

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BANGALORE

SESSION (2017-2018)



**A Comparative Study on Legal Issues concerning Euthanasia in
India, Netherlands and England**

**Dissertation submitted in partial fulfillment of the requirement for the
degree of Master of Laws**

**Under the supervision of
Dr. VISHNUPRASAD R
Assistant Professor of Law**

NLSIU, Bangalore

**SUBMITTED BY
TARUN KUMAR
ID. NO 808
LLM (HUMAN RIGHTS LAW)**

DECLARATION

I, **Tarun Kumar**, do hereby declare solemnly that the dissertation titled "**A Comparative Study on Legal Issues concerning Euthanasia in India, Netherlands and England**" submitted by me for the award of the degree of Master of Laws at National Law School of India University is my own work. The dissertation has not been submitted for any other degree of any other University.


Tarun Kumar

CERTIFICATE

This is to certify that the dissertation titled "**A Comparative Study on Legal Issues concerning Euthanasia in India, Netherlands and England**" submitted by **Mr. Tarun Kumar** is a genuine work carried out by him under my supervision and no part of this dissertation has earlier been submitted for any degree or published in any form.

Signature



Dr. Vishnuprasad R

Assistant Professor of Law

NLSIU, Bangalore

ACKNOWLEDGEMENT

I articulate my heartfelt thankfulness to my Teacher, **Dr. Vishnuprasad R**, for guiding me throughout my research and in writing of this dissertation under his supervision. This work would not have been possible without his support and diligent insights. It is due to his patient guidance that I have been able to complete this work.

I would like to thank librarian and the staff in finding out relevant material needed for this project. Last but not least I would to thank my parents who have been a constant support and guidance by my side.

With overwhelming gratitude

TARUN KUMAR

LIST OF ABBREVIATIONS

1. ACHR- American Convention on Human Rights, 1969
2. ACHPR – African Charter on Human and People's Rights, 1981
3. CAT- Convention Against Torture, 1984
4. ECHR- European Court on Human Rights, 1950
5. ICCPR - International Covenant on Civil and political Rights, 1966
6. ICESCR – International Covenant on Economic, Social and Cultural Rights, 1966
7. IPC – Indian Penal Code, 1860
8. UDHR - Universal Declaration of Human Rights, 1948
9. VRRF- Voluntary Refusal of Foods and Fluids

LIST OF CASES

- 1) Airedale NHS Trust v. Bland Case ((1993)1 All E.R. 821)
- 2) Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454
- 3) Bolam v. Friern Hospital Management Committee (1957) 1 WLR 582
- 4) Cheena Jadadeeswar v. State of Andhra Pradesh (1988 Cr LJ 549)
- 5) Common Cause (A Registered Society) v. Union of India (Civil Writ Petition no. 215 of 2005)
- 6) Gian Kaur v. State of Punjab (AIR 1996 SC 1257)
- 7) Gross v. Switzerland (2014 ECHR 1008)
- 8) Haas v. Switzerland (2011 ECHR 2422)
- 9) Jacob Mathew v. State of Punjab (2006) 5 SCC 472
- 10) Kharak Singh v. State of Uttar Pradesh (AIR 1963 SC 1295)
- 11) Koch v. Germany (2012 ECHR 1621)
- 12) Lambert and Others v. France ((2015) ECHR 545)
- 13) Maneka Gandhi v. Union of India, AIR 1978 SC 597
- 14) P. Rathinam v. Union of India (AIR 1994 SC 1844)
- 15) Postma Case, [1973] District Court Leeuwarden No. 183
- 16) Pretty v. United Kingdom Case ((2002) 2 F.C.R. 97)
- 17) Pt. Parmanand Katara v. UOI and Ors. (AIR 1989 SC 2039)
- 18) R. v. Dr. Bodkins Adams (1957) Crim. LR 365
- 19) R. v. Arthur, (1981) 12 B.M.L.R.1
- 20) R. v. Cox (1992)12 B.M.L.R. 38
- 21) Smith v. Smith (47 (1958) 317, Supreme Court of Arkansas)
- 22) St. George's Healthcare NHS Trust V. S Case ((1998) 3 All ER 673)
- 23) State of Maharashtra v. Maruti Sripati Dubal (1987 Cri. LJ 743 Bom.)

CONTENTS

CHAPTER 1 – AN INTRODUCTION	1
1.1 Statement of Problem	8
1.2 Aim and Objectives of the Study	9
1.3 Hypothesis	10
1.4 Research Questions	10
1.5 Methodology	11
1.6 Importance of the Study.....	11
1.7 Chapterization.....	11
1.8 Scope and Limitation	13
CHAPTER 2 - EUTHANASIA : A STUDY OF CONCEPT	14
2.1 Introduction	14
2.2 Philosophy of life and death.....	15
2.2.1 Sanctity of life	15
2.2.1.1 Absolute Value of Human Life	16
2.2.1.2 Infinite Value of Human Life.....	16
2.2.1.3 Inviolable Value of Human Life	17
2.2.1.4 Spiritual Value of Human Life	17
2.2.2 Phenomenon of Death	18

2.2.2.1 Meaning of Death.....	19
2.2.2.2 Layman's conception of death	20
2.2.2.3 Legally Alive	21
2.2.2.4 Brain Death	22
2.3 Meaning and Development of Euthanasia.....	23
2.3.1 Meaning of Euthanasia.....	23
2.3.2 Development of Euthanasia	24
2.4 Types of Euthanasia	29
2.4.1 On the basis of procedural decisions	29
2.4.1.1 Active Euthanasia	29
2.4.1.2 Passive Euthanasia	30
2.4.2 Based on Consent.....	32
2.4.2.1 Voluntary Euthanasia	32
2.4.2.2 Non Voluntary Euthanasia	33
2.4.2.3 Involuntary Euthanasia	34
2.5 Religious Perspectives on Euthanasia	34
2.5.1 Hinduism.....	35
2.5.2 Islam	37
2.5.3 Christianity.....	38
2.5.4 Sikhism	38

2.5.5 Buddhism.....	40
2.5.6 Jainism	41
CHAPTER 3 - EUTHANASIA AND HUMAN RIGHTS	42
3.1 Introduction	42
3.2 International Human Rights Instruments and Euthanasia	42
3.2.1 Right to life as a Human Right under International Instruments	46
3.2.2 International Judicial Response towards the Sanctity of Right to Life under Human Rights Instruments.....	60
3.2.2.1 Haas v. Switzerland	61
3.2.2.2 Koch v. Germany	62
3.2.2.3 Gross v. Switzerland	64
3.2.2.4 Lambert and Others v. France	65
CHAPTER 4 - LEGAL POSITION OF EUTHANASIA IN INDIA	69
4.1 Introduction	69
4.2 Constitutional and Legal Perspective on Euthanasia	70
4.2.1 Right to Life	70
4.2.2 Legal Denial of Right to Die.....	72
4.2.2.1 Section 299, Indian Penal Code, 1860	72
4.2.2.2 Exception 5 of Section 300	73
4.2.2.3 Section 92	73

4.2.2.4 Section 107 and Section 202	74
4.2.3 Right to Suicide	75
4.3 Judicial Interpretations on Euthanasia- Emerging Trends.....	77
4.4 New Dimension in Indian History- Aruna Shanbaug Case	81
4.5 Passive Euthanasia- The views of the Law Commission and the Supreme Court	84
4.6 Present Scenario	90
CHAPTER 5 - POSITION OF EUTHANASIA IN NETHERLANDS AND ENGLAND.....	95
5.1 Introduction	95
5.2 Legal position of Euthanasia in Netherlands	96
5.2.1 Netherlands – The First Country to Legalize Euthanasia	100
5.2.2 Euthanasia and Physician Assisted Suicide under the Law of 2002	101
5.2.3 Patient's 'Right' to Euthanasia.....	104
5.3 Legal Status of Euthanasia in England.....	105
5.3.1 LANDMARK CASES	106
5.3.1.1 Dr. John Bodkin Adams Case.....	106
5.3.1.2 Dr. Leonard Arthur Case	107
5.3.1.3 R vs. Cox Case	107
5.3.1.4 Airedale NHS Trust v. Bland Case.....	108
5.3.1.5 St. George's Healthcare NHS Trust v. S Case	109
5.3.2 Some recent Developments in England in relation to Euthanasia	110

5.3.3 The Living Will	112
CHAPTER 6- CONCLUSIONS AND SUGGESTIONS	115
6.1 Conclusions	115
6.2 Suggestions	119
BIBLIOGRAPHY	121

CHAPTER 1 – AN INTRODUCTION

“Life is Pleasant. Death is peaceful. It's the transition that's troublesome.”-

Mathew Arnold

It is an incredible gift and blessing of God to take birth on this planet. A baby steps in this universe and thereby, lives as per the time plan as permitted by the almighty. During this sacred journey from birth to death, he accumulates good and bad experiences of life and leaves this world with these experiences which are manifested in his soul. The journey brings him prosperity sometimes and sometimes misfortune and his personality is shaped accordingly. Sometimes during this journey, he finds tears in his eyes and sometimes splash of brightness and joy which enlighten him.¹

Life is precious. Nothing can substitute or compensate life, equally it is true that rose of life has many thorns too. In the running of life, old thorns are removed and replaced with new ones. Many have sufficient courage, power and resources to face thorns as “challenges”. Time too removes many thorns and their effects other people too help in this healing process. Still, there occur

¹ K.K. Agnihotri, “A Perspective on Life”, 1st Ed., *Better Books Publications*, Panchkula, 2009, p-109

1

moments in which life becomes so burdensome that nobody can help.² There are many medical cases in which the patients are sitting at terminal of some incurable diseases where there is no hope for life. Life becomes miserable and more terrible than death. The patient may want to die, but cannot die as 'suicide' is a crime. Nobody even the doctors cannot help such a patient as 'abetment to suicide' is also an offence and punishable. It is here, the concept of 'Euthanasia' intervenes.³ Within limits, it has been legalized in certain countries. Still, there is no express law on this subject in India except a few judicial verdicts.

Initially, abortion was totally illegal as it was against religious principles. But, later on, while considering the health of women, to prevent bastardisation and for the sake of family planning, medical termination of pregnancy was allowed under certain circumstances. In order to prevent health crisis, psychological crisis, unemployment etc., 'prostitution' was also legalized in many legal systems of the world. Furthermore, the individual rights of lesbians, gays and transgender got recognition in almost every civilized State.⁴ The practice of sex change, use of silicon in breast enhancement, tattoos and piercing on body, transplant of organs etc., reflects legal recognition of one's right to have control

² Shrinivas G. Sathaye, "A Philosophy of Living- An Introduction to Ethics", *Asia Publishing House*, New Delhi, 1963, p-91,97

³ Dr. Jaising P. Modi, "A Textbook of Medical Jurisprudence and Toxicology", 25th Ed., *Lexis Nexis*, New Delhi, 2016, p-10

⁴ Raphael Cohen- Almagor, "Euthanasia in the Netherlands: The policy and the practice of mercy killing", 1st Ed., *Springer Publications*, Netherlands, 2004, p-8

over one's own body. Similarly, the recognition of right to marry and live-in-relationships enhanced the zone of individualistic rights. In the similar fashion, the idea of 'surrogacy' is a buzzword in the present times, on which debate has started in India as well as in other countries. 'Right to die with dignity' is another issue which concerns the right to have control over one's own body, destiny and the nature itself, including the right to decide the time and manner of one's own death. The phrase covers a variety of concepts like suicide, euthanasia (active and passive) and assisted suicide (including physician assisted suicide).⁵

The debate on euthanasia is a momentous one. It is surrounded by numerous problems that involves within its ambit not only meaning and importance of human life but the most fundamental principles also on which generally societies are based. This debate is an analysis of individual as well as collective past of the persons living in a civilized society i.e. the traditions and norms having legal and cultural impact that have been transferred to them as members of such societies. Further, their present, in which they will deviate from those norms and alter them suitably to meet the current needs and their future in which the impact that this would have on upcoming generations after them.⁶

The movement for the legalization some form of euthanasia has frequently been known as the right-to-die movement. The name appears weird, because nothing

⁵ *Supra* note 2 at p- 56

⁶ Dr. S. M. Afzal Qadri, "Euthanasia and Law", *Criminal Law Journal*, Vol. XI, 2000, p-161

is more indisputably assured to everybody than death. The supporters of the movement wanted to defend not actually the right to die but the right to have some degree of control over the time and manner of one's death—i.e. "the right to choose to die." They consider that capable adults having terminal illness should be lawfully allowed not only the refusal of life-sustaining medical treatment but also to receive a help of physician in ending their lives on their request.⁷

It can be said that the question of legalization of euthanasia must be considered at societal, national as well as international levels and not only at an individual level from both present and future viewpoints. It is required to scrutinize not only facts like the chances for abuse that legalizing euthanasia would create, but also the effect that doing so would have on the norms and values of our society. Many questions arise about euthanasia concerning the cause of individual as well as the society as such. Two most important from those are: first, how do we want our descendants to die, and second, in relation to human death, what norms do we want to pass on from our generation to next generation and so on?⁸

⁷ *Supra* note 4

⁸ Margaret Somerville, "What would we lose by legalizing Euthanasia", *ABC religion and Ethics* (retrieved from <http://www.abc.net.au/religion/articles/2013/05/24/3766685.htm> visited on 20.5.2018)

Every human being entertains a wish to live and realize the benefits of life before his/her death. But sometimes a human being is desirous to end his life by use of unnatural means. To end one's life pre-maturely is a symbol of abnormal behavior. If a person ends his life by his own act, we call it 'suicide'. Suicide is that death which results from direct or indirect act of the victim himself, which he knows will surely produce the result.⁹

Life is a miracle that never stops to fascinate doctors, researchers and scientists alike. In the similar way, it can be urged that the line between life and death is quite thin. Fatal injuries, terminal diseases and life-threatening disorders all play a part in shortening our lives with an instant effect or sometimes after a long and extended struggle between life and death. Still recently, when people become subjects of unbearable pain from a terminal illness or when the prognosis looks extremely bleak or when day to day care becomes a huge burden and grossly violative of human dignity, the last option euthanasia- is actually being thought of and articulated in a country that is prolife and where the legal system is totally opposite to it.¹⁰

Euthanasia is a complex and emotional subject. Laws around the world vary greatly with regards to euthanasia and are constantly subject to change with the

⁹ *Supra* note 6

¹⁰ Sudha Umashanker, "The fight for dignity in death", *The Hindu Magazine*, Weekly Edition, February 14, 2010, P-1

change in cultural values and due to availability of improved palliative and hospice care. It has been legalized in some countries, while in others it is still a criminal act. Euthanasia is a debatable issue due to conflicting moral feelings both for the individual and between different cultures, ethnicities, religions and other groups. The subject is explored by the mass media, authors, film makers and philosophers and is to the source of ongoing debate and emotion.¹¹

Euthanasia, simply put, is the practice of mercifully ending a person's life in order to relieve that person from an incurable disease, intolerable suffering and of course an undignified death.¹²

In ancient times, the terminally ill patients were supposed to die in a natural way and that was considered as ethically right too. There was no compulsion to take the help of extraordinary medical treatment (available in whatever form at that time) because that would only delay the process of dying. The most important thing was to give ordinary care and treatment to such patients for their survival. It can be said in present scenario that when further treatment to such patients becomes futile, the focus of medical treatment may be to provide end of life care to relieve them from unbearable pain than to employ advanced medical treatment devices to prolong their dying processes.

¹¹ Dr. Sarabjeet Taneja, "Should Euthanasia be legalized?", *Journal of Constitutional and Parliamentary studies*, 2008, Jan-June, P-30

¹² Rajni Verma, "Termination of life on Request: An Analysis", *Amritsar Law Journal*, Vol. XII, 2003, P-143

In modern society, incidents of deaths due to terminal diseases are on a rise. General public is afraid of such incidents and have a thought that they would also be kept alive artificially on life-prolonging machines during the period of their old age illness. It would amount to mental trauma as well as physical sufferings to them. Besides, their families and relatives would also suffer from the situation. Who will be the appropriate person to decide continuation or withdrawal of artificial treatment to such patients is a matter of controversy. Now the term 'Euthanasia' encompasses various acts ranging from lethal injection to assistance in suicide which includes withholding of basic levels of care i.e. food and medicines from non-terminally ill patients. Any of the aforesaid action or omission is expressly directed towards ending the life of such a patient.¹³

In the last decade, *Terri Schiavo case*¹⁴ in united states of America and *K.Venkatesh's case*¹⁵ alongwith a very recent *Common Cause v. Union of India*¹⁶ case in India have one again revived the world wide debate on the

¹³ Mitakshara Goyal and Armin Rosencranz, "Welcoming the decision legalizing passive Euthanasia", *The Times of India Blog* (Retrieved from <https://blogs.timesofindia.indiatimes.com/voices/welcoming-the-decision-legalising-passive-euthanasia/>) visited on 19.05.2018

¹⁴ *Terri Schiavo's case* is the most heavily litigated right to die case in United States history. Terri, a severely brain damaged Florida state resident, lived for around 15 years in the persistent Vegetative State (PVS) on artificial tube feeding died on April 2005. After a long drawn court battle, Schiavo's feeding tube was removed and she died two weeks later.

¹⁵ *K. Venkatesh's case*: He was 25 years old, muscular dystrophy patient, confined to wheelchair since age of 10, he pleaded for death so that his organs could be donated. But his request was turned down by Andhra Pradesh High Court a day before his death in 2005 only.

¹⁶ Civil Writ Petition No. 215 of 2005

complex issue of Euthanasia. There are several questions which deserve clear explanation. Some of them are as under: -

- Whether the basic right to life includes in itself right to a peaceful and willing death or more specific right to mercy killing or Euthanasia?
- Can Euthanasia be equated with suicide and murder?
- Whether denial of right to die dignified death is violative of right to life guaranteed by article 21 of Indian constitution?
- Whether legalizing mercy killing is against morality and public policy?

Therefore, throughout this study, we will try to highlight upon the answers of the aforementioned questions.

1.1 Statement of Problem

Euthanasia has been a much debated subject throughout the world as it involves several ethical, moral and legal issues beside involving complex questions regarding the role of government as well as the rights of individual in Permanent Vegetative State regarding their death with dignity. Given the nature of Indian society, there are arguments against legalization of euthanasia. Presently, there is no comprehensive law concerning regulation of Euthanasia. Some cases involving questions of legality of euthanasia are brought before the Higher courts. However, the courts have limitation in laying down guidelines

generally applicable to the issue at hand. Hence, this is an important area of discussion involving crucial aspects of right to life and right of persons in Permanent Vegetative State to die with dignity.

