

## EUTHANASIA – RIGHT TO DIE

### ABSTRACT.

We human beings are living in 21<sup>st</sup> century, where we have developed immensely in the field of medical and science we have discovered, many medicines to cure and control various diseases like cancer, diabetes, AIDS etc.

Human beings are being given this special name as human beings because humans are 'being'<sup>1</sup> which means, that humans are living continually they keep themselves busy in one or the other activity hence they are named as human beings. As we keep ourselves alive by living our life. Many a times human beings suffer through some of the incurable diseases, or rather that type of disease which can be cured but to cure those harmful disease, humans have to go through lot of painful process and have to bear a lot of physical, mental as well as emotional pain and yet sometimes till the final outcome the treatment might not be positive.

We humans live in a collective civilized society and being a part of such a society all of us have to go through various problems, in our lives those problems can be social as well as personal due to such problems, humans sometimes are compelled to take life ending steps like suicide, consuming poison etc. Which can definitely cause the death of a person but not only that sometimes humans end up being in a more dangerous situation like going into an inactive state of mind which in the medical term is called 'coma'.

The worst thing about coma is that even doctors can't give a specific time as to when the patient will wake up from coma, he/she might wake up anytime or they might never wake up from coma. All doctors can do is that they can keep the patient on life supporting system can help him/her cure, but that is not an effective way to make patient awake from coma, and there is where Euthanasia comes into picture.

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<sup>1</sup> BEING ALIVE

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## INTRODUCTION.

Euthanasia is a word derived from the Greek word called 'EUTHANATOS' which means a good death, EU means well and THANATOS means death, death is something which brings one's life to an end, but to get death and that too get a death in relevantly good form/manner constitutes an important part of life.

The very basic meaning of euthanasia can be taken as the painless killing of a patient suffering from incurable and painful diseases or in an irreversible coma, which leads us to the path that if an individual is suffering from incurable diseases like cancer, aids, diabetes etc. Then it almost becomes impossible for the patient to get cure, nowadays treatment are available for such heinous diseases, as well but still these treatment cost a lot and one has to go through a tough treatment in which he/she has bear a lot of pain which also makes it quite difficult for the patient to get back to the normal life easily.

Death is something which the nature has kept in its own hand none of the human being irrespective of his age, nationality, caste, creed; color would never be able to have a control over death. Suicide is defiantly an option with every human being who wants to die but suicide is not something which can be legally, demanded or which can be legally opted while euthanasia can be legally asked for from the court. Hence euthanasia can be called as a legal way to get away with life.

Mercy killing is something over which euthanasia focuses on when a human being is unable to live life in anyway, or else if any individual is suffering from lots of pain then in that situation a person might give upon his/her life or even the family members of the diseased person would also like that instead of going through lot of pain and suffering. The diseased person should die so that he/she can be relived from immense pain and even after suffering from such great pain. The final outcome of the suffering and treatment would be death only hence then why not to give them a death peacefully, legally and by maintaining their dignity the whole concept of legalizing euthanasia focuses on this concept of giving a mercy killing only, while some of the countries have accepted euthanasia being a legal concept and also by considering it important for people to suffer less, while some countries and their laws use to considers euthanasia as something against the nature or an artificial death.

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### CLASSIFYING EUTHANASIA.

Primarily euthanasia can be divided into **3** main types, on the basis of whether a person gives his/her informed consent or not:-

A] **Voluntary euthanasia** – The meaning of such euthanasia can be derived for the term itself which means the euthanasia conducted with the consent of the patient, such a process is also called “assisted suicide” the process is also carried with the help of physician.

B] **Non-voluntary euthanasia** – The meaning of such euthanasia is when the process of euthanasia is conducted without the consent of patient, meaning in cases where the patient is unable to convey his/her consent to the outside world.

C] **In-voluntary euthanasia** – This type of euthanasia can be considered as the cruelest form of euthanasia as in this type the euthanasia is conducted against the will of the patient though he/she might want to live.

D] **Active euthanasia** – It means when the death of patient is brought by any act, for example – when a person is killed by giving him/her overdose of pain killers or any other such toxic, harmful substance.

E] **Passive euthanasia** – it means when the death of patient is cause due to omission, for example – when any person is on the ventilator [life support system] and if the ventilator is switched off then such a death is called passive euthanasia.

