EUTHANASIA: A LEGAL DILEMMA (A COMPARATIVE ANALYSIS OF EUTHANASIA LAWS AROUND THE WORLD)

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DECLARATION

I, Abhishek Kumar Khaund, pursuing Master of Laws (LL.M.) from National Law University, Assam, do hereby declare that the present dissertation titled, **Euthanasia: A legal dilemma (A comparative analysis of euthanasia laws around the world)** is an original research work and has not been submitted, either in part or in full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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PREFACE

Life and death are two things that cannot be separated from one another. Where there is life, there is death. The right to life is one of the most important basic rights in any civilised society and as such it is preserved by the Constitutions of most countries of the world. But with changing times, the basic human rights circle is encompassing within its sphere even more rights with individual liberty and right to self-determination at the forefront. Right to die is something which is a great example of such liberty and self-determination. To die on one's own terms with dignity is what defines this right.

Euthanasia although a controversial issue has polarised opinions around the world with some people viewing it as an important aspect of modern day human rights while others terming as a crime against God based religious grounds or having apprehensions about its abuse.

This study will look into the history of euthanasia throughout different ages and its legality in different countries around the world along with its position in India. It will also discuss the concept of euthanasia and its different types along with the different perspectives surrounding euthanasia.

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1860- The Indian Penal Code

1937- Swiss Criminal Code

1950- The Constitution of India

1961- Crimes Act

2002- Belgian Act on Euthanasia

2002- Termination of Life on Request and Assisted Suicide(Review Procedure) Act, 2002

2017- Mental HealthCare Act

TABLE OF ABBREVIATIONS

1.	&	And
2.	§	Section
3.	A.I.R.	All India Report
4.	All ER	All England Reports
5.	Art.	Article
6.	BomCR	Bombay Cases Reporter
7.	BOMLR	Bombay Law Reporter
8.	BMJ	British Medical Journal
9.	Ed.	Edition
10.	ECHR	European Convention on Human Right
11.	ECHR	European Court of Human Rights
12.	FCECE	Federal Control and Evaluation Committee on Euthanasia
13.	ICCPR	International Covenant on Civil and Political Rights
14.	IPC	Indian Penal Code, 1860
15.	Ltd.	Limited
16.	N.Y.	New York
17.	Ors.	Others
18.	Regd.	Registered
19.	S.C.C.	Supreme Court Cases
20.	U.S.A.	United States of America
21.	U.K.	United Kingdom
22.	UKSC	Supreme Court of United Kingdom
23.	v.	Versus

24.	Vol.	Volume
25.	W.P.	Writ Petition

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CHAPTER 1: INTRODUCTION

It is hard to deny that the most precious and valuable thing in this world is life. In a way it is the ultimate contrivance of nature. Every life form in this planet has a specific life span which it usually fulfils unless it ends abruptly as a result of some external factor. As far as human beings are concerned, this cycle of life also applies to us. A fulfilling and a contented life is desired by almost everyone. But sometimes there may arise circumstances that force one to end his or her own life by using means that can be considered as unnatural. This act of ending one's own life can be termed as suicide, however, this is not to be confused with euthanasia as in euthanasia the life of a terminally sick person, suffering from immense ache, hurt and pain as a consequence of his illness and for which there is no cure, is put to an end by another person upon the patient's own request. Many people also refer to euthanasia as "mercy killing". It is very important to understand the reasons as to why some people choose to take such a radical and extreme step. The answer is as convoluted and complicated as the act itself. Euthanasia is mainly connected with people who are suffering from terminal diseases and are suffering from extreme pain as a direct consequence of such illness and are no longer willing to live out the rest of their lives and are searching for a way to end the pain. This is where euthanasia comes in as a pain-relief mechanism except that it is permanent and ends a person's life.

1.1: Definition of euthanasia

If a person who is terminally sick and his or her condition cannot be cured or treated and that person is killed off with his or her own consent by the concerned physician, such a practice is known as euthanasia. The principle reason behind euthanasia is to provide relief and mercy to such patients from insufferable pain.

Euthanasia as a term has been derived from two Greek words, 'Eu'(good) and 'Thanatosis'(death), thus meaning 'good death'.The first person to use the term was Francis Bacon, mainly to denote a death which was painless without any kind of suffering or agony. However, despite of euthanasia being a practice to relieve a patient from immense pain who is suffering from a disease which is untreatable, it is one of the most controversial issues around the world, so much so that it is illegal in many countries.

1.2: Forms of euthanasia

There are different forms of euthanasia which denote different methods of ending a patient's life such euthanasia in the active and passive form, euthanasia in the voluntary and non-voluntary form. While some forms of euthanasia are considered to be more humane than others, they are all practiced in different capacities and circumstances. The different forms of euthanasia are discussed below:

Euthanasia in the passive and active form:

In active euthanasia, the patient's death is caused directly by the doctor usually by injecting something lethal such as poison or a sedative which can be of a lethal dose.

In passive euthanasia, the patient's life support or the medical treatment keeping him or her alive is withdrawn thus causing the patient's death. In most countries where euthanasia is legal, it is only legal in the passive form as it is considered to be the most humane thus making it the most common way of ending someone's life

Euthanasia in the voluntary and non-voluntary form:

In voluntary euthanasia, the patient's death is caused on the patient's own request. It is the patient's conscious decision to end his or her life, but there must be consent, and the patient's must demonstrate that he or she is fully aware of the consequences.

Non-voluntary euthanasia involves someone else making the decision to end a patient's life. Such a decision is usually made by a close family member. The patient may be unable to communicate his or her consent or is too sick to be aware of his surroundings or act on his own behalf.

Involuntary Euthanasia:

In this type of euthanasia, a person is euthanized against his or her consent or will. Unlike non-voluntary euthanasia, the patient here is very much competent to make the decision of whether he or she wants to live or not but regardless of the patient's wish, he or she is euthanized. This form of euthanasia is illegal in almost all countries as there is seemingly no

difference between this type of euthanasia and murder and is only practiced as a form of punishment to punish criminals convicted of serious offences.

1.3: Difference between suicide and euthanasia

While both euthanasia and suicide are two distinct things, some people still regard these two to be the same mostly due to the presence of the intention to die or a lack of desire to live. However, it is important to note that in most cases both euthanasia and suicide are practiced under completely different set of circumstances and environments. If we look at the definition of suicide as provided in Oxford Dictionary[1] we find that the act of purposefully and consciously ending one's own life is called suicide whereas as already discussed above, euthanasia involves ending a terminally sick person's life by a physician or by withdrawing life support.

A person may try to commit to suicide due to reasons that may vary such as depression, stress, frustration with regard to something, etc. In almost all cases of suicide, the existence of some type of mental illness is always there. However, in most cases of euthanasia, the patients mostly suffer from extreme physical pain and suffering which they cannot bear and as a result they prefer to die.

Suicide being something that results out of mental illness is to be dealt with very sensitively and hence has been decriminalised in most countries especially western countries. Attempt to suicide in India was also decriminalised recently in 2018 after the passing of Mental Healthcare Act of 2017.

When we look at India, euthanasia has been a very controversial issue with the Courts delivering very different judgements in different cases. In the case of *Maruti Shripati Dubal,*[2] it was stated by Court that the "right not to live a forced life" is included in "right to live" as provided by Article 21 of the Constitution. An attempt was made by the Bombay High Court to differentiate between suicide and euthanasia, where the Court stated that suicide refers to an act where a person terminates his or her own life without the assistance of anyone else. However, in the case of euthanasia there is intervention by others to terminate a patient's life.

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[1]Oxford Advanced Learner's Dictionary of Current English,6th ed. 2000 ; Oxford University Press
[2]Maruti Shripati Dubal v. State of Maharashtra,BomCR, (1986) 88 BOMLR 589.

In the case of *Rathinam,*[3] the issue of legalisation of euthanasia was triggered when the Supreme Court held that it is wrong to punish a person for attempted suicide and accordingly the IPC provision,i.e. section 309 which provides punishment for attempting suicide as unconstitutional. However, this was overruled in the case of *Gian Kaur,*[4]where the Court identified that it was not within the rights of a person to not accept any kind medical help or assistance and such a right was against the very idea of "right to life."

Subsequently, in *Aruna Shanbaug's*[5] case euthanasia in the passive form was given legal recognition by the Supreme Court, however only in "exceptional medical circumstances under judicial monitoring." Certain guidelines were also provided for the implementation of euthanasia in the passive form in India. A distinction between euthanasia in the passive and active form was also made by the court where it stated that the difference between them was simply, "killing" and "letting die." More recently in the *Common Cause case*[6] it was stated by the Apex Court that "death with dignity" is included under "meaningful existence" and that it is one's fundamental right to die with dignity. In the same case, the Court recognised 'living wills' by terminally ill patients and laid down guidelines regarding the same.

Article 21 of the Constitution of India states, "no person shall be deprived of his or her life or personal liberty except according to the procedure established by law".

However, in *Common cause v. Union of India,*[7]the Apex Court held that it would not be correct to not include individual dignity within the ambit of right to life and liberty as provided under Article 21. With changing times, more and more individual rights are now being included in spectrum of Article 21 and as such the right to live with dignity has now become a component of it.

Thus, providing that right to die with dignity is also included within the ambit of right to life. The case for euthanasia is that any terminally ill competent adult should have the right to have autonomy over his or her own body and life. Self determination is one of the most important aspects of a democracy. Euthanasia allows a person who is seriously ill and suffering to end his life on his own terms and to die with dignity instead of continuing to suffer.

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[3]P. Rathinam v. Union of India, 1994 A.I.R. 1844, 1994 S.C.C. (3) 394.
[4]Gian Kaur v. State of Punjab, 1996 A.I.R. 946, 1996 S.C.C. (2) 881.
[5]Aruna Ramchandra Shanbaug v. Union of India, 2011, 4 S.C.C. 454.
[6]Common Cause (A Regd. Society) v. Union of India, W.P.(CIVIL) NO. 215 of 2005.
[7]*Id.*

However, because of the moral dilemma and the presumed iniquity surrounding euthanasia, it has become a burning issue in recent times. In many countries such as New Zealand, Norway, Ireland, euthanasia is illegal. Even in the U.S.A., euthanasia is illegal in most of the states. Countries that do have a legal approval of the practice only allow it partially i.e., in the passive form and euthanasia in the active form remains illegal in most countries of the world. When we look at the Indian scenario passive euthanasia was made legal in India by the Supreme Court only recently in 2018. It is important to have an open discussion regarding euthanasia so that both sides can be heard and the plight of the people who are terminally sick and are going through immense pain can be resolved.

There is a great chance of euthanasia laws being misused however with strong and effective laws regulating euthanasia such practices can be prevented. Euthanasia allows people to be free from insufferable physical and mental pain. Thus, in today's age of individuality and self determination, euthanasia is very important.

However, even after such a progressive interpretation of the practice of euthanasia by the Supreme Court, contemporary India is still divided on the issue. And this divide is not just limited to India but also extends to other countries as well.

There are not many countries in the world where euthanasia is legal and those that do only allow it in the passive form. If we look at U.S.A., euthanasia is legal only in the states of New Jersey, Oregon, Vermont, New Mexico, Washington and Montana. However, it is known as assisted suicide there. Currently euthanasia is illegal in countries like Australia, France, New Zealand and Norway. As far as euthanasia in the active form is concerned, it is legal in only a few countries. Netherlands, Belgium, Colombia, Luxembourg and Canada are the only five countries where euthanasia in the active form is legal.

Recently, the support for the legalisation of euthanasia has seen a massive boost and people are opening up to listen to the arguments made in favour of legalisation of euthanasia. This change in attitudes and development of new euthanasia policies and laws can be attributed to the efforts made by the various NGOs, medical associations and organisations that are advocating for the legalisation of euthanasia and also to the rise in awareness with regard to euthanasia be that through popular culture, high profile cases or awareness drives.

However, despite the changes made in recent years with regard to euthanasia and its legalisation and the awareness around euthanasia, it still remains an issue which is highly controversial and includes the ethical and moral values and beliefs of the society.

1.4: AIM

The main purpose of this study is to understand euthanasia under the constitutional schemes of different countries around the world and make a comparative analysis of the same. It cannot be denied that awareness regarding euthanasia is very minimal, especially in India and the absence of any specific legislation to regulate euthanasia in the country only makes the situation worse. Again, the polarising and contradictory attitudes regarding euthanasia is also another problem. The subject is of particular significance because of the legal and ethical dilemmas surrounding it, especially in the Indian context as there is no specific law to regulate euthanasia in the country. In the absence of any such law, the Supreme Court guidelines given in the *Common Cause case*[8] are the only regulating law in this regard in the country. Even in the liberalised western countries like U.S.A. France, U.K., euthanasia is either illegal or only allowed in the passive form. In U.S.A. euthanasia in the active form is illegal whereas assisted suicide is legal in certain places like Washington, D.C., Oregon, Colorado, etc. The discussion surrounding euthanasia being so polarising, it has become a highly controversial issue however it still remains an unresolved and hotly debated grey area of law that requires further study.

1.5: OBJECTIVES

The aims and objective of the study are elucidated below:

- To understand what euthanasia is.
- To look at the historical background of euthanasia.
- To study euthanasia's position in India from a legal as well as moral perspective.
- To make a comparative analysis of different euthanasia laws laws in different countries to have a better understanding of India's position at the global level in this regard.

[8] Common Cause (A Regd. Society) v. Union of India, W.P.(CIVIL) NO. 215 of 2005.

1.6: SCOPE AND LIMITATION

The study will deal extensively with euthanasia's position in India and its legal implications. It will also take into account the various laws that have been developed to regulate euthanasia in different countries and make a comparative analysis of the same in comparison with the present Indian scenario. While making such comparison, the study will also briefly evaluate the international perspective on the subject. The study aims at understanding the very concept of euthanasia and its various forms and the attitudes regarding euthanasia and why they differ so much taking into account the various legal, political, religious and ethical aspects of it. It also looks into the various discussions that support euthanasia and the ones that criticise the euthanasia and its legalisation.

