

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

LEGALISATION OF PASSIVE EUTHANASIA

AUTHORED BY - RAKSHANA S

PART – I

1. INTRODUCTION

Humans are creatures that are psychologically and emotionally described to be beings that would do anything to avoid pain and gain pleasure. The human mind works with the principle of avoiding pain and gaining pleasure throughout its life no matter what it may be. Whether it may be food or work or even just simple tasks the human mind works to avoid pain and gain pleasure that is so momentary that it does not realise the future. Humans have worked years on scientific developments to make work simpler and change pain to pleasure or maybe even just to lessen the pain.

When pain is so undesirable, humans will do anything to avoid or get out of it, whether it may be for themselves or for others such as their loved ones as well. Seeing a loved one suffer can also cause changes in the human mind to come up with a way to help them avoid it or escape it or ultimately not suffer or end the suffering. Seeing a loved one struggle to stay alive through the usage of artificial life support whilst being in a Persistent Vegetative State can be painful for both of them. This is where Euthanasia kicks in as a solution.

Euthanasia is of 4 types i.e., active, passive, indirect, and physician-assisted suicide. This research paper will focus on Passive euthanasia. It will analyse the reasons why some people want Passive Euthanasia and why some people do not want Passive Euthanasia, leading to the discussion of Legalisation of Passive Euthanasia.

2. RESEARCH QUESTIONS

The following questions are ought to be addressed in the due course of this research.

- (i) What is Passive Euthanasia?
- (ii) What are the arguments for and against Passive Euthanasia?
- (iii) What are the Societal Views of Passive Euthanasia?

3. STATEMENT OF RESEARCH PROBLEM

The Statement of Research Problem is, 'Legalisation of Passive Euthanasia has more benefits than Illegalisation of Passive Euthanasia'.

4. OBJECTIVES OF THE STUDY

The following are the objectives of the study

- (i) To understand what is Passive Euthanasia
- (ii) To understand the arguments for and against Passive Euthanasia
- (iii) To understand the societal views of Passive Euthanasia

5. SIGNIFICANCE OF THE STUDY

Passive Euthanasia is about ending of a person's life by the decision of another who is solely motivated by the best interest of the person who is going to die. Since it involves the decision of another person to take away the life of a person, it is important to study the legality of such a form of practice.

6. RESEARCH METHODOLOGY

The current research is based on reports, facts and views collected and gathered by a resource. The idea of referring and analysing the existing data such as reports, facts, views, statistics and laws connote a doctrinal research.

7. SOURCES OF DATA

The researcher mainly uses secondary data for the research paper such as journals, articles, papers and essays by other researchers, and commentaries available on various databases on internet.

8. REVIEW OF LITERATURE

- *Euthanasia: A Study Into The Ethical And Legal Dimensions* by Armaan Gandhi

This carefully constructed article examines the ethicality or ethical aspect of euthanasia, followed by its potential effects, advantages, and consequences in society, all of which are backed by suitable logical argumentation. The writer has taken the effort to conduct a survey to bring out realistic results and analysis of the way the society perceives Euthanasia.

- *Euthanasia: An Indian Perspective* by Vinod K. Sinha, S. Basu & S. Sarkhel

This article brings out the benefits and fallouts of euthanasia. It also informs readers as to

why physician – assisted suicide should also be considered for legalisation, which is a controversial discussion. It brings out the arguments for and against the practices.

- *Euthanasia; An Understanding by Dharmender Kumar Nehra, Pradeep Kumar & Sheetal Nehra*

This paper covers the topic euthanasia in a very broad manner. It helps readers to start understanding from its meaning, history and types, to its pro and cons and the various kinds of views and issues it possesses.

- *Passive Euthanasia by E. Garrard and S. Wilkinson*

This article talks about the history and understanding of Passive Euthanasia, by throwing light on various kind of arguments that surfaces during a discussion of this topic. It discusses the arguments in detail bringing about a clarity of thought with regards to the understanding of Passive Euthanasia and its supporting and opposing arguments.