1.2 Aim and Objectives of the Study

The first and the foremost objective of the present study is to analyze the status of Euthanasia in Indian legal system and to compare it with the legal position prevalent in Netherland and England relating to the same. Accordingly, the study highlights whether right to live with dignity includes within its sweeps the right to die with dignity and whether the principle of sanctity of life can give way to the right to personal autonomy and self-determination in cases where a person is not able to live a dignified life. Further, an attempt is made to study whether euthanasia can be an answer to cases where a person is suffering from terminal illness or in coma or in persistent vegetative state or brain dead.

In this direction, the study aims at the following:

- a) To study the concept of Euthanasia and its development.
- b) To study the Human Rights Conventions relating to the concept of Right to life and Right to die with dignity.
- c) To study the legal position of Euthanasia in Netherland and England.
- d) To study the legal status of Euthanasia in India role of Judiciary in determining legal validity of Euthanasia.

- e) To analyze whether the practice of Euthanasia should be restricted.

1.3 Hypothesis

The concept of Euthanasia has gained attention globally. However, the legal position concerning Euthanasia varies from one country to another. The position in Netherland indicates legalization of Euthanasia while there is no law to govern either passive or active Euthanasia in England as well as India. Consequently, the courts in India, particularly the apex court decides on the questions involving legalization and execution of Euthanasia. It is found that the guidelines and decisions issued by the Supreme Court of India in this regard offer better regulation of Euthanasia compared to the legal systems of Netherland and England.

1.4 Research Questions

1. What is Euthanasia and how did the concept of Euthanasia developed?
2. What is the viewpoint of Human Rights Law regarding Euthanasia?
3. What is the legal position of Euthanasia in India and how does it differ from the position prevalent in Netherland and England Legal System?
4. Whether the practice of Euthanasia should be allowed in the exceptional circumstances?

1.5 Methodology

This study is doctrinal in nature and involves examination of the extent of recognition, practices and legalization of Euthanasia in India, Netherland and England. Accordingly, the study is a mixture of descriptive, analytical as well as comparative methods of research and the present study relies upon both primary and secondary sources. The primary sources are the international Human Rights conventions, statutes enacted by legislatures, judicial decisions and treaties as well as Resolutions of Human Rights Committee concerned with euthanasia. The secondary sources are books, articles and journals concerned with the study.

1.6 Importance of the Study

This study is believed to be helpful in understanding the various aspects of right to life and the right to die with dignity. Given the increasing importance of human rights and filing of numerous euthanasia related petitions before the Courts, the study holds a lot of relevance in addressing the legal issues related to Euthanasia. Thus, it is believed that the present study will be of significance to students, educational institutions, lawyers, Judges, civil societies and NGOs.

1.7 Chapterization

The result of the study will be presented in 6 chapters including the first chapter on Introduction and a last chapter on conclusions and suggestions.

In the First Chapter, an attempt is made to define the problem, to state the aim and objectives of the study, hypothesis and research questions as well as define the importance of study and to elucidate the methodology adopted from the study.

The Second Chapter titled as "Euthanasia: A study of concept" aims to highlight various approaches as to philosophy of life and euthanasia. In this chapter, descriptive method of study has been followed. The Chapter throws light upon the evolution of the Euthanasia and an attempt is made to study different types of Euthanasia as well as the religious views concerning it.

In the Third Chapter, titled as "Human Rights and Euthanasia", the descriptive as well as analytical method of study is followed that tries to establish a relation between the concept of 'Right to life' as envisaged in various International Treaties and 'Right to die' by means of Euthanasia. It also focuses on the humane Principle involved behind the practice of Euthanasia and tries to highlight the concept of "living wills" in the context of Euthanasia.

The Fourth Chapter titled as "Legal position of Euthanasia in India" aims to examine the legal position of Euthanasia in India with special reference to Reports of Law Commission of India and the Judicial decisions of the Supreme Court. In doing so, an analytical and descriptive method of research is followed.

The Fifth Chapter titled as "Position of Euthanasia in Netherland and England" includes a mixture of analytical as well comparative method of research and draws attention to the legal position of Netherland and England on Euthanasia.

The Last Chapter titled as "Conclusions and Suggestions" attempts to provide appropriate suggestions with reference to present study based on conclusion.

1.8 Scope and Limitation

The study focuses on legal issues while critically examine the position of Euthanasia in Netherlands, United Kingdom and India and in this direction the moral, ethical or social issue has been excluded from the scope of this study.

CHAPTER 2 - EUTHANASIA : A STUDY OF CONCEPT

2.1 Introduction

It is the desire of every single being to live as well as to enjoy his life until death. However, in certain situations, the person desires to conclude his lifespan in the way he decides. We term it as 'Suicide' whenever any human being concludes his life through his own action however it is called 'Euthanasia' or 'Mercy Killing' in case the life of the person is concluded by another person on his request.¹

Euthanasia is mostly connected with persons who have turn out to be incapacitated or having terminal illness and thereafter do not desire to experience suffering throughout their remaining life. A terminally ill or severely handicapped individual expected of having a right to pick amongst life as well as death therefore patient's right having terminal illness can't be compared with a person having sound and healthy body. Euthanasia is a debated topic that incorporates the moralities, beliefs and standards of our society.²

¹ Marvin Farber, "Basic Issues of Philosophy- Experience, Reality and Human Values", 1st Ed., Harper and Row, New York, 1968, p-219

² Hazel Biggs, "Euthanasia, Death with dignity and the Law", 1st Ed., Oxford: Hart Publishing, UK, 2001, p-9

2.2 Philosophy of life and death

2.2.1 Sanctity of life

Life is sacred for some people but if they mean so then killing of animals or pulling of vegetables would be same as the murder of a human being. There are different views as to what gives special value to human life. According to some, it is the existence of certain properties which are fundamental to the protection of human life. Such properties include possession of a soul as religious perspective and the biological based ones include development of fetus, self-consciousness. Though, others take the view that it is when a human life is of an appropriate quality that such protection should be afforded.³

The principle of sanctity of life contains various interpretations such as a function of the absolute value (or respect) of human life, or of the infinite value of human life, or of the inviolable value of a human life, or, most commonly, of the intrinsic value, or, inherent value of human life. It has also been considered crucial to the idea of the sanctity of human life that all human lives are, in consequence of their sanctity, of equal value.⁴

³ Robert Young, "Medically Assisted Death", *Cambridge University Press*, UK, 2007, p- 62

⁴ *Id* at 63

2.2.1.1 Absolute Value of Human Life

Those who support this claim are clearly committed to thinking that each human life is of equal value and that it must involve an absolute prohibition on the intentional killing of a human being and an absolute prohibition on intentionally failing to prolong the life of a human being whenever such a life can be prolonged. They also reject killing another in self-defense or to avoid greater number of deaths or to withdraw or withhold medical treatment that is futile. They set it far too high in holding that there is no amount of good that might be achieved, and no amount of bad that might be averted, that could make it right to kill an innocent human being.⁵

2.2.1.2 Infinite Value of Human Life

The proponents of this view deny that things of finite value, alone or in combination, can override the infinite or incalculable value of human life. But this view does not hold that human life may not be outstripped by something else of greater infinite value (i.e. except for another human life, nothing has a value compared with that of a human life).⁶

⁵ *Id.*, at 69

⁶ *Id.*, at 70-71

2.2.1.3 Inviolable Value of Human Life

Human life is inviolable because it is of overriding value or worth. Hence, there is nothing (other than another human life) whose value is sufficiently great that its realization would be worth the loss of a human life. For example, this view supports killing another in self-defense. But it implausibly prohibits someone acting in self-defense when he would have to kill multiple attackers.⁷

2.2.1.4 Spiritual Value of Human Life

Life has meaning and worth only when it has reference to the soul, the soul's unfolding, its progress and its growth. Many people are reluctant to accept this, but, it is true that we are, each one of us, more than just a body and a mind, reason, will, emotions and affections. Each one of us has a soul the innermost core- which came from God, indwells in our bodies here on earth and goes on to God when life is done.⁸ Death is just a drop-scene, where activity goes on at the back.⁹ What, then, is the purpose of human life? If we accept the explanations of natural science,

⁷ *Id.*, at 71-72

⁸ Frederick Ward Kates, "The Use of Life", 1st Ed., *Harper and Brothers*, New York, 1953, p-130-131

⁹ James Rachels, "End of Life: Euthanasia and Morality", 1st Ed., *Oxford University Press*, 1986, p-9

life cannot be said have a purpose,¹⁰ the world is not a purposeless chaos.¹¹ But, there is a purpose that is vastly bigger than ourselves and that will outlast our own short lives. We are visiting this earth only temporarily. We are here today, tomorrow we are gone: mere shadows in a cosmic dream. But behind the unreality of these fleeting pictures is the immortal reality of Spirit. Spiritualism is like a bug-bear to those who do not understand it. It is not a rejection of life. It is, rather the total acceptance of life, with all its shortcomings. It is an integral outlook on life. Spiritualism teaches no escape from life. It means self-less love, sympathy and service. It means that we should transcend greed, passion, hatred, malice, attachment and everything that is lower, all that is for misery and keeps man down.¹²

2.2.2 Phenomenon of Death

Death possesses an overwhelming power over all living things. All creatures have to die; life is but death. It is an integral and inevitable phase in the process of living. It is a natural part of the life cycle which implies extinction of life.¹³

¹⁰ Oswald Hanfling, "Life and Meaning: A Philosophical Reader", 1st Ed., Wiley- Blackwell Ltd., U.K., 1987, p- 31.

¹¹ Carl Olson, "Indian Philosophers and Postmodern Thinkers: Dialogues on the Margins of Culture", Oxford University Press, New Delhi, 2002, p- 131.

¹² *Id.*, at 14

¹³ Sujata Pawar, "Right to Die, How far Right? Judicial Responses", *Cr LJ (Journal Section)*, 280-288 at 281 (2010)

Death deletes our bodies, minds, and everything our bodies or minds have accomplished in our lives.¹⁴ It destroys all human happiness, success, fortune, worldly status and hope.¹⁵ A person can disagree with the presence of God, but he can't contradict the reality of death. Ronald Dworkin described death in two ways. The first being that it is the far edge of life as well as each fragment of our life comprising the very last and another is that, it is singular and also an unusually noteworthy incident in the tale of our lives, under a special spotlight with everything about it strengthened.¹⁶

2.2.2.1 Meaning of Death

There was a time when it was evident to even the casual observer that a person had died. There would be no respiration or pulse and the body would cease to function finally and irrevocably. This is no longer the case. Even lay people now have the knowledge and ability to revive a person who has suffered a heart attack or respiratory failure and effectively bring them back from the dead. Medical professionals, aided by technology, have the expertise to revive a person who in earlier times would have been considered dead, and to keep a body alive even after the brain has died. As a result, questions of exactly when life ends and how death is

¹⁴ Khushwant Singh, "Obituaries: Death at my doorstep", 6th Ed., Lotus Collection, *Roli Books*, 2005, p- 10

¹⁵ *Supra* note 11 at 126

¹⁶ *Id.* at p-128

defined have been clinically and legally confusing. Modern medicine relies comprehensively on technology to mechanically support life while diagnostic and therapeutic procedures are undertaken and in some situations diagnosing death has itself become an equally complex process. For example, when a person is warm to touch and rosy to the eye but breathing with the aid of a machine, how can we tell if she is alive or dead?¹⁷

2.2.2.2 Layman's conception of death

When a layman speaks of death, he is referring to somatic death, or the death of the entire organism. The traditional signs of somatic death are rigor mortis (the stiffening of certain muscles), algor mortis (the cooling of the body) and liver mortis (the purplish-red discoloration of the skin caused by the settling of the blood). Somatic death includes the death of all bodily tissues, but an individual is commonly said to be 'dead' long before all his tissues have died. The death of the 'person', then is only one stage in what an increasingly number of doctors tend to think of as a distinct physiological process.¹⁸

¹⁷ *Supra* Note 2 at p-16

¹⁸ Steven H. Zarit, "Reading in Aging and Death: Contemporary Perspectives", *Harper & Law Publishers*, New York, 1977, p- 269.

2.2.2.3 Legally Alive

According to the Kansas Statutes, 1971 of United States, an individual will be treated legally and medically dead if based on ordinary standards of medical practice, there is the lack of spontaneous brain function in the opinion of a physician.¹⁹ However, this statement is an ambiguous statement. It may be necessary to determine exactly when a person died in order to establish who will benefit from the deceased's estate, or to allocate criminal responsibility for causing the death, or to absolve professional careers of responsibility by negating any possible duty of care. Each of these situations has featured in cases that have sought to clarify the issue of when a person is legally dead.

*Smith v. Smith*²⁰ was an early American case which sought a legal definition of death. Mr. and Mrs. Smith had died following a road accident. Mr. Smith was declared to be dead on arrival at hospital but Mrs. Smith was unconscious and remained so until certified dead seventeen days later. The Smiths had no children and each had made a will to the effect that their property should pass to the other in the event of death. Therefore, the issue arose as to the inheritance of the Smith's estate. If Mrs. Smith had not died in the accident, then Mr. Smith's property would

¹⁹ *Supra* note 2 at p-120

²⁰ 47 (1958) 317, SW 2d, 275 Supreme Court of Arkansas.

pass to her and thence to her beneficiaries on her death. But, under the established law, if they had died simultaneously in the accident then the joint estate would pass to Mr. Smith's family. Reflecting a traditional approach to the issue, the Court held that while a person continued to breathe, even if aided by a machine, he or she remained legally alive.²¹

2.2.2.4 Brain Death

The Brain death takes place when pressure in the skull surpasses pressure in the blood vessel, thus denying the blood supply to the brain. There are enormous advancements in the arena of intensive care as well as the development of new debates relating to 'point of no return'. It is possible nowadays by way of current machinery to maintain ventilation through respirators, feeding through the intravenous route and cardiac function through several pumping devices of a person whose brain is irreversibly dead.²² Various persons have thoughts that existence of a 'person' is diminished when his brain is destroyed since he is usually linked with operative portion of head that is the brain. The visceral functions in the body are controlled primarily by way of the brain stem and therefore, in situations where the brain in totality is impaired, it will lead to

²¹ id

²² "Death", *The New Encyclopaedia Britannica*, 982-994 at 983,984

death since the lower brain which regulates the respiration and circulation are destroyed.²³

2.3 Meaning and Development of Euthanasia

2.3.1 Meaning of Euthanasia

The term 'Euthanasia' originated from the Greek words 'eu' and 'thanatos' which means 'good death'²⁴ or 'easy death'. Euthanasia is also known as Mercy Killing. It is the deliberate cessation of life of another person through intervention directly which is called as Active Euthanasia or through suppression of life persisting means and methods which is called Passive Euthanasia. This can be done either expressly or impliedly at the demand of the person suffered i.e., Voluntary Euthanasia, or without such consent i.e., Non-Voluntary Euthanasia.

Acc. to 8th Edition of Black's Law Dictionary, "*Euthanasia is an act or practice of killing or bringing about the death of a person, for reason of mercy, suffering from an incurable sickness or disorder, esp. a painful one.*"

Encyclopedia of 'Crime and Justice', explains Euthanasia as "*An act of death which will provide a relief from a distressing or intolerable condition of living.*"

Euthanasia is the act of leniently finishing a man's life with a specific end goal to discharge the individual from an intolerable suffering, incurable disease, pain

²³ *Supra* note 18 at p-349

²⁴ Guenter Lewy, "Assisted Death in Europe and America: Four Regimes and their Lessons", Oxford University Press, New York, 2010, p-1

and misery of the life. Euthanasia is the act of leniently finishing a man's life with a specific end goal to discharge the individual from a serious infection, deplorable enduring, hopelessness and torment of the life. Euthanasia can be characterized as the organization of medicines with the obvious goal of terminating the life of patient, on the request of patient. Euthanasia truly implies putting a man to effortless demise particularly if there should be an occurrence of incurable pain or when life ends up purposeless because of mental or physical disability.²⁵ Euthanasia or mercy killing is the act of slaughtering a man for giving break from serious agony or suffering or permitting or causing effortless demise when life has turned out to be insignificant and meaningless.²⁶ In the present scenario, Euthanasia is constrained to the murder of patients by physicians on the demand of the patient so as to free him of unbearable agony or from terminal sickness. In this manner the essential expectation behind Euthanasia is to guarantee a less difficult death to a man who is regardless going to pass on after a long stretch of agony.²⁷

2.3.2 Development of Euthanasia

In past time, "withdrawal or with-holding treatment" was performed and it was known as Orthothanasia, which signifies 'passive death.' In this strategy, the

²⁵Dr. C.K. Parikh, "Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology", 6th Ed., CBS Publishers & Distributors, New Delhi, 2006, p-155

²⁶ Apurba Nandy, "Principles of Forensic Medicine", 1st ed., New Central Book Agency (P) Ltd., Kolkata, 1995, p- 38

²⁷ *Id* at p-39

activities of curing the patient are never tried and his demise is made simple in a "passive" form. In Orthothanasia, the act of killing isn't tried; be that as it may, inactive activities are available keeping in mind the end goal to provide death. The activities of easy demise have been tried to hopeless patients who have been enduring extraordinary agony since antiquated ages. These activities were taboo every now and then. In antiquated Rome, Euthanasia was a wrongdoing and this activity was viewed as murder.²⁸

In the middle Ages in Europe, Christian educating contradicted Euthanasia for an indistinguishable reason from Judaism. Christianity conveyed more regard to people. Likewise, every individual has the privilege to live since God makes people and they have a place with Him and not themselves. Demise is for God to proclaim, not man.²⁹ The English thinker, Francis Bacon (1561-1621), was the first to examine prolongation of life as another therapeutic undertaking, the third of three offices: Preservation of wellbeing and health, treatment of ailment and elongation of life.

