A

DISSERTATION ON

CRITICAL APPRAISAL OF EUTHANASIA

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

MASTER OF LAW

SUBMITTED BY

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LUCKNOW

SUPERVISOR CERTIFICATE

This is to certify that the work contained in the thesis entitled "CRITICAL APPRAISAL OF EUTHANASIA", submitted by PRIYA GIRI for the award of the degree of LLM to the BABU BANARASI DAS UNIVERSITY, LUCKNOW, is a record of bona fide research works carried out by her under my direct supervision and guidance.

According to the best of my knowledge , he/she fulfilled all the necessary requirements prescribed under the Universities Guideline by way of regard to the submission of this Dissertation,

Date: 29 May 2021 Dr. Vatsla Sharma

Place: Lucknow (Assistant Professor)

DECLARATION

I hereby declare that the entire work embodied in the practical paper titled CRITICAL APPRAISAL OF EUTHANATIA is written by me and submitted to BABU BANARASI DAS UNIVERSITY, LUCKNOW. 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.

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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

IPC…………………………………………....Indian Penal Code

Cr P.C………………………………………...Criminal Procedure Code

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11. Suchita Srivastava v. Chandigarh Administration 2000 Cr IJ 3729.
12. C.A. Thomas Master v. Union of India (2009) 9 SCC 1.
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29. Bolam v. Friern Hospital Management Committee 1957 (1) WLR 582.
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INTRODUCTION TO RESEARCH

'Research', in simple terms, can be defined as 'systematic investigation towards increasing the quantity of human knowledge' and as a 'method' of recognize and explore 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[1].

In this state of affairs, legal research may be defined as 'systematic' discovery of law on a particular topic and making advancement in the science of law. However, the finding of law is not so easy. It contain a comprehensive study and finding of legal materials, statutory, and judicial pronouncements. For making advancement in the philosophy of law, one needs to go into the 'established principles or reasons of the law'. An organized method needs to be applied by the researcher. So, writing is just an device of communicating the researcher's findings and conclusions to the audience or readers, or consumers of the research outcome.

Writing a crucial work is not an easy job as it requires continuation. It is the fundamental part of the research process. It should start soon after the initiation of the research project, and continue to and beyond its accomplishment. It begins as soon as you start thinking about and finding around your research. Finally, the researcher has to compose the report of what has been done by him/her.

[1] http://novascotia.ca/dhw/phia/documents/chapters/7.%20Research.pdf

The topic of my dissertation is 'critical study of Euthanasia'. The word 'Euthanasia' is a produce from the Greek words 'eu' and 'thanotos' which literally mean "good death"[2]. It is otherwise or else described as mercy killing. The death of a deadly 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. Euthanasia defined as "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering"[3]. 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"[4].

We are here concerned with analytical study of euthanasia in 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)[5]. **Passive euthanasia,** otherwise known as 'negative euthanasia', however, stands on a different footing. It involves suppress the medical treatment or withholding life support system for continuance of life e.g., suppressing the antibiotic where by 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

[2] www.wikipedia.org
[3] Medical Ethics: Select Committee Report
[4]The European Association of Palliative Care (EPAC) Ethics Task Force.
[5] *Ibid* at 481

conditions and safeguards are maintained (*vide para 39 of SCC in Aruna's case*)[6]. 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"[7].

Passive euthanasia is further classified as voluntary and non-voluntary. Voluntary euthanasia is where the assent is taken from the patient. In non voluntary euthanasia, the consent is unavailable. When a person deprived of 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 person 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 lawarvogue, so also the position of different countries of the world. Although the Supreme Court has already given its decision on this aspect but still we can touch all the features of the issue which we need to study carefully.

[6] Aruna shanbag case

[7] Aruna Ramchandra Shanbaug vs Union of India

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.[8]

The Hypothesis is as follows:

- Euthanasia is a war 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 Assist 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, and condemnation.
- Passive euthanasia, which is allowed in many countries, has legal acknowledgement in India.
- When someone is unconscious or of unsound mind and is a terminally sick patient, passive euthanasia can be lawfully granted without his consent.

[8] www.wikipedia.org

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 root of acquiring knowledge or establishing the truth about a particular thing or object.

Thus the objectives of the present research are as follows;

- The main goal of the research is to perceive knowledge about euthanasia
- To study the legislative provision in other countries relating to euthanasia
- To study and understand the concept of brain death
- To perceive knowledge about Euthanasia in the intentional premature
- To acquire knowledge about different types of Euthanasia i.e. 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 philosophy 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

IMPORTANCE OF RESARCH

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

A) Social Welfare:-

Social welfare can be accomplished through socio-legal research. This research being of socio-legal significance helps us to judge the immensity 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 the 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.

SELECTION OF RESEARCH WITH REASONING

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

- The research problem are worth studying and hence need a focused study.
- This research problem has social and legal perspective.
- The researcher has interest and rational curiosity in the topic.
- This research is of practical significance.
- This research problem called for solution on complex issues involved.
- Availability of resources, literatures, articles helps me in selecting this research problem.
- This research problem may furnish a basis for future study.

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

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.

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. The researcher has used the following sources for the research.

a) All India Reporters,
b) Law Journals,
c) Articles, Essays, and Case Laws on the research problems, and

d) News Papers.

CHAPTERISATION

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CHAPTER 1 INTRODUCTION

CHAPTER 1: INTRODUCTION

1.1 Introduction

To take birth on this earth is a great blessing and gift of God. The child comes in this world and he lives according to the time schedule as permitted by the almighty. During this sacred journey from birth to death, he accumulates good and bad experiences of life and leaves this world with these experiences which are manifested in his soul. The journey brings him prosperity sometimes and sometimes misfortune and his personality is shaped accordingly. Sometimes during this journey, he finds tears in his eyes and sometimes splash of brightness and joy which enlighten him.[9]

According to Jeremy Bentham, pleasure and pain are natural events. Pleasure and pain are in fact the masters of human conduct and must be served in all walks of life whether social, political, economic, moral, religious and in

[9] K.K. Agnihotri, A Perspective on Life, 109 (2009).

speech, thought and action. The whole superstructure of morality thus rests on the foundation of pleasure and pain.[10]

Similarly, Shakespeare rightly said that: The web of our life is of a mingled yarn, good and ill together.[11]

In this world, where no stability of any kind, no enduring state is possible, where everything is involved in restless change and confusion and keeps itself on its tightrope only by continually striding forward, in such a world, happiness is not so much as to be thought of. The scenes of our life resemble pictures in rough mosaic; they are ineffective from close up and have to be viewed from a distance if they are to seem beautiful. [12] Thus, life itself is a sea full of rocks and whirlpools that man avoids with the greatest caution and care, although he knows that, even when he succeeds with all his efforts and ingenuity in struggling through, at every step he comes near to the greatest, the total, the inevitable and irremediable shipwreck, indeed even steers right on to it, namely death. This is the final goal of the wearisome voyage, and is worse for him than all the rocks that he has avoided.[13]

On the other hand, the sufferings and afflictions of life, sometimes, can easily grow to such an extent that even death, in the flight from which the whole life consists, becomes desirable and a man voluntarily hastens to it.[14]

But generally speaking, every human being, except in moments of acute distress wants to continue to live[15] and to postpone death.[16] To die is to suffer the greatest possible misfortune since that of which we are deprived of by death is life and life is all we have.[17]

Indeed, it is axiomatic that the real meaning of life and personal liberty should be enjoyed only in the ambience of physical and psychological growth.

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[10] Shrinivas G. Sathaye, A Philosophy ofLiving - An Introduction to Ethics, 91,97 (1963).
[11] Frederick Ward Kates, The Use ofLife, 18 (1953)
[12] On the Vanity of Existence"
, in Arthur Schopenhauer, Essays and Aphorisms (Translated by R.J. Hollingdale), 1970. Cited in Tom L. Beauchamp, et. al., Philosophy and the Human Condition, 558-559 (1989).
[13] Arthur Schopenhauer, "The Vanity and Suffering of Life", in Oswald Hanfling, (ed.), Life and Meaning, 97- 109 at 103 (1987)
[14] Ibid.
[15] Mary Mothersill, "Death", in Oswald Hanfling, (ed.), Life and Meaning, 83-92 at 83 (1987
[16] Id. at 91.
[17] Id. at 83.

[18]Furthermore, the presence of such aura is required to identify the individual's inner soul. Hence, State endeavours to provide this kind of environment to individuals by granting fundamental freedom to them. But the struggle for civil liberties is still going on in both developing and developed nations. It is pertinent to note here that fundamental freedom, especially relating to spiritual growth, have not developed all of a sudden. The freedoms have been evolving since times immemorial. However, the major shift took place in the period of renaissance and industrial resolution. Individualistic rights were greatly admired during and after the industrial revolutions. Therefore, it can be said that the acknowledgement of individualistic rights was very significant step for the achievement of enlightenment. Initially, the individual right showed their concern towards the protection of physical body and other tangible things relating to individuals. Later on, the individual rights developed in the form of State's recognition to one's control on its own body. However, State's recognition had to pass through the tussle among society's moral values and an individual's personal liberty. At one point of time, today's numerous personal liberties were treated as immoral. They were against religious principle. Gradually, after the incorporation of logic, reasoning, justness, fairness, equity and good conscience into the legal system, the State provided breathing space freedom. But still, there is disparity in different nations regarding one's right on its own body.

In the west, growing support for legalizing various forms of euthanasia is observed in recent times. Proponents claim it as a civil right, whereas, for the opponents, it is a Holocaust. Like abortion, euthanasia has become one of the most painfully divisive issue debated worldwide because it is based on human mortality and compassion. Federal Ninth Circuit Court Judge Stephen Reinhardt, in his historic 1996 decision on the right-to-die case Compassion in Dying v. State of Washington, [19] opened his judgment with the following thoughtful words:

1818

[19] 79 F.3d 790 (9th Cir. 1996).

This debate requires us to confront the most basic of human concerns—the mortality of self and loved ones—and to balance the interest in preserving human life against the desire to die peacefully and with dignity.

> . . . This controversy . . . may touch more people more profoundly than any other issue the courts will face in the foreseeable future.[20]

The movement to legalize some form of euthanasia has often been called the right-to-die movement. The name seems strange, since nothing is more unquestionably guaranteed to everyone than death. What the movement's supporters want to protect is not really the right to die but the right to have some degree of control over the time and manner of one's death—i.e. "the right to choose to die." They believe that competent adults with terminal illness should be legally permitted not only to refuse life-sustaining medical treatment but also to receive a physician's help in ending their lives if they request it. Some right-to-die supporters feel that people who have an incurable degenerative or disabling condition should also be allowed to ask for aid in dying, even though their illness is not terminal. People who oppose the movement, on the other hand, say that no individual's right outweighs the state's duty to protect life and the physician's duty not to harm patients. They fear that if physician-assisted suicide or euthanasia is legalized, society will slide down a "slippery slope" toward coercing and even perhaps forcing vulnerable members—the elderly, chronically ill, disabled, poor, and minorities—to die against their will. The so-called right to die, they say, will become a duty to die. In recent times, death has transformed from a social process to a merely biological one. Science has taken a hold over the role of the family, as medical treatment has become the backbone for a terminally ill patient, and the role of the family has decreased from loving and sincere care to an almost obligatory support. Death has been stripped of its spiritual and social quality, and has turned into a terminating event that was to be feared, and thus hidden away in sterile institutions, rather than accepted and experienced within the home and in the company of one's1 Sfriends and family.[21]

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[20] R. Cohen Almagor, Euthanasia in the Netherlands: The Policy and the practice ofmercy killing, 8 (2004).

[21] Raymond Whiting, A Natural Right to Die, 3 (2002).

Human dignity however is a nebulous concept amenable to a range of interpretations. In the context of the present debate the close association between ‘euthanasia’ and ‘death with dignity’ reflects the contemporary emphasis on self-determination as an expression of individual autonomy. In more classical, Kantian terms, respect for the autonomy of all rational beings demonstrates the intrinsic value of each individual and the esteem and inherent dignity of which each is worthy. Euthanasia in its various forms is one mechanism frequently promoted as a means of maintaining autonomy and achieving death with dignity. However, whether dignity can be achieved through euthanasia depends on the individual circumstances of each case and on how euthanasia is defined.[22]

Whether euthanasia can provide an answer to the need for a dignified death and whether this should be done by making a legislation to provide people with a legal right to opt for right to die vis-a-vis euthanasia is the main theme of this research work.

1.2 Meaning of Euthanasia

The term euthanasia comes from the Greece words “eu ”and “thanatos ”which means “good death”[23] 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).[24] 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.[25]

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.[26]

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[22] Ibid.

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

[24] Common Cause Society v. Union of India (2018) 5 SCC 1.

[25] www.wikipedia.com

[26]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

Euthanasia is the practice of intentionally ending a life in order to relieve pain and suffering (provided motive should be good & death must be painless as much as possible) or "A deliberate intervention was undertaken with the express intention of ending a life, to relieve intractable suffering."[27]

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 dis-agreeable[28]

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.[29] Encyclopedia of 'Crime and Justice', explains euthanasia as an act of death which will provide a relief from a distressing or intolerable 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.[30]

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 dis-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 dis-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 an 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[31]. Euthanasia or mercy killing is the

[27] British House of Lords Select Committee on Medical Ethics.

