CHAPTER –III

EUTHANASIA: MEANING, CONCEPT
& IT’S SOCIO-LEGAL IMPACT

“Of Course you do not died. Nobody dies. Death does not exist: You only reach a new level of vision, a new realm of consciousness, a new unknown world”.

- Henry Miller.

3.1. INTRODUCTION

Death is the cruelest of all words in any language of the world. It is the final end, the conclusiveness of all, the cessation of both physical life and personhood. In a daily human life, death is controversial fact that is left silent, but feared. Medical Science has learned to increase the life span and better human life, but now it may extend physiological life long after the loss of individual identity.¹

The public now faces great moral, ethical and individual challenges in dealing with the issues of persons who, while precisely alive, have lost the ability to work as normal person. Some suffer devastating pain, severe and permanent. The only sign of life is a heartbeat, respiration and occupancy of physical space which depends upon medicine. This predicament has given an old word new meaning in today’s society which is called as Euthanasia.²

Life and death were regarded as spheres not of human beings but of God before the advance of Medicine. Now-a-days, with an increase in the demand for physician assisted suicide, life and death no longer seem to be accorded the same moral sanctity as earlier. Ever since, the organic debate over this controversial issue has been kindled, deliberation heated up and brought to life the pros and cons of mercy killing.

¹ Harry D. Myeris “Determining the morality of active euthanasia” (p.3-9) available at http://opensiuc.lib.siu.edu/uhp_theses
² Ibid.
Law poses many problems in this regard, mostly because it often comes into contradiction with morality. One of the most fundamental problems arising out of this conflict between law and morality is euthanasia. Under the veil of ‘Right to Die’ euthanasia and related concepts opposed to the preservation of life, call into consideration the words of Thomas Jefferson.

“The care of human life and happiness and not their destruction is the first and only legitimate object of good governance.”

This write-up seeks to bring out the inherent paradox that lies in the existence of such a right to give up one’s life. Its essence however, goes into understanding the impracticability in the existence of such a right to die in the Indian Society.³

Euthanasia or mercy killing has been debated all over the world for several years. It has been favoured by many advanced humanitarian grounds that individuals and loss of dignity sometimes associated with certain serious disease deserve mercy and should be allowed to have a gentle death if he/she so desire. If there is no hope for survival the victims are kept artificially alive by being put under the ventilators or life support systems. Sometimes, the ordeal goes on for years. Has life any meaning in such conditions? When life becomes a burden and causes and unbearable pain then arises a situation to choose whether to live or to die. Death would be a merciful release from agony and loss of dignity as a human being. Now is the time when our legal system requires a revolutionary change and such progressive provisions need to be incorporated in our legal system which legalize euthanasia but simultaneously lays the fear of its misuse.⁴

Human life is a fundamental value and is to be protected on the basis of the sanctity of life ethics, considerations of the quality of life also are to be entertained our thoughts about life and death are beginning to change with the collapse of our traditional ethics. There have been cultures in the world that emphasizes that all human life is sacred including the life of non-human animals.

³ Mugunthan, Sangeetha “A constitutional perspective of Euthanasia and Right to Die” (2006) (p.36) Kerala Law Times
⁴ Rathi Dr. Sapna “Euthanasia or Mercy Killing : How far is it justifiable in India” (2011) (p. 42-51) Civil & Military Law Journal
There have been other cultures that have a much more restricted view of the sanctity of life in India, both law and ethics emphasizes that every human being has a right to life. There is no scope for the idea that some lives are more valuable than others. The lives are of infants, aged, infirm and persons with terminal illness all are sacrosanct and equally protected by law. In the man, from ancient times, we have respected the preservation and fulfillment of human life as a worthwhile value. That is the reason why suicide euthanasia and abortion are generally considered not only immoral but also criminal wrong. Here it may be noted that the law adopts the sanctity of life ethic in a static manner, overlooking the human misery as originating in debilitating illness. The question may now be raised as what obligations or rights does the society have to interfere when a person with debilitating illness requests to take his/her own life.\(^5\)

### 3.2 CONCEPT

Mercy killing is a concept or a practice where a person who is living an abnormal life or is in a ‘vegetable state’ due to terminal illness (unable to do things which a healthy person can do due to an illness, diseases or another factor), is killing legally under law. This is an extremely sensitive legal and social issue as life being extremely precious cannot be decided when it has to be ended.

This is illegal in most, but not all, countries of the world. Some loveless allow it, as long as strict guidelines are followed and the procedure is conducted by a medical professional, at the request of the patient\(^6\). The naked truth is that no human being is immortal yet human being fears the death. Life is most valuable, precious and unmatchable thing in the universe.

A person born always makes maximum effort to have life more cherish able, flushable and tries to enjoy every bit of life. Gradually the understanding of life has changed and death is ‘being viewed as just another stage of life. The thought process of death is better than life under certain circumstances circulated in the minds of few people and later became world phenomenon. Science of

---


\(^6\) Jadon Bhanwar Aditya, Euthanasia viz-a-viz right to life (Unpublished dissertation-Indian Law Institute, New Delhi)
medicine has made the real difference between the life and death. Advancement in medicine and technology has fundamentally enhanced the quality of life and its expectancy during the last 100 years. With increased life span, the focus is on quality of life then quantity. Patients who are suffering from the incurable diseases with unbearable pain prefer death to life. Euthanasia gives liberty to such patients to decide where to die, when to die and how to die.

3.3 ETYMOLOGY

“Euthanasia comes from the Greek words ‘ΕU’ (good) and ‘Thanatos’ (death) and it means ‘Good Death’, ‘Gentle and Easy Death’. This word has come to be used for ‘mercy killing’. Euthanasia’s literal meaning is ‘easy death.”

3.4 DEFINITIONS OF EUTHANASIA

3.4.1 MEANING OF EUTHANASIA

The term euthanasia was derived from the Greek Word ‘Eu’ and ‘Thanatos’ which means ‘good death’ or ‘easy death’, it is also known Mercy Killing. Euthanasia literally means putting a person to painless death especially in case of incurable suffering on when he like becomes purposeless as a result of mental or physical handicap.

In current usage, one approach to defining euthanasia has been to mirror Suetonius, regarding it as the ‘painless inducement of a quick death’. However, it is argued that his approach fails to properly define euthanasia, as it leaves open a number of possible actions which would meet the requirements of euthanasia.

In particular, these include situation where a person kills another, painlessly, but for no reason beyond that of personal gain; or accidental deaths which are quick and painless, but not intentional.

---

7 Ibid.
8 Ibid.
9 Ibid.
3.4.2 OXFORD ENGLISH DICTIONARY

Euthanasia— the painless killing of patient suffering from an incurable and painful disease or in an irreversible coma.\(^\text{10}\)

3.4.3 MARVIN KHOL AND PAUL KURTZ

“A mode or act of including and permitting death painlessly as a relief from suffering”

“However, focusing on this approach to defining euthanasia may also lead to counter examples: such definitions may encompass killing a person suffering from an incurable disease for personal gain (such as to claim an inheritance), and commentators such as Tom Beauchamp & Arnold Davidson have argued that doing such would constitute ‘murder simpliciter’ rather than euthanasia”.

3.4.4 HOUSE OF LORDS SELECT COMMITTEE ON MEDICAL ETHICS

A deliberate intervention with express intention of ending a hopeless life relieves intractable suffering.\(^\text{11}\)

3.4.5 DRAPER

He argued that any definition of euthanasia must incorporate four elements: an agent, a subject; an intention; a causal proximity, such that the actions of the agent lead to the outcome; and an outcome. Based on this she offered a definition incorporating those elements, stating that euthanasia must be defined as death that results from the intention of one person to kill another person, using the most gentle and painless means possible, that is motivated solely by the best interest of the person who dies.\(^\text{12}\)

3.4.6 BEAUCHAMP & DAVIDSON

An act of euthanasia is one in which one person (X) kills another person (Y) for the benefit of the second person, who actually does benefit from being killed.

