LEGALIZATION OF EUTHANASIA IN INDIA WITH SPECIFIC REFERENCE TO THE TERMINALLY ILL: PROBLEMS AND PERSPECTIVES

TANIA SEBASTIAN*

"Never to be born is best, ancient writers say; Never to have drawn the breath of life, never to have looked into the eye of day; The second best's a swift goodnight and quickly turn away."[1]

Concern about whether physicians should assist suicide or deliberately kill their patients is ancient. But the renewed interest in the moral arguments surrounding euthanasia can be attributed to the catapulting advances in life-sustaining medical technology. This paper seeks to look for answers to this dilemma from a humanitarian viewpoint by exploring the fundamentals of euthanasia and the debate revolving around legalization of euthanasia, especially in the context of the terminally ill. It examines the parameters for the criminalisation of such conduct and the subsequent move towards its decriminalisation is also examined. The persistent outlook of the judiciary till now is that legalizing euthanasia is the function of the legislature and can be done by enacting a suitable law. Such attempts by the legislature in the past have been aborted. Nonetheless, this paper discusses prospective legal guidelines to be taken into consideration to avoid probable misuse in the hands of the future

* Final Year LLM Student, Indian Law Institute, New Delhi. The author would like to acknowledge her brother, Fidel Sebastian for his multiple comments, reviews and constant support on this article. Without his enduring support this article could not have seen the light of the day.

1 Sophocles (495-406 B.C.) (As expressed in *Oedipus Coloneus*).

Published in Articles section of www.manupatra.com

miscreants who will administer euthanasia. Discarding the "slippery slope" argument which has been resorted to by the critics of euthanasia and has long overshadowed the legalization of euthanasia, the paper concludes with the suggestion that humane treatment be meted out to patients in excruciating pain and in cases where death itself is the final answer.

I. Introduction

Euthanasia or "*mercy-motivated killing*"[2] has remained a heavily contested topic given its proximity to "*homicide*" and the distinct possibility of "*misuse*". One may consider the practice of euthanasia to be as old as civilization itself, with its roots firmly placed in ancient Greek and Roman traditions.[3] The renewed interest in the debate is triggered by the catapulting advances in life-sustaining medical technology.[4]

Instances from India are reflective of the trend of refusal of Euthanasia practices; both by the president and by the judiciary. A farmer from Uttar Pradesh, Vijayshankar Pandey

---

2 Expression as used by Helen Silving, *Euthanasia: A Study in Comparative Criminal Law*, 103 U. Penn. L. Rev. 350, 351 (2003).

3 In Graeco-Roman antiquity, there was a generally recognized 'freedom to leave' that permitted the sick and the despondent to terminate their lives, sometimes with outside help. Also, in classical Greece, the term 'euthanasia' meant 'good death' and referred primarily to the mode of dying, an easy or painless death associated with drinking hemlock (a poisonous plant). For a detailed discussion, *see* Robert Orfali, Death With Dignity: The Case For Legalizing Physician-Assisted Dying And Euthanasia 5 (2011).

4 Deepak Gupta, Sushma Bhatnagar & Seema Mishra, *Euthanasia: Issues Implied Within*, 4 The Internet Journal of Pain, Symptom Control and Palliative Care (2006), *available at* http://www.ispub.com/journal/the_internet_journal_of_pain_symptom_control_and_palliative_care/volume_4_number_2_41/article/euthanasia_issues_implied_within.html (last visited Dec. 16, 2009).

Published in Articles section of www.manupatra.com

was forced to live albeit his debilitating condition after the President of India turned down his request to die. [5] Suffering from AIDS, he had to lose most of his farmland for his continual treatment. Also, in 2004, K. Venkatesh, a former national chess champion battling Duchenne's Muscular Dystrophy, a neurological disorder, had pleaded similarly to be allowed to die.[6] The Andhra Pradesh High Court rejected his plea on the ground that euthanasia or mercy killing was illegal in India.[7]

A. *The "Euthanasia Family" Distinguished*

The "*euthanasia family*", comprising of physician-assisted, active, passive, voluntary and involuntary euthanasia, has some inherent differences, which need to be comprehended before proceeding further.

Broadly speaking, the term "*euthanasia*"[8] refers to acts or omissions that result in the termination of the life of a terminally ill patient by a physician, usually through prescription of a drug (*hereinafter*, "Physician-Assisted Suicide"), or administration of a lethal injection (*hereinafter*, "Active Euthanasia") or through extubation (*hereinafter*, "Passive Euthanasia") (removal from ventilator). Involuntary euthanasia is a term used to describe the killing of a person

---

5 Valerie J. Vollmar, *Recent Developments in Physician-Assisted Death*, http://www.willamette.edu/wucl/pdf/pad/2008_06.pdf (last visited Mar. 26, 2010).

6 Anupam Dhar, *Live Well, Die Better?*, THE VIEWSPAPER (Dec. 3, 2007), http://theviewspaper.net/live_well_die_better/.

7 *See* DYING WITH DIGNITY NSW, *Right to Death in India* (Nov. 29, 2007), http://www.dwdnsw.org.au/ves/index.php/Articles/right-to-death-in-india. *See also HC no to AP Youth's Plea for Mercy Killing*, THE TRIBUNE, Dec. 9, 2004, http://www.tribuneindia.com/2004/20041210/nation.htm.

8 Also referred to as "*Speeding the Passing*" or "*Easing the Passing*" by some proponents.

Published in Articles section of www.manupatra.com

who has not explicitly requested aid in dying. This is most often administered to patients who are in permanent vegetative state (PVS) or in coma with low or no chances of recovering consciousness. Discussion about involuntary euthanasia is beyond the parameters of the present paper.

The present paper will deal with euthanasia in its strict sense, i.e. active euthanasia. Here the doctor commits an "*act of commission*" as against "*an act of omission*" (which is required in the case of passive euthanasia.) Active euthanasia is the central point of controversy, wherein the fear is based on the unfretted power given to doctors to terminate the lives of patients who are undergoing excruciating pain and suffering from an incurable disease.

Among the plethora of classifications present in the "*euthanasia family*", for the purposes of this article, euthanasia will be taken to mean the deliberate act of ending the life of a person for compassionate reasons. Further, the scope of this paper is limited to euthanasia in context of the terminally ill patients who can give consent to terminate their life, as against those patients in PVS who are unable to give consent.

B. "*Terminal Illness*": *An Attempt At Definition*

Defining the term "*terminal illness*" has proved to be a daunting task. Among the plethora of definitions, an "*illness*", almost unanimously, is said to be an abnormal condition of the body, or a disability.[9] The World Health Organisation defines health as "*a state of complete physical, mental and social well being and not merely the absence of disease and infirmity*".[10] In

---

[9] Jonathan Herring, Medical Law and Ethics 505 (2008) (citing the view of 'Union of the Physically Impaired People against Segregation'). *See also What is disability?,* Hill Country Disabled Group, http://hcdg.org/definition.htm (last visited Aug. 25, 2011).

[10] Preamble, World Health Organization, http://www.who.int/peh-emf/publications/Preamble1.pdf (last visited Apr. 21, 2011).

