1.1 Introduction

To take birth on this earth is a great blessing and gift of God. The child comes in this world and he lives according to the time schedule as permitted by the almighty. During this sacred journey from birth to death, he accumulates good and bad experiences of life and leaves this world with these experiences which are manifested in his soul. The journey brings him prosperity sometimes and sometimes misfortune and his personality is shaped accordingly. Sometimes during this journey, he finds tears in his eyes and sometimes splash of brightness and joy which enlighten him.\(^1\)

According to Jeremy Bentham, pleasure and pain are natural events. Pleasure and pain are in fact the masters of human conduct and must be served in all walks of life whether social, political, economic, moral, religious and in speech, thought and action. The whole superstructure of morality thus rests on the foundation of pleasure and pain.\(^2\)

Similarly, Shakespeare rightly said that:

> The web of our life is of a mingled yarn, good and ill together.\(^3\)

In this world, where no stability of any kind, no enduring state is possible, where everything is involved in restless change and confusion and keeps itself on its tightrope only by continually striding forward, in such a world, happiness is not so much as to be thought of. The scenes of our life resemble pictures in rough mosaic; they are ineffective from close up and have to be viewed from a distance if they are to seem beautiful.\(^4\) Thus, life itself is a sea full of rocks and whirlpools that man avoids with the greatest caution and care, although he knows that, even when he succeeds with all his efforts and ingenuity in struggling through, at every step he comes near to the greatest, the total, the inevitable and irremediable shipwreck, indeed even steers right on to it, namely death. This is the final goal of the wearisome voyage, and is

---

\(^3\) Frederick Ward Kates, *The Use of Life*, 18 (1953).
worse for him than all the rocks that he has avoided.\textsuperscript{5} On the other hand, the sufferings and afflictions of life, sometimes, can easily grow to such an extent that even death, in the flight from which the whole life consists, becomes desirable and a man voluntarily hastens to it.\textsuperscript{6}

But generally speaking, every human being, except in moments of acute distress wants to continue to live\textsuperscript{7} and to postpone death.\textsuperscript{5} To die is to suffer the greatest possible misfortune since that of which we are deprived of by death is life and life is all we have.\textsuperscript{9} 

Indeed, it is axiomatic that the real meaning of life and personal liberty should be enjoyed only in the ambience of physical and psychological growth. Furthermore, the presence of such aura is required to identify the individual’s inner soul. Hence, State endeavours to provide this kind of environment to individuals by granting fundamental freedom to them. But the struggle for civil liberties is still going on in both developing and developed nations.

It is pertinent to note here that fundamental freedom, especially relating to spiritual growth, have not developed all of a sudden. The freedoms have been evolving since times immemorial. However, the major shift took place in the period of renaissance and industrial resolution. Individualistic rights were greatly admired during and after the industrial revolutions. Therefore, it can be said that the acknowledgement of individualistic rights was very significant step for the achievement of enlightenment. Initially, the individual right showed their concern towards the protection of physical body and other tangible things relating to individuals. Later on, the individual rights developed in the form of State’s recognition to one’s control on its own body.

However, State’s recognition had to pass through the tussle among society’s moral values and an individual’s personal liberty. At one point of time, today’s numerous personal liberties were treated as immoral. They were against religious principle. Gradually, after the incorporation of logic, reasoning, justness, fairness, equity and good conscience into the legal system, the State provided breathing space freedom. But still, there is disparity in different nations regarding one’s right on its own body.

\textsuperscript{6} \textit{Ibid.}
\textsuperscript{8} \textit{Id.}, at 91.
\textsuperscript{9} \textit{Id.}, at 83.
It is so because of the fact that every society has its own parameter to decide moral and religious values. Every society takes into consideration the decent values. An individual’s action can be discarded by the society member on the basis of its apprehensive impact on decent values.

Initially, abortion was totally illegal as it was against religious principles. But, later on, while considering the health of women, to prevent bastardisation and for the sake of family planning, medical termination of pregnancy was allowed under certain circumstances. In order to prevent health crisis, psychological crisis, unemployment etc., ‘prostitution’ was also legalised in many legal systems of the world. Furthermore, the individual rights of lesbians, gays and transgenders got recognition in almost every civilised State. The practice of sex change, use of silicon in breast enhancement, tattoos and piercing on body, transplant of organs etc., reflects legal recognition of one’s right to have control over one’s own body. Similarly, the recognition of right to marry and live-in-relationships enhanced the zone of individualistic rights. In the similar fashion, the idea of ‘surrogacy’ is a buzzword in the present times, on which debate has started in India as well as in other countries.

‘Right to die with dignity’ is another issue which concerns the right to have control over one’s own body, destiny and the nature itself, including the right to decide the time and manner of one’s own death. The phrase covers a variety of concepts like suicide, euthanasia (active and passive) and assisted suicide (including physician assisted suicide).

In the west, growing support for legalizing various forms of euthanasia is observed in recent times. Proponents claim it as a civil right, whereas, for the opponents, it is a Holocaust. Like abortion, euthanasia has become one of the most painfully divisive issue debated worldwide because it is based on human mortality and compassion. Federal Ninth Circuit Court Judge Stephen Reinhardt, in his historic 1996 decision on the right-to-die case *Compassion in Dying v. State of Washington*\(^\text{10}\), opened his judgment with the following thoughtful words:

> This debate requires us to confront the most basic of human concerns—the mortality of self and loved ones—and to balance the interest in preserving human life against the desire to die peacefully and with dignity.

\(^{10}\) 79 F.3d 790 (9th Cir. 1996).
...This controversy...may touch more people more profoundly than any other issue the courts will face in the foreseeable future.  

The movement to legalize some form of euthanasia has often been called the right-to-die movement. The name seems strange, since nothing is more unquestionably guaranteed to everyone than death. What the movement’s supporters want to protect is not really the right to die but the right to have some degree of control over the time and manner of one’s death—i.e. “the right to choose to die.” They believe that competent adults with terminal illness should be legally permitted not only to refuse life-sustaining medical treatment but also to receive a physician’s help in ending their lives if they request it. Some right-to-die supporters feel that people who have an incurable degenerative or disabling condition should also be allowed to ask for aid in dying, even though their illness is not terminal. People who oppose the movement, on the other hand, say that no individual’s right outweighs the state’s duty to protect life and the physician’s duty not to harm patients. They fear that if physician-assisted suicide or euthanasia is legalized, society will slide down a “slippery slope” toward coercing and even perhaps forcing vulnerable members—the elderly, chronically ill, disabled, poor, and minorities—to die against their will. The so-called right to die, they say, will become a duty to die.  

In recent times, death has transformed from a social process to a merely biological one. Science has taken a hold over the role of the family, as medical treatment has become the backbone for a terminally ill patient, and the role of the family has decreased from loving and sincere care to an almost obligatory support. Death has been stripped of its spiritual and social quality, and has turned into a terminating event that was to be feared, and thus hidden away in sterile institutions, rather than accepted and experienced within the home and in the company of one’s friends and family.  

Just imagine a scene of impending despair at a hospital. An anxious relative sits at the bedside of a hospital patient expecting the imminent arrival of the Grim Reaper and the ultimate departure of a loved one. But the deathly visitation is not

13 Raymond Whiting, A Natural Right to Die, 3 (2002).
forthcoming and the patient lingers on interminably. The prospect of recovery is negligible but the expectation of death recedes with the passage of time. Eventually, it is apparent that medical technology has exceeded its ability to preserve life and has embarked on an odyssey of prolonging the dying process. The options available for the continuing care and treatment of this patient are readily apparent. He can be maintained indefinitely in his present condition, or he can be allowed, or enabled to die. Sadly however, the availability of these options is limited and constrained by both social mores and the criminal law. The implications for the patient, his relatives and dependants, the medical carers and for the allocation of scarce resources are profound and emblematic of the experiences of people everywhere. His dilemma raises legal, social, ethical and medical questions to which there are no easy solutions. Should he be kept alive as long as technology allows? Is it ethical to keep him alive just because we can, or can we morally let him die? Can his family insist that he is kept alive or, conversely, that his life is not maintained? What are the legal rights of the patient and his family? What is the responsibility of the clinicians providing medical care? Is it legal for care to be discontinued? Can the patient himself influence the decisions taken regarding his future medical care? Questions like these are confronted every day by people around the world.14

Those involved may encounter their personal dilemmas due to terminal or incurable disease, the effects of trauma, or simply the degeneration associated with old age. How they came to occupy their present position is often relatively unimportant compared with what happens to them next. Today it is commonplace for people to be kept alive or brought back from the brink of death where in the past they would have died. But what kind of life are they living and how can their carers respond? The answer was considered by the Institute of Medical Ethics Working Party on the Ethics of Prolonging Life and Assisting Death which reported that,

