

## **JURISPRUDENTIAL ASPECTS OF EUTHANASIA:WITH SPECIAL REFERENCE TO INDIA**

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### **(Abstract)**

Every human being has a right to live a dignified life. Human life is considered as sacred and it is the right of every one to cross this worldly mundane the way one wants. No one wants that he has to suffer in a prolonged way and thus making his end miserable. If one has the right to lead a healthy life then also he has a right to leave this world in a peaceful and dignified way. Life is meaningful only when one enjoys it but when living is a constant pain, then life becomes futile. Euthanasia which is an act of killing or bringing about the death of person who suffers from an incurable disease or condition especially a painful one for reason of mercy has posed a dilemma before our legislators that whether it should be legalized or not? The question is whether it is justified to take someone's life when one is suffering a lot and there are no chances of any improvement or we should not interfere in the process of God because only HE has the right to take the life. The trend in the world is shifting towards legalizing passive euthanasia. This issue of euthanasia is highlighted much in India in Aruna Shanbaug case. The article emphasized on the legality of euthanasia in India and also has highlighted the religious and utilitarian aspects regarding euthanasia.

*Key Words: Euthanasia, Right to life, Religion, Legalisation, Utilitarian*

### **INTRODUCTION**

*"It is my belief that death is a friend to whom we should be grateful, for it frees us from the manifold ills which are our lot." (Mahatma Gandhi)*

Right to life is a phrase that describes the belief that a human being has a right to live, particularly the right not to be killed by another person. Right to life is the most precious, sacrosanct, inalienable and fundamental right of all the rights as enshrined in the Indian Constitution under Article 21. It has become a sanctuary for human values and therefore has been rightly termed as the "fundamental of

fundamental rights.”<sup>1</sup> At present longevity has become a global reality. The benefits of modern health research, the conquest of childhood diseases, improved sanitation, new medications and technical procedures have raised the projected life span for newborns and contributed to dramatic increase in world population. Unfortunately, not all long lived individuals die peacefully. When life is without quality, when pain and discomfort rob life of its significance, some persons cry out for release through death-a good death through euthanasia.<sup>2</sup>

Euthanasia has become a complex global issue for the 21<sup>st</sup> century, with different cultures wrestling with the variety of ethical, religious and legal factors involved in helping someone to die legally. Euthanasia which can be simply defined as "a good death" or perhaps "a beneficent death" has emerged as a global end of life issue that has special relevance for the elderly, although the term embraces all ages.<sup>3</sup> Regardless of the way it is used, the word euthanasia always evokes strong emotions. While for some people euthanasia is a manifestation of the individual's autonomy at par with a responsible control of one's destiny, a compassionate responsiveness to someone's immense suffering or a clinical imperative to act in the patient's best interest, for other people euthanasia is tantamount to or merely a euphemism for killing, the violation of human life and an infringement of the human right to life, being contradictory to the sanctity of life doctrine and facilitating the abuse of vulnerable persons.<sup>4</sup>

An analysis of the ethics of euthanasia is a daunting task. It requires the application of philosophical ethics, the consideration of the doctor patient relationship, arguments convening the state's responsibility and the limits thereof, and the interplay between the factors. The axiom that one should preserve life above all else cuts the Gordian knot. It is not surprising that the notion of sanctity of life is promoted as an ethical principle, a guide to professional practice a legislated requirement. Nonetheless, debate continues concerning the justification of exalting the sanctity of life above other ethical considerations, such as welfare and wishes of

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<sup>1</sup> J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 135 (Central Law Agency, Allahabad 2006)

<sup>2</sup> *Euthanasia : A Global Issue*, ( Feb.25,2012, 12:30 PM), <http://www.humanismtoday.org>.

<sup>3</sup> Ibid.

