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# A Socio Legal Study on Euthanasia in India: A Dignified End of Life!

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## ABSTRACT

*Survival is undeniably valuable but some time and in certain condition life becomes painful and unbearable. Euthanasia is nothing else but a permit or license to the medical professional for ending the life of a person in question. With the march of law, the concept of 'individual autonomy' has gained much significance and recognized human dignity as an essential aspect across various jurisdictions. The present study presents varied forms of euthanasia and for whom it is granted. The study has made an attempt to explore the arguments in favour and against euthanasia and the position of life in various religions is also explored. The present study analyses the case of some countries like Netherland, Canada, Columbia, Belgium, Luxemburg and the state of Oregon in USA which have enacted legislations to euthanasia. India also joined these countries which have already legalized mercy killing in some form or other, so far India is concerned 'Passive Euthanasia' is legalized by Supreme Court's two judge bench on 7th March 2011. The researcher has done a non-doctrinal study. Finally, an attempt was made to see the possibilities by which euthanasia can be avoided to a large extent while taking into consideration the ethical code of humanity.*

**Keywords:** Dignity, Right to Die, Passive Euthanasia, Legal, Ethical Judiciary

## I. INTRODUCTION

*"Life sans dignity is an unacceptable defeat and life that meets death with dignity is a value to be aspired for and a moment for celebration."*

**- Dipak Misra C.J.I.**

Euthanasia is a Greek word. It is a combination of two words eu -good and Thanatos -death means "good death"<sup>2</sup>. Thus, 'Euthanasia' is defined as the intentional premature termination of another person's life either by direct intervention (active euthanasia) or by withholding life-prolonging measures and resources (passive euthanasia). It is either at the express or implied

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<sup>2</sup> Lewy G, Assisted suicide in US and Europe. New York: Oxford University Press, Inc; 2011.

request of that person (voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia)<sup>3</sup>.

Protection of life and Personal liberty though couched in negative language it is given paramount position by court of law in India<sup>4</sup>. The right to life and personal liberty is a universal right in India which means foreigners and Indian citizen both can claim their right to life from state<sup>5</sup>. There can be no discrimination on the basis of citizenship. With changing dimension of the society, it is very difficult to define article 21 i.e., Protection of life and personal liberty. Justice Field spoke on the right to life in following words-

*“By the term “life” as here used something more than animal existence. The inhibition against its deprivation to all those limbs and faculties by which life enjoyed. The provision prohibits the mutilation of the body by the amputation of an arm or leg, or putting out an eye, or the destruction of any other organ of the body through which the soul communicates with other world<sup>6</sup>.”*

This statement has been further extended by Indian Supreme Court, which include right to life with dignity. Indian law refuses to look mere life in isolation it considers life should be look in its whole context where a person has right to express himself have basic necessity like food, shelter and cloth, Right to life include right to dignity also<sup>7</sup>. The magnitude and component of this right is dependent upon social and economic status of the country<sup>8</sup>.

In the view of global development in the sphere of human rights these judicial decisions are strong pointer towards the recognition of affirmative rights to basic necessity of life under article 21<sup>9</sup>. The expression liberty in Article 21 has narrower application as compare to other constitution. But there was no definite pronouncement made this point<sup>8</sup>. Personnel Liberty was confined to freedom from detention or physical restrain<sup>9</sup>. Personnel liberty is used in the Article as a compendious term to include within itself all verities of rights which go to clause of Article 19(1) deals with particular comprise the residue<sup>10</sup>. The expression liberty in the 5th and 14th amendment to U.S. constitution has been given wider meaning. It takes all kind of freedom<sup>11</sup>. The expression is not confined to mere freedom from bodily restrain but extend to

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<sup>3</sup> Angkina Saikia, Euthanasia 'Is It Right To Kill' or 'Right To Die', Cr LJ 356 (2012).

<sup>4</sup> Kehar Singh v. Union of India, (1989) 1 SCC 204: AIR 1989 SC 653

<sup>5</sup> NHRC V. State of Arunachal Pradesh (1996) 1 SCC 204: AIR 1989 SC 653

<sup>6</sup> Munn v. Illinois 94 U.S. 113.

<sup>7</sup> Francis Coralie v. Union Territory of Delhi (1981) 1 SCC 608: AIR 1981 SC 746, at 753

<sup>8</sup> Badhua Mukti Morcha v. Union of India (1984) 3 SCC 161: AIR 1984 SC 802.

<sup>9</sup> Sodan Singh v. NDMC 1989 4 SCC 155.

<sup>10</sup> Kharak Singh v. State of U.P. AIR 1963 SC 1295

<sup>11</sup> Manna v. People of Illinois, 94 US 113

all kind of liberty.<sup>12</sup>

It is contended that any law that permits Euthanasia and helped suicide constitutes a genuine infringement of a government's obligation to ensure the lives of every one of its natives, regardless. The law is infringing upon the United Nations Universal Declaration of Human Rights, where the most central Human Right is proclaimed to be the privilege of each blameless individual to the uprightness of his/her life, a correct that ought to be secured by law. That privilege is proclaimed to be equivalent, natural, sacred and unavoidable. Its honesty isn't to be made subject to its quality at a specific time, and the privilege should not be taken away nor given away<sup>13</sup>.

