

- **Involuntary Euthanasia:** When the life of the person or patient is terminated without the knowledge or consent of the person or where the patient express his wish to the contrary or where the patient is in Persistent Vegetative State (PVS), in coma or brain dead, administered euthanasia without the consent of his guardian, spouse, parents, close relatives and if such person is not available then without the consent of his next friend like a social worker or lawyer. This kind of euthanasia is illegal in all the countries in the world and considered as a crime in the eye of Law.

These three kinds of euthanasia i.e. Voluntary Euthanasia, Non-Voluntary Euthanasia and Involuntary Euthanasia can be divided into two categories i.e. Active Euthanasia and Passive Euthanasia.

- **Active Euthanasia:** It is intentional causing of death of the patient either with the consent or without the consent of the patient by administering him lethal dose or injection. It is mostly criticized and controversial method to terminate the life of patient.
- **Passive Euthanasia:** Passive euthanasia allows the patient to die by withdrawing life supporting system and letting him die. It is not direct killing of patient. It is a decease that kills the patient and not who withdraw the life supporting system. Passive euthanasia is legalized in India by Supreme Court in the case of ‘Aruna Ramchandra Shanbaug V. Union of India¹’.

Euthanasia i.e. good death can be demanded by the patients who are terminally ill to relieve themselves from such a life without dignity and agony.

III. EUTHANASIA AND HUMAN RIGHTS DIMENSIONS:

The main human right aspect involved in this research paper is that the human rights of terminally ill patients such as right to life, right to health care, right to liberty and right to die with dignity. The concept of human rights, derived from considerations of the nature of mankind, originated within a political context called natural rights, they developed as a proclamation of liberty, to be used to guarantee freedom from attacks on one’s life, dignity or property. These human rights were considered to apply equally to each individual or to equivalent groups, they were unconditional and they imposed on others as a duty to respect them. Originally conceived as freedoms from oppression and other injustices, they evolved to include, and largely become, freedoms to have or do what may be wanted. More recently, to natural rights have been added welfare rights, claimed as entitlements to opportunity or good, to be provided or respected by others.

Universal Declaration of Human Rights 1948 declared that ‘the foundation of freedom, justice and peace in the world’ is the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family’. Further, ‘everyone has the right to life’ and ‘all are equal before the law and are entitled without any discrimination to equal protection of the law’.

Article 6 of International Convention on Civil and Political Rights 1966 also states that ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’.

Article 21 of the Indian Constitution also states that ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’.

The right to one’s life is declared to be the fundamental natural right, on which every other right depends for its existence and its validity.

Thus, the right to life, right to health care and right to liberty are protected by the International Instruments and Indian Constitution. The problem arise when the patient claims right to die with dignity. The Supreme Court observed in the case of Gain Kaur v. State of Punjab² that ‘right to die’ is not a fundamental right under Article 21 of the Indian Constitution.

The patient has right to refuse medical treatment but when he request for euthanasia for relieving himself from incurable decease for which medical treatment is not available then he is not allowed to take the help of medical practitioners. Now such a situation should be changed because patient request for mercy

¹ AIR 2011 SC 1290

² (1996) 2 SCC 648

killing as he cannot live a dignified life and therefore he request for to die with dignity at least. When he cannot live with dignity then it is his right to die with dignity and therefore euthanasia should be made legalize.

The common reasons for legalizing euthanasia are seeking the compassionate relief of pain and suffering, providing protection for doctors who behave compassionately, showing respect for human rights and assisting in the containment of health costs.

IV. MEDICAL ETHICS:

Ethics has been defined as the science of human conduct. It deals with how should man behave with others and what should be the ideal behavior of human being. Thus, ethics lay down the rules for human conduct based upon higher and nobler value of life. Ethics are concerned with the good and proper human conduct in the light of public opinion.

Ethical principles or obligations are also structured and enforced by professional bodies also like Bar Council of India and Medical Council of India etc. Such professional bodies formulates the ethical rules in order to protect the profession and impose obligations on the professionals as to manner in which they should conduct the profession and thereby insure the general public that the profession is not for the professionals but for the well being of general public.

Thus, medical professionals are bound by the ethical rules of International Code of Medical Ethics and Hippocratic Oath. Section 10 of the Code of Medical Ethics lays down the duties on medical practitioners to treat each and everyone asking for his service in emergencies for the sake of humanity and the noble tradition of the profession. Section 13 lays down that patient must not be neglected by the medical practitioners and so on. Incidentally, it was as 400 B.C. when the renowned Greek Physician stipulated in his oath that "I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course". Thus, according to the Code of Medical Ethics and Hippocratic Oath the Medical Practitioners have an obligation to preserve human life.

Medical practitioners have an inherent ethical delegation to respect the sanctity of life and to provide relief from suffering. In fact, Hippocratic Oath and Code of Medical Ethics have created ethical controversy for the Doctors. According to the oath and the ethics, Doctors is to relieve the patient from suffering on one hand and on the other hand to protect and prolong the life of his patient. If it says that to relieve the pain of patient then it seems that it is in favour of euthanasia but when it says that to protect and prolong the life of patient then it is against the euthanasia. It seems, however, that if the practice of euthanasia is permitted then Hippocratic Oath and Code of Medical Ethics will remain only for the sake of name and not in practice of medical profession. Ultimately we can say that medical ethics do not permit to practice euthanasia in India.

