

# 3

## Euthanasia and Dying with Dignity: A Human Rights approach

The debate over euthanasia cannot be considered in isolation from discussions of human rights since such rights protect human dignity. Human dignity and human rights are intertwined. Therefore, the researcher has attempted to evaluate euthanasia in the context of human rights and dignity as a component of Article 21 in this chapter. Human dignity is of the utmost significance and is one of the conditions necessary for human survival.<sup>176</sup> Human dignity is the quality of being deserving of honour, respect, and equal standing. It is innately linked to human existence, regardless of the individual's caste, creed, sex, gender, colour, or status.<sup>177</sup> In essence, it may be said that the right to life and human dignity go hand in hand. The right to life is the most significant human right, and it is recognized in the Indian Constitution and several other international instruments on human rights.

Different religions have historically placed the sanctity of human life and morality on the highest pedestal. Morality-related topics were no longer exclusively treated from a religious perspective as time went on. With the rapid advancement of medical technology, especially after World War II, it was feasible to keep a person alive with life-sustaining treatments, preventing them from passing away in the course

---

<sup>176</sup> Roberto Andorno, "Human dignity, and human rights as a common ground for global bioethics" 34(3), *The Journal of Medicine and Philosophy*, 223–240, (2009).

<sup>177</sup> Paras Dargarh, Human Dignity Under Indian Constitution. Available at- <https://desikaanoon.in/human-dignity-under-indian-constitution//> (last visited on August 25, 2022)

of their sickness. This sparked several euthanasia and right-to-die movements and discussions throughout the globe. Ultimately, these discussions and campaigns pushed for acknowledging the right to die with dignity and the legality of euthanasia.<sup>178</sup>

Human rights can be broadly defined as those fundamental, unalienable rights that are necessary for a person to survive. Human rights are those inherent rights without which one cannot survive as a human being. Human rights are those rights that are possessed by every human, regardless of nationality, caste, creed, sex, etc.<sup>179</sup> They are founded on humanity's growing desire for a life worthy of respect and protection, and intrinsic dignity. The ability to fully develop and use one's human traits, intelligence, abilities, and conscience, as well as to satisfy one's spiritual and other needs, is made possible by these human rights and fundamental freedoms.<sup>180</sup>

From the moment of birth, a person has the right to basic human rights. The right to life, without which no other right may be enjoyed, is one of the most basic and fundamental rights. But if someone has the right to life, does it also give them the right to die? The Indian and the international courts both offered different views in response to this question. So, legislating the right to die with dignity has been a contentious problem in recent history.<sup>181</sup>

### **3.1 Universal Concept of Dignity**

According to Ronald Dworkin, having dignity is honouring the inherent value of our own life.<sup>182</sup> According to him, moral and political philosophy uses the phrase "right to dignity" in various contexts. As old as humans and humanity itself is the idea of human dignity. Its notion and perception in legal thought varied throughout time.<sup>183</sup>

The idea of dignity is one of the most crucial ones since it is used by both those who support and oppose euthanasia and laws governing end-of-life care. Dignity plays a key role in discussions of euthanasia, physician-assisted suicide, and other ethical dilemmas. In light of the sanctity of life defence, the word "dignity" is

---

<sup>178</sup> P. De Cruz, "Assisted Suicide, Christian Theology, and the Law" *Christian Law Review*, 51-66, (2003).

<sup>179</sup> Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" 19(4), *European Journal of International Law*, 2008, 655-724, (2008)

<sup>180</sup> Ritika Bansal, *Euthanasia: Appeal and plea for mercy killing* 51-58 (Universal Law Publishing Co. Pvt. Ltd, New Delhi, 2013).

<sup>181</sup> J.N. Sharma, "Right to die in terminally ill state: A plea to legalize euthanasia" *Law Journal*, Maharshi Dayanand University.

<sup>182</sup> Ronald Dworkin, *Life's Dominion, An Argument About Abortion, Euthanasia, and Individual Freedom*, 238 (Vintage Publication, Reprint ed, 1994).

<sup>183</sup> S.R.S. Bedi, "Grundnorm of Human Dignity as a Judicial Ideology" 32 *Banaras Law Journal*, 16-61, (2006).

brought up since it is seen as an essential component of life. However, autonomy and the idea of quality of life are also taken into consideration when using the word "dignity." Moreover, human rights legislations heavily emphasize the idea of dignity. Investigating the idea of dignity enables us to compare the ethical definition of dignity to the definition of dignity in human rights legislations. The connection between the ethical concept of dignity and human rights law may therefore be discussed concerning the concept of the right to die with dignity and whether or not such a right can be derived from human rights law.<sup>184</sup>

Dignity is derived from the Latin word "dignitas". It signifies "worthiness" or "honour, nobility".<sup>185</sup> So, human worthiness is what dignity is all about. Human dignity refers to a condition of being deserving of respect, honour, and equality, and it is inseparably linked psychologically to human existence regardless of caste, sex, colour, or status of the individual. Human dignity is cited as a defence in the discussion of euthanasia by both supporters and opponents. Smith further on this by stating, "Sometimes, it appears to be a sword; other times it is used as a shield." Determining what constitutes human dignity is thus one of the major challenges.<sup>186</sup>

The Stoics, the Judeo-Christian tradition, and Kantian ethics have all influenced the understanding of human dignity. The concept of dignity has its roots in ancient, specifically in Stoic philosophy, which emerged around 400 BCE. According to the Stoics, every person has their own logic and ought to be respected. They should be treated with respect since there is a law that resembles nature. People are equal to and superior to animals since they possess reason. Based on these concepts, these stoics established the foundation for the idea of dignity.<sup>187</sup> Roman author Cicero, who lived in the first century BCE, passed forward the Stoic philosophy via his writings.<sup>188</sup> According to Cicero, human dignity distinguishes humans from other creatures. Humanity is worth more than animals because of our dignity.<sup>189</sup>

---

<sup>184</sup> Nick Bostrom, "Dignity and Enhancement" 1(2), *Contemporary Readings in Law and Social Justice*, 84-115, (2009).

<sup>185</sup> Audrey R. Chapman, "Human Dignity, Bioethics, and Human Rights" 3(1), *Amsterdam Law Forum*, 3-12, (2011).

<sup>186</sup> Stephen W. Smith, *End-of-Life Decisions in Medical Care: Principles and Policies for regulating the dying process* 128 (University of Birmingham, Cambridge University Press, 1st edn., 2012).

<sup>187</sup> Audrey R. Chapman, "Human Dignity, Bioethics, and Human Rights" 3(1), *Amsterdam Law Forum*, 3-12, (2011).

<sup>188</sup> Evadne Grant, "Dignity and Equality" 7(2), *Human Rights Law Review*, 299-329, (2007).

<sup>189</sup> Thomas Scheck, "Humanities in Cicero's Moral Philosophy and Its Christian Reception" 10(2), *Ave Maria Law Review*, 405-406, (2012).