<sup>4</sup> JOSEF KURE, EUTHANASIA– “THE GOOD DEATH” CONTROVERSY IN HUMANS AND ANIMALS 6( Janeza Trdine, Croatia 2011).

the patient. The sanctity of the life principle has an abstract, universal character, in contrast to an actual patient with particular wishes and individual needs.<sup>5</sup>

## **THEOLOGICAL AND UTILITARIAN NOTIONS OF EUTHANASIA**

Historically, religious communities have sought to appropriate death within the life cycle through rituals of remembrance and religious teachings have emphasized that death brings meaning to mortality. The process of dying is often portrayed as an invitation to spiritual insight and a key moment in the cultivation of spiritual identity. The world's great traditions of moral wisdom all begin with a strong predisposition to favour the preservation of life, although the specific reasons for this conviction vary from tradition to tradition.<sup>6</sup> In this age of life prolonging medicine, the deliberate decision to end a life generates a significant amount of religious discussion. Ethical concerns from a religious perspective likely will become even more central when and if euthanasia enters the mainstream of medical practice and society struggles to achieve consensus on this issue.<sup>7</sup>

### **Euthanasia: The Hindu View**

Beliefs about life after death are derived both from the ancient Hindu texts and from popular belief. Most Hindus believe that there is a soul in all living beings, which transmigrates from one life to another, including animal life. In the Upanishads the soul within man is identified with ultimate reality, Brahman. Liberation from birth and death can be obtained through austerity and meditation leading to mystical realization of unity with Brahman in the life, and absorption into Brahman in the next.<sup>8</sup> In the Bhagavad Gita, the Supreme Lord Krishna has assured that no one can destroy the soul: "*Weapons do not cleave this self. Fire does not burn him; waters do not make him wet; nor does the wind. Make him dry...For to the one' that is born death is certain, and certain is birth for the one that has died.*"<sup>9</sup>

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<sup>5</sup> Paul Jewell, "Rationality, euthanasia and the sanctity of life", 12<sup>th</sup> Annual Conference, Sept. 2005, Adelaide.

<sup>6</sup> Namita Nimbalkar, *Euthanasia: The Hindu Perspective*, (March 1, 2012, 04:30PM) <http://www.vpmthan.org>

<sup>7</sup> THOMAS BREWNE, *BIOETHICS, EUTHANASIA AND PHYSICIAN ASSISTED SUICIDE* 41 (Jones and Barlett Publishers, USA 2001).

<sup>8</sup> *Ibid.*

<sup>9</sup> S. RADHA KRISHNAN, *BHAGAVAD GITA* 49 (Harper and Bros, USA 1957).

The concept of willed death is common among Jain monks and Hindus who believe in re-incarnation. Hindus believe that if someone dies it is just a transformation. There are several Hindu points of view on euthanasia. In Hinduism a person who commits euthanasia does not attain moksha i.e. salvation.<sup>10</sup> The central belief of Hinduism is in Sanatana Dharma or eternal religion. According to Hindu philosophy, dharma is essential for accomplishing material and spiritual goals and for the growth of the individual and society. Dharma here means both law and religion. It is the guiding principle of life according to which Hindus live their lives. This school of thought which believes in the Karma theory feels that the doctor should not accept a patient's request for euthanasia as the soul and body will be separated at an unnatural time. The result of it will damage Karma of both doctor and patient.<sup>11</sup> Hindu views of euthanasia and suicide are grounded in the doctrines of Karma, moksha and ahimsa. Karma is the net consequence of good and bad deeds in a person's life, which then determines the nature of the next life. Ongoing accumulation of bad karma prevents moksha or liberation from the cycle of rebirth which is the ultimate goal of Hinduism.<sup>12</sup>

Thus, generalization about Hindu patients at the end of life is difficult because their beliefs and attitudes will depend so much on education, class and religious tradition. From one perspective a person who helps other to end a painful life and thereby reducing suffering is doing a good deed and will gain good Karma. From the other perspective, euthanasia interrupts the timing of the cycle of rebirth and both the doctor and patient will take on bad karma as a result. But despite all this Hindu good death provides a valuable model for how death can be approached positively and without apprehension.

### **The Buddhist View**

Buddhism has a lot to say about death and what comes after and while not all of it is markedly different from the monotheistic religion, it is overall more flexible in its doctrine than nearly all religions.<sup>13</sup> In the case of Buddhism, respect for life is grounded not in its divine origin but in its spiritual destiny, namely the state of final

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<sup>10</sup> S.K.Kapoor, *Gray Matter, 'Right to Die'?* Hindustan Times, April 8, 2007, at A.8.

<sup>11</sup> Namita Nimbalkar, *Euthanasia: The Hindu Perspective*, (March 1, 2012, 4:35 PM) <http://www.vpmthan.org>

<sup>12</sup> S.S.Das, *Religious Postulates of Euthanasia in India*, THE LEGAL ANALYST, 2011, at 121.