V. MEDICAL ETHICS AND RIGHT OF SELF-DETERMINATION:

According to the principle of self-determination, each person deserves respect and basic rights and freedoms. This right of freedom includes the right to final determination of his destiny. The basis for legalization of euthanasia is the right to self-determination or autonomy. According to the principle of self-determination, every person who has capacity to take decision in respect of his body and to determine as to when and how he should die provided that his right of self-determination must not violate the rights of others. The law must recognize and respect this right of personal autonomy and self-determination of every individual as it is his basic human right.

One of the most important arguments of the supporters of euthanasia is that the right of self-determination is not derived from the State but from International Human Rights Instruments and therefore State cannot directly impose its ethical rules which interferes the private life of an individual. Now, the right of self-determination has been extended to include within it a patient's right of refusal to medical treatment. International Covenant on Civil and Political Rights refers to right of self-determination in Art.1, the general comment on which states that, "the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and

for the promotion and strengthening of human rights³”. This necessarily implies that right of self-determination of individual should be taken into consideration by the State while interpreting the provisions of law or ethical rules framed by the State.

Apart from the principle of self-determination, the best interest of patient should be taken into consideration by the medical practitioners. It is a general duty of Doctor to treat the patient in his best interest. Now, there is a development in the medical field and it is the duty of medical professionals to relieve the terminally ill patient from the unbearable pain and suffering by providing appropriate treatment. The treatment which relieves the patient from pain and suffering is in the best interest of patient. The concept of best interest of terminally ill patient should now encompass peaceful dying without pain and agony as a part of the best interest of such patient when he pleads for euthanasia as no medicine relieves his anguish.

Medical ethics requires the Medical Practitioners to respect the autonomy of the patient and treat them with dignity. The decision, in respect of his or her life and death, taken by the capable patient should be respected and followed by the Medical Practitioners even when they believe that the decision is wrong⁴. Thus, the Medical Practitioners should be free to treat their terminally ill patient upon the informed consent of mentally capable patient for euthanasia or mercy killing without the fear of criminal liability.

VI. CONCLUSION:

In this research paper euthanasia is considered as human right of terminally ill patients. We have discussed various aspects of euthanasia. If we carefully examine the provisions of International Human Rights Instruments or Medical Laws or Medical Ethics then we can conclude that euthanasia is nowhere mentioned in International Human Rights Instruments and Medical Laws and Medical Ethics specifically prohibits the Doctors from practicing euthanasia. In the case of *Aruna Ramchandra Shanbaug v. Union of India*⁵, the Supreme Court has allowed the practice of passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state but court observed that active euthanasia cannot be allowed by the court. It can be legalized only by the legislature by passing specific legislation legalizing euthanasia. Supreme Court in the case of *Gain Kaur v. State of Punjab*⁶ held that ‘right to life’ under Article 21 of the Constitution does not include ‘right to die’. Therefore, the right to die or euthanasia is not constitutional in India. In such a situation if Medical Practitioner practices euthanasia even though the informed consent is given by the patient, he will be responsible for the criminal liability under Indian Penal Code.

The practice of euthanasia, however, is based on the concept of humanity. Terminally ill patients are also people having feelings. These people must be treated in human and compassionate way. They are living in such a situation where medicine cannot restore them good quality of life and suffering from continuous pain, discomfort and loss the dignity of life and therefore they choose the option of euthanasia. Thus, denying the right of euthanasia to such patients is to condemn them to a miserable existence against their wishes. In the above situation if the option of euthanasia is not provided to the terminally ill patient, it would be inhuman treatment and would cause violation of human rights. Thus, now it is a need of an hour that State should take initiative to pass appropriate legislation respecting the rights of terminally ill patients and legalizing passive as well as active euthanasia for terminally ill patients.

VII. SUGGESTIONS:

The researcher has discussed the issue of euthanasia in the human rights dimension. It is found that there are various lacunas in the Indian Legal System which prohibit the practice of euthanasia for terminally ill patients. The researcher, therefore, has made following suggestions on the issue of euthanasia.

- Euthanasia should be considered as human right for terminally ill patients because when they loss the dignity of life due to the terminal illness and not curable by medicine then compelling patients to suffer pain till natural death is not humanity.

³ Madhavi (Dr.) Ravulapati, *Death with Dignity*, Asia Law House, Hyderabad, (2014) p. 103

⁴ Ghuge (Dr.) Sharmila, *Legalizing Euthanasia: A Pedagogue’s Perspective*, Himalaya Publishing House Pvt. Ltd. Mumbai, (2015) p. 118

⁵ (2011)4 SCC 454

⁶ (1996)2 SCC 648

- Article 21 of the Indian Constitution which guarantees the ‘right to live with dignity’ should be amended so as to include in ‘right to die with dignity’ only for terminally ill patients.
- State should take an initiative to enact a legislation legalizing euthanasia for terminally ill patients.
- The proposed draft bill on The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006, should be immediately amended so as to include the practice of Active Euthanasia also for terminally ill patients.
- The relevant provisions of Medical laws and Medical ethics prohibiting the medical practitioners from prescribing deadly medicine to terminally ill patients even on informed consent of capable patients should be modified so as to legalize euthanasia in India.
- The Court while deciding the cases of right to die should interpret laws in order to provide justice to the terminally ill patients.
- The strict measures to prevent abuse or misuse of the provisions allowing the euthanasia should be incorporated in the proposed legislation on euthanasia and in case of violation of the said provisions, the erring professionals must be severely punished under law.

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D. H. Lokhande
Asst. Prof. , Dr. Panjabrao Deshmukh College of Law, Morshi Road, Amravati.