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## EUTHANASIA IN INDIA : JOURNEY TOWARDS LEGALISATION OF RIGHT TO DIE

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### Abstract

Euthanasia means a deceased person is killed without giving any pain who is ill or in coma for a long time and there is no scope of improvement in the situation of the deceased even in the coming years of life. The paper aims to provide detailed information regarding the journey of euthanasia in India with evolving legal system. The article is an attempt to grapple the challenges which are faced by the deceased person and many other social institutions struggling to ensure that a person has right to die like they have right to life. The struggle came to an end after the landmark judgement from Supreme Court of India which allows passive euthanasia which in turns guarantees the right to die with dignity. The paper further analyses the difference between euthanasia and suicide and different forms of euthanasia.

It also seeks to analyse the impact of legalisation of euthanasia over the society which provided a new dimension's to it. The research paper mainly provide an overview of the research done by researchers to understand the present status of euthanasia in India and its comparison with respect to other countries of the world.

**KEYWORDS** – Euthanasia, Passive euthanasia, Suicide, legal system, Right to Die, Right to Life, Legalisation

## **I. Introduction**

*“Euthanasia... is simply to be able to die with dignity at a moment when life is devoid of it”.* – **Marya Mannes**

The term Euthanasia has been derived from the two Greek words and they are ‘Eu’ means ‘good’ and ‘Thanos’ means ‘death’, hence Euthanasia means a good death. It is a way or method of ending one’s life who is suffering from fatal illness or irremediable condition through injection or by termination of the medical facilities in order to spare him of unbearable pain. As per the House of Lords Select Committee on Medical Ethics, it is “a deliberate intervention under taken with express intention of ending life to relieve intractable suffering.” Euthanasia is exercised so that individual can live plus die with dignity.

Euthanasia has been in controversy since it revolves around termination of life. The individual suffering from fatal illness generally faces more pain as illness constantly get worse till it kills them and they would prefer to end their life rather than suffering it. The process of legalisation of euthanasia was very difficult as our Constitution guarantees right to life to each citizen of this country whereas the concept of euthanasia totally ultravires such right and it was also seen in few countries like Netherland that when euthanasia is made legal, it start getting abused later. So referring to the above mentioned example no one wants that euthanasia should be legalised in India. So the dispute over euthanasia lies on the difference between the principle of sanctity of life and the right of self-reliance and dignity of individual.

In order to settle down the differences between the two prime principles as cited above there is a need to have a analysis of the developments that are made through various legislature and judicial efforts in India over the last more than three decades.

## **II. Types of Euthanasia**

Euthanasia is a complicated issue, there are different types of euthanasia. Euthanasia may be distinguished as per the consent into three types :-

1. **Voluntary Euthanasia** - In this case the patient who is killed has a desire or asked to be killed so as to release himself from the sufferings.
2. **Non –Voluntary Euthanasia** - In this the patient is in unconscious state or mind and is unable to make a decision between living and dying, and any other rational person can decide to release him from such pain.
3. **Involuntary Euthanasia** - When the patient has not given his consent or is not willing to die but inspite of it the euthanasia is practiced against the will of that individual.

There is a continuous dispute inside the medical and bioethics literature that should or should not the voluntary and involuntary killing of a individual be regarded as euthanasia, regardless of a consent some of the experts say that killing or ending someone’s life without his consent is illegal as the consent is necessary. If the consent is not

taken then such killing will become murder so, the euthanasia should have to be voluntary only. Euthanasia can be sub-divided into two according to means of death.

1. **Active Euthanasia** - It is also called as 'positive euthanasia' or 'aggressive euthanasia'. The death is caused by giving drugs and inserting lethal injection. It is considered as fastest means of causing death and all types of active euthanasia are illegal.
2. **Passive Euthanasia** - It is also called as 'negative euthanasia' or 'non-aggressive euthanasia'. In such case the basic amenities necessary for life and also medical treatment were withdrawn so, as to end the life or to release the sufferer from sufferings of pain.

Though the passive euthanasia have been made legal in India but still many of us see it as a attack or a threat to constitutional provision as it clearly provides for right to life whereas euthanasia ask for right to die which is contradictory. But though it has some drawbacks but it serves as painkiller for those who have been the sufferer as it helps them in ending their life so as to terminate the pain. The Supreme Court judgement has marked or has given a new dimension to the legalisation of euthanasia in India.

