RIGHT TO DIE AND ATTEMPT TO SUICIDE

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CERTIFICATE

This is to certify that the research work entitled **"**RIGHT TO DIE AND ATTEMPT TO SUICIDE**"** is the work done by Aishwarya Sharma under my guidance and supervision for the partial fulfillment of the requirement of B.B.A., LL.B. (Hons)degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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DECLARATION

I declare that the dissertation entitled **"**RIGHT TO DIE AND ATTEMPT TO SUICIDE**"** is the outcome of my own work conducted under the supervision of Mr. ArvindAnandan 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 acknowledgement has been made in the text to all other material used.

Signature & Name of Student

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LIST OF ABBREVATIONS

ATAMA: The Australian Medical Association

AS: assisted suicide

AVE: active voluntary euthanasia

BMA: The British Medical Association

CSA: The Controlled Substances Act

DAS: doctor-assisted suicide

DDE: the doctrine of double effect

ECHR: the European Court of Human Rights

ERGO: Euthanasia Guidance and Research Organization GMC the General Medical Council

ICCPR: the International Covenant on Civil and Political Rights

ICESCR: the International Covenant on Economic Social and Cultural Rights MDEL medical decision to end life

ROTIA: the Rights of the Terminally Ill

TLRASA: the Termination of Life on Request and Assisted Suicide (Review Procedures)

UDHR: the Universal Declaration of Human Rights

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"I am the master of my fate, I am the captain of my soul."

-William Ernest Henley

1. INRODUCTION

Right to die means right of a terminally ill person to refuse life-sustaining treatment Also termed right to refuse treatment[1].Right to die according to me is a broad right which not only include physician assisted death but also includes in it right of 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 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. Sate the protector of its citizen cannot give 'right to die' as giving this right is legally and morally incorrect. Every person in this world have problems that does 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 person can be given right to end his life.

It is this side of 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.

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 making of life and reason for death remains 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 law is in a difficulty over the issues of life and death. And among them one difficult issue is euthanasia.

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[1]Black's law dictionary 4th edition

The expanded significance given to individual independence in the twentieth and twenty-first century has been a real explanation behind parallel thinking toward authorizing ‘right to die’. The organization working for legalizing euthanasia are developing quickly in all parts of the globe to look for popular sentiment and to pressurize the governing body to pass enactment in this subject[2]. Netherlands, Canada, Oregon, Belgium and Columbia are such countries where euthanasia has been permitted

2. HISTORICAL BACKGROUND

[2]The first euthanasia society was established in London in 1935. Subsequently it spread to America (1938) and other parts of the globe.

The term euthanasia originates from the Greek words "eu"- means good and "thanasia" means death. Hippocrates oath taken by the doctors at the time of passing which was composed somewhere around 400 and 300 BC the first Oath states: "To satisfy nobody will I endorse a fatal medication nor give exhortation which may cause his death." Thus in olsen days people doctors were opposed to euthanasia Despite this, the old Greeks and Romans by and large did not accept the ideology they were of the view that that in situation were the life of the person has become miserable or in the case Stoics and Epicureans where an individual no more looked after his life the option of euthanasia is allowed. The oft-cited definition in Black's Law Dictionary suggests, demise was: "The suspension of life; the stopping to live; characterized by doctors as an aggregate stoppage of the course of living of a person, or an discontinuance of major functioning of creature like breathing.

English Common Law from the fourteenth century until the most recent century made suicide a criminal demonstration in England and Wales. Supporting others to die as unlawful in that locale. Be that as it may, in the sixteenth century, Thomas More, considered a holy person by Roman Catholics, portrayed an idealistic group and visualized such a group as one, to the point that would encourage the passing of those who are living oppressive life as a consequence of "tormenting and waiting agony".

Since the nineteenth Century, deliberations for legalizing euthanasia started in North America and Europe. As indicated by restorative antiquarian Ezekiel Emanuel, it was the accessibility of anesthesia which become bases for euthanasia. In 1828, the first law against euthanasia was passed in New York, with numerous different areas and states followed it afterward. After the Civil War, legalizing euthanasia was advanced by supporters, including a few Medical practioners..

In an article in the Bulletin of the History of Medicine, Brown University student of history Jacob M. Appel recorded far reaching political open deliberation over enactment to authorize doctor aided suicide in both Iowa and Ohio in 1906. Social extremist Anna S. Corridor was the main thrust behind this development. As per history specialist Ian Dowbiggin, driving open figures, including Clarence Darrow and Jack London, pushed for the authorization of willful extermination. But these deliberation could not yield any productive output England and USA both have anti-euthanasia law.

Pro euthanasia organization was set up in England in 1935 and in the USA in 1938 to help to encourage euthanasia. Doctor assisted euthanasia was made lawful in Switzerland. A few doctors say euthanasiais a sane decision for capable patients who wish to pass on to escape excruciating enduring. Others feel that supporting in the understanding's passing conflicts with a doctor's obligation to protect life.

3. Classification of Euthanasia

3.1 Involuntary euthanasia

3.1.1 Active euthanasia

3.1.2 Passive euthanasia

4 Voluntary Euthanasia

5 Non-Voluntary Euthanasia

3.1Involuntary euthanasia

Involuntary euthanasia means performing euthanasia without the consent of the patient. In this type of euthanasia the patient who is physically so much effected 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 victims consent is not taken by the murderer Involuntary euthanasia can be further divided into two sub categories that are

3.1.1 Active euthanasia

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 of 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 of the country were active euthanasia is not permitted but under certain circumstances active euthanasia can be allowed when the doctors are satisfied that the patient condition is unbearable and India is one of the countries were active euthanasia is not allowed at all. In India only passive euthanasia is allowed that to under certain

guidelines given by honorable Supreme Court in the case of Aruna Shanbaug case[3] this is a famous case decided by Supreme Court were Supreme Court gave guidelines in which of the conditions the 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.

3.1.2. Passive euthanasia

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 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 machine providing artificial oxygen. Passive euthanasia cases is 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 families financial conditions are same it varies on family to family. It is because of this type of the problem passive euthanasia is legal in the 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 honorable Supreme Court guidelines which is prevailing in the country given in aruna's case. Netherland is the first country in the world to allow euthanasia Netherland government passed an act in 2002. To legalize passive euthanasia

3.2. Voluntary Euthanasia

Voluntary Euthanasia is basically a type of euthanasia were the patient voluntary gives the consent for euthanasia. Here in this this cases the patient is in such a

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

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 legalized is because it will give an arbitrary power to the doctor.

But the international position is totally different. There are many laws which legalize Voluntary euthanasia like in countries Netherlands, Belgium, Switzerland, American state of Oregon and its neighboring state of Washington. According to Israeli dying patient's law, the patient has a right according to the law to specify his wish n advance regarding his medical treatment that would be given to him if he becomes terminally ill and inability of expressing his wishes at that time. The wish of the patients, are like directives which should be followed for medical treatment or by appointing an agent with power of attorney. The directives are valid for a period of 5 years with an option of extension.

In USA, both decisional and statutory law recognizes three ways to make decisions for terminally ill patients. The first one is the express directives, drawn by the patients when competent. The patients can give and clear in which circumstances the directives has to be followed or the procedure to be adopted when terminally ill. Second method is to make the decision in a way that attributes the choice to the patient by means of a substituted judgment. This concerns the best judgment of the patient's guardian and family as to whether to discontinue a treatment, which he is to believe the principle would have made under the circumstances. Unlikely this method there seems to be a problem but however the relatives would be close to the patient but he cannot read the mind of the patient. How can the relative know the wish of the patient? The third method is based on the concept of the "patient's best interest".

According to the America national report, the right of control over one's own body and the right to refuse or discontinue medical treatment are settled concepts in common law tradition. In principle,this also empowers a terminal patient in distress to discontinue the process prolonging his life. It is important not to confuse this power with right to die and secondly it must be noted that the right to refuse or discontinue medical treatment is not undisrupted. In Germany the 1994 ruling by the BCH in "Kempten case" made it clear that presume will of the patient has the same effect as the explicit expression of the person's will. A person who does not want to continue his medical treatment his decision has to be respected. The principle "in Dubio ero vita "is applied. Court's permission are needed for stopping life sustaining treatment. Regardless to the will of the patient a doctor has the right not an obligation to see his treatment at the terminal stage of life then it is medically useless to continue it is argued that statutory provisions are desirable to increase legal certainty in the area. Israil does have a legislative framework during which treatment and the patient' consent.

In the 1996, Patient's rights law establishes the principle that medical treatment should only be given after taking the permission of the patient. Treatment without taking the permission in a limited number of situations where the patient's life is in danger can be given, may not be needed. The 2005 Dying patient' law, establishes a balance between sanctity of life, quality of life, and individual autonomy. The law basically respects the wish of the patient to terminate the treatment. If a patient in dying stage does not want artificial oxygen or nutrition then they should not be compelled.

Similarly in 2004, Croatia adopted the act on the protection of the rights of the patient. A patient does not have an unqualified right to refuse medical treatment. A patient can refuse interventions except in cases of undesirable medical treatment whose nonperformance would endanger the patient's life.

The French act of 22 july 2005, clearly gives the patient right to refuse any treatment (including nutrition, artificial respiration). If this would endanger the patient's life a repeated request is necessary which is documented in the medical file.

In the Greek national report, the condition where the patient precedes the commencement or continuation of treatment is dealt under the heading of "voluntary euthanasia".

According to The Spanish law, the patient has the right to refuse the treatment even after the treatment has already commenced. The penal code contains special provisions under Article 172 for these situations. If a doctor continues the treatment inspite of the patient's refusal, he would be committing a crime against the freedom of the patient. If a patient is unable to express his will, the physician has to act according to the Lex Artis.

