Chapter VIII

LEGAL ASPECT OF EUTHANASIA WORLDWIDE

8. Introduction

Legal means rules, law endorsed by the sovereign to safeguard the interest of its subjects. To incorporate these rules, regulation you have to take a view of the verdicts given by courts. These form the basic source of legal jurisprudence. They are comprehensive with the charters of the states, the acts and rules. The decisions given by the apex courts always have an authoritative value and are binding on the lower courts in any state. The decisions delivered by the court are considered precedents. They steer the judiciary when similar cases appear in front of them for adjudication. They hold a prominent position in codification of any statute. Thus my research would be incomplete without taking the overview of all the judgments worldwide. These judgments help us to decide whether an individual has right to die? If yes can assistance for ending life be legalized?

Let us first see the states which have legalized euthanasia. The diagram below explains the global situation in respect of euthanasia.
Euthanasia is presently legalized in countries like Netherlands, Belgium and Luxembourg. States like Switzerland, German, Albania, Colombia, and in the U. S states of Oregon, Washington, Vermont, New Mexico, Montana give permission for assisted Suicide. The state of Netherlands, Belgium and Luxembourg legalize assisted suicide or euthanasia.

It has been observed that legalization of euthanasia is mainly due to three prominent factors. They are 1) Individualization, that is right of autonomy 2) Diminishing taboos with respect to death.

3) Extending life of a terminally ill not being the only suitable focal point of medical cure.

Dialogues about the possibility of legislation on euthanasia or assisted dying occurred in many states like United Kingdom, France, Columbia and Australia. Discussions concerning the possibility of law frequently related to anxiety concerning the model of the Netherland, Belgium, Switzerland or Oregon. It
was verified whether other countries could implement it like them. On 20th May, 2013, Governor Peter Shumlin signed Vermont’s doctorprescribed suicide bill, namely “Patient Choice at End of Life” bill. The legislation was effective immediately.

8.1.1 Australia

The Northern Territory of Australia took the honor of being the first state on the globe to have legislation on assisted euthanasia for terminally ill patient with the aid of the medical fraternity.

In 1995, the Rights of the Terminally Ill Act was enacted in the state. It came to force in the year 1996. The act restricted the use of euthanasia on certain conditions. A competent major enduring intolerable pain, misery was entitled for euthanasia. Requisition to the physician He had to make a explicit requisition to the physician of his / her desire to administer euthanasia. The physician had to consult other two physicians and psychiatrist about the patient’s condition. They had to confirm about his irretrievable illness and that there was no recourse available for his condition. They also had to check the possibility of the pain easing out by good palliative treatment. If the same was not the appropriate remedy and could not really relieve a person from his sufferings, euthanasia was the solution. The doctors before implementing had to at least wait for a span of seven days after the finalization. The doctors if abided these stipulations and administered the act in good faith and with utmost care, they were not prosecuted under any charges of the law prevalent in the state.

However this was challenged in the case of “Wake and Gondarra v. Northern Territory of Australia” the petitioners of this case had sought for a pronouncement stating “Rights of the Terminally Ill Act 1995” was unlawful and is not a valid Act. However the apex court of “Northern Territory of Australia” held it legal.

After the legislation, in 1996 Mr Bob Dent, a patient suffering from prostate cancer became the first individual on whom the law was executed. Dr Philip
Nitschke, a staunch proponent of euthanasia in the state administered euthanasia to him. In this case the 66 year patient himself took the mortal drug under the governance of the doctor. The physician monitored the whole act with the aid of the computer.

The second patient to avail the facility of this legislation was Mrs. Janet Mills, she suffered from cutaneous T-cell lymphoma. Dr Nitschke assisted her in her death as per the act.

However, the act facilitated the populace only for a short span of six months. Australian Federal Senate upturned the legislation in 1997. The legislation was terminated.

8.1.2 Netherlands

Lengthy discussions of the proponents on the issue resulted in a legislation for euthanasia. The tradition of mercy and the physicians support also helped in the legalization of euthanasia. The enactment came into force in the year 2002. This legislation made assisted suicide and euthanasia legal. The enforcement of the act was with strict stipulations of care.

In 1973 the “Postma case” activated discussions of the populace on the subject in the state. In this matter the ailing mother of the doctor had made frequent requisitions to him to terminate her life. The lady was ailing with enduring pain with no sign of revival. The doctor had assisted his mother to have a peaceful death according to her wishes. The doctor was prosecuted for the offence of murder. The court observed that he had committed murder but was however penalized for a short span of time. This judgment made the people think on the subject. They realized that even judiciary was liberal on the subject in specific conditions. The medicinal fraternity also accepted brought a change that where there is no recourse a individual should not be forced to survive in opposition to his desires when suffering is the only thing left in life for them. This approach of the society busted the Christian custom of preserving life. The young doctors also became alert about the sick persons resolve and the limitation about the health care in general.
In 1984, euthanasia was again administered to a lady aged 95 years. This lady made an unequivocal requisition for death to be administered. The lady suffered from acute enduring pain due to the weakening of her muscles and common failure of her organs due to the age. She experienced impairable loss in her vision, difficulty in listening ability and failure in verbal communication. She thought that her condition which confined her to bed with all this ailments was losing her ability to lead a dignified life. The doctor having mercy and for her benefit administered euthanasia. The law of the state prosecuted him for the crime. However it was observed that the apex court of the country did not penalized the doctor on the ground of inevitability. The court considered that the doctors are bounded with an obligation to rescue a person from the torturous pain and at the same time also entrusted with the duty of doing no damage to the body. The court in this matter held that it was a necessary to relieve the patient from the agony she suffered and thus while administering euthanasia were just discharging his duty. He was thus not held guilty.

It could be observed from this case that the judicial trend was in favor of euthanasia but with specific guidelines as they apprehended the slippery slope.

