"LEGAL POSITION OF EUTHANASIA IN INDIA"

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INTRODUCTION

India is a country highly influenced by religion and orthodox beliefs. It is a cosmopolitan country with an amalgamation of different cultures, traditions and religions.[1] Therefore, the people of our nation have different points of view on the issues relating to life and death. We are a fate ridden, optimistic society irrespective of our literacy or illiteracy. We believe that God is the creator of life so, no one else has a right to take it. No religion in India advocates for deliberate shortening of life except for certain exceptions like Salekhanna [2] in Jainism, Prayopavesa[3] in Hinduism, and Sokushinbutsu[4] in Buddhism.

Thus, from ethical point of view, Euthanasia is a moral sin in India.[5] There has been long-standing discussion relating to the legalization of Euthanasia in the country. There is a section of society, who claim that Euthanasia violates the sanctity of life, and in claiming so, they cite wide range of religious texts to back their claim.[6] However, on the other hand, others having a liberal view assert that

[1] Pralike Jain, "Euthanasia and the society", *Indlaw News*, The Buddhist Channel, 26th Nov'08 retrieved from http://www.buddhistchannel.tv/index.php?id=70,7438,0,0,1,0#.WxKWZkiFPIU on 25-05-2019.

[2] It is the religious practice of voluntarily fasting to death by gradually reducing the intake of food and liquids.

[3] The suicide by fasting of a person, who has no desire or ambition left, and no responsibilities remaining in life. It is also allowed in cases of terminal disease or great disability.

[4] The practice of Buddhist monks observing asceticism to the point of death and entering mummification while alive.

5 Gurbax Singh, "Law Relating to Protection of Human Rights and Human Values", *Vinod Publications (P.) Ltd.,* Delhi, 2008, p. 217

6 Sushila Rao, "The Moral Basis for a Right to Die", *Economic and Political Weekly,* 30th April, 2011, p. 13

the right to life must incorporate in itself, an accompanying right to choose when that life turn out to be not worth living or unbearable.[7]

CONSTITUTIONAL AND LEGAL PERSPECTIVE ON EUTHANASIA

Right to Life

The sanctity of life has been located at the uppermost platform in India. The Indian Constitution in addition with right to life obligates states for providing personal liberty to all the individuals. These are incorporated under Part-III and Part- IV of the Constitution. In the case of *Maneka Gandhi v. Union of India*[8], Justice Bhagwati talked about importance of the Fundamental Rights and observed that the Fundamental Rights as incorporated under Part-III of the Constitution signifies the fundamental standards of life expected by an individual in India from the Vedic period. These rights are considered to protect the individual's dignity as well as to produce environments wherein each individual should be able to achieve his potential to its full extent. These rights prevent encroachment of individual liberty and thereby imposing negative responsibilities over the state and provides an inviolable guarantee to every citizen of these basic human rights. The main purpose behind the Fundamental Rights declaration is to create some basic rights relating to the peoples as non-violable as well as to preserve them from the ever-changing majorities in the legislatures. The Apex Court in the case of *Pt. Parmanand Katara v. UOI and ors.*[9] held that it is the obligation of each doctor either at a government hospital or otherwise to outspread his services with due expertise for the protection of life. This right to life without a doubt includes inside its domain the right to have a dignified life. The court in the case of *Kharak Singh vs. State of Uttar Pradesh*[10], it was held that life is something more than mere animal existence. Therefore, all citizens are provided a Constitutional assurance to live. Furthermore, the medical occupation is indicted with duty to safeguard life of all individuals by giving them proper health care services. The general notion of doctors giving deadly dosage to the individuals who do not wish to live as well as the individuals giving their assent

[7] Id.
[8] AIR 1978 SC 597
[9] AIR 1989 SC 2039
[10] AIR 1963 SC 1295

for such thing is both illegal and unconstitutional under the Indian Legal System.[11] The right relating to life doesn't merely signifies continuance of an individual's existence as an animal but it implies the full opportunity for the development of one's potential as well as personality into utmost level conceivable in the prevailing phase of our development. Certainly, right to life implies the right to live with dignity as an individual from a cultured society. It seeks to guarantee all freedom and favourable circumstances that would require to turn life pleasant. This right signifies a realistic standard of decency and comfort.