### **III. Historical Background of Euthanasia in India**

The process towards legalisation of euthanasia in India started in the year 1985. A private bill was proposed within the house of Maharashtra legislature. The bill has the provision regarding the legal protection by the mode of immunity from civil and criminal liability provided to all the doctors who remove artificial life – prolonging measures at the desire of terminally ill patient. The bill has a provision with respect to the advanced directive to such effect if the sufferer has become incapable to make such a demand later on. Such patient was requested to be immuned from any sort of obligation for taking such a decision. A bill has been moved in Lok Sabha in the year 2007 entitled as “The Euthanasia (Permission and Regulation) Bill, 2007 by C.K. Chandrappan, a member of Parliament who belong to the Communist Party of India, a representative, Trichur, Kerala, to provide for a sympathetic, generous and painless termination of life of the patient who have become fully and permanently bed-ridden due to suffering from fatal illness. It says in such cases Euthanasia is essential because the sufferer has a right to put his grief and agony to an end in a dignified manner when there is no hope of recovery. The bill also discusses that there should be a sufficient check and balance so as to avoid the misuse of Euthanasia before legalizing euthanasia. The introduction of such a bill in parliament was a great step towards this direction, but it was unable to become a law.

### **IV. Arguments Against Euthanasia**

When discussion arose regarding legalizing of euthanasia in India there were many intellectuals who were against this and did not want that it will ever come into effect as it may disrespect the provision of Constitution and even it will hamper the valuable life of individual. So, the following arguments against it have been put forward and they were:-

1. The life is a gift of God and taking away life is wrong and sinful, and human do not have any authority to play the part of God. The one who undergo pain is only due his own karma. Thus, euthanasia undervalue the human life.
2. It totally opposes the medical ethics, values and public norms. Medical ethics appeal for nursing, care giving and curing and not for ending the life of individual. In the current scenario, medical sciences have advanced at a greater pace. Thus even fatal diseases are also becoming curable today. So instead of giving advice to end one's life medical experts should motivate the patient's suffering from disease to face it with strength which should be moral as well as physical. It is not only sole responsibility of doctor but as well as the relatives of the sufferer to stand up as backbone to help in minimizing the pain.
3. It is worrisome that if euthanasia is legalised than other groups of more susceptible people will be at great risk of feeling into taking that step for themselves. Groups which represent disabled people were opposing the legalisation of euthanasia on the basis that such groups of susceptible people would be obliged to choose euthanasia as they might see themselves as burden over society.
4. Approval for euthanasia as an option can have a detrimental effect on the societal norms and also on the doctor-patient relationship. The relationship is generally based on trust, and after legalisation of euthanasia it may disappear
5. When suicide is not allowed and is regarded as a crime then euthanasia should also not be allowed. A person commits suicide when he goes into the state of depression and has left no hope in life. Similar is in the case of euthanasia. But such trend can be lessened by providing proper care to the sufferer and by showing a ray of hope to them.
6. Euthanasia upto some extent may become a euphemism for assisted murder as the bond between doctor and patient and between patient and his relative will be hampered due decrease in the level of trust.
7. Miracles do happen especially in the case of life and death as there are many examples of patients coming out of coma after years and it should not be forgotten that human life is based upon hope.

The journey towards legalisation of euthanasia was not easy as it can be seen from above points where the intellectuals have discussed that legalisation process cannot be done at the cost of life and licensing other to affect someone's right to life. Though there were many obstacles due to which the euthanasia was not legalising but it found its way through which the legalisation process started and provided the rights to the sufferer with some limitation imposed on them as per the law so, as to ensure that rights of other vulnerable or susceptible groups should not get affected.

