hand euthanasia implies the intervention of other human agency to end the life. A person commits suicide when he is puzzled or mentally upset while euthanasia is an act of ending the life of an individual suffering from a terminal illness of an incurable condition.

[45] 1995 Cr LJ 96 (Born).

3.5 INTERNATIONAL ASPECT

- Australia
- Albania
- Belgium
- Netherland
- Canada
- United States of America
- England
- The United Kingdom
- Switzerland

INTERNATIONAL ASPECT

In England, the House of Lords' various decisions show variations about euthanasia. There is no unanimous opinion amongst them. It indicates changes in their decisions as per the changing social norms and cultural veracities. In some countries it is legalized or in others, it is criminalized.

- **Australia**

The Northern Territory of Australia was the first country to legalize euthanasia. It did so by passing the Rights of the Terminally Ill Act, 1996. It was held to be legal in the case of Wake v. Northern Territory of Australia[46] by the Supreme Court of Northern Territory of Australia. Subsequently, the Euthanasia Laws Act, 1997 legalized it. Although it is a crime in most Australian States to assist euthanasia, prosecutions have been rare. In 2002, the matter that the relatives and friends who provided moral support to an elder woman to commit suicide was extensively investigated by police, but no charges were

[46] http:/ /www.legalservicesindia.com, visited on 8th March, 2015.

made. In Tasmania in 2005, a nurse was convicted of assisting in the death of her mother and father who were both suffering from incurable diseases. She was sentenced to two and half years in jail but the judges later suspended the conviction because they believed the community did not want the woman but behind bars. This sparked debate about decriminalization euthanasia.

- **Albania**

In the year 1999 Euthanasia was legalized in Albania. It stated that any form of voluntary euthanasia was legal under the Rights of the Terminally Ill Act, 1995. Passive euthanasia is considered legal if three or more family members consent to the decisions.

- **Belgium**

Euthanasia was made legal in the year 2002. The Belgian Parliament had enacted the 'Belgium Act on Euthanasia' in September, 2002. It defines euthanasia as "intentionally terminating life by someone other than the person concerned at the latter's request". Requirements for contemplating euthanasia are very strict. They include that the patient must be an adult, has repeated and well considered the request which is voluntary,

and he/she must be in a condition of unbearable physical or mental suffering that can be alleviated. All these acts must be referred to the authorities before allowing in order to satisfying essential requirements.

- **Netherlands**

Netherlands is the first country in the world to legalize both euthanasia and assisted suicide in 2002. According to the Penal Code of Netherlands killing a person on his request punishable with 12 years of imprisonment or fine and also assisting a person to commit suicide is also punishable by imprisonment up to three years or fine.

Thus, though active euthanasia is technically unlawful in the Netherlands, it is considered justified (not legally punishable) if the physician follows the guidelines.

- **Canada**

In Canada, patients have the rights to refuse life sustaining treatments but they do not have the right to demand euthanasia or assisted suicide.

- **United States of America**

There is a distinction between passive euthanasia and active euthanasia. While active euthanasia is prohibited but

physicians are not held liable if they withhold or withdraw the life sustaining treatment of the patient either on his request or at the request of patient's authorized representatives. Euthanasia has been made totally illegal by the United States Supreme Court in the cases Washington v. Glucksberg and Vacco v. Quill.[47] In these cases the respondents are physicians who claim a right to prescribe lethal medication for mentally competent, terminally-ill patients who are suffering from great pain and who desire doctor's help in taking their own lives, but are deterred from doing so because of the New York Act. They contended that this is not different from permitting a person to refuse life sustaining medical treatment and hence, the Act is discriminatory.

This plea was not accepted by the US Supreme Court. The Equal Protection Clause states that no State shall 'deny to any person within its jurisdiction equal protection of the laws.' This provision creates no substantive rights. It embodies a general rule that the State must treat like cases alike but may however, treat unlike cases differently. Everyone, regardless of physical condition is entitled, if competent, to refuse unwanted life-saving medical treatment, but no one is permitted to assist a suicide.

[47] (1997) 117 SCT 2293.

The learned judges make a good distinction between Euthanasia and physician assisted suicide. In their opinion, when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient injects lethal injection prescribed by a physician, he is killed by that medication. (Death which occurs after the removal of life-sustaining systems is from natural causes). (When a life-sustaining system is declined, the patient dies primarily because of an underlying fatal disease)".

Similarly, the over-whelming majority of State Legislatures have drawn a clear line between assisting suicide and withdrawing or permitting the refusal of unwanted life-saving medical treatment by prohibiting the former and permitting the latter. In United States, nearly all States expressly disapprove of suicide and assisted suicide either in statues dealing with durable power-of-attorney in health care situations or in 'living-will' statutes.

In the state of Oregon, physician assisted suicide has been legalized in 1994 under Death and Dignity Act. In April, 2005, California State Legislative Committee approved a bill and has become 2nd State to legalize assisted suicide.

The Supreme Court of Oregon in Gonzales, Attorney-General et al V. Oregon et al,[48] upheld the Oregon Law of 1994 on assisted suicide not on merits but on the question of non-repugnancy with Federal Law of 1970.

The Oregon Death with Dignity Act, 1994 exempts from civil or criminal liability State-licensed physicians who, in compliance with the said Act's specific safeguards, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill-patient. In 2001, the Attorney-General of US issued an Interpretative Rule to address the implementation and enforcement of the Controlled Substances Act, 1970 with respect to the Oregon Act of 1994, declaring that using controlled substances to 'assist suicide' is not a legitimate medical practice and that purpose is unlawful under the 1970 Act. This Rule made by the AG was challenged by the State of Oregon, physicians, pharmacists and some terminally-ill State residents. But the Supreme Court of Oregon upheld the Oregon Law of the 1994 on assisted suicide.

[48] us (SC) (17-1-2006).

- **England**

The House of Lords have now settled that a person has a right to refuse life sustaining treatment as part of his rights of autonomy and self-determination. The House of Lords also permitted non-voluntary euthanasia in case of patients in a Persistent Vegetative State (PVS). Moreover, in a very important case namely, Airedale NHS Trust v. Bland,[49] the House of Lords made a distinction between withdrawal of life support on the one hand, and Euthanasia and assisted suicide on the other hand. That decision has been accepted by Supreme Court of India in Gian Kaur's case.[50]

The facts of the case are: Mr. Anthony Bland met with an accident and for three years, he was in a condition known as PVS. The said condition was the result of distinction of the cerebral cortex on account of prolonged deprivation of oxygen and the cortex had resolved into a watery mass. The cortex is that part of the brain which is the seat of cognitive function and sensory capacity. The patient cannot see, hear or feel anything. He cannot communicate in any way. Consciousness has departed for ever. But the brain-stem, which controls the reflective

[49] 1993 (1) All ER 821.
[50] Gian Kaur v. State of Punjab, (1996) 2 SCC 648.

functions of the body, in particular the heart beat, breathing and digestion, continues to operate.

In the eyes of the medical world and of the law, a person is not clinically dead so long as the brain-stem retains its functions. In order to maintain Mr. Bland in his present condition, feeding and hydration are achieved by artificial means of a nasogastric tube while the excretory functions are regulated by a catheter and other artificial means. The catheter is also used from time to time give rise to infusions which have to be dealt with by appropriate medical treatment.

As for Bland, according to eminent medical opinion, there was no prospect whatsoever that he would ever make a recovery from his present condition but there was likelihood that he would maintain the present state of existence for many years to come provided the artificial means of medical care is continued.

The doctors and the parents of Bland felt, after three years, that no useful purpose would be served by continuing the artificial medical care and that it would be appropriate to stop these measures aimed at prolonging his existence.

Since there were doubts whether withdrawal of life: support measures could amount to a criminal offence the

Hospital Authority (the appellant) moved the High Court for a declaration designed to resolve these doubts.