---

\(^{10}\) Oxford English Dictionary

\(^{11}\) Jadon Bhanwar Aditya, *Euthanasia viz-a-viz right to life* (Unpublished dissertation-Indian Law Institute, New Delhi)

\(^{12}\) Ibid.
In summary, we have argued that the death of a human being X is an instance of euthanasia if and only if X’s death is intended by at least one other human being, Y where Y is either the cause of death or a causally relevant feature of the event resulting in death (whether by action nor by omission); There is either sufficient current evidence for Y to believe that X is acutely suffering or irreversibly comatose, or there is sufficient current evidence related to X’s present condition such that one or more known casual laws supports Y’s belief that X will be in condition of acute suffering or irreversible comatoseness.

(a) B’s primary reason of indenting X’s death is cessation of X’s (actual or predicted future) suffering or irremediable comatoseness, where Y does not intend X’s death for a different primary reason, though there may be other relevant reasons and

(b) there is sufficient evidence for either X or Y that causal means to X’s death will not produce any more suffering that would be produced for X if Y were not to intervene;

The causal means to the event of X’s death are chose by X or Y to be as painless as possible unless either X or Y has in overriding reason for a more painful causal means, where the reason for choosing the latter casual means does not conflict with the evidence is no-fetal organish.

3.4.7 AN ATTEMPT TO DEFINE EUTHANASIA

To define euthanasia is not an easy task but I will try to define it in following way:

Euthanasia is an irreversible process. It is the action of one individual killing another individual for reasons considered to be merciful. It is the only moral, humane thing to do when medicine cannot relieve the pain and the terminally ill cannot go on any longer. Euthanasia is the last measure for a hopeless sufferer who has no hope of life.
3.5 EUTHANASIA ARISES ON THREE OCCASIONS.

The purpose of life is to be happy and to make others happy if possible, to grow old gracefully and to die with dignity. So the question of euthanasia arises on three occasions.

1. At the beginning of life/at birth.
2. At the end of natural life (terminal stage).
3. When a person is severely unpaired as a result of brain damage (unforeseen mishap).

3.5.1 AT BIRTH

In case of physically and mentally handicapped infants:
- Decision rests on the parents or on the doctors aided the law of the land
- The decision should be based on:
  - Quality of life the child can expect and its consequent impact on the parents, society and the resources of the state and also care of the child after death of the parents.13

3.5.2 AT TERMINAL STAGE

The dying conscious patients can give his own consent or decision as to continue or not the ongoing treatment if he wishes to: No moral obligation on doctors to preserve life at any cost.

3.5.3 UNFORESEEN MISHAP

When a person is severely impaired as a result of brain damage either due to violence, poisoning a natural cause where the brain suffers from hypodic brain damage from which it cannot recover irrespective of the treatment given his life can be sustained by artificial animation. This gives rise to the confusion whether the treatment is prolonging life or death. In such cases he may be allowed so die

---

13 Britannica (Micropedia ready reference)
in comfort and with dignity (Such a step would also save the resources of the state for more rational uses).  

3.6 TYPES OF EUTHANASIA

1. Active or Positive
2. Passive or Negative
3. Voluntary
4. Involuntary
5. Non-voluntary

3.6.1 ACTIVE EUTHANASIA

It is a merciful and positive act to end an endless sufferings and a meaningless existence. It is an act commission for example by giving large doses or a dying to hasten death.

3.6.1.1 MORAL JUSTIFICATION OF ACTIVE EUTHANASIA

Active euthanasia involves autonomy and privacy is the factors plays more important role to justify it on morality. Humanity and empathy are also major factors to justify morally the act of end of suffering of a hopeless person by causing death. It is merciful act of passing death on a person who has no hope of regaining health.

The necessity of aid to cause death is what most find morally frightened, especially if it is a medical practitioner. Kass Leon (1990) find a primary impediment within the very doctor-patient relationship to actively euthanize, especially with the doctor’s role of a healer. This would have even further impact on the mind set of public with regard to doctors and medicine. When it comes to end the unbearable sufferings of a person and medical science provides no assistance, what are the steps one must have to take? The Hippocratic Oath is

14 Kashyap Shashi and Kashyap Amit “Should euthanasia be legalized in India” (2011) (Vol.-47 No. 4 Oct.-Dec.) Civil and military law Journal
15 Ibid
16 Thomasma & Graber, (p.148)
one of the essences which require a doctor to both protect life and to reduce suffering\textsuperscript{17}. This creates an impasse for the medical practitioner and the sufferer.

When to relieve suffering and misery is a question arises on deadline to startup cure. We morally accept this theory in passive euthanasia, abortion and in the active euthanasia of species other than humans. In those acts we use the terms humane, merciful, and painless. In fact, we find it a moral responsibility to put animals of another species to sleep because they suffer or stray or have bitten.

For the fate of the sons of men and the fate of beasts is the same; as one dies, so dies the other. They all have the same breath, and man has not advantage over the beasts, for all is vanity. All go to one place; all are the dust, and all turn to dust again.\textsuperscript{18}

3.6.2 PASSIVE EUTHANASIA

Passive Euthanasia (Letting die or aid in dying):

- It implies discontinuing or not using unusual life sustaining measures to prolong life. Other includes.
- Act of omission such as failure to resuscitate an incurably ill\textsuperscript{19} or incapacitated patient (e.g. a severely defective new born infant). Other methods include disconnecting a feeling tube, not carrying out a file extending drugs etc.

Letting die means to give way to our ongoing inner-organism process of disintegration, without supporting substituting vital functions.

3.6.2.1 MORAL JUSTIFICATION OF PASSIVE EUTHANASIA

Therefore, the exudation (removal from a ventilator) of an incurable ill\textsuperscript{20} patient though a physical action with subsequent death\textsuperscript{21} is not killing in its proper meaning the exudation owes not produce the effect of death it only influences the time of its occurrence.

\textsuperscript{17} Fletcher, (1960) (p.64)
\textsuperscript{18} Cogden, (1977) (p.72)
\textsuperscript{19} Ibid.
\textsuperscript{20} Legality of Euthanasia available at Wikipedia – The Free Encyclopedia.
\textsuperscript{21} Ibid.
The lethal injection kills both the ill as well as the healthy person, the discontinuation of life sustaining treatment however, only causes the death of the morality ill, whereas on the beating it would have no effect at all.

3.6.3. VOLUNTARY

Voluntary Euthanasia have instances of euthanasia in which a competent person makes voluntary and enduring request (either verbally or written document) to be helped to die. However, there is no single, objectively correct answer, which has application to everyone, as to when if at all, life becomes burdensome and unwanted.

Where a critically ill person is typically in a severely compromised and deliberated state, it is, other things being equal, the patients judgment of whether continued life is a benefit that must carry the greatest weight, provided always that the patient is competent.

“Voluntary refusal of food and fluids (VRFF) of Patient Refusal of Nutrition and Hydration (PRNH) is bordering on euthanasia. Some authors classify it as a form of passive euthanasia while others treat it separately because it is treated differently from legal point of view and often perceived as a more ethical option.”

VRFF is sometimes suggested as a legal alternative to euthanasia in jurisdiction disallowing euthanasia.

3.6.4 INVOLUNTARY EUTHANASIA

When the person who is subjected to kill making a wish to the contrary.