## **V. Global Position of Euthanasia**

### **Australia**

The Northern Territory of Australia has become the first ever country to legalize euthanasia by passing the Rights of the Terminally ILL Act, 1996. In the case of *Wake v. Northern Territory of Australia* it was held legal by the Supreme Court of Northern Territory of Australia. Subsequently the Euthanasia Laws Act, 1997 legalised it. Since it had been a crime in most of the Australian states to assist euthanasia, prosecution have been rare. In 2002, the matter related to the relatives and friends who gave their moral support to an elder women to commit suicide was widely investigated by police, but no charges were framed. In Tasmania in 2005, a nurse was held guilty of assisting the death of her mother and father who were both suffering from incurable illnesses. She was sentenced to two and half years in jail but the judge later postponed the condemnation because he believed that the community did not want the woman to be put behind the bars. This sparked the debate regarding the decriminalization of euthanasia<sup>1</sup>.

### **Albania**

In 1999, euthanasia was legalised in Albania. They declared that any form of voluntary euthanasia was made legal under the rights of the Terminally ILL act of 1995. Passive euthanasia is considered to be legal if three or more family members give consent to the decisions.

### **Belgium**

Euthanasia was made legal in 2002. In September 2002, the Belgian Parliament enacted the 'Belgium Act on Euthanasia' which defines euthanasia as "intentionally terminating life by someone other than the person concerned at the latter's request". Provision for the approval of euthanasia were very strict which includes that the patient must be major, and should have made the request voluntary, well considered and he/she must be in a condition of giving consent and intolerable physical or mental suffering can be removed. All such acts must be done within the supervision of authorities before allowing in order to satisfy the essential requirements.

### **Netharlands**

Netherlands became the first country in the world to legalise both euthanasia and assisted suicide in 2002. According to the penal code provisions of the Netherlands, killing a person on his desire is punishable with twelve years of imprisonment or fine and also a guide the person that the commission of suicide is also punishable by imprisonment up to three years or fine. In spite of such provision, the court of Netherlands have come forward to interpret the law for ensuring a defence to the charges of voluntary euthanasia and assisted suicide. The defence allowed is due to the necessity. The circumstances laid down by the courts to observe that whether the defence of necessity applies in a given case of euthanasia, have been summarized by Mrs. Borst-Eilers as follows;

<sup>1</sup> <http://www.legalservicesindia.com/article/787/Euthanasia-in-India.html>.

1. The desire for euthanasia must come only from the patient and must be completely free and voluntary.
2. The patient's request must be well considered, reliable and constant.
3. The patient must be experiencing unbearable suffering, having no chance of improvement.
4. Euthanasia must be considered as the last resort. Other substitutes to mitigate the patient's situation must be considered.
5. Euthanasia must be performed by a physician or a doctor.

In 2002, Netherlands legalised euthanasia. The law codified a 20 years old custom of not suing the doctors who have committed euthanasia in very specific cases. It allows a doctor to end the life of a patient suffering intolerable pain in fatal condition, if the patient so requests.

### **U.S.A**

Passive euthanasia and active euthanasia are different from each other. While active euthanasia is banned but physicians were not held liable if they withdraw the life sustaining treatment of the patient either on his request or at the request of his relatives. Euthanasia has been made illegal by the United States. In Oregon, which is a state in America, the physician assisted suicide has been legalized in 1994 under the Death and Dignity Act. In April 2005, California State legislative committee approved a bill and became 2nd state to legalise assisted suicide.

### **England**

The House of Lords also permitted non-voluntary euthanasia in case of patient in a persistent vegetative state. Moreover in a one of the recent case, the British High Court has granted the woman, who was paralyzed from neck, the right to die by having life support system switched off.

### **Switzerland**

According to Article 115 of Swiss Penal Code, suicide is not a crime and assisting suicide is a crime if only if the motive is based on the concept of selfishness. It does not require the inclusion of physician nor that the patient is terminally ill. It only requires that the aim should be unselfish. In Switzerland, the euthanasia has been made illegal but the physician assisted suicide has been made legal. Though, decriminalizing of euthanasia was tried in 1997 but it was recommended that where a non- physician helper would have to be convicted whereas the physician should not<sup>2</sup>.

