

MERCY KILLING IN INDIA: A JUDICIAL OVERVIEW

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INTRODUCTION

Every human being is desirous to live and enjoy the fruits of life till he dies. But sometimes a human being is desirous to end his life by use of unnatural means. To end one's life in an unnatural way is a sign of abnormality. When a person ends his life by his own act we call it 'suicide' but to end life of person by others though on the request of the deceased is called 'euthanasia' or 'Mercy killing'.

Euthanasia is mainly associated with people with terminal illness or who have become incapacitated and don't want to go through the rest of their life suffering. A severely handicapped or terminally ill person should have the right to choose to live or die. The right to choose to live or die should not be a right allocated for bodied individuals of sound mind but to all human beings. Euthanasia is controversial issue which encompasses the morals, values and beliefs of our society.

Euthanasia and its procedure entail complicated issues regarding legal and procedural compliance in countries across the world. Every adult of sound mind has a right to determine what should be done with his/her person. It is unlawful to administer treatment on an adult who is conscious and of sound mind, without his consent. Patient with Permanent Vegetative State and no hope of improvement cannot make decision about treatment to be given to them.

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

The core philosophy underlying the Supreme Court's verdict allowing passive euthanasia and giving legal status to 'advance directives' is that the right to a dignified life extend up to the point of having a dignified death. In four concurring opinion, the five-member Constitution

Bench grappled with a question that involved, in the words of Justice D.Y. Chandrachud, ‘finding substance and balance in the relationship between life, morality and the experience of dying’. The outcome of the exercise is a progressive and humane verdict that lays down a broad legal framework for protecting the dignity of a terminally ill patient or one in a persistent vegetative state (PVS) with no hope of cure or recovery. For, in such circumstances ‘accelerating the process of death for reducing the period of suffering constitutes a right to live with dignity’. The core message is that all adults with the capacity to give consent ‘have the rights of self determination and autonomy’, and the right to refuse medical treatment is also encompassed in it. Passive euthanasia was recognized by a two-judge Bench in Aruna Shanburg in 2011; now the Constitution Bench has expanded the jurisprudence on the subject by adding to it the principle of a ‘living will’, or an advance directive, a practice whereby a person, while in a competent state of mind, leaves written instructions on the sort of medical treatment that may or may not be administered in the event of her reaching a stage of terminal illness.

Passive euthanasia essentially involves withdrawal of life support or discontinuation of life preserving medical treatment so that a person with a terminal illness is allowed to die in the natural course. The court’s reasoning is unexceptionable when it says burdening a dying patient with life-prolonging treatment and equipment merely because medical technology has advanced would be destructive of her dignity. In such a situation, ‘individual interest has to be given priority over the state interest’. The court has invoked its inherent power under **Article 142** of the Constitution to grant legal status to advance directives, and its directive will hold good until Parliament enacts legislation on the matter. The government submitted that it was in the process of introducing a law to regulate passive euthanasia, but opposed the concept of advance directives on the ground that it was liable to be misused. The stringent conditions imposed by the court regarding advance directives are intended to serve as a set of robust safeguards and allay any apprehensions about misuse. The court is justified in concluding that advance directives will strengthen the will of the treating doctors by assuring them that they are acting lawfully in respecting the patient’s wishes. An advance directive, after all, only reflects the patient’s autonomy and does not amount to recognition of wish to dieⁱ.

In the first few chapters the researcher has holistically discussed the concept of euthanasia and used different dimension to understand the socio-legal dimension of euthanasia. The researcher

is not confined to study the interpretative dimension of euthanasia in India only but her approach is to compare the practice of euthanasia in different parts of the world. So it is a multidimensional study which highlights various legal backings of euthanasia. Euthanasia also has different types and its historical background is very helpful in knowing the very present developments.

The next few chapters deal extensively with the reason of euthanasia and its legal developments. Any criminal law project will not be a complete project until the legal issues will be highlighted so the project is a combination of both the social dimension for knowing the response of society for the practice of euthanasia and legal issues to deal with different sections related to right to life and euthanasia.

Advocates of euthanasia argue that people have right to make their own decisions regarding death, and that euthanasia is intended to alleviate pain and suffering, hence being ascribed the term 'mercy killing'. They hold the view that active euthanasia is not morally worse than the withdrawal or withholding of medical treatment, and erroneously describe this practice as 'passive euthanasia'.

Such views are contested by opponents of euthanasia who raise the argument of the sanctity of human life and that euthanasia is equal to murder, and moreover, abuses autonomy and human rights. Furthermore, it is said that good palliatives care can provide relief from suffering to patients and unlike euthanasia, should be the answer in modern medicine.

LITERATURE REVIEW

RATANLAL & DHIRAJLAL, *THE INDIAN PENAL CODE*, (35TH EDITION, 2017, LEXIS NEXIS)

This legal classic has served the legal profession and everyone associated with it for almost a century. Learned yet simple in its approach, it allows reader to quickly grasp the principles of Criminal Law. All technical rules have been illustrated and explained in a lucid, comprehensive and systematic manner.

Authenticity, originality and reliability have always been the hallmarks of this publication and every possible care has been taken in this edition to maintain the original excellence, style and quality of work. The book is an invaluable source of reference for the widest possible range of readers including students, academics, legal practitioner, judges, administrators, public prosecutors, police officers and police trainees.

EUTHANASIA-ITS MEANING AND DEFINITION

Euthanasia is the termination of a very sick person's life in order to relieve them of their suffering. A person who undergoes euthanasia usually has an incurable condition. But there are other instances where some people want their life to be ended. The term is derived from the greek word euthanatos which means easy deathⁱⁱ.

Euthanasia, also called mercy killing, act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures. Because there is no specific provision for it in most legal system, it is usually regarding as either suicide or murder. Physicians may however lawfully decide not to prolong life in cases of extreme suffering, and they may administer drugs to relieve pain if this shortens the patient's life. In the late 20th century, several European countries had special provisions in their criminal codes for lenient sentencing and the consideration of extenuating circumstances in prosecutions for euthanasiaⁱⁱⁱ

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

According to **Black's law dictionary** (8th edition) euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, especially a painful one, for reasons of mercy. Encyclopedia of 'Crime and Justice',

explains euthanasia as an act of death which will provide a relief from 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. Euthanasia can be defined as the administration of drugs with the explicit intention of ending the patient's life, the patient's request. Euthanasia literally means putting a person to painless death when life has become meaningless and disagreeable. In the modern context euthanasia is limited to the killing of patient by doctors at the request of the patients by doctors at the request of the patients 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.

Euthanasia is usually taken to mean '**mercy killing**' and is applied to situations where patient is suffering severely or is enduring a terminal illness. Euthanasia can more helpfully be defined as the 'intentional killing by act or omission of a person whose life is felt to be not worth living'.