In another case of 1991 the judicial decisions were seemed to be against the subject. In this matter euthanasia was directed to a sick who suffered from melancholy, gloominess for a period of twenty years. A psychiatrist named Dr Chabot, assisted the aspirant of euthanasia to end life with a fatal poisonous medicine. The psychiatrist was prosecuted for the act committed. The apex court of the state held him guilty. He was sentenced as the physician had not consulted the other doctor before the act. The court clarified further that euthanasia could be applicable to any kind of sick of somatic or non somatic conditions. In this case it was not the non somatic condition that leads to the decision. But it was the issue of need that was not considered by the physician. This has to be the prime question that has to be determined by the doctor aiding death in view to avoid the possible abuse of the subject. The courts view of implementing euthanasia in cases of necessity was again reflected in 1993. A deformed infant with split spine was given deadly drug by
Dr. Prins. This was done by the physician after consulting the other doctors and after obtaining the consensus of the parents. Dr. Prins was not punished for the act. In a similar case known as Kadijk case the physician gave a demonstrated the controversy further. In 1993, the physician gave a highly toxic medicine to the infant deliberately to cause death. The infant suffered from deformation of organs. The doctor was prosecuted for murder. The court once again acquitted the doctor from the accusation of murder. A similar view taken by the court in Prins case was carried further by the court in this matter.

It was observed that assisted suicide and euthanasia had now become a necessity for those that suffered terminal sickness. The burden of the courts was also increasing unnecessarily as there was no legislation on it. Netherlands therefore with the current prevalent trend in favor went ahead towards legislation for euthanasia. The Euthanasia Act of 2002 was enacted. It was enforced in April. It received the honor of being the first state to have legislation on the subject.

The act levied restrictions on its implementation. Under the provisions of the act euthanasia had to be administered only to the enduring patients whose condition was irretrievable. These terminally ill had to convey their explicit desire to the physician. Further it was mandatory for the physician to verify the patients request whether it was a genuine one or not, taken after understanding the situation prevalent in his case. The doctor also had to testify the health condition of the patient before deciding about the act. In case the patient was suffering from immense misery with no chances of revival he could do so. It was also compulsory for the physician to take opinion of another doctor before implementation. It was also the responsibility of the physician to execute the act with utmost care and diligence to minimize the abuse.

8.1.3 Belgium

After Netherlands, Belgium in 2002 legalized euthanasia. It was the second state in the European continent to have legislation on euthanasia. The legislature was known as the Belgian act. It permitted competent adults and emancipated minors to perform euthanasia if required.
The research in the state revealed that amongst the cases of euthanasia. It was observed that euthanasia was covertly performed on many of the young individual with enduring irretrievable agony at home. However it was observed that there was no misuse of the provisions. There was no implementation of it on cases which did not deserve it.

With these reports the governing body of the state decided to expand the scope of euthanasia. In 2013 the expanded legislation was passed by parliament. This new reform permitted the young to terminate life with aid of the physician. There was no bar of age as earlier.

Now according to the provisions of law infant, child or young all were entitled to the mortal drug. The only stipulation was the blood relatives that are the mother and father had to give their consent for the act. However this imposes a great burden on the parents who have to take such a difficult decision for their young ones.

In the state now euthanasia is officially permitted for all the populace immaterial of their age. The only stipulation to be followed is it has to be for incurable patient on his desire which has to be certified by the doctor.

8.1.4 Luxembourg

After Netherlands and Belgium, Luxembourg ranks as the third place in the continent to enact legislation on euthanasia. It can be said that they followed these two states in this regard. According to the act the incurable could legally terminate life. Similar to the earlier legislations, of Netherlands and Belgium this also had certain stipulations to be followed while its execution. It was exactly the same as those two countries.

Lydie Err, a communist played a major role in sketching the legislation. She specifically stated that this enactment did not give any one a license to murder. It was framed to give a genuine advantage to those vulnerable people who felt themselves helpless in the situation and many a times forced to continue an unwanted life for want of legislation. She further cleared that doctors or parents were not allowed to take a decision for the sick. It was he/she only who could take a call of their life journey.
The act did not permit the implementation without the patient’s request. It could be a demand in existence or a one made by the patient explicitly before. The physician had to confirm the demand and the irretrievable situation of the aspirant before enforcement.

In spite of the sufficient precautions levied in the act Alex Schadenberg criticized the act of the senate. He was the opponent of euthanasia and worked for “euthanasia prevention association.”

Along with him the religious head “Emeritus Pope Benedict XVI” objected to the law. He reminded the law makers to remember the preaching’s of Christianity that did not allow anyone to take one’s life. As according to him implementing euthanasia was disobeying the rule of god.

8.1.5 Switzerland

Switzerland is the state known for performance of assisted suicide. Though there was no legislation on the subject assisted suicide have been executed in the state ever since 1940. This is the only state which does not restrict the assistance to be given limited to the physician only. Unlike the other states the aid given to the patient to end life in this country can be extended by any being. Though no legislation it has been observed that there was no penalization for people aiding the patient in good faith. However if the intent of the person aiding is to kill and not assist it was held as a crime under the Swiss laws. Further persuading a person to terminate life was also supposed to be illegal. The criminals of such offence were penalized for a period of five years.

It can be observed that the object behind the act was given more emphasis to detect the crime. How was this done? In Swiss it was obligatory to record the performance of the assisted act. It was also compulsory to update the law enforcement authorities about the act. The authorities from the department, a physician and the public officer from department certifying the death to be a natural death had to be present during the act. They had the authority of investigating the death to be a natural one or not. To identify this they
interrogated the blood relations and the people present around. In case any malafide intent was recognized and found the person had to undergo
prosecution. Thus even though there was no specific law on the issue deaths of euthanasia were monitored and no abuse was permitted.

