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'DEATH IS INEVITABLE, A BAD DEATH IS NOT': ISN'T THE TIME RIPE FOR INDIAN LAWS TO GRANT MERCY?

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"Our modern doctor is the sworn enemy of death, a specialist waging a battle on the medical arena. To lose a patient is to fail. All effort is organised and centered around the science of saving life. In this all-out war, the human needs of the individual patient or family may often be forgotten or ignored".......**Judith Ahronheim and Doron Weber**[1]

On the evening of 27th November, 1973, Aruna, a staff nurse working in King Edward Memorial Hospital, Mumbai was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day on 28th November, 1973 at 7.45 a.m. a cleaner found her lying on the floor with blood all over in an unconscious condition. Due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. After this brutal act, Aruna remained in persistent vegetative state (PVS) and virtually a dead person and had no state of awareness and her brain became virtually dead. She could neither see, hear anything nor could she express herself or communicate in any manner whatsoever. She became featherweight and her brittle bones could break if her hand or leg would awkwardly get caught, even accidentally under her lighter body. Her wrists were twisted inwards. Her teeth had decayed causing her immense pain.

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[1] As quoted in Judith Ahroheim and Doron Weber, *Final Passages: Positive Choices for the Dying and their loved ones* 18(Simon & Schuster, New York, 1993).

She could only be given mashed food on which she survived. That mashed food was put in her mouth and she was not able to chew or taste any food. She was not even aware that food has been put in her mouth. However, Aruna was virtually a skeleton. Her excreta and the urine used to be discharged on the bed itself. Once in a while she was cleaned up but again she used to go back into the same sub-human condition.[2]

In the year 2009, Ms. Pinki Virani filed a writ petition praying to stop KEM Hospital from feeding her and let her die peacefully as Aruna cannot be said to be a living person and it is only on account of mashed food which is put into her mouth that there is a facade of life which was totally devoid of any human element. The petition stated that there was not the slightest possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital, Mumbai like a dead animal and this has been the position for the last 36 years and now Aruna is around 60 years of age.[3]

The Supreme Court could have dismissed this petition on the short ground that under Article 32 of the Constitution of India, the petitioner has to prove violation of a fundamental right, and it has been held by the Constitution Bench decision of this Court in Gian Kaur v. State of Punjab[4], that the right to life guaranteed by Article 21 of the Constitution does not include the right to die. Hence the petitioner has not shown violation of any of her fundamental rights. However, in view of the importance of the issues involved the Supreme Court decided to go deeper into the merits of the case. The court held *"Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. This Court, in this case, is facing the same issue, and we feel like a ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels before us"*[5]

On 7th March 2011, in a landmark Judgment,[6] the Supreme Court, the highest court of the Indian land has itself admitted that Euthanasia may fall within the concept of right to live. The Court

[2] *Aruna Ramchandra Shanbaug v. Union of India & Ors,* AIR 2011 SC 115.
[3] *Ibid.*
[4] 1996(2) SCC 648.
[5] *Aruna Ramchandra Shanbaug v. Union of India & Ors,* AIR 2011 SC 115.
[6] *Ibid.*

allowed passive euthanasia on Aruna but laid down procedure and certain safeguards to be followed before granting euthanasia and reiterated that same would be followed all over India until Parliament makes legislation on this subject.

Though the Supreme Court held that they feel 'like a ship in an uncharted sea' on the question of euthanasia, but history is evidence to the fact that euthanasia is not a new concept rather has been prevalent from the ancient times.

Attitude towards Euthanasia: Historical Witness

Euthanasia was prevalent right from the **ancient times** even before the man could be civilized. It has been observed that it was a Tribal Custom that the people suffering from incurable pain or one facing distressing old age were killed on the grounds of sympathy and to preserve the freedom of an individual. Self willed death was prevalent during early times. The *Eskimo* also practiced euthanasia. In *Sparta Tribe*, it was the common practice for each newborn child to be examined for signs of disability or sickliness which, if found, led to his death. This practice was regarded as a way to protect the society from unnecessary burden or as a way to save the person from the burden of existence.[7]

But during the **middle ages**, with the advent of the Christian religion there was a major downfall towards the concept of suicide and euthanasia on moral grounds. Anyone who took his own life was denied Christian burial. Not only were the victim's goods and property confiscated by civil authorities, the body received an ignominious burial. There were no exceptions for anyone.[8] During the **Renaissance period**, there was intense learning and scientific discovery. In 1516,*Sir Thomas More* was the first prominent Christian to recommend euthanasia in his book *Utopia,* where the Utopian priests encourage euthanasia when a patient was terminally ill and suffering pain but this could only be done if the patient consented.[9] By **The Age of Reason (eighteenth century)**, a few members of the medical profession had begun speaking about their responsibility to the patient. They stressed the importance of a natural and humane way of dying. In fact, by 1798, six of the thirteen colonies no longer mandated legal penalties for people who

