Euthanasia: A Conflict between Sanctity of Life, Autonomy and Patient’s Best Interests

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(A) Introduction

Nature is devoid of value without the bias of life. Where there is no life, there can be none of the values of life. Life is a particular play of energy, one of myriad forms which all serve, each in its own place, time and scope, the whole play of the universe. Life presents itself to our eyes as a vast machine, feeding on itself, running on and on forever to nothing. And we are part of that life.

Nothing does one love in this world more than one’s life. There has been no greater gift in the past, nor will there be in the future, than the gift of life, for doubtless there is nothing dearer to one than one’s self. It is a beautiful divine gift. Human life is said to have a special value because it does not mean mere animal existence, but a life of dignity and worth, i.e. a meaningful life. Various legal systems at the national as well as international level recognize and protect ‘right to life’ as the most basic and important human right (or fundamental right) because it is the foundation of other essential human rights and freedoms. In India, the fundamental right to life is guaranteed under Article 21 of Part III of the Constitution which states that:

No person shall be deprived of his life or personal liberty except in accordance to procedure established by law.

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1 Marvin Farber, Basic Issues of Philosophy, 233 (1968).
Dying is a fact of life. Every human being is desirous to enjoy the fruits of life till he dies. But should we allow a doctor or a relative to terminate the life of a person because it has become intolerable and extremely painful for he is suffering from an incurable or terrible terminal disease, so that he can die a dignified death at least? Should human dignity, freedom and autonomy be respected to such an extent we can even override the sanctity of sacred and precious life given to us by God?

(B) The Right to Die and Euthanasia

We have associated life with breathing; the breath is life. But it is evident that spontaneous motion or locomotion, breathing, eating are only processes of life and not the life itself. These processes of our vitality can be maintained in other ways than by our respiration and other means of sustenance. With the advent of extraordinary and marvelous advancements in modern science and technology, the life of a person can be prolonged indefinitely through artificial life support mechanisms. But in some cases this artificial prolongation of life may cause unbearable, intolerable pain and agony not only to the patient but also his family. Moreover, financial crisis and psychological burden on the family add spark to the demand for right to die. The principles of personal autonomy and self-determination also make the case of right to die stronger.

Right to die is one of the most debatable issues which the courts and legislatures throughout the world are facing today because it concerns end of life decisions. The concept implies that the right to live a meaningful and dignified life should extend so far so as to include within its scope the right to die a dignified death by way of euthanasia (or mercy killing) or suicide or physician-assisted death.

While suicide means deliberately killing oneself, euthanasia has been defined as ‘an act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and intractably painful and distressing disease.’ The term euthanasia is derived from the Greek word “euthanatos”, “eu” means both “well” and “easy” and “thanatos” is death, thus meaning “good death”. It should be noted that concept of euthanasia is often erroneously described as “mercy killing”. Most forms of

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Notes:

1. supra note 2 at 165.
euthanasia are, indeed, motivated by mercy. Not so others. Physician-assisted suicide means that the physician does not directly kill the patient but provides the means or prescribes the drug which is taken by the patient himself.

Euthanasia is not a new subject as is evident from the references to it even in ancient Greece and Rome. The Hippocrates mentioned euthanasia in the Hippocratic Oath which states that:

I will prescribe regimen for the good of my patients according to my ability and my judgement and never do harm to anyone.
To please no one will I prescribe a deadly drug, nor give advice that may cause his death.

There are two kinds of euthanasia - active and passive. Active euthanasia is the ‘intentional’ killing of a terminally ill patient by a physician, or by someone, such as a nurse, who acts on the direction of the physician. It may be voluntary, non-voluntary, and involuntary. In voluntary active euthanasia the doctor intentionally kills the patient at the patient’s request and so with the patient’s consent. In non-voluntary active euthanasia the doctor intentionally kills the patient without the patient’s request because the patient is unable to make a request or actively give his or her consent. In involuntary active euthanasia the doctor intentionally kills the patient without the patient’s consent when patient consent is possible to get but is not sought. In passive euthanasia the doctor allows the patient to die, either by withholding treatment or by discontinuing treatment, where the relevant treatment is designed to keep a patient alive who is terminally ill. Like active euthanasia, it may also be voluntary, non-voluntary, and involuntary.