That judgment was affirmed by the Court of Appeal. Sir Thomas Bingham, Butler-Sloss and Hoffman L.JJ., opined that:

"Despite the inability of the defendant to consent thereto, the plaintiff and the responsible attending physicians:

1. May lawfully discontinue all life-sustaining treatment and medical supportive measures designed to keep the defendant alive in his existing PVS including the termination of ventilation, nutrition and hydration by artificial means; and

2. May lawfully discontinue and there after need not furnish medical treatment to the defendant except for the sole purpose of enabling him to end his life and die peacefully with the greatest dignity and the least of pain suffering and distress."

On further appeal to the House of Lords, Lord Keith observed that the object of medical treatment and care is, after all, to benefit the patient. But it is unlawful, both under the law of torts and criminal law of battery, to administer medical treatment to an adult, who is conscious and of sound mind, without his consent. Such a person is completely at liberty to

decline to undergo treatment, even if the result of his doing will be that he will die.[51]

- **The United Kingdom**

The euthanasia was illegal in United Kingdom. On November 5, 2006 British Royal College of Obstructions and Gynecologists submitted a proposal to the Nuffield Counsel of Bioethics calling for consideration of permitting the euthanasia of disabled new-born.

- **Switzerland**

According to article 115 of Swiss Penal Code, suicide is not a crime and assisted suicide is a crime if and only if the motive is selfish. It does not require the involvement of physician nor is that the patient must be terminally ill. It only requires that the motive must be unselfish. In Switzerland, euthanasia is illegal but physician assisted suicide has been made legal.

[51] Re F (Mental Patient), 1990 (2) AC 1; Bolam v. Friern Hospital Management Committee, 1959 (1) WLR 582.

Death is not a right, it is the end of all rights and a fate that none of us can escape. The ultimate right we have as human beings is the right to life, an inalienable right which even the person who possesses it can never take that away. It is similar to the fact our right to liberty does not give us the freedom to sell ourselves into slavery. In addition, this right to die does not equal to a right to 'die with dignity'. Dying in a dignified manner relates to how one confronts death, not the manner in which one dies.

CHAPTER 4

POSITION IN INDIA AND JUDICIAL TREND

4.1 Judicial Trend

4.2 New Dimensions in Indian History Arun Shanbag Case

4.3 Whether Legislation is necessary

4.4 Law Commission of India 196th Report

4.5 Medical Ethics and Duty of Doctor

4.6 Medical Treatment of Terminally Ill Patients (Protection of Patients & Medical Practioners) Bill, 2006

4.7 Present Scenario and the Liability of Doctors

CHAPTER 4

POSITION IN INDIA

4.1 Judicial Trend

In our day-to-day life we often come across terminally-ill patients, patients who are bedridden due to irreparable injuries and are totally dependent on others. It is not a dignified situation for such people. A sensible prudent man would think that death would be a better option rather than living such painful life. Physical and psychological deterioration happens swiftly, but escape from such pain takes longer time. People justify euthanasia is such cases. Argument for legalizing it comes forward every now and then. But it is not a simple task, for the government or legislature. The most alarming drawback of legalizing euthanasia is its abuse.

From the moment of conception and after the birth, a person has basic human rights. Right to life means a human being has an essential right to live, particularly that such human being has the right not to be killed by another human being. But the question arises that if a person has a right to live, whether he has a right not to live i.e., whether he has a right to die? While giving this answer, the Indian Courts expressed different opinions.

In the landmark case of State of Maharashtra v. Maruti Sripati Dubal,[52] wherein the Apex Court stated that section 309 Indian Penal Code (which deals with punishment for those found guilty of attempted suicide) is violative of article 14 and article

[52] AIR 1997 SC 411.

21 of the Constitution. Hence, the Court held that 'right to life' under article 21 of the Indian Constitution 'includes right to die'.

However, in Chenna Jagadesswar v. State of Andhra Pradesh,[53] the Andhra Pradesh High Court held that right to die is not a fundamental right under article 21 of the Constitution.

In 1994, the Supreme Court of India ruled in the case of P. Rathinam v. Union of India,[54] that article 21 of the Constitution i.e., 'Right to live' includes 'Right to die ' or to terminate one's life. The Apex Court further stated that suicide attempt has no either beneficial or unfavorable effect on society and the act of suicide is not against religions, morality or public policy.

But again in a landmark judgment passed by Bench consisting of 5 Judges in Gian Kaur v. State of Punjab,[55] overruled the P. Rathinam's case and held that 'Right to life' does not include 'Right to die'. Extinction of Life' is not included in 'Protection of Life'. Dying a natural with dignity at the end of life must not to be confused or equated with the 'Right to die' an unnatural death curtailing the natural span of life. Further, the Court stated that provision under section 309, IPC penalizing attempt to commit suicide is not violative of article 14 or 21 of the Constitution.

Section 309 of the IPC has been in discussion for a long time. Various attempts were made by learned people to seek nullification of the section. In the past, the Law Commission has suggested its repeal. Even a bill was tabled in parliament about its repeal; the same was not passed and never made into the law.

[53] 1988 Cr LJ 549.
[54] AIR 1994 SC 1844.
[55] AIR 1996 SC 1257.

But now Union Government has decided to decriminalize the said section by deleting it from the Indian Penal Code. 18 state governments and 4 union territories have supported the recommendation of the Law Commission of India. We can say that is a welcoming step, with respect to honoring the wishes of the people concerned.

One of the controversial issues in the recent past has been the question of legalizing the right to die or euthanasia. Euthanasia is controversial since it involves the deliberate termination of human life. Patient suffering from terminal diseases are often faced with great deal of pain as the diseases gradually worsens until it kills them and this may be so frightening for them that they would rather end their life than suffering it. So, the question is whether people should be given assistance in killing themselves, or whether they should be left to suffer the pain caused by terminal-illness.

The term euthanasia comes from two Ancient Greek words: 'eu' means 'good' and 'thanatos' means 'death', so euthanasia means 'good death'. It is an act or practice of ending the life of an individual suffering from a terminal illness or who is in an incurable condition by injection or by suspending extra-ordinary medical treatment in order to free him from intolerable pain. Euthanasia is defined as an intentional killing by an act or omission of person whose life is felt not to be worth living. It is also known as 'Mercy Killing' which is an act where the individual who, is in an irremediable condition or has no chances of survival as he is suffering from painful life, ends his life in a painless manner. It is a gentle, easy and painless death. It implies the procuring of an individual's death, so as to avoid or end pain

or suffering, especially of individuals suffering from incurable disease.

Oxford dictionary defines it as the painless killing of a person who has an incurable disease or who is in an irreversible coma.

According to the House of Lords Select Committee on Medical Ethics, it is "a deliberate intervention under-taken with the express intention of ending life to relieve intractable suffering." Thus, it can be said that euthanasia is the deliberated and intentional killing of a human being by a direct action, such as lethal injection, or by the failure to perform even the most basic medical care or by withdrawing life-support system in order to release that human being from painful life.

It is basically to bring about the death of terminally-ill patients or a disabled. It is resorted to so that the last days of the patient will be able to die peacefully. For such a patient it would be dignified death, rather than suffering a continuous unbearable pain.

Thus, the basic intention behind euthanasia is to ensure a less painful death to a person who is going to die after a long period of suffering. Euthanasia is practiced so that a person can live as well as die with dignity. The patient requires mental contentment which leads to the decision of carrying out euthanasia. In brief, it means putting a person to painless death in case of incurable diseases or when life becomes purposeless or hopeless as a result of mental or physical handicap.

The Supreme Court, had occasion to discuss the issues of suicide, euthanasia, assisted suicide, abetment of suicide,

stopping life sustaining treatment in Gian Kaur v. State of Punjab.[56] As the Supreme Court referred to some of the provisions of the Indian Penal Code, 1860 in that connection. These are as follows:—

(a)Sections 107, 306 and 309 of the Indian Penal Code, 1860

Section 306 of the IPC which refers to 'abetment of suicide,' reads as:

If any person commits suicide whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall liable to fine.

Section 107 of the IPC defines 'abetment of a thing' as follows:

A person abets the doing of a thing, who

First: Instigate any person to do that thing;

Secondly: Engages with one or more other persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, in order to the doing of that thing; or

Thirdly: Intentionally aids, by an act or illegal omission, the doing of that thing.

Explanation 1.—A person who by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to procure

[56] AIR 1996 SC 1257.

or cause a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act.

