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Dying with Dignity: The Legal and Ethical Dimensions of Passive Euthanasia in India

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Introduction:

In the timeless debate surrounding the complexities of life and death, euthanasia has emerged as a focal point of ethical and legal discourse. The term, originating from the Greek words *"eu"* (good) and *"thanatos"* (death), signifies a "good death" — a concept as ancient as the civilizations that first contemplated the dignity of human existence. The Roman historian Suetonius, in his seminal work *De Vita Caesarum*, recorded the peaceful death of Emperor Augustus in the arms of his wife, Livia, describing it as the emperor's wish for a swift and painless end — a true "euthanasia" by his own words. From this account, the term began its journey, weaving through European thought and later permeating global discussions.

Euthanasia, or mercy killing, addresses the poignant reality of terminal illness and incurable conditions. It is defined by the Oxford Dictionary as the "painless killing of a person suffering from an incurable illness or in an irreversible coma." Similarly, the Cambridge Dictionary describes it as the act of ending the life of someone who is gravely ill or elderly to alleviate their suffering.

The legal status of euthanasia varies widely across nations. Many European countries, acknowledging the right to die with dignity as an extension of human rights, have enacted laws to preserve the dignity of those at the end of life. For example, Belgium, the Netherlands, and Luxembourg have legalized euthanasia under strict conditions, placing Europe at the forefront of this global debate.

In contrast, India navigates the issue through the lens of its judiciary. The Indian Constitution upholds the right to life as one of its most fundamental human rights. This right encompasses not only living with dignity but also dying with dignity. However, the country lacks specific legislation governing euthanasia, relying instead on landmark Supreme Court judgments. The evolution of this jurisprudence began with the *P. Rathiram* case in 1994 and culminated in the *Common Cause* case of 2018, where the court recognized passive euthanasia and advance directives under stringent safeguards.

As the discourse on euthanasia continues to unfold, it reflects society's evolving relationship with the concepts of suffering, autonomy, and compassion. For Europe, with its rich legal traditions and philosophical heritage, the debate remains as much about upholding human dignity as it is about navigating the intricate balance between life, law, and morality.

Euthanasia simply refers to the practice of intentionally ending a life in order to relieve pain. This practice has been on since ancient times. Biblical records even show traces of the practice of euthanasia.

Kinds of Euthanasia

Euthanasia has been primarily classified into active and passive.
Active euthanasia refers to a physician deliberately acting in a way to end a patient's life.
There are three types of active euthanasia.
1. Voluntary euthanasia is one form of active euthanasia which is performed at the request of the patient.
2. Involuntary euthanasia, also known as "mercy killing," involves taking the life of a patient who has not requested for it, with the intent of relieving his pain and suffering.
3. Non-voluntary euthanasia is conducted where the patient is completely unable to give consent.

Passive euthanasia pertains to withholding or withdrawing treatment necessary to maintain life.

As Dworkin postulates: Making some die in a way that others approve but he believes a horrifying contradiction of his life, is a devastating, odious form of tyranny. Since Euthanasia involves the question of life and death, it involves a moral element and is seen in different light in different religion.

Religious Perspectives on Euthanasia

The diverse religious practices in India add layers of complexity to the formulation of laws on euthanasia. Any legislation on this sensitive issue must be framed with careful consideration of these perspectives.

The Hindu View

Rooted in the doctrine of karma, Hindu philosophy emphasizes that one's actions in life determine their destiny in future births. Acts such as euthanasia, suicide, or murder are believed to disrupt the soul's journey toward liberation (moksha), introducing bad karma for both the individual and those involved. The principle of non-violence (ahimsa) holds central significance, and any interference with the natural progression of life is seen as a spiritual transgression. Furthermore, a soul burdened by unresolved karma is thought to carry its suffering into the next physical incarnation.

