PASSIVE EUTHANASIA IN REGARDS WITH FUNDAMENTAL RIGHTS

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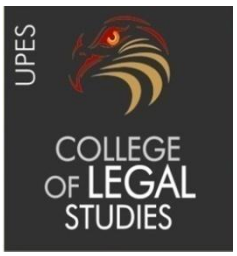
Submitted Uder the Guidance of: Mr A. Arvindam

This dissertation is submitted in partial fulfilment of the degree of B.A., LL.B. (Hons.)



College of Legal Studies

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Dehradun

2015

CERTIFICATE

This is to certify that the research work entitled *Passive Euthanasia with Regards to Fundamental Rights* is the work done by *Miss Nivedita Giri* under my guidance and supervision for the partial fulfilment of the requirement for B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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DECLARATION

I declared that the dissertation entitled *"Passive Euthanasia with Regards to Fundamental Rights*" is the outcome of my own word conducted under the supervision of *Prof. A. Arvindam*, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledge has been made in the text to all other material used.

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ABBREVIATIONS

Art. - Article

Est. - Established

Yr - Year

Sec - Section

SC - Supreme Court

HC - High Court

B.C. - Before Christ

Eg. -Example

i.e. - That is

Viz -Namely

USA - United States of America

AMA -American Medical Association

VELS -Voluntary Euthanasia Legislation Society

Pet. - Petition

ERGO - Euthanasia Research & Guidance Organization

IPC - Indian Penal Code

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ACKNOWLEDGEMENT

I extend my sincere thank all of the helping hands of this project. First and Foremost, I would like to express my deep and sincere gratitude to my mentor Mr. A. Arvindam, who has been a staunch supporter and motivator of this dissertation. Right from the inception of the research work, she guided me till the very end in the true sense of the word.

I would also like to thank my seniors for helping me frame the structure of this report. Last but not the least I would like to thank my parents and friends for their help and wonderful ideas without which this report would not have been possible.

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PREFACE

"Life is not merely tenure and humans are not machines".

The existence of human beings and the process of life and death is not merely a cycle but a way of nature. It is very rightly said nothing that exists is permanent be it living or non living. The man made things are not created, they are made and thus the existence and end becomes easy as it is simply guided by men. But the belief of people and the existence of God make the birth and death of human beings a complicated issue. This may be the reason why passive euthanasia becomes a much tangled and unsettled issue till date.

CHAPTER 1 -INTRODUCTION

Active euthanasia is caused when the medical professionals, or another person, deliberately do something or put efforts to effectuate death of a person.

Passive euthanasia occurs when the patient dies because the medical professionals either don't do something necessary to keep the patient alive, or when they stop doing the needful to keep the patient alive.

1.1 Definition

The concept is widespread and universal. With diverse meaning all over the world the core understanding of this Greek word is good death. It is an act of intentionally ending life in order to relieve a person from pain and sufferings.

The generally understood meaning is rather far beyond the dictionary definition of dying well - a good and easy death. We generally mean when a doctor induces the death, for instance with a lethal injection, to a patient who is suffering unbelievably and has continuously requested the doctors to do so. Generally, irrational or emotional suicides or the forced killing of another person is not included, although the term was coined by Nazi Germany to mean a form of forced killing, which is a very different idea. In the Netherlands, the definitions in use for euthanasia and assisted suicide are defined by the State Commission on Euthanasia.1 Euthanasia is the intentional termination of life by somebody other than the person concerned at his or her request. Assisted suicide means intentionally helping a patient to terminate his or her life at his or her request.

1 A-Z Definitions; EXIT's- FASTACCESS-A STARTING POINT; EXIT; http://www.euthanasia.cc/cases.html

1.2 Kinds- Active and Passive

Euthanasia lately has been classified as Active euthanasia and Passive euthanasia.

Active euthanasia is introducing something to cause death whereas;

Passive means withholding treatment or supportive measures;

Voluntary means with consent and *involuntary* means consent from guardian or close families and;

Physician Assisted is where physicians prescribe the medicine and patient or the third party administers the medication which causes death.

Arthur Hugh Clough mentioned that there is no real difference between Passive and active euthanasia. Thus this section shall also draw conclusion regarding the same studying both the kinds in detail and drawing a real time distinction between them. The main question is that is the difference mere morality and ethics or there is something else as well.

Some of the examples are:

Switching off life-support machines, disconnecting a feeding tube, not carrying out a life-extending operation, not giving life-extending drugs;

As previously mentioned the technical difference between active and passive euthanasia is same as the moral difference between killing and letting die. Many people make a moral distinction between active and passive euthanasia. They think that it is acceptable to withhold treatment and allow a patient to die, but that it is never acceptable to kill a patient by a deliberate act.

Request for premature ending of life has contributed to the debate about the role of such practices in contemporary health care. The distinction between refusing life saving medical treatment (passive euthanasia) and giving lethal medication is logical, rational and well established yet based on the stated facts and circumstances it is the Court to decide upon the same.

1.2.1

Distinction- Virtual or Real

As usually understood the difference between active and passive euthanasia is hairline. Yet the ground reality that traditional distinction between active and passive euthanasia requires critical analysis cannot be denied. The conventional doctrine puts forth is that difference between the two that is ethical, although the *Passive Euthanasia is sometimes and partially permissible, passive euthanasia is always forbidden.*

The above mentioned doctrine may be negated on several grounds. Active euthanasia is in many cases is more humanitarian than passive euthanasia. Secondly, the conventional doctrine leads to decisions concerning life and death on irrelevant grounds. Thirdly, the doctrine rests on a distinction between killing and letting die that itself has no moral importance.

The distinction between active and passive euthanasia is crucial for medical ethics. The idea is that it is permissible, at least in some cases, to withhold treatment and allow a patient to die, but it is never permissible to take any direct action designed to kill the patient.1

1.3

A Perspective into Past

The history of euthanasia is interesting as surprising. Right from 5th century B.C to the recent past euthanasia has seen ups and downs. Though there is no denying that Euthanasia has been more prevalent in the past. Religion to science, custom to logic, all have accepted euthanasia. It has been believed that "death is inevitable but pain isn't."

Thus an insight of the same has been recorded below:

5th Century B.C.-1st Century B.C. - Ancient Greeks and Romans Tend to Support Euthanasia

"In ancient Greece and Rome, before the coming of Christianity, attitudes toward infanticide, active euthanasia, and suicide had tended to be tolerant. Many ancient Greeks and Romans had no cogently defined belief in the inherent value of individual human life, and pagan physicians likely performed frequent abortions as well as both voluntary and involuntary mercy killings. Although the Hippocratic Oath prohibited doctors from giving 'a deadly drug to anybody, not even if asked for,' or from suggesting such a course of action, few ancient Greek or Roman physicians followed the oath faithfully. Throughout classical antiquity, there was widespread support for voluntary death as opposed to prolonged agony, and physicians complied by often giving their patients the poisons they requested."2

12th Century-15th Century - Christian Views on Euthanasia Reinforce Hippocratic Oath

"The ascendancy of Christianity, with its view that human life is a trust from God, reinforced the views of the Hippocratic School [which forbid euthanasia]. By the

2 Hippocratic Oath; Hippocrates; www.howstuffworks.com

twelfth through fifteenth centuries, it culminated in the near unanimity of medical opinion in opposing euthanasia."1

18th Century - During Middle Ages Christians and Jews Tend to Oppose Euthanasia

"Since ancient times, Jewish and Christian thinkers have opposed suicide as inconsistent with the human good and with responsibilities to God. In the thirteenth century, Thomas Aquinas espoused Catholic teaching about suicide in arguments that would shape Christian thought about suicide for centuries. Aquinas condemned suicide as wrong because it contravenes one's duty to oneself and the natural inclination of self-perpetuation; because it injures other people and the community of which the individual is a part; and because it violates God's authority over life, which is God's gift. This position exemplified attitudes about suicide that prevailed from the Middle Ages through the Renaissance and Reformation." 2

17th Century - Common Law Tradition Prohibits Suicide and Assisted Suicide in the American Colonies

"For over 700 years, the Anglo American common law tradition has punished or otherwise disapproved of both suicide and assisting suicide. For the most part, the early American colonies adopted the common law approach. For example, the legislators of the Providence Plantations, which would later become Rhode Island, declared, in 1647, that self murder is by all agreed to be the most unnatural, and it

1Euthanasia and Physician; Assisted Suicide: Killing or Caring?, *1998*

2 Saint Thomas Aquinas; *www.sciencemusings.com; also see:* New York State Task Force on Life and the Law; When Death Is Sought: Assisted Suicide and Euthanasia in the Medical

is by this present Assembly declared, to be that, wherein he that doth it, kills himself out of a premeditated hatred against his own life or other humour.”1

17th-18th Century - Renaissance and Reformation Writers Challenge Church Opposition to Euthanasia

"No serious discussion of euthanasia was even possible in Christian Europe until the eighteenth-century Enlightenment. Suddenly, writers assaulted the church's authoritative teaching on all matters, including euthanasia and suicide... While writers challenged the authority of the church with regard to ethical matters, there was no real widespread interest in the issues of euthanasia or physician-assisted suicide during that time."2