[28] Nandy, Apurba. (1995). Principles of Forensic Medicine, 1st Edition, Page 38. Kolkata, New Central Book Agency (P) Ltd

[29] Black's Law Dictionary (8th edition)

[30] Encyclopedia of 'Crime and Justice'

[31] 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.

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[32].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.

Oxford English Dictionary defines euthanasia as “the painless killing of patient suffering from an incurable disease or in an irreversible coma”.[33] It is the process whereby human life is ended by another in order to avoid the distressing effects of an illness.[34] It cannot be equated to suicide because of the requirement of third person’s intervention in the termination of life. Thus the two concepts are both factually and legally distinct.[35] Similarly it is very pertinent to note here that euthanasia cannot be equated to assisted suicide because in assisted suicide, the third party only assists in the termination of life by a person and he does not per se terminate the life.[36] But in case of euthanasia the third party is actively involved in the termination of life by means of his act or omission.[37] While assisted suicide refers to the self termination of life, euthanasia refers to the termination of life by the intervention of a third person. Further suicide may be committed for various reasons ranging from family to financial, societal to medical and so on. However euthanasia, in its strict sense, is confined to the cases where a person is in a serious medical condition.[38]

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[32] Nandy, Apurba. (1995). Principles of Forensic Medicine, 1st Edition, Page 38.Kolkata, New Central Book Agency (P) Ltd.

[33] DELLA THOMPSON, CONCISE OXFORD DICTIONARY 465 (9th ed. 1999

[34] ANDREW GRUBB, PRINCIPLES OF MEDICAL LAW 844 (1988).

[35] See the observations of Justice Lodha in Naresh Marotrao Sakhre v. Union of India 1995 Cri LJ 96 (Bom)

[36] If the third party actively involves himself in the termination of life, the termination of life would result in homicide or murder.

[37] Unfortunately, the distinction between euthanasia and assisted suicide has often not been recognized by the legal luminaries. Since in both cases the person performing euthanasia or assisting suicide deliberately facilitates the patient’s death, most commentators fail to distinguish between two. Shailish Pangaonkar, Euthanasia are Mercy Killing, JOURNAL OF G. H. RAISONNI LAW SCHOOL 5 & 6 (2005 – 2006).

[38] Most of the scholars subscribe to the view that euthanasia is putting a person to painless death in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap. C. K. PARIKH, TEXT BOOK OF MEDICAL JURISPRUDENCE, FORENSIC MEDICINE AND TOXICOLOGY 155 (6th ed. 1999).

Euthanasia can be classified into voluntary[39] and involuntary[40] on the basis of consent of the person whose life is terminated. While voluntary euthanasia is prohibited in most of the jurisdictions, [41] The involuntary euthanasia, though subject to controversy, [42] is allowed in certain circumstances.[43] Depending on the way in which life is terminated, euthanasia is classified into active and passive. Active euthanasia is highly complicated, as it involves the administration of poisonous substances to bring death. In other words, the dying person actually dies from something other than the disease. Passive euthanasia, on the other hand, is the death caused by the removal of life supporting systems or by the omission of medical care. It is refraining from action that would probably delay the death,[44] and thereby allowing natural death to occur.[45] It is not much complicated because the persons whose lives are terminated by this means are those who are not in a position to recover from their diseases and lead the normal life. Therefore the death in such cases is caused by the disease and not by the external factors.[46]

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[39] Voluntary euthanasia is induced at the will of an individual by his or her request.

[40]It is a form of euthanasia conducted when the dying individual is incapable of giving or refusing consent. This generally happens in the cases where the patient is in irreversibly comatose stage. In such cases, the termination of life is done on the basis of consent of the family members of the patient.

[41] A well known example of voluntary euthanasia is the killing of a patient suffering from Lou Gehrig's disease by Dr. Jack Kevorkian, a Michigan physician, in 1998. In this case, the patient was frightened that the advancing disease would cause him to die a horrible death in near future. Consequently, he wanted a quick painless exit from life. Dr. Kevorkian injected controlled substance into the patient, thus causing his death. Charged with first degree murder, the jury found him guilty of second degree murder. T. Basant, Euthanasia - Why a Taboo?, 2 ICFAI JOURNAL OF HEALTH CARE LAW 47 (2004).

[42] Since the consent of person undergoing euthanasia is absent in involuntary euthanasia, there is always a scope for misuse. The consent of the family members of the patient to terminate the life may .

[43] Involuntary euthanasia is generally allowed in the cases where patient is in persistent vegetative state and possibility of leading the normal life becomes impossible for him

[44]In other words, the person is in such a situation that there is hardly any chance of recovery. See Lalit Kishore, Euthanasia Debate: A Killing or a Mercy Death?, at <http://www.merinews.com/catFull.jsp?articleID=152788>

[45] This kind of euthanasia is easily distinguishable from suicide, as it does not involve any positive act. Wendy E. Hiscox, Intention and Causation in Medical Non-killing: The Impact of Criminal Law Concepts on Euthanasia and Assisted Suicide, 16 MEDICAL LAW REVIEW (2008) (Book review). <www.westlaw.com> In Vacco v. Quill, 521 U.S. 793 (1997), the Court of Appeal for the Second Circuit committed an error by holding that terminating life by withdrawing treatment is "nothing more nor less than assisted suicide". The US Supreme Court rectified this error by finding the distinction between treatment withdrawal and assisted suicide to be well grounded in medical and legal traditions. According to the Supreme Court, when a patient refuses life-sustaining medical treatment, he dies from the underlying fatal disease or pathology, but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication.

[46] In addition to above two types of classifications, euthanasia is also classified into pediatric euthanasia, geriatric euthanasia and battle field euthanasia on the basis of the persons being subjected to

1.2 Euthanasia as Death with Dignity

As stated earlier, human dignity is a descriptive and value-laden quality encompassing self-determination and the ability to make autonomous choices, andimplies a quality of life consistent with the ability to exercis self-determined choices. It is a concept that is gaining currency with modern political philosophers. Ronald Dworkin, for example, describes belief in individual human dignity as the most important feature of Western political culture giving people the moral right ‘‘to confront the most fundamental questions about the meaning and value of their own lives’'.[47]

People who examine the meaning and value of their lives in the face of imminent death often express concerns that their dignity may be compromised if the dying process is prolonged and involves becoming incapacitated and dependent. The ability to retain a similar level of control over dying as one has exercised during life is widely regarded as a way of achieving death with dignity.[48]

Madan argues that this is because:

Dignity does not come to the dying from immortality fantasies, or compensatory ideas, such as reincarnation and paradise, nor does it come from empowerment through modern medicine. It comes from the affirmation of values, not only up to the boundaries of death . ..but in a manner that encompasses dying under living and does not oppose the two in a stern dualistic logic.[49]

In line with this view advocates of euthanasia as death with dignity believe that respect for individual autonomy should allow patients the

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euthanasia. They are the euthanasia administered to sick infants, aged persons and the persons severely wounded in the respective

[47] Id., at 166

[48] Supra note 60 at 29

[49] T.N. Madan, “Dying with Dignity”, (1992) 35 Social Science and Medicine, 425-32. Cited in Ibid

opportunity to choose euthanasia as an alternative to becoming dependent upon medical carers and burdensome to family and society.[50]

Patient autonomy, self-determination and control are given legal expression through the law of consent which theoretically offers every person the right to "determine no what shall be done with his own body"[51] and ensures that anyone who imposes medical treatment, involving physical contact or harm upon another, in the absence of valid consent, will be criminally culpable. Any patient with the mental capacity to give consent is also entitled to withhold consent,[52] "even if a refusal may risk personal injury to his health or even lead to premature death".[53] Established exceptions to this general rule allow for treatment to be administered in the absence of consent if there is a dutv to act[54] on or necessity."[55] And failure to obtain consent where these exceptions are not present can amount to criminal assault and battery. The law pertaining to consent and issues relating to it are therefore pivotal to an analysis of euthanasia and death with dignity.[56] ' Euthanasia can offer the opportunity to select the time and manner of one's dying in order to secure a peaceful death, unencumbered by intrusive medical technology, and such a death is perceived by many as inherently dignified. However it is important to identify the precise nature of dignity in this context. Human dignity is a quality with different connotations for different people and in the context of dying many consider more dignified to takethe opportunity to experience every second that life has to offer.[57]

Yale Kamisar set out a number of developments as basis for demanding a case for euthanasia: a) new and improved medical technologies capable of sustaining lives well beyond the point that many people would desire; b) evolution of jurisprudence andmedical ethics governing the withholding and

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[50] M Kelner, 1. Bourgeault, "Patient Control Over Dying: Responses of Health Care Professionals". (1993) 36 Social Science and Medicine 757-765: C. Seale, J. Addington-Hall, "Euthanasia: Why People Want to Die Earlier" (1994) 39 Social Science and Medicine 647-54. Cited in Id., at 29-30

[51] Schloendorf v. Society of New York Hospital (1914) 105 NE 92, 93, (NY) per Cardozo J. Cited in Ibid

[52] Re C (Adult Refusal ofTreatment) [1994] 1 All ER 819, [1994] 1 WLR 290. Cited in ibid

[53] Re I (An Adult) (Consent to Medical Treatment) [1992] 2 FLR 458, per Lord Donaldson MR at 473C. Cited in ibid

[54] R v. Stone [1977] QB 354, R v. Wilkinson, The Times, 19 April 1978, 5. R v. Smith [1979] Crim LR 251. Cited in Ibid

[55] Murray v. McMurchy [1949] 2 DLR 442, Re F [1990] 2 AC 1. Cited in Ibid

[56] Id, at 30.

[57] Id., at 32.

withdrawal of Life Saving Medical Treatment; c) sophisticated palliative care techniques, especially drugs capable of both mitigating pain and hastening death; d) a shift in typical causes of death from virulent diseases to slower, progressive conditions carrying the prospect of lingering in a gravely debilitated state; e) changes in the nature and financing of the doctor-patient relationship away from a long-term relationship rendered on a fee-for-service basis and toward managed care carrying disincentives for expensive medical interventions; and f)acceptance of voluntary euthanasia or assisted suicide in the Netherlands. Belgium. Germany. Switzerland, and Oregon.[58]

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 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.[59][60]

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[61].

Australia's Northern Territory was the world's first jurisdiction to legalize euthanasia in 1996.[62] On April 10, 2001, the Dutch upper house of parliament voted to legalize euthanasia, making the Netherlands the first, and at

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[58] Norman L. Cantor, "On Kamisar, Killing, and the Future of Physician-Assisted Death" , Michigan Law Review, Vol. 102, No. 8, 1793-1842 at 1797 (Aug., 2004)

[59] Mystakidou, Kyriaki; Parpa, Efi; Tsilika, Eleni; Katsouda, Emanuela; Vlahos, Lambros (2005). "The Evolution of Euthanasia and Its Perceptions in Greek Culture and Civilization". Perspectives in Biology and Medicine

[60] Stolberg, Michael (2007). "Active Euthanasia in Pre-ModernSociety, 1500–1800: Learned Debates and Popular Practices". Social History of Medicine. 20 (2): 206–07

[61] Laws of Manu, translated by George Buhler, Sacred Books of the East by F. Maxmuller (1967 reprint). Vol. 25, page – 206

[62] Tordjman, G. Issues in bioethics: a brief history and overview. Quebec: Dawson College; 2013.

that time, the only country in the world to legalize euthanasia.[63] In order to provide guidance to the profes-sion, as to under which conditions euthanasia could be permissible, it formulated a set of criteria that mirror the criteria developed by the courts:

The request for euthanasia must come from the patient and be entirely free and voluntary, well considered, and persistent,

the patient must experience intolerable suffering (physical or mental), with no prospect of improvement and with no acceptable solutions to alleviate the patient's persistent

euthanasia must be performed by a physician, after consultation with an independent colleague who has experience in this field.[64]

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.[65] '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.[66]

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]

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

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[63] MetlathyIyeri.timesofIndia.indiatimes.com

[64] Cohen-Almagor R. Euthanasia policy and practice in Belgium: critical observations and suggestions for improvement. Issues Law Med2009 Spring;24(3):187-218

[65] Helga Kuhse, BIOETHICS NEWS, July 1992BACKGROUND BRIEFING* (from BIOETHICS NEWS Vol.11 No. 4 July 1992 page 40)

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

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[67]:

- Voluntary Euthanasia
- Non-Voluntary 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.[68] However, others see consent as essential.