Despite these beliefs, Hinduism does acknowledge certain practices that allow for a voluntary and peaceful end to life. Traditions like *Prayopavesa* (fasting to death), *Nirvana*, and *Samadhi* are seen as spiritually acceptable because they involve self-determination without external assistance. Of these, *Prayopavesa* stands out as a gradual and contemplative process. It is considered an honorable choice for individuals who feel their life's purpose has been fulfilled and their body has become a burden. This practice offers both the individual and their loved ones time to prepare for the eventual transition.

A modern instance of *Prayopavesa* was observed in November 2001[1] when Satguru Sivaya Subramuniyaswami, a prominent Hindu leader born in California, chose this path. Suffering from untreatable intestinal cancer, he embraced *Prayopavesa* as a means to end his life with dignity, in alignment with Hindu beliefs.

Many ancient Hindu texts mention many means to end life by conscious choice but it does not support taking anyone else's life hence does not support Euthanasia.

n Buddhism, the doctrines of karma and liberation serve as guiding principles in addressing the end of life. The way one's life concludes is believed to profoundly influence the nature of their rebirth. Hence, the state of mind at the time of death holds critical importance. Buddhists emphasize that a person's final thoughts should be selfless, enlightened, and free from anger, hate, or fear. This perspective implies that acts like suicide and euthanasia are generally discouraged unless one has achieved enlightenment. For those who have not attained such spiritual clarity, these actions are viewed as a hindrance to their karmic journey.

Christian Perspective

The Christian worldview is deeply rooted in the sanctity of life, as expressed in the commandment: *"Thou shalt not kill.[2]"* According to Christian teachings, every human life, irrespective of its length or condition, holds infinite value because it reflects the image of God. While the Bible mentions instances that might resemble mercy killing, such as the story of King Saul in the Old Testament—where Saul requests his servant to end his life[3], and upon refusal, takes his own life—these accounts are not endorsements but rather cautionary narratives.

[1] Crawford SC," *Dilemmas of life and death: Hindu ethics in a North American context*" (Albany. New York.USA)

[2] Exodus 20:13
[3] Samuel 1:8-17/2 Samuel 1:1-27

Central to Christian thought is the belief that life is a sacred gift entrusted to humans by God. This belief informs the strong opposition to voluntary euthanasia, where a person actively seeks assistance in ending their life. The opposition extends to non-voluntary euthanasia, which involves ending the life of someone who cannot consent due to conditions like severe dementia, permanent coma, or intellectual disability. Christians firmly reject the idea that such conditions diminish the intrinsic worth of a human being[4]. As a result, the Christian faith not only regards euthanasia as morally unacceptable but also opposes its legalization.

Islamic Perspective

In Islam, the sanctity of life is a divine decree, and the holy Quran does not acknowledge a person's right to voluntarily end their own life. Across both Sunni and Shiite schools[5] of thought, there is unanimous agreement that active euthanasia is strictly *haram* (forbidden). However, an exception is recognized in cases where life-support equipment is withdrawn from a brain-dead individual to preserve resources or save another life. This act is not seen as euthanasia but as a practical decision in line with Islamic ethics. As a guiding principle, Muslims firmly oppose euthanasia, upholding the belief that life and death are solely under the domain of Allah's will.

Global Perspectives on Euthanasia

"I believe those who suffer from a terminal illness and experience great pain should have the right to choose to end their own life, and those who assist them should be free from prosecution."

—Stephen Hawking

Euthanasia, a subject of intense debate worldwide, has different legal standings across various countries. The differences in policy reflect diverse cultural, religious, and moral attitudes toward life and death. This section explores the legal frameworks surrounding euthanasia and Physician Assisted Suicide (PAS) across different nations.