Cicero's works helped introduce the Stoic concept of dignity into the Judeo-Christian tradition. The idea of dignity was subsequently explored by theologians, who were mostly Christians. They asserted that morality was a fundamental aspect of human nature that ought to be honoured.<sup>190</sup> God was the basis for our moral character. Since God made man in his likeness, every person on earth is valuable and worthy of respect.<sup>191</sup> Since it contends that every human being has intrinsic worthiness in life due to their status as a person, this idea of dignity is easily linked to the sanctity of life argument. This religious understanding of dignity, therefore, emphasises the universal quality that all persons share rather than the individual.<sup>192</sup>

Kant removed the theological precepts pertaining to dignity in the 18th century.<sup>193</sup> Kant continues to believe that every rational human being has inherent dignity. The intelligent human must thus show respect for other reasonable creatures. Kant believed that since everyone has the capacity for reason, they all have dignity.<sup>194</sup> This brings to mind the autonomy argument in the discussion of the right to die: a rational person must be allowed to choose to die if it is his personal, autonomous decision. The development of the notion continues to define dignity today. Some individuals believe that persons have inherent value simply because they are human, while others believe that dignity is linked to a person's ability to make free decisions based on reason. This difference is crucial. If each human being is considered to have inherent value, then it is not up to the person to choose whether or not his life is worthy of respect. Because he is still alive, his life is honourable. The concept of dignity that emerges from Kant's idea of autonomy and reason stands in opposition to this.<sup>195</sup>

As seen above, the idea of dignity is now too nebulous and unclear to be applied in ethics or the law. However, both national and human rights legislation continue to place a high value on dignity. The issue of dignity also comes up frequently while discussing the right to die. Therefore, the idea of dignity should not

---

<sup>190</sup> Joseph Azize, "Human Dignity and Euthanasia Law" 9, *University of Notre Dame Australia Law Review*, 47-74, (2007).

<sup>191</sup> *Ibid.*

<sup>192</sup> Rex D. Glensy, "The Right to Dignity" *Columbia Human Rights Law Review*, 69-70, (2011).

<sup>193</sup> Michael J. Perry, "Liberal Democracy and the right to religious freedom" 71, *The Review of Politics*, University of Notre Dame, 621-635, (2009).

<sup>194</sup> Henk ten Have (ed.), *The Encyclopedia of Global Bioethics*, "Raphael Cohen Almagor, right to die" Center for Healthcare Ethics, Duquesne University of Pittsburgh, PA, USA University of Hull, Hull, Springer-Kluwer Publisher, (2015)

<sup>195</sup> Stephen W. Smith, *End-of-Life Decisions in Medical Care: Principles and Policies for regulating the dying process* 128 (University of Birmingham, Cambridge University Press, 1st edn., 2012).

be dismissed as meaningless. In order to have a current definition of dignity that incorporates both historically defined meanings, it should instead be tried to reconcile both notions of dignity.

### **3.2 Individual Dignity as a Facet of Article 21**

With the adoption of the universal declaration of human rights in 1948, the dignity of an individual came to be recognized on a global scale as a key component of human rights. Both the preamble and article 1 of this significant document mention human dignity. The UDHR's guiding principles are widely acknowledged as being of the highest significance and weight when defining human rights across the globe. The first and most crucial obligation imposed on the State is the safeguarding of human dignity, without which all other rights are rendered invalid and meaningless. According to Justice Brennan in his book 'The Constitution of the United States: Contemporary Ratification,' the protection of human dignity is the State's most important duty since without it, all other rights would crumble.<sup>196</sup>

In the case of *Christine Goodwin v. The United Kingdom*,<sup>197</sup> The European Court of Human Rights has gone so far as to claim that respect for human dignity and freedom is the very foundation of the convention for the protection of human rights and fundamental freedoms. In the south African case of *S. v. Makwanyane*<sup>198</sup> O' Regan J. stated in the Constitutional Court that “without dignity, human life is substantially diminished.” With the aforementioned in mind, the judges in the *Common Cause* verdict mentioned that it is crucial to recognize that our Court has broadened the scope of article 21. Dignity has once again been confirmed as a component of the aforementioned fundamental right in the most recent judgement by a nine-judge bench in 2017 of Justice K.S. Puttaswamy (Retd.) and *Anr. v. Union of India and others*.<sup>199</sup> In this case, dignity was found to be a key component under article 21. Supreme Court of India held that Human dignity is indescribable. Sometimes it could be impossible to define. Nevertheless, what counts most is that a life without dignity is like an unheard sound. Dignity has a voice, a sound and is both natural and human. Even if the person is dead and is just referred to as a body, it is a blend of thought and feeling, and it deserves respect. Due to this, the constitution

---

<sup>196</sup> *Common Cause (A Registered Society) v. Union of India*, (2018) 5 SCC 1

<sup>197</sup> (2002) ECHR 588

<sup>198</sup> 1995(3) SA 391

<sup>199</sup> (2017)10 SCC 1

bench rules in *M. Nagaraj & Others vs Union of India & Others*<sup>200</sup> that it is the responsibility of the State to not only safeguard but also promote human dignity by taking appropriate actions. The concept of human dignity is not precisely defined. It alludes to the inherent worth that each and every person has, which should be recognized. Every person has dignity simply by virtue of his or her existence; it cannot be given or taken away.

Since we are addressing dignity as an integral component of the right to life that upholds all of a person's human rights, the idea and value of dignity need to be further explained. Self-affirmation is essentially the purpose of life. Conflict and dilemma are anticipated to occur frequently in a person's life. In one of his remarks, Oliver Wendell Holmes cited a passage from a Latin poet who had said, "Death plucks my ear and says, Live, I am coming."<sup>201</sup> Should one be permitted to wait until death finally reaches them and there is relentless pain without any chance of survival? Should she/he be allowed to deteriorate slowly till life leaves them? Should he or she live with the support system because of modern medical technology, or should he or she live because others around him or her think that science will ultimately come up with a novel treatment method? Or, to put it another way, should he/she serve as a test guinea pig for an experiment? The response must be a definite no because such pointless waiting devalues the clear conception of life, deteriorate the essence of dignity, and destroys the reality of the ultimate decision, which is essential to solitude.<sup>202</sup> Justice Dr Chandrachud observed that life is important in and of itself when discussing dignity. However, because of the freedom that allows each person to live their life as they should, life is worth living. The individual is trusted with determining the best choices regarding how life should be lived. To live is to live with dignity according to Justice, dignity is the glue that ties the fundamental rights together because fundamental rights aim to uphold each person's dignity of being. Dignity does not acknowledge or accept any link to a person's position or place in life.<sup>203</sup> The one fundamental idea that it effectively introduces the viewer to is that every person has inherent human rights. Law is happy to acknowledge that a man's

---

<sup>200</sup> AIR 2007 SC 71

<sup>201</sup> Justice Oliver Wendell Holmes as saying upon the occasion of his 90th birthday: "Death plucks my ear and says 'Live—I am coming!' available at- <https://medicalfutility.blogspot.com/2009/08/death-plucks-my-ear-and-says-live-i-am.html/> , (last visited on Aug 25,2022)

<sup>202</sup> *Ibid.*

<sup>203</sup> *Common Cause (A Registered Society) v. Union of India, (2018) 5 SCC 1*

dignity is his most precious possession. Moreover, the sanctity of the aforementioned possession does not diminish or vanish when someone dies.<sup>204</sup>

In the *National Legal Services Authority v. Union of India and others*<sup>205</sup>, The Supreme Court has ruled that there is rising recognition of the idea that human dignity, rather than economic progress, is the ultimate measure of a country's level of development.

