Euthanasia: A Socio-Legal Study in the City of Lucknow

SUMMARY OF THESIS

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SUMMARY

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On January, 2020 the Supreme Court sought the centre's response to a PIL seeking euthanasia for persons afflicted with rabies, which has a 100% fatality rate and is accompanied by extreme pain which is unmitigable by medicine. A bench of Chief Justice SA Bobde and Justice BR Gavai and Surya Kant sought responses of ministries of health and family welfare, as well as ministry of environment, forest and climate change, after senior advocate Sonia Mathur pointed out that the SC's 2018 judgement allowing passive euthanasia left out persons suffering from rabies. Demanding recognition of right to die with dignity available to rabies patients, petitioner Anjali Gopalan's NGO "All Creatures Great and Small" said the SC's 2018 Judgement did not envisage "a situation where the death is inevitable regardless of assistance of medical facility. In such a situation, when the dignity of patient is jeopardised by the nature of diseases itself, it calls for different treatment for such patients". This burning case shows that despite supreme court ruling in common cause case, euthanasia debate is not yet settled. Euthanasia issues time and again continue to emerge in new situations with the demand of 'death with dignity'.[1]

'Right to die with dignity' or 'euthanasia' (good death) is the issue which concerns the right to have control over one's own body, destiny and the nature itself including the right to decide the time and manner of one's own death. Article 21 of our Constitution clearly speaks of the Right to live a dignified life as one of its facets. A person has a right to live a life with at least minimum dignity and if that standard is falling below that minimum level then a person should be given a right to end his life. The phrase covers a variety of concepts like suicide, euthanasia, assisted suicide etc. In recent years our attitude towards death has changed. In the past, death was simply something that happened to us and had to be accepted. However, with the technological developments it has become possible to exercise greater control over

[1] "Can rabies patients opt for euthanasia" *Available* at http://times ofindia.indiatimes.com/india/can-rabies-patient-opt-for-euthanasia/articleshow/73164110.cms Last visited on May 25th, 2020)

our death. Many people now wish for quiet, peaceful and a controlled death but the extent to which people should have control of their or another's death is highly controversial.

Before the industrial and scientific revolution, when the scientists had not invented artificial ways of keeping a terminally ill patient alive, like ventilators, heart & lung machines, artificial feeding methods, etc. such patients would have naturally died during the ordinary course of nature but with the scientific revolution, there was better and in-depth understanding of the human body. Simultaneously there was advent of new technology and machines, through which it is possible to prolong the life. Nowadays, a person who is in a persistent vegetative state, whose sensory systems are dead, can be kept alive by ventilators and artificial nutrition for years. Even though the patients are kept alive, often they will be in extreme physical pain and suffering (emotional, social and financial). Are these advanced intensive care procedures which we are referring here, any means to cure/control the disease or are they only prolonging the agony as well as the mere existence of terminally ill patients. Technology was limited to the hospital setting and used to treat emergencies, as opposed to those seen as coming to life as a natural result of the ageing process or the ravages of illness.

In the light of these developments, legal, moral and ethical issues have arisen as to whether a person who is on ventilator support and intravenous nutrition should be kept alive for all the time to come till the brain-stem collapses or whether, in circumstances where an informed body of medical experts' opinion states that there are no chances of the patient's recovery, the artificial support systems can be stopped. If that is done, can the doctors be held guilty of murder or abetment of suicide? These questions have been raised and decided in several countries and broad principles have been laid down in this regard. The 'withdrawal of life support systems' which is legally named as 'passive euthanasia' is allowed in most countries on the ground that it is lawful for the doctors or hospitals to do so in certain exceptional circumstances. Courts in several Countries grant declarations in individual cases that such withholding or withdrawal is lawful. However, legalisation of withdrawal of artificial life prolonging machine or artificial feeding and hydration has still left some serious concerns. These concerns have opened up in many literatures.

Moreover, we have seen that the law draws a distinction between actively and passively taking a patient's life. Both withholding and withdrawing life-sustaining treatment are, in law, omissions. No legal wrong is committed by an omission unless there is a legal obligation to act, which there will not be where a patient validly refuses treatment or where the treatment is not in the patient's best interests. There are two issues of controversy here. First, whether the distinction Between an act and omission is morally sufficient to justify the conclusions drawn by the law. Secondly, whether withdrawing (as opposed to withholding) life-sustaining treatment or care is properly characterized as a mere omission. These questions are important to both voluntary and non-voluntary end of life decisions.[2]

Few commentators consider the distinction between killing and letting die to be one of major moral significance. However, few criticized this distinction. Rachels rejects the distinction because he holds that we owe extensive positive duties (i.e. duties to assist), so that letting someone die becomes as morally unacceptable as killing them. Keown also don't consider any moral difference between act and omission.[3] These issues are important in the context of euthanasia debate.

Euthanasia has always been in the limelight as a subject matter of debate in the field of medicine and law. Justice 'Markandey Katju in the *Aruna Shanbaug case*[4] opined that' "Euthanasia is one of the most perplexing issues which the courts and legislature all over the world are facing today. This court in this case, is facing the same issue and we feel like a ship in an uncharted sea, seeking some guidance by the light thrown by legislations and judicial pronouncement of foreign countries, as well as the submission of the learned counsel which are with us".[5] Judicial opinion acknowledges that Euthanasia is a 'grey area' in the Indian criminal law.

Generally, every human being wants to live and enjoy the fruit of his life till the end of his life. There are situations where human beings wish to end their lives by unnatural means. This happens mostly in cases where one is suffering from a painful chronic and incurable disease. Euthanasia and physician assisted suicide (PAS) is essentially the doctrine that when, owing to disease, senility or the like, a person's life has permanently ceased to be either agreeable or useful, the sufferer should be

[2] J. Herring, *Medical Law and Ethics* 524 (Oxford University Press, 2010).
[3] James Rachels, , *The End of Life: Euthanasia and Morality*. 112 (Oxford University Press; 1986)
[4]Aruna Shanbaug VS Union of India and others, (2011) 4 SCC 454.

painlessly killed either by himself or by another. The intentional termination of patient's life in such a situation by an act or omission of medical care is called euthanasia or mercy killing. This is the most active area of research in contemporary bio ethics.[6]

Euthanasia is not something new or unknown to human civilization. In the ancient Greece and Rome, helping others die or putting them to death was considered permissible in some situations. For example, in the Greek city of Sparta new-borns with severe birth defects were put to death. Voluntary euthanasia for the elderly was an approved custom in several ancient societies. Many ancient texts including the Bible, the Koran and the Rig-Veda mention self-destruction or suicide.[7] In India, the history of Vedic age is replete with numerous examples of suicides committed on religious grounds. The Mahabharata and the Ramayana are also full of instances of religious suicides. Most Hindus would say that a doctor should not accept a patient's request for euthanasia since this will cause the soul and body to be separated at an unnatural time. The result will damage the karma of both doctor and patient. Other Hindus believe that euthanasia cannot be allowed because it breaches the teaching of ahimsa (doing no harm). However, some Hindus say that by helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations. Govardana and Kulluka, while writing commentaries on Manu, observed that a man may undertake the mahaprastha (great departure) on a journey which ends in death when he is incurably diseased or meets with a great misfortune, and that, it is not opposed to Vedic rules which forbid suicide.[8]

There are two Hindu views on euthanasia: By helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations. By helping to end a life, even one filled with suffering, a person is disturbing the timing of the cycle of death and rebirth. This is a bad thing to do, and those involved in the euthanasia will take on the remaining karma of the patient. The same argument suggests that keeping a person artificially alive on life-support machines would also

[6]Zachariah Thomas " Euthanasia-A Study of Law, Policy and Ethics", 2*Journal of Evidence based Medicine and Healthcare*(August 03, 2015), *Available at*https://jebmh.com/latest_articles/92976(Last visited July 30, 2017)

[7] "A General History of Euthanasia" A New Zealand Resource for Life related issues *Available at*http://www.life.org.nz/euthanasia/abouteuthanasia/history-euthanasia (Last Visited on Oct 30, 2017)

[8]Euthanasia, assisted dying, and suicide *Available At* http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/euthanasia.shtml (Last Visited on Sep 30, 2017)

be a bad thing to do. However, the use of a life-support machine as part of a temporary attempt at healing would not be a bad thing. The ideal death is a conscious death, and this means that palliative treatments will be a problem if they reduce mental alertness.

