POSITION OF EUTHANASIA IN INDIA: LEGAL PERSPECTIVE

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ABSTRACT

Euthanasia has sparked some heated debates over the years. It is an age - old issue which has its roots embedded in classical thinking. This concept revolves around the philosophy of humanism and compassion. Article 21 of the Constitution guarantees 'right to life' which is an unalienable right. However, the essence of human life is not merely restricted to breathing rather it is more about living a dignified life. To die with dignity is a concept that has led to major modifications in this field. As of now, there is no concrete law regarding euthanasia in India. However, Passive euthanasia has been legalized in India through a judgement. Guidelines provided by the Courts are to be followed until the Parliament makes a law concerning the same. As far as other countries are concerned, many of them have legalized passive euthanasia but are reluctant to welcome active euthanasia. Even most of the religions condemn active euthanasia but permit restricted forms of passive euthanasia. The aim of this paper is to throw light on the legal status of euthanasia in various countries and to explore the role of judiciary in legalizing euthanasia in India.

INTRODUCTION

Life is valuable. It cannot be substituted or recompensed. It is the heart felt desire of each and every human being on this planet to lead a healthy life. But life is not a bed of roses. We tackle numerous 'thorns' in the form of 'hurdles' every day. Moreover, it is a known fact that each and every living being on this planet is mortal and thus, death is an inevitable truth. We, human beings go through a lot of hardships during our lives. It is possible that a person might desire to end his life by unnatural means. Death under such circumstances is called suicide. However, there can be a situation where the quality of life is degraded to such an extent that it is not worthy of living at all. It is such scenarios where the concept of euthanasia kicks in. At this point it is crucial to understand that suicide and euthanasia are not the same. They are largely controversial issues in ethics. Suicide involves intentional killing of oneself whereas euthanasia is mercy killing as it is performed on the basis of medical reasons. In suicide the act is committed by oneself whereas in euthanasia killing is brought about by another person. Suicide is a harsh and sudden act whereas euthanasia does not involve any sudden or harsh act. It is crucial to note that the practice of euthanasia is applicable to both humans as well as animals whereas suicide is not applicable in the case of animals. Also, suicide can be voluntary only whereas euthanasia can be voluntary as well as non - voluntary.

The concept of euthanasia is not modern rather it is as old as human civilization. Euthanasia basically means deliberately ending a person's life to relieve him from the pain and suffering that has resulted as a consequence of some terminal incurable illness. Generally, euthanasia is performed at the request of the person suffering from terminal illness. However, there can be situations where the patient is too sick to request for painless death. In such circumstances, the decision is made by close relatives, medics or even the courts.

Euthanasia has remained in limelight since its inception. It is a controversial issue that has been exposed to debate throughout the world as it involves deliberate termination of human life. This matter has witnessed heated debates not only within the premises of court but also among the elites, intelligentsia and academicians alike. There are two crucial paradigms around which the public discussions on euthanasia have been shaped. The first one revolves around sanctity of life and the impermissibility to end the same and the other one revolves around the principle of autonomy or choices and the belief that individuals have a right to end their life, when in misery. It is noteworthy to mention here that euthanasia remains one of those rare instances

where law has taken into account the concerns and content of medical ethics to shape its own discourse on euthanasia.

MEANING AND DIFFERENT TYPES OF EUTHANASIA

Sir Francis Bacon, an English philosopher coined the "euthanasia" in the 17th century to refer to an easy, painless and happy death. The word 'euthanasia' derives its existence from the Greek word '*eu*' meaning 'good' and '*thanatos'* meaning 'death'. When put together it simply means 'good death'. A form of dignified death which primarily comes into light when life becomes a punishment and death becomes a relief. It is the intentional killing of a dependent human being by an act or omission for his or her alleged benefit. Oxford dictionary defines euthanasia as "*the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma*."[1] According to Merriam Webster Dictionary, the word euthanasia means "*the act or practice of killing or permitting the death of hopelessly sick or injured individuals in a relatively painless way for reasons of mercy*."[2] Moreover, euthanasia has been defined in The Black's Law dictionary (8th edition) "*as an 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.*"[3] Encyclopedia of 'Crime and Justice', explains euthanasia as "*an act of death which will provide a relief from a distressing or intolerable condition of living*."[4] The British house of Lords select committee on medical has defined euthanasia as "*a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering*."[5] The basic intention highlighted in these definitions regarding euthanasia is to ensure a less painful death to a person who is in any case going to die after a prolonged period of intolerable suffering.