The issue in the present case was whether the right to die with dignity is included in fundamental right to life. The issue was whether the living will be legally valid and passive euthanasia legally valid in India.

### **Objectives**

1. To highlight the concept of euthanasia in general and to explore its special kinds in particular.
2. To discuss in detail the arguments in favour and the arguments against euthanasia in India.
3. To explore and understand the present legal position of euthanasia in India and the role played by the Judiciary.
4. To study the status of Euthanasia in other countries and their legislations.
5. To analyse whether a person residing in India has a right to die.
6. To suggest remedial measures and to provide effective panacea to a person suffering in pain.

### **Hypothesis**

Ho: People in India with more religious belief will not agree to Legalising of Euthanasia.

Ha: People in India with more religious belief will agree to Legalising of Euthanasia.

### **Research Methodology**

The present research paper, "A Socio Legal Study on Euthanasia in India: A Dignified End Of Life!" is based on both primary and secondary data collected from different sources. The primary data was collected from religious text and first-hand books. So far as secondary sources are concerned, they were accumulated from number of research papers of reputed journals,

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<sup>12</sup> Subhash Chandra Singh "Euthanasia and Assisted suicide: Revisiting the sanctity of life principle", Journal of the Indian law institute, vol. 54, 2012, p-211.

<sup>13</sup> Rajesh Kumar Pathak, "Right to die: International perspective", Criminal law journal, vol.2, 2009, p-9.

articles published in various blocks, judgements delivered by Hon'ble Supreme Court and High Courts, books and newspapers. The research method used in the present study for exploration of data which amassed from different sources is descriptive/Ex post facto research method.

## II. KINDS OF EUTHANASIA

Euthanasia as discussed above is assisting a person who suffers critical and acute disease and is not in a condition to get restored of his health. Euthanasia can be of consent or without consent taking into account the circumstances which allow a physician to take decision over the withdrawal of life support aids to such patient. Consequently, euthanasia can be classified under the following broad categories:

**Active Euthanasia:** Active euthanasia involves painlessly putting patients with terminal illness to death for merciful reasons, as when a doctor administers a lethal dose of medication to a patient. In this case a person cannot himself cause his death but requires someone else's help with some prescription causing death. In India active euthanasia is illegal and a crime under section 302 or at least section 304 of Indian Penal Code. Physician assisted suicide is a crime under section 306 of IPC (abetment to suicide).

**Passive Euthanasia:** Passive euthanasia demands the withholding of common treatments, such as antibiotics, necessary for the persistence of life. It involves not doing something to prevent death as when doctor refrain from using devices necessary to keep alive a terminally ill patient or a patient in a persistent vegetative state (PVS). Passive euthanasia is thought to be less brutal than active euthanasia. Passive euthanasia is the only way to legally administer euthanasia in India. In "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him.

**Voluntary Euthanasia:** In voluntary euthanasia person asks for death by either active or passive euthanasia. It is basically related with the right to choice of the terminally sick patient who decide to end his/her life, which serves his best interest and everyone connected to his terminal sickness. This type of euthanasia is practiced when the expressed desire and consent of the patient is given.<sup>14</sup>

**Involuntary Euthanasia:** The involuntary euthanasia occurs when a patient is killed against his stated will and under the law this is a criminal act of murder. Thus, Involuntary Euthanasia occurs where the recipient has not agreed to the procedure and is an unwilling associate. Euthanasia can be said as an involuntary when the person killed is capable of consenting to her

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<sup>14</sup> Passive Euthanasia- A Relook, Law commission of India, August 2012, available at: <http://lawcommissionofindia.nic.in/reports/report241.pdf>, accessed on 14.03.2021 at 10:00AM.

own death, but does not do so, either because he/she is not asked, or because he/she is asked and chooses to go on living. Confessedly this definition puts two different cases under one caption. There is a significant difference between killing someone who chooses to go on living and killing somebody who has not consented to being killed, but if asked, would have consented. In practice, though, it is hard to imagine cases in which a person is capable of consenting and would have consented if asked, but was not asked.

**Non voluntary euthanasia:** To end the life of a person who is mentally lacking ability to make informed decision about his/her death, such as a patient in coma. It includes cases where the patient has not addressed his/her wish of dying in any will or indication, and the authority to make the decision lies with the family members. If a person is not capable of understanding the choice between life and death than euthanasia is said to be non-voluntary.<sup>15</sup>

### III. RELIGION AND ACCEPTANCE OF EUTHANASIA

All religion has a common faith that Life is a gift of God. All faiths and religions give some meaning and explanation for death and dying. These two concepts can't be separated from each other. The Supreme Court found that where Hinduism and Christianity have mixed views on euthanasia, Islamic views are against it. While it is accepted by Jainism and Buddhism<sup>16</sup>.

1) **Hinduism view:** There are different views of Hinduism regarding euthanasia. Justice Ashok Bhushan discovered euthanasia's link with religion. He said, "In ancient Indian religion, sanctity was attached to a yogi who could discard his body through the process of higher spiritual practices called yoga. Such a state was known as 'Samadhi'." On the contrary, the Hindu scriptures like Manusmriti and Yajnavalkya smriti mention fasting in order which might lead to one's death would be injustice to a situation, human or cosmic. Those who commit suicide don't attain moksha or salvation from the cycle of life and death.