Muslims are completely against euthanasia. They believe that all human life is sacred because it is given by Allah, and that Allah chooses how long each person will live. Human beings should not interfere in this. Life is considered to be sacred and Euthanasia and suicide are not included among the reasons allowed for killing in Islam. Islamic religious texts say that Do not take life, which Allah made sacred, other than in the course of justice. If anyone kills a person - unless it be for murder or spreading mischief in the land- it would be as if he killed the whole people. Suicide and euthanasia are explicitly forbidden as it is said "Destroy not yourselves, Surely Allah is ever merciful to you".[9]

Christians are mostly against euthanasia. The arguments are usually based on the argument that life is a gift from God and that human beings are made in God's image. Birth and death are part of the life process which God has created, so we should respect them. Therefore, no human being has the authority to take the life of any innocent person, even if that person wants to die.[10]

Sikhs derive their ethics largely from the teachings of their scripture, Guru Granth Sahib and the Sikh Code of Conduct (The Rehat Maryada). The Sikh Gurus rejected suicide (and by extension, euthanasia) as an interference in God's plan. Suffering, they said, was part of the operation of karma, and human beings should not only accept it without complaint but act so as to make the best of the situation that karma has given them.[11]

The term 'euthanasia' has been defined as 'an act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and

[9]Euthanasia, assisted dying, suicide and medical ethics *Available at*http://www.bbc.co.uk/religion/religions/islam/islamethics/euthanasia.shtml (Last Visited on Sep 30, 2017)
[10]Euthanasia, assisted dying, suicide and medical ethics *Available at* http://www.bbc.co.uk/religion/religions/christianity/christianethics/euthanasia_.shtml (Last Visited on Sep 30, 2017).
[11]Euthanasia, assisted dying, and suicide *Available At* http://www.bbc.co.uk/religion/religions/sikhism/sikhethics/euthanasia.shtml (Last Visited on Sep 30, 2017).

intractably painful and distressing disease.[12] The word 'Euthanasia' is derived from the Greek words 'eu' and 'thanotos' which literally mean "good death". It is otherwise described as mercy killing. The death of a terminally ill patient is accelerated through active or passive means in order to relieve such patient of pain or suffering. History says that Suetonius a Roman historian is the first writer who used the term Euthanasia.[13] But it appears that the word was used in the 17th Century by Francis Bacon to refer to an easy, painless and happy death for which it was the physician's duty and responsibility to alleviate the physical suffering of the body of the patient. The House of Lords Select Committee on 'Medical Ethics' in England defined Euthanasia as "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering". The European Association of Palliative Care (EPAC) Ethics Task Force[14], in a discussion on Euthanasia in 2003, clarified that "medicalised killing of a person without the person's consent, whether non-voluntary (where the person in unable to consent) or involuntary (against the person's will) is not euthanasia: it is a murder. Hence, euthanasia can be voluntary only". As far back as 300-400 BC, both Socrates and Plato accorded moral sanction to assisted killing and suggested that it was punishable in certain circumstances.[15]

Briefly, 'euthanasia' may be classified into various categories as:[16]

- Active euthanasia: It means a deliberate action to let the person die in order to alleviate pain and sufferings.
- Passive Euthanasia: It entails withholding of medical treatment for the continuance of life e.g. withholding of antibiotics, where without giving it, a patient is likely to die, or removing the heart lung machine, from a patient in coma.[17]
- Voluntary Euthanasia: It is performed with the consent of the recipient. It involves a request by the dying patient or that person's legal representative**.**

[12]McDonald, *Butterworth Medical Dictionary* (1999).
[13]V.V Pillay, *Euthanasia; Text Book of Forensic Medicine and Toxicology* 42-47(Paras Medical Publisher, Hyderabad, 16th ed., 2011)
[14]Lar Johan Materstvedt, David Clark *et.al*, "Euthanasia and physician-assisted suicide: a view from an EAPC Ethics Task Force" pdf *available at*http://www.eapcnet.eu/LinkClick.aspx?fileticket=eoUoZKuuBeY%3d&tabid=684 (Last visited Nov 19, 2017)
[15] Law commission of India, "241st report on Passive euthanasia" (August, 2012).
[16]Jonathan Herring, *Medical Law and Ethics*497, 498(Oxford University press, 3rd edn.2010).
[17]Jonathan Herring, *Medical Law and Ethics*497, 498(Oxford University press, 3rd edn.2010).

- Non-voluntary Euthanasia: It occurs where the patient's consent is unavailable due to persistent vegetative state, coma, or absolute malfunctioning of brain.

- Involuntary Euthanasia: It is said to occur when a patient is killed against his express will. This is a criminal act of murder. Thus, Involuntary Euthanasia occurs where the recipient has not agreed to the procedure and is an unwilling participant.

The efforts to legalize euthanasia and assisted suicide were started in early twentieth century in various countries of the world. Euthanasia was first legalized in Netherlands. Many countries of the world followed its footsteps and legalized right to die in its different forms. Various international documents recognize human dignity as the core of Human Rights Jurisprudence. Various nations have made laws which provide solution to this problem, having due regard to human dignity and worth, right to personal autonomy and self-determination and have adopted different criteria for dealing with this sensitive issue.[18] Some countries have legalized euthanasia, whereas others have legalized assisted suicide only. But, even in such countries right to die has not been granted absolutely. It has been made subject to certain conditions and restrictions to prevent its abuse.[19]

There are nations which have legalized right to die in any of its forms. In the Netherlands, euthanasia is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002.[20] It legalizes euthanasia and physician assisted suicide in very specific cases. The law allows a medical review board to suspend prosecution of doctors who performed euthanasia when certain conditions are fulfilled.[21] Following conditions are required to be fulfilled:

- The patient's suffering is unbearable with no prospect of improvement.
- The patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness, or drugs).

[18] Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

[19]Dvk Chao, NY Chan *et.al.*, " Euthanasia Revisited", 19*Family Practice: An International Journal* 128-134(2002) *Available at* https://academic.oup.com/fampra/article/19/2/128/490935 (Last visited on Feb 20, 2018)

[20]Jonathan Herring, *Medical Law and Ethics* 515(Oxford University press, 3rd edn.,2010).

[21] Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002,Art. 2

- The patient must be fully aware of his/her condition, prospects and options. There must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above.

- The death must be carried out in a medically appropriate fashion by the doctor or patient, in which case the doctor must be present.[22]

- The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents).

However, there are certain exceptional situations which are not subject to such restrictions of law as they are normal medical practice. These are (a) stopping or not starting a medically useless (futile) treatment, (b) stopping or not starting a treatment at the patient's request and (c) speeding up death as a side-effect of treatment necessary for alleviating serious suffering.[23]

Belgium became the second country in Europe after Netherlands to legalize the practice of euthanasia in September 2002, subject to certain conditions. Patients wishing to end their own lives must be conscious when the demand is made and repeat their request for euthanasia. They have to be under "constant and unbearable physical or psychological pain" resulting from an accident or incurable illness.[24] Unlike the Dutch legislation, minors cannot seek assistance to die. It only applies to patients who are above the age of 18 years. In contrast, the Dutch legislation allows even a 16-year old to request lethal treatment or assistance in consultation with his parents, and a child aged 12 to 15 with his parent's consent.[25] In U.K., Russia, Spain, Austria, Italy, Germany and France euthanasia or physician assisted suicide is not legal.

Article 115 of the Swiss Penal Code considers suicide not a crime and assisting suicide a crime if, and only if, the motive is selfish, otherwise not. However, legally, active euthanasia is illegal in Switzerland. The Swiss law is unique because the recipient need not be a Swiss national and a physician need not be involved. Many persons from other countries, especially Germany, go to Switzerland to undergo euthanasia. It does not require the involvement of physician nor is that the patient

[22]Michael Davies, *Medical Law* 353(Oxford University press, 2nd ed., 2009).
[23]*Ibid.*
[24]Jonathan Herring, *Medical Law and Ethics* 518, 519(Oxford University press, 3rd edn.,2010).
[25] Shaun D. Pattinson, *Medical law and Ethics*, 550(Sweet and Maxwell UK, South Asian edn., 2013)

terminally ill. It only requires that the motive must be unselfish. Switzerland has an unusual position on assisted suicide; it is legally permitted and can be performed by non-physicians. However, euthanasia is illegal.[26]

Active Euthanasia is illegal in all states in U.S.A. Euthanasia has been made totally illegal by the United States Supreme Court in the cases *Washington* v. *Glucksberg*[27]and *Vacco v.Quill*[28] but, Oregon was the first state in U.S.A. to legalize physician assisted death under the Oregon Death with Dignity Act, in 1997. Under the Act, a person who sought physician-assisted suicide would have to meet certain criteria. Washington was the second state in U.S.A. which allowed the practice of physician assisted death in the year 2008 by passing the Washington Death with Dignity Act, 2008. Montana was the third state (after Oregon and Washington) in U.S.A. to legalize physician assisted deaths, but this was done by the State judiciary and not the legislature. On December 31, 2009, the Montana Supreme Court delivered its verdict in the case of *Baxter v. State of Montana*[29] permitting physicians to prescribe lethal injection.