Euthanasia may be classified as follows:-

1. Active or positive euthanasia – When a person directly and deliberately causes a patient's death, it is called active euthanasia. In this type of euthanasia, death is brought

[1] https://www.oxfordreference.com/view/10.1093/acref/9780198609810.001.0001/acref-9780198609810-e-2515
[2] https://www.merriam-webster.com/dictionary/euthanasia
[3] https://trust.dot.state.wi.us/ftp/dtsd/bts/environment/library/reference/blacks-law-dictionary-8th-edition-(2004).pdf ; pg. 1674
[4] http://www.legalservicesindia.com/article/2182/Euthanasia:-Contemporary-Debates.html
[5] Harris, NM. 2001. "The euthanasia debate". J R Army Med Corps. 147

about by an *act*. For example, a doctor administering a lethal dose of medication to end a patient's life or when a person is killed by being given an overdose of pain killers etc.

2. Passive or negative euthanasia – In passive euthanasia, death is brought about by an *omission*. Here, the patient's life is not directly taken rather they are just allowed to die i.e., in this case, the doctors are not actively killing the patient, instead, they are simply not saving him.[6] This can be done by intentionally withdrawing or withholding life sustaining treatment.

    - Withdrawing treatment : for example, turning off a machine that is essential to keep the patient alive so that they die of their disease.
    - Withholding treatment : for example, omitting to perform a surgery which may extend patient's life for a short time.

      Passive euthanasia is usually a slower process than active euthanasia and is comparatively more uncomfortable and emotionally draining.

3. Voluntary euthanasia – When euthanasia is carried out with the consent or at the request of the patient, it is known as voluntary euthanasia. It is important to note that full consent is to be received by the concerned person. Also, it must be demonstrated clearly that the person understands what is about to happen.

4. Non – voluntary euthanasia – It is carried out when the person is unconscious or permanently incapacitated to make a meaningful choice between living and dying and thus, an appropriate person takes decision on their behalf. Such a decision is usually made by a close family member. It also includes cases where a child is mentally and emotionally fit to take the decision but is not old enough as per law to make such a decision and so someone else must take it on their behalf in order to be valid in the eyes of law.

5. Involuntary euthanasia – It refers to a case where the person who dies chooses life but is killed anyway. It is practiced against the consent of the patient. Moreover, it clearly

[6] *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454

amounts to murder and is prohibited all around the world.

HISTORICAL BACKGROUND

Euthanasia is an age - old concept. The origin of euthanasia is believed to be in ancient Greece and Rome in the fifth century B.C. In ancient Greece, Socrates viewed death as nothing to be afraid of and therefore, liberal feelings regarding euthanasia witnessed a spike. In the Greek city of Sparta, new born with severe birth defects were killed. The first notable objection to euthanasia can be traced from the Hippocratic Oath, an ethics code by which the physicians swore neither to administer poison to anyone even on demand nor to suggest anyone to do so. However, many doctors did not actually abode by the Hippocratic oath and continued to relieve patients from acute and prolonged suffering by ending their lives.

In the Middle Ages, euthanasia became a taboo and was considered a sin throughout Europe. The Christian teachings opposed euthanasia on the ground that death is to be decreed by God to man and therefore, no person has a right to end their life. The human body was regarded as a temple of God and thus, destruction of the same was considered a sin. Back in 15^{th} – 17^{th} century, it was Thomas More who first recommended euthanasia in his famous work "*Utopia*" but he mentioned that consent of the patient was a requisite in performing euthanasia if such a patient is in an intolerable stage of pain which cannot be treated. Furthermore, in his work the Judges and the Minsters urge the disabled not to be burden on others. The first law related to this matter came into existence in the 18^{th} century when Russia enacted a law for reducing penalty of those people who killed a patient suffering from an incurable disease. Moreover, in the 18^{th} century active euthanasia gained support due to the evolutionary theory of Charles Darwin that challenged the belief of God being the ultimate creator of every life. Although people began to advocate in favour of euthanasia in the early 17^{th} and 18^{th} century but it was short lived. The concept of euthanasia continued to be rejected during the late 18^{th} century.