Netherlands

The Netherlands became the first country to legalize euthanasia. The "Termination of Life on Request and Assisted Suicide (Review Procedures) Act," which took effect on April 1, 2002, legalized euthanasia and physician-assisted suicide under very specific conditions. The law stipulates that euthanasia can only occur if the following criteria are met:

1. The patient is enduring unbearable suffering with no prospect of improvement.
2. The patient's request for euthanasia must be voluntary and persistent over time, made without influence from others, psychological illness, or drugs.
3. The patient must be fully aware of their condition, prospects, and options.
4. An independent doctor must confirm the conditions outlined above.
5. The procedure must be carried out in a medically appropriate manner, with the doctor present, and the patient must be at least 12 years old (those aged 12-16 need parental consent). Euthanasia in the Netherlands is only permissible when it is deemed necessary to alleviate severe suffering due to terminal conditions. Any assistance in suicide that doesn't adhere to these criteria is illegal.

United States

In the United States, Oregon became the first state to legally sanction PAS. The Oregon Death with Dignity Act, passed in 1994, allows terminally ill patients with six months or less to live to request a lethal dose of prescribed medication. Most users of the law are elderly individuals suffering from terminal cancer. The Act was revolutionary as it was the first modern

[4] Mathew 27:3-5
[5] Hamid Reza Nikookar , "*Euthanasia: an Islamic ethical perspective* " , 2 European Scientific Journal,*05/07/2014*

legal provision for assisted suicide, and it was passed through a citizen's initiative. The law permits terminally ill patients to obtain a prescription for lethal medication but prohibits euthanasia, where a physician directly administers the medication.

Belgium

Belgium, following the Netherlands, became the third country to legalize euthanasia. Belgian law permits euthanasia if the person is suffering from a terminal illness and has requested to end their life. The criteria for euthanasia in Belgium include:

1. The individual must be of legal age and legally competent.
2. The request for euthanasia must be voluntary, informed, and persistent.
3. The person must be suffering from an incurable illness with no available treatment options.

Australia

Australia's Northern Territory passed the "Terminally Ill Act" in 1995, legalizing euthanasia. The Act, effective from July 1996, allowed euthanasia under strict conditions and only in extreme cases where all requirements were met. However, this law was repealed in 1997, limiting euthanasia to other forms of palliative care.

Colombia

Colombia legalized euthanasia in 1997 when the Constitutional Court ruled that individuals have the right to decide to end their own life. In this jurisdiction, those who assist in the process are not criminally liable, provided that the individual's request is informed and voluntary.

Other Countries

- **Sweden** legalized passive euthanasia in 2010, allowing the withdrawal of life-sustaining treatments under certain conditions.
- **Britain** has permitted the cessation of life-preserving treatments in certain circumstances since 2002, with decreased prosecution of those assisting a loved one in dying since 2010.
- **Austria, Germany, and Norway** allow passive euthanasia if requested by the patient or a relative in cases of unconsciousness.
- In **Hungary, Spain, and the Czech Republic**, people with incurable diseases may refuse life-prolonging treatment.
- **Italy, Romania, Greece, Bosnia, Serbia, Croatia, Poland, and Ireland** have banned euthanasia, considering it homicide, with penalties ranging from 14 to 15 years in prison in Ireland and Italy.
- **Russia** also regards euthanasia as illegal.

As evidenced, the stance on euthanasia varies widely due to cultural, religious, and ethical considerations. However, in regions where euthanasia is legalized, it is often seen as a relief for those in unbearable pain, who prefer to end their suffering.

Case of Marieke Vervoot where Euthanasia was opted and given

We have seen the stand of various countries. Euthanasia is legal in Belgium. Belgian Paralympic champion Marieke Vervoot ended her life through euthanasia at the age of 40. Vervoot suffered a degenerative muscle disease that caused constant pain, paralysis in her legs and left her barely able to sleep, and gradually her life became torture. She was just 14 years old when diagnosed with the disease but Vervoot pursued a sporting life with passion, playing wheel-chair basketball, swimming and racing in triathlons. She won the 100m gold and 200m silver wheel-chair races at the 2012 London Games,