Finally in Italy, the right to refuse medical treatment is governed by case law. According to Supreme Court decision the doctor is under strict professional obligation to treat the patient regardless of patient's consent. The overall picture is clear. In all jurisdiction it a paramount importance to know the patient's wishes.

3.3 Non-Voluntary Euthanasia

This type of euthanasia is were 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 were the patient is in coma it is not possible to take the patients 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 an contract between doctor and legal prosecutors that was approved by Dutch National Association of Pediatricians[4]

Detached non-intentional killing (withholding life backing) is lawful in India, Albania and numerous parts of the United States and is practiced in English healing facilities. Many individuals are against the perspective of Passive non-intentionalkilling, as per

[4]http://www.medscape.com/Ending the life of a Newborn, visited on 23th march 2015

them doctors have no power to end the lives of patient and case that they are basically acting in their patients' best advantage.[5]

Fetus killing is a good example of non-voluntary euthanasia as during sonogarphy if the radiologist think that the fetus is not healthy or that the fetus is terminally ill or has any genetic disorder the doctor can ask for termination of the pregnancy within 20 weeks[6] in India.

Generally in other countries the termination of pregnancy is 24 weeks. In the new proposed amendment to MTP Act it has been proposed that the new abortion period should be 20 week.

4. Religious views on Euthanasia

[5] Sarah Bosely, Call for non-consent euthanasia, The Guardian(8th june,2006) (London)
[6] According to Medical Termination of Pregnancy act 1971

4.1 Hinduism

Hinduism is one of the oldest religion of the world. There are two views on euthanasia in Hindu religion one view is that the person who is assisting the other person in dying because of his incurable diseases is doing a sacred job and the another view is that by assisting the person in committing suicide the person is interfering in the cycle of life and death (Janam and Maran). Voluntary euthanasia is a common practice in Hinduism as Sanyasi's in search of moksha take voluntary death whether it is any rishi muni or Sai baba all has taken samadhin for getting Moksha.

4.2. Christianity

Catholic teaching condemns euthanasia as a "crime against life" and a "crime against God". The teaching of the Catholic Church on euthanasia rests on several core principles of Catholic ethics, including the sanctity of human life, the dignity of human person, concomitant human rights, due proportionality in casuistic remedies, the unavoidability of death, and the importance of charity. Protestant on the other hand had different opinion on the subject.[7]

4.3. Buddhism

There are a wide range of perspectives among Buddhists on the issue of wilful extermination, yet numerous are condemning of the method. An essential estimation of Buddhist educating is empathy. Empathy is utilized by some Buddhists as a support for wilful extermination in light of the fact that the individual enduring is calmed of torment. On the other hand, it is still shameless "to set out on any approach whose point is to wreck human life, independent of the nature of the singular's thought process".

4.4.Jainism

[7] Declaration on Euthanasia- May 5, 1980 available at http:// www.Vatican.va/roman-curia/ euthanasia, visited on 24th March, 2015

The ideology of Jain religion is in favour of euthanasia as according to the religion the act of euthanasia is not immoral if the person is doing such an act for getting moksha

4.5. Judaism

Like the pattern among Protestants, Jewish restorative morals have gotten to be partitioned, mostly on denominational lines, over killing and end of life treatment since the 1970s. For the most part, Jewish scholars contradict deliberate killing, regularly overwhelmingly, through there is some support for willful extermination in Limited circumstances.

4.6. Shinto

In Japan, where the overwhelming religion is Shinto, 69% of the religious associations concur with the demonstration of voluntary inactive willful extermination. In Shinto, the prolongation of life utilizing fake means is a despicable demonstration against life. Perspectives on dynamic willful extermination are blended, with 25% Shinto and Buddhist associations in japan supporting voluntary dynamic killing[8]

5. Situations in which euthanasia should be granted

[8] http:// www.wikipedia.org.visited on 24th March, 2012.

5.1 Pain

When the patient is in such an extreme pain that it is not possible for the person to bear the pain from which he/she is suffering this pain could be because of various disease from which the person is suffering. It's a basic human right that every person should have pain free of life it's not emotional pain but physical pain from which the person should be atleat free so that the person can live his life happily. But there comes situation when the person cannot bear the pain from which they are suffering in that situation euthanasia is granted to patient. So that the person can end his miserable life. Thus physical pain is the basic reason for granting euthanasia to a person

5.2 Forced to live

This topic is of great debate in the world as when the person has right to live he should also have right to die. Though this debate is settled in India's by the decision of honorable Supreme Court in thecase of Gian kaur's case[9] . But earlier decisions of various high court held that right to live include in it right to die even the honorable supreme court has held in P. Rathinam's case[10] that right to live include in itself right to die . Also many countries in the world have the same view that right to live include within it right to die. As forcing a person to live is inhuman a person who is suffering from severe pain cannot be asked to live his life as he is the master of his life. An adult who can choose his representative he can thus choose to live or not to live. Forcing a person to live though it is not legally wrong but it is morally and ethically. Law is made for the benefit of the societies the person and if the person who are living are not happy then the law would be of no purpose. Though some person opposite to the view.

6. Euthanasia and its type

Euthanasia may further be classified into 5 other categories. They are.

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[9] Gian Kaur v. State of Punjab, (1996) 2 SCC 648

[10]; *P. Rathinam* v. *Union of India*, AIR1994SC1844

[1] Animal euthanasia

[2] Child euthanasia

[3] In case of mental patients

[4] In case of adult patients

[5] In case of pregnant women

6.1 Animal Euthanasia

As killing of animal is also a crime in most of the countries. It is important to discuss this issue. Animal Euthanasia is a type of non-voluntary where the consent of the animal cannot be taken so in this condition depending upon certain circumstances animal euthanasia can be allowed. Though the animals do not have basic human they have certain basic right. If the animal is in unbearable pain then it would be right to end the life of the animal .Lack of resources is the basic condition which leads to animal euthanasia. Also in many countries like India were we have less finance available for treating the animals it would be not possible to take care of the animal. So the only solution to this problem would be to end the life of the animal. There are many ways to end the life of the animal they are:-

6.1.1Method of Animal Euthanasia

a. *Intravenous Anesthetic*

Pets are usually killed by using high dosage of narcotics drugs like opium because which the animals within seconds gets an heart attack[11]. Method is used because it give fast result

People basically follow two techniques for ending the life of the animal as the owner of the pet are emotionally attach with the animal they want the death of the animal painless so technique which is followed are by giving high dosage of opium to the animal by injecting it to the body of the animal or by directly shooting the animal

Some tablets of the composition are used Like Somulose and Tributame which breaks down the nervous system of the animal causing heart attack to the animal which causes instant death of the animal.

b. Inhalants

By making a closed chamber small animals are introduced in the chamber were carbon monoxide is filled, carbon dioxide is filled which makes respiration for the animals impossible and thus causing instant death of the animal

This technique is critized by human rights activist saying it to be inhuman activity as the time taken for ending the life of the animal is too much which causes painful death to the animal

c. CervicalDislocation

This technique is used ordinarily by common man to end the life of small animals like rat if performed accurately it causes instant death of the animal. This is not ascientific technique but the person performing it should be careful about it because if it is not performed correctly than it will causes injury to the animal.

d. Intracardiac or Intraperitoneal Injection

[11]UK Veterinary Medicines Directorate Product Notes for 20% Pentobarbital Solution.

Pentobarbital composition is injected straight into the heart chamber of the animal which causes instant death of the small animal but in big animal the drugs take time to be effected.

e. Shooting

A inhuman but the most effective technique is directly shooting the animals through a gun usually a Merlin 336 XLR which has the bullet of 12 bore which directly shot in the head or in the heart of the patient

- Free Bullet: This technique is basically used for shooting large animals were the gun is pointed towards the back of the animal and it shot directly in the forehead

- Captive Bolt:Also an important technique used for killing goats and sheep's is in which a driller type of gun is inserted into the head of the animal causing instant death of the animal basically used before slaughtering the animal

6.1.2. Reasons for Euthanasia in animals

The following are the motives for euthanasia:

1) Terminal illness – e.g., cancer,

2) Rabies

3) Behavior Problems (usually ones that cannot be corrected) –e.g. violence;

4) Old age: Weakening leading to loss of major bodily functions,resulting in severe diminishing of the quality of life:

5) Lack of Homes: Certain shelters find considerably more surrendered animals that they skilled of re-housing .Some animals turned in to animals' shelters are not accepted:

6) Animal Testing:Beforehand, during or after use in testing animals may be euthanized .For example, an study may consist of breeding rats with a certain genetic defect .After behaviorstudies, the rat is euthanized, dissected and tested.

There are small clinics or vet nary hospitals or clinic were the animal is taken generally they are small animals which are taken not the big animals. For killing big animal one has to go to the place where they are like the house of the owner or at the race course were the horse is there

There are some specific organization which does the job of animal euthanasia they are masters of their work also many NGO are associated with them they have all the scientific means by which the life of the animal can be ended painlessly[12].

6.2.Child Euthanasia

Child Euthanasia is a an killing of an child who is not physically fit or has incurable disease which in further of his life will cause great hardship to the child or any heredity defect with which the child is born . So it is in best interest of the child to end the life of the child then and there because the future life of the child will be more miserable as today he/she has their parents to look after them but afterwards when they become adult there would be nobody to look after them. Also the next generation which would come from the child will also carry the risk for getting the disease so the best way is to stop the problem in the initial stage.Child killing is not allowed in every country or it is governed under normal euthanasia law of the country. Some of the countries like Netherlands were killing of the child below the age of 12 years is a crime but in UK such a permission can be given if the doctors think it fit.

