CHAPTER 7
JUDICIAL APPROACH TOWARDS RIGHT TO DIE AND EUTHANASIA IN INDIA

7.1 Introduction

The function of law is to respect, protect and promote human dignity. The law in its performance is a trilateral activity of legislature, executive and judiciary that aims at serving human dignity of the people, for the people and by the people.¹

Human dignity is a Grundnorm of law. Law and human dignity are symbiotic. The purpose of law is to serve human dignity. Peace, security and justice together form the trinity of human dignity. Thus, human dignity is a triangular process of legislation, enforcement and adjudication.²

The expectations from the judiciary in the modern era, the era of human rights and human dignity, are immensely high. The judges occupy in human society a foremost place. Can there be any nobler task than to declare law and render justice. Human dignity is not a charity of the ruler to the ruled. It is the basic legal norm of jus cogens character to be applied in its entirety of interaction and communication between and among the individuals, groups of individuals and institutions of governance.³

The mission of any judiciary, while serving the cause of respect and protection of human dignity in a given legal and political jurisdiction, is nothing less than to deliver ‘an empire of justice’ which is the ‘expression of eternal truth’ not only to the contemporary generation the judge or judiciary serves but also to its posterity, as legacy.⁴

There are two judicial ideologies. First, is the judicial ideology based on history i.e. interpreting law embedded in the past conditions in disregard of human dignity in the present. The second is the contemporaneous interpretation of law i.e. the law must be interpreted taking into contemporary circumstances and situations.⁵

² Id., at 48.
³ Id., at 17.
⁴ Id., at 16.
⁵ Id., at 21-22.
According to J.G. Merrills, other than the temporal aspect of law, generally speaking, there are two general judicial ideologies: (i) the ideology of judicial restraint that strictly maintains that judge’s function is to apply law and not to make it, and (ii) the ideology of judicial activism that boldly advocates that courts are part of the political process, which includes adjudication. He further divides these two general ideologies into two specific ideologies: (i) the ideology of tough conservatism, going for maximum rights for states, and (ii) the ideology of benevolent liberalism, favouring the value of the individual and promoting human rights.6

Human dignity means different to different judges. Human dignity oriented ideology perceives human dignity as a legal system’s Grundnorm. It has an immense potential of unleashing the infinite forces of humanity, morality and spirituality in man.7

How, and how much, does a judge destroy or preserve justice depends upon how much service he renders to someone and that someone’s societal fraternity by respecting him or her and restoring his or her human dignity in all aspects of life-civil, political, economic, cultural etc.8

The judicial system that is afraid of the power of legislature and executive, guised as judicial restraint, falls short of serving human dignity in good conscience, hence not worthy of a judicial ideology in the age of human rights and human dignity to be adopted when administering justice. An interactive and fully communicative with executive and legislature, human dignity oriented judicial ideology is the conscientious call of the day that can serve peace, security and justice to mankind while respecting and protecting human dignity in all aspects of life.9

Judge Manfred Lachs, a former President of the International Court of Justice opines: ‘Each judgment is either a step forward or step backward in the development of law. As a result judges cannot avoid being vital force in the life of the law.’10

7 Id., at 40, 49.
8 Id., at 25.
9 Id., at 27.
7.2 Right to Life vis-à-vis Right to Die and Euthanasia: Role of Courts

We all must die one day, so that killing and life-saving are interventions that alter length of life by bringing or postponing the date of death. An extreme statement of this perspective is to be found in St. Augustine’s *City of God*:

[1]he whole of our lifetime is nothing but a race towards death, in which no one is allowed the slightest pause or any slackening of the pace. All are driven on the same speed, and hurried along the same road to the same goal. The man whose life was short passed his days as swiftly as the longer-lived; moments of equal length rushed by for both of them at equal speed, though one was farther than the other from the goal to which both were hastening at the same rate.\textsuperscript{11}

Some people thinking about their own lives, consider length of life very desirable, while others consider the number of years they have is of no importance at all, the quality of their lives being all that matters. There is no doubt that a longer lasting worthwhile life is better than an equally worthwhile but briefer life, say, to fulfill time consuming plans and projects. Moreover, more of a good life is always better than less of it.\textsuperscript{12}

But what are the signs of a good and meaningful life. Meaninglessness is essentially endless pointlessness, and meaningfulness is therefore the opposite.\textsuperscript{13} The meaning of life is from within us, it is not bestowed from without, and it far exceeds in both its beauty and permanence any heaven of which men have ever dreamed or yearned for.\textsuperscript{14} Whether life is or not worthwhile, is a value judgment. Perhaps all this is merely a matter of opinion or taste. So, no objective answer can be given. But we arrive at our value judgement on the basis of certain criteria and standards.\textsuperscript{15} Some suggest that there are four qualities of life:

1. Liveability of the environment (level of living or habitability).
2. Life-ability of the person (quality of life and well-being).

\textsuperscript{11} Oswald Hanfling (ed.), *Life and Meaning*, 121 (1987).
\textsuperscript{12} Id., at 121-122.
\textsuperscript{14} Id., at 417
\textsuperscript{15} K. Baier, “The Purpose of Man’s Existence”. Cited in supra note 11 at 29.
3. Utility of life (good life must be good for something more than itself).
4. Appreciation of life (quality of life in the eyes of beholder).\textsuperscript{16}

The medieval view uses the criteria of the ordinary man: a life is judged by what the person concerned can get out of it: the balance of happiness over unhappiness, pleasure over pain, bliss over suffering. Our earthly life is judged not worthwhile because it contains much unhappiness, pain and suffering, little happiness, pleasure and bliss. (The next life is judged worthwhile because it provides eternal bliss and no suffering).\textsuperscript{17} To judge worthwhileness, we must take into consideration the range of worthwhileness which ordinary lives normally cover. Our end poles of the scale must be the best possible and the worst possible life that one finds. A good and worthwhile life is one that is well above average. A bad one is one well below.\textsuperscript{18} If life can be worthwhile at all, then it can be so even though it be short. And if it is not worthwhile at all, then an eternity of it is simply a nightmare.\textsuperscript{19}

As stated earlier, Article 21 of the Constitution of India states:

\begin{quote}
21. Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law.
\end{quote}

The Right to life does not merely mean the continuance of a person’s animal existence. It means, ‘the fullest opportunity to develop one’s personality and potentiality to the highest level possible in the existing stage if our civilization. Inevitably, it means the right to live decently as a member of a civilized society. It is to ensure all freedom and advantages that would go to make life agreeable. The right implies a reasonable standard of comfort and decency.’\textsuperscript{20}

The right to life under Article 21 of the Indian Constitution has received the widest possible interpretation under the able hands of judiciary and rightly so. Every aspect of

\textsuperscript{17} \textit{Supra} note 11 at 28-29.
\textsuperscript{18} \textit{Id.}, at 30.
\textsuperscript{19} \textit{Id.}, at 31
life is touched from cradle to crave. It includes all attributes of the life. This right is inalienable and is inherent in us. It cannot and is not conferred upon us. This is enough to state that Article 21 has enough of positive content in it. The originating idea in this regard is the view expressed by Field J. in *Munn v. Illinois*, in which it was held that:

The term 'life' (as appearing in the 5th and 14th amendments to the United States Constitution) means something more than 'mere animal existence'. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or the pulling of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world.