2) **Islamic view:** Islam is against euthanasia. Muslims say that life is a sacred gift of Allah and he chooses how long a person will live. None has the right to take away the said gift. Euthanasia according to them, is 'haram' for a doctor or a medical caretaker, he/she can't stop trying to prolong life even when there is no hope of cure.<sup>17</sup>

3) **Christianity view:** Christianity is also against euthanasia. The Bible says Human beings are a temple of God and the spirit of God exists in the body. They believe that Jesus healed the sick but he didn't kill the people, so Christians must help others who are suffering

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<sup>15</sup> Ibid.

<sup>16</sup> Zainab Tarannum, Passive Euthanasia: An Analysis Of Supreme Court Judgments, Journal On Contemporary Issues Of Law (Jcil) Vol. 4 Issue 10, June 2020.

<sup>17</sup> M. Narimisa, (2014). Euthanasia In Islamic Views. *European Scientific Journal*, Vol. 02, P. 170.

from disease, not to kill them. However, some Christians argue for euthanasia on the basis of love. Christianity is all about love. They say, euthanasia can treat the best way to people rather than suffering.

**4) Jainism view:** The concept and practice of euthanasia is not a new concept in Jainism. Principles of Jainism talk about the religiously nominated self-build death called 'Sallekhana' or 'Samadhi-marna', meaning 'fast unto death'. This practice can be done by both ascetics and householders. It is still practiced in a large number in India.

**5) Buddhism view:** There are many views among Buddhist regarding euthanasia. But, on the basis of compassion, some regard euthanasia in a justified way. Some scriptures state that Lord Buddha had allowed self-build death for extremely ill people as an act of compassion<sup>18</sup>.

#### IV. REASONS TO SUPPORT EUTHANASIA AND VIEWS AGAINST EUTHANASIA IN INDIA

##### **The Proponents of euthanasia support the subject:**

**1. Respecting patient's independence:** Every individual has authority to manage his own life. Most of the constitutions give the authority to the individual to end life with dignity, this is an absolute right. The terminally ill thus has power to decide whether he has to continue his life or not.

**2. Right to die:** Some interpret that right to live includes right to die. The human rights conferred on us also incorporate the authority to us to end life. Further it can be justified as the right to die is absolutely a personal issue.<sup>19</sup>

**3. Respecting quality of life:** Individuals suffering from terminal illness are eager to end life to relieve from severe pain life. Many individuals extremely dislike being dependent on others for their maintenance and survival. It takes away from them their peace or pleasure, and degrades them further. It is their inherent right to have a quality life<sup>20</sup>.

**4. Beneficence/ Compassion:** Euthanasia on compassionate grounds, says that it is a step of sympathy. They can achieve "moksha" for the good deeds done by them before ending life willingly. They can donate their organs. This shall eventually help in saving many individuals life that is precious.

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<sup>18</sup> Damin Keown, "End of Life: The Buddhist View", Lancet, 2005

<sup>19</sup> K. Dharanishree, K. J. Lalith, (2017). Critical Appraisal of Euthanasia in India- Indian Perspective. IJARIE, Vol. 3, Issue. 4, pp.766-770.

<sup>20</sup> Kufe J, EUTHANASIA – The "Good Death" Controversy In Humans And Animals (InTech 2018).

**5. Saving resources:** Palliative care relieves the terminally ill patients to a certain extent but definitely cannot cure a terminally ill patients, thus the long-term palliative care is a waste of available medical resources. The same valuable resources could be utilized for worthy lives where there are chances of revival, cure and also a strong desire to lead life.

**6. Reduces economic burden:** Medical expenses have reached skyrocketing prices. It is difficult for a common man to meet the routine medical expenses the big hospital bills. Many a times family spends all their savings on medical bills, they are indebted in giving treatment to the sick suffering from incurable diseases. This is when death is determined and no possibility of recourse.

**7. Reduces legal jeopardy for those implementing euthanasia:** The individual aiding in performance of the act commits a crime. Such people are prosecuted for the act committed. To avoid the unnecessary punishment for such people it is essential that euthanasia should be legalized<sup>21</sup>.

**8. Death more acceptable:** Each one of us is mostly scared of death, may be a patient or any normal human being. Euthanasia lessens this cruelty. If euthanasia is permitted it would also be easy for the care takers of the patient to, accept death of their loved ones than otherwise. The act is morally acceptable; as it is preeminent beneficial to everyone concerned that is the sick and his relatives<sup>22</sup>.

#### **Arguments of Opponents of Euthanasia:**

**1. Sanctity of life:** Human life should be respected and preserved. It is the sole privilege of God to bequeath life and to cause death. Some believe that life is sacred, and taking life is a sin. They do not attain moksha, as to derive this spiritual benefit the virtues of the individual in his existing life are accounted for.

**2. Human rights abused:** “Universal Declaration of Human Rights” guarantees each one the authority to live. This authority does not allow the individual to die. It contravenes the right to life. This principle of autonomy forbids the voluntary ending of one’s life. The terminally sick shall have a preference to die.

**3. Euthanasia a crime:** Most of the countries Euthanasia is considered as crime. Killing another person is inherently wrong it amounts to murder and therefore not to be administered.