During the late 1930's, euthanasia again started gaining support and societies in favour of it started popping up eventually not only in US but also in England. The organised movement for legalization of euthanasia began in 1935, when Voluntary Euthanasia Legalisation Society was founded by C. Killick Millard. However, the society's bill was rejected in House of Lords in 1936 and so was a motion again on the same subject in 1950. However, World War 2 changed the perspective on euthanasia. Hundreds of thousands of people were killed by Hitler and the Nazis using euthanasia by gassing, administering heavy dose of drugs and starving people.

Americans eventually became less fond of euthanasia and thus, its practice was halted.

Legalisation of euthanasia gained actual momentum in the late 20th and early 21st century. In 1998, Oregon became the first US state to allow euthanasia followed by Washington and Montana. The first country to legalize euthanasia was Netherlands (in 2002) followed by Belgium.

There have been instances where the Ancient Indian Philosophical tradition also justifies the idea of a man longing for his own death. In Mahabharata, after Kurukshetra war Pitamaha Bhishma refused all treatments and nursing after which he died. Furthermore, two commentators of Manu, Govardhana and Kulluka state that man may undertake the Mahaprastana on a journey which ends in death, when he is incurably diseased or met with a great misfortune. In ancient India, a voluntary death as a consequence of starvation was considered to be a befitting conclusion of hermit's life.[7] The Hindus have two views regarding euthanasia. The first view suggests that by ending prolonged suffering, a person is performing a good deed and is thus fulfilling his moral obligations. The second view holds that by ending a person's life to relieve him from suffering actually separates the soul and body of a person at an unnatural time thereby disturbing the cycle of death and rebirth. This is considered to be a wrong deed as it is against the karma of the patient as well as the doctors. According to this view, those involved in euthanasia will receive the remaining karma of the patient. Roman Catholic Church regards euthanasia to be morally wrong. Christians are largely against euthanasia as they believe that human beings do not have the authority to interfere in the phenomenon of death. Majority of the Muslims are completely opposed to euthanasia as they consider life to be a gift by Allah and its destruction is considered to be disrespect towards Allah. Sikhs have high respect for life, a gift of God and they consider suffering to be a part of operation of Karma. However, Buddhists are not united in the view of euthanasia and the teachings of Buddha do not explicitly deal with it. Most of the Buddhists are against involuntary euthanasia and their position on voluntary euthanasia are ambiguous. Religious people refer to the sanctity of life and therefore most of the religions disapprove of euthanasia.

STATUS OF EUTHANASIA IN DIFFERENT COUNTRIES

The legalization of euthanasia has witnessed little success all over the world. Due to the heated political and religious debates, governments feel a hitch to legalize it. An overview of the trends

[7] http://www.jicrjournal.com/gallery/139-jicr-august-3124.pdf

and legal mechanisms in some of the countries that allow euthanasia is discussed below :-

NETHERLANDS

Netherlands was the first country in the world to legalize both euthanasia and assisted suicide. The legal debate on euthanasia broke out in Netherlands with the "*Posthma Case*", where a physician facilitated the death of her mother using a lethal injection, upon her repeated requests.[8] The case ultimately resulted in the conviction of the physician but the court laid down certain conditions where doctor was not obliged to keep a person alive, contrary to their will. Over a period of time these principles were developed and crystallised by the courts through numerous decisions. In 2002, "Termination of Life on Request and Assisted Suicide (Review Procedures) Act" was passed by the legislature which regulates the matters related to euthanasia in Netherlands. It basically states that physician - assisted suicide and euthanasia are not punishable if the attending person acts in accordance with the criteria of due care. The penal code is clear in stating that killing a person on his request is a crime punishable by law. It is an offence which awards twelve years of imprisonment or fine to the person involved. However, the law provided medical review board with the liberty to suspend prosecution of doctors who have performed euthanasia only when the following conditions are satisfied :-