Similarly, in *Francis Coralie Mullin v. Delhi Administration*, Justice Bhagwati elucidated the import of the right to life thus:

The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiorari, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article may be total or partially neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21,

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21 Instances of them are: a) Right to education, b) Right to clean environment, c) Right to reputation, d) Right to food, e) Right to shelter, f) Right against exploitation, g) Right to dignified living-this includes rights guaranteed to prisoners, inmates of protective homes, right to release and rehabilitation of bonded labourers, right to legal aid, and the right to know. h) Right to go abroad. i) Right to privacy. j) Right against solitary confinement etc.
22 *P. Rathinam v. Union of India* AIR 1994 SC 1844 at 1853.
23 (1877) 94 US 113. This view was accepted by the Constitution Bench of the apex Court in *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 (paragraphs 56 and 26), to which further leaves were added in *Board of Trustees Port of Bombay v. Dilip Kumar*, AIR 1983 SC 109 (Paragraph 13), *Vikram Dev Singh v. State of Bihar*, AIR 1988 SC 1782 (Para 5); and *Ram Sharan v. Union of India*, AIR 1989 SC 549 (Para 13).
25 *AIR 1981 SC 746.*
whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all; it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. Therefore any act which damages or injures or interferes with the use of any limb or faculty of a person either permanently or even temporarily, would be within the inhibition of Article 21. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.26

Thus, the Supreme Court has held that the word 'life' in Article 21 means right to live with human dignity and the same does not merely connote continued drudgery. It takes within its fold "some of the finer graces of human civilization, which makes life worth living", which includes the basic necessaries of life such as hygienic environment, medical care, safe drinking water, food, clothing and shelter and education etc.,27 and that the expanded concept of life would mean the "tradition, culture and heritage" of the concerned person.28 Thus, life does not mean mere living, but a glowing vitality – the feeling of wholeness with a capacity for continuous intellectual and spiritual growth.29

26 Id., at 752-753.
28 Supra note 23.
The right to life is the basic right which takes into its sweep many more significant human rights.

As stated in the International Conference on Health Policy, Ethics and Human Values:

Life is not mere living but living in health. Health is not the absence of illness but a glowing vitality, the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. Physical, social, spiritual and psychological well-being is intrinsically inter-woven into the fabric of life.30

7.3 Does Right to Life Include Right to Die?

The central issue here is whether the right to life recognized and declared by the Constitution as fundamental includes the right to die? After all everyone has the right to live with dignity.

The constitutional validity of section 309 of the Indian Penal Code, has been the subject matter of challenge several times before the Supreme Court and High Courts. As stated in the previous chapter, section 309 provides punishment for attempt to commit suicide. It will be appropriate to first note the observation of the Delhi High Court in State v. Sanjay Kumar Bhatia31, a case under section 309, IPC.

In this case, the accused was charged under section 309, IPC. He was alleged to have consumed poison. However, the accused was acquitted on ground of delay in investigation. The Court was seized with the question as to whether the investigation of the case under Section 309 should be allowed to continue beyond the period fixed by Section 368, Criminal Procedure Code, 1973. Speaking through Sachar J, as he then was, the Division Bench observed that the continuance of section 309 is an anachronism and it should not be on the statute book. However, the question of its constitutional validity was not considered in that case. It was observed:

A young man has allegedly tried to commit suicide presumably because of over emotionalism. It is ironic that

30 Dr. M. Indira, Dr. Alka Dhal, "Meaning of life, suffering and death", International Conference on Health Policy, Ethics and Human Values, New Delhi, (1986). Supra note 22 at 1853 (para 29).
31 1985 Cri.LJ 931.
Section 309 I.P.C. still continues to be on our Penal Code. The result is that a young boy driven to such frustration so as to seek one’s own life would have escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed. Strange paradox that in the age of votaries of Euthanasia, suicide should be criminally punishable. Instead of the society hanging its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to suicide compounds its inadequacy by treating the boy as a criminal. Instead of sending the young boy to psychiatric clinic, it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive sections of the Penal Code. The continuance of Section 309 I.P.C. is an anachronism unworthy of a human society like ours. Medical clinics for such social misfits certainly but police and prisons never. The very idea is revolting. This concept seeks to meet the challenge of social strains of modern urban and competitive economy by ruthless suppression of mere symptoms – this attempt can only result in failure. Need is for humane, civilized and socially oriented outlook and penology.32

It was further observed,

Many penal offences are the offshoots of an unjust society and socially decadent outlook of love between young people being frustrated by false consideration of code, community or social pretensions. No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309 I.P.C. which has

32 Ibid.
no justification right to continue remain on the statute book.\textsuperscript{33}

In \textit{Maruti Shripati Dubal v. State of Maharashtra}\textsuperscript{34} the Division Bench of the Bombay High Court speaking through P.B. Sawant J., as he then was, examined the constitutional validity of section 309. In the said case, the petitioner was a police constable attached to the Bombay City Police Force. He met with an accident and suffered head injuries and although he recovered from such injury, he became mentally ill. He attempted to commit suicide by pouring kerosene on his body and lighting match stick. He challenged the vires of Section 309, IPC, before the Bombay High Court. Right to life under Article 21 was interpreted to include the right to die or to take away one’s life. The section was held to be discriminatory in nature and also arbitrary and therefore violated equality guaranteed by Article 14.\textsuperscript{35} Consequently, it was held that section 309 is ultra vires of the Constitution as being violative of Article 14 as well as Article 21 of the Constitution, and therefore, must be struck down.\textsuperscript{36}

It was observed that:

It is not and cannot be seriously disputed that the fundamental rights have their positive as well as negative aspects. For example, the freedom of speech and expression includes freedom not to speak and to remain silent. The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere. The freedom of business and occupation includes freedom not to do business and to close down the existing business. If this is so, logically it must follow that right to live as recognized by Article 21 of the Constitution will include also a right not to live or not to be forced to live. To put it

\textsuperscript{33} \textit{Ibid.}

\textsuperscript{34} 1987 CriLJ 743.

\textsuperscript{35} \textit{Id.} at 754. The Constitution of India, Article 14 reads: The state shall not deny to any person equality before law and the equal protection of laws within the territory of India.

\textsuperscript{36} \textit{Id.} at 755.
positively, Article 21 would include a right to die, or to terminate one’s life.\textsuperscript{17}

Further, it was also held that,

The right to die or to end one’s life is not something new or unknown to civilization. Some religions like Hindu and Jain have approved of the practice of ending one’s life by one’s own act in certain circumstances while condemning it in other circumstances. The attitude of Buddhism has been ambiguous though it has encouraged suicide under certain circumstances such as in the service of religion and country. Neither the old nor the New Testament has condemned suicide explicitly. However, Christianity has condemned suicide as a form of murder. In contrast, the Quran has declared it a crime worse than homicide.\textsuperscript{18}

The Court further pointed out that the language of section 309, IPC is sweeping in its nature. It does not define ‘suicide’. It was further observed that:

In fact, philosophers, moralists and sociologists are not agreed upon what constitutes suicide. What may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community. While some suicides are eulogized, others are condemned. That is why perhaps wisely no attempt has been made by the legislature to define either. The want of plausible definition and even of guidelines to distinguish the felonious from the non-felonious act itself therefore makes the provisions of S. 309 arbitrary and violative of

\textsuperscript{17} Id., at 748.
\textsuperscript{18} Id., at 749.
Art. 14. As is rightly said, arbitrariness and equality are enemies of each other.39

The High Court quoted the eminent French sociologist, Emile Durkheim’s classification of suicides made on the basis of the disturbance in the relationship between society and the individual. The court further pointed out that there are different mental, physical and social causes which may lead different individuals to attempt to commit suicide for different ends and purposes, there being nothing in common between them. Section 309 makes no distinction between them and treats them alike, making the provisions thereof arbitrary. The court observed that about one third of the people who kill themselves have been found to have been suffering from mental illness requiring psychiatric treatment.40 It further held that,

There is nothing unnatural about the desire to die and hence the right to die. The means adopted for ending one’s life may be unnatural varying from starvation to strangulation. But, the desire which leads one to resort to the means is not unnatural. Suicide or an attempt to commit suicide is not a feature of a normal life. It is an incident of abnormality or of an extraordinary situation or of an uncommon trait of personality. Abnormality and uncommonality are not unnatural merely because they are exceptional.41

