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Critical Analysis into the position of Euthanasia Laws in India

NEELA V NAIK [1]

ABSTRACT

The concept of Euthanasia or mercy killing majorly lies on the rationality of humanism and empathy due to which it has always been a matter of argument in the field of law and medicine. It was recently that the legalization of passive Euthanasia was considered to be upheld in Aruna Ramchandra Shanbaug v. Union of India as one of the historic judgements laid down by the Supreme Court of India although specific conditions were laid down for the same to be carried out. It was also observed, that the right to life includes right to live with dignity which also includes the right to die with human dignity. However, the fact that whether or not this remedy available is to be seen as an offence or defence against human life arises.

In this paper, an analysis regarding the position of law on euthanasia before and after its legalization will be observed by the author along with a significant focus on three key issues. Firstly, it will examine the current position of the Euthanasian laws in India. Secondly, it will analyse if whether or not any form of euthanasia would amount culpable homicide under Section 304 of the IPC or attempt to suicide under Section 309 and the reason for non- recognition of active form of euthanasia in India. Thirdly, the need for a legislation legalizing passive euthanasia in order to provide greater emphasis on the subject in the light of the role played by the judiciary in India.

Keywords: *Euthanasia, right to dignity, involuntary form, culpable homicide, murder, legislation.*

I. INTRODUCTION

*"If a man had a sickly constitution and intemperate habits, his life was worth nothing to himself or to anyone else***."**

\- *Plato*

The word 'Euthanasia' is a derivative from the Greek words 'eu' and 'thanotos' which literally mean "good death"[2]. Euthanasia also known as mercy killing is intentional termination of patient's life by an act or omission of medical care[3]. It can be classified as voluntary or

[1] Author is a student at Faculty of Law, PES University, Bangalore, India.
[2] 241st Law Commission Report, 2012.
[3] Dillman RJM, Legemaate J. Euthanasia in the Netherlands: The state of the debate-8cI. Eur Health Law. 1994; 1:81-87.

involuntary on the basis of consent and as active or passive depending on the way of termination of life. Active euthanasia involves administration of poisonous substances i.e. an act whereas passive euthanasia encompasses removal of life support i.e., an omission[4].

A patient who is undergoing suffering due to terminal illness may have unbearable suffering and in such situation patient's autonomy supersedes everything[5] .This topic instigates an incessant debate as many pro-life advocates believe that survival is the only objective of human existence, on the other hand many humanists believe that it is rather better to die with dignity which they consider to come under the ambit of Right to life, and therefore support euthanasia which is one such form of dying thereby alienating oneself from pain in case the quality of life degrades below the expected level of dignity due to a terminating illness, etc.

Euthanasia may be classified as follows: -

(1) Active or Positive: Active euthanasia involves painlessly putting individuals to death for merciful reasons, as when a doctor administer lethal dose of medication to a patient.

(2) Passive or negative: - euthanasia is passive when death is caused because a treatment that is sustaining the life of the patient is held off and the patient dies as a result thereof.

(3) Voluntary: This is primarily concerned with the right to choice of the terminally ill patient who decides to end his or her life, choice which serves his/her best interest and also that of everyone else.

(4) Involuntary- when the patient is killed without an expressed wish to this effect, it is a form of involuntary euthanasia.

(5) Non-Voluntary: Here, the patient has left no such living will or given any advance directives, as he may not have had an opportunity to do so, or may not have anticipated any such accident or eventuality.

At various times right to die has been claimed to cover up under the purview of right to life with dignity under article 21 of the Constitution of India. As we all know, passive euthanasia in India has been legalised after the *Aruna Shahbaug*[6] case in 2018 wherein the right to die with dignity was recognised. However, before the aforementioned judgment was passed, there were several cases wherein the judiciary failed to recognise the protection of the fundamental right to die by considering euthanasia amounting to an offence under Section 309 of the IPC and that the same would violate Article 21 of the Constitution of India. Over the passage of time, the courts came to the realisation of drawing a distinction between natural and unnatural extinction of life and thereby allowed passive euthanasia subject to fulfilment of certain criteria that shall be elaborated further.