<sup>13</sup> Carolyn Marie, *Understanding Death through Religion*, (March 7, 2012, 11:45 AM) <http://www.carolynnmarie.com>.

perfection known as nirvana. From this affirmative valuation of life flows percepts forbidding its intentional destruction. No euphemism such as ‘euthanasia’ is found in early Buddhist canonical sources, nor is the morality of the practice discussed specifically in the discourses of the Buddha. As an act or omission involving the intentional destruction of life, however it would undoubtedly be prohibited by Buddhist percepts. Confirmation of this can be found in the Monastic Rule, a corpus of canonical literature which sets out the regulations governing monastic life.<sup>14</sup>

Buddhism and Hinduism are indicative of some of the many ancient eastern cultural and religious philosophies that inform alternative approaches to death, dying and euthanasia. Contemporary Buddhists have extensively questioned whether euthanasia has a role to play within Buddhist philosophy. As a result it is suggested that there is much more to Buddhist thinking on euthanasia than a purely pragmatic concern to keep the first percept – not to take life while practicing the virtue of compassion. It has, for example been argued that in Buddhism volition constitutes a man “essential boringness” which implies that the intrinsic value of human life lies in the capacity for conscious choice. So, at least in principle, the Buddhist should be in favour of voluntary euthanasia provided it applied within narrowly defined limits. The intentional hastening of death is however morally unacceptable in all circumstances.<sup>15</sup>

### **The Islamic View**

Islam emphasizes the importance of maintaining one’s health and preventing illness but when prevention fails all efforts must be made to restore the health. One way of saving lives of people is to treat them when they become sick. It is a mutual responsibility of the patient and physician. In other words, seeking the treatment is a duty for the patient himself and everybody in the society is obliged to help the patient in treatment. On the other hand, healing people is considered as a sacred job. The physician must do his best to heal the illness but at the same time he must know that the real healer is God. The physician must also treat the patient with respect and compassion. The oath of the Muslim doctor includes undertaking to protect human life in all stages and under all circumstances, doing utmost to rescue it from death,

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<sup>14</sup> Damien Kewon, *Killing, Karma and caring: Euthanasia in Buddhism and Christianity*, 27 *Journal of Medical Ethics*, 23 (1995).

<sup>15</sup> Damien Keown, *Killing, Karma and Caring: Euthanasia in Buddhism and Christianity*, 21 *Journal of Medical Ethics*, 27(1995).

malady, pain and anxiety. To be, an instrument of God's mercy all the way, extending medical care to near and far, virtuous and sinner, friend and enemy is necessary.<sup>16</sup>

For Muslim, death marks the transition from one state of existence to the next. Islam teaches that life on earth is an examination- the life to come is the eternal abode where one will reap the fruit of one's endeavors on earth. Death is therefore not to be resisted or fought against but rather something to be accepted as part of the overall divine plan.

### **The Sikh View**

The Sikhs have a duty based rather than rights based approach to ethical decision making and both Hinduism and Sikhs believe in Karma, a casual law where all acts and human thoughts have consequences: good karma leads to a good rebirth, bad karma leads to bad rebirth. The tendency towards the death-wish is fostered by present day tensions and the conflicts of our competitive society. Mental illness is on the increase and some people in a fit of depression may welcome death as a relief from the torture of living.<sup>17</sup>

The rapid advances of medicine and biology present new challenges for the sikh faith. There is general agreement on topic such as euthanasia and the making of a living will or advance directive life is seen as a gift from God and an opportunity to strive for enlightenment. Illness, suffering and pain are a result of one's actions in this or previous life and should be endured with moral courage and fortitude. The ultimate point of release from this life is the will of God (hukum) and should not be interfered with. Thus assisted suicide and euthanasia are forbidden.<sup>18</sup>

Sikhism believes that whatever and whoever exists in this world is the creation of God and whatever happens in this world including the birth and death of a human is under the will of God. God is not only the creator of all but also permeates all. Thus, the human body is the house of the divine particle within. Torturing and harming the body in any way implies harming and injuring the creator within. Sikhism clearly states that man is essentially one with God and the ultimate aim of his

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<sup>16</sup> Mohamad Ali Showali, *Islamic Bioethics; A General Scheme*, Journal of Medical Ethics and History of Medicine, 2 (2008).