Legal Denial of Right to Die

The Legal System prevailing in India makes each effort to take life of oneself or of another a punishable offence under the IPC. Moreover, any aid or abetment provided is also an offence. Furthermore, concealing information about such an attempt is also an offence. In the following context, the following legal provisions are important:

Section 299[12], Indian Penal Code, 1860

This section defines the culpable homicide. We can say that practice of Euthanasia is illegal in India because the cases concerning mercy killing (or commonly referred as Euthanasia) involves an intention of killing the patient on the part of doctor and hence these cases would undoubtedly have contained under first clause of Section 300 of IPC, 1860 resulting the killing would amount to murder.[13]

Exception 5 of Section 300

[11] Sanheetha Mugunthan, "A Constitutional Perspective of Euthanasia & 'Right to Die'", *KLT Journal,* 2006 (1), p. 38

[12] It states that whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

[13] This section provides for punishment for culpable homicide not amounting to murder. If such murder has been committed with an intention, then shall be punished with imprisonment for life or imprisonment for a term which may extend to ten years with fine. If it is committed with the knowledge that the act is going to cause death, then ten years' imprisonment has been prescribed along with fine.

However, if the consent is given by deceased in such cases then it would fall under the purview of exception 5 of the said Section[14] which will result in the punishment of doctor by way of Section 304 of Indian Penal Code i.e., culpable homicide not amounting to murder.[15] However, exception 5 of Section 300 would only attract in cases of voluntary Euthanasia. The other cases would come under the purview of proviso 1 of Section 92 of Indian Penal code and therefore will be treated as illegal.[16]

Section 92

It is noteworthy to say that in cases of Euthanasia there is intentional causing of death whether with or without the patient's consent so the protection of Section 92 whose very basis stands on good faith is contradictory to the concept of Euthanasia rendering no legal protection to the mercy killer. In India, the concept of consent has not been extended beyond examination and treatment out of ethical, cultural, social and legal considerations. In addition, the professional aim of alleviation of pain and suffering has not been stretched to include participation in the destruction of an individual under any circumstances.[17] Therefore, the practice of Euthanasia is a crime under the Indian Penal Code, 1860 and the physician involving in such practice would be accused under Section 299 or Section 304-A, subject to the method used.[18]

[14] This provision deals with death with consent. The consenting age has been fixed at eighteen years.

[15] This section provides for punishment for culpable homicide not amounting to murder. If such murder has been committed with an intention, then shall be punished with imprisonment for life or imprisonment for a term which may extend to ten years with fine. If it is committed with the knowledge that the act is going to cause death, then ten years' imprisonment has been prescribed along with fine.

[16] It contains a general exception with regard to any harm done in good faith even without the consent of the consenting party sufferer, if he is incompetent to give such consent and he/she does not have any guardian to take such decision on his/her behalf. Its first proviso is further providing that this exception shall not extend to the intentional causing of death, or the attempting to cause death to that other person.

[17] Lyon's, "Medical Jurisprudence and Toxicology", 11th Ed., *Delhi law House,* New Delhi, 2007, p. 236.

[18] It deals with death caused with a rash and negligent act. Such an act does not amount to culpable homicide.

Section 107 and Section 202

All those persons comprising relatives who were aware of such intention or participated in this practice on the part of the doctor would be accused under Section 107 (Abetment of a thing)[19] and Section 202[20] of Indian Penal Code. Further, the cases in which whole process took place at their will, relatives would be found guilty under Section 299[21] or 304 also. A doctor may rely on Section 87[22], 88[23] as well as 92 in order to escape liability in cases wherein the physician is suspected to take place lethal sedation on account of mercy-killing but intention might turn out to be a measurable concern in such cases.

Right to Suicide

Section 309 of Indian Penal Code makes attempt to commit suicide punishable. However, this section is controversial involving the conflict views over the legality of this provision. A section of the judiciary and lawyers have expressed their strong protest against above provision which penalizes suicide bid. The opponents of the above penal provision maintain that our constitution has guaranteed "right to life" as a fundamental right and it includes a right to put an end to one's life by him or her also. No one should compel a person or live beyond and against his or her own wish.[24] The others in the legal field hold the view that punish ability of attempted suicide is justified on the ground that life is valuable not only to its possessor but also to state. A welfare state spends so much money on each of its subjects to improve quality of life in society. As personal disorganization may lead to social

[19] This provision deals with abetment of a thing. This can be done in three ways-Instigation, assisting and by way of a conspiracy.

[20] It deals with omission on the part of anyone who intentionally failed to provide information to the authorities, as he/she was legally bound to provide, regarding the commission of an offence.