The following are not euthanasia: -

- Stopping a medically futile treatment where the burden of that treatment would outweigh the benefits;
- Giving treatments aimed at relieving pain and other symptoms even when the treatment may very occasionally carry some foreseeable risk of shortening life. Confusingly known as 'double effect', it is more helpful to realize that the doctor's intention is pain relief, not the shortening of life;
- When a mentally competent person chooses to refuse treatment. Doctors cannot force patients to have treatment against their will and it is legal for a patient to refuse treatment. If the patient then dies it is not euthanasia^{iv}.

The act of killing an incurably ill person out of concern and compassion for that person's suffering. It is sometimes called *mercy killing*^v

HISTORY OF EUTHANASIA

The first step towards the legalisation of euthanasia in India was taken in the year 1985. A private bill was moved in the upper house of Maharashtra legislature. The said Bill contained the provision regarding the legal protection by way of immunity from civil and criminal liability to all doctors who remove artificial life-prolonging measures at the request of terminally ill patient. The Bill also contained a provision regarding the advanced directive to that effect if the patient has become incompetent to make such a request later on. Such a patient was demanded to be immuned from any kind of liability for taking such decision^{vi}. A bill has also been introduced in Lok Sabha 'The Euthanasia (Permission and Regulation) Bill in 2007 by C.K. Chandrappan, a member of Indian Parliament who belongs to the Communist party of India, a representative from Kerela to provide for compassionate, humane and painless termination of life of individuals who have become completely and permanently invalid and bedridden due to suffering from incurable disease on any other reason or matters connected there with.

The Bill defines euthanasia as the bringing about of a gentle, painless and easy death in the case of incurable and painful diseases making a person completely and permanently invalid or bedridden who cannot carry out his daily chores without constant and regular assistance or who has become completely and permanently invalid due to any other reason. The statement of objects and reasons says that in such cases euthanasia is necessary because the patient has a right to put his pain and agony to an end in a decent and dignified manner as there is no hope of recovery. It also says that before legalizing Euthanasia, a sufficient check and balances should be there to avoid its misuse. The bill was a good step in this direction, but it could not become law^{vii}

The right to die or end one's life is not something new or unknown to human civilisation. In ancient Greece and Rome helping others die or putting them to death was considered permissible in some situation. For example in the Greek city of Sparta newborns with severe birth defects were put to death. Voluntary euthanasia for the elderly was an approved custom in several ancient societies. Many ancient texts including the Bible, the Koran and the Rig-Veda mention self destruction or suicide. In India, the history of Vedic age is replete with numerous examples of suicides committed on religious grounds. The Mahabharata and the Ramayana are also full of instances of religious suicides.

Most Hindus would say that a doctor should not accept a patient's request for euthanasia since this will cause the soul and body to be separated at an unnatural time. The result will damage the karma of both doctor and patient. Other Hindus believe that euthanasia cannot be allowed because it breaches the teaching of ahimsa (doing no harm). However, some Hindus say that by helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations^{viii}

CLASSIFICATION OF EUTHANASIA

There are mainly three types of Euthanasia:-

1. Voluntary Euthanasia
2. Non-Voluntary Euthanasia
3. Involuntary Euthanasia

VOLUNTARY EUTHANASIA: -

The person wants to die and says so. This includes cases of: -

- Asking for help with dying
- Refusing burdensome medical treatment
- Asking for medical treatment to be stopped, or life support machines to be switched off
- Refusing to eat
- Simply deciding to die^{ix}

NON VOLUNTARY EUTHANASIA: -

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

- The person is in a coma
- The person is too young
- The person is senile
- The person mentally retarded to a very severe extent

- The person is severely brain damaged
- The person is mentally disturbed in such a way that they should be protected from themselves

When euthanasia is conducted on a person who is unable to consent due to their current health condition. In this scenario the decision is made by another appropriate person, on behalf of the patient, based on their quality of life and suffering^x

INVOLUNTARY EUTHANASIA: -

The term involuntary euthanasia is used to describe the killing of a person who has not explicitly requested aid in dying. This term is most often used with respect to patient who is in a persistent vegetative state and who probably will never recover consciousness.

Involuntary euthanasia can be divided into two categories: -

1. Passive Euthanasia
2. Active Euthanasia

Passive euthanasia is when life-sustaining treatments are withheld. The definition is not precise. If a doctor prescribes increasing doses of strong painkilling medications, such as opioids, this may eventually be toxic for the patient

Passive euthanasia is when death is brought about by an omission-i.e. when someone lets the person die. This can be by withdrawing treatment or withholding treatment. Withdrawing treatment for example, switching off a machine that is keeping a person alive, so that they die of their disease^{xi}

Active euthanasia involves painlessly putting individuals to death for medical reasons. A doctor administers lethal doses of medication to a patient. Active euthanasia involves the use of lethal substances and a person cannot himself cause his death but requires someone else's help with some medication causing death.

Active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC^{xii} (abetment to suicide).

REASONS FOR EUTHANASIA

(1) UNBEARABLE PAIN

Patients who suffer from unbearable pain which is utterly beyond treatment or improvement desire peaceful death without suffering from so much of intense pain both mental as well as physical. Life of an individual is defined by the dignity and respect with which a person is living his/her life. When a person undergoes intense pain then it is a life with less dignity and sometimes no dignity at all. Medical science has reached such apogee that there is no disease which cannot be recovered; there are many medicines and life saving drugs available in the market. Numbing the severe pain caused by illness until recovery is acceptable, but depending on painkillers for the rest of your life is not a very welcome choice. If such choice becomes a necessity of day to day living then the patient tends to develop the tendency towards putting an end to his life. But death is not a solution on the patient's troubles.

If a person is in permanent vegetative state then he is merely a living corpse and the life is of no use to him because he is not living a life but he is more dependent on the life supporting drugs and medications. It degrades a person self esteem and the dignity when he is not able to enjoy and experience life. It will augment the mental pain and the desire of life will be shattered in absence of the happiness which every human being is entitled to.

Further the caregiver's burden is huge and cuts across various domains such as financial, emotional, temporal, physical, mental and social^{xiii}

(2) DEMAND OF 'RIGHT TO COMMIT SUICIDE:-

The right to life was made more sacrosanct and over the years, has been seen as basic feature of the constitution, thereby making it both fundamental and permanent.

The significance of this is that if one relinquishes the right, one can do so only in accordance with procedure established by law. Imposing death by way of capital punishment is an example

of the right to life being terminated in accordance with the procedure established by law. To terminate life, even one's own life, were it to be done without the authority of law, would amount to an unlawful act, In certain cases it may even be a criminal act.