The world famous association “Dignitas” is an alliance of sophisticated refined individuals who are experts in the subject and are aiding people all over the globe to extinct their lives. These specialists are not necessarily doctors who otherwise are specifically required to be appointed to monitor the act. Recently in the year 2011 there was voting in Zurich for the continuance of permission to the foreigners to continue utilizing the facility of mercy killing to any citizen of any country. It was observed that there was a overpowering response to the referendum.

8.1.6 Albania
Albania state gave legal recognition to law on euthanasia. According to the authority conferred by the “Terminally Ill Act of 1995” desirous death of the terminally ill in every kind was acceptable since 1999. That is passive or even assisted suicide was given permission under the act in case it was the free wish of the patient. The only stipulation was the consensus of the relatives also had to be obtained.

8.1.7 Colombia
Colombia has no specific law on the issue but it has been held by their constitutional court, that voluntary euthanasia can be administered. Till the enactment the precedent of this apex court delivered in 1997 is considered to be the law for the state. The ruling has permitted euthanasia for incurable patients if they show their explicit desire for the performance of the act. The above verdict of the court was again confirmed in 2010. The court stated that no one should be charged with an offence if the euthanasia act was on the vulnerable patient and with his consensus. To be more explicit about the issue the court specified the category of the vulnerable patients. According to the verdict patients suffering with cancer, HIV and patients of organ failure like liver or kidney fell in the identified category. The others though suffering
from incurable ailments were not to be considered like patients of alzheimer's, parkinson's etc.

8.1.8 Japan
Japan waits for a law in the state. However the two judicial decisions have paved the possible way for the legislation. In 1962 the judicial authority of Nagoya permitted the patient to terminate life by withdrawal of life supporting system. In one more judgment delivered in 1995 on the subject in the Tokai university case the court permitted death with mortal drugs.

From the above it can be seen that the state courts are for both the types of euthanasia viz., active and passive. However as stated above since there existed no law then, the physicians were charged for murder.

The state now proposes to have legislation for both the forms of euthanasia with conditions. For passive euthanasia the proposed stipulations are that the sick should be in a irretrievable state and on the last phase of his ailment. Further he has to express his explicit willingness to end his sufferings. This indication can be given by himself or his relatives taking his care. This consensus can also be expressed in the initial phase of his ailment only requirement is that it has to be evidentiary.

The regulations for active euthanasia, are more or less the same like passive with slight variations. The difference is that in passive the consensus could be given by the patient or his relatives but for active it could given by the patient only and all the resources of relieving agony of the patient had turned futile.

8.1.9 United states
Only few countries like Oregon, Vermont, Washington, New Mexico and Montana permit suicide with aid of the physicians and passive euthanasia. However the active type is banned all over U S.
8.1.10 Oregon

The state has enacted implemented the “Death with dignity act” in the year 1994. However, it was enforced and put into implementation in 1997. This was the first state of the US to have legislation on “physician assisted death”. Like the other laws prevalent this act also laid similar regulations for its enforcement. This law was restricted for the adults in their state. The criteria was that the patient had to be an adult citizen of Oregon and also domiciled in the country. He should be a competent person possessing the ability of making a choice. The individual should have been ailing with the disease for a considerable period and in the final stages of his illness where his approximate survival period would not cross six mths. Further it was obligatory for the aider’s to receive a documentary requisition according to the proviso of the act along with at least two verbal demands expressing desire to finish their living. All these applications of the patient were to be witnessed. The responsibility of the physicians is also equivalent. The doctors had to report the patient the exact facts of his condition and the resulting facts out of the situation. It was also there duty to instruct them about the palliative care and the options available. The treating physician also had to consult the other over the condition of his patient before doing the act. Counselling sessions were advisable for all and must for patients of melancholy, and dejection. The government official had to be reported about the act and always there has to be a time gap of at least a fortnight from the decision taken to the decision implemented. This period was basically for the patient to recall his decision if necessary.

The revision to the act which came in 1999 has debarred the physician from giving the fatal drug. It stated that the doctor could prescribe it but has to be taken by the terminally ill person himself.

8.1.10 Washington

Washington state also consented to the act of Oregon and enacted as a law in their state in 2008. However the ban on physicians to aid suicide in Oregon does exist here. Pursuant to the apex court judgment in 2009 which permitted the doctors to aid their sick people with fatal medication.
8.1.11 Montana

After the above two narrated states Montana was the next to permit death with the assistance of doctors. The judgment given in the “Baxter v. Montana” was the cause of this permission. In this case the court gave a ruling that aid of the doctors for termination of the sick should not be considered an act opposing public policy.
8.1.12 Mexico
Active euthanasia is unlawful in the state. However from 2008 the country permits it, if the vulnerable is in an vegetative state enabling to understand the situation because of the ailment.

8.1.13 Canada
In Canada, assisted suicide is a crime under the Canadian criminal law. This has been confirmed in the case of Rodriguez v. Attorney, (1994). The verdict stressed about the possible abuse,. They felt that the patients interest would be subdued to the others interest if P A S is allowed. However passive euthanasia is justified in the state and therefore allowed.

8.1.14 India
India is a progressing country. There has been tremendous development in the field of medicine in the country. The after units also have been developed comparatively then the earlier period. This all has resulted into delaying death of the patient. This is not always beneficial in each case. In some cases it causes t major problems for the family and relatives. The cost of medication is very high and not affordable to a common Indian. It increases their liabilities which is a major problem faced by the people. They are forced to keep the incurable alive increasing their life burdens for no reason. In such situation the permission to terminate life is a major issue to be resolved in the current situation. This matter now has been resolved by the judiciary. They have approved passive euthanasia.

In the milestone verdict delivered the apex court has legalized euthanasia to a certain extent. In the year 2011 in the case of “Aruna Shanbaug” the court rejected the appellants plea of allowing euthanasia to the patient who was in an unconscious state for about 37 years. However the bench of justices Markandey Katju and Gyan Sudha Mishra, permitted "passive euthanasia" for the terminally ill in the state of P V S. Withholding of equipments that are necessary to keep the patient clinically alive was permitted. Doing the act that
would hasten the termination period of life was permissible. However the verdict has absolutely denied extinction by active euthanasia.