**4. Rights of vulnerable patients:** Opponents state that euthanasia if accepted as a practice,

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<sup>21</sup> Jain M, Indian Constitutional Law (7th edn, LexisNexis 2014)

<sup>22</sup> Orfali R, Death With Dignity (Mill City Press, Inc 2011)



it may give rise to situations that chip away the rights of helpless patients. It is apprehended that

terminally ill patients receiving costly treatments might be forced to accept euthanasia as a solution because of the inflation prevalent in Indian society.

**5. Wrong decision of the victim:** The decision of the individual depends on condition of his mind, the agony they go through and dysphasia. Hence there is a likelihood of the decision thus taken to be wrong. If proper treatment is given to the sick, conditions which influence the decision may be relieved.

**6. Conflicts of interest:** In case the patient is in a vegetative state the care takers are authorized to assess the situation and take decisions for terminally ill. This shall probably lead to misuse of the benefit conferred.<sup>23</sup>

**7. Diagnostic errors and medical advances:** The doctor's analysis may not be just right, mistakes can occur in prediction. As research advances, novel medicines are introduced, new equipment are launched, the state of the vulnerable patients improve. The option of death can be transmitted to cure and possibility to continue life.

**8. Religious view point:** The religious component states that if one does not consider his life to be sacred, then no life shall be considered to be divine. Most of the religions believe that God has the sole right to decide when life should begin or end. Euthanasia amounts to premature ending a life which is against god.

**9. Euthanasia dangerous to society:** The euthanasia movement is dangerous to the society as it would lead to organizations or authorities who work for assisting suicide in getting rid of the terminally ill. Thus, it is quite likely that the nation's resources would be diverted in pursuit of death instead of life.

**10. Values to be preserved:** Sufferings teach others to grow through it; it shows how a cognizant, dying patient indicates his or her commitment to community by not giving up on life. Thus, one can prove that values and purpose are beyond happiness.

## V. LEGAL PROVISIONS REGARDING EUTHANASIA IN INDIAN LAW

Section 81 of IPC deals with 'Act likely to cause harm, but done without criminal intent and to prevent other harm. Section 87 of IPC deals with 'Act likely to cause harm, but done without criminal intent and to prevent other harm'. Section 88 of IPC deals with 'Act done in good faith

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<sup>23</sup> S. K. Tiwari. Concept of Euthanasia in India: Socio- Legal Analysis. *International Journal of Law and legal Jurisprudence studies*, Vol.2, Issue 3.

for benefit of a person with consent'. Section 92 of IPC deals with 'Act done in good faith for benefit of a person without consent'.

As far as 'attempt to commit suicide' is concerned, Sec. 309 of the IPC prohibits the same. It states: "Sec. 309: 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."

The Indian Penal Code in sec. 306 states that 'abetment of suicide' is an offence. Sec. 306 states as follows: "Sec 306: If any person commits suicide, whoever abets the commission of such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

'Abetment' of any offence is defined in sec. 107 of IPC. In relation to Euthanasia, it has to be considered when we deal with the question whether the withholding or withdrawing medical treatment amounts of abetment of suicide.

The State makes 'murder' an offence under sec. 302 of the Penal Code, 1860. Sec. 299 defines 'culpable homicide'. Sec. 300 defines when 'culpable homicide' amounts to 'murder'. Sec. 304 mentions about punishment for culpable homicide not amounting to murder.

Section 87 of the Indian Penal Code clearly states that consent cannot be pleaded as a defense in case where the consent is given to cause death or grievous hurt. There is punishment for attempting suicide as mentioned Section 309 (Attempt to commit suicide) of the Indian Penal Code. A doctor administers lethal dose of medication to a patient<sup>24</sup>. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide). Patients are allowed to choose passive euthanasia but cannot choose active euthanasia. Passive euthanasia is when nothing can be done to prevent death. Making passive euthanasia legal is a bold step for a nation like us.<sup>25</sup>

Since in cases of euthanasia there is an intention on the part of the doctor to end the life of the patient, such cases would clearly fall under Section 300(1) of the IPC and treated as murder. However, if there is a valid consent of the deceased then Exception 5 to the said Section would be attracted and the doctor would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck down by

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<sup>24</sup> R. Shukla, Passive Euthanasia in India: A Critique. *Indian Journal of Medical Ethics*, Vol. I, No. 1, (2016), p.37.

<sup>25</sup> Dr. Sonali Abhang. "A Socio-Legal Impact of „Euthanasia In India-Suggested Reform." IOSR Journal Of Humanities And Social Science (IOSR-JHSS), vol. 22, no. 9, 2017, pp. 01–11.

proviso one to Section 92 of the IPC and thus be rendered illegal. But now Union Government has decided to decriminalize section 309 IPC by deleting it from the IPC. 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 honouring the wishes of the people concerned. Thus, the Indian Penal Code, 1860 upholds the sanctity of life in several respects.<sup>26</sup>

## VI. REPORT OF THE LAW COMMISSION OF INDIA

The Law Commission of India in its 196th Report (March 2006) under the Head “Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)”<sup>27</sup>, while supporting passive euthanasia i.e., withdrawal of life supporting measures to dying patients (which is different from euthanasia and assisted suicide) drafted a Bill. The Commission have suggested the safeguards to be observed by attending the doctors before withdrawing the life support systems and also recommended the deletion of sec 309 of the IPC which makes the “attempt to commit suicide” an offence. Refusal to obtain medical treatment does not amount to 'attempt to commit suicide' and withholding or withdrawing medical treatment by a doctor does not amount to 'abetment of suicide'. The Report concludes that “Euthanasia” and “Assisted Suicide” must continue to be offences under Indian law. The medical profession could take decisions for withdrawal of life support if it was in the “best interest” of the patient.

