

## STUDY OF LEGAL IMPERATIVES OF EUTHANASIA: NATIONAL AND INTERNATIONAL IMPERATIVES

Dr. Meena Ketan Sahu\*

### Abstract

*Death is inevitable for everyone, so it doesn't make sense for death to be a right that can be violated. What the 'right to die' really means is a demand for a right to choose the time and method of death. 'Right to die' is in direct conflict with the right to life. The right to life is so central to all other rights that it is both inviolable and inalienable. This means that not only can no one take it from you, but you also cannot give it away. So, a person who chooses to die is essentially violating their own right to live. It is pertinent to mention here that 'right to die' implies that the only qualification for euthanasia is simply to ask for it. This raises various problems. 'Right to die' is problematic because euthanasia is more complicated than simply choosing to die. Most jurisdictions have removed suicide from criminal law. This means that individuals will not be charged for attempting suicide. However, to assist a suicide or to kill someone, even on their request, is quite a different matter. Voluntary euthanasia, as proposed by advocates, is vastly different from suicide because it is really the doctor who decides whether the patient's life will be ended. It does indeed become a 'doctor's right to kill' rather than a patient's 'right to die'. In the present paper, the author has made an attempt to discuss the concept of euthanasia elaborately with special reference to types of euthanasia. The author has further endeavored to highlight the international perspective in nutshell. An attempt is made by the author to discuss the concept in Indian context with special reference to judicial precedent. The author has also suggested some measures to avoid the complex controversies surrounding euthanasia and must at least attempt to provide for adequate guidelines and legal safeguards.*

**Keywords:** Euthanasia, Right, Life, Die, Law, Voluntary etc.

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\* Reader @ P.G. Department of Law, Sambalpur University, Burla, Odisha; E-mail: [meenaketan1@gmail.com](mailto:meenaketan1@gmail.com); Contact: +91-7787000184

## **INTRODUCTION**

Life is precious and gift of God. Protection of life has been considered as the basis of civilized society. Sometimes, right to die is a concept which is debatable. Even moral theorists, legal experts, academics, medical personalities and human rights activists have contributed to an abundance of literature that discusses various aspects of right to die, euthanasia and assisted suicide. Public attitudes concerning right to die have changed considerably in recent decades not only in developed countries like United States of America but also in developing countries like India. In developed and developing nations, numbers of societies viz. The Right to Die Society of Canada, Dying with Dignity etc. have been established. These societies are dedicated to the demand put forth by some people for the right to die. The right to die principle has been given recognition by living will legislation, case law and various social movements.

Development of medical technology has enabled the medical profession to prolong life, using life-sustaining treatment, to an extent that has never before been possible. Modern medicine has made significant progress in saving and extending lives of the people suffering with diseases like cancer. Nevertheless, medical advances have decided their lives have no prospects for improvement and are no longer worth living. When life-sustaining treatment is the only means by which one is kept alive, the individual confronts a choice between continuing to live through the use of life-support and allowing a natural death to occur.

## **CONCEPTUAL ANALYSIS**

Euthanasia comes from the Greek word EU (good) and Thanatosis (death) which means “Good Death”, “Gentle and Easy Death”. This word has come to be used for “Mercy Killing”. In this sense, euthanasia means the active death of a patient, or inactive in the case of dehydration and starvation. There is no doubt that euthanasia is intentional killing. It can be done by a direct act, such as a lethal injection or a deliberately lethal dosage of drugs; this is known as active euthanasia. It can be done by the denial of ‘reasonable care’, including the basic needs of food and water. This is known as euthanasia by omission or neglect, where the patient dies of starvation or dehydration, or by being denied something else which should reasonably be provided to them.

## **TYPES OF EUTHANASIA**

Euthanasia is generally classified as either ‘active’ or ‘passive’ and as either ‘voluntary’ or ‘involuntary’. Similar to euthanasia is ‘assisted suicide’.

