

LEGAL PERSPECTIVES OF EUTHANASIA:—AN OVERVIEW

Dr. Aneeda Jan*
Dr. Beauty Banday*

ABSTRACT

The most important Public policy debates today surround the use of euthanasia to end the sufferings of terminally ill patients. This debate revolves round one of the most important aspects that is right to life and it is the central concern for one and all. This research paper is an attempt to analyze the legal issues involved in legalizing euthanasia and the consequences thereof. The research paper will also focus on the role played by the judiciary in India related to euthanasia.

Key Words: Euthanasia, killing, Terminally ill, Right to life, suicide, and physician assisted death, voluntary, involuntary, fundamental right, duty, Permanent Vegetative State.

Introduction:

*our days are fixed &
 all our days are numbered,
 how long and how short,
 we know not---this we know!*

*Duty requires we calmly wait for the summons,
 Not dare to stire till heavens shall give permission¹.*

Euthanasia seems to be a new word but it existed in one or the other forms from the earlier times. However as used in contemporary times, euthanasia involves the direct and intentional killing of a patient by a physician commonly by lethal injection. Euthanasia can be either voluntary or involuntary. In other words one can say that euthanasia is a process of taking one's own life or giving others permission to take it. This has been the topic great controversy and the debate is still continuing. Controversy of euthanasia is not limited to any particular segment of the society in fact it is the concern of all the quarters of the world. It is the concern of nations all around the world. Any move towards it must be carefully and cautiously taken. In India certain initiatives have been taken to make some changes in the law but euthanasia was not decriminalized keeping into view its socio-cultural or economic consequences.

Meaning and Types of Euthanasia:

The word Euthanasia coined in 17th century² has been derived from the Greek words '**Eu**' meaning 'good' or 'well' and '**thantos**' mean death. So the literal meaning of euthanasia means good death, well death or dying well³. As Originally used the term euthanasia referred to painless or peaceful natural deaths in old ages that occurred in comfortable and familiar surroundings. Euthanasia occurs when one

* Dr. Aneeda Jan, Assistant Professor, Directorate of Distance Education, University of Kashmir.

• Dr Beauty Banday, Associate Professor; Department of Law, University of Kashmir

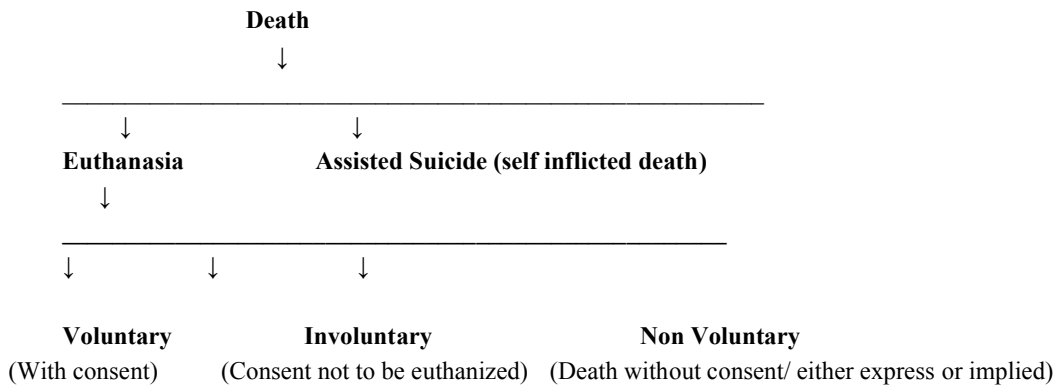
1 Robert Blair; The Grave 1.41, Euthanasia & Assisted Suicide pp,32.

2 Thomas More, Utopia 1516 JM Dent at. Pp 98.

3 T. L.Beachman; The Justification of Assisted Suicide , Int. Law Review (1996) at. Pp. 1173.

person ends the life of another person for the purpose of ending the sufferings and pain of that person⁴. Euthanasia is also referred to as mercy killing and is understood as causing death painlessly because the person is suffering or is terminally ill. O’Loughlin and MC Nanara defined euthanasia as, intentional taking of human life either by a deliberate act as with a lethal injection or by a deliberate neglect of reasonable care e.g. not offering eatables to a new born infant⁵. Euthanasia Society of America defines the term euthanasia as, ‘the lawful termination of human life by painless means for the purpose of avoiding unnecessary sufferings and under adequate safeguards’. The definition of euthanasia includes doing of something or omit to do something with an intention of causing death for the purpose of relieving sufferings. So in euthanasia ‘intention to cause death’ is always precursor to causing of euthanasia⁶.