So far Netherland, Canada, Belgium, Columbia and Oregon have legalized euthanasia, but in India it appears that Section 304 and Section 309

[4] Van der Wai G, Dillman RJM. Euthanasia in the Netherlands. BMJ. 1994; 308:1346-1349.

[5] Dr. Parikh, C.K. (2006). Parikh's Textbook of Medical Jurisprudences, Forensic Medicine and Toxicology. 6th Edition, Page 1.55. New Delhi, CBS Publishers & Distributors.

[6] 2011(3) SCALE 298.

of the IPC that deals with punishment for culpable homicide not amounting to murder and punishment for attempt to suicide respectively, are the two major provisions that come into conflict when the question of euthanasia arises. And therefore there is a need to understand the reasons why active and involuntary form of Euthanasia that is practised in other countries is still not recognised in India.

Though the assisted dying and euthanasia is self-destruction but there is clear difference between the two. It mainly depends on the person who observes the lethal medication and the same has been observed that in euthanasia, a physician or third party administers it while in physician assisted suicide, it is the patient who does it though on the advice of the doctor.[7] Euthanasia may be classified in five categories and also there are various ways for its application. Keeping aside, the opinion of sociologists regarding euthanasia, its legal position in India in view of the Constitution of India, Indian Penal Code, and debate over the right to die being a negative right of right to life which has been the point of debate since decades in Indian judiciary shall be discussed in this paper.

On an international perspective, there is not a "right to die" under international humanitarian law. However, it can be observed that the UN International treaty states that "States Parties must take all necessary measures to ensure that persons with disabilities have the same right as others to the effective enjoyment of the right to life.[8] Besides, article 7 of ICCPR also states that human beings should be protected from inhuman or degrading treatment.

There has been a constant effort in pushing the Legislature to enact laws regarding passive euthanasia as currently, the precedent is the only source of law present in protecting people in dire need of the right to die with dignity. The Law Commission of India in its 241st Report of Law commission of India[9] titled "Passive Euthanasia – A Relook", proposed to legislate a law on the issue of passive euthanasia as well, however no law has come into force till date and therefore there is a need to bring about one in India.

Objectives of Study

This paper aims at analysing the position of law regarding Euthanasia in India by tracing the footsteps of the judiciary right from the first case that dealt with it up until the recent historic judgement passed in *Aruna Ramchandra Shanbaug v. Union of India*[10] thereby analysing the evolution of the perspective of right to die with dignity under the ambit of Article 21 in India. This will also provide us with the current scenario of the law post *Aruna Ramchandra Shanbaug* judgment.

It will also aim at exploring the reasons for declining involuntary and active forms of euthanasia that are legalised in other countries along with highlighting the various attempts done in favour of legislating a law for Euthanasia.

[7] *Common Cause Society v. Union of India*, (2018) 5 SCC 1.
[8] 2 Convention on the Rights of Persons with Disabilities, 2006, art.10.
[9] Supra note 1.
[10] Supra note 3.

Research Problem

1) Need for a legislation directing passive euthanasia in India along with examining the judiciary's take on involuntary and active form of euthanasia.

The basic intention behind euthanasia is to ensure a less painful death to a person who is in any case going to die after a long period of suffering.

Historically, there have been several objections to the very act for it was considered to be against one's religious beliefs. Over time, it became the need of the hour in order to prevent people from long periods of suffering and hence euthanasia was recognised in several countries. As of now passive Euthanasia has been recognised however, Section 309 of the IPC has always been a barrier in India in declaring a law for Euthanasia. The issue of suicide amounting to a violation of Article 21 was a great obstacle towards legalizing Euthanasia, however the constitutional validity of the same was clarified in *Gian Kaur v state of Punjab*[11], wherein suicide was considered as unnatural extinction of life and that a natural positive right cannot go with unnatural negative right. Hence sec 309 IPC was treated as valid and not violating article 21- a positive right which provided for right to live and did not support suicide.