#### *Active versus Passive*

‘Passive euthanasia’ is usually defined as withdrawing medical treatment with the deliberate intention of causing the patient’s death. For example, if a patient requires kidney dialysis to survive, and the doctor’s disconnect the dialysis machine, the patient will presumably die fairly soon. Perhaps, the classical example of passive euthanasia is a “*do not resuscitate order*”. Normally, if a patient has a heart attack or similar sudden interruption in life functions, medical staff will attempt to revive them. If they make no such effort but simply stand and watch as the patient dies, this is passive euthanasia.

‘Active euthanasia’ is taking specific steps to cause the patient’s death, such as injecting the patient with poison. In practice, this is usually an overdose of pain-killers or sleeping pills.

In other words, the difference between ‘active’ and ‘passive’ is that in active euthanasia, something is done to end the patient’s life, in passive euthanasia, something is not done that would have preserved the patient’s life.

An important idea behind this distinction is that in ‘passive euthanasia’ the doctors are not actively killing anyone; they are simply not saving him. While we would usually applaud someone who saves another person’s life, we do not normally condemn someone for failing to do so.

#### *Voluntary versus Involuntary*

Voluntary euthanasia is, when the patient requests that action be taken to end his life, or that life-saving treatment be stopped, with full knowledge that this will lead to his death.

Involuntary euthanasia is, when a patient’s life is ended without the patient’s knowledge and consent. This may mean that the patient is kicking and screaming and begging for life, but in practice today it usually means that the patient is unconscious, unable to communicate, or is too sick and weak to be aware of what is happening or to take any action on his own behalf.

While this distinction appears clear-the patient willingly agreed to euthanasia or he did not, it too is often made ambiguous in court cases and some public debate.

It is not uncommon for Courts to declare someone legally incompetent. This does not mean that the person is stupid, but rather that the court believes that he is unable to make informed decisions and/or to communicate them to others. The judge then appoints a guardian to make decisions for this person. Usually, this will be a close relative, like a spouse, parents, or children. But if no such person is available, or if the judge believes that none of the relatives have this person's interests at heart, then someone else may be appointed such as a social worker, a lawyer, etc. children are routinely considered legally incompetent, and their parents are expected to make decisions for them. No one asks a two-year old whether or not he wants to go to the dentist. This decision is normally made for him by his parents. A judge may conclude that a person is senile, mentally retarded, suffering from delusions, or has some other psychological problem that makes it impossible for him to make truly informed, rational decisions. If someone is in a coma or is otherwise so sick that she is unable to communicate, then even if she is capable of making informed decisions, there is no way for anyone else to know what her decisions are. When Courts declare someone legally incompetent and appoint a guardian, any decisions that the guardian makes are, for legal purposes, considered to be decisions of the incompetent person. A little thought will show that this must be so for the system to work. There would be little point in saying that you are authorized to make decisions for this comatose person except that you do not have the authority to sign anything that would otherwise require his signature. That would exclude all important decisions. But it can also lead to legal sentiments that are very misleading.<sup>1</sup>

### *Assisted Suicide*

In 'assisted suicide', doctor provides a patient with the means to end his own life, but the doctor does not administer it, for example, if a doctor gives you an injection of morphine sufficient to cause your death, this is euthanasia. But if the doctor puts the hypodermic needle beside your bed, explains to you what it is, and leaves, and you later inject yourself, this is considered assisted suicide.<sup>2</sup>

## **INTERNATIONAL PERSPECTIVE**

The world medical community considers both euthanasia and assisted suicide to be in conflict with basic ethical principles of medical practice. The World Medical Association, with

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<sup>1</sup> Available at: [www.pregnantpause.org/euth/types.html](http://www.pregnantpause.org/euth/types.html), (Accessed on 5/10/2017 at 7:55 pm)

<sup>2</sup> Amit Mishra, *Euthanasia as Right to Life in India*, Indian Journal of Socio Legal Studies, Vol. V, Issue-1, Jan-June, 2016, p.196

members representing medical associations including the American Medical Association from 82 countries, has adopted strong resolutions condemning both practices and urging all national medical associations and physicians to refrain from participating in them even if national law allows or decriminalizes the practices.<sup>3</sup>

*“Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient’s own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.”*<sup>4</sup>