The court also held that,

If the purpose of the punishment for attempted suicide is to prevent the prospective suicides by deterrence, the same is not achieved by punishing those who have made the attempts. Those who make the suicide attempt on account of the mental disorders require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen leading to further mental derangement. Those on the other hand who make the suicide attempt on

39 Id., at 753.
40 Ibid.
41 Id., at 748-749.
account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement need nursing homes and not prisons to prevent them from making the attempts again. No deterrence is going to hold back those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. Thus in no case the punishment serves the purpose and in some cases it is bound to prove self-defeating and counter-productive. On this account also the provisions of the section are unreasonable and arbitrary.\textsuperscript{42}

A year later, the Andhra Pradesh High Court in \textit{Chenna Jagadeeswar v. State of Andhra Pradesh}\textsuperscript{43} also considered the constitutional validity of section 309. Here, one Dr. Jagadeeswar and his wife Saroja were charged under section 302, IPC, for having killed their 4 young children and also under section 309, IPC, for attempting to commit suicide. Dr. Jagadeeswar was also charged for attempting to commit murder of his wife. Saroja was found guilty and released on probation of good conduct for a period of 2 years. Dr. Jagadeeswar was found guilty and sentenced to imprisonment for life. Both preferred an appeal. Amareshwari J., speaking for the Division Bench, rejected the argument that Article 21 includes the right to die. The court also negatived the violation of Article 19. The court observed that:

The courts have sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention If section 309 is to be held illegal, we are highly doubtful whether section 306, IPC could survive. Thus people who actively assist and induce persons to commit suicide may go scot-free. It is true that a society which is indifferent to improving the living conditions of distressed persons cannot with justification

\textsuperscript{42} Id., at 755.
\textsuperscript{43} 1988 Cr. LJ 549.
punish them at self-help or self-deliverance. But the question is whether it is right for the State to adopt that those unable to lead a dignified life are welcome to depart it.44

The court also held that,

It is a paradox that society will neither provide sustenance nor allow the sufferer to die. In this complexity of social maladjustments, the best safeguard is the court which should exercise and temper its judgement with humanity and compassion. In a country like India, where the individual is subjected to tremendous pressures, it is wise to err on the side of caution. To confer a right to destroy oneself and to take it away from the purview of the courts to enquire into the act would be one step down in the scene of human distress and motivation. It may lead to several incongruities and it is not desirable to permit them. We therefore, hold that section 309 is valid and does not offend Articles 19 and 21 of the Constitution.45

Finally, the Supreme Court examined the constitutional validity of section 309 with reference to Articles 14 and 21 in P. Rathinam v. Union of India46.

A Division Bench of the Supreme Court considered the above decisions of the Delhi, Bombay and Andhra Pradesh High Courts and disagreed with the view taken by Andhra Pradesh High Court on the question of violation of Article 21. Agreeing with views of the Bombay High Court, the Division Bench of the Supreme Court, speaking through hon’ble Justice B.L. Hansaria observed:

We state that section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony

44 Id, at 557
45 Ibid.
46 Supra note 22.
and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State’s interference with the personal liberty of the persons concerned is not called for. We therefore, hold that section 309 violates Article 21, and so, it is void. May it be said that the view taken by us would advance not only the cause of humanization, which is a need of the day, but of globalization also, as by effacing section 309, we would be attuning this part of criminal law to the global wavelength.47

The Supreme Court also took note of the global position of suicide, particularly in the UK and US where attempted suicide is no crime. Most countries treat it as a manifestation of a diseased condition of mind which deserves treatment and care and not punishment.48 However, the Supreme Court disagreed with the view of the Bombay High Court that section 309 is also violative of Article 14. Dealing with the argument relating to the want of a plausible definition of suicide, the Supreme Court observed that irrespective of the differences as to what constitutes suicide, suicide is capable of a broad definition and that there is no doubt that it is intentional taking of one’s life.49 As for the reason that section 309 treats all attempts to commit suicide by the same measure without regard to the circumstances in which attempts are made, the Supreme Court held that this also cannot make the said section as violative of Article 14, inasmuch as the nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately; in certain cases, even Probation of Offenders Act can be pressed into service, whose section 12 enables the court to ensure that no stigma or disqualification is attached to such a person. The Supreme Court observed:

47 Id., at 1868.
48 Id., at 1867, 1868.
Suicide, the intentional taking of one’s life has probably been a part of human behaviour since prehistory. Various social forces, like the economy, religion and socio-economic status are responsible for suicides. There are various theories of suicide, to wit, sociological, psychological, biochemical and environmental. Suicide knows no barrier of race, religion, caste, age or sex. There is secularization of suicide in our country also.\footnote{id, at 520, 1523-24.}

While examining the question as to why a law is enacted and what object it serves? the apex court held:

[T]hat law has many promises to keep including granting of so much of liberty as would not jeopardise the interest of another or would affect him adversely, i.e., allowing of stretching of arm up to that point where the other fellow’s nose does not begin. For this purpose, law may have "miles to go". Then, law cannot be cruel, which it would be because of what is being stated later, if persons attempting suicide are treated as criminals and are prosecuted to get them punished, whereas what they need is psychiatric treatment, because suicide basically is a "call for help", as stated by Dr (Mrs) Dastoor, a Bombay Psychiatrist, who heads an Organisation called "Suicide Prevent". May it be reminded that a law which is cruel violates Article 21 of the Constitution.\footnote{supra note 22 at 1856.}

On the question as to whether suicide is a non-religious act, the court observed:

Every individual enjoys freedom of religion under our Constitution, vide Article 25. In a paper which Shri G.P. Tripathi had presented at the World Congress on Law and Medicine held at New Delhi under the caption "Right to
die", he stated that every man lives to accomplish four objectives of life: (1) Dharma (religion and moral virtues); (2) Artha (wealth); (3) Kama (love or desire); and (4) Moksha (spiritual enjoyment). All these objectives were said to be earthly, whereas others are to be accomplished beyond life. When the earthly objectives are complete, religion would require a person not to cling to the body. Shri Tripathi stated that a man has moral right to terminate his life, because death is simply changing the old body into a new one by the process known as Kayakalp, a therapy for rejuvenation. Insofar as Christians are concerned, reference may be made to what Pope John Paul II stated when he gave his approval to the document issued by the sacred congregation stating: ‘when inevitably death is imminent in spite of the means used, it is permitted in conscience to take decision to refuse forms of treatment that would only secure precarious and burdensome prolongation of life, so long as the normal care due to sick person in similar cases is not interrupted. Insofar as our country is concerned, mythology says Lord Rama and his brothers took Jalasamadhi in river Saryu near Ayodhya; ancient history says Buddha and Mahavira achieved death by seeking it; modern history of Independence says about various fasts unto death undertaken by no less a person than Father of the Nation, whose spiritual disciple Vinoba Bhave met his end only recently by going on fast, from which act (of suicide) even as strong a Prime Minister as Indira Gandhi could not dissuade the Acharya. The aforesaid persons were our religious and spiritual leaders; they are eulogised and worshipped. Even the allegation against them that they indulged in a non-religious act, would be taken as an act of
sacrilege. So, where is non-religiosity in the act of suicide so far as our social ethos is concerned? And it is this ethos, this social mores, which our law has to reflect and respect. 52

Further, the court examined as to whether suicide is immoral? It was stated that:

Law and morals often intersect and there can be no doubt that historically at least law and morals were closely related and that in many areas the law continues to look upon its function as the enforcement of morals, the reinforcement of moral standards in society, and the punishment of moral depravity, as noted at p. 19 of Burton M. Leiser's Liberty, Justice and Morals (1973). [M]orality has no defined contours and it would be too hazardous to make a bold and bald statement that commission of suicide is per se an immoral act. If human beings can be treated inhumanly, as a very large segment of our population is, which in a significant measure may be due to wrong (immoral) acts of others, charge of immorality cannot be, and in any case should not be, levied, if such human beings or like of them, feel and think that it would be better to end the wretched life instead of allowing further humiliation or torture. Those who demand virtue must do virtue and should see that others too do the same. 53