This is said to occur when a patient is killed against his express will. This is out-rightly a criminal act of put to death. It is Euthanasia of a competent, non consenting person e.g. when the person who is killed by the practice of euthanasia, made an expressed wish to the contrary.

---

22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.
26 Ibid.
Involuntary euthanasia\textsuperscript{27} occurs when euthanasia is performed on a person who is able to provide informed consent, but does not, either because they do not choose to die, or because they were not asked.

Involuntary euthanasia is contrasted with voluntary euthanasia (euthanasia performed with the patient’s consent) and non-voluntary euthanasia (where the patient is unable to give their informed consent\textsuperscript{28} for example when a patient is comatose or a child). Involuntary euthanasia is widely opposed and is regarded as crime in legal jurisdictions, and is sometimes used as a reason for not changing laws relating to other forms of euthanasia.

“Involuntary euthanasia occurs as and when a person who dies chooses life and is killed anyway. This is usually called murder, but it is possible to imagine cases where the killing would count a being for the benefit of the person who dies.”

\textbf{3.6.5. NON-VOLUNTARY}

When it is practiced without the scope to make the desire of the subject available and includes cases where:

- The person is in a coma.
- The person is too young.
- The person is mentally retarded to a very severe extent.
- The person is severally brain damaged.
- The person is mentally disturbed in such a way that they should be protected from themselves.

Non-voluntary euthanasia included instances where a person is either not competent\textsuperscript{29} to or unable to express a wish about euthanasia or wherein the patient is unconscious, comatose or is otherwise unable to explicitly make his/her intentions known; and there is no one authorized to make a substituted judgment wherein a proxy could would choose as the no longer competent patient would have chosen. In cases of non voluntary euthanasia, it is often the family members

\textsuperscript{27} Ibid.
\textsuperscript{28} Ibid.
\textsuperscript{29} Ibid.
who make the decision, whereas in some countries like Netherlands, it is the Doctors who mostly decide whether the patient’s life is to be terminated or not. However, there are certain legal guidelines\(^3\) that they also have to follow for terminating the patient’s life.

Non-voluntary euthanasia is euthanasia conducted where the explicit consent of the individual concerned is unavailable, such as when the person is in a persistent vegetative state. It contrasts with involuntary euthanasia, where euthanasia is performed against the will of the patient.

The decision can be made based on what the incapacitated individual would have wanted, or it could be made on substituted judgment of what the decision maker would want were he or she in the incapacitated person’s place, or finally the decision could be made by the doctor by their own decision.

Non-voluntary euthanasia also includes cases where the person is a child who is mentally and emotionally able to take the decision, but is not regarded in law as old enough to take such a decision, so someone else must take it on their behalf in the eyes of the law.\(^3\)

\[\text{3.7 CHART SHOWING TYPES OF EUTHANASIA}\]

\begin{center}
\begin{tabular}{ccc}
\textbf{DEATH} & & \\
\downarrow & & \\
\downarrow & & \\
\downarrow & & \\
\downarrow & & \\
\textbf{EUTHANASIA} & \textbf{ASSISTED SUICIDE} & \\
\downarrow & & \\
\downarrow & & \\
\downarrow & & \\
\downarrow & & \\
\textbf{VOLUNTARY} & \textbf{NON-VOLUNTARY} & \textbf{IN-VOLUNTARY} \\
\downarrow & & \\
\downarrow & & \\
\downarrow & & \\
\downarrow & & \\
\textbf{ACTIVE} & \textbf{PASSIVE} & \textbf{ACTIVE} & \textbf{PASSIVE} & \textbf{ACTIVE} & \textbf{PASSIVE} \\
\end{tabular}
\end{center}

\(\text{30 Ibid.}\)

\(\text{31 Ibid.}\)
3.8 DIFFERENCES BETWEEN VOLUNTARY, INVOLUNTARY AND NON-VOLUNTARY EUTHANASIA

3.8.1 VOLUNTARY EUTHANASIA
The person wants to die and says so. This includes cases of:
- asking for help with dying
- refusing burdensome medical treatment
- asking for medical treatment to be stopped, or life support machines to be switched off
- refusing to eat
- simply deciding to die

3.8.2 NON-VOLUNTARY EUTHANASIA
The person cannot make a decision or cannot make their wishes known. This includes cases where:
- The person is in a coma.
- The person is too young.
- The person is senile.
- The person is mentally retarded to a very severe extent.
- The person is severely brain damaged.
- The person is mentally disturbed in such a way that they should be protected from themselves.

3.8.3 INVOLUNTARY EUTHANASIA
The person wants to live but is killed anyhow. This is usually murder but not always. Consider the following examples:
- A soldier has their stomach blown open by a shell burst. They are in great pain and screaming in agony. They beg the army doctor to save their life. The doctor knows that they will die in ten minutes whatever, happens. As
he has no painkilling drug with him he decides to spare the soldier further pain and shoots them dead.

- A person is seen at a 10th floor window of a burning building. Their clothes are on fire and fire brigade has not yet arrived. The person is screaming for help. He has a rifle with him and shoots the screaming person dead.
- A man and a woman are fleeing from a horde of alien monsters notorious for torturing human beings that they capture. They fall into a pit dug to catch them. As the monsters lower their tentacles into the pit to drag the man out he begs the woman to do something to save him. She shoots him, and then kills her.32

3.9 DISTINCTION BETWEEN ACTIVE AND PASSIVE EUTHANASIA OR BETWEEN KILLING AND LETTING DIE

3.9.1 ACTIVE EUTHANASIA

Active euthanasia occurs when the medical professionals, or another person knowingly do something that causes the patient to die.

3.9.2 PASSIVE EUTHANASIA

Passive euthanasia occurs when the patient dies because the medical professionals either do not do something necessary to keep the patient alive or when they stop doing something that is keeping the patient alive.

- switch off life-support equipment
- disconnect a feeding tube
- do not carry out a life-extending operation
- do not give life-extending drugs33

3.10 THE MORAL DIFFERENCE BETWEEN KILLING & LETTING DIE

Many people make a moral difference between active and passive euthanasia. They think that it is acceptable to refuse to give treatment and allow a patient to die, but that it is never acceptable to kill a patient by a conscious act.

Some medical people like this idea. They think it allows them to provide a patient with the death they want without having to deal with the difficult moral problems they would face if they deliberately killed that person.\textsuperscript{34}

3.10.1 THERE IS NO REAL DIFFERENCE

But some people think this difference is nonsense, since stopping treatment is a conscious act, and so is deciding not to carry out a particular treatment.

Switching off a respirator requires someone to carry out the action of throwing the switch. If the patient dies as a result of the doctor switching off the respirator them although it’s certainly true that the patient dies from lung cancer (or whatever), it’s also true that the immediate cause of their death is the switching off of the breathing machine.

- In active euthanasia the doctor takes an action with the intention that he will cause the patient’s death.
- In passive euthanasia the doctor lets the patient die. When a doctor lets someone die, they carry out an action with the intention that it will cause the patient’s death.

3.11 SOME OTHER CONCEPTS RELATED TO EUTHANASIA

3.11.1 INDIRECT EUTHANASIA

This means providing treatment that has the side effect of speeding the patient’s death. As the primary intention is not to kill, this is considered by some people as morally acceptable. A justification along these lines is formally called the doctrine of double effect.

\textsuperscript{34} Arthur Hugh Clough (1819-1861)
3.11.2 THE DOCTRINE OF DOUBLE EFFECT

This doctrine says that if doing something ethically good has a morally bad side effect it’s ethically ‘OK’ to do it providing the bad side effect wasn’t intended. This is true even if you foresaw that the bad effect would probably happen.

