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# The New Statutory Legislation is the Need of Society with respect Right to Die and Attempt to Commit Suicide

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**ABSTRACT**

*The Society is in the need for the new legislative reforms regarding the euthsanasia i.e. Good Death as Life is the most valuable thing that God has given to the world but, to prolong the agony of life if the circumstances is in not in the favour of person unwillingness to continue his life arises because of some situation in the life of the person, The situation could be extreme poverty, incurable disease, emotional imbalance or any other situation were the person is so affected that he wants to end his life. State the protector of its citizen cannot give 'right to die' as giving this right is legally and morally incorrect. But there arises some situation which can't be solved, like having an incurable disease renders the person helpless and dependent and in these situation a person can be given the right to end his life.It is this side of the right to die which is much in debate as some countries of the world have given this right and some of them have not. A person who undergoes euthanasia usually has an irrepressible disease. However, it In Case of Common Cause versus UOI it was held by the Supreme Court that Living will is given by the patient before its treatment but it can never be the substitute of Statutory Legislation.*

## I. INTRODUCTION

Life is the most valuable thing that God has given to the world. Regardless of how exceptional science has progressed, the magnificence of nature and the making of life and The reason for death remain an unfolded puzzle. Life can't be made artificially so taking Life artificially or without the will of God is made punishable under law. Anyway, there are circumstances where even the law is in difficulty over the issues of life and death and among them one difficult issue is euthanasia. The right to die means the right of a terminally ill person to refuse life-sustaining treatment Also termed the right to refuse treatment. Right to die according to me is a broad right which not only includes physician-assisted death but also includes in it the right of an individual to end his life by himself because of his unwillingness to continue his life. The unwillingness to continue his life arises because of some situation in

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the life of the person. The situation could be extreme poverty, incurable disease, emotional imbalance or any other situation where the person is so affected that he wants to end his life. State the protector of its citizen cannot give 'right to die' as giving this right is legally and morally incorrect. Every person in this world has problems that do not give them the permission to end their life. The person cannot be given an arbitrary power to end his life just because he doesn't have the courage to solve his problems. But there arises some situation which can't be solved, like having an incurable disease renders the person helpless and dependent and in these situation a person can be given the right to end his life.It is this side of the right to die which is much in debate as some countries of the world have given this right and some of them have not. A person who undergoes euthanasia usually has an irrepressible disease.

**Involuntary Ethunasia**

Involuntary euthanasia means performing euthanasia without the consent of the patient. In this type of euthanasia the patient who is physically so much affected that he is not able to give his consent but by seeing the condition of the patient the doctors or the family members decide that in the interest of the patient it is right to stop the medical treatment or to actively end the life of the patient. Generally involuntary euthanasia is equated with murder as involuntary euthanasia is also a type of murder as the consent of the patient is not taken while ending his life same is the case with murder were the victim's consent is not taken by the murderer Involuntary euthanasim can be further divided into two sub categories that are Active euthanasia simply means actively ending the life of the person. Either by injecting lethal doses of opium or other narcotic drugs into the body of the patient. It is basically intentionally killing a person either by taking his/her consent or without taking his consent. A famous example related to active euthanasia is that Michigan patient who on 17 September, 1998 was given a lethal injection because he was suffering from amyotrophic lateral sclerosis. The doctor who has given such dose was Kevorkia who was found guilty of second degree murder in 1999 and he was imprisoned.Active euthanasia is not permitted in many countries of the world. Netherland is one of the countries where active euthanasia is not permitted but under certain circumstances active euthanasia can be allowed when the doctors are satisfied that the patient's condition is unbearable and India is one of the countries where active euthanasia is not allowed at all. In India only passive euthanasia is allowed under certain guidelines given by the honourable Supreme Court in the Aruna Shanbaug case. This is a famous case decided by the Supreme Court where the Supreme Court gave guidelines in which of the conditions passive euthanasia is allowed in our country. Though the court held