1828 - First US Statute Outlawing Assisted Suicide Enacted in New York

“The 1st of its kind American statute explicitly to outlaw assisting suicide is enacted in New York. It is the Act of Dec. 10, 1828, ch. 20, §4, 1828 N. Y. Laws 19. Many of the new States and Territories followed New York's example. Between 1857 and 1865, a New York commission led by Dudley Field drafted a criminal code that prohibited 'aiding' a suicide and, specifically, 'furnish[ing] another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life'. California, for example, codified its assisted suicide prohibition in 1874, using language similar to the Field Code's." 3

1 *Washington v. Glucksberg* , 1997

2 Ian Dowbiggin; *A Merciful End: The Euthanasia Movement in Modern America*, 2003

3 *Washington v. Glucksberg*, 1997

1885 - American Medical Association Opposes Euthanasia

"The *Journal of the American Medical Association* attacks Samuel Williams' euthanasia proposal as an attempt to make "the physician don the robes of an executioner." 1

1905-1906 - Bills to Legalize Euthanasia Are Defeated in Ohio

"By the turn of the century, medical science had made great strides. As physicians who used the modern scientific method and modern principles of pharmacology consolidated their control over university and medical school training, the euthanasia debate entered the lay press and political forums. In 1905-1906, a bill to legalize euthanasia was defeated in the Ohio legislature by a vote of 79 to 23. In 1906, a similar initiative that would legalize euthanasia not only for terminal adults, but also for 'hideously deformed or idiotic children' was introduced and defeated as well. After 1906, the public interest in euthanasia receded." 2

1930s - Public Support for Euthanasia Increases as US Endures Great Depression

"The dispute over mercy killing, after subsiding in the 1920s, caught fire again in the 1930s, making these years a pivotal juncture in the history of euthanasia in America. With the coming of the Depression and more troubled economic times, Americans began talking again about suicide and controlled dying... Public

1 Ezekiel Emanuel, MD, PhD "The History of Euthanasia Debates in the United States and Britain," *Annals of Internal Medicine*, Nov. 15, 1994

2 Michael Manning; *Euthanasia and Physician-Assisted Suicide: Killing or Caring?*, 1998

opinion polls indicated in 1937 that fully 45 percent of Americans had caught up with Harry Haiselden's belief that the mercy killing of 'infants born permanently deformed or mentally handicapped' was permissible." 1

1937 - Voluntary Euthanasia Act Introduced in US Senate

"Nebraska Senator John Comstock introduces legislation called the Voluntary Euthanasia Act, which calls for the legalization of active euthanasia. It is never voted on but demonstrates an emerging interest in legislating euthanasia. "2

1952 - Groups Petition the United Nations to Amend the Declaration of Human Rights to Include Euthanasia

"The British and American Euthanasia Societies submit a petition to the United Nations Commission on Human Rights to amend the UN Declaration of Human Rights to include "the right of incurable sufferers to euthanasia or merciful death. Inasmuch as this right is, then, not only consonant with the rights and freedoms set forth in the Declaration of Human Rights but essential to their realization, we hereby petition the United Nations to proclaim the right of incurable sufferers to euthanasia.

Eleanor Roosevelt, the Chairperson of the Commission, did not present the petition to the Commission". 3

1 Ezekiel Emanuel; "The History of Euthanasia Debates in the United States; Also see: Britain," *Annals of Internal Medicine*, Nov. 15, 1994

2 Bryan Hilliard; "The Moral and Legal Status of Physician-Assisted Death: Quality Of Life and the Patient-Physician Relationship," *Issues in Integrative Studies*

3 Marjorie Zucker; *The Right to Die Debate: A Documentary History*, 1999

"The Hastings Center was founded in 1969 by Daniel Callahan to study ethical problems in medicine and biology and was instrumental in the development of bioethics as a discipline. The original focus of the centre concerned death and dying, genetics, reproductive biology and population issues, and behaviour control. "1

1970s - Idea of Patients' Rights Gains Acceptance

"In the early 1970s, the widely accepted authority of the medical profession came under concerted attack in the name of patient autonomy. This challenge has been embodied in the progressive enumeration of patient rights, especially the right to refuse medical care, even life-sustaining care. The goals have been to remove physicians from decision making and to let individual patients weigh the benefits and burdens of continued life. "2

1974 - Society for the Right to Die Founded

"The founding of the Society for the Right to die [formerly the Euthanasia Society of America] marked a renewed dedication to pursuing the legalization of active euthanasia, a reenergized campaign to seek euthanasia laws through the political process."3

1 Daniel Callahan; "The Hastings Center and the Early Years of Bioethics," *Kennedy Institute of Ethics Journal*,

2 Ezekiel Emanuel; "The History of Euthanasia Debates in the United States and Britain," *Annals of Internal Medicine*,

3 ibid

Mar. 31, 1976 - Supreme Court Rules in Quinlan Case that Respirator Can Be Removed from Coma Patient

21-year-old Karen Ann Quinlan had fallen into an irreversible coma at a party in 1974. After doctors declared that she was in a "persistent vegetative state," her parents went to court to have her respirator removed.
The New Jersey Supreme Court rules in 1976 that Karen Quinlan can be detached from her respirator.

The case becomes a legal landmark, drawing national and international attention to end-of-life issues.1

1977 - Eight States Have Right to Die Bills

By 1977, eight states -- California, New Mexico, Arkansas, Nevada, Idaho, Oregon, North Carolina, and Texas -- had signed right-to-die bills into law.

1980 - World Federation of Right to Die Societies Forms

"The World Federation of Right to Die Societies was founded in 1980. Its membership included dozens of organizations from countries around the world that were concerned with euthanasia and the right to die"2.

1980 - Hemlock Society Forms

"Derek Humphry forms the Hemlock Society, a grassroots euthanasia organization, in Los Angeles.

1 *In Re Quinlan*, 1997

2World Federation of Right to Die Societies "Ensuring Choices for a Dignified Death;www.woldtd.net

Humphry ranks as one of the preeminent pioneers of the American euthanasia movement. Hemlock enjoyed a remarkable growth in the 1980s that rivalled anything the other U.S. organizations had achieved... What also distinguished Hemlock from CFD [Concern for Dying] and the SRD [Society for the Right to Die] was its official support for active euthanasia and assisted suicide."1

1988 - Unitarian Universalist Association Passes Resolution in Support of Aid in Dying

"The Unitarian Universalist Association of Congregations passes a national resolution titled "The Right to Die with Dignity." The resolution favours aid in dying for the terminally ill, thus the Unitarian Universalist Association of Congregations becomes the first religious body to affirm a right to die." 2

1 Ian Dowbiggin;*A Merciful End: The Euthanasia Movement in Modern America*, 2003

2 ibid

CHAPTER 2

EUTHANASIA- RECENT FOOTINGS

Euthanasia has been a dynamic concept. Right from the phase of complete acceptance till today where the dilemma between right and wrong has kept the concept on fire. Various study, research and literature have been developed on this topic yet a clear distinction whether it shall be accepted or not hasn't been settled. Even after such chaos and dilemma, a commendable degree of development has been ensured by almost all the countries either in affirmative of the subject or in negative of the subject.

This chapter shall be mentioned development right from the 90's till today leading towards a virtual legal platform where everywhere the hue and cry is all about uniformity, a legislation that would either uphold euthanasia or completely negate it.

In 1990's a Public Opinion Surveys was conducted where more than half of Americans supported Physician-Assisted Death.

"By the early 1990s, the growing interest in the right-to-die movement became apparent in public opinion surveys. These showed that more than half of the American public was now in favour of physician-assisted death.

With increased public interest, the stage was set for an explosive swell of activity in the courts, in professional medical journals and institutions, and, most significantly, in the homes of the American people."1

June 25, 1990 - Supreme Court Rules in Cruzan Case That a Person Has the Right to Refuse Life Saving Medical Service

"Cruzan v. Director, Missouri Department of Health comes before the United States Supreme Court. The case receives national attention, as it is the first right-to-die case that the court has agreed to hear. In 1983, a car accident had left Nancy Cruzan permanently unconscious (by most accounts). Her parents requested to withdraw her feeding tube, but the Missouri Supreme Court refused. The United States Supreme Court ruled that a competent person has a constitutionally protected right to refuse any medical treatment, but upholds Missouri's right to insist on clear and convincing evidence as to the wishes of patients who do not have decision-making capacity. In light of the ruling, the Cruzans' lawyer goes back to court with new evidence as to Nancy's prior wishes, and Nancy's feeding tube is removed. She dies on December 26th, 1990."2

Nov. 3, 1992 - California Death with Dignity Act Is Defeated

"California voters defeat Proposition 161, the California Death with Dignity Act, which would have allowed physicians to hasten death by actively administering or

1 1 Sue Woodman; Last Rights: The Struggle over the Right to Die, 2000

2 Wesley J. Smith; The Slippery Slope From Assisted Suicide to Legalized Murder, 1997

prescribing medications for self administration by suffering, terminally ill patients. The vote is 54-46 percent." 1

The Netherlands officially legalizes euthanasia2.

2003 - Attorney-General Ashcroft Challenges the Oregon Death with Dignity Act

"US Attorney-General John Ashcroft asks the 9th Circuit Court of Appeals to reverse the finding of a lower court judge that the Oregon Death with Dignity Act of 1994 does not contravene federal powers." 3

Feb. 19, 2008 - Luxembourg Legalizes Physician-Assisted Suicide and Euthanasia

"The Luxembourg parliament adopts a law legalizing physician-assisted suicide and euthanasia." 4

Nov. 4, 2008 - Washington Death with Dignity Act Is Passed

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1 Wesley J. Smith; Forced Exit: The Slippery Slope from Assisted Suicide to Legalized Murder, 1990

2 International Task Force on Euthanasia and Assisted Suicide; "Frequently Asked Questions,"; www.internationaltaskforce.org.