as well as the 400m silver and 100m bronze in Brazil four years later in 2016. But then her eyesight had deteriorated and she suffered from epileptic attacks, and she said that Rio would be her last competition. She announced her intentions after the Rio Games in 2016 to follow that path if degenerative condition worsened her suffering she would go for euthanasia. Vervoot signed the paperwork to be euthanized back in 2008. She said in Rio that access to legal assisted dying had given her the courage to continue living for as long as she had, and insisted the practice should not be characterized as 'murder'. "I think there will be fewer suicides when every country has the law of euthanasia. I hope everybody sees that this is not murder, but it makes people live longer" she said.[6] It appears that due to development of science and technology in the last century, the concepts of life and death has been changed. Changes have even been brought to outlook and psychology of the modern people.

Nowadays, a person who is in a persistent vegetative state (PVS), whose sensory systems are dead, can be kept alive by ventilators and artificial nutrition for years. In the light of these developments, legal, moral and ethical issues have arisen as to whether a person who is under ventilator and artificial nutrition should be kept alive for all time to come till the brain-stem collapses or whether, in circumstances where an informed body of medical opinion states that there are no chances of the patient's recovery, the artificial support systems can be stopped. If that is done, can the doctors be held guilty of murder or abetment of suicide

The Ethical Dilemma

The advancement of science and technology has shifted our understanding of life and death. Today, a person in a persistent vegetative state (PVS) can be kept alive indefinitely through artificial means, including ventilators and nutrition. This has sparked a moral and legal debate about whether such individuals should be kept alive indefinitely or whether life support should be withdrawn when recovery is deemed impossible by medical experts. If doctors remove such support, can they be charged with murder or aiding suicide?

DETAILS OF ADVANCE MEDICAL DIRECTIVE

Legal Development

In India, there is no specific law on Euthanasia but the judgements of Supreme court and the review of Law Commission have given guidelines in reaching a solution to the problem. "Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. This Court, in this case, is facing the same issue, and we feel like a ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels before us. The case before us is a writ petition under Article 32 of the Constitution".[7]

The Supreme Court ruled in Vikram Deo Singh Tomar v. State of Bihar 1988 that, "the right to live with human dignity is the fundamental right of every Indian citizen." In P. Rathinam v. Union of India 1994, it was decided that according to Article 21 right to life includes the right to die. The right to life" under Article 21 of the Constitution has received the widest possible interpretation under the able hands of the judiciary and rightly so. On the grounds as mentioned, Article 21 does not have a restrictive meaning. This affirms that if Article 21 confers on a person the right to live a dignified life, it should bestow the Right to Die also.

Court also made it clear that right to die (unnaturally) curtailing the span of life which means suicide is different from right to die with dignity (naturally) when life is naturally moving towards ebb. However, they left the law open for the possibility of euthanasia by distinguishing it from suicide.

[6] *Ben Morse, Marieke Vervroot : Belgian Paralympian dies aged 40 through Euthanasia , CNN (06/01/2021)* https://edition.cnn.com/2019/10/23/sport/marieke-vervoort-paralympian-dies-euthanasia-belgium-spt-intl/index.html

[7] Aruna Ramchandra Shanbaug vs Union Of India & Ors on 7 March, 201https://indiankanoon.org/doc/235821/

Aruna Ramachandra Shanbaug was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. She was sexually assaulted in 1973 by a staff of the hospital. She went into coma and remained in a Permanent Vegetative state since then. Pinky Virani made a plea to the Supreme court in December 2009 under the constitutional provision of "next friend" to grant the permission of Euthanasia, stop feeding her and let her die peacefully as she was in PVS for the last 36years.It was said to live such a life was violation of her fundamental right to a life with dignity and therefore she should be allowed to die. The court appointed 3 team doctors to evaluate her condition.

The court did not allow euthanasia because the court refused to accept Pinky Virani as next friend. The nurses of the hospital who took care of her, were considered next friend. They refused to plea for euthanasia. Aruna Shanbaug died in 2015 of pneumonia after being in coma for 42 years.