that it is the Parliament which is the proper authority to pass the legislation with respect to euthanasia not the court and Passive euthanasia literal meaning is that taking the life of the patient passively while in active euthanasia is actively taking the life of the patient. In passive euthanasia the life supporting system of the patient is removed. The life supporting system is basically a system which helps the patient to continue his/her life because of the system it could be anything like a machine providing artificial oxygen. Passive euthanasia cases are basically seen in the case of Coma were the patient is totally dependent upon the life supporting system. In these types of cases the chances of the patient to recover is very less and it causes undue financial pressure on the family members which is not correct. Not every family's financial conditions are the same ; it varies from family to family. It is because of this type of the problem passive euthanasia is legal in most of the countries. Every country does have an act dealing with respect to passive euthanasia.India currently does not have any legislation relating to passive euthanasia but it’s the honourable Supreme Court guidelines which is prevailing in the country given in Aruna's case. The Netherlands is the first country in the world to allow euthanasia.The Netherlands government passed an act in 2002. To legalise passive euthanasia.

**Voluntary Ethunasia**

Voluntary Euthanasia is basically a type of euthanasia were the patient voluntarily gives the consent for euthanasia. Here in this this cases the patient is in such a condition that he capable of understanding his good or bad, his mind is capable of taking decision It was first Netherlands who legalized all forms of euthanasia and then Belgium was the second country in the race Voluntary euthanasia or assisted suicide is unlawful in India even when the patient is suffering from an incurable disease or is in extreme pain. People also oppose active euthanasia on religious beliefs that human life is sacred. People are in the view that if assisted suicide is legalized the scope of law will gradually become wider and we would embark on a decent down a slippery slope down which we would slide until people who had expressed their wish to die were been killed because we, not they, thought there life was of no worth. Another aspect why Voluntary euthanasia cannot be legalised is because it will give an arbitrary power to the doctor.

**Non Voluntary Ethunasia**

This type of euthanasia is where because of the physical condition of the patient the patient is incapable of giving consent for euthanasia to doctors or his family members because of this permission for euthanasia is given without taking the consent of the patient. Like where the

patient is in coma it is not possible to take the patient's consent so here the consent of the family members is taken. Dynamic non-deliberate willful extermination is unlawful in all nations on the planet, despite the fact that it is allowed in the Netherlands on babies under a contract between doctor and legal prosecutors that was approved by Dutch National Association of Pediatricians. Detached non-intentional killing (withholding life backing) is lawful in India, Albania and numerous parts of the United States and is practised in English healing facilities.Many individuals are against the perspective of Passive non-intentional killing, as per them doctors have no power to end the lives of patient and case that they are basically acting in their patients' best advantage.

## II. STATUTORY PROVISIONS FOR SUICIDE IN INDIA

The present section 309 IPC reads:

309. Attempt to commit suicide.-Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [ or with fine, or with both].

According to WHO, every year more than 800000 people take their own life and there are many more people who attempt suicide. Suicide was a second leading cause of death among 15-29-year –olds globally in 2012.In the 19 century most countries around the world had laws that provided for punishment including jail sentences, for presence who attempted suicide. However in the last 15 years the situation has changed significantly. Most, but not all, countries have decriminalized suicide according to report of WHO, of 192 independent countries and states investigated (152, 25 currently have specific laws and punishment for attempted suicide an additional 10 countries follow sharia law and in these countries people who attempted suicide may be punished. Penalties stipulated in the laws range from a small fine and short period of imprisonment to life. However many of the country's laws stipulating punishments do not actually prosecute people who attempt suicide the complexities of the situation are illustrated by the following examples that exist in different countries.

### Interpretations by Indian Courts

According to the 42nd report submitted by the law commission in 1971 had recommended that section 309 IPS should be repeated. The government then introduced the IPC (amendment) bill, 1978 which was passed by the Rajya Sabha but before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the bill lapsed. In 1987, the Bombay high court held that the right to life guaranteed by the constitution includes the right to live and the right to end one's life and struck down section 309. The SC upheld the view in 1994