3 Derek Humphry "Chronology of Euthanasia and Right-to-Die Events During the 20th Century and into the Millenium"; www.finalexit.org

4 Luxembourg Parliament Adopts Euthanasia Law; Reuters; www.reuters.com

"Washington voters approve the Washington Death with Dignity Act (Initiative 1000) making Washington the second US state to legalize physician-assisted suicide."1

Dec. 5, 2008 - State of Montana Legalizes Physician-Assisted Suicide

"Montana District Judge Dorothy McCarter rules in the case of Baxter v. State of Montana that Montana residents have the legal right to physician assisted suicide, thus making it the third US state to legalize physician aid in dying."2

Jan. 13, 2014 - Physician-Assisted Suicide Ruled Legal by New Mexico Judge

"Laura Schauer Ives, Managing Attorney for ACLU-New Mexico, plaintiffs Katherine Morris, MD, and Aroop Mangalik, MD, and Kathryn Tucker, Director of Legal Services for Compassion & Choices 3

A ruling by Second Judicial Judge Nan G. Nash prohibits the prosecution of physicians who help competent terminally ill patients end their lives. The decision stated, "This court cannot envision a right more fundamental, more private or more integral to the liberty, safety and happiness of a New Mexican than the right of a competent, terminally ill patient to choose aid in dying." The ruling further stated " NMSA 1978 § 30-2-4 ["Assisted Suicide Statute"] therefore violates our State constitution when applied to aid in dying." 4

1 Washington Death with Dignity Act

2 Baxter v. State of Montana,; Montana Supreme Court

4 Michah McCoy, "ACLU Seeks Ruling That Physicians Can Provide Aid in Dying," www.aclu.nm.org

Mar. 2, 2014 - Belgium Legalizes Euthanasia for Terminally and Incurably Ill Children

On Mar. 2, 2014, Belgium became the world's first country to lift all age restrictions on euthanasia. King Philippe of Belgium signed legislation that allows children with terminal and incurable illnesses to choose to be euthanized. The child must be "near death, in 'constant and unbearable physical' pain with no available treatment." The child must also have "capacity of discernment and be conscious at the moment of the request." The request has to be made in writing, confirmed and agreed upon by the treating physician, confirmed by a second opinion from an outside doctor, and then the child must undergo psychological testing to confirm that the child understands the request fully and that test has to be certified in writing by the psychiatrist. The treating physician is then required to meet with the child's parents or legal representative to obtain their consent in writing. The Netherlands has similar legislation but prohibits euthanasia for children less than 12 years of age.1

Feb. 6, 2015 - Canada's High Court Strikes Down Physician-Assisted Suicide Ban

"In a unanimous ruling, Canada's Supreme Court struck down the country's law that bans doctor-assisted suicide Friday. The court said the law denies people the right 'to make decisions concerning their bodily integrity and medical care' and leaves them 'to endure intolerable suffering.' In its analysis, the court wrote, 'the prohibition deprives some individuals of life, as it has the effect of forcing some individuals to take their own lives prematurely, for fear that they would be

1 Cecilia Rodriguez; Will Belgium's Legalized Child Euthanasia Trigger Death Tourism? www.forbes.com.

incapable of doing so when they reached the point where suffering was intolerable.'

The court suspended its ruling from taking effect for 12 months, to give the government time to amend its laws." 1

1 National Public Radio; www.npr.org

2.1

Global Position and Associated Laws

Various forms of medically assisted dying and/or assisted suicide for the terminally or hopelessly ill competent adult have been approved by 2010 in the following ten states and nations. Each has its own rules and guidelines. All but Switzerland forbid foreigners coming for this type of help to die.1

This chapter shall give a gist of the position of some of the countries who have played a major role in the subject of euthanasia.

Canada

The law in Canada is almost the similar to that of England -- it is a crime to cause euthanasia, punishable by up to 14 years imprisonment. The offence is rarely prosecuted and a 2002 significant case brought against Evelyn Martens in BC resulted in acquittal.

The bill (Bloc Québécois MP's legislation) would have allowed doctors to avoid murder and manslaughter charges for helping terminally ill people or those in severe chronic pain to die. The bill stipulated that a physician could help someone to "die with dignity" provided nine conditions were met, including that the person was 18 or older, suffered from a terminal illness or unrelenting physical or mental pain, had made two written requests to die at least 10 days apart, and had their diagnosis confirmed by a second doctor.

Francine Lalonde, an east Montreal member of Parliament — *said it's time to allow terminally ill people in intolerable pain to die gently in a manner of their own choosing*. But a galaxy of MPs were concerned it would take the country down a "slippery slope" in which severely disabled or dying

1 Euthanasia Progress in 20th & 21st Century; Euthanasia Research & Guidance Organization (ERGO)

people could be euthanized without their consent.

Mexico

In Mexico, in 2008, the Senate voted 70-0 in favour of legalizing passive euthanasia. The Mexican bill legalizes passive euthanasia -- the disconnection of life support equipment -- when the patient is in permanent vegetative state and has been given less than six months to live. The consent of patient's family is to be taken as a necessity by the doctor. Whereas as far as possible the patient will have to voluntarily choose to or pray for euthanasia.

Colombia

Colombia's Constitutional Court in 1997 approved medical voluntary euthanasia but its parliament has never ratified it. Thus doctors there help suffering terminal people to die at their request.

Uruguay

In Uruguay it seems a person must appear in court, yet Article 27 of the Penal Code (effective 1934) is punishable for suicide. As far as is known, there have been no judicial sentences for mercy killing in Uruguay.

United Kingdom

In England and Wales there is a possibility of up to 14 years imprisonment for anybody assisting a suicide Oddly, suicide itself is not a crime.

Scotland

Suicide has never been illegal under Scotland law. There is no Scots authority of whether it is criminal to help another to commit suicide, and this has never been tested in court.

The killing of another at his own request is murder, as the consent of the victim is irrelevant in such a case. It is considered as the offence of culpable homicide.

Sweden

While it is correct that Sweden has no law specifically proscribing assisted suicide.

Norway

Neighbouring Norway has criminal sanctions against assisted suicide by using the charge "accessory to murder". In cases of consent, courts give lighter punishment. A recent law commission voted down de-criminalizing assisted suicide by a 5-2 vote.

Christian Sandsdalen, retired physician was found guilty of wilful murder in 2000. He admitted giving an overdose of morphine to a woman chronically ill after 20 years. It cost him his medical license but he was not sent to prison. He appealed the case right up to the Supreme Court and lost every time.

Denmark

Denmark has no laws permitting assisted suicide, despite reports that it does.

Finland

Euthanasia is covered nowhere in Finnish Criminal Code. Sometimes an assister will inform the law enforcement authorities of him or herself of having aided someone in dying, and provided the action was justified, nothing more happens. If Finnish doctors were known to practice assisted suicide or euthanasia, the situation might change, although there is no case history.

Germany

Direct killing by euthanasia is a crime. In 2000 a German appeal court cleared a Swiss clergyman of assisted suicide because there was no such offence, but convicted him of bringing the drugs into the

country. There was no imprisonment.

France

France does not have a specific law banning assisted suicide, but such a case could be prosecuted under 223-6 of the Penal Code for failure to assist a person in danger. Convictions are rare and punishments minor. France bans all publications that advise on suicide.

Italy

It is legally forbidden in Italy.

Belgium / The Netherlands / Switzerland

Four European countries today openly, legally, authorize assisted dying of terminal patients at their request:

Switzerland also legalized the same in 1994, where Belgium did it in 2002.

Netherlands (as well as voluntary euthanasia, lawfully since April 2002, but permitted by the courts since 1984).

Japan

Japan has medical voluntary euthanasia approved by a high court in 1962 in the Yamagouchi case, but instances are extremely rare, seemingly because of complicated taboos on suicide, dying and death in that country.

Australia

The Northern Territory of Australia had voluntary euthanasia and assisted suicide for nine months until the Federal Parliament repealed the law in 1997. Only four people were able to use it. Other states have attempted to change the law, so far unsuccessfully.1

1Euthanasia Research & Guidance Organization (ERGO)

Netherlands

Netherlands, in 2002 became the first country to legalise euthanasia and assisted suicide where it imposed a strict set of conditions: the patient must be suffering unbearable pain, their illness must be incurable, and the demand must be made in "full consciousness"

France

Euthanasia and assisted suicide are against the law.

Two recent high-profile cases have made the headlines: a doctor accused of administering drugs that hastened the deaths of seven elderly patients was acquitted, and France's high court authorised doctors to stop treating and feeding a young man who had been in a vegetative state on life support for six years. In the latter case, the patient's parents have appealed to the European court of human rights and are awaiting a decision.

United States

Doctors are allowed to prescribe lethal doses of medicine to terminally ill patients in five US states. Euthanasia, however, is illegal. In recent years, the "aid in dying" movement has made incremental gains, but the issue remains controversial.

Belgium

Belgium passed a law in 2002 legalising euthanasia, becoming the second country in the world to do so. The law says doctors can help patients to end their lives

when they freely express a wish to die because they are suffering intractable and unbearable pain. Patients can also receive euthanasia if they have clearly stated it before entering a coma or similar vegetative state.