PART – II

1] WHAT IS PASSIVE EUTHANASIA?

Euthanasia is the intentional ending of one person's life by another, motivated solely by the best interest of the person who dies. There are mainly four types of euthanasia, i.e., active, passive, indirect, and physician-assisted suicide. Active euthanasia is the action of killing a patient by active means, for example, injecting a patient with a lethal dose of a drug. It is sometimes also called as "aggressive" euthanasia. Indirect euthanasia refers to the prescription of painkillers that may be fatal in an attempt to relieve suffering. Physician-assisted suicide refers to a medical professional aiding a patient in terminating their life upon the patient's request.

Passive euthanasia is the action of intentionally letting a patient die by withholding artificial life support such as a ventilator or feeding tube. It is done by medical professionals and the patient dies when they do not provide the patient with something that has been keeping them alive. The well-wisher might feel that the person who is terminally-ill or in a Permanent Vegetative State would be better off or would suffer less if they would be rather dead.

2] HISTORY OF EUTHANASIA

Death via mercy is not a newly or recently coined idea. It has been around for ages. In the system of belief that was created ages ago, it was of basic and ethical view that no one had the right or authority to deny, remove or put an end to life created by God or the Almighty. During 400 B.C, it was believed that the life of a human being is highly sacred and thus all medical practitioners to an oath to never prescribe any deadly medicine to anyone even if asked or suggested as the protection and preservation of human life if of their primary duty. However, in ancient Greek and Rome, helping people to die or putting someone to death was permissible in certain situations. For example, a child born in ancient Greek or Rome, having certain defects was killed. Ancient Indian Law was also another place which recognised a person's right to die. The 42nd report of the Law Commission of India, which was related to the Indian Penal Code, expressed a tradition wherein a Brahmana who commits suicide to escape from his bodily sufferings was considered of high value in the Brahmana religion.

On the other hand, the ending of human life was not allowed by the U.S. Society in any form. A statute, namely the New York Statute, was passed in the U.S. in the year 1828, that outlawed any form of assisted suicide. Even the Criminal Code which was formulated at the leadership

of Dudley Field in the New York Commission, during the period of 1857 – 1865, prohibited any form of aiding suicide. As time passed, public opinion became an important part of the decisions being made. During the early 20th century, Public opinion was highly concentrated on protecting the dignity of one's life and independence at deciding one's death. Another country where people took efforts to establish an environment for ending one's life in a dignified way. In the year 1935, to support the existence of Euthanasia, a society was created in England. Nazi Germany, which was under Adolf Hitler, adopted Euthanasia, wherein Hitler ordered all sick and older disabled people to be mercy killed. After World War II, this practice was found to be inhuman rather than mercy by the International Military Tribunal at Nuremberg and they criticized Nazi for it.

In 1994, Assisted suicide was legalized by State of Oregon in the U.S. through the 'Oregon Death with Dignity Act'. However, it was struck down by the U.S federal district court as unconstitutional. In 1995, a euthanasia bill was approved by the Northern Territory of Australia and came into effect in the year 1996. Unfortunately, it was overturned in the year 1997. Despite failed measures in various countries, the first country which was able to partly legalize euthanasia or mercy killing was Albania, in the year 1995. This could be seen as a start to various others countries allowing assisted suicide. In 2002, both Netherlands and Belgium allowed euthanasia and assisted suicide. Soon, in the year 2009, euthanasia was declared legal in Luxembourg.