Section 309 of the Code makes 'attempt to commit suicide' an offence and it states as follows:—

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.

Thus, 'attempt to commit suicide' is an offence which may result in imprisonment (for a term which may extend to one year) or with fine or with both.

While dealing with section 309, it is necessary to refer to two important decisions of the Supreme Court of India where, in the first case in P. Rathinam v. Union of India[57], a two-judge Bench of the Supreme Court struck down section 309 as unconstitutional and in the second case in Gian Kaur v. State of Punjab,[58] a Constitution Bench overruled the earlier judgment and upheld the validity of section 309.

In both the judgments, the provisions of article 21 of the Constitution of India which guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law were interpreted. It was held in

[57] Supra note 91.
[58] Supra note 92.

both cases, that in any event, section 309 did not contravene article 21 of the Constitution of India.

In Gian Kaur's case, the appellants who were convicted under section 306 for 'abetment of suicide' contended that if section 309 dealing with 'attempt to commit suicide' was unconstitutional, for the same reasons, section 306 which deals with 'abetment of suicide' must be treated as unconstitutional. But the Supreme Court upheld the constitutional validity of both section 306 and section 309.

In Gian Kaur's case the Supreme Court made it clear that 'Euthanasia' and 'Assisted Suicide' are not lawful in India and the provisions of the IPC, 1860 get attracted to these acts. But, the question is whether Gian Kaur's case, either directly or indirectly deals with 'withdrawal of life support?

(a)Fortunately, in the context of section 306 (abetment of suicide), there are some useful remarks in Gian Kaur's case which touch upon the subject of withdrawal of life support. Before the Supreme Court, in the context of an argument dealing with 'abetment' of suicide, the decision of the House of Lords in Airedale N.H.S. Trust v. Blandm,[59] was cited. The Supreme Court referred to the distinction between withdrawing life support and euthanasia as follows:

> Airedale's case was a case relating to withdrawal of artifical measures for continuance of life by a physician. Even though it is not necessary to deal with physician assisted suicide or euthanasia case, a brief reference to the decision cited at Bar may be made.

[59] 1993 (1) All ER 821.

> In the context of existence in the Persistent Vegetative State of no benefit to the patient, the principle of sanctity of life, which is the concern of the State, was stated to be not an absolute one. In such cases also, the existing crucial distinction between cases in which a physician decides not to provide, or to continue to provide, for his patient, treatment of care which could or might prolong his life, for example, by administering a lethal drug, actively to bring his patient's life to an end, was indicated as under....

Their Lordships quoted the following passage from Airdale:

> But, it is not lawful for a doctor to administer a drug to his patient to bring about his death, even though that course is promoted by a humanitarian desire to end his suffering, however great that suffering may be. Thus, euthanasia is not lawful at common law.

Thus, in this effect, the Supreme Court, while making the distinction between euthanasia, which can be legalized only by legislation, and 'withdrawal of life-support,' appears to agree with the House of Lords that 'withdrawal of life support' is permissible in respect of a patient in a PVS as it is no longer beneficial to the patient that 'artificial measures' be started or continued merely for 'continuance of life'. The Court also observed that the principle of 'sanctity of life' which is the concern of the State, was 'not an absolute one'.

(b) Another thing which is referred in Gian Kaur's case is whether a 'right to die' with dignity was part of a 'right to live' with dignity in the context of article 21? The Court observed:

> A question may arise, in the context of a dying man who is terminally-ill or in a PVS that he may be permitted to terminate it by a premature extinction of his life in those circumstances. category of cases may fall within the ambit of the 'right to die' with dignity as a part of 'right to live' with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced.

From the above passages, it is clear that the Supreme Court accepted the statement of law by the House of Lords in Airedale that 'euthanasia' is unlawful and can be permitted only by the Legislature i.e., act of killing a patient painlessly for relieving his suffering from incurable illness. Otherwise, it is not legal. 'Assisted suicide' is where a doctor is requested by a patient suffering from pain and he helps the patient by medicine to put an end to his life. This is also not permissible in law.

But where a patient is terminally ill or is in a Persistent Vegetative State (PVS), a premature extinction of his life in those circumstances, by withholding or withdrawal of life support, is part of the right to live with dignity and, is permissible, when death due to natural termination of life is certain and imminent and the process of natural death has commenced.

Thus, there is a crucial distinction between cases in which (a) a physician decides not to provide or continue to provide treatment or case which can or may prolong his life, and (b) where the physician decides, for example, to administer a lethal drug, actively to bring an end to the patient's life. The former is permissible but the latter is not.

(b) Sections 87, 88 and 92 of the Indian Penal Code, 1860

These sections of the Penal Code also have relevance. Section 87 of the IPC deals with 'Act likely to cause harm, but done without criminal intention to prevent other harm.' It reads as:

> Act not intended and not known to be likely to cause death or grievous hurt, done by consent - Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause any such person who has consented to take the risk of that harm.

Illustration:

A and Z agree to fence with other for amusement. This 1 agreement implies the consent of each to suffer any harm which in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence."

Section 88 deals with 'Act done in good faith for benefit of a person with consent. It reads as follows:

> "Act intended to cause death, done by consent in good faith for person's benefit - Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause or be intended by the doer to cause or be known

by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration:

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence."

Section 92 deals with 'Act done in good faith for benefit of a person without consent.' It reads as follows:

Act done in good faith for benefit of a person without consent. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent. If the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided

First - That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly - That this exception shall not extend to the doing of anything which the person doing it knows to be likely to

cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;

Thirdly - That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than preventing of death or hurt;

Fourthly - That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations:

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill, Z and in good faith intending Z's benefit. A's bullet gives Z a mortal wound. A has committed no offence.

Thus, from the above sections it is concluded that mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

(c) Section 81 of the Indian Penal Code, 1860.

Section 81 of the Code is also relevant. It deals with 'Act likely to cause harm' but done without criminal intent and to prevent other harm. It reads as follows:—

Act likely to cause harm, but done without criminal intent, and to prevent other harm - Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation -

It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations:

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of the vessel, and that by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers on the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence."

From the above sections it is revealed that 'Active' euthanasia is not permitted in India but `Passive' Euthanasia is permitted on the fulfilment of certain conditions.

4.2 New Dimensions in Indian History Aruna Shanbaug's Case

Aruna Shanbaug,[60] was a 25 years old nurse, at KEM Hospital and dreaming of marrying her fiancé - a young doctor colleague. She was sexually assaulted on the night of November 27, 1973 by a ward boy named Sohanlal Walmiki. He sodomized Aruna after strangling her with a dog chain. Then he left her lying there and went away, but not before robbing her of her earrings.

Next day, Aruna was discovered by a cleaner, unconscious, lying in a pool of blood. It was then realized that the assault and resulting asphyxiation with the dog chain had left her cortically blind, paralyzed and speechless. She also suffered cervical cord injury. She went into a coma from where she has never come out. Her family gave up on her. She is cared for by KEM hospital nurses and doctors for 37 years. The woman does not want to live any more. The doctors have told her that there is no

[60] Aruna Ramchandra Shanbaug v. Union of India, AIR 2011 SC 1290.

chance of any improvement in her state. She faded from public memory until 1998, when journalist Pinki Virani wrote 'Aruna's Story', a book that brought her back into the public consciousness.

The ward boy got a 7 years' sentence for attempted murder and robbery. He was not tried for rape as the matter of anal rape was then concealed at the time, perhaps fearing social repercussions on the victim. Her next friend (a legal term used for a person speaking on behalf of someone who is incapacitated) described Shanbaug: "her bones are brittle. Her skin is like 'Paper Mache' stretched over a skeleton. Her wrists are twisted inwards; her fingers are bent and fisted towards her palms, resulting in growing nails tearing into the flesh very often. She chokes on liquids and is in a PVS (persistent vegetative state)." So, she through her 'next friend' and lawyer Pinki Virani, decided to move the Supreme Court with a plea to direct the KEM Hospital not to force feed her. But doctors at KEM hospital don't agree, they say she responds through facial expressions.