Airedale[13]is a leading English case of the UK the case has set an precedent or has made a law that if medical practioner's think appropriate that in the 'best interest of the patient' it would be advisable to end the life of the child or patient by removing any life supporting system which is attached to the patient

Many old precedents are available in the field of law upon these subjects they are. In Re C. (a minor)[14], a small baby which was under the guardianship of the court was medically brain imparted and was having nervous breakdown and there was no way in which the patient could be treated only doctors can give medicines to relief the child from pain . A solicitor approached the court were the court asked the medical

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[12]"Animal Rights Uncompromised: 'NO-Kill' shelter" PETA; available at http:// en.wikipedia.org, visited on 24th March,2015

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

[14] 1989 (2) All ER 782

authorities to end the life of the baby in such a way that least pain is caused to the child court gave the decision on the basis of patients best interest

In another case, Ward of Court, Re A[15], A girl child was born in 1950. She was having brain damage because of an anesthesia the brain of the child was not functioning properly her legs were joint. She was eating her own flesh a tube was needed to fed her food, a tube was used for drinking water so the parents of the child approached the court the court granted the permission for ending the life of the child by removing the feeding tube of the child and made the act of passive euthanasia possible. Court relied on the doctrine of parens patriae to come to this decision. Court had the view that it is the sovereign function to look after the needs of the public. The state shall ensure that the subjects who are there in the jurisdiction live their life well according to the needs of the public sovereign should take the decision. Thus in the interest of the child the permission to remove the tube should be given to the parents.

There is another case Re b (a minor)[16], There was a minor girl who was mental patient who used to think like a child Her mom and staff at the Sunderland Borough Council approached the court that the minor has become pregnant and by seeing the condition of the patient it is advisable that the embryo should be end. The Court connected to the Court for a mandate that B, a ward of Court, ought to be permitted be permitted sterilization of the girl.

Caesarian was esteemed unacceptable. As the girl can never ever take care of the child also because of the mental condition of the girl the child will always be at risk. Bramble, J. gave leave ending the life of the embryo and for conducting sterilization process. So that she does not become pregnant now. The said choice was affirmed. On further appeal, the House of Lords additionally affirmed the decision. It said that a Court practicing ward ship purview, when coming to a choice on an application to approve an operation for ending the life of the baby

There is another essential case specifically Siamese Twins case. An important case which was much highlighted in media and in courts .The issue there was, conjoined twins, obtrusive surgery was needed for separating the twins was vital if one of them (Jodic) could be made to live more while it was totally sure that the comparable

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[15](1995) ILRM 401 (Ireland Supreme Court) (Appeal against the order of Lynch,J. of the High Court).
[16]1988 (1) AC 199

surgery would leave the other one, Mary, dead. Jodic was stronger and indeed she was giving oxygen to Mary. The folks were not prepared of dividing them. Anyhow if operation was not done in six months, both will pass on. The twins couldn't obviously choose. Johnson, J. conceded an affirmation to the healing center to independent the twins. The twins were conceived on 8-8-2000. Mary was provided nourishment by tube. In the event that separated in six months, Mary would die however Jodic can live with a decent

Personal satisfaction, with imperfections which could be balanced. So the court was of the view that if one of the child can be saved it would serve the purpose for treatment of the patient though the life another sister will become at risk but practically seeing the situations the other twin cannot survive more

Overriding control is given in the Court in deciding the cases of child euthanasia. As the parents would not be ready for ending the life of the ward or any NGO does not want such a thing to happen it’s not there view which would prevail it would be according to the decision of the court if the court thinks fit then the permission for ending the life of the patient can be given. As child euthanasia is a form of non-voluntary euthanasia were the consent of the child cannot be taken. So the court would be the proper forum to decide.

Brooke and Walker, L.JJ. Doctrine of necessity evolved from this judgment. As in this it was necessary that the operation took place as there was less chances that marry would live but there was fair chances that jodic would survive .So analyzing the condition it was necessary that the operation should be done. [17].

The above mentioned cases adequately gives the idea how law is changing according to the need of the society.[18]

6.3.3. IN CASES OF MENTAL PATIENT

Keeping mental patient under different head is because of the reason that the mental patient is not capable to take the decision. As the sound man has the capability to take

[17]Re T (Warship: Medical Treatment) (CA), 1997 (1) WLR 906

[18] Portsmouth NHS Trust v, Wyatt, (2004) EWHC 2247

the decision but this is not the case with the mental patient he does not have the capability to take the decision

Re F(Mental Patients: Sterilization)[19]

Here the lady was 36 years of age, was rationally incapacitated and unfit to agree to an operation. She got to be pregnant. The clinic group considered that she would be not able to handle with the impact of pregnancy and conceiving a child and that, since all different systems for contraception were unsatisfactory and it was viewed as undesirable to farthest point to confine her. It would be to her greatest advantage to the patient. Her mom who was of the same sentiment moved the Court for an affirmation that such operation would not sum to an unlawful demonstration by reason of the nonappearance of her accord. The trial judge and the Court of Appeal acknowledged that the lady be operated. On advance, the House of Lords acknowledged the choice.

6.3.4. IN CASES OF ADULT PATIENT

A 68 year old prisoner suffering from paranoid schizophrenia, had established gangrene in his feet while serving his sentence for seven years. Later on he was shifted to general hospital. The consultant surgeon at general hospital recommended amputation of leg below the knee, if in case not imputed the chance of survival will be less around 15% and may also result into death. C refused amputation. A solicitor was called during the meantime there were some improvement due to drugs and

[19](1990) 2 AC 1

medicines, still the need for amputation due to fresh gangrene attack at a future date could not be given. The hospital authorities approached the court as the patient was refusing for amputation was impair by his mental illness and that he failed to understand the risk of death.[20]

The issue came before the High Court was to determine whether the mental capacity of patient was affected by chronic mental disease from which he was suffering as well as is he in a position to understand the consequences ill effects of the preferred medical treatment. This test is known as test of "competency" also known as C-Test.

Thorpe, J. defined the patient's competency as follows:

Dr. E analyzed the decision making process by dividing it into three phases: Comprehending and Retaining treatment information, believing it and measuring it to come to a finale.

By looking into the facts and circumstances it was held that the patient is not suffering from mental illness which would affect his decision making power and need not to go for amputation. The presumption in favor of his right to self-determination was not displaced.[21]

In a leading case of Frenchay Healthcare Trust v S[22] S was a healthy person during the year 1993 due to some circumstances he was fed through tubes at first through nasogastric tube later on by gastronomy tube. The gastronomy tube so inserted got removed due to his movement, again he was operated so that the tube can be re-inserted but operation may result into his death. As per the doctors he should be allowed to die rather than going through this procedure.

The hospital authorities approached the high court in the interest of the patient for authorizing them not to replace it. An official solicitor approached the court of appeal, there it was held that the earlier judgment given by the judge will stand out and the tube will not be treated in any way.[23]

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[20] Re C (Adult: Refusal of medical treatment), 1994 (1) All ER 819
[21]Re T (Adult: Refusal of medical treatment), 1992 (4) All ER 649 and Airedale, 1993 (1) All ER 821 (HL).
[22]1994 (2) All ER 403 (CA).
[23]Airedale,1993 (1) All ER 821 (HL)

In another leading case of Ms. B v. An NHS Hospital Trust.[24] Ms B was born in the year 1956 after her management diploma she opted for Post-graduation and later on she became a teacher .It was found in the year 1999 that she was suffering from hemorrhage of spinal cord, as an executed a living will. It contained some information regarding life threaten condition and mental disability, so the treatment should be withdrawn. While working on cervical she suffered from complete paralysis. She was kept on ventilator later on recovered but again she fall sick and kept in ICU but she refused to be on ventilator. Again she recovered and made a living will. She approached the court for declaration regarding treatment she said it is insidious and a trespass.

Principal of "Autonomy" was taken into reference, this principal deals in capacity of a person and its refusal to undergo the medical treatment. Thus, it was held that the patient's previous ambivalence about withdrawal of treatment was not relevant to the essential of her capacity.

In an another case of (adult sterilization)[6] it was held that the guidelines and standards accepted must be applied[7] in a proper manner as accepted by Stephen Brown in Re GF Dame Elizabeth Butter Sloss .

In another leading case of AN NHS Hospital Trust v S, S was 18 year old suffering from hereditary problem known as velo cardiac facial syndrome as well as bilateral renal dysplasia and global development delay. So because of the disease he has to undergone haemo dialysis. Later on he was diagnosed autistic as well and suffering from epilepsy, immune deficiency, blood clotting and a mental level same as 5-6 year old kid. As a result of mental state he is incapable of taking decision with regards to his treatment. So the hospital authority decided to approach court for declaration containing permission to perform kidney transfer and S should not undergo peritoneal dialysis and if required than only haemo dialysis. But the parents refuse the plea by the hospital and wanted them to perform all sorts of dialysis which are required to be performed during the process of kidney transplantation. It was held that the kidney transplantation is not in the interest in S only haemo dialysis be performed and in case more required than peritoneal can be performed.

[24]2002 EWHC 429.

6.3.5 In Case of Pregnant Woman

When any case come of euthanasia of pregnant women come before the courts. The court apply the doctrine of best Interest. The Court in Re *(Adult: Refusal of Medical Treatment.)*[25] In this case the court held that were the adult patient is in such a condition that he/she is not able to take decision regarding the medical treatment then the courts apply the doctrine of 'best interest' according to which the medical treatment should go on according the best interest which the treating doctors think fit.