First American statute expressly to prohibit helping suicide was enacted in New York in 1828 and a considerable lot of the new States and Territories took after New York's case. In the vicinity of 1857 and 1865, a New York commission

²⁸ A General History of Euthanasia, accessed from <http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1> on 10.05.2018

²⁹ Ian Dowbiggin, "A Concise History of Euthanasia", 1st Ed., Rowman and Littlefield Publishers, 2007, p-29

carried on by Dudley Field drafted a criminal code that denied supporting a suicide and, particularly, helping or furnishing someone else with any deadly weapon or harmful medication, realizing that such individual plans to utilize such weapon or medication in taking his own life.³⁰

Until the end of the 19th century, Euthanasia was viewed as a serene death and the craft of its achievement. The principal mainstream supporter of dynamic Euthanasia in the nineteenth century was a schoolmaster, not a specialist. In 1870 Samuel Williams composed the primary paper to manage the idea of 'medicalized' Euthanasia. Despite the fact that republished ordinarily, the paper was apparently disregarded by the British medical profession, and in 1873 Lionel Tollemache took up his contentions in the Fortnightly Review. Composing under the reasonable impact of utilitarianism and social Darwinism, he depicted the serious "incurable sick" as a pointless to society and difficult to the healthy.³¹ In spite of the fact that his perspectives were just dismissed as progressive, comparative perspectives were raising with the new exploration of "eugenics", as thoughts of cleaning the rationally sick, those with inherited disorders and scatters, and the incapacitated, became stylish.³²

³⁰ Id at p- 30

³¹ *Supra* Note 28

³² *Id.*

In 1889, the German rationalist, Nietzsche, said that terminally ill patients are a weight to others and they ought not to have the privilege to live in this world. In 1895, a German legal counselor, Jost, arranged a book called "Killing Law." Jost focused on those exclusive pitifully sick patients who needed death, must be let die. As indicated by Jost, life once in a while goes down to zero in esteem. Accordingly, the estimation of the life of a patient with a hopeless ailment is practically nothing.³³

The endeavors of legitimization of Euthanasia started in the United States of America in the early twentieth century. The New York State Medical Association suggested delicate as well as easy death. Much more dynamic Euthanasia recommendations went before Ohio and Iowa state assemblies in the year 1906 and 1907; however, these propositions were excluded.³⁴

A law suggestion which acknowledged Euthanasia was offered to government of the Great Britain in the year 1939. As indicated by this proposition, a patient needed to compose his assent as a living will which must be seen and witnessed by two people. The will of the patient must be acknowledged in the reports of two doctors. One of these doctors was the attending doctor, the other one was the doctor of the Ministry of Health. The will of the patient must be tried following 7 days and the vast majority of the relatives of the patient had again to

³³ *Supra* note 24 at p-20

³⁴ *Supra* note 29 at p-34

talk with him 3 days before the killing activity. Be that as it may, this proposition wasn't acknowledged.³⁵

In 1976, Dr. Tenrei Ota, on the establishment of the Japan Euthanasia Society (now the Japan Society for Dying with Dignity), required a worldwide gathering of existing national ideal right-to-die societies. Japan, Australia, the Netherlands, the United Kingdom, and the United States were altogether spoken to. This first gathering empowered those in participation to gain from the experience of each other and to acquire a more global point of view on appropriate on right to die issues.³⁶ In 1978, *Jean's Way* was distributed in England by Derek Humphry, portraying how he helped his terminally ill wife to die. The Hemlock Society was established in 1980 in Santa Monica, California, by Derek Humphry. It supported legitimate change and dispersed how "how-to-die" information. This propelled the campaign for helped dying the bucket in America. Hemlock's national participation developed to 50,000 inside 10 years. "Right to die societies" additionally established that year in Germany and Canada. The Society of Euthanasia amassed in Oxford by the end of 1980, facilitated by Exit, The Society for the Right to Die with Dignity. It comprised of 200 individuals represented to 18 nations. Since its establishment, the World Federation has come to incorporate 38 right to die organizations, from around the globe, and

³⁵ *Supra* note 28

³⁶ *Id*

has held fifteen extra universal meetings, each facilitated by one of the part associations.³⁷

2.4 Types of Euthanasia

Euthanasia can be classified into various kinds ranging from voluntary and non-voluntary or involuntary Euthanasia to active or passive Euthanasia. Active Euthanasia is generally reflected as criminal homicide; however voluntary or passive Euthanasia is not considered criminal in nature. Euthanasia may be classified based on the procedural decisions and also on the consent given by the person concerned.³⁸

2.4.1 On the basis of procedural decisions

2.4.1.1 Active Euthanasia

It implicates painlessly pushing a person to death for humane reasons. In this type of Euthanasia, the doctor gives lethal dosage of medicine to a patient. Active Euthanasia encompasses the use of lethal substances from where the controversy begins. An individual cannot cause his death himself and therefore help of someone else is required to cause death with some medication.

There are four conditions³⁹ required for active Euthanasia:

³⁷ *Supra* note 29 at p-40

³⁸ Lakhani Singh Rajput, "Legality of Voluntary Euthanasia", *Law Profiles*, Vol-I, Issue II, November, 2010.

³⁹ *Id* p-47

- (i) There must be unbearable physical pain to the patient;
- (ii) The death must be drawing near and must be inevitable;
- (iii) The consent of the patient must be necessary;
- (iv) All the pain relieving measures must have exhausted by the doctor.

This type of Euthanasia is criminalized all over the globe except the countries where it is legalized by legislation. In the Indian Legal System, active Euthanasia is considered as a crime under section 302 or at least section 304 of Indian Penal Code. Moreover, Physician assisted suicide is also coming under the category of Abetment to suicide under Section 306 of Indian Penal Code.⁴⁰

2.4.1.2 Passive Euthanasia

Passive Euthanasia can be defined as the deliberate omission of life lengthening act. It occurs when the doctors abstain themselves from using devices essential to keep alive a patient in a persistent vegetative state or a terminally ill patient.⁴¹

Basically, Passive Euthanasia take place when the patient concludes as a result of not doing something by the doctors in order to save the patient, or as soon as they discontinue performing something which is keeping the patient alive. This includes:

- (i) Switching off the life- support machines,

⁴⁰ *Id.*

⁴¹ Shreyans Kasliwal, "Should Euthanasia be legalized in India", *Criminal Law Journal*, 2004, p-209

- (ii) Not undergoing any life extending procedure,
- (iii) Disconnecting a feeding tube,
- (iv) Non- giving of life- extending drugs.

These procedures are generally performed on terminally ill suffering patients so that the death will occur sooner. It is also done on persons in a persistent vegetative state with massive brain damage who are in deep coma from which they are unable to regain consciousness.⁴² It means letting terminally ill patients to require their doctors the withdrawal of life sustaining usage. Such treatment includes omission to start normal treatment, administration of antibiotic drugs to cure the disease and for continuation of life of such a patient. There are certain other forms of Euthanasia in which the patients voluntarily abandon taking of food and liquids etc. This is also known as 'Voluntary refusal of food and fluids' (VRFF).⁴³ According to certain experts it is a kind of passive Euthanasia. But a few others described it otherwise and argue that it is more ethical and humane approach as compare to Euthanasia. The law also addresses the concept of VRFF in a different way. The countries in which Euthanasia is treated as illegal may employ VRFF as a legal alternative of the former. There is a requirement to

⁴² "Euthanasia and Physician Assisted Suicide", Retrieved from <http://www.religioustolerance.org/euth1.htm> visited on 11.05.2018

⁴³ *Id.*

fulfill three conditions before making out a case for passive Euthanasia. These three conditions⁴⁴ are as under:

First is regarding the incurability of the disease and that the patient has already reached his last days and chances of recovery are very meager. Another is regarding the informed consent on the part of such patient for the discontinuance of treatment. In case such patient has become incapable to express his consent then an advance directive made by him/her will be used as a document in support of his wish to put an end to his/her life. Lastly, after the fulfillment of above two conditions the patient can avail Euthanasia in its passive form by way of withholding of medical treatment, ventilator or chemotherapy etc.⁴⁵

2.4.2 Based on Consent

2.4.2.1 Voluntary Euthanasia

Voluntary Euthanasia means the Euthanasia that is undergone with the conveyed consent and desire of the patient.⁴⁶ It is mainly related to the right to choice of the patients in terminally ill condition who chooses to end his/her life,

⁴⁴ *Supra* note 38 at 47

⁴⁵ *Id.*

⁴⁶ M.D. Singh, "Euthanasia: How Merciful is the Killing", *Amritsar law journal*, Vol. X, 2001, p.53

decision that helps his or her best interest and also that of their relatives. This includes cases of⁴⁷:

- Seeking assistance for dying
- Refusing heavy medical treatment
- Asking for medical treatment to be stopped or life Support equipment to be switched off
- Refusal to eat or drink or deliberate fasting.

2.4.2.2 Non Voluntary Euthanasia

It denotes termination of a person's life who is not mentally capable to make a cognizant decision about dying, such as a patient in coma. The case may happen in case of patients who have not addressed their wish of dying in their Wills or given advance indications about it. Instance can be enumerated, like severe cases of accident where the patient loses consciousness and goes into coma. In these cases, the ultimate decision is made by the family members. The patient is unable to make his own decision or cannot make their desires acknowledged. This includes cases⁴⁸ where: -

- The person is in a coma
- The person is mentally challenged

⁴⁷ Rajni Verma, "Termination of Life on Request: An Analysis", *Amritsar law journal*, Vol.XII,2003, p.144.

⁴⁸ *Id.*

- The person is too young (e.g. a young baby)
- The person is severely brain damaged
- The person is absent-minded

2.4.2.3 Involuntary Euthanasia

Involuntary Euthanasia is Euthanasia against someone's wish and is often considered as murder. This kind of Euthanasia is usually considered wrong by both sides hence rarely discussed. In this case, the patient has capacity to decide and consent, but does not choose death, and the same is administered. It is quite unethical and sounds barbaric.⁴⁹ During World War II, the Nazi Germany conducted such deaths in gas chambers involving people who were physically incapable or mentally retarded.⁵⁰

2.5 Religious Perspectives on Euthanasia

Death with Dignity laws enables a terminally ill patient to facilitate an inescapable and unavoidable death. While numerous customs are as per the old conventions and understandings of physical life's last voyage, present-day medical technology has opened the entryway for faith leaders to effectively rethink a few convictions. The following are the convictions pervasive in varying religions that are being practiced not simply in India but rather over the globe.

⁴⁹ *Id.*

⁵⁰ *Id.*

2.5.1 Hinduism

The focal conviction of Hinduism is in Sanatana Dharma. As per Hindu rationality, dharma is basic for achieving material and profound objectives and for the development of the individual and society. Dharma here means both law and religion. It is the managing guideline of life. The Hindus experience their lives as indicated by their dharma-their ethical obligations and duties. Dharma expects Hindu to deal with the more seasoned individual from their locale or family.⁵¹

With regards to Euthanasia, this school of thought, which trusts in the karma hypothesis, declares that the specialist ought not follow up on or acknowledge a patient's demand for Euthanasia as it would speed up the normal procedure of death and would isolate the spirit from the body at an unnatural time.⁵² Subsequently, such unnatural demise will harm karma of both specialist and patient. Suicide is, for the most part, restricted in Hinduism, on the premise that it disturbs the planning of the cycle of death and resurrection and hence yields awful karma. As indicated by Hinduism, the dying procedure can include long-suffering or it can be serene or horrendously sudden: everything relies upon the karma included. As per the belief system of this school, such killings convey

⁵¹ Namita Nimbalkar, "Euthanasia: The Hindu Perspective", *Presented on National Seminar on Bio-Ethics, 2007*. Accessed from- <https://www.isis.in/sites/isis.in/files/docs/Euthanasia-The%20Hindu%20Perspective%20by%20Prof.%20Namita%20Nimbalkar.pdf> on 13.05.2018

⁵² *Id.*

awful karma not simply to the executioner, due to the infringement of the guideline of peacefulness yet in addition to the spirit which is resurrected in another physical body, it will endure as it did before on the grounds that a similar karma is as yet present.⁵³

As indicated by Hinduism, if a man commits suicide, he or she neither goes to damnation nor paradise yet stays in the earth as an awful soul and meanders carelessly until the point when he or she finishes the dispensed life expectancy. The individual at that point goes to hellfire just to return back to earth to finish the left "karma."⁵⁴

There is anyway one special case to the Hindu conviction of preclusion of suicide and it is known as the act of Prayopavesa, or fasting to death. Prayopavesa isn't considered as a suicide since it is common and peaceful, and is adequate just for profoundly propelled individuals under indicated conditions. It is utilized when a man feels that it is the ideal time for this life to end when the body has filled its need and has turned into a burden.⁵⁵

⁵³ *Id.*

⁵⁴ Jay Thareja and Satyam Thareja, "Euthanasia: The Last right", *Criminal Law Journal*, 2009, p-154

⁵⁵ *id.*

2.5.2 Islam

The sacredness of human life is ordained in the Quran. "Do not try to take life which God has made holy except for Justice" (6:151), and "any individual who has killed a kindred human with the exception of in lieu of murder or insidiousness on earth, it would be as he slew the entire humankind" (5:32).⁵⁶

About suicide, Quran is clear: "Do not kill yourselves as God has been to you extremely merciful" (4:29). Valid, there is Pain and enduring at the terminal end of a sickness, yet we accept there is a reward from God for the individuals who calmly continue on in suffering (Quran 39:10 and 31:17).⁵⁷

As indicated by Prof Yusuf Al-Qardhawi (Islamic scholar), "Euthanasia or mercy killing is prohibited in Islam for it envelops a positive part with respect to the doctor to end the life of the patient and rush his death by means of deadly infusion, electric stun, a sharp weapon or some other way. This is a demonstration of killing, and, killing is a noteworthy sin and along these lines forbidden in Islam."⁵⁸

As indicated in the Quranic verses, most Muslims trust that suicide, endeavored suicide, helped suicide, and Euthanasia are altogether disallowed in Islam.

⁵⁶ Dr Shahid Athar, "Euthanasia and Physician - Assisted Suicide". Accessed from http://www.islam-usa.com/index.php?option=com_content&view=article&id=381&Itemid=322 on 13.05.2018

⁵⁷ id.

⁵⁸ Al-Qardhawi, Y. Should euthanasia and physician assisted suicide be legal? Living Shariah: Fatwa Bank. 2005.

2.5.3 Christianity

As indicated by the religious philosophy of the Catholic Church, death by suicide is considered as a grave or genuine sin and this conviction depends on another conviction that life is God's property and a blessing to this world and no one else has the privilege to obliterate it.⁵⁹ Be that as it may, the Catechism of Catholic Church says, we ought not to give up all hope of the endless salvation of people who have taken their own lives. By routes known to only him, God can give the chance to healthy atonement. The Church prays to God for people who have taken their own particular lives.⁶⁰

The perspective of sacred text on the theme is that once a man comes to confidence in Jesus Christ, each transgression they will ever commit is paid for, and it is additionally expressed that "there is presently no condemnation for the individuals who are in Christ Jesus." The Christians trust suicides to be a wrongdoing, however, don't trust it is difficult to discover salvation.⁶¹

2.5.4 Sikhism

Sikhs get their morals to a great extent from the lessons of their sacred text, Guru Granth Sahib, and the Sikh Code of Conduct (the RehatMaryada).

⁵⁹ Faizan Mustafa, "Right to Die- A critique", *Amritsar Law Journal*, Vol. III, 1992, p-58

⁶⁰ Farooq Khan and George Tadros, "Physician-assisted Suicide and Euthanasia in Indian Context: Sooner or Later the Need to Ponder," *Indian Journal of Psychological Journal*, 2013. Accessed from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3701348/> on 13.05.2018

⁶¹ id.

Direction additionally originates from the case set by the masters, and from the experience of the Sikh people group in the course of the most recent 500 years. These don't give itemized answers to numerous moral inquiries, yet rather set down general standards and give a structure to Sikhs to answer those inquiries.⁶²

The Sikh Gurus rejected suicide (and by augmentation, Euthanasia) as an obstruction in God's arrangement. Enduring, they stated, was a piece of the activity of karma, and individuals ought to acknowledge it without grumbling as well as act in order to make the best of the circumstance that karma has given them. This isn't total. Sikhism (as of now said) trusts that life is a blessing from God; however, it additionally shows that we have an obligation to utilize life mindfully.⁶³

*God sends us and we take birth. God gets back to us and we die.*⁶⁴

The Sikh Gurus did not support of suicide as it meddles with the plans of Waheguru. They trusted that affliction was the aftereffect of awful Karma and that individuals ought to acknowledge it without grievance yet endeavor to make the best of the circumstance. Sikhs trust that life is given by Waheguru and in

⁶² Sikh attitude towards Euthanasia. Accessed from <http://www.bbc.co.uk/schools/gcsebitesize/rs/sanctity/sikheuthanasiarev2.shtml> on 13.05.2018

⁶³ id.

⁶⁴ Guru Granth Sahib 1239

spite of the fact that it might be cheerful or sad, long or short, nobody yet Waheguru has the privilege to abbreviate it. Death is viewed as a door into another life.⁶⁵

In this way, Sikhs considering Euthanasia for themselves or others should take a look at the entire picture, and make a fitting difference between ending life, and not misleadingly drawing out a terminal state.

2.5.5 Buddhism

In Buddhism, the suicide is clearly viewed as a negative type of activity, therefore it is the main principle to avoid for the devastation of life. Buddhism in its different structures asserts that while suicide as self-sacrifice might be proper for the individual who is an Arhat (spiritual practitioner who has understood certain high phases of accomplishment), one who has achieved enlightenment, it is still particularly an exception.⁶⁶

Deliberately achieving the early demise of an individual, regardless of whether it is as yet a baby, is an offense of Defeat.

It is important to note that that even admiring death or assisting death out of concern, i.e., Euthanasia, is yet considered a Defeat for a bhikku - a Buddhist

⁶⁵ Supra note 52

⁶⁶ Prof. Damien Keown, "End of life: the Buddhist View", *The Lancet*, Vol.-366, 2005, p-952-955

monk or a layman who has taken oath to lead a life of virtue, a Buddhist religious devotee.⁶⁷

2.5.6 Jainism

This religion allows suicide pertaining to certain limitations. In ancient times, Jain Munis and other elderly individuals have been known to starve themselves to death, despite the fact that there is no record of use of some other brutal means because of substantial emphasis on peacefulness.⁶⁸

In Jainism, the idea of picking the way and time of one's passing is a centuries-old custom. The faithful Jains trust that Mahavira, the 24th Tirthankar, permitted Santhara, or Sallekhana, as an ultimate test of will power or spirituality, whose extreme objective is purification of mind and body and confronting death deliberately. As indicated by the custom, which Jains accept has been prevailing for a great many years, a man willfully gives up water and food, either due to a serious sickness or because of the certainty that the end is close. It is reserved just for the old and the invalid and is experienced hardly ever.⁶⁹

⁶⁷ id.

⁶⁸ *Supra* Note 59

⁶⁹ id.

CHAPTER 3 - EUTHANASIA AND HUMAN RIGHTS

3.1 Introduction

Human rights are those rights which are conferred upon the human beings just because of the fact that they are 'human beings'. These rights are also known as inherent rights bestowed upon mankind by the nature. The idea of human rights coined inside a political framework called natural rights. They derived from reflections of the nature of mankind and settled as a declaration of liberty, to be utilized to ensure freedom from assaults on one's life, dignity or property.¹

Human rights, in simple term, mean rights of humans. Human rights are also taken as the fundamental rights, basic rights or natural rights. Human rights are inalienable without which we cannot survive as human beings.