The word right sounds absolute finality in the required choice. Sometimes it is confused with fundamental right to life granted under Article 21 if the constitution of India. That is not the case here. This is about the procedural right needed on the patient's part. The rights of the relatives and medical professionals are also considered. The terms must not be misunderstood with the right to die. It's about the right to bring about someone's death. Further it is not about giving recognition to the right but to make legal provisions for smooth and harmonious procedure of conducting euthanasia. Euthanasia and suicide should not be used together. These terms do not have common ingredients. Suicide is a sad, individual act. Euthanasia is not about a private act. It's about letting one person facilitate the death of another.

(3) SHOULD PEOPLE BE FORCED TO STAY ALIVE?

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

(4) EUTHANASIA AND SUICIDE

Suicide and euthanasia cannot be treated as one and the same. These are terms are interchangeable either. They involve different acts and mental state. In order to understand euthanasia it is important to understand the distinguishing feature of them. 'Suicide as mentioned in Oxford Dictionary^{xv} means the act of killing yourself deliberately. Therefore, suicide could be termed as the intentional termination of one's life by self-induced means for numerous reasons'.

Legal perspective to suicide has different dimensions. In Indian Law intention is the basis for penal liability. An act is not criminal if there is commission or omission without the intention.

The law of crimes in India is based on the famous latin maxim ‘Actus non facit reum nisi mens sit rea’.^{xvi}

EUTHANASIA IN INDIA : A JUDICIAL INTERPRETATION

Each nation comprising of a civilized society contains a cluster of social, ethical and religious principles which are usually considered as sacred by the people living in the nation. These principles govern the conscience of those people. There exists one such principle i.e., the principle of sanctity of human life, which is common to all civilized societies in the world. It may be pointed out that a profound recognition and respect for the said principle is a hallmark of every civilized society. Majority of people in the world entertain a feeling that a human life represents an intrinsic value in it. It is the faith of the people in the sanctity of life that it is considered as wrong to put an end to the life a human being.

However, the sanctity of life is not an absolute principle but it is just one of the clusters of numerous ethical principles which are generally followed by the people in their lives. From those other principles that exist, a significant principle is the right to autonomy and self-determination which authorizes a person to decide how he should live his own life. Right to autonomy further implies the respect for the dignity of a human being. The debate on euthanasia lies on the conflict between the principle of sanctity of life and the right of self-determination and dignity of individual. In order to settle this conflict between the two cardinal principles as mentioned above there is a need to have an overview of the developments made through various legislative and judicial attempts in India since last more than three decades^{xvii}

Principle of Motive or Intention

- (a) There is no legal distinction between active and passive euthanasia because the law considers only the intention behind human actions. The physician who advises, assists, or carries out euthanasia at the instruction of the patient in full knowledge of the underlying intention of committing a crime.
- (b) The physician involved in euthanasia either as an active participant or an advisor may have intentions relating to self-interest and not the interest of the patient or those of religion. These could include trying to get rid of a difficult medical case cutting costs

of intensive and expensive terminal care, or possible ulterior material, political, or social motive.

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

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

HUMAN RIGHTS AND EUTHANASIA

A strong argument in support of euthanasia is that a decision to end life is fundamental to human dignity, personal autonomy and safety, concepts that are protected by various international instruments of human rights. Although the right to liberty and security of a person is given a limited interpretation and has so far been limited to freedom from arbitrary detention, the notion of personal autonomy may affect the future developments of human jurisprudence around^{xix}

Further support for the recognition of human rights and euthanasia may be based on the right to privacy, especially that that this right has been used to allow the secession of systems artificial sustain hopeless case involving two patients capable and mentally incapable. **Article 8 of the European Convention**, which includes the right to respect for private life, may be raised as defences based on the patient's right to seek assistance to die. Indeed, the European Court has recognized that the laws preventing patients to exercise their choice to avoid an undignified end to painful life and may constitute an interference with the right to respect for private life^{xx}

CONSTITUTIONAL & LEGAL PERSPECTIVE:-

Right to life

In India, the sanctity of life has been placed on the highest pedestal. The constitution of India not only guarantees the right to live but also provides that the state should provide that the state

should provide health care to all citizens. This is illustrated by the following provisions of the constitution of india, 1950:-

- (1) **Article 21:** Protection of life and personal liberty^{xxi}
- (2) **Article 14:** Equality before law^{xxii}
- (3) **Article 39:** of the directive principles of state policies^{xxiii}
- (4) **Article 47:** of the DPSP^{xxiv}

The supreme court in its landmark judgement in **Pt. Parmanand katara vs Union of india and others**^{xxv} ruled that every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.

The right to life does not merely mean the continuance of person's animal existence. It means the fullest opportunity to develop one's personality and potential to the highest level possible in the existing stage of our civilisation. Inevitably, it means the right to live decently as a member of civilised society. It is to ensure all freedom and advantages that would go to make life agreeable. The right implies a reasonable standard of comfort and decency^{xxvi}

Legal Denial of Right to Die:-

The law treats every attempt to take life, either of oneself or of another a punishable offence under the Indian Penal Code. Any assistance or abetment rendered is also a punishable offence. Furthermore, concealing information about such an attempt is also an offence. In the present context, the following legal provisions are important:

Section 299, Indian Penal Code, 1860

Culpable Homicide- whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Hence in India, Euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient hence such cases would clearly fall under the clause ,first of section 300 of Indian Penal Code, 1860 resulting the killing would amount to murder^{xxvii}

Exception 5 to Section 300

However, in such cases if there is a valid consent of the deceased then exception 5 of the said section¹² would be attracted and the doctor or mercy-killer would be punished under Section 304 for culpable homicide not amounting to murder^{xxviii}

But it is only cases of voluntary Euthanasia (where the patient consents to death) that would attract exception 5 to Section 300 which states that Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffer death or takes the risk of death with his own consent^{xxix}

Cases of non-voluntary and involuntary Euthanasia would be struck by proviso one to Section 92 of the Indian Penal code and thus be rendered illegal^{xxx}

NEW DIMENSION IN INDIAN HISTORY***Aruna Shanburg's Vs Union Of India*****The brief facts of the Aruna's case are given as under:-**

Aruna Ramachandra Shanbaug was working as a staff nurse in King Edward Memorial Hospital, Parel, and Mumbai. A sweeper of that hospital wrapped a dog chain around her neck and fucked her on the evening of 27th November, 1973. His intended and attempted rape on her but because she was menstruating, he sodomized her. During this act, he twisted the chain around her neck to immobilize her. She was found lying on the floor with blood all over in an unconscious condition next day on 28th November, 1973 at 7:45 a.m. by a cleaner. It was alleged that due to strangulation, as above discussed by the dog chain, the supply of oxygen to her brain was stopped and as a result it caused permanent damage to her brain. It was alleged that the neurologist in the hospital found that the condition of her brain indicates damage to the cortex or some other part of her brain. She also received brain- stem contusion injury with associated cervical cord injury.