The lives of an increasing number of patients, predominantly but by no means all elderly, are now being prolonged by modern medicine in states of coma, severe incapacity, or pain they consider unrelievable and from which they seek release. Doctors in charge of such patients have to decide not only whether they are

14 Hazel Biggs, Euthanasia, Death with Dignity and the Law, 10 (2001).
morally bound to continue with life-prolonging treatment, but also, if no such treatment is being given, whether and in what circumstances it is ethical to hasten their deaths by administration of narcotic drugs.\textsuperscript{15}

For these patients, as for the hypothetical patient depicted above, living may amount to little more than survival. Life has been saved, but only because dying has been prolonged, and the quality of that life is questionable. Crucial questions raised by this situation concern exactly how life and death are defined. More specifically, is our understanding of these concepts rigid or must it be flexible in the face of rapid medical and technological advancement? Peter Singer argues persuasively that “the traditional ethic will be unable to accommodate the present demand for control over how we die”.\textsuperscript{16}

The logic of his argument is compelling and suggests that not only must our understandings of life and death be revised, but also that the law should be reshaped in response. Certainly the ability to preserve life despite trauma and terminal disease has resulted in more people demanding the right to die with dignity rather than endure the perceived indignity of a dependent existence.\textsuperscript{17}

Human dignity however is a nebulous concept amenable to a range of interpretations. In the context of the present debate the close association between ‘euthanasia’ and ‘death with dignity’ reflects the contemporary emphasis on self-determination as an expression of individual autonomy. In more classical, Kantian terms, respect for the autonomy of all rational beings demonstrates the intrinsic value of each individual and the esteem and inherent dignity of which each is worthy. Euthanasia in its various forms is one mechanism frequently promoted as a means of maintaining autonomy and achieving death with dignity. However, whether dignity can be achieved through euthanasia depends on the individual circumstances of each case and on how euthanasia is defined.\textsuperscript{18}

Whether euthanasia can provide an answer to the need for a dignified death and whether this should be done by making a legislation to provide people with a legal right to opt for right to die vis-à-vis euthanasia is the main theme of this research work.

\textsuperscript{15} \textit{Id.}, at 9.
\textsuperscript{16} \textit{Id.}, at 10.
\textsuperscript{17} \textit{Id.}, at 11.
\textsuperscript{18} \textit{Ibid.}
1.2 Objectives of the Study

The whole research work has been conducted to fulfill the following objectives:

- To analyze the value of life among individuals.
- To analyze the awareness of right to life and its judicial interpretation among the people.
- To analyze the meaning of death and concept of a dignified death.
- To analyze whether right to live with dignity includes within its sweep right to die with dignity.
- To study the horizons of right to personal autonomy and self-determination.
- To analyze whether the principle of sanctity of life can give way to the right to personal autonomy and self-determination in cases where a person is not able to live a dignified life.
- To study whether euthanasia can be an answer to cases where a person is suffering from terminal illness or in coma or in persistent vegetative state or brain dead.
- To analyze various reasons giving rise to a debate over euthanasia.
- To study the legal position of euthanasia in various countries including India.
- To study the role of judiciary in interpreting right to life and its horizons.
- To study the role of Law Commission of India in this regard.
- To undertake a comparative study of the recommendations of the Supreme Court and the Law Commission of India.
- To determine whether there is a need to make a law governing the subject in India.

1.3 Research Hypothesis

Everyone wants to have his or her loved ones around as long as possible. But watching a close relative or friend deteriorate, lose all quality of life and dignity before dying is a horrific situation. On the other hand, every person has a right to die with dignity.

But only in an extreme case, where the person is brain dead and is kept on artificial life support and as per the genuine medical opinion, death is near and certain and there are no chances of recovery, then subject to very strict and foolproof procedures (including the consent and wishes of his or her family and the approval of the court) he or she should be allowed to die in a passive manner only i.e. by
withdrawing artificial life support so that he or she may die a natural death because keeping such a patient alive by artificial life support may go against the law of nature. Only in such a situation we can say that, when there is no hope, there should be dignity at least.

Indian legal system does not recognize right to die in any form. And therefore, it is high time that a policy decision is taken at national level.

1.4 Research Methodology

The present research work requires both doctrinaire and non-doctrinaire study. The theoretical work will deal with the literature relating to various issues related with right to die and euthanasia in particular, historical roots of the concept, legal position of various countries on the issue including various Constitutional, Legislative policies and measures and the role of judiciary in dealing with the issue. It is often a most difficult decision, which many families and medical fraternity routinely face. This is an emotional, ethical, economic, social and medico-legal issue. The issue is of a patient's rights as a citizen. Therefore, we need to understand the concept not only from the point of view of patients but also from the point of view of society as a whole. The empirical work will be done by means of a questionnaire specifically designed to ascertain the real and practical aspect of the concept.

1.5 Universe of Study

Though there is a worldwide debate over end-of-life issues yet the empirical study of the present research will comprise of views of various sections of public, which includes patients and their families, doctors and the legal fraternity and is intended to be conducted in the city of Chandigarh. Chandigarh is a Union territory that serves as the capital of Punjab and Haryana. It is occasionally referred to as the City Beautiful.

People in Chandigarh are accustomed to a leisurely lifestyle, which sets them apart from the residents of other major cities in India. However, with the passage of time, they are adopting themselves to a fast paced lifestyle. The residents of the city are mostly a working class and are quite busy in their stressful professional life due to which they are unable to give sufficient time to their families, especially when both spouses are working. The result is that they have to arrange crèches for their infants, tuitions for their school going children and maids to take care of their home and aged parents, who may be suffering from one or the other illness and in some cases even
terminal illness. Therefore, it would be quite interesting to know their views on the concept of right to die with dignity vis-à-vis euthanasia.

Another reason to conduct the empirical study of the present research paper in this region is that in order to cater to the multifarious needs of the patients in the city and adjoining areas, a large number of multi-specialty hospitals have been constructed in the city. Moreover, recently the Chandigarh Administration has proposed to set up a Medicity in the Union Territory to offer citizens a wide array of world-class ultra-modern health care facilities with a super-speciality hospital as the core. Therefore, the views of the doctors in these hospitals and terminally ill patients getting treatment from these hospitals as well as their families can be obtained through empirical study.

1.6 Review of Literature

The debate on Euthanasia and Physician-assisted suicide is a continuing process taking place throughout the world including India. The recent case of *Aruna Ramachandra Shabhang v. Union of India* has once again sparked the debate on legalization of euthanasia in India.

Pralika Jain in her article, “Euthanasia and the Society” has taken the view that Constitution is a social document. It is the society in its political aspect. We can’t understand its nature without understanding the chief characteristics of the society. If the Constitution is such that it has taken into consideration, the social set up, then only will it stand the test of time. Constitution and society grow, develop together and gets intertwined in each other. The Constitution takes into account changes and developments in the society. Ours is a democracy, which means that it is by the people, of the people and for the people. Constitution of India locates the power that resides in the people. It is the people’s power for people’s benefit. Constitution creates rights and duties. Almost all our demands get converted into rights, even our feelings and emotions are governed by the rights and duties we have.

Life is a process that we have to go through. Ronald Dworkin, in his book described a natural course of human life as beginning in conception, extending through birth and childhood, culminating in successful and engaged adulthood in which the natural biological investment and the personal human investment in that life

19 AIR 2011 SC 1290.
21 Ibid.
22 Ronald Dworkin, Life’s Dominion (1994).
are realized, and finally ending in natural death after a normal span of years.\(^{23}\) According to him, human life, in any form, has inherent, intrinsic, innate sacred value and that whatever choices we have about birth and death, should be made, so far as possible, to respect and not dishonour that profound value.\(^{24}\) Human life is inviolable.\(^{25}\) Once a human life has begun, it is very important that it flourish and not be wasted.\(^{26}\) He gives an example that we attach great value to works of art when they exist, even though we care less about whether about more of them are produced.\(^{27}\) Something is sacred or inviolable when its deliberate destruction would dishonour what ought to be honoured.\(^{28}\)

Sujata Pawar in her article “Right to Die, How far Right? Judicial Responses”\(^{29}\) rightly said that Article 21, though worded in negative phraseology, has imposed positive obligation upon the state to take steps for ensuring better quality of life and dignity to people.\(^{30}\) The text of Article 21 has remained the same throughout the years but the context has been intellectually interpreted by the Indian judiciary, so as to read in variety of other related rights so necessary for the true enjoyment of the right to life.\(^{31}\) According to Sujata Pawar, the concept of death implies extinction of life.\(^{32}\) The Supreme Court of India has rightly taken the view that death is the only certain thing in life. Which is born must die.\(^{33}\)

In his book, Kasturi Basin took the view that death is not life’s simple opposite but rather its completion. Life is said to be pilgrimage towards death, which is the greatest mystery of life.\(^{34}\)

Ronald Dworkin\(^{35}\) described death in two ways. One, death is the far boundary of life and every part of our life including the very last, is important, and second, death is special, a peculiarly significant event in the narrative of our lives, like a final