Published in Articles section of www.manupatra.com

light of the existing ambiguity in defining terminal illness coupled with rapid progress in life prolongation methods, the pertinent question is whether the right to life relates to forcefully staying alive or should it mean a meaningful "*natural*" life free from forceful medical intervention? For the purposes of this paper, however, terminally ill can be safely construed as an illness which not only has no cure, but also whose ultimate conclusion is death itself.[11]

C. *Historical Background*

In ancient Greece and Rome,[12] euthanasia was a common practice with many preferring voluntary death over endless agony. This widespread practice was challenged by the minority of physicians[13] who were part of the Hippocratic School and had pledged "*never [to] give a deadly drug to anybody if asked for, nor ... make a suggestion to this effect*".[14] The ascent of Christianity, with its view that man's life was a

---

11 Gupta, Bhatnagar & Mishra, *supra* note 4, at 7.

12 For instance, the Stoic founder, Zeno (c. 263 B.C.) committed suicide, by drinking poison in his old age prompted by the agonizing pain of a foot injury. Pliny the Younger, whose letters recorded the details of everyday life in first-century Rome, described a typical case: "[Titius Aristo] has been seriously ill for a long time ... He fights against pain, resists thirst, and endures the unbelievable heat of his fever without moving or throwing off his coverings. A few days ago, he sent for me and some of his intimate friends, and told us to ask the doctors what the outcome of his illness would be, so that if it was to be fatal, he could deliberately put an end to his life." *See also* RICHARD SCHULZ, THE ENCYCLOPEDIA OF AGING 392 (2006).

13 Ezekiel J. Emanuel, *The History of Euthanasia Debates in the United States and Britain*, 121 ANNALS OF INTERNAL MEDICINE 793, 800 (1994) (The author uses the term 'minority' to mean the number of physicians in support of the Hippocratic School, who in turn denounced euthanasia practices).

14 *See* Peter Tyson, *Hippocratic Oath: Modern version*, *The Hippocrates Oath Today* (Mar. 27, 2001), http://www.pbs.org/wgbh/nova/doctors/oath_modern.html.

Published in Articles section of www.manupatra.com

trust from God, reinforced the Hippocratic position on euthanasia and led to a culmination of consistent opposition to euthanasia among physicians.[15]

Euthanasia-supporters gained advantage in the 19th century with the egress of the use of anaesthesia.[16] In 1870 came Samuel Williams'[17] proposal to use anaesthetics and morphine to intentionally put an end to a patient's life. Subsequently, in the 1890s, the euthanasia debate exploded to reach beyond the medical profession and to include lawyers and social scientists.[18] The most notable event occurred in 1906 with the introduction of the Ohio Bill[19] in the United States to legalize euthanasia, which was ultimately defeated. Two Parliamentary Bills were introduced in Britain in 1936[20] and

---

15 Emanuel, *supra* note 13, at 795.

16 Shai J. Lavi, The Modern Art Of Dying: A History Of Euthanasia In The US 31(2007).

17 Samuel Williams, a nonphysician, began to advocate the use of drugs like morphine not only to alleviate terminal pain, but to intentionally end a patient's life. During the late 1800s, Williams' euthanasia proposal received serious attention in the medical journals and at scientific meetings; *see also* Gage Sandlin, *Euthanasia: Is It Murder?*, http://www.helium.com/items/156337-euthanasia-is-it-murder (last visited Apr. 21, 2011).

18 Ian Dowbiggn, A Merciful End: The Euthanasia Movement In Modern America 21(2003).

19 Lisa Yount, Physician Assisted Suicide And Euthanasia 9 (2000), *available at* http://assets.cambridge.org/97805216/41234/sample/9780521641234ws.pdf (The Ohio Bill was titled as "An Act Concerning Administration of Drugs etc. to Mortally Injured and Diseased Persons". This bill to legalize euthanasia was defeated in the Ohio legislature by a vote of 78 to 22).

20 *"I believe that posterity will look back on this refusal you are going to make ....as people now look on the burning of witches".* Lord Chorley words, after the English Bill, moved in 1936, relating to legalization of euthanasia was refused a second reading and subsequently, the motion lost. *See generally* Yale Kamisar, *Some Non-Religious Views Against Proposed "Mercy Killing" Legislation*, 42 Minnesota L. Rev. 969, 1016 (1958).

Published in Articles section of www.manupatra.com

subsequently for a second time in1969.[21] Both the Bills did not find favour before the House of the Lords, finding extensive criticism for providing inadequate safeguards to the patients, and were ultimately defeated.

The euthanasia issue has since been a recurring decimal with periodic reappearances. With the increasing acceptance of patient autonomy, the euthanasia debate has once again become a matter of public concern. Sophisticated medical treatments which prolong life, while leaving a patient suffering without hope of recovery,[22] too have forced reconsideration of the whole issue.

II. Antecedents Of Euthanasia Vis-à-Vis The Process Of Criminalization Of Human Conduct

Crime, as we know today, stands at odds with how it existed in the pre-codification era. Post-codification, certain conducts and matters of customary right were criminalized. The severity of punishments was such that even minor offences were made punishable by death. For example, the "*Black Act*" of 1732 privatized property relations, where formerly everyone in the village possessed the right to hunt, fish and gather wood. What was a villager's customary right in 1700 became "*poaching*" punishable by death in 1723.[23] The core of the discussion here, then, is that it is the vested interest of the ruling class which often influences the process

---

[21] W. B. Fye, *Active Euthanasia: An Historical Survey of its Conceptual Origins and Introduction into Medical Thought*, 52 Bull. Hist. Med. 492 (1978); *See also* http://hansard.millbanksystems.com/lords/1969/mar/25/voluntary-euthanasia-bill-hl (last visited Mar. 19, 2011) (for the minutes of discussion of the 1969 Bill).

[22] Diana Brahams Barrister, *A Visit to the USA: Part 2*, 138 New L. J. 383, 385(1988).

[23] William J. Chambliss, *The Criminalization of Conduct*, *in* Law and Deviance 47 (H. Laurence Ross ed., 1981).

Published in Articles section of www.manupatra.com

of making an act "*criminal*" in nature. This may be a sweeping generalization, for some, but it certainly offers an important insight into the process of criminalization.[24]

Emile Durkheim, the French sociologist observes that a great deal of social change has been the direct result of people going against settled norms which often reflect the interests of those in power. He further elucidates his point by referring to the Greek philosopher Socrates and his conviction as a "*criminal*". He says:

> "*According to Athenian law, Socrates was a criminal, and his condemnation was no more than just, however, his crime, 'the independence of thought', rendered a service not just to his country but also to humanity....it served to prepare a new morality and faith which the Athenians needed, since the traditions they had lived until then were no longer in harmony with the current conditions of life*".[25]

Therefore, the moral stand taken by the influential sections (church etc.) or, the existing laws, cannot be taken to be infallible. Views to the contrary must be eagerly pursued to determine whether or not they can improve the quality of human life. It is important for socio-legal evolution that these be given an even higher amount of latitude if the subject debated has the potential to alleviate human misery in whichever way possible.

---

[24] *See* Amit Bindal, *Non-Culpability of Attempt to Commit Suicide : A Critical Analysis of the State's Policy of Wounding the Wounded*, 3 BANGALORE L. J. 184, 185 (2010).

[25] CHRIS HALE, KEITH HAYWARD, AZRINI WAHIDIN & EMMA WINCUP, CRIMINOLOGY 302 (2005) (citing EMILE DURKHEIM, THE DIVISION OF LABOUR IN SOCIETY (1893)).

Published in Articles section of www.manupatra.com

Mead asserts:

> "*(t)he majesty of the law is the dominance of the group over the individual, and the paraphernalia of the criminal law serves not only to exile the rebellious individual from the group, but also to awaken in law abiding members of society the inhibitions which make rebellion possible… Without the criminal, the cohesiveness of the society would disappear*".[26]

Thus Mead seems to suggest that society cannot exist without the "*ritualistic*" labeling of criminals.