These are the **5** major medical as well as legal classification of euthanasia, the primary stage as well as the detailed stage of classification, of any stage of euthanasia revolves around the single concept of “consent”. Consent being the center of attraction in legal as well as medical world be it euthanasia or anything else consent primary forms a major part of any act in human life, even regarding the thing which leads to the end of life consent is required whether of the patient and of the law.

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### COMA & IT'S CONCPET.

One of the most common and widely acclaimed reasons leading a person's life to euthanasia is coma. The whole concept of the medical term coma being much related to euthanasia, the medical term used to refer coma is 'vegetative persistent state'<sup>2</sup>. It is important to know that being in coma dose not means brain dead the brain does functions but at a very low pace, only the voluntary activities of the body are being governed properly, like breathing, sleeping etc rest of the functions which the brain normally carries on are not carried out by it when in coma.

Which simply means that a person in state of coma is almost as good as dead, but it can't be said so with surety as medical science has yet not being able to give full confirmation to the situation, of coma as to whether the person, will die or will he/she recover. There have been instances where a person suffering from coma has recovered even after a long time of being in coma, hence there is no surety. In fact there can be no surety regarding the same when it comes to assess the situation of the patient in coma.

The medical science has classified the unconscious state of a human mind in **3** major ways which are: - 1] COMA, 2] VEGETATIVE STATE and 3] MINIMALLY CONSCIOUS STATE. Hence it is a well established fact that humans functions through brain, brain is one of the most important organ of a human body without brain a human cannot function. When the brain damage happens it can led to any of the above mentioned situation. Any specific or general medicine, vaccine, surgery or any other medical aid has not being able to cure coma to even half of it, even no specific percentage of recovery rate can't even be decided, since it differs from one patient to another. Studies have proved that even after recovering from coma the human body can never be the same as it used to be before coma, moreover the danger of a brain stroke also raises with the risk of coma. In short coma is one of the most dangerous medical situations which ultimately might lead a person to euthanasia. As sometimes euthanasia being the only cure rather a remedy available to entire human race as whole against coma and various other such diseases.

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<sup>2</sup> Profound or deep state of unconsciousness.

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### UNBEARABLE PAIN.

The second most obvious reason for a human being to demand legal euthanasia is unbearable pain, pain is such a state of body where it can't let a human being live peacefully even for a minute a human being suffers 2 kinds of pain:-

A] **Physical pain** – Physical pain is of course related to a human beings body, these pain includes permanent disability, loss of outer human organ, being alive on a serious medical condition etc. Physical pain also includes some of the medical treatments which are extremely hard to undergo like the kimo, therapy given to the cancer patients in such cases even the thoughts of the human being may have break down, which reminds of Maharashtra's super cop named – Himanshu Roy<sup>3</sup> had committed suicide at the age of 54 for the exact same reason as he could bear the pain of his undergoing cancer treatment, he was considered as a super cop of Maharashtra police meaning if such a strong IPS cadre officer can committe, suicide then how of a pain one has to go through to overcome these serious diseases. Yet sometimes they don't find a ray of hope, in such hard time death comes out as the last solution to relive the human from this unbearable pain.

B] **Mental/Emotional pain** – Mental pain means when a person is brain dead which means the, body might function but the brain dose not responds to the body neither acts in accordance with the body. Such a situation creates havoc for the human being to live and perform hi/her daily routine life activities in day to day life these leads a human being to a dark state of mind. Which is often termed as 'depression' the mental state of such a human being is not stable he/she cannot make any kind of rational decision in his/her life. Such emotional pain/condition also leads to euthanasia.

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<sup>3</sup> (23/06/1963 – 11/05/2018)

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### DEPENDENCY & DIGNITY.