The case Re MB (medical treatment)[26] In this case a pregnant lady had the phobia from needle and operation. The doctor explained to the patient that normal surgery is not possible in your case and caesarian operation will be needed as the fetus is not in the position. Earlier the pregnant lady accepted the doctor request but after few days rejected the doctor's request and asked the doctor to perform normal delivery. Doctor explained the risk associated with normal delivery and the life of the women and child is at danger. But she rejected the request again. The hospital authority took the matter before the court the trial rejected the contention moved by the hospital authority. The hospital authority appealed the appellate court did not altered the decision of the lower court and held that for medical treatment the will of the patient would prevail it does matter that the patient's decision regarding the medical treatment is correct or not. It does not matter that the decision taken by the patient would take the decision to his death. Doctors can apply the doctrine of best interest in only those cases were the patient is incapable to take the decision.

Another case is Re SG (*Adult Mental Patient: Abortion)*[27]. In this a 26 year old lady was an mental patient and she was tested pregnant. The father of the lady approached the court for deciding whether for abortion in this case the prior approval of the high court is need the court held that no permission is needed in the abortion cases if all the conditions given under section 1 of medical termination act is satisfied. The court held that only in cases of best interest the application for the approval is need.

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[25]1992 (4) All ER649
[26] 1997 (2) 426.
[27]1991 (2) FLR 329

- Voluntary and direct,

7. Legal Aspect of Euthanasia

Euthanasia has become one of the leading controversies in this decade. Euthanasia is a way of giving a painless death to a person since he is assumed to be merciful? There are basically four kinds in which euthanasia can be divided:

- Voluntary and direct,

- Voluntary and indirect,
- Direct but involuntary, and
- Indirect and involuntary.

Most a patient usually opts for Voluntary and direct euthanasia whereas voluntary but indirect euthanasia in chosen in advance but in case of direct but involuntary euthanasia is done without patient's consent for him or her. Indirect and involuntary euthanasia is done by the hospital when it is decided that it is time to remove life support.

The origin of Euthanasia is from as far back as from the ancient civilization of Greek and Roman. It was many of the times allowed in these periods to help them die. Voluntary euthanasia was highly recognized and practiced in these ancient societies but with the passage of time and in increase in religion, the life was viewed to be sacred and thus Euthanasia in any form was seen as wrong.

There are a number of legal requirements are involved in the matter of euthanasia and it becomes the right of the State to get involved in euthanasia cases and the state can also specify the number of patients that must agree on whom euthanasia can be performed. The State can also specify that only the individuals can decide.

The medical science has a large number of methods and consequences that have a large impact as to how people view euthanasia. The ways in which Euthanasia can be performed are by way of lethal injection, gases, removing the life support equipment, the withholding of food and fluids, and the stoppage of required medicines. It has also become legal to switch off a patient's life support when the main areas of the brain have stopped working. There is also a passive euthanasia that the patients are allowed to choose but active euthanasia is not allowed. One kind of euthanasia that is actively followed is the process of stoppage of food and fluids even though countries might see this as cruelty due to its effects on the patients as it attracts nausea, vomiting, heart problems, depression, dry skin and shortness in breath yet there are numerous aspects and issues which make euthanasia controversial.[28]

[28]Available at http:// www.angelfire.com, visited on 25th March, 2015

There are continuing controversies on the legalization of euthanasia come countries of Europe and America[29] as the contention raised for legalizing of the euthanasia is that the individual's freedom entails liberty or his choice in all matters as long as the rights of any other person are not infringed upon while the debate against legalizing of the euthanasia is, it is somewhat a kind of disrespect for human life. Euthanasia can then be abused for criminal purposes. There can be a financial motive at times that can lead to favouring of euthanasia. It takes plentiful expenditure from the family or from the state government for the survival of terminally ill people on life support which is eventually a result of wastage of resources if they finally die.

For analyzing euthanasia, there are 5 principles which are recognized by most of the jurists. They are:

a) The principle of motive, i.e., each act is adjudged by the will governing it.
b) The principle of certainty, i.e., a certainty cannot be voided, changed or modified by uncertainty.
c) The principle of injury, i.e., an individual should not harm others or be harmed by others.
d) The principle of hardship, i.e. hardship mitigates easing of the rules and obligations.
e) The principle of custom, i.e., what is customary is a legal ruling.

a. The Principle of Motive or Intention

The principle of intention is raised in these situations:

[29]Available at http:// www.angelfire.com., visited on 25th March, 2015.

(a) There is no legal differentiation in between active and passive euthanasia as the law looks at only the intention only that is present behind human actions. The physician has full knowledge and intention of committing an offence who either advises, assists, or carries out a euthanasia operation at the instruction of the patient

(b) The physician who carries out euthanasia either actively or as a mere advisor may have intentions relating to self-interest and neglects the interest of the patient and of his religion. It might be a case of he is trying to run away from a difficult medial case and shortening the costs of intensive and expensive terminal care, or possible ulterior material, political, or social motive.

(c) Members of the family might be interested in the inheritance of the deceased's estate and thus showing the path of euthanasia. They may also want to shorten down the bill of terminal care.

Thus, the general rule of law is giving priority to prevent evil over accrual of a benefit. Thus, euthanasia is rejected as a case of the potential evil is present in it.

b. The Principle of Certainty

The principle of certainty can be invoked in two situations:

(a) The meaning of death states that there should be no suspicion to a person of death; thereby stating there can be complete cardio-respiratory failure and it cannot be doubted of its irreversibility. The study states that brain death; partially the medical technology can reverse brain death. The law states that once the brain death of a person takes place, he is declared dead with surety and hence the withdrawal of life support does not amount to committing homicide and is not a case of euthanasia.

(b) The legality of the living Will cannot be challenged as it can be made by a person in sound mind and in perfect health whereas the same individual might have different opinions when he is in terminal or severe illness and hence it is untenable that in the case of euthanasia the living will is accepted without any hindrance

C. The Principle of Injury

The principle of injury states that no patient should be hurt or cause hurt to others. The decisions taken of euthanasia might hurt patients in their life and health, moreover the case being that the family is hurt emotionally as well as psychologically since the life of a person comes to an end while in the other hand it can be said that the continuous amount of the pain and suffering of the patient by way of the life support in terminal care and further the emotional and psychological burden upon the family of the patient and the highly expensive treatment and terminal care constitute an injury to all involved. The law requires that any injury should be mitigated to the extent possible but also one injury cannot be said to be removed by another injury of a higher or similar magnitude but yes lesser injury can be replaced by a bigger one but not so by euthanasia.

d. The Principle of Hardship

The principle of hardship could wrongly be invoked in euthanasia situations.

The classical jurists do not recognize the pain and suffering of terminal illness. Where a necessity is established in cases of hardship, the prohibited activity can to some extent be allowed on a temporary basis until the hardship is relieved. Law defines necessity as what threatens any of the five purposes of the law which includes intellect, religion, progeny, life, and wealth also that Euthanasia is rejected as one of the necessities as it destroys and does not preserve intention of the law which is religion and life.

e. The Principle of Custom

Custom is defined as which is predominant and widespread and has uniformity and is not rare. Once a custom had been laid down and is surviving it must be accepted till the time there is evidence to the contrary. Custom has many applications and also has the force of law. It is mainly taken in two situations:

(a) Definition of death relies upon custom and precedent and in the traditional definition of cardio-respiratory failure is the only one that fulfills the criteria of custom and will be agreed till the time a better definition evolves and is accepted widely.

(b) The role of the physician is basically that of a savior and his function is that of preservation of life and hence it becomes difficult to establish that he is involved in any form of euthanasia which brings an end to life.

Thus, euthanasia unlike many other debated issues which is better prevented than waiting to resolve its attendant problems and for the same reason there is no legal sanction of law for euthanasia. Physicians are curer of life and are given no right to interfere in the fate which was fixed by God. Diseases will come and go until death and so it has become necessary that the physicians must concentrate on the quality of the remaining life and convert it into a deathbed. Life support measures are taken to preserve a life and not with the intention to take away someone's life with the intention of quality in mind and similarly medical care and healthy nutrition cannot be stopped. This can only be achieved if the hospitals have in their minds a clear and public policy on life support irrespective of a person's age, gender, religion or race.

8. Human Rights and Euthanasia

Human right is the minimal right which every person of this world should have against the government by virtue of being a human being irrespective of any

consideration .Human rights are the basic rights which are embodied in every person. These are the natural right of the person which every human being have in this world whether he is the citizen of any state or not the person is having some basic human rights. These human rights are available to all individual equal without considering the status, religion, colour of the person. Human rights are deduced from the ancient natural right that there is a right which is above every individual the moral right. Something can be morally wrong but legally right as in the case of Euthanasia. Every person in this world have basic human rights like right to live with dignity this right include in itself right to die with dignity

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Evolution of human rights lie because of the tragic incident of second world war in which innocent persons were killed or were injured the world community then came together and held that every person in this world have human rights, and was of the view that in second world war there was gross violation of human rights thus inorder to securer the human rights of every person all the members of the united nation signed the Universal declaration of human rights 1948. The declaration consists of many basic rights which the human being possesses not because of any statute but because of being a member of the human community. The basic right may includes but not limited to, in it justice, equality, protection, safety of life. The most important right which the declaration embodies in itself is that law gives equal protection to all the human beings, whether the fact the person is a citizen of the state or not. Human rights are basically that right which can neither be given nor can be taken. Subsequent to this declaration the United Nations passed the international covenant on civil and political rights which embodies in Article 6 that the human being has right to live and this right will be protected by law. No person will have the authority to violate his law. This particular article gives the essence of natural law that it's the fundamental natural right of every person to live with dignity and this right shall be protected by the government. The act of euthanasia is allowed on the reasoning the right to live with dignity is a basic essence of human rights. Right to live with dignity includes in itself right to die with dignity and this particular right is the connecting point between human rights and euthanasia.

This connection usually becomes the ground for granting euthanasia as right to die with dignity means that every human being in this world should excise control in his life but how to live this life and how to end this life. The sovereign function of the state is to help protect this life, the state should not interfere in the life of a person. It is the wish of the person that should prevail not the law made by the state should prevail.