Physician-assisted suicide, like euthanasia is unethical and must be condemned by the medical profession. Sometimes, the physician is intentionally and deliberately directed in enabling an individual to end his or her own life, the physician acts unethically. However, the right to decline medical treatment is a basic right of the patient and the physician does not act unethically even if respecting such a wish results in the death of the patient.<sup>5</sup>

Furthermore, in deciding an assisted-suicide case, the European Court of Human Rights found that its prohibition on the use of lethal force or other conduct that might lead to the death of a human being did not confer any claim on an individual to require a State to permit or facilitate his or her death.<sup>6</sup> The European Court judges described the prohibition as a measure intended to protect the weak and the vulnerable. Following definitions of euthanasia have been given to enumerate its basic perspective.

- Euthanasia- It is intentional killing by act or omission of a dependent human being for his or her alleged benefit. The key word here is “intentional”. If death is not intended, it is not an act of euthanasia.
- Voluntary euthanasia- When the person who is killed has requested to be killed.
- Non-voluntary- When the person who is killed made no request and gave no consent.
- Involuntary euthanasia-When the person who is killed made an expressed wish to the contrary.

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<sup>3</sup> World Medical Association Policy, *The World Medical Resolution on Euthanasia*, Adopted by the WMA General Assembly, Washington, 2002.

<sup>4</sup> Ibid.

<sup>5</sup> *Pretty v. United Kingdom*, No. 2346/02, Eur. Ct. H.R.

<sup>6</sup> Northern Territory Government (1995), *Rights of the Terminally Ill Act, 1995*, Northern Territory of Australia, Darwin: Government Publisher.

- Assisted suicide- Someone provides an individual with the information, guidance, and means to take his or her own life with the intention that they will be used for this purpose. When it is a doctor who helps another person to kill themselves it is called physician assisted suicide.
- Euthanasia by Action-Intentionally causing a person's death by performing an action such as by giving a lethal injection.
- Euthanasia by Omission- Intentionally causing death by not providing necessary and ordinary (usual and customary) care or food and water.

There are various instances which show efforts made by the State to safeguard the interest of natural justice and right of human dignity.<sup>7</sup> One of the examples of England is recently quoted by the scholars as- *"Diane Pretty, who suffers from motor neurone disease, unsuccessfully appealed to the British courts to allow her to seek assistance to die. Specifically, she sought immunity for her husband, whose assistance she wanted to commit suicide. The House of Lords also ruled against her claim of a 'right to die' in November, 2001."*<sup>8</sup>

In late April 2002, the European Court of Human Rights ruled that there was no 'right to die' and that the British government was not subjecting her to 'inhuman or degrading treatment' by forbidding assisted suicide. People who support euthanasia often say that it is already considered permissible to take human life under some circumstances such as self defence but they miss the point that when one kills for self defence they are saving innocent life- either their own or someone else's. With euthanasia no one's life is being saved-life is only taken.<sup>9</sup> One can argue that these efforts are in right direction in view of the facts that if no one can provide life to other or sustain one or other pretext, one cannot be permitted to die. However, this opens area for further research particularly in legal perspective.

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<sup>7</sup> Hiroeh U. Appleby I, et al, *Death by homicide, suicide and other unnatural causes in people with mental illness: a population-based study*, The Lancet, Vol. 358, December 22/29, 2001, pp. 2110-12.

<sup>8</sup> Van Der Maas P.J, Van der Wal G, et al, *Euthanasia, physician-assisted suicide, and other medical practices involving the end of life in the Netherlands, 1990-1995*, New England Journal of Medicine, Vol. 335 (22), November 29, 1996, pp. 1699-1705.

<sup>9</sup> Physicians for Compassionate Care, Media Release, March 21, 2002, See also, Diane Coleman, President of Not Dead Yet (cited in ProLife Infonet, "Ashcroft defends motion against Oregon's assisted suicide law", February 21, 2002, Statistics from Fourth Annual Report on Oregon's assisted suicide law", Feder "Assisted Suicide-The Death of Decency", Creators Syndicate, April 10, 2002; ProLife. February 21, 2002, Statistics from Fourth Annual Report on Oregon's assisted suicide law", Feder "Assisted Suicide-The Death of Decency", Creators Syndicate, April 10, 2002; ProLife.