Dependency means being dependent on someone else to live your own life, this stamen itself shows us the irony of the term being dependent. In today's time where, the generation of people are moving ahead in the direction of being independent being able to stand on their own feet being able to sustain in life on their feet, we cannot even imagine how a human being would feel if he/she can't even barely move due to their inabilities or any other medical conditions. To be able to do your daily routine activities as well as, for their economic welfare also they have being dependent on someone else's source of income, such is the tragedy of being dependent on someone else. A human being feels helpless and hopeless which drags more of negative thoughts in his or her mind since no one wants to be dependent on someone else for their life. The point in connection and relation to dependency which also gets sacrificed with dependency is

One of the most important torches bearing factor in any human beings life is “**DIGNITY**” – **SELF RESPECT!!!** ones a human being of any race, color or religion or be him/her of any nationality if once for god's sake looses hi/her dignity, they lose their will to live their life, dignity being such a great factor in admiring life of any individual. Often we have seen that instead of living with humility a human being would rather like to or choose to die with dignity. Hence dignity is such an important concept rather an aspect of any individual's life that the human being also wants to die with dignity. Such is the importance of dignity but due to many of the reasons a person might feel offended or humiliated as dignity, being such a wide concept that it cannot be defined in a specific manner. In a specific way neither a proper definition of dignity cannot be given since it depends on and various form one individual to another hence it cannot be kept in boundaries, it has to be widely open enough to include death and narrowly close enough to live with it.

Hence dependency and dignity are 2 very important concept of human life and are equally very important aspects of euthanasia.

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*As every coin has 2 sides so has the concept of euthanasia which are as follows:-*

- (1) **Setting wrong example** – By allowing euthanasia we human beings, are actually going against the will and powers of our very own existence. Which means the universe, or Mother Nature or even god has not granted any of the human being with the power to decide about their life nor about their death. To die is not something which rests with the human beings to decide, neither the time or manner of death is to be decided by the human beings, but still in the name of freedom and under the ground of euthanasia human beings have now started the wrong process in the eyes of nature, through euthanasia we are trying to control rather manipulate the natural, thing which was never supposed to be controlled or governed by us. Death was, is and always should be a natural call of the universe/god some super natural power rather than human controlled.
- (2) **Promoting the give up spirit** – Every now and then we human beings are being taught to develop the **“never give up spirit”** the whole existence, of human beings are piled on the spirit of fighting back, we are always been made to learn never to give up in life no matter whatever the situation and how difficult it might get. While allowing euthanasia for one person the belonging to a particular class, or rather suffering from a specific disease will give a loud message to the other people belonging to the same class or rather suffering from the same spirit, that they should also give up just because one human being suffering from the same situation has decided to give up, and law has even allowed him to do so legally. A human being had to have the mental capacity to fight back any god dam situation whatever he/she has putted into rather than to run away from it but in case euthanasia the give up spirit which is the darkest form of negative energy is being promoted.
- (3) **Encouraging suicides** – Euthanasia might be a different concept of death in the eyes of law but in the mind and thoughts of a common man a laymen of this country, would not bother to know the true concept and definition of difference between euthanasia and suicide. A common man will always look up to euthanasia as suicide which sets an utterly wrong example in the society at large. Suicide is such a cruel form of death that the one who committed suicide dies out of pain, anger, depression, anxiety, negativity and what not, not only that the family members of the one who has committed suicide.

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### DIFFERENCE BETWEEN SUICIDE & EUTHANASIA.

#### Smt. Gian Kaur vs. The State of Punjab<sup>4</sup>

The mentioned case was decided on 21st of March 1996. In the present case the appellants Gian Kaur and her husband Harbans Singh were convicted by the trial Court under Section 306<sup>5</sup>, of the Indian penal code, 1860, for abetting the commission of suicide by Kulwant Kaur. On appeal to the High Court, the conviction of both was maintained but the sentence of Gian Kaur alone was reduced. In the present case the constitutional validity of section 306 of the IPC was being challenged, the first argument advanced to challenge the constitutional validity of Section 306 IPC, rests on the decision in P. Rathinam vs. Union of India and Anr<sup>6</sup>., any person abetting the commission of suicide by another is merely assisting in the enforcement of the fundamental right under article 21 and, therefore, Section 306. IPC penalizing assisted suicide is violative of Article 21 of the constitution of india.

Further the court had relied and taken into consideration the observation by an English writer in H.Romilly Fedden : Suicide (London, 1938), page 42."It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation." But the end result to the said petition came out that section 306 and 309 are not constitutionally invalid neither they are violating the scope and ambit of article 21 nor the provisions' laid down in article 14 or article 19 of the constitution of India.

The present case settled the legal difference between euthanasia and suicide though not specifically and very clearly.

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<sup>4</sup> 1996 SCC (2) 648

<sup>5</sup> Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<sup>6</sup> 1994) SCC 394

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### EUTHANASIA WHEN TRIED ON ANIMALS.