Euthanasia essentially means putting terminally ill patients to death by medical means. The term euthanasia can be analyzed in the following ways depending upon the modalities for its performance⁷



The above chart classifies various types of euthanasia though technically understood euthanasia in any of its forms is always meant as the intentional killing by any act or omission, of a dependent for his or her alleged benefits. So the important element in euthanasia is intention to cause the death if such an element is missing there is no euthanasia. Various types of euthanasia depending upon the modalities for its performance are briefly stated below:-

Voluntary Euthanasia: when the person who is killed has requested to be killed for the reason of ending the sufferings it is known as voluntary euthanasia. It is also referred to as euthanasia by consent. It may be also defined as the medically assisted quick and peaceful death at the request and in the interest of the patient⁸ or the deliberate ending of the life by painless manner⁹ the killing of any person where on account

4 Encyclopedria of Crime and Justice, 2nd Edition Volume II at pp. 623.
 5 Euthanasia ; The Netherlands And Slippery Slopes- John-I Fleming Bio Ethics Research Notes , Occasional Paper No.1 June 1992.
 6 Arun Shorie; Mercy Killing—An Analysis Cri.L.J(2004) pp. 49.
 7 Ibid, pp. 50
 8 South Asian Voluntary Euthanasia Society; 22nd Interim Report of select Committee 2015, pp.98

of his distressing physical or mental state, and is thought to be in his own interest and done at the request of the person himself¹⁰.

Involuntary Euthanasia: when the person who is killed made an express wish that he should not be killed, it is involuntary euthanasia. This equates involuntary euthanasia to murder.

Non Voluntary Euthanasia: when the person who is killed makes no request and gives no consent with respect to euthanasia. In such type of euthanasia since the person is not capable of giving consent, the concerned person is killed at the request of family members.

Euthanasia may be conducted passively, non- aggressively and aggressively. Passive euthanasia involves withholding of common treatments, non-aggressive euthanasia involves withdrawing of life support system where as aggressive euthanasia involves the use of a lethal substance as to cause the death.

Legal Frame work of Euthanasia:

There are few places/States in the world wherein the euthanasia stands legalized which include Netherlands, Belgium and Oregon. Netherlands and Belgium have legalized both euthanasia and physician assisted suicide where as Oregon (state of U.S.A) has only legalized Physician Assisted Suicide. In India Euthanasia is undoubtedly illegal. In cases of euthanasia or mercy killing there is always an intention to cause the death. Hence such cases would squarely fall within the ambit of murder. That is within Section 300 of IPC however such cases would also attract exception 5 of section 300 of IPC that is the death being caused by the consent of the deceased (as in the case of voluntary euthanasia) in other words to go strictly by the words of section 300 IPC defining murder euthanasia qualifies as consensual killing¹¹. The punishment for consent killing is provided under section 304¹² IPC. It prescribes the punishment for culpable homicide not amounting to murder. The consent of the deceased to suffer the death reduces the crime from murder to culpable homicide not amounting to murder. The punishment is justified on the ground that life of human being is not only important and valuable to himself but also to the state. Human beings are therefore not entitled to give up life by consent, though consent has unquestionably the effect of mitigating punishment. However it can never exonerate the offender. This position was clarified by the hon'ble supreme court that the fundamental rights are non-violable and cannot be waived¹³. Thus a doctor has little defence available in India for euthanizing patient. If we go by the interpretation of law, the consent even if given by the accused, is null and void and renders the accused liable for murder. Thus the general notion attached with the exception to section 300 IPC is that they mitigate the gravity of the crime. Consent for killing is

9 Daniel ;Euthanasia (2008) pp.243.

10 Jonathan Glover; Causing Death and Saving Life, 1987,pp. 182

11 Section 300 IPC exception 5 culpable homicide is not murder when the person whose death is caused being above the age of 18 years and suffers death or takes the risk of death with his own consent.

12 This section prescribes punishment for culpable homicide not amounting to murder; para I: imprisonment for life, or imprisonment for 10 years and fine, cognizable, non-bailable triable by court of sessions -- non-compoundable, para II- imprisonment for 10 years or fine or both cognizable, non-bailable triable by court of sessions.