The Court's primary concern in the *Gian Kaur* case<sup>206</sup> was whether section 309 of the IPC was constitutional. The Court was aware that the discussion around euthanasia was not necessary to resolve the issue at hand. The Court clarified, however, that "life" in Article 21 has been understood to mean "life with human dignity" and that it encompasses the right to die with dignity as a part of the right to live with dignity. This right to live with dignity will encompass the entire lifespan till the very end. At the end of life, a person will also have the right to a dignified death.

The Court in *Common Cause v. Union of India* noted that if a person with a terminal illness or who is experiencing a PVS is permitted to end their life prematurely, such situations would fall under the purview of the right to die with dignity as an extension of the right to live with dignity. In these instances, only the natural process of death, which has already begun, is hastened. This justification comes to the conclusion that there is little doubt that, in accordance with the provisions of Article 21 of the Constitution, a terminally ill person or someone who is in a persistent vegetative condition can choose to have their life end early. If such an option is provided by article 21, no legislation is required to implement that fundamental right or, more specifically, his inherent human right. Indeed, this right cannot be absolute; rather, it must be subject to legislative restrictions that must be reasonable and in the best interests of the public.<sup>207</sup>

In *Auckland Health Board v. Attorney General*,<sup>208</sup> The Court ruled that everyone, living or dead, is entitled to the values of human dignity and individual privacy.

Death is a necessary component of life. Consequently, dying with dignity involves not losing one's identity, humanity, or sense of self. According to this

---

<sup>204</sup> *Common Cause (A Registered Society) v. Union of India*, (2018) 5 SCC 1

<sup>205</sup> (2014)5 SCC 438

<sup>206</sup> *Gian Kaur V. State of Punjab*, (1996) AIR 946

<sup>207</sup> *Common Cause (A Registered Society) v. Union of India*, (2018) 5 SCC 1

<sup>208</sup> (1993) 1NZLR235.

definition, a person's views, values, and sense of integrity should all be upheld throughout a dignified death. Depending on their circumstances, this may differ greatly from person to person. For some people, what is acceptable and meaningful may be intolerable for others. A legally protected choice is the only way to guarantee that every individual has this dignity. It is valued that one has control over their situation and that their decisions are honoured, which can, in turn, help to preserve personal dignity in dying.<sup>209</sup>

### **3.3 Right to Die with Dignity in Indian Context**

Death is the ultimate culmination of life. In chapter 2, verse 27 of the Bhagavad Gita, it is mentioned, “Death is certain for one who has been born, and rebirth is inevitable for one who has died. Therefore, you should not lament over the inevitable”.<sup>210</sup> Death may be viewed as a part of the cycle of life. It, therefore, seems reasonable that a person must have the same human rights at the time of his death that he has had throughout his life. Human dignity in life, as can be understood as a right to autonomy or self-determination, must be available at death also. This chain of argument can be extended to claim that a person must also have a right to die.

The Supreme Court of India, through its various rulings, has viewed the “Right to Life”, as guaranteed in Article 21 of The Constitution of India, to include a “Right to Life with Dignity”. In *Kharak Singh v. The State of Uttar Pradesh & others*, the Supreme Court of India quoted Justice Stephen Field and held that “By the term “life” as here used something more is meant than mere animal existence”.<sup>211</sup> In *Maneka Gandhi v. Union of India*, the Supreme Court of India interpreted article 21 to include the right to live with human dignity in its ambit.<sup>212</sup> In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court of India mentioned that this right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42.<sup>213</sup>

---

<sup>209</sup> Lily Srivastava, *Law & Medicine*, 107 (Universal Law Publishing Co. Pvt. Ltd, 2010).

<sup>210</sup> Bhagavad Gita The Song of God Commentary by Swami Mukund Ananda available at- <https://www.holy-bhagavad-gita.org/chapter/2/verse/27//> , (last visited November 8,2022)

<sup>211</sup> AIR 1963 SC 1295

<sup>212</sup> AIR 597,1978 SCR (2) 621

<sup>213</sup> AIR 802, 1984 SCR (2) 67



However, it should be noted that the request for euthanasia is only in case of terminal illness, which can be treated as an exceptional case. The State's duty to protect life is indisputable, but if a life is not worth living, why should the law force individuals to undergo an inhuman and cruel phase of life? The Supreme Court has ruled in a slew of significant judgments that no one should experience cruel or inhumane treatment. In *Sunil Batra v. Delhi Administration*, a convict was treated inhumanly by the jail authorities; the Supreme Court issued a writ of habeas corpus to protect prisoners from inhuman and barbarous treatment.<sup>214</sup> The law of the land can restrict the inhuman treatment given by human beings, and the judiciary, to a certain extent, has been successful in protecting individuals from cruel and inhuman treatment. However, the inhuman and cruel treatment given by vis major to terminally ill patients cannot be restricted by human beings. On one side, in exceptional cases, terminally ill patients do not get any relief even from advanced medical technology, and on the other side, the law restricts such patients from dying a quick and painless death. As a result, terminally ill patients are victimized by inhuman and cruel treatment from both sides.<sup>215</sup>

There have been many landmark judgements in the Supreme court of India and various High Courts where the issue of the 'right to die as a part of the right to life' has been discussed at length. However, the word dignity played the principal role in incorporating passive euthanasia under article 21 of the Constitution of India. In the case of *K.S. Puttaswamy and another v. Union of India and others*,<sup>216</sup> dignity was found to be a key component under article 21.

In the case of *Maruti Shripati Dubal v. State of Maharashtra*,<sup>217</sup> the Apex Court ruled in 1986 that section 309 of the Indian Penal Code violates both Articles 14 and 21 of the Indian Constitution. Because it was determined that the right to life guaranteed by Article 21 of the Indian Constitution includes the right to death, the Bombay High Court declared Section 309 IPC to be unconstitutional in this case. They held that everyone should be allowed to put an end to their lives anytime they so choose. In this case, Justice Sawant added that there should be no stigma associated