Former Dean, KEM Hospital Dr. Pragna Pai says that Aruna is not in coma. "I used to go and talk to her and when you tell some story, she would start laughing or smiling or when you start singing some prayers or shlokas, she would look very quiet and peaceful, as if she is also joining the prayers," said Dr. Pai.

Aruna's case is the focal point of the debate over euthanasia in India. On the one side, it is the right to live, and the other, death with dignity and the Supreme Court has the unprecedented and difficult task of deciding on the fate of a victim in a crime committed 41 years ago. On 17th December,

2010, the Supreme Court of India admitted the woman's plea to end her life. The Supreme Court Bench comprising Chief Justice K.G. Balakrishnan, Justice A.K. Ganguly and B.S. Chauhan agreed to examine the merits of the petition and sought responses from the Union Government, Commissioner of Mumbai Police and Dean of KEM Hospital.

On 24th January, 2011, Hon'ble Markandey Katju and Gyan Sudha Mishra, J. of the Supreme Court of India responded to the plea for euthanasia filed by Aruna's friend Journalist Pinki Virani, by setting up a medical panel to examine her. The three-member medical committee subsequently set up under the Supreme Court's directives, checked upon Aruna and concluded that she met "most of the criteria of being in a PVS." However, it turned down the mercy killing petition on 7th March, 2011. The Court, in its landmark judgment, however, allowed passive euthanasia in India. While rejecting Pinki Virani's plea for Aruna Shanbaug's euthanasia, the Court laid down guidelines for passive euthanasia. According to these guidelines, passive euthanasia involves the withdrawing of treatment or food that would allow the patient to live.

The judge who says that a CD he reviewed of Ms. Shanbaug shows, "she is certainly not brain-dead. She expresses her likes or dislikes with sounds and movements. She smiles when given her favourite food. She gets disturbed when too many people enter her room and calms down when touched gently".

Ms. Virani issued this statement after his verdict. "Because of the Aruna Shanbaug case, the Supreme Court of India has permitted Passive Euthanasia which means that Aruna's case will

worsen with persistent diarrhoea as her body cannot handle much of that being put through the pipe; no catheter to catch body fluids and waste matter which excrete themselves; lengthening response time due to a 'sinking'. But, because of this woman who has never received justice, no other person in a similar position will have to suffer for more than three-and-a-half decades."

The medical attention they have lavished on Ms. Shanbaug was praised by the judges in their verdict.

Ms. Shanbaug has, however, changed forever India's approach to the contentious issues of euthanasia. The verdict on her case today allows passive euthanasia contingent upon circumstances. So other Indians can now argue in Court for the right to withhold medical treatment - take a patient off a ventilator, for example in the case of an - irreversible coma. Today's judgment makes it clear that passive euthanasia will "Only be allowed in cases where the person is in PVS (persistent vegetative state) or terminally ill."

In each case, the relevant High Court will evaluate the merits of the case, and refer the case to a Medical Board before deciding on whether passive euthanasia can apply. And till Parliament introduces new laws on euthanasia, it is Ms. Shanbaugh's case that is to be used as a point of reference by other Courts.

Recently, in November 2007, a member of Indian Parliament who belongs to the Communist Party of India introduced a bill to legalize euthanasia to the Lok Sabha i.e; to the Lower House of representative in the Indian Parliament.

C.K. Chandrappan, a representative from Trichur, Kerala, introduced a Euthanasia Permission and Regulation Bill that would allow the legal killing of any patient who is bed-ridden or deemed incurable. The legislation would also permit any person who cannot carryout daily chores without assistance to be euthanatized. "If there is no hope of recovery for a patient, it is only humane to allow him to put an end to his agony in a dignified manner.[61]

However, there are number of cases where the High Courts have rejected the euthanasia petitions.

In Bangalore, the High Court has rejected the euthanasia plea of a 72 years old retired teacher from Devanagere, who sought the Court' permission to die. Justice Ajit Gunjal disposed of H.B. Karibasamma's petition based on reports by neuro-surgical and psychiatric experts from Nirnhans. The reports said Karibasamma does not suffer any pain or severe ailment. Her spine is normal and she can get-up without any pain. Neither does she suffer from any mental disorder.

"Since she is elderly and fears she would become disabled in future due to her multiple ailments, and has no family support, she could be provided psychiatric counseling", the report suggested, nothing that Karibasamma refused to undergo any further investigation and medication. Based on the Court's order, doctors examined Karibasamma and referred her to experts at Nimhans.

Karibasamma, who claimed to have suffered slip disc and was bed-ridden for 10-11 years, had written to local authorities

[61] Quoted by Dr. B.K. Rao, Chairman of Sir Ganga Ram Hospital in New Delhi; http://legal servicesindia.com visited on 15th June, 2012.

and even the President and Prime Minister, seeking permission for euthanasia since 2003. Karibasamma claimed that she was getting only Rs. 8968 as monthly pension in 2010 and it wasn't enough to meet her medical expenses.

Because of her age, doctors have opted for non-surgical treatment, and the pain she is undergoing is excruciating.

However, the High Court rejected her plea based on reports by neuro-surgical and psychiatric experts from Nimhans that she does not suffer any pain or severe a ilment.[62]

Similarly, the Kerala High Court in C.A. Thomas Master v. Union of India,[63] dismissed the Writ Petition filed by a citizen wherein he wanted the government to set up "Mahaprasthan Kendra" (Voluntary Death Clinic) for the purpose of facilitating voluntary death and donation, transplantation of bodily organs.

In 2005, 'Mohd. Yunus' from Kashipur, Odissa requested the President for euthanasia on the ground that his children were suffering from incurable disease but the request was rejected. Similarly, a petition filed by Mr. Tarkeshwar Sinha from Patna was also rejected.

In 2004, a two-judge Bench of the Andhra Pradesh High Court in Suchita Srivastava v. Chandigarh Administration[64] dismissed the writ petition of a 25-year old terminally-ill patient 'Venktesh' who sought permission to donate his organs in a non-heart beating condition. The High Court dismissed the writ petition where 'Venktesh' had expressed his wish to be put off the life support system.

[62] http://www. articles.times of India. corn visited on 8th Nov. 2012.
[63] 2000 Cr IJ 3729.
[64] (2009) 9 S 1.

Euthanasia is totally different from suicide and homicide. Under the Indian Penal Code, attempt to commit suicide is punishable under section 309 of Indian Penal Code and also abetment to suicide is punishable under section 306 of Indian Penal Code. A person commits suicide for various reasons like marital discord, dejection of love, failure in the examination, unemployment etc. But in euthanasia these reasons are not present. Euthanasia means putting a person to painless death in case of incurable diseases or when life becomes purposeless or hopeless as a result of mental and physical handicap. It also differs from homicide. In murder, the murderer has the intention to cause harm or cause death in his mind. But in euthanasia although there is an intention to cause death, such intention is in good faith. A doctor applies euthanasia when the patient, suffering from a terminal disease, is in an irremediable condition or has no chance to recover or survival as he is suffering from a painful life or the patient has been in coma for 20/30 years like Aruna Shanbaug.

It is evident from the various judgments that the judiciary is not only reluctant but also cautious about taking steps towards approving euthanasia. Theirs is a quite model approach, which fair and equitable in certain situations. Extinguishing a life or giving permission for the same sounds pretty horrific. The patient or the person concerned who passes all the criteria of living can not be subjected to death on the ground of unbearable pain. The Central Government has taken a decision on decriminalizing the section 309 of the IPC. It is a welcoming step and must applaud. In Aruna Shanbaugh's case the court has permitted passive euthanasia but it does not award active euthanasia to Aruna.

As it has been already stated, the issue of legalizing euthanasia is not a simple task. Whatever the parliament, the executive and the judiciary face regarding its handling is not possible to describe. India is a diverse country with diverse culture and traditional norms. It is not an urgently required legislation in India, when other grave matters require government's attention and dealing. Demand for euthanasia legislation is not inappropriate or untimely. There are many medical problems and unethical practices in India which are prone to violate moral, ethical and humane sides of practice of euthanasia.