On the question as to whether suicide produces adverse sociological effects, the apex court observed:

One of the points raised against suicide is that the person who had so done might have been the sole bread-earner of the family, say a husband, a father, because of whose death the entire family might have been left in lurch or doldrums,
bringing in its wake untold miseries to the members of his family. It is therefore stated that suicide has adverse effects on the social setup. No doubt, the effects of suicide in such cases are quite hurting; but then, it is a matter of extreme doubt whether by booking a person who had attempted to commit suicide to trial, suicides can be taken care of. Even imposition of death sentences has not been able to take care of commission of murders, as mentioned earlier. Further, the aforesaid adverse sociological effects are caused by the death of the person concerned, and not by one who had tried to commit suicide. Indeed, those who fail in their attempts become available to be more or less as useful to the family as they were. So the person to be punished is one who had committed suicide; but, he is beyond the reach of law and cannot be punished. This can provide no reason to punish a person who should not be punished.54

In relation to the issue whether suicide is against public policy, the court observed:

[It] would be an uninformed man in law who would say with any degree of definiteness that commission of suicide is against public policy; and, as such, a person attempting to commit it acts against public policy.55

While examining the effect of punishment on a person who attempts suicide, the court held that:

This is not all. It would be wrong to think that a person attempting to commit suicide does not get punished. He does. The agony undergone by him and the ignominy to be undergone is definitely a punishment, though not a corporal punishment; but then, Section 309 has provided for a sentence of fine also. Agony and ignominy undergone

54 Id., at 1864.  
55 Id., at 1866.  

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would be far more painful and deterrent than a fine which too may not come to be realised if the person concerned were to be released on probation.\textsuperscript{56}

The court also examined the issue as to how suicide prone persons are to be dealt with, and observed that:

We now come to the question relating to the treatment to be given to the persons who attempt to commit suicide. Do they deserve prosecution because they had failed? is the all important question. The answer has to be a bold NO. The reasons are not far to seek. Let us illustrate this first by referring to the case of those 20 persons who committed suicide in Tamil Nadu distressed as they felt because of prolonged illness of Chief Minister, M.G. Ramachandran. That this had happened was published in the Indian Express of 28-10-1984. Question is whether these persons would have deserved prosecution had they failed in their attempt? The answer has to be that there can be no justification to prosecute such sacrificers of their lives. Similar approach has to be adopted towards students who jump into wells after having failed in examinations, but survive. The approach cannot be different qua those girls/boys who resent arranged marriages and prefer to die, but ultimately fail. Let us come to the case of a woman who commits suicide because she had been raped. Would it not be adding insult to injury, and insult manifold, to require such a woman in case of her survival, to face the ignominy of undergoing an open trial during the course of which the sexual violence committed on her which earlier might have been known only to a few, would become widely known, making the life of the victim still more intolerable. Is it not

\textsuperscript{56} Id., at 1859.
cruel to prosecute such a person? We would go further and state that attempt to commit suicide by such a woman is not, cannot be, a crime. What is crime in such a case is to prosecute her with a view to get her punished. It is entirely a different matter that at the end of the trial, the court may impose a token fine or even release the convict on probation. That would not take care of the mental torture and torment which the woman would have undergone during the course of the trial. Such a prosecution is, therefore, par excellence persecution. And why persecute the already tormented woman? Have we become soulless? We think not. What is required is to reach the soul to stir it to make it cease to be cruel. Let us humanise our laws. It is never late to do so. So what is needed to take care of suicide-prone persons are soft words and wise counselling (of a psychiatrist) and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor.\footnote{Id., at 1861.}

In \textit{Smt. Gian Kaur v. State of Punjab}\footnote{AIR 1996 SC 946.} the above view of the Supreme Court was overruled by the Constitution Bench in wherein Verma J., (as he then was) speaking for the Court, held that \textit{P. Rathinam’s} case was wrongly decided. Brief facts of the case are: The appellants Gian Kaur and her husband Harbans Singh were convicted by the Trial Court under Section 306, Indian Penal Code, 1860 and each sentenced to six years R.I. and fine of Rs. 2,000/-, or, in default, further R.I. for nine months, for abetting the commission of suicide by Kulwant Kaur. On appeal to the High Court, the conviction of both has been maintained but the sentence of Gian Kaur alone has been reduced to R.I. for three years. The appeals by special leave were filed against their conviction and sentence under Section 306, IPC. The hon’ble court held that:
When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the ‘right to life’ under Article 21. The significant aspect of ‘sanctity of life’ is also not to be overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can ‘extinction of life’ be read to be included in ‘protection of life’. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the ‘right to die’ as a part of the fundamental right guaranteed therein. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of ‘right to life’. With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to ‘freedom of speech’ etc. to provide a comparable basis to hold that the ‘right to life’ also includes the ‘right to die’. With respect, the comparison is inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in P. Rathinam qua Article 21. To give meaning and content to the word ‘life’ in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the
right itself. The ‘right to die’, if any, is inherently inconsistent with the ‘right to life’ as is ‘death with life’.59

The court remarked that Article 21, which states that all Indians have a right to life and personal liberty, cannot be widened to include euthanasia. Further, assisted suicide and assisted attempt to commit suicide are made punishable by law due to cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.60

Thus, Supreme Court held that euthanasia and assisted suicide are not lawful in our country. The court, however, referred to the principles laid down by the House of Lords in Airedale NHS Trust v. Bland61 where the House of Lords accepted that withdrawal of life supporting systems on the basis of informed medical opinion, would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a normal death, where there is no longer any duty to prolong life. Thus, it is accepted that this is different from euthanasia and assisted suicide.62

On the question of violation of Article 14, the Court agreed with the view taken by Hansaria J. in P. Rathinam’s case. Verma J. further observed that the argument on the desirability of retaining such a penal provision of punishing attempted suicide, including the recommendation for its deletion by the Law Commission are not sufficient to indicate that the provision is unconstitutional being violative of Article 14. Even if those facts are to weigh, the severity of the provision is mitigated by the wide discretion in the matter of sentencing since there is no requirement of awarding any minimum sentence and the sentence of imprisonment is not even compulsory. There is also no minimum fine prescribed as sentence, which alone may be the punishment awarded on conviction under section 309, IPC. This aspect is noticed in P. Rathinam for holding that Article 14 is not violated.63 Thus, the Supreme Court’s decision in Smt. Gian Kaur has categorically

59 Id., at 952.
60 Id., at 955.
61 1993 (2) W.L.R. 316 (H.L.).
62 Id., at 368. Also see, Law Commission of India, 196th Report on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), 159 (2006).
63 Supra note 58 at 953.
affirmed that right to life in Article 21 does not include the right to die. Consequently section 309 which penalizes attempt to commit suicide is not unconstitutional.