It is further alleged that almost thirty years have elapsed since that incident and now she is about sixty years of age. She is in permanent vegetative state (PVS) and virtually a dead person. She is not aware about her surroundings in an active manner. Practically speaking, her brain has stopped working. If a person judges her from any parameter, she cannot be considered as a living person. The only thing which shows some element of life in her is the mashed food which is put into her mouth for keeping her alive. It is alleged that there are no chances of her recovery from that pathetic condition. Her body has suffered irreparable loss due to that incident. It has been prayed by the petitioner in this case that her feeding should be withdrawn from her so that she can die peacefully without any further sufferings and agony.

The highest court had an option to reject this petition on the ground that Article 32 can be invoked only in those cases where there occurred violation of fundamental right under part third of the constitution of India. Further, it has already been held by this court (5 judges' bench) in its decision in the year 1996 that the right to life does not contain its negative i.e. right to die under Article 21 of the Constitution. So, no violation of any human right has been shown by the petitioner but the court took the decision to appreciate the merits of this case. The reason behind such decision was the growing significance of the issue in hand.

So, the Court passed an order for the appointment of a medical team of three physicians to examine her completely. The team was further instructed by the Court to prepare and submit a report before it in a reasonable manner^{xxxii}. The said team of three doctors examined Aruna Shanbaug in KEM Hospital and has submitted the following report before the Apex Court:-

As per the medical history of the patient, she is not much aware about her surroundings. But certain kind of reaction is seen, when she sees people around her, through the sounds and movements of her hands in a particular manner. That shows her liking or disliking towards a particular thing. Her facial expressions seem pleasant when she got food items like fish and chicken soup. The food which she likes the most is generally taken by her she may spit out food often. Because of this she was caught by malaria. Thereafter, the food through her mouth was reduced and she was put on an artificial feeding tube (Ryle's tube) which was passed into her stomach via her nose. Now, the large amount of food is being received by her through this tube. Sometimes, she is able to accept the liquids through her mouth. The disease called Malaria as above said has greatly affected her body and she is struggling to recover from it. The Staff member of the hospital i.e., nurses and other staff members have a feeling of compassionate

and sympathy for her. They all deliberately and happily take care of her. They feel very proud of their achievement of taking care of their bed-ridden colleague and they want to continue such care till her natural death. They do not agree with the view that she is living a painful and miserable life. From her physical examination, the team found that she was conscious but unable to cooperate and appeared unaware of her surroundings. It appeared from her bodily movements that she felt uncomfortable on seeing so many people in her room. From the neurological point of view, it is concluded by the team that when examined she was conscious with eyes open wakefulness but without any apparent awareness. From the above examination, she has evidence of intact auditory, visual, somatic and motor primary neural pathways. However no definitive evidence for awareness of auditory, visual, somatic and motor stimuli was observed during the examination. There was no coherent response to verbal commands or to calling her name. She did not turn her head to the direction of sounds and voices. Thus neurologically she appears to be in a state of intact consciousness without awareness of self/environment.

The court is of the view that she fulfills all the conditions for being in a permanent vegetative state (PVS). PVS can be explained as a clinical condition of unawareness of self and environment in which the patient breathes spontaneously, has a stable circulation and shows cycles of eye closure and opening which may stimulate sleep and waking.

The medical terms like coma, brain death and vegetative state are generally used by people as laymen to describe brain injury of any nature. But these terms have been given specific meaning under medical terminology. The medical meaning of these terms can be explained as under:-

Brain-death:- A state of prolonged irreversible cessation of all brain activity, including lower brain stem function with the complete absence of voluntary movements, responses stimuli, brain stem reflexes, and spontaneous respirations.

This condition of a patient is taken as most serious damage to the brain. The patient is not conscious and totally without response. He/she shows no activity from the centres in the brain and cannot breathe on his/her own. But, the heart of such patient works in such a situation. Such a patient can live only with the help of artificial life- prolonging machines which provide him artificial breathing. Legally speaking such patients are dead in all respects and can be declared so for the donation of their bodily organs.

The patient in present case is not brain dead.

- **Coma:** - Patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation.

This category of patients although in the state of unconsciousness but they do not require artificial breathing. They can naturally breathe and their hearts beat in a natural way. Their deep sleep cannot be interrupted even by the administration of a painful stimulus.

The lady in present case cannot be said to be in a state of coma.

- **Permanent Vegetative State (PVS):-** This is a state of complete absence of behavioural evidence for self or environmental awareness. There is preserved capacity for spontaneous or stimulus-induced arousal, evidenced by sleep-wake cycles i.e. patients are awake, but have no awareness.

In this state of mind, patients seem awake. Their functioning of heart beat and breathing system is normal. There is no necessity of artificial life preserving machines for resuscitation. They are unable to develop and communicate a meaningful voluntary response in a stable way. They may produce minor responses to light, sound or pain. They are free from emotions and understandings of general nature. They cannot speak or interact with others. They have no control on passing of urine or stools. As the centres in the brain are intact and control the heart and breathing, as such there is no danger to life and they can live for many years with expert nursing care.

Legal Regime providing for Brain Death in other jurisdictions:-

Legally speaking, the issue of death carries with it certain legal implications. That is why concept of death is an important one in modern context. Amidst large scale obliviousness, many jurisdictions have enacted specific laws dealing with brain death. To this regard, it was understood way back in the late 1970s by the neurologists of United Kingdom that “if the brain stem is dead, the brain is dead, and if brain is dead, the person is dead.” American Uniform Definition of Death Act, 1980, has given definition of death in a following way:- It means any person whose brain has stopped working entirely with no chances of recovery and so is the case with brain stem also is taken as dead. It amounts to that state of mind where whole

consciousness along with all other functions to be performed by a human being which are usually controlled by brain is completely ceased. So far as the situation in euthanasia is concerned, it involves a different aspect. In case of euthanasia, the decision of withholding of ventilator from an incompetent patient is determined on the basis of following things:-

- In case a patient has reached a situation where he/she is living in a mechanical way only with the help of artificial machines.
- From such a situation the patient cannot possibly recover throughout his/her life. It would be a foolishness to wait for a miracle that would recover the patient from that state of mind. Waiting for so many years or sometimes even for the rest of whole life is not acceptable. Hence, in such cases the option of passive euthanasia can be fairly pleaded.
- In an extended manner, it can be said that in case of an incompetent patient the action may amount to commission of a judicial murder.

It Was Held In This Case:-

When a patient can be taken as dead in medical context :-

It was contended in the present case that the petitioner can be taken as already dead and it would not amount to killing if further feeding to her body has been withdrawn or withheld. The primary question which has arisen in this case is- when a person can be said to be dead?