A consideration can be given for enacting a law for carrying out euthanasia. But it poses practical problems. Euthanasia is a process which can not be applied generally. Every case is different and thus requires different standards. The conditions and requirements for carrying out euthanasia are not watertight compartments. Hence, it should not become an emotional matter. The judiciary in India is quite in its senses, which studies the issue on case to case basis. No constitutional body can be rushed or pressurized to legalize euthanasia.

The scholars advocating euthanasia suggest that India can make legislation on the basis of models of the countries with such legislation. These laws can give us guidelines as what can be done and what must be avoided. Such laws provide best practices and ethical norms for the medical field.

The argument is valid and it is not impossible to legalize euthanasia in India. The problem is about the conditions which prevail in India and in such states are not identical. It would be appropriate to say that ours is a totally different case.

The countries which have legalized euthanasia, are pretty small in case its territory. The population therein is more literate and is aware about their rights and dangers of euthanasia. Additionally, the machinery in play is sophisticated.

Indian population has a larger portion of illiterates than the literates. The literate population is not much liberal about euthanasia and might not approve its legalization. We Indians deal with such issues with sentiments and which can not override our reasoned decisions.

It is better to left the issue with the judiciary, until we prepare ourselves emotionally and practically to accept it as part of our life.

4.3 Whether Legislation is necessary

The path breaking judgment in *Aruna Ramachandra* and the directives given therein has become the law of the land. The Law Commission of India too made a fervent plea for legal recognition to be given to passive euthanasia subject to certain safeguards. The crucial and serious question now is, should we recommend to the Government to tread a different path and neutralize the effect of the decision in *Aruna's case* and to suggest a course contrary to the law and practices in most of the countries of the world? As we said earlier, there are no

compelling reasons for this Law Commission to do so. Our earnest effort at the present juncture is only to reinforce the reasoning adopted by the Supreme Court and the previous Law Commission. On taking stock of the *pros* and *cons*, this Commission would like to restate the propriety and of legality of passive euthanasia rather than putting the clock back in the medico-legal history of this country.

4.4 Law Commission of India 196th Report

LAW COMMISSION OF INDIA AND ITS RECOMMENDATION

The Law Commission in its 42nd Report[65] recommended the repeal of section 309 of India Penal Code. The Indian Penal Code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed. The Commission submitted its 156th Report[66] after the pronouncement of the judgement in

[65] http://lawcommissionofindia.nic.in/1-50/Report42.pdf , last visited on 08.03.2015
[66] http://lawcommissionofindia.nic.in/101-169/Report156Vol2.pdf , last visited on 08.03.2015

Gian Kaurv. State of Punjab[67], recommending retention of section 309. Later the Law Commission in its 210th Report[68] submitted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment. The Supreme Court in *Gian Kaur* focused on constitutionality of section 309. It did not go into the wisdom of retaining or continuing the same in the statute. The Commission has resolved to recommend to the Government to initiate steps for repeal of the anachronistic law contained in section 309, IPC, which would relieve the distressed of his suffering.

This 196th Report[69] of the Law Commission on 'Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)' is one of the most important subjects ever undertaken by the Law Commission of India for a comprehensive study. This Report is relating to the law applicable to terminally ill patients (including patients in persistent vegetative state) who desire to die a natural death without going through modern Life Support Measures like artificial ventilation and artificial supply of food.

The Commission has given the following recommendations.

[67] 1996 (2) SCC 648 : AIR 1996 SC 946
[68] http://lawcommissionofindia.nic.in/reports/report210.pdf , last visited on 08.03.2015
[69] http://lawcommissionofindia.nic.in/reports/rep196.pdf , last visited on 08.03.2015

1. Obviously, the first thing that is to be declared is that every 'competent patient', who is suffering from terminal illness has a right to refuse medical treatment (as defined i.e. including artificial nutrition and respiration) or the starting or continuation of such treatment which has already been started. If such informed decision is taken by the competent patient, it is binding on the doctor. At the same time, the doctor must be satisfied that the decision is made by a competent patient and that it is an informed decision. Such informed decision must be one taken by the competent patient independently, all by himself i.e. without undue pressure or influence from others.

It must also be made clear that the doctor, notwithstanding the withholding or withdrawal of treatment, is entitled to administer palliative care i.e. to relieve pain or suffering or discomfort or emotional and psychological suffering to the incompetent patient (who is conscious) and also to the competent patient who has refused medical treatment.

2. We propose to provide that the doctor shall not withhold or withdraw treatment unless he has obtained opinion of a body of three expert medical practitioners from a panel prepared by high ranking Authority. We also propose another important caution, namely, that the decision to withhold or withdraw must be based on guidelines issued by the Medical Council of India as to the

circumstances under which medical treatment in regard to the particular illness or disease, could be withdrawn or withheld.

In addition, it is proposed that, in the case of competent as well as incompetent patients, a Register must be maintained by doctors who propose withholding or withdrawing treatment. The decision as well as the decision-making process must be noted in the Register. The Register to be maintained by the doctor must contain the reasons as to why the doctor thinks the patient is competent or incompetent, as to why he thinks that the patient's decision in an informed decision or not, as to the view of the experts the doctor has consulted in the case of incompetent patients and competent patients who have not taken an informed decision, what is in their best interests, the name, sex, age etc. of the patient. He must keep the identity of the patient and other particulars confidential. Once the above Register is duly maintained, the doctor must inform the patient (if he is conscious), or his or her parents or relatives before withdrawing or withholding medical treatment. If the above procedures are followed, the medical practitioner can withhold or withdraw medical treatment to a terminally ill patient. Otherwise, he cannot withhold or withdraw the treatment.

3. A patient who takes a decision for withdrawal or withholding medical treatment has to be protected from prosecution for the

offence of ‘attempt to commit suicide’ under sec. 309 of the Indian Penal Code, 1860. This provision is by way of abundant caution because it is our view that the very provisions are not attracted and the common law also says that a patient is entitled to allow nature to take its own course and if he does so, he commits no offence.

Likewise, the doctors have to be protected if they are prosecuted for ‘abetment of suicide’ under sections 305, 306 of the Penal Code, 1860 or of culpable homicide not amounting to murder under sec. 299 read with sec. 304 of the Penal Code, 1860 when they take decisions to withhold or withdraw life support and in the best interests of incompetent patients and also in the case of competent patients who have not taken an informed decision. The hospital authorities should also get the protection. This provision is also by way of abundant caution and in fact the doctors are not guilty of any of these offences under the above sections read with sections 76 and 79 of the Indian Penal Code as of today. Their action clearly falls under the exceptions in the Indian Penal Code, 1860. We are also of the view that the doctors must be protected if civil and criminal actions are instituted against them.

We, therefore, propose that if the medical practitioner acts in accordance with the provisions of the Act while withholding

or withdrawing medical treatment, his action shall be deemed to be ‘lawful’.

4. We have therefore thought it fit to provide an enabling provision under which the patients, parents, relatives, next friend or doctors or hospitals can move a Division Bench of the High Court for a declaration that the proposed action of continuing or withholding or withdrawing medical treatment be declared ‘lawful’ or ‘unlawful’. As time is essence, the High Court must decide such cases at the earliest and within thirty days. Once the High Court gives a declaration that the action of withholding or withdrawing medical treatment proposed by the doctors is ‘lawful’, it will be binding in subsequent civil or criminal proceedings between same parties in relation to the same patient. We made it clear that it is not necessary to move the High Court in every case. Where the action to withhold or withdraw treatment is taken without resort to Court, it will be deemed ‘lawful’ if the provisions of the Act have been followed and it will be a good defense in subsequent civil or criminal proceedings to rely on the provisions of the Act.

5. It is internationally recognized that the identity of the patient, doctors, hospitals, experts be kept confidential. Hence, we have proposed that in the Court proceedings, these persons or bodies will be described by letters drawn from the English alphabet and

none, including the media, can disclose or publish their names. Disclosure of identity is not permitted even after the case is disposed of.

6. The Medical Council of India must prepare and publish Guidelines in respect of withholding or withdrawing medical treatment. The said Council may consult other expert bodies in critical care medicine and publish their guidelines in the Central Gazette or on the website of the Medical Council of India.