2.2

India's Position

Conceptual Debate on Euthanasia has been raging for more than half century around the world and is raising important questions in medical ethics, moral theology, civil rights and liberty. For the first time in India, there was a serious in-depth discussion about it in Supreme Court which finally endorsed Passive Euthanasia with its landmark judgment in Aruna Shanbaug case1. It gave direct guidelines that are to be followed whenever such a scenario arises in India which will be law until parliament passes legislation in this regard. The Law Commission of India has proposed a bill in this direction which is yet to be passed by the parliament. This section of the chapter shall highlight the complications that arouses in legalising the subject.

Euthanasia is earlier described s the deliberate and intentional killing of a person for the benefit of that person in order to relieve him from pain and suffering. The term 'Euthanasia' is derived from the Greek words which literally means "good death" (Eu= Good; Thanatos=Death). The term was coined by the great historian Suetonius, who described the way *King Augustus* opted for quick, painful death without suffering. According to the British House of Lords Select Committee on Medical Ethics, it is defined as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering". 2

Legal Grounds

Active Euthanasia *is a crime in India* (and in most parts of the world) under the Indian Penal Code section 302 or 304. Many countries have passed legislation permitting assisted suicide and active euthanasia. In Netherlands, euthanasia is sanctioned by the passage of "Termination of Life on Request and Assisted Suicide (Review Procedures) Act" 2002 providing well defined guidelines for the same. Belgium was the second nation to take a stand in this direction. In

1 Thejaswi; Present Status Of Euthanasia In India From Medico-Legal Perspective An Update

2 ibid

Switzerland assisted suicide can be performed by nonphysicians. Both Active Euthanasia and Assisted Suicide are legal in Luxembourg since 19th February 2008. Apart from these handfuls of nations, none in Europe have legalized Active Euthanasia or Assisted Suicide.

Considering the legal aspects voluntary euthanasia is illegal as it can be directly brought under the ambit of Sec 309 of IPC as attempt to commit suicide which is punishable which was also advocated by the judgment from the Constitution Bench of the Apex Court in the year 1996 in Gian Kaur vs. State of Punjab. It adamantly consisted that Right to Life does not include Right to Die under Article 21. The noticeable point is that all across the world Passive Euthanasia permissible which is also demonstrated by Supreme Court in Aruna Shanbaug case, which we will be discussing here.

The question here is that why do we need the concept of Euthanasia. The interesting fact is that previously during the early past lack of technological, industrial and scientific development patient couldn't be kept alive of artificial technologies like ventilators whereas now after the Industrial Revolution patients can be kept alive for longer through well advanced technologies like life saving drugs, medical machines etc. Thus the concept of euthanasia previously was only stuck to active euthanasia but now since people can be kept alive for longer artificially, it is sometimes requested to simply remove the treatment when the patient is in a state beyond recovery. Thus the concept of passive euthanasia came to play. Even though the patients are kept alive, often they will be in extreme physical pain and suffering (emotional, social and financial). At this stage let's reiterate that these advanced intensive care procedures which we are referring here, will by no means cure/control the disease, but it will only prolong the agony as well as existence of terminally ill patients.

Permanent Vegetative State or terminally ill is to be decided on the following factor. According to The Medical Treatment of Terminally ill patients (Protection of Patients and Medical Practitioners) Bill 2006, 'terminal illness' means – "*(I) such illness, injury or degeneration of physical or mental condition which is*

causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or (ii) which has caused a 'persistent and irreversible vegetative' condition under which no meaningful existence of life is possible for the patient."[1]

Therefore the condition implied it that the patient is in extreme pain and the professionals have declared that the condition is irreversible or permanent.

The triangle also contains a side representing the family and close ones whose emotional sufferings cannot be ruled out. And in a place like India where most of its citizens meet their health expenses from their own pockets, continuing such expensive treatments results in considerable financial burden on poor households, often pushing them deeper into poverty

Economic Grounds

The WHO Report mentioned that in India about 87% of total health expenditure is from private spending, out of this, 84.6% is out-of-pocket expenditure[2]. Keeping in mind the financial angle, one cannot disagree from the fact that there is genuine need for Passive Euthanasia with definitive, unbiased protocols and safeguards. Now we shall discuss two important judgments: *Airedale case* from the House of Lords, UK and *Aruna Shanbaug* case from Supreme Court of India giving us a fair idea regarding the evolution of the laws pertaining to Passive Euthanasia in India and the world. 1.

Brief facts about Airedale NHS Trust vs. Bland case:

Tony Bland was injured in Hillsborough stadium, Sheffield, England on 15th April 1989 in a terrible tragedy occurred during a football match. The crush resulted in the immediate death of 94 spectators and injured another 766[18]. Tony Bland suffered serious injuries in the form of multiple ribs fractures and two punctured lungs, causing disruption in the supply of oxygen to his brain leading to irrevocable damage to the higher centers of the brain leading to Persistent

1 Protection of Patients and Medical Practitioners Bill, 2006
2 WHO- official; www.un.org

Vegetative State19. He was transferred to Airedale General Hospital. Neuro-radiological investigations showed that there was no cortical activity but his brain stem remained largely intact. His family considered him as dead and medically it was proven that there is no possibility of him emerging out of the coma. In August 1989, Dr. Jim Howe the Neurologist who was treating Tony Bland contacted the Sheffield Coroner to withdraw all treatment including artificial nutrition and hydration after undertaking comprehensive consultation with the family and in agreement with their wishes. Next day Dr. Howe was visited by the Police who told him that if he 'withdrew treatment and if Tony dies, that he would be charged with murder'.20 Then Airedale NHS Trust with the support of Tony Bland's family and Dr. Howe made an application to the court to grant permission to withdraw all life-prolonging treatment. This went on to become a milestone case as Airedale NHS Trust vs. Bland 1993. All the learned judges in the House of Lords unanimously agreed that Tony Bland must be allowed to die and passed the judgment on February 4th 1993. Mr. Bland's parents supported the doctors' court action and said they were "relieved" at the ruling. His life support machine was switched off on 22 February and he died on 3 March. In April 1994 the High Court rejected an attempt by a pro-life campaigner, Father James Morrow, to get the doctor who withdrew food and drugs from Tony Bland charged with murder. This was a benchmark case which influenced similar petitions throughout the world. In India passive euthanasia was deliberated in Supreme Court in case, Aruna Ramachandra Shanbaug vs. Union of India (2011)

Brief facts about the Aruna Shanbaug case:

Miss Aruna Shanbaug was working as Junior Nurse in King Edward Memorial (KEM) Hospital, Mumbai, where she was sexually assaulted by a ward boy. He strangulated her with a dog chain and sodomized her. The resultant asphyxiation caused irreversible injury to the brain causing Permanent Hypoxic Ischemic damage to her brain and since then, she has been in a persistent vegetative state. After some time her family abandoned her, but the nurses at the KEM hospital continued to take care of her. On 17th December 2010, Pinki Virani claiming to be Aruna's friend (a social activistcum-journalist) made a plea in Supreme

Court1for permitting euthanasia on Aruna Shanbaug. The Honorable Supreme Court sought a report about Shanbaug's medical condition from the Govt. of Maharastra. Three member Expert Committee subsequently examined and opined that she was in a Permanent Vegetative state. In early March The Apex Court rejected Pinki Virani's Plea opining that Active Euthanasia as all across the world is illegal, whereas on case to case basis passive euthanasia may be permitted for which it formulated strict guidelines as it feared that passive euthanasia may be misused in a country like India

Basic Guidelines issued by the Hon'ble Court for Passive Euthanasia:

Patient's Permission has to be obtained by the concerned High Court before life prolonging measures can be withheld where the Court will act as 'parens patriae', a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf. This doctrine is important if the patient is in unconscious state and cannot decide for himself as to prevent any kind of mal intention or criminality of close ones and relatives.

Opinion of medical practitioners should be given due weightage in formulating the decision. In case of Aruna Shanbaug Court declared that the hospital staff were her true friend and not Miss Virani and thus the decision would lie in the hands of the Staff. the decision to withhold life prolonging measures rests on the hospital staff and not Ms. Pinki Virani.

Court also suggested the parliament to make a legislation on Euthanasia to increase the feasibility of courts and uniformity as well.

On 11th August 2011, Law Commission submitted their report to Government of India titled 'Passive Euthanasia- A Relook'. In the modified and revised Bill proposed by 19th Law Commission, the procedures laid down are in line with the directions of the Supreme Court in Aruna Ramachandra case. Salient features of these are as follows:

1 J Punjab Acad Forensic Med Toxicol 2014;14(1) 62

"'Best interests' include the best¬ interests of a patient : (i) who is an incompetent patient, or (ii) who is a competent patient but who has not taken an informed decision, and are not limited to medical interests of the patient but include ethical, social, moral, emotional and other welfare considerations.

'Incompetent patient' means a¬ patient who is a minor below the age of 18 years or person of unsound mind or a patient who is unable to – (i) understand the information relevant to an informed decision about his or her medical treatment; (ii) retain that information; (iii) use or weigh that information as part of the process of making his or her informed decision; (iv) make an informed decision because of impairment or a disturbance in the functioning of his or her mind or brain; or (v) Communicate his or her informed decision (whether by speech, sign, language or any other mode) as to medical treatment. 'Competent patient' means a patient¬ who is not an incompetent patient.