In Canada, Euthanasia and physician assisted suicide is illegal.[30] Though patients have the right to refuse life sustaining treatments. Moreover, the Canadian Supreme Court in *Sue Rodriguez* v. *British Columbia (Attorney General*)[31] rejected the plea of Rodriguez, a woman of 43, who was diagnosed with Amyotrophic Lateral Sclerosis (ALS) to allow someone to aid her in ending her life. The court said that in the case of assisted suicide the interest of the state will prevail over individual's interest.

In England, the House of Lords in *Airedale NHS Trust* v. *Bland*[32] permitted non voluntary euthanasia in the case of patients in a persistent vegetative state. It was a case relating to withdrawal of artificial measures for continuance of life by a physician. It was held that it would be unlawful to administer treatment to an adult

[26]Subhash Chandra Singh, "Euthanasia and Assisted Suicide: Revisiting Sanctity of life" pdf *Available at*http://14.139.60.114:8080/jspui/bitstream/123456789/12413/1/010_Euthanasia%20and%20Assisted%20Suicide_Revisiting%20the%20Sanctity%20of%20Life%20Principle%20%28196-231%29.pdf (Last Visited on Sep 25, 2017)
[27]521 US 702 (1997)
[28]521 US 793 (1997)
[29]No. ADV-2007-787 (Mont. 1st Jud. Dist. Ct 2000).
[30]The Criminal Code of Canada, RSC 1985, C-46, S.241(b).
[31](1993) 3 SCR 519.
[32]1993(1) All ER 821 (HL)

who is conscious and of sound mind, without his consent. Such a person is completely at liberty to decline to undergo treatment, even if the result of his doing so will be that he will die. It was further held that if a person, due to accident or some other cause becomes unconscious and is thus not able to give or with-hold consent to medical treatment, in that situation it is lawful for medical men to apply such treatment as in their informed opinion is in the best interests of the unconscious patient. It is not lawful for a doctor to administer a drug to his patient to bring about his death, even though that course is prompted by a humanitarian desire to end his suffering, however great that suffering may be. All the judges of the House of Lords in this case were agreed that Anthony Bland should be allowed to die.

After the *Airedale*[33]case as decided by the House of Lords it has been followed in a number of cases in U.K., and the law is now fairly well settled that in the case of incompetent patients, if the doctors act on the basis of informed medical opinion, and withdraw the artificial life support system if it is in the patient's best interest, the said act cannot be regarded as a crime. The question, however, remains as to who will decide what the patient's best interest is where he is in a persistent vegetative state (PVS). In some other countries like India the debate about its legalization is still going on.

In India, the sanctity of life has been placed on the highest pedestal. The right to life under Article 21 of the Indian Constitution has received the widest possible interpretation by the Supreme Court. This right is inalienable and is inherent in us. The Indian Constitution is silent about whether right to die is or is not a fundamental right under Article 21. Whether the right to die is included in Article 21 of the Constitution came for consideration for the first time before the Bombay High Court in the *State of Maharashtra* v. *M.S. Dubal*.[34]. The Supreme Court in *P. Rathiman* v. *Union of India*[35] upheld the Bombay High Court's decision. However, in *Gian Kaur* v. *State of Punjab*[36], a five Judge constitution Bench of the Court overruled P. Rathinam's case and held that right to life under Article 21 of the Indian Constitution does not include the right to die or the right to be killed. The Court held that the right to life is a natural right, embodied in Article 21. However, suicide is an unnatural

[33]*Ibid.*
[34]1987 CrLJ 743.
[35](1994)3 SCC 394.
[36](1996)2 SCC 648.

termination or extinction of life and, therefore, incompatible and inconsistent with the concept of Right to life. It was held that this concept was unrelated to the Principle of sanctity of life or that Right to live with dignity.

In the path breaking judgment of *Aruna Shanbaug* v. *Union of India*[37] Euthanasia in its passive form has taken legal roots in India. This judgment broke new ground, sanctioning passive Euthanasia or withdrawal of life support systems on patients who are brain dead[38] or in a permanent vegetative state (PVS).[39]Aruna Shanbaug was a former nurse from Haldipur, Karnataka in India. In 1973, while working as a junior nurse at King Edward Memorial Hospital, Parel, Mumbai, she was sexually assaulted by a ward boy and has been in a vegetative state since the assault. On 24 January, 2011, after she had been in this state for 37 years[40], the Supreme Court of India responded to the plea for Euthanasia filed by Aruna's friend journalist, Pinki Virani, by setting up a medical panel to examine her. The Court turned down the mercy killing petition on 7th March, 2011. However, in its landmark judgment, it allowed passive Euthanasia in India. The Court clarified that active Euthanasia, involving injecting lethal injection to advance the death of such a patient, was a crime under law and would continue to remain so. The Hon'ble Court laid down certain guidelines which will continue to be law until Parliament makes a law on this subject. Those are as under: (i) a decision to discontinue life support should be taken either by the parents or the spouse or other close relatives. In the absence of any of them, such a decision can be taken by a person or a body of persons acting as a next friend. Also, the decision taken by the doctor attending the patient should be a bonafide one and in the best interests of the patient. (ii) The Supreme Court made it mandatory to take approval from the High Court concerned, even if the decision is taken by the near relatives or doctors or next friend to withdraw life support, because in India the possibility of mischief being done by relatives or others for inheriting the property of the patient cannot be ruled out. (iii) The Court also prescribed the

[37](2011) 4 SCC 454.
[38]Brain death is the complete loss of brain function (including involuntary activity necessary to sustain life). It differs from persistent vegetative state, in which the person is alive and some autonomic functions remain.
[39]A persistent vegetative state (PVS) is a disorder of consciousness in which patients with severe brain damage are in a state of partial arousal rather than true awareness. After four weeks in a vegetative state (VS), the patient is classified as in a persistent vegetative state.
[40]Pinki Virani, *Aruna's story, the True Account of a Rape and its Aftermaths* Penguin (Books India, Mumbai, 1999).

procedure to be adopted by the High Court when such an application is filed. The Court propounded that a Bench of at least two judges should decide this application, after taking opinion from a committee of three reputed doctors to be nominated by the Bench after careful examination of the patient by those doctors. The Court also directed that notice should be issued to the State and close relative or the next friend and after hearing them; the High Court should decide this application.[41]

Although the Supreme court dismissed the petition of euthanasia and did not allow euthanasia in the present case because of noble spirit, outstanding and unprecedented dedication of hospital staff in taking care of Aruna, but it cleared the way for many sufferings who want to die with dignity. With respect to the social, legal, medical and constitutional perspectives, the court said, that the question of law involved requires careful consideration by a constitutional bench of the court for the benefit of humanity as whole. In the current context, the contentious issue of Euthanasia once again came to the Supreme Court.[42] The court issued notice to all the states and Union territories on legalizing passive euthanasia. The court also appointed former solicitor General Mr. T.R. Andhyarujina as amicus curie to assist it on the issue. The former attorney General Mukul Rohatgi said that the Government doesn't accept Euthanasia as a principle. The Court has no jurisdiction to decide the issue. It's for the legislature to take a call after a thorough debate and taking into account multifarious views.[43]

On 9th March, 2018 a five- judge bench of the Supreme Court recognized and gave sanction to passive euthanasia and living will/ advance directive. This implies that from now Right to Die with Dignity is a Fundamental Right. The judgment has been delivered by a Bench comprising of Chief Justice of India Dipak Misra, Justice A.K. Sikri, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud and Justice Ashok Bhushan. The matter was referred to it by a three -Judge bench, which held that the Constitution Bench in the case of Gian Kaur v State of Punjab, had not ruled upon the validity of active or passive Euthanasia, even though the bench had ruled that Right to

[41] *Supra* note at 52.
[42] Sanjeev Kumar Tiwari,"Concept of Euthanasia in India – A Socio- Legal analysis Concept of Euthanasia in India – A Socio- Legal analysis" 2 International *Journal of Law and Legal Jurisprudence Studies Available at*, http://ijlljs.in/wp-content/uploads/2015/04/AMBALIKA.pdf
[43] SC wants euthanasia debate, seeks states" views in 8 weeks, *Available at*, http://epaperbeta.timesofindia.com/Article.aspx?eid=31804&articlexml=SC-wants-euthanasia-debate-seeks-states-views-in-17072014001022. (Last visited on Jan 20, 2018).