but in 1996 a five-judge SC bench held that the fundamental right to life did not include the right to die, and that section 309 was constitutionally valid. That means the law today. Then the law commission submitted its 156 reports in 1997 after the Gian kaur judgement, recommending retention of section 309 however, the law commission, in its 210th reports, said attempt to suicide warranted medical and psychiatric care and not punishment. It had noted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind, deserving treatment and care rather than punishment, and accordingly recommended to the government to initiate the process for repeal of the "Anachronistic " section 309 . the law commission in its report said that all the countries in Europe and north America had decriminalize attempt to suicide thus only south Asian countries are left to decriminalize attempt to suicide so, taking the law commission view in consideration, in reply to a question in the Rajya Sabha in December last year, minister of state for whom Hari Bhai Chaudhary announced that the government has decided to dropped section 309 from the IPC after 18 states and union territories backed the recommendation of the law commission of India in this regard.

**Objection made by States**

Bihar, MP, Delhi, Punjab, Sikkim has expressed reservation against the move to decriminalize suicide bids. Bihar wanted a distinction drawn between person driven to suicide due to medical illness and suicide bombers who fail to blow themselves up or terrorists who consume cyanide pills to wipe out evidence, and wanted the former to be covered by a separate legislation. However, the home ministry officials clarified to the states that such persons would still face charges under the stringent unlawful activities prevention act, whether or not he succeeds in his mission. Madhya Pradesh, Delhi and Sikkim have said that decriminalizing attempt to suicide would handicap law enforcement agencies in dealing with persons who resort to fast unto death or self-immolation to press the government to accept their unreasonable or illegitimate demands. Such people, they argued, can no longer be booked for attempt to suicide or be forced. They have pointed out the case of Manipuri anti-AFSPA activist Erom Sharmila, who has been on indefinite fast for last 14 years but was kept alive by being charged with attempt to suicide and forcefully administered intravenous fluids.Madhya Pradesh and Delhi argued that deleting section 309 would dilute section 306(abetment to suicide), as an abetter cannot be prosecuted against for a failed suicide attempt. However, the section of IPC related to abetment of suicide reads as follows, " Punjab, while not opposing the deletion of section 309 insisting that the state come forward to rehabilitate people who commit to suicide by providing medical, psychiatric care and public

assistance in case of unemployment, old age, sickness, rape victims and distressed farmers. Delhi demanded that reporting to of attempt to suicide to authorize officer or hospital be make compulsory. National human rights commission (NHRC),] Head, KG Balkrishnann.

## III. EUTHANASIA IN INDIA AND THE ROLE OF INDIAN JUDICIARY

In the precedent setting case of State of Maharashtra v. Maruti Sripati Dubal[2]A person named Sripati Dubal attempted to end himself. Apex Court began that provision 309 of Indian Penal Code which manages discipline for those discovered blameworthy of endeavored suicide is ultra vires of article 14 and article 21 of the Constitution. Thus, the Court held that "privilege" to life' under article 21 of the Indian Constitution 'incorporates the right to pass on'. However, in Chenna Jagadeeswar v. State of Andhra Pradesh, 31 The Andhra Pradesh High court had the different view the court was of the view that section 309 is constitutional the court was not influenced by the persuasive judgement passed by the Bombay high court The above controversies was finally settled by the Apex court of P. Rathinam v. Union of India,32 In which the apex court relying on Bombay high court decision held that ‘right to live include in itself ‘right to die’. But the judgement cannot hold for many years as the judgement was overruled in Gian Kaur v. State of Punjab33 Here the constitutional bench of the Supreme court held that the right to die is not a fundamental right given under article 21. The cases in which the person is in a persistent vegetative state (PVS) he may want to terminate his life. In these types of cases it would be governed under the right to die with dignity as in these situations a person is not ending his life but the person is just accelerating the process of death which has already commenced. Only in cases of voluntary euthanasia that would attract exceptions provided under Section 300. Cases of non-voluntary and involuntary euthanasia would come under proviso (1) of Section 92 of IPC and thus be rendered illegal. In India the law is very clear on the subject of assisted suicide. Abutment or suicide is a crime which is punishable under section 305 and 306 of IPC. The whole debate came into the concluding stage in the case of Gian Kuar vs. State of Punjab where the court held that the right to life guaranteed by Article 21 of the Constitution does not include the right to die. The court held that by no such interpretation to Article 21 can give an idea that the law makers wanted right to die.A positive step taken by Modi government in decriminalizing attempt to suicide is a welcome step taken by the government as the offender is not the offender per se but he/she is the victim of the atrocities which he has gone through in the past. The sovereign function of the state should not only to punish the offender, but to