If any animal be it of any type dies a natural death then there no problem, but when the animal suffers such a hardcore injury, which might left him/her in major pain and the situation might arise where the tough call needs to be taken regarding euthanasia to the animal, so as to make them free from the unbearable pain. Many at times it happens that a horse might lose his leg in any injury after that almost becomes next to impossible for the horse to live the rest of his life in peace, the same case can happen with the camel as well. Not only just an outer injury these animals do sometimes also suffer through such internal, injury that the cure of such injury/disease might also not be possible, hence in such situations euthanasia remains the only option.

There are 2 main methods to treat animals with euthanasia which are **1] pharmacological method 2] physical method.** These are the 2 universally acclaimed methods for animals and the worst methods locally used in India sometimes are shooting the animal with a bullet. But as far as the situation of India is concerned here the law of the land has not taken any specific stand on the legality of euthanasia of animals though on paper euthanasia to animals is illegal only yet off the paper in practical field when an animal is no longer useful to the owner he tends to shoot him down.

while the legislatures of India have also drafted a law called “prevention of cruelty to animals act 1960” these whole specific act is dedicated to stop any kind of violence or cruelty to animals it also makes euthanasia illegal practice in India hence in India the practice of trying euthanasia on animals is illegal on paper yet it’s being widely practiced in practical life.

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### LEGAL ASPECT'S OF EUTHANASIA IN INDIA.

In India the constitution of India is considered to be the highest law of the land as far as any legality in matter is concerned, in such cases where the public at large in fact the whole country having such a huge population is concerned only the supreme court of India has been vested with the powers to draft, enact or amend any law affecting the whole of India. As far as the constitution of India is concerned there is a golden triangle in the constitution of India which highly affects the concept and judgment of euthanasia which are **Article – 14, 19 & 21**. These 3 article's form one of the most important basis of the whole constitution.

**Article – 14**<sup>7</sup> talks about the right to equality before law, which means that every human being should be treated equally on the equal ground in the eyes of law. It prohibits any sort of impartiality or biasness against any person based on any ground whatsoever. **Article - 19**<sup>8</sup> talks about protecting certain rights which are guaranteed to the citizens of India, through the constitution of India but, the right to die was never a part of the specific rights guaranteed by the said article moreover these right are inclusive rights they are not absolute rights which means the supreme court has to powers to stop such rights as and when the need to do so arises. Last but certainly never the least the heart and soul of Indian constitution **Article - 21**<sup>9</sup> on of the most relied on article while passing the judgment of the euthanasia is article – 21 as it talks about the most fundamental and basic thing of human being that is life, but not only that it also talks about the personal liberty of an individual as well as of every citizen of India, hence article 21 is the main article on which high stress has been given and a lot of discussion has been made, while allowing the passive form of euthanasia in India.

The other significant and substantial question law which should be taken into consideration by the honorable supreme court while granting the permission for allowing passive euthanasia is that whether the honorable court has set any specific guidelines in view of the Article – 14 of the constitution which as discussed above talks about the right to equality, according to that aspect of article 14 every patient rather every human being or specifically any citizen of India suffering

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<sup>7</sup> Equality before the law.

<sup>8</sup> Protection of certain rights.

<sup>9</sup> Protection of life and personal liberty.

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from any incurable disease whatsoever if approaches the court regarding the legal permission for passive euthanasia, considering the case the honorable court might even grant the permission to allow legal euthanasia on him/her, but considering the same case with a different human being, being a citizen of India if moves the honorable court and in such case considering the facts of the case the honorable court might not grant him/her the permission to do legal passive euthanasia in such case can the petitioner again approach the court for judicial review under the substantial question of law regarding the violation of article – 14 of the constitution for that specific person?

The answer to the above mentioned question rather a situation cannot be defined specifically, not dose the answer has any back support of any particular section or provision of law the answer is simply based on the judgment passed by the honorable supreme court of India in the case of Common Cause V. Union of India & Anr,<sup>10</sup> has laid some of the grounds and has framed some legal boundaries for the protection of the most important article of constitution that is article 21. Hence a petitioner if denied the legal permission for passive euthanasia cannot argue that his/her article 14 that being right to equality before law has been violated.