Live with Dignity under Article 21 of the Constitution of India was inclusive of the right to die with dignity. The Three – Judge Bench then noted that the judgment pronounced in *Aruna Shanbaug v Union of India* is based upon a wrong preposition that the Constitution Bench in the case of Gian Kaur v State of Punjab had upheld passive euthanasia. However, the Five-Judge Bench in the case of *Common Cause (A Regd. Society) v. Union of India and Another* has now unanimously held that the Two-Judge Bench in the case of Aruna Shanbaug had wrongly ruled that passive euthanasia can be made lawful only by legislation through an erroneous interpretation of the judgment in Gian Kaur case. The Judges in their judgment have also laid down the procedure for a "Living Will" or an "Advance Directive" through which terminally ill people or those with deteriorating health can choose not to remain in a vegetative state with life support system if they go into a state where it will not be possible for them to express their wishes.

Over the years the issue of euthanasia has been a complicated issue upon which there have been heated debates, not only within the confines of courts, but also among elites, intelligentsia and academicians alike. The Supreme Court of India however, through its judgment in the case of *Common Cause (A Regd. Society) v. Union of India and Another*[44] has now settled the position of Passive Euthanasia in India. Thus, the cloud upon right to live with dignity and right to die with dignity has now been cleared by the Apex Court for once and for all.

The issue of euthanasia was extensively dealt with by the Law Commission of India in their 196th report and further in the 241st report. The major issue before the Law Commission was of withholding or withdrawing medical treatment (including artificial nutrition and hydration) from terminally ill-patients. The Law Commission addressed many questions namely, as to who are competent and incompetent patients, as to what is meant by informed decision, what is meant by best interests of a patient, whether patients, their relations or doctors can move a court of law seeking a declaration that an act or omission or a proposed act or omission of a doctor is lawful, if so, whether such decision will be binding on the parties and doctors, in future civil and criminal proceedings etc. Law Commission recommended having a law to protect patients who are terminally ill, when they take decisions to refuse medical treatment,

[44]*Common cause (A registered society) v. Union of India and Others*, (2018) 5 SSC 1W.P. Writ petition (Civil) NO. 215 Of 2005

including artificial nutrition and hydration.[45]On the basis of the recommendation of apex court and Law commission in August 2016 "The medical treatment of terminally- ill patients (Protection of Patients and Medical practitioner) Bill, 2016 was introduced in upper house of the parliament.[46]

Recently a petition in the supreme court has restarted the debate of active euthanasia or physician-assisted suicide after it sought the response of the central government in a petition to allow assisted death for persons suffering for 'rabies'.[47]

Statement of Problem:

End-of-life processes such as euthanasia and physician-assisted suicide are controversial topics that society has distinct views on. Gender, the person's personality, or their previous life experiences, especially those relating to death may influence these views. To find out if these are contributing factors, a survey study is needed to administer. What happens if that family member is suffering or is in a persistent vegetative state? The family would then have some decisions to make as to whether to continue with treatment, keep the person on a ventilator, or to just keep them comfortable until they passed. If they chose to keep the person comfortable until they died by taking them off of a ventilator or taking out their feeding tube, this would be considered a form of passive euthanasia.

Euthanasia and physician-assisted suicide may be considered a form of murder by many, but what if they were faced with the decision with one of their own family members? In India, the debate over euthanasia, patient autonomy and the interests of the state in the preserving the life of persons is currently singing out in various fora, including the court and the executive. While the ethical implications of these acts have been debated endlessly, there is a need to debate how such a law would be operationalized. This will help to ensure the constitutionally guaranteed right to bodily integrity and autonomy, and to minimize misuse of the law. The Bill

[45] Law commission of India 241st report on Passive euthanasia, (August,2012) *Available at* http://lawcommissionofindia.nic.in/reports/report241.pdf

[46]Centre finally comes up with a draft bill on passive euthanasia, *Available at*, https://timesofindia.indiatimes.com/city/mumbai/Centre-finally-comes-up-with-a-draft-bill-on-passive-euthanasia/articleshow/52283576.cms (Last visited Jan 20, 2018).

[47]The Delhi High Court in an order had turned down the plea by the petitioner NGO, 'all creatures great and small' October, 2019 leading to the appeal to supreme court. *Available* at https://www. Hindustantimes.com/india-news/plea-in-supremecourt-restarts-debate-on-euthanasia/story (Last visited on April 4th 2020)

introduced related to euthanasia in 2016 is a starting point, and must take these debates into account to be implemented effectively.

The legalization of euthanasia in India will raise a number of social-ethical and legal issues which need to be resolved. For instance, who in India will certify the critical nature of an illness which demands euthanasia? What will be the acceptable parameters? Moreover, amazing developments in the field of medical science offer new hope to such patients who were once considered to be a lost cause. Another cause for worry is the danger of there being ulterior motives in wanting someone to be subject to euthanasia. The probability of its misuse whether it is demanded for property, money, or because of animosity among family members is very high. There exists no legislation laying down the procedure to permit a person to take her own life. These issues make euthanasia a highly complex issue.

Several Petitions also extend to asking for permission to terminate unwanted, accidental or dangerous pregnancies. Thousands of farmers in Vidarbha took their lives when faced with a dehumanizing existence. Rabies patients are also demanding death with dignity. Thus, when a person chooses to end her life because she can no longer live with dignity, the question needs to be asked is not whether he can waive her constitutional right to life, but whether he has a right to choose.

Objectives:

- To study whether euthanasia can be an answer to cases where a person is suffering from terminal illness or in coma or in persistent vegetative state or brain dead.
- To analyze various reasons giving rise to a debate over euthanasia.
- To study the legal position of euthanasia in various countries including India.
- To study the role of judiciary in interpreting right to life and its horizons.
- To study the role of the Law Commission of India in this regard.
- To undertake a comparative study of the recommendations of the Supreme Court and the Law Commission of India.

Hypothesis:

The tentative assumption which can be drawn from research point of view are as follows-

1. Legalization of euthanasia in India involves major complex issues which need to be addressed with law.
2. There is a growing demand for legalizing euthanasia in India from different stake holders.
3. Due to the advancement of recent medical technologies people are now very much aware about euthanasia and its socio-legal implications.

Research Questions:

- Why is there a need to make a law governing the subject.
- What are the effects of recent view which has been taken by Supreme Court of India regarding living will?
- When and who decides the point of final withdrawal of life support?
- How does an individual come to the conclusion that an unconscious patient would prefer death to "suffering"?
- Whether there is any mechanism to ensure that a living will is genuine.
- What is the safeguard to ensure that it is really his will and who will certify that his condition is bad?
- What is the attitude of different stakeholders towards Euthanasia?
- What is the perception of respondents towards legalizing euthanasia in India?

Significance of the Problem:

Health care professionals on a regular basis are faced with euthanasia issues. There are many factors that influence peoples' feelings regarding euthanasia from both the standpoint of the medical profession and from a family's point of view. These include religious beliefs along with the degree of religiosity, age of the person dying and age of the family members who are making the decisions, level of education which may influence their understanding of what euthanasia is, previous experience involving cases of painful dying of a terminally ill patient, and family environment. Euthanasia

involves not only a decision by the family but also a decision by the physician who is requested to perform it. The physician will have his/her own personal beliefs regarding euthanasia.

This research will be important from the following point of view-

- ***Social Welfare:***

A socio-legal research can be very much helpful to achieve social welfare. This research being of socio-legal importance assists us to judge the magnitude of the good or bad consequences of euthanasia.

