JURISPRUDENTIAL ANALYSIS OF EUTHANASIA – THE RIGHT TO DIE

"To die proudly when it is no longer possible to live proudly. Death freely chosen, death at the right time, brightly and cheerfully accomplished amid children and witnesses: then a real farewell is still possible, as the one who is taking leave is still there; also a real estimate of what one has wished, drawing the sum of one's life – all in opposition to the wretched and revolting comedy that Christianity has made of the hour of death."

- Friedrich Nietzsche (1844-1900)

(German Philosopher, Classical Scholar, Critic of Culture)

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ABSTRACT

The 'Right to Die' allows a human being to end his life. Over the years, there has been much debate over whether the right to life includes right to die and if euthanasia in any of its forms i.e., active or passive, voluntary or involuntary and physician-assisted is permissible or not[1].

Article 21 of the Constitution of India propounds 'Right to life and personal liberty'. Over the years, Article 21 has been interpreted to include various facets, but the right to die is not one of them. After much debate and deliberation, in India, passive euthanasia has been made legal in the landmark judgment of Aruna Ramachandra Shanbaug v. Union of India[2] *.But the Right to Die is still not viewed as an integral component of Right to Life.*

In this paper, the researcher would like to answer the question "Should active euthanasia be legalized in India?" by analyzing the issue at hand from the perspectives of the different schools of law, mainly natural law, sociological school of law, historical approach and post-modernism.

[1] Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

[2] (2011) 4 SCC 454

Keywords: Active Euthanasia, Passive Euthanasia, Right to Life, Legalization of Active Euthanasia

INTRODUCTION

The word euthanasia is derived from Greek: *Eu* 'well' + *Thanatos* 'death'. Euthanasia means 'a good death'.[3] The Oxford dictionary defines euthanasia as the practice of killing without pain, a person who is suffering from a disease that cannot be cured[4]. The Stedman's medical dictionary gives a more comprehensive definition. It defines it as the act or practice of ending the life of an individual suffering from a terminal illness or an incurable condition, as by lethal injection or the suspension of extraordinary medical treatment.[5] Euthanasia is also known as mercy killing.[6] Mercy killing is the painless termination of the life of an unbearably suffering patient by the physician upon the patient's request.[7]

This paper has discussed the types of euthanasia and has argued in favor of the legalization of active euthanasia in India. Firstly, the types of euthanasia have been enumerated, following which the position of euthanasia, mainly passive euthanasia has been discussed. Finally, the crux of the paper i.e., arguments favouring legalization of active euthanasia in India have been laid. These arguments have been put forth through the lens' of various schools of law such as natural law, positive law, medical ethics and humanitarian grounds.

TYPES OF EUTHANASIA

Euthanasia is of two types[8]: "active and passive. Passive euthanasia is of two types voluntary and involuntary. The distinction between active and passive has been highlighted in the decision of the Supreme Court of India in *Aruna Ramachandra Shanbaug vs. Union of India*.[9] Active euthanasia involves taking specific steps such as injecting the patient with a lethal substance, e.g. Sodium

[3] Lewy G., *Assisted suicide in U.S. and Europe*. New York: Oxford University Press, Inc; 2011.
[4] Oxford dictionary online at http://oxforddictionaries.com.
[5] Stedman's Online Medical Dictionary at http://www.stedmans.com.
[6] Brody, Baruch, life and Death Decision making, New York: Oxford University Press, 1988.
[7] Harris NM, The Euthanasia debate. J.R. Army Med Corps 2001;147 (3): 367-70.
[8] Supra note 1.
[9] Id.

Pentothal which causes the person to go in deep sleep in a few seconds and the person dies painlessly in sleep. Thus it amounts to killing a terminally ill person by a positive act for ending his suffering.[10] In India, active euthanasia is illegal and a crime under Section 302 and 304 of the I.P.C. Physician-assisted suicide is a crime under Section 306 IPC (abetment to suicide).