3.2 International Human Rights Instruments and Euthanasia

The Universal Declaration of Human rights, 1948 pronounced that-

*"the foundation of freedom, justice and peace in the world is the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. Further, everyone has the right to life and all are equal before the law and are entitled without any discrimination to equal protection of the law."*²

¹ Ritika Bansal, "Euthanasia: Appeal and plea for mercy killing", *Universal Law Publishing Co.*, New Delhi, 2013, p-53

² Preamble to the UDHR, 1948

This Declaration was accompanied by more precise declarations, including the Article 6 of International Covenant on Civil and political Rights 1966 which states- *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*

It means right to life has been given a prominent place in this unique international human rights instrument.

The common law has also long recognized the principle that every person has the right to have his bodily integrity protected invasion by others. International human rights law and the national laws of many countries, including India, recognize the right of a patient not to be treated in the complete absence of consent. Since the commencement of (English) Human rights Act of 1998, numerous activists have said that the rejection of right for releasing a person from severe and repeatedly intolerable pain leads to merciless and degrading cure that is prohibited under Article 3 of the ECHR³ as well as is also infringement of privacy and family life that is safeguarded under Article 8 of the convention.⁴ The Human Rights Act and The European convention on Human

³ It deals with a provision to forbid torture or inhuman or degrading treatment to any human being.

⁴ Right to respect for private and family life -1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Rights may recognize an individual's right to life but does not recognize their concurrent right to death.⁵

Euthanasia remains to draw much discussion and consideration. Though, in the previous two decades the attention of the debate has moved from the political to the legal and judicial ring, predominantly in nations with a common law legal practice wherein the subject has been taken up by cause lawyers. Through a number of high profile court cases, right to die proponents have challenged laws prohibiting Euthanasia and have asked the courts to define the circumstances in which a patient may receive assistance to die. The efforts of these proponents could not achieved large success but such activities on their part have brought the concept of Euthanasia in to limelight and now it has become most hotly debated topic around the world. Such actions at international level has resulted in legalization of Euthanasia in the Netherlands, Belgium, Australia's Northern Territory etc. Despite these developments at global level the controversy relating to the concept has not been resolved till today and it seems that it would continue in future also.⁶

⁵ Subhash Chandra Singh "Euthanasia and Assisted suicide: Revisiting the sanctity of life principle", *Journal of the Indian law institute*, vol. 54, 2012, p-211

⁶ *Id.*

It is argued that any law that allows Euthanasia and assisted suicide constitutes a gross violation of a government's obligation to safeguard the lives of all its citizens, devoid of any omission.⁷

In this chapter an attempt has been made to examine various International Human Rights instruments which are containing the principle of sanctity of life as the mother of all other human rights in contrast with the exact opposite of it i.e., right to die with dignity and the right to Euthanasia and assisted suicide. The unrestrained advocacy of the principle of sanctity of life should be reevaluated from the perspectives of patient's autonomy, self-determination and human rights. In fact, the total denial of the right to autonomy and self-determination of terminally ill patients to choose their mode of dying is a clear violation of human rights. The right to human dignity requires that the physician gives assistance to his patient to avoid unbearable physical and spiritual suffering.⁸ Although it is unlawful for a doctor to do a positive act to bring about a patient's death, the discontinuance of life support treatment is lawful when such treatment is futile and discontinuance is in accordance with responsible public opinion and after fulfilling all the requirements of foolproof mechanism i.e., the established legal and judicial guidelines.

⁷ *Id* at 213

⁸ *Id.*

3.2.1 Right to life as a Human Right under International Instruments

Since the declaration of 1948, the respect exists for the preservation and fulfillment of human life as worthwhile value at international level. That is the reason why suicide, Euthanasia and abortion are generally considered not only immoral but also criminal wrongs.⁹

The right to life has very wider aspects. It includes in it numerous other rights for example – Right to food, right to health, right to live with human dignity and so on. Very few people dispute the above said rights. But some people claim another right which is simply the opposite, for example, the right to die.¹⁰

Right to die can never be considered as a human right because it can be considered as contrary to another human right i.e. right to life. Right to life is one of the basic fundamental right without which all other rights would be meaningless. Therefore, it has been protected and guaranteed under all major international human rights instruments. For instance, the Universal Declaration of Human Rights under proclaims that *“Everyone has right to life, liberty and security of person”*.¹¹

⁹ Subhash Chandra Singh, “Euthanasia and Assisted Suicide: Revisiting the sanctity of life Principle, *Journal of the Indian Law Institute*, Vol. 54, 2012, p-211.

¹⁰ Rajesh Kumar Pathak, “Right to die: International Perspective”, *Criminal Law Journal*, Vol.2, 2009, p-92

¹¹ Article 3 of UDHR, 1948

As such, the International Covenant on Civil and Political Rights also provides:¹²

“Every human being has inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

The use of the term “arbitrarily” was severely criticized at the time of drafting of the covenant. The fear was expressed that the word is ambiguous and can be molded and severally interpreted.

There are so many factors which provide help in arriving at a conclusion whether a deprivation of the right to life is an arbitrary one or not i.e. foolproof controls through legal provisions and rule of proportionality. The vagueness of the term “arbitrarily” has been criticized by many philosophers including Nowak but it is an important thing that the Human Rights Commission adopted the term irrespective of the knowledge about problem and after a lengthy discussion. According to Human Rights Commission, arbitrary deprivation of life means something more than just instances of intentional killing. On the other side, usually not all cases of intentional killing can be taken as arbitrary e.g. excusable homicides in relation to which self-defense, duress or coercion could be employed. Such killings are although clearly intentional but are somehow justified or excused under municipal laws of various countries. It can be remembered here that the said Article allows the state parties where death

¹² Article 6(1) of ICCPR, 1966

penalty exists as a mode of punishment to impose death sentence for serious crimes.

A few delegates opined that the term "arbitrarily" is synonymous to the phrase of Anglo- American jurisprudence i.e. "*without due process of law*". The Committee of Experts also supported the conclusion that the arbitrary deprivations of life "*contained elements of unlawfulness and injustice, as well as those of capriciousness and unreasonableness.*"

There is a common argument that the permissible instances in which deprivation of life is allowed as enumerated under Article 2(2)¹³ of the European Convention on Human Rights, 1950 necessarily put them out of the ambit of arbitrary within the meaning of Article 6(1) of International Covenant on Civil and Political Rights (ICCPR).

Nowak recognizes this approach in the following way:- *that the preliminary criterion in Article 2(2) ECHR of "absolutely necessary use of force" introduces the elements "essential for the prohibition of arbitrariness, namely, reasonableness (proportionality) and justice; the listed cases, on the other hand, have to do with lawfulness and predictability."*

¹³ Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

It is clear from the above discussion that the term "arbitrarily" has a very wide room for interpretation. Many alternative words can be used in its alternative like capricious, unreasonable and so on.

In a similar way, Article 2(1) of European Convention of Human Rights, 1950 states:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

Almost similar provisions may be traced in the American Convention on Human Rights and African Charter of Human and Peoples Right.¹⁴

A very obvious feature of all Human Rights Instruments is that they recognize at least implicitly, that some human rights are deserving of a higher degree of protection than others. But the formulation of human rights at the terms they are expressed reflects a fundamental assumption in all of conventions namely that subjects to certain limited exceptions, individual rights cannot be demanded in

¹⁴ Article 4(1) American Convention on Human Rights states- "Every person has the right to have his life respected. This right shall be protected by law, and, in general from the moment of conception. No one shall be arbitrarily deprived of life."
Article 4 of African Charter of Human and Peoples" Right provides- "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

absolute terms. In other words, the rights protected may be fundamental, but they are not in general "absolute".¹⁵

Right to Life with all its features has been given an upper hand over rest of all the human rights. However, it cannot be considered as an absolute one. The right to life of a person can be curtailed in certain situations. Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 which proclaims that everyone's right to life shall be protected by law, is the best example of it. It provides the situations in which a person may be deprived of his life.

As such Article 4 of the American Convention on Human Rights, 1969 which protects right to life from the moment of conception also makes provision with certain circumstances.¹⁶

¹⁵ J.N. Sharma, "Right to Die in Terminally Ill State: A Plea to Legalize Euthanasia", *M.D.U. Law Journal*, 2004, p-203

¹⁶ Article 4: Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes. 5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

'Right to life' though protected by International Human Rights Instruments, but not absolute right in contrast with such other human rights as the right to freedom from torture or cruelty inhuman or degrading treatment or punishment and the right to freedom from slavery and servitude, which are absolute in their nature in the sense that these are subject to no exceptions of any kind. Thus right to life as pointed out by Paul Sieghart, the Convention does not grant a right to life but merely recognizes its existence and requires its protection and it may clearly be established that international human rights law assigns a higher value to the quality of living as a process, than to the existence of life as a state. It seems clear that Euthanasia requires an intentional taking of life and does not fall within the exception in Article 2. The victim's consent is, therefore, irrelevant and permitting Euthanasia would appear to breach Article 2.¹⁷

On the other hand, it would not necessarily breach Article 6(1) of the International Covenant on Civil and Political Rights, which provides that the right to life shall be protected by law. No one shall be arbitrarily deprived of his life. As the Covenant speaks of arbitrary rather than intentional deprivation, it is strongly arguable that intentional deprivation, it is strongly arguable that Euthanasia would not breach Article 6(1) if performed with the victim's consent or at his request and after considering the victim's medical circumstances and

¹⁷ *Supra* note 15

any other relevant circumstances. The Covenant is therefore less restrictive and more forward looking and either more or less civilized, than the Convention.¹⁸

The growth and raise in standard of living of an individual is the main goal of modern democratic governments. As a result of it, the aspirations of citizens have acquired a great value and are frequently put forward by them. The standard of health has been acknowledged as one of the most significant right of every human being under the Preamble of World Health Organization. No discrimination is allowed on the basis of race, religion, political belief, economic and social condition of an individual while conferring upon such right on him.¹⁹

A Similar provision has been enunciated in Universal Declaration of Human Rights which explicitly co-relates health with the standard of living of an individual in the following wording- *“everyone has the right to standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”*²⁰

Some other human rights instruments treat health as an independent right. For instance, International Covenant on Economic, Social and Cultural Rights states as under: *“The states parties to the present covenant recognize the right to*

¹⁸ id.

¹⁹ Retrieved from http://www.who.int/governance/eb/who_constitution_en.pdf visited on 21-05-2018

²⁰ Article 25 (1) of UDHR, 1948.

everyone to the enjoyment of the highest attainable standard of physical and mental health."²¹

As such American Declaration of the Rights and Duties of Man provides: "*Every person has the right to the preservation of his health through sanitary and social measure relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.*"²²

African Charter on Human and People's Rights says: "*Every individual shall have the right to enjoy the best attainable state of physical and mental health.*"²³

And the European Social Charter provides: "*Everyone has the right to benefit from any measure enabling him to enjoy the highest possible standard of health attainable.*"²⁴

The above enumerated provisions appearing in various international human rights instruments are showing concern for the health of people during their entire lifetime. It can be ascertained that everyone has right to basic and advance level care so that a suitable environment could be created to support a person's health. However, in today's world, dreadful diseases are spreading very fast due to poor environmental and dietary conditions. The health services are proving inefficient to combat with these serious diseases and the patients

²¹ Article 12(1) of ICESCR, 1966.

²² Article XI of American Declaration of the Rights and Duties of Man, 1948.

²³ Article 16(1) of African Charter on Human and People's Rights, 1981.

²⁴ Article 1(II) of European Social Charter, 1961.

who are suffering from said diseases are bound to suffer. Due to these reasons, the pro-Euthanasia people are advocating the practice of Euthanasia or physician assisted suicide through which such patients can avail an easy and painless death especially in those cases where death will be the inevitable result.²⁵

So far as Indian Constitution is concerned, Article 21 is guaranteeing right to life against arbitrary deprivation. It means a person can be deprived of his life and personal liberty but according to a just, fair and reasonable procedure.²⁶ It is generally argued by the people supporting Euthanasia that a law providing for voluntary Euthanasia in case where a patient is terminally ill, will obviously prove to be a just and reasonable law. Such deprivation of life in the circumstances as above said cannot be taken as arbitrary. It can be concluded from the above discussed lines that right to live with dignity includes within its ambit a right to die with dignity and without pain in those cases where a person is in persistent vegetative state or otherwise terminally ill and further treatment has become futile.

No doubt that the right to life has been treated as the most fundamental right but it is in a way equally problematic. The legal provisions, whether national or international, are providing foolproof protection to this right against any arbitrary

²⁵ *Supra* note 15

²⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

encroachment. But if a law is containing a just and reasonable procedure to put an encroachment on the life of a person, such procedure is considered as just. Hence, conditions can be levied on right to life also.²⁷

The Human Rights Committee has urged that the right to life should not be given narrow interpretations. Another relevant issue arises as to the nature of right to life. Whether the right should be considered as discretionary or is this right a mandatory one? The obvious answer is that it is mandatory and inalienable. As a result, it cannot be waived even and accordingly incapable of waiver irrespective of the wishes of the beneficiary of the right. If it is discretionary, the right holder is capable of waiving the right.²⁸

The right to a dignified death has been recognized under Universal Declaration of Human Rights.²⁹ Further, the right against inhumane treatment has also got recognition under The International Covenant on Civil and Political Rights, 1966³⁰ and the Convention Against Torture. These rights, as discussed above, are proclaiming that the any terminally ill Patient cannot be forced to undergo inhumane treatment and degradation which he never wished for. Every patient possesses the right to self-determination which facilitates him to decide what is

²⁷ *Supra* note 10

²⁸ *Id.*

²⁹ Article 5 of Universal Declaration of Human Rights, 1948 states: "No one shall be subjected to cruel inhumane and degrading treatment..."

³⁰ Article 7 of International Covenant on Civil and Political Rights, 1966 states: "No one shall be subjected to cruel inhumane treatment..."

good for him. Right to liberty is justifying the right to dignified death. The supporters of personal liberty generally put forward an argument that all human beings should be entitled to end their lives at any time whenever they consider it appropriate. The personal liberty can be limited in the U.S.A. only through due process of law.³¹

The persons who claim Euthanasia are generally the terminally ill persons suffering unbearably and those with incurable diseases of irreversible nature. Such patients are in agony from physical and mental torture they are subjected to due to the disease, which probably does not have a permanent cure. For most of these, death is the only way for freedom from the excruciating life. Traditionally, persons suffering from terminal illness were allowed to die naturally. But today, medical science has acquired life supporting systems and medications to extend life artificially for long periods even after the loss of brain activities and control of bodily functions. This has greatly affected the terminally ill's rights to dignity and against inhumane and degrading treatment.³²

Terminal illness is usually accompanied by pain. The membranes become dry and sore and infections may be caused by pathogenic organisms and oral secretions. All these cause acute pain and suffering to the patient. Thus, such

³¹ Article IX of the USA Constitution States. "No person shall be deprived of his life, liberty, and property without due process of law."

³² Rini M.V., "Euthanasia and Rights of the terminally ill: An Indian Perspective", *The Academy Law Review*, Vol. 34: 1&2, p-175.

persons fear the indignity of being hooked onto life support machines and other forms of treatment when such treatment is futile and death is inevitable. Thus more people urge for a death in peace or a dignified death. Terminally ill opt for a dignified death because under such circumstances, they wish to exercise their right to die with dignity when pain, mental anguish and suffering are only prolonged by such measures and all sensuous existence may have ceased with a loss of personhood.³³

Generally, the most common reasons behind the demand of legalized Euthanasia are as under³⁴: -

- (i) seeking the compassionate relief from pain and suffering;
- (ii) providing protection to the doctors who behave compassionately;
- (iii) showing respect for human rights;
- (iv) helping in the containment of health costs.

Right to autonomy and self-determination are supporting the notion that there exists a right to die with dignity. If someone appeals for the right to die with dignity that would itself be a sufficient ground for legalizing Euthanasia. Ethically, though not legally, there exists a right to die, in the sense that when the natural process of death has already commenced, a right to be allowed to

³³ *Id* at,p-176

³⁴ *Id.*

die and it is in one's interest to die, by withholding or withdrawing unwanted, burdensome and futile medical treatment, and by providing all required comfort and care.³⁵

There are certain implied claims to some new and different grounds which are going beyond the desires of an individual. Those claims include the claims like requesting anyone else to put an end to one's life and further an expectation from that another to respond to that request by intentionally taking that life. There will be a justification from that another person also for such killing because it was requested by the patient.³⁶ Through this interpretation, the concept of personal autonomy as generally known to the people has been given a vastly different construction. However, such liberal construction is rarely made explicit.³⁷

There are certain questions which can generally be entertained by the intelligent minds with regard to right to die. For example³⁸:-

Could this highly claimed right to die be considered as justified by virtue of competent and reasonable request of a person expressing his free choice to end his life?

³⁵ *Id*

³⁶ *Supra* note 15

³⁷ *Supra* note 9

³⁸ *Supra* note 15

For answering this question one can observe that if the right to life is really inherent, inviolable and inalienable then the reply to the same would surely be in negative. But for the sake of discussion only it can be said that if there were a natural right to be killed on request, it ought to be able to be validated by reasoned argument. Such a right should always have an existence and it must be made available to all without any discrimination whenever they ask for it and it must be given due respect.³⁹

However, the proponents of Euthanasia do not offer any argument regarding the existence of such right either at present or in the past. Rather they deny that it has universal application because of the limitations of its application on society. Further, they have disclaimed the fact that such requests are binding on others.⁴⁰

Even if one imagines that the right to Euthanasia on request was genuine and as a result the physician was allowed to end the life of a patient who asked for it, such doctor would also be justified. Perhaps, he would be obliged out of compassion in ending the lives of others in similar unfortunate situations. This situation may come into picture specifically when the patient is unable to express his wish. It would amount to discrimination if a physician is withholding

³⁹ *Id.*

⁴⁰ Ian Dowbiggin, "A Merciful End: The Euthanasia Movement in Modern America", 1st Ed., Oxford University Press, USA, 2003, p- 153

such a benefit just because no request was made with regard to that. The doctor is thereby violating the right of the patient to the said benefit.⁴¹

It is a popular notion that the common good is a good for all living in a society. It is not a good for each or everyone. Hence, the proposal for the legalization of Euthanasia must at least, ensures a sincere attempt to strike a balance between individual interests and the community's interests and especially the safety of its vulnerable members. However, it is really very difficult to find that balance in a society which gives equal value to the persons and their autonomy. Ethically speaking, the common good carries a presumption that there must appear certain moral concerns for societal betterment beyond the individual interests. But these are undermined when over- emphasis is placed on individual autonomy and will.⁴²

3.2.2 International Judicial Response towards the Sanctity of Right to Life under Human Rights Instruments

There are notable cases which have been decided by European Court of Human Rights with reference to various facets of Right to Life touching upon the issues relating to Euthanasia. Some of these are discussed as under: -

⁴¹ Gerald Dworkin, "Euthanasia and Physician-Assisted Suicide: For and Against", 1st Ed., Cambridge University Press, 1998, p-79

⁴² *Id* at p-80

3.2.2.1 Haas v. Switzerland⁴³

This case involved the question whether the right to respect for private life of a human being casts upon the State a duty to facilitate a patient seeking death through a lethal substance even without a prescription and hence, by providing such facilitation the state is derogating from the law prohibiting suicide? In this case, the applicant was suffering from a severe bipolar affective disorder since last 20 years. He thought his life as worthless and therefore wanted to end it in a dignified manner. He argued that his right to die with dignity had been violated in Switzerland because of pre-conditions that had to be met by a patient before taking such a decision. He did not fulfill the said conditions.