However due to the absence of laws regulating euthanasia in the country, lack of awareness especially on the national front and euthanasia still being illegal in most countries around the world, the scope of the study is limited and as a result only a select few countries have been studied. Moreover, due to paucity of time, only a select few cases have been studied.

1.7: STATEMENT OF THE PROBLEM

On March 9th, 2018, the Supreme Court of India made the declaration the right to die with dignity is included under Article 21 of the Constitution of India and is a fundamental right, also granting citizens of the nation the right to draft a living will. However, it is to be kept in mind that a person is allowed to draft a living will only when such an individual is in a state of mind which can be considered to be normal and healthy.

However, despite the Supreme Court's ruling, euthanasia still remains a very controversial issue and it has divided public opinion regarding the right of a terminally sick person to terminate his or her life on his or her terms. This is evident more particularly in religious groups, who are of the opinion that life is a sacred gift and is something not to be fiddled with. This stand against euthanasia can be seen in even some of the most developed countries around the world where religious beliefs, possibility of misuse of euthanasia laws, lack of awareness are some of the major hurdles which are preventing euthanasia from becoming a legal reality.

Moreover, the problem arises that in the absence of any specific law which can regulate euthanasia in the country and only the Supreme Court guidelines acting as the primary law in

the country in this respect until any suitable law is enacted by the Indian Parliament, chances of exploitation and abuse are great.

1.8: LITERATURE REVIEW

Books:

1. Neha Jain, *Should euthanasia be legalised in India* (Lambert Academic Publications, 2013)

Neha Jain's *Should euthanasia be legalised in India* makes an honest endeavour to critically evaluate and analyse the discussion surrounding euthanasia from different perspectives and puts forward the laws dealing with euthanasia with the help of precedents and provisions of different laws prevailing in India.

2. Michael J. Cholbi, *Euthanasia and Assisted Suicide: Global views on choosing to end Life* (Praeger Publications, 2017)

Cholbi's book extensively addresses the various issues and outlooks on euthanasia and assisted suicide from different point of views be it scientific, historical or legal. Though the book mainly centres around assisted suicide and euthanasia in U.S.A., it also analyses such practices in other countries and cultures. It also critically evaluates and analyses assisted suicide and euthanasia in many religious, cultural and philosophical traditions.

3. M.P Jain, *Indian Constitutional Law*, Vol 2 (8^{th} edition, Lexis Nexis, 2018),pp: 1159-1233

Although M.P. Jain's Indian constitutional law does not meticulously deal with the right to die and is more of a thematic presentation of the entire constitutional law of India, it nonetheless provides a good understanding of Article 21 and the different kinds of implied rights provided under it.

Articles:

1.Vinod K. Sinha, S. Basu, and S. Sarkhel, *Euthanasia: An Indian perspective*, Indian J Psychiatry, 2012

The practices of physician assisted suicide and euthanasia has been critically studied from an Indian perspective. The various opinions and arguments put forth by the different proponents

and as well as the critics of euthanasia and assisted suicide has also been discussed in this article. However, it is mostly limited to the psychology of the patients and provides a very limited legal perspective. Still it provides a detailed analysis of the age old debate about whether such practices should be made legal or not.

2. Sujita Pawar, *Euthanasia: Indian Socio-Legal Perspectives,* Heinonline, 2013

This article analyses euthanasia in India from a socio-legal perspective. It evaluates the adequacy and relevancy of the various legal rules and customs by taking a look at the prevailing social norms and the legal scenario existing in India. The article also takes a look at euthanasia from an international perspective and the systems evolved by other countries to deal with euthanasia.

3. Luc Deliens, Gerrit Van der Wal, *The euthanasia law in Belgium and the Netherlands,* The Lancet, 2003

Active euthanasia being considered ethically and morally wrong in most parts of the world, is legal in only a few countries. Belgium and the Netherlands are two of the few countries that legally allow active human euthanasia. Therefore, it is important to take a look at the social and legal situation in these two countries in respect of euthanasia. This article provides a very detailed analysis of the laws relating to euthanasia in the Netherlands and also Belgium focussing on the judicial trends in those countries. It also gives a brief insight into the general attitudes of the public in Belgium and the Netherlands on euthanasia.

4. Esha Jhunjhunwala, *Should euthanasia be legalised or otherwise,* 2010

This article provides a critical analysis of the arguments for and against the legalisation of euthanasia in India. It also meticulously defines the various forms of euthanasia such as euthanasia in voluntary and non-voluntary forms as well as euthanasia in the active and passive forms. It also provides information about the position of euthanasia in India till 2011 after the judgement in the *Aruna Shanbaug* case.[9]

1.9: RESEARCH QUESTIONS

Following are the research questions in respect of this study:

[9]Aruna Ramchandra Shanbaug v. Union of India, A.I.R. 2011, 4 S.C.C. 454 (India).

- What is euthanasia and why is it such a controversial issue around the world?
- What is the socio-legal position of euthanasia in contemporary India?
- What is its position around the world and how does it differ from that of India?

1.10: RESEARCH METHODOLOGY

Research Methodology is the systematic procedure of analysing, evaluating and understanding different aspects and elements of a particular topic using different skills and techniques.

For the purpose of this study analytical and doctrinal research have been mainly used. Euthanasia being a very sensitive issue, therefore it is extremely important to carefully discuss and evaluate both the arguments for and against euthanasia as both sides make really strong points as far as putting out their views regarding euthanasia is concerned. Various case laws, books and articles written by eminent scholars have been relied upon. The issue of euthanasia being a socio-legal issue, doctrinal method seems to be best suited to evaluate and understand the matter in hand.

Moreover, the application of analytical research method makes the study of the concerned topic easier as there is no dearth of information relating to euthanasia and its position in different countries.

To have a broader understanding of any topic or issue, it is important that we look at its historical background, the same has been done here with regard to euthanasia. Its historical background has been briefly discussed taking into account the past judgements and legal opinions. Hence historical method of research has also been used.

The study also aims at comparing laws relating to euthanasia in other countries with that of India to get a better understanding of India's position at global level with regard to euthanasia, thus comparative research method has also been used for this purpose.

CHAPTER 2: HISTORICAL BACKGROUND

2.1: Ancient Period

Even though it may seem like the practice of euthanasia is relatively new and a result of modern ideologies, however, it is not so. Euthanasia has a long standing history and was practiced in different parts of the world even though it was in different forms and not necessarily known as euthanasia at that time. However, it is also important to keep in mind that the practice of letting a patient, whose improvement from his illness was not possible, die was also prohibited from time to time. For instance, euthanasia was not permitted by physicians in Mesopotamia. Similarly, the practice of killing off patients suffering from serious illness was not permitted in the Jewish society as they strictly followed the teachings of the Bible where the Sixth Commandment provided that "Thou shalt not kill". According to Judaism, life was something that was sacred and something that should be taken so unconscientiously and there was no difference between euthanasia, suicide and murder, all of which they considered sins. Similarly, there are also records that point to the drowning of untreatable patients in Ganges in ancient India.

However, there were also societies that were very open to the idea of shortening a person's life who was suffering from a terminal illness and the Roman and Greek societies were the perfect examples of this. This practice was prevalent in the ancient period, more specifically in ancient Rome and Greece where a poisonous plant known as hemlock was administered to some people as a way of killing them mercifully or to accelerate death. The practice of helping a person to die who was suffering from untreatable sickness or was in extreme pain was prevalent in Greece during the ancient times. A poison or something similar to it was given to the person suffering by the physician. Both ancient Roman and Greek societies had a very tolerant attitude with regard to suicide. Any person who wanted to end his/her life could apply to the Senate citing his/her reasons to do so and if the Senate was satisfied with such reasons then they would allow that person to end his/her life and in a way similar to euthanasia they would even be provided with a poisonous plant named "hemlock" to fasten the process.

The practice of euthanasia in that period had many eminent supporters such as Socrates, Plato, etc. However one important person who was against this practice was Hippocrates, who vehemently advocated against it. In the famous "Hippocratic oath", Hippocrates stated

that, administering poison to someone even if asked to do so is something he will never do nor would such a course be suggested by him.

However, the practice of euthanasia did face a lot of opposition from various institutions and people. For instance, Pythagoras and his supporters were completely against the practice of euthanasia and suicide.[1]

2.2: Twelfth to Fifteenth century

The rise of religious institutions and teachings led to the rise in opposition of euthanasia in the middle ages, especially in Europe. Various religions such as Christianity, Islam, Judaism, etc. put human life above everything else and killing oneself meant disobeying god and it was considered to be against the principles of these religions. The general view at that time was that suicide and related practices were considered to be inconsistent with societal and religious values and ideals. These religions re-emphasised the Hippocratic school of thought which condemned euthanasia and throughout this period, i.e., twelfth to fifteenth centuries, the overall medical opinion regarding euthanasia was in complete tandem with these religious views.

A major critic of suicide at that time (13^{th} century) was Thomas Aquinas whose catholic philosophy was very much against suicide and his teachings would later go on to shape Christian thought on euthanasia and suicide. The general opposition of suicide and euthanasia continued during this period through the period of renaissance.

2.3: Fifthteenth to Seventeenth century

Even though the religious opposition to suicide and euthanasia was still prevalent during the fifthteenth till the seventeenth period, there were some eminent scholars and philosophers such as Thomas More and Francis Bacon who were not shy to show their support with regard to euthanasia. In his book "Utopia", Thomas More advocated for euthanasia where if a patient was terminally sick and was in intolerable pain and agony then he could be killed through euthanasia if that patient gave his consent to the same.

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[1] *A General History of Euthanasia*, THE LIFE RESOURCES CHARITABLE TRUST (Dec 2, 2018, 10:05 PM), http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1.

Similarly, another the famous philosopher who was in favour of euthanasia was Francis Bacon, who vehemently supported euthanasia. With regard to medical practice and medical practitioners Bacon believed that a certain set of skills need to be acquired by physicians and detailed attention should be paid so that death may happen in a more easy manner and without any kind of suffering.

This according to him is what is called "euthanasia exterior" or "outward euthanasia" where in exceptional cases the ending of a life was permissible to end the pain and suffering.[2]

Carl F.H. Marx who was another personality who was in support of euthanasia was in fact, greatly inspired by Bacon's philosophy in the later nineteenth century. According to him, it was the duty of a doctor, morally, to make sure that a patient does not suffer when dying and the death should be as painless as possible.

2.4: Eighteenth to nineteenth century

In the eighteenth century in Prussia, a reduction in punishment of a person who helps a patient suffering from terminal sickness kill himself was introduced by the way of a law in 1794. Similarly the eighteenth century saw the beginning of a slow change in the attitudes and opinions surrounding euthanasia, especially in the United States. This period saw the emergence of modern system of hospitals. However there was still strong opposition to euthanasia, for instance, in 1828, the first recorded or known legislation against euthanasia was passed in the United States in New York.[3] When such a statute was passed by New York, various other states in America did the same. Moreover, a criminal code was drafted by a commission in New York which provided for punishment to anyone who aided someone in committing suicide and furnished someone with any kind of weapon or thing which could be used by that person to kill himself or herself and the person who provided him or her with that weapon or thing knew that.

However, various scholars and eminent personalities started to show their support for euthanasia. Robert Ingersoll was a supporter of euthanasia. Samuel Williams in 1870 suggested the use of morphine to put an end to someone's life who wanted to die because of serious illness. In 1894 he stated that people who are suffering from any kind of terminal

[2] *Id.*
[3] Act of Dec. 10, 1828, ch. 20, §4, 1828 N. Y. Laws 19 (codified at 2 N. Y. Rev. Stat. pt. 4, ch. 1, tit. 2, art. 1, §7, p. 661 (1829).

illness should have the right to end their lives to get rid of the pain. However, he also mentioned that precautions must be taken to make sure that such a practice is not abused and it should only be done when it is established beyond any uncertainty that such a decision was in fact the patient's own and not a result of any kind of miscommunication of coercion.

A similar take was given by Felix Adler, even though he did not reject religion, in fact from a religious point of view, he argued that it is ethical to let a person end his life and doctors should also be allow in assisting such suicides.

Carl Friedrich Heinrich Marx who was a noted German physician of the nineteenth century was a major supporter of euthanasia and he stated that every man has a right to die. According to him religion or philosophy play a very small role in determining what should be done with a person who is dealing with an untreatable disease and wants to die and that it is a physician who is actually the best suited to decide the ailment of such patients and whether he or she should be allowed to be euthanized. However, he did completely negate the role of religion and philosophy in such cases as according to him they do help in providing some comfort in such situations but that is all that they can do and not much more.

Towards the later part of the nineteenth century societal attitude towards euthanasia began to slowly change and this support was even extended to euthanasia in the active form. It was during this period that society shifted its focus from religion to science and various theories such as those of Darwin that questioned the very existence of a "God". This in turn led to growing dissent amongst those people who were tired of being just religious explanations for their questions and not practical or logical ones. Many questioned whether it was for God alone to decide whether one should live or not.

Jost, who was a German lawyer, wrote in his book, "Killing law" that the practice of letting terminally sick patients die should be a reality.

During the later part of the nineteenth century, many scholars, philosophers, thinkers, however, began to look at terminally sick patients as a burden to the society and that they have nothing to provide to the society and hence, they should be allowed to die. This was evident in the field of eugenics where there was a growing trend of sterilisation of patients who were untreatable or mentally ill.

A similar opinion was provided by German Philosopher, Nietsche, who had very radical views with regard to people who were terminally sick or ill. According to him such people were nothing but a burden to our society and their lives had no value.[4]

2.5: Twentieth Century and modern period

This period saw the explosion of the debates and controversies surrounding euthanasia as many religious groups and medical associations opposed the legalisation of euthanasia citing religious incompatibility and ethical violation of medical duties,[5] on one side, whereas on the other side rise of individual choice and freedom demanded that euthanasia being a personal choice should be allowed.