In order to answer this question, it can be considered that the brain of a patient is the most vital organ of his/her body. The replacement of brain is impossible. Hence, it cannot be taken as any other organ of human body which can be replaced like- arm, leg, kidney, heart or liver etc. So, the transplantation of a human brain is impossible. The brain of a human being specifically belongs to him or her. From this consideration, the conclusion follows that when one's brain is dead the person can be taken as dead. The red cells in the blood supply oxygen to the brain cells which need constant supply of the oxygen. A situation called anoxia occurred when brain could not get oxygen for more than six minutes resulting in the death of brain cells. Usually, such person is considered as dead. Medically speaking, the death amounts to extinguishment of life. When the life ceases to exist within a human body then the person is taken as dead. Three main functions of a human body imply existence of life i.e., respiration, circulation and cerebration. This is an established notion at international level also^{xxxii}

The above- mentioned definition of death totally ignores brain of a human being. It is understood that the cessation of circulation would automatically lead to the death of brain cells, which require a great deal of blood to survive. However, the advancement in medical technology has caused an alteration in the above understanding. It is possible in these days to keep the respiration and circulation sustained artificially though the brain has already stopped functioning^{xxxiii}

With such advances in the medical science the concept has changed in many countries. Lawyers and society at large have accepted this changed and revised concept. Thus conceived, death has to be declared on neurological ground i.e., when the brain finally ceases to function. Ordinarily even though death is considered as an instantaneous event, in reality, it is a chain of processes. When the heart stops, the brain very soon ceases to function because of hypoxia^{xxxiv} and without the drive of the brain stem, breathing stops, if there is primary arrest the brain soon ceases to function, sometimes later hypoxia stops the heart. When the brain fails either from primary insults such as head injury or intracranial hemorrhage or from secondary hypoxia, there is normally immediate respiratory arrest. But if mechanical ventilation is established, the heart can continue to beat and other organs can continue to be oxygenated for days, even though the brain is not only dead but is beginning to autolyse in situ. This is the phenomenon of brain death. Thus, cessation of brain function would be legitimately the surest sign of death i.e., brain death^{xxxv} But in our country, neither the legislation prevails, nor the change in concept and circumstances and facilities of testing. Under these prevailing circumstances, when all the three cardinal functions are found to be non-existent or extinct, death is certified.^{xxxvi}

Brain Death

The term Brain Death has developed various meanings. It can be explained as a complete stoppage of all functions of the brain in an incurable manner. The brain-stem is equally included within such cessation. So far as the global perspective on brain death is concerned, it usually includes whole brain death- a situation in which all three vital parts of the brain have stopped functioning. Hence, brain-stem death is the most important criterion for declaring a person dead. It indicates inevitable, irreversible death. If brain stem death has occurred irreversibly, a doctor cannot be charged for withdrawing artificial aids. Otherwise, in the case of a patient in an intensive care unit, withdrawal of an artificial aid like respirator could involve a doctor in

an offence under section 304-A of Indian Penal Code.⁶⁶ Hence brain stem death should be considered as tantamount to brain death^{xxxvii}

➤ **Difference between Vegetative State and Brain Death**

The difference between brain death and vegetative state can be summarized as follows:

- (i) Vegetative state is caused by damage to the cerebral cortex while brain death is the outcome of permanent damage to brain –stem.
- (ii) Damage to cerebral cortex (i.e. vegetative state) is curable while permanent damage to brain-stem (i.e. brain death) cannot be reversed.
- (iii) While in a vegetative state though the body may become irresponsive to thought, speech, feeling or for that matter any type of conscious activity, nonetheless there may be some response to the environment, in cases of brain death, there is no response of any of the organs to the activity as the link between the brain and them having been permanently severed, no nervous reaction can emerge.

It can be summed up from the above distinguishing points that both the concepts are different from each other on certain important aspects. In case of brain- death, the functioning of brain stem is not ceased and a certain degree of responses may appear, but the probability of recovering consciousness is very feeble. Hence, if a person is taking breathe naturally or artificially he is said to be alive irrespective of the fact that he is unable to express any response or reaction to the environment.

The above discussed definition of „whole brain death“ is not free from criticism. Here, comes the contention that certain functions of human body do not depend on brain like- growth or the process of digestion etc. In 2008, the President’s Committee on Bio-ethics in America proposed a definition of brain-death for nullifying the said contention. The definition implies that a person can be said to be brain- dead, in case he/she is incapable of doing any of the following works:-

- ❖ Receiving of signals from the world around,
- ❖ To act upon the demands of the world,
- ❖ Lacks force behind an organism to perform and achieve the needed things^{xxxviii}

If all the above said things are present in a person, he/she can be considered as dead despite the fact that he/she is able to respire because of the artificial techniques. The heart is beating and some kind of nutrition to such a patient is happening in some form.

Further the exception 5 under 300 of the IPC may also not be available the patient being not in a position to make a valid consent to this regard. This situation is not new but come up before a number of courts of this country where the requests for removal of life support system have been made by the relatives of the patient but the judges have found themselves helpless^{xxxix}

Indian Medical Council Act, 1956:-

Under section 20- A read with section 33(m) of the Act of 1956, the Medical Council of India provided that the practice of euthanasia is against the medical ethics. The only exception to this statement is the withdrawal of artificial machines from a patient whose heart beat is being maintained with the help of said machines and for no other fruitful purpose. In this state of affair a group of doctors will issue certificate with regard to that and then such withdrawal would be allowed and it will not be taken as an unethical act under the code of conduct for doctors practicing in India^{xl}.

Retention or Deletion of Section 309, IPC (After Aruna's Case)

In the case of *Gian Kaur v. The State of Punjab*^{xli}, Gian Kaur and her husband Harbans Singh had been charged for abetting suicide of their daughter-in-law Kulwant Singh. They had fearlessly poured kerosene on her and they had a clear intention to see her dead. This was challenged by the Trial Court. On appeal, it came before High Court.

It was held that Right to life under Article 21 does not include right to die. The right to die is inherently inconsistent with right to life as is death with life. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and incompatible and inconsistent with the concept of right to life.

Accordingly, the court ruled that Section 309 of IPC which punishes a person convicted at attempting to commit suicide is not unconstitutional^{xlii}. In effect, the court overruled its earlier verdict delivered in the *P. Rathinam v. Union of India*^{xliii} case (1994).

Suicide and mercy killing are different and should not be confused as one and the same. In the former no third party is involved but in the latter the third party is crucial.

Decriminalizing attempts to suicide is one thing and conferring a right to die is another. Once a life is extinguished, it is lost forever. Further the severity of the provision is mitigated by the wide discretion in the matter of sentencing since there is no requirement of awarding any minimum sentence and the sentence of imprisonment is not even compulsory. There is also no minimum fine prescribed as sentence, which alone may be the punishment awarded on conviction under section 309, IPC.

Hence it is suggested that **Section 309** should be retained on the statute book but exceptions can surely be created in favour of terminally ill patient.