[2] AIR 1997 SC 411

help them to rehabilitate their life There are two important Apex Court decisions on Section 309. First is P. Rathinam V. Union of India, in this case Apex Court held that Section 309 of IPC is against the fundamental right given under Article 21 and hence the said provision is unconstitutional. After passing of this judgment attempt to commit suicide was no offence. The basis of this judgement is dependent on a couple of High Court Judgments one of them being Chenna Jagadeeswar Vs. State of Andhra Pradesh. In this case also the AP High Court was of the view that Section 309 is violating Article 21 and Article 14 as the provision is unlawful. Subsequent to this judgement the Apex Court in case of Gian Kaur Vs State of Punjab held that Section 309 does not violate Article 21 of the Constitution and thus overruling all the past decisions rendered. After passing of this judgement section 309 again became legal and the offender would be punished for simple imprisonment of one year for committing such an offence While dealing with section 309, it is necessary to refer to two important decisions of the Supreme Court of India where, in the first case in P.Rathinam V. Union of India, a two-judge Bench of the Supreme Court struck down section 309 as unconstitutional and in the second case in Gian kaur V. State of Punjab,38 a constitution Bench overruled the earlier judgement and upheld the validity of section 309. In Gian Kaur's case, the appellants penalized under section 306 for 'abetment suicide' argued that if section 309 deals with 'attempt of commit suicide' are unconstitutional, similarly section 306 which is dealing with 'abetment of suicide' should also be unconstitutional. But the Apex Court upheld the constitutional validity of both section 306 and section 309. Thus it was stated in the case of Gian kaur, Supreme Court made it clear that provisions of the IPC get attracted hence 'Euthanasia' and 'Assisted Suicide' are not lawful in India. But, the question which was raised in Gian Kaur is whether it directly deals with 'withdrawal of life support'? (a) Fortunately, in reference to section 306, there are some very important comments in Gian Kaur's case which relate to whether withdrawal of life support should be done or not. In earlier case in context of an argument dealing with 'abetment' of suicide, Airedale N.H.S. Trust V. Bland,[3] The House of Lords gave a judgement that was cited by the Supreme Court, it reiterated the difference between withdrawing life support and euthanasia as follows: "Airedale's case was a case relating to withdrawal of artificial measures for continuance of life by a physician. Even though it is not necessary to deal with physician assisted suicide or euthanasia case, a brief reference to the decision cited at Bat may be made." "In the context of existence in the Persistent Vegetative State of no benefit to the patient, the principle of sanctity of life, which is the concern of the state, was stated to be not an absolute one. In such

[3] 1993 (1) All ER 821

cases also, the existing crucial distinction between cases in which a physician decides not to provide, or to continue to provide, or to continue to provide, for his patient, treatment of care which could or might prolong his life, for example, by administering a lethal drug, actively to bring his patient's life to an end, was indicated as under…"

