2.1 The Concept of Right

During the past few years, academic literature on rights has been growing at a considerable pace. Since most of it is written within the liberal-democratic tradition, it tends to concentrate on such questions as whether we can meaningfully talk about natural, human or inalienable rights, what criteria a right must satisfy in order to be so called, what rights, if any, meet the requirement and which every state must be required to guarantee. The concept of ‘right’ is relatively recent in origin, and does not go back much further than the seventeenth century, and is fraught with paradoxes and contradictions. Almost from its inception the modern conception of right has been subjected to considerable criticism by such diverse groups of people as the old natural law theorists, religious writers, socialists and the Marxists. They were deeply troubled by it, and explored either an alternative conception of right or a society to which the concept of right was not central. Nearly all non-western and most pre-modern European societies managed to do without such so-called concept of rights or claims. They took various freedoms for granted and enjoyed and exercised them without in any way feeling self-conscious about them. The concept of right was first systematically developed in Rome. For the Roman jurists, right, law and justice were inseparable, and the term *jus* was used to refer to them all. Rights were created by the law, and the law was an articulation of the community’s conception of justice.\(^1\)

A Roman *cive* had several rights, such as the right to property, to discipline and to exercise the power of life and death over the members of his family and household etc. These rights belonged to him not as an individual but as the head of a family or *pater familias* and were conferred on him as the necessary conditions for the realization of community’s common purposes. The individual did not enjoy rights as of right. Rights were subject to several constraints and restricted in depth and scope. However, during the

several centuries of feudalism, the picture was equally complex. The concept of duty, not right, dominated the feudal society. The latter was generated by the former.\(^2\)

In pre-modern societies the moral conduct had many sources, such as communal loyalties, common sentiments and affections, traditional ties, customary duties and common interests. Men cared for each other. Indeed, each of them was tied to others by so many bonds that he did not define himself and his interests in isolation from, let alone in opposition to them. From seventeenth century onwards, social life changed radically. Each looked after his own interests and devised ways of protecting them against the invasion of others who are at best indifferent and at worst hostile. But the modern state, a unique historical institution, characterized by such features as centralized authority, monopoly of violence, impersonality, the rules of law and protection of individual rights, came to replace earlier forms of organizing the community. It represented a particular kind of order and manner of creating and sustaining it. Order in modern society is articulated in terms of a system of rights and obligations created by law. Law created civil morality is the primary and dominant form of morality in it, and is articulated in the idiom of rights and obligations.\(^3\)

Thus, from the seventeenth century onwards, the traditional conception of right began to undergo profound changes. Among others, an important change relates to its scope. The world was considered as 'dead matter', which man, its sovereign master, is free to plunder at will. Everything in the natural world became an object of right and capable of alienation.\(^4\)

The theorists of the modern conception of right locate his essential humanity in the inter-related capacities of 'choice' and 'will', which represented man's differentia specificia, and are the basis of human dignity and humanity. His loss of control over these amounts to a loss of his humanity. The individual differs from the rest of the universe in possessing the two basic capacities of reason and will. Thanks to them, he is capable of unconditional freedom of choice, will and self-determination. He is considered

\(^2\) Id., at 3-4.
\(^3\) Id., at 12-13.
\(^4\) Id., at 4-6.
to be autonomous; his actions are uniquely his sole responsibility. And so, in the writings of Kant, Hegel and others, the individual is conceived as a little God.⁵

As a result of this, certain rights became most important, especially the rights to life, liberty and property. To this, was added a list of certain social and economic rights in the nineteenth century.⁶

Harold J. Laski observed that ‘rights are those conditions of social life without which no man can seek in general, to be himself at the best’. Professor Hob House puts it as under:

Rights are what we expect from others and others from us and all genuine rights are conditions of social welfare.⁷

The modern concept of rights represents a novel and explosive combination of the following features: (a) A right is a claim, (b) The claim has the nature of a title and its bearer is entitled to make it (c) The title is conferred upon him by the established legal authority. The law must publicly and unambiguously announce the title, (d) To have a right is to be free to do what one likes with it in conformity with the conditions of its grant, (e) To have a right to a thing means not only that one can do what one likes with it within the legally prescribed limits, but also that others are excluded from the access to it. The concept of exclusivity is built into it, (f) A right not only excludes others but also requires a specific set of services from and imposes hardship on them, and (g) A right is legally enforceable. Since a right is a formal title conferred by the state, one’s possession of it is not dependent on one’s ability to exercise it.⁸

2.2 A Saga of Human Rights

Since the inception of human civilization, there has always been one common quest of mankind i.e. search for ‘Higher or superior Law’ (i.e. peace). The modern jurists have rightly termed it as ‘Natural Law’, which has led to the conception of ‘Natural rights’. Romans term them as ‘jus naturale’, Medieval Christian thinkers as ‘lex naturalis’,

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⁵ Id., at 7.
⁶ Id., at 8.
⁸ Supra note 1 at 9-11.
ancients Hindus as ‘Dharma’, and in the modern context, such rights are called ‘Rights of Man’ or ‘Human Rights’.