Religion too determines what activities receive the sanction of law and which do not. In India, there are religious scriptures that speak of comfort in the form of death when faced with incurable diseases. Manu states that man may undertake "*great departure*" on a journey which ends in death, *when he is incurably diseased* or meets with a great misfortune.[27] The codified law adopts the sanctity of life in an inflexible manner, ignoring human misery originating due to debilitating illness.[28]

However, as Christianity developed and grew powerful in the west, it brought with it and, subsequently into the colonies of the western powers, the notion of life as God's gift to mankind.[29] Any attempt to shorten life was perceived

---

[26] Stephen J. Pfohl, *Labeling Criminals*, *in* LAW AND DEVIANCE 66 (H. Laurence Ross ed.,1981).

[27] LAWS OF MANU (Georg Buhler trans.), *in* 25 SACRED BOOKS OF THE EAST 204 (photo. reprint 1967) (F. Max Muller ed., 1886).

[28] Dr. Subhash Chandra Singh, *Euthanasia: Contemporary Debates*, (2000) 2 S.C.C. 25.

[29] *'Before I formed you in the womb, I knew you, before you were born, I set you apart'* (Jeremiah 1:5). The Christian version of life is thus based, to include life even before its actual inception. The Jewish religion, likewise, attributed breath (nishmat) to be the first sign to give full status of

Published in Articles section of www.manupatra.com

as abhorrent and as the work of the devil himself. The modern push for euthanasia is seen as a push against the potent Christian tradition, which forcefully speaks out against the deliberate act of ending a human life.[30]

Any attempt at legalisation of euthanasia, hence, will have to be an attempt to de-criminalise[31] euthanasia. Three ingredients constitute the criteria for decriminalisation.[32]

A. *The Criminal: Actor's Role*[33]

The primary intent of criminal law is to punish the criminal by way of "*employment of sanctions in order to deter further acts of the same or similar nature*".[34] Engisch highlights the neglected idea of the actor's role in euthanasia, by asserting that the "*mental attitude of the actor*" is very conveniently "*neglected*" and that the "*borderline between guilt and immunity*

---

humanness to a child at birth (in the religious book 'Talmud') as, till that stage it is just human semen and no attributes of life are incorporated. The idea further evolved to contain that day in which the soul entered the fetus. Regarding cases marked not by the *indirect* or *passive* allowing of natural dying processes to take their course but the *direct* or *active* ending of life, the church has, at least officially, remained unified: Christians have usually insisted that any intentional, active termination of life rejects the truth affirmed in the Catholic document Evangelium Vitae (1995), that "*God alone has sovereignty over life and death.*" Such acts of killing, whether "merciful" or not, unacceptably dispose of God's gift of life—over which humans are not masters but only stewards. *See* Chris Armstrong, *Not a Mercy but a Sin: Christian Tradition vs. Euthanasia* (Jan. 15, 2010), http://gratefultothedead.wordpress.com/2010/01/15/not-a-mercy-but-a-sin-christian-tradition-vs-euthanasia/.

[30] *See Id.* (for a compact discussion).

[31] In its ordinary connotation, includes to mean *'the removal, from the criminal justice system, of a particular offence'* Reasons underlying a decision taken to decriminalize particular conduct may vary. But the end is identical, namely, to ensure that the law does not punish that conduct.

[32] P. M. Bakshi, De-Criminalisation: A Study 29 (1994).

[33] Silving, *supra* note 2, at 363.

[34] Bakshi, *supra* note 32, at 30.

Published in Articles section of www.manupatra.com

is made to depend on superficial factors".[35] The fact remains that there is a profound moral difference between euthanasia administered at the patient's own request and between those actions which rely solely on the actor's "*own head*".[36]

The mental attitude of the actor, his dangerousness or harmlessness may be inferred from his motive. "*An actor is dangerous where, in the light of the circumstances, it may be assumed that he will act similarly in other situations.*"[37] In short, in active euthanasia, the medical practitioner acts on the request of the patient and no question arises of the supposed threat of the medical practitioner to other members of the society.

In cases where murder is characterized by *manners of performance*, which the statute regards as particularly reprehensible and therefore classifies as characteristic of murder, consideration of the personality of the actor is greatly reduced. In general, such consideration is limited to the question of whether the actor knew and desired the external characteristics of the act. On the other hand, in evaluating the characteristics of murder based on *motive*, consideration of the personality of the actor is in accordance with the decisiveness of motive—of utmost importance. "*Under rare circumstances, certain motives which ethically deserve consideration may remove the treacherous character from a killing performed in exploitation of the confidence of the victim and of his inability to defend himself.*"[38]

Where the manner of performance is the decisive factor, judicial consideration of the total personality of the actor is

---

[35] Silving, *supra* note 2, at 357 (citing ENGISCH, EUTHANASIE UND VERNICHTUNG LEBENSUNWERTEN LEBENS IN STRAFRECHTLICHER BELEUCHTUNG 11-12 (1948)).

[36] *Id.*, at 358.

[37] *Id.* at 355.

[38] *Id.* at 354.

Published in Articles section of www.manupatra.com

limited, but nevertheless exceptional motive is not entirely disregarded. Clearly, mercy does not fall within any of the types of motive which characterize the actor as a murderer. Nor is a mercy killer likely to perform the act in any of the above stated ways which are characteristic of murder.[39] The mercy killing of a suffering, dying patient under the pretext of applying a pain-relieving measure was judicially said not to be "*treacherous*" within the meaning of the law, the true mark of murder is the depraved mind (base attitude or mentality) or the dangerousness of the actor.[40]

The medical practitioner's role in administering informed euthanasia (to mean "*informed patient*") is thus to be kept at a distance from the motive of a murderer. A doctor's decision to administer euthanasia stems not from an ulterior/criminal motive. This is an important consideration for separating euthanasia from the "*crime*" sphere.

B. *The Crime*

Differences arise on the question of what constitutes crime. Basically, a certain type of conduct is regarded as a crime, because the conduct is supposed to cause harm to others.[41]

---

[39] *See* Philip Small, *Euthanasia-The Individual's Right To Freedom Of Choice*, 5 Suffolk U. L. Rev. 191, 201 (1970-71) (The Swiss Penal Code first includes a general provision that the judge is to consider motive when meting out punishment, and then enumerates among the mitigating circumstances the so-called "*honourable motives.*" This description indicates a sympathetic attitude of the Code toward these motives. Germann, a noted commentator of the Code, suggests that there might be cases in which motive, such as compassion, is of such decisive importance as to warrant total exculpation. As a rule, however, honourable motives have an extenuating effect of pardoning power only in cases which deserve exceptional treatment recourse).

[40] Silving, *supra* note 2, at 359.