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[7]Derek Humphry and Ann Wickett, *The Right to Die: Understanding Euthanasia* 2 (Harper and Row, New York, 1986)
[8]*Id.*, p. 3-4.
[9]*Id.*,p.7-8.

attempted suicide.[10] In 1828, a criminal legislation was outlawed under the guidance of *Dudley Field* which extended assistance to suicide.Until the end of the **nineteenth century**, euthanasia was regarded as a peaceful death and the art of its accomplishment.[11]

During the **twentieth century**, the efforts of legalization of euthanasia began in the USA in the first years of the 20th century. *The New York State Medical Association* recommended gentle and easy death. In 1920, two German professors published a small book with the title *Releasingthe destruction of worthless animals* which advocated the killing of people whose lives were devoid of value. This book was the base of involuntary euthanasia. The writings laid a foundation for euthanasia to be performed even if the patient did not express his/her desire. [12]

During**the Nazi Era**,*Adolf Hitler*implemented mercy killing generally. He administered it for disabled kids and worthless beings. The Nazis destroyed life that was unworthy of life as they termed it not as an act of mercy but as part of a strategy to murder that part of the population which was least able to defend itself. There was mass killing without consent of the individual. People were killed indiscriminately. The psychologically sick, people suffering from epilepsy, persistent intellect disorders, cerebral lumps etc. were also euthanized. The physicians were forced to only abide with the state rules keeping their Hippocratic Oath aside.[13]

During the **year of 1952** a requisition was made to the *U N Commission* for human rights by the British and American Euthanasia Societies. They petitioned to incorporate the right to die in the right to live for terminally ill patients so that they can euthanatize them. They stated that the right of mercy killing is concurrent with right of freedom envisaged in the UN declaration of human rights. [14]In 1978, Jean's Way was published in England by *Derek Humphry,* describing how he helped his terminally ill wife to die. The *Hemlock Society* was founded in 1980 in Santa Monica, California by *Derek Humphry*, that advocated legal change and distributed how to die information. This launched the campaign for assisted dying in America. Then started the era of history of Euthanasia becoming personal.

[10] Jennifer Fecio MaDougall and Martha Gorman, *Euthanasia: Contemporary World Issues*, 5(ABCCLIO, California, 2008).
[11]Sachindra Shetye Medha, *Understanding euthanasia a critical study of euthanasia from social and legal perspective* (2016) (Unpublished Ph.D, dissertation, Shri Jagdishprasad Jhabarmal Tibarewala University).
[12]*Ibid.*
[13]Derek Humphry and Ann Wickett, *The Right to Die: Understanding Euthanasia* 20-25 (Harper and Row, New York, 1986).
[14]*Ibid.*

The History of Euthanasia Becomes Personal

When people read a newspaper article about a horrific automobile accident or watch a news report about someone struck with a terminal illness, they may feel a sense of relief that such tragedy has not visited them or their loved ones. Although they do not wish it on the unfortunate victim, they may still think, "I am glad it's not me or someone in my family".[15]

Unfortunately, when such tragedies occur, they change the lives of all involved- for the worse and forever. For *Karen Ann Quinlan, Nancy Cruzan, Claire Conroy and Terri Schiavo* in the United States, *Aruna* in India and many more, tragedy struck. For their families, the world tilted and they were left facing a loved one lying in a hospital bed, heart rending decisions, and seemingly endless court battles.

Euthanasia: Diversified Categories

Clearly, it was not only United States but other countries of the world that were grappling with the concept of Euthanasia. As a combination of Greek words 'Eu'(good) and 'thanatos'(death), that started with a simple meaning of 'good death', progressed and took different shapes and kinds, the nations of the world were forced to deliberate upon the issue. Euthanasia is commonly used to refer to the act of deliberately inducing the death of a person who is in severe pain as a result of a terminal illness. Euthanasia may be defined as "active", where there is a deliberate act to end an incurably or terminally ill person's life, or "passive", which can be defined as the deliberate withholding or withdrawing of life-prolonging medical treatment in respect of such a person. Considering the various types of Euthanasia like Active Voluntary Euthanasia[16], Passive Voluntary Euthanasia[17], Active Non-voluntary Euthanasia[18], Passive Non-voluntary

[15] Supra Note 10, p. 6.