Death is not only a right, it is the end of all the rights and a situation that none of us can escape. The eventual right that we as human beings have is the right to life, an inalienable right not even the person who acquire it can never take that away. It is akin to the fact that our right to liberty does not allow us to have the freedom to sell ourselves into the slavery. This right to die is not equivalent to right to 'die with dignity.' Dying in a dignified manner associate to how one encounter death, and not the way in which one dies as the past events recounts many

<sup>2</sup> *ibid*<sup>1</sup>

situations in which individuals have faced degrading deaths in a dignified way. This objection really associate to supposed lack of dignity of forcing someone to face suffering rather than permitting them to end their life. However, better pain relief techniques are a more moral solution to such problem than killing those who are suffering. The question arises whether Article 21 includes right to die or not first came into consideration in the case State of *Maharashtra v. Maruti Shripathi Dubal*<sup>3</sup>, in this case the Bombay High Court held that 'right to life' also includes 'right to die' and Section 309 was struck down. The court said it clearly that in this case the right to die is not unnatural; it is just uncommon and abnormal. Also the court noticed about many instances in which a person may want to end his life.

## **VI. Journey Towards Legalisation of Euthanasia in India**

### **Constitutional And Legal Aspect of Euthanasia**

#### **1. Right To Life**

In India, the sanctity of life has been placed at a highest pedestal. The Indian constitution not only guarantees the right to life but also provide the guidelines to state to take proper care of all its citizens. This can be illustrated by following provisions of the Constitution of India, 1950:-

- i. Article 21 : Protection of life and personal liberty<sup>4</sup>
- ii. Article 14 : Equality before law<sup>5</sup>
- iii. Article 39 : of the Directive Principle of State Policies<sup>6</sup>
- iv. Article 47 : of the Directive Principles of State Policy<sup>7</sup>

The Supreme Court of India gave a landmark judgement in *Pt. Parmanand Katara v. Union of India and others*<sup>8</sup>, ruled that every doctor whether at government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.

<sup>3</sup> 1987 (1) BomCR 499, (1986) 88 BOMLR 589

<sup>4</sup> 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.

<sup>5</sup> It provides for equality in the eyes of law for every person living in India. The law will protect every such person with in the territory of India.

<sup>6</sup> It provides for a directive to the state regarding certain things enumerated as under:-

- Both men and women will be given an equal means of livelihood.
- The material resources in the country should be equally distributed for the common good.
- Non- concentration of wealth in few hands.
- Equal pay for equal work.
- Health and strength of all people should not be abused.
- The children are given opportunities and facilities to develop in a healthy manner.

<sup>7</sup> It provides for the control and regulation of use of intoxicants and drugs which are dangerous to human health except for the medical purposes. The efforts will be made by the state as directed under this Article regarding the raising of the level of nutrition and standard of living.

The right to life unquestionably encompasses within its ambit the right to lead dignified life. In *Kharak Singh vs. State of Uttar Pradesh*<sup>9</sup>, it was held that life is something more than mere animal existence. Thus every citizen is given a constitutional guarantee to live. In addition the medical officials are charged with the responsibility to protect the life of all citizens by providing medical attention. The very idea of doctors providing a lethal dose to the sufferers who no longer wish to live and who have given their consent for the same is both unconstitutional and illegal under Indian law as mentioned under the penal laws.

So, right to life does not mean the presence of mere animal existence. But it ensure that each individual should live a dignified life without any restriction. They all are free within their sphere and live a comfortable life.

## 2. Legal Perspective of Right To Die

The law consider each attempt of taking away life, either of oneself or of another as a punishable offence under the Indian Penal Code. Any kind of assistance or abetment executed is also an offence. In the current scenario, the following legal provisions are important:-

### **Section 299, Indian Penal Code, 1860**

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

So, considering the above mentioned section, euthanasia was considered as illegal. In the cases of euthanasia, there is clear intention on the behalf of doctor to end the patient's life and hence, such cases will clearly come under the clause of 'first' of Section 300 of Indian Penal Code, 1860 which tells that killing would amount to murder<sup>10</sup>.

### **Exception 5 to Section 300**

However where there is a valid consent of the sufferer then exception 5 of the said section would be emphasised and doctor should be punished under Section 304 for culpable homicide not amounting to murder<sup>11</sup>.

But it will only apply to the cases of voluntary euthanasia (where sufferer gives consent to death) that would attract exception 5 of Section 300. The cases which deal with voluntary and non-voluntary euthanasia would be struck down by provision one to Section 92 of the Indian Penal Code and thus it should be rendered as illegal<sup>12</sup>.