(C) Principle of Sanctity or Sacredness of Life

People often say that life is sacred. They almost never mean what they say. If they did, killing a pig or pulling up a cabbage would be as abhorrent to them as the murder of

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11 Jonathan Herring, Medical Law and Ethics, 437 (2006). The withdrawal of life support by the doctors is in law considered as an omission and not a positive step to terminate the life.
a human being. When people say that life is sacred, it is human life they have in mind. The conviction that human life is sacred probably provides the most powerful basis for resisting euthanasia in the different forms and contexts. But why should human life have special value? There are various interpretations of the principle of sanctity of life.

(1) Instrumental Value of Human Life

We treat the value of someone’s life as instrumental when we measure it in terms of how much his being alive serves the interests of others i.e. of how much what he produces makes other people’s life better, for example.

(2) Subjective Value of Human Life

We treat a person’s life as subjectively valuable (or personal value) when we measure its value to him, that is, in terms of how much he wants to be lived or how much being alive is good for him. So if we say that life has lost its value to someone who is miserable or in great pain, we are treating that life in a subjective way.

(3) Intrinsic Value of Human Life

Most of us think that it is wrong to kill people. Some think that it is wrong in all circumstances, while others think that in special circumstances (say, in a just war or in self-defense) some killing may be justified.

(i) Being Alive is intrinsically Valuable

Life of any human organism has intrinsic value whether or not it also has instrumental or personal value. We should respect, honor and protect as it is marvelous, most important in itself. Human life is sacred or inviolable.

Once a human life has begun, it is very important that it flourishes. And it is an inherently bad event when the investment in that life is wasted. There are two dimensions of investment, natural and human investments in a human life. The former is dominantly more important than the latter and that choosing premature death for a person who could be kept technically alive longer, either by injecting lethal drug or by withdrawing life support, cheats nature and therefore euthanasia is the greatest possible insult to life’s

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14 Id. at 72
15 Id. at 72-73.
17 Supra note 13 at 73-74.
18 Id. at 74.
sacred value. Deliberately ending a human life denies its inherent, cosmic value and therefore against God’s will.\textsuperscript{19}

There are various interpretations of the principle of sanctity of life. Albert Schweitzer’s ‘reverence for life’ was unrestricted, applying to all living things, not only human beings. According to the Jewish law, life is to be preserved, even at great cost. Each moment of human life is considered to be intrinsically sacred. Preserving life supersedes living the ‘good life’.\textsuperscript{20} In Christianity, Judaism, Buddhism, Hinduism, Sikhism and Islam, respect is shown to the principle of sanctity of life and euthanasia or suicide is opposed. Every life is valuable and precious to God. The person in Persistent Vegetative State (PVS) is still valued and loved by God and hence is precious, even if no earthly person can relate to him or her.\textsuperscript{21}

(ii) Being Human is intrinsically valuable

Human life has some special value, a value quite distinct from the value of the lives of other living beings.\textsuperscript{22} At this point we should pause to ask what we mean by the terms like ‘human life’ of ‘human being’:

(a) The ‘Speciecest’ Doctrine: Membership of the species \textit{Homo Sapiens}

This particular thinking is based on what is sometimes called ‘speciesism’ or the ‘member of the species \textit{Homo Sapiens}’ i.e. human life being treated as having a special priority over animal life simply because it is human.\textsuperscript{23} As Thomas Aquinas put it, taking a human life is a sin against God in the same way that killing a slave would be a sin against the master to whom the slave belonged. Non-human animals, on the other hand, are believed to have been placed by God under man’s dominion, as recorded in the Bible (Genesis 1:29 and 9:1-3). Hence humans could kill non-human animals as they pleased as long as the animals were not the property of another.\textsuperscript{24}

(b) The Doctrine of ‘Personhood’: Being Conscious is intrinsically Valuable

\textsuperscript{19} \textit{Ibid} at 195.
\textsuperscript{21} Though, in the summer of 1991, one major denomination, the general Assembly of the Church of Christ, formally accepted the legitimacy of suicide for the terminally ill.
\textsuperscript{22} \textit{Supra} note 12 at 85.
\textsuperscript{23} \textit{Supra} note 16 at 118.
\textsuperscript{24} \textit{Supra} note 12 at 88-89.
Even those who do not believe that killing is always wrong normally think that a special justification is needed. The assumption is that killing can at best only be justified to avoid a greater evil. But they believe that the life of permanent coma is in no way preferable to death. For permanently comatose existence is subjectively indistinguishable from death. Thus, from subjective point of view, there is nothing to choose between the two. Thus, being alive is only of instrumental value and it is consciousness that is intrinsically valuable. Thus, this version rejects the specieism doctrine.