The principle is used to justify the case where a doctor gives drugs to a patient to relieve stressful symptoms even though he knows doing this may curtail the patient’s life.

This is because the doctor is not aiming directly at killing the patient – that bad result of the patient’s death is a side-effect of the good result of reducing the patient’s life.

Many doctors use this doctrine to justify the use of high doses of drugs such as morphine for the purpose of relieving suffering in terminally-ill patients even though they know the drugs are likely to cause the patient to die sooner.

3.11.2.1 FACTORS INVOLVED IN THE DOCTRINE OF DOUBLE EFFECT

- **The good result must be achieved independently of the bad one:** For the doctrine to apply, the bad result must be the means of achieving the good one. So if the only way the drug relieves the patient’s pain by killing him the doctrine of double effect does not apply.

- **The action must be proportional to the cause:** If I give a patient a dose of drugs so outsized that it is certain to kill them and that is also for greater than the dose needed to control their pain. I cannot use the Doctrine of Double Effect to say that what I did was right.\(^{35}\)

- **The action must be appropriate:** I also have to give the patient the right medicine. If I give the patient a fatal dose of pain-killing drugs, it’s no use

saying that my intention was to relieve their symptoms of vomiting if the drug doesn’t have any effect on vomiting.

- **The action must be appropriate:** I also have to give the patient the right medicine for their symptoms. If I give patient a fatal dose of pain-killing drugs, it’s no use saying that my intention was to relieve their symptoms of pain if the patient was not suffering from pain but from breathlessness.

- **The patient must be in a terminal condition:** If I give a fatal dose of pain reliever drugs and they would have recovered from their disease or injury if I had not given them the drugs, it’s no use saying that my objective was to relieve their pain. And that applies even if there was no other way of controlling their pain.

### 3.11.2.2 PROBLEMS WITH THE DOCTRINE OF DOUBLE EFFECT

- **We are responsible for all the anticipated consequences of our actions:** If we can predict the two effects of our action we have to take the ethical responsibility for both effects we cannot get out of trouble by deciding to intend only the effect that suits us.

- **Intention is irrelevant:** Some people take the view that it’s sloppy morality to decide the rightness or wrongness of an act by looking at the intention of the doctor. They think that some acts are objectively right or wrong, and that the intention of the person who does them is irrelevant. But most legal systems regard the intention of a person as a vital element in deciding whether they have committed a crime, and how serious a crime, in cases of causing death.

- **Death is not always bad so double effect is irrelevant:** Other philosophers say that the Doctrine of Double Effect assumes that we think that death is always bad. They say that if continued life holds nothing for the patient but the negative things of pain and suffering, then death is a good thing, and we don’t to use the doctrine of double effect.
Double effect can produce an unexpected moral result: If you do think that a quicker death is better than a slower one then the Doctrine of Double Effect shows that a doctor who intended to kill the patient is morally superior to a doctor who merely intended to relieve pain.  

3.12 SOCIO - LEGAL IMPACT OF EUTHANASIA

3.12.1 EUTHANASIA, THE VALUE OF LIFE, AND THE RIGHT TO LIFE

Few philosophers, legislators, and laymen support non-voluntary or involuntary euthanasia. These types of mercy killing are associates with most heinous crimes against humanity committed by Nazi regime on both its own people and other nations. They are and were also an integral part of every program of active eugenics. The arguments against killing someone who has not expressed a wish to die revolve around the right of life. People are assumed to value their life cherish it and protect it. Euthanasia especially the non-voluntary forms-amounts to depriving someone of something they value.

The right to life at least, as far as, human beings are concerned is rarely questioned fundamental moral principle. In western cultures, it is assumed to be inalienable and indivisible. Even if we accept the axiomatic-and therefore arbitrary source of this right, we are still faced with intractable dilemmas. All said, the right to life may be nothing more than a cultural construct, dependent on social mores, historical contexts, and exegetic systems.

Rights whether moral or legal-impose obligations or duties on third parties towards the right holder. One has right against other people and thus can prescribe to them certain obligatory behaviors and proscribe certain acts or omissions. Rights and duties are two sides of the same Janus-like ethical coin. The duality confuses people. They often erroneously identify rights with their attendant duties or obligations, with the morally decent, or even with the morally permissible. One’s rights inform other people how they must behave towards one-

36 Legality of Euthanasia available at Wikipedia-The Free Encyclopedia (Retrieved on 07/22/2014)
not how they should or ought to act morally. Moral behavior is not dependent on the existence of a right. Obligations are.

To complicate matters further many apparently simple and straightforward rights are amalgams of more basic moral or legal principles. To treat such rights as unties is to mistreat them. Take the right to life. It is compendium of no less than eight distinct rights: the right to be brought to life, the right to be born, the right to have one’s life maintained, the right not to be killed, the right to have one’s life saved, the right to save one’s life the right to terminate one’s life, and the right to have one’s life terminated.

None of these rights is self-evident, or unambiguous, or universal, or immutable, or automatically applicable. It is safe to say, therefore, that these rights are not primary as hitherto believed but derivative. 37

3.12.2 THE RIGHT TO HAVE ONE’S LIFE MAINTAINED

This leads to a more general quandary. To what extent can one use the other people’s bodies, their property, and their time of comfort, material possessions, pleasure, income or any other thing order to maintain one’s life?

Even if it were possible in reality, it is indefensible to maintain that I have a right to sustain, improve, or prolong my life at another’s expense. I cannot demand-though I can morally expect-even a trivial and minimal sacrifice from another in order to prolong my life. I have no right to do so.

Of course, the existence of an implicit, let alone explicit, contract between me and another party would change the picture. The right to demand sacrifices commensurate with the provisions of the contract would then crystallize and create corresponding duties and obligations.

No embryo has a right to sustain its life, maintain, or make longer it at its mother’s expense. This is true regardless of how immaterial the sacrifice required of her is.

Yet, by knowingly and intentionally conceiving the embryo, the mother can be said to have signed a contract with it. The contract causes the right of the

37 Euthanasia and the right to die available at: http://samvak.tripod.com/euthanasia.html (Retrieved on 06/09/2011) (Viknin Dr. Sam)
embryo to demand such sacrifices from his mother to crystallize. It also creates corresponding duties and obligations of the mother towards her embryo.

-We often find ourselves in a situation where we do not have a given right against other individuals-but we do possess this very same right against society. Society owes us what no constituent-individual does.

Thus, we all have a right to sustain our lives, maintain, prolong, or even improve them at society’s expense-no matter how major and significant the resources required. Public Hospitals, State Pension schemes and police forces may be needed in order to fulfill society’s obligations to prolong, maintain, and improve our lives but fulfill them is must.

Still, each one of us can sign a contract with society implicitly and abrogate this right. One can volunteer to join the army. Such an act constitutes a contract in which the individual assumes the duty or obligation to give up his or her life.

3.12.3 THE RIGHT NOT TO BE KILLED

It is commonly agreed that every person has the right not to be killed unjustly. Admittedly, what is just and what is unjust is determined by an ethical calculus or a social contract both constantly in flux.

Still, even if we assume an Archimedean immutable point of moral reference does X’s right not to be killed means that third parties are to refrain from enforcing the rights of other people against X. What if the only way to right wrongs committed by A against others was killing X? The moral obligation to right wrongs is about restoring the rights of the wronged.