---

<sup>214</sup> AIR 1986 SC 1579

<sup>215</sup> *Ibid.*

<sup>216</sup> (2017)10 SCC 1

<sup>217</sup> (1986) 88 Bom LR 589

with the wish to die because it is not inherently unnatural.<sup>218</sup> The Court also determined that the right to life provided by Article 21 included the right to die. The Court also acknowledged that every positive right conferred by the Fundamental rights chapter of the Constitution includes within its scope a negative right. The Court referred to *Rustom Cavasjee Cooper v. Union of India*<sup>219</sup>, where it was ruled that the right to freedom of trade constrained in article 19(1) (g) includes the right not to carry on a business. Since the freedom of speech and expression extends to the right to remain silent, the freedom of association and mobility extends to the right to refrain from joining any associations or travelling anywhere; it follows logically that the right to life should also include the right to die or put an end to one's life, at least in some compelling circumstances. However, in 1987, *Chenna Jagadesswar and Anr. v. State of Andhra Pradesh*,<sup>220</sup> the Andhra Pradesh High Court held that the right to die is not a fundamental right under article 21 of the Constitution. Again In 1994, the Supreme Court of India, in the case of *P. Rathinam Nagbhusan Patnaik v. Union of India*,<sup>221</sup> a Division Bench of the Supreme Court comprising Hon'ble Mr Justice M. Sahai and Hon'ble Mr Justice Hansaria stated that article 21 of the Constitution, i.e., 'Right to life' includes 'Right to die ' or to terminate one's life and declared Section 309 of the IPC as unconstitutional. The Apex Court further stated that suicide attempt has no beneficial or unfavourable effect on society and that the act of suicide is not against religion, morality or public policy. A landmark judgment in 1996 passed by a Bench consisting of five Judges in *Gian Kaur v. State of Punjab*<sup>222</sup> overruled P. Rathinam's case and held that the 'Right to life' does not include the 'Right to die'. 'Extinction of Life' is not included in 'Protection of Life'. The main reason is that the apex court did not want to make suicide decriminalized in India because it may also lead to economic injustice. 'Right to life' and 'Right to die' are opposite, like death with life. Though death is a fundamental fact of life but is not the only true meaning of life. Article 21 recognizes the right to life as a natural right, while suicide is an unnatural way to end one's life and is incompatible with the idea of the right to life. The court did state, however, that the right to pass away with dignity at the end of one's life should not be confused with the right to a premature, painful death that shortens one's

---

<sup>218</sup> (1986) 88 Bom LR 589

<sup>219</sup> (1970) 1 SCC 248

<sup>220</sup> (1988) CrLJ 549

<sup>221</sup> (1994) 3 SCC 394

<sup>222</sup> 1996(2) SCC 648

life expectancy. Hence, we can say Apex court did not want to go into details of euthanasia but was not against the passive way of euthanasia.

The first steps toward the law of passive euthanasia were set forth in *Aruna Ramachandra Shanbaug v. Union of India*<sup>223</sup> by the two-judge bench of J. Markandey Katju and J. Gyan Sudha Mishra. The Court ruled that the decision to turn off a patient's life support system can be made by the patient's parents, spouse, or other close family members, or in the absence of any of them, by a person or group of people, including the treating doctors acting as their next friend. However, such a decision should be taken bonafide in the patient's best interest.

Passive euthanasia and living wills/advance directives were acknowledged and approved by a five-judge Supreme Court bench in the case of *Common Cause (A Registered Society) v. Union of India*<sup>224</sup>. The "right to die with dignity" is a component of the "right to live with dignity" and may apply to someone who is terminally ill or in a persistent vegetative state. Article 21 guarantees that choice, thus neither that fundamental right nor, more significantly, his natural human right, need be implemented through legislation. The Court clarified that only passive euthanasia would fall under the ambit of Article 21.<sup>225</sup>

### **3.4 Dignity, Human Rights and Euthanasia: A Trilogy**

The history of human rights is as old as humanity itself. The moment our hunter-gatherer ancestors decided to care for their group's weak or sick members marked the start of human civilization in its true sense. It separated them from the groups of other animals, where weaker members often fall behind and become prey to other hunting animals. This departure in behaviour indicated that they learned to 'help' others, the most fundamental human value. From then onwards, it has been a struggle not just to survive but to live with dignity. A meaningful human existence cannot be imagined without a life with dignity. The right to a dignified life forms the bedrock upon which all other human rights stand. The Universal Declaration of Human Rights (UDHR), which the UN General Assembly adopted in 1948, mentions in the very first paragraph of its preamble states that the acceptance of the inherent dignity and

---

<sup>223</sup> (2011) 4 SCC 454

<sup>224</sup> *Common Cause (A Registered Society) v. Union of India*, (2018) 5 SCC 1

<sup>225</sup> *Ibid.*

unalienable rights of every member of the human family forms the cornerstone of global freedom, justice, and peace.<sup>226</sup> Similarly, Article 1 of UDHR states that all people are born free, with equal rights and respect. They should behave toward one another in a spirit of brotherhood because they are endowed with reason and conscience.<sup>227</sup>

After the end of the Second World War, it became evident that human rights can be abused in many ways. Hence, Human Rights were defined and proclaimed by the United Nations. However, these rights are such that they cannot be created nor can be amended, as they are natural human rights. However, in the 20th century, the concept became important in the domestic and international legal sphere.<sup>228</sup> Human dignity has been referenced and used in various human rights instruments since the Second World War. Dignity is often undefined and a complicated concept in human rights law.<sup>229</sup> It is used and interpreted in different ways. What follows tries to overcome this complexity and achieve an acceptable understanding of dignity in human rights law.

UDHR and these core international human rights treaties have greatly emphasized human dignity. Human dignity can be regarded as the source of human rights. There have been various treaties and protocols internationally for upholding human rights.<sup>230</sup> The UN has designated “Nine core international human rights treaties”.<sup>231</sup>

A question then arises: “How does one define human dignity?” No consensus definition has been reached in any political, legal, theological, or ethical debate.

---

<sup>226</sup> United Nations Peace, dignity, and equality on a healthy planet, available at- [https://www.un.org/en/about-us/universal-declaration-of-human-rights//](https://www.un.org/en/about-us/universal-declaration-of-human-rights/) (last visited on Aug 15,2022)

<sup>227</sup> *Ibid.*

<sup>228</sup> Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights” 19(4), *European Journal of International Law*, 655-724, (2008)

<sup>229</sup> Deryck Beyleveld, Roger Brownsword, “Human Dignity, Human Rights and Human Genetics,” 61(5) *The Modern Law Review*,661-680, (1998).

<sup>230</sup> United Nations Peace, dignity, and equality on a healthy planet, available at- [https://www.un.org/en/about-us/universal-declaration-of-human-rights//](https://www.un.org/en/about-us/universal-declaration-of-human-rights/) (Last visited on Aug 15,2022)

<sup>231</sup> The nine core international human rights treaties are – the International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Right, International Covenant on Economic, Social, and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment, Convention on the Rights of the Child, International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, International Convention for the Protection of All Persons from Enforced Disappearances.

However, if we need to understand euthanasia from the point of view of human rights, we need to have some working principles to define human dignity, particularly from the perspective of end-of-life decision-making. If we compare human beings with other primates, individual autonomy is one of the basic features that separate us. John Stuart Mill argued in 'On Liberty' that the ape-like ability of imitation is all that is required of the person who lets the world decide his course of action for him. He must use observation to perceive, logic and judgement to predict, action to acquire information for his decision, discrimination to make his decision, and when he has made his conscious decision, firmness and self-control to uphold it. Without such self-determination a life is not worth for a human being<sup>232</sup>.