In India, there had been many debates about the legalisation of Euthanasia over the past decades. In the year 1860, during the preparation of the Indian Penal Code, it was asserted that suicide is a crime and punishable offence and was included as such in the Indian Penal Code. This was challenged in the year 1994 in the P. Rathnam case¹. During this case, the Supreme Court struck down the provision as unconstitutional, however this decision was overturned in the Giyan Kaur case² in 1996 with the view that "right to life does not include the right to die". In the year 2005, the law minister, during a seminar held in New Delhi, agreed that there needs to be a framework regulating and protecting the process of withdrawing the life support given to patients who are dying. On April 28th 2006, the law commission decided to draft a bill on passive euthanasia, allowing pleas to be made before the high court and after expert opinion, a

¹ P.Rathinam v. Union Of India, 1994 SCC (3) 394

² Gian Kaur v. The State Of Punjab, 1996 SCC (2) 648

decision will be held. On 7th March 2011, the Aruna Shanbag case³ acted as an ultimate turning point wherein the Supreme Court of India allowed Passive Euthanasia and decriminalised the attempt to suicide. In spite of these developments, there still lies a requirement for India to establish a proper legislation to provide a cover for the procedure of euthanasia and mercy killing.

3] ARGUMENTS FOR PASSIVE EUTHANASIA

The question that is to be dealt under this sub-topic is, “Why do people require Passive Euthanasia?”. It is to analyse the reasons for the support of the practice of passive euthanasia.

- The first reason is an argument of compassion. It is better to allow them to die with dignity rather than forcing them to continue live with their suffering.
- The second reason is an argument of autonomy. Every patient has the right to choose when to die.
- The third reason is an argument of public policy. Supporters of this practice believe that the government can regulate it with appropriate legislations.
- The fourth reason is an argument of burden. The caregiver’s burden is huge and cuts across various domains like financial, emotional, time, social, mental and physical.
- The fifth reason is the right to refuse treatment which is well recognised in many countries and also paves a way for Passive Euthanasia.
- The sixth reason is that Passive Euthanasia can help promote organ donation which not only allows the terminally ill patient to exercise his/ her right to die but also allows the patient who needs an organ to exercise his/her right to life.
- The seventh reason is that, terminally ill patients with no chance of recovery or survival, occupying beds in a hospital for long periods of time is highly not advisable especially in those countries with scarce medical resources or provisions. Many other patients with the chance of recovery or survival could be treated and given proper medical attention with the resources that were spent on a patient that had no chance of recovery or survival.

4] ARGUMENTS AGAINST PASSIVE EUTHANASIA

The question that is to be dealt under this sub-topic is, “Why do people not require Passive Euthanasia?”. It is to analyse the reasons for the opposition of the practice of passive

³ Aruna Ramchandra Shanbaug v. Union Of India, (2011) 4 SCC 454

euthanasia.

- The first reason is that such a practice is not necessary when there are alternate methods to relieve pain such as palliative care and hospices. It is not necessary to kill a patient and nearly all kinds of pain can be relieved.
- The second reason is that opening doors to such a practice can lead to involuntary attempts to kill a person. It was reported that in Netherlands, when euthanasia was made legal in 1990, around 1000 patients were killed without their request.
- The third reason is that we can never truly control it as many such involuntary attempts may even go unreported or improperly reported to know that it was involuntary. During the Netherlands incident, it was found that the doctors did not actually report it.
- The fourth reason is that the assumption that a patient has the right to die and decide when to die would naturally impose a duty on the doctors to kill the patients but on the contrary they should actually be trying to save lives.
- The fifth reason is that some people consider passive euthanasia to be morally wrong and consider it to be just another form of defining murder. They believe that it weakens the society's respect towards the sanctity of life.

5] SOCIETAL VIEWS ABOUT PASSIVE EUTHANASIA

Life ending processes such as Euthanasia, Physician – Assisted Suicide, and other similar processes are all highly controversial topics of discussion with which society has mixed views. Upon collection of various results of numerous surveys, the following could be found about the views of the diverse people who took part in the surveys.

In a survey conducted in Malaysia, the majority of physicians and patients voted against Active Euthanasia but voted for Passive Euthanasia. Around 30% of physicians and 62% of patients were in favour of withdrawing or withholding the life support of patients with no chances of survival. In another nationwide study of the same, around 66% of the physicians in Netherlands reported that they were ready to perform such a practice under appropriate circumstances and around 46% of British Respondents reported that they would make use of such a measure if it was legal to do so. Reports from Australia were found to be similar to those of Britain.