[41] John S. Mill propounds the idea of "Harm Condition", in which he talks about "the only rationale for which power can be rightly exercised over any member of a civilized society, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

Published in Articles section of www.manupatra.com

Moreover it has been argued that irrespective of harm caused to others by one's actions, there exists the element of "*public morality*", which holds the fabric of the society together.[42] This means that individual autonomy (as in the case of euthanasia) should be coupled with public morality and the responsibility of an individual to the society. When criminal law chooses a particular conduct for punishment and distinguishes it from another conduct, it must take into account the magnitude of the harm likely to be caused.[43]

Thus, countries which have taken steps to legalize euthanasia have, in the process, excluded the act of euthanasia from the sphere of "*crime*", advocating individual autonomy. This has been coupled with cogent steps specified to ascertain that the "*doctor has informed the patient of the nature of illness, its likely course and the medical procedures available*".[44]

Subsequently, "*upon having the pertinent information, the patient could indicate that she wishes to end her life*".[45] The "*doctor has to be satisfied that the decision has been made freely, voluntarily and after due consideration*".[46] This, in turn forms

---

He cannot rightfully be compelled to do…because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise, or even right", *see* PATRICK DEVLIN, THE ENFORCEMENT OF MORALS 103 (1965) (quoting JOHN STUART MILL, ON LIBERTY 72 (1869)). Professor H. L. A. Hart too is an exponent of this viewpoint. He went on to state that as far the law is concerned, it should restrict itself to the offensiveness to others of his public conduct, not with the immorality of his private conduct; *See also* H. L. A. HART, LAW, LIBERTY AND MORALITY 41 (1963).

[42] Lord Devlin was an active proponent of this side of the argument, famously brought forth in the 'Hart-Devlin' debate on Law and Morality; *See also* IAN MCLEOD, LEGAL THEORY 181 (2005).

[43] BAKSHI, *supra* note 32, at 29.

[44] Rights of the Terminally Ill Act, 1995 (Northern Territory, Australia).

[45] *Id.*, § 7 (1) (f).

[46] *Id.*, § 7 (1) (h).

Published in Articles section of www.manupatra.com

the fabric of the argument which advocates the removal of euthanasia from the "*crime*" sphere.

C. *The Punishment*[47]

The third fundamental aspect is about the desirability of punishment. The move towards de-criminalisation probably began with the feeling that for "*certain types of conduct labelled as criminal in a particular legal system, the use of criminal sanctions is not really appropriate*".[48] This stems from a variety of considerations, including the "*eternal debate as to the proper scope and limitations of criminal law in enforcing morality*". Also, particular types of conduct against which criminal sanctions have been applied, may, in due course of time, come to be regarded as not appropriate for the use of such sanctions for example; conduct that is worth moral condemnation or disapprobation may not necessarily be made the subject matter of criminal sanction.

III. The Insistent Euthanasia Debate before the Courts

In answering the question concerning the expanding paradigms of "*right to life*", especially as conjoined to "*right*

---

[47] There are other factors which are to be considered, baring the essential three mentioned in the main body. These include:

a. The mental element
b. Magnitude of harm likely to be caused
c. Nature of harm likely to be caused
d. Whether conduct is covered by sanctions separately laid down in law
e. Need for economy in the use of criminal sanction
f. Effectiveness of sanction in regard to the conduct in question
g. Likelihood of greater harm resulting from the employment of criminal sanction.

This compilation is derived from Bakshi, *supra* note 32, at 31.

[48] Bakshi, *supra* note 32, at 3.

Published in Articles section of www.manupatra.com

to die", the apex court has held that the term "*life*" under Article 21 "*does not connote mere animal existence or continued drudgery through life*".[49] It has been interpreted to include within its ambit "*some finer graces of human civilization, which make(s) life worth living*", which, in the expanded form would mean the "*tradition, culture and heritage*" of the concerned person.[50] Further, physical and mental health has been treated as an integral part of right to life, because without good health the civil and political rights assured by our Constitution cannot be enjoyed.[51]

In *State of Maharashtra* v. *Maruti Sripati Dubal*[52] (*hereinafter*, "Maruti") , the Bombay High Court observed that "*right to life*" as enshrined in Article 21 includes a "*right to die*".[53] It was held that every individual should have the freedom to dispose of his life as and when he desires. The challenge in this case was based on the unconstitutionality of Section 309 of The Indian Penal Code (*hereinafter*, "I.P.C.") wherein it was held that "*..the provisions of section 309 being arbitrary are ultra vires the Constitution... being violative of Articles 14 and 21 [of the Constitution] thereof and must be struck down*".[54]

---

[49] Consumer Education and Research Centre v. Union of India, ¶ 22, (1995) 3 S.C.C. 42.

[50] Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors., (1983) 1 S.C.C. 124.

[51] C.E.S.C. Ltd. v. Subhash Chandra, ¶ 4, (1992) 1 S.C.C. 441.

[52] Maruti Shripati Dubal v. State of Maharashtra, (1986) 88 Bom.L.R. 589.

[53] *Id.,* ¶ 12 (The issue before the court was with regard to section 309 of the I.P.C. which makes attempted suicide an offence of criminal nature and hence prescribes punishment for the same. The court held the section as unconstitutional. In this case, the judges observed that the desire to die is not unnatural, but merely abnormal and uncommon. They also listed several circumstances in which people may wish to end their lives, which included disease, cruel or unbearable condition of life, a sense of shame or disenchantment with life.).

[54] *Id.,* ¶ 21.

Published in Articles section of www.manupatra.com

Closely following this case was that of *Chenna Jagadeeswar* v. *State of Andhra Pradesh*[55], wherein the Andhra Pradesh High Court held that right to die is not a fundamental right within the meaning of Article 21 and hence section 309 of the I.P.C. is not unconstitutional.

The opposing views of the different high courts were placed to rest by a division bench[56] of the Supreme Court in *P. Rathinam* v. *Union of India*[57] (*hereinafter*, "P. Rathinam"). The apex court, agreeing with the view expressed in *Maruti*, upheld the contention that section 309 of I.P.C. violates Article 21, and is hence void. Further it was held that this section should be effaced from the face of the statute books not only to keep abreast with the global developments on the treatment to be meted out to those attempting suicide, but also to humanise our penal laws. Justice B.L. Hansaria further observed that "*The right to life which Article 21 speaks of can be said to bring in its trail right not to live a forced life*".[58]

And though:

> "*The negative aspect may not be inferable on the analogy of the rights conferred by different clauses of Article 19. One may refuse to live, if his life is not according to the person concerned worth living of, if the richness and fullness of life were*

---

[55] Chenna Jagadeeswar v. State of Andhra Pradesh, (1988) Cri.L.J. 549.

[56] Article 145(3) of the Constitution of India explicitly enumerates that 'the minimum number of judges who are to sit for the purpose of deciding any substantial question of law as to the interpretation of this Constitution SHALL be five'. The case at hand should have been before a constitutional bench and not the division bench as the pertinent issue involved therein was a 'substantial question of law' relating to the possible inclusion of 'right to die' via interpretation of Article 21 of The Constitution. There was thus, a visible defection from the Constitutional provision.

[57] P. Rathinam v. Union of India, (1994) 3 S.C.C. 394.

[58] *Id.* at 1616.

Published in Articles section of www.manupatra.com

> *not to demand living further. One may rightly think that having achieved all worldly pleasure or happiness, he has something to achieve beyond this life. This desire for communication with God may very rightly led even a healthy mind to think that he would forgo his right to life and would rather choose not to live. In any case, a person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking*".[59]

However, in *Gian Kaur* v. *State of Punjab*[60] (*hereinafter*, "*Gian Kaur*"), a constitutional bench overruled *P. Rathinam*, and, univocally held, that "*right to life*" does not include within its ambit the "*right to die*". Though this case was concerned with the validity of sections 306 and 309 of I.P.C., the Supreme Court had an occasion to discuss the issues related to euthanasia and stopping of life sustaining treatment. The court while distinguishing between euthanasia and withdrawal of life support[61] observed that the principle of sanctity of life, which is the concern of the state, is "*not an absolute one*".[62] The withdrawal or withholding of life support was held to be a part of the right to life with dignity, and was hence, held to be permissible, when it related to death occasioned, when the natural termination of life is certain and imminent and the process of natural death has commenced. However, regarding euthanasia, the court was of the view that bringing about a change through legislation is the function of the legislature. Such a law may provide therein adequate safeguards to prevent any possible abuse.[63] Justice J.S. Verma, nevertheless observed that "*right to a dignified life upto the point of death*

---

59 *Id.* at 1615.