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<sup>10</sup> Writ petition [civil] no. 215 of 2005

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### **1] ARUNA RAMCHANDRA SHANBAUG VS. UNION OF INDIA & OTHERS.**<sup>11</sup>

This case being one of the first of its kind case in the history, of Indian judiciary asking for the writ of mercy killing for the petitioner Aruna shaunbag. The case was admitted on 17<sup>th</sup> December 2010. The facts of the case are as follows – Aruna shanbuag was a serving medical nurse in the king Edward memorial hospital parle Mumbai. In the evening of 27<sup>th</sup> November 1973 she was brutally attacked by a sweeper working in the same hospital, he tied a dog chain around the neck part of Aruna, then he tried to rape her but as and when he came to know that she was menstruating he sodomized<sup>12</sup> her, as the whole process could be done so easily he twisted the dog chain and made Aruna unconscious. On the next day morning 28<sup>th</sup> November 1973 another cleaner found Aruna's lying unconscious on, the floor with blood all around her later when her medical examination was done the doctors concluded that due to the dog chain blockage Aruna suffered brain damage. as her brain couldn't get oxygen moreover there were other savior injuries on the cortex part of her brain there was swelling as well.

The situation of Aruna was almost near to be brain dead, after almost 36 years a friend of Aruna and a journalist named Ms. Pinki virani filed a writ petition in the supreme court of India, under article 32<sup>13</sup> of the constitution of India. In her petition the entire detailed description of Aruna's so called life was provided to the court, right form her medical condition to her emotional condition, the petitioner requested the court that she cannot be considered a living person under the preview of article 21 of the constitution and hence should be given the right to die peacefully with dignity at least when she couldn't live with dignity.

The Supreme Court appointed a team of 3 doctors who were trained neurologist, psychiatry and critical care at Mumbai, the committee on 28<sup>th</sup> January 2011 and 3<sup>rd</sup> February 2011 examined Aruna Shanbaug who was 60 years of age then.

The committee then submitted its report to the court in which 3 things were made very clear which are **1] Aruna shabuag was clearly not brain dead 2] Aruna shabuag was clearly not**

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<sup>11</sup> Writ petition criminal No. 115 OF 2009.

<sup>12</sup> Having anal intercourse

<sup>13</sup> Remedies for enforcement of rights conferred by this part.

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**in coma and 3] that Aruna shanbug could follow simple commands when given to her.** After that it was argued that the 2 cardinal principals of medical ethics has to be taken into consideration which are **A} Autonomy** – which means the patient should have the right to chose the manner of their treatment, but in the present case it was not possible since Aruna’s couldn’t answer, **2} Beneficeence** - which means acting in the best known interest of the patient, hence the court and the medical team had to follow the set of actions for the best results of Aruna’s life.

The other big question which stood right in front of the court was who will take the decision regarding Aruna’s life as she was abounded by her family, and such an important decision cannot be taken relying on close friends, the court choose to decide on these part later in the case.

Later on as the case proceeded the other various questions of interpretation were also dealt, with by the court in one such interpretation in **Charan lal shau V. Union of india**<sup>14</sup> the court observed the **state has a legitimate interest in taking care of their citizens who are unable to take care of themselves**, further in the case of In state of **kerala V. N.M Thomas**<sup>15</sup> the court also is a state within the meaning of article 12 of the constitution of India. Hence in this way the court by making a chain of such judgments established itself in the interest of the patient. Later article 226<sup>16</sup> of the constitution of India was also widely discussed in connection to the writs to be directed by the high court – **Dwarka nath V. ITO**<sup>17</sup>, the same decision had also being followed in the case of **Shri anadi mukta sadguru V. V. R. Rudani**<sup>18</sup>. Through these mentioned cases the supreme court laid down the guidelines to be followed by the high court’s of India as and when the application regarding the permission of euthanasia is to be discussed.

The honorable Supreme Court concluding the case dismissed the petition for grating euthanasia in the aruna shanbuag case the final verdict and the detailed judgment was pronounced in the supreme court of India on 7<sup>th</sup> march 2011. Aruna shanbuag lived for another 4 years in the same

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<sup>14</sup> 1990 1 scc 613 para – 35 and 36

<sup>15</sup> 1976(1) scr 906 page 951

<sup>16</sup> Power of the high court to issue certain writs

<sup>17</sup> AIR 1966 sc 81 para - 4

<sup>18</sup> AIR 1989 sc 1607

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condition then on 18<sup>th</sup> may 2015 she died a natural death after being in almost like a non living state for 40 years.