However, it is significant to note that the Supreme Court in Gian Kaur focused on constitutionality of section 309, IPC. The Court did not go into the wisdom of retaining or continuing the said provision in the statute. The above judgment has been criticized as follows:

It is submitted that an attempt to suicide was not an offence in this country for a period of about two years, after which the police was back in business. It would turn up at hospitals, threaten interrogation, imply abetment by other members and extort money from the family of the hapless 'accused' who failed in his or her attempt to end life. The force-feeding of persons on hunger strike on issues which have shocked their conscience is the other fallout of the judgment. Today, Indian law looks askance at failed attempts of suicide. It sounds almost regretful in a Kafkaesque sense that the "criminal" who "successfully" commits suicide is now outside its reach. The person who fails to successfully commit the offence is righteously punished.64

It may now be appropriate to also note the decision given by the Kerala High Court in C. A. Thomas Master v. Union of India. In this case, in 1999, four senior citizens in Kerala had filed law suits asking for the legalization of assisted suicide in the country. The petitions were originally filed by two retired schoolteachers, C.A. Thomas (then 80 years) and Mukundan Pillai (then 69) saying they had no further desire to live. But as law-abiding citizens, they did not want to commit suicide, they added. They wanted to voluntarily put an end to their life after having had a successful, contented and happy life. They stated that their mission in life had ended and argued that voluntary termination of one’s life was not equivalent to committing suicide. They wanted to voluntarily end their

64 Rakesh Shukla, “Law be not proud: Right to life should include Euthanasia, Suicide”. Available at www.timesofindia.com. (Accessed on 18.3.09).
65 2000 CriLJ 3729.
lives or donate bodily organs to facilitate voluntary death. Thomas' petition said that freedom to choose the method of one's death was part of the right to life as guaranteed by Article 21 of the Constitution. In 2000, a Division Bench of the Kerela High Court dismissed the petitions.\textsuperscript{66} The court, speaking through Chief Justice A.V. Savant observed that:

The word ‘suicide’ is not defined in the IPC. One must therefore, look at the dictionary meaning of the word. As per New Webster's Dictionary of the English language, Deluxe Encyclopedia Edition, the word ‘suicide’ appearing at page 980 means: ‘One who intentionally takes his own life; the intentional taking of one’s own life; destruction of one's own interests or prospects’. In the Concise Oxford Dictionary, 9th Edn., at page 1393, the word ‘suicide’ is stated to mean as under: ‘1.a. the intentional killing of oneself; b. a person who commits suicide. 2.a. self-destructive action or course (political suicide) 3. Designating a highly dangerous or deliberately suicidal operation etc’. In the Halsbury’s Laws of England, fourth edn., ninth volume, page 686, paragraph 1124, the word ‘suicide’ has been dealt with in the following words: A finding of suicide must be based on evidence of intention. Every act of self-destruction is, in common language, described by the word ‘suicide’, provided it is the intentional act of a party knowing the probable consequence of what he is about. Suicide is never to be presumed. Intention is the essential legal ingredient. In our view, therefore, the word ‘suicide’ in plain English

\textsuperscript{66} A few months after the HC dismissed his petition, "Thomas Master" committed suicide. See, “The right to life or the right to die?”, The Hindu, 3 (May 1, 2005).
language would mean a person voluntarily putting an end to his life.\textsuperscript{67}

The court further held that,

Voluntary termination of one’s life for whatever reason, assuming that it is by persons like the petitioners, who say that they are successful in life, and had led a contended life, and claim that their mission in life is ended, would nevertheless amount to suicide within the meaning of sections 306 and 309, IPC. No distinction can be made between suicide committed by a person who is either frustrated or defeated in life. The question as to whether suicide was committed impulsively or whether it was committed after prolonged deliberation, is wholly irrelevant…….What the petitioners have overlooked is the possible loss to the society, when a person who is otherwise bodily and mentally healthy, wants to exercise his right to voluntarily put an end to his life. It may be that his family members or the society at large may stand to gain by his rich experience in life. The possibility of misuse, or abuse, of such a right and exploitation on that count cannot be ruled out.\textsuperscript{68}

Though, there has been no legislation pertaining to euthanasia in India, the term keeps on coming back for public consideration. In the middle of this legal muddle, extraordinary cases appear and disappear from public consciousness.\textsuperscript{69}

The expression euthanasia arrived in India, though with sadistic attacks, subsequent to the bereavement of K. Venkatesh, 25, who hailed from the metropolis of Charminar.\textsuperscript{70} A former national chess champion, had been in hospital in the southern city of Hyderabad for more than seven months, battling Duchenne's Muscular Dystrophy. The disorder

\textsuperscript{67} Supra note 65 at 3732.
\textsuperscript{68} Id., at 3735.
\textsuperscript{70} Cited in Ibid. Also see, Ashish Goel, “Right to Die Must Be Set Free!”. Available at www.boloji.com/opinion/0431.htm. (Accessed on 17.1.09).
degenerates the body's muscles, heart and lungs and he had wanted to donate his heart, kidneys and liver before it was too late. But both the hospital authorities and the Andhra Pradesh High Court refused his request to turn off his life support system, saying that would amount to euthanasia or mercy killing, which is illegal in India. But, he died in hospital after a futile wait for the courts to accept his plea for euthanasia so that he could donate his organs. His mother, K Sujatha, who was fighting the legal battle on her son's behalf said she was very sad that her son's last wish remained unfulfilled. She said,

I hope my son's case will force the authorities to review the law relating to organ transplants. I hope the law will one day allow terminally ill patients with different medical conditions to donate their organs to help other people in need."}

In the final analysis, only his eyes were able to be made use of to restore health to others, and several others who could have had their lives dramatically changed for the better - or saved entirely - were condemned, therefore, to suffer or to die. There are no laws specifically governing such ending of life in India, though the 'Transplantation of Human Organs Act' was passed in 1995. Venkatesh's scuffle has sparked a controversy on a national scale on this concern. This case had set off an intense and unprecedented debate about the right to die in India, but over the time it dropped off from the media radar.72

Similarly, in another case, a petition was filed by Bihar's Tarkeshwar Chandravanshi in early April 2005 to the State governor asking for mercy killing for his wife Kanchan Devi. Kanchan Devi lapsed into a coma during childbirth in 2000 and her

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71 "Euthanasia seeker dies in India". Available at http://news.bbc.co.uk/2/hi/south_asia/4103747.stm (Accessed on 23.2.13). "Brain stem death" as laid under chapter II section 3 (sub section 6) of the Human Organ Transplantation Act, 1994 provides: Where any human organ is to be removed from the body of a Person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of the following, namely:- (i) the registered medical practitioner in charge of the hospital in which brain-stem death has occurred; (ii) an independent registered medical practitioner, being a specialist, to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority; (iii) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority; and (iv) the registered medical practitioner treating the person whose brain-stem death has occurred.

72 Supra note 69. Also see, Shree Ram, Insight Legal Essays, 203 (2010).
husband has run through all his property and other financial assets in taking care of her. In a petition before the Patna High Court, he pleaded that it review its order of 2001 when it rejected a petition saying that Kanchan Devi was alive and that she had not filed the petition herself. He claimed that the doctors of the Patna Medical College Hospital had declared she was “incurable” and that he was pained to see her in a comatose condition. Chandravanshi’s petition in the court was rejected. Ravi S. Dhawan, chief justice of the Patna High court, was of the view that it was too inhuman to allow mercy killing. The court held that it could not allow the death of a person and the plea was inconsistent with the notion of a welfare state. "The job of the judge is not to take life" and, "this court is certainly not in a position to, in effect, give an order that this patient should be killed," the judges said. The court added, "The patient was not conscious enough to express a wish to die". Hence, his petition was rejected forcing him to appeal to Bihar's Governor, Buta Singh. He urged the Governor, to amend the law by promulgating an ordinance and allow for mercy killing of those in a coma for over six years.  

Unfortunately, Kanchan, in a coma for nine years, passed away in 2007. In May 2011, Chandravanshi appealed to chief minister Nitish Kumar’s janata darbar to demand Rs 50 lakh. He claimed that he did not have a single penny left for him and his children. However, his plea was rejected for demanding such a big amount.

Giriraj Prasad Gupta, 79, has had a long life and now wants to die. Gupta, a retired principal living in Jaipur, has filed a petition in the Rajasthan High Court and sought permission to end his life if he becomes incapacitated. Gupta, a freelance journalist, suffers from poor eyesight and hearing, hernia and prostrate. A fracture left him bedridden for months, and he now wants to die peacefully if he falls ill again. The right to live must include the right to die with dignity, he says. He further said that,

If I am in a coma and people feel that my survival is not at all possible, then I must be allowed to die with some

After recovering from the fracture, Gupta spoke to terminally ill patients and their families. These conversations led him to file the petition. Gupta's family is shocked by his petition and says they will not allow him to kill himself. His lawyer, N.C. Goyal, says the petition will help people like his client and settle the debate on euthanasia. Sociologists, however, are aghast at the thought of euthanasia and say the petition shows the failure of the state, society and family to provide a sense of security among the elderly. Sociologist Rajiv Gupta said that,

If this continues, then the elderly, who are our social assets, will find no place. They will have no other option than committing suicide or appeal before legal institutions to legitimize mercy killing.76

Hon'ble Supreme Court of India, on 7 March 2011, gave its path-breaking verdict on euthanasia in Aruna Ramachandra Shanbaug v. Union of India77.

