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## ASSISTED SUICIDE AND ITS LEGAL IMPLICATIONS

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### ABSTRACT :

Terms used to describe suicide that is carried out with assistance from another person include aided dying, medical aid in dying, and assisted suicide. Physician-assisted suicide, or PAS, is the term used to describe suicide carried out with a doctor's or other healthcare provider's assistance. When the patient's situation is determined to meet the requirements of the local physician-assisted suicide laws, the doctor's assistance is usually limited to issuing a prescription for a lethal amount of medication. The contentious topic of physician-assisted suicide (PAS) has garnered attention from the public, government, media, and medical community lately. With the exception of Switzerland and the Netherlands, most countries prohibit active euthanasia and PAS; nonetheless, there is pressure from some governments and patient advocacy groups to legalize the practice in and around Europe, which could have an impact on the rest of the world. The legal status of PAS and euthanasia in India is determined by the Indian Penal Code, which addresses active and passive both types of euthanasia. The lethal dosage is the difference between physician-assisted death and euthanasia; in the former, the patient delivers the dose themselves, while in the latter, a doctor or other third party does it. There is discussion of how different religions affect euthanasia, PAS, and suicide. People complain that hospitals don't pay attention to what their patients want, particularly if they are terminally ill, disabled, or unable to respond to treatment.

If PAS is permitted, new laws might be passed, which would cause this to alter. Given that they frequently handle issues related to mental capacity, psychiatrists are becoming more and more worried about this problem.

**Keywords:** Culture, passive euthanasia, India, physician-assisted suicide.

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### INTRODUCTION TO ASSISTED SUICIDE AND PHYSICIAN-ASSISTED SUICIDE

The act of eliminating oneself from this life is known as suicide. Physician-assisted suicide refers to a situation in which a doctor "consciously and deliberately provides a person with the knowledge or means or both required to commit suicide, including counseling regarding lethal doses of drugs, recommending such lethal doses or providing the drugs." Assisted suicide is defined as when someone else materially assists a person in taking their own life, such as by offering tools or equipment.

Euthanasia, frequently referred to as "mercy killing," is not the same as assisted suicide in that the person ending their own journey of life is not murdered outright but is instead relieved of their suffering. Euthanasia can occur freely, involuntarily, or non-voluntarily, and it can do so with or without permission. Voluntary euthanasia is the decision to put down an agonizing person's life with their permission. Right now, some areas permit this. Non-voluntary euthanasia is euthanasia performed on a subject without their agreement. The murderous act of murdering someone who is capable of giving permission but has not done so, or who does not want to die, is known as involuntary euthanasia and is punishable by law as murder. The "right to die" movement is the belief that every individual has the freedom to end their life, regardless of whether they choose to commit suicide, euthanasia, or refuse life-sustaining medical care.

Physician-assisted suicide, or PAS, is a contentious topic that is currently attracting attention from the general public, media, lawmakers, and medical community. Despite the fact that PAS and active euthanasia remain banned in much of the globe—aside from Switzerland and the Netherlands—politicians and patient advocacy groups are pushing for the legalization of these practices in Europe, which could have an impact on many other regions of the world. Understanding how culture and religion affect decision-making is crucial because we live in a diverse and religiously diverse society, particularly when it comes to PAS.

While there are geographical differences in the concept of euthanasia, it is generally accepted to refer to a purposeful action carried out specifically to end a life in order to alleviate unbearable suffering<sup>1</sup>. “The practice of prescribing medication to a patient who is capable with the primary goal of having them end their own life<sup>2</sup>” (PAS) requires the patient to self-administer the medication, either by themselves or with the assistance of a machine.

The cultural, religious, and economical contexts that underlie the disparities in attitudes toward assisted suicide held by different segments of society have not received enough consideration. According to recent research, cultural variations could be the cause of some assisted suicide-related disparities<sup>3</sup>.

In active euthanasia, which is prohibited in India, injections or medication overdoses are used to accelerate the death of terminally sick individuals. In passive euthanasia, medical treatment is stopped for these people. Passive euthanasia is regarded as ethically better than active euthanasia because it involves letting an individual to die rather than killing him.