The supreme court when permitted this act framed rules to be observed if any person was desirous of its implementation. This was done with the view that there should be no misuse of the verdict given which is equivalent to the law in absence of a specific legislation on the issue. The decision is a law till the houses considers it to be enacted. Along with these guiding principles the court also gave directives to the legislature to reconsider the deletion of the punishment stated for attempt to suicide under the provision of the criminal code. It stated that the proviso of section 309 of the IPC has been obsolete. And hence should be obliterated from the act. They stressed that a individual thinking of doing this act is a sick person and requires assistance rather than penalizing them. Justice Katju of the supreme court has laid a great deal of accountability on the judges of high courts of all states to assess the requisitions and then give a independent verdict of implementation or not. This decision came in the case of Aruna who had been raped by a sweeper of the hospital where she worked as a nurse. The incident throttled the nurse resulting in injury to her brain which left her ibn a vegetative state for a number of years.

A journalist who wrote articles on the case and visited the patient frequently for the purpose developed friendship with aruna. In January 2011, this lady named Pinky Virani filed a requisition on behalf of the patient. The apex court in this case established a panel of doctors to scrutinize the patient’s condition. The report submitted by this committee stated her to be in a state which can be narrated as PV S

8.1.15 Statutory and judicial aspect - India v. Rest of the countries
The twentieth and twenty-first centuries have witnessed tangential philosophy in the populace of the state. Amongst the various attitudes independence of the human being is the most significant and augmented issue discussed. This has brought a rational change in the human thinking towards the concept of euthanasia. Humans feel that life is a wonderful gift that has been bestowed
on us. Then why not live to its fullest. To adopt this practically life has to be free from misery and pain.

The constitutional question is whether the fundamental rights to live with dignity, privacy, autonomy, and self determination include the right to voluntary assisted suicide. The sacredness of existence is considered to be the utmost religious policy. The Constitutional right which is stated in the Article 21 “The right to life” which is absolute and innate. It has been elucidated by the court in the broadest probable manner.

The Article means that existence and freedom of living is ensured in the state. Under no circumstances can it be restricted apart from the due process of law.

In Munn v. Illinois, Field, J. spoke of right of Life in following words:
It means that life is not just survival or existence like any mammal but something more. It means protection of your whole body with all its organs intact. As if it is so, then only the living can have a meaning and would be life of enjoyment with dignity. The proviso hence states that maiming of any part or organ of body is a ultra vires of the provision and strictly banned. Vikram Deo Singh Tomar v/s State of Bihar²

In this case a writ petition was filed by N G O from Bihar named Yuva Adhivakta Kalyan Samiti, Sasaram, They had appealed for the Among other things, it is alleged in the letter that the female prisoner of the ladies who were kept in "Care Home". The state of this home was pathetic the building was in a dilapidated condition and they were kept in miserable in human conditions. They were without any basic amenities essential for their living. While deciding this matter the apex court highlighted the sub standard facilities given and also the discrimination that has always been prevalent in the society due to the sex. They also highlighted the demotion done to her through the past. They also emphasized on the Article 21 of the Constitution and reminded that each citizen is at a liberty to enjoy living of excellence. It is the basic right of the individual to have a dignified life.

When discussions over euthanasia are held in the state Article 21 is the inevitable part of those arguments. It always has been the midpoint as the interpretation of the statute guarantees dignity of life. It has always been a
point of debate whether this authority also comprises the authority to die as per our wish. The positive explanation of the authority incorporates numerous rights. When this is so the proponents argue that to extinct living should be innate right. In case of terminal ill patients this living steep down to the lowest amount of a respectful living. This is contradictory to the inherent authority of dignity. In such a situation forcing a person to live a miserable life does not in any circumstances upheld the right of living and therefore there is no harm in allowing them to finish their life according to their wishes and ensuring them a life of dignity till death. According to this view fortification guaranteed under the proviso means rescue of torturous life then prolonging the meaningless life. The freedom pledged to the human also gives him the authority of dealing with his life in any manner as he wishes. But if this thinking is to be appropriate then punishment given for instigating a person to give away life and efforts made to end life would be a major hurdle to euthanasia.

The judicial system in our state has made efforts to elucidate these controversies in the following matters.

Maruti Shripati Dubal v. State of Maharashtra

In this matter suicide was committed by a constable afflicted with mental disorder and therefore charged under section 309 of the criminal code. The petitioner by filing this writ challenged the soundness of the proviso 309. The petitioners mentioned that section was not constitutional sound. It infringed the provisos equality and liberty under Article 14 and Article 21 respectively. The court convinced by the petitioners plea stated that they should not be penalized on the contrary treated as they try to commit such acts due to mental instability that requires healing measures and not an penal action.

P. Rathinam / Nagbhusan Patnaik v. Union of India

This was a petition to exercise euthanasia. It was the first ever matter on this subject. In this case also the issue of constitutional validity of Section 309 was raised. But partly contrary view to Maruti Shripati Dubal case was taken by the apex court. It held the proviso of article 14 to be valid but for article 21 to be violative. It held that right to end is assumed to be inclusive.
Gian Kaur v. State of Punjab. In this case the petitioner were prosecuted for abetment of suicide under the criminal code. They filed this petition on the basis that the earlier verdict of P. Rathinam case where efforts made to terminate life was held to be violative of the right under article 21. The petitioners mentioned that if the authority to die is recognized then if someone is trying to aid a person to die it should not be considered a crime. As the person is just aiding in the implementation of the constitutional right and therefore section 306 is also violative of Article 21. From all these cases it could be concluded that suicide was allowed not to be held as a crime but if any one assist they are guilty. To understand these views with reference to euthanasia it could be said that if you yourself administer a fatal drug prescribed by the doctor it would amount to suicide and not punishable. However, if the same is administered by physician it was an offence. The apex court tried to resolve this issues but were unable to so. It may be because these matters were not directly related to the subject euthanasia.