Ultimately, The judgment of *Aruna Ramchandra Shanbaug* case has brought about a major impact on the on-going debate on euthanasia in India as it gives legal recognition to passive euthanasia in India and acknowledges robust interpretation of 'right to life' including 'right to die' with dignity thereby bringing it within manifold of article 21 of constitution of India.

Though this judgement as brought about a law through the judiciary, a legislation regarding the same is the need of the hour and the efforts made for the same shall be explored to enhance the clarity regarding the same. Arguments put forth in the judicial cases for and against active and involuntary euthanasia shall also be discussed to understand the rationale of not legalizing the same.

Research Questions

1) What was the position of Euthanasia law before and after the Aruna Shanbaug judgement?
2) What is the rationale behind declining the need to legalise active and involuntary form of Euthanasia?
3) What are the attempts made towards legislating a Euthanasia Act and what is the significance of the same?

Research Methodology

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of case laws in this paper, so as to discern a trend in the judicial pronouncements.

[11] AIR 1996 SC 946.

Literature Review

The review of literature gives an idea about the research carried out by the other researchers in the past. The major part of the literature that exists for the topic is in the form of judicial decisions and articles. The books and commentaries which are there are with respect to the general interpretation of the legislation. The literature is reviewed under the following heads:

1) Euthanasia and Assisted Suicide: Revisiting the Sanctity Of Life Principle[12]

The idea of euthanasia and assisted suicide generated considerable debate among ethicists and modern thinkers. The unstrained advocacy of the principle of sanctity of life should be re-evaluated from the perspective of the patient's autonomy and human rights. And the total denial of these rights of terminally ill patients is a violation of their human rights. This paper, by Subhash Chandra, critically examines the various issues involved in euthanasia and assisted suicide.

2) India Decides on Euthanasia: Is the Debate Over?[13]

The Supreme Court in March 2018 delivered landmark judgment allowing 'living will' where, an adult in his conscious mind, is permitted to refuse medical treatment or voluntarily decide not to take medical treatment to embrace death in a natural way. The judgment gave legal recognition to Passive euthanasia in India and robust interpretation of 'Right to life' including 'Right to die' thereby bringing it within manifold of article-21 of constitution of India. The present paper describes evolution of Euthanasia in India contemporary to Dutch law as well as pros and cons of the landmark judgment in Aruna Shanbaug case.

3) Euthanasia and Its Desirability in India

An overall perspective regarding euthanasia including the position of law in India and abroad have been elaborated upon. It also includes reasons for a legislation for euthanasia to be enacted in India by the Parliament in order to prevent its misuses. The author believes that every aspect of right to life shall be protected including the right to die with dignity as Article 21 of the Indian Constitution as well as Article 3 of International Convention Universal Declaration of Human Rights, 1948 guarantees it.

II. ANALYSIS

In a country where the basic human rights of individuals are often left unaddressed, illiteracy is rampant, more than half the population is not having access to potable water, people die every day due to infections, and where medical assistance and care is less, for the few people, issues related to euthanasia are irrelevant. In this background, the debate on euthanasia in India is more confusing as there is also a law in this land that punishes individuals who even try to commit suicide[14].

[12] Singh, S. (2012). *EUTHANASIA AND ASSISTED SUICIDE: REVISITING THE SANCTITY OF LIFE PRINCIPLE*. Journal of the Indian Law Institute, *54*(2), 196-231.

[13] Santokba Durlabhji, (2019), *India Decides on Euthanasia: Is the Debate Over?,* Memorial Hospital 7 Research Center Pathology.

[14] Section 30, Indian Penal Code, 1860.

1) Position of law pre Aruna Shanbaug judgement

In order to analyse the current position of Euthanasia in India, it is import to trace back to the series of cases wherein the question of whether or not euthanasia is a way by which a person can be relieved from his life- long suffering was discussed. This will also include the debate of whether taking away a person's life would amount to abetment to suicide or assistance in killing a person. The mode and procedure required before performing the said act or omission shall also be specified as mentioned in the courts of justice.