\(^{23}\) Id. at 89.
\(^{24}\) Id. at ix, 11.
\(^{25}\) Id. at 26.
\(^{26}\) Id. at 74.
\(^{27}\) Ibid.
\(^{28}\) Ibid.
\(^{30}\) Id. at 280
\(^{31}\) Ibid.
\(^{32}\) P. Rathnam v. *Union of India*, AIR 1994 SC 1844 at 1853 (para 29).
\(^{34}\) Supra note 22.
scene of a play, with everything about it intensified, under a special spotlight. According to him, it is a platitude that we live our whole lives in the shadow of death; it is also true that we die in the shadow of our whole lives. Death’s central horror is oblivion—the terrifying, absolute dying of the light. Death has dominion because it is not only the start of nothing but the end of everything, and how we think and talk about dying—the emphasis we put on dying with ‘dignity’—shows how important it is that life ends appropriately, that death keeps faith with the way we want to have lived.37

But an important question arises: If a person is in such a situation and he is not able to live a meaningful and dignified life either because of terminal illness or otherwise, should he be allowed to at least die with dignity or ask for a dignified death? Or to put it alternatively, does right to live a meaningful and dignified life extends so far so as to include within its ambit the right to die a dignified death either by way of suicide or assisted suicide or euthanasia? Does the denial of right to die with dignity violate the right to live with dignity for which we have been striving throughout our history? Do human dignity, freedom and autonomy extend so far that we should override the sanctity of sacred and precious life given to us by God? Once lost, life cannot be restored back.

Such situations have led to a debate over end-of-life issues, not only in India, but also throughout the world. Right to die is not something new and unknown to our civilization.38 It is part of a constellation of life and death issues. Mylinh Cao, in his article39 has taken the view that the term refers to various issues related to the decision of whether an individual who could continue to live with the aid of life support, or in a diminished or enfeebled capacity, should be allowed to die. In some cases, it refers to the idea that a person with a terminal illness and in serious condition should be killed or be allowed to commit suicide or be assisted in dying before death would otherwise occur i.e. to give people real choice and control to alleviate unnecessary suffering at the end of life.40 The concept is often referred to as dying with dignity.

36 Id., at 207.
37 Id. at 199.
40 Ibid.
Therefore, according to Raphael Cohen-Almagor⁴¹ the central question is: Should terminally ill patients be made to endure painful therapy and be sustained on life support indefinitely or opt for end of life care support that will limit treatment but facilitate a less painful death? It is often a most difficult decision, which many families and medical fraternity routinely face. This is an emotional, ethical, economic, social and medico-legal issue. The issue is of a patient’s rights as a citizen.⁴² Thus, the clash here is between the ‘sanctity of life’ and ‘self-determination and personal autonomy in the end of life decisions’; ‘the welfare of the many’ and the ‘welfare of the individual as a citizen’; ‘the relief of pain’ and ‘the prolongation and preservation of life’; ‘human worth and dignity’ and ‘state’s interests in protecting and preserving the life of citizens’.

Alan Meisel and Kathy L. Cerminara, in their book⁴³ took the view that the term right to die is used both popularly and in legal contexts to apply to an individual’s right to refuse medical treatment, the refusal of which will cause death. Although not used in all legal cases, the term has had long popular currency and is being used by courts, sometimes in combination with the phrases ‘natural death’ or ‘death with dignity’. The term is also sometimes equated with mercy killing or euthanasia.⁴⁴

Thomas L. Beachamp has stated in his article⁴⁵ that the term ‘euthanasia’ is derived from the Greek word "euthanatos", "eu" means both "well" and "easy" and "Thanatos" is death, thus meaning "good death". It means the “intentional killing by act or omission of a dependent human being whose life is felt not to be worth living or for his or her alleged benefit”. In an article titled “Euthanasia, Suicide and Physician Assisted Suicide- Background”⁴⁶ it has been defined as the practice of terminating the life of a person or animal with incurable disease, intolerable suffering, or a possibly undignified death in a painless or minimally painful way, for the purpose of

⁴⁴ Id. at 3.
limiting suffering or for reasons of mercy. This present-day definition differs from that of the classical Greeks.47

In a Medical Dictionary48, the term ‘euthanasia’ has been defined as ‘an act or practice of procuring, as an act of mercy, the easy and painless death of a patient who has an incurable and intractably painful and distressing disease.’49

Shobha Ram Sharma, in her article50 refers to the declaration on euthanasia ‘Iura at bona’ issued by the congregation for the doctrine of faith on 5 May 1980, which defines euthanasia as an action or omission which in itself or by intention causes death in order that all suffering may in this way be eliminated.51 She refers to the definition of euthanasia given by Baruch Brody in his book52, who defined it as the administration of drugs with the explicit intention of ending the patient’s life at the patient’s request. She also refers to the view taken by Carleton Chapman in his book53, that the meaning of euthanasia has evolved over the centuries to focus on a ‘good way’ of ending the life of a suffering patient, with less emphasis on the patient’s psychological state of well-being. It has been argued that euthanasia is homicide, but the physician who commits it always has what he thinks is a merciful, unselfish motivation.54

Spiti Sarkar in her article titled “Right to Die: To be or not to be?”55 has taken the view that euthanasia, physician-assisted suicide and suicide are the species of the same genre. In earlier times, it was used as an omnibus term to signify a painless death. In its modern context, the term is used as a deliberate euphemism to reduce the culpability of an act, which is a subset of murder, by injecting the term ‘mercy’. The fact remains that euthanasia or mercy-killing is all about giving license for the right to kill.56

---

47 Greeks considered euthanasia simply “one mode of dying.” To the Greeks, euthanasia was a rational act by people who deemed their lives no longer useful. That these individuals sought the help of others to end their lives was considered morally acceptable. Ibid.
48 Ibid. at 626.
51 Ibid. at 38.
54 Supra note 50 at 39.
55 Spiti Sarkar, “Right to Die: To be or not to be?” Available at http://www.legalservicesindia.com/articles/die.htm (Accessed on 17.4.11).
56 Ibid
Sam Vaknin, in his article\textsuperscript{57} rightly explains that euthanasia, whether in a medical setting (hospital, clinic, hospice) or not (at home) is often erroneously described as "mercy killing". Most forms of euthanasia are, indeed, motivated by (some say, misplaced) mercy. Not so others. To qualify as euthanasia, the termination of life has to be the main and intended aim of the act or omission that leads to it. He also differentiates between euthanasia and murder. Killing someone before we have ascertained his or her preferences as to the manner of her death and whether he or she wants to die at all. This constitutes murder even if, after the fact, we can prove conclusively that the victim wanted to die.\textsuperscript{58}

There are two kinds of euthanasia - Active and Passive. In his book, Jonathan Herring\textsuperscript{59} defines active euthanasia is the ‘intentional’ killing of a terminally ill patient by a physician, or by someone, such as a nurse, who acts on the direction of the physician. It may be voluntary, non-voluntary, and involuntary. In voluntary active euthanasia the doctor intentionally kills the patient at the patient’s request and so with the patient’s consent. In non-voluntary active euthanasia the doctor intentionally kills the patient without the patient’s request because the patient is unable to make a request or actively give his or her consent. In involuntary active euthanasia the doctor intentionally kills the patient without the patient’s consent when patient consent is possible to get but is not sought. In passive euthanasia the doctor allows the patient to die, either by withholding treatment or by discontinuing treatment, where the relevant treatment is designed to keep a patient alive who is terminally ill. Like active euthanasia, it may be voluntary, non-voluntary, and involuntary.\textsuperscript{60}

J.S. Rajawat in his article, “Euthanasia”\textsuperscript{61} writes that passive euthanasia allows one to die by withdrawing or withholding life supporting means. Life supporting means may further be ordinary or extra-ordinary. Ordinary means such as nutrition and hydration, which are never to be withheld since they are one’s basic rights in order to survive. However, one may not be obliged to use extra-ordinary means to sustain life, such as discontinuance of medical treatment which is burdensome,\textsuperscript{62}

\textsuperscript{58} Ibid.
\textsuperscript{59} Jonathan Herring, Medical Law and Ethics (2006).
\textsuperscript{60} Id. at 437.
dangerous, extra-ordinary to the expected outcome. To withdraw a life supportive
treatment as condition worsens, is letting one die and not a direct killing. In this case,
it is the disease that is killing and not the one who withdraws or consents to withdraw
the treatment. He further says that propounders of active euthanasia have closed their
ear to the God’s command: thou shall not kill. The goal is to eliminate or relieve
suffering by an evil means of death. The suffering of a patient may be lessened, but
this act of killing can never be justified. These patients, whether having incurable
disease, being elderly or suffering in the other ways, are crying out for help and love.
Palliative care, not death is answer. Suffering and pain is manageable in advanced
scientific age. Painkiller can be prescribed as long as there is no danger. Consciousness of patient is strongly encouraged, so that if dying, one may prepare to
accept to meet the Almighty.62