Reports of Law Commission of India:-The Law Commission of India, in its 196th Report recommended that there must be a law made to protect terminally ill patients who refuse medical treatment, artificial nutrition or hydration from Section 309 of IPC. The Law Commission suggested that the law be called ‘The Medical Treatment of Terminally Ill Patients (Protection of Patient, Medical Practitioner) Act. The Report clarified that the ‘patient’ must be suffering from terminal illness^{xliv}

The Law Commission of India, in its 210th Report ‘**Humanization and Decriminalization of Attempt to Suicide**’ had recommended that Section 309 (attempt to commit suicide) of IPC needs to be effaced from the statute book because that provision is inhuman irrespective of whether it is constitutional or unconstitutional^{xlv}

The Law Commission of India, in its 241st report stated that passive euthanasia should be allowed with certain safeguards and there was a proposed law—Medical Treatment of Terminally Ill Patient (Protection of Patients and Medical Practitioner) Bill, 2006^{xlvi}

Common Cause Vs Union Of India:-

Facts:-

In 2005, a registered NGO filed PIL in the Supreme Court under **Art. 32** of the Indian constitution to legalise living will and passive euthanasia . Prior to this the registered society

wrote letters to ministry of law and justice, ministry of health and family welfare with regard to passive euthanasia. The petitioner received no response from the government and thus filed the PIL. The petitioner contended that the right to live with dignity is a person's right till his death so it can be extended to include the right to have a dignified death. And that the modern technology has given rise such a situation whereby life of the patient is unnecessarily prolonged causing distress and agony to the patient and his relatives^{xlvi}

The petitioner further contended for legalising living wills whereby a person undergoing persistent pain and suffering can write about the medical treatment and authorize the family to stop such treatment.

Judgement:-

The Supreme Court in this case held that an individual has a right to die with dignity as a part of his/her right to life and personal liberty under Article 21 of the Indian Constitution. This ruling thus permits the removal of life-support systems for the terminally ill or those in incurable comas. The Court further permitted individuals to decide against artificial life support, and recognised the need for creating a living will.

The court in this particular case further laid down certain proposition regarding the procedure for execution of Advance Directives and provided the guidelines thereof to give effect to passive euthanasia.

Those suffering from chronic diseases are often subjected to persistent pain and suffering and the treatments where there is no cure but only medication and treatment that only prolongs life. Denying them the right to die in a dignified manner extends their suffering. Hence, the court is right in declaring Right to die with dignity as a fundamental right as it would help in reducing the pains of those suffering from chronic treatments and they will be able to die in a dignified manner^{xlvi}

PRESENT SCENARIO OF EUTHANASIA

1. Argument for Legalizing Euthanasia: -

Historically, the euthanasia debate has tended to focus on a number of key concerns. According to euthanasia opponent Ezekiel Emanuel, proponents of euthanasia have presented four main arguments:

1. That people have a right to self-determination, and thus should be allowed to choose their own fate.
2. Assisting a subject to die might be a better choice than requiring that they continue to suffer.
3. the distinction between passive euthanasia, which is often permitted, and active euthanasia, which is not substantive (or that the underlying principle—the doctrine of double effect—is unreasonable or unsound);
4. Permitting euthanasia will not necessarily lead to unacceptable consequences. Pro-euthanasia activists often point to countries like the Netherlands and Belgium, and states like Oregon, where euthanasia has been legalized, to argue that it is mostly unproblematic^{xlix}
5. Constitution of India: ‘Right to life’ is a natural right embodied in Article 21 but euthanasia/suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of ‘right to life’. It is the duty of the State to protect life and the physician’s duty to provide care and not to harm patients. Supreme Court in Gian Kaur Case 1996 has held that the right to life under Article 21 does not include the right to die.
6. Caregivers burden: Right-to-die‘ supporters argue that people who have an incurable, degenerative, disabling or debilitating condition should be allowed to die in dignity. This argument is further defended for those, who have chronic debilitating illness even though it is not terminal such as severe mental illness. The majority of such petitions are filed by the sufferers or family members or their caretakers. The caregiver’s burden is huge and cuts across various domains such as financial, emotional, time, physical, mental and social.
7. Refusing care: Right to refuse medical treatment is well recognised in law, including medical treatment that sustains or prolongs life. For example, a patient suffering from blood cancer can refuse treatment or deny feeds through a nasogastric tube. Recognition of the right to refuse treatment gives a way for passive euthanasia.

8. Encouraging the organ transplantation: Euthanasia in terminally ill patients provides an opportunity to advocate for organ donation. This, in turn, will help many patients with organ failure waiting for transplantation. Not only euthanasia gives 'Right to die' for the terminally ill, but also 'Right to life' for the organ needy patients^l

2. Argument against Legalizing Euthanasia: -

1. Not all deaths are painful;
2. Alternatives, such as cessation of active treatment, combined with the use of effective pain relief, are available;
3. The distinction between active and passive euthanasia is morally significant; and
4. Legalising euthanasia will place society on a slippery slope, which will lead to unacceptable consequences
5. Other Arguments include:
 1. Euthanasia weakens society's respect for the sanctity of life.
 2. Euthanasia might not be in a person's best interests, for example, getting old aged parents killed for property will.
 3. Belief in God's miracle of curing the terminally ill.
 4. Prospect of a discovery of the possible cure for the disease in near future.
6. Practical arguments :-
 - Proper palliative care makes euthanasia unnecessary.
 - There is no way of properly regulating euthanasia.
 - Allowing euthanasia will lead to less good care for the terminally ill.
 - Allowing euthanasia undermines the commitment of doctors and nurses to saving lives.
 - Euthanasia may become a cost-effective way to treat the terminally ill.
 - Allowing euthanasia will discourage the search for new cures and treatments for the terminally ill.
 - Euthanasia gives too much power to doctors^{li}

3. Government's endorsement of Passive Euthanasia

On December 23, 2014, Government of India endorsed and re-validated the Passive Euthanasia judgement-law in a Press Release, after stating in the Rajya Sabha as follows: that The Hon'ble Supreme Court of India, while dismissing the plea for mercy killing in a particular case, laid down comprehensive guidelines to process cases relating to passive euthanasia. Thereafter, the matter of mercy killing was examined in consultation with the Ministry of Law and Justice and it has been decided that since the Hon'ble Supreme Court has already laid down the guidelines, these should be followed and treated as law in such cases. At present, there is no legislation on this subject and the judgment of the Hon'ble Supreme Court is binding on all.

The court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law. Active euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries.