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<sup>8</sup> AIR 1989 SC 2039

<sup>9</sup> AIR 1963 SC 1295

<sup>10</sup> This section provides for killing of a human being by another human being under a specific situation, e.g. with an intention to kill that another. It also provides for the punishment of such an offence.

<sup>11</sup> This section provides for punishment for culpable homicide not amounting to murder. If such murder has been committed with an intention then shall be punished with imprisonment for life or imprisonment for a term which may extend to ten years with fine. If it is committed with the knowledge that the act is going to cause death then ten years of imprisonment has been prescribed along with fine.

## Section 92

It is very well known that in case of euthanasia there is an intentional causing of death as there may be or may be not the consent of the patient. So, the protection of Section 92 stands on the basis of 'good faith' which very much conflicting to the concept of Euthanasia and should not lend any legal protection for the mercy killer.

The intent to kill any individual will qualifies under euthanasia as a crime under the Indian Penal Code, 1860. A specialist who practices euthanasia would be charged under Section 299 or Section 304-A which depends on the kinds of method used<sup>13</sup>.

## Section 107 and Section 202

All individuals including the relatives who partly or fully participated and were even aware of the intention of the specialist would be charged under Section 107 (Abetment of thing)<sup>14</sup> and Section 202 of the Indian Penal Code, 1860<sup>15</sup> and in such cases where the entire process has been taken place on the desire of relatives than they will be charged under Section 299<sup>16</sup> or 304-A as well. The specialist may seek grant under Section 87<sup>17</sup>, 88<sup>18</sup> and 92 to defend him in where he have been charged for using terminal sedation for an act of mercy-killing. The intention may become material concern in such cases.

### 3. Suicide and Euthanasia

These two terms are often considered as same but many few are aware that though it has some similarity but they have a conceptual distinction between them.

In suicide, the individual voluntarily ends his life by stabbing, injecting any kind of harmful substance which deliberately kills him or through any other mode. It is an instance of intentionally ending one's life mostly due to depression and various other reasons such as disappointment from day-to-day life, failure in examination or in getting a good job etc., whereas in euthanasia it is an act of some other person to bring an end to the life of sufferer. It is crucial to acknowledge that there is also a difference between 'Assisted Suicide' and 'Euthanasia'.

<sup>12</sup> 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. Its first proviso is further providing that this exception shall not extend to the intentional causing of death, or the attempting to cause death to that other person.

<sup>13</sup> It deals with death caused with a rash and negligent act.304-A. Such an act does not amount to culpable homicide.

<sup>14</sup> This provision deals with abetment of a thing. This can be done in three ways-Instigation, assisting and by way of a conspiracy.

<sup>15</sup> It deals with the omission on the part of anyone who intentionally failed to provide information to the authorities, as he/she was legally bound to provide, regarding the commission of an offence.

<sup>16</sup> It deals with the definition of offence of culpable homicide. Intention and knowledge both are crucial mental elements which will compose this offence under the code.

<sup>17</sup> It deals with an exception that any person who is above the age of eighteen years who willingly gives consent to the effect of suffering any harm except death or grievous hurt. The doer will not be held guilty for any offence.

<sup>18</sup> It also deals with an exception with regard to any harm caused except death done in good faith for the benefit of the other person who has given consent to such harm either expressly or impliedly. The doer will not be held guilty for any offence.

Assisted suicide involves an action which intentionally helps the other person to commit suicide, for instance providing him with the means to do so. When it is a doctor or a medical expert who helps a patient for ending his own life (by providing a remedy by use of lethal medication) it is known as 'Physician Assisted Suicide'. In assisted suicide the person end his own life and even know the further consequences of it and other person simply help (for instance providing all the necessities which is required for carrying out such action). Whereas, euthanasia may be active such as when the physician gives a lethal injection or dose to a patient or passive such as when a physician remove life support system of the patient.

Suicide and even attempt to suicide is considered as a criminal act and is made punishable under law. Similarly, the people demanded that euthanasia should be criminalised rather than making it legal on the basis that as the state spends all its money on each individuals or subjects for improving the quality of life in society. As it is very well said that the "personal disorganisation will lead to social disorganisation. This will internally and externally effect the societal structure and in one or other gives freedom or opportunity to other's for ending one's life which clearly disobeys the constitutional provision and also hampers one's living a life with dignity.