(D) Legal Position of Euthanasia in Various Countries

Generally, the legal position all over the world seems to be that while active euthanasia (e.g. giving a lethal injection) is illegal unless there is legislation permitting it, passive euthanasia (i.e. withdrawal of life support) is legal even without legislation subject to certain conditions and safeguards.

(i) Netherlands

In the Netherlands, euthanasia is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act", 2002. It legalizes euthanasia and physician assisted suicide in very specific cases. The law allows a medical review board to suspend prosecution of doctors who performed euthanasia when certain conditions are fulfilled. However, there are certain exceptional situations which are not subject to such restrictions of law as they are normal medical practice. These are (a) stopping or not starting a medically useless (futile) treatment, (b) stopping or not starting a treatment at the patient’s request and (c) speeding up death as a side-effect of treatment necessary for alleviating serious suffering.

(ii) Switzerland


Ibid. Following conditions are required to be fulfilled: The patient's suffering is unbearable with no prospect of improvement. The patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness, or drugs). The patient must be fully aware of his/her condition, prospects and options. There must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above. The death must be carried out in a medically appropriate fashion by the doctor or patient, in which case the doctor must be present. The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents). Euthanasia of children under the age of 12 remains technically illegal; however, Dr. Eduard Verhagen has documented several cases and, together with colleagues and prosecutors, has developed a protocol to be followed in those cases. Prosecutors will refrain from pressing charges if this Groningen Protocol is followed.
Article 115 of the Swiss Penal Code considers assisting suicide a crime if, and only if, the motive is selfish, otherwise not. However, legally, active euthanasia is illegal in Switzerland.29

(iii) Belgium

Belgium became the second country in Europe after Netherlands to legalize the practice of euthanasia in September 2002, subject to certain conditions.30

(iv) United Kingdom (UK), Spain, Austria etc.

In U.K., Spain, Austria, Italy, Germany, France euthanasia or physician assisted death is not legal.31

(v) United States of America (USA)

Active Euthanasia is illegal in all states in U.S.A. But, Oregon was the first state in U.S.A. to legalize physician assisted death under Oregon Death with Dignity Act, in 1997. Under the Act, a person who sought physician-assisted suicide would have to meet certain criteria. Washington was the second state in U.S.A. which allowed the practice of physician assisted death in the year 2008 by passing the Washington Death with Dignity Act, 2008. Montana was the third state (after Oregon and Washington) in U.S.A. to legalize physician assisted deaths, but this was done by the State judiciary and not the legislature. On December 31, 2009, the Montana Supreme Court delivered its verdict in the case of Baxter v. State of Montana32 permitting physicians to prescribe lethal indication.

(vi) Canada

In Canada, physician assisted suicide is illegal under Section 241(b) of the Criminal Code of Canada. Moreover, the Canadian Supreme Court in Sue Rodriguez v. British

29 Visit http://en.wikipedia.org/wiki/Euthanasia_in_Switzerland. (Accessed on 15.3.09). The Swiss law is unique because the recipient need not be a Swiss national and a physician need not be involved. Many persons from other countries, especially Germany, go to Switzerland to undergo euthanasia.

30 Patients wishing to end their own lives must be conscious when the demand is made and repeat their request for euthanasia. They have to be under "constant and unbearable physical or psychological pain" resulting from an accident or incurable illness. Unlike the Dutch legislation, minors cannot seek assistance to die. For full text of the law visit http://www.kielcuen.be/ehners/viewpic.php%3FLAN%3DE%26TABLE%3DDOC%26ID%3D23. (Accessed on 12.12.10). Also see, R. Cohen Almagor, "Belgium Euthanasia Law: A Critical Analysis", 35 Journal of Medical Ethics, 436-439 (2009) at 436.