- The patient is subjected to unbearable pain and there is no prospect for improvement.
- The request for performing euthanasia should be voluntary i.e., it must come directly from the patient.
- The request should be persistent.
- The request must be free from the influence of others, psychological illness or drugs.
- The patient must be totally aware of his condition, options and prospects available.
- The concerned physician must consult with one at least one more independent medical practitioner, who confirms the aforesaid conditions. Further, the independent medical practitioner should have prior knowledge and experience in the field.
- The patient must be at least twelve years of age.
- Patients between twelve and sixteen years of age require the consent of their parents.

[8] *The Euthanasia Case Leeuwarden- 1973*, Issues in Law and Medicine, Vol.3, No.4 (1988), 439

- Euthanasia must be performed in a medically appropriate fashion in the doctor's presence.

As per this legislation, the doctor is obliged to report the death of the patient to the municipal coroner, including the cause of death. The act is then reviewed by a regional review committee and on finding that the concerned act was in accordance with the norms, it is approved otherwise the same is reported to the prosecutor. Although euthanasia is illegal for people below twelve years of age, in 2004, medical community in consultation with the prosecutors developed a protocol called the "Groningen Protocol." This protocol lays down the standards to be taken care of and procedures that are to be followed in cases of child euthanasia and abiding by these would save the doctor from prosecution. However, it has faced criticism regarding the fact that the mechanism only provides for a *post facto* review and lacks provisions that are preventive of misuse.[9]

BELGIUM

After Netherlands, next country in line to legalize euthanasia was Belgium. Voluntary euthanasia and doctor assisted suicide was made legal in Belgium since 2002. The conditions under which euthanasia can be performed as per the legislation are as follows[10] :-

- The patient must be incurably ill and in a medically futile condition of constant and unbearable suffering that cannot be alleviated.
- The request made by the patient for euthanasia should be voluntary, informed and repeated, free from any external pressure.
- The patient must be a major or an emancipated minor and must be legally competent and conscious at the moment of making the request.

It must be noted that if a person is not terminally ill, there is a waiting period of 1 month before euthanasia can be performed. The person requesting for euthanasia must reside in Belgium to be granted this right. The Act also casts a duty on the doctor to totally reveal to the patient options available to him. The Act has also incorporated a mechanism for substituted decision making in the event of Permanent Vegetative State Condition and also makes room for prior expression of position on euthanasia in writing. It is mandatory to report death of the patient

[9] CCPR Human Rights Committee, Concluding *Observations of the Human Rights Committee*, CCPR/CO/72/NET (2001)
[10] The Belgian Act on Euthanasia of May, 28th 2002*

after performing euthanasia to a special commission who then decides whether the act has been carried out in accordance with the regulations. The Belgian law has been criticized on the ground that only post facto reviews are contemplated whereas misuse – preventive regulatory mechanism is not dealt with. [11]

UNITED STATES OF AMERICA

Active euthanasia is illegal throughout USA but patients have the right to refuse life sustaining treatment on the voluntary request made by the patient. The movement for euthanasia started in the United States by 1930. However, little success was met despite serious efforts as none of the legislatures were prepared to pass a law allowing euthanasia. In 1991, initiative for euthanasia was defeated by voters in the state of Washington. However, in 2008, Death with Dignity Act, 2008 was passed as a result of a positive referendum in the State of Washington. This Act allowed physician assisted euthanasia. Again in 1994, Death with Dignity Act was approved by the voters in the state of Oregon. According to the Act, following conditions must be fulfilled before performing euthanasia :-

- The patient must be above 18 years of age with sufficient decision - making capacity.
- The request for euthanasia must be in a written manner as prescribed under the Act.
- The patient must be terminally ill, with less than six months of time to survive.
- The physician must inform the patient about his condition and the options available to him. Moreover, the decision must be an informed one.
- There must be another physician to certify patient's decision - making capacity.
- Counselling must be offered to patients suffering from depression.
- Prior to the procedure, the state authorities and the patient's next of kin has to be informed.