### **P. Rathinam's case** –

In these case two individuals, namely, P. Rathinam and Nagbhushan Patnaik, filed two Writ Petitions under Article 32 of the Constitution, which were decided by a two Judge Bench in P. Rathinam v. Union of India & another<sup>19</sup>. The writ petitions assailed the constitutional validity of Section 309 of the Indian Penal Code (IPC) contending that the same is violative of Articles 14 and 21 of the Constitution. The Court posed 16 questions. Out of those 16 questions, the relevant ones read thus:- — (1) Has Article 21 any positive content or is it merely negative in its reach? (2) Has a person residing in India a right to die? (12) Is suicide against public policy? 6 (1994) 3 SCC 394 20 (13) Does commission of suicide damage the monopolistic power of the State to take life? (14) Is apprehension of constitutional cannibalism 'justified? (15) Recommendation of the Law Commission of India and follow-up steps taken, if any. (16) Global view. What is the legal position in other leading countries of the world regarding the matter at hand?

In the another important case of **State of Himachal Pradesh and another v. Umed Ram Sharma and others**<sup>20</sup> wherein it has been observed that the right to life embraces not only physical existence but also the quality of life as understood in its richness and fullness within the ambit of the Constitution.

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<sup>19</sup> (1994) 3 SCC 394

<sup>20</sup> (1986) 2 SCC 68 : AIR 1986 SC 847

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### **Inherent powers of the high court under the constitution of india.**

In **Charan Lal Sahu v. Union of India**<sup>21</sup> and **State of Kerala and another v. N.M. Thomas and others**<sup>22</sup> opined that the High Court can grant approval for withdrawing life support of an incompetent person under Article 226 of the Constitution, because Article 226 gives abundant power to the High Court to pass suitable orders. The application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support of an incompetent person. Dealing with the procedure to be adopted by the High Court when such application is filed, the Court ruled that when such an application is filed, the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not and before doing so, the Bench should seek the opinion of a Committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Amongst the three doctors, as directed, one should be a Neurologist; one should be a Psychiatrist and the third a Physician.

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<sup>21</sup> (1990) 1 SCC 613

<sup>22</sup> (1976) 2 SCC 310

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### **Legal position of euthanasia and related concepts around the globe.**

The legal position in the **United States**: In the United States of America, active euthanasia is illegal but physician-assisted death is legal in the States of Oregon, Washington and Montana. A distinction has been drawn between euthanasia and physician-assisted suicide. In 90 both Oregon and Washington, only self-assisted dying is permitted. Doctor-administered assisted dying and any form of assistance to help a person commit suicide outside the provisions of the legislation remains a criminal offence.

Legal Position in **Canada**: In Canada, physician-assisted suicide is illegal as per Section 241(b) of the Criminal Code of Canada. The Supreme Court of Canada, in **Carter v. Canada** (Attorney General)<sup>23</sup> held that the prohibition on physician assisted, death in Canada (in Sections 14 and 241(b) of the Canadian Criminal Code) unjustifiably infringed the right to life, liberty and security of the person in Article 7 of the Charter of Rights and Freedoms in the Canadian Constitution.

**Australian Jurisdiction**: Hunter and New England Area Health Service v. A<sup>24</sup>, the Supreme Court of New South Wales considered the validity of a common law. Wherein in this case a person was admitted to the hospital that was being kept alive on mechanical ventilation as well as regular dialysis, later he himself denied to receive any kind of advance medical treatment and wanted to discontinue the treatment on his own. The court held that a competent adult in the full mental capacity can decide to discontinue his/her medical treatment though discounting such treatment shall lead to his/her death.

Auckland Area Health Board v. Attorney-General<sup>25</sup> in which a court similarly bound to apply the human right to life and the prohibition on cruel and degrading treatment found that futile treatment could be withdrawn from a patient in a persistent vegetative state.