- ***Comparative Study:***

It is a fact that the legislature considers the law prevailing in other countries at the time of law making. This research is important to find out what the law is in other countries with repect to euthanasia.

- ***Law Reforms:***

Research is a significant tool for any development or law reform according to the need of society. So, this research may be playing an important role from the point of view of law reforms in relation to Euthanasia.

- ***Effectiveness:***

This research will be helpful in laying down effective policies and principles to make the law on euthanasia an effective instrument in protecting an individual from the misuse of the machinery engaged.

Research Methodology:

Framework of study-

The research will consist of conducting a sample survey of the persons of different fields above the age of 18 years through the method of questionnaire. It will be a convenience sampling. The sample survey will be conducted during the period of research with 400 individuals. The persons below 18 years will be excluded from the study.

Universe of Study-

The following locations will be included for the distribution of questionnaire-

Sanjay Gandhi post graduate institute of medical sciences, King George medical University Lucknow, Students of different Universities like Babasaheb Bhimrao Ambedkar University, Ram Manohar Lohia National Law University, Lawyers of the Lucknow bench of the Allahabad High Court as well as the civil court. The empirical

study of the present research will comprise of the views of various sections of the public, which includes patients, families/ relatives of critical patients in 'coma' and PVS, doctors, nurses, lawyers, judges and is intended to be conducted in the city of Lucknow which is the capital of the state of Uttar Pradesh. The residents of the city are mostly working class and are quite busy in their stressful professional life due to which they are unable to give sufficient time to their families, especially when both the spouses are working. Therefore, it would be rather interesting to know their views on the concept of right to die with dignity i.e. euthanasia. Another reason to conduct the empirical study of the present research in this city is that in order to fulfil the multifarious needs of the patients, a large number of multi-specialty hospitals like the King George Medical University and the Sanjay Gandhi Post Graduate Institute of Medical Sciences have been established in the city where the patients who suffer from chronic diseases and are in extreme pain and suffering also come from different cities. Therefore, the views of the doctors in these hospitals and terminally ill patients getting treatment from these hospitals as well as their families can be obtained through empirical study.

Data collection-

The proposed study will be an empirical one and the materials have been collected from primary and secondary sources including the web resources. The primary data will be collected through questionnaire from sample surveys conducted in the city of Lucknow. The secondary data will be collected from books, journals, internet, newspapers, magazines etc.

Data Analysis-

The collected data will be edited, analyzed and summarized. Then it will be analyzed with help of SPSS to draw the inferences and conclusion. Descriptive, analytical, informative and evaluative methods will be adopted in the study to draw the inference and conclusion.

Organisation of the Chapters:

To achieve the goal within the scope, the present study is divided into 7 chapters, dealing with various aspects relating to Euthanasia. The Chapters are as follows:

Chapter I: Introduction

This chapter throws light on the inquisitiveness of the researcher to opt for the highly debated issue and outlines a general awareness on the insight of the topic. This chapter also elucidates the need for the study of the contentious issue, highlighting the objectives and the methodology undertaken by the researcher. The research questions that are formulated by the researcher are pin pointed in the chapter. The overall idea of the subject has been put forwarded in the chapter. The researcher also focuses on relevant review of literature pertaining to the perplexed issue. The researcher brings out the significance of the study and takes a stand to clarify the concept of euthanasia in the mind of the people. A general approach of the society is projected by the researcher, when at times the people are perplexed and cannot justly decide for themselves or their relatives.

Chapter II: Conceptual Analysis of Euthanasia.

The second chapter of this thesis attempts to describe about the meaning, concept and some other related terms of euthanasia. Historical and religious concepts have also been described briefly along with operational concepts. Euthanasia is mainly of two types: Active or Positive Euthanasia and Passive or Negative Euthanasia. Additional classifications are also present in the research work like, Voluntary, Involuntary, and Non-voluntary. The researcher has also made an attempt to differentiate these terms and try to tell about the related terms like Physician Assisted Suicide (PAS), Brain Death, Suicide, Murder, Doctrine of Double Effect and Human dignity & Euthanasia. An attempt has been made to roll off various euthanasia devices for terminally ill patients. The researcher has then discussed the main points of the controversy that if the right to life means a meaningful and dignified life, does that also mean a right to die with dignity. The researcher has therefore discussed the meaning of right to die with dignity. Because, once the relationship of death with dignity is understood, only then the concept of Euthanasia can be perceived. The researcher has then focused on the concept meaning and kinds of Euthanasia in the context of death with dignity and then distinguished it from the concepts like mercy-killing, suicide and physician

assisted suicide. Another very important concept has also been discussed i.e. Withdrawal of life support in cases where the patient is kept on artificial life sustaining machines.

Chapter III: Comparative Analysis of Euthanasia in different countries.

In this chapter, the researcher has analysed the law prevailing in certain countries in different continents of the world. In all these countries, the concept of euthanasia has been extensively discussed. The issue is not only limited to one country, it is rather transnational in character, because it deals with the matters of death, which comes to everyone. None is left untouched. Therefore, it is very important to understand how various countries have dealt with the issue and what laws they have made, if any, to accommodate the cases in which patients ask for a dignified death.

Various countries have adopted different criteria for dealing with this issue. Some countries have legalised euthanasia, whereas others have legalised assisted suicide only and there are some countries also, which have not legalised right to die in any of its forms. But, if we observe the laws of the countries in which right to die is legalized in various forms, one thing is common, and it is that right to die has not been granted absolutely. It has been made subject to certain conditions and restrictions. This shows that in order to prevent its abuse, law has provided certain safeguards which must be followed while performing Euthanasia. Euthanasia under Indian scenario has been discussed elaborately

The international perspective in this chapter examines the implementation of euthanasia in various countries. Further, implementation of passive euthanasia in India within permissible limits is highlighted by the researcher through the various law commission reports and Parliamentary debates. In particular, the researcher has attempted an analysis about the position of euthanasia in different countries. This chapter takes an initiative to make an analysis of the different Acts in the countries at the international level. The ways of administering euthanasia in different countries is projected by the researcher in this chapter. It is further seen that not all countries have the same ways of administering euthanasia. For example, the country of Switzerland welcomes tourist euthanasia. Also, the reasons are not same in all countries like, in Netherlands even mental depression is cited as a reason behind euthanasia.

One of the main reasons for the debate over Euthanasia is the advancement in science and technology. Science and technology have the ability to prolong life, even if it is painful and full of agony. The purpose of law is to cater to the needs of people. It has to keep pace with the changing needs of society. A law which does not do so is a bad law. It needs to be amended or changed. So, various countries have made efforts to make laws which provide solution to the problem, having due regard to human dignity and worth personal autonomy and self-determination.

Netherland was the first country in the world to legalize Euthanasia, subject to certain conditions. Therefore, in this chapter the researcher has discussed at length how this concept came into being after a lot of discussions debates, argumentations and deliberations. Its evolution through the various judgments of the courts has also been discussed whereby various requirements for the performance of euthanasia have been laid down, subject to which it has been legalized i.e. requirement of due care.

Belgium followed the footsteps of Netherlands, which was later followed by Luxemburg. In Switzerland Euthanasia is not allowed, but it allows assisted suicide under certain circumstances.

In the United Kingdom though the law does not permit Euthanasia but cases have come before the courts whereby they have started recognizing right to die in certain circumstances subject to certain conditions. It should be noted that in the United Kingdom and United States of America (USA) the attempt to commit suicide has been decriminalized. The reason is that in such cases the accused is already a victim of circumstances and punishing him for attempt to commit suicide amounts to double punishment. Such persons should rather be reformed through counselling. In the United States of America also Euthanasia is illegal. But the state of Oregon made a law on assisted suicide. However the courts in USA have started recognizing the right to die in certain circumstances subject to certain safeguards. In November 2014, Brittany Maynard, 29, the young, terminally ill American cancer patient became the face of the controversial right to die movement. She ended her life in Oregon. She was diagnosed with a likely stage 4 glioblastoma, a kind of malignant brain tumour. Within weeks, in course of researching possible treatments and realizing it was futile, she became an advocate of a dignified death instead of undergoing endless rounds of

debilitating chemotherapy and radiation, which was already proving useless in her case. She had moved from California to Portland.