The American Courts have been reluctant in allowing euthanasia. In *Vacco v. Quill*[12] and *Washington v. Glucksberg*[13], euthanasia was made completely illegal by the U.S. Supreme Court. In 2009, the Supreme Court of Montana in *Baxter v. Montana*[14] held that there was

[11] *Debating Euthanasia in Belgium*, The Hastings Center Report, Vol. 27, No. 5 (Sep. - Oct., 1997), p.47; http://www.jstor.org/stable/3527806

[12] 521 U.S. 793 (1997). The court upheld a New York law that prohibited physician assisted suicides. It was held that the same was the protection of a legitimate state interest well within the authority of the state.

[13] 521 US 702 (1997)

[14] MT DA 09-0051,2009 MT 449. The Action was brought by Baxter, a 76 year old truck driver who was dying of leukemia and was terminally ill.

nothing in the Montana constitution or precedent that prohibited a physician assisted suicide, though there was no such right. In 2006 the Supreme Court of U.S. held in clear terms that the prosecutions against physicians in Oregon who prescribed for drugs to facilitate physician assisted suicide was unconstitutional.[15]

UNITED KINGDOM

Like in United States, active euthanasia is prohibited in United Kingdom as well. This country has witnessed series of stiff resistance in its attempt to legalize euthanasia. Decision of the House of Lords in *Airedale NHS Trust v. Bland*[16] paved the way for facilitating the practice of euthanasia. As a result of the collapse of a football stadium, Bland received severe injuries and got into a Permanent Vegetative State (PVS) in which he remained for over 4 years. The hospital in consultation with his parents applied to the High Court and sought a declaration that they may lawfully withdraw life sustaining treatment for which they will not be held criminally liable. The court showed its support for the removal of life sustaining systems. Also, few guidelines were laid down in relation to the procedure to be adopted in such cases. This decision was confirmed by the Court of Appeal as well as the House of Lords. The withdrawal of treatment was seen as a mere omission that would not attract criminal liability unless there was duty to act. Further, the court held that there was no duty to treat if the treatment was of no benefit to the patient. The standard of care to be taken was addressed in *Bolam v. Friern Hospital Management Committee.*[17] It is crucial to understand that the question should not be whether it is in the best interest of the patient that he should die rather the question should be whether it is in the best interest of the patient that his life should be prolonged by the continuance of this form of medical treatment or care. In 1996, the House of Lords issued a *Practice note*[18] that laid down the procedures to be followed in such cases. The most important guidelines mentioned were as follows: -

- Taking prior permission of the Court is mandatory.

[15] *Gonzales v. Oregon*, 56 U.S. 243 (2006). The Attorney General of the United States had issued an interpretative rule that physicians who prescribed/used federally controlled drugs for physician assisted suicides would be liable for prosecution under the same under the Controlled Substances Act.

[16] [1993] 1 All ER 821

[17] [1957] 2 All ER 118. The *Bolam standard* essentially puts the duty of the doctors to that of following the course or standards of procedure that would have been followed by a responsible body of medical personal, exercising due diligence and care in the process. A doctor, to avoid liability need only show that he was following an accepted – medical practice, even if the practice is followed only by a minority among the professionals. The case therein was one of medical negligence

[18] [1996] All ER 766

- The diagnosis must be made by the professional medical practitioners supported by the independent reports concerning the patient from neurologists or doctors specialized in detecting disturbances of consciousness.
- The next kin of the patient must be informed by giving a notice. Their views and the patient's view which may have been previously expressed in writing or otherwise must be ascertained by the official solicitor in an interview.
- In cases concerning minors, the applications must be within wardship proceedings.

It must be noted that the procedure mentioned above is applicable only in case of passive euthanasia. Its applicability does not extend to active euthanasia. It still remains illegal and its practice in United States would certainly attract criminal liability.