<sup>17</sup> Gobind Singh Mansukhani, *What is Sikh Attitude to Mercy Killing*, (March, 7, 2012, 04:30PM) <http://www.sikhspirit.com>.

<sup>18</sup> JAGBIR JHUTTI JOHAL, *SIKHISM TODAY 10* (Newgen Imaging Systems Pvt. Ltd., Chennai 2011).

life is to realize this oneness. This is what we call god realization or self realization and this state of liberation also marks an end to the process of transmigration. There are several scriptural hymns where in a human being is chided for not having worked towards the realization of this objective and for having wasted life in worldly pursuits. This no doubt implies that this human life is a gift from God and it has been endowed with a specific aim before it. This gives birth to the doctrine of sanctity of human life.<sup>19</sup>

### **Utilitarianism and Euthanasia**

Utilitarianism is most closely associated with Jeremy Bentham. The theory known as utilitarianism is only a development of simple statement of Jeremy Bentham that nature has placed mankind under the governance of two sovereign masters pain and pleasure, it is for them to point out what we ought to do, as well as to determine what we shall do. By the principle of utility said Bentham, “is meant the principle which approves or disapproves of every action whatsoever, according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question or what is the same, in other words, to provide or oppose that happiness.”<sup>20</sup>

Utilitarianism is the ethical doctrine by which the moral worth of an action is solely determined by its contribution to overall utility. It is thus a form of consequentialism meaning that the moral worth of an action is determined by its outcome-the ends justify the means. A moral theory is utilitarian if and only if it assesses, acts and rules in terms of nothing but their utility. On this view, people’s level of well being is determined solely by how much pleasure and pain they experience. But most utilitarian’s now think that pleasure, even if construed as widely as possible, is not the only thing desirable in itself and pain is not the only thing undesirable in itself. Utilitarianism can think that things that are desirable for their own sake include not only pleasure but also important knowledge, friendship, autonomy, achievement and so on. Indeed, many utilitarians now construe utility just as the fulfillment of desire or the satisfaction of preferences, with relatively few or the

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<sup>19</sup>Dharam Singh, *Reverence for Life in Sikh Theology*,(March7,2012,05:30PM) <http://www.sikhreview.org>.

<sup>20</sup> R. G CHATURVEDI, PHILOSOPHY OF LAW,28 (Rupa Books International, Jaipur 1984) .

satisfaction of preferences, with relatively few restrictions on what the desires or preferences are for.<sup>21</sup>

Utilitarian theories are divided into two types: Act Utilitarian Theory and Rule Utilitarian Theory. Act utilitarian theory holds that the utilitarian principle of utility is to be applied to particular situations. We must find out for each alternative possible act in the situation what its net utility function is. The right act is then defined as the one that has greater net utility than any other alternative. In act utilitarianism each individual case is created on its own merits, with calculation of pain and pleasure outcomes determining what should be done. An act utilitarian would support voluntary active euthanasia if this results in less pain than passive euthanasia, which tends to extend the last days and hours of suffering and even if the patient is pain free, the anxious waiting of the relatives, the cost of the extra drugs and nursing time and the fact that a hospital bed can't be used for some other needy patient will all be the factors to be taken into the calculation, adding extra support for active euthanasia.<sup>22</sup>

Rule utilitarianism won't consider each case on its own merits because it is more interested in adopting general rules that generate maximum happiness if widely accepted by society. Individual action only gets tested indirectly via their adherence to social rules. Now, a very good social rule that's widely accepted and is great for producing lots of happiness all around is the rule that we should not go around killing innocent people. So rule utilitarianism will approach forms of euthanasia that conform to it or at the very least, don't tend to undermine it. So although each individual act of active euthanasia might decrease a patient's pain more than any other alternative such as passive euthanasia or palliative care, rule utilitarianism would probably reject active euthanasia across the board on the grounds that if widely adopted as a medical routine in our hospitals then among the general public and in the longer term gradual whittling away of a good rule not to kill will cause more unhappiness than happiness. There would be widespread fear that the system may be abused and corrupted to such an extent that people would come to view hospitals with loathing and fear as death house rather than places of healing.