As per the Report, Civil liability of the doctors under the law of torts is as follows: (i) when a competent patient who is seriously ill and is also properly informed, refuses to take medical treatment and allows nature to take its own course, the Doctor is bound to obey him and withhold or withdraw the treatment. In such circumstances if on account of doctor obeying the patient's refusal the death occurs, Doctors cannot be sued for negligence.

(ii) Likewise, (a) where doctors do not start or continue medical treatment in such cases because of such patients' refusal, they are not guilty of abetment of suicide or murder or culpable homicide and (b) if the patient is **incompetent**, either being a minor or of unsound mind and is in a permanent vegetative state (PVS), or (c) if the patient was **competent** but his decision was not an informed decision and if the doctors consider that there are no chances of recovery and that it was in the best interest of the patient that medical treatment be withheld or discontinued, the doctor's action of withholding or withdrawing the medical treatment would be lawful. Here the Doctor will not be held guilty of any offence of abetting suicide or murder or culpable

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<sup>26</sup> T. Bhattacharyya, (2016). The Indian Penal Code, (10<sup>th</sup> Ed.). Central Law Agency, Allahabad, pp. 420-470.

<sup>27</sup> Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), available on, <http://lawcommissionofindia.nic.in/reports/rep196.pdf>, accessed on 14.03.2021 at 9:10AM.

homicide.

In that case, as the doctor is acting in good faith, his action in withholding or withdrawing medical treatment is protected and he is also not liable in tort for damages<sup>28</sup>. The main difference between the recommendations of the Law Commission (in 196th Report) and the law laid down by the Supreme Court (*pro tempore*) lies in the fact that the Law Commission suggested enactment of an enabling provision for seeking declaratory relief before the High Court whereas the Supreme Court made it mandatory to get clearance from the High Court to give effect to the decision to withdraw life support to an incompetent patient. The opinion of the Committee of experts should be obtained by the High Court, as per the Supreme Court's judgment whereas according to the Law Commission's recommendations, the attending medical practitioner will have to obtain the experts' opinion from an approved panel of medical experts before taking a decision to withdraw/withhold medical treatment to such patient.

Suggestions made by the **Law Commission of India in its 241st Report (August 2012)** under the title of **"Passive Euthanasia- A Relook" in Para. (14.1-14.9) of Chapter 14** under the Head **"Summary of Recommendations" (Pp.40-42)**<sup>29</sup>

*"14.1 Passive euthanasia, which is allowed in many countries, should 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 [(2011) 4 SCC 454]. It is not objectionable from legal and constitutional point of view.*

*14.2 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.*

*14.3 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*

<sup>28</sup> Supreme Court decisions on civil liability of Doctors in, Jacob Mathew: 2005 (6) SCC 21, State of Punjab vs. Shiv Ram: 2005(7) SCC 1 and State of Harvana vs. Raj Rani: 2005(7) SCC 22.

<sup>29</sup> Passive Euthanasia- A Relook, Law commission of India, August 2012, available at: <http://lawcommissionofindia.nic.in/reports/report241.pdf>, accessed on 14.03.2021 at 10:00AM.

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 are somewhat different. The Law Commission proposed an enabling provision to move the High Court.

**14.4** 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.

**14.5** 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 offence under any law.

**14.6** 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.

**14.7** 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.

**14.8** 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.

**14.9** Accordingly, the Medical Treatment of Terminally Ill 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 Commission and the views / directions of the Supreme Court in Aruna Ramachandra case. The

*revised Bill is at Annexure I.*”<sup>30</sup>

## VII. EUTHANASIA IN INDIA AND THE JUDICIAL RESPONSE:

The Courts in India have time and again grappled with the issue of permitting a person to die or not. The first case in which such an issue was brought before an Indian Court is *State v Sanjay Kumar*<sup>31</sup>. In this case, a Division Bench of the High Court of Delhi criticized Section 309 of the Indian Penal Code, 1860<sup>32</sup> “Section 309 of the Indian Penal Code, 1860 is an anachronism unworthy of a humane society like ours.”<sup>33</sup> This decision was followed by conflicting decisions of two High Courts. The Bombay High Court in *Maruti S. Dubal v State of Maharashtra*<sup>34</sup> 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*<sup>35</sup> held Section 309 as constitutionally valid.

Pursuant to these judgments, the High Court of Delhi in the case of *Court of its own motion v Yogesh Sharma*<sup>36</sup> took a radical step while interpreting the constitutionality of Section 309. The Court provided the strongest ideological offensive against the outmoded offence and ordered that all the pending 120 attempted suicide cases in Delhi be quashed.