SWITZERLAND

Perhaps the only country to recognize "right to die" is Switzerland. According to Article 115 of the Swiss Penal Code, suicide is not a criminal offence rather assisted suicide is made a crime if done with a selfish motive. Even non – physicians are permitted by the law of the land to perform assisted suicide provided it is not done with a selfish motive. While assisted suicide is perfectly legal, euthanasia continues to be illegal. Moreover, the patient need not be a Swiss national. Active euthanasia in all forms is prohibited in Switzerland.

AUSTRALIA

The first jurisdiction to legalize euthanasia in Australia was its Northern Territory (in the year 1996). It was done by passing the Rights of Terminally Ill Act, 1996. This Act permitted physician assisted suicide as well as active voluntary euthanasia under some circumstances. Voluntary euthanasia is illegal throughout Australia although a patient can refuse to receive any treatment and can choose to have their life support turned off.

CANADA

As per Section 241(b) of Criminal Code of Canada, physician assisted suicide is illegal. In this country, patients possess the right to refuse continuing life supporting system however, they do not have a right to demand euthanasia or assisted suicide. In *Sue Rodriguez v. British Columbia (Attorney General)*[19], the Supreme Court of Canada held that in case of assisted

[19] (1993) 3 SCR 519

suicide the interest of the state will prevail over the interest of the individual.

STATUS OF EUTHANASIA IN INDIA

One of the basic human rights include Right to life. In India, the Constitution guarantees this fundamental right under Article 21. Life is meaningless if right to life which is very fundamental for the existence of a human being is curtailed. This right brings with it right not to get killed by any person or entity including the government. All the other rights can be enjoyed only when right to life persists. This right commences right from the time of birth and follows till the death of an individual. Right to life also includes the aspect of living life with dignity. Here, a crucial question arises as to whether right to live with dignity includes right to die with dignity or not. Indian courts have faced this question numerous times. Different views have been expressed by the courts in this regard. Sections of the IPC that came into limelight in this matter was section 309 and 306 that basically contains penal provisions for attempt and abetment to suicide respectively.

In *Maruti Shripati Dubal v. State of Maharashtra*[20] , the petitioner endured multiple brain injuries as a result of an accident which ultimately led to mental imbalance and later, he was found to be suffering from schizophrenia. Also, there was an instance when he tried to commit suicide for which he was even tried under section 309 of the Indian Penal Code. The Bombay High Court held that every right has both, its positive and negative aspects and the negative aspect of fundamental right guaranteed under Article 21 of the Constitution i.e., right to life includes right to die. The Court went to the extent of invalidating Section 309 of the IPC and held it to be unconstitutional as it was violative of Article 14 and 21 of the Constitution. In this case, the Court by citing numerous instances where a person might desire to end his/her life, finally came up with the opinion that right to die was not unconstitutional rather it was just abnormal and uncommon. However, in *Chenna Jagadeeshwar & Anr. v. State of Andhra Pradesh*[21], it was held that Article 21 of the Constitution does not include right to die. The next case which popped up with the same question was *P. Rathinam v. Union of India*[22] where the Supreme Court took similar stand as in *Maruti Shripati Dubal case.* The Apex Court held that right to life does include right to die. Moreover, Section 309 of the IPC was said to be a cruel and irrational provision which needs to be scrapped off from the statute in order to humanize

[20] BomCR 499 (1986) BOMLR 589
[21] AIR 1988 Cr LJ 549
[22] AIR 1994 (3) SCC 394

penal provisions and hence Section 309 of the IPC was held to be unconstitutional as it was not in line with Article 21 of the Constitution.

Gian Kaur v. State of Punjab[23] was another significant case in which the constitutional validity of Section 309 of the IPC was challenged. In this case, Gian Kaur along with her husband was convicted under section 306 of the IPC for abetting the suicide of their daughter – in – law, Kulwant Kaur. The contention on the part of the appellants was that since the validity of Section 309 of the IPC is questionable, therefore abetment of suicide should be seen as simply assisting in the enforcement of fundamental right incorporated under Article 21 of the Constitution and also, providing punishment under Section 306 of the IPC is equally violative of Article 21 of the Constitution. The Supreme Court upheld the constitutional validity of Section 309 of the IPC and stated in clear terms that right to die is unconstitutional. It was further held that anything and everything that causes the extinction of life is inconsistent with right to life. In this case, the Supreme Court also pointed out the distinction between natural and unnatural extinction of life. The Court clearly said that right to die with dignity at the end of natural life is not to be confused with right to die an unnatural death which curtails the natural span of life. In other words, death with dignity in any manner does not indicate unnatural extermination of life that restricts a person's natural life – span.