[21] It deals with the definition of offence of culpable homicide. Intention and knowledge both are crucial mental elements which will compose this offence under the code.

[22] It deals with an exception that any person who is above the age of eighteen years who willingly gives consent to the effect of suffering any harm except death or grievous hurt. The doer will not be held guilty for any offence.

[23] It also deals with an exception with regard to any harm caused except death done in good faith for the benefit of the other person who has given consent to such harm either expressly or impliedly. The doer will not be held guilty for any offence.

[24] J.G. Kanabar, "Should there be the Right to commit Suicide? "An unresolved controversy on an intimate question", *Criminal Law Journal*, 1993, p. 1.

disorganization state has every right to discourage attempted suicides. Normally, suicide has adverse impact on other family members. It is also against religion, public interest and morals. Euthanasia, Physician Assisted Suicide (PAS) and Suicide though conceptually different are species of the same genre. As the Indian Penal Code (or for that matter any other law) does not define Euthanasia in any chapter the scope of attempt to suicide and abetment to suicide has been extended to embrace Euthanasia in its purview as because both the terms 'Suicide' and 'Euthanasia' is analogous to 'self-destruction' law as it is understood in the modern sense of human welfare and the rights have a definite intention to protect human life. It is not only opposing the harming or killing of a person by another but also one by himself. To get this idea translated into realities, it has adopted a mechanism to prevent suicide. In India, the Indian Penal Code has adopted a mechanism to prevent suicide. In India, the Indian Penal Code enshrines definite injunctions regarding suicide. Its awards punishment to those who attempt to commit suicide and also who abets to commit suicide. Our constitution also stands for the protection of human life and not for its destruction.[25]

JUDICIAL INTERPRETATIONS ON EUTHANASIA- EMERGING TRENDS

From the moment of conception and after the birth, a person has basic human rights. Right to life implies that a person bears an inalienable right to live, predominantly that such person has the right not to be murdered by another person. However, the debate arises as to whether right to life enshrined under Article 21 include right to die. The court discussed this question in various landmark Judgments. In the landmark case of *State of Maharashtra v. Maruti Sripati Dubal*[26], the Supreme Court held that Attempt to Suicide provided under Section 309 of Indian Penal Code as unconstitutional and violative of Art. 14[27] and Art. 21[28] of the Constitution. The court further stated that 'right to life' provided under Art. 21 of the Constitution of India comprises 'right to die'. In this case, the accused was charged for an offence under section 309. He challenged the validity

[25] Faizan Mustafa, "Right to Die: A Critique", *Amritsar Law Journal,* Vol. III, 1992, pp. 59-79.

[26] 1987 Cri. LJ 743 Bom.

[27] Article 14 (Equality Before Law)- The state shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

[28] Article 21 (Protection of Life and Personal Liberty)- No person shall be deprived of his life or personal liberty except according to procedure established by law.

of section 309 of IPC by filing an application in the High Court on the ground that Sec. 309 do not constitute an offence and it is in violation of Article 19 and 21 of the Constitution. He also pleaded that all cases of attempt to suicide are treated equally in this section making an offence and prescribing punishment indiscriminately and hence, it violates Article 14 of Constitution of India. The Court held Section 309 of IPC as unconstitutional and in violation of Right to life and Personal Liberty as provided under Article 21 of the Constitution. The court also held that the right to life includes the right to live as well as the right to end one's life if one so desire. Thus, the impugned section was struck down by the Bombay High Court.

This controversial decision was followed by the judgment of the Andhra Pradesh High Court in the case of *Cheena Jadadeeswar v. State of Andhra Pradesh*[29]. In this case, the appellant was convicted under Section 309 of IPC. So, he approached the court on the ground that the Section 309 violates the Equality before Law and Right to Life and Personal Liberty as given under Articles 14 and 21 of the Constitution respectively. The court in this case upheld the validity of the section and said that the section does not violate any of these Articles and remarked that right to life does not necessarily signify a right to die. Then the matter came up before the Apex Court in the case of *P. Rathinam vs. Union of India*[30]. The validity of Section 309, IPC was thoroughly analysed by the court in this case by having due regard to the constitutional provisions. This section was challenged as violative of right to equality and right to life enshrined under Part-III of the Constitution. So far as the equality provision is concerned, the court set aside the challenge in relation to that. But regarding right to life it was observed by the court that right to life includes right not to live a forced life. The court in support to its views cited some international decisions as well as the legal provisions prevalent there. The court in this case declared section 309 as violative of right to life enshrined under Article 21 of the Constitution. The court observed that Section 309 is inhuman and barbaric provision and therefore, it should be removed from the code. It also observed that this section implies punishing an individual twice as such individual is already undergoing pain and misery and when he attempted to kill himself out of frustration but he could not succeed in his attempt and have to face punishment for his act under the criminal law of the country. This act is not only in contradiction of the morality or public policy as it does not affect the society in many ways. Finally, the most important decision of the Apex Court came in *Gian*