- **Voluntary euthantia[69]**

Voluntary euthanasia is when the decision to terminate life by the physicians corresponds with the patient's desire to do so and the patient willfully gives consent of its implementation.[70]

Non voluntary euthantia

Non voluntary euthantia is conducted when the consent of the patient is unavailable. Examples include child euthantia, which is illegal worldwide but decriminalized under certain specific circumstances in the Netherlands under groningen protocol. passive forms of non-voluntary euthanasia (i.e. withholding treatment) are legal in a number of countries under specified conditions

- **Involuntary euthantia[71]**

Involuntary euthanasia is when the decision to end life is implemented against the patient's wishes. Nonvoluntary euthanasia refers to cases where

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[67] https://www.aph.gov.au/binaries/senate/committee/legcon_ctte/completed_inquiries/199699/euthanasia/report/report.pdf (last visited on Feb 25, 2020).

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

[69] MelathyIyeri.timesofIndia.indiatimes.com/city/Mumbai/centrefinallycomesupwithadraftbilonpassiveeuthanasia/artcleshow/15 May 2016

[70] Kai K. Euthanasia and death with dignity in Japanese law. Waseda Bull Comp Law 2006;27:1-14

[71] Kai K. Euthanasia and death with dignity in Japanese law.
Waseda Bull Comp Law 2006;27:1-14

patients are unable to make their decisions, for example, a person who is brain dead and in a permanent or irreversiEuthanasi

a. **Active Euthanasia**[72]

Is identical to mercy killing and involves taking action to end a life. Active euthanasia is defined as any treatment initiated by a physician, with the intent of hastening the death of another human being, who is terminally ill, with the motive of relieving that person from great suffering. For example, intentionally giving a person a lethal dose of a drug to end a painful and prolonged period of dying.

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.[73] Physician assisted suicide is a crime under section 306 IPC (abetment to suicide).[74]

b. **Passive Euthanasia**[75]

passive euthanasia is allowing the patient to die when he or she could have been kept alive by the appropriate medical procedures. Passive euthanasia is defined or considered as discontinuing, or not starting a treatment at the request of the patient.[76]

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[77].

1.5 Religious Views on Euthanasia

[72]Van den Berg, JH. Medischemacht en medischeethiek[Medical power and medical ethics]. Nijmegen: Callenbach; 1969.

[73]Section 302 and 304 of IPC

[74]Section 306 of IPC

[75] Van den Berg, JH. Medischemacht en medischeethiek[Medical power and medical ethics]. Nijmegen: Callenbach; 1969.

[76]. Goel V. Euthanasia – a dignified end of life!Int NGO J 2008 Dec;3(12):224-231. Available online at http:// www.academicjournals.org/INGOJ

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

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.[78] 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."[79]

In Theravada Buddhism a lay person daily recites the simple formula: "I undertake the precept to abstain from destroying living being."[80] Thus, it is reasonable to that this opposition to euthanasia also applies to physician-assisted death and other forms of assisted suicide.

1.5.2 Christianity

Catholic teaching condemns euthanasia as a "crime against life" and a "crime against God".[81] 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.[82] It has been argued that these are relatively recent positions,[83] but whatever the position of individual Catholics, the Roman Catholic Church's viewpoint is unequivocal.[84]

1.5.3 Hinduism

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

[79] Keown, Damien. "End of life: the Buddhist View," Lancet 366 (2005): 954.

[80] This is the first of the Five Precepts. It has various interpretations.

[81] "Declaration on Euthanasia". Sacred Congregation for the Doctrine of the Faith. 5 May 1980.

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

[83] McDougall H, It's popularly believed that Catholics are anti-euthanasia. Do Catholics believe we don't have the freedom to do as we like? The Guardian 27 August 2009

[84] Catechism of the Catholic Church.

There are two Hindu perspective on euthanasia. It is a two edged sword. By helping to end a painful life a person is discharged a good deed and so consummate their moral requirements. On the other hand, mess up with the life and death of a third person is not humanly, which is a bad deed. However, one of the justification is that keeping a person artificially alive on a life-support machines would also be an appalling thing to do. Death is a natural process, and will come in time.[85]

Hinduism does not promote or recommend actions leading to death of a person. According to it euthanasia is not an act of evil , but the myths and issues attached to it make it sound a ruthless and an inhuman act, a sin.

1.5.4 Muslim

Muslims opposes 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.[86]

1.5.5 Jainism

Jainism is based on the principle of non-violence (ahinsa) and is best known for it. [87] Jainism recommends voluntary death or *sallekhana* for both ascetics and srāvaka (householders) at the end of their life.[88] Sallekhana (also known as *Santhara*, *Samadhi-marana*) is made up of two words *sal* (meaning 'properly') and *lekhana*, which means to thin out. Properly thinning out of the passions and the body is *sallekhana.*[89] A person is allowed to fast unto death or take the vow of *sallekhana* only when certain requirements are fulfilled. It is not considered suicide as the person observing it, must be in a state of full consciousness.[90] When observing *sallekhana*, one must not have the desire to live or desire to die. Practitioner shouldn't recollect

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[85]"Religion & Ethics - Euthanasia"
[86]Translation of Shih Bukhari, Book 71. University of Southern California. Hadith 7.71.670
[87]Kakar 2014, p. 175.
[88]Jain 2011, p. 102.
[89] Kakar 2014, p. 174
[90] Kakar 2014, p. 174

the pleasures enjoyed or, long for the enjoyment of pleasures in the future.[91] The process is still controversial in parts of India. Estimates for death by this means range from 100 to 240 a year.[92] Preventing santhara invites social ostracism.[93]

1.5.6 Judaism

Jewish medical norms are conflicted 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.[94] It can be said that there is disagreement 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.[95] In Shinto, prolonging the life using artificial means is a disgraceful act and hence against life.[96] There are miscellaneous views on active euthanasia. 25% Shinto and Buddhist organizations in Japan support voluntary active euthanasia.

1.6 EUTHANASIA VS SUICIDE

Suicide is an act of intentionally and consciously taking one' life i.e. death is self-inflicted.[97] Suicide and euthanasia are two different ways of ending life. While former is committed on the whims and fancies of the individual, the latter states a reasonable ground for one's decision to rise above the everyday fight for survival.[98] In Maruti Shripati Dubai v. Stale of Maharashtra[99], the

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[91] Jain 2011, p. 111.

[92] "Fasting to Death" in: Docker C, Five Last Acts – The Exit Path, 2013:428-432 (details benefits and difficulties)

[93] Colors of Truth Religion, Self and Emotions: Perspectives of Hinduism, Buddhism, Jainism, Zoroastrianism, Islam, Sikhism and Contemporary Psychology by Sonali Bhatt Marwaha, 2006:125.

[94] For example, J. David Bleich, Eliezer Waldenberg

[95] "9.3. Implications of Japanese religious views toward life and death in medicine". www.eubios.info. Retrieved 2009-02-14.

[96] "9.3. Implications of Japanese religious views toward life and death in medicine". www.eubios.info. Retrieved 2009-02-14.

[97] "Euthanasia" in Lawrence C. Becker, Charlotte B. Becker, (eds.), Encyclopedia ofEthics, 492-498 at 492
(2001).

[98] Supra note 70 at 149.

[99] Maruti Shripati Dubai v. Stale of Maharashtra

Division Bench of the Bombay High Court, speaking through P.B. Sawant J., observed:

Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own self and without the aid or 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 thus is not suicide and an attempt at mercy-killing is not covered by the provisions of section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected.[100][101]

Another point of distinction is that euthanasia or mercy killing substantially involves pain and suffering due to some irremediable medical ailments while suicide need not necessarily involve any such infirmity. Then there is the matter of consent. Consent to kill one self is implied by the very commission of the act but in euthanasia the consent has to be in the form of a request essentially by the patient himself or close kith and kin.[102]

The Bombay High Court in *Maruti Shripati Dubal's* case[103] has attempted to make a distinction between suicide and euthanasia or mercy killing. According to the court[104] the suicide by its very nature is an act of self killing or suspention of one's own life by one's own act without taking any assistance from others ones.

In Naresh Marotrao Sakhre's case[105] 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 i.e. euthantia and suicide

[100] 1987 Cri LJ 743.
[101] Id., at 752.
[102] Aditya Kamath, "'Euthanasia, Suicide and Theology". Available at www.law4u.net.com. (Accessed on
[103] 1987 (1) BomCR 499, (1986) 88 BOMLR 589
[104] Maruti Shripati Dubal vs State Of Maharashtra.
[105] Naresh Marotrao Sakhre v. Union of India; 1995 Cri.L.J 95 (Bomb)

are distinct from each other, both factually and legally. Euthanasia or mercy killing is nothing but extermination, the circumstances in which it is affected.

The Supreme Court in *Gian Kaur v. State of Panjab*[106] 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 case*[107], 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 new concept arises which is known as physician assisted suicide. Physician-assisted suicide (PAS) means that the physician does not directly kill the patient but provides the means or prescribes the drug which is taken by the patient himself. Those who attempt to draw a moral line between the practices often emphasize that the patient exercises more control in assisted suicide, remaining the final causal actor in his or her own death, while in euthanasia another person assumes that role, thus creating a greater chance for physician malfeasance.[108]

The High Court of Bombay in *Maruti Shripati Dubal's case*[109], 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[110] 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*[111] case. In this case a five judge Constitutional bench of the Supreme Court overruled the *P. Rathinam's* case[112] and held that right to life under Article 21 does not include right to die or right to be killed

[106] 1996 AIR 946, 1996 SCC (2) 648

[107] Airedale National Health Service Trust v Bland [1993] AC 789

[108] See, e.g., John Deigh, Physician-Assisted Suicide and Voluntary Euthanasia: Some Relevant Differences,
88 J. Crim. L. & Criminology 1 155, 1157-59 (1998); Timothy E. Quill et aL Care ofthe Hopelessly 111

[109] 1987 (1) BomCR 499, (1986) 88 BOMLR 589

[110] P. Rathinam vs. Union of India and Anr., 1994) SCC 394.

[111] 1996 AIR 946, 1996 SCC (2) 648

[112] 1994 AIR 1844, 1994 SCC (3) 394

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.[113]

[113]Article 21, Indian constitution.

CHAPTER: 2 EUTHANASIA AND ITS TYPE

CHAPTER:2 EUTHANATIA AND ITS TYPE

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

2.1.1 Animal Euthanasia

Animal Euthanasia is an 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,[114] lack of resources to continue supporting the animal or laboratory test procedures. Euthanasia methods are designed to cause minimal pain and distress. In domesticated animals, this process is commonly referred to by euphemisms such as "lay down", "put down", "put to sleep"[115], or "put out of its/his/her misery".[116]

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.

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

[115] "Definition of PUT TO SLEEP"

[116] "Definition of PUT-DOWN"

Large animals which undergo accidental injuries are put down at the respective sites. In hopeless cases like brutal injuries to horses, cattle etc. are allocated with the 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.[117]

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 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.[118] American bioethicist Jacob M. Appel goes one further, arguing that pediatric euthanasia may be a step ethical even in the absence of parental consent.[119]

In the Netherlands, euthanasia is technically illegal for patients under the age of 12.[120] 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.[121]

Airedale[122] 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

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

[118] Joseph Fletcher "Infanticide and the ethics of loving concern", 22 (1978)

[119] JM Appel,"Neo-natal Euthanasia: Why Require Parental Consent?" Journal of Bioethical In 477 (2009).

[120] www.wikipedia.org

[121] www.wikipedia.org

[122] Airedale NHS Trust v. Bland, 1993 (1) All ER 821 (HL).

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.

In another case, Ward of Court, Re A[123], 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)[124], the patient was not a minor, hence parents patriate 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.

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;[125] 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.

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[123]1995) ILRM 401 (Ireland Supreme Court) (Appeal against the or of Lynch, J. of the High Court). 28 (1990) 2 AC 1.

[124]Re F (Mental Patient Sterilisation) [1990] 2 AC 1

[125] 1957 (1) WLR 582.

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.[126]

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.[127]

The judge quoted from her judgment in Re A: (male Sterilization) case,[128] where it was held that, the duty of the doctors was secondary. He must act in the best interest of a mentally incapacitated patient.'[129]

[126] 241St Report On Passive Euthanasia - A Relook

[127] *Airedale National Health Service Trust v Bland*, [1993] 1 All ER 821

[128] 2001 (1) FLR 549 (555).

[129] Re F (Mental Patient: Sterilizati

CHAPTER:3 LEGAL ASPECTS OF EUTHANASIA

CHAPTER 3 LEGAL ASPECTS OF EUTHANASIA

3.1 Legal Aspects of Euthanasia in India

The legal position of India cannot and should not be studied in insulation. 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 doubtlessly 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.[130] However, as in such cases there is a valid consent of the deceased Exception 5[131] 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

[130]Section 34 of IPC.

[131]Section 300, Explanation 5 of IPC

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.[132] After the decision of a five judge bench of the Supreme Court in ***Gian Kaur* v. *State of Punjab***[133] 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.[134]

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.[135]

The Bombay High Court in **Maruti Shripati Dubal v. State of Maharashtra**[136] 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.

[132]Article 21 of the Indian Constitution.
[133] 1996 (2) SCC 648 : AIR 1996 SC 946
[134]Indian Medical Council Act, 1956
[135] Researchgate.net
[136] 1987 Cri.L.J 743 (Bom.)