[16] It is a direct act of ending someone's life, done at the direct voluntary consent of a clearly competent person whose life is ended. It takes place when medical professionals or someone else deliberately take specific steps to execute something that will eventually cause the patient's death, normally achieved through by giving the patient an overdose of drugs such as pain-killers or a lethal injection as they believe that they are easing the suffering of the patient. The individual who is killed, himself requests for it. A clearly competent and lucid individual makes a deliberate and permanent request to be helped to die.

[17] In this type of euthanasia, a patient may make the decision himself that medical treatment that he is getting is making his life more unpleasant than the disease and he would rather end the treatment and go home. It involves withholding of certain action that would have saved the patient's life. For example, a terminally ill patient who is conscious and is competent can take an informed decision to die a natural death and direct that he or she be not given medical treatment or life extending drugs which may merely prolong life.

[18] In this type of euthanasia, there is a direct act of ending someone's life done without the direct voluntary consent of a person as they are not competent or unable to give consent. An individual straight forwardly and intentionally causes the patient's death. The demise of the patient is caused by a deliberate act.The patient himself cannot make a decision or cannot make their wishes known due to being in a coma or permanent vegetative state or being senile or being too young or having severe mental problem or being severely brain damaged. It will take place in extreme circumstances, in which it might be reasonable to judge that the person would prefer death in

Euthanasia[19], controversies and discussions have loomed large on the world scenario. Active voluntary euthanasia occurs where there is an intentional taking of life by a third party to relieve a person's suffering in response to that person's request.In assisted suicide, a third person helps a patient to kill her or himself but does not administer any fatal treatment; where the third person is a medical practitioner, this is commonly referred to as doctor-assisted suicide. As *Hiley* observes, there is no "bright dividing line" between active voluntary euthanasia, assisted suicide and doctor-assisted suicide;the distinction is a matter of degree.[20]

Euthanasia: International Standpoint

Passive Voluntary and Non-voluntary Euthanasia i.e. the deliberate withholding or withdrawing of life-prolonging medical treatment either at the request of the patient, or in circumstances where such treatment is no longer considered to be in the best interests of the patient, has more or less become an established part of medical practice and is relatively uncontroversial in many countries of the world. The Netherlands[21] and Belgium[22] have legislated for active voluntary

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comparison to the only alternative of existence at hand. The decision is to be taken in the best interest of the patient by the family or care taker of the patient.

[19]It is a type of euthanasia in which some action that could have saved a person in suffering who is not competent or unable to give consent is not able to take or withdraw to end their suffering and life. Demise of the patient is caused because of omission of acts that are to be performed. In this method of termination of life, the life givers remain as silent spectators of death. There is non performance of acts like not treating the patient with medication when required, in order to cause death. It can be also done by removing the life supporters of the patient with a deliberate intention of death.

[20]Lorana Bartels & Margaret Otlowski, "A Right to Die? Euthanasia and the law in Australia", 17 *JLM* 532(2010).

[21]Netherlands was the first country to legalise Euthanasia. The societal debate about euthanasia in the Netherlands was triggered in 1973 by the Postma case in which a physician helped her dying mother end her own life following repeated and explicit requests for euthanasia. The physician eventually received a short, suspended sentence. While the court upheld that she did commit murder, it offered an opening for regulating euthanasia by acknowledging that a physician does not always have to keep a patient alive against his or her will when faced with pointless suffering. This case reflected a wave of awareness among many young medical professionals about the limits of medical care and patients self determination. Dutch governing coalition occurred, and in 2001, the parliament decided that euthanasia should be legalized. On April 1st, 2002, the Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2001came into effect to regulate the ending of life by a physician at the request of a patient who was suffering unbearably without hope of relief. They require a physician to assess that: 1) The patient's request is voluntary and well-considered; 2) The patient's suffering is unbearable and hopeless; 3) The patient is informed about his situation and prospects; 4) There are no reasonable alternatives; 5) Another independent physician should be consulted and 6) The termination of life should be performed with due medical care and attention. For more information, see Judith A.C. Reitjens, Paul J. Van der Maas et. al., "Two Decades of Research on Euthanasia from the Netherlands" 6(3) *Journal of Bioethical Inquiry* 271(2009).