In *P. Rathinam v Union of India*<sup>37</sup>, the Supreme Court of India for the first time formulated fifteen questions and discussed the issue “whether a person residing in India has a right to die?”. At the end of its judgment, the Supreme Court came to the conclusion that Section 309 of IPC, 1860- Attempt to commit suicide- is outdated, cruel and irrational provision. And therefore it is violative of Article 21 of the Constitution of India and so, it is void and unconstitutional. This observation of Hon’ble Court is in tune with the recommendation made by **Forty Second Report of the Law Commission of India, (June, 1971)** under the title of “**Indian Penal Code**” in **Para.16.33 Chapter-16** under the Head “**Offences affecting the human body**” (Pg.244) Section 309 of IPC is harsh and unjustifiable and it should be repealed<sup>38</sup>. In this context, while answering the above question the Supreme Court observed;

*“This desire for communion with God may very rightly lead even a very healthy mind to think*

<sup>30</sup> Ibid, Chapter 14 - “Summary of Recommendations”.

<sup>31</sup> 1985 Cr.L.J.931.

<sup>32</sup> **Section 309 of IPC, 1860- Attempt to commit suicide** -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].

<sup>33</sup> Supra 13.

<sup>34</sup> 1987 Cr.L.J.743

<sup>35</sup> 1988 Cr.L.J.549

<sup>36</sup> Civil Revision Appeal No. 230 of 1985, decided on 13.12.1985

<sup>37</sup> AIR1994 SC 1844, Para 109 & 110.

<sup>38</sup> Available on <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>, accessed on 12.03.2021

*that he would forgo his right to live and would rather choose not to live. In any case, a person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking*<sup>39</sup>. ”

The Supreme Court dealt with the question of „right to die“ once again in the case of **Smt. Gian Kaur v State of Punjab**<sup>40</sup>. In this case, the Supreme Court held that right to die is not included in right to life. Having said this, the Supreme Court questioned:

*“In the context of a dying man, who is, terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the 'right to die' with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life.”*<sup>41</sup>

On 17 August, 1994, in **Naresh Marotrao Sakhre v. Union of India**<sup>42</sup>, the Bombay H.C. (Bench consisting of M Ghodeswar, R Lodha) observed that, “Euthanasia”/ “mercy-killing” 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 life 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 of IPC. 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.”*

In the case, **C.A. Thomas Master v Union of India**<sup>43</sup>, the High Court of Kerala also concurred with the judgment given in *Gian Kaur*’s case where “right to life did not include right to die”.

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<sup>39</sup> Supra 19, Para 33.

<sup>40</sup> AIR1996 SC1257

<sup>41</sup> Ibid.

<sup>42</sup> 1996 (1) BomCR 92,1995 Cri L J 96 (Bom)

<sup>43</sup> 2000 Cr.LJ.3729

In this case the petitioner 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 a happy state of affairs. Therefore, the High Court dismissed his writ petition.

But in the present case, *Aruna Ramachandra Shanbaug vs. Union of India and Others (Euthanasia Case)*<sup>44</sup> Supreme Court allowed **passive euthanasia with some guidelines**. Coming to Indian law on the subject, it was pointed out that in *Gian Kaur's case*<sup>45</sup>, the Supreme Court approvingly referred to the view taken by House of Lords in *Airedale case* on the point that Euthanasia can be made lawful only by legislation. Then it was observed: "*It may be noted that in Gian Kaur case although the Supreme Court has quoted with approval the view of House of Lords in Airedale case, it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. This vexed question has been arising often in India because there are a large number of cases where persons go into coma (due to an accident or some other reason) or for some other reason are unable to give consent, and then the question arises as to who should give consent for withdrawal of life support*".

Then, it was observed: "*In our opinion, if we leave it solely to the patient's relatives or to the doctors or next friend to decide whether to withdraw the life support of an incompetent person, there is always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or otherwise grab property of the patient*".<sup>46</sup>

Then Supreme Court explained the doctrine of "*Parens Patriae*". The Supreme Court then observed that Article 226 of the Constitution gives ample powers to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff seeking permission to withdraw the life support to an incompetent patient.<sup>47</sup>

Also vide Para 100 of the judgment, the SC stated that although Section 309 Indian Penal Code (attempt to commit suicide) has been held to be constitutionally valid in *Gian Kaur's case* (supra), the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide while he is in the state of depression. Hence he needs help, rather than punishment. The Court in its landmark judgment, however, allowed **passive**

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<sup>44</sup> AIR 2011SC1290

<sup>45</sup> AIR 1996 SC 1257

<sup>46</sup> Supra 26, Para 101, 127

<sup>47</sup> Supra 26, Par 133.



**euthanasia** in India.

The recent case *Common Cause Society v. Union of India*<sup>48</sup>, was decided by the apex court on the issue of euthanasia. The petitioner, a registered society argued that the right to die with dignity should be declared fundamental right within the fold of article 21 under the Constitution of India, 1950. The petitioner seeks to declare issue direction to the respondent, to adopt suitable procedures, in consultation with state governments where found necessary, to ensure that persons of deteriorated health or terminally ill should be able to execute a document titled “My Living Will and Attorney Authorisation” which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant to appoint a committee of experts including doctors, social scientists and lawyers to study into the aspect of issuing guidelines as to the Living Will. It was contended that the right to die with dignity is the inseparable and complex part of article 21. The Hon’ble Supreme Court accepted the contention and held that, Passive euthanasia is legalized because it drags out the patient from such incurable condition in which he is suffering with unbearable pain. The patient should have the right to die with dignity without pain and sufferings. It has also issued the **guidelines for Living Will which is detailed below.**

### **VIII. CONCEPT OF LIVING WILL**

The Black's Law Dictionary defines a living will order as "an authoritative archive clarifying one's desires about therapeutic treatment in the event that of incompetency or unfit to communicate.”