Passive euthanasia entails withholding of medical treatment for continuance of life, e.g. withholding of antibiotics, where without giving it, a patient is likely to die, or removing the heart-lung machine from a patient in coma. The deliberate omission of the life-lengthening act is called Passive Euthanasia. It involves not doing something to prevent death as when doctor refrain from using device necessary to keep alive a terminally ill patient or a patient in a persistent vegetative state (P.V.S.).[11] Passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained.[12]

The Bombay High Court in Maruti Shripati Dubal's case[13] and Naresh Marotrao Sakhre case has attempted to make a distinction between suicide and euthanasia or mercy killing. According to the court the suicide by its very nature is an act of self-killing or termination of one's own life by one's act without assistance from others. But euthanasia means the intervention of other human agencies to end life. Mercy killing, therefore, cannot be considered on the same footing as on suicide. Mercy killing is nothing but a homicide, whatever is the circumstance in which it is committed.[14]

The core point of distinction between active and passive euthanasia as noted by the Supreme Court, is that in active euthanasia, something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. To quote the words of learned Judge in Aruna's case, in passive euthanasia, "the doctors are not actively killing anyone; they are simply not saving him".[15]

[10] Passive Euthanasia – A Relook, Law Commission of India, Government of India, Report No. 241, 2012, p. 1.
[11] Shreyans kasliwal, " Should Euthanasia be legalized in India?", Criminal Law Journal, 2004 p.209.
[12] Para 39 of supra note 11.
[13] Maruti ShripatiDubal v. State of Maharastra; 1987 Cri.L.J 743 (Bomb).
[14] Naresh Marotrao Sakhre v. Union of India; 1995 Cri.L.J 95 (Bomb).
[15] Passive Euthanasia – A Relook, Law Commission of India, Government of India, Report No. 241, 2012, p. 2.

Passive euthanasia is then further classified into voluntary and non-voluntary. Voluntary euthanasia is performed with the consent of the recipient. There must be no form of coercion.[16] It requires the free consent of the dying patient.[17] Non-voluntary euthanasia occurs when the person concerned has been unable to express an opinion, usually because he or she lacks the capacity to do so. However, others consider that it is in his or her best interest to end his or her life at this time.[18] Thus, Involuntary Euthanasia occurs where the recipient has not agreed to the procedure and is an unwilling participant.[19]

EUTHANASIA IN INDIA

The issue was first taken up in the case of *P. Rathinam v. Union of India & Anr.*[20] wherein, a two judge bench of the Supreme Court while dealing with the challenge to section 309 of the Indian Penal Code, 1860 (I.P.C.) (attempt to commit suicide) as being violative of Article 14 and 19 of the Constitution, held that fundamental rights have positive and negative aspects. Accordingly, right to live must include the right to die; hence, it concluded by saying that the right to live, which Article 21 speaks of, can be said to bring in its trail the right not to live a forced life.

The Supreme Court in *Gian Kaur v. State of Punjab*[21]held that euthanasia and assisted suicide are not lawful in our country. This case overturned the *P. Rathinam* case. The court, however, referred to the principles laid down by the House of Lords in Airedale case[22], where the House of Lords accepted that withdrawal of life-supporting systems based on informed medical opinion would be lawful because such withdrawal would only allow the patient who is beyond recovery to die a natural death. This case also stated that euthanasia, whether active or passive, can only be made legal through legislation and not otherwise.

[16] Biggs Hazel , "Euthanasi: Death with dignity and the Law".
[17] Singh M.D. "Euthanasia : How Merciful is the killing", Amritsar Law Journal, vol. X,2001, p.53.
[18] Id.
[19] Biggs Hazel, "Euthanasia : Death with Dignity".
[20] P. Rathinam v. Union of India & Anr., (1994) 3 SCC 394.
[21] Gian Kaur v. State of Punjab, 1996 (2) SCC 648 : A.I.R. 1996 SC 946.
[22] Airdale N.H.S. Trust v. Bland, 1993(1) All ER 821 (H.L.).

"Right to Life" is a natural right embodied in Article 21. However, suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of the right to life. The earlier decision had failed to make a distinction between negative aspect of the right that was involved for which no positive or overt act was to be done."[23]

The Supreme Court on 7th March 2011 broke new ground with a judgment in the *Aruna Shangbaug*[24] The case sanctioned passive euthanasia or withdrawal of life support systems on patients who are brain dead or in a permanent vegetative state (P.V.S.). The court, however, clarified that active euthanasia, involving injecting lethal injection to advance the death of such a patient, was a crime under law and would continue to remain so.