It is a recent case in India, in which the issue of euthanasia was discussed at length by the hon'ble Supreme Court of India. Aruna was a staff Nurse working in King Edward Memorial Hospital (KEM), Parel, Mumbai. On the evening of 27th November, 1973 she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day on 28th November, 1973 at 7:45 a.m. a cleaner found her lying on the floor with blood all over in an unconscious condition. It is alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. The Neurologist in the Hospital found that she had plantars' extensor, which indicates damage to the cortex or some other part of the brain. She also had brain stem contusion injury.

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76 Ibid
77 AIR 2011 SC 1290.
with associated cervical cord injury. The incident took place 36 years back and now Aruna is about 60 years of age. 78

The case was a writ petition under Article 32 of the Constitution, and was filed on behalf of the petitioner Aruna Ramachandra Shanbaug by one Ms. Pinki Virani of Mumbai, who claimed to be her next friend. 79 The prayer of the petitioner was that the respondents be directed to stop feeding Aruna, and let her die peacefully. 80

However, Dr. Sanjay Oak, Dean, KEM Hospital, Mumbai issued a statement opposing euthanasia for the petitioner. Commenting upon the issue of euthanasia or mercy killing, he said that:

[I] feel that entire society has not matured enough to accept the execution of an Act of Euthanasia or Mercy Killing. I fear that this may get misused and our monitoring and deterring mechanisms may fail to prevent those unfortunate incidences. To me any mature society is best judged by its capacity and commitment to take care of its “invalid” ones. They are the children of Lesser God and in fact, developing nation as we are, we should move in a positive manner of taking care of several unfortunate ones who have deficiencies, disabilities and deformities. 81

Not only this, other staff of the KEM hospital also issued statements that they were looking after Aruna Shanbaug and wanted her to live 82 and were determined to take care of her till her last breath by natural process. 83

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78 Id., at 1293.
79 Ibid.
80 Ibid. It was stated in the petition that Aruna was virtually a skeleton. Judged by any parameter, Aruna cannot be said to be a living person and it is only on account of mashed food which is put into her mouth that there is a facade of life which is totally devoid of any human element. There is not the slightest possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital, Mumbai like a dead animal, and this has been the position for the last 36 years. Ibid.
81 Id., at 1306.
82 Ibid. Moreover, in an affidavit filed by Dr. Amar Ramaji Pazare, Professor and Head in the said hospital, stated that Aruna accepted the food in normal course and responded by facial expressions. She responded to commands intermittently by making sounds. She made sounds when she had to pass stool and urine which the nursing staff identified and attended to by leading her to the toilet. Id., at 1294.
83 Ibid.
Because of this variance between the allegations in the writ petition and the counter affidavit of the hospital staff (including doctors), the court appointed a team of three very distinguished doctors of Mumbai to examine Aruna Shanbaug thoroughly and submit a report about her physical and mental condition.84

Taking into consideration her medical history, physical, neurological and mental status examination (including her consciousness, general appearance, attitude, behavior, mood and effect, speech and thoughts, perception, orientation, memory and intellectual capacity and insight) and various medical reports (like CT Scan Head (plain), EEG, Blood, Diagnostic Impression and Prognosis), the team of doctors concluded that she had evidence of intact auditory, visual, somatic and motor primary neural pathways. However no definitive evidence for awareness of auditory, visual, somatic and motor stimuli was observed during their examinations. They also handed over a CD in this connection.85

The court saw the screening of the CD submitted by the team of doctors along with their main report and another supplementary report explaining the technical terms used in the first mentioned report. In its supplementary report, the team explained various medical terms like coma, brain-death, persistent vegetative state and minimally conscious state etc. These words are often used in common language to describe severe brain damage. However, in medical terminology, these terms have specific meaning and significance.86

The team opined that broadly there were following issues involved in Aruna’s case (and other similar cases):

1. In a person who was in a permanent vegetative state (PVS), should withholding or withdrawal of life sustaining therapies be permissible or ‘not unlawful’?
2. If the patient had previously expressed a wish not to have life-sustaining treatments in case of futile care or PVS, should his / her wishes be respected when the situation arises?
3. In case a person did not previously express such a wish, and if his family or next of kin made a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?

84 Id, at 1294.
85 Id., at 1294-1300.
86 Id, at 1301-1303.
4. Aruna Shanbaug had been abandoned by her family and was being looked after for the last 37 years by the staff of KEM Hospital. Who should take decisions on her behalf?87

The team realized that these questions were difficult to answer because they involved various ethical, legal and social issues. So, they based their opinion on medical facts and medical ethics. The two of the cardinal principles of medical ethics are Patient Autonomy and Beneficence.

Autonomy means the right to self-determination, where the informed and competent patient has a right to choose and decide the manner of his treatment. In the event that he is incompetent to make choices, his wishes expressed in advance in the form of a Living Will or the wishes of surrogates acting on his behalf ('substituted judgment') are to be respected.88

Beneficence is acting in what is (or judged to be) in patient's best interest. It means following a course of action that is best for the patient, and is not influenced by personal convictions, motives or other considerations. In some cases, the doctor’s expanded goals may include allowing the natural dying process (neither hastening nor delaying death, but ‘letting nature take its course’), thus avoiding or reducing the sufferings of the patient and his family, and providing emotional support. This is not to be confused with euthanasia, which involves the doctor's deliberate and intentional act through administering a lethal injection to end the life of the patient.89

The team opined that in the case under consideration:

1. The doctors had no indication of Aruna Shanbaug’s views or wishes with respect to life-sustaining treatments for a permanent vegetative state.
2. Any decision regarding her treatment would be taken by a surrogate.
3. The staff of the KEM hospital had looked after her for 37 years, after she was abandoned by her family. Therefore, the Dean of the KEM Hospital (representing the staff of hospital) was an appropriate surrogate.
4. If the doctors treating Aruna Shanbaug and the Dean of the KEM Hospital, together acting in the best interest of the patient, felt that life sustaining treatments

87 Ibid, at 1304.
88 Ibid.
89 Ibid.
should continue, their decision should be respected. And if they felt that withholding or withdrawing life-sustaining treatments is the appropriate course of action, they should be allowed to do so, and their actions should not be considered unlawful.90

Mr. Shekhar Naphade, learned senior counsel for the petitioner relied on the decision of the Supreme Court in *Vikram Deo Singh Tomar vs. State of Bihar*91 where it was observed that:

[W]e live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen.92

He also relied on the decision of the Supreme Court in *P. Rathinam vs. Union of India and another*93 in which a two-Judge bench of this Court quoted with approval a passage from an article by Dr. M. Indira and Dr. Alka Dhal in which it was mentioned that:

[L]ife is not mere living but living in health. Health is not the absence of illness but a glowing vitality the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. Physical, social, spiritual and psychological well-being are intrinsically inter-woven into the fabric of life.94

The decision in Rathinam's case was, however, overruled by a Constitution Bench decision of the Supreme Court in *Gian Kaur vs. State of Punjab*95. Mr. Naphade invited the attention of the hon'ble court to the para 2196 and para 2297 of Gian Kaur, and

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90 Id., at 1304-1305.
91 1988 (Supp) SCC 734 (vide para 2).
92 Supra note 77 at 1307.
93 Supra note 22.
94 Id., at 1853.
95 Supra note 58.
96 Id., at 952-953. Para 21 states that: "Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the right to live with dignity' is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of right to life therein includes the right to die'. The right to life' including
submitted that Aruna Shanbaug should be allowed to die. He also submitted that Ms. Pinky Virani was the next friend of Aruna as she had written a book on her life called *Aruna's story* and had been following Aruna’s case from 1980 and had done whatever possible and within her means to help Aruna. Mr. Naphade also invited the attention of the hon’ble court towards the report of the Law Commission of India, 2006 on ‘Medical Treatment to Terminally Ill Patients’.  