All these issues were finally set to rest with a historic verdict on the subject which was delivered in 2011 by the apex court.

In Aruna Shanbaug case the court took an overview about the subject in detail. They studied the foreign judgments also on the issue and came to certain detailed conclusions that have left no controversy about the understanding and implementation of the subject.

The court rejected the plea of the petitioner but permitted passive euthanasia. This was permitted not only to those who were competent to give consent but also for those who were in permanent unconscious state due to their ailment. However like any other legislations they levied practical stipulations to the act. The sole intention behind it was to avoid misuse. It has imposed an duty on the medical fraternity to decide whether the case was really fit for the act. They have suggested the doctors to check with every possibility of revival with the new medication and then only decide the case fit. While explaining the aforesaid fact they have cited example of Arkansas man.
Terry Wallis, who revived after twenty-four years at the same time they have also quoted the judgment of Airedale case delivered by the House of Lords.

The court appreciated the verdict.

The bench clearly denied recognition to active euthanasia. They narrated the reasons for its elimination. According to them a state that suffers from low moral values, unbridled corruption and commercialization in every profession irrespective of the cause of that work shall definitely endanger the proviso. They suggested the law makers of the country to check the possibility of removal of section 309 of IPC.

Airedale case

In this case the judges allowed withdrawing sustenance devices of the patient who was unconscious for about 3 years after he had sustained an accident. The court observed that in his case the physicians had done their best and left nothing undone. In such a case prolonging life was nothing but aggravating the family members' agony and burden the hospital unnecessarily. They were of the opinion that all the resources that are utilized on such a patient where there is no scope of revival can be put to use to those who really require it. It has now held by courts in the UK that if physicians certify a case to be hopeless withdrawal of mechanical equipments keeping the patient clinically alive should not be considered an offence. The paramount interest of the terminally ill has to be considered. In case the patient is in PVS the medical fraternity, the near relations' views can be considered by the court before giving the verdict on this point.

According to the various judgments scrutinized it seems that it is the prime duty of the state to come to a decision of parens patriae which ultimately lies on court being delegates of the state.

It has been observed that assisted suicide is disapproved most of the time. To analyze this let us discuss the issue citing cases of the United States court. In these matters the right was discussed with reference to state laws.
Washington v. Glucksberg\textsuperscript{7}

In this matter the prohibition on doctors aiding death was challenged by association working for euthanasia, physicians and patients. They had pleaded that the forbiddance is violative of the charter of Washington state which assures them liberty and freedom to end life. The court held that this right cannot be held as an inherent right. These rights of liberty are always subjected to reasonableness. Further they also pointed out that it is duty of each state to guard their subjects and conserve human life. If the freedom requested by the petitioners is granted then it shall contradict the duty of preservation conferred on the state.

Vacco v. Quill\textsuperscript{8}

This is yet another similar case like the above where the validity of New York law was challenged. It was held by their apex court that did not accept the plea of the petitioners. They stated that the prohibition is based on conventional rights of not harming an individual and retaining his physical uprightness.

Cruzan v. Director, Missouri Department of Health\textsuperscript{9}

This matter is about a lady that met with an accident and left her in a permanent vegetative state. The family members made requisition for mercy killing to the court. They wanted to withhold the artificial sustenance that had kept her alive. The lower court permitted them to do so but the apex court upturned the judgment. The court held the law of the state demands apparent, persuasive, confirmation of the person about his desires to terminate treatment. The court observed that in case like Cruzan the consent needs to be procured when they are capable of making a choice. Further the submission made to the maid earlier did not have any evidentiary value and therefore not to be considered. They reminded about the statute that states that even laying a hand on or tapping an individual without their consensus was an offence and an unlawful act under law of tort.
Matters of Consensus when the sufferer is in a P VS

Re Quinlan Case\textsuperscript{10}

Karen Quinlan a terminal ill was in an unconscious state. The parents of the patient were of the opinion that she had to be relieved from the torturous life she lead. They petitioned in the court of New Jersey for the same. The court granted their prayer. They held that the US statute assures solitude. This authority can be implemented by the parents. As they are in a position to identify what the patient would have desired in the situation in which she is..

Re Conroy Case\textsuperscript{11}

In this matter elderly patient lacking the ability to state his choice had to be euthanized. Astonishingly in this case the court had taken a divergent view the above matter of Karen. In both these matters the question of self governance and independency was raised. In the earlier case the court had recognized the proxy right executed by parents but in this case they refused to accept the same. They recognized the right of autonomy but did not agree to the reported consensus of the patient. They insisted for unequivocal proof to withdraw life support. They stated that in absence of the same the right of autonomy can be recognized if it was in the well being of the person to extinguish life. And if it was not possible for the pleader to establish so then in the interest of humanity it is the best to protect and conserve life.

From the above cases discussed it can be asserted that even if the right of self rule exist there has to be a believable confirmation of facts showing the consensus of the patient to withheld treatment if required. This can be given even before they become incapable to make a choice but the same has to be proved. This view of the courts is because of the possibility of its misuse. The court asserts that it is not necessary that in each of the cases there are people around competent to take decisions on behalf of the patient. Further it also points the probability of being genuine in protecting the interest of the patient. The government therefore becomes responsible to safeguard the subjects against prospective untoward incidents.
The judges opine that it is better to prevent execution if there lays a doubt about the genuineness of the termination and also hope for sustenance of the patient. A wrong decision may not be altered and a crime can be committed.

This opinion can be well explained by the Seema Sood case. Seema an Indian resident was confined to bed for about fifteen years. She suffered from chronic, complete inflammatory disorder in her joints. With no hopes of improvement requested for euthanasia.