In 2018, the Supreme Court in the *Common Cause (Registered Society) v. Union of India & Anr.*[25], once again discussed the issue of euthanasia in detail and ruled partly in favor of the same. While the landmark judgement of *Aruna Shanbaug* which ruled in favour of legalization of passive euthanasia in India subject to the guidelines laid down in the judgement to execute the same, was a three-Judge bench decision, the *Common Cause 2018* judgement was a constitutional bench decision.

The Supreme Court analysed in length the various decisions of the Supreme Court in Gian Kaur and Aruna Shanbaug case and the position in various foreign jurisdictions relating to euthanasia. The Supreme Court clarified that the "*judgement in Gian Kaur case cannot be understood to have stated that passive euthanasia can only be introduced through legislation."*[26] It further held that *"in Gian Kaur, the word "life" in Article 21 has been construed as life with human dignity, and it takes within its ambit the "right to die with dignity" being part of the "right to live with dignity".*"[27] The court thus clarified that Article 21 covers within its ambit only passive euthanasia and not active euthanasia.

[23] Gian Kaur v. State of Punjab, 1996 (2) SCC 648 : A.I.R. 1996 SC 946.
[24] Supra note 1.
[25] Common Cause (Registered Society) v. Union of India & Anr., W.P. (Civil) 215 of 2005.
[26] Ibid.
[27] Ibid.

Finally, the court goes on to say that the right to live with dignity also includes the smoothening of the process of dying in the case of a terminally ill patient or a person in a permanent vegetative state. It also recognises Advance Directives akin to a 'living Will' through which persons of sound mind and in a position to communicate can indicate the decision relating to the circumstances in which withholding, or withdrawal of medical treatment can be resorted. Thus, the Supreme Court has ruled that the interest of the patient shall override the interest of the State in protecting the life of its citizens and that right to live with dignity is attached throughout the life of the individual. While this case discusses guidelines clearly for passive euthanasia, it does not legalize active euthanasia in India as argued in this paper.

ARGUMENTS FOR LEGALIZATION OF ACTIVE EUTHANASIA

The acts of euthanasia and physician-assisted suicide are viewed as murder or abetment to suicide by pro-life thinkers. Religious people believe that life is sacred and is a gift of God and hence, we must not take it away at any cost. The researcher would like to argue that active euthanasia must be made legal on the following grounds:

(i) Humanitarian Grounds

Euthanasia and physician-assisted suicide must be viewed as an act of humanity extended towards a terminally ill patient and his family. Any further treatment of the terminally ill person would only prolong the imminent death of the person and at the high price of excruciating pain due to the extensive treatment that they have to undergo to prolong their lives by a few weeks or months. When the end result is the confirmed death of the terminally ill patient due to his incurable disease, the researcher argues that if the patient so chooses, he must be allowed to end his life in a dignified manner and put himself and his family out of misery.

Active euthanasia must be made legal only for terminally ill patients and only if they so choose. It is immoral to force a person to suffer through the last moments of his life. He must be granted the right to die with dignity just as he is granted a right to live with dignity.

(ii) Choice

A terminally ill patient is a rational human being of sound mind. He must be allowed to make a rational and informed decision about his life. He is the person undergoing the suffering and the

pain. The Law Commission of India, in its 196th report suggested that every "competent patient", who is suffering from terminal illness has a right to refuse medical treatment (including artificial nutrition and respiration) or the starting or continuation of such treatment which has already been started. If such informed decision is taken by the competent patient without pressure or influence and the doctor must be satisfied that the decision is made by a competent patient.[28] Ronald Dworkin opined that the right to die as well as live is "too much at the core of liberty, to allow a majority to decide what everyone must believe."

(iii) Natural Law Perspective

As is well known, natural law theorists treat law as a prescription deriving its ultimate authority from a 'purpose' morality, by reference to which its 'law' quality may be judged. "Nothing but confusion can result from assuming that the rights of man in a moral sense are equally rights in the sense of the Constitution and the law."[29] According to H.L.A. Hart, Law is made of primary and secondary rules. Primary rules require human beings to do or abstain from certain actions, regardless of whether they wish to or not. The Secondary rules allow human beings to introduce new primary rules or extinguish or modify old ones (rules of change). As well as to specify some features of a primary rule that indicate that it is supported by the social pressure it exerts (rule of recognition), or to otherwise determine their incidence or control (rules of adjudication). Hence, H.L.A. Hart believes that laws can be changed and should be changed to suit human beings.[30]

Forcing terminally ill patients to suffer and bear the pain of their incurable disease is immoral. As Hart propounded, law and morality overlap and in some cases, morality precedes law. Although there is a law which illegalizes active euthanasia (secondary law as interpreted by Hart), it can be changed. It should be changed. The Constitution provides the necessary power for us to amend laws to suit the current social situation (primary law as interpreted by Hart).