Legalizing euthanasia is a sign of honoring the human right of the patient and respecting the decision taken by the patient to end his life. Not every individual has the financial ability to bear the medical expenses which are cost which treating the patient. If the patient believes that it won't be feasible to undergo the treatment as the disease is incurable and there are no chances that the condition ever getting better. In such a situation the patient possess a leverage to end his life instead also when the human being bears severe pain or becomes incapable of doing the daily jobs, rendering the patient to become dependent on meagre and basic jobs. Because of this the patient suffers immense personal shame resulting in the loss of his dignity. Thus he must have the right to end his life.

Still many countries around the world have not legalized euthanasia. Activist working in conservation of human rights, are making constant appeals that the countries must legalize euthanasia as human rights being the basic grounds for granting euthanasia. Thus respecting the right of every individual speaks that each state should legalize euthanasia. In India the Hon'ble Supreme Court in the case of Gian Kaur V. State of Punjab has said that right to live does not include right to die in it but it's on the parliament to enact the law and the Indian parliament to legalize all forms of euthanasia because this is such right can neither be given nor can be taken.

9. Suicide v. Euthanasia

Euthanasia and suicide carry different meaning. As suicide is the act of killing oneself. Euthanasia on the other hand is giving authority to others to end the life like doctors relative. In suicide there is the consent of the person but this is not in euthanasia in passive euthanasia were the patient is in such a condition that he cannot take decision like coma then it's not the person who take the decision but it is the doctors or family members take the decision. Suicide can be done when the person is not willing to live his life because of any reason like emotional pain cyclonical pain, extreme poverty but euthanasia is granted when the person is in PVS stage

Death is the subject people are reluctant to talk about. But the truth of the life is that we will die one day. The time or the mode of death is totally uncertain or it's a natural thing which the human being shall not have control in it. Manner of death could be anything like old age, any incurable disease any accident. But there are some situations in which human being disturb the cycle of life and death they are suicide and euthanasia. In these situation human being voluntary give their life.

Suicide basically means voluntary taking one's own life. Euthanasia are of two type's voluntary and non-voluntary euthanasia it is performed with consent or without consent. The subject matter of the study here is the voluntary euthanasia were the patient gives his consent. Here the patient is assisted so that he/she can die painlessly. This form of euthanasia is called active euthanasia or assisted suicide

The reason or the basis of euthanasia is to end the extreme pain from which the patient is suffering because of any incurable disease. Suicide on the other hand is committed because of any emotional problem, sadness from which the person is going through and the person is no longer is willing to live further.

Suicide is an act of voluntary ending the life the difference between suicide and euthanasia lies in the fact that suicide is always an voluntary act but this is not in the case of euthanasia the act of euthanasia can be voluntary or involuntary Suicide is voluntary means it is the persons, will to end his life while euthanasia can also be involuntary or non-voluntary. Involuntary euthanasia is termination of a person life without taking the patients consent and Non-voluntary euthanasia means were the patient is not capable to give his/her consent for the termination of his life then the medical practitioner or the relatives take such an decision.

According to religious believe both suicide and euthanasia is wrong because both of them disturb the cycle of life and death they believe that life is a sacred thing and taking one's life is totally against the wish of the god. Hindu religion differ in such opinion as from very old time sati is practiced, people take samadhis so the principle of self-killing lies in

10. Comparative study of Euthanasia

After a wide array of judgments rendered by the House of Lords in England with respect to euthanasia, a lot of changes came by in its meaning, on account of a

paradigm shift in the way the culture was valued and availability of better 'palliative' care or treatments. While in some countries, it is a criminal offence, it is not so in the others.

10.1 Australia

The first country ever to confer legal recognition on the practice of euthanasia was the Northern territory of Australia, through the Rights of the Terminally III Act, 1996. The legalization was upheld in the case of Wake vs. Northern Territory of Australia where the ruling was given by the Supreme Court of Australia and thereafter it was legalized in 1997 by the euthanasia laws act. Despite the fact, that helping or aiding anybody in the act euthanasia is a criminal, it is a very rare occasion that anybody was prosecuted for it. In a particular 2002 case, the victim, who was elderly woman, her friend and relative had aided her through a moral encouragement to kill herself. This case was thoroughly investigated by the police but then no case was made out.

A 2005 Tasmanian case, involved the conviction of a nurse on grounds of her assistance in ending the life of both her parents who were ailing from terminal diseases. Since the community staunchly believed in the concept of not sending the female clan behind bars, so she was sentenced to two and half years jail. This triggered off a heated discussion regarding decriminalizing euthanasia.

10.2 Albania

Albania legalized Euthanasia in 1999 wherein it was clearly mentioned that any form of euthanasia which was voluntarily done, was legal as per the rights enshrined in the

Terminally III Act, 1995, but the passive method mandated the presence of 2-3 family members who had agreed to the decision.

10.3 Belgium

The Belgium Act on Euthanasia enacted by the country's legislature in September 2002 conferred legal status on Euthanasia. It defined euthanasia as "the intentional termination of life by a third person at the request of the victim."

The requisites were very high for such an act like the age of the patient must be 18 or above and the request such made, must be voluntary with the patient in a condition to give his/her free consent. This aspect has to be scrutinized and made sure that indeed the patient is suffering from incrutiating pain and illness which is affecting him both physically and mentally and that such act can free him of these sufferings forever. Reference of the competent authorities is a mandate before such acts to satisfy certain necessary requirements.

10.4 Netherlands

In 2002, Netherlands was the pioneer nation to have conferred legal status on euthanasia as well as abetment to suicide. As per the Netherlands penal code, killing a person on his request is punishable with 12 years of imprisonment or fine and also assisting a person to commit suicide is also punishable by imprisonment up to three years or fine. Despite such provisions, Netherlands courts have interpreted the law to the extent of defending euthanasia and assisted suicide, on the grounds of necessity, which should come voluntarily and out of free will subject to the following conditions:

1. The made request should be consistent, for a long period of time and well considered.
2. The pain suffered should be incrutiatingly intolerable with no chances of betterment.

3. Other alternate options to relieve the patient from the pain much be either exhausted or kept in consideration till the last extent, putting euthanasia as the very last measure.
4. A physician should only perform euthanasia.
5. The concerned physician doing this much work in consultation with his colleague who has expertise and finesse in this field. thus, strictly speaking, though active euthanasia is punishable, it can be allowed if the above conditions are met by the patient, family and the concerned physician.

10.5 Canada

Enactment on euthanasia in Canada recognizes uninvolved willful extermination (withholding or withdrawing of life-safeguarding techniques including water and sustenance) and dynamic willful extermination (deliberately slaughtering an individual to soothe torment). While inactive killing is legitimate in Canada, dynamic willful extermination is illicit and is thought to be murder. The February 2015 Carter v Canada (AG) choice by the Supreme Court of Canada struck down the provision disallowing aided suicide, however the decision does not produce results until 2016.

10.6 USA

Willful extermination is unlawful in the United States. Doctor support in assisting suicide (PAD), or helped suicide, is legitimate in the stae of Washington, Oregon, Vermont and Bernalillo County, New Mexico ; its status is questioned in Montana. The key distinction in the mercy killing and PAD is who controls the deadly measurements of drug. Willful extermination involves the doctor or another outsider managing the solution, while PAD requires the patient to self-control the drug and to figure out if and when to do this. Endeavors to sanction PAD brought about ticket activities and "enactment bills" inside the United States of America in the most recent 20 years. For instance, the condition of Washington voters saw Ballot Initiative 119 in 1991, the condition of California put Proposition 161 on the poll in 1992, Oregon voters passed Measure 16 (Death with Dignity Act) in 1994, the condition of Michigan included Proposal B in their vote in 1998, and Washington's Initiative 1000 went in 2008. Vermont's state governing body passed a bill making PAD legitimate in

May 2013. On the other hand, on May 31, 2013, Maine rejected a comparable bill inside its state governing body (95-13).

10.8 The United Kingdom

Euthanasia was illegal in U.K till November 5, 2006, post which British Royal Collage of Obstructions and Gynecologists submitted a proposal to the Nuffield Counsel of Bioethics not to consider euthanasia of disabled new-born as illegal.

10.9 Switzerland

The Swiss Penal Code in its section 115 says that committing suicide is not a crime, but assisting somebody to do the same is one, but only if solemnized with an ulterior motive. The requirement of euthanasia is very simple-no doctors or no incurable disease. It is simply the intention behind the purported act, i.e. it should be done without a selfish mind.

Euthanasia per se is illegal in Switzerland, but the ones where the physicians assist, are legal. The decriminalization process was tried in 1997, but it advocated the conviction of non-physicians in this case. So it was scraped off.

It is mistaken that right to die is right. No. death can never be right. It is in fact a termination of all rights and obligations and that one fate that all of us have us. The only right vested on us the right to life which cannot be taken away by even that anybody. It is inalienable and can be compared to the situation, where a person who has freedom cannot give himself up to slavery. Dying in a dignified manner relates to how one confronts death, not the manner in which one dies. ?

11. Living Will

Will is a document which lays down the wish of the person to be executed after he dies. This is well settled legal document which is executed only once the person or the maker of that will is dead. Thus, this will is enforceable only after the person is dead. The question here is what happens if the person is alive?

The concept of living well is relatively a new concept which embodies in itself a desire to end the life of the maker of the will, in pre specified conditions where the patient is not able to take decision. Living will generally declares what and how the patients are intending to carry and not to carry the treatment, when he is unconscious or unable to decide. Living will gives the patient the right to enforce is will even when he is alive. This is a basic difference between the will and the living will.

Will is to become operational as per the desire of the person as to what is that he wants to happen to his belongings after he is dead, but this emerging concept of living will, makes it feasible to execute the desires of a man even when he is alive.