31 In January 2011 the French Senate defeated by a 170-142 vote a bill seeking to legalize euthanasia. In England, in May 2006 a bill allowing physician assisted suicide, was blocked, and never became law.

Columbia (Attorney General) rejected the plea of Rodriguez, a woman of 43, who was diagnosed with Amyotrophic Lateral Sclerosis (ALS) to allow someone to aid her in ending her life.

(vii) India

In India abetment of suicide (assisted suicide or physician assisted suicide) and attempt to suicide are both criminal offences under section 306 (or 305, depending upon the age) and 309, Indian Penal Code, respectively. Under the Code, both forms of euthanasia are prohibited and are illegal. Section 300 defines murder. Exception 5 of section 300 provides that culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent. The consent in such cases has to be ‘informed consent’ given by a person who is of sound mind and has attained the age of majority. In cases which fall under this exception, the punishment is inflicted for culpable homicide not amounting to murder as per section 304 of the Code. In cases of voluntary active euthanasia, the offender will be punished according to first part of section 304 and in cases of voluntary passive euthanasia the offender will be punished according to the second part of Section 304. However, in case of involuntary euthanasia, exception 5 of section 300 will not be applicable and offender will get punished under section 302 of the Indian Penal Code, 1860 for murder.

(E) Sanctity of Life versus Personal Autonomy and Patient’s Best Interests: Judicial Response in UK and USA

The principle of sanctity of life comes in direct conflict with personal autonomy of patient to kill himself or ask another person to kill him in order to avoid what he takes to be unbearable suffering either in himself or in others. It is a human right born of self-determination and is the ultimate act of democracy. Freedom of choice is a fundamental

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1) (1993) 3 SCR 519
2) Section 306 reads as follows: “If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Section 309 of the IPC states: “Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.” It should be noted that USA and UK have decriminalised attempt to commit suicide.
principle for liberal democracies and free market systems.36 In the words of Leenen, “Not allowing euthanasia would come down to forcing people to suffer against their will, which would be cruel and a negation of their human rights and dignity”.37 Following is an account of few landmark English and American judgments throwing light over the conflict.

In *Airedale NHS Trust v. Bland* 38 it was held that the principle of sanctity of life, fundamental though it is, is not absolute and must yield to the principle of self-determination in such a case. This extends to the situation where the person in anticipation of his entering into a condition such as PVS, gives clear instructions (e.g. by way of living will) that in such an event he is not to be given medical care, including artificial feeding, designed to keep him alive.

But, if a person, due to accident or some other cause becomes unconscious and is thus not able to give or withhold consent to medical treatment, in that situation it is lawful for medical men to apply such treatment as in their informed medical opinion is in the “best interests of the unconscious patient, and the said act cannot be regarded as a crime. Existence in a vegetative state with no prospect of recovery is by that opinion regarded as not being of benefit to the patient. And keeping him alive artificially would be most startling, and could lead to the most adverse and cruel effects upon the patient. It is ultimately for the Court to decide, as parens patriae, as to what is in the best interest of the patient, though the wishes of close relatives and next friend, and opinion of medical practitioners should be given due weight in coming to its decision.

In *Superintendent of Belchertown State School v. Saikewicz* 39 it was held that to presume that the incompetent person must always be subjected to what many rational and intelligent persons may decline is to downgrade the status of the incompetent person by placing a lesser value on his intrinsic human worth and vitality.

The approach adopted in some of American cases concerning incompetent patient is of “substituted judgment” or judgment of a surrogate. It involves a detailed inquiry into patient’s views and preferences. The surrogate decision maker has to gather from

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material facts as far as possible the decision which the incompetent patient would have made if he was competent.

In *Washington vs. Glucksberg* the U.S. Supreme Court held that the asserted right to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause of the Fourteenth Amendment. The decision to commit suicide with the assistance of another may be just as personal and profound as the decision to refuse unwanted medical treatment, but it has never enjoyed similar legal protection. Indeed the two acts are widely and reasonably regarded as quite distinct.

In *Vacco vs. Quill* the U.S. Supreme Court again recognized the distinction between refusing life saving medical treatment and giving lethal medication. The Court disagreed with the view that ending or refusing lifesaving medical treatment is nothing more nor less than assisted suicide. The Court held that the distinction between letting a patient die and making that patient die is important, logical, rational, and well established. The Court held that the State of New York could validly ban the latter.