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<sup>21</sup>Brad Hooker, *Rule Utilitarianism and Euthanasia*, (March 7, 2012, 0:30PM), <http://www.blackwellpublishing.com>.

<sup>22</sup>NOEL STEWART, *ETHICS: AN INTRODUCTION TO MORAL PHILOSOPHY* 87 (Polity Press, UK 2009).



Because of its fear of rule eroding slippery slopes, rule utilitarianism is suspicious of passive euthanasia too in case with a change in the law to allow it, its widespread use infects and undermines people's readiness to adhere to the rule not to kill. Utilitarian's don't see any significant moral difference between acts as omissions, between killing and letting die which adds extra weight to this worry. So, there's likely to be a significant disagreement between act and rule utilitarianism in their approach to euthanasia.<sup>23</sup>

### **LEGAL DEVELOPMENTS IN THE CONTEXT OF EUTHANASIA IN INDIA**

Time and again, the legal position on individual's right to die has sparked debate only to die down until the next case. In India, it was in 1984 when the president of the Indian Society for the Right to Die with Dignity, Sadanand Varde had moved the bill in the Maharashtra legislature seeking to legalize mercy killing. The bill lapsed as the House was not in its favour.<sup>24</sup> One B.V. Patil also made a similar attempt in the Lok Sabha in the same year. But this attempt also resulted in naught.<sup>25</sup>

Another attempt was made by C.K. Chandrappan, a MP from Trichur, Kerala, who introduced *The Euthanasia (Permission and Regulation) Bill, 2007* in the Lok Sabha. The bill is to provide for compassionate, humane and painless termination life of individuals who have become completely and permanently invalid and/or bed ridden due to suffering from incurable disease or any other reason and for matters concerned there with. The bill also states that "a person who is completely invalid or who cannot carry out his daily chores without regular assistance can either himself or through persons authorized by him have the option to file an application for euthanasia with the civil surgeon or the chief medical officer (CMO) the district government hospital." The CMO will place the application before a medical board which will be responsible for examining the actual condition of the patient. If the board is convinced of the non curable nature of the disease, it will issue a certificate recommending the patient's case for euthanasia.

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<sup>23</sup> Ibid.

<sup>24</sup> *The right to life or the right to die*, The Hindu, May 1, 2005, at A7.

<sup>25</sup> Amandeep Kaur, *Legalisation of Euthanasia in India-A Critical Analysis*, LAW HERALD, July, 2009, at 15.

Chandrappan stated that if the bill is passed it would provide for a compassionate, humane and painless termination of the life of an individual who is permanently bedridden because of an incurable disease. If there is no hope of recovery for a patient it is only humane to allow him to put an end to his pain and agony in a dignified manner. Agreeing with Chandrappan, Mr. B.K. Rao, Chairman (Board of Management, Sir Ganga Ram Hospital) said, "If it is established that the treatment is proving to be futile, euthanasia is a practical option for lessening the misery of patient."<sup>26</sup>

On March 5, 2008 senior BJP MLA Bharat Barot moved *The Private Member Gujarat Physicians and Surgeons (Civil and Criminal Immunity) Bill, 2008* seeking to allow patients suffering from terminal illness for voluntary euthanasia which generated an interesting debate in the Gujarat State Assembly. Moving the bill in the House, Bharat Barot said that the medical science has now acquired life support systems and medications to extend life artificially for long period even after the patient becomes brain dead. Thus, the patient has a fear that he or she if kept alive artificially for long might add suffering and distress to his/her family. Such a patient should therefore be allowed to take a decision to reject artificial treatment and seek a voluntary passive euthanasia.

The bill also proposed that if the patient is not in a position to take such a decision an adult person should be permitted to make a written declaration through the power of attorney, pressing that patient's wish for euthanasia. The bill further said that if a physician or surgeon fails to concede the patient's request for withdrawing life support system or medical treatment and if the physician does not transfer the case to another one who is willing to respond to such a request, the patient can file a petition in a district court praying for his/her wish to be respected. But the bill was later on withdrawn by Barot on the request of Health Minister Jay Narayan.<sup>27</sup>

Recently in 2009, in a path breaking attempt, Kerala's Law Reform Commission, headed by former Supreme Court Judge V.R. Krishan Iyer has recommended legalizing euthanasia and decriminalizing suicide attempt. The commission while defending euthanasia stated "Life is sacred but intense pain with no

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<sup>26</sup> *Right to Death in India*, ( March 10, 2012, 10:45PM),<http://www.dwdnsw.org>.

