The Treatment of Terminally ill Patients Bill

What is the issue?

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- Efforts to allow assisted suicide have gained traction around the world in the recent past, with Albania, Colombia and Germany having legalised it in various forms.
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- Even in India, the debate over euthanasia and the interests of the state in preserving the life of persons is currently playing out in various fora.
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- While the ethical implications of these acts have been debated, there is a need to debate how such a law would be operationalised.
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- This will help to ensure the constitutionally guaranteed right to bodily integrity and autonomy, and to minimise misuse of the law.
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- In this context, **The Treatment of Terminally Ill Patients Bill, 2016** acts as a great starting point.
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What is Euthanasia?

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- It is the practice of **intentionally ending a life** in order to relieve pain and suffering.
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- **Passive euthanasia** entails the withholding of common treatments, such as antibiotics, necessary for the continuance of life.
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- **Active euthanasia** entails the use of lethal substances or forces, such as administering a lethal injection to kill, and it is controversial.
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What does the draft bill says?

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- According to the draft Bill, 2016, a terminally ill patient above the age of 16 years can decide on whether to continue further treatment or allow nature to take its own course.
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- The Bill **provides protection to patients and doctors** from any liability for withholding or withdrawing medical treatment and states that palliative care (pain management) can continue.
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- When a patient communicates her or his decision to the medical practitioner, such decision is binding on the medical practitioner.
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- However, the draft also notes that the medical practitioner must be "satisfied" that the patient is "competent" and that the decision has been taken on free will.
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- There will be a panel of medical experts to decide on case by case basis.
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- The draft also lays down the process for seeking euthanasia, right from the composition of the medical team to moving the high court for permission.
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- The Bill only augurs to **legalise passive euthanasia,** as discussed in the judgement pertaining to Aruna Shanbaug.
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- The Ministry said that **active euthanasia is not being considered** as it is likely to be used by unscrupulous individuals to attain their ulterior motives.
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What did the SC say?

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- In its judgments in the Aruna Shanbaug and Gian Kaur cases, the Supreme Court has stated that the law currently only permits passive euthanasia.
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- The administration of active euthanasia or assisted suicide would **constitute attempts to commit or abet suicide** under the Indian Penal Code, 1860.
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- However, in both these judgments, the court stated explicitly that assisted suicide was only illegal in the absence of a law permitting it.
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- Therefore, assisted suicide could be legalised if legislation was passed by Parliament to that effect.
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What does the new bill say?

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- This Bill is a bold and welcome step in many respects, and is a significant improvement over the draft Ministry Bill that it is based on.
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- It moves away from decision-making based on the 'best interests' of the patient and recognises the right to die with dignity.
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- It does not permit active euthanasia.
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- Once the practitioner is satisfied that the patient is competent and has taken an informed decision, the decision will be confirmed by a panel of three independent medical practitioners.
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- However, there is need to clearly think through some of the provisions in this Bill and the procedures it sets out.
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What are some the perceived flaws?

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- Like the draft Bill, it defines "terminal illness" as a **persistent and irreversible vegetative condition** under which it is not possible for the patient to lead a "meaningful life".
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- The use of this **subjective phrase** would require second parties to decide

whether a person in a permanent vegetative state is living a meaningful life.
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- Persons with disabilities, in particular, are likely to be disadvantaged by such an understanding of “terminal illness”.
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- It also gives rise to the practical question of how a person in a permanent vegetative state will be able to self-administer the lethal dosage to commit suicide.
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- In the case of incompetent patients, or competent patients who have not taken an informed decision about their medical treatment, the Bill lays down a **lengthy and cumbersome process** like asking permission from High Court and getting clearance from MCI, before any action can be taken for the cessation of life.
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- Such a procedure is advisable for an act like assisted suicide which might be prone to abuse.
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- However, it would be a **violation of patient autonomy** if it were applied to instances of merely withholding or withdrawing medical treatment.
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- Decisions on such withdrawal must not tie up the medical practitioner and family of the patient in litigation.
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- Further, given that the MCI has been plagued by corruption and incompetence, it is not advisable to place complete reliance on it. Rather, its role should ideally be limited to framing guidelines and providing guidance when requested.
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Source: The Hindu

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