Respondents of China were found to agree with active euthanasia and were neutral about passive euthanasia. In China, many respondents said that patients were perceived as the primary decision makers when it comes to euthanasia.

It can be said that there was a greater influence of religious beliefs than the severity of the illness, disease or condition. In a survey conducted at a Midwestern University to specifically analyse the factors that contribute to the views of these processes of a person, it was found that religious views, whether liberal or conservative, and past experiences in life especially those concerning death had a substantial impact on their opinions about euthanasia, physician assisted suicide and similar other processes.

To analyse the views of terminally ill patients with regard to euthanasia and other similar means, a survey titled “The Canadian National Palliative Care Survey” was conducted which interviewed patients who fulfilled the measures of being, a terminally ill patient who had no chance of survival and was to die under six months, and would be able to speak in English and provide for an interview. A majority of the patients who took the interview (62%) accepted the legalisation of euthanasia or physician assisted suicide where close to half of them expect themselves to request for the measures of quickened death in the near future. Some patients expressed that they would be relieved to know that measures such as euthanasia and physician assisted suicide were available for them to resort to in the worst case scenario of their conditions becoming worse and definitely incurable or irrecoverable. Around 22 patients (5.8%) of the survey expressed that they would have already taken the measure of euthanasia or physician – assisted suicide if it were already available. With a more close examination, it was found that these 22 patients were different from the other patients as they had much lower religiosity than the other patients.

It was also found that 40% of the patients who participated in the survey who agreed to the ideas of euthanasia or physician assisted suicide were also under the criteria of major depression. This result is helpful to indicate that there lies a connection between people with depression and their will to commit suicide. With the legalisation of processes such as euthanasia and physician assisted suicide, patients with major depression might tend to use either of these processes as a means to not only escape their physical pain but also their mental agony or depression.

Apart from physicians and patients, the general view of the public regarding the idea or the question of acceptability with regard to inducing death or to let a patient die through the means of euthanasia or physician assisted suicide was encountered through another survey by mail to around 810 participants, which was done by Achille & Ogloff. The result indicated that “in the

eyes of the public, ending life by means of a lethal injection is significantly less acceptable than withdrawing life-support, regardless of who is requesting such a procedure.”

6] COUNTRIES WHERE PASSIVE EUTHANASIA IS LEGAL

Many countries around the world have made legislations allowing and acting in favour of Passive Euthanasia. Countries like Argentina, Chile, Netherlands, Canada, Germany, India, Peru, Mexico, Belgium, Colombia, Luxembourg, Finland, Sweden have legalised Passive Euthanasia. In some states of the U.S. such as Oregon, Washington, Hawaii, Vermont, Maine, New Jersey, California and Montana, Passive Euthanasia is legal. However, in many of these countries Active Euthanasia is illegal. There is strict regulation to allow only Passive Euthanasia. Besides this, medical practitioners of Germany are also known to provide painkillers for patients near death to lessen their pain. These painkillers might slowly decrease their breathing and lead to respiratory arrest and death. However, this is not considered as a crime in Germany. Similarly in Denmark, even though the Parliament had been advised against the legalisation of euthanasia, a study conducted in 2003 showed that around 41% of deaths under the medical supervision was done by doctors to help ease the suffering of their patients.

Some countries like France are debating about decriminalisation of voluntary euthanasia but allows doctors to keep terminally ill patients sedated till death. Ireland is another country which respects the right of ‘right to die’ and allows a doctor to remove the life support of a patient if so requested by the patient, and is close to the legalisation of assisted dying. Israel has been through various such discussions about the topic of euthanasia and life and death, considering its thought in accordance with Jewish laws. In 2006, it was suggested by the Steinberg Commission that committees could be set up at hospitals which would contemplate whether or not to provide a patient with the option of Passive Euthanasia.