<sup>27</sup> *Assembly debate over bill for euthanasia*, ( March 15,2012, 07:25 PM) <http://www.expressindia.com>.

relief in sight is a torture which negatives the meaning of existence.”<sup>28</sup> Even after Aruna Shanbaug case, the then Law Minister M. Veerappa Moily stated that right to life is a right vested with a person. Therefore there is a need for a serious debate into the matter. Though, there is no question of concurring or not with the judgment but in fact, Supreme Court is right that without a law you cannot resort to this kind of decision with a judicial order.<sup>29</sup>

### **Supreme Court of India on Suicide and Euthanasia**

Like right to life, does a man have a right to death also? Is physician-aid-in-dying a crime? The legal aspects of euthanasia are understood by few people. The law, though active in many countries has been a sleeping giant in India as euthanasia goes on behind closed doors. The law awoke from its slumber by way of a petition filed by P. Rathinam directed against the constitutional validity of sec. 309 IPC, which deals with punishment for attempt to commit suicide. The Supreme Court ruled in favour of the petitioner there by legalizing suicide and rendering as unconstitutional punishment for abetting of suicide. In this case a corollary was drawn between euthanasia and suicide. The judgment stated that in cases of passive euthanasia, the consent of patient (if he be in sound mental condition) is one of the pre-requisites. So, if one could legally commit suicide, he could also give consent for being allowed to die. It went on to say that if suicide was held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point. The judgment came as a shot in the arm for people supporting euthanasia. However, whatever progress was there came to a grinding halt in 1996 and the state of confusion returned.<sup>30</sup>

The Supreme Court again got occasion to discuss the issues of suicide and euthanasia in *Gian Kaur v/s State of Punjab*.<sup>31</sup> In this case, the question was about the validity of both sections i.e. sec. 306 (abetment of suicide) as also of sec. 309 IPC (attempt to commit suicide). The Supreme Court upheld the constitutional validity of both sections 306 and 309 IPC. The Supreme Court made it clear that 'Euthanasia' and 'Assisted suicide' are not lawful in India and the provisions of the Indian Penal Code 1860 get attracted to these acts. The court stated that euthanasia is unlawful and can

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<sup>28</sup> K.P.M. Basheer, *Legalise Euthanasia*, The Hindu, Jan. 8, 2009, at A.10.

<sup>29</sup> *Serious debate on euthanasia needed: Moily*, (March 15, 2012, 07:35 PM) <http://www.hindustantimes.com>.

<sup>30</sup> Shubham Pant, *Indian Law on Euthanasia*, (March 15, 2012, 07:45 PM), <http://www.spandan.com/>.

<sup>31</sup> AIR 1996 SC 946

be legalized only by legislation i.e. act of killing a patient painlessly for relieving his suffering from incurable illness (and be subject to appropriate supervision and control.) Other wise, it is not legal. "Assisted suicide" is where a doctor is requested by a patient suffering from pain and he helps the patient by medicine to put an end to his life. This is also not permissible by law.<sup>32</sup>

#### **A NEW DIMENSION IN EUTHANASIA (ARUNA SHANBAUG CASE)**

The question as to the right to withdraw treatment came up for the consideration before the Indian judiciary very recently in Aruna Ramachandra Shanbaug v. Union of India.<sup>33</sup> In this case, the Supreme Court Bench comprising Justice Markandey Katju and Justice Gyan Sudha Mishra had to deal with significant minefields. The Bench could not tread all of them with equal success as the huge debate it has set off its decision to permit passive euthanasia testifies.<sup>34</sup>

On the evening of November 27,1973, nurse Aruna Shanbaug was attacked by a sweeper in KEM hospital where she worked. Allegedly enraged at her for telling him off and threatening to report a theft by him, he accosted her when she was changing in a basement room, wrapping a dog chain around her neck. He tried to rape her but finding that she was menstruating, he sodomised her. To immobile her during this act, he twisted the chain around her neck. Strangulation by the dog chain cut off the supply of oxygen to the brain and the brain got damaged.<sup>35</sup> Abandoned by her family and friends, now after 37 years of the incident, she is looked after by the staff of the KEM hospital.