However, later a surgery that replaced her knees changed her life. It made her mobile. She now is extremely happy that her pleading had been ignored. The opportunity that she got in life to stand again would have been missed if the request would have been accepted. Thus an opportunity to live life to the fullest can be missed with an erroneous resolution.

In another case of split spine Alison Davis, the sufferer has taken inspiration from Seema's matter and altered her opinion of ending life. She believes in the advancement of medical science. At the same time is positive about the states support in protecting her life. She recommends that a appropriate choice should be made rather than getting dejected and surrendering to the disease. The fight gives you a chance of living which is permanently taken away by depression frustration or agony. A opportunity should be given to life as it can have in store for you, that is wonderful and not known.

In a recent petition for euthanasia, the apex court again confirmed the necessity to have legislation for euthanasia. It was a public interest litigation filed to withdraw life support. Initially the respondents opposed the issue being unethical and illegal. But the court observed that when existence was fading due to the illness preserving life on mechanism is a deviant act to the natural process of law and hence not advisable.
8.2 Legal decisions in favor

Euthanasia on demand

1. Karen Ann Quinlan

This case determined by the court of New Jersey in 1996. This has already been discussed above. It is the matter where the judges directed removal of artificial respiratory devices that had kept her alive forcibly. The authority to reject care was acknowledged. This was a case where delegation of demand was recognized by the court in case the sick were in capable of exercising their choice due to the ailment.

2. Joseph Saikewicz

Joseph Saikewicz was a mentally challenged person from the time of his birth. Due to the gravity of his ailment he spent his life in the hospital. To add to his misery he later suffered from blood cancer. He was advised chemo to cure him from the ailment. The parents refused and on the contrary asked for mercy killing.

The Court decided the matter in favor of the petitioners in 1977. They observed that there was no good done to the patient by keeping him alive. The object of best interest was also safeguarded. Further the approach taken by the court of delegation in Quinlan was also made applicable. The court justified it stating that an individual that is always incapable to make a choice cannot do so at this juncture of his life. And hence the parents executing the right he inherited were absolutely proper and should be allowed. The decision of the Massachusetts court was made applicable generally.

People refrained themselves, from moving the court for such similar cases. The doctors and their parents were considered to be the best judge.

3. Brother Joseph Fox

An appeal was filed to the New York Court in the year 1981 by an aged priest after he passed to a state of losing consciousness because of the operation he underwent. When competent he had stated his desire of leaving the world
in case he went into a vegetative state and had to survive on machineries to his brother colleague.

The judges granted his wish as it as a clear cut case of right to refuse treatment which is recognized by the land of that state.

4. Baby Doe

This matter reflects the scandalous part that is attached to mercy killing. It speaks about the thin line that exists between permissible and unwarrantable in euthanasia.

In the year 1982 an infant suffered from congenital disorder which leaves the child mentally retarded and also causes multiple malformations. A surgery was a cure but the parents made an application for euthanasia. The lower court allowed it justifying the blood relation’s right to solitude. There were many who were against the verdict and also offered to adopt the child. An appeal was filed against the order in the apex court of Indiana. However before it could be heard the infant passed away in misery and pain. The reflexes of this case were that a national legislation was passed banning withdrawal of treatment or refusal of medication to any kind of deformed infant. It was the responsibility of all parents to provide adequate nourishment and medication to such kind of infants and can only anticipate their peaceful death.

5. Clarence Herbert

In this case of California, Clarence went to a permanent vegetative stage while he was operated for a heart surgery. Pursuant to the request from his blood relations the physicians withdrew the life support system and his feeding tube.

After his demise the nurses of the hospital reported to the administrative governing body of the state. The physicians were prosecuted for murder. They were held guilty by the lower court. In an appeal against the judgment the appellate court overruled the judgment. The court observed that the act of the physician to withhold treatment was justifiable. It amounted to passive
euthanasia, the act performed by the doctors was not an deliberate action with an intention to kill the patient. It was with consensus of relatives and hence cannot fall in the ambit of murder or active euthanasia.

6. Claire Conroy

Claire Conroy, an old patient of New Jersey was waiting for her death to come which was expected by the doctors to follow in a year. The patient was incapable of consuming any food and converse with anyone around due to her sickness. She survived on the a medical device to provide her the required nutrition to keep her alive. The patient was competent and cognizant about her illness.

The nephew taking her care requested the New Jersey apex court for her peaceful death that was definite. The patient passed away during the pendency of the matter. However while disposing the matter the court in 1985 observed an important philosophical connotation that nutrition devices should be considered as extraordinary measures alike your other life sustenance devices.

7. Elizabeth Bouvia

This was another appeal decided by the California Court, 1986 , Elizabeth Bouvia, a young lady suffered with condition of disrupted muscle functioning due to brain damage, her mobility was restricted and she was confined to bed. She was forcefully fed artificially by the care takers. The 28 year patient in her complete consciousness expressed her desire to die. The court rejected the plea. In an appeal to the apex court the court took a divergent view. It was pursuant to the bulk view that insisted for assistance of the medical fraternity to embrace a peaceful death. The court permitted withdrawal of her tubes. Justifying the verdict the court said that it is not always necessary that the patient has to be in an permanent unconscious state towards the end of life to administer euthanasia. The authority of privacy permitted enables to decide whether He/she wishes to continue life. If a
dignified life cannot be obtained by the patient she should not be forced to continue living against her wishes.

This verdict helped to move towards legislation for assisted suicide.

8. Helen Corbett

Helen Corbett, a terminally ill old surviving on mechanical devices for nutrition was permitted mercy killing in 1986 by the Florida Court.

The right to privacy permits a individual and also his associates taking care of him to exercise this right and refuse nutrition.