'Informed decision' means the¬ decision as to continuance or withholding or withdrawing medical treatment taken by a patient who is competent and who is, or has been informed about- (i) the nature of his or her illness, (ii) any alternative form of treatment that may be available, (iii) the consequences of those forms of treatment, and (iv) the consequences of remaining untreated.

. Provisions are introduced for protection of medical practitioners and others who act according to the wishes of the competent patient or the order of the High Court from criminal or civil action. Further, a competent patient (who is terminally ill) refusing medical treatment shall not be deemed to be guilty of any offence under any law. This Bill has to pass through various stages before it becomes an Act. Until then the law laid down by Hon'ble Apex Court is to be followed whenever need for Passive Euthanasia arises in our country."1.

1 India's Position on Pasive Euthanasiahttp://medind.nic.in/jbc/t14/i1/jbct14i1p59.pdf

2.2.1

The relevance of Art 21 of Constitution of India

The jewel of our Indian Constitution is our fundamental rights. And among all the priceless pearl is Art. 21 which make a constitution more meaningful and welfare inclined. Right to life is the epitome of our constitution as it has a closest nexus with the Preamble and the objective of the country of making India a welfare Society.

Under the Constitution of India, Article 21 provides that:

"*No person shall be deprived of his life or personal liberty except according to the procedure established by law*."[1]

It means that for the deprivation of life and personal liberty, there should have been a law and a procedure established under it. The procedure should be fair, just and reasonable. Any arbitrary procedure cannot be justified for the deprivation of life and personal liberty. This right has been guaranteed to not only the citizens of India but to foreigners as well.

By its various decisions, the Supreme Court has extended the definition of right to life to right to a dignified life, declaring that 'life' does not mean a mere animal existence but something more. It has included the right to shelter, right to privacy, right to livelihood, right to pollution free environment, right to reputation, right to medical aid, right to education and so on under the ambit of Article 21. A man is entitled not only to breathe but to lead a fulfilling productive life.

In the case of Gian Kaur v State of Punjab, it has been held that the right to life as enshrined under Article 21 of the Constitution cannot be interpreted to include the

1 Article 21;Constitution of India

right to put an end to life by any unnatural method. There is no right to die under Article 21.

Suicide: Section 309 of the Indian Penal Code, 1860, makes an attempt to suicide punishable under the law. Suicide is a voluntary act to terminate one's life. It is an act of bringing about an unnatural end to one's own life. The Court has said that suicide is socially wrong and it is the duty of the State to prevent the same. The attempt to suicide has been made punishable in order to make an example of the person for others who may be developing a similar attitude towards life and death. The said section is constitutionally valid under the purview of Article 21 of the Constitution and the Supreme Court has held it reasonable in the case of Gian Kaur.

The question whether Article 21 includes right to die or not first came into consideration in the case State of Maharashtra v. Maruti Shripathi Dubal . It was held in this case by the Bombay High Court that 'right to life' also includes 'right to die' and Section 309 was struck down. The court clearly said in this case that right to die is not unnatural; it is just uncommon and abnormal. Also the court mentioned about many instances in which a person may want to end his life. This was upheld by the Supreme Court in the case P. Rathinam v. Union of India where it was concluded by the Court that "right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life". However in the case Gian Kaur v. State of Punjab it was held by the five judge bench of the Supreme Court that the "right to life" guaranteed by Article 21 of the Constitution does not include the "right to die". The court clearly mentioned in this case that Article 21 only guarantees right to life and personal liberty and in no case can the right to die be included in it.

The Law Commission of India in its 42nd Report (1971) has recommended for the deletion of Section 309, IPC. However, no action has been taken on the same till date. Euthanasia has been a debated topic as the person who is terminally ill, no longer leads a dignified life or a life that can be productive in any fashion. There is more or less a vegetative existence bound to machines at the mercy of others instead of a dignified human life and this life could hardly be covered under the ambit of Article 21. Euthanasia is often confused with suicide as in this case as

well, the person demands to terminate his life because of his condition and the death is brought about not in the natural, timely manner but by some external, human interference. Euthanasia and Suicide were clearly defined in the case of Naresh Marotrao Sakhre v. Union of India where Justice Lodha stated- "Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency while Euthanasia or mercy killing on the other hand implies the intervention of other human agency to end the life. Mercy killing is therefore not suicide and an attempt at mercy killing is not covered by the provisions of Section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is performed." In the case of Gian Kaur, the Apex Court distinguished between suicide and euthanasia by saying that in case of euthanasia, the patient is terminally ill and the process of death has already commenced and it is only hastened to avoid long sufferings.

On the other hand, however, the courts have been wary of the fact that relatives may try to hasten the death of the terminally ill patient, specially the one who cannot give his own consent, to get inheritance.

For a long time, the courts have been continuously rejecting all pleas of euthanasia citing legal, moral and ethical reasons. However, it has been raised time and again in the court about what is the actual state of patients who are brain dead or those who are permanently bound on life support system. The advocates of euthanasia state that it prevents the prolonged sufferings of the terminally ill patient and is in a manner morally right to end a life of suffering. They claim that by bringing about an early death, the pain and sufferings are reduced both of the person who is in a vegetative state surviving on a life support as well as of their near relatives and friends who undergo mental and emotional trauma, watching their loved one suffer.

However, euthanasia has been criticized on a number of social, theological, moral and ethical grounds.

Euthanasia and religious grounds

1. Hinduism: There are two views in Hinduism, one considers it a good deed to terminate a person's sufferings while the other states that by bringing about death, one interferes with the normal cycle of life and rebirth.

2. Islam: Under Islamic doctrine, human life is sacred and none but God has right over it and hence, suicide is against religion and by extension so is euthanasia.

3. Sikhism: Sikhism rejects suicide as interference with God's plan..

4. Christianity: Christianity also forbids suicide and all forms of taking of human life.

Euthanasia and socio-economic grounds

In a country like India, where the elder members of the family are considered a burden, the greedy relatives may get a doctor to say that euthanasia is the only way left for them. Euthanasia might be misused for ending the lives of relatives in order to get inheritance and by incidence raising the crime rate in the country.

Euthanasia and law

In India, euthanasia is absolutely illegal. If a doctor tries to kill a patient, the case will surely fall under Section 300 of Indian Penal Code, 1860, but this is only so in the case of voluntary euthanasia in which such cases will fall under the exception 5 to section 300 of Indian Penal Code, 1860 and thus the doctor will be held liable under Section 304 of Indian Penal Code, 1860 for culpable homicide not amounting to murder. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to Section 92 of the IPC and thus be rendered illegal.

2.2.2

Case Laws

In the **Gian Kaur case**, the Apex Court laid down that euthanasia can be permitted only through legislation. In 2005, the then law minister H R Bhardwaj agreed that a framework was needed for withdrawal of life support to dying patients and entrusts the Law Commission to come out with a legal paper. In 2006, the Law Commission suggested a draft bill on passive euthanasia. It said that pleas must be made to the High Court which should decide expeditiously after expert opinion.

So, recently, in the case of Aruna Shanbaug represented by Pinki Virani, the Apex Court has, while rejecting the plea of euthanasia for Aruna, has however, allowed passive euthanasia for terminally ill patients, who cannot be, under any circumstances, with all medical advances, cured of their ailment and be made healthy. Patient's Permission has to be obtained by the concerned High Court before life prolonging measures can be withheld where the Court will act as 'parens patriae', a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf. This doctrine is important if the patient is in unconscious state and cannot decide for himself as to prevent any kind of mal intention or criminality of close ones and relatives.

Opinion of medical practitioners should be given due weightage in formulating the decision. In case of Aruna Shanbaug Court declared that the hospital staff were her true friend and not Miss Virani and thus the decision would lie in the hands of the Staff. the decision to withhold life prolonging measures rests on the hospital staff and not Ms. Pinki Virani.

Court also suggested the parliament to make a legislation on Euthanasia to increase the feasibility of courts and uniformity as well.

On 11th August 2011, Law Commission submitted their report to Government of India titled 'Passive Euthanasia- A Relook'.

The court has ruled that passive euthanasia can be given only when the patient is kept alive only mechanically, when not only the consciousness is lost but the person is able to sustain only involuntary functioning through machines. Further, there is no possibility of the patient ever being able to come out of this condition and if there has been no alteration in the patient's condition for at least a few years. However, the Honourable Court has pointed out that such an order can be given only by the High Court after consulting with medical practitioners on the application filed by the near relatives or next friend or doctors/hospital staff praying for permission to withdraw life support.

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While dealing with euthanasia in Aruna's case, the Court has further asked the Parliament to scrape the provisions of Section 309 of the Indian Penal Code, by saying that the person attempting suicide does so in a state of depression and needs help instead of being punished.

Foreign Cases

Antony Bland Case

In March 1993 after three years of permanent Vegetative State, Anthony Bland by Court Order was allowed his degradation and indignity to come to a merciful close. The judges said that if he had made a living will expressing his future wishes he could have been allowed to die in peace earlier.