In the U.S.A. again in 1904, a legislation aimed at legalisation of euthanasia was introduced by Henry Hunt in Ohio's General Assembly which aimed at anaesthetics being allowed to be administered to patients to end their lives as long as the patient was of sound mind and legal age and suffered from a terminal illness. A similar legislation was passed in Iowa. Similarly, in New York, the Medical Association of the state suggested that painless and gentle death should be permissible. Later on in 1938, the Euthanasia Society of America was created in the state of New York.

Similarly, there was a rise in the demand for legalisation of euthanasia in Germany too around this period. Various books were published by professors, scholars that advocated for mercy killing and some even promoted involuntary euthanasia as some considered the terminally and mentally ill to be worthless and of no real value to the society.

Adolf Hitler who was inspired by such writings went on to promote these ideals so much that in 1935, handicapped children and patients who were considered to be useless and untreatable were allowed to be euthanized. The Hippocratic oath was also replaced by the Gesundheit as a result of which a doctor's first duty was now towards the Nazi state and not to his or her patient. The interest of the Reich was now of paramount importance. In 1939, a decree which allowed the grant of "mercy death" by the doctors was signed by Hitler so that patients who

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[4] *Supra* note 5.

[5]. MICHAEL J. CHOLBI, EUTHANASIA AND ASSISTED SUICIDE: GLOBAL VIEWS ON CHOOSING TO END LIFE, 10-11 (1st ed. 2017).

were considered to be untreatable or incurable could be killed. This led to wide spread abuse of this law by killing of children who were considered to be suffering from "serious hereditary diseases", people suffering from down syndrome, brain tumour, etc. were also killed off sometimes without their consent. People who were mentally ill, epileptic, psychotic, old people with diseases such as Parkinson's were sent to the Gas Chambers to be killed off.[6] This was all a part of the Nazi Euthanasia Program which was a way for the Reich to eliminate anyone who was not an Aryan or was physically and mentally handicapped or a homosexual.

In the 1935, Charles Killick Millard founded the "Voluntary Euthanasia Legalisation Society" which called for euthanasia being legalised in U.K. However, the very next year a proposal which sought to make euthanasia legal in the country was rejected by the Parliament. Another important incident that took place during this period was the administration of morphine to hasten the death of King George V in 1939.

A similar approach was taken by the other developed nations especially in Europe, where in 1922, Russia reduced the punishment for euthanasia being committed by medical practitioners however after a short period of time large scale opposition led to the abolishment of this law.

In 1973, the Voluntary Euthanasia Society of Netherlands (NVVE) was created as a direct consequence of a case involving a Doctor who received a light sentence for being found guilty of voluntary euthanasia which caused a huge controversy in Netherlands with many arguing that a Doctor should not be punished for euthanizing a patient who wants to end his or her life.

Similarly, in 1995 a euthanasia Bill was approved by the Northern Territory of Australia however the Bill was overturned in 1997.

Some states in the U.S.A. also permitted euthanasia during the twenty first century such as Washington, California,Colorado, Oregon, etc.

In 2000, the Netherlands legalised both euthanasia in the voluntary form and assisted suicide. Similar approach was taken by Belgium in 2002.

Switzerland, as far euthanasia is concerned is known as the Mecca of death. Euthanasia law in Switzerland came into effect in 1942 with the actual objective of the law being to provide a

[6] *Supra* note 5.

death which was dignified and without any pain. However, in recent years many people who are mentally and physically challenged are coming to Zurich to end their lives. Fatal drugs can be given to citizens of the country and even a non-citizen or a foreigner as long it is with their consent or an active role is being played by the person who is to be euthanized.

As far as India is concerned, euthanasia was only legalised in the passive form by the Supreme Court in 2018.

CHAPTER 3: EUTHANASIA IN INDIA

Euthanasia in India India was frowned upon for a long time given its sensitive and controversial nature. It was only in 1985 that an attempt was made to legalise it in the form of a private Bill which was introduced in the Upper House in the Maharashtrian Legislature. The Bill was meant to provide protection to doctors who at the instance of terminally sick patients remove their life support. It granted them exemption from any kind of civil or criminal liability for doing so. Provisions that dealt with advance directives were also included in the Bill. Moreover, immunity from such liability whether civil or criminal was also extended to patients who decided to end their lives through the practice of euthanasia.[1]

When discussing euthanasia in India, we can divide its position into two stages, before the Aruna Shanbaug case and after the Aruna Shanbaug case. Although there have been cases before the Aruna Shanbaug incident where the judiciary has recognised that the right to die is also a important aspect of individual choice and freedom but nothing concrete or productive came up from those cases and it was only after the Aruna Shanbaug incident that a new legal dimension was given to the right to die when the Supreme Court acknowledged that euthanasia in the passive form could be allowed under certain circumstances. On the 9th of March, 2018, euthanasia in the passive form was legalised by the Apex Court in a decision that was given as a part of the infamous case of Aruna Shanbaug.

3.1 Before *Aruna Shanbaug* Case

Euthanasia in India before the *Aruna Shanbaug*[2] and *Common Cause*[3]cases was very much illegal in our country, even though there were some very important cases in this regard even before the aforementioned cases where the courts have shown their support for "mercy killing" or euthanasia but in finality there was no legal scope for euthanasia.

In the case of *Maruti Shripati Dubal v. State of Maharashtra*,[4] the petitioner had an accident because of which multiple head injuries were suffered by him and as a direct consequence of these injuries he became mentally unstable. It was later found that the petitioner suffering

[1]Supryo Routh, *Right to Euthanasia; A case against criminalisation*, 112 Criminal Law Journal, 196, (2006).
[2]Aruna Ramchandra Shanbaug v. Union of India, 2011, 4 S.C.C. 454 (India).
[3]Common Cause (A Regd. Society) v. Union of India, W.P.(CIVIL) NO. 215 of 2005 (India).
[4]Maruti Shripati Dubal v. State of Maharashtra,BomCR, (1986) 88 BOMLR 589 (India).

from a severe case of schizophrenia. Because of this, suicide was attempted by him and as a result he was later registered for an offence under Section 309 of the Indian Penal Code.[5] When this case was brought before the court, it was stated by the Bombay High Court that there are aspects to a right that can be both positive and negative. It also held that the "right not to live a forced life" is included in "right to live" as provided by Article 21 of the Constitution.[6] Further Section 309 of the Indian Penal Code was held to be unconstitutional as it was in direct contravention of Articles 14 and 21 of the Constitution of India.

A similar approach was taken by the Supreme Court in the case of *P. Rathinam,*[7] where it again held Section 309 to be unconstitutional and it also argued that the "right to die" was an integral part of Article 21. In this case the Court acknowledged that right to life also means the right to not live a life which is forced. The Court observed that section 309 was indeed very cruel and inhumane and it should be removed from the Code. The Court referred to the 42nd Report of the Law Commission which recommended the removal of the said section from the Code. It also looked to the legal ramifications of suicide in the U.K. and U.S.A. where suicide is not a crime and has been decriminalised. It was further observed by the Court that removal of the said section would attune the criminal law in India to the international wavelength. This liberal and progressive observation of the Supreme Court reached its peak when it stated that suicide involves underlying and inherent psychological problem and in no way does it mean the manifestation of any kind of criminal behaviour or impulse. What a person who attempts suicide needs is care and counselling and not any kind of punitive treatment or jail time.

However, in the case of *Gian Kaur*[8] a different approach was taken by the Apex Court with regard to euthanasia where it overruled the decisions of the previous cases. The verdict was made by a bench consisting of five judges. This case at that time cleared all the ambiguities and uncertainty regarding section 309 of the Indian Penal Code and its validity. In this case the defendant and her husband helped in abetting the suicide of their daughter-in-law. The Court held "right to die" to be unconstitutional as Article 21 does not permit it. It was observed by the Court that "death with dignity" does not include an unnatural extermination of existence or life which shortens the natural life-span of a person. Also, Section 309 of the Indian Penal Code was held to be legal.

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[5] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1850 (India).
[6] INDIA CONST. art. 21.
[7] P. Rathinam v. Union of India, 1994 A.I.R. 1844, 1994 S.C.C. (3) 394 (India).
[8] Gian Kaur v. State of Punjab, 1996 A.I.R. 946, 1996 S.C.C. (2) 881 (India).

Moreover, the Court also stressed that legalisation of euthanasia has no scope in India as it would be a direct violation of sections 306 and 309 of the Indian Penal Code.

The aftermath of this case was that the Law Commission in its 156th report made the recommendation to retain Section 309 of the Indian Penal Code even though the Commission in its earlier 42nd report suggested that Section 309 should be repealed. As a result of the recommendation of the 42nd report, the Indian Penal Code (Amendment) Bill of 1978 was passed by the Rajya Sabha which provided for the removal of Section 309 but due Bill Lapsed as the Lok Sabha dissolved.

The Law Commission in its 196th report showed a more liberal approach toward to treatment of patients who were terminally ill. This report dealt with the application of law to terminally ill patients who wished to end their lives without the support of any kind medical treatment or life support.

The recommendations that were put forth by the Commission are as follows:

- Every terminally sick patient who is competent should have the right to deny any kind of medical treatment and the doctor looking after such patient shall be bound by such decision. However, it is imperative that the doctor is satisfied that such a decision was taken by a patient who is competent and that the decision is an informed one and it is also necessary that such a decision is independently taken by the patient without any kind of coercion, influence or pressure from anyone else.

  However, a doctor is allowed to provide any kind of care which is palliative in nature so as to provide relieve to the patient from pain or discomfort whether physical or psychological in nature.

- The opinion of three expert medical practitioners, who are to be selected by the appropriate authority, is required before a doctor can withdraw or withhold any kind of life support. Moreover, strict adherence to the guidelines provided by the Medical Council is required when a decision to remove life support is made.

  A register must also be maintained by the doctors with respect to such patients whether they are competent or not. Such register should contain the decision taken by the concerned doctor and reason behind it. It must also contain the grounds on which the respective doctor considers the patient to be competent, the reasons as to whether the decision of the patient is an informed one or not along with the name, age, gender,

etc. of the patient. The patient's identity must be kept private. The patient concerned has to to be informed by the doctor before his or her life support is withdrawn and in case the patient is not conscious then his or her relatives must be informed. If all these steps are not taken, then the life support or medical treatment cannot be withdrawn.

- Any patient who has decided to end his or her life through the withdrawal of any kind of life support or medical treatment must not be punished under Section 309 of the Indian Penal Code for attempting suicide.

  Moreover, protection from prosecution should also be provided to the doctors for abetting suicide under sections 305 and 306 of the Indian Penal Code or from Section 304 which deals with culpable homicide not amounting to murder when a decision is taken by the doctors to withdraw life support of the patient when such a decision is in the best interest of the concerned patient(if he or she is not conscious) or a follow up of an informed decision by a patient who is conscious. Such protection must also extend to the other authorities of the hospital. Any act of a doctor which relates to the withholding or withdrawal of life support should be considered as legal and lawful if it is done in accordance with the rules and protection must be provided to them if any kind of civil or criminal action is made against them.

- The Commission also recommended the introduction of an enabling provision through which all the concerned persons in relation to the patient such as his or her parents, relatives, the doctors attending the patient concerned and even the patient himself or herself can approach a High Court by moving its Division Bench so that any decision to withdraw, withhold or continue the treatment or life support of a patient can declared as lawful or unlawful depending the circumstances. Such a decision must be taken by the High Court concerned within a period of thirty days. Once a declaration has been made by the High Court which declares such a decision to withdraw or withhold any kind of treatment or life support to be lawful then no subsequent proceeding whether civil or criminal can be initiated against the parties mentioned above with regard to the same patient.

  However, it is also to be noted that it is not mandatory to approach the court in every case. Any decision or action to withdraw life support or treatment which is taken after compliance to rules and provisions provided shall be considered to be lawful and it can even be a good defence in any consequent proceedings.

- The identities of such doctors, patients, hospitals must not be disclosed. For this, the Commission suggested that description of the people so concerned should be done by using the letters of the English alphabets and their identities cannot be disclosed before the disposal of the case by anyone, not even by the media .

- Guidelines must be published by the Medical Council of India with regard to the procedure of withdrawing of withholding life support or treatment of a patient. Such guidelines can be published in the Official Gazette or on the Medical Council's website.

Similarly, in its 210th report, the commission made the recommendation that steps should be taken to repeal the antediluvian law provided under Section 309. It was the thought of the Commission that suicide was something which could be related to mental illness and hence it deserved care and healing rather than punishment.

In *Naresh Marotrao Sakhre v. Union of India*[9] it was stated by Justice Lodha that there is no difference between euthanasia and homicide and the circumstances under which it is performed don't matter.

Moreover, in 2007 a Bill titled "The Euthanasia (Permission and Regulation) Bill, 2007 was introduced in the Lok Sabha which aimed at providing humane, considerate and painless death to patients who were suffering from incurable diseases or any matter or reason connected therewith. One important aspect of the Bill was that it defined euthanasia. Euthanasia under the Bill was defined as effectuating a death which is painless and gentle with regard to patients who were suffering from an kind of disease which is incurable and extremely painful and as a result makes such persons totally bed-ridden or unable to accomplish their daily chores and activities without any kind of assistance. The Bill recognised the rights of such patients to end their suffering and agony in a manner which is dignified and on their own terms as in such cases there is no scope of treatment or recovery. The Bill also acknowledged the possible abuse of such law and hence provided that there should be legal mechanisms to prevent its misuse. Although the Bill was progressive and was a step in the right direction, however like the Bill of 1985, it could not become a law.

[9]Naresh Marotrao Sakhre v. Union of India 1996(1), BomCr 92 (India).

Therefore it can be said that the stance of the judiciary prior to the *Aruna Shanbaug* case was mostly against euthanasia however in this landmark case, a drastic change was observed as the Supreme Court permitted passive euthanasia and even laid down certain guidelines regarding the same.