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* 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

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43 70 N.J.10, 355 A. 2d 647.
objective ‘best interest’ standards. If none of these conditions obtained, it was best to err in favour of preserving life.

In Cruzan v. Director, Missouri Department of Health 44 the U.S. Supreme Court rejected the petition for withdrawal of life support of Nancy Cruzan, who lay in PVS in a Missouri State hospital, on the ground that there was no clear and convincing evidence that while the patient was competent she had desired that if she became incompetent and in a PVS, her life support should be withdrawn.

(F) Judicial Response in India: Passive Euthanasia Legalized in Certain Cases

Time and again, the legal position on an individual's right to die has sparked debate only to die down until the next case as is evident from the Venkatesh’s case 45, Kanchan Devi’s case 46 and the recent Aruna Shanbaug's case 47. Besides the above cases, our apex court has taken the following view on the issue of euthanasia. Interestingly in P. Rathinam v. Union of India 48 even when a Division bench of the Supreme Court, speaking through hon’ble Justice B.L. Hansaria affirmed the view in Maruti Shripati Dubal v. State of Maharashtra 49 that the “right to life” provided by the Constitution under article 21, may be said to bring into its purview, the right not to live a forced life 50, the plea that euthanasia be legalized was discarded. It was held that as euthanasia involves the intervention of a third person, it would indirectly amount to a person aiding or abetting the killing of another, which would be inviting Section 306 of the I.P.C. 51 Moreover, in M.S Dubal’s case, the Division Bench of the Bombay High Court, speaking

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45 Terminally ill, as a result of the genetic neurological disorder called Duchenne's Muscular Dystrophy, and on a life support machine, from his Hyderabad hospital bed Venkatesh beseeched the authorities to allow others to live, specifically because he knew that he could not. The Andhra Pradesh High Court rejected his plea, and the Supreme Court of India in Delhi ran out of time to decide the case - to determine whether a person has such a right to die - as he passed away. He died on 17 December 2004 after a futile wait for the courts to accept his plea for euthanasia so that he could donate his organs. For details, visit http://www.slideshare.net/huzefa007/discussit-the-right (Accessed on 2.12.10).
46 An appeal was made by Bihar's Tarkeshwar Chandravanshi in early April 2005 to the State governor asking for promulgating an ordinance and allow for mercy killing for his wife Kanchan Devi after the Patna High Court rejected his petition. Kanchan Devi lapsed into a coma during childbirth in 2000 and her husband has run through all his property and other financial assets in taking care of her. For details, visit www.thehindu.com/thehindu/mag/2005/05/...Z2005050100390300.htm - 2lk (Accessed on 23.10.10).
47 Aruna Ramachandra Shabaug v. Union of India, AIR 2011 SC 1290.
48 AIR 1994 SC 1844.
49 1987 Cr.LJ 743.
50 Supra note 48 at 1854.
51 Supra note 49 at 752.
through P.B. Sawant J., affirmed that euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected. Unless it is specifically excepted, it cannot but be an offence. The decision of the Supreme court in Gian Kaur v. State of Punjab\(^5\), thereby overruling P. Rathinam’s case established that the “right to life” not only precludes the “right to die” but also the “right to kill” and that euthanasia could be made lawful only by legislation. But, it was not clarified who can decide whether life support should be discontinued in the case of an incompetent person.

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, in a recent landmark verdict the hon’ble Supreme Court of India in Aruna Ramachandra Shanbaug v. Union of India\(^5\) the court opined that passive euthanasia should be permitted in our country in certain situations. The case relates to the mercy killing of Aruna who was a staff Nurse working in King Edward Memorial Hospital (KEM), Parel, Mumbai. On 27 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 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 with associated cervical cord injury. The incident took place 36 years back and now Aruna is about 60 years of age. The case was a writ petition under Article 32 of the Constitution, and was filed on behalf of the petitioner Aruna by one Ms. Pinki Virani of Mumbai, who claimed to be her next

\(^5\) AIR 1996 SC 946.
\(^{5}\) Supra note 47.
friend.\textsuperscript{54} The prayer of the petitioner was that the respondents be directed to stop feeding \textit{Aruna}, and let her die peacefully.\textsuperscript{55}

The Division Bench consisting of hon’ble Justice Markandey Katju and Justice Gyan Sudha Misra rejected the petition on the ground that \textit{Aruna} was not brain-dead. She had some brain activity, though very little.\textsuperscript{56} Her brain stem was certainly alive.\textsuperscript{57} 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.\textsuperscript{58} 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.\textsuperscript{59} 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.\textsuperscript{60}

Following guidelines for withdrawal of life support system which will continue to be the law until Parliament made a law on the subject were laid down on the issue:

(a) 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 or 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.