Having said earlier, the Central Government has accepted the recommendation of the Law Commission of India to repeal the section 309 (attempt to commit suicide) of the Indian Penal Code.

4.5 Medical Ethics and Duty of Doctor

4.5.1 What is the duty of the doctor? Is he bound to take patient's consent for starting or continuing the treatment including surgery or artificial ventilation etc? How is he expected to act where a patient is not in a position to express his

will or take an informed decision? These are the primary questions which come up for discussion and these issues were addressed in Airedale and Aruna.

4.5.2 In this context, two cardinal principles of medical ethics are stated to be patient autonomy and beneficence (vide P. 482 of SCC in Aruna's case):

1. "Autonomy means the right to self-determination, where the informed patient has a right to choose the manner of his treatment. To be autonomous, the patient should be competent to make decision and choices. In the event that he is incompetent to make choices, his wishes expressed in advance in the form of a living will, OR the wishes of surrogates acting on his behalf (substituted judgment) are to be respected.

The surrogate is expected to represent what the patient may have decided had she/she been competent, or to act in the patient's best interest.

2. Beneficence is acting in what (or judged to be) in the patient's best Interest. Acting in the patient's best interest means following a course of action that is best for the patient, and is not in influenced by personal convictions, motives or other considerations……."

4.5.3 Both the Supreme Court as well as the Law Commission relied on the opinion of House of Lords on these aspects. The contours of controversy has been put in the following words by Lord Goff in Airedale case – "Even so, where for example) a patient is brought into hospital in such a condition that, without the benefit of a life support system, he will not continue to live, the decision has to be made whether or not to give him that benefit, if available. That decision can only be made in the best interests of the patient. No doubt, his best interests will ordinarily require that he should be placed on a life support system as soon as necessary, if only to make an accurate assessment of his condition and a prognosis for the future. But if he neither recovers sufficiently to be taken off it nor dies, the question will ultimately arise whether he should be kept on it indefinitely. As I see it, that question (assuming the continued availability of the system) can only be answered by reference to the best interests of the patient himself, having regard to established medical practice. …….The question which lies at the heart of the present case is, as I see it, whether on that principle the doctors responsible for the treatment and care of Anthony Bland can justifiably discontinue the process of artificial feeding upon which the prolongation of his life depends". That question

was dealt with in the following words: “It is crucial for the understanding of this question that the question itself should be correctly formulated. The question is not whether the doctor should take a course which will kill his patient, or even take a course which has the effect of accelerating his death. The question is whether the doctor should or should not continue to provide his patient with medical treatment or care which, if continued, will prolong his patient's life. The question is sometimes put in striking or emotional terms, which can be misleading”. To stay clear of such misconception, the right question to be asked and answered was stated as :- “The question is not whether it is in the best interests of the patient that he should die. The question is whether it is in the best interests of the patient that his life should be prolonged by the continuance of this form of medical treatment or care.” Then, it was observed:- “The correct formulation of the question is of particular importance in a case such as the present, where the patient is totally unconscious and where there is no hope whatsoever of any amelioration of his condition. In circumstances such as these, it may be difficult to say that it is in his best interests that treatment should be ended. But if the question is asked, as in my opinion it should be, whether it is in his best interests that treatment which has the effect of

artificially prolonging his life should be continued, that question can sensibly be answered to the effect that it is not in his best interests to do so."

The following words of Lord Goff touching on the duty and obligation of a doctor towards a terminally ill incompetent patient are quite apposite:

> "The doctor who is caring for such a patient cannot, in my opinion, be under an absolute obligation to prolong his life by any means available to him, regardless of the quality of the patient's life. Common humanity requires otherwise, as do medical ethics and good medical practice accepted in this country and overseas. As I see it, the doctor's decision whether or not to take any such step must (subject to his patient's ability to give or withhold his consent) be made in the best interests of the patient. It is this principle too which, in my opinion, underlies the established rule that a doctor may, when caring for a patient who is, for example, dying of cancer, lawfully administer painkilling drugs despite the fact that he knows that an incidental effect of that application will be to abbreviate the patient's life."

4.5.4 Lord Goff then made a pertinent observation that discontinuance of artificial feeding in such case (PVS and the

like) is not equivalent to cutting a mountaineer's rope or severing the air pipe of a deep sea diver. In the same case, Lord Brown Wilkinson having said that the doctor cannot owe to the patient any duty to maintain his life where that life can only be sustained by intrusive medical care to which the patient will not consent, further clarified the legal position thus : "If there comes a stage where the responsible doctor comes to the reasonable conclusion (which accords with the views of a responsible body of medical opinion), that further continuance of an intrusive life support system is not in the "best interests" of the patient, he can no longer lawfully continue that life support system; to do so would constitute the crime of battery and the tort of trespass to the person. Therefore, he cannot be in breach of any duty to maintain the patient's life. Therefore, he is not guilty of murder by omission".

4.5.5 These passages have been approvingly quoted by learned Judges of the Supreme Court in Aruna's case.

4.5.6 The observations of Lord Mustill in Airedale's case which were quoted by Supreme Court are also relevant – "Threaded through the technical arguments addressed to the House were the strands of a much wider position, that it is in the best interests of

the community at large that Anthony Bland's life should now end. The doctors have done all they can. Nothing will be gained by going on and much will be lost. The distress of the family will get steadily worse. The strain on the devotion of a medical staff charged with the care of a patient whose condition will never improve, who may live for years and who does not even recognize that he is being cared for, will continue to mount. The large resources of skill, labour and money now being devoted to Anthony Bland might in the opinion of many be more fruitfully employed in improving the condition of other patients, who if treated may have useful, healthy and enjoyable lives for years to come".

4.5.7 The negative effects of compelling a doctor to continue the treatment to a PVS patient till the end have thus been forcibly portrayed.

4.6 Medical Treatment of Terminally Ill Patients (Protection of Patients & Medical Practioners) Bill, 2006

A Bill to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally ill.

Be it enacted in the Fifty Seventh Year of the Republic of India. It extends to the whole of India except the State of Jammu and Kashmir.

Medical Council of India to issue Guidelines:

(1) Consistent with the provisions of this Act, the Medical Council of India shall prepare and issue guidelines, from time to time for the guidance of medical practitioners in the matter of withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness.

(2) While preparing such guidelines, the Medical Council of India may consult medical experts or bodies consisting of medical practitioners who have expertise in relation to withholding or 434 withdrawing medical treatment to patients or experts or bodies having experience in critical care medicine.

(3) The Medical Council of India may review and modify the guidelines from time to time.

(4) The guidelines and modifications thereto, if any, shall be published in the Official Gazette of India and on its website.

4.7 Present Scenario And The Liability Of Doctors

Due to development of Science and technology in the last century the concepts of life and death has been changed. Nowadays, a person who is in a persistent vegetative state (PVS), whose sensory systems are dead, can be kept alive by ventilators and artificial nutrition for years. In the light of these developments, legal, moral and ethical issues have arisen as to whether a person who is under ventilator and artificial nutrition should be kept alive for all time to come till the brain-stem collapses or whether, in circumstances where an informed body of medical opinion states that there are no chances of the patient's recovery, the artificial support systems can be stopped. If that is done, can the doctors be held guilty of murder or abetment of suicide? These questions have been raised and decided in several countries and broad principles have been laid down. 'Withdrawal of life support systems' is different for 'Euthanasia' or 'Assisted Suicide'. Withholding or withdrawing life support is today permitted in most countries, in certain circumstances, on the ground that it is lawful for the doctors or hospitals to do so. Courts in several countries grant declarations in individual cases that such withholding or withdrawal is lawful.

It is a well settled principle at common law that a patient has a right to accept medical treatment or refuse it. This is called the principle of self determination. In *Airedale*[70], Lord Goff of Chiveley stated that "it is established that the principle of self determination requires respect must be given to the wishes of the patient, so that if any adult patient of sound mind refuses, however unreasonably, to consent to treatment or care by which his life would or might be prolonged," it shall be obeyed. The doctors "must give effect to his wishes even though they do not consider it to be in the best interests to do so." If a competent patient wants life support system to be withheld or withdrawn, it is binding on the doctors unless they come to the conclusion that the patient's decision is not an 'informed decision'. In such cases, the doctor has to take a decision in the 'best interests' of the patient.