**Landmark Judgement related to Passive Euthanasia**

[4]Aruna Shanbaug, was a 25 years old pretty, bubbly nurse, at KEM HOSPITAL and dreaming of marrying her fiancé- a young doctor colleague. A compounder of the hospital on 27/10/1973 attacked Aruna when she was changing her dress. He sodomised Aruna after strangling her with a dog chain. Then he left her lying there and went away, but not before robbing her of her earrings. Following day, Aruna was found by a cleaner, oblivious, and lying in a pool of blood. It was then understood that the strike and coming about suffocation with the pooch chain had abandoned her cortically visually impaired, incapacitated and dumbfounded and she went into a trance-like state from where she has never turned out. Her family abandoned her. She is tended to by KEM doctor's facility medical caretakers and specialists for a long time. The lady would not like to live any longer. The specialists have advised her that there is no possibility of any change. She blurred from open memory until 1998, when columnist Pinki Virani composed 'Aruna's Story' into a book that brought her once again into open cognizance. The ward boy got a 7 years' sentence for attempted homicide and theft. He was not strove for rape as the matter of law as that time anal sex was assumed to be rape Her next companion (a legitimate term utilized for an individual talking for the benefit of somebody who is crippled) portrayed Shanbaug: "her bones are fragile. Her skin is similar to 'Paper Mache' extended over a skeleton. Her wrists are turned inwards; her fingers are twisted and fisted towards her palms, bringing about developing nails attacking the substance all the time. She stifles on fluids and is in a PVS (Permanent vegetative state)." So, she through her 'next companion' and legal advisor Pinki Virani, chose to move the Supreme Court with an application to direct the KEM Hospital not to coercively feed her. In any case specialists at KEM Hospital don't agree with the contention. Past Dean, KEM Hospital Dr. Pragna Pai says that Aruna is not in a daze like state. " I used to run and banter with her and when you relate to some story, she would start giggling or smiling or when you start singing a couple of supplications to God or shlokas, she would look quiet and calm, as if she is furthermore joining the solicitations to God," said Dr. Pai. Aruna's case is the purpose of joining the verbal encounter over stiff-necked elimination in Indian. On the one side, it is the benefit to live, and the other, bite the dust with pride and the Supreme Court has the

[4] Aruna Ramchandra Shanbaug v. Union of India, AIR 2011 SC 1290

momentous and troublesome undertaking of picking the predetermination of an exploited individual in a wrongdoing 37 years earlier. Additionally, on sixteenth December, 2009, The Supreme Court of India yielded the woman's supplication to end her life. The Supreme Court Bench containing Chief Justice K.G. Balakrishnan, Justice A.K. Ganguly and B.S Chauhan agreed to dissect the profits of the solicitation and searched

for responses from the Union Government, Commissioner of Mumbai Police and Dean of KEM specialist's office.On 24th January,2001 Hon'ble Markandey katju and gyan sudha mishra JJ. Of the overwhelming court of india responded to the application for executing the request moved by aruna's friend author pinki virani by Court reacted to the petition and order for setting up of a restorative advisory group to inspect that whether really aruna is in PVS stage.The court in its purpose of interest judgement, however allowed Passive killing in India. While releasing pinki virani,s pela for aruna shanbaug,smurdering, the court set down standards, for inactive willful extermination . As shown by these principles, uninvolved obstinate annihilation incorporates the withdrawal of treatment or sustenance that would allow the patient to live The judge who says that a CD he reviewed of ms. Shanbaug shows ; she is certainly not brain – dead she expresses her likes or dislikes with sounds and movements . she smiles when given her favourite food.... She gets disturbed when many people enter her room and calms down when touched gently".[5]

In 2004, a two-judge Bench of the Andhra Pradesh High Court in Suchita Shrivastava v. Chandigarh Administration, rejected the writ request of a 25 year old hanging on by a thread tolerant "Venkatesh" who sought to agree to give his organs in a non- heart pounding condition. The high Court dismisses the writ bid where "Venkatesh" had imparted his wish to be put off the life sincerely steady system.It is prescribed that correctional discipline as to tries to submit suicide and abetment to if all else fails yet unshakable annihilation (deliberate) should be permitted in particular circumstances. Thus, Indian Parliament should make a law with respect to killing which engages a specialist to end the troublesome presence of a patient encountering a genuine contamination with the consent of the patient.Parliament should set out a couple of circumstances under which killing will be true blue as underneath:

1. Assent of the patient must be taken,

2. Disappointment of all remedial meds or when the patient, encountering a lethal torment, is in an irremediable condition or has no chance to recover or survival as he is encountering a troublesome life or the patient has been in compelling lethargies for 20/30 years,

[5] www.family.org.au/care,visited on 26 march 2015

3. The money related or budgetary condition of the patient or his family ought to likewise be considered.

4. Proposition of the specialist ought not be to cause hurt,

5. Legitimate insurance must be detracted to keep from sick utilisation of by Specialist,

Along these lines, willful extermination could be authorised, yet the laws would need to be greatly stringent. Every case must be meticulously reviewed investigating the motivation behind points of view of the patient, relatives and the experts. Yet whether Indian society has grown enough to face this, as it is an unfathomably critical issue which ought to be tended to.