[29] 1988 Cr LJ 549.
[30] AIR 1994 SC 1844.

Kaur Vs. State of Punjab[31]. This was a five judges bench verdict. It had put a full stop on all the ambiguities which were prevailing regarding the validity of section 309 of IPC vis-à-vis constitutional provision relating to right to life. The court maintained the legitimacy of the said section and declared that right to life cannot be said to include right to die also. Such an interpretation cannot be given to the words under Article 21 by any stretch of imagination. By allowing such a negative right the positive aspect of it will automatically get abolished. Hence, the Constitution Bench in this case set aside the earlier ruling and upheld the validity of Section 309. In this case, the appellants contended that if under Section 309 of the code attempt to kill one self has been decriminalized then on the same line Section 306 should also be declared as unconstitutional. The latter includes a provision regarding abetment of suicide. But the Apex Court in this case has maintained the legitimacy of both section 306 and section 309.[32] Further, the court in this case observed that there is no scope of legalization of Euthanasia or assisted suicide in India because of the present criminal law scheme. It is specifically prohibiting any such act under the express provisions. However, the main issue regarding removal of life supports from a terminally ill was indirectly addressed by the court in its judgment. In this respect, the decision has been considered as a landmark decision in the judicial history of India.[33]

In 1997, the Law Commission of India submitted its 156th Report followed by the Supreme Court judgment in form of *Gian Kaur vs. State of Punjab*[34], which recommended retaining of Sec. 309. The significant factor to be prominent here is that Euthanasia, Suicide and Mercy Killing lead to abnormal ending of life. Therefore, this judgment held that 'right to life' does not necessarily implies 'right to die', further it also prohibits 'right to suicide'.[35]

New Dimension in Indian History- Aruna Shanbaug Case[36]

[31] AIR 1996 SC 1257 82.
[32] Soumya Deshawar, "Euthanasia: the present scenario", *iPleaders Intelligent Legal Solutions,* 24th June' 16, retrieved from https://blog.ipleaders.in/euthanasia-present-scenario-india/ on 27-05-2019.
[33] Id.
[34] 1996 AIR 946
[35] Id.
[36] (2011) 4 SCC 454.

In this case, the Judiciary dealt with the issue of Euthanasia in an extensive way. The various controversial aspects of this concept have been considered and possible solutions have also been forwarded through the judgment in this case.

The facts of the case are as follows

Aruna Shanbaugh had been living in a permanent vegetative state for 42 years although her brain was still functioning a little. In absence of any relatives or family members the staff of the KEM hospital, where she had been lying in vegetative state for 42 years, used to take care of her. As a result of which, the staff of the hospital got emotionally close to her and didn't want her to be left to die. The care taken by the staff was found to be marvellous. However, a social activist had moved the Court looking for permission to disconnect life-support system from Aruna, but court said that she didn't have a locus standing in the issue. Though, the case led a two-judge bench of the Apex Court comprising of Markandey Katju and Gyan Sudha Mishra, JJ. to give deep discussion to the whole issue of allowing or legitimizing Euthanasia. The bench ruled out active Euthanasia, however, held that passive Euthanasia may be allowed in certain cases subject to some precautions. The important factor that has to be considered is whether the patient is conscious his/her own wishes. On the contrary, in case of comatose patient, the desires of close relatives (life partner, parents, kids and others) must be considered. If no close relative is accessible, as in the case of Aruna, the KEM hospital staff can step up. At that point the issue needs to go before the High Court, and a bench of no less than two judges need to settle on the decision. The bench is to create a crew of three skilled doctors to look at the patient. Moreover, the bench should also determine the perspectives of the State and the close relatives of the patient. The Apex court ruled that this process ought to be taken after until Parliament had legislated on the issue.[37]