[22]The Belgium parliament legalised euthanasia on 28 May, 2002. Belgium permits only voluntary euthanasia. The patient must be adult and in a futile medical condition of constant and unbearable physical and mental suffering that cannot be alleviated. His request must be voluntary, well considered and repeated. It must be confirmed by two doctors. In December 2013, the Belgian Senate voted in favour of extending its euthanasia law to terminally ill children. Conditions imposed on children seeking euthanasia are that: 1) the patient must be conscious of their decision and understand the meaning of euthanasia; 2) the request must have been approved by the child's parents and medical team; 3) their illness must be terminal and 4) they must be in great pain, with no available treatment to alleviate their distress.

euthanasia under certain conditions; and in the United States, the States of Oregon[23] and Washington[24] have law permitting assisted suicide, and the laws in Switzerland[25] are permissive of assisted suicide, provided that the person assisting is acting altruistically and not out of self-interest.

Examining Euthanasia: India's Take

As most of the countries of the world have accepted and established passive euthanasia as part of medical practice, but India is still grappling and struggling with its legislation. A draft bill – Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill uploaded by India's Union Health Ministry on 9 May 2016 for public comments, on passive non-voluntary euthanasia withholding medical treatment to keep a patient alive, has once again stroke a debate over right to life and right to die with dignity.

The Law Commission of India in its *196th Report* on *Medical Treatment to Terminally ill Patients (Protection to Patients and Medical Practitioners), 2006*[26] had in its opening remarks clarified in terms that the Commission was not dealing with "euthanasia" or "assisted suicide" which are unlawful but the Commission was dealing with a different matter, i.e., "withholding life-support measures to patients terminally ill, such withdrawal is treated as lawful". The

[23]The first instance of legal sanction to euthanasia took place in Oregon, a northwestern state in the United States. In 1994, the state adopted the Oregon Death with Dignity Act that allowed people who had been diagnosed with terminal illness and had six months to live, to take a lethal dose of prescribed medication and die voluntarily. Since the passage of the Act, 401 people have adopted this measure, most of them over 80 years of age and suffering from cancer. In 2006, the United States Supreme Court upheld the law despite President Bush's opposition. The provision of Death with Dignity Act deserves special attention as the Act was first of its kind to be enacted in modern times. It is also to be noted that it was a citizen's initiative that legalized Physician Assisted Suicide in Oregon. It allows terminally-ill patients to obtain a prescription for lethal medication from an Oregon physician. Euthanasia, in which a physician directly administers a lethal medication is not permitted. Patients eligible to use the Act must: 1) be 18 years of age or older; 2) be an Oregon resident; 3) be capable of making and communicating health-care decisions; 4) have a terminal illness within 6 months to live and5) voluntarily request a prescription. The patient must make one written and two verbal requests (separated by at least 15 days) of their physician. The prescribing physician and a consultant physician are required to confirm the terminal diagnosis and prognosis, determine that the patient is capable and acting voluntarily, and refer the patient for counseling if either believes that the patient's judgment is impaired by a psychiatric or psychological disorder. The prescribing physician must also inform the patient of feasible alternatives, such as comfort care, hospice care and pain control options. However, the lethal injection must be administered by the patient himself and physicians are prohibited from administering it. The law mandates that the Oregon Health Division, monitor the Act's implementation. To be in legal compliance with the law, physicians are required to report the writing of all prescription for lethal medications to the Health Division.

[24] Washington also allowed the practice of physician assisted death in the year 2008 on the lines of the Oregon Sate by the name of Washington Death with Dignity Act, 2008

[25]Euthanasia is legal in Switzerland. Swiss laws allow euthanasia, as long as the recipient gives consent and participates in administering the drug or substance which will lead to their death. This law was passed in 1942 and allows for euthanasia except in circumstances where the recipient does not give consent or in cases where motives for committing euthanasia are selfish. After euthanasia is administered, there may be a police inquiry, which is usually procedural since euthanasia is allowed under law. The Swiss laws also prohibit non-voluntary active euthanasia; for more information, see Undergoing Euthanasia in Switzerland, available at: www.lawteacher.net/free-law-essays/medical-law/undergoing -euthanasia-in-switzerland-medical-law.php (Visited on April 15, 2016).

[26] Law Commission of India, 196th Report on Medical Treatment to terminally ill patients (Protection of patients and Medical Practitioners) (March, 2006).

Commission laid down that there is need to have a law to protect patients who are terminally ill, when they take decisions to refuse medical treatment including artificial nutrition and hydration, so that they may not be considered guilty of the offence of 'attempt to commit suicide' under section 309 of the Indian Penal Code and it is also necessary to protect doctors who obey them Such actions of doctors must be declared by statute to be 'lawful' in order to protect doctors and those who act under their directions if they are hauled up for the offence of 'abetment of suicide' under section 306of the Indian Penal Code, 1860 (IPC), or for the offence of culpable homicide not amounting to murder under section 299 IPC.[27]

After the *196th Report of the Law Commission*, the bill was for the first time discussed in Ministry of Health and Family Welfare in the year 2006. After the discussion, the Ministry opted not to propose any bill on euthanasia.