The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14.[137] 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[138] 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*[139] 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*[140]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

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.[141]

3.4 Suicide v. Euthanasia

Suicide is an act of intentionally and consciously taking one' life i.e. death is self-inflicted.[142] Suicide and euthanasia are two different ways of ending life. While former is committed on the whims and fancies of the individual, the latter states a reasonable ground for one's decision to rise above

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[137]Constitution of India

[138]1987 Cri.L.J 743 (Bom.)

[139]P. Rathinam vs. Union of India and Anr., 1994) SCC 394

[140]1996 AIR 946, 1996 SCC (2) 648

[141]www.Legalserviceindia.com

[142]Euthanasia" in Lawrence C. Becker, Charlotte B. Becker, (eds.), Encyclopedia of Ethics, 492-498 at 492 (2001)

the everyday fight for survival.[143] In Maruti Shripati Dubai v. Stale of Maharashtra[144], Division Bench of the Bombay High Court, speaking through P.B. Sawant J., observed:

Suicide by its very nature is an act of self killing or self-destruction, an act of terminating one's own self and without the aid or 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 thus is not suicide and an attempt at mercy-killing is not covered by the provisions of section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected.[145]

Another point of difference is that euthanasia or mercy killing essentially involves pain and suffering due to some irremedical medical ailments while suicide need not necessarily involve any such malady. Then there is the question of assets. Consent to kill one self is implied by the very commission of the act but in euthanasia the consent has to be in the form of a request essentially by the patient himself or close kith and kin.[146]

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.[147] Justice Lodha in Naresh Marotrao Sakhare v. Union of India[148] 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 act and without the aid or 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 thus is not suicide and an attempt at mercy killing is not covered by the provisions of Section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected."[149]

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[143]Supra note 70 at 149
[144] 1987 Cri LJ 743.
[145]Id., at 752
[146]Aditya Kamath, "'Euthanasia, Suicide and Theology". Available at www.law4u.net.com.
[147] http://www.difference between.net, visited on 8th Mrch, 2015.
[148]1996 (1) BomCR 92, 1995 CriLJ 96, 1994 (2) MhLj 1850
[149] Naresh Marotrao Sakhre And ... vs Union Of India And Others, 1996 (1) BomCR 92, 1995 CriLJ 96, 1994 (2) MhLj 1850

3.5 Euthantia vs. Physical Assisted Suicide:

Physician-assisted suicide (PAS) means that the physician does not directly kill the patient but provides the means or prescribes the drug which is taken by the patient himself. In other words, the doctor merely assists or aids the patient in committing suicide. Those who attempt to draw a moral line between the practices often emphasize that the patient exercises more control in assisted suicide, remaining the final causal actor in his or her own death, while in euthanasia another person assumes that role, thus creating a greater chance for physician malfeasance."[150]

Yet. morally, in cases of assisted suicide and euthanasia alike, the patient forms an intent to die and the physician intentionally helps the patient end his or her life. 'Though an analytical distinction exists between assisted suicide and euthanasia, there is a great deal they share in common, and those who support legalizing one tend to support legalizing the other for the same or similar reasons— whether it be out of a sense that fairness requires killing those who wish to die but who cannot kill themselves, a desire to promote individual autonomy whether it is expressed in terms of a desire to kill oneself or have another do so, or a sense that the actions serve a similar social utility in allowing patients to avoid needless suffering. In Dutch practice both are legal and they are "considered to be identical because intentionally and effectively they both involve actively assisting death."[151]

The physical difference, too, between assisted suicide and euthanasia certainly need not be, and frequently is not. very great. As John Keown has asked. "[w]hat. for example, is the supposed difference between a doctor

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[150] See, e.g., John Deigh, Physician-Assisted Suicide and Voluntary Euthanasia: Some Relevant Differences, 88 J. Crim. L. & Criminology 1 155, 1157-59 (1998); Timothy E. Quill et aL Care of the Hopelessly 111:Proposed Clinical Criteria for Physician Assisted Suicide, 327 New Eng. J.Med. 1380, 1381 (1992). Cited in Neil M. Gorsuch, The Future of Assisted Suicide and Euthanasia, 6 (2006).

[151] Gerri Kimsma & Evert van Leeuwen, Euthanasia and Assisted Suicide in the Netherlands and the USA:Comparing Practices, Justifications and Key Concepts in Bioethics and Law, in Asking to Die: Inside the Dutch Debate about Euthanasia, 51 (1998)

handing a lethal pill to a patient; placing the pill on the patient's tongue; and dropping it down the patient's throat?"[152]

For Yale Kamisar, the benefit of PAD was expeditious relief from prolonged suffering. That important benefit, however, had to be considered together with several other factors. The need for PAD depended on availability of alternative means of mitigating suffering like palliative or analgesic techniques as well as alternative legal means to hasten the death of a suffering patient.' The possible benefits of PAD had to be weighed against certain "utilitarian obstacles"[153]

abuse of vulnerable patients in the administration of PAD and unsavory extensions of PAD beyond the realm of voluntary active euthanasia of competent patients nearing the end of a painful dying process. These predicted abuses would take the form of "unwilling or manipulated death[s] of the most vulnerable members of society." [154] Some abuse would flow from medical mistake in diagnosis or mistake in assessing the competence of patients seeking PAD. Kamisar wondered how stricken patients facing terrible stress, pain, or effects of narcotic no analgesics could possibly make careful, considered judgments about PAD.[155]

3.6 INTERNATIONAL ASPECT

- Australia
- Albania
- Belgium
- Washington

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[152] John Keown, Euthanasia, Ethics and Public Policy: An Argument Against Legalisation, 33 (2002)

[153] Yale Kamisar, '"Some Non-Religious Views Against Proposed 'Mercy-Killing' Legislation" , 42 MINN.L. REV (1958) at 974, 1005- 1008. Cited in supra note 85 at 1795

[154] Yale Kamisar, The Reasons So Many People Support Physician-Assisted Suicide - And Why These Reasons Are Not Convincing, 12 ISSUES IN L. & MED. (1996) at 116 (quoting Seth F. Kreimer, Does.Pro-Choice Mean Pro-Kevorkian? An Essay on Roe, Casey, and the Right to Die, 44 AM U. L. REV. 803,.807 (1995). Cited in Ibid

[155] Supra note 96

- Luxembourg
- Netherland
- Canada
- United States of America
- England
- The United Kingdom
- Switzerland

INTERNATIONAL ASPECT:

In England, the House of Lords' alternative decisions show variations about euthanasia. There is no uniform opinion amongst them. It indicates swap in their decisions as per the changing social norms and cultural veracities. In some countries it is legalized or in others, it is criminalized.[156]

- **Australia**

The Northern Territory of Australia was the first country to legalize euthanasia.[157] It did so by passing the Rights of the Terminally Ill Act, 1996.[158] It was held to be legal in the case of Wake v. Northern Territory of Australia[159] 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 made.[160] In Tasmania in 2005, a nurse was convicted of assisting in the death of her mother and father who were both suffering from incurable

[156]www.legalseeviceinsia.com
[157]Rights of the Terminally Ill Act 1995
[158]Euthanasia and Assisted Suicide in Australia". The World Federation of Right to Die Societies.
[159] http:/ /www.legalservicesindia.com.
[160]www.legalserviceindia.com

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.[161] This glimpse debate about decriminalization euthanasia.

- **Albania**

In Albania, while euthantia is deemed criminal offences and in violation of rules established in the Code of Medical Ethics (Article 39).[162]Albanian law has acknowledged that withholding or withdrawing treatment from a conscious patient is considered legal since the patient can and does, in fact, consent to withholding or withdraw**in**g medical treatment.[163]

- **Luxembourg**

Following the footsteps of the Netherlands and Belgium, Luxembourg Parliament adopted a law decriminalizing euthanasia on 19 February 2008. It permits euthanasia in certain circumstances. These are: the patient must be in a terminal condition, the patient must be in unbearable pain with no hope for improvement in their condition, the patient must make a voluntary request, the patient's doctor must consult with another doctor, a living will which must be lodged with the Direction de la sant [164]

- **Washington**

Washington Criminal Code, §9A.36.060 specifically prohibits assisted suicide. However, Washington Initiative 1000 (I-1000), an adopted ballot measure dealing with aid in dying that was enacted in the US State of Washington in the November 4, 2008 1 7J2 general election. The effort was started by former Governor Booth Gardner.[165]

I -1000 requires the patient to ingest the medication unassisted. The initiative is based on Oregon Measure 16, which Oregon voters passed in 1994.

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[161]Voluntary Assisted Dying Tasmania 2020 campaign to step up in new year". 12 December 2019.

[162]Code of Medical Ethics (Article 39)

[163]Article 6(2)(ç) Law no. 107 of March 2009

[164] Visit http://www.station.lu/edito-9306-details-of-new-law-on-euthanasia.html - 25k.

[165] In 1991, the similar initiative 119 was rejected by Washington. After that, three attempts were made in the Washington State legislature to transform assisted suicide, which was a crime in Washington, into a "medical treatment." All three attempts failed. Available at www.patientsrightscouncil.org/site/washington.

While the initiative is supported by Right to die proponents, Right to life proponents oppose it.[166]

- **Belgium**

For some time, there was no formal registration and authorization procedure for the end-of-life decisions in medical practice in Belgium. Although euthanasia was illegal and was treated as intentionally causing death under criminal law, prosecutions were exceptional and generally speaking, the practice of euthanasia was tolerated.[167]

On 28 May 2002, The Belgium Act on Euthanasia was passed that entered into force on 23 September 2002.[168] Section 2 defines euthanasia as 'intentionally terminating life by someone other that the person concerned at the latter's request'. Section 3(1) provides that the physician who performs euthanasia commits no criminal offence when he/she ensures that (i) (a) the patient has attained the age of majority or is an emancipated minor and is legally competent and conscious at the moment of making he request, (b) the request is voluntary, well-considered and repeated and is not the result of any external pressure, (c) the patient is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable disorder caused by illness or accident, (ii) and when he/she has respected the conditions and procedures provided in this Act.[169]

Section 3(2) prescribes the other conditions to be fulfilled by the physician before carrying out euthanasia in each case:

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[166] Specific provisions of the initiative include: the patient must be an adult (18 or over) resident ofthe state of Washington, the patient must be mentally competent, verified by two physicians (or referred to a mental health evaluation), the patient must be terminally ill with less than 6 months to live, verified by two physicians, the patient must make voluntary requests, without coercion, verified by two physicians, the patient must be informed of all other options including palliative and hospice care, there is a 15 day waiting period between the first oral request and a written request, there is a 48 hour waiting period between the written request and the writing ofthe prescription, the written request must be signed by two independent witnesses, at least one of whom is not related to the patient or employed by the health care facility, the patient is encouraged to discuss with family (not required because of confidentiality laws), the patient may change their mind at any time and rescind the request. Visit en.wikipedia.org/wiki/Washington_Death_with_Dignity_Act

[167] Cohen Almagor, "Belgium Euthanasia Law: A Critical Analysis", Journal of Medical Ethics, vol. 35, 436-439 at 436 (2009)

[168] 8j For full text of the law, Visit:http://www.kuleuven.be/cbmer/vicwpic.php%3FLAN%3DE%26TABLE%3DDOCS%261D%o3D23

[169] Ibid.

(1) inform the patient about his/her health condition and life expectancy, discuss with the patient his/her request for euthanasia and the possible therapeutic and palliative courses of action and their consequences.

(2) Be certain of the patient's constant physical or mental suffering and of the durable nature of his/her request.

(3) Consult another physician about the serious and incurable character of the disorder and inform him/her about the reasons for this consultation.

(4) if there is a nursing team that has regular contact with the patient, discuss the request of the patient with the nursing team or its members.

(5) if the patient so desires, discuss his/her request with relatives appointed by the patient.