11.1 WORKING OF LIVING WILL-

Person makes living will which contains in it how his medical treatment should go on when he/she becomes terminally ill. So living will is made in that point of time when the person is made aware that in future if he would suffer from any terminal disease then the will of the maker would prevail. The living will starts to operate when the person is unconscious incapable to take decisions. A certificate is needed from the medical practitioner who is treating the patient to certify that the patient is suffering from an incurable disease and he is not capable of taking his health decisions. After obtaining this certificate from this mentioned medical practioner only then could this living will become operative? The living will shall not become operative or rather not

come into existence till the time the patient is unconscious not capable to make decision.

Suppose a patient has made a living will and in his living will he declares that in case of any mishap to his health the medical Practioner shall have full power to take decision to operate or not to operate and after few days the maker of the will have an heart arrest and after the attack the maker is still conscious and sane to take decisions then the will of the maker would prevail and not the living will made by him would operate.

11.2 POWER OF ATTORNEY

There occurs a situations when the patient is not able to speak for himself, then the patient authorizes can in such a situations the concept of power of attorney would prove its great advantages. The power of attorney differs from living will in such a point that a living will would only operate when the patient is suffering from any terminal illness and on the other hand the power of attorney will become operative in such illness or disease where the patient cannot speak for himself.

A power of attorney is a declaration in writing that gives power to another person to act in best interest of the patient so it is important that the person who has the authority should be acquainted with the maker preferably should be his relative or friend who can take best decisions for his medical treatment.

11.3SAMPLE LIVING WILL

I declare that if whenever the accompanying circumstances exist, to be specific:

• I experience the ill effects of one or a greater amount of the conditions recorded

• I am not in position to take decision

•Two medical specialists are of the feeling that i am unrealistic to recuperate from the illness

At that point and in those circumstances my headings are as per the following:

• That I am not to be subjected to any therapeutic intercession or treatment went for dragging out or supporting my life;

• That any troubling indications (counting any created by absence of nourishment and liquid) are to be completely controlled by fitting pain relieving or other treatment, despite the fact that that treatment may abbreviate my life.

12. Euthanasia in India and the Role of Indian Judiciary

In the precedent setting case of State of Maharashtra v. Maruti Sripati Dubal[30], A person Sripati Dubal attempt 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 right to pass on'. However, in Chenna Jagadesswar 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 judgment passed by the Bombay high court

The above conterversises 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 judgment cannot hold for many years as the judgement was overruled in Gian Kaur v. State of Punjab[33] Here the constitutional bench of the Supreme court held that right to die is not an fundamental right given under article 21.

Important provisions related to suicide

[30]AIR 1997 SC 411
[31]1988 Cr LJ 549
[32]AIR 1994 SC 1844
[33]AIR 1996 SC 1257.

12.1 Sections 107,306 and 309 of the Indian Penal code, 1860

Section 107 of the IPC defines ‘abetment of a thing’ as follows:-

A person abets the doing of a thing, who First: Instigate any person to do that thing; Secondly: Engages with one or more other persons in any conspiracy for the doing of that things, if an act or illegal omission takes place in pursuance of that conspiracy, in order to the doing of that things; or Thirdly: Intentionally aids, by an act or illegal omission, the doing of that things.

Section 306 of the IPC which covers ‘abetment of suicide’. This section provides punishment for abetting any person to commit suicide. The punishment mentioned for the offence can be extended to 10 years thus making it a stringent provision. Abetment of suicide means instigating any person to commit suicide or assisting the person to commit suicide. To make a person liable under this act two conditions must be satisfied

a. A person must commit a suicide
b. The person guilty under the section must have abated the commission of the suicide

Under this section mens rea is really important if mens rea is not present there is no abetment. That implies that the offender should deliberately abate the victim[34]

In the context of euthanasia mens rea factor is really important because the doctor while assisting a patient to commit euthanasia is doing it in good faith and for the benefit if the patient. So mens rea is missing in the case of physician assisted suicide. Thus making the doctor out of the purview of this section but in many cases it has been seen that the doctor has been prosecuted for assisting the patient to commit euthanasia. Though the Hon’ble Apex Court has made such provision constitutional but according to me an exception or a proviso should be added to this provision excluding the doctors from the purview of the act. It is harsh punishing the doctor for

[34] Manish Kumar Sharma vs. State of Rajasthan 1994 Cr.LJ (Raj.)

an imprisonment for an act which he is doing for the benefit of the patient. Section 306 is unique in itself as it makes abetment attempt of abetment to commit suicide.

Section 309 of the Code makes 'attempt to commit suicide' an offence and it states as follows:-

Section 309 penalizes attempt to commit suicide any person who attempts to commit suicide would be punishable with imprisonment extended up to one year. This is the only section in IPC which makes attempt of any offence punishable as successful completion of the act will make the offender dead and thus out of the purview of the legal authorities. As self-killing is morally, ethically and spiritually wrong as according to many religions like Christianity where the life is held to be sacred and taking it without the consent of god is a sin. As we all know law is made for fulfilling the needs of the society and thus the law makers has included such a provision.

Euthanasia is not governed by the provisions given under section 309 as both the phenomena are different[35]

The cases in which the person is in persistent vegetative state (PVS) he may want to terminate his life. In these type of cases would be governed under right to die with dignity as in these situation 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 exception 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 concluding stage in case of Gian Kuar vs. State of Punjab where the court held that right to life guaranteed by Article 21 of the Constitution doen not include 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

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[35]Naresh Marotrao Sakhre vs Union of India 1995 Cr.L.J. 96 (Deoband)

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 help them to rehabilitate their life

There are two important Apex Court decisions on Section 309. First is P. Rathinam V. Union of India[36], 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 judgment is dependent on a couple of High Court Judgment 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 judgment the Apex Court in case of Gian Kaur Vs State of Punjab held that Section 309 does not violate of Article 21 of the Constitution and thus overruling all the past decisions rendered. After passing of this judgment 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,[37] 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 judgment 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

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[36] AIR 1994 SC 1944
[37]Supra note 55
[38]Supra note 56

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,[39] the House of Lords gave a judgment 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 artifical 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 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…”

[39] 1993 (1) All ER 821.

12.2 Sections 87, 88 and 92 of the Indian Penal Code, 1860

These section are important as it is closely related to the concept of 'right to die and attempt to suicide' these section states the general exception section 87 states that if a person with consent of another acts in such a way that the person does not have the intention nor have the knowledge that if act committed will likely to cause death or grievous hurtis not an offence. Thus the particular section is the general exception. The basis of this section is based on the maxim volenti non fit injuria (he who consents suffers no injury) .The very reason for making of this section is that (a) every person is best judge of his own interest and (b) no man will consent to what he thinks hurtful to himself. This provision is important in the case of voluntary euthanasia were the person gives consent for ending his life the doctor cannot take the benefit of this provision because this act would end the life of the person.

Section 88- under this section any harm except intentional death may be caused by the doer in good faith and for the benefit of the consenting person who must by virtue of the second clause of section 90 be must at least 12 years of age. The act consented to must be done either

a. with a knowledge that death is likely though death must not be intended
b. with intention to cause grievous hurt
c. with a knowledge that either these three kinds of harms is likely where the accused in good faith and for the benefit of his patient and in accordance with the recognized Indian treatment for cataract operated upon her for cataract with a result that she lost her sight of her left eye, it was held that that the act of the accused was not an offence under this code[40]

[40]Emperor vs. Sooraj Bali Cr.LJ 306, 5 All LJ 155

12.3 Section 81 of the Indian Penal Code, 1860.

. It deals with 'Act likely to cause harm' but done without criminal intent, and to prevent other harm- Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.- It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing that act with the knowledge that it was likely to cause harm.

This section comes into play when the person, causing harm, say by confining another, has a genuine and reasonable apprehension that to allow the other to remain at large will endanger the person and property of others. This section deals with what is known, in English law, as 'compulsion by necessity' where a person confronted with two evils, one of which is inevitable, chooses the lesser rather than the greater, the law justifies his doing so, and does not render him responsible for the consequence of his action. The ground for his non-liability is justification or excuse, by reason of the absence of mens rea[41]

Motive any sometime justify the infliction of harm, viz, where it is to prevent other and greater harm. Harm any thus be caused to prevent harm. But the harm caused must not be an offence intentionally committed.

From the above sections it is revealed that 'Active' euthanasia is not permitted in India but 'Passive' Euthanasia is permitted on the fulfillment of certain condition.

[41]Gope v. Sharpe (1910) 1 KB 168

13.SUICIDE

Give us a chance to first think upon the actuality concerning what precisely is Suicide. Presently, Merriam- Webster[42] characterizes suicide as "the demonstration or an example of taking one's own life willfully and purposefully particularly by an individual of sound personality". A plain perusing of the significance of the word makes us feel as though it's a psychiatric issue and not an indication of criminal nature. Regardless some intriguing verifiable truths, Indian mythology says that Lord Rama and his siblings took Jalsamadhi in river Sarayu close to Ayodhya[43] . Old History of our country says that Lord Buddha and Lord Mahavira attained to death by taking samadhi. We are pleased with the way that our Father of the Nation fasted for our freedom which is a criminal offence in our country.

Heading off to the law coordinating suicides in India, we have Section 309 (hereinafter implied as the 'said acquirement') of the Indian Penal Code, 1860 (IPC) which makes suicide a criminal offense, the wrongdoer can be detained up to one year or fine or both . This procurement is in perspective of the rule that State, being the guard of life of the people, is under a guarantee to keep people from taking their own particular lives as it keeps them from taking other people's lives. There has been a huge amount of verbal showdown in the later times regarding the charitable piece of this law and the courts, on different occasions already, have commented on the lawfulness and appeal of this procurement. Expectedly, the lawful assessment on this has been amazingly varied, dabbed and really disaffirming. The courts at one point have reported the said procurement void , yet then another assumption is that the said procurement is characteristically genuine yet is not charming nor is filling any need . The most recent notion on the said section is the 210th Law Commission of India Report which has endorsed a rejection of Section 309 of IPC .