The right to die is a negative right that should essentially come under the ambit of right to life under Article 21 and has been the point of debate since decades in Indian judiciary. The legal impediments in recognition of right to die are sections 309 IPC and 306 IPC containing penal provisions for attempt and abetment to suicide respectively. As if this negative right of committing suicide is legalised on the context of Euthanasia though voluntary, it will result in multiple people committing suicide as a matter of their fundamental right under Article 21.

Though there is no law which would has been framed by the Parliament of India in this regard. Time to time the apex judiciary of the country has interpreted the concept of whether Section 309 is violative of Article 21 which is one the sole arguments being posed against Euthanasia. The first case concerning the same was brought about in *Maruti Sripathi Dubal vs. State of Maharashtra*[15] where a constable with psychiatric illness tried to commit suicide and subsequently was tried under section 309 IPC. The petitioner argued that the police constable should not be punished on account of attempt to suicide and that he must be provided with rehabilitation facilities instead. The court held that every fundamental right has both positive and negative aspects and negative aspect of article 21 proclaims right to die, hence section 309 IPC violates Article 21 of constitution.

This was followed by the case of *R Rathinam and Nagbhushan Patnaik V Union of India*[16] wherein a two judge bench of the Supreme Court held that a person has a right not to live a forced life and attempt to suicide is not illegal. It further emphasised that Section 309 is not in line with Article 21 by stating that "section 309 IPC was cruel, irrational provision that needs to be effaced from statute books to humanize penal laws and as the act is not against any religion, morality and public policy with no beneficence to society the state intervention on personal liberty is uncalled for."

But this view was overruled by the constitutional bench of the Supreme Court.In pursuance of another question regarding the constitutional validity of section 309 that had come up before the Supreme Court in *Gian Kaur v state of Punjab*[17], Gian Kaur and her husband were convicted by trial court under IPC306 of abetting suicide of Kulwant Kaur. A constitution bench was set up, wherein the appellant wanted to seek relief as constitutional validity of Section 309

[15] 1987 (1) BomCR 499.
[16] AIR 1994 SC 1844.
[17] AIR 1996 SC 946.

IPC was questionable so was the validity of Section 306 IPC. It was in this case that the court drew a clear distinction between natural and unnatural extinction. The court stressed on the fact that the right to die with dignity at the end of a natural life should not be confused with right to die an unnatural death curtailing the natural span of life. The court said "Suicide is unnatural extinction of life; a natural positive right cannot go with unnatural negative right. Hence constitutional validity of sec 309 IPC was upheld and it does not violate article 21. Those who are terminally ill or in persistent vegetative state come under the ambit of right to die with dignity, the process of death has already started in such individuals and there is no question of unnatural termination therefore termination of life can be permitted." And thus, Section 309 IPC was treated as valid and not violating article 21- a positive right which provided for right to live and did not support suicide.

In the above mentioned case although the court decided to remain silent on the issue of Euthanasia, it mentioned that it could be legalised only through a legislation by mainly relying on the case of *Airedale N.H.S. Trust v. Bland*[18] wherein the matter was about withdrawal of life preventive means equipped to save the life of the doctor. In the instant case, one Anthony Bland, who was a supporter of Liverpool Football Club, went to Hillsborough Ground, and sustained severe injuries as assault of which supply to his brain was interrupted and thus suffered an inconvertible loss to the brain as a result of which he got into a condition of persistent vegetative state (PVS). The House of Lords stated that "euthanasia is not legal in common law and that it should be given legal effect only by legislation. It can be allowed in such cases only where the sufferings in causing assisted suicide are little in comparison to those sufferings to avoid which euthanasia is permitted. The state should have faith in the principle of sanctity of life."

This was followed by the 196th Law Commission Report on Euthanasia wherein they recommended that the Parliament shall make a law named "'The Medical Treatment of Terminally Ill Patients (Protection of Patients, Medical Practitioners) Act." under which all the terminally ill patients would be protected thereby ending their misery either on the approval of the patient itself, if the patient is incompetent to do so, then an expert medical practitioner shall decide on what is to be done. They also suggested that the medical practitioner in this case shall be voted by a board with three experts and that the decision to withhold or withdraw treatment unless he has obtained the opinion of a board of three expert medical practitioners. The report further recommended that the Medical Council of India must issue guidelines as to the circumstances under which withdrawal of medical treatment can be allowed. And that a prior permission must be obtained from the near relatives of the patient and in case of disagreement, the relatives may approach the respective High Court.