Spiti Sarkar63 takes the view that there have been views propagating the
practice of passive euthanasia to be morally permissible and active euthanasia morally
impermissible. It is submitted that these distinctions are irrelevant and unnecessary as
both acts inevitably center around a single element i.e. ‘an intention to kill’. This
premise has been aptly summed up by Professor James Rachel who believes that the
active and passive dichotomy is a distinction without a difference.64

It must be noted that euthanasia differs from suicide. In Maruti Shripati Dubal
v. State of Maharashtra65, the Division Bench of the Bombay High Court, speaking
through P.B. Sawant J., observed:

[S]uicide by its very nature is an act of self-killing or
self-destruction, an act of terminating one’s own self
and without the aid or assistance of any other human
agency. Euthanasia or mercy killing, on the other hand,
means and implies the intervention of other human
agency to end the life. Mercy killing thus is not suicide
and an attempt at mercy- killing is not covered by the
provisions of section 309. The two concepts are both
factually and legally distinct. Euthanasia or mercy

62 Id at 322.
63 Supra note 55.
64 Ibid.
65 1987 Cri LJ 743.
killing is nothing but homicide whatever the circumstances in which it is effected.\textsuperscript{66}

In his article titled “Euthanasia, Suicide and Theology”\textsuperscript{67}, Aditya Kamath, points out another point of difference, that euthanasia or mercy killing essentially involves pain and suffering due to some incurable medical ailments while suicide need not involve any such malady. Then there is the question of consent. Consent to kill one self is implied by the very commission of the act but in euthanasia the consent has to be in the form of a request essentially by the patient himself or close kith and kin.\textsuperscript{68}

In his article\textsuperscript{69} Shreyas Kasliwal states that euthanasia is different from another concept called assisted suicide. In euthanasia, one person does something that directly kills another. For example, a doctor gives a lethal injection to a patient. In assisted suicide, a person (a doctor or a relative or a friend) knowingly and intentionally provides the means or acts in some way to help the patients kill himself. For example, a doctor writes a prescription for poison, or someone hooks up a facemask and tubing to a canister of carbon monoxide and then instructs the person on how to push a lever so that he will be gassed to death.\textsuperscript{70}

So far as the historical background of euthanasia is concerned, Jonathan Herrings, in his book\textsuperscript{71}, holds the view that people’s attitudes towards death are often marked by their ethical or religious beliefs. Some therefore regard death as no more than a passage to the start of a joyous after-life. To others, death is the final chapter of their story, which should reflect the values and principles, which they have treasured during their lives.\textsuperscript{72}

According to the author, all the religions of the world came into being when neither medicine nor science was progressed enough to give any kind of treatment for life threatening diseases. Most of the major religions of the world have propounded an anti-death philosophy and are opposed to euthanasia or suicide. Euthanasia is not a new subject as is evident from the references to it even in ancient Greece and Rome.

\textsuperscript{66} Id. at 752 (para 16).
\textsuperscript{68} Ibid.
\textsuperscript{70} Ibid.
\textsuperscript{71} Supra note 59.
\textsuperscript{72} Id. at 405.
The Hippocrates were among those who challenged the practice of euthanasia. They mentioned euthanasia in the Hippocratic Oath, which states:

```
I will prescribe regimen for the good of my patients
according to my ability and my judgment and never do
harm to anyone. To please no one will I prescribe a
deadly drug, nor give advice that may cause his death.73
```

According to Dictionary of American History74, our attitudes towards death have changed in recent times. Earlier generations presumably handled many of these difficult problems by having the doctor consult with the family or even possibly resolve the question without consultation. Currently, right to die cases often involves public discussion and the relatively transparent decision-making process is the characteristic of the present age. In the past death was simply something that happened to us and had to be accepted. However, new scientific and technological developments ranging from drugs to respirators have increased the complexity of the problem.75

Moreover, in his book76, Jonathan Herrings is of the view that it has now become possible to exercise greater control over our dying. Many people now wish for a quiet, peaceful and controlled death. Remarkable medical advances have even meant that it is possible to consider the possibility of immortality. It may soon be possible to say that death is not something that happens to you, but something that you do. But the extent to which people should have control of their or another’s death is highly controversial.77

According to Dictionary of American History, earlier generations presumably handled many of these difficult problems by having the doctor consult with the family or even possibly resolve the question without consultation. Currently, right to die cases often involves public discussion and the relatively transparent decision-making process is the characteristic of the present age. New technologies ranging from drugs to respirators increase the complexity of the problem.78

---

73 Supra note 50 at 40.
74 Available at www.answers.com/topic/right-to-die-cases (Accessed on 20.2.10).
75 Ibid.
76 Supra note 59.
77 Id. at 405.
78 Supra note 74.
Jayita Ekta in her article, “Death: Dying with Dignity”\(^79\), explained that the importance of asking these questions and the necessity of finding an answer to them has prompted a study of death and the dying process in recent years. It is known as Thanatology (derived from the Greek word “thanos”, which means death). While Thanatology has evolved into a wide field involving the study of various phenomena related to death, including suicide, aging, terminal illness, coma and persistent vegetative state, AIDS and medical ethics, its most significant contribution has been to try and provide the dying with dignity and comfort in their final moments. Rites of passage have lost their sanctity in modern times, and have become mechanical, hospital and medication driven events. Thanatologists are seeking to provide a dignified passage to the dying, at times by using music, shamanic rites, prayer, and by making available love and support i.e. quality end-of-life care. This approach has been adopted in several hospices and care centers for the terminally ill around the world.\(^80\)

In his article titled “Dying with Dignity”\(^81\), Dr. S.P. Kalantri takes the view that dying patients want adequate pain and symptom management; detest inappropriate prolongation of dying, wish for a sense of control, and desire strengthening relationships with loved ones.\(^82\)

Ronald Dworkin defines the term dignity as respecting the inherent value of our own lives.\(^83\) According to him, the phrase ‘right to dignity’ is used in many ways and senses in moral and political philosophy. Sometimes, for example, it means the right to live in conditions in which genuine self-respect is possible or appropriate, whatever these are. Another limited idea may be that people have a right not to suffer indignity, not to be treated in ways that in their culture or community are understood as showing disrespect. Every civilized society has standards and conventions defining these indignities, and these differ from place to place and time to time.\(^84\)

Patty James, in his article, “Dying with Dignity”\(^85\), quoted the words of Mother Teresa:

\(^80\) Ibid.
\(^82\) Ibid.
\(^83\) Supra note 22 at 238.
\(^84\) Id at 233.
\(^85\) Patty James, “Dying with Dignity”. Available at [www.pregnantpause.org/euth/dignity.htm](http://www.pregnantpause.org/euth/dignity.htm) (Accessed on 13.2.09).
Death with dignity is to die with grace, in the knowledge that you are loved.\(^{86}\)

Thus, dying with dignity means a death in which one’s identity is not destroyed; it means a death in which one’s humanity is not shattered; it means dying without losing one’s self. Dignified death has been defined as one that is consistent with an individual’s personal beliefs, values and sense of integrity. This may vary considerably from person to person based on their circumstances. What is tolerable and meaningful for one individual may be unacceptable to another. The only way that every person can be assured of this dignity is through legally protected choice.\(^{87}\)

The arguments surrounding a person’s right to die are a hot topic in many countries including India. Since World War II, the debate over euthanasia in Western countries has centered on voluntary euthanasia (VE) within regulated health care systems. In some cases, judicial decisions, legislation, and regulations have made VE an explicit option for patients and their guardians.\(^{88}\)

In her article titled “Assisted Suicide: The Continuing Debate”, Rita L. Marker holds the view that "Out of sight, out of mind" seems to be the operative phrase among those who oppose euthanasia and assisted suicide. "If at first you don’t succeed, try, try again" depicts the response of proponents. Those who seek to legalize euthanasia and assisted suicide pursue their agenda with great dedication and zeal, coupled with savvy public relations instincts and a strategy that launches multidirectional attacks on state laws banning both practices.\(^{89}\) Proponents and critics of the ‘right to die’ offer the following reasons for and against legalizing voluntary euthanasia and assisted suicide.\(^{90}\)

B. N. Colabawalla, in his article titled “Understanding Voluntary Euthanasia: A Personal Perspective”\(^{91}\) has taken the view that most individuals fear the process of dying rather than the terminal event of death which they realize is an inevitable end of life. They fear the indignity of being hooked on to life support machines and other forms of treatment when all such treatment is futile and death is inevitable. Under

\(^{86}\) Ibid.
\(^{87}\) Visit http://www.dyingwithdignity.ca/who_are_we/vision.php (Accessed on 15.7.09).
\(^{89}\) Available at www.Internationaltaskforce.org (Accessed on 10.2.09).
\(^{90}\) Ibid.
such circumstances they wish to exercise their right to die with dignity. When pain, mental anguish and suffering are only prolonged by such measures and all sensuous existence may have ceased with a loss of personhood, they desire not to subject the family to emotional and financial distress when all treatment may be futile. To this Kannamma Raman adds by holding the view that by shielding the patient's family from economic catastrophe, euthanasia eases the psychological tension experienced by the patient. Moreover, proponents of euthanasia emphasize that freedom of choice is a fundamental principle for liberal democracies and free market systems. In *P. Rathinam v. Union of India*, the hon'ble Supreme Court referred to an English poet, William Ernest Henley, who wrote:

> [I] am the master of my fate, I am the captain of my soul.