3.2 After *Aruna Shanbaug* case

The Aruna Shanbaug incident completely changed the way we looked at euthanasia in our country. This case was a turning point in the controversy surrounding euthanasia. Aruna Shanbaug worked as a nurse in King Edward Memorial Hospital in Mumbai. She was raped and sodomised by a person working as a sweeper in the same hospital. The man also strangled her and as a consequence she was left in a permanent vegetative state with zero awareness of anything happening around her and a brain which was practically dead. She was kept under treatment in the same hospital and the staff of the hospital looked after her. However, a petition was filed on her behalf by Pinky Virani who was a friend of hers stating that "continued existence of Aruna is in violation of her right to live in dignity." The Supreme Court on the 17th of December, 2010 admitted her plea and later asked for a report on the medical condition of Aruna. On 24th January, 2011, a medical panel consisting of three expert doctors was established by the Court for the purpose of examining Aruna Shanbaug. The panel held that she fulfilled almost all the criteria that would be required to be considered to be in a persistent vegetative state. According to the report submitted by the panel:

- The patient is not entirely aware of her surroundings although some minute reaction is there on her part, which she does by moving her hands in a certain way, especially when people are around her. Because of suffering from malaria when she was in coma, she was being fed through an artificial feeding tube although sometimes she could be fed liquids through her mouth.

- When the patient was physically examined, it was found that although she was conscious but there was no cooperation from her part as she was not aware of her surroundings. She could not respond to the verbal commands even though she seemed to be conscious.

- The panel concluded that neurologically her consciousness was intact but she was not aware of her surroundings.Her auditory, somatic, visual and motor neural pathways were intact but there was no evidence with regard to the patient's awareness to these senses. This was observed when she could not respond to any kind of verbal commands or when her name was called.

- The hospital staff, however, have a strong sense of compassion for the patient. She was being taken care of by the staff without any kind of problem. They wanted to take care of her till she dies of natural causes and were not particularly in favour of euthanizing her.

However, the Apex Court rejected the petition on 7th March, 2011 by not acknowledging Pinky Virani as Aruna's next friend and instead recognising the staff of the K.E.M Hospital as the next friend and as the hospital staff did not want to euthanize Aruna, Pinky's petition was refused and thereby the Court did not agree to let Aruna die by withdrawing her life support.[10]But some guidelines were issued by the Court that permitted euthanasia in the passive form in India but only under circumstances which are exceptional.The Supreme Court made it clear that passive euthanasia can be permitted in India and laid down certain guidelines and safeguards which must be followed in the case of a patient who cannot convey his or her consent due to unsoundness of mind or coma which is irreversible. The Court, however, stated that euthanasia in the active form cannot be made legal. Another recommendation of the Supreme Court was the decriminalisation of attempted suicide under the Indian Penal Code.

The guidelines that were laid down by the Supreme Court are as follows:

- The decision to withdraw the life support of a patient must be taken by the close relatives, spouse, next friend, doctors taking care of the patient or parents of the patient concerned. However such a decision must be taken in the interests of the patient and the approval of the High Court is also required. The High Court then must consult a panel of three expert doctors and consider their opinions.

[10]*India court rejects ArunaShanbaug euthanasia plea*, BBC NEWS (May 10, 2019, 10:04 AM), https://www.bbc.com/news/world-south-asia-12662124.

- The attendance of at least two witnesses are mandatory when such a decision is taken and a Judicial Magistrate of the First Class must countersign that decision. Moreover, the medical board which the hospital, in which the patient is being treated, has set up must approve that decision.

An important question that came to light during this case was that whether the Court has the power to grant authorisation for the withdrawal of life support in case of a patient who is incompetent to convey his or her consent and if so then under what law and under which provision of such law. It was stated by the Court that under Article 226 of the Constitution of India, the High Courts can give a decision which approves the withdrawal of life support in case of an incompetent patient as Article 226 of the Constitution authorises the High Court to also issue orders or directions along with writs.

When an application asking for such approval to withdraw the life support of a patient is filed or submitted before a High Court, a Bench, comprising of at least two Judges, should be constituted by the Chief Justice of the concerned High Court. The primary function of the Bench would be to decide whether such an application should be approved or not. However, before deciding on the matter, three doctors of reputable stature, who are to be nominated by the Bench itself, must be consulted by the Bench and only then can the Bench grant its approval if it deems it fit. It is preferable that the committee of doctors should consist of a neurologist, a psychiatrist and a physician.

The Committee so nominated by the Bench should closely observe and examine the patient concerned and also look at his or her report. The staff of the hospital looking after the patient should also be consulted and their opinions should be taken into account and then the report of the Committee can be submitted to the Court.

Following the decision in the case of Aruna Shanbaug, the Law Commission in its 241st Report recommended that passive euthanasia in the case of patients who are in a persistent vegetative state or are of unsound mind thus lacking the capacity to give their consent should be allowed. In this regard, the Commission prepared a draft bill titled, the Medical Treatment of Terminally Ill Patients (Protection of patients and medical practitioners) Bill. As a result, the draft bill was uploaded by the Health Ministry on its website in 2016.

Following is a summary of the recommendations made in the 241st report of the Law Commission:

- The legalisation of euthanasia in India has been supported by the Commission and it also recommended the suggestions of the 17th Law Commission and those provided by the Supreme Court as far as procedural safeguards with regard to euthanasia were concerned.

- Any terminally sick patient who is an adult and is capable of taking such decisions can be allowed to decide as to whether he or she wants to continue their life support or not. Such authorisation can also be extended to patients who are above the age of sixteen. If the physician is of the opinion that the such a decision is an informed one, then he or she must respect such decision.

- If such a patient is not competent to make a decision which is an informed one then such a decision can be made by the physicians attending such patient or the patient's relatives. However, the prior approval of the High Court is necessary. It is interesting to note that the 196th report of the Law Commission made a different recommendation in this regard which provided for an enabling provision to move the High Court.

- After receiving an application for such approval, the High Court will seek the expert opinion of a medical panel as well as the wishes of the patient's family. After considering all these things, the Court will give its decision. The Court in this capacity will act as "parenspatriae" and shall give due importance and regard to the patient's interests.

- The Commission also recommended for protection of the doctors from any kind of civil or criminal liability provided while exercising their duties, they complied with the provisions laid down in the Bill suggested by the Commission.

- The patients who decide to end their lives by the way of refusal of medical treatment should also be extended similar immunity and protection.

- The Commission, however, recommended against the legalisation of any kind of advance directive from such patients.

- The Commission also recommended the issuance of guidelines with regard to the withdrawal of medical treatment to such patients from time to time by the Medical Council of India.

More recently, in the *Common Cause* case,[11] it was held by the Supreme Court that "death with dignity" is included under "meaningful existence" and that it is one's fundamental right to die with dignity. The Court also recognised "living wills" by patients who want to discontinue their artificial life support. Certain guidelines were also laid down by the Court in this regard

The guidelines or instructions under which a "living will" can be made are as follows:

- The patient who is making the living will should be of sound mind and a clear communication must be made by him which indicates his intent. Moreover, he should not be forced or influenced to take such a decision as the decision must be voluntary.

- The document must be in written form.

- The will should make it clear that the person is fully aware of the consequences ensuing from his decision along with stating the circumstances under which his life support must be discontinued. A relative who can take a decision on his behalf must also be named in the will.

- At least two witnesses should be present when the will is being signed by the person concerned and must be countersigned by a Judicial Magistrate of the First Class.

[11]Common Cause (A Regd. Society) v. Union of India,W.P.(CIVIL) NO. 215 of 2005(India).

In the wake of the *Aruna Shanbaug* case, a legislation permitting passive euthanasia entitled, "Treatment of Terminally Ill Patients Bill, 2016" was introduced in the Parliament which is currently pending. The Bill allows terminally sick patients to take a decision to withhold their medical treatment, provided they are aware of the consequences and have taken an informed decision and are of sound mind. If passed, then this Bill can be of great assistance in spreading awareness and providing clarity about the liability of doctors and physicians. It provides protection to patients and medical practitioners from any liability for withdrawing medical treatment.

CHAPTER 4: POSITION IN OTHER COUNTRIES

4.1: Netherlands

Netherlands is one of the very countries in the world where both active and passive euthanasia are lawfully allowed. There is no denying that the Dutch country has a very liberal and open understanding of euthanasia and as such knows how to deal with such a controversial issue. Its medical association recognises that healing and promotion of health are not the only elements of medical practice as it also involves assisting patients who are suffering from incurable illness to die a dignified death.[1]

The discussing of euthanasia from a legal perspective became hot as a result of the *Postma Case*[2] where a woman was euthanized by her daughter who herself was a physician on her repeated requests. Although the physician was given a light sentence, it was still observed by the Court that a doctor is not always required to keep his or her patients alive if they are suffering and certain conditions were provided by the Court as to when a doctor would not need to keep his or her patient alive.

Although initially like most countries, Netherlands too viewed euthanasia to be similar to murder, however, in 1984, the Supreme Court of Netherlands delivered a verdict which basically legalised euthanasia in the voluntary form. However, adherence to certain guidelines by the doctors was mandatory. But the problem at that time was that under the Dutch criminal law physicians could still be prosecuted for euthanizing someone. This verdict was given in the Schoonheim case, where a patient who was 95 years old and bed ridden conveyed her wish to die. The patient was completely dependent for her bodily functions on the staff of the hospital. It was decided by her doctor that it is better that she be euthanized after consulting with another doctor and reaching to the conclusion that the patient is unlikely to recover from her disease. The doctor's defence was accepted by the Court that he was faced with a predicament where he had to either preserve the life of the patient or help the patient get relief from her pain and suffering and after extensive consultation and

[1]Nuno Ferreira, *Revisiting Euthanasia: A Comparative Analysis of a Right to Die in Dignity*, (2005), Zerp Discussion Paper No. DP 4/2005.
[2]District Court, Leeuwarden, 21 February 1973, N.J. 1973,(No. 183) (Netherlands).

examination, he chose the latter. This was the first case where a physician was not convicted for euthanasia.

The Parliament in the year 2000, however, passed a legislation which led to the legalisation of euthanasia in the country. By doing so, Netherlands became the first country in the world to legalise euthanasia in both active and passive form.

The "Termination of Life on Request and Assisted Suicide (Review Procedure) Act, which was passed in 2001 and came into effect in 2002 regulates euthanasia in the Netherlands. When Netherlands passed this Act, it became, at that time, the first country which made "active euthanasia" legal. However, it is important to note that even today euthanasia and "physician assisted suicide" are considered to be criminal offences in Netherlands but due to the passing of this Act a physician who observes certain conditions provided under Article 2 of the Act cannot be punished.

Article 2 of the Act provides that the physician should be sure that the request to be euthanized has been voluntarily made by the patient and that it is a well thought out decision. Moreover, the patient should be suffering from unbearable pain. There must a conviction on the part of the patient that this is the final resort as there is no other option or remedy open to him. The physician must also let the patient know about his or her medical condition and what options the patient has. The details about the patient's condition and disease must also be consulted by the physician with another physician who is independent who has previously examined or treated the patient and then he or she must give his or her opinion in the written form regarding due care being taken by the present physician. He or she must have the conviction that due care has been taken by him or her while terminating the life.[3]

Moreover, a patient who had previously shown to have a prudent comprehension of his or her decision to end his life but cannot express his or her will or consent, then his or her request must be carried out by the physician.

This Article also deals with euthanasia with regard to children. For Instance, a minor who is between the age of 16 and 18 years, and understands the consequences and effects of euthanasia then the physician may terminate his life as per his request, however, the parents

[3]Termination of Life on Request and Assisted Suicide (Review Procedure) Act, 2002, art. 2.

or the guardians of the patient must be involved in the decision. Similar is the case with patients who are between 12 and 16 years old.

Moreover, the physician concerned must also submit a report of the euthanasia or assisted suicide done by him to the medical pathologist, after that the report is sent to the Regional Review Committee which makes the assessment if the physician has duly observed the conditions laid down in the Act. If it is found that the conditions have not been observed by a physician then he can be punished by imprisonment which can extend to twelve years. Article 3 of the Act provides for the establishment of a Regional Committee, which is to be composed of members in odd numbers. One of the members must be an expert in law and he or she should be the chairperson of the Committee, one should be a physician and another person who is an expert of moral and ethical matters.

It was found that in 2016, an estimated 6,091 cases of euthanasia took place which accounted for about 4 percent of deaths in the country.[4]

Presently, physicians in Netherlands can only euthanize patients if their suffering is deemed to be "hopeless and unbearable". Thus, cases of euthanasia in Netherlands are mostly limited to patients who are dealing with serious diseases and have no scope of recovery, such as extreme pain or asphyxia and hypoxia, although, it is not uncommon to to see patients who are mentally ill to be euthanized if they are not treatable or have no scope of getting better. This is mostly seen in cases of dementia where people have stated in their wills that if they end up suffering from dementia then they would like to be euthanized.

In 2016, it was announced by the Dutch health ministry that they are working on a new legislation that would permit euthanasia in cases where the patients are not suffering from any kind of terminal illness, if the patient feels so.

The Dutch government has played a vital role in normalising euthanasia throughout the country of Netherlands by carrying out various research programs and awareness drives at a national level. However, it is still to be kept in mind that killing someone on his or her request still remains a crime in the country. The difference here is that, if a physician ends a patient's life in accordance of the conditions mentioned above and reports the same to the concerned authority, the that physician will not be criminally prosecuted.

[4]*Number of official cases rise 10% in the Netherlands*, DutchNews.nl, (Feb. 3, 2019, 10:15 AM) https://www.dutchnews.nl/news/2017/04/number-of-official-cases-of-euthanasia-rise-10-in-the-netherlands/.

Thus, it can be said that the position of Netherlands when it comes to euthanasia is very progressive. This can be attributed to the religious and social tolerance prevalent in the country which has not put any kind of hindrance in realising the need for respecting individual freedom. . In Netherlands, the standard rules of euthanasia are being introduced by the help of jurisprudence.[5]

4.2: U.S.A.

When it comes to U.S.A., the legality of euthanasia is a bit complicated as it is still illegal in most states of the country. However, assisted suicide is legal in some states. Some of the few states in which it is legal are California, Washington, D.C., Colorado, Vermont, Oregon, Hawaii, New Mexico and the issue is currently under dispute in the state of Montana.[6] Though euthanasia and assisted suicide are not so different and they are often used interchangeably, but there is one small difference. Assisted suicide denotes the practice where a patient voluntarily ends his or her life with some assistance from the doctors whereas in euthanasia a patient's life is terminated by a doctor through means which are painless.