If the continued existence of X is predicated on the repeated and continuous violation of the rights of others and these other people object to it-then A must be killed if that is the only way to right the wrong and re-assert the rights of X’s victims.38

38 Ibid.
3.12.4 THE RIGHT TO HAVE ONE’S LIFE SAVED

There is no such right because there is not moral obligation or duty to save a life. That people believe otherwise demonstrates the muddle between the morally commendable, desirable and decent and the morally obligatory, the result of other people’s rights. In some countries, the obligation to save a life is codified in the law. But legal rights and obligation do not always correspond to moral right and obligations or give rise to them.39

3.12.5 EUTHANASIA AND PERSONAL AUTONOMY

The right to have one’s life terminated at will (euthanasia) is subject to social, ethical and legal strictures. In some countries – such as Netherlands-it is legal (and socially acceptable) to have one’s life terminated with the help of third parties given a sufficient deterioration in the quality of life and given the imminence of death. One has to be of sound mind and will one’s death knowingly, intentionally, repeatedly, and forcefully

“Should we have right to die? When our wishes to end it all conflicts with society’s judgment of what is right and what is good for us and for others what should prevail?”

One the one hand, as Patric Henry put it, gives me liberty or gives me death. A life without personal autonomy and without the freedom to make unpopular and non-conformist decisions is, arguably, not worth living at all!

As Dworking postulates:

Making some die in a way that others approve but he believes a horrifying contradiction of his life, is a devastating, odious form of tyranny.

“Still-even the victim’s express wishes prove to be transient and circumstantial (owing of depression, misinformation or clouded judgment). Can we regard them as immutable and invariable? Moreover what, if the circumstances prove everyone-the victim included-wrong. What if a cure to the victim’s disease is found ten minutes after euthanasia？”40

39 Ibid.
40 Ibid.
3.12.6 EUTHANASIA AND SOCIETY

“It is commonly accepted that where two equally potent values clash, society steps in as an arbiter. The right to material welfare such as food, shelter, basic possession often conflicts with the right to own private property and to benefit from it. Society strikes a fine balance by, on the one hand, taking from the rich and giving to the poor and on the other hand, prohibiting and punishing theft and looting.”

Euthanasia involves a few such finely balanced values: the sanctity of life versus personal autonomy, the welfare of the many v. the welfare of the individual, the relief of pain v. the prolongation and preservation of life. Why cannot society step in as arbiter in these cases as well?

Moreover, what if a person is rendered incapable of expressing his preferences with regard to the manner and timing of his death—should society step in and make the decision for him?

In a variety of legal situations parents, court guardians, custodians and conservators act for on behalf of and in lieu of minor children, the physically and mentally challenged and the disabled. Why should not there?

We should distinguish between four situations:

1. That the patient foresaw the circumstances and provided an advance directive in the form of living will, asking clearly for his life to be ended when certain condition are met.
2. The patient did not provide an advanced directive but expressed his preference without a doubt before he was out of action. The risk here is that self interest family members may lie.
3. That patient did not provide advance directive and did not express his preference aloud—but the decision to terminate his life is commensurate with both his character and with other decisions he made.
4. There is no indication however indirect that the patient wishes or would have wished to die had he been capable or expression but the patient is no
longer a ‘person’ and therefore, has not interest to observe, respect and protect. Moreover, the patient is a burden to himself, to his nearest and dearest and to society at large. Euthanasia is the right, just, and most efficient thing to do.\(^{41}\)

### 3.13 INFORMED DECISION OF A COMPETENT PATIENT

Where a sufferer who is capable enough to withdraw or decline the life saving mechanism and the medical practitioner act upon and removes the life saving machinery or treatment, the “I and II parts of the s. 299 do not attracted, as there is no intention either to cause death or bodily injury likely to cause death. But, the act may fall under the III part because the doctor has knowledge that the act of withdrawal is likely to cause death”.\(^{42}\) Hence, the offence is attracted under Section 299 IPC.

### 3.14 NO INFORMED DECISION OF A COMPETENT PATIENT

When a patient or a sufferer who is capable enough but the choice is not to inform one, the doctor then has to take a assessment in the best interest of the sufferer or the patient. So we can say there is no ‘intention’ mentioned in I & II parts of s. 299, but has the ‘knowledge’ mentioned to in III part of s. 299. Therefore, medical practitioner may be guilty for the crime under s. 299.

### 3.15 PATIENT WHO IS INCOMPETENT

Here the medical practitioner is satisfied that “the sufferer or the patient is not competent and he takes a decision to withdraw the life saving machine in the best interest of the patient. Here also there is no ‘intention’ which is mentioned to in the first and second parts of s. 299 but has the ‘knowledge’ mentioned to in the third parts of s. 299”.

---

\(^{41}\) Ibid.

\(^{42}\) Taneja Dr. Sarabjeet “Should Euthanasia be legalised?” (2008) (p. 30-61) Senior lecturer, Faculty of Law, Delhi University, *Delhi Journal of Constitutional and Parliamentary Studies*
The Commission further considered whether the doctors in above three cases are protected under exceptions in s.76 and s.79 of the Indian Penal Code. If medical practitioner who removed the treatment mechanism and in case of refused to medical cure by a competent sufferer in such cases according to s. 76 doctor’s action can be exempted from punishment under s.304

All the exceptions mentioned above may be ‘justified by law’ according to s.79 IPC. This section applied to the medical practitioner’s act in the case of both capable and incapable patients. If the patient is capable of taking a decision but has not taken the decision and if the patient is incapable to take a decision then the medical practitioner can justify to deny the treatment or in case of removing the life sustaining system. “So act of doctor or a medical practitioner is justified by law and in all case (i), (ii) and (iii), thus he is protected by s. 79 first part. If the doctor takes the decision to withdraw life support system in good faith, then is protected by second part of s. 79. Thus, we can say that if the provisions of s. 299 even if involved to the cases of the medical practitioner, s. 76 and s. 79 protect the doctor or medical practitioner from punishment under the Penal Code. As discussed earlier, the Supreme Court in Gian Kaur case allowed withholding or removal of life support system only in case of patients in terminal state”. Even in such cases if the doctor is administering drugs or an injection to end his patient’s life or otherwise assisting a terminally ill patient in his death even on his request, his act is unlawful.

3.16 ASSISTED SUICIDE

“This usually refers to cases where the person who is going to die needs help to kill them and asks for it. It may be something as simple as getting drugs for the person and putting those drugs within their reach”.

Assisted suicide is suicide is committed by someone with assistance from others typically to end suffering from severe physical illness. It is often confused with euthanasia. Euthanasia is the killing of another in order to relieve dire
suffering whereas assisted suicide is a practice in which an individual provides competent patient with assistance, but where the individual brings about their own death, such as when physician provides a prescription for a lethal dose of medication, upon the patient’s request, which the patient intends to use to end his or her own life.

Assisted suicide is closely related to euthanasia. An assisted suicide occurs when one person gives another person the instructions, means, or capability to bring about their own demise. In the context of the modern moral and public policy debates, the motive in assisted suicide, as in euthanasia, is to bring about an end to suffering. Suicide per se is not considered to be the same as assisted suicide because the former is an individual act while the latter involves a joint enterprise between the suicidal person and a helper to bring about death.45

3.17 SUICIDE

Suicide is intentionally taking one’s own life or self inflicted ruin. In suicide one voluntarily attempts to take his life. The killer is the deceased himself or herself. In it, a person must have indulged into act of killing himself due to various reasons like quarrel with one’s lover family problems, financial problems, problems related to one’s personal life or any other such problems. In case of suicide, a person takes such a decision without telling it to anybody.