9. Paul Brophy

The Supreme Court of Massachusetts, did not allow on September 11, 1986 to cut off the life sustaining devices of Paul Brophy. His brain was damaged due to bursting of blood vessel which had left him unconscious. The relatives had asked the physicians for withdrawal of the artificial measures of extending life. They refused and therefore the petition. The court also held that physicians should not be coerced to assist but were satisfied that if the patient had been competent would not have agreed to such a life.

In this case the parents took him off the hospital and he passed away due to the disconnection

10. Hector Rodas

Hector Rodas quadriplegic by a stroke of drug wanted to die. He survived on nasal tubes to provide him food. Competent but fed up with the undignified living petitioned Colorado District Court in 1987.

The District Court accepted his right of withdrawal and directed the government sanatorium to do the needful but offer him the best care till he passed away.
11. **Nancy Ellen Jobes**

The patient Nancy Ellen Jobes suffered from degeneration of brain cells. Due to this illness was unable to communicate but reacted to certain people and stimulus. She lived on tube food.

The apex court of New Jersey in 1987 held that an individual, who knows the patient well, is aware about his thinking and psychology can take a decision on his behalf. The person discharging this duty should be acting in good faith and for the benefit of the patient. Hence in this case the family requisition was granted.

The court also mentioned in the judgment that no consent of the court was required for the doctors to remove the patients nutrition tubes.

12. **Ione Bayer**

North Dakota County Court, December 11, 1987

The court advised physicians to discontinue food but the physicians refused. The family members had to take her home and starve her till death to relieve her from her vegetative state.

In this case again the court specified about the blood relations authority to take a decision for the patient in their interest and also confirmed that courts intervention was not essential in such matters.

The above discussed matters conclude that though the U S statute does not mention about the right to privacy. The court has recognized it in all the matters stated above. It has legalized euthanasia to infants as observed in Baby Doe and also accepted involuntary passive euthanasia as observed in Elizabeth Bouvia case.

8.2.1 **Netherland**

i) 22 October 2013

A son helped his ailing mother to terminate life and was prosecuted for the crime. In this case he had requested the physician treating his mother to
assist him in the act. The physician refused and therefore had to do it himself. He assisted her by giving her fatal drugs. He recorded the whole procedure he adopted in helping her die.

In Netherland though euthanasia is not a crime it has to be performed according to the stringent stipulations stated in the code. If not it is a crime. Further to assist an individual to commit suicide is a crime in Netherlands. Albert Heringa was therefore charged assisting suicide. He was prosecuted and the Gelderland court held him guilty. However he was granted a suspended sentence by the judge only for a span of three months. This short term sentence was ordered as judge was convinced that Albert Heringa had committed the act because of the affection he had for his mother and that it was done in good faith to rescue his mother from the torturous life she lead. The court also pointed that he failed in making attempts to find another physician who could have assisted him in the act.

ii) 07 October 2013

This is a case of a blind old lady who was tired of her living because of the complete blindness she suffered. This was unusual case then the others. It is usually observed that person is euthanized due to some serious ailment that they suffer making the life miserable.

The woman had a defected vision since her birth. This fault in the eye sight had grown with passage of time and had left her completely blind at the age of seventy years. She was stayed alone after the death of her husband. She was a cleanliness freak and could not bear that she could not see around. The frustrated and weary lady had made a number of attempts of suicide but failed.
The lady was euthanized as per the stipulations of law. The lady had made a explicit choice to her physician he was convinced about her desire and also consulted another physician for his opinion according to the due procedure of law. The act was physician assisted suicide that has legal acceptance in Netherland.

The regional euthanasia monitoring boards of the state were implicated in the assessment of the case. It was held by them that the case was exceptional and physician assisted suicide was appropriate in the matter.

8.2.2 Switzerland

07, April 2014

A British elderly lady frustrated with the contemporary life travelled to “Dignitas” to assist herself in finishing her life.

An unmarried art teacher Sharona Schwartz was incapable to handle mechanical life lead today. The lady disappointed with the current style of living was not able to adjust with life. She thought that humans were turning to machines and worked like robots with no humanity, compassion and kindness. She stated that she had lived her life to the fullest and did not wish to continue in this computerized world. The lady suffered with regular health issues as per her age but apprehended decline in health with increase in age. The independent adventurous female dreaded her independence and hospitalization in years to come. She therefore travelled with her niece and administered a mortal dosage of barbiturates and ended her life as she desired besides her beloved niece.

8.2.3 Oregon

This matter speaks about aged lady who suffered from dementia. There was a decline in her cerebral capability due to which she was unable to do her every day schedule jobs. Along with this she was also suffering from cancer. It was a fit case of euthanasia. She had pleaded for it but still her doctor refused to assist her in the performance of the act.
The refusal was basically because of her incapacity to express the correct choice. In the psychotherapy sessions conducted it was observed that it was not her unequivocal decision but a choice made due to the daughter. However managed care ethicist who were supervising the matter held that it was a fit case for assisted suicide and therefore assistance could be given.

8.2.4 Belgian
Twins were euthanized under the Belgium law by administering a lethal dose. These twins suffered deafness since birth and at the age of forty five it was revealed to them that they shall be suffering from permanent loss of vision. The twins had spent their whole life together and were unable to stay without the other. The thought of not able to see the other disturbed them and resented for continuing life. The Belgian physicians assisted them in dying.

8.2.5 Canada
February 12, 1994

Sue Rodriguez a proponent of euthanasia herself suffered from neurodegeneration an ailment that affected the cerebral cells. It is known as amyotrophic lateral sclerosis. She requested for assisted suicide. The Canadian laws do not recognize it. A person aiding can be charged for the crime. However being well aware of the law prevalent petitioned the apex court of the state hoping for a change. But to her dismay she did not succeed. Ultimately in 1994 she herself terminated her life with aid of unidentified doctor in presence of the campaigner who had aided her in fighting her case to get legal assistance.

8.3 Legal decisions against
United States
1) Vacco, attorney general of New York V. Quill 1997⁸
In this case a writ of certiorari was filed in the New York court, challenging the equal protection clause of the statute.