As already stated above, the advocacy for the legalisation of euthanasia in the U.S. began in 1870, when Samuel Williams advocated for the morphine and anaesthetics to end a patient's life with his consent. In the following years, various debates took place in America which ultimately led to the passing of the Ohio Bill which legalised euthanasia in 1906, however, the Bill later became defunct. Several cases in the later period kept the issue of euthanasia in the spotlight such as the case of Karen Ann Quinlan.[7] In this case, the parents of Karen Ann Quinlan, who was kept alive with the assistance of artificial means, were allowed to discontinue her life support.

An important case which brought mainstream attention in the 1990's to euthanasia was that of Dr. Kevorkian. He was infamously dubbed "Dr. Death" by the media at that time. A retired pathologist, Dr. Kevorkian assisted close to 130 people in committing suicide. In 1993, his practice was challenged on the ground that it had violated a Michigan law under which physician-assisted suicide was illegal. However, he received widespread support and as a

[5]Luc Deliens, GerritVan der Wal, *The euthanasia law in Belgium and the Netherlands,* THE LANCET, (Feb. 5, 2019, 08:00 PM), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(03)145205/fulltext?code=lancet-site.

[6] Allison Hanley, *the "Right To Die" in America: New Trends Explained*, RUGGLES MEDIA, (Feb 5, 2019, 08:15 PM),http://www.northeastern.edu/rugglesmedia/2016/04/20/right-to-die-in-america/.

[7]*Re* Quinlan, 70 N.J. 10, 355 A.2d 647 (1976).

result it was argued by him that any law which expressly prohibits euthanasia is violative of an individual's right to self determination and individual liberty and freedom.

But later in 1999, he was convicted and awarded a sentence of 10 to 25 years of imprisonment by a court in Michigan for the second degree murder of a man who was suffering from "Amyotropic Lateral Sclerosis" also known as ALS.[8]

It was also found that before being convicted while he was carrying on his practice many of the patients who seeked his assistance in dying were not actually terminally sick .

Another case was that of *Washington v. Glucksberg*[9]where the Supreme Court of the United States stated that the "Due process clause" did not protect the right to assisted suicide. In this case the ban made against assisted suicide by the state of Washington was challenged by Dr.Glucksberg along with some other physicians and patients who were terminally sick and an organisation called Compassion in dying. Their contention was that the Fourteenth Amendment which dealt with due process granted protection to assisted suicide under individual liberty. The U.S. District Court ruled in favour of Glucksberg, but when the case went to the United States Court of Appeals for the Ninth Circuit, the decision was reversed. Then when the Ninth Circuit reheard the case, the decision of the earlier panel was reversed and the decision of the District Court was upheld.

The Attorney General of Washington at that time, Christine Gregoire filed a petition in the U.S. Supreme Court for the issuance of a writ of certiorari. The writ was granted by the Court. Then the case went on to be argued before the Court. The principal question here was that is assisted suicide protected by the Due Process Clause.

The Court held that does not fall under fundamental liberal interests and as such it is not protected by the Due Process Clause, thus, reversing the decision of the Ninth Circuit. The Court in this case acknowledged the societal disapproval of assisted suicide and the ban on assisted suicide by majority of the states in the country.

The Supreme Court felt the ban to be rational in the sense that the ban protected the interest of the state and also protected patients who were mentally ill and the patients who could not convey their consent from abuse, intimidation and pressure.

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[8] People v. Kevorkian, 497 U.S. 345(1999).
[9]Washington v. Glucksberg, 521 U.S. 702 (1997).

Because, assisted suicide is legal in some states and illegal in others, there is a great deal of controversy surrounding the issue in U.S.A. where many are demanding that euthanasia or assisted suicide should be made legal throughout the country. The reason the law surrounding assisted suicide varies from state to state is because in the U.S. the state law overrides the federal law in this regard. As a result, many individuals suffering from incurable diseases often move to other states where assisted suicide is legal.

Gonzales v. Oregon[10] was a landmark case where the physician assisted suicide law of Oregon was held to be valid by the Supreme Court of the United States. The Attorney General in this case wanted to provide punishment to doctors for the prescription of drugs which would help patients who are terminally sick to end their lives. However, it was held that the law of Oregon overrides the federal law for the regulation of physicians.[11]

The issue of euthanasia and assisted suicide still remains a disputed issue. And it is surprising to see it still be disputed in a progressive state like the U.S. However, it can be said that it is only the beginning and many more states will follow in the footsteps of states like California, Oregon and other states which have legalised euthanasia.

4.3: Belgium

As far as Belgium is concerned, the position of euthanasia in Belgium is similar to that of Netherlands as euthanasia in both active and passive forms are legal in the country. Euthanasia was legalised by the Belgian Parliament on 28th May, 2002 in the country when the Euthanasia Act, 2002 was passed by it.Belgium is one of the few countries where the number of cases of euthanasia is very high, with 1,400 cases of euthanasia taking place in a single year since the introduction of the law. The number rose even more in the year of 2013 with 1,807 cases of euthanasia taking place in the country .[12]

The debate for legalisation of euthanasia in Belgium started in the 1980s when two right to die associations were created in the country which were major advocates for euthanasia. In the subsequent years, many liberal members of the Belgian Parliament proposed several laws for the legalisation of euthanasia, however, none of that led to anything productive as there

[10]Gonzales v. Oregon, 546 U.S. 243 (2006) .
[11]*Supra* note 13.
[12]*Belgian convicted killer with 'incurable' psychiatric condition granted right to die*, THE GUARDIAN, (Feb. 6, 2019, 08:36 PM) https://www.theguardian.com/world/2014/sep/16/belgium-convict-granted-right-to-die.

was strong opposition from the conservatives and Christian democrats in the Parliament. But the allure and desirability of the public for the legalisation of euthanasia was examined by the Federal Advisory Committee on Bioethics in 1997 but was unable to reach any kind of consensus and as a result four proposals were made by the Committee. The first one recommended that the penal code which made euthanasia punishable should be amended. The second proposal suggested that the existing penal code to be retained but physicians should be allowed to euthanize patients under certain conditions. In the third proposal, creation of formal medical procedures for euthanasia was recommended. The fourth one recommended that euthanasia should remain illegal and others ways to medically relieve pain should be considered.[13]

Whenthe elections took place in 1999, there was a change in government and the Christian Democrats were no longer in power. The Social Democrats and the liberals came to power and made several changes with regard to various laws. The new Government introduced a Bill which took a little bit from all the four proposals recommended by the Advisory Committee. The Senate approved the Bill in 2001 and subsequently the Bill got the approval of the Chamber of Representatives in 2002. The new law came into effect from 23rd September, 2002, called the Euthanasia Act, 2002.

The Act provides that only a physician is permitted to perform euthanasia and any physicians who follows the procedures provided in the Act cannot be prosecuted.

Section 3 of the Act lays down the procedure and conditions under which euthanasia can be performed by a physician. It provides that a physician who observes the following conditions when performing euthanasia commits no crime:

- The patient who is to be euthanized must be a major or a minor who is emancipated and is competent legally to take such a decision.

- The decision of the patient must be voluntary and well thought out and should not be a result of any kind of pressure, influence or coercion.

[13]Sigrid Deirich, *Euthanasia Practice in Belgium, A population based evaluation of trends and currently debated issues,* July 5, 2018, at 18,90.

- The condition of the patient must be such that he or she is suffering from a disease which is not treatable and the disease cause immense pain whether physically or mentally to the patient and nothing can be done medically to alleviate the suffering.

- The physician before euthanizing a patient must inform him or her about his or her medical condition and life expectancy and other possible methods or procedures and their consequences. Both the patient and the physician must believe that there is no alternate way to deal with the situation of the patient.

- The physician must be certain and sure of the constant physical or mental pain and suffering of the patient.

- The seriousness and the nature of the disease of the patient must be consulted by the physician with another physician. The physician so consulted must be independent with regard to the patient and his or her situation and should be competent to give an opinion on the patient and his or her condition.

- If it is believed by the physician that the patient is likely to survive and not die then a second physician must be consulted who must be a specialist in the disease in question. When such physician is consulted, he or she must examine the medical records of the patient along with the patient himself or herself.

- The request of the patient to be euthanized should be in writing and should be signed by him or her. However, in case where the patient is not capable to do so, then it can be done by a person so selected by the patient to act on his or her behalf. The person so designated must be a major and must not have any interest in the patient's death. When this document is being documented, it must be done in the presence the physician and must be attached to the medical record of the patient after it is drafted.

- The patient, however, may revoke his or her euthanasia request at any time and in such a case the document so drafted is terminated.[14]

- The physician is also required to notify a case of euthanasia to the Belgian Federal Control and Evaluation Committee on Euthanasia (FCECE).

[14]Belgian Act onEuthanasia, 2002, §3.

4.3.1: The Federal Control and Evaluation Committee on Euthanasia (FCECE)

The Federal Control and Evaluation Committee on Euthanasia is entrusted with the duty to look after the safety of the patients and the legal compliance of the practice of euthanasia in Belgium. Each case of euthanasia is required to be reported to the FCECE by all the physicians who performed it. The reported cases are then reviewed by the FCECE and then it determines whether the prescribed legal formalities and requirements were complied with or not. Although the initial information which is provided to the FCECE remains anonymous, however, in order to gain additional information from a reporting physician, the anonymity can be revoked by the FCECE through a majority decision. The euthanasia case can be sent to the public prosecutor if the FCECE finds that the prescribed legal formalities were not satisfied. At least two-thirds majority of the Committee has to agree that the formalities were not fulfilled. Moreover, the euthanasia law in Belgium is evaluated twice a year by the FCECE.

The Committee consists of sixteen members of whom eight are required to be physicians and four of them have to be professors. Four other members have to be lawyers or law professors and the other four have to be persons who have professional experience dealing with patients who are suffering from incurable diseases.[15]

There is no mention of assisted suicide under the Belgian euthanasia law, however, a statement was made by the National Council of the College of Physicians where it was advised to consider assisted suicide and euthanasia to be the same. Even the FCECE considers assisted suicide to be a form of euthanasia.

Belgium not only permits the euthanizing of terminally ill patients but also patients who have psychiatric disorders which are considered to untreatable and unbearable to suffer. However, this has invited a lot of criticism as many consider psychiatric disorders to be of subjective nature. Moreover, a well thought out decision to end one's own life cannot be taken by patients with psychiatric disorders as their decision and consent will be less informed.

In 2014, another highly controversial step taken by the Belgian Government when it decided to extend the present euthanasia law to competent children who are terminally sick. By doing

[15]Sigrid Deirich, *Euthanasia Practice in Belgium, A population based evaluation of trends and currently debated issues,* July 5, 2018, at 21.

so, Belgium became the first country in the world to recognise euthanasia for children without any kind of restriction or limitation of age. However, certain additional requirements are provided in case of children and euthanasia. Certain conditions have to be fulfilled before a child can be euthanized. They are as follows:

- The child must be suffering from a terminal illness and severe pain for which there is no treatment.

- The patient must understand what euthanasia means and they must be aware of their decision. He or she should have the mental awareness and consciousness to take such a decision.

- The parents of the child or legal guardians as the case may be and the medical team must approve the decision.

- The maturity of the child to take such a decision must be evaluated by a psychologist.

- The decision must be voluntary and not coerced.

The decision of the Belgian Government to allow children to be euthanized has been attacked on several fronts with many raising questions as to how a child can be expected to make life or death decisions.

The Act also allows a patient to make an advance directive in cases where euthanasia can be performed on them if they fall into a state of complete unconsciousness which cannot be treated or reversed. The directive must be in the written form and requires the signatures of two witnesses who must be adults. It is also necessary that there should not be any kind of interest in the death of the patient by the witnesses or at least one of them. The directive can also be registered in the Civil Registry but it is not compulsory. The validity of such a directive is five years and hence, it needs to be renewed after the date of expiration.

The Euthanasia Act, 2002 of Belgium can be considered as one of the most complete legislations that deals with euthanasia because it covers almost every aspect of the practice and its legalities.

4.4: Canada

Although the decriminalisation of suicide in Canada happened back in 1972, assisted suicide only became legal in 2014 in the Quebec province of Canada. In 2016, euthanasia in the voluntary form called medical assistance in dying along with assisted suicide became legal in the entire country after the Criminal Code was amended to legalise both the practices. However, it is not applicable to minors, patients who are mentally ill or to patients who are suffering from any kid of disease which is curable. Moreover, to prevent euthanisation of tourists, assisted suicide and euthanasia can only be performed on people who are covered by Canadian healthcare. Canada does not allow advance directives for euthanasia where patients can give their consent in advance to be euthanized if they end up suffering from diseases like dementia or Alzheimer's.

Canada's Parliament passed the Bill C-14 on 17th June, 2016 which legalised assisted dying in the country.[16]It lays down the procedure and the legalities that have to be followed in cases of assisted suicide and euthanasia. If the conditions laid down there are not adhered to then any person who aids someone in ending their life is liable to be criminally prosecuted. The conditions one must fulfil to be eligible for medically assisted dying are:

- The person must be entitled to health care services provided by the government of Canada.

- The person must be at least 18 years old and also must be competent to take decisions regarding their well being and health.

- The person must be suffering from a medical condition which is grievous and untreatable.

[16] Tim Winton, *Canada's Parliament passes assisted suicide Bill*, BBC News, (May 15, 2019, 11:05 AM), https://www.bbc.com/news/world-us-canada-36566214.

- ❖ The decision to die must be made voluntarily and without any kind of influence, coercion or pressure.

- ❖ An informed consent must be given by the person concerned to be euthanized after he or she has been informed about the methods available to mitigate the pain.
- ❖ Two physicians must examine the patient before his or her request is granted and must confirm that the condition of the patient is indeed severe and untreatable.