In the context of a terminally ill patient, this idea of dignity as respecting his autonomy means he must have the right to accept or refuse treatment. The treating doctor's role is limited to providing him with the necessary information regarding treatment options and the consequences of refusing treatment. If the patient has made an informed decision with a sound mind, with a clear understanding of the consequences, and without any inducement or coercion, his decision to accept or refuse treatment or discontinue treatment at any stage must be respected. Similarly, the wishes of the near and dear ones regarding refusing or withdrawing treatment must also be respected.

There are a few cases at the European Court of Human Rights (ECtHR) where the right to die with dignity has been debated in the context of human rights laws. A number of the cases that the European Court of Human Rights heard have been analysed by the researcher in this part.

In *Pretty v. Director of Public Prosecutors*<sup>233</sup>, Dianne Pretty, a patient, paralyzed from the neck down due to motor neuron disease, had wished to commit suicide. However, she could not commit suicide by herself due to her condition. According to Suicide Act, although suicide was not illegal in the UK, it was illegal to assist someone in committing suicide. Therefore, Pretty pleaded with the Director of Public Prosecutions (DPP) to not charge her husband if he helped her kill herself. Her request was turned down by the DPP. Later, the case was heard in the House of Lords,

---

<sup>232</sup> David Bromwich, George Kateb (eds.) *On Liberty, John Stuart Mill* (Yale University Press, 2003).

<sup>233</sup> (2002) 2 All ER 1

where Pretty contended that the DPP's refusal was unconstitutional under the European Convention on Human Rights (ECHR). The House of Lords rejected her claims. Then the case went to ECtHR on 21 December 2001. The Court concluded that: Article 2, which provides for the right to life, cannot provide a right to die.<sup>234</sup> Article 3, which prohibits inhuman or degrading treatment, cannot be interpreted to put a positive obligation on the State to allow actions that are intended to end life.<sup>235</sup> In a democracy, the State is permitted to interfere with a person's right to privacy under Article 8 if it is deemed necessary to defend the rights of others.<sup>236</sup> Article 9 was not violated since there was no expression of religion or belief via worship, teaching, practice and/or observance in the claimant's case.<sup>237</sup> The European Court acknowledged the appeal under Article 14 that Pretty experienced discrimination on the ground of disability. However, it gave a justification that legalizing assisted suicide could lead to vulnerable people being manipulated into killing themselves.<sup>238</sup>

Though the application was rejected, the decision must be appreciated on the following three grounds.

a. Firstly, it did not say that it is not contrary to the European Convention for the State to prohibit assistance in suicide, nor did it say that it would be contrary to the European Convention for a State to make it lawful. If the State deems fit, it may legalize it, and, in this way, it will not be discriminatory towards incompetent persons.

b. Secondly, there is a high-level judicial approval of the argument that if suicide is permitted and not punishable, then logically, it should follow that those who, through their disability, are unable to commit suicide should be allowed to be killed by another.

c. Thirdly, the European Court of Human Rights has acknowledged that a competent person has the right to reject life-saving treatment and that this right is protected by the European Convention on Human Rights.

---

<sup>234</sup> European Convention on Human Rights (ECHR), art. 2.

<sup>235</sup> *Id.*, art. 3

<sup>236</sup> *Id.*, art. 8

<sup>237</sup> *Id.*, art. 9

<sup>238</sup> *Id.*, art. 14

The case added a new longstanding debate on assisted suicide and euthanasia. In English law, a patient can refuse to take any treatment, even if the refusal may lead to the death of the person but assistance in committing suicide is still an offence.

The second interesting case is *Haas v. Switzerland*.<sup>239</sup> In this case, a man claimed a violation of his rights under article 8 of ECHR as he could not procure medications to end his life. He was suffering from bipolar affective disorder and claimed that he could no longer lead a life with dignity. In Switzerland, assisted suicide is legal. However, the Court held that states must protect vulnerable individuals and, to that end, having strict rules for assisted suicide is not violative of Article 8.

The next case in the series is *Koch v. Germany*.<sup>240</sup> In this case, the applicant's wife had requested the German authorities for procurement of lethal dose of a medicine to end her life. She had been paralyzed in all four limbs and needed mechanical ventilation and continuous medical care for survival. She considered such a life undignified and wanted to end it. However, her request was denied by the authorities. Later, she was moved to Switzerland, where, with the help of Dignitas (a Swiss non-profit organization that assists patients seeking assisted suicide), she ended her life under the provisions of assisted suicide. Her husband claimed a violation of Article 8 in ECtHR. The ECtHR, while not commenting on the substantive aspect of Article 8, concluded that the German authorities violated the procedural aspect of Article 8 and ordered the respondent State to pay the applicant 2,500 euros as pecuniary damage and 26,736.25 euros as costs and expenses.

In each of the three instances, the question of how to interpret the right to life as a human right was brought up, and each party argued for the need to uphold human dignity in all circumstances and give individuals the freedom to make their own decisions. The researcher thinks that protecting and upholding human rights on a global scale should be the primary goal of human rights legislation, and quality rather than quantity of life should be considered. The "Right to live with Dignity" is grossly violated if they fail to do so. The researcher also thinks that while deciding whether to perform euthanasia, the human rights provision should be interpreted liberally,

---

<sup>239</sup> *Haas v. Switzerland*, Application no. 31322/07, 20 January 2011 (Chamber judgment).

<sup>240</sup> *Koch v. Germany*, Application no. 497/09, 19 July 2012 (Chamber judgment)

generously, and practically. Therefore, it would not be inappropriate to examine the utilitarian theory of jurisprudence while interpreting the right to a dignified life to support these views.

### **3.5 Arguments in Favour of Legalizing Euthanasia**

The issue of euthanasia has been debated worldwide and has been a subject of heated debate for a long time. Many advanced humanitarian grounds have argued that persons who have lost their dignity due to a terrible sickness deserve pity and should be permitted to die peacefully if they so want. If the victims have no chance of survival, they are kept alive artificially by ventilators or life support systems, and this agony can sometimes last for years. Is there any value to existence in such circumstances? When life becomes a burden and causes excruciating agony, a decision must be made whether to live or die. Death would be a compassionate respite from suffering and the loss of human dignity. Now is the moment for a revolutionary shift in our legal system, and such progressive measures that allow euthanasia while removing the fear of its misuse must be integrated into our legal system.<sup>241</sup>

#### **3.5.1 Argument from compassion**

The argument of compassion is one of the earliest rationales of euthanasia. We must, as a human society, provide a legal mechanism for someone to end their misery by taking their lives because common humanity requires that we endeavour to lessen the suffering of others.<sup>242</sup> One of the main justifications for voluntary euthanasia, according to Reverend professor Paul Badham, is compassion for those who suffer near the end of their lives.<sup>243</sup> The foundation of the euthanasia laws in the Netherlands and Belgium is the argument from compassion.