As India had no law about euthanasia, the Supreme Court's guidelines are law until and unless Parliament passes legislation. The following guidelines were laid down:

- A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
- Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned.
- When such an application is filled, the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. A committee of three reputed doctors to be nominated by the Bench, who will give a report regarding the condition of the patient. Before giving the verdict, a notice regarding the report should be given to the close relatives and the State. After hearing the parties, the High Court can give its verdict^{lii}

4. New bill on Euthanasia

Recently, the issue was in the news, as the Govt. said it was open to making a law on the subject. The law commission too has proposed legislation on “passive euthanasia”, it said. According to the Centre, the decision to come out with a bill was taken after considering the directives of the apex court, the law commission’s 241st report and a private member bill introduced in Parliament in 2014. The Centre said that initially, a meeting was held under the chairmanship of B.P. Sharma, secretary in the health and family welfare ministry, on May 22, 2015, to examine the draft of The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill and the draft of The Euthanasia (Regulation) Bill^{liii}

The Supreme Court in the case of *Common Cause v. Union of India*^{liv} held that an individual has a right to die with dignity as a part of his/her right to life and personal liberty under Article 21 of the Indian Constitution. This ruling thus permits the removal of life-support systems for the terminally ill or those in incurable comas. The Court further permitted individuals to decide against artificial life support, and recognised the need for creating a living will^{lv}

5. EUTHANASIA AND RELIGION:-

There are two Hindu points of view on euthanasia. By helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations. Euthanasia may also be acceptable if it is used for selfless motives. On the other hand, by helping to end a life, even one filled with sufferings, a person is disturbing the timing of the cycle of rebirth and death. This is a bad thing to do, and those involved in the euthanasia will take on the remaining karma of the patient. Death is a natural process, and will come in time^{lvi}

Prayopavesa, or fasting to death, is an acceptable way for a Hindu to end their life in certain circumstances and it is very different from what most people mean by suicide:

- It’s non-violent and uses natural means.
- It’s only used when it’s the right time for this life to end-when this body has served its purpose and become a burden.
- While suicide is often associated with feelings of frustration, depression, or anger, Prayopavesa is associated with feelings of serenity^{lvii}

CONCLUSION & SUGGESTIONS

Life without dignity is not worth living. It is the birth right of each and every individual to live the life without any pain, suffering and unhappiness. When the life is worse than death then it is tantamount to a life of an animal. Even animals are not living such undignified life. When a person struggles every second of his life and when there is no hope to get back to normalcy then that life is an undignified and useless life. Right to life means right to a dignified and respectful life, without dignity the human body becomes a living dead body. The society aims at interest of individuals rather it is made with the purpose of assuring a dignified and a peaceful life at all. Now if the individual who is under unbearable pain is not able to decide for him then it is surely will hamper his interest. In that case it will surely be a negation of his dignity and human rights. A patient will wish to end his life only in cases of excessive agony and would prefer to die a painless death rather than living a miserable life. Thus from a moral point of view it will be better to allow the patient die painlessly when in any case he knows that he is going to die because of terminal illness.

Similarly a lot of medical facilities which amount a lot are being spent on these patients who are in any case going to die. So rather than spending those on such patients, it will be better to use such facilities for those who have even fair chances of recovery. Thus the question lays that whom we want to save using medical facilities, those who are in any case going to die today or tomorrow or those who have a fair chance of recovery. A point which is often raised against supporter of euthanasia is that if such rights will be granted to terminally patients then there will be chances of abuses of it. But every right involves a risk of being abused that doesn't mean that the right itself should be denied to the people.

Hypothesis No. 1: '**Euthanasia is a conflict between life and death**' is proved that life is a gift of god but death is not. The conflict of life and death is distinguished by euthanasia and suicide. Suicide means intentional termination of one's life/act of killing deliberately but euthanasia is not killing oneself deliberately. The factors which result into suicide are different than those of euthanasia. Suicide is an offence punishable under section 309 of IPC but passive euthanasia is permissible in India.

Hypothesis No. 2: '**Though the Indian Constitution grants equality to everyone, either ill or healthy but in context of euthanasia it is deficient and doesn't permit to avail voluntary**

death' is proved as the Indian Constitution guarantees equality of law and right to life under article 14 and 21. But in case of euthanasia there is discrimination between sick and healthy person which indirectly violates Article 14 and article 21.

Hypothesis No. 3: '**Passive euthanasia, which is allowed in many countries, can have legal recognition in India but it is subject of conflict and complexities**' is proved. The complications involved in the legalizing it in india is a bold step, which requires detailed study and training of the medical practitioner, para-medical staff, advocates and nonetheless general public.

Hypothesis No. 4: '**When someone is terminally ill and not conscious or of unsound mind and is ill, passive euthanasia lawfully can be granted without his consent**' is proved. When a person who is unconscious and terminally ill or who is of unsound mind and terminally ill patient in such a stage not in a position to give consent as to whether passive euthanasia should be granted to him or not? Then in such a case passive euthanasia can be granted to him without his consent. The Apex court has legalized passive euthanasia in Aruna Shanbaugh's Case.

Hypothesis No. 5: '**Mercy killing or euthanasia is not a punishable offense under section 300 of IPC**' is proved'. Mercy killing is granted to a patient when he is suffering from such a condition where no chance of recovery is possible, in such a case the doctors withdraw the life support from the patient who is in permanent vegetative state. This is not a crime under Section 300 of IPC. In such a condition sometimes the patient gives his consent through a living will but sometimes the condition is so worse that he is not in a condition to give his consent. Under section 300 exception 5 it is stated that when a person gives consent to cause his/her death then it will be a culpable homicide not amounting to murder. In such a case passive euthanasia is not a punishable offence because consent totally depends on the situation prevailing, if given it is through living will if not given euthanasia is granted as per the guidelines set up by the apex court in Aruna Shanbaugh's Case.

SUGGESSTIONS: -

- The issue of legalizing euthanasia is not a simple task. Whatever the parliament, the executive and the judiciary face regarding its handling is not possible to describe. India

is a diverse country with diverse culture and traditional norms. It is not an urgently required legislation in India, when other grave matters require government's attention and dealing. Demand for euthanasia legislation is not inappropriate or untimely. There are many medical problems and unethical practices in India which are prone to violate moral, ethical and humane sides of practice of euthanasia.

- A consideration can be given for enacting a law for carrying out euthanasia. But it poses practical problems. Euthanasia is a process which cannot be applied generally. Every case is different and thus requires different standards. The conditions and requirements for carrying out euthanasia are not watertight compartments. Hence, it should not become an emotional matter. The judiciary in India is quite in its senses, which studies the issue on case to case basis. No constitutional body can be rushed or pressurized to legalize euthanasia.
- The scholars advocating euthanasia suggest that India can make legislation on the basis of models of the countries with such legislation. These laws can give us guidelines as what can be done and what must be avoided. Such laws provide best practices and ethical norms for the medical field.
- The argument is valid and it is not impossible to legalize euthanasia in India. The problem is about the conditions which prevail in India and in such states are not identical. It would be appropriate to say that ours is a totally different case.
- The countries which have legalized euthanasia, are pretty small in case its territory. The population therein is more literate and is aware about their rights and dangers of euthanasia. Additionally, the machinery in play is sophisticated.
- Indian population has a larger portion of illiterates than the literates. The literate population is not much liberal about euthanasia and might not approve its legalization. We Indians deal with such issues with sentiments and which cannot override our reasoned decisions.

