CLINICAL MEDICINAL PRACTICE OF EUTHANASIA:
ARTICLE 21 OF INDIAN CONSTITUTION & LEGISLATIVE - JUDICIAL APPROACH WITH REFERENCE TO U.S.A/U.K

Siddharth Thapliyal1 Praveen Kumar Rathi2 and Bhupnesh Kumar 3 Dr. Sanandan Thapliyal

1Assistant Professor(Law) Himgiri Zee University, Dehradun, Uttarakhand
2Associate Professor(Law) Himgiri Zee University, Dehradun, Uttarakhand
3Assistant Professor(Law) Himgiri Zee University, Dehradun, Uttarakhand

(5Associate Professor, Uttaranchal Ayurvedic College Dehradun, Uttarakhand

(Corresponding & Main Author: Siddharth Thapliyal)

ABSTRACT: In recent times, death has transformed from a social procedure to a merely biological one. Science has taken a hold over the role of the family, as medical treatment has become the backbone of a terminally ill patient, and the role of the family has decreased from loving and sincere care to an almost obligatory support. Death has been stripped of its spiritual and social quality, and has turned into a terminating event that was to be feared, and thus hidden away in sterile institutions, rather than accepted and experienced within the home. Simply envision a scene of becoming despair at a healing facility. An on edge relative sit at the bedside of a physician's facility understanding expecting the up and coming entry of the pending and the patient wait on endlessly. The possibility of recuperation is insignificant however the desire of death retreats with the progression of time. In the end it is clear that medicinal innovation has surpassed its capacity to safeguard life and has set out on an odyssey of dragging out the diminishing procedure. The choices accessible for the proceeding with care and treatment of this patient are promptly clear. He can be kept on. Tragically in any case, the accessibility of these alternatives is restricted and compelled the social mores and the criminal law. The suggestions for the patient, his relatives and dependents, the therapeutic careers and for the allotment of rare resources are profound and emblematic of the experiences of people everywhere...the parents and family shall support this euthanasia s it not only give such person a release from his pain and rest his soul in peace from that painful life but also from the such deteriorate pain which has change the life of that person as well as the life of the family member and it also release the mental and economical pressure from the family and his guardians however it very difficult to the Indian society to accept such situation but it bitter to accept as in future it shall be fruitful to the person.

Keywords: Article 21, Euthanasia, Constitution, Suicide, Indian Penal Code (IPC),

I. INTRODUCTION

Science of medicine has made the factual difference between life and death. Expansion in medicine and technology has profoundly enriched the quality of life than quantity. Patients who are suffering from the incorrigible diseases with intolerable pain choose death to life. Euthanasia gives liberty to such patients to decide where to die, when to die and how to die?2 It .Life on this earth is a great sanctification and gift of God. The child comes in this world and he lives according to the time schedule as permitted by the almighty. During this sacred journey from birth to death, he amasses good and bad experiences of life and leaves this world with these experiences which are established in his soul The journey brings him success sometimes and sometimes trouble and his personality is shaped accordingly sometimes during this journey he finds tears in his eyes and sometimes splash of brightness and joy which enlighten him3.

According to Jeremy Bentham, pleasure and pain are natural events. Pleasure and pain are in fact the masters of human conduct and must be served in all walks of life whether social political, economic, moral, religious thought and action. The whole superstructure of morality thus rests on the foundation of pleasure and pain4. Similarly, Shakespeare rightly said that:

The web of our life is of a mingled yam, good and ill together5.

As discussed hereinafter, issue of euthanasia is a complexes and complicated issue over which there have been heated debates, not only within the confines of courts, but also among elites, intelligentsia and academicians alike. Some of these complexities may be captured at this stage itself.

Thus, though the judicial discretion is with the Court, the same is limited and not absolute. The Court is not entitled to weigh any factor as it likes. It has to act within the framework of the limitations, and after they have been exhausted, there is an Edom of choice which can also described as 'sovereign prerogative of choice

II. MATERIALS AND METHODS

Concept of Euthanasia

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2 S.G. Goudappanavar, "Euthanasia is imperative of contemporary society" 4, ISLJ, 1 (2013).
5 John Lubbock The Use of Life, 3 (WENTWORIGHTH Press, Britain, 1st edn., 2016).
The term EUTHANASIA was gotten from the Greek word "eu" and "thanaos" which implies mercy killing or peaceful death.