13 Oliga Tellis v. Bombay Corporation AIR 1986 pp.180

unconstitutional being inconsistent with the interpretation put to the right to life by Supreme Court under constitution of India. However it is also to be understood that it is only in cases of voluntary euthanasia that is where the patient consents to his death that exception 5 of section 300 is attracted. In the cases of non-voluntary and in-voluntary euthanasia the act would be illegal and the exception would not be attracted because of the provisos 1&2 of section 92 IPC and punishable like any case of murder. It is submitted here that in the light of this discussion the Supreme Court may declare the exception 5 to 300 of IPC unconstitutional in the context of euthanasia¹⁴ because it seeks to bring right to die within the constitutional precincts, which is strictly against the mandate of article 21.

Law regarding brain stem death vis-à-vis euthanasia

Many jurisdictions have enacted specific laws dealing with brain-death. To this regard it was commented way back in the late 1970's by the neurologists of the United Kingdom that, "if brain-stem is dead, brain is dead and is the brain is dead the person is dead".

In the United States brain-death was accepted as equivalent to death. The Uniform Brain-Death Act, 1978 define death as cessation of all circulatory, respiratory and brain functions including the brain stem. Initially, lower brain death was considered as an alternative mode of determining the probability of the revival¹⁵. Today no state in the United state, allows the higher brain death standard to be equated with the death, in some jurisdictions, it is legitimized from the perspective of right to die with dignity¹⁶. While in others, it is simply recognized as an exception to suicide¹⁷. The rationale lies in fact that every competent adult has a right to forgo treatment, or even cure, if it entails what for him are intolerable consequences or risks, however unwise his senses of values may be to the other¹⁸.

In some states even persistent vegetative state (a prolonged stage of vegetative state) is considered as sufficient to allow the removal of life support systems and this decision of removal has been allowed by the United States Supreme Court to be taken by the kin of the patient¹⁹.

Legal Position in India

To find the relevancy of euthanasia in the modern day context, we ought to keep into account the advancements made in medical sciences which is stretching the normal life-span of human beings. Questions are being asked on the propriety of continuance of life support medical treatments in the cases where all hopes have extinguished. The moot question arises; Whether wishes of a person yet competent to exercise judgment and the wishes previously expressed before lapsing into the incapacity of exercising judgment be respected and complied with in terminating life²⁰.

14 Emphasis supplied.

15 James T Bernet, On The Definition & Criterion Of Death, ANAALS Internal Med At 394.

16 E.G. Arizona Hawii Death with dignity act, 2004,pp.34

17 Washington Natural Death Act, 1979, provides that withholding of life supporting treatment, at a patients direction shall for any purpose constitute a suicide.

18 Robert D Troug; It Is Time To Abandon Death, 1997 HCR, 29.

19 Crusen v. Director Missouri Department of Health, SCL2008, pp. 2841

20 H.D. Shorie The Right to Live & Die, 1998 pp. 24

The law regards the brain stem death is not settled in India. Instead the existing provisions have come to perplex the Indian medical fraternity with conflicting provisions under different laws. The same is clear from the survey of laws, as applicable to brain stem death in India. The discussion on the following laws will further clarify the point.

1. **Transplantation of Human Organs Act** In India the hither to prevailing situation was dramatically reversed by passing of Transplantation of Human Organs Act, 1994 which defined deceased person²¹ as one in whom permanent disappearance of all evidence of life has occurred by reason of brain stem death. The Act also elaborates the meaning of brain stem death as a stage at which all functions of brain stem has permanently and irreversibly ceased. The declaration of brain stem death was made subject to certificate of a registered medical practitioner. The object of the Act was however different. The preamble of the Act provides that it is meant to provide for regulation, removal, storage and transplantation of human organs for therapeutic purposes and for prevention of commercial dealings in human organs. In spite of the fact that the Act defines the deceased person but its application is limited to transplantation of organs only. Where a person is brain stem dead and is maintained in life support system, this status quo has to be maintained unless he has earlier consented to his organ donation and prescribed procedure has been followed²².
2. **Indian Medical Councils Act, 1956** : This Law also incidentally deals with the issue at hand section 20-A read with section 33 (m) of Act of 1956, the medical council of India may prescribe the standard of medical ethic for, medical practitioner.²³ The code of medical ethics for medical practitioners classifies the Act of euthanasia as unethical except in the cases where the life support is used only to continue cardio-pulmonary actions of the body²⁴.
3. **Indian Penal Code:**Provisions of Act of 1994 are not applicable to the situations other than donation of organs in such cases therefore the general position of law applies. Removal of life support from the body of the patient on which the entire body would cease to function would tantamount to an act of murder. Motive is irrelevant factor for the purpose of commission of an act. The doctor or the concerned person would nonetheless be liable though it may be a different case that the quantum of punishment be reduced. Further the exception V to section 300 of IPC²⁵ can not be availed since the patient would not be in a position to make a valid consent. Euthanasia in India is undoubtedly illegal. In cases of euthanasia there is clear intention of killing hence such cases would squarely fall within section 300 of IPC which defines murder. Petitions are being moved before the courts where the prayers for removal of life support system have been made by