Mrs Boyes' Case

In 1992 Dr Cox openly defied the law and assented to 70 year old Mrs Boyes' persistent request for voluntary active euthanasia. Mrs Boyes' was so ill that she "screamed like a dog" if anyone touched her. Conventional medicine did not relieve her agony. In her last days, when she repeatedly requested to die, Dr Cox finally gave her an injection of potassium chloride, bestowing on her the boon of a peaceful death so many of us feel we are entitled to. Dr Cox, although given a suspended sentence, was hauled through the courts like a common criminal. We believe good doctors acting in all conscience like Dr Cox, should be lauded, not vilified, and should have the benefit of legally approved codes of conduct that embody consistent safeguards against abuse. Together we should ensure that medicine and the law serve the patient and the citizen once more. Together, we can stand and be counted

Sue Rodriguez

Sue Rodriguez, a mother in her early thirties, died slowly of Lou Gehrig's disease. She lived for several years with the knowledge that her muscles would, one by one, waste away until the day came when, fully conscious, she would choke to death. She begged the Courts to reassure her that a doctor would be allowed to assist her in choosing the moment of death. They refused. She lived on in terror, helped eventually by a doctor who, in February 1994, covertly broke the law to help her die in peace. A law on assisted suicide with rigorous safeguards could have saved her the nightmare during those months before her death, given her the confidence to carry on - with the reassurance that when it got too bad she could

rely on a compassionate doctor to follow her wishes at the end. Exit is pledged to support research for drafting the most thorough, yet feasible, assisted suicide Bill yet presented to Parliament. Your support will make it happen.

"Mr C", a 68 year old prisoner of Jamaican origin had been diagnosed as suffering from chronic paranoid schizophrenia and was treated with drugs and electro-convulsive therapy. In September 1993 the prison doctors found he had gangrene in his right leg. They felt his chance of survival with conventional treatment was no better than 15%, and so recommended that his leg be amputated below the knee. The prisoner refused amputation and received conventional treatment only. There was a likelihood, however, that gangrene would recur. The prisoner stated he would rather die on two legs than live on one, and his solicitor asked the hospital to promise not to amputate in any circumstances without the prisoner's consent. They refused, and he sought a court injunction to uphold his wishes. The court considered expert testimony in the case (known as Re C) and found that, although the prisoner was suffering from schizophrenia, there was nothing to suggest that he did not understand the nature, purpose and effects of treatment; he had understood, and, with a full knowledge that death might result from refusing amputation, had clearly made his choice. The court upheld the prisoner's right to make an advance refusal of treatment and granted an injunction. The case paved the way for acceptance of advance refusals of medical treatments and so for living wills. Completion of an Exit living will document could save distressing and drawn-out court proceedings if ever you were incapacitated.

Karen Ann Quinlan Case

Karen Ann Quinlan collapsed on April 15th, 1975. She was twenty-one years old. Within hours, she entered a coma from which she could never recover. Her parents, staunch Roman Catholics, knew their daughter would not want to be kept alive by extraordinary means. A year later, as Karen lay in a "persistent vegetative state," the courts finally allowed her treatment to be stopped; but artificial feeding was continued and she was maintained as a living corpse until June 1985, when she eventually died of pneumonia. Her case spurred thousands of letters of sympathy and fuelled the "right to die" movement. How many people need to die degrading deaths before society learns a little humanity?

CHATPER 3

MEDICAL ETHICS

It is very rightly said that the doctors are entrusted with divine duty. The duty of saving lives. When talking about euthanasia, the entire medical ethics comes into a strict observation. Euthanasia is not a general practice but a rare happening based on the circumstances of the case. Thus most of the time the call for euthanasia is not the patients or close families call but the decision of the doctor on requested of the patient/close family. Thus the doctors come into the radar of any adverse consequence of passive euthanasia. Thus the role of medical ethics plays a vital role in decision making. It is also believed that euthanasia be it passive or active is an exception to the doctor's oath or ethics.

The cessation of the employment of extraordinary means like ventilation, oxygen masks, other medical techniques causes to prolong the life of the body when there is irrefutable evidence that biological death is imminent is the decision of the patient and/or his immediate family. The advice and judgment of the physician should be freely available to the patient and/or his immediate family.

However keeping in mind the medical ethics and the Hippocratic Oath, a strong case can be made against this doctrine. In what follows some of the relevant arguments, and urge doctors to reconsider their views on this matter. Taking into consideration an example of a situation, a patient who is dying of incurable cancer of the throat is in terrible pain, which can no longer be treated completely or even cured from the root. He is certain to die within a few days, even if present treatment is continued, but he does not want to go on living for those days since

the pain is unbearable. So he asks the doctor for an end to it, and his family joins in the request.

Taking into consideration the condition of the patient, the unbearable pain, the trauma of the family, the expensive treatment; the doctor agrees to withhold treatment, as the conventional doctrine says he may. The justification casted is that the patient is in terrible agony, and since death is inevitable, it would be wrong to prolong his suffering needlessly.

But if one simply withholds treatment, it may take the patient longer to die, and so he may suffer more than he would if more direct action were taken and a lethal injection given.

This fact provides strong reason for thinking that, once the initial decision not to prolong his agony has been made active euthanasia is actually preferable to passive euthanasia, rather than the reverse. To say otherwise is to endorse the option that leads to more suffering rather than less, and is contrary to the humanitarian impulse that prompts the decision not to prolong his life in the first place.

The process of being "allowed to die" can be relatively slow and painful, whereas being given a lethal injection is relatively quick and painless. The strong language is not intended to offend, but only to put the point in the clearest possible way.

The conventional doctrine leads to decisions concerning life and death made on irrelevant grounds. But this situation is absurd, no matter what view one takes of the lives and potentials of such patients. If the life of such a patients is worth preserving, what does it matter if it needs a simple operation?

The medical ethics shall be applied in such a way that intense research shall be carried out on the case as per the circumstances and patients' condition and consequence. In either case, the matter of life and death shall not be decided on irrelevant grounds. The matter should be decided, if at all, on that basis, and not be allowed to depend on the essentially irrelevant question.

The fact that this idea leads to such results as deciding life or death on irrelevant grounds is another good reason why the doctrine should be rejected. One reason why so many people think that there is an important moral difference between active and passive euthanasia is that they think killing someone is morally worse than letting someone die. But is it? Is killing, in itself, worse than letting die?

3.1

Case Study of Medical Ethics

To investigate this issue, two cases may be considered on the basis of medical ethics and guidelines that are exactly alike except that one involves killing whereas the other involves letting someone die. Then, it can be asked whether this difference makes any difference to the moral assessments.

It is important that the cases be exactly alike, except for this one difference, since otherwise one cannot be confident that it is this difference and not some other that accounts for any variation in the assessments of the two cases.

In the first, Sumit stands to gain a large inheritance if anything should happen to his six-year-old cousin. One evening while the child is taking his bath, Sumit sneaks into the bathroom and drowns the child, and then arranges things so that it will look like an accident.

In the second, Jalan also stands to gain if anything should happen to his six-year-old cousin. Like Sumit, Jalan sneaks in planning to drown the child 4 in his bath. However, just as he enters the bathroom Jalan sees the child slip and hit his head, and fall face down in the water. Jalan is delighted; he stands by, ready to push the child's head back under if it is necessary, but it is not necessary. With only a little thrashing about, the child drowns all by himself, "accidentally," as Jalan watches and does nothing.

Now Sumit killed the child, whereas Jalan "merely" let the child die. That is the only difference between them. Did either man behave better, from a moral point of view? If the difference between killing and letting die were in itself a morally important matter, one should say that Jalan's behaviour was less reprehensible than Sumit's. But does one really want to say that?

Both men acted from the same motive, personal gain, and both had exactly the same end in view when they acted. It may be inferred from Sumit's conduct that he is a bad man, although that judgment may be withdrawn or modified if certain further facts are learned about him—for example, that he is mentally deranged. But would not the very same thing be inferred about Jalan from his conduct? And would not the same further considerations also be relevant to any, modification of this judgment? Moreover, suppose Jalan pleaded, in his own defence, "After all, I didn't do anything except just stand there and watch the child drown. I didn't kill him; I only let him die." Again, if letting die were in itself less bad than killing, this defence should have at least some weight. But it does not.

Such a "defence" can only be regarded as a grotesque perversion of moral reasoning. Morally speaking, it is no defence at all.

Now, it may be pointed out, quite properly, that the cases of euthanasia with which doctors are concerned are not like this at all. They do not involve personal gain or the destruction of normal healthy children. Doctors are concerned only with cases in which the patient's life is of no further use to him, or in which the patient's life has become or will soon become a terrible burden. However, the point is the same in these cases: the bare difference between killing and letting die does not, in itself, make a moral difference. If a doctor lets a patient die, for humane reasons, he is in the same moral position as if he had given the patient a lethal injection for humane reasons.

If his decision was wrong—if, for example, the patient's illness was in fact curable—the decision would be equally regrettable no matter which method was used to carry it out. And if the doctor's decision was the right one, the method used is not in itself important.

Many people will find this judgment hard to accept. One reason, I think, is that it is very easy to conflate the question of whether killing is, in it-self worse than letting die, with the very different question of whether most actual cases of killing are more reprehensible than most actual cases of letting die. Most actual cases of killing are clearly terrible (think, for example, of all the murders reported in the newspapers), and one hears of such crises every day. On the other hand, one hardly ever hears of a case of letting die, except for the actions of doctors who are motivated by humanitarian reasons. So one learns to think of killing in a much worse light than of letting die but us this does not mean that there is something about killing that makes it in it-self worse than letting die, for it is not the bare difference between killing and letting die that makes the difference in these cases. Rather, the other factors—the murderer's motive of personal gain, for example, contrasted with the doctor's humanitarian

The important difference between active and passive euthanasia is that, in passive euthanasia, the doctor does not do anything to bring about the patient's death. The doctor does nothing, and the patient dies of whatever ills already afflict him. In active euthanasia, however, the doctor does something to bring about the patient's death: he kills him. The doctor who gives the patient with cancer a lethal injection has himself caused his patient's death; whereas if he merely ceases treatment, the cancer is the cause of the death.