As indicated by Black’s law dictionary word reference wilful extermination implies the demonstration or routine with regards to murdering or achieving the demure of an individual who experiences a hopeless ailment or condition. Ex an excruciating one. Euthanasia has been characterized as the organization of medications with unequivocal aim of completion the patient life at the patient solicitation. Wilful extermination truly implies putting an individual to effortless passing particularly if there should be an occurrence of hopeless anger man or when life ends up intentional bozo mental or physical debilitation. As a rule sense in the event that we need to comprehend the importance of killing i.e." To finale up one's life by the demonstration of other"

Classification of Euthanasia

**Active Euthanasia:** Dynamic killing are characterized as any treatment started by doctor with the plan of hurrying the demure of another individual who are critically ill, with the thought process of relating that individual from incredible Margery .for ex deliberately giving an individual a deadly portion of a medication to end a difficult and delayed time of passing on.

**Passive Euthanasia:** "uninvolved killing " are regularly described as pulling back restorative treatment with the purposeful objective of causing the patients passing. For example, if a patient requires a kidney dialyzer to endure, and the specializes confine the dialyzer machine, the patient will most beyond words soon .might be the incredible case of aloof killing are a ‘don't revive request". Consistently if a patient demonstrates some heart assault or relative abrupt interruption in life limit, therapeutic staff wills endeavored to rehabilitees them. If they attempt anyway basically standing and look as the patient bites the dust, there are passive euthanasia .aloof killing are when passing are accomplished by an oversight – for example when someone allows the person to kick the bucket .there can be pulling back or retaining treatment; Pulling back treatment; for instance, turning off a machine that are keeping an individual alive, so beyond words. Retaining treatment; for instance, not conveying put therapeutic procedure that will broaden life for a brief timeframe. It is described as hustling the passing by changing some kind
of assistance and allowing nature to take in course by following one the procedures ,for models ,clearing life supporting restorative framework ,drug, etc ,or ceasing sustenance and water and empowering the person to dry out to starve to death or not passing on CPR (cardiopulmonary revival )and allowing a man ,whose heart has halted ,to bites the dust (Baum et al, 1995 ; "kept up religious association and the act of willful extermination" ,diary of medicinal morals 21:49:54). These makers are performed to in critical condition; enduring people with the goal that characteristic demure will happen sooner.

**Voluntary Euthanasia:** when the killing are brought about by the assent and communicated want of the at death's door individual are called intentional willful extermination .It is for the most part favor appropriate to decoration of the critically ill patient who chooses to finale up hare or her life and furthermore hare or her advantage are additionally remembered before giving the killing .dynamic deliberate willful extermination are legitimate all however the US per Cruzan v Director ,Missouri bureau of wellbeing, willful extermination are occurs at the interest of the person who kicks the bucket. Promoters of willful killing regularly battle that if an individual

A. Are experiencing an incurably disease.

B. Are probably not going to profit by the dare closure of a solution for that ailment amid what survives from her future.

C. Are, as an immediate consequence of the ailment, either enduring unbearable torment, or just has accessible a real existence that are unsuitable difficult (for example since the ailment must be treated in manners that lead to her being unsuitable dependent on others or on innovation methods forever support).

D. Has a suffering ,intentional and equipped ware to bites the dust (or has preceding losing the capability to do as such ,communicated a desire to be helped to pass on in the occasion that conditions (an)- (e) are fulfilled ;and

E. Can’t without help to take her life, what’s more, there ought to be lawful and restorative arrangement to empower her to be permitted to kick the bucket or to be helped to pass on.
Non Voluntary Euthanasia: There term are utilized to depict the murdering of an individual who has not expressly mentioned help in biting the dust. there are frequently done to patients who are in diligent vegetative state or in unconsciousness and will presumably never recoup awareness. Involuntary killing are caused when the individual aren't giving assent however by here demonstration or conditions demonstrates there will to finale up her life are called automatic killing.