(6) be certain that the patient has had the opportunity to discuss his/her request with the persons that he/she wanted to meet.[170]

According to section 3(3), if the physician believes that patient is clearly not expected to die in the near future, he/she must also consult a second physician, who is a psychiatrist or a specialist in the disorder in question and inform him/her of the reasons for such a consultation. The physician consulted reviews the medical record, examines the patient and must be certain of the constant and unbearable physical or mental suffering that cannot be alleviated and of the voluntary, well-considered and repeated character of the euthanasia request. The physician consulted reports on his/her findings. The physician consulted must be independent of the patient as well as of the physician initially consulted. The physician informs the patient about the result of this consultation. The physician must allow at least one month between the patient's request and the act of euthanasia.[171]

Section 3(4) further provides that the patient's request must be in writing. The document is drawn up, dated and signed by the patient himself/herself. If the patient is not capable of doing this, the document is drawn up by a person designated by the patient. This document must be annexed to the

[170] Ibid.
[171] Ibid.

medical record. The patient may revoke his/her request at anytime in which case the document is removed from the medical record and returned to the patient.[172]

Section 3(5) provides that all the requests formulated by the patient, as well as any action by the attending physician and their results, including the reports of the consulted physician are regularly noted in the patient's medical record. Section 4 in Chapter II deals with Advance Directives i.e. in cases where one is no longer able to express one's will, every legally competent person of age, or emancipated minor can draw up an Advance Directive instructing a physician to perform euthanasia if the physician ensures the existence of certain prescribed circumstances.[173]

- **Netherlands**

Although most Western countries have been as conservative about accepting physician-assisted suicide and euthanasia, there was one notable exception: the Netherlands. As medical ethicist Edmund Pellegrino says, that country is "a living laboratory of what happens when a society accepts the legitimacy of [physician-assisted suicide and euthanasia]. You've got direct, empirical evidence" of the consequences.[174]

Throughout history, suicide has been both condemned and commended by various societies. Since the Middle Ages, society has used first the canonic and later the criminal law to combat suicide. In some jurisdictions, an act or incomplete act of suicide is considered to be a crime. However, following the French Revolution of 1789 criminal penalties for attempting to commit suicide were abolished in European countries.[175] In the Netherlands, euthanasia and assisted suicide have been practiced for a long time. However, on April 1, 2002, a law regarding the practice of euthanasia and assisted suicide was passed in the Netherlands and it became the first nation in the world to legalize euthanasia. The topic of euthanasia is not new to Dutch law and society. For well over one hundred years the Netherlands has had legislation outlawing the practice. However, the post-war experience has been one in which euthanasia and

[172] Ibid.
[173] Ibid.
[174] Lisa Yount, Right to Die and Euthanasia, 44 (2007
[175] Q The Law commission of India, 210th Report on Humanization and Decriminalization ofAttempt to Suicide, 6 (2008

assisted suicide came to be re-examined in the courts of law and public opinion.[176]

The Criminal Code of 1886 replaced an older Napoleonic code of 1881. The Code provided two sections which explicitly made both euthanasia and assisted suicide criminal acts.[177] Besides making euthanasia illegal, the 1886 Code also created criminal liability in cases of assisted suicide.[178] It is important to refer to Article 40 at this juncture. It provides that:

A person who commits an offense as a result of a force he could not be expected to resist is not criminally liable.

This superior force is a defense of necessity. It was this defense of necessity found in Article 40 that courts would use to relieve physicians in violation of Articles 293 and 294 from criminal liability.[179] These provisions of the 1886 Criminal Code relating to euthanasia and assisted suicide were little applied in the pre-war period. The rise of the Nazi Party in Germany and the eventual brutal occupation of the Netherlands from 1940 to 1945 might explain some reluctance amongst the Dutch in this period to show any interest in euthanasia. However the Nazis carried out an involuntary euthanasia program, largely in secret.[180] Whatever the reason, there was relatively little concern in the Netherlands on the issue of euthanasia and assisted suicide until the close of the Second World War. Due to outrage over Nazi euthanasia, in the 1940s and 1950s there was very little public support for euthanasia, especially for any involuntary, eugenics-based proposals. Catholic Church leaders, among others, continued speaking against euthanasia as a violation of the sanctity of life. Nevertheless, owing to its principle of double effect, Roman Catholic moral theology did leave room for shortening life with pain-killers and

[176] Jonathan T. Smies, "The Legalization of Euthanasia in the Netherlands", 7 Gonz. J. Int'l L. (2003-04). Available at http://www.gonzagajil.org/content/view/97/26/.

[177] The Criminal Code of 1886, art 293. Article 293 prohibited euthanasia: "A person who takes the life of another person at that person's express and earnest request is liable to a term of imprisonment of not more than twelve years or a fine ofthe fifth category." This article was introduced into the Criminal Code in 1886 to dispel any doubts as to the legality of killing a person requesting death

[178] Id., Article 294.

[179] John Griffiths et. al.. Euthanasia and law in the Netherlands, 307 (1998).

[180] Supra note 10

what could be characterized as passive euthanasia.[181] However, by the 1960s, advocacy for voluntary euthanasia increased.[182]

- **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.[183] In Canada, physician assisted suicide is illegal under Section 241(b) of the Criminal Code of Canada. Moreover, the Canadian Supreme Court in Sue Rodriguez v. British Columbia (Attorney General)[184] decisions rejected the plea of Rodriguez, a woman of 43, who was diagnosed with Amyotrophic Lateral Sclerosis (ALS) to allow someone to aid her in ending her life. But, two years later, Ms. Rodriguez received the assistance of an unknown doctor and ended her life, in direct defiance of the court's decision.[185]

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.[186] Euthanasia has been made totally illegal by the United States Supreme Court in the cases Washington v. Glucksberg and Vacco v. Quill.[187] 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.[188]

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

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[181] During this period, prominent proponents of euthanasia included Glanville Williams (The Sanctity of Life and the Criminal Law) and clergyman Joseph Fletcher (Morals and medicine).
[182] Ibid.
[183] "Medical Assistance in Dying Bill". Canada's Justice Laws Website. 2016.
[184] [1993] 3 S.C.R. 519
[185] The Economist, 17 September 1994, 21. Cited in supra note 1 at 40.
[186] "D.C. physician-assisted suicide law goes into effect". www.washingtontimes.com.
[187] (1997) 117 SCT 2293.
[188] Washington v. Glucksberg and Vacco v. Quill

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 lifesaving medical treatment, but no one is permitted to assist a suicide.

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 lifesaving medical treatment by prohibiting the former and permitting the latter.[189] 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.[190]

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,[191] upheld the Oregon Law of 1994 on assisted suicide not on merits but on the question of no 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.[192] In 2001, the Attorney-General of US issued an Interpretative Rule to address the implementation and enforcement of

[189] Harris, D (2006). "Assisted dying: the ongoing debate". Postgraduate Medical Journal. 82 (970): 479–482. doi:10.1136/pgmj.2006.047530. ISSN 0032-5473. PMC 2585714. PMID 16891435

[190] www.wikipedia.com

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

[192] The Oregon Death with Dignity Act, 1994

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.[193]

- **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.[194] 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,[195] the House of Lords made a distinction between withdrawal of lif e 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.[196]

The facts of the case[197] are: Bland was injured in the Hillsborough disaster when he was seventeen and a half years old and was left in a persistent vegetative state, he remained in this state for over two years with no sign of improvement, howbeit being kept alive by life support machines. Bland could breathe by himself but required feeding via a tube and received full care. The doctors that were treating Bland were granted approval to remove of the tube that was feeding him. This decision was then appealed to the House of Lords by the Solicitor acting on Bland's behalf.

The house of lords in this case held[198]: Doctors have a duty to act in the best interests of their patients but this does not necessarily require them to prolong life. On the basis that there was no potential for improvement, the treatment Bland was receiving was deemed not to be in his best interests. It is not lawful to cause or accelerate death. However, in this instance, it was lawful

[193]GONZALES, ATTORNEY GENERAL, et al. v. OREGON et al.
[194]www.legalserviceindia.com
[195] 1993 (1) All ER 821.
[196] Gian Kaur v. State of Punjab, (1996) 2 SCC 648.
[197]Airedale National Health Service Trust v Bland [1993] AC 789
[198][1993] AC 789

to withhold life-extending treatment which in this instance was the food that Bland was being fed through a tube. Appeal dismissed.[199]

The United Kingdom

The euthanasia was illegal in United Kingdom.[200] 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.[201]

- **Switzerland**

The practice of assisted suicide in Switzerland has led many people to believe that the practice has been legalized in that country. That is not the case. There is an important distinction between the Swiss situation and that of the Netherlands and Belgium where the law considers euthanasia and/or assisted suicide to be "medical treatment."[202]

According to Swiss law[203],

Whoever, from selfish motives, induces another to commit suicide or assists him therein shall be punished, if the suicide was successful or attempted, by confinement in apenitentiary for not more than five years or by imprisonment.

The key words are "from selfish motives." Thus, in Switzerland, there is no prosecution if the person assisting a suicide successfully claims that he is acting.unselfishly. While this results in de facto legalization, assisted suicide is not legal, only unpunishable, unless a selfish motive is proven. Thus Switzerland has tolerated assisted suicide for many years. Suicide groups have been assisting suicide within Switzerland based on a legal interpretation of their 1918 suicide law. In other words, Switzerland never legalized assisted suicide, but tolerates the practice based on a legal interpretation.[204]

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[199]Lawteacher.in
[200]www.nhs.uk
[201]https://www.rcog.org.uk/
[202] Supra note 10.
[203] The Penal Code of Switzerland, Article 115.
[204] “ Alex Schoenberg, “Troubling trends on euthanasia in Europe”. Available at: www.theinterim.com /2008/June/15euthanasia.html.

Only Switzerland allows foreigners to make use of their clinics, which has given rise to the morbid industry of "death tourism" in the country.[205]

There is an organization called "Exit" which is far more serious and accepted in Switzerland for assisted suicide.[206]

The Zurich Declaration issued at the 1998 Bi-annual Convention of World Federation of Right to die Societies[207] states:

We believe that we have a major responsibility for ensuring that it becomes legally possible for all competent adults, suffering severe and enduring distress, to receive medical help to die, if this is their persistent, voluntary and rational request. Such medical assistance is already permitted in the Netherlands, Switzerland and Oregon (USA). It should also be noted that, one need not be dying or even sick ton experience severe and enduring distress."[208]

In Europe, the euthanasia lobby is becoming bolder and more extreme. They have let go of their traditional anthems of voluntary euthanasia for the competent and suffering to that of language that would lead to euthanasia as a human right.[209]

3.6 ARGUMENTS IN FAVOUR OF EUTHANASIA:

Every patient has a right to decide about his mode of treatment including when and how they should die based upon the principles of autonomy and self determination. Autonomy is a concept granting right to a patient to make decisions relating to their health and life. A patient's own decision taken after all consideration cannot be argued and challenged. It is his wish either to continue his treatment or withdraw it, even though the outcome

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205 Jenna Murphy, John Jalsevac, "Assisted Suicide Gains Ground in British Courts" , 13 June 2008. Available at: www.lifesitenews.com/ldn/2008/jun/08061304.html

206 Supra note 1 at 47.

207 The WFRD is an umbrella group made up of 37 national euthanasia advocacy organizations, including Compassion and Choices and Hemlock founder Derek Humphry's Euthanasia Research and Guidance. Organization (or ERGO). Available at: www.weeklystandard.coni/Content/Public/Articles/000/.../124abkbr.asp

208 98 Supra note 94.

209 Alex Schadenberg, "Troubling trends on euthanasia in Europe". Available at http://www.theintenm.com/2008/june/I5eiithanasia.html.

may result into his death. It is argued that as a part of our human rights, there is a right to make our own decisions and a right to a dignified death.[210]

Beneficence - Advocates of euthanasia expresses the view that the fundamental moral values of society, compassion and mercy, require that no patient be allowed to suffer unbearable and relieving patient from their pain and suffering by performing euthanasia will do more good than harm.[211]

According to the proponents of PAS, it becomes ethical and justified when the quality of life of the terminally ill patient l becomes so low that death remains the only justifiable means to relieve suffering. Lack of any justifiable means of recovery and the dying patient himself making the choice to end his life are conditions which make euthanasia more justifiable.[212] In short, it is the extension of patient's right of autonomy to determine what treatment to be accepted or refused.

3.7 ARGUMENTS AGAINST EUTHANTIA:

Society and various religions believe in the sanctity of life which must be respected and preserved. The Christian view sees life as a gift from God, who ought not to be offended by taking of that life.[213] Similarly the Islamic faith says that "it is the sole prerogative of God to bestow life and to cause death". The withholding and withdrawing of treatment is permitted when it is futile, as this is seen as allowing the natural course of death. [214]

Euthanasia is considered as intentionally killing of one human being by another human being which is equivalent to murder especially active voluntary euthanasia

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[210] Bartels L., Otolowski M. A right to die? Euthanasia and the law in Australia. J Law Med. 2010 Feb; 17(4): 532-555.

[211] Norval D, Gwyther E. Ethical decisions in end-of-life care. CME. 2003 May; 21(5):267-272.

[212] Quill TE. Death and Dignity: Making Choices and Taking Charge. New York: WW Norton; 1993:156-157

[213] Bartels L., Otolowski M. A right to die? Euthanasia and the law in Australia. J Law Med. 2010 Feb; 17(4): 532-555.

[214] HH, Sprung CL, Reinhart K, Prayag S, Du B, Armaganidis A, et al. The World's major religion's points of view on end-of-life decisions in the intensive care unit. Intensive Care Med 2008 Mar; 34(3); 423-430

Critics of euthanasia argue that the patient's requests for euthanasia are rarely autonomous as most of them suffering from terminally ill diseases and may not be in sound or rational mind while making such decisions. The Universal Declaration of Human Rights highlights the importance that "Everyone has the right to life", and euthanasia contravenes [6]the "right to life".[215] Right to life does not include right to die.