60 Gian Kaur v. State of Punjab, (1996) 2 S.C.C. 648.

61 *Id.* at 665.

62 *Id., ¶ 40.*

63 *Id.*

Published in Articles section of www.manupatra.com

including a dignified procedure of death may include the right of a dying man to also die with dignity when his life is ebbing out".[64] These judgments touched extensively upon decisions made in other countries, all of which dealt with withdrawal or withholding of the ongoing treatment.[65]

It was only in March 2011 that the Supreme Court, in *Aruna Ramchandra Shanbaug* v. *Union of India*[66] (*hereinafter*, "*Aruna*"), allowed for the first time, passive euthanasia under certain circumstances.[67] The decision draws a distinction between active and passive euthanasia[68] and recommends that the latter be permitted in certain circumstances.[69] The Court

---

64 *Id.*

65 *See* Airedale NHS Trust v. Bland, (1993) 1 All ER 821; *See also,* for unanimity on the legal principle, the American Supreme Court in Cruzan v. Director MDH, (1990) 497 US 261, the Irish Supreme Court in Re A Ward, [1995] 2 ILRM 401, the Canadian Supreme Court in Ciarlariello v. Schater, [1993] 2 SCR 119 and in Rodriguez v. British Columbia (Attorney General), [1993] 3 SCR 519, the Australian Courts in Q v Guardianship and Administration Board & pilgrim (1998) VSCA 45, Northridge v. Central Sydeny Area Health Service, [2000] NSWSC 1241, Isaac Messiha v. South East Health, [2004] NSWSC 1061 and Auckland Area Health Board v. Attorney General, 1993(1) NLLR 235, to name a few.

66 Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 S.C.C. 454.

67 *Id.,* ¶¶ 126, 127 (These *'specific circumstances'* include: (i)A decision taken to discontinue life support has to be either made by the parents or the spouse or other close relatives or next friend of the incompetent patient (ii) due weight has to be given to the opinion of the attending doctors, and that(iii)the approval of the High Court is mandatory in this connection.).

68 *See Id.,* ¶¶ 41-49 (for the differentiation). *See also Id.,* ¶53 (The court explicitly states that they are not dealing with the aspect of active euthanasia but that of (non-voluntary) passive euthanasia).

69 *See supra* Part I.A (for the academic definition). The courts have not forsaken the distinction made with regard to active and passive euthanasia. *Id.*, ¶ 38 (The judgment states "Active euthanasia entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony. Passive euthanasia entails withholding of medical treatment for continuance of

Published in Articles section of www.manupatra.com

ruled that "*The general legal position all over the world seems to be that while active euthanasia is illegal unless there is legislation permitting it, passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained*",[70] stating therein that pending legislation, passive euthanasia is permissible.

The court has reiterated the view that active euthanasia is frowned upon,[71] especially in the absence of any legislative backing, but has laid down the procedure for the exercise of passive euthanasia, pending legislation.[72]

---

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.") This is in conformity with the definition advanced in Part I. Also, the judgment follows the LAW COMMISSION OF INDIA, ONE HUNDRETH AND NINETY SIXTH REPORT ON MEDICAL TREATMENT TO MEDICALLY ILL PATIENTS (PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS) (2006) that speaks out in favor of passive euthanasia, *see infra* Part IV.B.

[70] *Id.* ¶ 39.

[71] *Id.,* (The court states that since the "*general legal position all over the world seems to be that while active euthanasia is illegal unless there is legislation permitting it, passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained*"*.* The court stated that pending legislation, passive euthanasia is made permissible, subject to certain restrictions).

[72] *Id.,* ¶ 138 (The Apex Court lays down procedure to be adopted by the concerned High Court once an application for passive euthanasia under Article 226 is filed. The Chief Justice of the High Court should, subsequent to the application, constitute a Bench of at least two Judges who should decide to grant permission or not. The Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench. Preferably, one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician from a panel of doctors prepared by the High Court in consultation with the State Government/Union Territory. This committee of three doctors should examine the patient and consult the record of the patient as well as take the views of the hospital staff and submit its report. The Bench shall also issue notice to the State and close relatives, and in their absence to the patient's next friend, and supply a copy of the report of the doctor's committee to them as soon as it is available, only after which, the Bench should arrive at a decision).

Published in Articles section of www.manupatra.com

However, in the case before hand, of 60-year-old Aruna Shanbaug, who has spent 37 years in a hospital bed after an unfortunate assault on her (who is neither in coma nor brain-dead,[73] but in PVS state[74]) was not allowed to die. In the opinion of the court, the fundamental ground for refusing to entertain the prayer in the petition for termination of life[75] of the petitioner was based on the fact that as the parents of Aruna Shanbaug were already dead and other close relatives were not interested in her, it is the KEM hospital who have the best *locus standi* in making decisions for her and not Ms. Pinky Virani who has filed the petition on behalf of Aruna.[76] KEM hospital had expressly voiced their view that Aruna should be allowed to live.[77]

IV. LEGISLATION

The Northern territory of Australia was the first to legalize euthanasia in 1996[78] and the first to repeal the Act in 1997, to constitute the Euthanasia Laws Act in 1997.[79] Netherlands in 2001[80] and Belgium in 2002[81] are the only

[73] *Id.,* ¶ 121.

[74] *See also* discussion *supra* Part I.A.

[75] *Supra* note 66, ¶ 3 (The prayer of the petitioner is that the respondents be directed to stop feeding Aruna, and let her die peacefully).

[76] *Id.*, ¶ 126.

[77] *Id.*, ¶¶ 10,11 & 12 (The court quotes from the affidavit placed before them by the Dean, KEM hospital. The court has also considered statements issued by those connected with looking after Aruna in the hospital. They have all have distanced themselves from termination of Aruna's life and have, on the contrary stated their willingness to care for her).

[78] *Supra* note 44.

[79] In the wake of a subsequent challenge by the Federal Parliament of Australia to the existing law of 1996, it was repealed, to constitute the Euthanasia Laws Act, 1997.

[80] Termination of Life on Request and Assisted Suicide (Review and Procedures) Act, 2001. It allows a doctor to end the life of a patient suffering unbearable pain from an incurable condition, if the patient so requests.

[81] The Belgian Act on Euthanasia, 2002.

Published in Articles section of www.manupatra.com

countries to have legalized the practice of euthanasia. A few other legislations around the world hesitantly recognise the practice with qualifications. Oregon, USA has legalized only Physician Assisted Suicide in 1997.[82] In Switzerland,[83] suicide is not a crime and assisting suicide is a crime if and only if the motive is selfish. It condones assisting suicide for altruistic reasons. In Israel, passive euthanasia as well as physician-assisted euthanasia has been legalized since 2006.[84] However the staunch opposition to the practice continues in certain jurisdictions. Britain continues its stand against decriminalization of euthanasia. A Bill passed as early as 1936 was refused a second reading in the house.[85] Canada too has resisted attempts to legalize euthanasia.[86]

A. *Legislative Status Of Euthanasia In India*

There is no mention of the concept of euthanasia in the Indian Penal Code. In the eyes of law, euthanasia is either:

1. Murder[87] - If committed without consent or committed with consent in case of a minor or insane person;
2. Culpable homicide[88] - in case of consenting adults of sound mind.
3. Abetment to Suicide[89] - if any person commits suicide, whoever abets the commission of suicide. As the contours of the present paper are restricted to active euthanasia and hence exclude secondary mode of commission of a crime, abetment is not considered in the paper.