An non-governmental organization called Common Cause petitioned the Supreme Court in 2005, requesting a ruling that the "right to die with dignity" is included in the "fundamental right to live with dignity" under Article 21 of the Constitution. They also requested guidance on the appropriate procedure to be adopted for the execution of "living wills," which allow a person in good health and mental capacity to express his desire to not be kept alive by artificial ventilation if medical professionals at any point in his life believe that he cannot be kept alive with the help of a life support system<sup>4</sup>. Thanks to the ruling, terminally ill people can now request death by means of a "living will" and passive euthanasia.

The Apex court issued a historic decision on ninth of March, 2018, paving the stage for physician assisted suicide, or PAS, often known as passive euthanasia. The Court upheld the prior five judges bench ruling in the *Gian Kaur case*,<sup>5</sup> holding that the right to pass away with honor is a fundamental right and that every mature human being with the mental ability to make a rational choice has the right to turn down medical treatment, such as the elimination of life-saving devices. The apex court ruled in *Common Cause v. Union of India and Others*<sup>6</sup>, that an individual with sufficient mental capacity has the right to carry out an advance medical decision.

J. Dipak Misra (Then) CJI, J. A.K. Sikri, J. A.M. Khanwilkar, J. D.Y. Chandrachud, and J. Ashok Bhushan were among the five judges that gave the 538-page decision<sup>7</sup>.

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## PRESENT VIEWS IN INDIA REGARDING EUTHANASIA AND PHYSICIAN-ASSISTED SUICIDE

India is not the only nation seeking opinions on this matter; in fact, most nations have been attempting to do so. In contrast to the UK public, the majority of the 3733 doctors surveyed in this study on the legalization of medically assisted dying (PAS and euthanasia) believed that strong religious beliefs were independently linked to opposition to assisted dying.<sup>8</sup> "Whoever intends to attempt suicide and performs anything that contributes towards the committing of such crime, will be penalized with simply being imprisoned for a period of time which can be extended a single year or with fine, or with both," the legislation continues, outlining its guiding concept.<sup>9</sup> Many challenges to Section 309 of the IPC have been made in Indian courts of law. One such case was *P. Rathinam v. Union of India*<sup>10</sup>, in which the Supreme Court ruled that Section 309 violates Article 21 because the right to life that Article 21 protects can be understood to include the right not to live under duress.

However, a Constitution Bench of the Supreme Court overturned this decision in the *Gian Kaur v. State of Punjab*<sup>11</sup> case, holding that Article 21 could not be interpreted to include the "right to die" as a part of the fundamental right guaranteed therein. As a result, it was decided that it was not legitimate to claim that section 309 violates Article 21.<sup>12</sup>

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## RIGHT TO LIFE OR DIE

The Indian Constitution's Article 21, which addresses the preservation of life and individual liberty, has undergone multiple interpretations by courts in significant precedent-setting rulings. The scope of Article 21 has been expanded by each of these interpretations to encompass aspects of life that give life significance, direction, and dignity. No one may be taken of their life or personal liberty unless in accordance with a legally defined procedure,

<sup>1</sup> NM Harris, *The Euthanasia Debate*, J R Army Med Corps 147, 1<sup>st</sup> edn., (2001).

<sup>2</sup> Webster's New World Medical Dictionary, Wiley Publishing, Inc; 3rd ed., (2008).

<sup>3</sup> JA Clark, *Bringing Social Structure Back into Clinical Decision Making* 32 Soc Sci Med. Publication 2<sup>nd</sup> edn., (1991).

<sup>4</sup> Ranjan Jyoti Sarma, *Assisted Suicide and its Legal Implications*, Vol. 26 *JHSS* Is. 11 2021.

<sup>5</sup> AIR 1996 SC 946.

<sup>6</sup> 2019 SC 527

<sup>7</sup> Available at: <https://www.iosrjournals.org> (Visited on February 20, 2024).

<sup>8</sup> Seale C. *Legalisation of euthanasia or physician-assisted suicide: Survey of doctors' attitudes*. *Palliat Med.* 205 (2009)

<sup>9</sup> *Supra note 1.*

<sup>10</sup> AIR 1994 SC 1844.

<sup>11</sup> *Supra note 5.*

<sup>12</sup> Law Commission of India, *Dehumanization and decriminalization of attempt of suicide, Report 210. Government of India.* 2008.

according to Article 21. The concept of life is the desire to live with dignity and liberty is the sense and fulfillment of the traits linked with the chosen path.