Probably the major argument in favour of euthanasia is that the person involved is in great or unbearable pain. B.Jyoti Kiran & Shiladitya Goswami, in their article titled “Right to Die - Legal and Moral Aspects” mentioned the following:

If I have been reduced to a corpse, suffering from an incurable, interminable disease, I don't deserve to live with so much pain. I fear death and the pain that will come with it, I want to have a sound sleep.

Similarly, Mahatma Gandhi said:

> Death is our friend, the truest of friends. He delivers us from agony. I do not want to die of a creeping paralysis of my faculties a defeated man.

Many old people spend their lives fearing about their death which causes a lot of mental agony, pain and suffering. Guaranteeing a person the right to die would dismiss this fear and mourning.

In a book, Harvey Chochinov and William Breitbart have taken the view that pain is a subjective perception and is, at times, very difficult to assess objectively by

---

95 *Id.* at 1847 (para 1).
97 *Supra* note 94 at 1847 (para 1).
any scale of measurement. The relationship between pain and desire for death is often described as a relatively straight-forward one; Intractable or severe pain is thought to lead to a desire for hastened death and in particular to thoughts of suicide.\textsuperscript{99}

B. N. Colabawalla is of the view that pain is not the only factor in suffering.\textsuperscript{100} One has to take into account mental distress caused by other manifestations of the disease, such as loss of control over bodily functions or loss of cognitive existence, causing a sense of loss of dignity of life.\textsuperscript{101}

In their book, Harvey Chochinov and William Breitbart have taken the view that interest in euthanasia or physician assisted suicide appears to be more a function of psychological and social factors (e.g. depression, social support, fears of becoming a burden to one’s family/friends) than of physical factors (e.g. pain, symptom distress, disease status).\textsuperscript{102}

In her article, Reenu Narula took the view that that modern medicine has the ability to control pain. Today, advances are constantly being made in the treatment of pain and, as they advance, the case for euthanasia/assisted-suicide is proportionally weakened. Thus, anti-euthanasia people argue that pain can be alleviated by proper pain control methods. Modern medicine has the ability to control pain. A person who seeks to kill him or herself to avoid pain does not need legalized assisted suicide but a doctor better trained in alleviating pain. Appropriate care can make a huge difference. Pro-life activists say that nearly all pain can be eliminated and - in those rare cases where it can't be eliminated - it can still be reduced significantly if proper treatment is provided. It is a national and international scandal that so many people do not get adequate pain control. But killing is not the answer to that scandal. The solution is to mandate better education of health care professionals on these crucial issues, to expand access to health care, and to inform patients about their rights as consumers. There are board certified specialists in pain management who will not only help alleviate physical pain but are skilled in providing necessary support to deal with emotional suffering and depression that often accompanies physical pain. Moreover they say that, “Death with dignity” may be a catch phrase with euthanasia activists, but there’s nothing dignified about the methods they advocate. For example, one

\textsuperscript{99} Id. at 57.
\textsuperscript{100} Supra note 91.
\textsuperscript{101} Ibid.
\textsuperscript{102} Supra note 98 at 57.
euthanasia organization distributes a pamphlet on how to cause suffocation with a plastic bag.104

Those who argue in favour of euthanasia contend that there should be quality of life rather than sanctity of life. The pain and suffering a person feels during a disease, even with pain relievers, can be incomprehensible to a person who has not gone through it. Even without considering the physical pain, it is often difficult for patients to overcome the emotional pain of losing their independence.105

Similarly, B.N. Collabawala, in his article took the view that to preserve such a biological but insensate existence, or to preserve life in a terminally ill individual, suffering from unmitigated pain and agony, against his expressed wishes, is the very negation of respect for life. Prolongation of useless suffering is a greater evil than expediting death that is inevitable.106

Likewise, Rishab Gupta, in his article titled “Euthanasia: Contemporary Debates”, has taken the view that right to dignified life should be recognized as a part of basic human rights. Life does not only mean life with flesh and bones but a life with full human dignity and honour. If a person cannot live with this honor and dignity, he or she should have the right to medical assistance in dying.107

However, according to pro-life people there is no such right to die; one only has the right to live. For example, S.J. Holmes is of the view that human life is precious and special, possibly sacred and a gift from God and only God has the right to take it away.108 Similarly, Sumantra Sinha, in her article titled “Euthanasia, Suicide & Theology”109, said that when one cannot create, one should not destroy.110 Thus, for them respect for life is the central, political or social concern and consciousness as to the value of life must be strengthened among people.

Sanjay A. Pai, in his article titled “The right to die”, took the view that the act of killing another out of mercy is a compassionate response to the excruciating pain of those who are terminally ill or in unbearable agony i.e. in such cases the saving- grace

104 Ibid.
106 Supra note 91.
108 S.J. Holmes, Life And Morals (1948).
109 Id at 161.
111 Id at 122.
is euthanasia on compassionate grounds and is therefore humanitarian. Likewise, Kannamma Raman has taken the view that the act of relieving a painful or a distressful death would promote a patient's well-being, hence, one which will lead to more good than harm. If animals are put out of their misery; why cannot we do it for human beings?

Sumantra Sinha, in her article has taken the view that neither the law nor medical ethics require that "everything be done" to keep a person alive. Insistence, against the patient's wishes, that death be postponed by every means available is contrary to law and practice. It would also be cruel and inhumane. There comes a time when continued attempts to cure are not compassionate, wise, or medically sound. That's where hospice, including in-home hospice care, can be of such help. That is the time when all efforts should be placed on making the patient's remaining time comfortable. Then, all interventions should be directed to alleviating pain and other symptoms as well as to the provision of emotional and spiritual support for both the patient and the patient's loved ones.

However, Dr. Shalini Marwaha, in her article has taken the view that legalising euthanasia will deface the precious human life and hence it is against morality and greater common good. Legalizing euthanasia is a mere political tactic. The ultimate goal is a much broader death license. Moreover they emphasize on the non-feasibility of implementation of laws governing euthanasia. Request for euthanasia or assisted suicide is typically a cry for help. It is in reality a call for counseling, assistance and positive alternatives as solutions for very real problems.

Harvey Chochinov and William Breitbart, in their book, have taken the view that Requests for euthanasia are a ‘rational’ decision, given the circumstances of

113 Supra note 92.
114 Supra note 110.
115 Id. at 120.
118 Id. at 103.
119 Terminally ill patients who desire death are depressed and depression is treatable in those with terminal illness. Pro-life people say that, “You don't solve problems by getting rid of the people to whom the problems happen. The more difficult but humane solution to human suffering is to address the problems.” Visit www.euthanasia.com/debate.html (Accessed on 23.2.09).
120 Supra note 98.
terminal illness, pain, increased disability, and fears of becoming (or condition to be) a burden to family and friends.\textsuperscript{121}

However, Nikhil Aggarwal, in his article titled “Euthanasia – A Theological Approach”\textsuperscript{122}, has taken the view that Patients may experience emotional and psychological pressure to consent to voluntary euthanasia rather than be a financial burden on their families. If legalized, it would be misused by people to fulfill selfish interests. Many people support the right of a terminally ill patient to die - but what if the right becomes an obligation? And what of the potential for abuse by impatient heirs? Similarly, Sumanta Sinha, in her article\textsuperscript{123} has taken the view that permitting voluntary euthanasia would, over the years lead to a slide down the slippery slope and eventually we would end up permitting even non-voluntary and involuntary euthanasia.\textsuperscript{124}

It is a human right born of self-determination and is the ultimate act of democracy. Freedom of choice is a fundamental principle for liberal democracies and free market systems.\textsuperscript{125} Shreyas Kasliwal, in his article\textsuperscript{126}, took the view that not allowing euthanasia would come down to forcing people to suffer against their will, which would be cruel and a negation of their human rights and dignity.\textsuperscript{127}

Rishab Gupta, in his article, emphasize on the economic costs and human resources. Today in many countries there is a shortage of hospital space. The energy of doctors and hospital beds could be used for people whose lives could be saved instead of continuing the life of those who want to die which increases the general quality of care and shortens hospital waiting lists. It is a burden to keep people alive past the point they can contribute to society, especially if the resources used could be spent on a curable ailment i.e. the chunk of these recourses, which are ‘wasted’ for the treatment of terminally ill patients should instead be utilized for the health care of other citizens who if provided good treatment, might have many years of useful and fruitful life ahead.\textsuperscript{128} Shreyas kasliwal also takes a similar view that the same facilities