The Supreme Court in this relation also formulate the regulations that will remain to be the law until Parliament formulates an appropriate legislation over the issue. These guidelines[38] are as follows:

1. The decision for terminating the life support system has to be taken either by the spouse or the parents or other close relatives. In case, the patient doesn't have any of these, then the decision can be taken even by an individual or a

[37] *Supra* note 29.
[38] Id.

body of individuals acting as a next friend. The decision can also be taken by the doctors attending the patient. Though, the choice ought to be made legitimate in the best interest of the patient.[39]

2. The decision is required approval from the concerned High Court even if a choice is taken by the near relatives or next friend or doctors to terminate life support system.[40]

3. After the filing of such an application, the Chief Justice of the High Court should immediately establish a Bench of not less than two Judges who should choose to grant approval or not. Bench should also nominate a committee of three skilled doctors who will provide an information relating to the state of the patient. A notice concerning the information should be provided to the close relations as well as to the State before making the decision. Then the High Court can pass its verdict after hearing both the parties.[41]

This landmark judgment of the Supreme Court of India paved way for a bill over the passive Euthanasia named *"The Medical Treatment of Terminally-ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016"*. The Bill is essentially a replica of draft legislation that was first annexed to the 196th Report of the Law Commission of India in 2006 and later revised in 2012. However, the Bill is imbibed with certain shortcomings.[42]

PASSIVE EUTHANASIA- THE VIEWS OF THE LAW COMMISSION AND THE SUPREME COURT

The Law Commission of India, in its 196th Report, favoured Passive Euthanasia in the case of competent as well as incompetent patients which includes terminally ill patients.[43] The Apex Court in Case of Aruna Shaunbaug has permitted non-voluntary passive euthanasia with the condition that the safety measures set out in the pronouncements are obeyed. The Court in this case adopted the different approach in comparison to Law Commission when the safety measures are

[39] Id.
[40] Id.
[41] Id.
[42] Id.
[43] Sarabjeet Taneja, "Should Euthanasia Be Legalized?", *Journal of Constitutional and Parliamentary Studies,* Jan-June, 2008, p. 57.

concerned. In the case of Incompetent patients, the highest Court has made a compulsory provision which requires prior permission from the High Court of the State by the close relatives or next friend or the doctor attending the patient. After receiving the application, the High Court will thereafter seek the view of a Group comprising of three professionals picked out of a panel organized by it after meeting with medical experts which will be followed by the order of the Court after considering the report as well as the requests of the patient's family or next friend.[44] After as a result of this Judgment, the Government raised the matter before the Law Commission of India vide their letter dated 20th April, 2011 requesting the Commission to deliver a comprehensive report over the possibility of Euthanasia Law in India while considering the 196th Report of the Commission. The 17th Law Commission of India as well as Apex Court have already advocated the framing of laws relating to passive euthanasia and that will be in conformity with universal practice too. Both of these authorities concluded that Euthanasia is not a crime in any manner howsoever, and no legal or constitutional obstacle is there in the way of enactment of a statute granting permission of withholding or withdrawal of medicinal treatment from terminally ill patients.[45] Law Commission also gave due regard to the perspective of both the authorities in its 241st Report. Though, the report provides a whole new vision over this issue and finally advocated the framing of suitable legislation over the Euthanasia. Moreover, the Commission has respected both the observations concerning the procedural measures in situations where the choice of removal of life supporting equipment's is made in the best interests of an incompetent patient. However, with respect to the method and protections to be accepted and followed, the Commission inclined extensively in favour of the view of the Supreme Court in preference to the view of the Law Commission.[46] It additionally proposed some alterations with respect to the composition and preparation of medical expert's panel which is to be selected by the High Court. Chief portion of rest of provisions proposed in the 196th Report of Law Commission of India have been considerably embraced in the revised Bill organized by the present Commission. The present Commission began talk on the suggestions given by 17th Law Commission. It witnessed that the principle dissimilarities between the proposals of the Law Commission (in 196th Report) and the law set around the Supreme Court (2011) which can be

[44] Dr. Sanjeev Kumar Tiwari, "Concept of Euthanasia in India- A Socio-Legal Analysis", *International Journal of Law and Legal Jurisprudence Studies,* Vol. 2, 2015 retrieved from http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf visited on 28-25-2019.
[45] Id.
[46] Id.