In some other countries including India the debate about its legalization is still going on, the research work deals with the legislative and constitutional measure relating to the right to die in India. In this chapter, the researcher has discussed the relevant provisions of the Constitution of India and other laws concerning the right to die vis-a-vis euthanasia. Firstly, the concept of fundamental rights under Part III of the Constitution has been discussed including Article 21 with reference to right to die and Euthanasia. The meaning and extent of this right as interpreted by our judiciary has also been discussed. The relevant provisions under Indian penal code related with the subject matter of the study have also been discussed. The question of applicability of various defences under chapter 4 of the Indian Penal Code to those who perform Euthanasia has also been discussed at length, not only this, the provisions relating to attempt to commit suicide have also been discussed. It should be noted that the debate regarding the decriminalization of attempt to suicide is also going on in India. The Law Commission of India and the Hon'ble Supreme Court of India are in favour of decriminalizing the attempt to commit suicide. The researcher has also discussed the role of the Law Commission of India relating to the right to die and Euthanasia. Law commission in its 2006 report recommended the legalization of withdrawal of life support system subject to certain conditions and recommended a bill for that purpose. However, in the aftermath of *Aruna Ramachandra Shanbaug vs Union of India* the Law commission of India had a look into the matter and gave another report in 2012 reconciling its earlier recommendations and the recommendations of the Hon'ble Supreme Court. The report of 2012 has also been discussed in detail.

Chapter IV: Judicial Response towards Euthanasia.

In chapter 4, the judicial approach towards the right to die and Euthanasia in other countries including India has been discussed. The researcher also described various landmark judgements of Indian courts and Courts of various Countries that focused upon the key issues related to euthanasia. Judgments like Maruti Shripati Dubal, P. Ranthinam, Gyan Kaur and Aruna Shanbaug, Common cause are well explained. The landmark judgements given by the courts of some other countries are also described in this research work like the Airdale Case, Conjoined twin Case, R vs Cox, Pretty case etc. In few 'countries' 'euthanasia' is legalized which is also described here.

Here, comes the role of courts in interpreting various provisions of the Constitution and other laws. The Supreme Court in a number of cases has given different interpretation to the right to life. These cases have been discussed in detail before the Aruna Ramachandra Shanbaug's judgment but it is humbly submitted that our courts did not give a clear-cut verdict on Euthanasia. However, in Aruna Ramachandra Shanbaug's case, for the first time in the history of Indian judicial system Euthanasia was discussed at length. The Supreme Court Legalized Euthanasia in its passive form and that too for brain dead patients. The case has been discussed in detail covering the recommendations of the Hon'ble Supreme Court regarding the safeguards to be followed while performing Euthanasia in its passive form. It should be noted that the court has followed the principle of best interest of the patients as the paramount consideration in such cases.

Chapter V: Socio-legal, ethical and moral issues related to Euthanasia

There are two sides of the same coin. While there are proponents of the right to die and euthanasia, there are opponents also who criticise it on one or the other ground. Euthanasia involves various ethical, legal, moral, socio-political issues. The debate over euthanasia is a result of the contradictions involved in those favouring and opposing it. There are arguments against legalising euthanasia. It is also called a Conservative point of view. To prove their argumentation, opponents rely on various justifications like principle of sanctity of life, human life is the property of God, State has an interest in protecting the lives of its citizens, slippery slope argument, compromising the dignity of others, medical ethics, need to find out alternatives and many more. In contrast, proponents of euthanasia also base their arguments on one or the other ground. To them, quality of life is more important than its sanctity and dignity.

Moreover, patients need to be relieved of the pain and agony and there should be respect for patient's autonomy and self-determination. According to them, this will also help in organ use, organ transplantation, medical research, education and training etc. So, the continuous tussle between these groups has led to the debate over euthanasia. Each side opines that the other is not able to understand its philosophy. In an effort to come to particular solution to this debate, many countries have legalised the right to die in one form or the other for example, Netherlands, Oregon (U.S.A.) etc. But the matter of concern here is that even in countries, which have legalised it,

there is always a scope of slippery slope i.e. misuse of the provisions allowing euthanasia or assisted suicide to satisfy personal motives and vested interests. If the law allows something, it may allow aggravations of it. People may kill their near ones under the garb of euthanasia. Moreover, some opponents of euthanasia claim that the possibility of euthanasia will undermine the relationship between doctor and patient and disrupt a doctor's healing role. However, Supporters argue that on the contrary it will create a more open and equal relationship between doctor and patient, with the patient being more able to discuss her or his true feelings. The present law may discourage a patient from discussing her or his wish to die with her or his doctor for fear that it would put the doctor in a difficult position.

There is also concern over the treatment of vulnerable people of the society. Linked to the 'slippery slope' argument is the concern that permitting voluntary euthanasia would work against the interests of vulnerable people. Those people suffering poverty, confusion, or general vulnerability may be pressurized into agreeing to euthanasia against their wishes. Moreover, There have also been concerns about euthanasia for those who is suffering from disability, in particular that legalizing euthanasia would send the message that the lives of disabled people were not worth living.

Apart from this there is some issue related to passive euthanasia still exist. One important issue is that how to reach the decision of best interests of the patients regarding continue or withdraw the treatment. It is well settled law that court's as well as medical professional's first and paramount consideration must the best interest of the patient. The great respect for sanctity of life imposes a strong presumption in favour of taking all steps capable for preserving life except some extraordinary circumstances. The main problem is how to define those circumstances. It is known fact that court never sanctions steps to terminate life. Even in the most critical situation (extreme disability) there is nothing to approve the steps to terminating life or hastening death. The court is only concerned with the circumstances in which the steps should not be taken to prolong life. However, in deciding what is in a patient's best interests there is contrary views and dispute over what factors can be taken into account. It is clear the level of pain and suffering or intolerability is the most certain

and general touchstone to determine the best interests of patients[48] but it is not the sole test to determine the best interests.[49] It cannot be done with mathematical or any precision.

There is not a unanimous view to determine the best interest of the patients as some considered intolerability and some quality of life. However, there should be a balanced approach including all factors not only medical factor but ethical moral, social, emotional and other welfare factors.[50] Another discussed point is that nature of withdrawal of treatment. Whether it is an 'act' or 'omission'. This issue is also concerned with 'killing vs letting die'. terminating life by act and terminating life by omission.

The distinction between killing and letting die evokes controversy because it does not turn on the outcome (a patient can be killed by an act or an omission), the doctor's state of mind (the doctor can intend to kill by act or omission), or the patient's consent (the patient can be killed or left to die without or with consent).[51] It is therefore difficult to find a convincing reason why this distinction should be drawn as a matter of ethical principle. These important issues have been discussed in this chapter.

Chapter VI: Data Analysis and Interpretation

Chapter six relates to the field work on the basis of questionnaire method which is one of the most suitable methods for the investigation of socio-legal problems. The researcher has used the tool of questionnaire to collect data from large, diversified and scattered persons from different places to deal with the empirical data and its analysis. The empirical research has been conducted in the city of Lucknow, capital of the state of Uttar Pradesh. Data has been collected from the 400 respondents belonging to different professions like doctors, lawyers, academicians, nurses and patients' relatives, in order to have complete analysis of various issues concerning the right to die and Euthanasia. The data has been collected in the form of a questionnaire containing various questions relating to the issue. The data collected from the person

[48] *R (On the application of Burke)* v GMC (2005) EWCA Civ 1181
[49] *Re J (A Minor) {Wardship medical treatment}* (1991) 1 FAM 33, CA.
[50] Section 2(b) of "The medical treatment of terminally- ill patients (Protection of Patients and Medical practitioner) Bill, 2016 provides not only medical factor as a single factor but also included ethical, moral, social, emotional and other welfare factors to decide best interests of the patient.
[51] J Keown *Euthanasia, ethics, and public policy: an argument against legalisation* 14 (2002)

shows their view points on various issues. The data has been analysed in this chapter and various finding have been recorded.