21 Section 2(e) of Transplantation of Human Organs Act, 1994.

22 Section 3 of Transplantation of Human Organs Act, 1994.

23 Jan Aneeda; Socio-Legal Perspectives of Euthanasia, 2012 pp. 87

24 Ibid 88

25 Exception V Culpable Homicide is not murder when the person whose death is caused being above the age of 18 years suffers death or takes the risk of death with his own consent

the relatives of the patients but the judges have found themselves helpless in giving the clear position of law²⁶.

Position of law which emerges by taking together the Transplantation of Human Organs Act, 1994, Indian Medical Councils Act, 1956 and Indian Penal Code, 1860 can be summarized as follows;

In cases where the patient has given his consent for donation of his organs and prescribed procedure is followed including the certification by a registered medical practitioner, it would be legally permissible to remove the life support system in case of brain stem death. Since the definition of deceased person under the act of 1994 is confined to the Act alone in any case where the act is not applicable, brain stem death may not be considered to be death under the eyes of law. Under the regulation of 1956 it would not be unethical to remove the life support system if it is used only to continue the cardio-pulmonary actions of the body.

The Act of 1956 does not amend the IPC. The Doctor removing the life support system may however be prosecuted for murder that act which falls outside the purview of Medical Council Act 1956. Where it is settled position that brain stem death is a death in medical parlance with no chance of recovery under penal code it is punishable to remove the life support system to a person having suffered from brain death unless his case is covered under Act of 1994. There have been a number of representations to cure this anomaly but of no avail²⁷. To this regard it is apt to quote a member of Maharashtra Confederation for organ transplantation who states,

Neurologists/neurosurgeons are reluctant to ascertain a patient as brain stem dead and withdraw life support as they feel that it is not permitted under the law, they think that a patient has to be declared only in the context of organ retrieval.

Also the supreme court of india in the case of Gian Kaur vs. State of Punjab²⁸ wherein one of the points directly raised was the inclusion of Right to die within the ambit of article 21 of the constitution the bench observed,

To give meaning and content to the word life under article 21 it has been construed as the life with human dignity and the aspect of life which makes it dignified may be read into it but not that which extinguishes it and is therefore in consonance with the continued existence of life resulting in effecting the right itself. The right to die if any is inherently inconsistent with the right to life as is death with life. The right to life including the right to live with human dignity would mean existence of such a right upto to the end of natural life. This also includes the right to a dignified life up to the point of death including the dignified procedure of death. In other words this may include the right of a dying man also to die with dignity when his 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 curtailing the natural span of life²⁹.

Thus the court made it abundantly clear that so long as there is any trace of human life present in the patient, death could not be accelerated by the removal of life support system. To this extent court reversed

26 The most hyped case being one of K. Venkatesh before Andhra Pradesh High Court in 2004

27 Sunil k. Pandia Brain Death and Transplant Law (2000) pp. 54

28 AIR(1996)SC,PP. 1257

29 Ibid, at para,24

its earlier decision taken in the case of *P. Rantinam vs. Union of India*³⁰ where in the right to die was considered as embedded in article 21 of the constitution. In fact the court in *Gian Kaur's* case was categorical in restating that euthanasia was not permitted within the constitutional precincts.

In India if euthanasia is decriminalized or permitted attempt to commit suicide can not survive as an offence. Attempt to commit suicide is self helped attempt to euthanasia. In euthanasia a third person may come into picture otherwise there is no difference. Under the present legal system, euthanasia is murder or culpable homicide not amounting to murder if the consent of the person seeking euthanasia is obtained.