According to John Finnis, natural or human rights are those rights which can only be enjoyed in particular contexts, namely a "framework of mutual respect and trust and common understanding, an environment which is physically healthy and in which the weak can go about without fear of

[28] Id.
[29] Oliver Wendell Holmes, "The Path of Law" (1897).
[30] H. L. A. Hart, The Concept of Law (1961).

the whims of the strong."[31] He has further maintained that absolute human rights involve "the right to be taken into respectful consideration in any assessment of what the common good requires"[32] Applying this principle, a terminally ill patient has an absolute right to be taken into consideration while analyzing whether active euthanasia must be legalized or not. His pain and suffering must be taken into consideration. The fast and painless method to serve the common good is by legalizing active euthanasia.

(iv) Utilitarian Grounds

Utilitarianism is the ethical doctrine by which the moral worth of an action is solely determined by its contribution to overall utility.[33] On this view, people's level of well-being is determined solely by how much pleasure and pain they experience. Active euthanasia must be legalized on utilitarian grounds that suffering of terminally ill patients does not have any utility whatsoever. Rather than maximum happiness to maximum number of people, the patient's suffering only causes sadness and pain to the people around.

J. S. Mill opined that "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a enough warrant."[34]

(v) Religious Grounds

In our culture, we have followed age old traditions such as Jauhar, Sati and Santhara. In all these cases, whatever explanation is given by the religious scriptures, it is suicide. Sati was the practice of a wife burning herself on the funeral pyre of her husband and Santhara (which is now banned) was the practice of a person fasting unto death. When compared to a person suffering with a chronic illness, the reasons for which these practices have been performed seem trivial. When

[31] John Finnis, Natural Law and Natural Rights (1980).
[32] Ibid.
[33] Divya Sharma, Dr. Kuljit Kaur, Jurisprudential Aspects of Euthanasia: With Special Reference to India, International Journal of Law and Legal Jurisprudence Studies.
[34] Mill, John Stuart. "On liberty." *A Selection of his Works*. Macmillan Education U.K., 1966. 1.

people can choose to kill themselves in the name of religion and age-old customs and traditions, then a terminally ill person who is suffering must also be given the right to die.

(vi) Libertarian Grounds

Libertarianism is a political philosophy advocating only minimal state intervention in the lives of its citizens. According to the social contract theory, State was formed as a result of a contract between the people. The people would give up a part of their rights to the State and the State in turn would enact certain laws for the welfare of the people. "The suffering of a terminally ill person cannot be deemed to be any less intimate or personal, or any less deserving of protection from unwarranted governmental interference than that of a pregnant woman".[35] Obviously, the State has a legitimate interest in deterring suicide by young people with a significant natural span ahead of them. In the case of active euthanasia, no rights of any person are being violated as the patient gives full consent and it is his life. In fact, by illegalizing active euthanasia, the State is subjecting the terminally ill patient to unwarranted pain and suffering. It is hence violating the right to die with dignity of the patient.

(vii) Medical Ethics

Dr. Jack Kevorkian, U.S.A.'s most energetic practitioner of physician-assisted suicide, argues: "In my view the highest principle in medical ethics – any kind of ethics – is personal autonomy and self-determination. What counts is what the patient wants and judges to be a benefit or a value in his or her life. That is primary."[36] The Doctors cannot be held responsible for such deaths and the subject of active euthanasia should be considered as a boon to the suffering persons. If a doctor can see his patients suffer and realize his inability to cure them, it is equivalent to him failing to fulfill his Oath. The aim of a doctor is to cure patients not to see them suffer.

(viii) Economic Theory of Jurisprudence

[35] Egan, p. Al.
[36] Jack Kevorkian and Paul Kurz, "Medicine: The Goodness of Planned Death" in Free Inquiry (Fall 1991) 14.