---

82 Death with Dignity Act, 1997.

83 Swiss Pen. Code, Art. 115.

84 The Israeli Terminally Ill Patients Law, 2005.

85 *See generally supra* note 20.

86 *Canada Euthanasia Bill C-384, 2009-2010.*

87 *Pen. Code, § 300 (1860).*

88 *Id., §299.*

89 *Id.*, § 306.

Published in Articles section of www.manupatra.com

Consent[90] cannot be pleaded as a defence in cases where consent is acquired to cause death or grievous hurt. The "*murderer*" is either a principle offender or an abettor, depending upon the facts and circumstances of each case. However, consent *may* have the effect of reducing the gravity of the offence and existence of consent may mitigate the punishment in certain cases. Hence the defence of consent or consent coupled with "*good faith*" and/or "*benefit*" is irrelevant once euthanasia is administered.[91]

The constitutional provisions too do not expressly mention the "*right to die*" with medical assistance, though the interpretation with regard to Article 21 can vary, as can be seen in the transition from *P. Rathinam* to *Gian Kaur*.

B. *Inroads Made*

A bill proposing legalisation of euthanasia was introduced in the Lok Sabha as "*The Euthanasia (Permission and Regulation) Bill, 2007*" (*hereinafter*, "The Bill").[92] The statement of objects and reasons states that in cases of persons with "*no hope of recovery*", active euthanasia gives a way out and that it is a better alternative "*than committing suicide, which is an offence under the present penal provisions*".

---

[90] *Id.,* § 87.

[91] *Id.,* § 88.

[92] The Euthanasia (Permission and Regulation) Bill, 2007, No. 55. If passed, the bill would provide for a compassionate, humane and painless termination of the life of an individual who are permanently invalid or bedridden because of an incurable disease. Chandrappan (who moved the bill in the house) says, "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." Dr. B.K. Rao (Chairman, Board of Management, Sir Ganga Ram Hospital, New Delhi) agrees saying "If it is established that the treatment is proving to be futile, euthanasia is a practical option for lessening the misery of patients." *See, generally*, DYING WITH DIGNITY, *supra* note 7.

Published in Articles section of www.manupatra.com

The bill goes on to state that "*before making euthanasia legal, sufficient checks and balances at the institutional level are necessary to ensure that the system is not misused by unscrupulous elements*".[93] Additionally, it has to be ensured that the "*life of the patient is taken only after due process has been adhered to and in a humane and compassionate manner in the presence of family members and elected representatives*".[94]

The bill states that:

> "*a person who is completely invalid and/or bedridden or who cannot carry out his daily chores without regular assistance, can either himself or through persons authorised by him have the option to file an application for euthanasia (an instance of active euthanasia) with the civil surgeon or the Chief Medical Officer (CMO) of the district government hospital*".[95]

The CMO is to thereafter place the application before a medical board which will then examine the actual condition of the patient. A certificate recommending the patient's case for euthanasia will be issued in the event the board is convinced of the non-curable nature of the disease. [96] The major objection to the bill was that such authority legitimately provided to the act performed by a physician would make murder of the patient all the more convenient for the physician. This was rebutted by the argument that a skilled physician always knows the ways of killing the patient

---

93 *Supra* note 92, Statement of Objects and Reasons.

94 *Id.*

95 *Id.,* § 3.

96 K.P.M. Basheer, *Legalize Euthanasia, Says Panel,* THE HINDU, Jan. 8, 2009, http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article370554.ece.

Published in Articles section of www.manupatra.com

without leaving a trace.[97] The bill has subsequently lapsed.[98]

However, the 196th Law Commission Report dealing with Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), 2006, took a contrary view. It opined that euthanasia and assisted suicide should continue to remain illegal.[99] The report, while focusing on the withdrawal or withholding of medical treatment by doctors, reasserted the acceptance of the practice of "*passive euthanasia*".[100] It supported "*passive euthanasia*" of terminally ill patients, provided sufficient safeguards as mentioned therein were adhered to, to prevent its misuse. This report maintains the established disdain for *active* euthanasia, which is "*comparatively quick and a less painful method of relieving a terminally ill patient from his ongoing pain*".[101] This report of the Law Commission has not been accepted by the Government of India[102].

The 2007 bill took, and rightly so, a proactive attitude towards active euthanasia, rendering solace to terminally ill patients. This is in sync with the stand of and the arguments advanced in this paper. The Law Commission recommendation, however, takes a backward step by advocating against active euthanasia while supporting passive euthanasia.

---

97 P.M. Bakshi, *Mercy Killing or Euthanasia*, 21 Indian J. Crime and Criminalistics 1, 5 (2000).

98 *See* Status of the Bill at http://164.100.47.4/newlsbios_search/Default.aspx.

99 Law Commission of India, One Hundredth and Ninety Sixth Report on Medical Treatment to Medically Ill Patients (Protection of Patients and Medical Practitioners) (2006), at 15.

100 *Id.* at 301.

101 Dr. Sarabjeet Taneja , *Should Euthanasia be Legalised?*, 42 J. Const. Parl. Studies 20, 57 (2008).

102 *Supra* note 66, ¶ 22.

Published in Articles section of www.manupatra.com

V. The Need For A Legal Framework For Prevention Of Probable Misuse

Surveys conducted in Europe indicate that "*many thousands of people are routinely assisted to die by doctors... every year*".[103] There is hence a need to formulate a legal framework for matters concerned with euthanasia. The need for regulation of the practice becomes amply clear on a perusal of the following reasons:

Firstly, as individual freedom of a patient ingrained in euthanasia involves some risk of abuse,[104] it is desirable to limit such abuse to the minimum by providing legal safe-guards. However, a mere risk of abuse is no reason to deny an individual of the right itself.[105] The fear (regarding legalisation) stems from the "*discretionary power*"[106] which would be placed in the hands of doctors to decide whether or not to administer euthanasia, once the patient consents to it. The irony being that doctors, in whose hands we commit our lives are not considered trustworthy enough to deal with the patient's death, as opposed to judges, who are given the power to execute death sentences.

Secondly, legalization of euthanasia warranted by statute provides for greater assurance of uniformity in the adjudication of euthanasia cases. [107] The process of legalisation will also pave the way for greater reliance of expert opinion in euthanasia

---

[103] P.V.L.N, *Is Euthanasia Ethical,* The Hindu, Nov. 25, 2003, http://www.thehindu.com/thehindu/op/2003/11/25/stories/2003112500341600.htm.

[104] Shreyans Kasliwal, *Should Euthanasia be legalized in India?,* 108 Cri. L. J. 209, 212 (2002).

[105] *Id.*

[106] *Id.* at 213.

[107] Silving, *supra* note 2, at 373.