## **RIGHT TO LIFE**

Right to life is the ultimate right. This makes sense for many reasons, one of them being the fact that if you have no life, you can have no other rights. The most important reason, however, is that if some are allowed to give up their right to life, then the capacity for the State to impartially protect the right to life of others, especially the weak and vulnerable, is gravely compromised. Some people criticize this concept of the right to life, suggesting it is simply a ploy of the pro-life lobby, and suggesting that it is a violation of people's rights to 'choose'.

Intention is what you intend to achieve. Motive is the reason behind your intention to achieve this. This difference is important for both the doctor and patient. The motives of people who ask to be killed must be considered. "Many people with incurable diseases who ask a health-care provider to end their lives do so more as an expression of fear, helplessness or hopelessness than as a serious request for euthanasia."<sup>10</sup> Very frequently, it is reassurance of their continuing worth as a person that is the real reason for patients suggesting that they would be better off dead.

## **RIGHT TO DIE**

In *Maruti Sripati Dubal v. State of Maharashtra*<sup>11</sup> the Bombay High Court has struck down Section 309 I.P.C which provides punishment for attempt to commit suicide by a person as unconstitutional on the ground that it is violative of Article 21 of the Constitution.

The Court held that the right to live guaranteed by Article 21 includes also a right to die. The judges felt that the desire to die is not unnatural but merely abnormal and uncommon. They listed several circumstances in which people may wish to end their lives, including disease, cruel or unbearable condition of life, a sense of shame or disenchantment with life. They held that everyone should have the freedom to dispose of his life as and when he desires. In this case, a Bombay Police Constable who was mentally deranged was refused permission to set up a shop and earn a living. Out of frustration he tried to set himself fire in the corporation's office room.

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<sup>10</sup> Collen Burher, *Women shown as typical mercy killing targets*, The Collegian, 25/10/2001

<sup>11</sup> (1986) 88 BOMLR 589

The liberal approach of the Bombay High Court on suicide although will help many, but will raise many strange issues. Firstly, in traditional societies in which individual decision matters little it will open some women to barbaric and inhuman pressure for becoming 'Sati'. Secondly, in cases where people go on hunger strike the police will not be able to arrest and prosecute them. Suicide owing to frustration love, examinations or failure to get a job or even good job or promotions in service will raise many social problems. Is individual capable of taking decisions to end his life? Does he not owe a responsibility towards the society to overcome these human frailties and live for it?

In another landmark judgment in *P. Rathinam v. Union of India*,<sup>12</sup> seeking to humanize the criminal law, the Supreme Court has held that a person has a right to die and declared unconstitutional. Section 309 of the Indian Penal Code which makes "attempt to commit suicide" a penal offence. The right to life in Art 21 of the Constitution includes the right not to live, i.e right to die or to terminate one's life. In the present case, the petitioners have challenged the validity of Section 309 on the ground that it was violative of Arts. 14 and 21 of the Constitution and prayed for quashing the proceedings initiated against the petitioner (Nagbhusan) under Section 309 pending in the Sub-Judge Court, Gunupur in the District of Koraput, Orissa for attempting to commit suicide.

A Division Bench comprising Mr. Justice R. M. Shai and Mr. Justice Hansaria held that Section 309 of the I.P.C violates Art. 21 i.e rights to life and personal liberty of the constitution and so it is void. A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. The court held while striking down Section 309 of the I.P.C saying that it was a cruel and irrational provision. The court held that right to life which Art. 21 of the Constitution speaks of can be said to bring in its bail the right not to live a forced life.

The Court observed that:

*"Section 309 I.P.C deserves to be effaced from the Statute Book to humanize our penal laws. It is a cruel and irrational provision and may result in punishing a person again (Doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide."*

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<sup>12</sup> (1994) 3 SCC 394



The Court made it clear that an act of suicide could not be said to be against religion morally 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 and therefore the State's interference in the personal liberty of the concerned person is not called for.