Involuntary Euthanasia: Non deliberate killing will be willful extermination coordinated when the unequivocal consent of the individual concerned are difficult to reach, for instance, when the individual are in a tireless vegetative state, or because of youthful youngsters. It emerges from automatic killing, when willful extermination are performed against the desire of patient.

EUTHANASIA AND SUICIDE: Suicide and euthanasia cannot be treated as one and the same thing. They are two different acts. Therefore, we shall have to make a distinction between ‘euthanasia’ and ‘suicide.’ Suicide as mentioned in Oxford Dictionary means the act of killing yourself deliberately. Therefore, suicide could be termed as the intentional termination of one’s life by self- induced means for various reasons, such as, frustration in love, failure in examinations or in getting a good job, but mostly it is due to depression. Euthanasia has not been defined in the religious books but since it is very close to concept of suicide, therefore it can be presumed that it is prohibited by all religions. In Indian law intention is the basis for penal liability. An act is not criminal act if it is committed or omitted without the intention and law of crimes in India is based on the famous Roman maxim, “Actus non facitreum nisi men sit rea.”

Now applying the above maxim in cases of euthanasia one may conclude that since the victim has given the consent to die therefore, the accused is not liable for any offence. But does giving a consent for killing a person absolve the offender from his criminal liability is very important question. If answer to this question is in affirmative then euthanasia is not an offence. But the Indian law is very clear on this point. One may argue that giving the consent absolves a person from liability or he may plead the defense of “volenti non fit injuria.”

ETHUANASIA WORLDWIDE

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UNITED STATES

Dynamic killing as rehearsed in the Netherlands are nor lawfully passable anyplace in the United States. A vast greater part of states make aiding Suicide a wrongdoing, regardless of whether help are by a doctor or any other individual. In spites of the fact that state courights and the U.S Supreme court have long held that a capable patient may deny fundamental lifesaving treatment, just a single state has legitimized doctor helped suicide. Furthermore, the Supreme Court has held that tolerant don't have an established appropriate to doctor helped suicide. Courts are reluctant to utilize "willful extermination" in talking about appropriate to pass on are sue, alluding rather to one side to hurry one's demure or different expressions less insulting than the term killing.

ENGLAND

In England, the development of the law relating to euthanasia has been gradual, though not specification mentioned, it sprouts could be seen in the case of therapeutic treatment to words of courts, where the court had a consider withholding of treatment. The being cases of in competent person, the court had to take decision for them in execrate of pisnspatiae jurisdiction. The underlying question in their case was withholding of treatment from the words would invites liability to the doctors.

The principle recognized by common law and applied by the judiciary was based on the distinction between ‘act’ and ‘emersion’ “thus if a doctor were to severely handicapped child a drug in such an excessive amount as to cause it death it would be open to the jury to decide that he was guilty of murder”? 7It is based on the distinction between ‘actually killing the child’ and ‘allowing the nature to take its own course: however serious the case may be: however much the dare advantage of a Mongol, indeed, any other handicapped child, no doctor has the Right to kill it.8The Down’s syndrome could not be felt UN operate to state that “in effect the child must be condemned to die” and hence the court would “decide that the child must live” On the other hand, the judge advised the jury that no one could say whether a surgeon was committing an act

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8 Per Frquharson J while briefing the Jury in R v. Arthur. 12 BMLR 1, 5.
or murder by declining to operate on a Mongol child with duodena artesian and so allowing the child to die”. In short, the board contour of the principle enunciated by the judiciary are the act of the doctors of parents with the primary intention to bring the life of the child to an end would amount to homicide, while withholding of or withdrawal from the treatment in the case of the child whose life prospects are black are not an offence. In the case of an unconscious patient, the doctor’s duty to turn on a ventilator depends on what prospects the patient has of advancing along the line of the hopelessness to improvement to recovery. The above cases dealt withholding of treatment of incompetent persons. The legality of the with drawl of life – supporting equipment from a patient come up for the consideration of the house of lords in Airedale NHS trust v. bland, a case relating to a patient in persistent vegetative state for a more than three years. The doctors were the unanimous opinion that there was no chance of hare recovery and emerging to the cognitive sapient state. The doctor who was attending him was of the opinion that there was no purpose in proceeding with the treatment and hence he got in touch he got in touch with the coroner who had to deal with fatal cases.