The rationale of the economic analysis of law is rather simple: to implement economics to legal decision-making process. The "economic man" may be perfectly rational while breaking legal norms if it maximizes his utility.[37] The economic analysis of law substitutes the notion of justice by the notion of efficiency and wealth maximization.[38]

Terminally ill patients are those who are considered to have reached the end-stages of incurable diseases. By forcing them to stay alive and suffer is not only a violation of their right to die with dignity but by applying the economic theory, it is inefficient. A huge amount of money and resources are spent by the family and the State on the treatment of these patients to decrease their pain and prolong their death. This is not only injustice to the patients but is also not a very competent policy for the State.

(ix) Historical Approach

Oliver Wendell Holmes said that law isn't always rational. Sometimes, tradition or historical evolution of the law overrides rational policy, and this must not be done.[39] Our society has evolved, science and technology has improved manifold. In the past, society did not have the required technology or science to help people suffering from chronic disease. But in the present scenario, we do. Hence, looking to the needs of the current society and the technology we have, we must make the current laws more progressive by legalizing active euthanasia as it helps the people suffering rather than holding onto the dogma of the past.

(x) Consequentialism

Michael Clark argues in a recent article that the slippery slope argument against voluntary euthanasia is 'entirely consequentialist' and that its use to justify continued prohibition of voluntary euthanasia involves a failure to treat patients who request assistance in ending their lives as ends in themselves.[40] The slippery slope argument claims that the acceptance of certain practices, such

[37] About the notion of economic man (resourceful evaluating maximizing man) in social and economic sciences cf. Schäfer and Ott (2000) p. 56-69.
[38] Coleman (1980) p. 531-535.
[39] Oliver Wendell Holmes, "The Path of Law" (1897).
[40] Michael Clark (1998) Euthanasia and the slippery slope, Journal of Applied Philosophy, 15, pp. 251-7.

as physician-assisted suicide or voluntary euthanasia, will invariably lead to the acceptance or practice of concepts which are currently deemed unacceptable, such as non-voluntary or involuntary euthanasia. Thus, it is argued, in order to prevent these undesirable practices from occurring, we need to resist taking the first step.[41] The slippery slope argument against voluntary euthanasia claims that, even if voluntary euthanasia is not intrinsically wrong, it should nevertheless remain prohibited because a likely consequence of permitting it is that involuntary euthanasia and other morally unacceptable killings will be practiced more widely in the future.[42]

(xi) Sociological Approach

Rudolf Von Jhering, the father of Modern Sociological Jurisprudence, opined that "law is an instrument for serving the needs of individuals of society." According to him, human will is directed towards the furtherance of individual purposes. In realization of individual purposes, there is bound to be a conflict between social interests & individual's selfish interests. The success of the legal process depends on achieving proper balance between social & individual interests.[43] Hence, law is a means to an end.

Law must conform to the needs of society as it is an instrument for serving people. A law legalizing active euthanasia would benefit a whole section of society consisting of terminally ill patients and their respective families.

(xii) Post-modernism

[41] *Lewis, P (2007). "The empirical slippery slope from voluntary to non-voluntary euthanasia". J Law Med Ethics.* ***35*** *(1): 197–210. doi:10.1111/j.1748-720X.2007.00124.x. PMID 17341228.*

[42] It should be noted that although Clark refers to the various acts of unjustified killings that may result from the permitting of voluntary euthanasia as 'unacceptable forms of euthanasia' much of what is referred to here is not properly euthanasia at all. Euthanasia is defined as killing that is carried out for the sake of the one killed, whereas the scenarios sketched here involve killings carried out for the convenience of others. Involuntary euthanasia, strictly speaking, is killing that is done for the benefit of the person killed though against their wishes, and is just one of the undesirable consequences predicted by proponents of the S.S.A. to result from the social acceptance of voluntary euthanasia. Note further that I use 'euthanasia' throughout to refer to active euthanasia, since the permissibility of voluntary passive euthanasia is not seriously contested; see William Grey (1999) Right to die or duty to live? The problem of euthanasia, Journal of Applied Philosophy, 16, p. 21.

[43] William Seagle, Rudolf Von Jhering: Osr Law is a Means to an End, The University of Chicago Law Review.

Post-Modernists believe that modern society's structures, its laws, its literature, its architecture, its arts, or any of its products are subject to deconstruction, a process that reveals several alternatives. They do not believe that society contains any objective truth or natural laws upon which it can be grounded.[44] In other words, post-modernism propounds that nothing is right or wrong; it is just an opinion. In the researcher's opinion, active euthanasia must be legalized in India.