\textsuperscript{121} Id. at 52.
\textsuperscript{123} Supra note 110.
\textsuperscript{124} Id. at 125.
\textsuperscript{125} For details, visit http://plato.stanford.edu/entries/euthanasia-voluntary/ (Accessed on 1.2.11).
\textsuperscript{127} Ibid.
\textsuperscript{128} Supra note 107.
should be used for the benefit of other patients who have a better chance of recovery and to whom the said facilities would be of greater value. Thus, the argument runs, when one has to choose between a patient beyond recovery and one who may be saved, the latter should be preferred as the former will die in any case.\textsuperscript{129}

However, Michael Prowse, in her article titled “Don't take liberties with the right to die”, has taken the view that given the economic grounds for voluntary euthanasia (VE), critics of VE are concerned that patients may experience emotional and psychological pressure to consent to voluntary euthanasia rather than be a financial burden on their families. Terminally ill patients often fear being a burden to others and may feel they ought to request euthanasia to relieve their relatives from distress. However, use of physical force here is highly unlikely. Even where health costs are mostly covered by public money, as in various European countries, VE critics are concerned that hospital personnel would have an economic incentive to advise or pressure people toward euthanasia consent.\textsuperscript{130} Moreover, B. Jyoti Kiran and Shiladitya Goswami, in their article\textsuperscript{131} take the view that decisions in case of such patients fluctuate. For example, a patient receiving chemotherapy might want to end his life because of the physical and mental trauma but once he feels better, he might change his mind.\textsuperscript{132}

One of the most important issues here is the right to donate body organs before the disease affects them.\textsuperscript{133} Dr Aarti Vij, associate professor of hospital administration at All India Institute of Medical Sciences (AIIMS) and in charge of Organ Retrieval Banking Organization (ORBO), said:

Organs of medico-legal cases are of good tissue because of the untimely death and it’s time that we don’t let that

\textsuperscript{129} Supra note 126.
\textsuperscript{131} Supra note 96.
\textsuperscript{132} Ibid.
\textsuperscript{133} The case of Venkatesh is one of the cases in India where someone of his free will wanted to donate his organs, to serve a noble cause and wasn’t allowed to do so. In another recent case in which, a three year old brain dead girl, Tamanna who had met with a road accident in Bangalore on 20 January 2009, created history as she ended up saving three lives, including that of a 21-month-old boy, with timely transplant of her organs through a well-coordinated effort by doctors. Her father, who got injured in the accident signed the papers for donating his daughter’s organs from the hospital bed. “Brain-dead girl saves three lives”, The Tribune, 2 (26 January 2009).
bank go to waste. In the west, 70 to 80 per cent organ retrievals are from medico legal cases.\textsuperscript{134}

However, Nikhil Aggarwal in his article has taken the view that “Brain death” and “death” are not identical and equivalent. If they were identical and equivalent, there would not be a need for the term “brain death”.\textsuperscript{135} Moreover, Kannamma Raman takes the view that it is believed that sometimes patients in a vegetative state due to head injury or a variety brain diseases are not sure-fire cases for euthanasia. There have been cases where comatose patients maintained on life support systems for months have miraculously swung back to recovery and resumed life. Euthanasia is therefore totally unjustified.\textsuperscript{136}

Moreover, Dr. Shalini Marwaha, in her article, has taken the view that Euthanasia/ physician-assisted suicide violates medical ethics. Duty of doctor is to give life and not to take it.\textsuperscript{137} Sheila A.M. Mclean, in her book\textsuperscript{138} referred to the Report of the House of Lords Select Committee on Medical Ethics, HL Paper 21-1, Para 237 (1994) which states that prohibition of intentional killing is the cornerstone of law and of social relationships. It protects each one of us impartially, embodying the belief that all are equal, whether they are young or old, fit or sick, able or disabled.\textsuperscript{139} Apart from this, in their book\textsuperscript{140}, Harvey Chochinov and William Breitbart hold the view that in a welfare state, providing a better health care is the responsibility of the state and nobody, even at his deathbed can be denied this facility.\textsuperscript{141}

In her article, Pralika Jain has rightly taken the view that India is a country highly influenced by religion and orthodox beliefs. It is a cosmopolitan country with an amalgamation of many cultures, traditions and religions. So, not surprisingly, people of our nation have various points of view on the life and death issues. Part III of the Constitution of India, secures to the people of India, certain basic, natural and

\textsuperscript{135} \textit{Supra note 122}.
\textsuperscript{136} \textit{Supra note 92}.
\textsuperscript{137} \textit{Supra note 117} at 103.
\textsuperscript{139} \textit{Ibid}.
\textsuperscript{140} \textit{Supra note 98}.
\textsuperscript{141} \textit{Id.} at 53.
inalienable Fundamental Rights. In India, the ‘sanctity of life’ has been placed on the highest pedestal. 142

Article 21 of the Indian Constitution guarantees right to life and personal liberty. The right to life under Article 21 has been given the widest interpretation by the judiciary in India. Almost every aspect of life has been touched.

In P. Rathinam v. Union of India143, the hon’ble Supreme Court held that Article 21 has enough of positive content in it. It means right to live with human dignity. The hon’ble court has also referred to an American case, Munn v. Illinois144 in which it was held that the term life means something more than ‘mere animal existence’. The term ‘life’ takes within its fold “some of the finer graces of human civilization, which makes life worth living”.145

Rattan Lal & Dhiraj Lal, in their book146, have taken the view that life does not mean mere animal existence, but a glowing vitality – the feeling of wholeness with a capacity for continuous intellectual and spiritual growth.147 If Article 21 can be interpreted as such, then can right to die be included in its ambit?

There is no legislation relating to euthanasia in India, yet extraordinary cases come up and disappear.

Ashish Goel, in his article titled “Right to Die must be set free”, referred to Venkatesh’s case. Terminally ill, as a result of the genetic neurological disorder called Duchenne's Muscular Dystrophy, and on a life support machine, from his Hyderabad hospital bed Venkatesh beseeched the authorities to allow others to live, specifically because he knew that he could not. The Andhra Pradesh High Court rejected his plea, and the Supreme Court of India in Delhi ran out of time to decide the case - to determine whether a person has such a right to die - as he passed away. He died on 17 December 2004 after a futile wait for the courts to accept his plea for euthanasia so that he could donate his organs.148

In an article in The Hindu, titled “Man pleads for mercy killing of wife” published on 10 April 2005, the facts of Kanchan Devi’s case were stated. An appeal

\[supra\] note 20.
\[supra\] note 94.
\[1876\] 94 US 113. Cited in supra note 94.
\[supra\] note 94 at 1853 (para27).
Id. at 1825-1827.
was made by Bihar’s Tarkeshwar Chandravanshi in early April 2005 to the State
governor asking for promulgating an ordinance and allow for mercy killing for his
wife Kanchan Devi after the Patna High Court rejected his petition. Kanchan Devi
had lapsed into a coma during childbirth in 2000 and her husband has run through all
his property and other financial assets in taking care of her.\footnote{149}

Besides these cases, our apex court has taken the following view on the issue of
euthanasia. Interestingly in \textit{P. Rathinam v. Union of India}\footnote{150} even when a Division
bench of the Supreme Court, speaking through hon’ble Justice B.L. Hansaria affirmed
the view in \textit{M.S Dubai v. State of Maharashtra}\footnote{151} that the "right to life" provided by
the Constitution under article 21, may be said to bring into its purview, the right not to
live a forced life\footnote{152}, the plea that euthanasia be legalized was discarded. It was held
that as euthanasia involves the intervention of a third person, it would indirectly
amount to a person aiding or abetting the killing of another, which would be inviting
Section 306 of the I.P.C. Moreover, in \textit{M.S Dubai’s} case, the Division Bench of the
Bombay High Court, speaking through P.B. Sawant J. affirmed that euthanasia or
mercy killing is nothing but homicide whatever the circumstances in which it is
effected. Unless it is specifically excepted, it cannot be but an offence.\footnote{153}

The decision of the Supreme Court in \textit{Smt Gian Kaur v. State of Punjab}\footnote{154},
thereby overruling \textit{P. Rathinam’s} case established that the ‘right to life’ not only
excludes ‘right to die’ but also the ‘right to kill’. This shows that any form that
involves unnatural termination of life, whether an attempt to suicide, abetment to
suicide or assisted suicide or euthanasia, is illegal under the present legal framework.
Making an attempt to suicide punishable shows the extent of credibility and
significance accorded to the sanctity of life and the right to life as a whole.