ARTICLE 21 AND INDIAN PENAL CODE

Article 21 guarantees the right to life in India. It is argued that the right to life under Article 21 includes the right to die. Therefore the mercy killing is the legal right of a person. After the decision of a five judge bench of the Supreme Court in GianKaurv. State of Punjab it is well settled that the “right to life” guaranteed by Article 21 of the Constitution does not include the “right to die”. The Court held that Article 21 is a provision guaranteeing “protection of life and personal liberty” and by no stretch of the imagination can extinction of life be read into it. In existing regime under the Indian Medical Council Act, 1956 also incidentally deals with the issue at hand. Under section 20A read with section 33(m) of the said Act, the Medical Council of India may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners. Exercising these powers, the Medical Council of India has amended the

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101977 crim L.R. 447.
111993] I ALL ER 821. While he was over 17 years, Anthony Bland, was injured in a dareaster that happened in the football ground Due to the injury he suffered, he never regained consciousness and turned to be persaretent vegetative state and has been. In hospital.
121996 (2) SCC 648 : AIR 1996 SC 946
code of medical ethics for medical practitioners. There under the act of euthanasia has been
classified as unethical except in cases where the life support system is used only to continue the
cardio-pulmonary actions of the body. In such cases, subject to the certification by the term of
doctors, life support system may be removed.

In GianKaur’s\textsuperscript{13} case section 309 of Indian Penal Code has been held to be constitutionally valid
but the time has come when it should be deleted by Parliament as it has become anachronistic. A
person attempts suicide in a depression, and hence he needs help, rather than punishment. The
Delhi High Court in \textit{State v. Sanjay Kumar Bhatia}\textsuperscript{14}, in dealing with a case under section 309 of
IPC observed that section 309 of I.P.C. has no justification to continue remain on the statute
book. The Bombay High Court in \textit{Maruti Shripati Dubal v. State of Maharashtra}\textsuperscript{15} examined the
constitutional validity of section 309 and held that the section is violative of Article 14 as well as
Article 21 of the Constitution. The Section was held to be discriminatory in nature and also
arbitrary and violated equality guaranteed by Article 14. Article 21 was interpreted to include the
right to die or to take away one’s life. Consequently it was held to be violative of Article 21.

\textbf{JUDICIAL APPROACH}

Recently the judgment of our Supreme Court in \textit{Aruna Ramchandra Shanbaug v. Union of India}\textsuperscript{16} opened the gateway for legalization of passive euthanasia. In this case a petition was filed
before the Supreme Court for seeking permission for euthanasia for one
Aruna Ramchandra Shanbaug as she is in a Persistent Vegetative State (P.V.S.) and virtually a
dead person and has no state of awareness and her brain is virtually dead. Supreme Court
established a committee for medical examination of the patient for ascertaining the issue. Lastly
the Court dismissed the petition filed on behalf Shanbaug and observed that passive euthanasia is
permissible under supervision of law in exceptional circumstances but active euthanasia is not

\textsuperscript{13} 1996 (2) SCC 648 : AIR 1996 SC 946

\textsuperscript{14} 1985 Cri.L.J 931 (Del.).

\textsuperscript{15} 1987 Cri.L.J 743 (Bom.)

\textsuperscript{16} 2011(3) SCALE 298 : MANU/SC/0176/2011
permitted under the law. The court also recommended to decriminalized attempt to suicide by erasing the punishment provided in Indian Penal Code.

The Court in this connection has laid down the guidelines which will continue to be the law until Parliament makes a law on this point.

A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in *Airedale’s case* (supra) as this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

In this case, question comes before the Court is under which provision of the law the Court can grant approval for withdrawing life support to an incompetent person. Then the Court held that it is the High Court under Article 226 of the Constitution which can grant approval for withdrawal of life support to such an incompetent person. The High Court under Article 226 of the Constitution is not only entitled to issue writs, but is also entitled to issue directions or orders.

According to the instant case, when such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist; one should be a psychiatrist, and the third a physician.

The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench.

After hearing the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.

The High Court should give its decision assigning specific reasons in accordance with the
principle of ‘best interest of the patient’ laid down by the House of Lords in *Airedale’s* case (supra).

