

Explanatory Note

The matter regarding formulation of regulatory provision for 'Euthanasia.' was earlier examined in this Ministry in 2006 based on the 196th Report of the Law Commission of India on '*The Medical Treatment of Terminally-ill Patients (Protection of Patients and Medical Practitioners) Bill 2006*' in consultation with a committee of experts. However, based on the opinion of the experts, this Ministry at that time had opted not to make any Law on Euthanasia.

2. Subsequently, Hon'ble Supreme Court of India in its judgment dated 7th March, 2011 in the WP No. 115 of 2009- **Aruna Ramchandra Shanbaug vs UoI and Others**, laid down comprehensive guidelines to process "**Passive Euthanasia**" in the case of incompetent patients and stated that the said procedure should be followed all over India until the Parliament makes a legislation on the subject. Detailed judgement may be viewed at <http://www.supremecourtfindia.nic.in/outtoday/wr1152009.pdf>

3. Hon'ble Supreme Court of India in the above mentioned decision highlighted the distinction between Active Euthanasia and Passive Euthanasia. Same has been explained in the 'Brief Note' at Annexure-1 to this Explanatory note.

4. Meanwhile, Law Commission vide its 241st Report titled 'Passive Euthanasia- A Relook' prepared in August 2012, available at <http://lawcommissionofindia.nic.in/reports/report241.pdf> again proposed for making a legislation on '**Passive Euthanasia**' and also prepared a draft Bill, *The medical treatment of*



terminally ill patients (protection of patients and medical practitioners) Bill'. The Bill is at Annexure-2 to this Explanatory note.

5. The draft bill as proposed in 241st Report of Law Commission deals with **Passive Euthanasia** and **Living Will**.

6. Living Will has been defined as "*A document in which person states his/her desire to have or not to have extraordinary life prolonging measures used when recovery is not possible from his/her terminal condition.*"

However, as per para 11 of the said Bill the **advance medical directive(living will)** or **medical power of attorney** executed by the **person shall be void and of no effect and shall not be binding** on any medical practitioner.

7. Active euthanasia has not been recommended in the 'The Medical Treatment of Terminally Ill patients (protection of patients and medical practitioners) Bill'. Further, Active Euthanasia is also not being considered by this Ministry as the same is more likely to be misused by unscrupulous individuals to attain their ulterior motives.

8. Based on the recommendations of the Law Commission as contained in their 241st report and after examination of the draft Bill in this Ministry, it is being contemplated **to enact/not to enact** a Law on Passive Euthanasia. In order to take an informed decision in this matter, this Ministry seeks to solicit public opinion/comments on the subject/draft Bill.



9. A brief explaining Passive Euthanasia and Active Euthanasia is being uploaded along with the draft Bill as proposed by the 241st Report of Law Commission at **Annexure-1** and **Annexure-2** respectively.