characterized as under:[47] The Law Commission recommended sanctioning of an enabling provision for seeking declaratory relief before the High Court while the Supreme Court made it obligatory to get permission from the High Court to give effect to the choice to terminate life support to a hopeless patient. According to the Judgment delivered by Supreme Court, the views of the Experts Committee ought to be acquired by the High Court, while as per the proposals of Law Commission, the attending medical practitioner should acquire the opinion of experts from an approved panel of medical experts before taking a decision to withdraw/withhold medical treatment to such patient.[48] In such an occasion, it is available to the patient or his/her relatives and so forth to approach the High Court for a suitable declaratory relief. Moreover, the present Law Commission has broken down certain essential terms in the definition part of the proposed Bill drafted by the seventeenth Law Commission. One such term was 'informed decision'. The Commission witnessed that the term 'informed consent' has been acquired from the chosen cases in England and different nations. The broad meaning of the term is the absence of ability to choose, notwithstanding the way that the patient is in his senses, which has restricted him from taking 'informed decision'. The said definition of 'informed decision' was inspired from the English case which have been referred in the 196th Law Commission Report. In *Re: MB (Medical Treatment)*[49], was a decision of Court of appeal pronounced by Butler Sloss L.J. He observed that:

"On the facts, the evidence of the obstetrician and the consultant psychiatrist established that the patient could not bring herself to undergo the caesarean section she desired because a panic–fear of needles dominated everything and, at the critical point she was not capable of making a decision at all. On that basis, it was clear that she was at the time suffering from an impairment of her mental functioning which disabled her and was temporarily incompetent"

The Law Commission of India on this point made it explicit that where a competent patient has made an informed decision to withdraw his medical treatment or withhold medical treatment from him and let the nature take its own course, he/she under common law will not be held guilty of committing suicide and the doctor who obliges such patient's decision by omitting to give the required treatment will also be given immunity from criminal liability under Indian Penal Code. The second important term used in the draft Bill by the 17th Law

[47] *Supra* note 39 p. 89.
[48] *Supra* note 36.
[49] 1997 (2) FLR 426.

Commission was 'best interest'. The concrete definition of this term is not possible but still the Law Commission relied on the test laid down in *Bolam's case*[50] - a test which was reiterated in *Jacob Mathew's case*[51] by the Supreme Court of India. Through this the Commission has set out a detailed procedure which is as under:

- The Director General of Health Services in relation to Union territories and the Directors of Medical Services in the States will be the appropriate authorities to prepare the panel of experts.
- There is a prerequisite of keeping a register by the doctor attending on the patient.
- The register should include all the significant particulars about the patient and the treatment being provided to him, and should also encompass the view of the doctor and experts as to the competence of the patient and what is in the best interests of the incompetent patient.
- The Medical Council of India has been enjoined to issue the guiding principle from time to time for the management of medical practitioners in the matter of withdrawing or withholding the medical treatment to competent or incompetent patients suffering from terminal illness.[52]

The Law Commission on the question of validity of the documents called advance directives (living will) and medical power of attorney has answered negatively even if such documents are made in written form. The Commission has overridden the common law right of autonomy of the patients under the garb of public policy of India.[53] It has considered such documents as against the public policy of India. Moreover, they will be subjected to blatant abuse in the country. The level of education and awareness about their rights among the general masses in India is clearly supporting the view taken by the Commission in its 196th Report. The present Commission did not interfere in such decision of the previous Commission. It means even under the revised Bill advance directives have been rejected in totality. The international scenario has also shown ambiguities in this area. This can be ascertained especially from the case laws of the nations where such advance directives have been given legal force.[54]

[50] Bolam v. Freirn Hospital Management Committee (1957) 1 WLR 582.
[51] Jacob Mathew v. State of Punjab (2006) 5 SCC 472.
[52] *Supra* note 39.
[53] Id.
[54] *Supra* note 15.

Present Scenario

In recently delivered Judgment in the case of *Common Cause v. Union of India*[55] on 8th March, 2018, the Apex Court has ruled that individuals have the right to die with dignity, and has allowed passive Euthanasia with guidelines. The Apex Court further said that an individual could make an advance 'living will' that would authorize passive Euthanasia under certain circumstances. The panel of 5 Judges allowed the Passive Euthanasia in cases when the persona is terminally ill and there is no hope of recovery. However, Active Euthanasia remained illegal in India.[56]

The Constitutional Bench was headed by CJI Dipak Misra, said the living will can authorize the pulling out of life-support system if the individual touched an irretrievable stage of terminal illness in the medical view. The judgment decreed that passive Euthanasia is legal and valid across the country.[57]

The court delivered its verdict on a public interest litigation filed in 2005 by a Non-Governmental Organization called Common Cause - to allow terminally-ill patients to 'die with dignity. Justice Chandrachud while delivering the Judgment, said,

"Life and death are inseparable. Every moment our bodies undergo change… life is not disconnected from death. Dying is a part of the process of living."