In the state like many other nations committing or attempting suicide is charged as an offence. However, passive euthanasia is permissible if the patient wishes to refrain himself from medicinal measures.

The doctors of New York also assert that in certain cases where the patient suffers from terminal illnesses and are desirous and capable to disclose their wish to end their enduring agony can be assisted. However they have not been doing so because of the prohibition levied on assisted suicide. It is the physicians and the proponents who have filed this petition argue that the law is discriminatory. They argue that when withdrawal of life sustenance is permissible incase of enduring patients then why should those patients not be allowed who desire termination by medicines prescribed by physicians which can be administered themselves. They feel that this discrimination is not reasonable and not associated with any national interest.


This was a case similar to the above wherein the validity of law was challenged on the same grounds in Washington. The federal court upheld the petitioner’s plea and held that the legislation was unconstitutional. The appellate court overturned the ruling.

However when the matter came again in front of full circuit court. They again upturned the decision of court of appeal. Due to this the prohibition was again held to be violative of the statute.

The apex court finally gave a verdict for both the legislations and held the prohibition to be valid and constitutional.

The five bench judges of the court gave this verdict. According to them the right to freedom, liberty does not include the authority to commit suicide. They further stated that for any authority to be emphasized it has to be grounded to the customs and acceptable to all the citizens and sense it as correct. If this is so it
can accepted as the basic right. However from the past times it was always observed that assisted suicide has been unlawful. Similarly this so called right to get aid to die did not exist in most of the nations. Passive euthanasia which was compared by the appellants has well been accepted by the people since ages. Hence the two cannot be compared. He further in his verdict depicted how the provision is in the interest of the state and hence cannot be stated discriminatory. The few reason for the same are 1) the interest of the state to conserve human living.2) To safeguard the people who are depressed. 3) To preserve the medicinal principles of safeguarding life till its last breath.4) protection from the slippery slope etc.

3. Mary O' Connor 1988

This matter speaks about a terminally ill lady aged about seventy seven years. Though wearied by her sickness she was quite capable to understand the situation. She also answered the queries posed to her. Though fed by artificial tubes she was not completely brain drained. A petition was made to the New York court of appeals by her daughters to remove her tubes. They stated that the lady wished to die.

In the scrutiny it was observed by the court that moreover the request seemed to be from the daughters rather than the lady herself. No obvious, credible proof had come before the court in that respect. The statement made by her showing her keen interest in preserving dignity or not being a trouble to others cannot be considered as her wish to terminate life. The court stated that there should have been profound assertions about her desire to discontinue the life support mechanism. In case of inadequacy of such evidence the court cannot grant permission for withdrawal.

8.4 Conclusion

It is observed that judicial decisions have a significant impact on the civilization to nurture their decisions in having legislation for mercy killing. The Northern Territory of Australia was the first state to legalize euthanasia. They accepted “Rights of the Terminally Ill Act 1995”. But still the validity of the act was
challenged and it was only after the Supreme Court’s decision confirming it the first euthanasia death was administered under the act. It has been examined that the social taboos prevalent against euthanasia also have been broken by the decisions and paved way for an awakening about the subject. It also aided in creating awareness about the issue amongst the common man, physician’s nurses etc. Discussions were conducted among them which enabled to gain a momentum pertaining to the subject in most of the countries. As a result euthanasia was thus legalised in few of the states viz. Netherlands, Belgium and Luxembour. Following them states of Oregon Montana, Washington, Germany also approved PAS. The decisions also assisted the legislators to avoid the slippery slope.

The judicial decisions reflected the due care criterion. The standards, norms and measures that had to be adopted by the legislators were emphasised. This enabled the legislators to have strict legislations with specified conditions which ought to be fulfilled. Thus the legislations stating that euthanasia to be administered in terminally ill cases without a hope of relief can be an example of the stipulations levied while enacting an act.

The decisions also helped in guiding the physicians to decide in which cases it can be administered whether only relating or affecting the body or germ plasma also. Whether it has to be restricted to major or minors also has been guided by the courts in number of cases. It has also been observed that where assisted suicide is permitted by the legislators, restrictions have been levied that it needs to be implemented only in cases where there exists a selfless motive. This motive is thoroughly confirmed and if found negative the person is to be held guilty. Further it has been observed that these stipulations are the similar in most of the countries. But it seems that the Oregon death with dignity act has more stringent regulations to be a full proof legislation for the state. The criteria of having a witness for the assertions of desire to extinct living are noteworthy. However most of the decisions depict that the judiciary is in favour of passive euthanasia all over the globe.

In spite of the advancement in medical sciences in the Asian continent these decisions have brought about a revolution towards the outlook of the populace in
the continent. Japan has cases where euthanasia of any form is allowed it is heading towards possibility of legislation.

In India the Aruna Shanbag case has been a landmark judgement in this respect. Justice Katju and Justice Mishra allowed removal of life saving devices for terminally sick in a non recoverable unconscious condition. However permission of High Court is essential to perform the act. This has been the law of the land till legislator enact a law in respect to it. Emphasis was given on human autonomy. The judgement also establishes that each individual should be able to live with least amount of decorum, as soon as the condition of survival cascades under the lowest point. The human being have to be permitted to finish such convoluted subsistence. It recommended the deletion of section 309 of I.P.C. Rejection of active euthanasia because of the high probability of its misuse in the country.

The decisions discussed above promote legalization of euthanasia, with necessary safeguards. This is because of the rejection of euthanasia in number of cases. It has been observed that while enacting a law on euthanasia the perpetrators can be aware of the possible drawbacks emphasized in these negative judgments, and take precautions of the possible abuse to strengthen the legislation that they shall be enacting.

End Notes
2. 8 1987 Cr L J 743 (Bom)
3. AIR 1994 S.C. 1844
4. AIR 1966 SC 1257.