However, a Division Bench of the hon’ble Supreme Court, consisting of Justice
Markandey Katju and Justice Gyan Sudha Misra, delivered its landmark verdict in
\textit{Aruna Ramachandra Shanbaug v. Union of India}\footnote{155}, in which the court has legalized
passive euthanasia and clarified that it would remain in force until the enactment of a
\footnote{150} \textit{Supra} note 94.
\footnote{151} \textit{Supra} note 65
\footnote{152} \textit{Supra} note 94 at 1854 (para 35).
\footnote{153} \textit{Supra} note 65 at 752 (para 16).
\footnote{154} AIR 1996 SC 946. Cited in Spiti Sarkar, “Right to Die- To be or not to be”. Available at
\footnote{155} \textit{Supra} note 19.
relevant law by Parliament in this regard. The court rejected the petition for the mercy killing of Aruna on various grounds. The court also noted that the KEM hospital authorities had expressed their wish against letting her die and that they were taking care of her well. The hospital welcomed the apex court’s landmark verdict. Not only this, the hon’ble court also recommended to Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code. The court held that although Section 309 Indian Penal Code (attempt to commit suicide) has been held to be constitutionally valid in Gian Kaur’s case, the time has come when it should be deleted by Parliament as it has become anachronistic. A person who attempts suicide is in a depression, and therefore, he needs help, rather than punishment. 157

S. Balakrishnan and R.K. Mani, in their article 158 discussed in detail certain defenses available to the doctors under some of the existing sections of the IPC.

Similarly, J.S Rajawat, in his article 159, recommended that with the advancement of civilization and scientific knowledge, the traditional moral view has gone sea change. Euthanasia has become debatable issue in many countries, as there has been a steady increase in the number of people seeking permission to commit it. Consequently, nations around the globe are revising their laws. It will only be in the fitness of things that the Indian Parliament would also reconsider the end of life issue afresh. The concept of voluntary euthanasia does not appear to be a degrading concept. If permitted, it can bring an end to the pain and agony, which vast numbers of people are suffering from in our country. The fear of misuse by people is baseless as checks and balances can take care of such fear, in any case, every law can be misused, even medicine or molecules can be misused. Does that mean that one should stop manufacturing medicine? 160

Sujata Pawar, in her article 161 suggested that while deciding the debate on right to die, the conflict between the principle of sanctity of life and the right of self-

156 Supra note 154.
157 For details of Aruna’s case, see chapter 7.
159 Supra note 61.
160 Id. at 324.
161 Supra note 29.
determination and dignity of a human being needs to be resolved. Rather than allowing right to die as a general rule by legalizing euthanasia, it may be allowed as necessary exception only in rarest of rare cases, in passive form in appropriate cases where the individual is dying and gives informed consent. Where he or she cannot give consent and as per genuine medical opinion, death is near and certain, to withdraw the life support system is in the best interest of the patient.\footnote{Id. at 288.}

In her article\footnote{Supra note 20.}, Pralika Jain holds the view that the basic moral question is that whether by legalizing a person’s right to die, we will degrade a human being’s life and stop respecting human life. No one can deny that there is nothing more precious than the gift of life, which every human being enjoys. Why then should man decide when his life should end? Most religious people believe that life is sacred and one should not waste time in planning about their death but planning about how to enjoy life. Terminating life is not an answer to pain. All along life’s journey, man will suffer pain whether it is physical or mental or emotional or psychological. Will legalisation of right to die be done to relieve oneself from the physical pain only? A person weakened by illness may not be in a position to review his decision to kill himself. Decision to die by coming under some financial or social obligation is also very dangerous. Somewhere down the line we may end up violating the right to life while legalizing right to die. Therefore, it seems a viable argument that the right to die should remain generally illegal because of the confusion that could ensue if it were legalized. This is the status quo, and the suffering of people like Venkatesh is unfortunate, but perhaps justified because it does serve the greater common good. On the other hand, if doctors could specify the cases where euthanasia is the best option with upwards of 99% certainty (this would require a classification of terminal illnesses and probably the statistical ascertainment of survivability), then may be legalizing right to die would also serve the common good.\footnote{Ibid.}

Spiti Sarkar in her article\footnote{Supra note 55.}, took the view that the most vital point is the repercussions that could take place one such a controversial issue is legalized. The matter is not an issue of force but an issue of the way laws can be expanded once something is declared legal. In India, where abuse of the law is the rule rather than the exception and where conniving relatives clamor to lap up an heirloom, the
The abovementioned argument holds great weight. The acceptance and application of the concept to various mentally ill or physically ill or even to persons who possessed limited cognitive faculties, in various countries, shows a conceptual degradation of the right to live with dignity. The sole qualitative argument in favour of euthanasia is the fact that if procedures are stringent and foolproof and with proper mechanisms in place, then the legalization of the same could be effected in India. For instance, in Netherlands, the request for euthanasia should come only from the patient and be free, voluntary and persistent. It should be the last resort and should be performed by a physician in consultation with an independent physician colleague who has experience in the field. But at the same time, it is humbly submitted that the implementation of the above mechanism in India is utopian and thus the two situations incomparable. It is ironical to note that ninety percent of the patients succumb to death without receiving any primary health care. Thus, the logical derivation of this aspect would be that India does not have an appropriate health care mechanism in place, let alone foolproof procedures for euthanasia. Thus, in the presence of above bottlenecks and policing rampant in our country, the appropriate course of action would be to develop ‘care ethics’ ensuring dignified existence and termination of life. Let us augment this and resultantly, the concept of euthanasia will be nothing but a distant reality.166

1.7 Plan of Study

The present study is divided into 9 chapters, dealing with various aspects relating to right to die and Euthanasia. In Chapter 1, the researcher has mentioned the introductory part.

Chapter 2 of research work deals with Meaning, Concept and Historical Background of right to die and Euthanasia. In this chapter, the concept of right has been discussed including its evolution and development with the passage of time.

The Concept of the right is relatively of recent origin which dates back to seventeenth century. Before seventeenth century, individuals consider themselves as part and parcel of society and not in isolation. But from seventeenth century onwards, people started becoming selfish and started thinking of their own interests without thinking about others. The concept of right began to undergo sea change. And in a modern state, law confers right and duties on citizens as a unit of society. Individual

---

166 Ibid.
today is capable of unconditional freedom of choice, will and self-determination and autonomy. And as a result, he possesses number of rights, like right to life, right to liberty, personal autonomy and self-determination and other social, economic and political rights.

Some of these rights are inherent in us by virtue of being human beings. We call them Human Rights. And the sole basis for these rights is the respect of human dignity and worth. That is why, Right to die has been interpreted to mean meaningful and dignified life. It covers all those aspects which make life meaning, dignified and worth living.

The researcher then discussed the main point of controversy. That if right to life means a meaningful and dignified life, does that mean a right to life also includes right to die with dignity. The researcher, therefore discussed, the meaning of right to die with dignity. Because, once the relationship of death with dignity is understood, only then the concept of Euthanasia can be perceived. The researcher then focused on the concept meaning and kinds of Euthanasia in the context of death with dignity and then distinguished it from the concepts like mercy-killing, suicide and physician-assisted suicide. Another very important concept has also been discussed i.e. Withdrawal of life support in cases where the patient is kept on artificial life sustaining machines.

The research would not have been complete without the mention of the historical background of Euthanasia i.e. how this concept evolved and developed over a period of time. Under this topic, the researcher discussed the theories of various renowned jurists concerning Euthanasia, like Socrates, Plato, John Locke, Seneca, St.Augustine, St.Thomas Aquinas, David Hume, Montesquieu, Immanuel Kant etc. While some of them supported right to die and Euthanasia, others were strongly opposed to it.

However, efforts to legalise euthanasia and assisted suicide started in early twentieth century in various countries of the world. Passing through various staged of evolution, euthanasia was first legalised in Netherlands. Many countries of the world followed its footsteps and legalised Right to die in one form or the other. The attitudes, opinions and views towards life and death are also influenced by religious beliefs. So, in the last part of Chapter 2, the researcher has discussed various theological perspectives on Euthanasia.
Chapter 3 of the present research work deals with the philosophy of life and death. In this chapter, the researcher has discussed various theories relating to evolution. God has created many species and the Human being has been considered at the top of His creation. Therefore, human life is considered to be a divine gift having sacred value.

People may value life in different ways. For some life has absolute value or infinite value while for others it may have inviolable value. Instrumental value, subjective value and intrinsic value. For some being alive is valuable while for others being human is valuable. To Ronald Dworkin, for example, Creative Investment in life makes it valuable. To John Keown, the idea of life is a mere “basic good”. For some, being conscious is valuable, while for others being rational is valuable. To some, the Quality of life matters while others value the life from the viewpoint of spirituality.