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[42]Suicide. (2008).In *Merriam-Webster Online Dictionary*. Retrieved March 15th 2015, from http://www.merriam-webster.com/dictionary/suicide

[43] Available at < http://www.spirit-of-india.com/group/Buddhist/BuddhaPurima.html> on15 March, 2015

The present position of law as appreciation to the authenticity of the said procurement has been verbalized by a Constitution Bench judgment on account of Smt. Gian Kaur v. Condition of Punjab

This Constitution seat has kept up the authenticity of the said procurement and has held that it is a basic and fundamental procurement. In spite of the way that this has been the last position by the Honorable Supreme Court on the said procurement yet then it needs to reviewed that the position has been changing with time and the verbal showdown on the authenticity of the same has not chilled off yet. The said area, at whatever point, thought upon by the Supreme Court has joined the infringement of Fundamental Right. Article 21 of the Constitution of India gives Right to Life and Liberty and it has been doubtlessly held in the event of Maneka Gandhi v. Union of India that the methodology created by law must be just, sensible and sensible in case it needs to acclimate to Article 21 .

Instantly, the guideline issue that has been overseen by the Supreme Court again and again is that whether right to life guaranteed under Article 21 of the Constitution of India joins in it a benefit not to go ahead with a compelled life and fundamentally, a benefit to bite the dust. As is spilling out of the point that if right to kick the bucket on is fused under Article 21 then try to suicide would get the regard as a fundamental right.It has been held by distinctive judgments of the Supreme Court besides Article 13 , that any law which is taking interminably a key right is void. Along these lines, Section 309 would moreover be declared unlawful and void if Right to Die was scrutinized into Article 21.

In 1987, because of Maruti Shripati Dubal v. State of Maharashtra , The Bombay High Court struck down Section 309 IPC as ultra vires21 of Article 21 and said that benefit to life fuses in itself a benefit not to live. Range 309 IPC was furthermore

struck down on the ground that it is violative of Article 14 as it is unjustifiable as it doesn't consider circumstances of the case, and is subjective as it doesn't clearly set down what constitutes "try" and is in this way, astoundingly vague. The Court moreover held that since two persons may try to submit suicide for out and out distinctive reasons, they should not be put on a proportional balance and there must be an unmistakable differentia in the order procurement. The Court further held that since the said procurement does not totally set down what constitutes an "attempt" to give suicide, it is to a great degree dark and accordingly, optional as every judge may decipher any movement of a single person as a 'try to present suicide' as he assumes fit. As needs be, there is an abundance of subjectivity included and subsequently, the law is conclusive toward oneself and violative of Article 14. Along these lines, Section 309 of IPC was struck down shockingly.

Of course, in 1988, a Division Bench of the Andhra Pradesh High Court releases the test to the holy authenticity of Section 309 IPC because of

Chenna Jagadeeswar v. Condition of Andhra Pradesh . It was held that benefit to life under Art 21 can't be made an interpretation of to join right to kick the bucket. Hence, Sec 309 IPC was held to be not neglecting Art 21. It was moreover held that since the region gives bottomless watchfulness to the courts the extent that rewarding control, they have all the capacity to see to it that ridiculous pitiless order is not given to any loss of circumstances who needs care and thought. In this way, it is not violative of Art 14 too and not unlawful.

In 1994 came the development judgment of P. Rathinam v. Union of India . The assurances of this case were that the hopeful had unsuccessfully tried to present suicide and was charged under Sec 309 IPC for the offense of try to submit suicide. He reported a writ appeal of in the Supreme Court testing the built authenticity of Sec 309 IPC saying that the said area was in encroachment with Articles 14 and 21 of the Constitution. The court kept up the debate just on the reason that Sec .309 was neglecting Art 21. The court kept up the judgment for Maruti's circumstance saying that if right to talk incorporates right not to talk and right to cooperate fuses right not to cooperate then right to life similarly consolidates right to pass on. Thus, the Supreme Court struck down Sec 309 IPC as unlawful and ultra vires of Art 21.

In the wake of giving of the previously stated judgment by the SC and till the judgment of Smt. Gian Kaur v. State of Punjab , the people of India had a benefit to kick the bucket at their will . Regardless, Gian Kaur's judgment changed the position of law in this admiration. Overruling the past judgment, it made the said segment genuine again and thusly, people lost their privilege to right to bite the dust. This judgment, being the latest decide that everybody must take after, requirements an ordered examination. The Constitution Bench for this circumstance negative all the conflicts given in the past judgment.

As to Article 21: The Supreme Court for this circumstance held that Section 309of IPC does not misuse Article 21 . The Supreme Court divided between right to life and other focal rights by saying that for distinctive rights like right to talk, the negative piece of the right does not presuppose doing of a positive or plain act yet is by proposal. In any case, when an individual gives suicide, he needs to do an unmistakable exhibition to end his life. The court consequently held: "Article 21 is an obtainment guaranteeing protection of life and individual opportunity and by no stretch it can be translated to incorporate 'right to kick the bucket'.

" Further, the court held that benefit to life under Art 21 is a trademark right which is common in each and every person and is not a gave right. At any rate, suicide is an unnatural end of life and thusly, does not fall under the space of right to life. Thusly, right to pass on can't be fused as a bit of right to life under Article 21".

With Regards to Article 14: The court held that whatever be the reasons of attempting to present suicide, the law can't be divided as suicide in all cases incorporates deliberately taking one's own specific life. Also, it is keen on the reviled to show that his exhibition does not whole to attempting to give suicide. Moreover, the circumstances related to each case are considered by the judge while allowing equity to the wrongdoer.

The court moreover held that the prudent dialog on charm of holding such a reformatory obtainment which repels some individual whose equitable offense is that he/she, being in such a state of misery, to the point that the individual might not want to experience any more, tries to end his life, which joins the proposition of the42nd

Law Commission to evacuate this area, is not a ground for saying that Sec 309 is unlawful. For holding a procurement to be unlawful, it must be exhibited that the procurement is harming the principal right. On the reason of the above reasons, the Supreme Court held Sec 309 IPC to be characteristically genuine.

Landmarks in repealing the section 309 IPC

Year	Event
1970-71	42nd report of the Law Commission of India recommended the deletion of the offence of the attempt to commit suicide from the penal code
1978-79	Recommendation was accepted by the GOI but before it could be passed by the Lok Sabha in 1979, elected body of the country was dissolved and the Bill lapsed
1985	Decisions by Delhi High Court, Chief Justice Rajinder Sachar in State v. Sanjay Kumar Bhatia condemned the penal provision as "unworthy of human society"
1986	Bombay High Court held it to be ultravires on the ground that it violates Articles 14 and 21 of Indian Constitution
1994	A 2-judge bench of the Supreme Court in P Rathinam Vs Union of India struck down Section 309 of IPC (attempt to suicide) as unconstitutional
1996	In Gian Kaur's case, a Constitution bench of the SC (five judge, headed by justice J S Verma) overruled the 1994 verdict stating that the right to life does not include right to die and upheld the validity of Section 309
2008	Law Commission favoured scrapping of Section 309 of the IPC in 210th report on 'humanization and decriminalization of Attempt to Suicide.'
March 7, 2011	Supreme Court had recommended to Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic, while giving guidelines for passive euthanasia
Sep, 2011	25 out of 29 states agreed to the proposal to bring amendment to delete 309 IPC
2012	Drafting and Consultations for Mental Health Care Act
Aug 19, 2013	Mental Health Care Bill introduced in Rajya Sabha [upper house], pending approval of parliament. Still to be formed as an act
Dec,2014	The government decided to decriminalize attempt to suicide by deleting section 309 of the Indian penal code

13.1 Anti-suicide law in India

In December 2014 the government decided to decriminalize attempt to suicide by deleting section 309 of the Indian penal code from the statue book. A cabinet note on the Indian penal code (amendment) bill has already circulated by the union home ministry among other ministries.

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. Penalty stipulated in the laws range from a small fine and short period of imprisonment to life. However many of the countries 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.

13.1.1India: A suicide capital

Highest number of suicide causes are reported in India in the world .India accounts for one third of the total person who commit suicide this figure is twice that of china .People in the age between 15 to 29 years commit suicide in the year 2012 nearly 2.6 lakhs suicide took place in India

13.1.2 Interpretations by Indian court

According to the 42nd report submitted by the law commission in 1971 had recommended that section 309 IPS should be repeat. The government than 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 once 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 whome Hari Bhai Chaudhary announced that the government has decided to dropped section 309 from the IPC after 18 states and 4 union territories backed the recommendation of the law commission of India in this regard.

13.3 State Objection

Bihar, MP, Delhi , Punjab, Sikkim has expressed reservation against the move to decrimilize 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, psychicratic 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

14. NEW DIMENSIONS IN INDIAN HISTORY ARUNA'S CASE

"Marte hain aarzoo mein marne ki….
Maut aati par nahi aati"
(I die for Death, Death knocks, but comes not….)
Mirza Ghalib

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 on aruna when she was changing her dress. He sodomized 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 endeavored homicide and theft. He was not strove for rape as the matter of law as that time anal sex was assumed to berape 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 a application to direct the KEM Hospital not to coercively feed her. In any case specialists at KEM Hospital don't agree to the contention.