But in 2011, the Supreme Court of India in its landmark judgement of Aruna Shanbaug legalised passive euthanasia. Passive euthanasia refers to an omission, usually the withholding of medical treatment, such as antibiotics or a ventilator, which is necessary for the continuance of life. The judgement recognised passive euthanasia and maintained that active euthanasia is illegal.[8]

This decision was made in agreement with the principle that there exists right to die with dignity in the right to life itself.

In 2002**, Common Cause**, a registered society wrote to Ministries of Law and Justice, Health and Family Welfare, Company affairs and also to state governments on the issue of the right to die with dignity to the terminally ill patients and in 2005 approached supreme court to declare it as a fundamental right under Article 21. It also sought permission to allow the making of "living will" for appropriate action if they are admitted to hospital. A living will is a type of an advance directive. It is also a written document outlining your wishes for your health, to be followed if you cannot make decisions or express your wishes. It typically focuses on situations where you are terminally ill and explains whether you would wish life-sustaining efforts be made.

The Advance Medical Directive

Black's Law Dictionary defines an advance medical directive as "A legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate." [9] The idea behind such a document is that if a patient is in a vegetative state or any other condition which would prevent her from communicating, there will be concrete proof of what she would wish for herself regarding treatment. These wishes should be given primary importance when considering the question of euthanasia**.**

When deciding a course of treatment, doctors must consider the two cardinal principles of medical ethics: the patient's right to self-determination and beneficence (also known as the principle of deciding in the patient's best interests).

Without an Advance Medical Directive, a comatose (a person in coma), unconscious or otherwise incapacitated patient will simply be treated in accordance with rule of beneficence.

The principle of patient autonomy, states that every human being of adult years and sound mind has a right to determine what shall be done with her own body.[10]

When the patient is unable to exercise autonomy due to the seriousness of her condition, the patient may make her wishes known previously through a formal advance directive. This can protect the patient's right to death with dignity. For this

[8] ibid
[9] Black's Law Dictionary, 7th ed, sub verbo "advance medical directive".
[10] Scloendorff v Society of New York Hospital, 211 NY 123, 126 (1914) (USA).

reason, many countries have now implemented procedures for the making of formal advance directives, notably the United States of America and the United Kingdom.

Advance medical directives include both the living will and a medical power of attorney. India acknowledges the legality only of living wills and not of medical powers of attorney.

The legal complications started in cases where the patient is unable to communicate her wish due to her severity of illness or because she is incompetent then who is best person to make a decision for the patient and on what grounds?

The case of Aruna Shanbaug attempted to address these two questions.

The Supreme Court observed that, "if we leave it solely to the patient's relatives or to the doctors or next friend to decide whether to withdraw the life support of an incompetent person, there is always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or otherwise grab property of the patient".[11] They therefore provided that the family or next friend of a patient can petition the High Court which will, in consultation with a panel of medical experts, decide the issue.

The judgement upheld the right to die with dignity laid down in Gian Kaur v. State of Punjab.[12] It was held that, "The right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life…this may also include the right of a dying man to die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life."[13]

With this principle in mind, the Supreme Court of India has legalised passive euthanasia by allowing High Courts to sanction it. Although leaving the decision to the judiciary appears to be the most logical method, keeping in mind the sanctity that the law places on the lives of the people, the question that one must ask is whether the procedure is really protecting the patient's right to die with dignity.

It has come to be agreed that when a person is in such pain that her life has lost all meaning apart from the fighting of that pain, she loses her human dignity. In such circumstances, a respect for her former dignity may be the justification necessary for euthanasia.[14]

Living Wills: The Benefits

Apart from protecting the patient's right to self-determination, a living will has many advantages.