In England and other countries, the doctors or hospitals approach the Court for a declaration that any decision by them for withholding or withdrawing medical treatment be declared lawful. Again, parents of a patient, whether the patient is minor or not, can also move the Court, if they disagree with the doctor. The parents may want the artificial treatment be still continued or in some cases, discontinued. They can also approach Courts.

[70] 1993(1) All ER 821 (HL)

In *Re C (adult: refusal of medical treatment)*[71], Thorpe J referred to what is now known as the C-Test-, that the patient must have the 'competency i.e. the capacity to understand and decide the medical opinion. But where his faculties are reduced on account of his chronic illness and he had not sufficiently understood his state and the medical opinion, his refusal is not binding and the doctors could approach the court for directions. There cannot be any single test of what is in the best interests of an incompetent patient but it must depend upon a variety of considerations depending upon the facts of the case.

Where a patient is not competent, it is lawful for doctors to take a decision to give, withhold or withdraw medical treatment if they consider that to be the appropriate action to be taken in the best interests of the patient. So it is very important to define 'competent' and 'incompetent' patients, 'informed decision' and 'best interest' to know the position. Accordingly the Law Commission in its 196th Report[72] annexed the drafted Bill namely "Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006 relating to the law applicable to terminally ill patients (including patients in persistent vegetative state) who desire to die a natural

[71] 1994 (1) All ER 819
[72] http://lawcommissionofindia.nic.in/reports/rep196.pdf , last visited on 08/03/2015

death without going through modern Life Support Measures like artificial ventilation and artificial supply of food.

Now, two questions arise. First, so far as the patient who is an adult and competent who refuses treatment, does it amount to ‘attempt to commit suicide’?

Secondly, so far as the doctors are concerned, in the case of an adult where they obey the patient’s refusal or where in the case of competent patient whose decision to refuse treatment is not an informed one and where the patient is a minor or incompetent or a PVS they take a bona fide decision to stop artificial life support, on the basis of ‘best interests’ of the patient, question arises whether they are guilty of ‘abetment of suicide’?

Now, as far as the patient is concerned, when he refuses treatment, whether he is guilty of ‘attempt to commit suicide’ or not. The definition of ‘attempt to commit suicide, is contained in sec. 309 of IPC. But, that is different from a patient allowing nature to take its own course. When a person is suffering from disease, he may take medicine to cure himself. A patient may decide for himself that he will allow the disease or illness to continue and be not bothered by taking medicines or invasive procedures. An attitude where a patient prefers nature to take its course has been held in almost all leading countries governed by

common law, as pointed out in the preceding chapters, as not amounting to an act of deliberate termination of one's own physical existence. It is not like an act of deliberate or intentional hanging or shooting one's self to death or attempting to drown in a well or a river or in the sea. In view of the settled law on this aspect, allowing nature to take its course and not taking medical treatment is not an attempt to commit suicide. Hence there is no offence under sec. 309. In fact, in *Airedale*[73] the House of Lords clearly held it is not suicide.

So far as the doctor is concerned, let us consider if sec. 306 which deals with 'abetment to commit suicide' applies. Once the competent patient decides not to take medicine and allows nature to take its course, the doctor has to obey the instructions. Administering medicine contrary to the wishes of a patient is battery and is an offence. The omission to give medicine is based on the patient's direction and hence the doctor's inaction is not an offence. In fact, when there is no attempt at suicide or suicide under sec 309, there can be no abetment of suicide under sec 306.

Even under sec 107 of the Indian Penal Code which generally deals with 'abetment', the position is the same. Under that section 'abetment' may be by a positive act or even by

[73] 1993(1) All ER 821 (HL)

omission. If a doctor omits to give medical treatment at the instructions of a competent patient, he is not guilty of 'abetment' under sec 107, because under sec 107 the omission must be "illegal". If under common law, the doctor is bound by the patient's instruction for stoppage of treatment, it is binding on him and his omission is 'legal'.

We have seen in *Airedale*[74] case and *Cruzan v. Director, MDH*[75], the question of the doctor's omission has been considered elaborately and it has been held that where there is no duty under common law to give or continue the medical treatment, the omission of the doctor does not amount to an offence. Hence, the doctor is not guilty of 'abetment of suicide' under sec. 306 IPC, even if we read sec. 306 along with sec. 107 which deals generally with 'abetment'.

It is still necessary to consider whether the action of the doctor in refusing to provide medical treatment, though with consent of the competent patient, amounts to 'culpable homicide' not amounting to murder under section 299 of IPC. After reading section 299 of IPC, it can be said that under the main part of sec 299, the doctor is not guilty because he had no intention to cause death or bodily injury which is likely to cause death. Sections 76, 81 and 88 of IPC provide ample scope for

[74] 1993(1) All ER 821 (HL)
[75] 497 U.S. 261(1990)

protection of the actions of well meaning doctors. Therefore applicability of these sections in a given set of circumstances needs a special mention. Firstly, Section 76, which provides the defense of mistaken fact, can be invoked by the doctors in case of passive euthanasia. Section 76 is attracted to the case of doctors taking action to withhold or withdraw treatment in the case of refusal to medical treatment by a competent patient. Such refusal being binding on the doctor (provided, of course, the doctor is satisfied that the patient is competent and the patient's decision is an informed one). In such cases sec 76 brings the doctor's action under the exception.

The act of withholding or withdrawing medical treatment will fall under this exception under section 79, if the said act is "justified by law". This section applies to the doctor's action in the case of both competent and incompetent patients.

Section 81 is the most important provision, which may be invoked in relation to decisions of terminating life. Significantly, it may be contended not only in cases of passive euthanasia but also in cases of active euthanasia, since it permits causing harm with an intention to avoid greater harm. This section may be applicable both in cases of competent or incompetent patients but involves proof of several questions of fact, even if there is no

criminal intent. In our view, sections 76 and 79 give far greater protection than sec 81.

Section 88 is also relevant to take decisions for withdrawal and withholding of treatment, as there is no direct intention on the part of doctors to cause death. This section applies to competent patients who give consent but the consent is for acts which will cover ‘benefit’. This section also requires several facts to be proved and question is of ‘benefit’. Sections 76, 79 are more appropriate than section 88 and there is no offence under sec 299 read with sec 304 of the Penal Code.

CHAPTER 5
ANALYSIS, CONCLUSION AND SUGGESTION'S

5.1Analysis

1. Hypothesis No.1 "Euthanasia is a conflict between Life and Death" is proved that life is a gift of god but death is not. The conflict of Life and Death is distinguished by Euthanasia and suicide. Suicide means intentional termination of one's life/act of killing deliberately. But euthanasia is not killing yourself deliberately. The factors which result into suicide are different than those of euthanasia. Sucide is an offence punishable U/Sec. 309 0f I.P.C. but passive euthanasia is permissable in India. This conflict between euthnasia and life and death is explained in Ch. No. 1&4 of this research.
2. Hypothesis No. 2 "Though the Indian Constitution grants equality to everyone, either ill or healthy but in the context of Euthanasia it is deficient and does not permit to avail voluntary death" is proved as the Indian Constitution guarantees equality of law and right to life U/art 14 &21. But in case of euthanasia there is discrimination between sick and healthy person which

indirectly violates Art. 14 & 21. These aspects are explained in Ch.1 of this research.

3. Hypothesis No. 3 “Indian law is based on ‘Ahinsa’, voluntary death is taken as an attempt to suicide leading to criminal offence and has been subjected to criticism, vilification and condemnation” is proved. As the Indian society and law is based on ‘Ahinsa’, but the concept of euthanasia has shaken this concept of Ahinsa. If euthanasia permitted in both its form then it will lead to many invontary deaths which will indirectly cause violence, as euthanasia is taken as an attempt to suicide leading to criminal offence.
4. Hypothesis No.4 “Abetment of Suicide and Attempt to commit Suicide are violative to the Right to Life” proved. As abetment of suicide is an offence U/Sec 306 of I.P.C. & attempt to commit suicide is an offence punishable U/Sec. 309 of I.P.C. (Section 309 would be repealed eventually). These offences are violative of right of life guaranteed U/Art. 21 of Indian constitution. Art. 21 guarantees right to life and personal liberty but right to life does not include right to die so, active euthanasia is violative of right to life. These aspects

have been explained in chapter no. 6 with judicial precedents.