[215] Goldman L, Schafer Al, Editors. Goldman's Cecil Medicine. 23rd ed. USA: Saunders; 2008. Chapter 2, Bioethics in the practice of medicin:4-9

CHAPTER:4 POSITION IN INDIA AND JUDICIAL TENDS

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 Report

4.1 Judicial Trend

India is a country highly influenced by religion and orthodox beliefs. It is cosmopolitan country with an amalgamation of many cultures, traditions and religions[216]. So, not surprisingly, people of our nation have various points of view on the life and death issues. We are a fate ridden optimistic society irrespective of our literacy or illiteracy. We believe that "God" is the author of life and no one else has a right to take it. No religion in India advocates for deliberate shortening of life. Thus, from ethical point of view, euthanasia is a moral sin in India.[217]

The debate surrounding the legalization of euthanasia in India has proven both protracted and intractable. Opponents cry themselves hoarse about the "sanctity of life" (SOL), being violated by self-styled angels of death, and cite eclectic religious authorities to shore up their claim.[218] Proponents of a more liberal view, on the other hand, insist that a "right to life" must include a concomitant right to choose when that life becomes unbearable or not worth living.[219] After discussing the legal position of

[216]Pralika Jain, "Euthanasia and Society". Available at: mvw.indlawnews.com/display.aspx74379 (Accessed on 15.1.09

[217]Gurbax Singh, Law Relating to Protection ofHuman Rights and Human Values, 217 (2008)

[218]Sushila Rao, "The Moral Basis for a Right to Die", Economic & Political Weekly, 13-16 at 13 (April 30,2011).

[219]Ibid.

right to die and euthanasia in various countries, we shall now discuss the law in India on the subject

In the landmark case of State of Maharashtra v. Maruti Sripati Dubal,[220] 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 21[221] of the Constitution. Hence, the Court held that 'right to life' under article 21 of the Indian Constitution 'includes right to die'.[222]

However, in Chenna Jagadeswar 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,[223] 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.[224]

The first case in which such an issue was brought before an Indian Court is State v Sanjay Kumar.[225] In this case, a division bench of the High Court of Delhi criticized section 309 of the Indian Penal Code, 1860 as ‘an anachronism and a paradox”. This decision was followed by conflicting decisions of two High Courts.[226]

The Bombay High Court in Maruti Shripati Dubal v State of Maharshtra[227] struck down section 309 as violative of right to life enshrined in Article 21 of the Constitution of India. Whereas the Andhra Pradesh High Court in Chhena Jagadesswer v State of Andhra Pradesh[228] held Section 309 as constitutionally valid.

In the case State of Maharashtra v. Maruti Shripathi Dubal[229], it was held that ‘right to life’ also includes ‘right to die’. The court said that right to die is not unnatural; it is just uncommon and abnormal. Also the court mentioned about many instances in which a person may want to end his life. This was upheld by the Supreme Court in the

[220] 1997 SC 411
[221] Cr LJ 549.
[222] Article 21 of the Indian constitution.
[223] AIR 1994 SC 1844.
[224] Article 21, Constitution of India
[225] State v Sanjay Kumar 1985 Cri LJ 931.
[226] Ibid
[227] Maruti Ssripati Dubal v State of Maharshtra 1987 Cri LJ 743 Bom.
[228] Chhena Jagadesswer v State of Andhra Pradesh 1988 Cri LJ 549 A.P.
[229] 1987 Cri LJ 743

case P. Rathinam v. Union of India[230] by a two-judge bench of the Supreme Court through Justice B.L. Hansaria and invalidated section 309 of the Penal Code, which made attempt to commit suicide an offence, on the ground that it 'violated the fundamental right to life'. However in the case Gian Kaur v. State of Punjab[231] the five judges Constitution Bench of the Court overruled Rathinam and held that Article 21 only guarantees right to life and personal liberty and in no case can the right to die be included in it.[232]

In Naresh Marotrao Sakhre v. Union of India[233], Lodha J. 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 act and without the aid or 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 thus is not suicide and an attempt at mercy killing is not covered by the provisions of Section 309. 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." (emphasis added) .

In another case, C.A. Thomas Master v Union of [234]India[235] the High Court of Kerala dealt with euthanasia. In this case, the Court entertained a writ petition filed by a citizen wherein he wanted the government to setup "Mahaprasthana Kendra" (Voluntary Death Clinic) for the purpose of facilitating voluntary death and donation/transplantation of bodily organs. The petitioner in this case was fit and wanted to terminate his life because he wanted to die in happy state of affairs. The High Court dismissed his writ petition and placed heavy reliance on the judgment given in Gian Kaur's case. But again in a landmark judgment passed by Bench consisting of 5 Judges in Gian Kaur v. State of Punjab,[236] 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.

[230]1994 AIR 1844, 1994 SCC (3) 394
[231]1996 AIR 946, 1996 SCC (2) 648
[232]Shreyans Kasliwal, Should Euthanasia be Legalised in India? (2003) PL WebJour 16
[233]Naresh Marotrao Sakhre v. Union of India 1995 Cri L J 96 (Bom)
[234]Ibid
[235]C.A. Thomas Master v Union of India 2000 Cri LJ 3729
[236] AIR 1996 SC 1257.

Further, the Court stated that provision under section 309[237], 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.[238] 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.

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.

The term euthanasia comes from two Ancient Greek words: 'eu' means 'good' and 'thanatos' means 'death', so euthanasia means 'good death'.[239] 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 extraordinary medical treatment in order to free him from intolerable pain.[240]

Oxford dictionary defines it as the painless killing of a person who has an incurable disease or who is in an irreversible coma.[241]

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.[242]" 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.[243]

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[244]. As the Supreme Court to mention some of the provisions of the Indian Penal Code, 1860 in that connection. These are as follows:—

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[237]Section 309 of IPC
[238]*Ibid*
[239]www.wikipedia.com
[240]www.legalserviceindia.com
[241]Oxford dictionary.
[242]House of Lords Select Committee on Medical Ethics.
[243]www.wikipedia.com
[244]1996 AIR 946, 1996 SCC (2) 648

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

Section 306 of the IPC[245] 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.[246]

Section 107[247]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 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.[248]

Section 309[249] 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. [250]

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.[251]

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

[245]www.indiankanoon.org
[246] "Indian Penal Code". India Kanoon. Retrieved 28 March 2017
[247]Section 107 of IPC.
ted by Shankar Lal vs State & Anr on 9 August, 2017
[249] Attempt to commit suicide, Section 309 Of Indian Penal Code.
[250]"Indian Penal Code". India Kanoon.
[251]"Indian Penal Code". India Kanoon.

of India[252], 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, [253] 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.[254] It was held in both cases, that in any event, section 309 did not contravene article 21 of the Constitution of India.[255]

In Gian Kaur's case[256], 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[257] 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, [258] was cited. The Supreme Court referred to the distinction between withdrawing life support and euthanasia as follows:

Airedale's case[259] was a case relating to withdrawal of artificial 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.

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[252] Supra note 91.
[253]Supra note 92.
[254]Article 21 of the Indian Constitution.
[255]Gian Kaur v. State of Punjab.
[256]**1996 AIR 946, 1996 SCC (2) 648**
[257]**1996 AIR 946, 1996 SCC (2) 648**
[258] 1993 (1) All ER 821.
[259]Airedale National Health Service Trust v Bland [1993] AC 789

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[260]:

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) 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[261] 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.

[260]**Airedale National Health Service Trust v Bland [1993] AC 789**
[261]**Section 87 in The Indian Penal Code**

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.

Section 92[262] 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.

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

Section 81 of the Indian Penal Code, 1860.

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[262]Section 92 in The Indian Penal Code

Section 81 of the Code[263] 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.

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,[264] 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.[265] 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.[266]

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 chance of any

[263]Section 81 in The Indian Penal Code

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

[265]Virani, Pinki (10 September 2003). "Aruna is still on our conscience". The Times of India. Archived from the original on 5 March 2011.

[266]Aruna Ramchandra Shanbaug v. Union Of India [2011 (4) SCC 454] (Euthanasia case)". 1, Law Street. Supreme Court of India. 7 March 2011. Archived from the original on 19 May 2015. Retrieved 18 May 2015.

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 threemember 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 favorite 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-ahalf 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.[267]

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

In Bangalore, the High Court[268] 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 neurosurgical 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.[269]

Karibasamma, who claimed to have suffered slip disc and was bed-ridden for 10-11 years, had written to local authorities and even the President and Prime Minister, seeking permission for euthanasia since 200, however Karibasamma claimed that she was getting only Rs. 8968 as monthly pension in 2010 and it wasn't enough to meet her medical expenses.[270]

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.[271]

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

[268] H.B Karibasamma v. Union Of India And Others

[269] https://m.timesofindia.com/city/bengaluru/72-yr-olds-mercy-killing-plea-rejected/articleshow/16566026.cms

[270] H.B Karibasamma v. Union Of India And Others

[271] http://www. articles.times of India. com

Similarly, the Kerala High Court in C.A. Thomas Master v. Union of India,[272] 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.[273]

In 2004, a two-judge Bench of the Andhra Pradesh High Court in Suchita Srivastava v. Chandigarh Administration[274] dismissed the writ petition of a 25-year old terminally-ill patient 'Venktesh' who sought permission to donate his organs in a nonheart beating condition. The High Court dismissed the writ petition where 'Venktesh' had expressed his wish to be put off the life support system.

Thus, the above discussion shows that how courts play a significant role in interpreting law while deciding cases. They are the ones who come face to face with the public. In researcher's view they better understand the plight of those who suffer. The view taken by hon'ble Supreme Court in its path breaking judgment is strongly welcomed and the procedure and guidelines given by it will be extremely helpful in making a legislative policy on the subject.

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

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[272]2000 Cr IJ 3729. [64] (2009) 9 S 1.

[273]"House and Senate Leaders Announce Gold Medal Ceremony for Professor Muhammad Yunus" Archived 29 August 2018 at the Wayback Machine, Press Release, US Congress.

[274](2009) 14 SCR 989, (2009) 9 SCC 1

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.[275]

4.4 Law Commission of India Report

- ### Law Commission of India 17th Report:

The Law Commission of India in its 196th Report on Medical Treatment to Terminally 111 Patients (Protection to Patients and Medical Practitioners), had in its opening remarks clarified in unmistakable terms that the Commission was not dealing with "euthanasia" or "assisted suicide" which are unlawful but the Commission was dealing with a different matter, i.e., "withholding life-support measures to patients terminally ill and universally in all countries, such withdrawal is treated as lawful". Time and again, it was pointed out by the Commission that withdrawal of life support to patients is very much different from euthanasia and assisted suicide. The Commission took up the subject for consideration at the instance of Indian Society of Critical Care Medicine, Mumbai which held a Seminar attended by medical and legal experts. It was inaugurated by the then Union Law Minister. The Law Commission studied a vast literature on the subject before the preparation of report. In addition, the commission gave the following recommendations on the subject:

1. There is need to have a law to protect patients who are terminally ill, when they take decisions to refuse medical treatment, including artificial nutrition and hydration, so that they may not be considered guilty of the offence of 'attempt to commit suicide' under sec. 309 ofthe Indian Penal Code, I860.[276]

It is also necessary to protect doctors (and those who act under their directions) who obey the competent patient's informed decision or who, in the case of (i) incompetent patients or (ii) competent patients whose decisions are not informed decisions, and decide that in the best interests of such patients, the medical treatment needs to be withheld or withdrawn as it is not likely to serve any purpose.

[275]www.researchgate.org
[276] 62 Id, at 205.