#### **3.5.2 Dying with dignity**

Many patients who are chronically unwell or in a persistent vegetative state do not want to be a burden on their family members. Euthanasia can be viewed as a means of

---

<sup>241</sup> Henk ten Have (ed.), *The Encyclopedia of Global Bioethics*, “*Raphael Cohen Almagor, right to die*” Center for Healthcare Ethics, Duquesne University of Pittsburgh, PA, USA University of Hull, Hull, Springer-Kluwer Publisher, (2015)

<sup>242</sup> The words of Lord Joffe were taken from <http://www.dignityindying.org.uk/patron/lord-joel-joffe-cbe/> (last visited on August 23,2022)

<sup>243</sup> Rev.Paul Badham’s words can be found on the dignity in dying. available at-: <http://www.dignityindying.org.uk/blog/Christian-case-assisted-dying/>. (last visited on August 23,2022)



upholding the "Right to life" by respecting the "Right to die" in a dignified manner.<sup>244</sup> It is often argued in favour of physician-assisted suicide or voluntary active euthanasia that people have the right to die with dignity just as they have the right to live in dignity.

Some medical illnesses are so excruciatingly painful and needlessly protracted that the ability of the medical community to provide palliative care to lessen suffering is exceeded. The sufferers lose the majority of their dignity as a result of unrelenting terminal pain. Additionally, modern medical research and practice can extend human life in ways that have never been done before. It might be a prolonging that all too frequently entails a concurrent prolongation of needless misery.

Enormous pressure is placed upon families and the health care system to spend time and costly resources on patients with little or no chance of recovery who are irrevocably destined to die. It is, so the argument goes, not inhumane or irreverent to assist such patients – particularly if they clearly and repeatedly so request to bring their lives to an end.<sup>245</sup>

### 3.5.3 Economic Factor

Euthanasia or Physician-Assisted Suicide help patient reduce medical costs. A lot of money is needed to pay for medical bills for patients who are admitted to the hospital. Euthanasia can help the patient with no way to cure save medical costs. An act of euthanasia lessens the financial burden on the family to which the person belongs. Families often need to take extraordinary measures for a terminally ill patient who lives behind severe financial constraints. A survey in Oregon concludes that 66 per cent of the patients request euthanasia because they do not want to burden their families. So, euthanasia can help patients reduce medical costs.<sup>246</sup>

In the Common Cause judgement, Justice A.K. Sikri explains the economics of euthanasia by stating that given the widespread poverty in a nation like India, where the majority of the population cannot afford health services, should they be

---

<sup>244</sup> Suresh Bada Math, Santosh K Chaturvedi, "Euthanasia: Right to Life vs Right to Die" 136(6), *The Indian Journal of Medical Research*, 899-902, (2012).

<sup>245</sup> Editorial, we have a right to die with dignity. The medical profession has a duty to assist, *The conversation* October 25, 2016 available at- <https://theconversation.com/we-have-a-right-to-die-with-dignity-the-medical-profession-has-a-duty-to-assist-67574/> (last visited on August 23, 2022)

<sup>246</sup> Ezekiel J Emanuel, Margaret, P. Battin, "What Are the Potential Cost Savings from Legalizing Physician-Assisted Suicide?" 339(3), *The New England Journal of Medicine*, 167-172, (1998).

compelled to spend more than they can afford on medical treatment, forcing them to sell their homes, possessions, and other assets. Second, should patients who have no hope of recovery utilize a large portion of the limited medical facilities that are available? Additionally, Justice Sikri argued that passive euthanasia might be morally acceptable when the individual is in a persistent vegetative state.<sup>247</sup>

#### **3.5.4 Right of self-determination and individual autonomy**

To be autonomous means to rule oneself and not be ruled by anyone else.<sup>248</sup> Self-autonomy is closely related to individuals' freedom of will, actions, thoughts and beliefs.<sup>249</sup> Individual autonomy, sometimes known as the right to self-determination, is the recognition of each person as an independent human being, especially in relation to his or her freedom to decide how to conduct his or her life.<sup>250</sup> If we have complete control over every other element of our lives, such as where we live, how we spend our money, and whom we choose to marry, then we do certainly have the right to terminate our own lives whenever and however we see fit.<sup>251</sup>

The notion of autonomy has been asserted by some medical ethics experts to be the single most significant principle in all medical decision-making. The guiding premise of contemporary health care is autonomy, which promotes patient choice. At the centre, the patient should be in charge of selecting and directing the course of treatment.<sup>252</sup>

According to philosopher John Harris, the value of our being comes from the life we choose for ourselves. He claims that autonomy—the capacity and liberty to make the decisions that shape our lives—is essential to ensuring that each life has its own unique value.<sup>253</sup> The Victorian poem *Invictus*, "I am the captain of my soul," which has been embraced by a number of well-known politicians, including Nelson

---

<sup>247</sup> *Common Cause (A Registered Society) v. Union of India*, (2018) 5 SCC 1

<sup>248</sup> Tony Hope, Julian Savulescu, et. al., *Medical Ethics and Law: The Core Curriculum*, (Churchill Livingstone, 1st edn., 2003).

<sup>249</sup> Gerald Dworkin, *The Theory and Practice of Autonomy*, (Cambridge University Press, 1988).

<sup>250</sup> John Rawls, *Political liberalism*, (Columbia University Press, Expanded edn., 2005).

<sup>251</sup> The words of Terry Pratchett are taken from the Dignity in Dying website: available at <http://www.dignityindying.org.uk/about-us/patrons> (last visited on August 23, 2022)

<sup>252</sup> *Ibid.*

<sup>253</sup> John Harris, "Consent and end of life decisions" 29(1), *Journal of medical ethics*, 10-15, (2003).

Mandela, best captures this attitude of self-mastery. Many in our society identify with these noble thoughts.<sup>254</sup>

According to John Stuart Mill, the only legitimate reason to use force against a member of a civilised society is to protect others from danger. The individual is sovereign over himself, over his body, and over his thoughts.<sup>255</sup>

Being a decision-making agent, a man has the right to decide when life is to be ended, or he may desire to discontinue treatment to allow death to come, and we have to honour his decision as a rational choice.<sup>256</sup> Ronald Dworkin contends that everyone should place a high priority on having individual control over the way and when we pass away. Death has dominion because it is not only the beginning of nothing but also the end of everything, and the emphasis we place on dying with dignity in our thinking and education highlights how crucial it is that life ends in an appropriate manner commensurate with the way we want to have lived.<sup>257</sup> He contends that we fear about dying in indignity in the same way that we may be concerned about how a play's final scene or a poem's final stanza will affect the entire creative production.<sup>258</sup>

Desmond Tutu, the well-known archbishop from South Africa and a campaigner against apartheid, declared that such regulations are an insult to the affected parties and their families. He denounced the treatment of his old friend Nelson Mandela, who was kept alive through multiple gruelling hospitalizations and made to endure a photo op with politicians just before he passed away at the age of 95, as dishonourable.<sup>259</sup> Modern medical and legal practice highly values respect for individual autonomy. The English High Court acknowledged that an individual patient could legally demand that life-sustaining treatment be discontinued in the landmark case of Miss B. Miss B, a 41-year-old social worker, experienced progressive paralysis from the neck down as a result of bleeding into the spinal cord. She was moved to an intensive care unit due

---

<sup>254</sup> Poetry Foundation, *Invictus* by William Ernest Henley, available at-

<https://www.poetryfoundation.org/poems/51642/invictus> (last visited on August 23,2022)

<sup>255</sup> John Stuart Mill, *On Liberty*, available at - <http://www.gutenberg.org/files/34901/34901-h/34901-h.htm/> (last visited on August 23,2022)

<sup>256</sup> Jacques P. Thiroux, *Ethics: Theory and Practice*,195 (Pearson Publication,11th edn.,2003).