Thus, when a person ends his life, it is suicide. But when some other person extinguishes the life of an individual either on the request of the deceased or to relieve him of pain and misery, it will be homicide unless protected by some law. Euthanasia and suicide has been clearly distinguished in the case of ‘Naresh Marotrao Sakhre v. Union of India’ also.46 The word suicide comes from the Latin ‘sui’ means of oneself and cede or ‘Codium’ means ‘a killing’. Suicide or “Felo de se” is where a man of the age of discretion, and compos mentis, voluntarily kills himself by stabbing, poison or any other way and was a felony at common law”47

47 Pahurkar Prof. Pradyna “Mercy killing a gruesome of a compassionate act” (2015) (p.15-17)
3.17.1 DEFINITION
According to Shneidman definition of suicide is a conscious act of self-induced annihilation and best understood as a multidimensional malaise in a needful individual who defines an issue for which suicide is perceived as the best solution.

3.17.2 SIGMUND FREUD
Also believed that we had two opposing basic instincts – life (Eros) and death (Thanatosis) – and all instincts sought tension reduction. He also believed that suicide is more likely in advanced civilizations requiring greater repression of sexual and aggressive energy.

According to Jean Baechler’s definition of suicide was that ‘suicide denotes all behaviour that seeks and finds the solution to an existential problem by making an attempt on the life of the subject’. 48

3.17.3 JOSEPH H. DAVIS
According to Joseph ‘suicide is a fatal willful self-inflicted life threatening act without apparent desire to live; implicit are two basic components lethality and intent’.

Suicide is self murder and the person committing suicide is beyond the reach of law whereas Mercy Killing is one of the types of suicide which is also known as ‘Euthanasia’ of ‘Assisted Suicide’ in this case the person ask for a permission from the court to kill himself, as suicide is a crime in almost all countries in the world. 49

3.17.4 REASONS OF SUICIDE
There are various reasons which led to Suicide, in this the causes may be social problems, personal problems, relationship problems, financial problem, social stigma, depression, health problems, mental illness etc. many reasons led to suicide, due to this reasons the person kills himself.

48 Ibid.
49 Ibid
In Mercy Killing the reason is prolong painful illness which leads to the patient feel relieved by accepting death than living the painful life, or he may ask himself to be killed by someone.\textsuperscript{50}

**3.18 EUTHANASIA: NOT A FORM OF HOMICIDE OR SUICIDE**

Mercy killing is not a casual act, nor is it accidental. Its effect is the result of a cause (terminally state, severe pain, death of brain). There is honesty in the relief of suffering, or no longer prolonging hopeless pain. Homicide and suicide is directly opposite to it, and the comparison of euthanasia with both is totally wrong.

Homicide is constituted by the intentionally taking of life of one human being by another and so there is no justification for homicide. It is solely based the self-interests of the murderer. This does not involve sympathy and mercy; it is the result of a wanton disregard for the sanctity and worth of a life of person. It violates another's right to live of another human being. Intentional taking of one's life is an act of Suicide, but commonly compared with euthanasia. Two basic types of suicide: egoistic and altruistic\textsuperscript{51} identified by Sociologist Emile Durkheim. According to him altruistic suicide is closest when comparing suicide with euthanasia. Patient who is in a vegetative state and think himself burden on his family and for the financial reasons of their family takes their own life, it may be perceived as altruism.

In Suicide, there is lack of mercy hence we could not compare it with euthanasia. Suicide is generally an outcome of or financial issues, depression, egoistic reasons. Suicide for economic reasons is a choice not due to the loss of personhood, but due to financial issues for the quality of life\textsuperscript{52}. After going through the discussion, euthanasia cannot be applied to suicide or homicide due to the lack of regard for the sanctity of life and the right to live. One who commits suicide to relieve hopeless suffering is in all actuality committing voluntary type of euthanasia.

\textsuperscript{50} Ibid
\textsuperscript{51} Fletcher (1976) p.173
\textsuperscript{52} Ibid.
3.19 COMPARISON BETWEEN SUICIDE, ASSISTED SUICIDE AND EUTHANASIA

“Individual act of ending one’s own life is known as Suicide and is condemned legally as well as morally in the world everywhere. Although the act of suicide is an offence against life but we cannot punish the person because the person who commits suicide is no more. Attempt to commit suicide punishable offence in India but in many countries it is not punishable because the person needs mercy and sympathy and healing for recovery from depressing thoughts of suicide. It must be well noted that if some other person has instigated, abetted or aided the suicide that person remains liable for punishment.”53

Assisted Suicide: If, “the suicide commits by a person after assisted by another person by provides that person the guidance, information, knowledge, and means to take his or her own life; with the intention that they will be used for this purpose it will be assisted suicide. If the same is done by doctor then it is called ‘Physician Assisted Suicide’. If a third party performs the last act that intentionally causes a patient's death, euthanasia has occurred. If the person who dies performs the last act, assisted suicide has taken place. In the case of suicide, a person terminates his or her own life by himself, mostly in lonely place. But sometimes he or she may find himself or herself in a pitiable condition arising out of infirmity caused by physical or mental and physical illness, or such other condition; that, even for committing suicide, the person requires help of others”. He or she may be disabled, “in terminal illness, bed ridden or paralyzed or in coma or otherwise unable to commit suicide himself. Here legal and ethical debate for euthanasia initiated. Both assisted suicide and euthanasia are against law in most of the countries as they involve unnatural ending of life and amount to murder in disguise”. But in exceptional cases passive euthanasia may be justified as it involves medical, ethical, moral, and legal issues.54

53 Ibid.
54 Ibid.
Euthanasia implies terminate life of a person abruptly by intentionally or inaction causing death for his or her alleged benefit. “Unless the death is intentionally caused by what was done or not done there is no euthanasia. Thus, some medical actions that are often labeled ‘passive euthanasia’ are no form of euthanasia, since the intention to take life is lacking. These acts include not commencing treatment that would not provide a benefit to the patient, withdrawing life support system that has been shown to be ineffective, too burdensome or is unwanted and the giving of high doses of pain-killers that may put in danger life, when they have been shown to be necessary”. All those are part of good medical practice, supported by law, when they are properly followed.

Euthanasia is voluntary “when the person who is dead has consented to be killed and, it is Non voluntary, when the person who is dead made no request and gave no consent. Euthanasia will be Involuntary, when the person who is killed made an expressed wish to the contrary. Euthanasia is called ‘Active Euthanasia’ when it involves intentionally causing a person’s death by performing an action such as by giving a lethal injection. And it is termed as ‘Passive Euthanasia’ when it intentionally causes death by not providing necessary medical care or food and water”.

3.20 MURDER

3.20.1 ETYMOLOGY

The word murder has been derived from the Germanic word ‘Mortna’ which means ‘secret killing’.

3.20.2 DEFINITION

Kill (another human) unlawfully.

---

55 Pahurkar Prof. Pradnya “Mercy Killing: A Gruesome or a Compassionate Act (Euthanasia)” (2015 p.18)
3.20.3 ACCORDING TO INDIAN PENAL CODE\textsuperscript{56}

Murder means the act by which the death is caused is done with the intention of causing death, if it is done with the intention of causing bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature of cause of death or if the person committing the act knows that it is so enormously dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act without excuse for incurring the risks of causing the death or such injury as is mentioned above.