Published in Articles section of www.manupatra.com

cases. Expert opinions have been regarded as sacrosanct by the judiciary, especially in matters involving scientific uncertainty (eg. Environmental matters).[108]

In model code the following pre-conditions for performing euthanasia, would be desirable: [109]

(i) not less than 21 years; (*a major)*
(ii) sound mind;
(iii) suffering from an illness involving severe pain and of an incurable and fatal character;
(iv) there must be a written application , signed by the patient in the presence of two witnesses;
(v) there must be an applications supported by two medical certificates , one from the patient's own doctor and another from a specialist;
(vi) the application has to be made to a referee approved by the Minister of Health , and the referee has to go personally to see the sufferer/ patient in order to make sure that the condition prescribed in the Bill has been fulfilled and that the patient has fully understood the nature and purpose of the application;
(vii) a "*cooling – off*" period of 9 days in case the patient changes her mind.[110]
(viii) subsequently, the referee makes the necessary order;
(ix) Euthanasia would then be administered in the presence of an official witness by a medical

---

[108] Held in a plethora of cases, *see* DDA v. Ramesh Kumar, 2009 (10) SCALE 273 (as a recent example).

[109] This borrows heavily from the Voluntary Euthanasia Legalization Bill, 1936, which unfortunately did not see the light of the day. The counterpart Dutch Principles also incorporate the same, but are less stringent, due to the absence of a 'referee' and of a 'special panel'.

[110] This borrows from *supra* note 44, § 7 (1) (i).

Published in Articles section of www.manupatra.com

practitioner from a special panel appointed for the purpose.[111]

The Indian bill incorporates a majority of these suggestions. There is however a key consideration of the "*cooling-off*" period, an important requisite in the event the patient decides to change her mind, which the bill ignores. The Indian bill also does not consider the age factor or the soundness of mind for administering euthanasia.

A law in regard to legalization of euthanasia will also put a blockage on cases wherein medical practitioners disclose the fact of administering of lethal drugs only after the act has been completed and the patient is dead.[112] Specific legislation is designed to bring such practices out of the grey area of uncertainty and potential abuse by establishing strict and transparent procedures, mechanisms and criteria which doctors and nursing staff have to observe in their decision-making. Euthanasia appears to be extensively practiced in secret. It is this reality that carries the greatest potential for abuse. Decisions may be taken in a furtive and arbitrary manner. They may depend on the "*luck of the draw*": a sympathetic doctor or a benevolent nurse. The pressures that can influence end-of-life decisions will be more pernicious if exercised in the dark. Abuse will not disappear with legislation, but will surely be reduced.[113] The Hippocrates Code includes the moral duty of a medical practitioner to preserve and protect the life of a patient under his care, as against his duty to relieve his patient's unbearable pain. The medical profession has strived undoubtedly to assuage the pain, but when the patient develops a tolerance for the available drugs,

[111] Bakshi, *supra* note 97.

[112] R v. Cox, (1992) 12 B.L.M.R. 38 (U.K.).

[113] Euthanasia (Report), Parliamentary Assembly Council of Europe (Sep. 10, 2003), *available at* http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc03/edoc9898.htm.

Published in Articles section of www.manupatra.com

then the dilemma starts, as Lord Chorley puts it "*It is a very terrible state of affairs when that point has reached. And how terrible such suffering may be, can be realized only by those who have been brought up against it by personal contact*".[114]

"*Destruction of life not worth living*"[115] brings into play an important psychological angle to the debate on euthanasia. The terminology describes not the patient's own attitude towards life but his "*objective uselessness*" to the community, or, in other words, relieving society of a burden. Euthanasia in the sense of termination of a terminally ill person for the purpose of putting an end to his anguish must be clearly distinguished from euthanasia in the sense of destruction of life "*not worth living*" because it is socially useless.[116] As was infamously said, "*drugs used in assisted suicide cost only about $40, but it could take $40,000 to treat a patient properly, so that they will exercise the* "*choice*" of assisted suicide".[117] Killing, is hence, considered "*easier and cheaper*" than providing care.[118] It is seen more as a resource allocation measure (both human and economic) that are devoted to keeping people

[114] Bakshi, *supra* note 97, at 3.

[115] The German legal and medical literature term, coined by Karl Binding.

[116] The argument put forth by some scholars, that euthanasia in developed countries might be a boon as against legalization of euthanasia in the so called third world countries, wherein its misuse will be more rampant because of scarcity of resources relating to medicine and medical care, and hence administration of a 'legal' drug will be considered as a much cheaper and efficient method to combat the meager doctor : patient ratio. *See* Johannes JM van Delden & Margaret P. Battin, *Euthanasia: Not Just for Rich Countries,* http://www.eutanasia.ws/hemeroteca/eutanasia_rich _countries.pdf (last visited Aug. 8, 2011) (for arguments and counter-arguments).

[117] Wesley J. Smith, *Arguments against Euthanasia,* http://www.euthanasia.com/argumentsagainsteuthanasia.html (last visited Mar. 7, 2010).

[118] Dr. M.R. Rajagopal, *From India: Palliative Medicine,* http://www.eapcnet.org/download/forEuthanasia/rajagopal.pdf (last visited Mar. 20, 2010).

Published in Articles section of www.manupatra.com

alive who have deliberating and incurable diseases, whereas these resources could be devoted to give attention to the curable diseases or funding preventive medicines,[119] and hence state action should be directed for the purposes of relieving society of the burden.[120] It is possible therefore that validating legislation may be viewed in wrong light, as economically beneficial to the state exchequer and not an ethical acknowledgment of the right of the terminally ill.

VI. Does The "Slippery Slope" Argument Hold Water

The arguments and justifications advanced both for and against euthanasia have hardly changed in over a century, the opposition till date continues to cite the slippery slope argument.[121] A study conducted by the University of Utah professor, Margaret Battin (a renowned expert in the "*ethics*" of suicide) on "*fears about the impact on vulnerable people*" and "*physician – assisted suicide*",[122] found no evidence to support these fears where this practise is already legal. It is important to distinguish a patient who has the competence to make her own choice from others who cannot indicate desires or the patients who fail to have desires at all. Therefore, no logical connection between the competent patient and the

---

[119] Brad Hooker, *Rule-Utilitarianism and Euthanasia*, http://www.blackwellpublishing.com/content/BPL_Images/Content_store/Sample_chapter/0631228330/lafollette.pdf (last visited Apr. 2, 2011).

[120] Silving, *supra* note 2, at 359.

[121] In a debate or rhetoric, slippery slope is a classic form of argument, arguably, an informal fallacy. A slippery slope argument states that a relatively small first step inevitably leads to a chain of related events culminating in some significant impact, much like an object given a small push over the edge of a slope sliding all the way to the bottom. *See generally* http://www.slippery.us/slippery_slope/ (last visited Aug. 8, 2011).

[122] Meg Jalsevac, *Euthanasia Critics Challenge Pro-Euthanasia Study Research Methods* (Sept. 29, 2007), http://www.freerepublic.com/focus/f-news/1903744/posts.