<sup>257</sup> Ronald Dworkin, *Life's Dominion, An Argument About Abortion, Euthanasia, and Individual Freedom*, (Vintage Publication, Reprint ed, 1994).

<sup>258</sup> *Ibid.*

<sup>259</sup> Editorial, "Desmond Tutu: I want right to end my life through assisted dying", *the Guardian*, October 7,2016, available at - <http://www.theguardian.com/commentsisfree> (last visited on August 23,2022)

to her worsening breathing problems, and life support treatment with artificial ventilation was started. The attempts at treatment were unsuccessful, and Miss B remained reliant on a mechanical ventilator. Miss B constantly requested the medical staff attending to her to turn off the life support system so she may pass away. The case was referred to the High Court. In a ground-breaking precedent, the High Court held a portion of its sessions inside the intensive care unit so that the patient could provide personal testimony. The presiding judge, Dame Elizabeth Butler-Sloss, expressed her respect for Miss B's courage, willpower, and tenacity. Dame Elizabeth Butler-Sloss also came to the conclusion that the hospital had broken the law by continuing to treat her with ventilation against her desires even though she had the mental capacity to refuse treatment. The right of competent patients to refuse life-sustaining care has been confirmed by this judgement, which has had a significant impact.<sup>260</sup>

According to Lord Hoffman's clear explanation of the term autonomy in *Reeves v. Commissioner of Police*, every person is sovereign over himself and cannot be denied the freedom to engage in certain kinds of behaviour.<sup>261</sup> Autonomy has been legally protected when invoked for protective purposes. The modern tendency has been for courts and legislatures to promote the individual autonomy of competent persons. In *Schlendroff's case*,<sup>262</sup> patient autonomy was recognized as a patient's right to self-determination and signalled a shift away from medical paternalism. The supporters of euthanasia argue that death is a case of individual freedom; a man should be left free to decide death in his own way. Everybody should have a right to choose to end suffering and pain if they know that there is no way to cure it. When all hope has been lost, it is immoral to keep a person struggling for nothing. Both the victim and his fraternity endure long-term mental agony. Society has a duty to respect those who choose euthanasia and to recognize the rights of patients.

### **3.5.5 Encouraging organ donation**

It is possible to promote organ donation by allowing euthanasia for terminally ill people. This will benefit numerous organ failure patients who are awaiting transplants. Not only does euthanasia grant the terminally ill the right to die, but it

---

<sup>260</sup> *Re B (Adult: Refusal of Medical Treatment)* EWHC (2002) 2 AER 449.

<sup>261</sup> (1999) 3 WLR 363.

<sup>262</sup> *Schloendorff v. Society of New York Hospital*, (1914), 105 NE 952 (N.Y.C.A)

also grants the people awaiting donated organs the right to life. Many patients who pass away in hospitals every day whose organs can save the lives of others. Many such patients are in PVS for prolonged periods before, ultimately, their organs start to fail or get infected. There could potentially be a window of opportunity between a patient going into a vegetative state and death where the patient's relatives could have opted for active euthanasia and could have helped many patients requiring organ transplantation.<sup>263</sup>

In a California intensive care unit in late 2006, a 25-year-old man named Ruben Navarro had his life support removed. He had a progressing neurological condition and had experienced a cardiac and respiratory arrest outside of a hospital. He had suffered a serious hypoxic brain injury and the doctors intended to take him off the breathing machine and let him die. Ruben's mother had consented to his organ donation following his passing. When Ruben's life support was turned off, a transplant surgeon was present and instructed that a dose of sedatives and painkillers be administered to him. However, Mr Navarro didn't pass away swiftly enough to qualify for organ donation. In actuality, he passed away around eight hours after the life support systems were turned off. Following the incident, the surgeon engaged was accused of assaulting a dependent adult (though he was later acquitted).<sup>264</sup>

In the case of Kolavennu Venkatesh, the 25-year-old chess player from India with muscular dystrophy who was aware of his incurable genetic condition and wished to donate his organs to somebody who needed them before he passed away. His request for euthanasia was, however, denied by the Andhra Pradesh High Court. Venkatesh requested the right to die so he could give his life-saving organs, not to escape his degenerative muscular dystrophy. Unfortunately, the legislation only permits the harvesting of organs from patients who are brain-dead, and Venkatesh did not fit that category. But it's time for this regulation to be altered so that even terminally ill persons can donate their organs. However, this should only be permitted

---

<sup>263</sup> Dominic Wilkinson, Julian Savulescu, "Should we allow organ donation euthanasia? alternatives for maximizing the number and quality of organs for transplantation", 26(1), *Bioethics*, 32–48, (2012).

<sup>264</sup> Jesse McKinley "Surgeon Accused of Speeding a Death to Get Organ". *New York Time*, Feb. 27, 2008, Available at: <http://www.nytimes.com/2008/02/27/us/27transplant.html/> (last visited on August 15, 2022)

after making sure there are no hopes of recovery and that the donation was not forced.<sup>265</sup>

### 3.6 Arguments Against Legalizing Euthanasia

#### 3.6.1 Sanctity of life

The sanctity of life principle emphasizes that life ascends to the highest pedestal because it is holy, inviolable, and a gift from God, and it should be preserved in all circumstances, regardless of the quality of life. According to this notion, protection and respect for life begin at conception; as a result, respect for human life should be maintained from conception.<sup>266</sup> The fundamental and guiding basis of ethics and law throughout history has been the sanctity of life.<sup>267</sup> The phrase has become a crucial tenet of modern bioethics, particularly in discussions related to end-of-life care.<sup>268</sup> According to proponents of the sanctity of life, lives are sacred regardless of the level or type of pain, decline, dependency, or development they exhibit, regardless of the approaching death, the burden on others, and regardless of the subject's wishes to live or die. The sanctity of life position rejects any viewpoint that lets the value of a life change depending on its circumstances or condition.

#### 3.6.2 Doctor's role

Traditionally, ethical codes of doctors, from the days of Hippocrates till modern times, have opposed euthanasia. Even in the 21<sup>st</sup> century, many professional associations strictly oppose euthanasia and VAS (e.g., American Medical Association)<sup>269</sup> or take a neutral stand (e.g., British Medical association).<sup>270</sup> The sacred duty of a doctor is to protect and prolong life, not to hasten death. Again, they

---

<sup>265</sup> Editorial, "Venkatesh is gone, but his struggle lives", *Times of India*, December 18, 2004, available at- <https://timesofindia.indiatimes.com/india/venkatesh-is-gone-but-his-struggle-lives/articleshow/963064.cms//> (last visited on August 15, 2022)

<sup>266</sup> Sripada Venkata Joga Rao, *Medical ethics*, 37(Legalaxy Publication, Bangalore 1st edn.,2009).