Such actions of doctors must be declared by statute to be 'lawful'in order to protect doctors and those who act under their directions if they are hauled up for the offence of 'abetment of suicide' under sections 305, 306 of the Indian Penal Code, 1860, or for the offence of culpable homicide not amounting to murder under sec. 299 read with sec. 304 of the Penal Code, 1860 or in actions under civil law.[277]

2. Parliament is competent to make such a law under Entry 26 of List III of the Seventh Schedule of the Constitution of India in regard to patients and medical practitioners. The proposed law, should be called 'The Medical Treatment of Terminally 111 Patients (Protection of Patients, Medical Practitioners) Act.[278]
3. A number of definitions were proposed in the Bill (for details, see Annexure 2)
   a) There must be a definition of 'patient' as a patient who is suffering from'terminal illness', because we are concerned only with such patients in this Report.[279]
   b) The definition of 'competent' and 'incompetent patients', is proposed as follows: 'Competent patient' means a patient who is not an incompetent patient."'Incompetent patient' means a patient who is a minor or person of unsound mind or a patient who is unable to (i) understand the information relevant to an informed decision about his or her medical treatment; (ii) retain that information; use or weigh that information as part of the process of making his or her informed decision; (iv) make an informed decision because of impairment of or a disturbance in the functioning of his or her mind or brain; or (v) communicate his or her informed decision (whether by speech, sign, language or any other mode)as to medical treatment."[280]
   c) There must be a definition of 'terminal illness' because the question of withholding or withdrawal of medical treatment relates only to such patients.'Terminal illness' means (i) such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patient and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient

[277] Ibid
[278] Ibid
[279] Id., at 206.
[280] Ibid.

concerned, or (ii) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient."[281]

d) The definition of 'medical treatment' must be as follows: 'Medical treatment' means treatment intended to sustain, restore or replace vital functions which, when applied to a patient suffering from terminal illness, would serve only to prolong the process of dying and includes (i) life-sustaining treatment by way of surgical operation or the administration of medicine or the carrying out of any other medical procedure and (ii) use of mechanical or artificial means such as ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation.[282]

e) There must be a definition of an 'informed decision', which a competent patient is supposed to take about his medical treatment. It must reflect the various aspects and must be defined as follows:

"'informed decision' means the decision as to starting or continuance or withholding or withdrawing medical treatment taken by a patient who is competent and who is, or has been informed about (i) the nature of his or her illness, (ii) any alternative form of treatment that may be available, (iii) the consequences of those forms of treatment, and (iv) the consequences of remaining untreated."[283]

f) There must be a definition of 'best interests' of the patient i.e. the best interests of a patient

   i. who is an incompetent patient, or
   ii. who is a competent patient but who has not taken an informed decision, and are not limited to medical interests ofthe patient but include ethical, social, moral, emotional and other welfare considerations.[284]

g) 'Palliative care' is permissible to be given by doctors for securing relief from pain and suffering even where the doctor obeys the informed

[281] Ibid.
[282] Id., at 206-207.
[283] Id., at 207.
[284] Ibid.

decision of a competent patient to withhold or withdraw the medical treatment. This definition must also be applicable to 'incompetent patients' who are conscious and who are not in a persistent vegetative state. Hence, a definition of 'palliative care' is proposed to be included as follows: "'palliative care' includes (i) the provision of reasonable medical and nursing procedures for the relief of physical pain, suffering, discomfort or emotional and 71 psycho-social suffering, (ii) the reasonable provision for food and water."[285]

h) There should be a definition of 'medical practitioner'. The Commission adopted the definition in the Medical Termination of Pregnancy Act, 1971.lt reads as follows: 'medical practitioner' means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and who is enrolled on a State Medical Register as defined in clause (k) of that section.[286]

i) There needs to be a definition of'minor' as defined in the Indian Majority Act, 1875 (4/1875) because a patient who is a minor is 'incompetent'. 'minor' means a person who, under the provisions of an Indian Majority Act, 1875 (4 of 1875) is to be deemed not to have attained majority.[287]

j) The Commission proposed to define 'Advance Medical Directives' as well as 'Medical Powers of Attorney' (Living Will) as follows: 'Advance Medical Directive' (called living will) means a directive given by a person that he or she, as the case may be, shall or shall not be given medical treatment in future when he or she becomes terminally ill. 'Medical Power of Attorney' means a document executed by a person delegating to another person (called a surrogate), the authority to take decisions in future as to medical treatment which has to be given or not to be given to him or her if he or she becomes terminally ill and becomes an incompetent patient. Section 4 of the proposed Bill states that the Advance Medical Directive and the Medical Power of Attorney being

[285]Id, at 207-208.[285]
[286] Id., at 208.
[287] Ibid

void and of no effect and shall not be binding on the medical practitioner.[288]

4. Every competent patients, who is suffering from terminal illness has a right to refuse medical treatment (as defined i.e. including artificial nutrition and) 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.[289]
5. Next is the case of (a) 'incompetent patients' and (b) competent patients whose decisions are not informed ones, in respect of whom the doctor is entitled to take a decision for withholding or withdrawal of medical treatment provided it is in the 'best interests' of the patient. Here it is necessary to be very careful so that appropriate decisions are taken and the Act is not abused. The Commission proposed to provide that the doctor shall not withhold or withdraw treatment unless he has obtained opinion of a body of three expert medical practitioners rom a panel prepared by high ranking Authority. And where there is a difference of opinion among the three experts, the majority opinion shall prevail. The medical practitioner shall consult the parents or close relatives (if any) of the patient but that their views shall not be binding on the medical practitioner because it is the prerogative of the medical practitioner to take a clinical decision on the basis of expert medical opinion.[290]

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

288 Ibid
289 Id., at 208-209.
290 Id., at 209.

disease, could be withdrawn or withheld. Of course, these guidelines must be consistent with the provisions of the proposed Act. It will be necessary for the Medical Council of India to issue guidelines. (The Medical Council of India could consult other expert bodies dealing with critical care such as the Indian Society for Critical Care Medicine which has also issued several guidelines). The guidelines are to be published in the Gazette of India and on the website of the Medical Council of India.[291]

The attending physician cannot choose experts of his own choice. Here too one has to be careful to see that the experts are duly qualified and have necessary no experience.[292] It is, therefore, proposed that the attending physician must choose from a panel prepared by a recognized public authority. This is necessary to ward off complaints of abuse of the system. The panel of experts must be prepared and published by the Director General of Health Services, Central Government for purposes of the Union Territories and by the Directors of Medicine (or authorities holding equivalent posts) in the States. The panel must contain names of medical experts in different fields who can take decisions on withholding or withdrawing medical treatment. The experts must have at least 20 years experience and must be of good repute. Those who are subject to disciplinary proceedings or who are found guilty of professional misconduct should not be included by the above Authorities in such panels. But, once the panels are prepared, the selection of the three experts must be left to the attending medical practitioner.[293]

The location of the place of treatment will define the appropriate panel of the relevant State or Union Territory for purposes of selection of experts by the on attending medical practitioner. [294]

The panel prepared by the above Authorities will be published in the Official Gazette ofthe Government of India or of the concerned State, as the case Q 1may be and also on their respective websites.[295]

It shall be necessary for the Medical Practitioner to maintain a register where he obeys the patient’s refusal to have the medical treatment or where, in the case of (i) competent or incompetent patient or (ii) a competent patient (who has or has not taken

291 Ibid.
292 Ibid.
293Id., at 210
294 Ibid.
295 Ibid.

an informed decision) he takes a decision to withhold or withdraw or starting or continuance of medical treatment, he must refer to all these matters in the register. The register shall contain the reasons as to why he thinks the patient is competent or incompetent, or what the experts have opined, as to why he thinks the medical treatment has to be withheld or withdrawn in the best interests of the patient. He must also record age, sex, address and other particulars ofthe patient or the expert advice given.[296]

Before withholding or withdrawing medical treatment, in the case of incompetent patients and patients who have not taken an informed decision, the medical practitioner, shall inform in writing to the patient (if he is conscious), parents or relatives, about the decision to withhold or withdraw medical treatment in the patient's best interests.[297]

Where such patients, parents or relatives inform the medical practitioner of their intention to move the High Court, the medical practitioner shall postpone such withholding or withdrawal for fifteen days and if no orders are received from the High Court within that period, he may proceed with the withholding or withdrawing of the medical treatment.[298]

A photocopy of the pages of the register should be lodged immediately with the Director General of Health Services or the Director of Medical Services of the concerned State where the treatment is being given or proposed or is proposed to be withheld or withdrawn, and acknowledgment obtained. The contents of the 85register shall be kept confidential and not revealed to the public or media.[299]

The said authorities shall also maintain these photocopies in a register but shall keep the information confidential and shall not reveal the same to the public or media.[300]

6. Then come the crucial provisions of the proposed Bill which will protect the patient in his decision for withholding or withdrawing medical treatment and thereby allowing nature to take its own course. A patient who takes a decision for withdrawal or withholding medical treatment has to be protected from

[296] Ibid.
[297] Ibid.
[298] Ibid.
[299] Ibid.
[300] Id, at 211.

prosecution for the offence of 'attempt to commit suicide' under section 309 of the Indian Penal Code, I860.[301]

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. Similarly, where doctors obey instructions of a competent patient who has taken an informed decision for withholding or withdrawing treatment, they should be protected. The hospital authorities should also get the protection. The doctors are not guilty of any ofthese 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, I860.[302]

The doctors must be protected if civil and criminal actions are instituted against them. Therefore, it was proposed 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'.[303]

To treat the doctor's action as "lawful" requires, as a condition to be satisfied, namely, that the doctor maintains a register as to why he thinks a patient is competent or incompetent, or why a competent patient's decision is an informed one, what the opinion of the three experts is, and why withholding or withdrawing medical treatment is in the best interests according to experts and himself. Maintenance of such record is mandatory and if such record is not on maintained, the protection afforded under this Act is not applicable to him.[304]

7. In the United Kingdom and other common law countries, the patient, parents or close relatives are entitled to seek declaratory relief in Courts for preventing the doctors or hospitals from withholding or withdrawing medical treatment or sometimes for directing such withholding or withdrawal.[305]

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[301] Ibid.
[302] Ibid
[303] Ibid.
[304] Ibid.
[305] Id., at 211-212

Such declaratory relief is granted in UK and other common law countries when approached by doctors and hospitals where they are of the opinion that it is necessary to withhold or withdraw medical treatment. They seek a declaration that Q? such action be declared 'lawful'.[306] However, in Airedale (1993), the House of Lords and in Burke (2005), the Court of Appeal made it clear that it is not necessary in every case for the doctors to seek a declaration that the proposed action is lawful. Till a body or precedent is obtained, the medical profession may approach the Courts so that Courts will lay down what is 'good medical practice' in medical parlance.[307]

These principles are, therefore, proposed to be substantially incorporated in the proposed Act. Time is essence in the case of terminally ill patients when decisions have to be taken under this enabling provision for withholding or withdrawing treatment. To avoid delays and appeals, the Court which deals with these cases must, therefore, be a Division Bench of the High Court and not the ordinary trial Courts. The Division Bench must deal with the matters with the greatest speed but, at the same time, after hearing all concerned and after due consideration and should be disposed of within a maximum period of one month.The High Court can also appoint an amicus curiae. The High Court may even pass orders first and give reasons later. The High Court will be the High Court within whose territorial jurisdiction the medical treatment is proposed to be given or given or withheld or withdrawn.[308]

The High Court could be approached by the patient, parents, relatives, doctors or hospitals. The Court could hear all, including the next friend or guardian ad litem as also the amicus curiae. The declaration given by the High Court must benefit the patient, the medical practitioner and the concerned hospital also.[309]

According to our law of precedents, where there is already a decision of a Division Bench ofthe High Court declaring the proposed action of withholding or withdrawing medical treatment as lawful, such decisions of the High Court are binding on the subordinate Courts, civil and criminal. In order to prevent

[306] Id., at 212
[307] Ibid.
[308] Ibid.
[309] Id., at 213.

harassment in fresh litigation, it is proposed to make a statutory provision that once a declaration is given by the Division Bench of the High Court, that the action is lawful, it will be binding in subsequent proceedings, civil and criminal. This is permissible because the judgments of Division Benches of High Court are binding precedents on all trial Courts, civil and criminal.[310]

8. (a) There must be a provision preserving the privacy rights of patients and the confidentiality of professional advice. Once a petition is filed in the High Court by patients, parents or relatives or doctors or hospitals, the High Court must soon pass an order for keeping the identity of all persons, including doctors, experts, hospital confidential. In the proceedings of Court or in publications in the law reports or media, the identity of the persons or hospital will not be disclosed and they will have to be described by English alphabet letters as assigned by the High Court. This prohibition holds good during the pendency of the petition in the High Court and even after it is disposed of.[311]

   However, when the Court communicates its directions or decisions to the patient, doctor or hospital or experts, it will be necessary to disclose real identity of patient and others. In such situations, the Court communications shall be in sealed covers. If any person or body breaches the above provisions as to confidentiality, the High Court may take action for contempt of Court. [312]

   (b) where the matter has not gone to the High Court, no person or body including the media can publish the identity of the patient, doctor, hospital, relatives or experts etc. and must keep identity confidential. If that is breached, they may be liable for civil or criminal action.[313]

9. There must be provisions mandating the Medical Council to issue guidelines on the question of withholding or withdrawing medical treatment to competent or incompetent patients suffering preform terminal illness. It may consult experts and also experts in critical care medicine, before formulating the guidelines.[314]

It is very important to note here that in 2011, in its landmark verdict in Aruna Ramachandra Shanbaug v. Union of India[315] the Hon’ble Supreme Court of India held

[310] Ibid.
[311] Ibid.
[312] Ibid.
[313] Ibid.
[314] Ibid.
[315]AIR 2011 SC 1290. For detailed discussion of this case, see chapter 7.

that passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained. The core point of distinction between active and passive euthanasia as noted by 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. In passive euthanasia, "the doctors are not actively killing anyone; they are simply saving him". The Court graphically said that 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". The Supreme Court then repelled the view that the distinction is valid and in doing so, relied on the landmark English decision of House of Lords in Airedale case[316], which has been discussed in previous chapter.

The Supreme Court in Aruna's case has put its seal of approval on (non voluntary) passive euthanasia subject to the safeguards laid down in the judgment. In the arena of safeguards, the Supreme Court adopted an approach different from that adopted by the Law Commission. The Supreme Court ruled that in the case of incompetent patients, specific permission of the High Court has to be obtained by the close relatives or next friend or the doctor / hospital staff attending on the patient. On such application being filed, the High Court should seek the opinion of a Committee of three experts selected from a panel prepared by it after consultation with medical authorities. On the basis of the report and after taking into account the wishes ofthe relations or next friend, the High Court should give its verdict. The court clarified that the above procedure should be followed all i n ^over India until Parliament makes legislation on this subject.[317]

In the aftermath of this case, the Law Commission of India, had to reconsider the matter and in August 2012, prepared its 241st Report titled "Passive Euthanasia-A Relook".[318]

[316] Supra note 25.
[317] Supra note 101 at 1331
[318] Law Commission of India 241st Report on Passive Euthanasia- A Relook, 2012. Full Report available on http//164.100.47.132/paperlaidfiles/law%20AND%20JUSTICE/report241 .