Thereafter the Law Commission of India in the year 2008 vide its *210th Report of "Humanisation and Decriminalisation of Attempt to Suicide",* had recommended the repeal of section 309 from the statute book of IPC stating that those who attempt suicide on account of mental disorders require psychiatric treatment and not confinement in the prison cells where their conditionis bound to worsen leading to further mental derangement. The Law Commission reached this conclusion after India became witness to various legal battles in the High Courts[28] and Supreme Court[29] on the question of constitutional validity of section 309 and finally in 1996[30] the Supreme Court laying that that 'Right to Life' as construed under Article 21 of the Constitution does not include 'Right to Die'.

India continued to loom under section 299, 300, 302, 92, 309 and 306 of the IPC where euthanasia remained unlawful and therefore any doctor who assists the patient in causing his death, will be liable to punishment under section 306 IPC and if the doctor himself causes the patient's death, then he will be liable to punishment under section 300(1) of the IPC.

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[27] *Ibid.*
[28] *Maruti Shripadi Dubai v. State of Maharashtra*, AIR 1986 BOMLR 589; *Chenna Jagadeeswar v. State of Andhra Pradesh*, AIR 1988 Cr.L.J. 549.
[29] *P. Rathinam v. Union of India*, AIR 1994 SC 1844.
[30] *Gian Kaur v. State of Punjab*, AIR 1996 SC 946.

In 2011, the Supreme Court ultimately allowed passive euthanasia even without any legislation[31]. It further directed that before granting Euthanasia, the High Court should decide to grant approval or not. Before doing so the Bench should seek the opinion of a Committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a Neurologist, one should be a Psychiatrist and the third a Physician. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient and in their absence his/her next friend and supply a copy of the report of the doctor's committee to them as soon as it is available.[32]The Supreme Court further reiterated that theState, relatives and in their absence his/her next friend) should be heard and after hearing them the High Court bench should give its verdict.[33]

In the aftermath of this case, the Law Commission of India, had to reconsider the matter and in August 2012, prepared its *241st Report* titled *"Passive Euthanasia-A Relook"*[34]. The question before the Commission was whether Parliament should make a law permitting passive euthanasia in the case of terminally ill patients - both competent to express the desire and incompetent to express the wish or to take an informed decision. If so, what should be the modalities of legislation? The Commission had a fresh look of the entire matter and reached the conclusion that a legislation on the subject is desirable. Such legislation while approving the passive euthanasia should introduce safeguards to be followed in the case of such patients who are not in a position to express their desire or give consent (incompetent patients).[35]

Thus, from the above account, the researcher concludes that our legal system does not recognize right to die in any of its forms, not even attempt to commit suicide. However, there are provisions in our penal law which provide certain defences on the grounds of consent or

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[31]*Aruna Ramchandra Shanbaug vs Union of India & Ors*, AIR 2011 SC 115.
[32]*Ibid.*
[33]*Ibid.*
[34]Law Commission of India, 241st Report on Passive Euthanasia-A Relook (August, 2012).
[35]*Ibid.*

benevolence. But these have limited application. Even the Supreme Court of India and the Law Commission have proposed the legalization of ‘withholding of life-support measures to terminally ill patients’, but have fallen short of proposing active voluntary euthanasia.The researchers further propagate to legislate for active voluntary euthanasia to the terminally ill patients based on the end-of-life issues that have existed for so many years.

End-of-life Issues: Problems, Controversies and Solutions

Law, medicine, theology and philosophy has provided wealth of literature to continue the debate on the legalization of active voluntary euthanasia. At the outset it seems that euthanasia debate is in many respects indeterminable and intractable: it is a controversial subject on which many people hold strong views. It is therefore unlikely that a resolution of the debate can ever be reached which will meet with universal approval. Rather, the question is which side of the debate has the more compelling arguments when measured against important criteria such as patient autonomy and safety and the proper functioning of the medical profession.