Hence, to clear all such issues which are the obstacles in the pathway leading to the legalisation of euthanasia and also that right to die should be included under right to life have been discussed in the cases mentioned below and how the concept about euthanasia finds new dimension's in Aruna Shanbaug's case<sup>19</sup> which in turns leads towards the legalisation of Passive Euthanasia which was a major step towards providing the rights to the patient who is in a dilemma of right to life and right to die with certain limitation so, that no third person can use such right with the intention of ending that person life and such act will be made punishable under law.

Distinguishing euthanasia from suicide, Justice Lodha in *Naresh Maratra Sakhee vs Union of India*<sup>20</sup>, observed that, "suicide by its nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or Mercy killing on the other hand means implies the intervention of other human agency to end the life. Mercy killing is thus not suicide and the provision of section 309 does not cover an attempt at mercy killing. The two concepts are both legally and distinct. Euthanasia or Mercy killing is nothing best homicide whatever the circumstances in which it is affected."

Euthanasia generally seems similar to suicide and homicide but it is totally different from them. Under the Indian penal code, an attempt to commit suicide is punishable under section 309 and abetment to suicide is punishable under section 306. A person generally commits suicide for certain reasons like marital discord, failure in the examination, dejection of love, unemployment etc. but these reasons are not present in euthanasia. Euthanasia in common terms means putting a person to painless death in case of the incurable diseases or when life became purposeless as a consequence of mental retardness or physical handicap. It also differs from homicide. In a murder case, the murderer has a clear intention to cause harm or cause death in the mind. But in the case of euthanasia although there is an intention to cause death, such intention is in good faith. A doctor generally use the method of

<sup>19</sup> (2011) 4 SCC 454

<sup>20</sup> 1996 (1) BomCR 92, 1995 CriLJ 96, 1994 (2) MhLj 1850

euthanasia when the patient, suffering from a terminal disease, is in an irremediable conditions or as he suffering from a painful life or the patient who has been in coma for or more than 20/30 years like Aruna Shanbaug.

The different views came from the courts at different times regarding the legalisation of euthanasia and right to die to be included as part in right to life.

In *M.S. Dubal v. State of Maharashtra*<sup>21</sup>, the Bombay High Court held that right to life under article 21 of the Indian Constitution includes 'right to die'. Whereas in *Chenna Jagadeeswar vs. State of AP*<sup>22</sup>, the Andhra Pradesh High Court said that the right to die is not a fundamental right under Article 21 of the Constitution.

However in *P. Rathinam v. Union of India*<sup>23</sup> case Supreme Court of India observed that the 'right to live' includes 'right not to live' i.e right to die or to terminate one's life. But again in *Gain Kaur v. State of Punjab*<sup>24</sup>, a five member bench overruled the *P.Rathinam's* case and held that right to life under Article 21 does not include Right to die or right to be killed.

After the judgements which have been mentioned in the above cases it had somewhat became clear that it is not possible to legalise euthanasia in India but a landmark judgement came from a case which totally reviewed the old judgements and provided a new dimension to euthanasia in the history of India.

## **VII. Law Commission of India and Its Recommendation**

The Law Commission in its 42nd Report<sup>25</sup> suggested the repeal of section 309 of the India Penal Code. The Indian Penal Code (Amendment) Bill, 1978, passed by the Rajya Sabha, respectively provided for exclusion of section 309. But unfortunately, before bill could be passed by the Lok Sabha, the Lok Sabha was dissolved and the bill was lapsed. The commission submitted its 156th Report<sup>26</sup> after the announcement of the judgement in *Gian Kaur v. State of Punjab*, suggesting retention of section 309.

Later the Law Commission in its 210th Report<sup>27</sup> submitted that attempt to suicide may be considered more as a manifestation of a diseased condition of mind deserving proper care and treatment rather than an misdeed to be visited with punishment. The Supreme Court in Gian Kaur case mainly focused on the constitutionality of section 309. It did not go into the prudence of retaining or continuing the same in the statute. The Commission has decided to suggest the Government to take steps for repealing of the anachronistic law provided in section 309 of IPC, which would allievate the distressed of his suffering.