However, the Learned Attorney General, Mr. Vahanvati, appearing for the Union of India, did not justify terminating her life by withdrawing hydration/food/medical support as such act or omission would be cruel, inhuman and intolerable. Withdrawing/withholding of hydration/food/medical support to a patient was unknown to Indian law and was contrary to law. If allowed, it would lead to resentment, disheartenment in hospital staff and other well-wishers of Aruna and large scale disillusionment. In any event, Ms. Pinky Virani did not have any locus.  

Learned Attorney General stated that the 2006 report of the Law Commission of India on euthanasia had not been accepted by the Government of India. He further submitted that:

> [Indian society is emotional and care-oriented. We do not send our parents to old age homes, as it happens in the West. He stated that there was a great danger in permitting euthanasia that the relatives of a person may conspire with doctors and get him killed to inherit his property. He]  

This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the right to die' an unnatural death curtailing the natural span of life.”  

97 *Id.* at 953. Para 22 states that: “A question may arise, in the context of a dying man, who is, terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the 'right to die' with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life.”

98 *Supra* note 77 at 1308.

further submitted that tomorrow there may be a cure to a medical state perceived as incurable today.\textsuperscript{100}

Mr. T. R. Andhyaruinja, learned senior counsel as Amicus Curiae, submitted that in general in common law if a surgeon who performed an operation without the patient’s consent committed assault or battery.\textsuperscript{101} The patient possessed the right not to consent i.e. to refuse or discontinue treatment. This was known as the principle of self-determination or informed consent. In the United States this right is reinforced by a Constitutional right of privacy.\textsuperscript{102} The same principle applied where a patient’s consent had been expressed at an earlier date before he became unconscious or otherwise incapable of communicating it as by a ‘living will’ or by giving written authority to doctors in anticipation of his incompetent situation.\textsuperscript{103} If the doctor acted on such consent there was no question of the patient committing suicide or of the doctor having aided or abetted him in doing so.\textsuperscript{104} Unlike learned Attorney General, he favoured passive euthanasia provided the decision to discontinue life support was taken by responsible medical practitioners.\textsuperscript{105}

The court also sought some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries.\textsuperscript{106}

The Supreme Court also discussed the question as to what happens when the patient is in no condition to be able to say whether or not he consents to discontinuance of the treatment and has also given no prior indication of his wishes with regard to it as in 

\textit{Aruna}’s case. To reiterate, in such a situation, the approach adopted in some of the American cases is of “substituted judgment” or the judgment of a surrogate (Medical Power of Attorney). This involves a detailed inquiry into the patient’s views and preferences. The surrogate decision maker has to gather from material facts as far as possible the decision which the incompetent patient would have made if he was competent.\textsuperscript{107}

\textsuperscript{100}ibid.
\textsuperscript{101}ibid., at 1309.
\textsuperscript{102}ibid.
\textsuperscript{103}ibid.
\textsuperscript{104}ibid.
\textsuperscript{105}ibid.
\textsuperscript{106}ibid., at 1292 (para 2).
\textsuperscript{107}ibid., at 1309.
In re Quinlan, Karen Quinlan suffered severe brain damage as a result of anoxia, and entered into PVS. Her father sought judicial approval to disconnect her respirator. The New Jersey Supreme Court granted the prayer, holding that Karen had a right of privacy grounded in the U.S. Constitution to terminate treatment. The Court concluded that the way Karen's right to privacy could be exercised would be to allow her guardian and family to decide whether she would exercise it in the circumstances.

In re Conroy, however, the New Jersey Supreme Court, in a case of an 84 year old incompetent nursing home resident who had suffered irreversible mental and physical ailments, contrary to its decision in Quinlan's case, decided to base its decision on the common law right to self determination and informed consent. This right can be exercised by a surrogate decision maker when there was clear evidence that the incompetent person would have exercised it. Where such evidence was lacking the Court held that an individual's right could still be invoked in certain circumstances under objective 'best interest' standards. If none of these conditions obtained, it was best to err in favour of preserving life.

However, this test is not favoured in English law in relation to incompetent adults. The House of Lords in Airedale NHS Trust v. Bland observed that the test in such cases was 'what is in the best interest of the patient'. Existence in a vegetative state with no prospect of recovery was by that opinion regarded as not being of benefit to the patient. This opinion must be formed by a responsible and competent body of medical persons in charge of the patient. Thus, the court observed that the principle of sanctity of life was not an absolute one and took the view that while passive euthanasia may be lawful, active euthanasia was unlawful.

As to the question that who has to decide the best interest of the patient, most decisions have held that the decision of the parents, spouse, or other close relative, should

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108 70 N.J.10, 355 A. 2d 647.
109 Cited in supra note 77 at 1325-26.
111 Cited in supra note 77 at 1326.
112 Supra note 61.
113 Cited in supra note 77 at 1317.
114 Id., at 1309.
115 Id., at 1318.
116 Id., at 1320.
carry weight if it is an informed one, but it is not decisive.\textsuperscript{117} In \textit{Re J (A Minor Wardship: Medical Treatment)}\textsuperscript{118} it was held that the Court as representative of the Sovereign as \textit{parens patriae} will adopt the same standard which a reasonable and responsible parent would do. But, for historical reasons, the \textit{parens patriae} jurisdiction over adult mentally incompetent persons was abolished by statute and the Court has no power now to give its consent. In this situation, the Court only gives a declaration that the proposed omission by doctors is not unlawful.\textsuperscript{119}

The hon'ble Supreme Court could have dismissed this petition on the short ground that under Article 32 of the Constitution of India (unlike Article 226) the petitioner had to prove violation of a fundamental right, and it has already been held by the Constitution Bench decision of that Court in \textit{Gian Kaur vs. State of Punjab}\textsuperscript{120} that the right to life, guaranteed by Article 21 of the Constitution did not include the right to die. Hence the petitioner had not shown violation of any of her fundamental rights. However, in view of the importance of the issues involved the court decided to go deeper into the merits of the case.\textsuperscript{121}

The verdict delivered on 7 March 2011, began with the following words of Mirza Ghalib:

\textit{Marte hain aarzoo mein marne ki, Maut aati hai par nahin aati.}\textsuperscript{122}

The court recommended to Parliament to consider the feasibility of deleting the Section 309, IPC as it had become anachronistic. A person attempts suicide in a depression, and hence he needs help and counselling, rather than punishment.\textsuperscript{123}

The following view was taken by Supreme Court on various issues concerning euthanasia:

\begin{itemize}
  \item Several of these decisions have been referred to in Chapter IV of the 196th Report of the Law Commission of India on Medical Treatment to Terminally ill Patients). \textit{Id.}, at 1323.
  \item \textit{1990 (3) All E.R. 930.}
  \item \textit{Supra} note 77 at 1310, 1323. In U.K., the Mental Capacity Act, 2005 now makes provision relating to persons who lack capacity and to determine what is in their best interests and the power to make declaration by a special Court of Protection as to the lawfulness of any act done in relation to a patient. \textsuperscript{120}
  \item \textit{Supra} note 58.
  \item \textit{Supra} note 77 at 1293.
  \item \textit{Id.}, at 1292.
  \item \textit{Id.}, at 1327.
\end{itemize}
(1) The foreign decisions had only persuasive value in our country, and were not binding authorities on our Courts. Hence, it could prefer to follow the minority view of a foreign decision, or follow an overruled foreign decision.124

(2) The Supreme Court in Gian Kaur vs. State of Punjab (thereby overruling its earlier Division Bench decision in P. Rathinam v. Union of India) held that both euthanasia and assisted suicide are not lawful in India because right to die was not included in right to life under Article 21. The Court also observed that euthanasia could be made lawful only by legislation.127 But, it was not clarified who can decide whether life support should be discontinued in the case of an incompetent person.128

(3) It was experts like medical practitioners who could decide whether there was any reasonable possibility of a new medical discovery which could enable such a patient to revive in the near future.129

(4) The court explained the words coma, brain-death and persistent vegetative state (PVS), often used in common language to describe severe brain damage. However, in medical terminology, these terms have specific meaning and significance.