Published in Articles section of www.manupatra.com

incompetent patient exists, and allowing euthanasia for the first does not entail allowing euthanasia for the second.[123] This argument is oft quoted to disallow voluntary euthanasia, as it would be akin to taking the first step down the slippery slope.[124] The slippery slope enthusiasts maintain that allowing the competent patient to be euthanized will lead to abuse against those who lack competence.[125] An argument interjected could be that by allowing a person to kill in self defence is tantamount to opportunity thrown open for murderers to conceal their crimes. However, is the answer to this juxtaposition to do away with the practise of self defence itself? To do away with the practice of self-defence in order to make it impossible for some murderer to succeed in crime, would be like throwing the baby with the bath water. Though it is true that the recognition of killing in self-defence could be used by a murderer to hide the crime, standards of evidence are to be raised to prevent such a happening. To make all euthanasia illegal, however, assumes that we are not capable of differentiating the good from the bad.[126] Such an assumption seems excessive. Understanding the dangers that are present does not create an opportunity to slide down a slope. Rather, they should be used as an opportunity to "*raises our awareness, heighten our alertness, and generate the sort of conscientiousness that thwarts the psychological slippery slope*".[127]

In conclusion, it seems that the use of slippery slope arguments no longer appears to be a rhetorical device for

---

123 Rick Garlikov, *The 'Slippery Slope' Argument,* http://www.garlikov.com/philosophy/slope.htm (last visited Jan. 6, 2010).

124 David Enoch, *Once You Start Using Slippery Slope Arguments, You're On a Very Slippery Slope,* 1 OXFORD J. LEGAL STUDIES 629, 631 (2001).

125 Michael A. Gillette, *The Slippery Slope-II,* http://www.bsvinc.com/articles/intro/slope2.htm (last visited Apr. 1, 2010).

126 *Id.*

127 Douglas Walton, *Slippery Slope Arguments,* http://www.valepress.com/Samples-%20Slippery%20Slope.htm (last visited Jan. 5, 2010).

Published in Articles section of www.manupatra.com

factional dispute. The slippery slope is a tool for clarifying the implications of the varied views. Either the slippery slope opens our eyes and forces us to accept as right some things that initially seemed untenable, or it shows us the unreasonableness of our initial, unreflective view. Either ways, we are better off, and the slippery slope becomes a method of philosophical discovery rather than a tool for winning arguments. [128]

On the contrary and correctly, the proponents for euthanasia claim that its legalization would not constitute a slippery slope. The justification of euthanasia for terminally ill individuals who request it is for the individual's good. This would not apply to involuntary euthanasia for incompetent patients or for killing the retarded or criminals for the good of society:

> "*As regards any application of this principle to the elimination of the unfit or the degenerate, the imbecile, etc. as such, we find no such suggestion ... It would be entirely out of keeping with the consistently expressed individualism. The fact that [euthanasia] may be justifiable, perhaps even a duty of humanity, under certain circumstances, exceptional circumstances, if you like - to yield to the pleas of the sufferer himself for "the end of pain," in no sense supports the idea that any person or persons may properly decide to eliminate the degenerate or the imbecile against or in the absence of his express consent and desire*". [129]

The hesitance of legislature to give a green signal for legalisation of euthanasia stems mainly from the slippery slope argument. This section conclusively points out *qua*

[128] Gillette, *supra* note 125; *Id.*

[129] Emanuel, *supra* note 13, at 800.

Published in Articles section of www.manupatra.com

studies that such fear is unfounded. Active euthanasia for terminally ill patients should not be diluted to mean passive euthanasia for incompetent patients. The distinction made between a competent and an incompetent patient needs to fully understood and complied with, with no room for deviation. Even for the sake of argument, considering that legalisation of euthanasia could have catastrophic implications, the guidelines laid down should be made stringent (discussed in Part V) and followed vehemently, with criminal punishments for deviants.

VII. Concluding Remarks

There are no better words for an apt conclusion than those echoed by Dr. Jack Koverkian,[130] "*For those who are facing a terminal illness, who are in irremediable pain and suffering, and wish to exercise their right to die with dignity, a system should be available to them*".[131]

Sanctity of human life does not imply the forced continuation of an existence in pain and suffering.[132] Given that a person has the right to lead a dignified existence, he cannot be forced to live to his detriment. If a person suffers

---

[130] Famously known as 'Dr. Death', for his extrovert work in the field of active euthanasia. He is said to have 'relieved from suffering' around 130 patients by using devices named as 'Thanatron' and 'Mercitron'. He first administered active euthanasia in 1998. In 1999 the U.S. Supreme Court ruled that Americans who want to kill themselves, but are physically unable to do so, have no constitutional right to end their lives. Kevorkian was hence sentenced to 10-25 years in prison, but was paroled in 2007, citing failing health reason and nearing his own death. *See The Real Jack Koverkian*, *Patients Rights Council*, http://www.patientsrightscouncil.org/site/the-real-jack-kevorkian/ (last visited Aug. 8, 2011).

[131] Dr. David Jay Brown, *A Compassionate Ending: An Interview with Dr. Jack Kevorkian*, http://www.smart-publications.com/articles/MOM-kevorkian.php (last visited Aug. 13, 2010).

[132] Bakshi, *supra* note 97, at 3.

Published in Articles section of www.manupatra.com

from an incurable disease, it would be inhuman to compel him to live a painful life. Human life is sacred, but it ought to be the privilege of every human being to cross the River Styx in the boat of his own choosing, when further agony cannot be justified by the hope of future health and happiness. Hence, a terminally ill person should be permitted to terminate his pain and suffering by choosing to do so. In fact, these are not cases of extinguishing life but only of accelerating the process of natural death, which has already commenced. The proposition merely is that the legislation must provide for an alternative, if the terminally ill patient so desires, having complied with the requisite conditions, to substitute his slow and painful death with a quick and painless one. This, I submit, should be regarded not merely as an act of mercy, but as an elementary human right, as Albert Bach stated in 1896:

> "*There are also cases in which the ending of human life by physicians is not only morally right, but an act of humanity. I refer to cases of absolutely incurable, fatal and agonizing disease or condition, where death is certain and necessarily attended by excruciating pain, when it is the wish of the victim that a deadly drug should be administered to end his life and terminate his irremediable suffering*".[133]

The law's interference in this regard should be limited to safeguards considered necessary to prevent abuse. Dr. Glanville Williams suggests, and rightly so that "*a measure that does no more (than) give legislative blessing to the practise (of euthanasia), that the great weight of medical opinion already approves*"[134] must be welcome.

---

133 Emanuel, *supra* note 13, at 802.

134 Bakshi, *supra* note 97, at 10.

Published in Articles section of www.manupatra.com

Allowing euthanasia exclusively in the case of terminally ill patients is desirable. The term "*terminal*", though a broad one has been consensually narrowed down by medical experts to mean and include "*a disease that cannot be cured nor has any remedy*". In fact, the final remedy is death. Death, being the only relief from the intolerable pain and unbearable suffering connected therewith, criminal laws must not act with misplaced zeal. Only where they can prove to be an appropriate and efficient tool, to address the concerned evil, should they be resorted to.[135] Also it is time that the courts reconsidered the interpretation of the phrase "*right to life*" as mentioned in Article 21 of the Constitution, to include within its ambit the "*right to die peacefully with medical assistance for the terminally ill*".

The ultimate outcome of this debate remains uncertain. It must, however, be remembered that an acrobatic argument that acknowledges technological advances but dismisses the evolving ethical issues which pose uncomfortable and disturbing questions is unfair to the community of patients.[136]

---

[135] LAW COMMISSION OF INDIA, TWO HUNDRED AND TENTH REPORT ON HUMANIZATION AND DECRIMINALIZATION OF ATTEMPT TO SUICIDE (2008), at 38.

[136] Raphael Cohen-*Almagor, Euthanasia and Physician- Assisted Suicide in the Democratic World: A Legal Overview*, 16 N. Y. INT. L. REV. 1, 13 (2003).

Published in Articles section of www.manupatra.com