Another important aspect of the Canadian law on assisted dying is the importance which is given to prevent abuse of such law. Many safeguards have been provided to ensure that there is no abuse and patients who make the decision to die are not any kind of pressure. Firstly, the decision of a patient to die must be made in front of two independent witnesses who should have any kind of interest in the death of the patient.

Similarly, the opinions of two independent physicians or nurses with regard to the patient's medical condition is also mandatory. These physicians or nurses like the witnesses must also not have any kind interest in the death of the patient. Moreover, the consent of the patient must be expressed and not implied and the patient must be informed at every possible opportunity that he or she can withdraw his or her request to die by receiving medical assistance.

In cases where a patient cannot communicate his or her consent before the procedure to terminate the patient's life takes place, every possible measure must be taken to ensure that some kind of communication can be established with the patient so that can be aware of the information that is being given to him or her. Such patients must also be informed about the means which available to ease or relieve their pain, including palliative care.

In order to receive assistance in dying, a patient must sign a written statement which expresses their desire to die before two witnesses who must be independent and who can attest that the decision of the patient was out of free will and not a result of any kind of pressure or compulsion.

A landmark case on the issue of assisted suicide and euthanasia in Canada was the case of *Carter v. Canada (AG)*[17] where the Supreme Court of Canada unanimously gave a judgement which removed the bar on doctor assisted suicide throughout the country. In this case, several parties challenged the ban on assisted suicide as being against the "Canadian charter

[17]Carter *v.* Canada (Attorney General), 2015 S.C.C. 5, [2015] 1 S.C.R. 331(Canada).

of freedom and rights". Kay Carter, a woman who had spinal stenosis and Gloria Taylor, another woman who had ALS were two of the parties in this case. The provision of the Canadian Criminal Code which prohibited assisted suicide was struck down by the Court thus allowing competent adult citizens of Canada to request assisted suicide if they were suffering from an illness which could not be treated.

By doing so the Canadian Supreme Court overruled the earlier decision of 1993 in the case of *Rodriguez v. British Colombia (AG)*[18]where Section 241(b) of the Criminal Code which prohibited assisted suicide was held to be valid.

It was in response to this case that the Parliament of Canada passed the Bill C-14 in 2016 which legalised death by the assistance of a doctor in cases where a patient is terminally ill. If we look at Canada's laws for euthanasia and assisted suicide, it can be said that they are a blend of both leniency and strictness. They are lenient in the sense that very few countries in the world permit euthanasia at all and Canadian laws on euthanasia and assisted suicide are consistent with most countries that allow euthanasia, especially those that permit euthanasia in the voluntary form. Moreover, both physicians and nurses are allowed to decide the eligibility to be granted a request for assisted death. This reflects flexibility of the law because in many rural areas of the country, there is a dearth of physicians.

4.5: U.K.

In the United Kingdom, euthanasia in the active form is illegal and thus any person who assists another in committing suicide is liable to be convicted for assisting suicide. While euthanasia in the active form is illegal, euthanasia in the passive form is legal by giving advance directives. Patients have the right to refuse any medical treatment. An advance directive can be made by patients or a proxy can be appointed by the patients in England and Wales. Withdrawal of food and liquid can also be done in case of a patient who is terminally sick and in a permanent vegetative state without any kind of prior approval from the Court.

One important case with regard to euthanasia in England is that of *Airedale NHS Trust v. Bland*[19] where in 1993 euthanasia which was non-voluntary was allowed by the House of Lords in case of patients who were in a permanent vegetative state. In this case, Anthony

[18]Rodriguez *v.* British Columbia (Attorney General), [1993] 3 S.C.R. 519 (Canada).
[19] Airedale NHS Trust v. Bland, 1993(1) All ER 821 (HL) (U.K.).

Bland was injured in an accident which resulted in him being in a state of permanent vegetation. Although, he was breathing without any kind of medical support but he he had to fed through a tube. His parents asked the doctors to withdraw his life support. This decision was then appealed before the House of Lords on behalf of Bland. It was held that although it is a doctor's primary duty to do everything in the interest of a patient but this does not necessarily imply prolongation of life. Since there was no scope of recovery for Bland and it was not in his best interest to keep giving him the treatment, there is no duty on the part of the doctors to keep administering the treatment.

Some other cases following this case fairly settled the law that it is lawful for a doctor to withdraw the life support of an incompetent patient when such a decision is well informed on medical grounds and in the interest of the patient.

More recently in 2018, the Supreme Court of the United Kingdom held in *An NHS Trust and others (Respondents) v. Y (Litigation friend, Official the Solicitor) and another (Appellants)*[20] that withdrawal of medical treatment of patients who are in a permanent vegetative state does not require any legal permission.

4.6: Switzerland

Article 115 of the Swiss Penal Code permits assisted suicide, however, the person who assists must do so without having any selfish motive. It means that a person who assists another in ending his or her life should not any any kind of interest in his or her death. It is not mandatory that the person assisting should be a physician nor it is required that the person being assisted to die should be terminally sick. The requirement under the Swiss law is that the motive should not be selfish.[21]

However, euthanasia in all forms in Switzerland is illegal and the law only allows a person to assist another in committing suicide provided the motive is not based on any kind of self interest. For instance, a person may provide another person with fatal drugs but cannot actively administer that drug to that person. It has to be done by the person committing suicide himself or herself.

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[20]An NHS Trust and others (Respondents) v. Y (Litigation friend, Official the Solicitor) and another (Appellants), [2018] UKSC 46 (U.K.).

[21]Derek Humphry, *Assisted suicide laws around the world,* EUTHANASIA RESEARCH AND GUIDANCE ORGANISATION (May 17, 2019, 10:10 AM), http://www.assistedsuicide.org/suicide_laws.html.

Article 115 of the Penal Code provides that any person who assists or incites another person to commit suicide or attempt to do so for self serving interests and suicide is committed by that person or attempted then the person who incites or assists the other person shall be liable to be sentenced for imprisonment for a period not exceeding five years or a fine.[22]

Like India, there is no legislation in Switzerland which specifically deals with euthanasia or assisted suicide. And because of it, no procedure has been established by the law as to how assisted suicide should be done. Moreover, the availability of assisted suicide is not limited to just Swiss citizens only as it is legal to prescribe fatal drugs to a foreigner also, provided that the foreigner plays an active role administering the drug. This has led to what any refer to as "suicide tourism".[23] Many organisations which deal with euthanasia and assisted suicide have been established in the country and are widely used by foreigners. One of the biggest organisation which promotes assisted suicide and euthanasia in the country is Dignitas which was established in 1998 and is a non profit organisation. Volunteers who work for it provide assistance to people in committing suicide by providing them with fatal drugs. The main objective of the organisation is to provide people a death with dignity.

In Switzerland, a physician's role is limited to gauge whether a person who makes a request for assisted suicide is capable to take such a decision or not and to prescribing the fatal drugs. A police enquiry can be initiated when a case of assisted suicide case is pronounced but since there is no criminal liability if it can be proved that the motive was not self serving, these generally end up becoming open and shut cases.

The Supreme Court of Switzerland laid down some conditions under which assisted suicide can be performed. They are:

- The act must be done by the person himself or herself. Thus, a physician or any other person cannot inject or administer any fatal drug to another person for the purpose of committing suicide. It has to be done by that person only.

- A person who makes a request for assisted suicide must be aware of the consequences of his or her decision. Such decision must be well thought out and duly considered.

[22]Swiss Criminal Code, 1937 (SR 311), Art. 115.
[23]Samia A Hurst & Alex Mauron, *Assisted suicide and euthanasia in Switzerland:Allowing a role for non-physicians*, 326(7383) BMJ 271, 271-3 (2003).

- A person must take such a decision on his or her own accord and not under any kind of pressure or compulsion.

In 1999, a general public survey revealed that out of 1000 people who were asked about the legality of euthanasia and assisted suicide, 82% agree that people who are suffering from diseases which are untreatable and suffer from unbearable pain whether physical or psychological should have the right to ask for death. 66% of these people agreed that physicians should be allowed to assist such people to commit suicide and 22% of them agreed that friends and family members should also be allowed to perform such requests.[24] In 2014, it was found that 752 cases of assisted suicide took place in the country.

4.7: Japan

If we look at Japan, there is no official law or legislation which regulates euthanasia in the country. Even the Supreme Court of Japan has only given a verdict once on the issue. However, the euthanasia policy of Japan has been dealt with by two local courts in two different cases, the first one being in the city of Nagoya in the year of 1962 and the other one taking place after event in the Tokai University in the year 1995. The judgements given by the courts in these two cases laid down the foundation of an essential framework from the legal point of view and provided certain conditions under which euthanasia can be performed without any king of legal repercussions . While the first case involved euthanasia in the passive form, the second one was about euthanasia in the active form. However, the doctors performing euthanasia in both these cases were held liable as they were found guilty of violating the conditions laid down by the courts.[25]

Although there are no official laws and rules regarding euthanasia or assisted suicide in Japan but, presently, it can be said that there are some tentative conditions that have to be fulfilled before euthanasia can be performed on someone. The conditions that must be fulfilled in cases of euthanasia in its passive form are:

- The patient must be terminally sick and there must be no cure or remedy for such disease.

[24] *Id.*
[25] Jun Hongo, *Euthanasia: The dilemma of choice*, THE JAPAN TIMES, (May 17, 2019, 11:05 AM), https://www.japantimes.co.jp/life/2014/02/15/general/euthanasia-the-dilemma-of-choice/#.XN6AXY4zbIU.

- ❖ Express consent must be given by the patient to stop the treatment. If the patient is in such a condition where it is not possible for him or her to communicate his or her consent then the determination of consent can be done by any document written and signed prior to the patient's death where it has been specified that the patient may be euthanized in specific circumstances.

Conditions that must be fulfilled in cases of euthanasia in its active form are:

- ❖ The patient must be terminally sick and should suffering from an untreatable illness and unbearable pain.
- ❖ There is no remedy and death is inevitable.
- ❖ There must be express consent given by the patient and no prior document will suffice.
- ❖ Every other measure should be taken by the physician to alleviate the pain before euthanizing the patient.

In 2015, a new Bill was introduced by the lawmakers in Japan but it has not yet been presented in the Parliament. He draft if passed would legally permit doctors to withdraw life support of patients over the age of fifteen years and who have given their consent to be euthanized in writing without any kind of civil or criminal liability.

4.8: Australia

Australia does not permit euthanasia in any form thus making it illegal. However, in 2018, it was made legal in the province of Victoria as a result of which euthanasia can be performed on people who are terminally sick and are above the age of eighteen. Such persons must be competent to take such decisions. The law will effective from mid 2019.[26]

[26] Jean Edwards, *Euthanasia: Victoria becomes Australian state to legalise voluntary assisted dying*, ABC NEWS, (May 17, 2019, 11:35 AM), https://www.abc.net.au/news/2017-11-29/euthanasia-passes-parliament-in-victoria/9205472.

Euthanasia in Australia was legal for a brief period in the northern territory in 1996 because of the Rights of the Terminally Ill, Act, 1995. But the Act was repealed by the Federal Government in 1997 by the introduction of the Euthanasia laws Act.

4.9: Germany

Euthanasia in the passive form is legal in Germany if requested by a patient. The Federal Constitutional Court of Germany in 2014 made euthanasia in the passive form legal by means of withdrawal of life support of patients if it is so requested by the patients. However, euthanasia in the active form is illegal in the country, including causing death through administration of fatal drugs. The German Parliament in 2015 passed a Bill which legalised assisted suicide in Germany provided the motive should be altruistic.[27]

Before passing of the Bill, the Jewish community protested against the legalisation of assisted in Germany due to the dark history attached to it during the Nazi era.

4.10: France

Both euthanasia and assisted suicide are illegal in France but in 2016, the French Parliament passed a Bill which allows physicians to keep patients who are terminally ill sedated till their death. Patients under this new law will be allowed to make requests to be kept under deep uninterrupted sedation till they die. Physicians will be permitted to withdraw life support of patients including nutrition.[28]

This new law also includes patients who cannot convey their consent by allowing the family members of such patients to take the decision and through consultation. Such patients are allowed to appoint a person who they deem to be trustworthy and the opinion of such person will play a dominant role in determining whether a patient should be allowed to die or not.

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[27] Abigail Abrams, *Assisted in Germany passes despite concerns over Nazi association*, INTERNATIONAL BUSINESS TIMES (May 17, 2019, 12:30 PM),https://www.ibtimes.com/assisted-suicide-law-germany-passes-despite-concerns-over-nazi-association-2172889.

[28] *France adopts sedated dying law as compromise on euthanasia*, THE GUARDIAN (May 17, 2019, 12:50 PM), https://www.theguardian.com/society/2016/jan/28/france-adopts-sedated-dying-law-as-compromise-on-euthanasia.

The Bill also allows patients to decide whether they want their sedation to take place at their home or in a hospital.[29]

Medication of a patient until he or she dies naturally or until he or she starves to death are some methods through which the life of a patient who makes such a request can be terminated. Moreover, doctors are required to follow certain end of life directives with regard to uninterrupted sedation of patients and stopping life support of patients.

4.11: Luxembourg

The euthanasia law in Luxembourg came into effect in 2009. The law relating to euthanasia in Luxembourg is very much similar to that of the Belgian law and it can be said that it has been borrowed from Belgium. Similar to the Belgian law, only those patients who are terminally sick and are suffering from untreatable diseases can make a request to be euthanized provided their consent is out of free will and two doctors and an expert panel have examined them and given a green light. Similar to the Belgian law, this law also includes palliative care.[30]

4.12: Colombia

The Constitutional Court of Colombia in 1997 ruled that it is not legal to hold a person criminally liable for ending the life of a patient who is incurably sick and has given clear permission to the other person to end his or her life. But no procedure or guidelines were provided by the court. It was only in 2015 that the Health Ministry of Colombia published certain guidelines under which euthanasia can be performed after it was asked by the Constitutional Court to publish guidelines for euthanasia so that patients who are fatally sick have the right to die with dignity.[31]

Under these guidelines, patients who are eighteen years old or above and are suffering from a terminal illness which causes unbearable pain and there is no means to alleviate the pain

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[29] *Id.*

[30] JulienPonthus, *Luxembourg parliamement adopts euthanasia law*, RUETERS (May 18, 2019, 10:00 AM), https://www.theguardian.com/society/2016/jan/28/france-adopts-sedated-dying-law-as-compromise-on-euthanasia.