Firstly, it helps safeguard against the abuse of euthanasia by making the patient's wishes binding on doctors (unless proven that the patient's wishes should not be followed)[15]. The use of a living will would lead to easier and more reliable decision making, with clear proof of the patient's choice.

Secondly, a living will can legitimise a physician's actions of withdrawing treatment by providing proof of a patient's intentions. This protects a doctor from accusations of homicide.

Thirdly, a living will can help to provide patients and their loved ones with a sense of control over death, which can be an important psychosocial outcome of an AMD. Death, once central to social and religious life, has been made taboo, making

[11] [Aruna], supra note 2
[12] [Gian], supra note 23
[13] ibid
[14] Jyl Gentzler, *What is a Death with Dignity? (2003)* 28 Journal of Medicine and Philosophy 461 at 466.
[15] Jochen Taupitz and Amina Salkić, "*Advance Directives and Euthanasia under German Law*" in Stefania

it difficult to think about[16]. People usually resist thinking about the death of their loved ones. AMDs can act as aids in encouraging people to overcome their fears and face the decisions that must be made[17].

Fourthly, as Dworkin has pointed out, most patients realise that their suffering causes anguish to their families and are therefore inclined to minimise the burden that their illness imposes on others[18].

Finally, decisions about death are heavily influenced by cultural and personal values. To safeguard patient autonomy, physicians should give due recognition to a patient's wishes[19].

The Law Commission report on Euthanasia

The 196th Report of the Law Commission of India had made a study of the law relating to euthanasia and its related facets and had proposed a Bill for its implementation.

The Law Commission of India in its 196th Report, 2006 recommended that there must be a law made to protect terminally ill patients who refuse medical treatment, artificial nutrition. Further, doctors who obey such a decision of the patient, or who make the decision for incompetent patients in their best interests of such patients, must be protected from punishment under Section 306 of the IPC (abetment of suicide) or Section 299 (culpable homicide). Such actions of doctors must be declared 'lawful'. Parliament can make such a law under Entry 26 of List III of the Seventh Schedule of the Constitution. The Law Commission suggested that the law be called 'The Medical Treatment of Terminally Ill Patients (Protection of Patients, Medical Practitioners) Act.

The Report clarified that the 'patient' must be suffering from a 'terminal illness'. It is such illness, injury or degeneration of a physical or mental condition which causes extreme pain and suffering, according to reasonable medical opinion will inevitably cause the untimely death of the patient. It can also be a persistent and irreversible vegetative condition of the patient.

The Report also differentiated between a 'competent patient' and an 'incompetent patient'. According to the report, an 'incompetent patient' is a minor, or a person of unsound mind, or a patient who is unable to understand the information relevant for making the decision or is unable to communicate his or her decision.

Next, it was recommended that the doctor must not withhold or withdraw treatment unless he has obtained the opinion of a board of three expert medical practitioners. If there is a difference of opinion among the three experts, the majority opinion must prevail. The doctor must also consult the family of the patient, but the doctor is the best person to take a clinical decision using his expert medical opinion.

The Report recommended that the Medical Council of India must issue guidelines as to the circumstances under which withdrawal of medical treatment can be allowed. Before withdrawing medical treatment in case of incompetent patients and patients who have not taken an informed decision, the doctor must inform in writing to the patient (if he is conscious) and his/her parents or relatives about the decision.

If they do not agree with the doctor, they may approach the High Court. In such circumstance, the doctor must postpone the decision by fifteen days. If no orders are received from the High Court within 15 days, the doctor can proceed with the decision. The High Court can be approached by the patient, parents, relatives, doctors or hospitals. The declaration given

[16] Douglas K. Martin, Linda L. Emanuel & Peter A. Singer, "Planning for the End of Life" (2000) 356 The Lancet 1672 at 1673 [Martin].
[17] Henry S. Perkins, "Controlling Death: The False Promise of Advance Directives" (2007) 147 Ann Intern Med 51 at 52.
[18] [Cohen-Almagor], supra note 143
[19] [Martin], supra note 41

by the High Court must benefit the patient, the medical practitioner and the hospital. Once a petition is filed in the High Court it must soon pass an order to keep confidential the identity of all persons involved.