**Guidelines for withdrawing Life Supporting System**

1. An application has to be filed in the high court

2. The chief justice of the concerned high court will constitute a bench with at least two judges who shall decide to grant approval or not.

3. It is obligatory to the bench to set the procedure to take opinion of the committee of 3 repudiated doctors

4. The committee shall be constituted in consultation with the state government which shall preferably consist of a neurologist, psychiatrist and a general physician.

5. This committee of doctors should be constituted in every city by the high court

6. The committee which is nominated by the bench shall carefully examine the condition of the patient and his reports and after carefully scrutinising these reports shall henceforth submit its report to the high court.

7. Simultaneously with appointing the committee of doctors the high court bench shall also issue notice to the state and near relatives and in their absence to his/her Next friend?

8. The report submitted by the panel of doctors shall be forwarded to the relatives.

9. The high court shall after hearing the parties shall give its judgement.

10. High court should give the decision as speedily as possible because delay in its matter can cause mental pain to the relatives.

11. The high court shall assign reasons in accordance with the principle of best interest of the patient laid down by high court lords in Airedale's Case.

12. The above mentioned guidelines should be followed until parliament makes laws in this concern.

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## IV. CONCLUSION AND RECOMMENDATIONS

Euthanasia is a controversial subject to study as there are many controversies attached with euthanasia. Our religious belief and human rights are attached with euthanasia making it a debatable topic. Euthanasia raises some complex questions of moral, social, philosophical and religious grounds. The first agreement against euthanasia lies in the religious beliefs of the people every religion gives the freedom to practise euthanasia, like Christianity which says euthanasia – a suicide- a sin. The second most important argument against euthanasia is that in some situations it is not possible to take the consent of the patient thus making euthanasia equal to murder. Doctor Jack of the United Nations, is well-known for his work in euthanasia, he is recognized as a "doctor death". He is a medical practitioner appealed against the law governing euthanasia as that law in USA made assisted suicide a crime and the punishment was ten years. He advocated that t permission of assisted suicide should be given so that the doctor can end the life of his patient who is suffering from a terminal illness .doctor jack has assisted some patients to end thee lives because of which he in 1999, he was given a sentence of ten years of imprisonment for voluntary ending the life of the patient. In 2003, a bill was introduced in the British parliament to allow assisted suicide for terminally ill patients, but it was rejected November 2004, but certain amendments were proposed. In November 2005 the proposed amendment was made in the house of lords that in May 2006 there was a heated debate on the topic and the members of the parliament declined the bill by 148/200. The Netherlands is one among such countries who passed the legislation way back in 13 years ago. Initially under the law of Netherlands only a patient who is terminally ill can approach the court for granting permission of euthanasia but now even a person who is chronically ill can claim benefit under the law. Also, earlier the person needed to report for granting the permission for euthanasia but now even doctors can take such a decision. In this era where medical treatment has made such progress the patients who can't be cured should be given the permission to end his life and become free from all the suffering he has been going through and it is known to him that he shall continue in the future to go through this pain. The person is also suffering from the mental trauma, euthanasia is a way by which our legal system and the society can bring some relief to the patient's stress.

My suggestion would be that every country of the world should have an enactment regarding euthanasia. It's high time now Indian parliament should pass law governing euthasia, Indian law which should be enacted should be based on euthasia law practised in Netherland because according to me the Netherlands country law is the best comprehensive legislation passed for legalising euthasia. The Netherlands' enactment in such a manner is a standout

amongst the most thorough enactment for two conspicuous reasons. From one perspective, it sets out the vital criteria for granting permission for euthanasia and then again, it gives governing power to the Review Committees. Consequently euthanasia is not gave as an issue of right to the patient, but an protection to the doctor so that doctor can legally practise euthanasia. Moreover now, from the Case of Common Cause versus UOI it was held by the Supreme Court that Living will is given by the patient before its treatment but, it can never be the substitute of Statutory Legislation that is the need of the Society.

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