Self Determination versus irrational Suicide

The strongest argument in support of legalization of active voluntary euthanasia is based on the notion of individual autonomy or self determination. If these well established principles are taken to their logical conclusionthen the individuals have the right to control their body, they have the right to determine how and when they will die, provided this does not cause harm to others or interfere with their rights. A person who is suffering has the right to choose what should be done with his or her life.[36] He or she may choose to get treated or not. Life should only continue as long as person feels their life is worth living. In support of this argument, one can draw attention to the law of many countries, which permits a patient to induce an earlier death by refusing treatment (passive euthanasia), yet prohibits a patient from seeking active suicide. Indeed, many philosophers have argued that there is no morally relevant difference between passive and active euthanasia and that the current legal position which permits passive euthanasia but prohibit active euthanasia is fundamentally flawed.[37]

[36] Lorana Bartels & Margaret Otlowski, “A Right to Die? Euthanasia and the law in Australia”, 17 *JLM* 532 (2010).
[37] *Ibid.*

Whereas the individuals and organisations against granting euthanasia in India decry that Constitution of India vide Article 21 guarantees right to life only. Deciding upon the constitutional validity of section 306 (Suicide) and section 309 (Abetment to suicide), the Supreme Court of India has upheld the constitutional validity of these sections stating that right to life does not include right to die.[38] Moreover assisted suicide is argued to be an irrational end of life. *Harvey M. Chochiniv* and *Leonard Schwartz* in their study reiterated that physical problems such as pain, delirium and fatigue as well as social factors such as extent of emotional or family support, prior psychopathy and psychiatric history of a terminally ill patient impairs his rational thinking. Further more, the terminally ill patient's depression causes him to make irrational end of life decisions.[39]

The researchers support the views of *McKhann* who stated that suicide is sometimes a very rational choice which rest on two foundations: one, the desire to avoid unnecessary sufferings and second, the desire to exercise one's autonomy and self determination. He explained that the first is an essential reason for wishing to have an earlier and more comfortable death while the second provides the impetus for actually doing it or asking for it.[40] No doubt terminal illness may cause depression in the patient so as to impair rational thinking, but the consent of the suffering patient is to be considered only in case it is free. Moreover, the doctor or the team of doctors have to fulfill the wish only after proper verification and considering the mental state of the patient.

Is accepting active voluntary euthanasia stepping onto a 'Slippery Slope'?

Advocates of rejecting active voluntary euthanasia state that legalization of voluntary euthanasia logically entails non-voluntary and involuntary euthanasia. They invoke the Nazi atrocities in support of their contention that taking small steps on a slippery slope will result in wrongs of ever-increasing magnitudeleading to possibility of termination of lives no longer considered socially useful.[41]

The argument is quickly rejected on the basis that Nazi analogy is completely inapplicable to the contemporary notion of voluntary euthanasia as Nazi atrocities were based on the belief that

[38]*Gian Kaur v. State of Punjab*, AIR 1996 SC 946.
[39]JenniferFecio MaDougall and Martha Gorman, *Euthanasia: Contemporary World Issues*, 33(ABCCLIO, California, 2008).
[40] Charles F. McKhann, *A time to Die: The Place for Physical Assitance* 45-46 (Yale University Press, Connecticut, 1999).
[41] Y. Kamisar, "Some non-religious views Against Proposed Mercy-killing Legislation" 42 *Minn L Rev* 969(1958).

some lives were devoid of value and not worthy of being lived. It was neither compassionate nor based on voluntariness. But the present notion of euthanasia is completely distinct based on individual's choice which is the determining factor. It is submitted that there is a sufficient clear line to prevent the imposition of euthanasia on non-consenting patients. *Bartles* and *Otlowski*in their research have highlighted that experience in the Netherlands where voluntary euthanasia has been practiced for many years indicate that proper safeguards and caution would never invoke stepping on slippery slope. Moreover academic studies in Australia and other countries have focused the assumption that because euthanasia is presently prohibited, it doesn't occur, is a flawed premise.[42] Hence, absolute prohibition is not justified whereas legalization with appropriate safeguards and regulations is the need of the hour.

Is Hippocratic Oath and Palliative care based only on 'saving life' or it includes'improving life'and living a 'dignified life'?

"The bones in his chest were so frail that they fractured easily. His heart compressions were accompanied by a sickening crunch of broken ribs.....I left the room profoundly disturbed. I felt that not only the dying man, but I too had been violated by being forced to act in a way I found both personally and professionally intolerable. How could we repeatedly brutalize this poor man in the name of extending life? Could this possibly be what the Hippocratic Oath intended?.... **Timothy Quill**[43]

These words of Dr. Timothy Quill describe a situation in which he felt that medical care did more harm than good for an elderly ailing patient. It is argued that casting doctors into the role of administering euthanasia would undermine and compromise the objective of medical profession and destroy the trust and confidence essential for the doctor-patient relationship. Moreover, it will imperil the medical profession if doctors are permitted to assist patients to die.