A decision taken by the High Court influenced by a panel of medical experts who have no relation to the patient or the physician treating will be impersonal. It may have no relation to what the patient would have chosen had she been conscious.

For many other people, however, the principle of autonomy may be a dominant ethical consideration in their value system.[20] A study of attitudes among people of Chinese origin found that they had a world view that values interdependence, compassion and protection in contrast with independence and autonomy.

A decision by an impartial party such as the judiciary, though just, may not take into consideration these complex values according to which a person wishes to live and, presumably, die. Such a decision may then be an imposition of the values of the decision makers, rather than a reflection of the values of the patient in question. This, surely, is counter-productive to the right to a death with dignity, one of the core components of which would be a chance to die on one's own terms, according to one's own values.

Terminally Ill Patients (Protection of Patients and Medical Practitioners)", proposed a Bill for the legalisation of passive euthanasia. In it, the Law Commission criticised living wills and advised against their implementation in India. This Report was made in 2006, before the decision of the Supreme Court in Aruna Ramchandra Shanbaug v. Union of India and Ors.

The Supreme Court did not address the issue of living wills in this decision.

The **241st Law Commission Report** of August 2012 ("Passive Euthanasia – A Relook"), which reported on the feasibility of legislation of euthanasia, taking into consideration the 196th Report and the recent decision in Aruna Ramchandra Shanbaug v. Union of India and Ors., agreed with the previous Report that, as a matter of public policy, living wills should be made legally ineffective, overriding the common law right to self-determination.

Although living wills have been permitted in several countries, most notably the U.S.A. and the U.K., the Law Commission felt that they would create complex problems in India.

The criticism brought up by the Report focused on the difficulties that arise when considering the question of living will continues to be valid. The Report relied on the complex issues that have been created in the U.K. by advance medical directives and used case law to demonstrate its arguments.

The first among the cases relating to living wills is, **HE vs. A Hospital NHS and Anr** [21].In this case, the patient was born into a Muslim family. When her parents separated, her mother became a Jehovah's Witness, a religion that does not support blood transfusions. The patient thereafter executed a living will saying that she did not want blood transfusions. When she required surgery, her father, who remained a Muslim, applied to the court for permission to give a blood transfusion. He argued that the living will did not stand since his daughter had renounced her faith and entered into a relationship with a Muslim.

Judge Munby permitted blood transfusion, notwithstanding the living will. Briefly, he held that a living will must be valid and applicable to be effective. The question of whether a living will is valid and applicable is one of fact which must be proved on a balance of probabilities. The court said that in case of a doubt, "that doubt falls to be resolved in favour of the preservation of life, for if the individual is to override the public interest, he must do so in clear terms".[22]

[20] ibid
[21] Casemine.com/judgement/uk/5a8ffc760d03e7f57eb2090
[22] ibid

In conclusion, the law in the U.K. is that a living will of a patient is effective when the patient is of full capacity. Care must also be taken to ensure that such anticipatory declarations are still representative of the wishes on the patient, by investigating how long ago, with what knowledge and in what circumstances the wishes were expressed.[23]

The Law Commission has thus argued that while there is an inherent right to self-determination under which a living will should be accepted as per common law, they have created complex legal and factual issues in the U.K. and should therefore be made void in India. It has been put forth that if a living will is oral, it can create serious problems of proof.

When it is in writing, it must be proved that it was based upon the informed consent of the patient who had knowledge of her illness and of the medicines and technology available.

The Law Commission opined that in a country where there is a high level of illiteracy and lack of knowledge about the developments in medicine, there are chances of misuse.

They also argued that this confusion would lead to an increase in litigation against doctors. They concluded their arguments by saying that living wills, whether written or oral, are controversial and can lead to mischief and therefore should be made legally ineffective, overriding the common law right of self-determination.