The Court held that there had been no violation of Article 8 of the Convention⁴⁴. It concluded that even under the assumption that States had a positive obligation to take steps to provide assistance to

⁴³ 2011 ECHR 2422

⁴⁴ European Convention on Human Rights, 1950
Article 8-Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

voluntary death with dignity, it had not violated that obligation in the case of applicant.

The Court additionally considered that the prerequisite under Swiss law for a therapeutic medicine with a specific end goal to get sodium pentobarbital had a real point. It means to shield individuals from taking choices carelessly and to avoid the abuse. These are the dangers which ought not be thought little of in a framework which has encouraged access to assisted suicide. The Court considered that such requirement of a prescription is a measure of satisfying the obligation on States to ensure a person has decided to end his life free from any influence.

3.2.2.2 Koch v. Germany⁴⁵

In this case a husband applied before the court in 2004, to permit assisted suicide to his wife. She was suffering from terminal illness. Earlier, she applied to the Federal Institute for Pharmaceutical and Medical Products for permission to get a lethal dose of medicine for committing suicide at home in Germany. An administrative appeal filed by the applicant and his wife was dismissed. In February, 2005 they both went to Switzerland, where the wife committed suicide with the

⁴⁵ 2012 ECHR 1621

help of an association. In April, 2005 the applicant filed a case before the Court to obtain a declaration that the Federal Institute's decisions was unlawful. His appeals to the administrative court, administrative court of appeal and Federal Constitutional Court were declared inadmissible. The applicant claim before the present court is that the domestic courts denial to observe the merits of his complaint had interfere with his right to respect for private and family life. The court held in this case that because of the close relationship between the applicant and his wife it can be said that the said refusal to her amounts to violation of his rights also.⁴⁶ The German courts denial to scrutinize the merits of his complaint amounts to an infringement of the procedural rights of applicant under Article 8 of the Convention. However, regarding the material of the complaint of applicant, the Court thought that it was predominantly up to the courts of Germany to scrutinize its merits. This is because of the absence of agreement among the Member States of the Council of Europe with respect to the query of whether or not to permit assisted- suicide in any form.

⁴⁶ *Id.*

3.2.2.3 Gross v. Switzerland⁴⁷

This case is somehow similar to the above discussed case. It consisted of a complaint by an elderly woman to put an end to her life. She was not suffering from clinical illness still she filed the present suit because she could not get the permission of Swiss authorities to be delivered with a lethal dose of medicine to commit suicide. The applicant complained such action on the part of the said authority's amounts to violation of her rights under Article 8 of the Convention. In its Chamber judgment, the Court held with a majority, that there had been a violation of Article 8 of the Convention. It found in particular that Swiss law is ambiguous as to when assisted suicide was permitted.

The case was subsequently forwarded to the Grand Chamber at the instance of the Swiss Government. In the meanwhile, she died during the pendency of the suit.

On 30th September, 2014, in its Grand Chamber judgment, the Court has on a majority basis affirmed the application inadmissible. The court concluded that she had planned to deceive the court on the substance of the matter involved in her complaint. Above all, she specifically took exceptional safety measures to stop information

⁴⁷ 2014 ECHR 1008

relating to death from being revealed to her counsel as well as to the Court also, for preventing the court from terminating the proceedings in her case. Her behavior had amounted to an abuse of the right of individual application.

3.2.2.4 Lambert and Others v. France⁴⁸

The applicants were the parents of Vincent Lambert, an accident victim who received an injury on head in a road-traffic accident happened in the year 2008 due to which he went to coma. They complained against the ruling given on June 24th, 2014 by the French *Conseil d'État*. The *Conseil d'Etat* while depending over a medical report prepared by a three doctors panel, confirmed the choice taken by the physician treating Vincent Lambert lawful, to withhold his artificial hydration and nutrition. The applicants contended that such an act on the part of the doctor would be conflicting to the obligations of State under Article 2 (right to life) of the European Convention on Human Rights.

The Court held that there would be no violation of Article 2⁴⁹ of the European Convention, 1950 on Human Rights in the event of implementation of the *Conseil d'État* above discussed judgment.

⁴⁸ (2015) ECHR 545

The court observed specifically that there was a lack of consent among the member nations of Council of Europe regarding the permission of the withdrawal of life-sustaining treatment. The Court further considered that the provisions of the Act of 22, April 2005, as constructed by the *Conseil d'Etat*, constituted a legal framework which was sufficiently clear to regulate with precision the decisions taken by doctors in situations such as that in the present case. The Court also observed that the Act of 22, April 2005 on patients' rights and end of life issues didn't allow either Euthanasia or assisted suicide. It simply permitted doctors to withhold treatment from a patient whose recovery has already become impossible, but of course after following a prescribed procedure.

Further, the Court was aware of the significance of the concerns outstretched by the present case, that was related to enormously difficult medical, legal and ethical substances. Therefore, the Court stated that it was the primary duty of the national governments to verify whether the decision to withdraw treatment was in consonance

⁴⁹ Article 2- Right to Life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

with the rules of domestic legislation and the Convention. Another duty of the state is to establish the fact that desires of the patient is in accordance with the national law. The role of the Court is to examine the State's compliance with its positive obligations flowing from Article 2 of the Convention⁵⁰.

It can be concluded from the above discussion that almost all the international instruments containing a list of human rights have put the right to life on a highest pedestal. But on the other hand right to die is not considered as a human right under any such instrument. With the growing incidents of terminal - disease deaths in all over the world, the principle of sanctity of life has been relaxed in favor of the principle of autonomy and self-determination of a human being. The new right has been created out of such relaxation i.e. right to die with dignity. Now right to die with dignity is also a human right. When the natural process of death has already been commenced then it is unreasonable to put hindrances in its way with the help of life-prolonging machines is itself a violation of human rights.⁵¹

The European Court on Human Rights through its various decisions has given mixed reactions regarding the relaxation of rule of sanctity of life principle in favour of right of autonomy and self-determination of the terminally ill patient

⁵⁰ *Id.*

⁵¹ *Supra* 1 at p-54

depending on the peculiar circumstances of each case having due regard to the best interests of the patient if further treatment has become futile, without violating the corresponding duty of the state to preserve the lives of its subjects. There is a need to balance the two i.e. the principle of sanctity of life and the right of autonomy and self-determination of the terminally ill patient. One out of the two should not be too stretched to abolish the effect of the other. This would be the more practical approach towards the protection of human rights of a dying patient.⁵²

Thus, Euthanasia can't be reflected devoid of reference to human rights, yet all important rights ought to be incorporated. These will comprise the rights of each individual relating to their life as well as to the, health care standard suitable to their sickness and, where the facility or quality of that care is noticeably irregular, to the right to distributive justice to safeguard the equal rights of all the sick. No right should be incorporated unless its existence has been validated beyond questions.⁵³

⁵² *Id* at p-55

⁵³ *Id.*

CHAPTER 4 - LEGAL POSITION OF EUTHANASIA IN INDIA

4.1 Introduction

India is a country highly influenced by religion and orthodox beliefs. It is a cosmopolitan country with an amalgamation of different cultures, traditions and religions.¹ Therefore, the people of our nation have different points of view on the issues relating to life and death. We are a fate ridden optimistic society irrespective of our literacy or illiteracy. We believe that God is the creator of life so, no one else has a right to take it. No religion in India advocates for deliberate shortening of life. Thus, from ethical point of view, Euthanasia is a moral sin in India.²

There is a long standing discussion relating to the legalization of Euthanasia in the country. There is a section of individuals who claim that Euthanasia violates the sanctity of death, and in claiming so, they cite wide range of religious authorities to back up their claim.³ However, on the other hand, other peoples having a liberal view assert that a right to life must incorporate in itself, an

¹ Pralike Jain, "Euthanasia and the society", *Indlaw News*, The Buddhist Channel, 26th Nov'08 retrieved from <http://www.buddhistchannel.tv/index.php?id=70.7438.0.0.1.0#.WxKWZkiFPIU> on 25-05-2018

² Gurbax Singh, "Law Relating to Protection of Human Rights and Human Values", *Vinod Publications (P.) Ltd.*, Delhi, 2008, p-217

³ Sushila Rao, "The Moral Basis for a Right to Die", *Economic and Political Weekly*, 30th April, 2011, p-13

accompanying right to choose when that life turn out to be not worth living or unbearable.⁴

4.2 Constitutional and Legal Perspective on Euthanasia

4.2.1 Right to Life

The sanctity of life has been located on the uppermost platform in India. The Indian Constitution in addition with right to life obligates states for providing health care services to all the citizens. These are incorporated under Part-III and Part- IV of the constitution.

In the case of *Maneka Gandhi v. Union of India*⁵, Justice Bhagwati talked about importance of the Fundamental Rights and observed that the fundamental Rights as incorporated under Part-III of the Constitution signifies the fundamental standards appreciated by the individuals of India from the time of Vedas. These rights are considered to protect the individual's dignity as well as to produce environments wherein each individual should be able to improve his personality at full extent. These rights prevent encroachment of individual liberty and thereby imposing negative responsibilities over the state and provides an outline of guarantees on the basic structure of human rights'.

⁴ *Id.*

⁵ AIR 1978 SC 597

The main purpose behind the fundamental rights declaration is to create some basic rights relating to the peoples as non-violable as well as to preserve them from the ever-changing majorities in the legislatures.

The Apex Court in the case of *Pt. Parmanand Katara v. UOI and ors.*⁶ held that it is the obligation of each doctor either at a government hospital or otherwise to outspread his services with due expertise for the protection of life. This right to life without a doubt includes inside its domain the right to have a dignified life.

The court in the case of *Kharak Singh vs. State of Uttar Pradesh*⁷, it was held that life is something more than mere animal existence. Therefore, all citizens are provided a constitutional assurance to live. Furthermore, the medical occupation is indicted with duty to safeguard life of all individuals by giving them proper health care services. The general notion of doctors giving deadly dosage to the individuals who do not wish to live as well as the individuals giving their assent for such thing is both illegal and unconstitutional under the Indian Legal System.⁸ The right relating to life doesn't only signifies continuance of an individual's animal existence but it implies the full opportunity for the development of one's potential as well as personality into utmost level conceivable in the prevailing phase of our development. Certainly, right to life

⁶ AIR 1989 SC 2039

⁷ AIR 1963 SC 1295

⁸ Sanheetha Mugunthan, "A Constitutional Perspective of Euthanasia & 'Right to Die'", *KLT Journal*, 2006 (1), p-38

implies the right to live with dignity as an individual from a cultured society. It seeks to guarantee all freedom and favorable circumstances that would require to turn life pleasant. This right signifies a realistic standard of decency and comfort.

4.2.2 Legal Denial of Right to Die

The Legal system prevailing in India makes each effort to take life of oneself or of another a punishable offence under the IPC. Moreover, any aid or abetment provided is also an offence. Furthermore, concealing information about such an attempt is also an offence. In the following context, the following legal provisions are important:

4.2.2.1 Section 299⁹, Indian Penal Code, 1860

This section defines the culpable homicide. We can say that practice of Euthanasia is illegal in India because the cases concerning mercy killing (or commonly referred as Euthanasia) involves an intention of killing the patient on the part of doctor and hence these cases would undoubtedly have contained

⁹ It states that whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

under first clause of Section 300 of IPC, 1860 resulting the killing would amount to murder.¹⁰

4.2.2.2 Exception 5 of Section 300

However, if the consent is given by deceased in such cases then it would fall under the purview of exception 5 of the said section¹¹ which will result in the punishment of doctor by way of Section 304 of Indian Penal Code i.e., culpable homicide not amounting to murder.¹² However, exception 5 of Section 300 would only attract in cases of voluntary Euthanasia. The other cases would come under the purview of proviso 1 of Section 92 of Indian Penal code and therefore will be treated as illegal.¹³

4.2.2.3 Section 92

It is noteworthy to say that in cases of Euthanasia there is intentional causing of death whether with or without the patient's consent so the protection of Section

¹⁰ This section provides for punishment for culpable homicide not amounting to murder. If such murder has been committed with an intention, then shall be punished with imprisonment for life or imprisonment for a term which may extend to ten years with fine. If it is committed with the knowledge that the act is going to cause death, then ten years' imprisonment has been prescribed along with fine.

¹¹ This provision deals with death with consent. The consenting age has been fixed at eighteen years.

¹² This section provides for punishment for culpable homicide not amounting to murder. If such murder has been committed with an intention, then shall be punished with imprisonment for life or imprisonment for a term which may extend to ten years with fine. If it is committed with the knowledge that the act is going to cause death, then ten years' imprisonment has been prescribed along with fine.

¹³ It contains a general exception with regard to any harm done in good faith even without the consent of the consenting party sufferer, if he is incompetent to give such consent and he/she does not have any guardian to take such decision on his/her behalf. Its first proviso is further providing that this exception shall not extend to the intentional causing of death, or the attempting to cause death to that other person.

92 whose very basis stands on good faith is contradictory to the concept of Euthanasia rendering no legal protection to the mercy killer.

In India, the concept of consent has not been extended beyond examination and treatment out of ethical, cultural, social and legal considerations. In addition, the professional aim of alleviation of pain and suffering has not been stretched to include participation in the destruction of an individual under any circumstances.¹⁴

Therefore, the practice of Euthanasia is a crime under the Indian Penal Code, 1860 and the physician involving in such practice would be accused under Section 299 or Section 304- A, subject to the method used.¹⁵

4.2.2.4 Section 107 and Section 202

All those persons comprising relatives who were aware of such intention or participated in this practice on the part of the doctor would be accused under Section 107 (Abetment of a thing)¹⁶ and Section 202¹⁷ of Indian Penal Code. Further, the cases in which whole process took place at their will, relatives

¹⁴ Lyon's, "Medical Jurisprudence and Toxicology", 11th Ed., *Delhi law House*, New Delhi, 2007, p-236.

¹⁵ It deals with death caused with a rash and negligent act. Such an act does not amount to culpable homicide.

¹⁶ This provision deals with abetment of a thing. This can be done in three ways-Instigation, assisting and by way of a conspiracy.

¹⁷ It deals with omission on the part of anyone who intentionally failed to provide information to the authorities, as he/she was legally bound to provide, regarding the commission of an offence.

would be found guilty under Section 299¹⁸ or 304 also. A doctor may rely on Section 87¹⁹, 88²⁰ as well as 92 in order to escape liability in cases wherein the physician is suspected to take place lethal sedation on account of mercy-killing but intention might turn out to be a measurable concern in such cases.

4.2.3 Right to Suicide

Section 309 of Indian Penal Code makes attempt to commit suicide punishable. However, this section is controversial involving the conflict views over the legality of this provision. A section of the judiciary and lawyers have expressed their strong protest against above provision which penalizes suicide bid. The opponents of the above penal provision maintain that our constitution has guaranteed "right to life" as a fundamental right and it includes a right to put an end to one's life by him or her also. No one should compel a person or live beyond and against his or her own wish.²¹

The others in the legal field hold the view that punishability of attempted suicide is justified on the ground that life is valuable not only to its possessor but also to

¹⁸ It deals with the definition of offence of culpable homicide. Intention and knowledge both are crucial mental elements which will compose this offence under the code.

¹⁹ It deals with an exception that any person who is above the age of eighteen years who willingly gives consent to the effect of suffering any harm except death or grievous hurt. The doer will not be held guilty for any offence.

²⁰ It also deals with an exception with regard to any harm caused except death done in good faith for the benefit of the other person who has given consent to such harm either expressly or impliedly. The doer will not be held guilty for any offence.

²¹ J.G. Kanabar, "Should there be the Right to commit Suicide? "An unresolved controversy on an intimate question", *Criminal Law Journal*, 1993, p-1

state. A welfare state spends so much money on each of its subjects to improve quality of life in society. As personal disorganization may lead to social disorganization state has every right to discourage attempted suicides. Normally, suicide has adverse impact on other family members. It is also against religion, public interest and morals.

Euthanasia, Physician Assisted Suicide (PAS) and suicide though conceptually different are species of the same genre. As the Indian Penal Code (or for that matter any other law) does not define Euthanasia in any chapter the scope of attempt to suicide and abetment to suicide has been extended to embrace Euthanasia in its purview as because both the terms 'Suicide' and 'Euthanasia' is analogous to 'self-destruction' law as it is understood in the modern sense of human welfare and the rights have a definite intention to protect human life. It is not only opposing the harming or killing of a person by another but also one by himself. To get this idea translated into realities, it has adopted a mechanism to prevent suicide. In India, the Indian Penal Code has adopted a mechanism to prevent suicide. In India, the Indian Penal Code enshrines definite injunctions regarding suicide. It awards punishment to those who attempt to commit suicide

and also who abets to commit suicide. Our constitution also stands for the protection of human life and not for its destruction.²²

4.3 Judicial Interpretations on Euthanasia- Emerging Trends

From the moment of conception and after the birth, a person has basic human rights. Right to life implies that a person bears an inalienable right to live, predominantly that such person has the right not to be murdered by another person. However, the debate arises as to whether right to life enshrined under Article 21 include right to die also. The court discussed this question in various landmark Judgments.

In the landmark case of *State of Maharashtra v. Maruti Sripati Dubal*²³, the supreme court held Attempt to Suicide provide under Section 309 of Indian Penal Code as unconstitutional and violative of Art. 14²⁴ and Art. 21²⁵ of the Constitution. The court further stated that 'right to life' provided under Art. 21 of the Constitution of India comprises 'right to die'. In this case, the accused was charged for an offence under section 309. He challenged the validity of section 309 of IPC by filing an application in the High Court on the ground that Sec. 309

²² Faizan Mustafa, "Right to Die: A Critique", *Amritsar Law Journal*, Vol. III, 1992, p-59

²³ 1987 Cri. LJ 743 Bom.