Past Dean, KEM Hospital Dr. Pragna Pai says that Aruna is not in 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 of 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 momentous and troublesome undertaking of picking the predetermination of an exploited individual in a wrongdoing gave 37 year 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 viraniby Court reacted to the pettetion and orderd for setting up of a restorative advisory group to inspect that wether reallly aruna is in PVS satge.. The court in its purpose of interest judgment, however allowed Passive killing in the India. While releasing pinki virani,s pela for aruna shanbaug ,s murdering , the court set down standards, for inactive willful extermination . As showed by these principles, uninvolved obstinate annihilation incorporates the withdrawing of treatment or sustenance that would allow then 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 favorite food…. She gets disturbed when many people enter her room and calms down when touched gently”.

Ms. Virani issued this statement after his verdict. “Because of the Aruna Shanbaug case, the supreme court of India has permitted passive Euthanasia which means that Aruna’s case will worse with persistent diarrhea as her body cannot handle much of that being put through the pipe; no catheter to catch body fluids and waste matter which excrete themselves; lengthening response time due to a ‘sinking’. But, because of this woman who has never received justice, no other person in a similar position will have to suffer for more than three-and-half decades.”

The medical attention they have lavished on Ms. Shanbaug was praised by the judges in their verdict.

Ms. Shanbaug has, regardless, changed everlastingly India's approach to manage the adversarial issues of resolved eradication. The choice on her case today allows idle tenacious annihilation subordinate upon circumstances. So now Indian native can now fight in court for the rights to withhold remedial treatment – take a patient off a ventilator, for example because of a – irreversible stupor like state. The judgment makes it pass that latent killing "will be allowed in circumstances where the individual is in PVS (Permenant vegetative stage) or in basic condition

In the occasion any such case come up it will be the high court which would be equipped to amusement such appeal to the essential High Court will survey the profits of the case, and suggest the case to a Medical Board before picking whether unapproachable unshakable killing can apply .And till Parliament show new laws on willful extermination, it is Ms. Shanbaugh's case that is to be point of reference for any such case come up

Starting late, in November 2007, a Member of parliament proposed a bill to legitimize euthansia to the Lok Sabha i.e; to the Lower House of agent in the Indian Parliament. C.K. Chandrappan, an operators from Trichur, Kerala, displayed an Euthanasia Permission and Regulation Bill that would allow the genuine completion of life any patient who is at PVS or basically sick. The establishment would similarly permit any person who can't carryout everydaytasks without backing to be euthanatized. "If there is no trust of recovery for a patient, it is simply pleasing to allow him to put an end to his pain in decent way .

Regardless, there are number of circumstances where the High Courts have rejects the killing petitions.

In Bangalore, the High Court has rejected the slaughtering solicitation of a 72 year's old surrendered teacher from Devanagere, who searched for the court' approval to end his life. Equity Ajit Gunjal on Wednesday tossed H.B. Karibasamma's allure in light of reports by neurosurgical and psychiatric authorities from Nimhans. The reports said Karibasamma is not in PVS or genuine disease. Her spine is mornal and she can get-up with no torment. Neither does she encounter the evil impacts of any mental issue.

"Since she is elderly and misgivings she would get the chance to be disabled in future as a result of her distinctive illnesses, and has no family reinforce, she could be given psychiatric exhorting", the report proposed, nothing that Karivasamma declined to experience any further examination and arrangement. In perspective of the Courts demand, pro broke down Karibasamma and insinuated her to authorities at Nimhans. Karibasamma, who ensured to have persisted slip circle (a malady) and was at bed for as far back as 10-11 years, being saw at death's door she has kept in touch with the President and Prime Minister for giving authorization of killing and was holding up from the 2003. Karibasamma declared that she was getting just Rs. 8968 as month to month advantages in 2010 and it wasn't sufficient to meet her therapeutic expenses.

Because of her age, pros have chosen non-surgical treatment, and the misery she is encountering is anguishing.

In any case, the High Court releases her application in perspective of reports by neuro-surgical and psychiatric pros from Nimhans that she doesn't persevere through any misery or compelling ailment

Basically, the Kerala High Court in C.A.Thomas Master V. Union of India , discharged the Writ Petition reported by a national wherein he required the organization to set up "Mahaprasthan Kendra" (Voluntary Death Clinic) with the deciding objective of empowering deliberate passing and blessing, transplantation of considerable organs.

In 2005, 'Mohd. Yunus' from Kashipur, odissa requested the President for intentional killing on the ground that his young people were encountering great sicknesss yet the request was rejected. Moreover, an advance reported by Mr. Tarkeshwar Sinha from Patna in like manner came to be releases.

In 2004, a two-judge Bench of the Andhra Pradesh High Court in Suchita srivastava v. Chandigarh Administration , rejected the writ request of a 25 year old hanging on by a thread tolerant "Venktesh" who searched for agree to give his organs in a non-heart pounding condition. The high Court dismisses the writ bid where "Venktesh" had imparted his wish to be put off the life sincerely steady system.

Slaughtering is extremely astonishing from suicide and murder. Under the Indian Penal Code,

Killing is not quite the same as suicide and homicide. Under the Indian Penal Code, attempt to give suicide is culpable under area 309 of Indian Penal Code besides abetment to suicide is culpable under segment 306 of Indian Penal Code. An individual presents suicide for diverse reasons like marriage issue, disappointment in examinatio, dissatisfaction in the life, unemployment et cetera. In any case in willful extermination these reasons are not show. Willful extermination means putting a single person to smooth passing if the individual is experiencing terminal ailment. It also differs from wrongdoing. In murder, the executioner has the desire to cause fiendishness or reason end in his cerebrum. In willful extermination there is an intention to help the patient, such point is as per some fundamental good rule. A pro specialist applies for euthansia when the patient, encountering a deadly disease, is in an irremediable condition or has no chance to recover of survival as he is encountering a horrifying life or the patient has been in obviousness for 20/30 years like Aruna Shanbaug.

Accordingly, 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,

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 utilization of by specialist,

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

14.1 GUIDELINESS 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 scrutinizing 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 judgment.
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[44].
12. The above mentioned guidelines should be followed until parliament makes laws in this concern.

[44] Airedale N.H.S. trust v. Bland 1993 (1) All ER 821

15. 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 question 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 practice euthanasia, like Christianity which says euthanasia – a suicide- a sin. The second most important argument against euthanasia is that in some situation it is not possible to take the consent of the patient thus making euthanasia equal to murder.

Doctor jack of United Nations, is a well-known for his work in euthanasia, he is recognized 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 house of lords hat in May 2006 there was a heated debated on the topic and the members of the parliament declined the bill by 148/200.

For concluding it would be appropriate to analyzing different laws governing in various countries of the world for the euthanasia. Enlisting below-

1. Belgium-

In Belgium the first legislation governing euthanasia was enacted in 2002. H act allowed the citizens who are terminally ill and are suffering from extreme pain can apply to the court for granting the permission of voluntary euthanasia.

2. Luxembourg**-**

The parliament of Luxembourg in 2008 passed a bill named "right to die with dignity" which allowed its citizens for assisted suicide.

3. Netherlands**-**

Netherlands passed a law in the year 2002 which allowed its citizen to legally end there life if they are at incurable condition, and they are suffering from extreme mental or physical pain.

4. Oregon (USA)**-**

It is stated in USA which had passed "death with dignity Act", which placed death. The act as passed ten years ago, giving power to the terminally ill patients to efficiently end their lives with dignity.

5. Switzerland**-**

Is a country which opposes voluntary euthanasia but going through the Swiss penal code a provision is given in section115 clearly states that any person who ends another person to commit suicide will not be a crime under the code. If the Act is done with good motive.

Netherlands is one among such countries who passed the legislation ay back in 13years ago. Initially under the law of Netherlands only a patient who is terminally can approach to 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 grating the permission for euthanasia but now even doctors can take such a decision[45]

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[45]www.family.org.au/care,visited on 26 mach 2015

PROS AND CONS OF EUTHANASIA-

Pros-

1. The most important advantage of euthanasia is that a patient is suffering from extreme pain can end his life thus ending all the pains he has been going through.
2. When the science of medicine fails to bring relief to the patient's pain, its euthanasia that comes to the resort to the patient's suffering.
3. When a patient suffers an incurable disease, often it is seen amongst the deaths of the patient's that there death is a very disgraceful condition, with the aid of euthanasia the patient can exercise the right to bring to him a graceful death instead of a pathetic one.
4. With the euthanasia the basic human right of the person is restored.
5. Euthanasia can act as a "legal medicine" to the patients in pain.
6. The biggest agony that such conditions of the patents are that both pain and fear of the coming death is known and felt, yet there is not a single way with the patient to be able to fix his pain and fear, but live and bear it instead. Euthanasia fixes this distort.
7. It saves the patient to be dependent on another person even on day to day regular common jobs
8. For families not financially sound, who cannot afford the medical treatment but still has to bear despite of knowing that the person shall sooner or later die, there this financial burden is reduced.

Cons-

1. Euthanasia is morally wrong as this is like murder because taking someone else's life can in no good way justified.
2. Human life is entitle to extra ordinary guarantee and safeguards, thus by legalizing euthanasia is a direct attack so this guarantee so given.
3. Relatives of the patents can get a chance to intentionally ending the patients life for their benefit.
4. Doctors are not god, though medical science has exceptionally grown over the years but to correctly predict the death of the patient is impossible.

5. It is the undue advantage which remains for justification for their act as every killing after this will be used as assisted suicide.
6. The religious sentiments of the people are disturbed because of the euthanasia.

In this era where medical treatment has done so 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 h has been going through and 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 every country of the world should have an enactment regarding euthanasia. Its high time now Indian parliament should pass law governing euthasia, Indian law which should be enacted should be based on euthasia law practiced in Netherland because according to me the Netherlands country law is the best comprehensive legislation passed for legalizing euthasia. The Netherlands' enactment in such 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 practice euthanasia

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