In some other countries, the idea of Euthanasia has been dealt with at a very minimal degree. Japan does not have an official law or statute that deals with the idea of Euthanasia and has never dealt with such a case at the Supreme Court level. However, there has been a discussion about both active and passive euthanasia in lower courts and universities as there have been reports of these two kinds of cases. The judgement hinted at developing a legal framework to address the issue of euthanasia by legalising active and passive euthanasia with some conditions but it still has not been upheld at a national level. Nonetheless, efforts have been taken to create what are called as ‘bioethics SWAT teams’ to help the families that contain a

terminally ill patient to sit down and discuss with their doctor and come to a decision of action after completely analysing the facts of the case. There are also plans to create a Non-Profit Organisation under which such efforts will continue.

In Latvia, euthanasia is not legal but a doctor may refuse further administration of treatment if they perceive it to be the best course of action. In Lithuania, euthanasia is not legal too but there have been some discussions which has brought about the drafting of a 'Right to die' law in 2016. In South Korea, Passive Euthanasia is legal and came into effect in the year 2018. The topic of euthanasia is however still under debate. Nevertheless, both active and passive euthanasia are allowed with the fulfilment of proper formalities requiring the confirmation of a registered physician and the consent of both guardians. Uruguay accepts the practice of passive euthanasia under the name of Compassionate Homicide but there are still discussions over the differences between Euthanasia as homicide and Euthanasia as suicide, resulting in the discussion of Assisted Suicide.

7] COUNTRIES WHERE PASSIVE EUTHANASIA IS ILLEGAL

There are countries which consider euthanasia and assisted suicide of any form to be a crime and have thus kept it illegal. In Czech Republic, both euthanasia and assisted suicide are considered to be homicide and comes under their Criminal Code. Similarly in Moldova and Poland, euthanasia is banned and it also comes under their Criminal Code. In Norway, euthanasia is illegal, however if proven that the person requested for it, the caregiver might receive reduced punishment. In Portugal and Philippines, there have been numerous efforts to legalise euthanasia by the consideration of passing a bill but Portugal's Supreme Court had declared that the bill was imprecise and requires revision, while in Philippines their bill met strong opposition.

Countries like Romania, Russia, Serbia, Slovakia and Turkey have prohibited euthanasia and it comes under their Criminal Codes or Criminal Law. They consider it to be murder even if it was requested by the person. In Switzerland, even though all forms of euthanasia are against the law, it allows assisted suicide as long the motives are not selfish.

8] CASE LAWS

- *P.Rathinam v. Union Of India (1994)*⁴

This was the first case in India to challenge the provision under Section 309 of the Indian Penal Code. The provision defines suicide as the ‘*act of killing oneself intentionally*’ and criminalises the attempt to commit suicide. This was considered to be strange and draconian by society as suicide was not a crime but the attempt to do so was a crime. Punishing someone for an unsuccessful attempt to suicide was severe and cruel as such people who are suicide prone should be consulted with kind and hopeful words instead of being punished with jail time which will only add to their misery.

In this case, the petitioners challenged the validity of Section 309 of the Indian Penal Code, stating that it is violative of Article 14 and Article 21 of the Constitution. They made a prayer to declare the section void and also to quash the proceedings towards the petitioner under Section 309 of the Indian Penal Code.

The Supreme Court made various considerations and took account of numerous legal and judicial thinking, specifically making statements that punishment towards the attempt to suicide by a female after abuse is arguable. It was finally declared by the Supreme Court that Section 309 of the Indian Penal Code as unconstitutional.

- *Gian Kaur v. The State of Punjab (1996)*⁵

In this case, the appellants were convicted for abatement of suicide of their daughter in law Kulwant Kaur. The Supreme Court rejected the correlation that since Article 19(1)(a), which is the right to speak, also includes the right not to speak, Article 21, which is the right to life, also includes the right to die. The Court held that the right to die included what is known as withdrawing of life using unnatural means, which deteriorates the sanctity of life and cannot be justified in anyway, and thus cannot be incorporated under Article 21.