²⁴ Article 14 (Equality Before Law)- The state shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

²⁵ Article 21 (Protection of Life and Personal Liberty)- No person shall be deprived of his life or personal liberty except according to procedure established by law.

do not constitute an offence and it is in violation of Article 19 and 21 of the Constitution. He also said that all cases of attempt to suicide are treated equally in this section making an offence and prescribing punishment indiscriminately and hence, it violates Article 14 of Constitution of India.

The Court held section 309 of IPC as unconstitutional and in violation of Right to life and Personal Liberty as provided under Article 21 of the Constitution. The court held that the right to life includes the right to live as well as the right to end one's life if one so desires. The impugned section was struck down by the Bombay High Court.

After this controversial decision, the judgment of the Andhra Pradesh High court in the case of *Cheena Jadadeeswar v. State of Andhra Pradesh*²⁶ came. In this case, the appellant was convicted under Section 309 of IPC. So, he approached the court on the ground that the Section 309 violates the Equality before law and Right to life and personal liberty as given under articles 14 and 21 of the constitution respectively. The court in this case upheld the validity of the section and said that the section does not insult any of their articles and remarked that right to life does not necessarily signify a right to die.

²⁶ 1988 Cr LJ 549

Then the matter came up before the Apex Court in the case of *P. Rathinam vs. Union of India*²⁷. The validity of said section was thoroughly analyzed by the court in this case by having due regard to the constitutional provisions. This section was challenged as violative of right to equality and right to life enshrined under part three of the constitution. So far as the equality provision is concerned, the court set aside the challenge in relation to that. But regarding right to life it was observed by the court that right to life includes right not to live a forced life. The court indicates support to its views from some international decisions as well as the legal provisions prevalent there. The court in this case declared section 309 as violative of right to life enshrined under Article 21 of the constitution. The court observed that Section 309 is inhuman and barbaric provision and therefore, it should be removed from the code. It also observed that this section implies punishment to a person for two times in the manner that such person is already undergoing pain and misery and when he attempted to kill himself there is again a frustration that he could not succeed in his attempt and have to face punishment for his act under the criminal law of the country. This act is not in contradiction of the morality or public policy as it does not affect the society in any way.

²⁷ AIR 1994 SC 1844

Finally, the most important decision of the Apex Court came in *Gian Kaur Vs. State of Punjab*²⁸. This was a five judges bench verdict. It has put a full stop on all the ambiguities which were prevailing regarding the validity of section 309 of IPC vis-à-vis constitutional provision relating to right to life. The court maintained the legitimacy of the said section and declared that right to life cannot be said to include right to die also. Such an interpretation cannot be given to the words under Article 21 by any stretch of imagination. By allowing such a negative right the positive aspect of it will automatically get abolished. Hence, the constitution bench in this case set aside the earlier ruling and upheld the validity of section 309. In this case, the appellants contended that if under section 309 of the code attempt to kill one self has been decriminalized then on the same line section 306 should also be declared as unconstitutional. The latter includes a provision regarding abetment of suicide. But the Apex Court in this case has maintained the legitimacy of both section 306 and section 309.²⁹

Further, the court in this case observed that there is no scope of legalization of Euthanasia or assisted suicide in India because of the criminal law scheme. It is specifically prohibiting any such act under the express provisions. However, the main issue regarding removal of life supports from a terminally ill was indirectly

²⁸ AIR 1996 SC 1257

²⁹ Soumya Deshwar, "Euthanasia: the present scenario", *iPleaders Intelligent Legal Solutions*, 24th June' 16, retrieved from <https://blog.iPLEaders.in/euthanasia-present-scenario-india/> on 27-05-2018

addressed by the court in its judgment. In this respect, the decision has been considered as a landmark decision in the judicial history of India.³⁰

In 1997, the Commission submitted its 156th followed by the judgment in Gian Kaur, and recommended retaining of Sec. 309. The significant factor to be prominent here is that Euthanasia, Suicide, mercy killing lead to abnormal ending of life. Therefore, this judgment institutes that 'right to life' not only impedes, further it also prohibits 'right to kill'.³¹

4.4 New Dimension in Indian History- Aruna Shanbaug Case³²

In this case, the Judiciary dealt with the issue of Euthanasia in an extensive way. The various controversial aspects of this concept have been considered and possible solutions have also been forwarded through the judgment in this case.

The facts of the case are as follows:

Aruna Shanbaugh had been living in a permanent vegetative state for 42 years although her brain was still functioning a little. In absence of any relatives or family members the staff of the KEM hospital, where she had been lying in vegetative state for 42 years, used to take care of her. As a result of which, the staff of the hospital got emotionally close to her and didn't want her to be left to

³⁰ *Id.*

³¹ *Id.*

³² (2011) 4 SCC 454

die. The care taken by the staff was found to be marvelous. However, a social activist had moved the Court looking for permission to disconnect life-support system from Aruna, but court said that she didn't have a locus standing in the issue. Though, the case led a two-judge bench of the Apex Court comprising of Markandey Katju and Gyan Sudha Mishra, JJ. to give deep discussion to the whole issue of allowing or legitimizing Euthanasia. The bench ruled out active Euthanasia, however, held that passive Euthanasia may be allowed in certain cases subject to some precautions. The important factor that has to be taken into account is whether the patient is conscious his/her own wishes. On the contrary, in case of comatose patient, the desires of close relatives (life partner, parents, kids and others) must be considered. If no close relative is accessible, as in the case of Aruna, the KEM hospital staff can step up. At that point the issue needs to go before the High Court, and a bench of no less than two judges need to settle on the decision. The bench is to create a crew of three skilled doctors to look at the patient. Moreover, the bench should also determine the perspectives of the State and the close relatives of the patient. The Apex court ruled that this process ought to be taken after until Parliament had legislated on the issue.³³

³³ *Supra* note 29

The Supreme Court in this relation also formulate the regulations that will remain to be the law until Parliament formulates a legislation over the issue. The guidelines³⁴ are as follows:

1. The decision for terminating the life support system has to be taken either by the spouse or the parents or other close relatives. In case, the patient doesn't have any of these, then the decision can be taken even by an individual or a body of individuals acting as a next friend. The decision can also be taken by the doctors attending the patient. Though, the choice ought to be made legitimate in the best interest of the patient.³⁵

2. the decision is required approval from the concerned High Court even if a choice is taken by the near relatives or next friend or doctors to terminate life support system.³⁶

3. After the filing of such an application, the Chief Justice of the High Court should immediately establish a Bench of not less than two Judges who should choose to grant approval or not. Bench should also nominate a committee of three skilled doctors who will provide an information relating to the state of the patient. A notice concerning the information should be provided to the close

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

relations as well as to the State before making the decision. Then the High Court can pass its verdict after hearing both the parties.³⁷

This landmark judgment of the Supreme Court of India paved way for a bill over the passive Euthanasia named "*The Medical Treatment of Terminally-ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016*". The Bill is essentially a replica of draft legislation that was first annexed to the 196th Report of the Law Commission of India in 2006 and later revised in 2012. However, the Bill is imbued with certain shortcomings.³⁸

4.5 Passive Euthanasia- The views of the Law Commission and the Supreme Court

The Law Commission of India, in its 196th Report, favored Passive Euthanasia in the case of competent as well as incompetent patients which includes terminally ill patients.³⁹ The Apex Court in Case of Aruna Shaunbaug has permitted non-voluntary passive euthanasia with the condition that the safety measures set out in the pronouncements are obeyed. The Court in this case adopted the different approach in comparison to Law Commission when the safety measures are concerned. In the case of Incompetent patients, the highest Court has made a compulsory provision which requires prior permission from the High Court of the

³⁷ *Id.*

³⁸ *Id.*

³⁹ Sarabjeet Taneja, "Should Euthanasia Be Legalized?", *Journal of Constitutional and Parliamentary Studies*, Jan-June, 2008, p-57

State by the close relatives or next friend or the doctor attending the patient. After receiving the application, the High Court will thereafter seek the view of a Group comprising of three professionals picked out of a panel organized by it after meeting with medical experts which will be followed by the order of the Court after considering the report as well as the requests of the patient's family or next friend.⁴⁰

After as a result of this Judgment, the Government raised the matter before the Law Commission of India vide their letter dated April 20th 2011 requesting the Commission to deliver a comprehensive report over the possibility of Euthanasia Law in India while considering the 196th report of the Commission. The 17th Law Commission as well as Apex Court have already advocated the framing of laws relating to passive euthanasia and that will be in conformity with universal practice too. Both of these authorities came to the conclusion that Euthanasia is not a crime in any manner howsoever, and no legal or constitutional obstacle is there in the way of enactment of a statute granting permission of withholding or withdrawal of medicinal treatment from terminally ill patients.⁴¹ Law Commission also gave due regard to the perspective of both the authorities in its 241st report. Though, the report provides a whole new vision over this issue and finally

⁴⁰ Dr. Sanjeev Kumar Tiwari, "Concept of Euthanasia in India- A Socio-Legal Analysis", *International Journal of Law and Legal Jurisprudence Studies*, Vol. 2, 2015 retrieved from <http://ijlls.in/wp-content/uploads/2015/04/AMBALIKA.pdf> visited on 28-25-2018

⁴¹ Id.

advocated the framing of suitable legislation over the Euthanasia. Moreover, the Commission has respected both the observations concerning the procedural measures in situations where the choice of removal of life supporting equipment's is made in the best interests of an incompetent patient. However, with respect to the method and protections to be accepted and followed, the Commission inclined extensively in favor of the view of the Supreme Court in preference to the view of the Law Commission.⁴² It additionally proposed some alterations with respect to the composition and preparation of medical expert's panel which is to be selected by the High Court. Chief portion of rest of provisions proposed in the 196th Law Commission have been considerably embraced in the revised Bill organized by the present Commission. The present Commission began talk on the suggestions given by seventeenth Law Commission. It witnessed that the principle dissimilarities between the proposals of the Law Commission (in 196th Report) and the law set around the Supreme Court (2011) which can be characterized as under:⁴³ The Law Commission recommended sanctioning of an enabling provision for seeking declaratory relief before the High Court while the Supreme Court made it obligatory to get permission from the High Court to give effect to the choice to terminate life support to a hopeless patient. According to the Judgment delivered by Supreme

⁴² *Id.*

⁴³ *Supra* note 39

Court, the views of the Experts Committee ought to be acquired by the High Court, while as per the proposals of Law Commission, the attending medical practitioner should acquire the opinion of experts from an approved panel of medical experts before taking a decision to withdraw/withhold medical treatment to such patient.⁴⁴

In such an occasion, it is available to the patient or his/her relatives and so forth to approach the High Court for a suitable declaratory relief. Moreover, the present Law Commission has broken down certain essential terms in the definition part of the proposed Bill drafted by the seventeenth Law Commission. One such term was 'informed decision'.

The Commission witnessed that the term 'informed consent' has been acquired from the chosen cases in England and different nations. The broad meaning of the term is the absence of ability to choose, notwithstanding the way that the patient is in his senses, which has restricted him from taking 'informed decision'. The said definition of 'informed decision' was inspired from the English case which have been referred in the 196th Law Commission Report. In *Re: MB (Medical Treatment)*⁴⁵, was a decision of Court of appeal pronounced by Butler Sloss L.J. He observed that:

⁴⁴ *Supra* note 36

⁴⁵ 1997 (2) FLR 426

"On the facts, the evidence of the obstetrician and the consultant psychiatrist established that the patient could not bring herself to undergo the caesarian section she desired because a panic-fear of needles dominated everything and, at the critical point she was not capable of making a decision at all. On that basis, it was clear that she was at the time suffering from an impairment of her mental functioning which disabled her and was temporarily incompetent."

The Law Commission of India on this point made it explicit that where a competent patient has made an informed decision to withdraw his medical treatment or withhold medical treatment from him and let the nature take its own course, he/she under common law will not be held guilty of committing suicide and the doctor who obliges such patient's decision by omitting to give the required treatment will also be given immunity from criminal liability under Indian Penal Code.

The second important term used in the draft Bill by the 17th Commission was 'best interest'. The concrete definition of this term is not possible but still the Law Commission relied on the test laid down in *Bolam's case*⁴⁶ - a test which was reiterated in *Jacob Mathew's case*⁴⁷ by the Supreme Court of India. Through this the Commission has set out a detailed procedure which is as under:-

⁴⁶ *Bolam v. Friern Hospital Management Committee* (1957) 1 WLR 582

⁴⁷ *Jacob Mathew v. State of Punjab* (2006) 5 SCC 472

- The Director General of Health Services in relation to Union territories and the Directors of Medical Services in the States will be the appropriate authorities to prepare the panel of experts.
- There is a prerequisite of keeping a register by the doctor attending on the patient.
- The register should include all the significant particulars about the patient and the treatment being provided to him, and should also encompass the view of the doctor and experts as to the competence of the patient and what is in the best interests of the incompetent patient.
- The Medical Council of India has been enjoined to issue the guiding principle from time to time for the management of medical practitioners in the matter of withdrawing or withholding the medical treatment to competent or incompetent patients suffering from terminal illness.⁴⁸

The Law Commission on the question of validity of the documents called advance directives (living will) and medical power of attorney has answered negatively even if such documents are made in written form. The Commission has overridden the common law right of autonomy of the patients under the garb of public policy of India.⁴⁹ It has considered such documents as against the public policy of India. Moreover, they will be

⁴⁸ *Supra* note 39

⁴⁹ *Id.*

subjected to blatant abuse in the country. The level of education and awareness about their rights among the general masses in India is clearly supporting the view taken by the Commission in its 196th report. The present Commission did not interfere in such decision of the previous Commission. It means even under the revised Bill advance directives have been rejected in totality. The international scenario has also shown ambiguities in this area. This can be ascertained especially from the case laws of the nations where such advance directives have been given legal force.⁵⁰

4.6 Present Scenario

In recently delivered Judgment in the case of *Common Cause v. Union of India*⁵¹ on 8th March, 2018, the apex court has ruled that individuals have the right to die with dignity, and has allowed passive Euthanasia with guidelines. The apex court further said that an individual could make an advance 'living will' that would authorize passive Euthanasia under certain circumstances. The panel of 5 Judges allowed the Passive Euthanasia in cases when the persona is terminally ill and there is no hope of recovery. However, Active Euthanasia remained illegal in India.⁵²

⁵⁰ *Supra* note 15

⁵¹ Civil Writ Petition no. 215 of 2005

⁵² Accessed from <http://indianexpress.com/article/india/passive-euthanasia-now-legal-supreme-court-issues-guidelines-for-living-will-5092082/> on 20.05.2018

The Constitutional Bench was headed by CJI Dipak Misra, said the living will can authorize the pulling out of life-support system if the individual touched an irretrievable stage of terminal illness in the medical view. The judgment decreed that passive Euthanasia is legal and valid across the country.⁵³

The court delivered its verdict on a public interest litigation filed in 2005 by an Non-Governmental Organization called Common Cause - to allow terminally-ill patients to 'die with dignity. Justice Chandrachud while delivering the Judgment, said,

"Life and death are inseparable. Every moment our bodies undergo change... life is not disconnected from death. Dying is a part of the process of living."

The court stated the rights of a patient would not fall out of the purview of Article 21 (right to life and liberty) of the Indian Constitution. The Court also defined advance medical directive stating that in case where an individual is not in position of specifying his wishes, then an advance medical directive can be pursued by the individual exercising his autonomy on the matter of the degree of medical intervention that he wishes to allow upon his own body at a future date.

⁵³ *Id.*

It is a measure to safeguard aforementioned right by an individual. The following guidelines⁵⁴ were laid down by the top court:

- Who can execute the advance directive and how can it be executed?

It can be executed by the person who have attained the age of majority, having a healthy and sound mind. The person must be in a position to relate, communicate and realize the purpose as well as magnitudes of executing the document. The document should be executed voluntarily as well as with no coercion or compulsion or inducement and person should have full knowledge or information.⁵⁵

- What should be the content of written document?

The written document should plainly specify the decision concerning the situations in which the medical treatment can be ceased or withdrawn. It should mention specific terms and instructions provided should be plain and unambiguous. The document must contain a clause whereby the executor may withdraw the instructions at any point of time. Moreover, it must reveal that the consequences of executing the document have been understood by the person. In case, the executor turns out to be incompetent of taking the decision, then it should specify the name of guardian or close relative who have authority to provide permission to

⁵⁴ *Id.*

⁵⁵ *Id.*

withdraw or to refuse medical treatment in the method which is in consistency with the Advance Directive.⁵⁶

- These guidelines further direct to record and preserve the document. One copy of the document would be preserved by the Judicial Magistrate of First Class in his office, in hard copy and digital form, another would be forwarded to the Registry of the jurisdictional District Court, third copy would be given to the competent officer of the Municipal Corporation or local Government or Panchayat or Municipality and the fourth copy would be given to a family physician, if any.⁵⁷
- Detailed pointers have been set in case the executor becomes terminally ill, in which case, the instructions provided in the document would be given due weight by the doctors. A Medical Board would be constituted by the hospital or the physician where, the executor is admitted.⁵⁸
- The executor of the Advance Directive or his family members or even the hospital staff or treating doctor can file the petition in the High Court under Article 226 of the Constitution if the Medical Board refuses the permission to withdraw medical treatment.⁵⁹

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

- The individual has been provided with the right to withdraw or alter the Advance Directive as well. The court also drew a scenario in the event of the absence of an Advance Directive. In such a case, a Hospital Medical Board would be constituted where the individual is admitted.⁶⁰

On the subject of administration of a lethal drug, the court held that *"no one is permitted to cause death of another person including a physician by administering any lethal drug even if the objective is to relieve the patient from pain and suffering"*.⁶¹

⁶⁰ *Id.*
⁶¹ *Id.*

CHAPTER 5 - POSITION OF EUTHANASIA IN NETHERLANDS AND ENGLAND

5.1 Introduction

The legality of Physician Assisted Suicide and euthanasia has been matter of great discussion for both the judiciary and legislators in many countries, these debates are focused on the question whether to legalize such acts. The practice of Euthanasia and assisted suicide have been almost universal rejected because they are considered to be outside the purview of genuine medical practice, many countries in the world did not allow either one of them or both.¹ In Netherlands this practice has been used for not less than three decades. Between the time period 1973 and 2002 there were increase in number of government documents, court decisions and medical association guidelines. As a result of all this, a legislation was enacted in 2002 in which both Euthanasia and assisted suicide were allowed. So, the first country in the world to legalize Euthanasia was Netherlands inevitably. Voluntary Euthanasia was supported in Britain and the Organizations for that purpose were established in 1935. These organizations enjoy some kinds of Public support, still they were not able to achieve their desired purpose. In the previous couple of decades, western laws

¹ Satpal Singh Makkar, "Euthanasia: A betrayal of Justice", *Amritsar Law Journal*, Vol. 12, 1985, p-65

related to passive as well as Voluntary Euthanasia have gradually been smoothed, even though severe moral and lawful inquiries still exist.²

As the evolution of laws from their conventional religious foundations, some types of Euthanasia have been lawfully acknowledged. Generally, laws endeavor to demarcate between Passive as well as Active Euthanasia. Whereas laws usually allow Passive Euthanasia, Active Euthanasia is by and large disallowed.³

5.2 Legal position of Euthanasia in Netherlands

The Dutch circumstance in the vicinity of 1973 and 2002 was an outgrowth of various judicial pronouncements, government archives as well as guidelines of medical association. The lawful discussion relating to Euthanasia in the Netherlands started with a decision⁴ of District Court in the year 1973 wherein Postma, a doctor was accused of Euthanasia after she concluded the life of her mother who was seriously ill. The circumstances under which the old lady passed on would not have come into highlight if the Postma would not have insisted to make her actions public.⁵

² M.D. Singh, "Euthanasia: How merciful is the Killing," *Amritsar law Journal*, Vol. X, 2001, p-54

³ Shreyans Kanswal, "Should Euthanasia Be Legalized in India", *Criminal law Journal*, 2002, p-210

⁴ "Postma" Case *Nederlandse Jurisprudentie*, [1973] District Court Leeuwarden No. 183.