There is an innate connection between the two. A person who is free to think and behave as they like is entitled to liberty; without freedom, life would be meaningless. Because of this, Article 21 has linked life and liberty through a legal process that allows for their deprivation in a way that is all its own. Due to this view, the right to die was never considered by subsequent rulings to be a necessary component of the Article 21 right to life and personal liberty.

Nonetheless, in a historic ruling in the March 2018 case of *Common Cause v. Union of India and Another*<sup>13</sup>, the Supreme Court established a wide legal framework to safeguard the dignity of patients who are terminally ill or in a persistent vegetative state (PVS) where there is no chance of recovery. As a result,

1. Passive euthanasia was permitted,
2. One of the fundamental rights to a dignified death is the ability to leave a legitimate "living will" or advance medical directives to facilitate the dying process.

In the 2011 case of *Aruna Shanbaug*<sup>14</sup>, a two-judge bench had already acknowledged the existence of passive euthanasia. presently, the concept of a "living will," also known as an advance directive, has been added to the definition of euthanasia by the Constitution Bench in the *Common Cause* case. This is a procedure wherein a person, as long as they are able to think, writes a statement on the type of medical treatment they are interested in receiving or not get in the event that they become fatally sick.

Euthanasia and Related Practices Euthanasia, according to the Oxford Dictionary, is the deliberate and painless taking of a patient who is in an irreversible coma or who has a terminal illness. Euthanasia, sometimes known as Physician Assisted Suicide (PAS) or "mercy killing," is the process of gently ending a patient's agonizing, protracted, and incurable illness<sup>15</sup>. Physician aided suicide and euthanasia are not the same thing. There is a variation in the way the deadly medicine is given.

It has been noted that whereas physician aided suicide is carried out by the patient on the doctor's recommendation, euthanasia is carried out by a doctor or other designated caregiver.

Euthanasia essentially refers to the deliberate and premature taking of another person's life, either directly (active euthanasia) or indirectly (passively, by withholding resources and life-prolonging measures)<sup>16</sup>. Non-voluntary euthanasia is when this is carried out without the agreement or consent of the individual in question, whereas voluntary euthanasia is carried out at their express or implicit request. Positive or aggressive euthanasia, also known as active euthanasia, is the process of intentionally ending a person's life by a lethal injection given to a terminally ill person who is in excruciating pain, or by any other positive act, affirmative action, or act of commission involving the use of lethal substances or force. In contrast, passive euthanasia, often known as negative or non-aggressive euthanasia, involves stopping medical treatment for life extension or life support.

**Eg:** Neglecting antibiotics in cases were failing to administer the prescribed medication could result in the patient's death, or removing the heart-lung machine from a coma patient. Voluntary and non-voluntary passive euthanasia are two further subcategories of passive euthanasia. Non-voluntary passive euthanasia has been defined as a situation in which a person is not in a position to decide for themselves (when they are in a coma or in a persistent vegetative state). In contrast, voluntary passive euthanasia occurs when a person who is capable of making his own decisions decides that he would prefer to die for a variety of reasons. The difference between active and passive euthanasia has been interpreted by supreme courts in Canada, the US, the UK, the Netherlands etc., based on the intention of the act when it expedites death.

As a result, the global jurisprudence on passive euthanasia has developed a common thread and attained moral and legal sanctity due to its acceptance in one way or another. But the same cannot be said for active euthanasia, and it is still unclear whether legal authority will be granted for it.

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## **SUCCESSIVE JUDGEMENTS OF SUPREME COURT OF INDIA OF RIGHT TO LIFE, RIGHT TO DIE, SUICIDE AND EUTHANASIA**

### **P. Rathinam v. Union of India & Another<sup>17</sup> (1994)**

The right to life and personal liberty, which are two of the most widely interpreted Fundamental Rights in the Constitution, have been attempted to encompass the freedom to die in India. Many constitutional concerns were brought up in *P. Rathinam v. Union of India & Others*, including the constitutionality of suicide attempts (sec 309 of the IPC) and the right to die. In addressing the matter of whether the right to die can be deemed an essential component of Article 21, the Court cited the ruling in *Maruti Shripati Dubal v. State of Maharashtra*<sup>18</sup>, wherein the Bombay High Court determined that basic rights possess both advantages and disadvantages.