Judicial Approach to Euthanasia: Euthanasia is not permitted in India and the judiciary has maintained this position of law and in almost all the cases disallowed the petitions seeking permission for euthanasia. However a softer view was taken by the courts in India in 2011 wherein passive euthanasia was permitted. Some of the case laws pertaining to euthanasia decided by the Indian judiciary are lime lighted as below:

The case of *Sudeshwari vs. State of Assam*³¹ is one of the interested cases which came before the high court of Assam. In this case three year old child was killed by her mother and one of the defences stated by her was, that the child has been done to death because she was suffering from illness badly and the accused could not bear the trouble and the court was asked to decide whether mercy killing was permitted as an exception to murder available in India. The specific argument before the court was whether mercy killing is exempted under the law, if yes to what extent. For this purpose the court referred to diminished responsibility available under Homicide Act 1957 in Britain which enables the judge to reduce or extinguish the sentence on merciful grounds and does not leave the accused entirely on the executive³². The court observes that the purpose of criminal law is to induce people to control their impulse and thus mercy killing due to impairment of mental faculties of victim was no exception under Indian law, even if it be with the purpose of relieving pain or unbearable sufferings. Another case which is largely relied upon by the supporters of euthanasia is *Maurti Sharipati Dubal vs. State of Maharashtra*³³, in this case the high court of Mumbai invoked a number of decisions³⁴ of Supreme Court and came to hold that what is true for one fundamental right is also true for another fundamental right. It is not and cannot be disputed that fundamental rights have positive as well as negative aspect.

If it is so, logically it must follow that 'right to life as recognized by article 21 of constitution would include right not to live or not to be forced to live. To put it positively, it would include right to die or terminate one's own life³⁵. In *Dubal's* case, there was a judicial transmutation of right to life into right to die. After concealing a positive right to life, the court painstakingly labored to create a new right namely right to die from the basic right. The analysis of the decision reveals that while suicide may be permitted under certain circumstances euthanasia or mercy killing is never permitted, as it amounts to murder.

30 AIR(1994)2, SC PP.48

31 1981)3 Cr.L.J.PP. 1005

32 Section 3 of Homicide Act, 1957

33 (1983) 4 Cr.L.J. PP. 748

34 *Manckha Ghandi vs. Union of India* AIR(1978), *Sunil Batra vs. Delhi Administration* AIR (1970) *Kharak Singh vs. State of U.P* AIR (1960)

35 *Ibid*, Para, 10

However the decision of supreme court in the case of Gian Kaur vs. State of Punjab³⁶ has negated the allowance to commit suicide and thus the decision of Bombay high court has no force or authority of law now. In the Gian Kaur's case it was held that section 309 of IPC provides for attempt to commit suicide is not volatile of article 14 of the constitution. Right to die is not included within the ambit of right to life and article 21 of the constitution. Thus right to live with human dignity cannot be construed to include within its ambit the right to terminate the natural life, at least before commencement of natural process of death. The court held that article 21 of the constitution guarantee protection of life and liberty and by no stretch of imagination can extinction of life be read into it. Article 21 of the constitution cannot be pressed into service to support the challenge based on article 14 it cannot be therefore said that section 309 of IPC is volatile of either of article 14 or 21 of constitution.