⁵ John Griffiths, et.al., "Euthanasia and law in Europe", *Oxford and Portland, Oregon*, 2008, p-28

Postma's mom was suffering from brain hemorrhage which left her partly incapacitated, hard of hearing and able to speak only with difficulty. In the nursing where she lived, she had to be tied into a chair in order to avoid falling. She over and over again begged her girl to end her life. At last, Postma could not bear to see her mother in such situation as a result of which she gave her mom an injection of morphine and thereby finishing her life. Afterwards, she informed the director of the nursing home, who revealed the death to the police. Postma held accused of mercy killing, which was a statutory offense in the Netherlands at the time. She was convicted with only a one week suspended sentence, and put on probation for a year.⁶

After the *Postma case*⁷, the Royal Dutch Medical Association reconsidered its attitude to voluntary Euthanasia. In 1973 when every other medical association unequivocally supported the Hippocratic tradition that doctors must not assist their patients to die the Royal Dutch medical Association opened the door just a crack. Although the association openly said that voluntary Euthanasia should remain illegal, it suggested that if a doctor, after considering all the aspects of a patient's circumstances, shortened the life of a patient who was incurably ill and in the process of dying, a court should decide whether there was a conflict of duties that could justify the doctor's action. In the case of Postma, the Dutch

⁶ *Id.*

⁷ *Supra* note 4

court depended vigorously on expert evidence by the district medical inspector who put forward specific conditions wherein the normal doctor thought Euthanasia ought to be viewed as worthy. Incorporation of those situations shaped the foundation for consequent acknowledgment of Assisted suicide and Euthanasia in the Netherlands.⁸

In Netherlands, a 15-part commission was built up in 1982 to submit proposals for future government strategy on Euthanasia and abetting suicide, especially as to framework and implementation of laws, a larger part of commission suggested that Euthanasia ought to be accessible in specific situations and condition, executed just by a medicinal officer through proper medical strategies.⁹

Article 293 of the Netherlands Penal Code provides for 12 years of imprisonment for consensual killing and 3 years of imprisonment to the person assisting another in committing suicide.

Notwithstanding the clear expressions of the Code, the Netherlands courts have come to decipher the law in such a way so as to provide a defense in cases of Voluntary Euthanasia and Assisted Suicide. The defense was the defense of Necessity. Defense of Necessity in Netherland is of two categories. The former

⁸ Subhash Chandra Singh, "Euthanasia and Assisted suicide: Revisiting the Sanctity of life principle," *Journal of Indian law institute*, Vol.54, No.2, April-June 2012, p-206.

⁹ *Id.* at p-207

is 'psychological compulsion' and the latter is 'emergency'. The second applies in cases where the accused chooses to break the law for the promotion of higher good.¹⁰

The Court has laid down the principle of 'defense of necessity' in *Chabot's case*. The situation in which this principle becomes applicable is a question of fact. It has been summarized by health minister Mrs. Borst -Eilers (as she then was) as following:

- (i) The request for Euthanasia must come only from the patient and must be entirely free and voluntary.
- (ii) The request of patient should be very much viewed as persistent and durable.
- (iii) The suffering must be intolerable having no scope of improvement.
- (iv) The last resort must be Euthanasia since different contrasting options to ease the patient circumstance have been measured.
- (v) Doctor should perform Euthanasia.
- (vi) The doctor should consult with an independent doctor associate having skill in this area.

The above-mentioned guidelines as prepared by the Royal Dutch Medical Associations are more favorable in establishing the patient's right to die. It is

¹⁰ *Supra* note 3

more liberal in the same that these conditions do not require that the Patient should be in a terminal condition but only that the suffering must be unbearable and without hope of improvement.¹¹

5.2.1 Netherlands – The First Country to Legalize Euthanasia

In the light of above- discussed judicial guidelines, a Bill had been introduced in Netherland's Parliament with a view to legalize Euthanasia. Finally, on April 10, 2001 the Bill was passed by the legislature of the Netherlands. With this the Netherlands had drafted a unique chapter in the history of legalization of Euthanasia and thus became the first country in the whole wide world which permits medical practitioners to put an end to the lives of the patients suffering from unbearable pain and without hope of recovery from such condition.¹²

The law on Euthanasia provides for the rules under which a long tolerated practice of Euthanasia in the Netherlands will become lawful and official. The requirements of such rules will be as under: -

- a continuous and consistent doctor-patient relationship;
- the patient possesses the knowledge regarding the alternative medical treatments

¹¹ Dr. Subhash Chandra Singh," Euthanasia: Contemporary debates", Supreme Court Journal, Vol.:2, 2001, p-26-28

¹² Retrieved from <http://www.rationalistinternational.net> visited on 21-05-2018.

- and above all, the patient must have consulted a second medical professional and the opinion of such second doctor must support the written and enduring request for Euthanasia in the form of advance directives made by such patient.

Hence, the law on Euthanasia recognizes a practice which was in operation though unofficially since more than two decades in Netherlands. Luckily, it has been accepted by the people of Netherlands with open arms.

5.2.2 Euthanasia and Physician Assisted Suicide under the Law of 2002

Since 2002, the substantive and procedural conditions under which Euthanasia can be legally performed are governed by the Termination of life on Request and Assisted Suicide (Review Procedures) Act (the law of 2002) which entered into force on 10 April 2002. The law comprises of 3-parts.¹³

The first Codifies the requirements of due care and makes the Regional Review Committees principally responsible for renewing reported cases, the responsibility of the prosecutorial authorities is limited to cases in which the regional review Committee have found the doctor not careful. Cases held by the committee to be outside their Jurisdiction due to the absence of a valid request or because they consider what the doctor did to be normal medical practice, as

¹³ Retrieved from <https://www.lawteacher.net/free-law-essays/human-rights/analysis-of-euthanasia-law-in-netherlands.php> on 23.05.2018

well as cases that come to their attention in some other way than via the report of a doctor (e.g. from another doctor, a nurse, the manager of an institution, etc.) are dealt with directly by the prosecutorial authorities.

The second amends articles 293 (Euthanasia) and 294 (assisted suicide) of the Penal Code to make Euthanasia and assisted suicide legal if performed by a doctor who has confirmed to the requirements of due care and has reported what he did to the municipal pathologist.

And the third part amends the Burial and Cremation Law to provide for the forms and the procedure to be used in reporting a case of Euthanasia or assisted suicide. Since the statutory legalization of Euthanasia and physician-assisted suicide takes the form of amendments to articles 293 and 294 of the Penal Code, it is only behavior prohibited by those articles that, under specified Conditions, is made legal. Behavior that does not amount to taking life or that is not pursuant to an express and earnest request, or that does not amount to intentionally assisting or procuring the means (or that does not in fact result in suicide) is not affected by the law of 2002.¹⁴ The conditions of legal Euthanasia to be observed by a doctor under the law of 2002 were the same summarized by Health Minister Mrs. Borst-Eilers.

¹⁴ *Supra* note 5 at p-83

Before the law of 2002, for a doctor to file an inaccurate report of a 'natural death' was a distinct criminal offence and as far as that is concerned, nothing has changed.¹⁵ However, the law of 2002 amends article 293 of Penal code to legalize Euthanasia by a doctor who conforms to requirements of due care and reports the Euthanasia to the municipal pathologist as required by the law on Burial and Cremation when the doctor who reports a case of Euthanasia is not the doctor who actually carried it out, the Regional Review Committees treat the later as the reporting doctor (who must meet the requirements of due care) and dispose of the case accordingly. Since the Review Committees do not see non reported cases their implementation of the requirement is limited to comments on the quality of the reports they receive and to requesting Additional information in the case of an inadequate report.¹⁶

In the case of minors (patient under 18 years), the law of 2002 for the first time contains specific provisions which parallel the age distinctions made in the law on contract for Medical Treatment. A doctor can honour the Euthanasia request of a minor over 12 who can be considered capable of a reasonable understanding of his interests. For minors between 12 and 16 both parents, or a guardian, must agree to the Euthanasia. For minors of 16 and 17, the parents or guardian must be included in the decision making but it is not necessary that

¹⁵ *Id.*

¹⁶ *Id.*

they agreed with the decision to carry out Euthanasia. The reporting and review procedure for cases involving minors is, since the law of 2002, the same as in the case of adults. The first case of a minor under 16 was reported in 2005, the Regional Review Committee found that the physician had met the requirements of due care.¹⁷

5.2.3 Patient's 'Right' to Euthanasia

As it has been discussed earlier in this chapter that legal regulation of Euthanasia in the Netherlands has taken the form of a justification, available only to doctors, for what otherwise would be a violation of explicit provisions of the Penal Code. A consequence of this is that the patient, even when his case meets all of the legal requirements, has no right to Euthanasia, if he finds a doctor willing to perform it, the doctor can legally do so, but no doctor has any obligation to accede to a request, however well founded. So it becomes clear that a patient whose request meets all the legal criteria sometimes experiences great difficulty in finding a doctor willing to carry it out. The whole complex of problems surrounding the access of patients to Euthanasia has yet to receive adequate legal attention.¹⁸

¹⁷ *Supra* note 13

¹⁸ *id.*

5.3 Legal Status of Euthanasia in England

It is worthwhile to note that first futile attempt to –legalize mercy killing was made in the year 1936 in England. A motion in 1950 was also defeated. Till today, it is not legalized though attempts in this direction have been made from time to time. In England law at present, Euthanasia would constitute the murder. The consent of the victim would be irrelevant to liability as the law does not recognize consent to serious injury or death. Even suicide was a criminal offence.¹⁹

The courts in England however, have taken a lenient view of mercy killing and some of the accused have been acquitted. In England and all other western Jurisdictions, the right to die with dignity by Euthanasia is compromised by the law of homicide. If the dying process is hastened by one person to limit the suffering of another, the criminal law makes no concession for benevolent motives. It persistently refuses to leave the issue in the hands of doctors; it treats Euthanasia as murder. A series of cases demonstrates that the criminal law of homicide inadequately reflects the motives which underlie the actions of

¹⁹ Shalini Marwaha, "Euthanasia Personal Anatomy and Human Rights: An intricate legal and Moral Global Perspective", *Amritsar Law Journal*, Vol.XIII, 2004, p.99.

those who assist people in their care, to die with dignity. Some of those are discussed below.²⁰

5.3.1 LANDMARK CASES

5.3.1.1 Dr. John Bodkin Adams Case²¹

Dr. Adams was tried for the murder of an 84-year-old woman in his care, who apparently respected the care, provided by the doctor and had named him as a beneficiary in her will. The patient was terminally ill and succumbed following the administration of large dose of narcotics prescribed by Dr. Adams. Devlin J. advised the jury that regardless of the health of the victim and motive of the accused, the law would treat as murder any action which intended to kill and did in fact kill. He also ruled that: "If the first purpose of medicine, the restoration of health, can no longer be achieved, there is still much for a doctor to do, and he is entitled to do all that is proper and necessary to relieve pain and suffering, even if the measures he takes may incidentally shorten human life. After a seventeen-day trial the Jury declined to convict. They deliberated for only forty-five minutes before finding Dr. Adams not guilty. The Acquittal was also the outcome of the trial of Dr. Leonard Arthur, a pediatrician who was charged with the murder of a Down's syndrome neonate.

²⁰ Hazel Biggs, "Euthanasia and Death with Dignity: Still poised on the Fulcrum of Homicide", *Criminal Law Review*, 1996, p-878

²¹ R v. Dr. Bodkins Adams (1957) Crim. LR 365

5.3.1.2 Dr. Leonard Arthur Case²²

The Child had been rejected by his parents who instructed Dr. Arthur that they did not wish the baby to survive. Subsequently a note was entered in medical records that the baby should receive "nursing care only". The infant was not fed but received strong pain killing drugs, allegedly to ease his distress. He died three years later. The doctor argued that the child died of natural causes to Down's Syndrome and when evidence was revealed that other significant congenital abnormalities also existed, the charge was reduced to attempted murders. Despite being advised that doctors, like everyone else, must practice within the law, and that motive is irrelevant in determining intention, the jury failed to convict Dr. Arthur.

5.3.1.3 R vs. Cox Case²³

In this case, the clinician carried out the wishes of his distressed and dying patient and deliberately injected her with strong potassium chloride, a drug which causes death but has not therapeutic value in this form. She died soon afterwards. The jury was given no choice but to convict in this instance since the death had resulted from deliberate unlawful killing and was therefore categorized as homicide. Their extreme reluctance to find Nigel Cox guilty was apparent in the fact that many of them wept openly as the verdict was returned.

²² R. vs. Arthur, (1981) 12 B.M.L.R. 1

²³ (1992)12 B.M.L.R. 38.

The patient's family considered that Dr. Cox had enabled their elderly relative to secure a merciful release from the terrible pain and distress she was enduring so that she could die with dignity. The case resulted in a considerable public debate and concern for the doctor, the patient, her family and others who may find themselves in a similar situation. These cases stand as authority for the basic premise that deliberately to take the life of another is a crime, reflecting Ognall J.'s comments that "prosecution is usually appropriate in these circumstances".

5.3.1.4 Airedale NHS Trust v. Bland Case²⁴

Against the above-stated background, this case was presented to the court to obtain a declaration that withdrawal of „treatment“ leading to death was lawful, so that the medical attendants could avoid criminal prosecution. The condition of Anthony Blend offered no prospect of recovery or improvement so to maintain a regime of burdensome and invasive treatment was medically pointless. Yet to discontinue treatment would cause his death and give rise to criminal culpability. The House of Lords has legalized non-voluntary Euthanasia in the situations where patients are in a persistent vegetative state.

The issues raised by these cases characterize the medico-legal dilemma generated by voluntary Euthanasia. Good medical practice requires that patients

²⁴ (1993)1 All E.R. 821

do not experience unnecessary and unwelcome suffering but the criminal law is inconsistent in its response to practitioners who take life-limiting decisions. Clinicians such as Nigel Cox, who openly concluded the life's of their patient's out of concern, are convicted, while Euthanasia was permitted.²⁵

5.3.1.5 St. George's Healthcare NHS Trust v. S Case²⁶

In this case, the blood vessels of a British woman were ruptured as a result of which she got paralyzed from neck down making her incompetent to breathe unaided. The physicians at the Hospital were keeping her alive by artificial means and assumed that switching off the machine was contrary to their morals. But in this landmark legal case, the woman won the 'right to die'. The decision followed a rising demand by patients to put their own rights before the rights of physician as well as the law and provide them right to choose when they wish to die. The doctors also supported the 'right to die' and requested the courts to allow the Assisted suicide in circumstances where an individual is in permanent vegetative state. The House of Lords settled that a person has the right of life-sustaining treatment as part of his rights of autonomy and self-determination. It was the first time in modern history of England when the judiciary accepted the reality of the time by allowing a terminally ill patient 'right to die'.

²⁵ *Supra* note 20 at 881-882

²⁶ (1998) 3 All ER 673

5.3.2 Some recent Developments in England in relation to Euthanasia

In November 2005, a bill known as an "Assisted Dying Bill" was introduced in the House of Lords to this effect in which a competent and terminally ill major person having unbearable suffering can wish either for Voluntary Euthanasia or for assisted suicide. It requires that attending physician should specify that the patient is probable to pass away from natural reasons within upcoming months. It further requires that the patient should sign a written declaration of intent and if this is not revoked within 14 days of the date on which the request was first made, then he can obtain the means to take his own life. Moreover, if the patient is not physically capable to do that, then he can have his or her life ended by means of voluntary Euthanasia. All cases are to be reviewed by a medical committee.²⁷

Pretty vs. United Kingdom Case²⁸

In Britain, Diana Pretty, 43 years old woman, suffering from motor neuron disease battled in the courts for the right to die in vain and finally died in 2002. After her demise, her husband Brian pretty, continued nation-wide Campaign for

²⁷ *Supra* note 19 at 99

²⁸ (2002) 2 F.C.R. 97

legalizing Euthanasia and delivered the petition even to British Prime Minister Tony Blair and also approached European Court of Human Rights.²⁹

This case and the above-mentioned British High Court's Case led to the introduction of Bill of November 2005 which has been discussed briefly just few lines above. The bill was intended to facilitate terminally ill patients to be able to obtain assistance in their dying processes. But unfortunately, path of the said bill has been blocked by the upper house of British Parliament i.e. House of Lords. The anti-Euthanasia people which were around 1,00,000 have signed a petition and the same has been submitted before the parliament along with a strong demonstration. In spite of the above hindrance, Mark Slattery, the chairman of an NGO named 'Dignity in Dying' said that- "the campaign to introduce an assisted dying bill would continue in spite of hindrance."³⁰

Thus, it can be said that Euthanasia has become more socially acceptable in England irrespective of the fact that legally speaking it amounts to a crime in the country. The case laws as discussed above are indicating the fact that there exists a sense of disharmony between law and social morality in this area and the criminal Justice system of England is ambiguous in its response to the situation in hand. It is incumbent upon the legislature to provide a clear cut law

²⁹ Richard H. S Tur, "Legislative Technique and human Rights: The sad case of Assisted Suicide", *Criminal Law Review*, 2003, p.3

³⁰ Retrieved from <http://www.Euthanasiaprocess.org/internationalprospective.htm/> visited on 26-05-2018

for taking medical decisions by the physicians regarding the end of life of terminally ill persons within the said legal framework. In this way only, the respect may be given to the patient's right to autonomy. An entirely new offence of mercy killing could be created to overcome concerns about classifying Euthanasia as homicide. Or, Euthanasia could become the subject of a special defense of homicide, described as mercy killing or legal Euthanasia whereby culpability could be defined without analysis of issue of causation or distinguishing between acts and omissions. However, protection for those who may fall victim to non-voluntary Euthanasia in the guise of mercy killing could become equally difficult to safeguard if the law were to be relaxed too far in favor of Euthanasia.³¹

5.3.3 The Living Will

In plain meaning this can be explained as a written or oral statement given by a terminally ill patient during his healthy times that in case if the person would become incompetent of giving an informed consent for withholding or withdrawing the life- prolonging machines due to some dreadful disease then the person named in the Will would be authorized to give such consent on behalf of such patient.³²

³¹ *Supra* note 20 at 886-887

³² *Id.*

It is significant to note that a 'Living Will' will only become operational when the patient is unable to express his consent freely.³³ This covers those situations in which the patient has become terminally ill and permanently unconscious. He/she can beforehand express his/her wish for receiving or rejecting any particular medical treatment.³⁴

Only the things which are otherwise legal can be ensured and authorized through a living will. The physician cannot be compelled to do anything which is contrary to law. Any family member or a close relative or even a next friend can be appointed as proxy. The function of that proxy person will be to give a practical suggestion or assistance to the attending physician in order to arrive at a meaningful conclusion.