- *Aruna Ramchandra Shanbaug v. Union of India (2011)*⁶

The petitioner, Aruna Shanbaug, was a nurse at the KEM Hospital, Mumbai. She was attacked, strangled and sodomized by a sweeper from the same hospital on 27th November 1973 evening. She was found lying on the floor the next day and was admitted to the hospital. Due to the strangulation during the incident, she had less oxygen flow to her brain,

⁴ *Supra* note 1

⁵ *Supra* note 2

⁶ *Supra* note 3

due to which her brain got damaged. The permanent damage to her brain led her to a Permanent Vegetative State.

An activist-journalist named Pinki Virani filed a petition to the Supreme court under Article 32 and alleged that since there is no possibility for her to regain her consciousness and get well, she should be allowed for passive euthanasia and be released from her pain and agony. The Supreme Court instructed a team of three doctors to take a look into the situation and provide the Court with a clearer picture address the petition. The doctors, after careful analysis, provided a report to the Supreme Court that Aruna Shanbaug was not brain dead and responded to the environment in her way. Her actions or body language did not in any way confirm that she would like to be terminated of her life. She was able to breathe on her own and without the support of an artificial device to help her breathe and the only element keeping her alive was food.

The Supreme Court analysed the report and declared that Passive Euthanasia could not be allowed in her case as Aruna Shanbaug is not brain dead and depriving her of food in order to terminate her life is not justified by the Indian Laws in any way.

In this case, The Supreme Court also legalised Passive Euthanasia for India and laid down specific conditions to be followed in the future so as to prevent the misuse of this provision. Anyone who would like to use the process of Passive Euthanasia would have to apply to the High Court first, after which a team of three eminent doctors would be instructed to investigate the situation of the patient in detail. The report would be submitted to the court, and a bench of two judges would determine and pass a judgement whether to terminate the life of the patient or not.

9] CONCLUSION

To conclude, Euthanasia is the process of deliberately ending someone's life to relieve them of their pain, suffering and agony. It originates out of the sympathetic thought that such a person would be better off dead than to be held with life using the support of artificial devices that help to keep them alive. Euthanasia is of four types which are active, passive, indirect and physician – assisted suicide. In this research paper we have discussed in detail about Passive Euthanasia. Passive Euthanasia is the process used to end someone's life through the action of withholding or withdrawing a device of artificial life support that had been helping a patient of

Permanent Vegetative State to be kept alive.

The history of Passive euthanasia dates back to ages ago where the idea of mercy killing emerged. Throughout history there had been many attempts and efforts to legalise Euthanasia in various countries. Despite all, Albania was the first country to partially legalise euthanasia or mercy killing in the year 1995. This was a major step and could be seen as the start to the legalisation of euthanasia in various other countries. Soon after in 2002, Netherlands and Belgium allowed euthanasia and assisted suicide. In the year 2009, Luxembourg legalised euthanasia and within a few years many more countries including India had declared Passive Euthanasia to be legal.

There are various arguments for and against Passive Euthanasia. Some of the arguments for passive euthanasia are that it is better for the patient to die with dignity than to be forced to live with the pain and suffering, every patient has the right to choose when to die, the government can regulate the practice of euthanasia and terminally ill patients occupying beds for long periods of time is not advisable as those resources could be spent on another patient with better chances of survival and recovery. Some arguments against the practice are that euthanasia is a morally wrong practice that deteriorates the sanctity of life, it is not necessary when there are alternate methods available, such a practice can lead to involuntary attempts to kill a patient and it might impose a natural duty on doctors to kill whereas their original duty is to save a patient.

The societal views of Passive Euthanasia have been well analysed by the study of various surveys conducted throughout the world which provides results containing the views of physicians, patients and the public in general about Passive Euthanasia. The findings state that a large portion of physicians are ready to provide their terminally ill patients with the option to utilise the process of euthanasia if it was legal, a substantial amount of terminally ill patients have agreed that they would be relieved and would consider making use of euthanasia if it were available to them and finally the result of a general public survey state that the general public believes that withholding of the artificial life support is a more acceptable practice than injecting a lethal drug to kill a terminally ill patient.