(b) An application is to be filed by the near relatives or next friend or the doctors/hospital staff to the concerned High Court that could grant approval for withdrawal of life support to such an incompetent person under Article 226 of the Constitution.

(c) 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.

(d) 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.

(e) 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

\[61\] Ibid.
\[62\] Ibid.
\[63\] Ibid.
\[64\] Ibid.
\[65\] Ibid.
by the High Court before pronouncing a final verdict which shall not be summary in nature.65

(G) Conclusion and Suggestions

The traditional concept of death is replaced by the modern concept of ‘brain death’. The hon’ble Supreme Court has rightly denied passive euthanasia for Aruna because she is certainly not “dead”. In our country, things are not that simple. There is always a scope for slippery slope. One has to take into consideration not the interest of a few but all, whose lives will positively or negatively be affected by such a decision. It is an extremely important question because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialization, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method.66 Dr. Sanjay Oak, Dean, KEM Hospital, Mumbai, where Aruna is being cared, issued a statement opposing euthanasia for the petitioner. Commenting upon the issue of euthanasia or mercy killing, he said very rightly 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 it’s capacity and commitment to take care of it’s “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.67

Moreover, the Learned Attorney General, Mr. Vahanvati, appearing for the Union of India in Aruna’s case submitted that:

65 Id. at 1334-35.
66 Id. at 1327.
67 Id. at 1306. Not only this, other staff of the KEM hospital also issued statements that they were looking after Aruna Shanbaug and wanted her to live and were determined to take care of her till her last breath by natural process.
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 further submitted that tomorrow there may be a cure to a medical state perceived as incurable today.68

Therefore, upholding the principle of sanctity of life, it is submitted that death should never be a persons’ last resort, there will always be an alternative to euthanasia, like palliative care and hospices. If the family is unable to take care of the patient, then it should be the responsibility of the State to take care of its citizens in such state of health. There should be adoption and proper implementation of national health policies to provide more humane end-of-care for the dying. But at the same time, it is also submitted that keeping a patient alive on life support is a very costly affair. Many families have to bear psychological, emotional and financial crisis for keeping their loved one alive, which may adversely effect the life of other family members. They may have to face many problems. But, it is humbly submitted that this is not the only factor in support of euthanasia. In only very genuine cases, where life of a person is unworthy of living and there is no chance of recovery as per the informed medical opinion then subject to strict and foolproof procedures and conditions as is laid down by the hon’ble Supreme Court in Aruna’s case, euthanasia may be allowed as necessary exception only in rarest of rare cases, in passive form only. In support of this submission, it would be desirable to mention a passage from an article by Dr. M. Indira and Dr. Alka Dhal in which it was mentioned that:

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

68 ld. at 1308.
psychological well being are intrinsically inter-woven into the fabric of life.69

Therefore, only in such cases the principle of sanctity of life should give way to personal autonomy and patient’s best interests. At the same time, there is also a need to introduce a new provision in the Indian Penal Code, which specifically provides defence to those performing passive euthanasia, so that they can avoid criminal sanction if they act in accordance with the prescribed restrictions and guidelines strictly and report the death in a proper manner and punishes those who perform euthanasia for selfish motives or in violation of one or more of the stringent conditions laid down by law.

Euthanasia is such a sensitive issue which is of interest to almost everyone because it concerns matters of life and death. We never know what is in store for us. Anyone of us may have to face a similar situation. Its permissibility or impermissibility is surely going to affect all of us positively or negatively. Thus, keeping into mind various socio-economic conditions prevailing in our country and before taking any legal initiative, it is desirable to have a nation-wide debate on the issue. To conclude in the words of Sophocles:

Death is not the greatest of evils;
it is worse to want to die,
and not be able to.70

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69 Supra note 48 at 1853.