It is submitted that the purpose of medical profession is not only to save lives of people who would have died otherwise, using the advanced technology but using technological innovations to improve life. Simply prolonging the life of the patient by placing the patient on the ventilator or administering antibiotics to ward of infections not giving quality life but using technology for

[42]Supra Note 20.
[43] Timothy Quill, *Death and Dignity: Making Choices and Taking Charge*, 35-36 (W.W. Norton, New York, 1993).

an older person who has been shut on for years due to lack of mobility, a hip replacement can mean the end of heartfelt wish to die.[44] Hence, the principle is to add life to years rather than years to life with a good quality palliative care. The intention is to provide care when cure is not possible by low cost methods. The expectation of society is cure from the health professionals, but the role of medical professionals is to provide care. When no cure is possible, palliative and rehabilitative care comes to the rescue of the patient and the family. If a person is given the right care, in the right environment, there should be noreason why they are unable to have a dignified and painless natural death. Palliative care actually provides death with dignity and a death considered good by the patient and the care givers.[45]

The assertion that doctor participation in assisted suicide results in erosion of trust in medical profession has been rejected by experience in the Netherlands. Rather doctor assisted death in exceptional circumstances in response to unrelievable suffering is consistent with professional integrity and the basis duties and norms of medicine.[46]

It might be acceptable if end-of-life care was worth the money, but it’s objectively not. Patients who are terminally ill or those who suffer from incurable diseases can choose to get medical attention but that would be eventually futile since the person will not be saved. One would simply prolong the life of suffering and pain while spending a lot of money. There are thousands of cases where a family has gone bankrupt to ensure medical care for a terminally ill person or to keep up the treatment for an incurable disease. Prolonging such lives would only lead to heartache, financial challenges and eventual futility. Instead, euthanasia allows peaceful death in a medically monitored environment.[47]

It has also been argued that legalization will discourage the search fro new cures and progress in palliative care. However, given that euthanasia would be a last resort option only sought by a

[44]Supra Note 39, p. 38.
[45]Supra Note 20.
[46] M. Otlowski, *Voluntary Euthanasia and the Common Law* 245 (Clarendon Press, Oxford, 1997).
[47]Suresh Bada Math and Santosh K.Chaturvedi, “Euthanasia: Right to life vs Right to die” 136(6) *Indian Journal of Medical Research* 899 (2012).

minority, there is no justification for assuming that legislation would impede progress in these areas.[48]

What is more substantial: Beneficence or Spiritual Significance of Suffering?

Proponents of euthanasia argue that where there is no reasonable prospect of meaningful recovery, beneficence demands that patients should be allowed a merciful release from prolonged and useless suffering. They state that maintaining the legal prohibition on euthanasia amounts to cruel and degrading treatment and society and its members have a prima facie obligation to treat its members kindly.[49]

Whereas spiritual belief shared by many religions especially Christians is that physical suffering is seen as having a special place in God's divine plan, allowing an opportunity for the sufferer's spiritual growth and means of redemption. Euthanasia is accordingly rejected by the believers as a denial of the spiritual significance of suffering.[50]*Courtney Campbell* examines that though all the religions of the world teach that life is sacred and must be preserved but the catholic church and major faith traditions of west rejected a view known as 'vitalism' which holds that biological life is to be preserved at all costs and with all available technologies. *Campbell* goes on to write in his article *"……..some faith communities in Protestant Christianity and in Reformed Judaism have argued otherwise. When faced with terminal illness, one may well be disposed to ending life, and one's immediate community (or family) may support this method of death*."[51]

Islam affirms the significant value of persons and emphasizes that every person is responsible for his or her own body and therefore entrusted with the capacities and responsibilities to make appropriate decisions when confronting a treatment choice at the end of (his or her) own life or that of a loved one.[52] Noting that suicide is generally anathema for Hindus and Buddhist, *Campbell* explains that this doesn't necessarily preclude declining treatment if such a choice is made to avoid imposing a heavy burden of caregiving on family or friends. *Campbell* further examines the role 'Physical Suffering' play within Hinduism and Buddhism and states that when

[48]Supra Note 46, p. 247-248.