After discussing various viewpoints on the value of life, the researcher then discussed the meaning of death and how various meanings and interpretations have been given to it in recent times. Death is the biggest truth of Life. What has come, must go. Therefore it is very important to know what is death, how it comes and how a person dies. The Researcher has discussed the meaning of death from the point of view of a layman as well as its dictionary meaning, scientific meaning and legal meaning. A very important concept of brain death has also been discussed at length. It should be noted that there can be many kinds of physical and mental disabilities. The concept of brain death has also been distinguished from various other concepts like Coma, PVS etc. in succeeding chapters. Further, the Researcher has discussed death from the viewpoint of morality, biology, psychology, theology and spirituality.

In Chapter 4, the researcher has discussed the development of the concept of euthanasia i.e. what forces led to its development. There are two sides of the same coin. While there are proponents of the right to die and euthanasia, there are opponents also who criticise it on one or the other ground. Euthanasia involves various ethical, legal, moral, socio-political issues. The debate over euthanasia is a result of contradictions involved in favouring and opposing it. There are arguments against legalising euthanasia. It is also called a Conservative point of view. To prove their argumentation, opponents rely on various justifications like principle of sanctity of life, human life is the property of God, State has an interest in protecting the lives of its citizens, slippery slope argument, compromising the dignity of others, medical
ethics, need to find out alternatives and many more. In contrast, proponents of euthanasia also base their arguments on one or the other ground. To them, quality of life is more important than its sanctity and dignity is the necessity of good life. Moreover, patients need to relieved of pain and agony and there should be respect for patient autonomy and self-determination. According to them, this will also help in organ use, organ transplantation, medical research, education and training etc. So, the continuous tussle between these groups has led to the debate over euthanasia. Each side opines that the other is not able to understand its philosophy. In an effort to come to particular solution to this debate, many countries have legalised right to die in one form or the other. For example, Netherlands, Oregon (U.S.A.) etc. But the matter of concern here is that even in countries, which have legalised it, there is always a scope of slippery slope i.e. misuse of provisions allowing euthanasia or assisted suicide to satisfy personal motives and vested interests. If the law allows something, it may allow aggravations of it. People may kill their near ones under the garb of euthanasia.

Chapter 5 of the present research work deals with International perspective of euthanasia. In this chapter, the researcher has discussed legal position of euthanasia in various countries of the world. The issue is not only limited to one country, it is rather transnational in character, because it deals with the matters of death, which comes to everyone. None is left untouched. Therefore, it is very important to understand how various countries have dealt with the issue and what laws they have made, if any, to accommodate the cases in which patients ask for a dignified death.

Various countries have adopted different criteria for dealing with this issue. Some countries have legalised euthanasia, whereas others have legalised assisted suicide only. And there are some countries also, which have not legalised right to die in any of its forms. But, if we observe the laws of the countries in which right to die is legalized in various forms, one thing is common, and it is that right to die has not been granted absolutely. It has been made subject to certain conditions and restrictions. This shows that in order to prevent its abuse, law has provided certain safeguards which must be followed while performing Euthanasia. One of the main reasons for the debate over Euthanasia is advancement in science and technology. Science and technology has the ability to prolong life, even if it is painful and full of agony.

The purpose of law is to cater to the needs of people. It has to keep pace with the changing needs of society. A law which does not do so is a bad law. It needs to be
amended or changed. So, various countries have made efforts to make laws which provide solution to the problem, having due regard human dignity and worth, personal autonomy and self-determination.


Netherland was the first country in the world to legalize Euthanasia, subject to certain conditions. Therefore, in this chapter the researcher has discussed at length how this concept came into being after a lot of discussions debates, argumentations and deliberations. It evolution through various judgments of the courts has also been discussed whereby various requirements for the performance of euthanasia have been laid down, subject to which it has been legalized i.e. requirement of due care.

Belgium followed the footsteps of Netherlands, which was later followed by Luxemburg. In Switzerland Euthanasia is not allowed, but it allows assisted suicide under certain circumstances.

In United Kingdom (UK), though the law does not permit Euthanasia, but cases come before the courts whereby they have started recognizing right to die in certain circumstances and subject to certain conditions.

It should be noted that in United Kingdom and United States of America (USA) the attempt to commit suicide has been decriminalized. The reason is that in such cases the accused is already a victim of circumstances and punishing him for attempt to commit suicide amounts to double punishment. Such persons should rather be reformed through counselling.

In United States of America also Euthanasia is illegal. But the state of Oregon made a law on assisted suicide. However the courts in USA have started recognizing right to die in certain circumstances and subject to certain safeguards.

In November 2014, Brittany Maynard, 29, the young, terminally ill American cancer patient became the face of the controversial right to die movement. She ended her life in Oregon. She was diagnosed with a likely stage 4 glioblastoma, a kind of malignant brain tumour. Within weeks, in course of researching possible treatments and realizing it was futile, she became an advocate of a dignified death instead of undergoing endless rounds of debilitating chemotherapy and radiation, which was already proving useless in her case. She had moved from California to Portland,
Oregon with her family, to take advantage of the State’s physician assisted suicide laws.167

In some other countries including India the debate about its legalization is still going on.

Chapter 6 of the research work deals with the legislative and constitutional measure relating the right to die in India. In this chapter, the researcher has discussed the relevant provisions of the Constitution of India and other laws concerning right to die vis-à-vis euthanasia. Firstly, the concept to fundamental rights under Part III of the Constitution has been discussed including Article 21 with reference to right to die and Euthanasia. The meaning and extent of this right as interpreted by our judiciary has also been discussed. The relevant provisions under Indian penal code related with the subject matter of the study have also been discussed.

The question of applicability of various defenses under chapter 4 of the Indian Penal Code to those who perform Euthanasia has also been discussed at length. Not only this, the provisions relating attempt to commit suicide have also been discussed. It should be noted that the debate regarding the decriminalization of attempt to suicide is also going on in India. The Law Commission of India and hon’ble Supreme Court of India are in favour of decriminalizing attempt to commit suicide. The researcher has also discussed the role of Law Commission of India relating to right to die and Euthanasia.

Law commission in its 2006 report recommended the legalization of withdrawal of life support system subject to certain conditions and recommended a bill for that purpose. The Bill is given in Annexure 2. However, in the aftermath Aruna Ramachandra Shanbaug vs Union of India168 the Law commission of India had a relook into the matter and gave another report in 2012 reconciling its earlier recommendations and the recommendations of the hon’ble Supreme Court. The report of 2012 has also been discussed in detail. The revised Bill has been given in Annexure 3.

In chapter 7, the judicial approach towards right to die and Euthanasia in India has been discussed. Here, comes the role of courts in interpreting various provisions of Constitution and other laws. The Supreme Court in number of cases has given

---

167 “29 year old cancer patient, face of right to die, ends life”, The Tribune, 1,12 (4 November 2014). For details, see Chapter 5.
168 Supra note 19.
different interpretation to right to life. These cases have been discussed in detail, before Aruna Ramachandra Shanbaug’s judgment, our courts did not give a clear cut verdict on Euthanasia. However, in Aruna Ramachandra Shanbaug’s case, for the first time in the history of Indian judicial system, Euthanasia was discussed at length. The Supreme Court legalized Euthanasia in passive form and that too for brain dead patients. The case has been discussed in detail covering the recommendations of hon’ble Supreme Court regarding the safeguards to be followed while performing Euthanasia in passive form. It should be noted that the court has followed the principle of best interest of the patients as the paramount consideration in such cases.

Chapter 8 deals with the empirical data and its analysis. The empirical research has been conducted in the city of Chandigarh, capital of the States of Punjab and Haryana. Data has been collected from the respondents belonging to different professions like doctors, lawyers, judges, academicians, nurses and patients’ relatives, in order to have complete analysis of various issues concerning right to die and Euthanasia. The data has been collected in the form of a questionnaire containing various questions relating to the issue. The data collected from the respondents shows their viewpoints on various issues. The data has been analyzed in this chapter and various finding have been recorded.

Lastly, Chapter 9 deals with conclusion and suggestions. In this chapter, the researcher concluded the whole research and mentioned various recommendations and suggestions given by different authorities that need to be considered while making a law on the subject.

The researcher discussed the guidelines given by Medical Council of India along with the guidelines issued by the Indian Society of Critical Care Medicine (ISCCM). The researcher also reiterated briefly the recommendations of the Law Commission of India given in its 196th Report on “Medical Treatment to Terminally Ill Patients (Protection to Patients and Medical Practitioners)”, 2006 and 241st Report on “Passive Euthanasia- A Relook”, 2012.

The guidelines given by hon’ble Supreme Court in Aruna Ramachandra Shanbaug vs. Union of India\(^\text{169}\), and the procedure to be followed for performing euthanasia in case of brain dead patients are also discussed in brief so as to make a comparative

\(^{169}\text{Ibid.}\)
study of the recommendations of Law Commission on the one hand and Supreme Court on the other.

In the end, the researcher has given her own suggestions regarding the subject matter of the present study which involves various moral, social, ethical and political issues.