The court stated the rights of a patient would not fall out of the purview of Article 21 (Right to Life and Liberty) of the Indian Constitution. The Court also defined advance medical directive stating that in case where an individual is not in position of specifying his wishes, then an advance medical directive can be pursued by the individual exercising his autonomy on the matter of the degree of medical intervention that he wishes to allow upon his own body at a future date. It is a measure to safeguard aforementioned right by an individual. The following guidelines[58] were laid down by the top court:

- Who can execute the advance directive and how can it be executed? It can be executed by the person who have attained the age if majority having a healthy

[55] Civil Writ Petition no. 215 of 2005.
[56] Accessed from http://indianexpress.com/article/india/passive-euthanasia-now-legal-supreme-court-issues-guidelines-for-living-will-5092082/ on 20.05.2019.
[57] Id.
[58] Id.

and sound mind. The person must be in a position to relate, communicate and realize the purpose as well as magnitudes of executing the document. The document should be executed voluntarily as well as with no coercion or compulsion or inducement and person should have full knowledge or information.[59]

- What should be the content of written document? The written document should plainly specify the decision concerning the situations in which the medical treatment can be ceased or withdrawn. It should mention specific terms and instructions provided should be plain and unambiguous. The document must contain a clause whereby the executor may withdraw the instructions at any point of time. Moreover, it must reveal that the consequences of executing the document have been understood by the person. In case, the executer turns out to be incompetent of taking the decision, then it should specify the name of guardian or close relative who have authority to provide permission to withdraw or to refuse medical treatment in the method which is in consistency with the Advance Directive.[60]
- These guidelines further direct to record and preserve the document. One copy of the document would be preserved by the Judicial Magistrate of First Class in his office, in hard copy and digital form, another would be forwarded to the Registry of the jurisdictional District Court, third copy would be given to the competent officer of the Municipal Corporation or local Government or Panchayat or Municipality and the fourth copy would be given to a family physician, if any.[61]
- Detailed pointers have been set in case the executor becomes terminally ill, in which case, the instructions provided in the document would be given due weight by the doctors. A Medical Board would be constituted by the hospital or the physician where, the executor is admitted.[62]
- The executor of the Advance Directive or his family members or even the hospital staff or treating doctor can file the petition in the High Court under Article 226 of the Constitution if the Medical Board refuses the permission to withdraw medical treatment.[63]

[59] Id.
[60] Id.
[61] Id.
[62] Id.
[63] Id.

- The individual has been provided with the right to withdraw or alter the Advance Directive as well. The court also drew a scenario in the event of the absence of an Advance Directive. In such a case, a Hospital Medical Board would be constituted where the individual is admitted.[64]

On the subject of administration of a lethal drug, the court held that *"no one is permitted to cause death of another person including a physician by administering any lethal drug even if the objective is to relieve the patient from pain and suffering".*[65]

CONCLUSION

Euthanasia is complex issue, thus, the idea behind this paper is to analyze the actual practice of mercy killing in India and whether it should really be practiced in India. The famous case of *Aruna Ramachandra Shanbaug* (2011) has opened the doors of hope for the brain-dead patients depending on life support machines to get rid of the sufferings.

The Constitution of India provides every individual Right to Life and Personal Liberty under Article 21 and the debate whether right to life include right to die with dignity has prevailed in India since 1980s and the courts have had a conflicting opinion over this issue. Thereafter, the judgment in the case of *Aruna Ramachandra Shaunbaug* paved a way for the passive Euthanasia in India for the terminally ill patients and laid down guidelines in order to practice the same. However, at the moment these guidelines have not have been transformed in the form of Legislation in the country. Subsequently, the Supreme Courts again in the matter of recently delivered *Common Cause vs. Union of India* came up with the same issue and held that individuals have the right to die with dignity and allowed the Euthanasia in the passive form, with active form being illegal. The Supreme Court also allowed 'living will' for the patients to authorize Passive Euthanasia in the certain circumstances in the future.

[64] Id.
[65] Id.