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<sup>13</sup> Supra note 6.

<sup>14</sup> 2011 (4) Scc 454.

<sup>15</sup> Oxford Dictionary, Oxford Publication, 13<sup>th</sup> edn., (2013)

<sup>16</sup> Supra note 4.

<sup>17</sup> AIR 1994 SC 1844

<sup>18</sup> 1987(1) BOM CR 499

The statement gave an example, saying that the freedoms of speech and expression include the ability to remain silent, and that the freedoms of association and travel include the choice to remain in one place or form no associations at all. In light of this, it was declared that it would seem to reason that the freedom to choose to end one's life would logically entail the freedom to not live.

In *P. Rathinam v. Union of India & Others*, the SC held that the right to life guaranteed by Article 21 included the freedom from being forced to live a life that would be to his disadvantage or distaste. The Supreme Court further ruled that Section 309 IPC, which makes suicide attempts illegal, was ultra vires since it contravened Article 21. The Court concluded that, in order to humanize India's penal laws, attempts at suicide should be deleted from the statute book and emphasized that they should only be followed by medical assistance rather than punishment.

#### **Gian Kaur v. State of Punjab<sup>19</sup> (1996)**

*Gian Kaur v. State of Punjab* was a case that challenged the verdict in *P. Rathinam v. Union of India & Another*. It was questioned how aiding and abetting suicide (section 306 IPC) could be regarded as a crime if the attempt to commit suicide was ruled unlawful and unconstitutional. According to the ruling of a five-judge Constitutional Bench, "life" and "death" are intrinsically incompatible, as is the "right to life" with the "right to die".

Furthermore, the presence of such a right until one's natural death would be in accordance with the right to life, which includes the right to live with human dignity. As a result, the Court upheld the validity and constitutionality of Sections 306 (abetment of suicide) and 309 (attempt to commit suicide) of the IPC. Thus, the ruling in *Gian Kaur v. State of Punjab* effectively overturned the ruling in *P. Rathinam v. Union of India*<sup>20</sup>, holding that Article 21 does not include the right to die.

The Supreme Court made a further distinction in *Gian Kaur* between euthanasia and suicide attempts. The Court noted that the existence of such a right till the end of natural life would entail the right to life, which includes the right to live with human dignity. On the other hand, euthanasia refers to the taking of a terminally sick or PVS patient's life. Euthanasia therefore only involves hastening the natural death process that has already begun, not "extinguishing life." But the Court ruled that, as it would be limiting the natural course of life, allowing life termination in certain situations to shorten the pain during a particular natural death cannot be covered by Article 21. As a result, the Court decided that the "right to live with human dignity" does not encompass the right to end one's natural life, at least not until the process of a certain natural death begins. Because passive euthanasia ended a person's natural existence, the Court rejected its application.

#### **Aruna Shanbaug<sup>21</sup> (2011)**

The debate of aiding and abetting suicide was resolved, but euthanasia remained a contentious topic. Aruna Shanbaug was left in a persistent vegetative state from 1973 till her death in 2015 due to injuries to her brain stem and cervical chord. Shanbaug was to be put to sleep via passive euthanasia according to a 2009 writ case brought before the Supreme Court of India under Article 32. Three eminent medical professionals were assigned by the court to conduct a comprehensive examination of the petitioner and provide a report on her state of mind and body. The group turned in a report as a whole. "A person's right to life includes the right to live with dignity, and Article 21 of the Constitution states that there is no right to die.," the Court ruled in a historic 2011 decision. However, in the case of a terminally ill person or someone in a permanent vegetative state, the dying person may be allowed to end their life prematurely and it would not be considered a crime". The Supreme Court granted the KEM Hospital in Mumbai's medical staff permission to cease force-feeding Shanbaug and remove life support at their discretion in order to end her purposefully. As a result, the Supreme Court permitted patients who were unable to make an educated decision to stop receiving life-sustaining treatment.

This was the first occasion since the *Gian Kaur* case that the Supreme Court has permitted passive euthanasia under stringent rules. But the Supreme Court rejected the practice of active euthanasia, ruling that it is never acceptable to end a person's life by using a fatal chemical.