**LAW COMMISSION OF INDIA AND ITS RECOMMENDATION**

The Law Commission in its 42\textsuperscript{nd} Report\textsuperscript{17} recommended the repeal of section 309 of India Penal Code. The Indian Penal Code (Amendment) Bill, 1978, as passed by the RajyaSabha, accordingly provided for omission of section 309. Unfortunately, before it could be passed by the LokSabha, the LokSabha was dissolved and the Bill lapsed. The Later the Law Commission in its 210\textsuperscript{th} Report\textsuperscript{18} submitted that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment. The Supreme Court in *GianKaur* focused on constitutionality of section 309. It did not go into the wisdom of retaining or continuing the same in the statute. The Commission has resolved to recommend to the Government to initiate steps for repeal of the anachronistic law contained in section 309, IPC, which would relieve the distressed of his suffering.

This 196\textsuperscript{th} Report\textsuperscript{19} of the Law Commission on ‘Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)’ is one of the most important subjects ever undertaken by the Law Commission of India for a comprehensive study. This Report is relating to the law applicable to terminally ill patients (including patients in persistent vegetative state) who desire to die a natural death without going through modern Life Support Measures like artificial ventilation and artificial supply offood.

**INDIAN MEDICAL COUNCIL ACT, 1956**

This Act is also containing a provision relating to the concept of euthanasia. Under section 20- A read with section 33(m) of the Act of 1956, the Medical Council of India has been empowered to instruct and provide for the rules regarding the standards of professional conduct and etiquette and a code of ethics for medical practitioners. „The Code of Medical Ethics” has been amended by the Medical Council recently for issuing new standards of professional behavior for the doctors of India. The amendment as above said has provided that the practice of euthanasia is against the medical ethics. The only exception to this statement is the

\textsuperscript{17} [http://lawcommissionofindia.nic.in/1-50/Report42.pdf](http://lawcommissionofindia.nic.in/1-50/Report42.pdf), last visited on 03.05.2020

\textsuperscript{18} [http://lawcommissionofindia.nic.in/reports/report210pdf](http://lawcommissionofindia.nic.in/reports/report210pdf), last visited on 03.05.2020

\textsuperscript{19} [http://lawcommissionofindia.nic.in/reports/rep196.pdf](http://lawcommissionofindia.nic.in/reports/rep196.pdf), last visited on 03.05.2020
withdrawal of artificial machines from a patient whose heart beat is being maintained with the help of said machines and for no other fruitful purpose. In this state of affairs a group of doctors will issue certificate with regard to that and then such withdrawal would be allowed and it will not be taken as an unethical act under the code of conduct for doctors practicing in India.  

CONCLUSION

A close perusal of the arguments against euthanasia that have been summarized above tends to indicate that all the talk about sanctity of life notwithstanding, the opposition to euthanasia breeds from the fear of misuse of the right if it is permitted.

It is feared that placing the discretion in the hands of the doctor would be placing too much power in his hands and he may misuse such power. This fear stems largely from the fact that the discretionary power is placed in the hands of non-judicial personnel (a doctor in this case). This is so because we do not shirk from placing the same kind of power in the hands of a judge (for example, when we give the judge the power to decide whether to award a death sentence or a sentence of imprisonment for life). But what is surprising is that the fear is of the very person (the doctor) in who’s hands we would otherwise not be afraid of placing our lives. A doctor with a scalpel in his hands is acceptable but not a doctor with a fatal injection. What is even more surprising is that ordinarily the law does not readily accept negligence on the part of a doctor. The Courts tread with great caution when examining the decision of a doctor and yet his decision in the cases of euthanasia is not considered reliable.

It is felt that a terminally ill patient who suffers from unbearable pain should be allowed to die. Indeed, spending valuable time, money, and facilities on a person who has neither the desire nor the hope of recovery is nothing but a waste of the same. At this juncture it would not be out of place to mention that the “liberty to die”, if not right in strict sense, may be read as part of the right to life guaranteed by Article 21 of the Constitution of India. Recently the judgment of our Supreme Court in ArunaRamchandraShanbaug v. Union of India 21 legalized the passive euthanasia and observed that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under the law.

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20 ibid
Conflict of Interest: The Authors declares we have no Conflict of Interest.

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