[31] Simeon Tegel, *Colombia just legalised euthanasia. Here's why that's a big deal,* PUBLIC RADIO INTERNATIONAL (May 18, 2019, 10:15 AM), https://www.pri.org/stories/2015-04-29/colombia-just-legalized-euthanasia-heres-why-thats-big-deal.

can make a request to be euthanized. Moreover, a lawyer, an expert physician and a psychologist must approve the patient's request before he or she can be euthanized.[32]

Colombian Government went a step further by legalising euthanasia for children who are above six years old. In 2018, a resolution was issued by the the Ministry of Health in Colombia which legalised euthanasia for children above the age of six. Children who are between the ages of seven and twelve can make request for euthanasia if their parents approve so.

Children who are aged between twelve and fourteen can make such requests even if they and their parents are in disagreement.

For adolescents over the age of fourteen, no parental approval or involvement is required provided they satisfy all the conditions for euthanasia.[33]

Similar to the adults, these children should also have a terminal illness for which there is no cure, they must be suffering from unbearable pain and should be competent to give consent.[34]

4.13: New Zealand

In New Zealand, it is a criminal offence to assist, abet or aid someone in committing suicide. Hence, assisted suicide and euthanasia are illegal in the country. Section 179 of the Crimes Act, 1961 of New Zealand makes assisted suicide and euthanasia criminal offences.[35]Although, attempts were made to decriminalise euthanasia, but they failed.

4.14: Other Countries

In other countries like Israel, Lithuania, Turkey, Portugal, Philippines, Norway, Peru euthanasia remains illegal. Though in some of these countries attempts have been made to legalise it but they have been futile. While in countries like Ireland, Finland, Chile, Mexico,

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[32] *Id.*

[33] Michael Cook, *The other country where euthanasia for children is legal- Colombia*, MERCATORNET (May 18, 2019, 10: 30 AM), https://www.mercatornet.com/careful/view/the-other-country-where-euthanasia-for-children-is-legalcolombia/22242.

[34] *Id.*

[35] Crimes Act, 1961, No. 43, § 179 (New Zealand).

Sweden euthanasia in the passive form is legal. In most of these countries the legalisation of euthanasia was a direct result of court rulings or pressure from the public.

More countries are now looking into the legal possibilities regarding euthanasia and assisted suicide as they come to the realisation that euthanasia as a practice is gaining more acceptance and the right to die is a matter of individual liberty and freedom.

CHAPTER 5: ARGUMENTS FOR AND AGAINST EUTHANASIA

It cannot be denied that euthanasia is one of the most controversial issues having immense socio-political impact, especially in today's day and age where individual liberty and choice is at the very centre of world politics. People who are pro euthanasia are of the opinion that legalisation of euthanasia is a sign of a progressive and liberal society, whereas there are others who feel that legalisation of euthanasia would mean disrespecting the very idea of life and then there are people who believe that there is a very big possibility of such laws being misused. Opposition of euthanasia mainly comes from religious groups who believe that it is for God only to decide whether one should live or not. Moreover, it can also be noted that this conflict is mainly between individual interests and societal interests. Therefore, in this regard euthanasia has become a highly debated topic. It is important to look at the different outlooks towards euthanasia.

5.1: Arguments in favour of legalisation of euthanasia

- One major argument that supporters of euthanasia like to make is that it would be cruel to force someone, who wants to die and is in great pain and is suffering because of a disease for which there is no cure. It is more humane to let them end their lives. For people who are suffering from untreatable diseases and as a result have to bear intolerable pain whether physical or mental, euthanasia seems like the only option for alleviating their suffering. Moreover, euthanizing a patient not only relieves him or her from the pain but also relieves the friends and family members of the patient from going through an extreme emotional ordeal. If the motive is altruistic then there is nothing wrong with helping someone in ending their lives when there is no other way to relieve them from the pain and suffering.

- Another great point which can be made in favour of euthanasia is that a person should have the right to decide what he or she wants to do with his or her own body. Therefore, a patient must be allowed to have an individual choice with regard to his or her own life. If we take away the an individual's right of self determination we are

denying him or her of basic freedom and liberty. If a person is under intolerable pain and there is no other way to ease the pain other than death and he or she has no right to stop the suffering then it would mean the negation of his or her right to live or die with dignity. When we look at it from an Indian context, Article 21 of the Constitution of India clearly grants a individual the right to live with dignity. Now if such a standard of living is not there then in such cases a person must be allowed to at least die with dignity. Societal interests should be given priority over the interests of an individual only in those cases when society at large is likely to be affected. When it comes to euthanasia, the decision to die only affects the person who makes such a decision and no one else. Thus, in such a case individual interest should outweigh societal interest.

- People who support euthanasia in the active form argue that since euthanasia in the passive form has been widely accepted into the legal systems of so many countries, it should also be accepted in the active form. Euthanasia in the passive form mainly includes withdrawal or withholding of treatment or life support, in many cases this results in a slow death meaning that a patient who is suffering from extreme pain has to suffer for a longer period of time. Euthanasia in the active form provides a quick death through the administration of fatal drugs. Another argument is that since many hospitals lack adequate staff and equipments, the equipments which are used to sustain such patients should instead be used for patients who actually have a better chance of surviving. It helps in freeing up hospital resources which can be used for patients who can be treated. Palliative care of euthanasia patients which is long term is a big drain on hospital staff, equipments and resources. Wasting them on a patient who has already expressed his or her wish to die would be a disservice to patients who actually want to live and can survive through proper treatment. Therefore, if it comes to choosing between patients who have no scope of surviving and patients who can be treated, the latter should be given priority.

- People who support euthanasia argue that respecting a person's decision to be euthanized is a societal obligation. Euthanasia in a sense relates to an individual's right of self determination. It also includes the right to privacy. The only time interference with these rights is acceptable when the safety and protection of the society and its values are concerned, which is not the case when as far as euthanasia is

concerned. Banning euthanasia would mean forcing people who are in extreme pain to continue to suffer, against their will.

- Many critics of euthanasia legalisation argue that it can be abused for personal gains but supporters of euthanasia argue that it is quite possible to regulate euthanasia so that there are no chances of such laws being abused. When we look at the laws enacted by countries like Belgium and Netherlands, there is strict regulation of euthanasia laws. For instance, the Belgian law provides that the decision taken by a patient must be deliberate and made out of free will and examination of such patient by independent physicians is mandatory before they can be euthanized. Similarly in Netherlands, a physician must be satisfied that a patient who makes a request to be euthanized fulfils all the conditions laid down by the law. A report has to be sent to the Regional Review Committee which will determine whether a physician has observed all the requirements of euthanasia or not. For preventing abuse of such laws, psychological evaluation of such patients along with medical examination and a critical examination of the disease by experts should be there. It is also necessary to provide the patient with good palliative care before he or she is to be euthanized.

- Supporters of euthanasia argue that it is the duty of a doctor to do everything in his or her power to help a patient. A doctor should do what is best for his or her patient and in some circumstances that happens to be death. Prolongation of life sometimes is not in the best interests of a patient and it is better to let him or her die. As seen in the case of *Airedale NHS Trust v. Bland*,[1] it is a doctor's primary duty to do everything in the interest of a patient but this does not necessarily imply prolongation of life. Since there was no scope of recovery for Bland and it was not in his best interest to keep giving him the treatment, there is no duty on the part of the doctors to keep administering the treatment.

- A patient whose death is inevitable and who has expressed his or her desire to die can also become organ donors and by doing so they end up saving someone else's life. The important organs of a patient can be examined by a doctor to ensure that whether they can be donated or not. It is seen in most cases of terminal diseases that the vital organs of a person end up being deteriorated and thus become unusable. But if a

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

patient who is terminally sick is euthanized at an early stage, his or her organs can be used for saving the life of someone else who actually needs it.

5.2: Arguments against the legalisation of euthanasia

- Many religious groups who are against the legalisation of euthanasia and assisted suicide as they believe life to be sacred and a gift from God. Euthanasia is something which leads to the devaluation of human life. Religions such as Christianity, Islam, Buddhism are against euthanasia. They condemn the practice and consider it to be sin. There are however some religions which are divided with regard to euthanasia. For instance, in Hinduism there are two contrasting perspectives with regard to euthanasia. The first view is that one performs an act of benevolence by helping someone who wants to finish his or her life because of pain and suffering. The second view is that ending someone else's life even it is for selfless motives is a sin and a against the cycle of life. Similarly, in the Shinto religion, euthanasia in the passive form is accepted.[2]

- While there are members of the medical profession who support euthanasia but there also some people from the medical profession who are against it. According to them, medical ethics does not permit euthanasia to be performed on anyone as it is the duty of a physician to save lives and not end them. The Hippocratic Oath which the doctors take, imposes a duty upon them to do their best the save the lives of their patients and uphold ethical standards. Contemporary medical technology has come a long way and almost all kinds of diseases are treatable and thus patients who want to die must be encouraged to not go down that path and instead try to do their best to push through the pain.

- Another problem with legalising euthanasia is that it becomes very difficult figure out whether the motive in euthanizing someone was altruistic or not. Many countries where euthanasia is legal, impose a pre-condition that a person who euthanizes

[2]*Religion and Ethics-Euthanasia*, BBC (May 18, 2019, 12:30 PM), http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml.

someone else or assists him or her in committing suicide should do so without any kind of selfish interest in the death of such person. But it is very difficult to find out whether such an act was a result of compassion or not. In some countries, patients who are unable to convey their consent, the decision to let them die is taken by the physicians or relatives. But it is not always possible to know whether the doctors or he relatives are acting in the patient's interest or not. For instance, a doctor might suggest euthanizing a patient for procuring an organ from that patient. Thus, in cases where a patient cannot express his or her consent, the chances of abuse of euthanasia laws are very high.

- Another major argument against euthanasia is that if a person who is hale and hearty and in good physical condition is not permitted to commit suicide then it is unfair and discriminatory to allow people who are critically ill to end their lives. The main factors as to why a person is pushed to kill commit suicide are depression, frustration, family issues, etc. Even though these factors are considered to be mental or emotional factors they still can be equated with physical illness. There are many countries where attempting suicide is a crime but euthanasia is not.

- The "slippery slope" argument is another criticism against euthanasia. It means that the legalisation of euthanasia in any form would lead to a slippery slope situation which would eventually result in the legalisation of euthanasia in the non-voluntary as well as involuntary forms. When practices such as euthanasia or assisted suicide gain both social and legal acceptance, it opens the door for the acceptance of more inhumane forms of such practices. The critics of euthanasia argue that currently the countries where euthanasia is legal have some forms of legal limitations or restrictions which are there to prevent the misuse of such laws but eventually these restrictions will fade away. The Nazi program of euthanasia where many people were euthanized against their will could be regarded as an example of the slippery slope argument.

- Some countries like Colombia and Belgium have euthanasia programs for children. Critics of euthanasia consider euthanizing children to be extremely immoral and unethical. Moreover, children are not always able to comprehend the consequences of their decisions and thus allowing them to make requests for assisted suicide or euthanasia can be a dangerous practice.

- Legalising euthanasia also leads to suicide tourism as seen in the case of Netherlands and Belgium where foreigners come in from different countries to be euthanized as euthanasia or assisted suicide is not legal in their own countries. The scope of abuse of euthanasia laws in such cases is very high as foreigners though may be aware of the laws of a different country but they don't always know the minute details of such laws. And this can result in people using loopholes in such laws to their own benefits with the foreigners paying the ultimate price.

CHAPTER 6: EUTHANASIA UNDER THE INTERNATIONAL HUMAN RIGHTS SCENARIO

Euthanasia has not been directly referred to in international conventions or human rights instruments. But this does not imply that the practice of euthanasia is inconsistent with international human rights. Although it is not explicitly provided in these conventions and instruments but the right to die can be said to exist impliedly in some of the provisions of these instruments and conventions. Moreover, the UN Human Rights Committee in 2017 stated that right to life also includes right to die and abortion rights.[1]

It is provided in Article 6(1) of the International Covenant on Civil and Political Rights that the right to life is intrinsic to every human being and arbitrary deprivation of life is wrong. It must be protected by the law. Although this Article does not explicitly address euthanasia but if we look at this provision then it can be understood that only arbitrary deprivation of life is mentioned and it does not talk about deprivation of life which is intentional. Euthanasia in the passive form can be interpreted as being included in this Article. For instance, if a person is in a state of permanent vegetation and is being kept alive through life support treatment, then the withdrawal of such treatment would not amount to a violation of Article 6(1). Thus, euthanasia being a practice which involves termination of life which is intentional would not likely violate Article 6(1) . For non-violation of this provision it is important that the patient's consent is obtained and is voluntary.

Similarly Article 7 of the Covenant which provides that it is not permissible to subject a person to torture or to any kind of treatment which is inhumane or degrading. This can be interpreted as including euthanasia within its ambit. In most cases people make requests to be euthanized because they are suffering from pain which is intolerable and unbearable and from a disease which is not treatable. Now, denying a person his or her request to be euthanized would mean subjecting him or her to pain and suffering which is prohibited under Article 7 of the Covenant. Moreover, many consider living such a life to be degrading and would rather die with dignity.

[1] Jonathan Abbamonte, *Right to life means right to abortion and euthanasia, says UN Committee*, MERCATORNET (May 19, 2019, 10:00 AM), https://www.mercatornet.com/features/view/right-to-life-means-right-to-abortion-and-euthanasia-says-un-committee/20660.

Again Article 17 which promotes the right to privacy and respect for private life can be applied in case of euthanasia as well since the practice is something very private and only affects the person who wants to die. It can be said that the right to self determination is an aspect of the right to privacy. Thus, it is something that a person does in his or her private capacity. Interfering with someone's private activities would be a violation of this Article.

According to this Convention, the right to life should be interpreted as broadly as possible.