The person making such living will would be under legal obligation to provide his/her doctor and legal advisor with the copies of such document. The document needs to be executed and completed correctly to ensure its authenticity through proper legal procedure.³⁵

'Living Wills' have been given due consideration in the Report titled as- British Law Commission Report. The said report has been given after an analysis of numerous judgments. In these judgments, the use of the above mentioned will in

³³ Retrieved from <http://www.caredirections.co.uk/legal/comment-6.htm> visited on 24-05-2018.

³⁴ *Id.*

³⁵ *Id.*

specific medical circumstances has been discussed in elaboration. The report has given comprehensive recommendations about the operation and legal status of living wills. The use of such kind of legal documents will definitely increase in future and it would go a long way to facilitate the easy decision making process regarding those patients who are in permanent vegetative state and need passive Euthanasia after withholding or withdrawing the unwanted medical treatment.³⁶

³⁶ *Id.*

CHAPTER 6- CONCLUSIONS AND SUGGESTIONS

6.1 Conclusions

The concept of 'keep on living' even if it is not that comfortable is changing very fast with the notion that there exists a right to die or mercy killing through which the wishes of the terminally ill patient must be respected. Usually, mercy killing is requested for those terminally ill patients where any further treatment is futile. It is difficult to accept that if a person is suffering from unbearable pain then his life can be put to an end in a peaceful manner. But on the other hand, it is equally difficult to ignore the reality of those people who are terminally ill and suffering from enduring pain. Hence, there arises a question whether such patients should wait till their natural death and keep on suffering till that time arrives or in order to relieve them from unbearable sufferings euthanasia should be made a legal option in order to give a peaceful end to the suffering patients.

There is no exclusive acceptance or rejection of the concept of euthanasia in various cultures and civilizations. That is why it is called an issue of controversy. Socially and legally, from both points of view it is tough to sustain these two terms together i.e. mercy and killing. Thus leading to very different approaches by people in different contexts of situation where mercy killing is accepted and rejected by them. It can be traced in different aspects like theosophical view,

medical view, legal view and its social aspect, the acceptance of it by common men living on the earth.

The whole topic is complex thus the idea behind this research work is to notify the actual practice of mercy killing at international level in countries like Netherlands and England and whether it should really be practiced in India in comparison to nations which are tolerable to this concept along with the discussion on the famous case of Aruna Ramachandra Shanbaug (2011) which has opened the doors of hope for the brain- dead patients depending on life support machines to get rid of the sufferings.

The Constitution of India provides every individual Right to Life and Personal Liberty under Article 21 and the debate whether this right include right to die with dignity has been prevailed in India since the 80s and the courts had a conflicting point of view over this issue. Thereafter, the judgment in the case of Aruna Ramachandra Shaunbaug paved a way for the passive Euthanasia in India for the terminally ill patients and formulate guidelines in order to practice the same. However, these guidelines could not have been transformed in the form of Legislation in the country. Thereafter, the courts again in the matter of recently delivered Common Cause v. Union of India came up with the same issue and said that individuals have the right to die with dignity and allowed the Euthanasia in the passive form, with active form being illegal. The court also allowed 'living

will' for the patients to authorize Passive Euthanasia in the certain circumstances in the future.

But, when the practice of Euthanasia in Netherlands is concerned, it became the first country to legalize Euthanasia in the world by enacting a legislation in the year 2002. The mechanism has seen a long span of time tickling obstacles and setting new norms. But, the practice is not foolproof and the Legislation is being misused on a large scale. It is seen that a huge number of Euthanasia deaths in the country are unreported and these deaths are not added within the official Euthanasia Statistics in the Netherlands. Further, the practice of Euthanasia is being conducted without the consent of the patients, as well as the doctors falsifies death certificates of the patients in order to escape their liability from the paperwork and inquiries from local authorities and claims the death as a natural death of concerned patient.

However, England was the first country to begin the debate relating to Legalization of Euthanasia, although even after several attempts, the law still recognizes Euthanasia as a crime making the person convicted of the murder. Nevertheless, the courts in England have taken a lenient view over the issue of mercy killing and it can be said it has become socially acceptable in the country. Therefore, in the absence of proper framework or proper guidelines relating to the practice of Euthanasia in England, there exist a sense of disharmony

between law and social morality in this area and the criminal Justice system of England is ambiguous in its response to the situation in hand.

Therefore, after studying with the laws relating to Euthanasia in the India, Netherlands and England, we came to conclusion that even in the absence of any legislation concerned with Euthanasia, India provides a better legal framework issued by the Supreme Court in comparison to the legal system prevalent in Netherlands and Euthanasia, which proves the hypothesis of this study. This apart, it pertinent to recall here that the Judgments discussed in this study concerning Euthanasia emphasize the idea of liberty, which places the focus on the 'individual' or the 'patients'. This would mean that the courts ventured in to the idea of passive Euthanasia, which does not involve killing as much as letting a person die. This is where the distinction between Passive and Active Euthanasia becomes significant.

Keeping in mind the above- mentioned findings, the following suggestions are made.

6.2 Suggestions

1. The State should incorporate the guidelines and judicial decisions of the Supreme Court of India on Euthanasia and ensure its effective operation;
2. It is desired that the State should consider recommendations of the Law Commission of India while enacting legislation/s to regulate passive Euthanasia in the case of terminally ill patients, while adhering to decisions of the Court;
3. This legislation should permit Passive Euthanasia of the brain dead patients as well as persons in Permanent Vegetative State under a strict monitoring by a Board, of both records and procedures, to be constituted by the State for this purpose. The Board may comprise of two senior retired/practicing doctors of reputation, One police officer of a rank not less than assistant commissioner, and one social worker and a retired high Court Judge.
4. It is suggested that the said legislation must expressly prohibit the use of Active Euthanasia on any terminally-ill patients, under any situation, as well as it must provide for strict punishment to the persons involved in it.
5. Further, there should be strict criminal penalty for all persons who misuse or violate the legislation and in the case of a medical practitioner violating

or misusing the said law there shall be cancellation or suspension of the license in addition to criminal liability, if found guilty.

6. The Medical Council of India should frame guidelines for the withdrawing or withholding of medical treatment in order to ensure that palliative care is administered in a manner consistent with the right to die with dignity of the patient;
7. It is further suggested that the law must specify where the terminally ill patient should be kept after the withdrawal of treatment for giving 'end of life care' till his/her death;
8. All Euthanasia cases executed must be recorded and these statistics must be made available by the State to the courts, Parliament, National Human Rights Institutions and the Human Rights bodies periodically or as and when required;
9. Lastly, it is suggested that the State Governments, National Human Rights Institutions, Universities, NGOs, Media, Civil Societies and all hospitals, jointly or independently, must promote awareness amongst the urban and rural populations concerning the legal and procedural aspects of Euthanasia from time to time.

BIBLIOGRAPHY

LIST OF BOOKS

1. Agnihotri, K.K., "A Perspective on Life", 1st Ed., *Better Books Publications*, Panchkula, 2009
2. Almagor, Raphael Cohen, "Euthanasia in the Netherlands: The policy and the practice of mercy killing", 1st Ed., Springer Publications, Netherlands, 2004
3. Bansal, Ritika, "Euthanasia: Appeal and plea for mercy killing", *Universal Law Publishing Co.*, New Delhi, 2013
4. Biggs, Hazel, "Euthanasia, Death with dignity and the Law", 1st Ed., *Oxford: Hart Publishing*, UK, 2001
5. Dowbiggin, Ian, "A Merciful End: The Euthanasia Movement in Modern America", 1st Ed., *Oxford University Press*, USA, 2003
6. Dowbiggin, Ian, "A Concise History of Euthanasia", 1st Ed., *Rowman and Littlefield Publishers*, 2007
7. Dworkin, Gerald, "Euthanasia and Physician-Assisted Suicide: For and Against", 1st Ed., *Cambridge University Press*, UK, 1998
8. Farber, Marvin, "Basic Issues of Philosophy- Experience, Reality and Human Values", 1st Ed., *Harper and Row*, New York, 1968
9. Griffiths, John, et.al., "Euthanasia and law in Europe", *Oxford and Portland Publishers*, Oregoon, 2008
10. Hanfling, Oswald, "Life and Meaning: A Philosophical Reader", 1st Ed., *Wiley- Blackwell Ltd.*, U.K., 1987
11. Kates, Frederick Ward, "The Use of Life", 1st Ed., *Harper and Brothers*, New York, USA, 1953

12. Lewy, Guenter, "Assisted Death in Europe and America: Four Regimes and their Lessons", *Oxford University Press*, New York, 2010
13. Lyon's, "Medical Jurisprudence and Toxicology", 11th Ed., *Delhi law House*, New Delhi, 2007
14. Modi, Dr. Jaising P., "A Textbook of Medical Jurisprudence and Toxicology", 25th Ed., *Lexis Nexis*, New Delhi, 2016
15. Nandy, Apurba, "Principles of Forensic Medicine", 1st ed., *New Central Book Agency (P) Ltd.*, Kolkata, 1995
16. Olson, Carl, "Indian Philosophers and Postmodern Thinkers: Dialogues on the Margins of Culture", *Oxford University Press*, New Delhi, 2002
17. Parikh, Dr. C.K., "Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology", 6th Ed., *CBS Publishers & Distributors*, New Delhi, 2006
18. Rachels, James, "End of Life: Euthanasia and Morality", 1st Ed., *Oxford University Press*, 1986
19. Sathaye, Shrinivas G., "A Philosophy of Living- An Introduction to Ethics", *Asia Publishing House*, New Delhi, 1963
20. Singh, Gurbax, "Law Relating to Protection of Human Rights and Human Values", *Vinod Publications (P.) Ltd.*, Delhi, 2008
21. Singh, Khushwant, "Obituaries: Death at my doorstep", 6th Ed., Lotus Collection, *Roli Books*, 2005
22. Young, Robert, "Medically Assisted Death", *Cambridge University Press*, UK, 2007
23. Zarit, Steven H., "Reading in Aging and Death: Contemporary Perspectives", *Harper & Law Publishers*, New York, 1977

LIST OF ARTICLES

1. Al-Qardhawi, "Y. Should euthanasia and physician assisted suicide be legal? Living Shariah: Fatwa Bank. 2005
2. Biggs, Hazel, "Euthanasia and Death with Dignity: Still poised on the Fulcrum of Homicide", *Criminal Law Review*, 1996
3. Deshwar, Soumya, "Euthanasia: the present scenario", *iPleaders Intelligent Legal Solutions*, 24th June' 16
4. Goyal, Mitakshara and Rosencranz, Armin, "Welcoming the decision legalizing passive Euthanasia", *The Times of India Blog*
5. Jain, Pralike, "Euthanasia and the society", *Indlaw News*, The Buddhist Channel, 26th Nov'08
6. Kanabar, J.G., "Should there be the Right to commit Suicide? "An unresolved controversy on an intimate question", *Criminal Law Journal*, 1993
7. Kasliwal, Shreyans, "Should Euthanasia be legalized in India", *Criminal Law Journal*, 2004
8. Keown, Prof. Damien, "End of life: The Buddhist View", *The Lancet*, Vol.-366, 2005
9. Khan, Farooq and Tadros, George, "Physician-assisted Suicide and Euthanasia in Indian Context: Sooner or Later the Need to Ponder," *Indian Journal of Psychological Journal*, 2013
10. Makkar, Satpal Singh, "Euthanasia: A betrayal of Justice", *Amritsar Law Journal*, Vol. 12, 1985
11. Marwaha, Shalini, "Euthanasia Personal Anatomy and Human Rights: An intricate legal and Moral Global Perspective", *Amritsar Law Journal*, Vol.XIII, 2004

12. Mugunthan, Sanheetha, "A Constitutional Perspective of Euthanasia & 'Right to Die'", *KLJ Journal*, Vol. 1, 2006
13. Mustafa, Faizan, "Right to Die: A Critique", *Amritsar Law Journal*, Vol. III, 1992
14. M.V., Rini, "Euthanasia and Rights of the terminally ill: An Indian Perspective", *The Academy Law Review*, Vol. 34: 1&2
15. Nimbalkar Namita, "Euthanasia: The Hindu Perspective", *Presented on National Seminar on Bio- Ethics, 2007*
16. Pathak, Rajesh Kumar, "Right to die: International Perspective", *Criminal Law Journal*, Vol.2, 2009
17. Pawar, Sujata, "Right to Die, How far Right? Judicial Responses", *Criminal Law Journal*, 2010
18. Qadri, Dr. S. M. Afzal, "Euthanasia and Law", *Criminal Law Journal*, Vol. XI, 2000
19. Rajput, Lakhan singh, "Legality of Voluntary Euthanasia", *Law Profiles*, Vol-I, Issue II, November, 2010
20. Rao, Sushila, "The Moral Basis for a Right to Die", *Economic and Political Weekly*, 30th April, 2011
21. Sharma, J.N., "Right to Die in Terminally Ill State: A Plea to Legalize Euthanasia", *M.D.U. Law Journal*, 2004
22. Singh, M.D., "Euthanasia: How Merciful is the Killing", *Amritsar law journal*, Vol. X, 2001
23. Singh, Dr. Subhash Chandra, "Euthanasia: Contemporary debates", *Supreme Court Journal*, Vol. 2, 2001
24. Singh, Subhash Chandra, "Euthanasia and Assisted Suicide: Revisiting the sanctity of life Principle", *Journal of the Indian Law Institute*, Vol. 54, 2012
25. Somerville, Margaret, "What would we lose by legalizing Euthanasia", *ABC religion and Ethics*, 24th May, 2013

26. Taneja, Sarabjeet, "Should Euthanasia Be Legalized?", *Journal of Constitutional and Parliamentary Studies*, Jan-June, 2008
27. Thareja, Jay and Thareja, Satyam, "Euthanasia: The Last right", *Criminal Law Journal*, 2009
28. Tiwari, Dr. Sanjeev Kumar, "Concept of Euthanasia in India- A Socio-Legal Analysis", *International Journal of Law and Legal Jurisprudence Studies*, Vol. 2, 2015
29. Tur, Richard H. S., "Legislative Technique and human Rights: The sad case of Assisted Suicide", *Criminal Law Review*, 2003
30. Umashanker, Sudha, "The fight for dignity in death", *The Hindu Magazine*, Weekly Edition, February 14, 2010
31. Verma, Rajni, "Termination of life on Request: An Analysis", *Amritsar Law Journal*, Vol. XII, 2003

LIST OF WEBSITES

1. <http://www.abc.net.au/religion/articles/2013/05/24/3766685.htm>
2. <https://blogs.timesofindia.indiatimes.com/voices/welcoming-the-decision-legalising-passive-euthanasia/>
3. <http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia1>
4. <http://www.religioustolerance.org/euth1.htm>
5. <https://www.isjs.in/sites/isis.in/files/docs/Euthanasia-The%20Hindu%20Perspective%20by%20Prof.%20Namita%20Nimbalkar.pdf>
6. http://www.islam-usa.com/index.php?option=com_content&view=article&id=381&Itemid=322
7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3701348/>
8. <http://www.bbc.co.uk/schools/qcsebite-size/rs/sanctity/sikheuthanasiarev2.shtml>
9. http://www.who.int/governance/eb/who_constitution_en.pdf
10. <http://www.buddhistchannel.tv/index.php?id=70,7438,0,0,1,0#.WxKWZkiFPIU>
11. <https://blog.ipleaders.in/euthanasia-present-scenario-india/>
12. <http://ijljis.in/wp-content/uploads/2015/04/AMBALIKA.pdf>
13. <http://indianexpress.com/article/india/passive-euthanasia-now-legal-supreme-court-issues-guidelines-for-living-will-5092082/>
14. <http://www.rationalistinternational.net>
15. <https://www.lawteacher.net/free-law-essays/human-rights/analysis-of-euthanasia-law-in-netherlands.php>
16. <http://www.Euthanasiaprocess.org/internationalprospective.htm/>
17. <http://www.caredirections.co.uk/legal/comment-6.htm>

LIST OF INTERNATIONAL INSTRUMENTS/ CONSTITUTION/ STATUTES

1. African Charter of Human and Peoples Right, 1981
2. American Convention on Human Rights, 1969
3. American Declaration of the Rights and Duties of Man, 1948
4. Constitution of India, 1950
5. Constitution of United States of America, 1987
6. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
7. European Social Charter, 1961
8. Indian Penal Code, 1860
9. International Covenant on Civil and political Rights, 1966
10. International Covenant on Economic, Social and Cultural Rights, 1966
11. Termination of life on Request and Assisted Suicide (Review Procedures) Act, 2002
12. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
13. Universal declaration of Human Rights, 1948

↓

LAW COMMISSION OF INDIA REPORTS

1. 196th Report of Law Commission of India, 2006
2. 241st Report of Law Commission of India, 2012