A Proposal for Living Wills in India with Essential Safeguards

From a study of the existing legislations in the U.K. and U.S.A., a set of procedures is followed in the making and implementation of living wills in the Indian circumstances. Since a living will is similar to a will in its execution, the Indian Succession Act is used to adapt the U.K. and U.S.A. laws to the Indian circumstances.

Who can execute the Advance Directive and how?

a. The Advance directive can only be executed by an adult who is of a sound and healthy state of mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document.

b. It must be voluntarily executed and without any coercion or inducement or compulsion and after having full knowledge or information.

c. It should have characteristics of an informed consent given without any undue influence or constraint.

d. It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering and further put him/her in a state of indignity.

What should the Advance Directive Contain?

a. It should clearly indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to.

b. It should be in specific terms and the instructions must be absolutely clear and unambiguous.

c. It should mention that the executor may revoke the instructions/authority at any time.

d. It should disclose that the executor has understood the consequences of executing such a document.

e. It should specify the name of a guardian or close relative who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorized to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive.

[23] ibid

f. In the event that there is more than one valid Advance Directive, none of which have been revoked, the most recently signed Advance Directive will be considered as the last expression of the patient's wishes and will be given effect to.

How should Advance Directive be recorded and preserved?

a. The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the concerned District Judge.

b. The witnesses and the jurisdictional JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.
c. The JMFC shall preserve one copy of the document in addition to keeping it in digital format.

d. The JMFC shall forward one copy of the document to the Registry of the jurisdictional District Court for being preserved. Additionally, the Registry of the District Judge shall retain the document in digital format.

e. The JMFC shall cause to inform the immediate family members of the executor, if not present at the time of execution, and make them aware about the execution of the document.

f.. A copy shall be handed over to the competent officer of the local Government or the Municipal Corporation or Municipality or Panchayat, as the case may be. The aforesaid authorities shall nominate a competent official in that regard who shall be the custodian of the said document.

g. The JMFC shall cause to handover copy of the Advance Directive to the family physician, if any.

When and by whom can it be given effect to?

a. .In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof from the jurisdictional JMFC before acting upon the same.

b. The instructions in the document must be given due weight by the doctors. However, it should be given effect to only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is no hope of him/her being cured.

c. If the physician treating the patient (executor of the document) is satisfied that the instructions given in the document need to be acted upon, he shall inform the executor or his guardian / close relative, as the case may be, about the nature of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated.

d. The physician/hospital where the executor has been admitted for medical treatment shall then constitute a Medical Board consisting of the Head of the treating Department and at least three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical

As it is a highly sensitive issue there was a political debate and following guidelines were laid down:
1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
2. Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires presence of two witness and countersigned by first class magistrate. .

Conclusion:

A Thought-Provoking Perspective on Euthanasia

Euthanasia sparks intense debate, confronting the sanctity of life against the freedom to choose its end. For those enduring terminal illnesses and unbearable pain, the desire to escape suffering often overshadows the instinct to survive. But does the right to life also encompass the right to die with dignity?

David Swanton challenges the notion that the right to life imposes a duty to remain alive, suggesting euthanasia could honor life by respecting the individual's choice to end it. While proponents argue that this is a compassionate extension of liberty, opponents warn of ethical dilemmas, including potential coercion, misuse by caregivers, and declining trust in medical professionals.

The irreversible nature of euthanasia and the fluidity of a patient's will to live present complex moral questions. Could better palliative care and support alter their perspective? Should a society prioritize alleviating suffering over facilitating death?

Though legally recognized in some nations, the legalization of euthanasia remains controversial. India's recognition of "living wills" marks a step toward addressing this sensitive issue. However, a deeper exploration of patient motivations and safeguards is vital before society fully embraces euthanasia as a dignified end-of-life option.