3.21 DEATH, BRAIN DEATH AND WITHDRAWAL OF LIFE SUSTAINING TREATMENT

Definitions of death are important in euthanasia debate, since the justice with terminally ill patients can only be done by a clear understanding of the precise meaning of the term ‘death’. According to the classic account, death was ‘the permanent cessation of the flow of vital bodily fluids. Living things, this account assumed, have vital bodily fluids. They may be blood, sap or something else, but when they stop flowing forever, all living things die. Using this definition, doctors know that, if breathing and circulation have ceased, then after a decent interval you could be sure that the patient is dead. The fourth edition (1968) of Black’s Law Dictionary carried the following version of the classical definition of death, which avoided the problem of circularity: Death, the cessation of life; the ceasing to exist; defined by physician as a overall stoppage of the circulation of the blood and a cessation of animal and vital functions consequent thereupon such as respiration, pulsation etc. The question is a vital one, in every sense of the term. When breathing, warm, pulsating human beings are declared to be dead, they lose their basic human rights. They are not given life support. The change in one’s notion of death that excluded these human beings from the moral

\textsuperscript{56} Ibid.
community was among the first in a series of dramatic changes in one’s view of life and death.57

The medical definition of death a doctor before going to certify death must be satisfied that the nervous, circulatory and respiratory systems have ceases to work permanently and irreversibly which cannot be started again. This is known as somatic death. With somatic death further supply of oxygen to different organs stops. Due to lack of oxygen supply, individual cells of different tissues or organs die. This is known as molecular or cellular death. Molecular or cellular death means the death of the tissues and cells individually taking place about three to four hours after the stoppage of the circulation. But the process of death may be initiated by the failure of the functions of brain i.e., in other words, brain death in some cases initiates the process of the somatic death.

These definitions may not solve all legal problems. With the advent of science, now-a-days maintenance of circulation with artificial aids has become a common event in hospitals. Sustaining life by such artificial aids inherits certain legal implications. The same is true in question of maintenance of respiration, where the patient need artificial reparation, for continuation of life. The necessity for such artificial circulatory or respiratory aids is that, the natural circulation or reparation may be established after use of artificial respiration for quite a long period, say for a week, or two or more. It is risky decision as the doctor may by such an act involve himself with the offence of culpable homicide not amounting to murder or liable for causing death of the patient by rash and negligent act.

The law does not say that if a patient is kept alive on mechanical life support systems, an artificial aid cannot be withdrawn. Certainly, these systems have to be stopped at some point. Now the question is – what is the stage? The life support aid can be withdrawn when it cannot always give the expected result to revive the patient. In such a crucial situation the decision should be taken in consultation with another doctor. The American Medical Association has a policy that a doctor can ethically withdraw all means of life prolonging medical

57 Singh, Chandra Dr. Subhash “Euthanasia and Assisted suicide : Revisiting the sanctity of life principle” (2012) (p. 196-231) Prof. of Law, School of legal Studies, Assam University (Silchar) EMail-solmgkvp@yahoo.co.in Journal of the India Law Institute
treatment, including food and water, from a patient in an irreversible coma. Yet
the same policy insists that the physician should not intentionally cause death.58
The Medical Royal College and their faculties of United Kingdom conferences
and resolute in 1976 that “when irrevocable damage of brain is diagnosed” and if
it is ascertained by tests that none of the critical damage is diagnosed and if it is
establishing the patient is accounted to be dead, though the decision to cease
artificial support should be taken by two doctors.

Glanwille Williams suggested that “a medical practitioner must never do
anything actively to kill sufferer, but he is not duty bound to struggle for the life
span of a sufferer’s.” His only duty is to make sound efforts, keeping in mind the
regard and benefit to the patient to be anticipated from further exertion. His moral
duty is only to save patients life from painless suffering. He need not struggle
ceaselessly to maintain bare vital functions when he knows that he cannot restore
the patient to life with any human value. The idea that someone is dead when his
brain is dead, is at best rather odd, says Peter Singer, a noted ethicist. Way back in
1968 the Harvard Brain Death Committee defined death in terms of brain death.
The committee said that a new definition of death is needed because irreversibly
comatose patients are a great burden not only on themselves but also on their
families, hospital and patients waiting for bed. And then there is the problem of
controversy about obtaining organs for transplantation. The basic aim of the
committee was to redefine death in order to make viable organs more readily
available to person requiring transplant.59

The second remarkable aspect of the Harvard Committee Report is that
referring to irreversible coma as the condition that it wishes to define as death.
The committee also speaks of ‘permanent loss of intellect’ and suggest that
responsible medical opinion ready to adopt new criteria for pronouncing death to
have occurred in an individual sustaining irreversible coma as a result of
permanent brain damage. Now irreversible coma as a result of permanent brain
damage is by no means identical with the death of the whole brain. Permanent

58 Kolburn, Don “AMA Ethics panel revises rules on withholding food: in irreversible, coma, water
and nutrition may be stopped” Washington Post 9 (1 April, 1986)
59 Ibid.
damage to the parts of the brain responsible for consciousness can lead to a condition known as ‘persistent vegetative state’. In these people the brain stem and the central nervous system continue to function, but consciousness has been irreversible lost. Even today no legal system regards those in a persistent vegetative state as dead.\textsuperscript{60}

Campaigner for euthanasia have accused the legal system of applying a double standard, after several cases, in which the doctors attending brain dead patients, were not allowed to adopt ‘brain dead’ as a sole criteria of death in those patients who could be suitable donors of kidney, eyes and other organs. In India, already the Transplantation of Human Organs Act, 1994 shows the way forward. It recognizes as dead a person who is brain dead. The doctors who work with organ transplantation have been taught by their professional ethics as well as by the Transplantation of Human Organ Act that patient, whose hearts still beat, are dead as their brains are dead. The doctors have now made up their minds in favour of brain death instead of her death in cases of organ donation. This disparity must be removed and the law must adopt a uniform criterion of death\textsuperscript{61}.

The redefinition of death in terms of brain death cannot harm the brain dead patients. It may be benefited to everyone else – the families of brain dead patients, the transplant surgeons, the hospitals, people needing transplant, people who worried that they might one day be kept on a respirator after their brain had died, taxpayers and the government. The general public understood that if the brain has been destroyed then there can be no recovery of consciousness and so there is no point in maintaining the body. Defining such people as dead was a convenient way around the problems of withdrawing treatment from them. It is necessary to bring medical practice into line with the definition of brain death. Henry Beecher had to say in an address to the American Association for the advancement of science.

At whatever level we choose to call death, it is an arbitrary decision, Death of the heart? The hair still grows- Death of the brain? The heart may still beat. The need is to choose an irreversible state where the brain no longer functions. It is

\textsuperscript{60} Ibid.
\textsuperscript{61} Ibid
best to choose a level where, although the brain is dead, usefulness of other organs still present. This we have tried to make clear in what we have called the new definition of death.

3.22 ABORTION

We must discuss about the already legal and morally accepted abortion before discussing active euthanasia. In some condition abortion may be accepted. So, people of middle ground of being both ‘Pro-Choice’ and ‘Pro-Life’. Abortion is morally and legal accepted in some cases but in all cases do not.62

According to Ethicist Joseph Fletcher, abortion is a passive, involuntary and direct euthanasia. Abortion is a deliberate act taken for the merciful reasons of either the mother or the fetus without consent of the fetus, thereby represent active euthanasia.

3.23 EUTHANASIA DEVICES

“A euthanasia device can be used to engineer to allow an individual to die quickly with minimum pain. The most common devices are those designed to help terminally ill people die by voluntary euthanasia or assisted suicide without prolonged pain. They may be operated by a second party, such as a physician, or by the person wishing to die. There is an ongoing debate on the ethics of euthanasia and the use of euthanasia devices.”63

- Notable devices
- Thanatron
- Mercitron
- Deliverance Machine
- Exit International's euthanasia device

62 Myers Harry D. “Determining the morality of active euthanasia” Southern Illinois University, (Carbondale)
3.23.1 THANATRON

Dr. Jack Kevorkian invents the machine and stated, “This device involved an individual pushing a button that released drugs or chemicals that would end his or her own life. Two deaths were assisted by means of this device which delivered the euthanizing drugs mechanically through an IV. Kevorkian called it a ‘Thanatron’ or death machine.”