<sup>21</sup> 1987 Cri. LJ 743 Bom.

<sup>22</sup> 1988 Cri. LJ549 A.P.

<sup>23</sup> AIR 1994 SC 1844

<sup>24</sup> AIR 1996 SC 946

<sup>25</sup> <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>

<sup>26</sup> <http://lawcommissionofindia.nic.in/101-169/Report156Vol2.pdf>

<sup>27</sup> <http://lawcommissionofindia.nic.in/reports/report210.pdf>

This 196th Report<sup>28</sup> of the Law Commission on ‘Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)’ is one of the most crucial subjects ever undertaken by the Law Commission of India for a critical study. This Report relates to the law pertinent to terminally ill patients (also including the patients in persistent vegetative state) who have desire to die a natural death without having any Modern Life Support System like artificial ventilation and artificial supply of food.

The Commission has given the following suggestions:-

1. Obviously, the very first thing to be declared is that every ‘competent patient’, who is suffering from fatal illness has a right to refuse medical treatment or continuation of such treatment which has been started already. If such information is given by the competent patient, it is binding on the doctor. At the same time, the doctor must be convinced that such decision is made by a competent patient and it is an informed decision. Such informed decision must be taken by the competent patient individually or freely, all by himself i.e. without under any kind of undue pressure or influence from other persons.

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

2. We recommend to provide that the doctor shall not withdraw from the treatment unless he has procured the opinion of a body of three expert medical practitioners from a panel made by high ranking Authority. We also recommend another important caution, namely, that the decision to withdraw must be based upon the certain guidelines issued by the Medical Council of India as to the circumstances under which medical treatment in regard to the precise illness or disease, could be withdrawn.

In addition, it is recommended that in the case of competent as well as incompetent patients, a Register must be managed by the doctors who suggest for withdrawing of the treatment. The decision as well as the decision-making process must be mentioned in the Register. The Register to be managed by the doctor must consist the reasons as to why he thinks the patient is competent or incompetent as well as why he thinks that whether the patient’s decision is an informed decision or not. A doctor must keep the identity of the patient and other particulars confidential. Once the above Register is duly managed, the doctor must tell the patient (if he is conscious), or his or her parents or relatives before withdrawing medical treatment. If the above procedures are followed accurately, the doctor can withdraw medical treatment to a terminally ill patient. Otherwise, he cannot withdraw from the treatment.

<sup>28</sup> <http://lawcommissionofindia.nic.in/reports/rep196.pdf>

3. The sufferer who takes a decision for withdrawal of a medical treatment has to be defended from prosecution for the offence of 'attempt to commit suicide' under section 309 of the Indian Penal Code, 1860.

Similarly, the doctors have to be defended if they are prosecuted for 'abetment of suicide' under sections 305, 306 of the Penal Code, 1860 or for culpable homicide not amounting to murder under section 299 read with section 304 of the Penal Code, 1860 when they take decisions to withdraw life support and in the best interests of incompetent patients as well as in the case of competent patients who have not taken an informed decision. The hospital authorities will be provided with the protection. This provision is by way of abundant caution and in fact the doctors are not at any fault for any of these offences under the above mentioned sections would be read with sections 76 and 79 of the Indian Penal Code. Such action clearly falls under the exceptions in the Indian Penal Code, 1860.

We are also of the view that the medical practitioners must be safeguarded if civil and criminal actions are instituted against them. We, therefore, recommend that if the medical practitioner acts in consonance with the provisions of the act during withdrawing of the medical treatment, his action shall be deemed or supposed to be 'lawful'.

4. Therefore, we have thought that it is fit to grant an enabling provision under which the patients, parents, relatives, next friend or medical practitioner or hospitals can move to a Division Bench of the High Court for a declaration that the recommended action of continuing or withdrawing medical treatment be declared 'lawful' or 'unlawful'. As time is significant or essence, the High Court must decide such cases at its earliest or within thirty days. Once the High Court gives the approval that the action of withdrawing medical treatment recommended by the doctors is 'lawful', it will be binding in following civil or criminal proceedings among the same parties in relation to the same patient. We have made it clear that it is not always necessary to move to the High Court in every such cases. Where the action to withdraw treatment is taken without acknowledgment to the Court, it will be deemed or supposed to be 'lawful' if the provisions of the given act have been accurately followed and it will be a good defence in the following civil or criminal proceedings to rely upon the provisions of the Act.