However, the Court rejected the plea that 'euthanasia (mercy killing) should be permitted by law. The Judges said that they would not decide this point as firstly it is beyond the scope of the present petition and secondly also because in euthanasia a third person is either actively or passively involved about whom it may say that he aids or abets the killing of another person. There is a distinction between an attempt of a person to take his life and action of some others to bring to an end the life of a third person such a distinction can be made on principle and is conceptually permissible.

Suicide is a psycho-socio problem and not a manifestation of criminal instinct. The Court therefore, suggested that this needs to be socially and medically tackled. The need is to take care of suicide prone persons through counselling and other measures which will make them realise that life is worth living. There can be a justification to prosecute such sacrifices or their lives. Suicide is really a 'call for help' not a 'call for punishment'. Similar approach has to be adopted towards students who jump into well after having failed in examination, but survives.<sup>13</sup>

### CONSTITUTIONAL VALIDITY OF RIGHT TO DIE

Here, the question arises whether right to life under Article 21 includes right to die or not. This question came for consideration for first time before the High Court of Bombay in *Maruti Sripati Dubal v. State of Maharashtra*<sup>14</sup> In this case the Bombay High Court held that the right to life guaranteed under Article includes right to die, and the Hon'ble High Court struck down Section 309 of I.P.C which provides punishment for attempt to commit suicide by a person as unconstitutional. In *P.Rathinam v. Union of India*,<sup>15</sup> a Division Bench of the Supreme Court supporting the decision of the High Court of Bombay in *Maruti Sripati Dubal* case held that under Article 21 right to life also include right to die laid down that Section 309 of Indian Penal Code which deals with 'attempt to commit suicide is a penal offence' unconstitutional.

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<sup>13</sup> Dr. J. N. Pandey, Constitutional Law of India, 28<sup>th</sup> Edition, 1995, Central Law Agency, Allahabad, p.180

<sup>14</sup> *Supra* note 11

<sup>15</sup> *Supra* note 12

This issue again raised the court in *Gian Kaur v. State of Punjab*.<sup>16</sup> In this case a five judge constitutional Bench of the Supreme Court overruled the P. Rathinam's case and held that Right to Life under Constitution does not include *Right to Die* or *Right to be killed* and there is no ground to hold that the Section 309, IPC is constitutionally invalid. To true meaning of the word "life" in Article 21 means life with human dignity. The 'Right to Die' if any, is inherently inconsistent with the "Right to Life" as is "death" with "Life".

Further, a question also arise in case of a dying man, who is, seriously ill or has been suffering from virulent and incurable form of disease 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 Right to die with dignity as a part of life with dignity. According to the court, these are not cases of extinguishing life but only of accelerating the process of natural death which has already commenced.

## RIGHT TO DIE: NEW CHALLENGES

In Aruna Shanbaug's case, the Apex Court allowed 'passive euthanasia' of withdrawing life support to patients in permanently vegetative state (PVS) but rejected out rightly active euthanasia of ending life through administration of lethal substances.

The Supreme Court of India in its landmark judgment pronounced passive euthanasia as permissible under Section 309 of the Indian Penal Code. The main ground for adjudication before the Apex Court was whether a person who advertently refuses to accept lifesaving treatments or food in order to die, commits a crime under IPC under Section 309 which speaks regarding attempt to suicide. This landmark judgment was pronounced in relation to a journalist writer Pinki Virani's plea to allow passive euthanasia for Aruna Shanbaug.

As far as the brief fact of the case is concerned, Aruna Shanbaug hailing from Haldipur town of Utter Kannada district in Karnataka, was a junior nurse, at King Edward Memorial Hospital in Mumbai and was planning to get married to a medic in the hospital. On the night of 27 November, 1973, Shanbaug was sexually assaulted by Sohanlal Bhartha Valmiki, a ward boy at the King Edward Memorial Hospital. Valmiki was motivated partly by resentment for being ordered about and castigated by Shanbaug. Valmiki attacked her while she was changing clothes in the hospital basement. He choked her with a dog chain and

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<sup>16</sup> (1996) 2 SCC 648

sodomized her. The asphyxiation cut off oxygen supply to her brain, resulting in brain stem contusion injury and cervical cord injury apart from leaving her cortically blind. The police case was registered as a case of robbery and attempted murder on account of the concealment of anal rape by the doctors under the instructions of the Dean of KEM Hospital. Valmiki was caught and convicted, and served two concurrent seven years sentences for assault and robbery, neither for rape or sexual molestation, nor for the unnatural sexual offence.