[49]Lorana Bartels & Margaret Otlowski, "A Right to Die? Euthanasia and the law in Australia", 17 *JLM* 532 (2010).
[50]*Ibid.*
[51] Courtney S. Campbell, "Euthanasia and Religion" 53(1) *Unesco Courier* 38(2000).
[52]Jennifer Fecio MaDougall and Martha Gorman, *Euthanasia: Contemporary World Issues*, 23(ABCCLIO, California, 2008).

physical suffering impedes self-control and lucidity, it is permissible to shorten life. Pain or lethargy might cloud the awareness and consciousness at death that both Hindus and Buddhist believe is necessary to ensure a [favourbale] rebirth. *Campbell* further states that Hindu and Buddhist scholars have found support for this so-called 'active' euthanasia in their traditions by reflecting on the meaning of death as a door to liberation.[53] Moreover, Jainism too has the sacred vow of Sallekhana or Santhara which is a slow death by starving. Defenders of Santhara argue that Santhara is to achieve self purification through the act of renunciation of all worldly actions including food and water.[54]

Is Legal Prohibition on Euthanasia actually protecting the patients?

Over the years, compelling empirical data suggest that criminal prohibition has been ineffective in practice in preventing the occurrence of euthanasia. Survey further suggests that active voluntary euthanasia is being performed even in those countries where it is not legalized and doctors even reported that they had at some stage provided such assistance.[55]There is no dearth of empirical data from countries like Australia, which provides that there are higher incidence of euthanasia performed without the explicit request of the patient, in the countries prohibiting active voluntaryeuthanasia than the countries such as the Netherlands which have taken steps to legalise the practice.[56]Though there is very less empirical evidence to substantiate such findings in India due to multiple reasons: the most important being that the families of the patients and even doctors and nurses do not disclose or report any such act due to legal prohibition, but if such acts can take place in a developed countries then it is very much likely to happen in India. Rather the studies suggest that prohibition does not impact significantly on the incidence of euthanasia.[57] There are, arguably problems arising from such discrepancy between legal theory and practice. To have a situation where it is commonly known that the law is being breached, yet breaches are either being ignored or pass unpunished, threatens to undermine public confidence in the law and to bring it into disrepute.[58]More so, the growing public demand and support for the practice is another reason for legalizing active voluntary euthanasia with proper regulations. Public opinions have a role in shaping criminal law, as it indicates prevailing morality and the

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[53]*Id.*, p. 23-24.

[54]*Nikhil Soni v. Union of India*, AIR 2015 SC 7414.

[55] D. Neil et. al., "End-of Life Decisions in Medical Practice: A Survey of Doctors in Victoria (Australia)" 33 *JME* 721(2007).

[56] C. Douglas et. al., "The Intention to Hasten Death: A Survey of Attitudes and Practice of Surgeons in Australia 175 *MJA* 511(2001).

[57] M. Otlowski, "The Effectiveness of Legal Control of Euthanasia: Lessons from Comparative Law" *Recht Der Werkelykheid* 137(2002).

[58]Lorana Bartels & Margaret Otlowski, "A Right to Die? Euthanasia and the law in Australia", 17 *JLM* 532 (2010).

needs of the community. Ultimately, the law must serve the community and should therefore be responsive to the real social needs.[59]

Inference

Though in India, the euthanasia debate has again come to life with the drafting of *Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill* on passive voluntary euthanasia, but the day is not far and its merely a matter of time before the legislation to legalise active voluntary euthanasia will be passed. Prosecutions for mercy-killings or assisted suicide are rare, they do occur, at least in the family setting, causing significant inconvenience and distress to family members and friends who were merely seeking to end their loved ones' sufferings. The need of the hour is to legalize active voluntary euthanasia with array of safeguards to ensure that assistance from a doctor is properly regulated and only available in strictly defined circumstances. The patient's decision to request assistance should be fully informed, genuinely held and made entirely voluntarily. The legislation need to respect the autonomy of the doctor too, making it clear that the doctor should be free to decide whether to provide assistance to a patient to end her or his life, even if the patient is eligible for assistance under the legislation. Though, the law should provide the patient an opportunity to freely articulate their request, but that request need to be evaluated and responded to, in appropriate circumstances. Legalization will not confer an absolute right on the patient to have active voluntary euthanasia performed. It is to be administered only as a last resort measure and it is not to be anticipated as a routine part of medical practice. The number of people who might ultimately be provided with such assistance is not expected to be great. Nevertheless, the availability of this option would be likely to bring significant peace of mind to many people especially terminally ill patients, through a process of empowerment in decision-making, even if these individuals ultimately never need to avail themselves of such assistance.[60]

"That is not true, but we lack the moral authority to endorse them (acts of euthanasia). What we do instead is what you have just seen. We commend the dying to Saint Hubert and tie them to a pillar in order to prolong and intensify their suffering." **……Gabriel Garcia Marquez.**

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[59] *Ibid.*
[60] *Ibid.*