[18] Supra note 17.

Thus it can inferred that before the Aruna Shanbaug judgement, no form of Euthanasia was discussed because of the inconsistent decisions of the judiciary regarding the constitutional validity of Section 309 of the IPC. There was also no clarity regarding the right to die being recognised as a fundamental right under Article 21 of the Constitutions of India which is a pre-requisite for conducting or legalizing Euthanasia. Even though the law commission had mentioned several recommendations in order to administer incorrupt ways of Euthanasia to the terminally ill, it could not do much due to the persuasive value that it holds.

2) Position of law post the Aruna Shanbaug judgement

This was followed by the historic judgment of the apex court in *Aruna Shahbang case*[19] wherein they undertook a request under article 32 of constitution filed by Pinki Virani a social activist on behalf of Aruna Shanbaug, a nurse working in a hospital where she was raped by a staff boy had lost her awareness and her brain was unconscious. She was on bed continuously and was taken care of by the hospital staff in persistent vegetative state since 37 years in KEM hospital Mumbai, for withdrawal of artificial feeding. Although the court did not allow the withdrawal of medical treatment to Ms. Shanbaug, it discussed the issue of euthanasia at length and allowed passive euthanasia. It defined "passive euthanasia" as withdrawing treatment with a deliberate intention of causing the patient's death. It held that passive euthanasia is allowed if the doctors act on the basis of notified medical opinion and withdraw life support in the patient's best interest. It was held that a close relation or a 'surrogate' cannot take a decision to discontinue or withdraw artificial life sustaining measures and that the High Court's approval has to be sought to adopt such a course.

Invoking the *Parens Patriae* latin principle meaning "parent of the nation", where the Court can step in and serve as a guardian, it held that the Court is the ultimate decider of what is best for the patient although the wishes of the parents, spouse or other close relatives and the opinion of the attending doctors should carry due weight, it is not decisive and thus insisted that for passive euthanasia request must be approved by high court by extended this power to the High Courts under Article 226 since there is possibility of mischief by relatives and friends for interior motives.

As a result of this, for the first time in India legal recognition was also provided to 'Advanced Medical Directives' or 'Living Will'. It refers to patient's decision communicated in advance on withdrawal of life saving treatment which should be respected by treating doctors and hospitals. Moreover, it said that the failure of advanced medical directives may lead to the denial of these rights, thereby recognising the right to refuse life support intervention as fundamental right.

This was followed by one of the most recent judgements regarding right to die with dignity was in *Common Cause Society v. Union of India*[20]. In 2002, Common Cause, a registered

[19] Supra note 3.

[20] (2018) 5 SCC 1.

society had written to the, Health & Family Welfare, Ministries of Law & Justice and Company Affairs, also addressing the State Governments, on the issue of the right to die with dignity. They then, approached the Supreme Court in 2005 through a writ petition where they argues that the right to die with dignity should be declared fundamental right within the fold of article 21 under the Constitution of India, 1950.

They wanted the State to lay down procedure for patients who are terminally ill to be able to execute a "My Living Will and Attorney Authorisation" which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant. In pursuance of the same, they sought a request for a committee of lawyers, doctors and social scientist to be set up in order to consolidate on the aspects of the Living Will. They prayed to the Court in allowing the execution of such a deed that will be made by the patients as an informed choice as it would help them end their suffering in a dignified manner in case they fall into a condition of being terminally ill instead of being subjected to cruel medical treatments.