The research paper has also discussed about the countries that have made efforts and legalised Passive Euthanasia and the countries that are yet to legalise Passive Euthanasia. It has also

discussed the important case laws that lead to the legalisation of Passive Euthanasia in India.

10] SUGGESTIONS

From the research paper, it can be well suggested that a person need to read and fully understand the meaning of Passive Euthanasia. One seeking to utilise the process of Passive Euthanasia should first be informed and aware is such a practice is available and legal in their country. If so, they should read and make themselves knowledgeable about the process or procedures through which such a practice could be utilised. They should also make sure the patient who is going to go through the process of passive euthanasia fulfils all categories to qualify for the process.

In India, the process of availing the process of Euthanasia is through applying to the High Court. The High Court will assign a team of three doctors to inspect the patient and a report will be submitted to the judges of the court. The report will be analysed to see if the patient qualifies for Passive Euthanasia after which the procedure will be initiated.

Nevertheless, it is important to know about the process of Passive Euthanasia as it is a controversial topic having a significant impact on society and is constantly debated about the advantages and disadvantages of the procedure.

11] REFERENCES

- Rathor, M. Y., Abdul Rani, M. F., Shahr, M. A., Jamalludin, A. R., Che Abdullah, S. T., Omar, A. M., & Mohamad Shah, A. S. (2014). Attitudes toward Euthanasia and Related Issues among Physicians and Patients in a Multi-cultural Society of Malaysia. *Journal of family medicine and primary care*, 3(3), 230–237. <https://doi.org/10.4103/2249-4863.141616>
- *Arguments for and against assisted suicide and euthanasia*. (n.d.). CARE. January 17, 2022, https://care.org.uk/cause/assisted-suicide/arguments-for-and-against-assisted-suicide-and-euthanasia?gclid=CjwKCAiA_omPBhBBEiwAcg7smW5jOI9y-vFN5yoa2sZEx0hWBP4-tQpJCPu8y9eky-WXwlsGQYn3RhoCEU4QAvD_BwE
- Chhallani, A. (2021, March 17). *Smt. Gian Kaur v. The State of Punjab*. Jus Dicere. January 17, 2022, <https://www.jusdicere.in/smt-gian-kaur-v-the-state-of-punjab/>

- Chong, A. M., & Fok, S. Y. (2009, January 28). *Attitudes Toward Euthanasia: Implications for Social Work Practice*. Taylor & Francis. January 17, 2022, <https://www.tandfonline.com/doi/abs/10.1080/00981380802533298>
- Critical Care Medicine. (2008). *Passive Euthanasia - an overview | ScienceDirect Topics*. Sciencedirect. January 17, 2022, <https://www.sciencedirect.com/topics/nursing-and-health-professions/passive-euthanasia>
- Garrard, E. (2005, February 1). *Passive euthanasia*. Journal of Medical Ethics. January 17, 2022, <https://jme.bmj.com/content/31/2/64>
- Hettenhausen, C. N. (n.d.). *Attitudes Toward End-of-Life Processes*. Mckendree. January 17, 2022, <https://www.mckendree.edu/academics/scholars/issue15/hettenhausen.htm>
- Nanda, A. (2020, July 21). *P. Rathinam v. Union Of India*. Indian Law Portal. January 17, 2022, <https://indianlawportal.co.in/p-rathinam-v-union-of-india/>
- Wikipedia contributors. (2022, January 11). *Legality of euthanasia*. Wikipedia. January 17, 2022, https://en.wikipedia.org/wiki/Legality_of_euthanasia
- Sinha, V. K., Basu, S., & Sarkhel, S. (2012). Euthanasia: An Indian perspective. *Indian journal of psychiatry*, 54(2), 177–183. <https://doi.org/10.4103/0019-5545.99537>
- Nehra, Dharmender & Kumar, Pradeep & Nehra, Sheetal. (2013). *Euthanasia: An Understanding*, ResearchGate. January 17, 2022, https://www.researchgate.net/publication/252626984_Euthanasia_An_Understanding

IJLRA