A petition for euthanasia was first filed by Pinki Virani, a journalist and her friend who has written a book on the woman who is being forced to live her life stripped of basic dignity. The Supreme Court praised MMs. Virani's concern, but ruled out her relationship with the patient does not give her this right to file a petition on behalf of Ms. Shanbaug for mercy killing. The only party can appeal for the euthanasia is the staff of KEM hospital where she had served as a nurse. Refusing mercy killing of Aruna Shanbaug, lying in a vegetative state for 37 years in a Mumbai hospital, a two-judge bench of Justices Markandeya Katju and Gyan Sudha Mishra, laid a set of though guidelines under which passive euthanasia can be legalised through High Court monitored mechanism.

Ms. Shanbaug has, however, changed forever India's approach to the contentious issue of euthanasia. The verdict on her case on 7<sup>th</sup> March 2011 allowed passive euthanasia contingent upon circumstances. So, other Indians can now argue in Court for the right to withhold medical treatment-take a patient off a ventilator, for example, in the case of an irreversible coma. The judgment made it clear that passive euthanasia will "only be allowed in cases where the person is in persistent vegetative state or terminally ill". The Apex Court while framing the guidelines for passive euthanasia asserted that it would now become the law of the land until Parliament enacts a suitable legislation to deal with the issue.

The bench also asked Parliament to delete Section 309 i.e attempt to suicide as it has become anachronistic though it has become constitutionally valid. A person attempts suicide in a depression, and hence he needs help, rather than punishment, Justice Katju writing the judgment said.

The Apex Court said though there is no statutory provision for withdrawing life support system from a person in permanently vegetative state, it was of the view that "passive euthanasia" could be permissible in certain cases for which it laid down guidelines and cast the responsibility on High Courts to take decisions on pleas for mercy killings. "We agree

with senior counsel T.R.Andhyarujina (who assisted the court in the matter) that passive euthanasia should be permitted in our country in certain situations, and we disagree with Attorney General (G.E.Vahanvati) that it should never be permitted,” said the bench.

Thus, in each case, the relevant High Court will evaluate the merits of the case, and refer the case to a medical board before deciding on whether passive euthanasia can apply. And till Parliament introduces new laws on euthanasia, it is Ms. Shanbaug’s case that is to be used as a point of reference by other courts.

## **ADVANTAGES AND DISADVANTAGES OF EUTHANASIA**

### *Advantages*

1. It provides a way to relieve extreme pain.
2. It provides a way of relief when a person’s quality of life is low.
3. Frees up medical funds to help other people.
4. It is another case of freedom of choice.

### *Disadvantages*

1. Euthanasia devalues human life.
2. Euthanasia can become a means of health care cost containment.
3. Physicians and other medical care people should not be involved in directly causing death.
4. There is a ‘slippery slope’ effect that has occurred where euthanasia has been first been legalised for only the terminally ill and later laws are changed to allow it for other people or to be done non-voluntarily.<sup>17</sup>

## **CONCLUDING REMARKS**

As far as the abovementioned discussion and deliberation is concerned, it is observed that society cannot avoid the complex controversies surrounding euthanasia and must at least attempt to provide for adequate guidelines and legal safeguards for those who tragically must face such a decision. Passive euthanasia is rarely painless. Active euthanasia is not only painless, but if properly administered it should be a positive experience. Drugs that produce

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<sup>17</sup> Available at [www.insightsonindia.com/2016/./insights-into-editorial-towards-a-law-on-euthanasia](http://www.insightsonindia.com/2016/./insights-into-editorial-towards-a-law-on-euthanasia), (Accessed on 8/10/2017 at 8.35am)

pleasurable sensations given before a fatal injection, coupled with a dignified ceremony, are far preferable to an ignominious starvation as an end to life. If feasible, amendment may be made in the existing law for proper administration of active euthanasia. Legal guidelines need to be formulated in this context keeping in view that the right to life won't be violated.