They also contended that "a person has a right to choose the treatment where alternates are available to him. He should be allowed to make his choices. As where he is incompetent to express his wishes due to his illness, he should be given the right to express his wish in advance through living will or the wish of surrogate acting on his behalf". Thus, a three judge bench of the Supreme Court referred the matter to a five judge bench in order to settle the issue in light of inconsistent opinions in *Aruna Ramchandra Shanbaug vs Union Of India & Ors*[21] and *Gian Kaur vs State of Punjab*[22].And thus, a robust interpretation of right to die with dignity was brought about under the ambit of Article 21 through the legalization of passive euthanasia. The court also held that an individual's right to execute advance medical directives is an assertion of the right to bodily integrity and self-determination and does not depend on any recognition or legislation by a State.

3) Arguments for the non-recognition of Active Euthanasia in India

Active euthanasia refers to a direct intervention into a patient's existence by introducing a foreign element into his body thereby causing the death of the individual. This mode of euthanasia is often criticised to having amounting to the Act of culpable homicide amounting to murder. Due to the direct interference involved in this act, many critics seems to be against this idea of killing an individual.

The Supreme Court seems have given its view on distinguishing between active and passive euthanasia in terms of its legality and morality is that in active euthanasia, something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. The Court also observed that "the general legal position all over the world seems to be that while active euthanasia is illegal

[21] Supra note 3.

[22] Supra note 10.

unless there is legislation permitting it, passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained".

To quote the words of learned Judge in Aruna's case, in passive euthanasia, "the doctors are not actively killing anyone; they are simply not saving him". The Court graphically said "while we usually applaud someone who saves another person's life, we do not normally condemn someone for failing to do so". The Supreme Court pointed out that according to the proponents of Euthanasia, while we can debate whether active euthanasia should be legal, there cannot be any doubt about passive euthanasia as "you cannot prosecute someone for failing to save a life"

And thus, the view of the judiciary can be outlined in the above mentioned quotes wherein the courts are yet not satisfied with the concept of Euthanasia and therefore await for a legislation to come by in order to ensure the protection of the same in consonance with their ideologies.

4) Murder and Euthanasia

Many critics argue that Euthanasia is a form of culpable homicide amounting to murder wherein without the consent of the patient due to his ill state of mind and body, he is killed by either removing the life supporting machines or by adding a foreign substance thereby ending his life. This is also one of the moral arguments put forth by people. Some of them also believe that Mala fide intentions can also lead to ending a person's life under the guard of euthanasia.

Although, several countries around the world like Iran prevent laws pertaining to Euthanasia due to religious attitude and by considering it as an act in violation of human dignity[23], in India there was a question if whether the act of Euthanasia would amount to an offence under Section 302 or Section 304 of the Indian penal code corresponding to culpable homicide amounting and not amounting to murder respectively. But it is important for us to understand that for an act/omission to constitute a crime *actus reus* and *mens rea* need to be satisfied. However, in the case of voluntary and passive Euthanasia there seems to be no element of guilty mind, i.e, *mens rea* being present thereby not amounting to culpable homicide. Here the only intention is to relieve the person from acute pain and suffering through his own will by executing a Living Will as formulated in *Aruna Shanbaug v UOI*. Therefore it can be said that passive and voluntary Euthanasia cannot be constituting an offence, however sometimes a mala fide intention may take part through coercion of executing a living will due to which safeguards have been provided by the court by relying on the principle of *Parens Patriae,* a Latin principle meaning "parent of the nation", where the Court can step in and be the ultimate deciding factor in whether or not the Living Will may be executed.[24]

Apart from this, as mentioned above the Supreme Court still considers active Euthanasia as a form

[23] Noori F (2014). Euthanasia in Iranian Criminal System. *Research Journal of Applied Sciences, Engineering and Technology*, 7(11): 2182–2184.
[24] Supra note 3.

of actively killing someone which may not be declared by the court without much deliberation on the same and thus stated that such a form would require a legislation in place.[25]

5) Need for a legislation governing passive Euthanasia

Euthanasia as a concept was highly debatable back when the judiciary or the legislation had very little information about it. However over time, they gained knowledge by referring to several other foreign legislations regarding the protection of right to die with dignity and therefore have legalised the same. Even in the *Aruna Shanbaug* judgement various reference is seemed to have been made to o the legal position obtaining in other countries, the best medical practices and the law laid down in series of authoritative pronouncements in UK and USA. And therefore the Supreme Court no longer considered passive euthanasia as a crime though it is subjected to safeguards.