Outcomes of empirical research-

The major findings of this research are presented objective wise in the following manner:

i. *Euthanasia can be an answer to cases where a person is suffering from terminal illness or in coma or in persistent vegetative state or brain dead.*

As stated above the first objective of the present study was to explore and identify whether euthanasia can be an answer to cases where a person is suffering from terminal illness or in coma or in persistent vegetative state or brain dead. To achieve this objective, it is important to know the general attitudes of different stakeholders (Academician, Judges, Lawyers, Doctors, Nurses Patient relatives and the general public) is important towards the issue of euthanasia in India. Their general attitudes towards legalizing euthanasia in India were elicited by constructing the items with reference to the patient's terminal illness, incurability and chances of recovery as well as the forms of euthanasia. The related questions were asked about right to die with dignity, personal autonomy and self-determination of your own body, right to privacy and euthanasia including direct question related to awareness and acceptance of euthanasia. The major findings related to this objective were as follows: a. The Academician included in this sample survey have shown positive attitude towards legalizing euthanasia in India, they don't think euthanasia as crime but as human rights or help of dying patient b. The legal fraternity (Judges and the lawyers) have also shown favorable attitude towards the issue of legalization of euthanasia and c. In the same way the medical fraternity (Doctors and Nurses) as well as general public also manifested the similar attitude towards euthanasia. Taking the sample as a whole, it can be concluded that in general, significant majority of the respondents of this study have taken euthanasia as a positive manner.

ii. *To analyze various reasons giving rise to a debate over euthanasia:*

The Second objective of the research was to analyze various reasons giving rise to a debate over euthanasia. The objective was further clarified by research hypothesis: "Legalization of euthanasia in India involves major complex issues which need to address with law". To achieve this objective the questions were asked about most

favourable ground of opposing and justifying their stand on euthanasia. The search was led to the following major finding: Significant majority of academicians, Judges, lawyers, doctors, nurses, patient's relative and the general public opined that 'elevate intolerable pain and suffering and empowering right to death with dignity was the most favorable factor for euthanasia. One fourth of respondents were in favor of loss of 'quality of life and purpose' to justify euthanasia. However financial condition of the family due to the high cost medical services is also a factor to demand of euthanasia. On the other hand, physical disability, depression and psychological disorder and limited health resources are not a massive factor to ask for dignified death.

The question was also asked regarding argument they fill most favourable to reject the legalization of euthanasia They have professed the following reason in order of priority: Public corruption and misuse of Law, sanctity of life, effect on public trust upon doctor and negative impact on vulnerable persons of the society.

Summative conclude, it may be stated that the major reason for favoring legalizing euthanasia, as professed by our respondents could be identify as follows: to elevate pain and suffering and empowering the individual 'right to die with dignity' rather than go on suffering from an incurable and painful disease. The principle of individual autonomy cannot be a sole and adequate factor but it can only play a supportive role to the 'elevate pain and suffering and empowering death with dignity'. Whereas the reason for unfavorable attitude were identified as Pubic corruption and misuse of law.

iii. *Practical Concerns of Misuse of the Law of Euthanasia if Legalized:*

The above-mentioned objective of the present study was also included some specific questions related to real concerns raised by opponent and even by the supporters of euthanasia. The objective was further clarified by research hypothesis: "people are now very much aware about euthanasia and its socio-legal implications". The questions were asked as: if euthanasia issue unregulated it would be resulted into unethical medical practice? patient's relatives would misuse euthanasia for economy, inheritance or other personal motives? And euthanasia practices would negative effect on poor persons as they would be exploited by rich persons. The major findings which emerge out of the data gathered from the respondents were as follows: It is interesting to mention that in a very significant majority all the respondents belonging

to 7 sub-categories of our sample i.e. Academicians, Judges, Lawyers, Doctors, Nurses patient's relatives and general public have agreed with the risk involved in legalization of euthanasia without proper safeguards. The observed data have clearly indicated that in the opinion of more than significant majority (sixty five percent) of the respondents, the unregulated legalization of euthanasia would increase the chances of its abuse or misuse the patient's relatives, the medical professionals. They have also agreed that the following might be reasons for motivating them for such abuse and misuse: economy, inheritance weariness and vested interest. It is concluded that(i) A more than sixty out of hundred respondents have highlighted the fact that the prevailing socio-political conditions are not yet ripe enough to legalize euthanasia because the Indian society was still afflicted by a large number of poor people and public corruption. In other words, they have opined that the present conditions in India were not friendly for legalizing euthanasia because of its chances of misused (ii) The respondents of the present study were further found to be in agreement with the view that euthanasia and if legalized in India, would open the door for the exploitation of the poor by the rich. Because there existed a vast class-cleavage in the existing social structure in India. (iii) Lastly, a very significant majority of 7 subgroups of respondents assessed that the prevailing medical scenario was also not favorable for undertaking euthanasia legalization because there was no dearth of unethical medical practice.

iv. *The Issue of euthanasia need to be addressed with Law:*

The Hypothesis of the research also mention that the issues of euthanasia need to be address with law so that risk of misuse and abuse can be minimize. This law should include detailed provisions related to euthanasia, therefore specific questions are also asked to take the views of respondence about the doctor's duty to provide informed consent, provisions deciding best interests, provisions related to safeguard of medical professions, acceptance of living will, and punishment to those who misuse of law. The Data showed that majority of respondence agreed that Doctors have the duty to act in the best interests of all their patient competent and incompetent. This duty includes to provide reasonable information and treatment to the patient. They also agreed that When the treatment will become futile and burdensome then doctor's role is not only limited to save life but also a role to alleviate the suffering of the patients. In addition, they also in opinion that Court should decide the best interest of a

terminal ill patient's best interests regarding to continue or withdrawal the treatment with consensus of a panel of doctors and consent of patient's relatives. A good percentage of respondents holds a positive view towards the concept of living will and its execution in India. However substantial number of populations still not convinced with the concept of living will. They also believe that euthanasia law should have the provision for the defense of doctors who perform euthanasia in good-faith subject to prescribed guidelines. Lastly, three fourth majority of respondents are in favour of rigorous punishment to those who misuse of law on euthanasia.

Comparatively speaking all the sub groups of our sample of the study i.e. Academician, Judges, Lawyers, Doctors, Nurses Patient relatives and the general public have exhibited positive attitude towards legalizing euthanasia as well as withdrawal of life support system. However, they more preferred passive euthanasia than active voluntary euthanasia. Of course, their agreement differed vis-a-vis each other in magnitude, statistical differences did exist among them. Summative speaking it can be concluded that the significant majority of the respondents have exhibited a positive attitude for legalizing euthanasia in India. A significant majority of our respondents both comparatively vis-a-vis each other and summative for the sample as a whole have opined that there was definite risk involved in legalizing euthanasia in India and they also in favour of strict law. As regards the association between the variables of their profession, attitudes towards legalization of euthanasia no relationship did emerge. Finely, it is found that in average over 18% respondents select neutral option. There may be the two reasons for this. Some may not have given the issue much thought and importance. Others may have had an opinion but found that response alternatives did not allow them to express their views.

Inferences and Implications:

Keeping the views in the sample of respondents as a whole. The major inferences and implications are as follows:

- Terminally ill and incurable patient with extreme physical mental suffering should have right to die peacefully i.e. death with dignity.

- There is enough support is rising for voluntary euthanasia (whether active or passive) in India. However, it is limited to terminally ill and incurable patient with extreme physical mental suffering.
- Substantial number of populations either not convinced or undecided the with the concept of euthanasia.
- Personal autonomy and self-determination of your own body is an important part of human right of personal liberty. But this right is not absolute and it can be only extended to take own life or demand euthanasia to the terminally ill and incurable patient who is suffering from unbearable pain and suffering.
- People are very much aware about euthanasia. However small portion of population still unaware about this concept.
- Allowing euthanasia is justified to protect from undignified and destressing end to his/her life.
- Euthanasia is essential to protect right to privacy/ private life of the dying patient. undesirable treatment and bodily invasion of a 'dying patient' (competent or incompetent) does the violation of the right to privacy.
- In comparison there is much support of passive euthanasia than active euthanasia.
- Euthanasia is not a crime in the eyes of a large majority of population in India. Either they consider it help or a human right of a dying patient.
- Doctors have the duty to act in the best interests of all their patient competent and incompetent. This duty includes to provide reasonable information and treatment to the patient.
- When the treatment will become futile and burdensome then doctor's role is not only limited to save life but also a role to alleviate the suffering of the patients.
- Doctors should have special defence as to treatment of patient who is suffering from extreme and unbearable pain and also in terminally illness stage or incurable stage of treatment.
- People are very much aware about recent judgement of honourable Supreme Court of India recognised die with dignity (declared withdrawal of live support system and living will as legal) and supported the same.
- A good percentage of respondents holds a positive view towards the concept of living will and its execution in India. However substantial number of populations still not convinced with the concept of living will.