Brain death is a state of prolonged irreversible cessation of all brain activity, including lower brain stem function with the complete absence of voluntary movements, responses to stimuli, brain stem reflexes, and spontaneous respirations. This is the most severe form of brain damage. The patient is unconscious, completely unresponsive, has no reflex activity from centres in the brain, and has no breathing efforts on his own. However the heart is beating. This patient can only be maintained alive by advanced life support (breathing machine or ventilator, drugs to maintain blood pressure, etc). These patients can be legally declared dead (‘brain dead’) to allow their organs to be taken for donation.130

Patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation. These patients are unconscious. They cannot be awakened even by

124 Id., at 1326.
125 Supra note 58.
126 Supra note 22.
127 Supra note 77 at 1327.
128 Ibid.
129 Ibid.
130 Id., at 1301.
application of a painful stimulus. They have normal heart beat and breathing, and do not require advanced life support to preserve life.131

In Vegetative State (VS), there is complete absence of behavioral evidence for self or environmental awareness. There is preserved capacity for spontaneous or stimulus-induced arousal, evidenced by sleep–wake cycles. i.e. patients are awake, but have no awareness. Patients appear awake. They have normal heart beat and breathing, and do not require advanced life support to preserve life. They cannot produce a purposeful, coordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak, or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stools. They sleep and awaken. As the centres in the brain controlling the heart and breathing are intact, there is no threat to life, and patients can survive for many years with expert nursing care. The following behaviours may be seen in the vegetative state:

- Sleep-wake cycles with eyes closed, then open.
- Patient breathes on her own.
- Spontaneous blinking and roving eye movements.
- Produce sounds but no words.
- Brief, unsustained visual pursuit (following an object with her eyes).
- Grimacing to pain, changing facial expressions.
- Yawning; chewing jaw movements.
- Swallowing of her own spit.
- Non-purposeful limb movements; arching of back.
- Reflex withdrawal from painful stimuli.
- Brief movements of head or eyes toward sound or movement without apparent localization or fixation.
- Startles with a loud sound.132

Aruna Shanbaug is clearly not brain dead or in coma or in minimally conscious state. She had some brain activity, though very little.133 Her brain stem was certainly alive.134

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131 Ibid
132 The court also explained the concept of ‘Minimally Conscious State’. Id, at 1301-1302.
She met most of the criteria for being in a permanent vegetative state which had resulted for 37 years. However, her dementia had not progressed and had remained stable for many years. However, there appeared little possibility of her coming out of PVS in which she was in. In all probability, she would continue to be in the same state till her death.

(5) In India, if a person consciously and voluntarily refuses to take life-saving medical treatment it is not a crime. But there is no statutory provision in our country as to the legal procedure for withdrawing life support to a person in PVS or who is otherwise incompetent to take a decision in this connection. So, the court opined that passive euthanasia should be permitted in our country in certain situations (i.e. only in cases where the patient is brain-dead). It laid down the following guidelines for withdrawal of life support system which will continue to be the law until Parliament made a law on the subject:

(i) A decision to discontinue life support could be taken either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision could be taken even by a person or a body of persons acting as a next friend, the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient. Aruna Shanbaug's parents were dead and other close relatives were not interested in her ever since she had the unfortunate assault on her. It was the KEM hospital staff, who had been amazingly caring for her day and night for so many long years, who really were her next friends, and not Ms. Pinky though the court appreciated the splendid social spirit she had shown. However, assuming that the KEM hospital staff at some future time changed its mind, it would have to apply to the Bombay High Court for approval of the decision to withdraw life support.

135 Ibid.
136 Ibid.
137 Id., at 1331-32.

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133 Id., at 1331.
134 Ibid. She did not need a heart-lung machine. She breathed on her own without the help of a respirator. She digested food, and her body performed other involuntary function without any help. From the CD it appeared that she could certainly not be called dead. She was making some sounds, blinking, eating food put in her mouth, and even licking with her tongue morsels on her mouth.
135 Ibid.
136 Ibid.
137 Id., at 1331-32.
Such a decision required approval from the High Court concerned as laid down in *Airedale*'s case. This was also in consonance with the doctrine of *parens patriae*. The High Court could grant approval for withdrawal of life support to such an incompetent person under Article 226 of the Constitution on an application filed by the near relatives or next friend or the doctors/hospital staff.

The Chief Justice of the High Court should constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors, preferably a neurologist, a psychiatrist and a physician, to be nominated by it after consulting such medical authorities/medical practitioners as it may deem fit. For that purpose, a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory and their fees for this purpose may be fixed.

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

The High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor's committee to them as soon as it was available. After hearing them, the High Court bench should give its verdict speedily at the earliest, assigning specific reasons in accordance with the principle of 'best interest of the patient', since delay in the matter might result in causing great mental agony to the relatives and persons close to the patient. The views of the near relatives and committee of doctors should be given due weight by the High Court before pronouncing a final verdict which shall not be summary in nature.

Welcoming the verdict in favour of conditional passive euthanasia for terminally ill patients, among many others is the Bollywood star, Hrithik Roshan, who played a

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138 *ibid.*
139 *Id.*, at 1332.
140 *Id.*, at 1333.
141 *Id.*, at 1334.
145 *Id.*, at 1334-35.
paraplegic patient (who also files a petition requesting euthanasia in noted Bollywood director Sanjay Leela Bhansali’s Guzaarish, says that he can realize the pain of a patient who loses all mobility. He said that the verdict was a good beginning and with time, it would become easier for the society to accept it.146

7.4 Judicial Approach towards Assisted Suicide

As stated in the previous chapter, Section 306 of the Indian Penal Code (IPC) penalizes abetment of suicide. The constitutionality of section 306 was challenged in Smt. Gian Kaur v. State of Punjab.147 One of the points directly raised was the inclusion of the ‘right to die’ within the ambit of Article 21 of the Constitution, to contend that any person assisting the enforcement of the ‘right to die’ is merely assisting in the enforcement of the fundamental right under Article 21 which cannot be penal; and Section 306, IPC making that act punishable, therefore, violates Article 21.148 Upholding the constitutionality of section 306, the Supreme Court, speaking through Justice J.S. Verma observed:

Section 306 prescribes punishment for abetment of suicide while Section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of Section 306 and it is punishable only under Section 309 read with Section 107, IPC. In certain other jurisdictions, even though attempt to commit suicide is not a penal offence yet the abettor is made punishable. The provision there, provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus, even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. In other words assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision. The arguments

147 Supra note 58.
148 Id., at 948.
which are advanced to support the plea for not punishing the person who attempts to commit suicide do not avail for the benefit of another person assisting in the commission of suicide or in its attempt. This plea was strongly advanced by the learned Attorney General as well as the amicus curiae Shri Nariman and Shri Sorabjee. We find great force in the submission.\textsuperscript{149}

7.5 Conclusion

Thus, the above discussion shows that how courts play a significant role in interpreting law while deciding cases. They are the ones who come face to face with the public. In researcher’s view they better understand the plight of those who suffer. The view taken by hon’ble Supreme Court in its path breaking judgment is strongly welcomed and the procedure and guidelines given by it will be extremely helpful in making a legislative policy on the subject.

\textsuperscript{149} Id., at 955.