He also described, “it had three canisters or bottles mounted on a metal frame about 6 inches (150 mm) wide by 18 inches (460 mm) high. Each bottle had a syringe that connected to a single IV line in the person's arm. The first bottle contained ordinary saline or salt water. Another contained a sleep inducing barbiturate called sodium thiopental and the third a lethal mixture of potassium chloride which immediately stopped the heart and pancuronium bromide, a muscle relaxant to prevent spasms during the dying process. These are the three drugs administered in the lethal injection execution protocol, but in the execution protocol, the pancuronium bromide is administered before the potassium chloride.”

1. Kevorkian or an assistant begins the saline solution flow.
2. The person who wants to die must deliver the barbiturates by throwing a switch, pushing a button or pulling a string.
3. After that, either a timer or a mechanical device triggered by the person's falling arm as the drugs take effect starts the lethal drug flowing. The idea is for the deadly chemicals to enter the bloodstream only after the person is asleep. Death usually occurred within two minutes.

3.23.2 MERCITRON

Kevorkian assisted others by inducing CO gas mask which was called ‘Mercitron’ (mercy machine). According to him, it was an elementary device consisting of a canister of carbon monoxide attached to a face mask with a tube and inhale of CO caused chock the living system of the body immediately. Carbon

---

64 Ibid.
65 Ibid.
66 Ibid.
monoxide (CO) is a health hazardous gas to others who may discover the body and cause death of other.

3.23.3 DELIVERANCE MACHINE

The ‘Deliverance Machine was invented by Philip Nitschke’ and based upon questionnaire supported by computer software. The questions given below were displayed on the screen and each required the patient to answer ‘Yes’ to proceed further:

1. “Are you aware that if you go ahead to the last screen and press the ‘Yes’ button, you will be given a lethal dose of medications and die”?
2. “Are you certain you understand that if you proceed and press the ‘Yes’ button on the next screen that you will die?”
3. ‘In 15 seconds you will be given a lethal injection press ‘Yes’ to proceed’.

3.23.4 EXIT INTERNATIONAL’S EUTHANASIA DEVICE

It is used an ordinary barbecue gas bottle filled with nitrogen, a plastic suicide bag. This new device/method is a modification of the ‘Exit Bag plus helium method described in The Peaceful Pill Handbook advantages over the helium method:

- Larger amounts of nitrogen are available and flow rates last longer.
- The gas is more physiologically inert with no chance of adverse reaction (helium is reported to cause some twitching during death)

3.24 HUMAN RIGHTS AND EUTHANASIA

The concept of human rights, derived from natural rights based upon they liberty of human being including one’s life, dignity or property. It is a concept of individual considered with respect to one’s duty. In our day to day life we often come across terminally ill patients that are bedridden and are totally dependent on other. It actually hurts their sentiments. Looking at them we would say that “death will be a better option for them rather than living such a painful life; which

---

67 Ibid.
68 Ibid.
is painful physically as well as psychologically. But if on the other hand we look at the Netherlands where euthanasia is made legal, we will see that how it is abused there. So following its example no one wants euthanasia to be legalized in India. But the question lies before us is which will be a better option euthanasia are discussed and then it is totally on the public decide which will be better”. The Hon’ble Supreme Court has already given its decision on this point but still some doubts arise. Court held in case “Gian Kaur that Article 21 speaks of right to life. However the spotters of euthanasia emphasize that when a person suffering with terminal disease cannot even take care of himself, than how can be thinking for him a dignified life. In that case it will be better if he is allowed to end his life as Article 21 speaks for a dignified life. But the court made it clear that according to Article 21, a person has a right to live a dignified life which also includes right to die with dignity. But here right to die means dying a natural death”.

Therefore, Article 21 nowhere mentions about, “Right to die an unnatural death. Curtailing the natural span of life of a person who has a certain end to life can not in any case be read in to Article 21. If a person is terminally ill, it does not mean he himself or anyone else can end his life. It will surely be a violation of the ‘sanctity of life’. Living a dignified life does not at all means that a person can end his life unnaturally. Our constitution nowhere provides for it Thus, right to life does not include right to die. If a person’s life is being ended unnaturally it will sourly be a violation of human right. By virtue of being a human being a person has right to live a life as he wishes to. But that does not allow him to end his life as and when he wants. This life is given to him by God and thus, it should be ended as its natural span”.

---

69 Ibid.
70 Ibid.
71 Ibid.
3.25 CONCLUSION

The desire for control over how one dies marks a sharp turning away from the sanctity of life ethic. It will not be satisfied by the concessions to patient autonomy within the framework of the ethic – a right to refuse extraordinary means of medical treatment, or to employ drugs like morphine that are intended’ to relieve pain but have the ‘unintended’ but foreseen side effect of shortening life. The right to deny medical treatment can help only in the limited number of cases in which it leads to a swift and painless death. Most cancer patients for example are not in this situation. They are more likely to be helped by liberal injections of morphine. For most people, who are very ill, the desire for control over death is best satisfied with the assistance of a medical practitioner. That is why the traditional ethic will be unable to accommodate the present demand for how we die.

The centuries old Hippocratic Oath relating to sanctity of life ethic needs to be revaluated because it is too absolutistic deal all the circumstances that can arise. It is noted that a civilized society does not offer inadequate care to any of its members, however damaged or disadvantaged, not dies it neglect them by failing to offer care or treatment which could be of any benefit. In the same way, a civilized society should not condemn one of its members for not to be a ‘victim of medical technology’. It is in this context to say that prolonging life by the use of medical technology is greater burdens than benefits on terminally ill patients.

If an individual suddenly become unable to breathe on his/her own, it would have been quite in accordance with the law and the traditional ethical view not to put him/her one respirator or if he/she was already on one, to take it away. It is not clear how much weight the traditional ethic places on the fine line between ending life by withdrawing treatment, and ending it by a lethal injection. The prohibition on physician-assisted suicide was one element of a general view that the state should enforce morality and act paternalistically toward its citizens.

72 Ibid.
73 Singh Dr. Subhash Chander "Euthanasia and Assisted Suicide: Revisiting the sanctity of life principle" (2012) (p.196-231) Prof. Law School of Legal Studies Assam University (Silchar) Journal of the Indian Law Institute
This view of the proper role of the state was first powerfully challenged by the nineteenth century British philosopher Jon Stuart Mill, who wrote in his classic On Liberty, “the only reason for which power can be rightfully exercised over any member of civilized community, against his will, is to prevent harm to others. His own good either physical or moral is not a sufficient merit”.74 Incurably ill people who ask their doctors to help them die at a time of their own choosing are not harming others. The state has no grounds for interfering, once it is satisfied that others are not harmed, and the decision is an enduring one that has been freely made, on the basis of relevant information, by a competent adult person.

The new ethical approach allows us to acknowledge that life without consciousness is of no worth at all. One should treat human being in accordance with their ethically relevant characteristics. They include consciousness, the capacity to physical, social and mental interaction with other beings, having conscious preferences for continued life, and having enjoyable experiences.

Can doctors who remove the feeding tubes and ventilators from patients in persistent vegetative state really believe that there is a huge gulf between this, and giving the same patients an injection that will stop their heats beating? Doctors may be trained in such a way that it is psychologically easier for them to do the one and not the other, but both are equally certain ways of causing the death of the patient. As far as the second assumption, one can say that it is not rationally defensible.75

---