A number of points need to be made here. The first is that it is not exactly correct to say that in passive euthanasia the doctor does nothing, for he does do one thing that is very important: he lets the patient die. "Letting someone die" is certainly different, in some respects, from other types of action—mainly in that it is a kind of action that one may perform by way of not performing certain other actions. For example, one may let a patient die by way of not giving medication, just as one may insult someone by way of not shaking his hand. But for any purpose of

moral assessment, it is a type of action nonetheless. The decision to let a patient die is subject to moral appraisal in the same way that a decision to kill him would be subject to moral appraisal: it may be assessed as wise or unwise, compassionate or sadistic, right of wrong. If a doctor deliberately let a patient die who was suffering from a routinely curable illness, the doctor would certainly be to blame for what he had done, just as he would be to blame if he had needlessly killed the patient. Charges against him would then be appropriate. If so, it would be no defence at all for him to insist that he didn't "do anything." He would have done something very serious indeed, for he let his patient die.

Fixing the cause of death may be very important from a legal point of view, for it may determine whether criminal charges are brought against the doctor. But I do not think that this notion can be used to show a moral difference between active and passive euthanasia. The reason why it is considered bad to be the cause of someone's death is that death is regarded as a great evil—and so it is. However, if it has been decided that euthanasia—even passive euthanasia—is desirable in a given case, it has also been decided that in this instance death is no greater an evil than the patient's continued existence. And if this is true, the usual reason for not wanting to be the cause of someone's death simply does not apply.

Finally, doctors may think that all of this is only of academic interest—the sort of thing that philosophers may worry about but that has no practical bearing on their own work. After all, doctors must be concerned about the legal consequences of what they do, and active euthanasia is clearly forbidden by the law. But even so, doctors should also be concerned with the fact that the law is forcing upon them a moral doctrine that may well be indefensible, and has a considerable effect on their practices. Of course, most doctors are not now in the position of being

coerced in this matter, for they do not regard themselves as merely going along with what the law requires. Rather, in statements such as the AMA policy statement that has been quoted, they are endorsing this doctrine as a central point of medical ethics. In that statement, active euthanasia is condemned not merely as illegal but as "contrary to that for which the medical profession stands "whereas passive euthanasia is approved. However, the preceding considerations suggest that there is really no moral difference between the two, considered in themselves (there may be important moral differences in some cases in their consequences, but, as I pointed out, these differences may make active euthanasia, and not passive euthanasia, the morally preferable option). So, whereas doctors may have to discriminate between active and passive euthanasia to satisfy the law, they should not do any more than that. In particular, they should not give the distinction any added authority and weight by writing it into official statements of medical ethics

CHAPTER 4

LEGISLATION – PRE-REQUISITE

"In the Gian Kaur case, the Apex Court laid down that euthanasia can be permitted only through legislation."

Also in Aruna Shanbaug Case, the court suggested the Parliament to draft a legislation to lay down the provision of Passive Euthanasia. In absence of legislation it will be never ending debate leading to more complications and more uncomplicated issues.

Thus apart from the Judiciary which has laid down a set guidelines to avoid any kind of misuse in the Aruan Shanbaug Case; the Parliament and the Executive have an important role of legislating and implementing the laws respectively.

The need of the hour is legislation as the cases are many, and solution is none. No doubt that the bill has been presented in the parliament but no positive direction have yet been shown in the further movement of the bill. It is important that every aspect of the bill is closely studies as the fact that this subject is sensitive and fragile matter including religion and moral and ethics of the people. Thus especially in country like India special consideration has to be given to such human principles apart from the technical and intense logical aspects.

Assisted suicide laws around the world are clear in some nations but unclear – if they exist at all – in others. Just because a country has not defined its criminal code on this specific action does not mean all assisters will go free. It is a complicated state of affairs. A great many people instinctively feel that suicide

and assisted suicide are such individual acts of freedom and free will that they assume there are no legal prohibitions. This fallacy has brought many people into trouble with the law. While suicide is no longer a crime – and where it is because of a failure to update the law it is not enforced – assistance remains a crime almost everywhere by some statute or other. I'll try to explain the hodge-podge.

For example, it is correct that Sweden has no law specifically proscribing assisted suicide. Instead the prosecutors might charge an assisted with manslaughter – and do. In 1979 the Swedish right-to-die leader Beret Hereby went to prison for a year for helping a man with MS to die. Neighbouring Norway has criminal sanctions against assisted suicide by using the charge "accessory to murder". In cases where consent was given and the reasons compassionate, the courts pass lighter sentences. A recent law commission voted down de-criminalizing assisted suicide by a 5-2 vote.

A retired Norwegian physician, Christian Sandsdalen, was found guilty of wilful murder in 2000. He admitted giving an overdose of morphine to a woman chronically ill after 20 years with MS who begged for his help. It cost him his medical license but he was not sent to prison. He appealed the case right up to the Supreme Court and lost every time. Dr. Sandsdalen died at 82 and his funeral was packed with Norway's dignitaries, which is consistent with the support always given by intellectuals to euthanasia.

Finland has nothing in its criminal code about assisted suicide. Sometimes an assister will inform the law enforcement authorities of him or her of having aided someone in dying, and provided the action was justified, nothing more happens. Mostly it takes place among friends, who act discreetly. If Finnish doctors were known to practice assisted suicide or euthanasia, the situation might change, although there have been no known cases.

Germany has had no penalty for either suicide or assisted suicide since 1751, although it rarely happens there due to the hangover taboo caused by Nazi mass murders, plus powerful, contemporary, church influences. Direct killing by euthanasia is a crime. In 2000 a German appeal court cleared a Swiss clergyman of assisted suicide because there was no such offence, but convicted him of bringing the drugs into the country. There was no imprisonment.

France does not have a specific law banning assisted suicide, but such a case could be prosecuted under 223-6 of the Penal Code for failure to assist a person in danger. Convictions are rare and punishments minor. France bans all publications that advise on suicide - Final Exit has been banned since l991 but few nowadays take any notice of the order. Since l995 there has been a fierce debate on the subject, which may end in law reform eventually. Denmark has no specific law banning assisted suicide. In Italy the action is legally forbidden, although pro-euthanasia activists in Turin and Rome are pressing hard for law reform. Luxembourg does not forbid assistance in suicide because suicide itself is not a crime. Nevertheless, under 410-1 of its Penal Code a person could be penalized for failing to assist a person in danger. In March 2003 legislation to permit euthanasia was lost in the Luxembourg Parliament by a single vote.

Tolerance for euthanasia appears in the strangest of places. For instance, in Uruguay it seems a person must appear in court, yet Article 27 of the Penal Code (effective 1934) says: "The judges are authorized to forego punishment of a person whose previous life has been honorable where he commits a homicide motivated by compassion, induced by repeated requests of the victim." So far as I can tell, there have been no judicial sentences for mercy killing in Uruguay.

The law in Canada is almost the same as in England; indeed, a prosecution has recently (2002) been brought in B.C. against a grandmother, Evelyn Martens, for

Counselling and assisting the suicide of two dying people. Mrs. Marten was acquitted on all counts in 2004. One significant difference between English and Canadian law is that no case may be pursued by the police without the approval of the Director of Public Prosecutions in London. This clause keeps a brake on hasty police actions.

Assisted suicide is a crime in the Republic of Ireland. In 2003 police in Dublin began proceedings against an American Unitarian minister, George D Exoo, for allegedly assisting in the suicide of a woman who had mental health problems. He responded that he had only been present to comfort the woman, and read a few prayers. This threatened and much publicized case had disappeared by 2005.

Suicide has never been illegal under Scotland's laws. There is no Scots authority of whether it is criminal to help another to commit suicide, and this has never been tested in court. The killing of another at his own request is murder, as the consent of the victim is irrelevant in such a case. A person who assists another to take their own life, whether by giving advice or by the provision of the means of committing suicide, might be criminally liable on a number of other grounds such as: recklessly endangering human life, culpable homicide (recklessly giving advice or providing the means, followed by the death of the victim), or wicked recklessness.

The Netherlands permits voluntary euthanasia as well as physician-assisted suicide, while both Oregon and Switzerland bar death by injection.

Dutch law enforcement will crack down on any non-physician assisted suicide they find, recently sentencing an old man to six months imprisonment for helping a sick, old woman to die.

Belgian law speaks only of 'euthanasia' being available under certain conditions. 'Assisted suicide' appears to be a term that Belgians are not familiar with. It is left to negotiation between the doctor and patient as to whether death is by lethal injection or by prescribed overdose. The patient must be a resident of Belgium, though not necessarily a citizen. In its first full year of implementation, 203 people received euthanasia from a doctor.

All three right-to-die organizations in Switzerland help terminally ill people to die by providing counselling and lethal drugs. Police are always informed. As we have said, only one group, DIGNITAS in Zurich, will accept foreigners who must be either terminal, or severely mentally ill, or clinically depressed beyond treatment. (Note: Dutch euthanasia law has caveats permitting assisted suicide for the mentally ill in rare and incurable cases, provided the person is competent.)