5. It is internationally well known that the identity of the patient, doctors, hospitals, experts must be kept confidential. Hence, we have recommended that in the Court proceedings, these persons or bodies will be mentioned by letters drawn from the English alphabet and no one, including the media, can disclose or publish their names. Exposure of identity is not permitted even after the case is disposed off.

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

### VIII. Aruna Shanbaug's case

Aruna Shanbaug, who worked as a nurse at KEM Hospital was assaulted on the night of 27<sup>th</sup> November, 1973 by a ward boy. He sodomised Aruna after strangling her with a dog chain. After the attack, Aruna got paralysed and speechless and went into the coma from where she never comes out. She was kept under the care of KEM Hospital nurses and doctors. The doctors have already told that there is no chance of any kind of improvement in her condition. Her next friend describes Shanbaug: "her bones are brittle. Her skin is like 'Paper Mache' stretched over a skeleton. Her wrists were twisted inwards; her fingers were bent and fisted towards her palms, resulting in growing nails tearing into the flesh very often. Her teeth are decayed and giving her immense pain. Food is completely mashed and given to her in semisolid form. She chokes on liquids and is in a persistent vegetative state<sup>29</sup>." So, on behalf of Aruna, her 'next friend' Pinki Virani decided to move to the Supreme Court with a plea in which it was mentioned that the court should direct KEM Hospital not to force feed her. On 16<sup>th</sup> December 2009, the Supreme Court of India accepted the women's petition. The Supreme Court bench comprising of Chief Justice K.G. Balakrishnan and Justices A.K. Ganguly and B.S. Chauhan agreed to analyse the merits of the petition and sought to seek responses from the Union Government, Commissioner of Mumbai Police and Dean of KEM Hospital.

On 24<sup>th</sup> January 2011, the Supreme Court of India acknowledged to the plea for euthanasia filed by Aruna's friend, a journalist Pinki Virani by establishing up a medical panel to examine her. The panel was subsequently set up under the direction given by Supreme Court, checked upon Aruna and gave the conclusion by saying that she met "most of the criteria of being in a permanent vegetative state". However, the court turned down the mercy petition on 7<sup>th</sup> March 2011. But the court in its landmark judgement, however allowed to Passive Euthanasia in India. Though the court rejected the Pinki Virani's petition for Aruna Shanbaug's euthanasia, the court set out following guidelines for passive euthanasia. As per these guidelines, passive euthanasia comprises the withdrawing of treatment or food that would allow the sufferer to live a dignified life.

Shanbaug's case has, however, changed India's approach forever towards combative issue of euthanasia. After the verdict of the case, it allows passive euthanasia contingent upon the circumstances. So, it gave the right to other's to approach the court in cases relating to euthanasia where patient is suffering from irreversible disease. The judgement makes it very much clear that passive euthanasia will "only be allowed in cases where the person is in persistent vegetative state or terminally ill."

<sup>29</sup> <https://www.scribd.com/document/283657981/mat-1>

## **IX. Conclusion**

The journey has not ended yet and there are more laws to be implemented over this issue. Parliament should lay down certain criteria's under which euthanasia will be lawful such as:-

- A) The consent of the patient must be obtained.
- B) When there is a failure of all medical treatments or when the patient, suffering from a fatal disease, is in an irremediable conditions or has no chance to recover as he is suffering through a painful stage of life or the patient has been in coma for 20/30 years,
- C) The economic condition of the patient or his family is very low.
- D) Intention of the doctor should not be to cause harm.
- E) Proper care or safeguard must be taken to avoid the abuse of it by doctors.
- F) Any other relevant to the particular case.

Thus, Euthanasia can be legalized, but the laws would have to be very much stringent. Every cases will have to be carefully observed while taking into consideration the view points of the patient, the relatives and the doctors. But whether Indian society is sophisticated enough to face this, as it is a matter of life and death, is yet to be seen.