- **241st Report of the Law Commission of India, 2012**

The question before the Commission was whether parliament should enact a law subject permitting passive euthanasia in the case of terminally ill patients – both competent to express the desire and incompetent to express the wish or to take an informed decision. Ifso, what should be the modalities of legislation? This is exactly the reason why the Government of India speaking through the Minister for Law and Justice had referred the matter to the Law Commission of India. In the letter dated 20 April 2011addressed by the Hon'ble Minister, after referring to the observations made by the Supreme Court in Aruna's case, had requested the Commission to give its considered report on the feasibility of making legislation on euthanasia taking into account the earlier 196th Report of the Law Commission. Both the Supreme Court and Law Commission felt sufficient justification for allowing passive euthanasia in principle, falling in line with most ofthe countries in the world. The Supreme Court as well as the Commission considered it to be no crime and found no objection from legal or constitutional point of view.[319]

The Commission had a fresh look of the entire matter and have reached the conclusion that a legislation on the subject is desirable. Such legislation while approving the passive euthanasia should introduce safeguards to be followed in the case of such patients who are not in a position to express their desire or give consent (incompetent patients). As regards the procedure and safeguards to be adopted, the Commission is inclined to follow substantially the opinion of the Supreme Court in preference to the Law Commission's view.[320] The Commission, however, suggested certain variations in so far as the preparation and composition of panel of medical experts to be nominated by the High Courts. Many other provisions proposed by the Law Commission in its 196th Report have been usefully adopted. A revised draft Bill has been prepared by the present, Commission which is enclosed to the 241 report.[321]

[319]Id., at 5-6
[320]Id., at 6.
[321]Id., at 7.

The earnest effort of the Commission at this juncture, was 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 restated the propriety and of legality of passive euthanasia rather than putting the clock back in the medico-legal history of this country.[322] The Commission gave the following recommendations:

i. Passive euthanasia, which is allowed in many countries, shall have legal recognition in our country too subject to certain safeguards, as suggested by the 17th Law Commission of India and as held by the Supreme Court in Aruna Ramachandra's case. It is not objectionable from legal and constitutional point of view.[323]

ii. A competent adult patient has the right to insist that there should be no invasive medical treatment by way of artificial life sustaining measures / treatment and such decision is binding on the doctors / hospital attending on such patient provided that the doctor is satisfied that the patient has taken an 'informed decision' based on free exercise of his or her will. The same rule will apply to a minor above 16 years of age who has expressed his or her wish not to have such treatment provided the consent has been given by the major spouse and one of the parents of such minor patient.[324]

iii. As regards an incompetent patient such as a person in irreversible coma or in Persistent Vegetative State and a competent patient who has not taken an 'informed decision', the doctor's or relatives' decision to withhold or withdraw the medical treatment is not final. The relatives, next friend, or the doctors concerned / hospital management shall get the clearance from the High Court for withdrawing or withholding the life sustaining treatment. In this respect, the recommendations of Law Commission in 196th report is somewhat different. The Law Commission proposed an enabling provision to move the High Court.[325]

[322]Id., at 27.
[323]Id., at 40-41.
[324] Id., at 41.
[325] Ibid.

iv. The High Court shall take a decision after obtaining the opinion of a panel of three medical experts and after ascertaining the wishes of the relatives of the patient. The High Court, as parens patriae will take an appropriate decision having regard to the best interests of the patient. [326]

v. Provisions are introduced for protection of medical practitioners and others who act according to the wishes of the competent patient or the order of the High Court from criminal or civil action. Further, a competent patient (who is terminally ill) refusing medical treatment shall not be deemed to be guilty of any 113offence under any law.[327]

vi. The procedure for preparation of panels has been set out broadly in conformity with the recommendations of 17th Law Commission. Advance medical directive given by the patient before his illness is not valid.[328]

vii. Notwithstanding that medical treatment has been withheld or withdrawn in accordance with the provisions referred to above, palliative care can be extended to the competent and incompetent patients. The Governments have to devise schemes for palliative care at affordable cost to terminally ill patients undergoing intractable suffering.[329]

viii. The Medical Council of India is required issue guidelines in the matter of withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness.[330]

ix. Accordingly, the Medical Treatment of Terminally 111 Patients (Protection of Patients and Medical Practitioners) Bill, 2006, drafted by the 17th Law Commission in the 196th Report has been modified and the revised Bill is practically an amalgam of the earlier recommendations of the Law Commission117 and the views / directions of the Supreme Court in Aruna Ramachandra case.[331]

x. Thus, from the above account, the researcher concludes that our legal system does not recognize right to die in any of its forms, not even

[326]Ibid.
[327]Ibid.
[328]Ibid.
[329]Id., at 42
[330] Ibid.
[331] Ibid.

attempt to commit suicide. However, there are provisions in our penal law which provide certain defenses on the grounds of consent or benevolence. But these have limited application. Even the Law Commission is in favor of legalizing withdrawal of life support in extreme cases in order to enable people to live with dignity till their last breath.

CHAPTER:5 CONCLUSION

CHAPTER 5 CONCLUSION

Life is larger than the law. Law is the essence extracted from the life and reinstalled into it for its purposeful invigoration, but it does not wholly cover the life. Life is comprised of elements which often travel far beyond the terrain of law and it is probably impossible to imprison life within four walls of law. It may be vain to hope to modulate the life invariably on the legal pattern, though law ever endeavors to keep it on its rails, is however only a half measure

and that too not always pleasant, to try to tame the man into the cage of law as a device of his construction.[332]

Taking human suffering seriously and eliminating it is the foundation of 'modern' Human Rights Jurisprudence.[333] We must give new seriousness to life, insist upon absolute perfection, enhance the worth and dignity of man and of each individual, and his strong'J desire for love and happiness, increase man's sensitiveness to dark and woe.[334]

Respect for human dignity and worth is the most important feature of any political system.[335] But why man claims dignity? Man is a special type of animal.[336] He appears to have not only more intelligence that the other animals, but also special kind of intelligence. That shows that he and he alone exhibits a series of special characteristics. The most striking among them is the capability to think completely different from other animals and to differentiate between right and wrong.[337]

These specialties grant him ascertain dignity and power, which raise him above all other living creatures. He is the one who is also (and as it appears, he alone) conscious of his limitations, and above all, of his death.[338] Thus, dignity denotes a quality of being worthy or honorable[339] , and consists Inman's ability to experience self-awareness and to think rationally.[340]

There is a continuous development in the field of medicine, in terms of technology and skills. New drugs and vaccinations are being developed, blood component therapy, genetic experiments, newer investigation techniques and organ transplantation are being researched into and are evolving. However, these new developments have created new moral and ethical questions as well as legal problems.[341]

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[332] B.N. Saksena, Law & Life, 103 (1978)
[333] Upendra Baxi, The Future ofHuman Rights, 48-49 (2006).
[334] Rudolf Eucken, The Problem ofHuman Life, 145 (2012).
[335] Ronald Dworkin, Life's Dominion: An Argument about Abortion and Euthanasia, 166(1993)
[336] Anand Amaladass, Introduction to Philosophy, 81 (2001).
[337] Id., at 82
[338] Id., at 87
[339] Justice Palok Basu, Law relating to Protection ofHuman Rights, 333 (2007).
[340] S.K.Singh, Bonded Labour and the Law, 156 (1994)
[341] Tapas Kumar Koley, Medical Negligence and the Law in India, xxii (2010)

The doctor-patient relationship has undergone a drastic change. Earlier, doctors occupied the highest pedestial in society and their advice was accepted unconditionally by patients. Today, however, the old adage 'doctor knows the best', is no longer valid. Patients often seek opinions of different doctors for the same problem and then decide the course of treatment themselves. Moreover, a difference of opinion among doctors regarding treatment of same medical problem often causes confusion in the mind of the patient.[342] The past few decades have witnessed an increase in the commercialization of various sectors including medical services. Not too long ago, medical care was mainly provided free. Gradually, the concept changed into service for a fee and now for most medical professionals, the focus seems to be primarily on profit. The cost of medical services is very high in private hospitals, nursing homes, private clinics and diagnostic centres, which are managed like commercial establishments. Medical profession has become more of a business these days. This change has occurred at a very rapid pace in 1 9 India particularly.[343]

Respect for human dignity means high regard for the inherent and intrinsic value of human life and individual autonomy. At the end of life, it signifies that dying should be attended by such degree of dignity that reflects the quality of the life lived till that time. Hence, the ability to govern one's own conduct according to self-formulated rules and values should be upheld and personal choices endorsed, enabling people to control their own destinies. Modern medicine has got a solution to this problem. It has developed the ability to maintain life in the face of intractable illness, often at the cost of prolonging the dying process. But, sophisticated new medical and psychotherapeutic technology can pose a threat to the physical and intellectual integrity of the individual, thereby minimizing the degree of control and choice he has over his own life. For a person who seeks a dignified death, overriding autonomy by insisting on utilising every available therapy is inherently destructive of human dignity and can compromise his quality of life. When medical technology prolongs dying, it does not do so unobtrusively. It does so with needles, tubes, pain and discomfort, accompanied by the bright lights, noise, odours and loss

[342] Id., at 3, 4

[343] Id., at 4.

of privacy associated with institutional caring. In this environment death represents the ultimate form of patient's resistance, where natural death is that point at which he refuses any further input of treatment.14 In contrast, the opportunity to die without the intrusion of medical technology and before experiencing loss of independence and control, appears to many to extend the promise of a death with dignity. As a result, euthanasia and death with dignity have become so closely linked. Concerns about excessive treatment have generated much of the debate about euthanasia. Fuelled by the increasing longevity of the population and the further development of medical expertise, the euthanasia debate is therefore gaining momentum. Moreover, proponents of voluntary euthanasia argue that by taking control when death is inevitable and avoiding the futile excesses offered by medicine, greater dignity can be achieved. For some, the possibility of choosing an alternative to becoming dependent upon medical carers and burdensome to family is fundamental to dignity in this context. Preserving dignity through the avoidance of dependency and the maintenance of autonomy, is of greater significance to them than was relief from pain. Flowever, for others, dignity may amount to relief from pain and agony. The concepts of autonomy, self-determination and control at the end of life are therefore, key factors in dealing with the concepts of euthanasia and dignity.

Death and dying are the elements of life over which human beings can exercise only limited control. Death itself is not an experience that can be recounted or shared with others, but dying is an observable phenomenon whose contemplation shapes peoples' perceptions of their own lives and their expectations for their own demise. Fear of dying, fear of the possible mode of dying, fear of death itself are part of the human Condition[344] and the combining of these fears with new anxieties about the excesses of inappropriate medical care has fostered the convergence of euthanasia and death with dignity that is now well established in various cultures of the world. Furthermore, it has been

[344] J. Sanders, "Medical Futility: CPR", in R. Lee & D. Morgan, Death Rites: Law and Ethics at the End of
Life, 72-90 at 77 (1994)

acknowledged that individual choice and self-determination are central to this debate.[345]

In the context of dying, the word dignity signifies a sense of serenity and powerfulness, accompanied by qualities of composure, calmness, restraint, reserve, and emotions or passions subdued and securely controlled without being negated or dissolved.[346]

Therefore, right to die with dignity should be protected as a part and parcel of the right to life. State regulations that would force a dreadful, painful death on a rational but incapacitated terminally ill patient are a violation of human dignity. But at the same time, the state has an interest in the protection and preservation of life of its members and the avoidance of any devaluation of human life which might result from permitting lives to be deliberately terminated, thereby resulting into abuse.[347] Paradoxically therefore, opponents of euthanasia also speak of the centrality of dignity in dying but contend that there are alternative, more dignified, methods of achieving the same goal. In much the same way that euthanasia is preferred by its supporters as an alternative to traditional western medicine at the end of life, so the 'good death' ideal is revered by many ancient and eastern religions. As discussed in previous chapters, Buddhism, Jainism, and Hinduism, in particular, embrace the concept ofthe 'good death' as a means of achieving dignity and spiritual fulfilment at the end of life without resorting to artificially shortening its span. The modern hospice movement, founded in Britain, espouses a similar philosophy which emanates from a rather different environment.[348]

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[345] M. Kelner, I. Bourgeault, "Patient Control Over Dying: Responses of Health Care Professionals" (1993)
36 Social Science and Medicine 757-765. Cited in supra note 15 at 146

[346]A. Kolnai, "Dignity", in R. S. Dillon (ed.) Dignity, Character, and Self-Respect, 53-75 at 56 (1995)

[347]A. Kolnai, "Dignity", in R. S. Dillon (ed.) Dignity, Character, and Self-Respect, 53-75 at 56 (1995)

[348]Ibid., at 151-155

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