(xiii) Comparison with other Countries

India is a developing country. Its society and laws must be progressive. The different countries of the world have taken different stances on active euthanasia. In 2002, the Netherlands became the first country to legalize euthanasia and physician-assisted suicide. Strict conditions were imposed: the patient must be suffering unbearable pain, their illness must be incurable, and the demand must be made in "full consciousness" by the patient.[45] Euthanasia is regulated by the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002 in the Netherlands. Belgium followed right after the same year.[46] After the Netherlands and Belgium, Luxemburg became the third country to legalize euthanasia in 2008.[47] In Canada, voluntary active euthanasia called "physician-assisted dying" is legal for anyone above the age of 18 who has a terminal illness that has progressed to the point where natural death is "reasonably foreseeable."[48]

Article 115 of the Swiss Penal Code considers assisting suicide a crime if, and only if, the motive is selfish. The code does not give physicians a special status in assisting suicide; although, they are most likely to have access to suitable drugs. Ethical guidelines have cautioned physicians against prescribing deadly drugs. The Swiss law is unique because (1) the recipient need not be a Swiss national, and (2) a physician need not be involved. Many persons from other countries, especially Germany, go to Switzerland to undergo euthanasia. Active euthanasia is illegal in all

[44] Queency Pereira, Post-Modernist Jurisprudence.
[45] https://www.theguardian.com/society/2014/jul/17/euthanasia-assisted-suicide-laws-world last accessed on 28-03-2017.
46 Adams M, Nys H (2003). "Comparative reflections on the Belgian Euthanasia Act 2002". Med Law Rev. 11 (3): 353–76. doi:10.1093/medlaw/11.3.353. PMID 16733879; On 28th May, 2002 the Act Concerning Euthanasia Act was passed by the Belgian House of Representatives.
[47] Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide
[48] Carter v. Canada (Attorney General), [2015] 1 SCR 331.

states in U.S.A., but physician-assisted dying is legal in the states of Oregon, Washington and Montana. Further, Washington and Montana also have similar legislations in place.

India must follow the stance taken by the above-stated countries and legalize active euthanasia. But doing so, the same can be regulated by law. Strict guidelines can be laid down to prevent misuse.

CONCLUSION

In the case of Aruna Ramachandra Shanbaug v. Union of India[49]Passive euthanasia was legalized in India. When passive euthanasia can be legalized, why not its counterpart i.e. active euthanasia? Passive euthanasia involves non-commission of an act and active euthanasia involves commission of the act, but the result in both the cases is the death of the terminally ill patient, thus putting him out of his pain and suffering. Passive euthanasia is a prolonged and painful process for a person who is already in pain. In contrast, active euthanasia is a faster and more efficient method to acquire the same results that passive euthanasia aims to acquire. When there is a more efficient method that benefits the patient, the patient must not be subjected to any more torture by prolonging his suffering by making him choose passive euthanasia and refusing treatment. This would also help relieve the family of the patient from their mental agony of watching the patient suffer on a daily basis.

The reasoning given by the Supreme Court in the Aruna Shanbaug case for legalizing passive euthanasia is that by withdrawing life-support equipment or by allowing a patient to refuse treatment, he suffers and dies a natural death unlike in the case of active euthanasia, which is murder as lethal doses are injected to the patient causing instant.

The Law Commission of India in its 196th report suggested that 'The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill be passed and made into a law. Thus, regulating passive euthanasia through a legal framework.

[49] (2011) 4 SCC 454.

Both active and passive euthanasia are different means to the same end. The only difference is that passive euthanasia is more painful and time-consuming than active euthanasia. Active euthanasia does not have to be perceived as murder. It can be perceived as an act of humanity done to liberate a terminally ill patient from suffering. When Medical Practitioners are protected under Bill suggested by the Law Commission, the same can be amended to protect medical practitioners who practice active euthanasia, if legalized. Specific guidelines like passive euthanasia put forth by the Supreme Court in Aruna Shanbaug case can be issued for active euthanasia.

Active euthanasia will be helping terminally ill patients. It is a much better option than passive euthanasia, which allows the patient to suffer even more before dying. In lieu of all the arguments made above, it is believed that there is more benefit than harm and therefore, active euthanasia must be legalized in India.