In *Naresh Marotrao Sakhre v. Union of India*[24], Justice Lodha held euthanasia to be a homicide irrespective of the circumstances in which it takes place.

The issue regarding euthanasia again came into limelight in the famous case of *Aruna Ramachandra Shanbaug v. Union of India.*[25] Aruna Shanbaug who was a junior nurse working at the King Edward Memorial Hospital (KMH), Parel, Mumbai was sexually assaulted by a ward boy, Sohanlal B. Walmiki on 27th November, 1973. The ward boy wrapped a dog chain around her neck to yank her back and tried to rape her but he sodomized her on finding that she was menstruating. While doing so, he twisted the chain around her neck. She was found next day by the cleaner of the hospital at about 7:45 a.m., lying unconsciously on the floor with blood all over. It was alleged that supply of oxygen to her brain was stopped due to strangulation by the dog chain as a result of which her brain got seriously damaged. A writ petition was filed by Ms. Pinki Virani on behalf of the petitioner Aruna Shanbaug under Article

[23] AIR 1996 (2) SCC 648
[24] 1996 (1) BomCR 92
[25] (2011) 4 SCC 454

32 of the Constitution. Ms. Pinki alleged that since the incident, 36 years have been passed without any sign of improvement in Aruna's health condition. At the time of filing petition she was about 60 years of age. She did not put on any weight rather she was light a feather and had brittle bones that could easily break if her hands or legs are awkwardly caught under her featherweight body. Her skin was crumbled like a papier mache' extended over a skeleton. She had stopped menstruating and was prone to bed sores. Her teeth had decayed which caused her immense pain and her wrist was twisted inwards. She couldn't chew at all and therefore, she was given only mashed potatoes on which she survived. She was in a Persistent Vegetative State (P.V.S) and was equivalent to a dead person with no state of awareness. She was neither able see or hear anything nor could she communicate or express herself. The petitioner prayed that KEM doctors and staffs should be directed to stop feeding Aruna so that she could die in peace. A committee of three doctors was appointed by the Supreme Court to thoroughly examine Aruna and prepare a report about her physical and mental condition. Taking into consideration the petitioner's prayer and opinion expressed by the committee of doctors, Pinky Virani's plea was rejected by the Supreme Court. Aruna Shanbaug passed away on 18th May, 2015. This case is of paramount importance to the nation as it is in this case that passive euthanasia was legalized. The Court also put forward significant statement regarding attempt to suicide. The Court was of the view that whoever attempts to take away his/her life should not be penalised rather they should be provided with adequate help as they are already in a depressed state. Recommendation was made to the Parliament to decriminalize attempt to suicide by scrapping off punishment provided in the Indian Penal Code. The guidelines laid down by the Court are to be followed until the state or central government drafts rules concerning the same. Such guidelines are extremely crucial in a country like India where the ethical standard of the society have unfortunately descended to new low. There is always a possibility that if the guidelines are not strict and sophisticated enough then people might misuse passive euthanasia for their own gains such as inheriting property or assets. The guidelines laid down by the Supreme Court are as follows :-

- It is necessary that decision to discontinue life support system should be taken by the parents, spouse or close relatives of the patient and in their absence the decision is to be taken by the next friend. In the absence of next friend decision is to be taken by the doctor who is treating the patient.
- The decision to discontinue life must be in the best interest of the patient and should not be mala fide.

- Prior permission of the High Court has to be taken before performing euthanasia under Article 226 which empowers the high court to issue order and directions.
- The Court must seek opinion of an independent panel of 3 doctors after receiving the application. The panel must necessarily consist of a neurologist, a physician and a psychiatrist.
- A notice must be issued to the near relatives and next of kin of the patient and their views must be taken into consideration.
- A reasoned order must be passed by the High Court while permitting or disallowing the application.