Recently courts turned down the requests of the patients to die which were reported in the year 2001. The Patna High Court dismissed the Tarakeshwar Chandraswami's Plea seeking mercy killing for his 25 year old wife Kanchan who had been comatose for 16 months. The Kerala High court said no to the Plea of death of B.K Pilla who had disabling illness. Recently in the State of West Bengal, the father of two disabled daughters, seeking the permission from the state Government to end his daughter's lives who are in Moribund state but the Plea was dismissed³⁷. In another case Kumari Pranajali Vs. Chief Secretary³⁸ a petition seeking mercy killing of 10 year old girl, Pranajali, was filed by her mother. The girl was suffering from a serious ailment for which there was no effective treatment, the petition was dismissed. In another case Venkatesh vs. State of Andhra Pradesh³⁹, Venkatesha former National chess champion, 25 year of age, had been in hospital in the southern city of Hyderabad for more than seven months battling Duchenne'S Muscular Dystrophy. This disorder degenerates the bodies muscle heart and lungs. Venkatesh mother filed a writ petition before Andhra Pradesh high court seeking declaration from the high court to switch off the life support system but the petition was dismissed. The Plea which was raised before the court was that Venkatesh wanted to donate organs" Heart, Kidney, Liver" before it is too late. The petition was dismissed the court declared that the law doesn't allow transplanting organs from a person who is still alive. Devender Gupta J. and Naraian Raddy J. said, the existing law has no such provision and such a request cannot be conceded. It will amount mercy killing which is not legal. Petition is accordingly dismissed. Although the Indian Judiciary has been reluctant in acknowledging and legalizing euthanasia but however a partial change in this trend has been observed in the case of Aruna Ramchandra Shanbaug vs. Union of India⁴⁰ when honorable supreme court of India on 7th march 2011 legalized passive euthanasia by means of withdrawal of life support, (Aruna was a staff nurse at KEM hospital Mumbai who was raped by ward boy in the same hospital in 1973,she died in may 2015 after spending 42 years in coma) Markandey Kartju J. while delivering judgment quoted the following couplet of Mirza Ghalib

36 (1996)Cr.L.J PP. 1600 SC

37 India Today April 5, 2005, unreported.

38 (2003)3 Crimes pp. 374

39 Times of India,December 15 2005

40 (2011)4 SCC, 454

مرتے ہیں آرزو میں مرنے کی
موت آتی ہے پر نہیں آتی

while rejecting Pinkey Viran's Plea for Aruna Shanbangs euthanasia against which the KEM Hospital filed a counter petition. Since there were disparities in the petitions filed by the petitioners and respondents the court appointed a team of three eminent doctors to investigate and file a report on the physical and mental health of Shanbaug's. They studied the medical history in detail and opined that she is not brain dead. She reacts to certain situations in her own way for example she likes light, devotional music and prefers fish soup and mango. She is calm seeing fewer people around her. The KEM Hospital was taking sufficient care of her. She was kept clean also there was no sign from her body language any willingness to terminate her life. Further the nursing staff at KEM was keen and willing to take care of her. Thus, the doctors opined that euthanasia in this case was not needed or necessary and therefore euthanasia was denied by the courts in this case. In 2015 Aruna died natural death in KEM Hospital after spending 42 years in coma.

While rejecting Pinki Viranis plea of euthanasia for Aruna the court laid down the below mentioned guidelines for passive euthanasia which are as:

- a) Decision regarding discontinuance of life support has to be made by the parents, spouse or even by a person acting as next friend or by doctors attending patient. However, the decision should be taken bonafide in the best interests of the patients.
- b) Before executing such decision should be approved by the High court.
- c) When such application is filed the Chief Justice of high Court should forthwith constitute a bench of at least two judges who should decide on the grant of approval or not.
- d) A committee of three reputed doctors, nominated by the bench who will give report regarding the condition of the patient

Although the decision is path breaking however there is more possibility of misuse of the guidelines. Evil consequences of euthanasia cannot be ruled out. For instance the faith in doctors as healers will shake, every ailing patient would live under the constant sword of euthanasia. Euthanasia denies the patient the final stage of growth. Euthanasia undermines medical research, curing and caring centers will convert into killing centers etc.

Conclusion

Euthanasia seems to be a beautiful concept in terms of relieving pain & sufferings of terminally ill people but at the same it goes against the philosophy of life. Right to life being the basic and inalienable right that is the reason as to why there are only few states throughout the world which have legalized euthanasia. In India euthanasia is not legalized and the courts have maintained this position of law. However in Aruna Shabangs case court has legalized passive euthanasia and prescribed guidelines for the same. Although the decision is historic and landmark. However the decision may set a stage for legalizing euthanasia for which the time is not enough ripe keeping into consideration social, economic & cultural setup in India. If euthanasia is legalized in India attempt to commit suicide will no more remain on the statute books. Thus any move towards euthanasia must be carefully and cautiously taken keeping into view the essence and importance of life for the existence of human race. With the following message we conclude this research paper by asking that,

*‘ should the human be allowed and empowered to end the lives of innocent ailing persons when they cannot create even a single soul?
We are committed against it, what about you⁴¹.....?.*

41 J.Aneeda; Socio Legal Perspectives of Euthanasia (2012)at pp.I