It is thus desirable for a legislation to be passed in favour of passive Euthanasia along with mentioning the specific requirements and the mode in which it would be conducted. A bill namely "The Euthanasia (Regulation) Bill, 2019" has been introduced in the Parliament and mainly aims to regulate termination of life of persons who are in a permanent vegetative state or terminally ill and facing unbearable suffering and for matters connected therewith or incidental thereto. This includes:

a) Defining 'active euthanasia' and 'passive euthanasia'

b) Allowing active euthanasia for terminally ill individuals who are facing acute suffering due to such illness

(c) Allowing passive euthanasia for individuals in permanent vegetative state; (iv) providing for constitution of an Evaluation and Review Board to examine patients requiring active or passive euthanasia

(d) Providing for constitution of a Committee of three physicians to decide whether a patient actually requires passive euthanasia; and

(e) Providing that application of euthanasia involving a child shall be decided by the Evaluation and Review Board in consultation with a paediatrician to prevent misuse of law in such case.

It is however a sad reality that the above mentioned bill lies pending before the Parliament simply because of the nature of complexity that is involved in the very subject of Euthanasia. The 196th and 241st Law Commission report too suggests for a legislation that would regulate the matters that come under the manifold of Euthanasia. Here, as you can observe provisions are made concerning active euthanasia as well that is still not legalised through the courts of justice due to several reasons that shall be elaborated further. But here, it is important for us to understand that efforts have surely been made in the direction of enacting a law that is highly desirable.

[25] 241st Law Commission Report, 2012.

III. CONCLUSION

India having recognised the need for passive euthanasia to exist is highly commendable keeping in view with the evolution of the justice system being in par with the progressive courts of the world. As it is extremely important for the world to recognise the pain that is undergone by citizens who may fall terminally ill ultimately ending up with a vegetative state.

For passive euthanasia in India consent by patient, spouse and children is sufficient whereas if consented by near relative, friend or doctor it requires approval from high court until parliament enacts laws. And thus there is a dire need to simplify the procedures so that it should be practical, operational and without many ifs and buts, though the March '2018[26] order has paved the way for following a new approach to the concept of Euthanasia.It is crystal clear that the apex court has discussed the case where the person concerned (executor) is ready to provide Advance directive. However, it is not a very feasible solution owing to that fact that India has a high percentage of illiteracy and thus the procedure established in *Aruna Shanbaug* case[27] will remain a paper law with lack of access to the same and thus cannot be enforced pragmatically. Thus although mercy killing appears to be morally justifiable, its fool-proof practicability seems near to impossible.

As far as active Euthanasia is concerned the courts in India have still not deliberated upon the issue in detail yet as The courts have failed to distinguish between the two types of Euthanasia with legal reasoning thereby not providing any clarity on the same. But it is favourable for the judicial system in order to take up the matter just like how in Canada, situation changed after the judicial pronouncement of the Supreme Court of Canada given in *Cartar v. Canada (Attorney General)* wherein voluntary active euthanasia called "physician assisted dying", was declared legal for all people over the age of 18 who have a terminal illness that has progressed to the point where natural death is "reasonably foreseeable".[28]

With the advancement in the society there is need to change and codify laws according to the needs of the society. With the new areas of rights emerging, new dimensions of law are also established consequently. There are also the instances where in the absence of legislation the claims are recognized as a right with the help of judicial decisions as the precedent and the execution of passive euthanasia in India is one of them. It is, however the need of the hour to a pass a legislation in the same area in order to ensure proper safeguards to the citizens and this is possible only when the law makers understand the overall background the socio-legal conditions prevalent along with taking suggestions from the guidelines recommended by the Law Commission Reports[29] and the judgments passed by the Supreme Court of India.

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[26] Supra note 3.
[27] Ibid.
[28] 2015 5 SCC 5.
[29] Supra note28.

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