<sup>267</sup> Anne J. Davis, "Dilemmas in practice: to make live or let die" 81(3), *The American Journal of Nursing*,582, (1981)

<sup>268</sup> Heike Baranzke, "Sanctity of life- a bioethical principle of right to life?" 15(3), *Ethical theory moral practice*,295-308, (2012).

<sup>269</sup> Louis Pojman, James Fieser, *Ethics: Discovering Right and Wrong*, (Cengage Learning Publisher, 8th edn., 2016).

<sup>270</sup> Jacques P. Thiroux, *Ethics: Theory and Practice*, 177-195(Pearson Publication,11th edn.,2003).

may argue that the purpose of medicine is to save life and if death is opted for, the very basis of medicine will be nullified."<sup>271</sup>

Given the Hippocratic oath and other considerations, healthcare practitioners can be reluctant to compromise their professional obligations. On the contrary, the physician does not intend to cause his patient's death with a criminal intention but tries to relieve him from prolonged pain and suffering either by withdrawing medical treatment or by administering the pain relieving drugs with the patient's consent which may shorten his life span. Hence as in euthanasia intention is not to cause death but to relieve the patient from his prolonged pain and suffering.<sup>272</sup>

### 3.6.3 Malafide intention

In a time of eroding morality and justice, it is possible for family members or other relatives to use euthanasia unjustly in order to gain access to the patient's assets. For example, a wealthy business tycoon who is terminally ill and is entirely dependent on the life support system, the relatives, in greed for property, pressure the doctor to terminate the artificial life support and that results in the death of the person. This problem was also brought up by the Supreme Court in a recent ruling.<sup>273</sup> The fear that bothers the opponents and the legislators is the possibility of abuse and misuse of euthanasia by relatives or medical professionals. Older people will be pushed into ending their lives by their families to avoid being a burden, and their attitude towards disabled people will worsen as their lives remain devalued as well as their contribution to society.<sup>274</sup> Does that mean we should not have laws because they may be misused? The misuse can be controlled by drafting well-crafted legislation and its effective interpretation and implementation.

There is a need for a fresh look at this issue, considering the rise in the number of patients requesting physician-assisted suicide.<sup>275</sup> Let the law be as stringent as

---

<sup>271</sup> Jacques P. Thiroux, *Ethics: Theory and Practice*, 177-195(Pearson Publication,11th edn.,2003).

<sup>272</sup> Sharmila Ghuge, *Legalizing Euthanasia: A Pedagogue's Perspective*,250 (Himalaya Publishing House Pvt. Ltd, 1st edn., 2015).

<sup>273</sup> Simon Steven, "Suicide never be the answer" 38(1753), *Community Care*, Sutton,10, (2009).

<sup>274</sup> *Ibid.*

<sup>275</sup> *Namit Sharma v. Union of India*, (2013) 1 SCC 745

possible, but first, let there be a law.<sup>276</sup> Legislation must be passed urgently to shield patients and doctors who treat terminally ill patients from needless litigation.

### 3.6.4 Palliative care

Good palliative care can make euthanasia unnecessary. It can be an acceptable option for terminally ill patients who do not wish to accept medical care which cannot cure the condition but rather prolongs the painful survival. Unawareness of alternatives is the key driver behind many pleas for euthanasia.<sup>277</sup> Patients who understand that palliative care can reduce their symptoms may no longer desire euthanasia. In the precious final days, weeks, and months that may be left, such care focuses on the person's wellbeing and life experience.

However, good quality palliative care is not cheap. Over 450,000 people in the UK require quality palliative care treatments annually, and over 90,000 do not receive it, according to a reliable, independent evaluation published in 2011. Unfortunately, it is extremely difficult to provide high-quality palliative care in developing nations with limited health care budgets. In India, the field of palliative care is still in its infancy. Palliative care centres in India are woefully inadequate and are located only in major cities, whereas the number of terminally ill patients in India is millions.<sup>278</sup>

### 3.6.5 Commercialization of health care

Passive euthanasia occurs unofficially in a lot of hospitals across the country when financially strapped patients and their families have to decline or withdraw from treatment due to the exorbitant costs associated with keeping them alive. There is a distinct possibility that if euthanasia is permitted, unscrupulous elements in the commercial healthcare industry will execute many elderly and disabled Indians for a pittance. This was emphasized in the Supreme Court ruling in Aruna Shanbaug's case.<sup>279</sup>

---

<sup>276</sup> Kamayani Bali Mahabal, "Dying with Dignity- A Human Right?" 2(4), *ICFAI Journal of Healthcare Law*, 28-36, (2004).

<sup>277</sup> Z Zyllicz, I.G. Finlay, "Euthanasia, and palliative care: reflections from The Netherlands and the UK" 92(7), *Journal of the Royal Society of Medicine*, 370-373, (1999).

<sup>278</sup> Elizabeth McDermott, Lucy Selman, et. al., "Hospice and palliative care in India, a multidimensional review of services and experience" 35(6), *Journal of Pain Symptom Management*, 583-593, (2008).

<sup>279</sup> Roop Gursahani, "Life and death after Aruna Shanbaug" 8(2), *Indian Journal of Medical Ethics*, 68-69, (2011).



### 3.6.6 Mental illness

Suicidal thoughts and actions are frequently observed in people with depression, schizophrenia, and substance misuse. It has also been reported to occur in individuals with obsessive-compulsive disorder. Therefore, determining the mental state of the person asking for euthanasia is crucial. In conventional teaching, attempting suicide is seen as a call for help or support and is treated as a mental health emergency. As a result, suicide attempts are seen as a sign of mental illness. Several recommendations have been developed for the psychiatric management of suicidal patients.<sup>280</sup>

It can be concluded from the discussion in this chapter that human dignity forms the bedrock of human rights. The Supreme court of India has also concluded that the right to life as guaranteed in Article 21 of the Constitution refers to a life with dignity and not mere animal existence. The Supreme Court has also held that the right to life with dignity extends to the very end of life and therefore, includes the right to die with dignity. The legal position in India vis a vis the right to die with dignity will be further discussed in detail in Chapter 4. Strong arguments can be made for and against euthanasia as a means to ensure the right to a dignified death. However, it becomes apparent from the discussion in this chapter that every individual must have the freedom to choose the way they wish to approach their final days, more so in case of people afflicted with incurable terminal illnesses. If they decide that a painless, premature death through euthanasia will give them a dignified exit, then the government, the judiciary and the society at large have the moral responsibility to ensure that such decisions are respected. It is incumbent upon the government and judiciary to provide the legal framework to uphold the right to die with dignity with adequate mechanisms to protect the vulnerable population and the healthcare providers from exploitation and frivolous lawsuits.

---

<sup>280</sup> The Law Commission of India, “196th Report on Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners)”, (March, 2006).