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<sup>23</sup> 2015 SCC 5

<sup>24</sup> [2009] NSWSC 761

<sup>25</sup> [1993] NZLR 235

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### **Law commission report on euthanasia in India.**

The 241st Report of The Law Commission of India on Passive Euthanasia: The Commission in its report referred to the observations made rightly points out that a rational and humanitarian outlook should have primacy in such a complex matter. Recognizing that passive euthanasia, both in the case of competent and incompetent patients, is being allowed in most of the countries subject to the doctor acting in the best interests of the patient, the report summarized the broad principles of medical ethics which shall be observed by the doctor in taking the decision. The said principles as obtained in the report are the patient's autonomy (or the right to self-determination) and beneficence which means following a course of action that is best for the patient uninfluenced by personal convictions, motives or other considerations. Reeves v. Commissioner of Police of the Metropolis<sup>62</sup> have stated: - "Autonomy means that every individual is sovereign over himself and cannot be denied the right to certain kinds of behavior, even if intended to cause his own death."

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### Common cause case

In the present case of common cause the supreme court had also appointed amicus curie, one of them being one of the most renowned designated senior advocate Arvind dattar said has advanced submissions in support of passive euthanasia and also given suggestions spelling out the guidelines for advance directive. Implementation of the same when the patient is hospitalized, the said aspect shall be taken into consideration while giving effect to the advance directive and also taking steps for withdrawal of medical support. Another amicus cure Mr. Mohta, learned counsel appearing for the intervener, that is, Society for the Right to die tantamount to destruction of his dignity, which is the core value of life. In our considered opinion, in such a situation, an individual interest has to be given priority over the State interest.

The honorable supreme court had framed some of the important aspects in the form of questions which needs to be answered specifically so as to decide whether the permission to grant passive euthanasia should be granted or not. Which are

#### **(a) Who can execute the Advance Directive and how?**

The Advance Directive can be executed only by an adult who is of a sound and healthy state of mind It must be voluntarily executed and without any coercion or inducement or compulsion It should have characteristics of an informed consent given without any undue influence It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given

#### **(b) What should it contain?**

It should clearly indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to. (ii) It should be in specific terms and the instructions must be absolutely clear and unambiguous. (iii) It should mention that the executor may revoke the instructions/authority at any time. It should disclose that the executor has understood the consequences of executing such a document. (v) It should specify the name of a guardian or close relative

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### (c) **How should it be recorded and preserved?**

(i) The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and countersigned by 173 the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the concerned District Judge. The witnesses and the jurisdictional JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences

### (d) **When and by whom can it be given effect to?**

(i) In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof from the jurisdictional JMFC before acting upon the same.

### (e) **What if permission is refused by the Medical Board?**

(i) If permission to withdraw medical treatment is refused by the Medical Board, it would be open to the executor of the Advance Directive or his family members or even the treating doctor or the hospital staff to approach the High Court by way of writ petition under Article 226 of the Constitution

### f) **Revocation or inapplicability of Advance Directive**

(i) An individual may withdraw or alter the Advance Directive at any time when he/she has the capacity to do so and by following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.

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### Conclusion

#### Life can be too long for something and too short for something!!

A lot has been said and debated about life, death, and law. The reality of life cannot be understood merely on the basis of bookish knowledge or rather the court cannot rely absolutely on medical jurisprudence as well as just on the expert opinion of highly qualified doctors though they are highly qualified.

The court has to go down in the deep routes of the individual accordingly to the life he/she has lived up till now, considering the past, present and the future of the individual. Moreover the court has to consider the point that instead of letting the individual suffer unnecessary, he/she should be given the freedom to decide whether they themselves want to relive themselves from pain. Each and every aspect connected with euthanasia be it legal, emotional, medical or monetary aspect each somewhere down the line leads us to the general conclusion of allowing euthanasia with some specific restricted strict laws and guideline provided by the honorable supreme court of India.

The Supreme Court of India in its common cause judgment has left a space for the parliament of India as well as has expressed a desire that the central legislation of India that is the parliament of India should enact a proper legislation, law and provisions regarding the concept of euthanasia these in itself is relevant and big enough to consider the importance of the death in the form of euthanasia.

To relive a person from his/her pain specially the pain which neither let him/her live peacefully neither let him/her die peacefully such a relive would never amount to a sin rather a boon and in fact that would amount to the best use of human capacity in its each and every sense be it medical sense or legal sense. Euthanasia is one of the most progressive yet a serious step in the history of mankind and a landmark mind opening judgment for the generations to come.

मरते हैं आरजू में मरने की मौत आती है पर नहीं आती