Living will, also known as an ‘advance directive’, is a legal document that specifies the person’s wish if they are terminally ill, and incapable of making informed decisions of how medical treatment should proceed. It mainly specifies that in the state of their incapacitation, they would or wouldn’t like their life to be sustained on life support systems or to be subjected to different types of treatments for a terminal illness.

#### **Pre-requisites for making a Living Will:**

1. Any person of age above 21 years, who is of sound mind and is capable of communicating his decision clearly.

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<sup>48</sup> *Common Cause Society v. Union of India* (2018) 5 SCC 1.

2. Execution of living will must be done voluntarily, i.e., without any coercion or inducement or compulsion.

**Living Will to include:**

1. A living will must be in a written format and the content must clearly declare that the treatment may be withdrawn.
2. The name of the guardian or relative authorized must also be clearly mentioned to decide on behalf of the patient in adverse situations.
3. In case of revocation of living will, it must also be mentioned clearly.
4. If there is more than one living will, then the most recently signed living will shall be implemented.
5. The living will must be signed by the person making it in the presence of two witnesses, countersigned by a Judicial Magistrate of First Class (JMFC).
6. JMFC will preserve a copy of the living will and forward one copy of the living will to the registry of district court.
7. JMFC will immediately inform family members of the patient about the living will.
8. JMFC will hand over a copy of living will to the family physician.

**Execution of Living Will:**

1. The hospital where the patient has been admitted for medical treatment has to constitute a medical board consisting of the head of the treating department and at least three experts from different fields of medical science and having at least twenty years of experience. This medical board after visiting a patient in the presence of his/her guardian or close relative will form any opinion to certify or not to, the instructions of living will.

2. If the medical board is satisfied to carry out the instructions further, then the board will inform the Jurisdictional Collector about the proposal.

3. The Collector shall constitute another medical board in which the Chairman will be the Chief District Medical Officer and three expert doctors from different fields of medical science.

4. The Chairman of the medical board nominated by the Collector shall convey the decision of the board to JMFC before withdrawing the medical treatment from the patient.

5. JMFC will visit and examine the patient and then authorize the implementation of the decision of the board.

6. If the medical board refuses to grant permission to execute the living will, the family can approach the High Court. The Chief Justice of the High Court will then constitute a division bench to decide upon the case.

## IX. INTERNATIONAL SITUATION OVER EUTHANASIA

There is not a “right to die” under international humanitarian law. “Right to good death” cannot be inferred from the ordinary meaning of any human rights document. On the contrary, human rights documents call upon states to protect and secure the life of everyone. Out of the 193 members of the United Nations (UN), only four have legalized euthanasia (the Netherlands, Belgium, Luxembourg, and Canada). The issue continues to be fiercely debated but has been rejected by legislatures in many jurisdictions.<sup>49</sup> The Convention on the Rights of Persons with Disabilities, 2006 is an international human rights treaty of the UN to protect the rights and dignity of people. The UN International treaty states that “States Parties must take all necessary measures to ensure that persons with disabilities have the same right as others to the effective enjoyment of the right to life.”<sup>50</sup> Article 6(1) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) states, “Every human being has the inherent right to life. No one shall be arbitrarily deprived of his life.” Article 6(1) of the Convention on the Rights of the Child (CRC) states that “every child has the inherent right to life.” Besides, article 7 of ICCPR states that human beings should be protected from inhuman or degrading treatment.

**1) Netherland:** Euthanasia was legitimized in Netherland in 2001. The Parliament of Netherland enacted the Termination of Life on Request and Assisted Suicide (Review of Procedures) Act, 2002 which formalises a relaxation of the law prohibiting euthanasia and assisted suicide previously by judicial decision. The Act only permits euthanasia and doctor-assisted suicide under the wishes of the patient and with medical supervision.<sup>51</sup>

**2) Switzerland:** Article 115 of the Swiss Penal Code, which came into effect in 1942, considers assisting suicide a crime if, and only if, the motive is selfish. The Code does not give physicians a special status in assisting suicide; although, they are most likely to have access to suitable drugs. Ethical guidelines have cautioned physicians against prescribing deadly drugs.<sup>52</sup>

**3) Belgium:** The Belgian Act on euthanasia was enacted on May 28, 2002. The Belgian law allowed doctors to help kill patients who during their terminal illness, express the wish to

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<sup>49</sup> Available at: <https://adfllegal.blob.core.windows.net/international-content/docs/-dated on 22/10/2018>.

<sup>50</sup> Convention on the Rights of Persons with Disabilities, 2006, art.10.

<sup>51</sup> Ratanlal and Dhirajlal, The Law of Torts 564-565((LexisNexis: Butterworth, 26th edn.2010).