The petition was filed by Pinky Virani, a journalist who had visited the petitioner a few times and wrote a book on her. The prayer was to direct the respondent to stop feeding of the petitioner and to allow her to die peacefully. The court observed that in view of Gian Kaur case no one had a right to die under Article 21, and hence the petition could have been dismissed in limine. But, considering the importance of the issues raised before the court it decided to hear the matter in detail.

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<sup>32</sup> 196<sup>th</sup> Report of Law Commission of India on Medical Treatment to Terminally Ill Patients.

<sup>33</sup> V.R. Jayadevan, *Right of the Alive (WHO) But has no Life at All*, 53 *Journal of Indian Law Institute*, 458 (2011).

<sup>34</sup> 2011 (3) SC 300.

<sup>35</sup> V. Venkatesan, *Passive ruling*, FRONTLINE, Feb.,8, 2011, at 104.

In the process of examining the right of Aruna Shanbaug, the two judge bench of Justice Markandey Katju and Justice Gyan Sudha Mishra declared that suicide is not a crime and advised the government to consider the deletion of section 309 of Indian Penal Code, which penalizes a person who has survived an unsuccessful suicide attempt. In other terms, the court has conceded that no one be forced to live against one's wishes. While rejecting the petition for mercy killing filed on Aruna's behalf by writer Pinki Virani as her "next friend" the court made an important distinction between passive and active euthanasia and held that passive euthanasia is permissible while active euthanasia is prohibited.

The court held that though the efforts of Pinki Virani, who had written a book on Aruna's suffering needed to be applauded, she could not to be deemed the next friend and hence did not have locus standi to plead on her behalf for her death. Accordingly, the court appointed a team of doctors to examine and report about the condition of the patient, which after a detailed examination gave a report of physical, neurological mental examinations and investigations. They reported that she was in a persistent vegetative stage and that as of then, there was no treatment for the damage suffered by her and her condition was likely to remain the same for many more years to come.<sup>36</sup> The Supreme Court while deciding this case legalized passive euthanasia giving thousands of patients living in a persistent vegetative state all over the country the right to have artificial life support system withdrawn to enable them to end a life of misery. The Supreme Court's order clearing the way for passive euthanasia is a big leap forward as will hopefully push legislators to tackle the issue without further delay.<sup>37</sup>

## **CONCLUSION**

Sanctity of human life does not imply the forced continuation of exercise in pain and suffering. Under Article 21 of the Indian Constitution everyone has the right to life which means not merely animal existence but a dignified life. Given that a person has the right to lead a dignified life, he cannot be forced to live to his detriment. The essence of human life lies in the fact that a person is able to live a dignified life but

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<sup>36</sup> Flavia Agnes, *Going gently into that good night*, The Indian Express, March 10, 2011 at A.11.

<sup>37</sup> The last rights of staying alive, The Indian Express, March 9, 2011 at A. 8.

when law forces one to live in intense suffering, pain and agony then there is a serious need to think about this issue. Right to life means right to live peacefully as human being. If a person is unable to take normal care of his body or has lost all the senses and if his real desire is to quit the world, he cannot be compelled to continue with his painful life enduring torture and pangs of death. Euthanasia, in all its forms as conceived today is only giving aid to a person unwilling to live and craving to die.

The lives of all persons do not have the same pattern. One person's life may be filled with happiness and he may like to live on till it becomes impossible to live any further. Another's life may be full of such agony, psychological or physiological as it generally is and living for him may become a curse and he may not prefer to live any longer. The law along with medical ethics has to cater for both kinds of people. Living with dignity means the right to live a meaningful and non vegetative life. The fundamental purpose of euthanasia is to save an individual from suffering severe physical and psychological torture caused by incurable terminal illness. Article 21 of the Indian Constitution states that every person has right to live with human dignity but if the living standard of person falls below that dignity and his life becomes a bane or curse for him, he should be given the right to put an end to his unending sufferings. There are no better words for an apt conclusion than these echoed by Mahatma Gandhi:

*“Death is our friend, the truest of friends. It delivers us from agony. I do not want to die of a creeping paralysis of my faculties-a defeated man.”*