5. Hypothesis No.5 “Passive euthanasia, which is allowed in many countries, can have legal recognition in India but it is a subject of conflict and complexities” is proved. The complications involved in the legalizing it in India is a bold step, which requires detailed study and training of the medical practitioners, para-medical staff, advocates and nonetheless general public.
6. Hypothesis no.6 “When someone is terminally ill and not conscious or of unsound mind and is ill passive euthanasia lawfully can be granted without his consent” is proved. When a person who is unconscious and terminally ill or who is of unsound mind and terminally ill patient and in such a stage he is not in apposition to give consent as to whether passive euthanasia should be granted to him or not? Then in such a case passive euthanasia can be granted to him without his consent. This aspect has been explained in 2 of this research. There is not much to argue about this problem as the Apex court has legalized passive euthanasia in Aruna Shanbaugh’s case.

5.2 Conclusion

It could be exaggerating to say that the issue of legalizing euthanasia is over and there is hope of putting it into an enactment in the near future. Making a law is not a solution on every problem we face in day to day life. Mercy killing is not a common situation but quite a rare condition. One in thousands situation medical practitioners come across cases of patients with chronic conditions, where euthanasia is considered. It is not a common case. Taking into account euthanasia in case of a patient with PVS state is practical but that does not happen with every such case. Evaluating every case in here is not practical and won't serve the purpose of the research. It is important to assess the practical task behind legalizing euthanasia in India.

Countries where euthanasia is legal in all aspects, the practice of the same has turned into a convention. The mechanism has seen a long span of time tackling obstacles and setting new norms. It is not the situation that the practice is full proof and without loopholes in those nations. During that period the nations and their citizens have gone through a radical change in the medical field as well as human perspective. It has developed the mindset of the whole community towards forming the opinion about

choosing death over life. This understanding has flowed through generations now, which is pretty much revolutionary.

What India needs is the maturity to handle the issue and understanding its pros and cons thoroughly. It is a mammoth task.

The requirement of having legislation on euthanasia depends on the intensity of number of patients with terminal illness and the gravity of such situations. It is not commonly accepted in India. What a situation would demand in future and what would be its repercussions are matter of unknown reality. Indian population has not developed the healthy potential required for legalizing active euthanasia.

Let us say that there exists a law on euthanasia in India. Nobody can guarantee its 100% legal compliance or the possible and probable abuse by the society and medical practitioners and hospitals. What is the possibility of violation of norms in case where the patients involved do not prefer and consider euthanasia? An especially dangerous aspect is that such abuse can be easily made undetectable. Thus although mercy killing appears to be morally justifiable, its fool-proof practicability seems near to impossible.

After the *Gian Kaur's* case, suicide has become illegal per se, but the same could not be said for euthanasia. Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India* legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law. In view of the discussion above I believe that voluntary euthanasia should also be allowed in India and that the legislature should step in and make a special law dealing with all the aspects of euthanasia. So we need a law to legalize euthanasia with adequate safeguards. The recommendations laid down in the Reports of Law Commission of India and guidelines given in the Aruna's case are to be taken into consideration when any law on that point is to be framed to prevent the malpractices and misuse of euthanasia. Besides, if the suggestions laid down above are implemented then the chances of misuse of euthanasia would be greatly reduced.

Therefore all in all, the success of the legislation depends on various factors. We can control and regulate few of them. Elimination of all the evils in the system evolved is a critical and complex job. It can be done reasonable and rationally. A healthy and faithful approach is what we need to fulfill the objective.

5.3 Suggestion

A close perusal of the arguments against euthanasia that have been summarized above tend to indicate that all the talk about sanctity of life notwithstanding, the opposition to euthanasia breeds from the fear of misuse of the right if it is permitted.

It is feared that placing the discretion in the hands of the doctor would be placing too much power in his hands and he may misuse it. This fear stems largely from the fact that the discretionary power is placed in the hands of non judicial personnel (a doctor in this case). This is so because we do not shirk from placing the same kind of power in the hands of a judge (for example, when we give the judge the power to decide whether to award a death sentence or a sentence of imprisonment for life). But what is surprising is that the fear is of the very person (the doctor) in who's hands we would otherwise not be afraid of placing our lives. A doctor with a scalpel in his hands is acceptable but not a doctor with a fatal injection. What is even more surprising is that ordinarily the law does not readily accept negligence on the part of a doctor. The Courts tread with great caution when examining the decision of

a doctor and yet his decision in the cases of euthanasia is not considered reliable.

It is felt that a terminally ill patient who suffers from unbearable pain should be allowed to die. Indeed, spending valuable time, money, and facilities on a person who has neither the desire nor the hope of recovery is nothing but a waste of the same. At this juncture it would not be out of place to mention that the "liberty to die", if not right in strict sense, may be read as part of the right to life guaranteed by Article 21 of the Constitution of India. Recently the judgment of our Supreme Court in *Aruna Ramchandra Shanbaug v. Union of India* legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law.

Here it is sought only to agree for the legalization of voluntary (both active and passive) euthanasia. This is because though there may be some cases of non-voluntary or involuntary euthanasia where one may sympathize with the patient and in which one may agree that letting the patient die was the best possible option, yet it is believed that it would be very difficult to separate each cases from the other cases of non-voluntary or involuntary euthanasia. Thus, it is believed that the potential of

misuse of provisions allowing non-voluntary and involuntary euthanasia is far greater than that of the misuse of provisions seeking to permit voluntary euthanasia.

It is submitted that in the present scheme of criminal law it is not possible to construe the provisions so as to include voluntary euthanasia without including the non-voluntary and involuntary euthanasia while expressly prohibiting non-voluntary and involuntary euthanasia. Coming back to the argument of the opponents of euthanasia that any legislation legalizing voluntary euthanasia would lead to a misuse of the provisions, I would now like to present a scheme by which such misuse could be minimized. The risk and fear of misuse and abuse could be done away with proper safeguards and specific guidelines. Though in this regard the 196th Law Commission Report and the guidelines given in the *Aruna's* case are there and guidelines will continue to be the law until Parliament makes a law on this point.

As it has been already stated, the issue of legalizing euthanasia is not a simple task. Whatever the parliament, the executive and the judiciary face regarding its handling is not possible to describe. India is a diverse country with diverse culture and traditional norms. It is not an urgently required legislation in India, when other grave matters require government's attention and dealing. Demand for euthanasia legislation is not inappropriate or untimely. There are many medical problems and unethical practices in India which are

prone to violate moral, ethical and humane sides of practice of euthanasia.

A consideration can be given for enacting a law for carrying out euthanasia. But it poses practical problems. Euthanasia is a process which can not be applied generally. Every case is different and thus requires different standards. The conditions and requirements for carrying out euthanasia are not watertight compartments. Hence, it should not become an emotional matter. The judiciary in India is quite in its senses, which studies the issue on case to case basis. No constitutional body can be rushed or pressurized to legalize euthanasia.

The scholars advocating euthanasia suggest that India can make legislation on the basis of models of the countries with such legislation. These laws can give us guidelines as what can be done and what must be avoided. Such laws provide best practices and ethical norms for the medical field.

The argument is valid and it is not impossible to legalize euthanasia in India. The problem is about the conditions which prevail in India and in such states are not identical. It would be appropriate to say that ours is a totally different case.

The countries which have legalized euthanasia, are pretty small in case its territory. The population therein is more literate and is aware about their rights and dangers of euthanasia. Additionally, the machinery in play is sophisticated.

Indian population has a larger portion of illiterates than the literates. The literate population is not much liberal about euthanasia and might not approve its legalization. We Indians

deal with such issues with sentiments and which can not override our reasoned decisions.

It is better to left the issue with the judiciary, until we prepare ourselves emotionally and practically to accept it as part of our life.

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