<sup>52</sup> Hurst SA, Mauron A (February 2003), "Assisted suicide and euthanasia in Switzerland: allowing a role for non-physicians". *BMJ* 326 (7383): 271–3.

hasten their own death. The Belgium law imposed strict legal conditions and procedures in which euthanasia can be allowed. The patient's request must be in writing. If the patient is not capable of doing this, the document is drawn up by a person designated by the patient. If the patient is not in position to make the request he can designate such a person to do so. In cases where no one is able to make a request then every able person can draw to physicians in matters of unconscious patients suffering with incurable disease or accident.<sup>53</sup>

**4) Luxembourg:** Luxembourg is the third country who decriminalized euthanasia with the passing of law of March 16, 2009. Terminally ill people will be able to have their lives ended after receiving the approval of two doctors and a panel of specialists.

**5) Canada:** In Canada, situation changed after the judicial pronouncement of Supreme Court of Canada given in *Cartar v. Canada (Attorney General)*<sup>54</sup>. Physician Assisted Suicide is a kind of Euthanasia wherein voluntary active euthanasia is given to the patient who is above the age of 18 years and is suffering from such a chronic illness where death is foreseeable. In order to prevent the increase in suicide tourism, euthanasia in Canada is pre-conditioned that mercy killing can be done to only those patients who can claim Canadian Health Insurance.

**6) Germany:** In Germany active euthanasia is legal but this is not the situation in regard of passive euthanasia. If the doctor stops life preventive measures on the written wish of the patient then it would not come in the category of criminal offence.

**7) United States:** While in United States (US), also the active euthanasia is held illegal. Only in few States as in Oregon, Washington and Montana physician assisted suicide has legalized in some form or the other with the help of the backing of the enactment "Death with Dignity Act, 1997". A distinction has been drawn between euthanasia and physician-assisted suicide. Only self-assisted dying is permitted in Washington and Oregon both. Dying and any assistance to a person commit suicide by doctors remains a criminal offence outside the provisions of the legislation 18 In the US a doctor withdraws life support only on the request of a patient. By assessing him the doctor only regards the patient's wish to end his life.

**8) United Kingdom:** Euthanasia is illegal in the *United Kingdom*. Any person found to be assisting suicide is breaking the law, it is a statutory offence and can be convicted of assisting suicide with the 14 years' imprisonment. In *R (on the application of Pretty) vs. Director of Public Prosecutions*<sup>55</sup>, the House of Lords held that the right to life and other human rights

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<sup>53</sup> Available at : <https://associatie.kuleuven.be/p/flandershealthcare/touofflanders/belgian-law-oneuthanasia.pdf>, (last visited on Feb.25, 2020).

<sup>54</sup> 2015 SCC 5.

<sup>55</sup> (2002) 1 All ER 1 (HL).

enshrined in the European Convention and enforced in England by the Human Rights Act, 1998 have not affected the said law and that the convention did not oblige a state to legalise assisted suicide.<sup>56</sup> In January 2011 the French Senate defeated by a 170-142 votes a bill seeking to legalize euthanasia. In England, in May 2006 a bill allowing physician assisted suicide, was blocked, and never became law.

## X. CONCLUSION & SUGGESTIONS

*“I think those who have terminal illness and are in great pain should have the right to choose to end their own life, and those that help them should be free from prosecution.”*

- **Stephen Hawking**

The judgment of K.Puttuswamy case exemplifies the application of the doctrine of proportionality<sup>57</sup>, wherein the Court has balanced two facets of the same right, i.e. the right to life under Article 21. While on one hand the right to life creates a compelling State interest in preserving human life, on the other hand it also assures the individual autonomy to take decisions with respect to his/her own body. The Court has carried out careful analysis of the social, philosophical, ethical and economical aspects regarding this issue. It has carved out an exception to the principle of sanctity of life in cases where a person's life has lost any meaning and the prolongation of life is no longer in his best interest.

Taking cue from the judgment in *Visakha*<sup>58</sup>, the Court has not only affirmed the right to die with dignity and to issue advance directives but has also provided detailed guidelines regarding the same.

Besides keeping in view, the religious and moral grounds, by the advancement and development of Science and Technology the concepts of life and death have been changed. Progresses and innovations in medical Science now allow both living and dying to be prolonged. By this fact the death to person suffering from immense pain can be avoided to a great and large extent. Here at this juncture some suggestions are needed that could bring in focus the proper use of euthanasia:

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<sup>56</sup> Cica N, “Euthanasia - The Australian Law in an International Context: Part 1: Passive Voluntary Euthanasia” 3 *Parliamentary Research Service* iv (1996-97).

<sup>57</sup> “Proportionality is a legal principle that requires balancing between competing values.” *Justice K.S. Puttuswamy v. Union of India*(2017) 10 SCC 1.

<sup>58</sup> *Visakha v. State of Rajasthan*, (1997) 6 SCC 241.

1. Need of the hour is to review the legislations concerning euthanasia, at the same time such legislations should be passed under which proper steps should be taken to save such patients who want to live in spite of their sufferings.
2. The patients who are suffering from terminal illness shall be provided with financial support and assistance so that they could no longer be burden on their family and relatives.
3. Physicians should be given training about the use of modern medical science and technology which could largely determine their course of decision while meeting with such patients.
4. Strong doctor-patient relationship is essential which could largely built ethical and moral values among physicians and they could do every possible effort to save the precious life of a patient suffering from acute pain.
5. Such patients should be given freedom to choose between life and death instead they should not be forced to die.

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