#### **Common Cause v. Union of India and Another<sup>22</sup> (2018)**

In a common cause case, the Supreme Court ruled that the Article 21 fundamental right to life and dignity includes the right to pass away with dignity. A person loses their dignity if they are made to endure agony and suffering due to unjustified medical assistance.

A person loses a meaningful existence when they are deprived of their dignity at the end of their life. A person's right to autonomy and self-determination in choosing their own medical care is essential to a meaningful living. Autonomy, or the right to self-determination, is the respect for each unique human being, especially for his or her freedom to live his or her own life. A competent adult has the right to make decisions about their own life and body free from outside influence or control. This is known as the right against non-interference by others.

When it comes to decisions about their health and medical care, exercising one's right to self-determination and autonomy means deciding whether and to what extent one is willing to submit oneself to medical procedures and treatments, selecting an alternative treatment from the list of options available,

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<sup>19</sup> *Supra* note 5.

<sup>20</sup> *Supra* note 18.

<sup>21</sup> *Supra* note 15.

<sup>22</sup> *Supra* note 6.

or, in some cases, choosing not to receive any treatment at all if it aligns with one's personal goals and values. The Court further acknowledged that a "dignified procedure of death" is a part of the right to a dignified existence.

The Supreme Court made a distinction between suicide and active euthanasia, drawing a legal boundary between the two. It described active euthanasia as unconstitutional and unlawful, while passive euthanasia was described as a "mere acceleration of the inevitable conclusion." Suicide entails "overt acts" that lead to an abnormal demise. The Supreme Court has used its inherent authority under Article 142 to give its advance directions legal standing until the passage of relevant legislation by Parliament. This decision is historic since it goes against earlier rulings regarding the idea that Article 21's right to life includes the right to die with dignity.

The 5 judge Bench, consisting of (CJI) Dipak Misra, J. AK Sikri, J. AM Khanwilkar, J. Dr. DY Chandrachud, and J. Ashok Bhushan, held in four separate but concurring opinions that "passive euthanasia," both voluntary and involuntary, is acceptable and that one of our basic rights is the ability to pass away with honor, as established in *Gian Kaur v. State of Punjab*.<sup>23</sup>

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## COMPARATIVE STUDY OF THE UNITED STATES, THE UNITED KINGDOM, AND INDIA IN RELATION TO ASSISTED SUICIDE AND EUTHANASIA

### *India and United Kingdom*

The creative output of Thomas More and Francis Bacon include the earliest examples of British support for active euthanasia. Early in the 17th century, Bacon discussed euthanasia as a just and compassionate death. Beginning in the late eighteenth century, mercy killing reemerged on the United Kingdom's philosophical agenda. And the prevailing ideologies of the day—individualism, free thought, and laissez-faire economic science—served to intemperately control debate. Re J stated that there is no burdensome nor fruitless obligation to pay for treatment. It's easy to imagine a situation in which patients decline specific medical therapy due to spiritual reasons, even though it doesn't necessarily imply an end to the illness or irreversible damage, nor does it imply highly advantageous aspects of recovery. Determine whether having an additional conversation might prove more burdensome than helpful. Estimates of the patient's projected quality of life with and without the unusual therapy should also be made.<sup>24</sup>

It is true that conventional liberal intelligence forms a large part of today's public discourse. Euthanasia is prohibited and penalized under criminal law in the United Kingdom. There are no exceptions to "mercy killings" in the English legal system, however a family member of a victim in agony may raise a defense to reduce the charge of murder to one of culpable homicide that does not qualify as murder. This rigid mentality regarding intentional killing is a reflection of the fact that individual liberty has historically been subordinated to the interests of social order defense in UK legal systems. The origins of this strict stance on the untouchability of life can be traced back to the long history of British common law development. The new, well-developed concepts of euthanasia and mercy killing were established by the Apex court of the Republic of India on March 9, 2018, in the case of *Common Cause (A Regd. Society) v. Union of India and Others*.<sup>25</sup> The judges, Dipak Misra, CJI, and A.M. Khanwilkar, J., themselves. The petitioner, a registered society, brought this writ suit under Article 32 of the Constitution in order to request from this court the fundamental right under Article 21 of the Indian Constitution to die with dignity and the issuance of living will instructions for patients who are terminally ill.