New Zealand forbids assistance under 179 of the New Zealand Crimes Act, l961, but cases were rare and the penalties lenient. Then, out-of-the-blue in New Zealand in 2003 a writer, Lesley Martin, was charged with the assisted suicide of her mother that she had described in a book. Ms. Martin was convicted of manslaughter by using excessive morphine and served half of a fifteen-month prison sentence. She remained unrepentant. That same year the country's parliament voted 60-57 not to legalize a form of euthanasia similar to the Dutch model.

Similarly, Colombia's Constitutional Court in 1997 approved medical voluntary euthanasia but its parliament has never ratified it. So the ruling stays in limbo until a doctor challenges it. Assisted suicide remains a crime.

The move towards legislation in Japan

"Japan has medical voluntary euthanasia approved by a high court in l962 in the Yamagouchi case, but instances are extremely rare, seemingly because of complicated taboos on suicide, dying and death in that country, and a reluctance to accept the same individualism that Americans and Europeans enjoy. The Japan Society for Dying with Dignity is the largest right-to-die group in the world with more than 100,000 paid up members. Currently, the Society feels it wise to campaign only for passive euthanasia – good advance directives about terminal care, and no futile treatment. Voluntary euthanasia and assisted suicide are rarely talked about, which seems strange to Westerners who have heard so much about the culture of ritual suicide, hari kari, in Japanese history. This is because, one Society official explained: "In Japan, everything is hierarchical, including academics, and government organization, and this makes it difficult for the medical staff and those who offer psychiatric care to join forces to treat the dying."

The right-to-die movement has been strong in Australia since the early l970s, spurred by the vast distances in the outback country between patients and doctors. Families were obliged to care for their dying, experienced the many harrowing difficulties, and many became interested in euthanasia. TheNorthern Territory of Australia actually had legal voluntary euthanasia and assisted suicide for seven months until the Federal Parliament stepped in and repealed the law in l997. Other states have since attempted to change the law, most persistently South Australia, but so far unsuccessfully.

In a rare show of mercy and understanding, a judge in the Supreme Court of Victoria, Australia, in July 2003 sentenced a man to 18 months jail – but totally suspended the custody. Alex Maxwell had pleaded guilty to 'aiding and abetting' the suicide of his terminally ill wife, actions that the judge said were motivated by compassion, love, and humanity and thus did not deserve imprisonment. This was a trend in the right direction.

The move towards Legislation in Europe

The strongest indication that the Western world is moving gradually to allow assisted suicide for the dying and the incurable rather than to permitting voluntary euthanasia comes from a huge survey that the Council of Europe did in 2002. It received answers from 34 Central Asian and European states, plus the USA and Russia. Not a few replied that such terms were nowhere to be seen in their laws so had difficulty answering.

There is no implied obligation on any health worker to take part in an act of euthanasia, nor can such an act be interpreted as the expression of lesser consideration for human life.

Governments of Council of Europe member states are asked to collect and analyse empirical evidence about end-of-life decisions; to promote public discussion of such evidence; to promote comparative analysis of such evidence in the framework of the Council of Europe; and, in the light of such evidence and public discussion, to consider whether enabling legislation authorising euthanasia should be envisaged."1

1 Derek Humphry; World Right-to-Die Newsletter

Having a look at the world scenario, we see how countries have moved towards the evolvement of legalised passive euthanasia. Certain things that cannot be denied in making regional or national laws on such issues are many. Some of the following are

Cultural aspect of the country

Economical aspect of the country

People's awareness and understanding about the subject matter

Democracies consent on such fragile issues

The existing laws, apart from these there are various other things that matter. The most important of all at times is the international standards formulated in conventions and treaties to which the country is a signatory. Even such things shall be noticed and kept into consideration in order to respect and maintain comity between nations.

Thus legalisation in regards with passive euthanasia keeping in mi9nd the fundamental rights of the people is an important task.

CHAPTER 5

CONCLUSION

The To-Fro Approach

"Marte hain aarzoo mein marne ki Maut aati hai par nahin aati" Mirza Ghalib (A famous Urdu poet). The literature all around the world believes that men are the owner of his life and death and if the physical pain is beyond repair, men should rather be allowed to embrace death than being bondage of

death.

"I'm not afraid of being dead. I'm just afraid of what you might have to go through to get there." ― Pamela Bone (A reputed Journalist)

It is very rightly put. Death is inevitable and since birth we know the end result. The fear is not death but the process that takes us to the end of life. These two quotes give us a fair idea about the fact that sometimes people with terminal illness would rather like to embrace death 'peacefully' than clinging on to life filled with intractable pain and suffering.

Oxford English dictionary defines Euthanasia as, the painless killing of a patient suffering from an incurable and painful disease or a person who is in irreversible condition.

Abstract Debate on Euthanasia has been raging for more than half century around the world and it raising important questions in medical ethics, moral theology, civil rights and liberty.

It is believed that causing death is a great evil if death is a great evil. A lesser evil should always be preferred to a greater evil. With such conflicting views and ideas

all over euthanasia is turning out to be the longest existing problem. The reason if understood behind the same has been morality, ethics, religion etc which is not a basis of legislation.

If *passive euthanasia* would be right in this case then the continued existence of the patient in a state of great pain must be a greater evil than their death. Thus continuing to live in this state is a greater evil than causing their death. Causing their death swiftly is a lesser evil than allowing them to live in pain.

Active Euthanasia- Better

Many people believe that Active euthanasia is a lesser evil than passive euthanasia on the other hand this still won't satisfy some people.

The rule that we should treat other people as we would like them to treat us also seems to support euthanasia, if we would want to be put out of our misery if we were in Permanent Vegetative State. There are many such people who have accepted appalling pain for their beliefs.

One well-known ethical principle guised in form of standard legislation or international convention shall be formulated and we should only be guided by moral principles that we would accept should be followed by everyone.

And if we accept that active euthanasia is wrong, then we accept as a universal rule that people should be permitted to suffer severe pain before death if that is the consequence of their disease.1

1 BBC Ethics Guide

http://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml

No real difference

Some people believe that this distinction is irrelevant as the intention for both the kinds is same as the end result as well. If there is any difference, it is only the process to reach the result. Since stopping treatment is a deliberate act, and so is deciding not to carry out a particular treatment. Switching off a respirator requires someone to carry out the action of throwing the switch. If the patient dies as a result of the doctor switching off the respirator then although it's certainly true that the patient dies from lung cancer (or whatever), it's also true that the immediate cause of their death is the switching off of the breathing machine. In active euthanasia the doctor takes an action with the intention that it will cause the patient's death in passive euthanasia the doctor lets the patient die when a doctor lets someone die, they carry out an action with the intention that it will cause the patient's death so there is no real difference between passive and active euthanasia, since both have the same result: the death of the patient on humanitarian grounds thus the act of removing life-support is just as much an act of killing as giving a lethal injection

Morality -relevant Ground

Most of the philosophers go even further to believe that active euthanasia is morally better because it can be quicker and cleaner, and causes less painful for the patient.

Acts and omissions- the Classic Idea

"This is one of the classic ideas in ethics. It says that there is a moral difference between carrying out an action, and merely omitting to carry out an action.

Simon Blackburn explains the doctrine that it makes an ethical difference whether an agent actively intervenes to bring about a result, or omits to act in circumstances in which it is foreseen that as a result of the omission the same result occurs.

This section is written from the presumption that there are occasions when euthanasia is morally accepted. If you believe that euthanasia is always wrong, then this section may sound irrelevant. Active euthanasia is morally better because it can be quicker and cleaner, and it may be less painful for the patient.

Doctors faced with the problem of an incurable patient who wants to die have often felt it was morally better to withdraw treatment from a patient and let the patient die than to kill the patient (perhaps with a lethal injection).

But some philosophers think that active euthanasia is in fact the morally better course of action. The question still lies the same whether the professional i.e the doctors or the philosopher's i.e the preacher of morality and ethics is to be ruled as a final call. Most importantly the vacuum that is creating such a chaos is to be filled by a legislation whose construction shall be laid on the pillars of morality, ethics, acceptance and even technical/professional know how.

It has to b accepted that most of the countries and the jurists have ruled that Passive euthanasia is far more acceptable than Active euthanasia keeping into consideration all the above mentioned pillars.

The moral discourse surrounding end-of-life (EoL) decisions is highly complex, and a comparison of Germany and Israel can highlight the impact of cultural factors. The comparison shows interesting differences in how patient's autonomy and doctor's duties are morally and legally related to each other with respect to the withholding and withdrawing of medical treatment in EoL situations. Taking the statements of two national expert ethics committees on EoL in Israel and Germany (and their legal outcome) as an example of this discourse, we describe the similarity of their recommendations and then focus on the differences, including the balancing of ethical principles, what is identified as a problem, what social role professionals play, and the influence of history and religion. The comparison seems to show that Israel is more restrictive in relation to Germany,1

1 Preferring active to passive euthanasia

http://www.ncbi.nlm.nih.gov/pubmed/20680469

in contrast with previous bioethical studies in the context of the moral and legal discourse regarding the beginning of life, in which Germany was characterized as far more restrictive. We reflect on the ambivalence of the cultural reasons for this difference and its expression in various dissenting views on passive euthanasia and advance directives, and conclude with a comment on the difficulty in classifying either stance as more or less restrictive."1

Keeping into account the recent judgement of Aruna Shanbaug, the required factors, the guidelines formulated has triggered the Parliament of India to think beyond the box.

Thus the Law Commission of India has proposed a bill in this direction which is yet to be passed by the parliament.

1 Preferring active to passive euthanasia

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