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

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 - ^{xiii} Rucha Dhananjay Kulkarni, An Analytical Study of Euthanasia in India with Reference to Aruna Shanbug's Case, August 21, 2019, 3:00 PM, <http://elib.bvuict.in/moodle/pluginfile.php/179/mod-resource/content/0/An%20Analytical%20Study%20of%20Euthanasia%20in%20India%20with%20-%20Rucha%20Kulkarni.pdf>
 - ^{xiv} *Ibid*

^{xv} Oxford Advanced Learner's Dictionary of Current English (2000), Sixth Edition; *Oxford University Press*, Retrieved on August 22, 2019 at 4:00 PM

^{xvi} Actus reus non facit reum nisi mens sit rea definition, August 22 2019 at 10:00 PM, <https://www.duhaime.org/LegalDictionary/A/ActusReusNonFacitReumNisiMensSitRea.aspx>

^{xvii} Supra Note 9

^{xviii} Supra 18

^{xix} Dr. Irena Shala & Drmt. Kilda Gusha , *The Debate Over Euthanasia and Human Rights*, Vol. 12, European Scientific Journal, 73, 77-79 (2016) ,August 23, 2019 at 7:30 PM, <http://dx.doi.org/10.19044/esj.2016.v12n8p73>

^{xx} J Scherer & R Simon, *Euthanasia and the Right to Die: A Comparative View (Rowman & Littlefield Publishers*, Vol. 2, P- 47-49 (1999), Retrieved August 23, 2019 at 7:45 PM.

^{xxi} It provides for right to life as well as personal liberty to every person living within the territory of India. Only a just, reasonable and fair procedure can cut short this right.

^{xxii} It provides for equality in the eyes of law for every person living in India.

^{xxiii} It provides for a directive to the state regarding certain enumerated as under:-

- Both men and women will be given an equal means of livelihood
- Non-concentration of wealth in few hands
- Equal pay for equal work
- Health and strength of all people should not be abused.

^{xxiv} It provides for the control and regulations of use of intoxicants and drugs which are dangerous to human health.

^{xxv} AIR 1989 SC 2039

^{xxvi} *Chameli singh Vs. State of U.P.*, AIR 1996 SC 1051 ; *Francis Coralie Vs. Union Territory of Delhi*, AIR 1981 SC 746

^{xxvii} This section provides for killing of a human being by another human being under a specific situation. It also provides for the punishment of such an offence.

^{xxviii} This section provides for punishment Culpable Homicide not amounting to Murder.

^{xxix} Section 300 of IPC, August 24 2019 at 3:00 PM, <https://indiankanoon.org/doc/626019/>

^{xxx} It contains a general exception with regard to any harm done in good faith even without the consent of the consenting party sufferer, if he is incompetent to give such consent and he/she does not have any guardian to take such decision on his/her behalf.

^{xxxi} Retrieved from <http://supremecourtindia.nic.in/outtoday/wr1152009>

The team of doctors as above said consisted of :-

- Dr J.V. divatia, Dr. Roop gurshani and Dr. Nilesh Shah

^{xxxii} *Airdale vs. director, MHD, Washington Vs. Gluksberg*, 521 US 702 (1997), *Vasco vs. Quill*, 521 US 793 (1997)

^{xxxiii} Marya Mannes, '*Euthanasia v. Right to Life*', *Baylor Law Review*(1995), August 24 2019 at 3:00 PM

^{xxxiv} Hypoxia is a low oxygen intake by the body, especially as resulting from decreased pressure at high altitude

^{xxxv} Tarun Jain and Sakshi Jain, '*Brain-stem death: making a case for legalising removal of life support system*', *Criminal Law Journal*, Vol. 113 2007,pp-43-44

^{xxxvi} Retrieved from <http://www.isjs.in/sites/is/isjs.in/files/docs/brain-stem%20death%20making%20out%20A> visited on August 11, 2019

^{xxxvii} Ajay kumar goila & Mridula Pawar, The diagnosis of brain death, August 21 2019 at 3:00 PM, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2772257>

^{xxxviii} Supryo Routh, '*Right to euthanasia: A Case against Criminalisation*', *Criminal Law Journal*, Vol. 112, 2006,pp-190-191

^{xxxix} K Venkatesh Case, *Andhra Pradesh HC* (2004),August 24, 2019 at 7:00 PM, retrieved from <http://www.womenexcel.com/law/Euthanasia.htm>

^{xl} The Indian Medical Council Act, 1956, August 23, 2019 at 10 PM, <https://indiankanoon.org/doc/65767870/>

^{xli} AIR 1994 Cr L J 1660 (SC)

^{xlii} *Gian Kaur v. The State of Punjab*, August 24, 2019 at 11 PM, <https://indianlegalsolution.com/smt-gian-kaur-v-the-state-of-punjab-on-21-march-1996-case-comment/>

^{xliii} AIR 1994 CrL J 1605

^{xliv} Law Commission Report on Euthanasia, August 23, 2019 at 9:00 PM, <https://www.scobserver.in/court-in-review/right-to-die?slug=law-commission-report-on-euthanasia>

^{xlv} Attempt to suicide, August 23, 2019 at 9:30 PM , <https://pib.gov.in/newsite/PrintRelease.aspx?relid=115721>

^{xlvi} Examining Law Commission's report on euthanasia, August 23, 2019 at 9:30 PM, https://wap.business-standard.com/article/pti-stories/examining-law-commission-s-report-on-euthanasia-centre-to-sc-116020501033_1.html

^{xlvii} Ibid

^{xlviii} Common cause vs Union of india, (2018), (Civil) No. 215, <http://lawtimesjournal.in/common-cause-vs-union-of-india/>

^{xlix} Mayank Singh, Argument for legalizing euthanasia, August 24, 2019 at 11:30 PM, <https://blogs.bmj.com/2014/07/28/mayank-singh-the-euthanasia-debate-in-india>

^l Euthanasia-Arguments in Favour and Against, August 24, 2019 at 4:00 PM, <https://www.clearias.com/euthanasia>

^{li} Ibid

^{lii} Euthanasia-Arguments in Favour and Against, August 24, 2019 at 4:00 PM, <https://www.clearias.com/euthanasia>

^{liii} Ibid

^{liv} AIR 2018 Writ Petition (Civil) No. 215 of 2005 (SC)

^{lv} Supra Note 49

^{lvi} Euthanasia, assisted dying, and suicide, August 24, 2019 at 11:00 PM, <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml>

^{lvii} Adrija Bhattacharya, Fasting till death rituals, August 24, 2019 at 11:00 PM, <https://www.youngistan.in/religion-fortune/fasting-till-death-rituals/10407>