Similar to the ICCPR, Article 8 of the European Convention on Human Rights also states that every person's right to family and private life should be respected and that any public authority should interfere with such right except in cases of national interest, safety of the public, protection of the economy of a country, preventing any kind of crime or disorderly conduct, etc. Similar to the ICCPR, euthanasia can also be interpreted being included within this Article.

The Universal Declaration of Human Rights also recognises euthanasia and the right to die. Article 5 of the Declaration provides that subjecting a person to treatment which is cruel, inhumane and degrading or to torture is not acceptable. This right proclaims that any person who is suffering from any kind of terminal disease should not be forced or subjected to any kind of degrading treatment which he or she does not desire or want. Self-determination is every person's right and every should have the right to decide what is good for him or her.

The UN Human Rights Commission suggested that any law which permits euthanasia in the voluntary form cannot be said to be contrary to a state's duty to protect its citizens' right to life. However, it has also laid emphasis on the need to provide legal safeguards against the abuse of such laws. While looking at the Dutch model for euthanasia, the UN Human Rights Commission commented that any state which seeks to allow euthanasia needs to apply strict inspection and scrutiny as to whether the obligations of the state to protect the right to life are being fulfilled or not.

6.1: International Judicial attitude towards euthanasia

The question of right to life and its different interpretations have been discussed in the European Court of Human Rights which also includes decisions on euthanasia. The position of the Court is somewhat similar to that of the UN Human Rights Commission. In some cases it has been held by the Court that the duty of a state to ensure the protection of the right to life does not prevent it from enacting laws that permit euthanasia in the voluntary form provided

laws are there to prevent any kind of misuse of euthanasia laws in such states. Some important cases in this regard are:

1) *Haas v. Switzerland*[2]

In this case, the applicant was suffering from bipolar disease and wished to end his life by administering a fatal dosage of drug but was unable to do so as he was required to attain a prescription first and before that he needed to be evaluated by a psychiatrist. According to him his life was of no value and as such he wanted to die in a dignified manner. It was contended by him that Article 8 of the European Convention on Human Rights grants him the right to privacy and that right had been violated. According to him his right to die with dignity was breached because of certain pre conditions that had been imposed upon him before he could be euthanized.

Although it was acknowledged by the Court that right to respect for private life includes within its ambit the right of a person to decide when and in what manner he or she wants to die provided he or she makes such a decision voluntarily and not because of any kind of pressure or influence but the Court in this case held that no such violation had taken place. The Court stated that Haas was not suffering from any kind of incurable sickness and moreover he was not prevented by the state to commit suicide. All he was required to do was fulfil certain conditions.

It was observed by the Court that the prerequisite condition to acquire a prescription under the Swiss law to get a certain kind of drug or medicine was not unjustifiable and a valid and legitimate purpose. The reason behind such law is to protect the citizens themselves from making any irrational or harsh decisions and to stop the abuse of such practices. The Court stated that such conditions are some of the steps taken by the State to fulfil its obligations to make sure that a decision of a person to end his or her own life is not a result of any kind of undue influence or pressure and is a voluntary decision.

The Court also observed that it is not right to pin point only a singular right provided for in the Convention and instead it must be read as a whole. When we do that we see that the Convention under Article 2 emphasises on the importance of right to life and its protection. Most countries in this regard place more importance on the protection of a person's right to

[2] Haas v. Switzerland, no. 31322/07, § 53, ECHR 2011.

live than on the right of a person to die. Thus, it is an obligation on the states to ensure that a person does not end his or her life without taking any an informed decision.

2) *Koch v. Germany*[3]

In this case a husband who is the applicant filed an application in the Court to allow him to perform assisted suicide on his wife who was terminally sick. Before that in 2004, his wife filed an application in the Federal Institute of Pharmaceutical and Medical Products seeking permission to allow her to obtain some fatal drugs so that she can end her life. This request was rejected by the Institute and a later administrative appeal by both of them was dismissed.

In 2005, both the husband and wife travelled to Switzerland where an association helped the wife in committing suicide. In the same year, a case was filed by the applicant in the Court asking the it to declare the decision of the Institute to be unlawful. But this attempt was unsuccessful.

The appeals of the applicant before the Administrative Court, Administrative Court of Appeal and Constitutional Court were proclaimed to be inadmissible.

The main contention before the present court was that the refusal of the domestic court to inspect the points and merits of his case was a violation of his right to respect for family and private life.

It was observed by the Court that in this case as the applicant and his wife had a close relationship therefore it can be argued that the refusal of her appeal can be interpreted as being a breach of his rights too. The rejection of the courts in Germany to examine the points and merits of his case is a breach of the applicant's right under Article 8 of the European Convention of Human Rights.

However as far as the subject-matter of the complaint of the applicant was concerned, the Court stated that it was up to the German courts to decide whether they want to assess the merits or not. The reason behind this is that there was no mutual agreement between the member states of the Council with regard to the legality of euthanasia or assisted suicide.

[3] Koch v. Germany, no. 497/09, ECHR 2012.

3) *Gross v. Switzerland*[4]

It was in this case where the laws of a member state relating to euthanasia and assisted suicide were held to be inconsistent with Article 8 of the European Convention on Human Rights by the Court.

In this case a complaint was filed by a woman named Alda Gross who wanted to end her life. But she was not suffering from any kind of terminal disease, therefore because of the legal requisites provided by Switzerland which have to be fulfilled before anyone can end his or her life through assisted suicide, she could not find a physician who would prescribe her the drugs to do so. As a result, she challenged these requirements and safeguards as being violative of her rights under Article 8 of the Convention.

In its judgement, the Court held that such conditions and safeguards are a violation of Article 8 of the Convention as the law was regarded as being vague by the Court. The decision of the Court was a majority decision where four to three votes was voted by the panel.

Later the case was submitted in the Grand Chamber of the Court when the Government of Switzerland insisted. However, the woman took her own life during the pendency of the suit. But the Court was not notified of the incident in an attempt to continue the case even after the death of Gross. When the Court came to know about the incident, it completely dismissed the case and as a result the earlier ruling became null and void. The application was declared to be inadmissible on a majority basis by the Court. The Court observed that the applicant's right to petition was abused by her and she took advantage of the right by misleading the Court on the subject-matter of her case.

4) *Lambert and Others v. France*[5]

The parents of Vincent Lambert who were the applicants in this case filed a complaint against a decision of the Conseild'Etat dated June 24, 2014. Vincent Lambert suffered an accident in 2008 and as a result went into coma due to severe injuries to his head. The Conseild'Etat after reading a medical report made by a panel consisting of three physicians held that the decision of the physicians who were treating Lambert to withdraw his life support to be valid and lawful. It was contended by the applicants that such a decision by the physicians would

[4] Gross v. Switzerland, no. 67810/10, ECHR 2013.
[5] Lambert and Others v. France, no. 46043/14, ECHR 2015.

be violative of Article 2 of the European Convention on Human Rights which promotes protection of the right to life.

It was however held by the Court that the decision of the physicians were not violative of Article 2. It was specifically pointed out by the Court that as far as euthanasia and assisted suicide were concerned, there was a lack of agreement between the member states. The Court further observed that Article 2 (right to life) consists of both negative and positive aspects thus imposing obligations on a state that are both negative and positive.

As far as obligations that are negative are concerned withdrawal of life support treatment lacks any kind of intention to deliberately kill someone. Instead, by withdrawing the life support and treatment of a patient, a physician is only letting death take its natural course and to relieve the pain and suffering. Therefore, if someone's life is not being ended intentionally and it is done for altruistic motives, then removal of life support in accordance with the Health Code of France cannot be considered as being violative of Article 2.

As far as positive duty of a state to protect life is concerned, the Court opined that various fundamental safeguards were established by the legal framework of the French Public Health Code as well as the Conseild'Etat while giving its judgement supporting the decision of the doctors. Thus establishing that the decision is appropriate to protect the lives of patients.

It was also observed by the Court that most European States lacked a common consensus regarding how much importance is to be given to a patient's wishes in process of making such decisions. It cannot be denied that in such cases the states have some amount of discretion as to maintaining some sort of balance between its duty to protect life of such patients and to protect their individual right of self-determination and bodily autonomy.

Moreover, Vincent Lambert's desire not to live with artificial support if he ever ends up in a state where he becomes entirely dependent on artificial medical support which he conveyed to his wife verbally was also taken into account by the Court.

Thus it can be concluded from the cases and discussion discussed above that right to life as part of international human rights have been given utmost priority by international instruments and judicial bodies. On the other hand, right to die has not been explicitly mentioned in these instruments. But it is to be noted that incidents of deaths caused by terminal diseases are increasing day by day and as a consequence of that the sacredness of

life has been somewhat relaxed to give way for self determination and individual liberty rights of human beings. Right to die is a result of such relaxation.

In today's day and age right to die is considered to be an important human right. When it is futile to try to save a person who is terminally sick and there is no treatment for his or her disease, then it is better to let him or her die a natural death instead of subjecting that person to medication against his or her will. Not doing so would be a direct violation of human rights.

CONCLUSION AND SUGGESTIONS

When we look at the arguments made against the legalisation of euthanasia various reasons can be cited but all the apprehensions and hesitations breed from a fear of misuse of euthanasia laws. The discretionary powers provided to physicians in this regard can be abused and practiced for their own personal gains. However, it also should be kept in mind that in majority of the cases of euthanasia, the request to end a person's life is made by that person himself or herself. Though there are possibilities of such requests being made under influence or pressure but that is generally not the case. Extreme caution is taken to ensure that such decisions are well considered by the patients and made because of coercion and compulsion. Countries where practices like euthanasia and assisted suicide are legal, various safeguards in the form of laws and regulations are there to ensure that such power is not abused. Countries like Belgium, Netherlands and Switzerland lead the way in euthanasia legislation and other countries can learn a lot from them as to how a sensitive issue like euthanasia can be tackled. Various safeguards such as opinions of independent physicians, prior approval of a court or committee, mandatory requirement of a voluntary consent, presence of independent witnesses are used by these countries to prevent the misuse of euthanasia laws.

As far as India is concerned, we still don't have any official law dealing with euthanasia. All we have are the guidelines laid down by the Supreme Court of India regarding passive euthanasia and living wills in case of terminally sick patients. In response to the decision of the Supreme Court with regard to euthanasia,

Whatever opinion one might have with regard to euthanasia, it cannot be argued that it is issue which needs to be discussed as it will lead to more awareness. When we look at euthanasia from the Indian point of view, it is quite evident that it is a very new concept and despite there being no law to regulate euthanasia in the country, slowly but gradually awareness about the topic is being spread. However, it needs to be widespread and as far as religious outlook on euthanasia is concerned, it should be avoided as far as possible as religion should not dictate one's personal choice.

While the arguments in support of euthanasia in India come from the urban progressive society, the arguments against euthanasia mainly come from more conservative and religious

people. It is because of these disputing attitudes of people regarding euthanasia is perhaps why we don't have any specific law in India.

Although, we have the Supreme Court guidelines, there needs to be a law to regulate euthanasia in the country. In response to the decision of the Supreme Court to allow euthanasia in the passive form, the "Treatment of Terminally Ill Patients Bill, 2016" was introduced in the Parliament but is still pending. The Bill permits patients who are terminally sick to withdraw their medical treatment provided their decision is an informed one and is voluntary. It also provides physicians and medical practitioners protection from any kind of liability for acting upon the request of a patient to withdraw his or her request.

Moreover, some suggestions are provided below to deal with the abuse of such laws in the Indian context:

- A physician must only register a request for euthanasia from a patient who is suffering from an illness which is incurable and because of such disease the patient has to deal with intolerable pain.

- While doing so, due care must be taken by a physician to follow certain conditions before such a request can be granted. For instance, the physician must be convinced that the decision of the patient is well thought out and voluntary. He or she must also be certain that the patient is terminally sick and there is no treatment for the patient's disease and the patient is not likely to recover. He or she must also inform the patient about the nature of his or her disease and the prospects.

- Euthanasia for minors or at least for children below the age of fourteen should not be allowed in India as it is not suitable for a country like India.

- Euthanasia in the active form should also be legalised in the country as the end goal remains the same as that of euthanasia in the passive form only the means is different. However, caution should be taken to ensure that the administration of a fatal drug does not inflict more suffering in the patient.

- A patient who has made the request to be euthanized should understand the consequences of his or her decision, should know about other treatments available and should make his or her decision freely without any kind of pressure or influence from anyone else.

- The request made by a patient should be in the expressed form and in writing.

- In case of patients who are not able to convey their consent, the requests of the family members and close friends can be accepted provided their motive is altruistic.

- Before such patients are euthanized, prior approval of the High Court must be obtained. And only if the Court allows euthanasia to be performed on such patients, should the physicians go ahead with the request.

- The concerned authority must appoint a quasi judicial officer, whose function would be to supervise and oversee the cases of euthanasia within the territory assigned to him or her. Such an officer must be an expert in medical practice.

- Any physician who is of the opinion that a certain patient can be euthanized, the he or she must report the case to such officer. The patient would be then interviewed by the officer to ensure that the patient making the request is doing so out of free will without any kind of pressure or coercion from his or her relatives, friends or the medical staff looking after him or her.

- Such an officer must also seek the opinion of a panel consisting of three other experts. One of them should be a physician, one of them should a legal expert and one should be a psychiatrist. Based on the opinion of the panel, the officer can decide whether to issue a certificate which would grant the request of the patient to end his or her life.

- The relatives and close friends of the patient (if any) must also be made aware of the decision of the patient to terminate his or her life. The must also be informed about the opinion of the physician and about other treatments available.

- After the death of a patient, his or her body must be examined by a coroner to find out whether he or she was actually euthanized or not. If it is found that it is not a case of euthanasia then criminal proceedings can be started.

Euthanasia in a country like India can be legalised provided adequate safeguards are put in place to prevent the abuse of such laws. In this regard the guidelines provided by the Supreme Court in the Aruna Shanbaug case[1] and recommendations of the Law Commission of India can be taken into consideration.

[1]Aruna Shanbaug v Union Of India. (2011) 4 S.C.C. 454 (India.

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