### *A fundamental right is the ability to die with dignity.*

In this instance, the SC upheld the *Gian Kaur* case's ruling<sup>26</sup>, holding that the The fundamental right to life would be upheld until the end of a person's natural life span, and the right to a dignified existence until death—which requires a self-respecting process of dying—would be acknowledged. This includes the right to live with human dignity. As a result, it was decided that the aforementioned right was a fundamental right protected by Article 21.

### *India and United States of America*

On April 18, 2011, the Supreme Court of India issued the following ruling, establishing the legal framework for passive euthanasia in India<sup>27</sup>:

- i. For a person in a permanent vegetative state, it is appropriate to allow the withholding or removal of life-sustaining treatments, such as artificial feeding tubes and ventilators, as long as it is not against the law to do so.
- ii. Parents, the patient's spouse, or other close relatives may make this decision if they are unable to do so, or if a group of people acting as that unfortunate person's next-door friends may. Physicians who are responsible for a patient can also take it. Nevertheless, the decision must be made in good faith with the patient's wellbeing as the first priority.
- iii. According to the process established in the *Airedale* case, the High Court of the relevant area must first approve any decision to remove a life support system, even whether it is made by close congregants, medical professionals, or friends.

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<sup>23</sup> Supra note 5.

<sup>24</sup> Available at: <http://dx.doi.org/10.1590/1983-80422016242136> Rev. (Visited on February 25<sup>th</sup> 2024).

<sup>25</sup> Supra note 6.

<sup>26</sup> Supra note 5.

<sup>27</sup> *Common Cause v. Union of India and Others* (2019 SC 527)

- iv. According to their lordships, in the event that an incapable person is unable to make a decision regarding the withdrawal of a life support system, the Court alone, acting in the capacity of a "parens patriae," will ultimately make this decision. Nevertheless, the opinions of close friends, family members, and medical professionals must undoubtedly be given due weight.

However, in the US, the Terri Schiavo case<sup>28</sup> was a historic one involving euthanasia from 1990 until 2005. The case's facts are as follows: Theresa Marie "Terri" Schiavo was a lady whose state of vegetative state was irreversible and continuous. Terri's spouse and legal guardian argued that if Terri hadn't been recovering, she wouldn't have wanted a lengthy artificial life support system and wouldn't have picked to take out her feeding tube. Terri's parents contested both her husband's claims and Terri's medical diagnosis, arguing in favor of continuing to provide artificial nutrition and hydration. Then, a lengthy and highly publicized series of legal challenges brought forth by her parents ultimately resulted in demands for state and federal political leaders, including President George W. Bush, to postpone the removal of Schiavo's feeding tube for seven years.

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## CONCLUSION :

The right to euthanasia is a hotly contested topic in many nations today, and compelling arguments in favor of the practice are growing. A large number of people are currently in a "persistent vegetative state" over the world. Conditions where these terminally sick patients remain suspended near death but are unable to cross the barrier have been made possible by medical technology. Both passive and active euthanasia are vehemently supported in certain situations. The primary reason for opposing the right is that it poses the greatest risk of being abused. Nevertheless, with the right safety measures and well-defined guiding principles, the threat and horror of abuse and exploitation may be avoided.

The Republic of India's right to an end to one's own life is subject to legal, moral, and social constraints. Furthermore, it is not objective to ask whether mercy killing and active and passive euthanasia should be legalized. It is a subjective one that considers surroundings and occurrences more heavily. We are only able to provide assistance in the natural demise action after it has started. And the person should be in a comatose state, be in a permanent vegetative state, or have a dead brain. Is consent to remove the patient's life support system a requirement in addition to that? When a patient is unable to give consent, a decision must be made through the patient's parents, significant other, or other close family members. If no one is present to make the decision, the patient's next closest friend may do so. The doctors tending to the patient might as well take it. However, the decision-making must be genuine and done with the patient's best interests in mind. In the event that a person is incapable of providing permission and has no family or close friends present, the court will order the qualified medical professionals to submit the patient's medical record, which will also be reviewed by the court.

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<sup>28</sup> SC 03-1242