It is not out of place to mention that Supreme Court failed to consider certain aspects while legalizing passive euthanasia in India. The Court had reasoned that since passive euthanasia involves only an omission say, omission of life support system, it need not be criminalized since omissions are generally not criminalized as per the Indian law. This view is not completely correct as in the Indian Penal Code, an act includes an omission as well.[26] So, an illegal omission can be considered as sufficient *actus* (act) for causing death of the person.

MEDICAL TREATMENT OF TERMINALLY ILL PATIENTS BILL, 2016

After the *Aruna Shanbaug case*, the Law Commission came up with its 241st report[27] in 2012. This report proposed that in order to prevent the misuse of passive euthanasia, a proper legislation regarding the same has to be made by the Parliament. Based on the recommendations of this report, Medical Treatment of Terminally Ill Patients Bill was proposed by the Ministry of Health and Family Welfare in the Parliament but it is still pending. This Bill was made with the purpose to promote dignified death. It legalizes voluntary passive euthanasia. The patients are at the liberty to make even living will for the termination of life sustaining treatment if that person suffers from an incurable disease in future. The Bill also contains provisions to provide protection to those practitioners who acted as per the will provided by the concerned patient. After the *common cause case*, this Bill has managed to receive green signal by the Supreme Court. As of now, there is no constitutional or legal objection to this Bill. It must be noted that if this Bill gets approved then the burden on the shoulders of the High Court and Medical Boards will significantly increase.

[26] Section 32 of the Indian Penal Code,1860 : In every part of the code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.
[27] https://lawcommissionofindia.nic.in/reports/report241.pdf

A more recent case in this context as mentioned above is *Common Cause (A Regd. Society) v. Union of India*[28] where the Supreme Court held that individuals have a right to die with dignity under strict guidelines. In this case, the Court also provided the concept of "living will." Living will is a document that allows people to make decisions regarding what treatment they want to avail in case if they become terminally ill in future and thus, incapable of taking decisions. As per the Court, these living wills are subject to certain guidelines like the person making the will should be of sound mind. Also, he must be aware of the consequences of the will made. He must neither be forced nor influenced to make such will. Moreover, living will should be a written one with at least two persons present at the time when the concerned person signs the will which has to be further countersigned by a Judicial Magistrate of First Class and so on. The Court observed that Article 21 of the Constitution by the virtue of which every person is guaranteed right to life is completely meaningless unless it contains an element of dignity. It was further held that right to live with dignity includes smoothening of the process of dying in case of person in Permanent Vegetative State (PVS) with no chance of recovery.

CONCLUSION

Euthanasia is an extremely delicate subject which has been exposed to unending debates since ages. Medical community appears to have reached a consensus that euthanasia becomes a necessity in certain circumstances and hence, needs to be permitted. If the legal status of euthanasia in different countries is considered, it can be inferred that while many countries are tolerant towards passive euthanasia, active euthanasia is not welcomed in most of the countries. India is on its way to legalize euthanasia.

Over the years there has been a spike in health - related issues and they are not getting any better rather they will certainly become worse with the passage of time due the impact of several factors such as air pollution, increased food adulteration, climate change and so on. New diseases will find its place and number of terminally ill patients will consequently increase irrespective of the advancement in the medical field. Although the Supreme Court of India has laid down strict guidelines for the execution of passive euthanasia by way of advanced directives but it is not free from flaws. The recent judgements have failed to address certain matters such as capacity of the minors to give advance directives and access to palliative care.

[28] (2018) 5 SCC 1

Major issue in relation to euthanasia is its misuse. This issue requires attention and needs to be addressed by the Parliament before a law is introduced in the country. Even if a legal mechanism is set up, its implementation is another major issue. India has seen instances where laws look decent on papers but things become complicated during the phase of its implementation.

To suit the requirements of the people, India is taking a progressive step towards legalizing euthanasia and the Parliament, at the earliest, should make laws in this regard which in turn needs to be in consonance with the interminable philosophy and culture of our nation where religion is indispensable and sensibility takes the front seat.