- Court should decide the best interest of a terminal ill patient's best interests regarding to continue or withdrawal the treatment with consensus of a panel of doctors and consent of patient's relatives.
- Intolerable pain and suffering seem to be the most favorable factor for patients or their relatives ask for a dignified death. However financial condition of the family due to the high cost medical services is also a factor to demand of euthanasia. On the other hand, physical disability, depression and psychological disorder and limited health resources are not a massive factor to ask for dignified death.
- Personal autonomy is not most favourable argument to support legalisation of euthanasia but it is a patient's deteriorate condition is the most favourable argument to demand death with dignity.
- Public corruption and misuse of law is the most favorable argument against legalisation of euthanasia than any other ground. That shows that people are aware about socio-legal implications and concerns of euthanasia after legalisation.
- There is concern of people occur that if euthanasia not regulated, euthanasia would be misused by patient's relatives for economy, inheritance or other personal motives, resulted into unethical medical practice, negative effect poor persons as they would be exploited by rich persons
- To resolve these concerns there is an urgent need to make a law made by the parliament with strict provision and safeguards to regulate the practice of euthanasia in India.
- Such law should make provision for the defence of doctors who perform euthanasia in good-faith subject to prescribed guidelines.
- Misuse of provisions or safeguards for performing euthanasia should be punishable with rigorous imprisonment under the law.

Chapter VII: Conclusion and Suggestions- Draft Legislation on Euthanasia.

Chapter VII deals with conclusions and suggestions. In this chapter, the researcher has concluded the whole research and mentioned various recommendations and suggestions given by different authorities that need to be considered while making a law on the subject. At last, the researcher has concluded this research work and given some suggestions which in his opinion will help the terminally ill patients in ending their suffering. Many opponents of euthanasia are saying that it will be abused. Thorough investigation has been done by the researcher while laying down the major

findings and recommendations. Further, the researcher also proposed a Draft legislation taking into consideration the advances in modern medicine and the debate over the subject of law. Certain concrete suggestion for improving the techniques in palliative care is forwarded by the researcher in the thesis. While promoting the concept of living will", the researcher has duly highlighted the significance of this concept in this chapter. Further, the researcher has supported that 'passive euthanasia' and 'active voluntary euthanasia' should be accepted in the India. The suggestions made in the thesis are in approximately conformity with the guidelines of the Supreme Court as well as the Law Commission of India. Hence, the researcher has made a humble attempt to justify the reasons for the acceptance of the proposed Bill in this chapter from all aspects- morally, legally and socially.

In this chapter, the researcher firmly establishes that a law in this regard is the need of the hour in India. Perhaps no law has ever been written that cannot be or has not been abused. The arguments in support of euthanasia law state that the time will come when euthanasia in certain circumstances will be accepted, practiced and we will wonder how society had continued so long in its unkind customs in dealing with the hopeless suffering.

Presently, India does not have any legislation allowing euthanasia but a flawed judgment based on the wrong premise, which permits passive euthanasia under certain exceptional circumstances. The researcher strongly feels that we should look into and study thoroughly the experiences of other countries where euthanasia has been legalized. The conditions in other countries are surely not similar to India and the approach towards the value of life is quite different but legislation cannot be drafted in isolation. The best example for this is the Constitution of India, which was drafted after studying functioning Constitutions from across the world. The researcher has therefore examined the legislative framework of different countries of this work and has attempted to draft a model bill that can be considered for legalizing euthanasia. The researcher believes that it is high time to consider the legalization of both passive as well as voluntary active euthanasia.

Finally, life does not mean that we are having sufficient flesh and blood to live and we are living. Life is always full of dignity and honour. If a person cannot live like that, he should be given the right to practice euthanasia. Right to death should

also be seen as the other rights. Therefore, there should be euthanasia legalized for the people only who are terminally ill to allow such people to die with dignity and honour.

Summary of the Conclusions:

a. Right to die with dignity form the basis for legalizing euthanasia.
b. The quality of life should be upheld in order to protect dignity of the patients.
c. Life should be protected but it should not be imposed.
d. The principles of autotomy and beneficence should be respected.
e. Rules of Medical ethics should be changed according to the best interest of patients.
f. Judiciary should interpret the laws in order to provide justice to terminally patients.
g. Law allows abortion under certain circumstance in the same way death with dignity should be allowed.
h. Laws should be made in keeping with the global legislations in mind.
i. 'Active voluntary euthanasia' and 'passive euthanasia' should be allowed in rarest of rare case.
j. The strict and proper procedure must be applied to.
k. The stringent procedure should be followed to avoid misuse of the law on euthanasia.

Suggestions:

1. The patient who is demanding euthanasia, his situation should be regarded as incurable with no hope of recovery, and death should be imminent,
2. The patient must be suffering from unbearable and severe pain that cannot be relieved,
3. The act of killing should be undertaken with the intention of alleviating the patient's pain,
4. If it is possible, the act should be done only if the patient himself or herself makes an explicit request,

5. The euthanasia should be carried out by a physician, although if that is not possible, special situations will be admitted for receiving some other person's assistance,

6. The euthanasia must be carried out using ethically acceptable methods,

7. One should review a few basic facts about euthanasia. There is no law that recognizes passive or active euthanasia. However Supreme Court of India has legalised passive euthanasia in recent judgements. In case of active voluntary euthanasia, the following four conditions should need to be filled that,

- The patient's death is inevitable and imminent,
- The patient is suffering from unbearable physical pain,
- The doctor has already done everything possible to remove the pain,
- The wish of the patient to die has been made clear.

8. The family's role and consent are also very important along with the patient. The traditional importance and authority of the family in medical decision-making is illuminated by the fact that they should also be informed of a terminal diagnosis. The family also should be informed about the terminally ill patient's request to practice euthanasia.

9. There should be 'with-holding Life-Support Measures' to patients terminally ill. But there should be restrictions also for practicing euthanasia or with-holding life support measures so that there are no malpractices regarding assisted suicide.

10. Incompetent patients and also competent patients who have informed decisions, the doctor can take a decision to withhold medical treatment, if that is in the 'best interests' of the patients based on the opinion of a body of medical experts. Therefore patient's 'best interest' should be protected at all cost.

11. It is suggested that a virtual - judicial officer be appointed appropriate authority under the proposed bill to supervise all cases of euthanasia within a possible territory as a beginning. Such officer should have the reasonable knowledge of medical science with the degrees. Any doctor who feels that his patient's request to die should be fulfilled would report such a case to the said supervising officer. If the officer so mentioned feels |that the patient would not be able to recover and he has no other option than death, then the supervisor should issue a certificate allowing the doctor involve in the treatment to let the patient die.

12. If euthanasia is legalized in India, a section should be inserted after Section 88 of Indian Penal Code, but the provision should be limited to adults.| Taking a person's life, even in case of serious illness is an issue must be decided by that very person, the decision should not be left parents or to the doctor. In short, the provision may be to the effect that it is not an offence for a physician, with the concurrence of another physician, to accelerate, by any merciful means, the death of a person is seriously ill, provided the act is done in good faith with the consent the patient.'

13. There is need to have a law to protect the patient who are terminal when they take decision to refuse medical treatment, so that they may not be considered guilty of the offence of the attempt to commit suicide 309, IPC. Though, section 115 of the Mental Healthcare Act, 2018 has weakened the provision of punishment to commit suicide (Section 309 IPC) this provision still exists.

14. Parliament should enact specific laws for the patients, doctors and should define some technical words like it is given in the 'proposed bill'. There must be a council to observe practicing euthanasia for competent incompetent patients,

15. In case of incompetent patients whose decisions are not informed once, in respect of whom the doctor is entitled to take a decision for withholding or withdrawing medical treatment provided it is in the best interest of patient. In these cases, appropriate decisions should be taken and it should not be abused. In this case the doctor should not withhold or withdraw medical treatment until it is permitted by high ranking medical authorities' panel and if there is a difference opinion in these authorities, then majority opinion should prevail. This panel should consist of the parents or close relatives and they should be consulted with. But it is not necessary that the medical panel should be bound with their consent.

16. It is suggested that panel of experts must be prepared and published by the director general of health service, Central Government for purposes of the Union Territories and by the directors of medicine in the states. The panel must contain name of medical expert in different field who can take decisions on withholding or withdrawing medical treatment and also one member of the panel must be retired high court judge. Panel should maintain a written record in which about all the proceedings should be written like all the details of the patient, whether he is competent or incompetent, consent etc. and this record should be like a public document.