Nature has given us certain inherent and basic rights which we call ‘human rights’ and which are inseparable from human dignity and worth, liberty and freedom. They unite human being with humanity from within. Initially these claims had no legal basis, instead they were considered to be moral claims. However, in due course these have been formally recognized and granted legal protection at the national as well as international level.

Magna Carta (1215) is the first document which granted certain rights, basic freedoms and protection to individuals. Magna Carta was followed by a number of Declarations, Charters, Conventions, Treaties, Conferences on human rights, which have enlarged these rights and made it the duty of all State authorities to implement them, yet there are many challenges to meet. To mention a few, ‘Bill of Rights’ in the American Constitution, ‘The Declaration of the Rights of Man and Citizen’ adopted by the French parliament in 1789, and most importantly ‘The International Bill of Human Rights’ consisting of ‘The Universal Declaration of Human Rights’ (1948), ‘The International Covenant on Economic, Social and Cultural Rights’ (1966), ‘The International Covenant on Civil and Political Rights’ (1966), and ‘two Optional Protocols’ added to the International Covenant on Civil and Political Rights.

The aims and objectives (i.e. the Preamble) behind the resolution of the UDHR are:

The recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world.

The Law of Human Rights can now be seen flowering in numerous other covenants, conventions, declarations etc. With their strong and solid appearance on the international stage and their proper recognition in the positive international law, they have circumvented and brought within their universal fold all their pigmy forms in

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9 Supra note 7 at 259.
11 Id., at 261-264, 267.
national constitutions and other documents by characterizing with their essence, namely the inherent dignity of human beings.  

2.3 ‘Human Dignity’ rings the note of a key concept in the body of Human Rights Law

As seen above the whole edifice of human rights stands on the base and foundation of human dignity and worth. The dignity of man implies creation of such social, economic and political conditions which would allow him liberties to evolve along the lines of his own temperament, potential and capabilities.  

Ronald Dworkin defines the term dignity as respecting the inherent value of our own lives. 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.

Human dignity is a dynamic term that is as old as human and his humanity. Its conception and perception in legal thought reflected differently in different times as per cultivated consciousness and conscience about the needs and aspirations of man in the society of particular time and circumstances. The principle as a concept is conscientious in substance that manifests first and foremost in mutual respect between and among all fellow human beings, for the universally accepted fact and value of universal fraternity is deeply ingrained in human conscience.

The high conception of human dignity in Immanuel Kant’s thinking made him also place the individual above the authority of the state. Kant saw that (i) an individual is capable of leading a true life, (ii) individual possesses a rational will, and (iii) he can decide things for himself. As opposed to Bentham’s famous concept of the ‘greatest

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14 For details, see, V.N. Bhushan, Things of Beauty (1969).
15 Ronald Dworkin, Life’s Dominion, 238 (1994).
16 Id., at 233.
happiness of the greatest number of people’, Kant saw the aim of the state in the perfection of man and his development. And for the development of personality as a dignified human man must be given certain rights by the state. Besides liberty and equality before law, for Kant the right to freedom was ‘one sole and original right that belongs to every human being by virtue of his humanity.\textsuperscript{18}

According to Professor Dhayani, ‘the freedom of will’ in Kant’s philosophy is nothing more than ‘the human right of self determination’ as expounded by Rousseau.\textsuperscript{19}

Sir Hersch Lauterpacht’s theory of human dignity and ‘sovereignty of man’ is a modern version of a natural law advocate. He sees man no less than a sovereign state in his \textit{persona}. He saw that the struggle between the powerless individual and the powerful state is an old but constant one. Man has for ages been fighting for his dignity, human rights and consideration of utility. And this has considerably changed the relationship between the individual and the state whereas it has become an established fact that it is the duty of the state to treat man with respect and acknowledge the sovereignty of man.\textsuperscript{20}

Judge Tanaka (Japan), the most staunch advocate of natural law school, emphasized that human rights must be recognized, respected and protected everywhere man goes. Human rights have always existed with the human being. They existed independent of, and before, the state. According to him, human dignity is a law unto itself.\textsuperscript{21}

Dworkin’s theory of ‘equal concern and respect’ is another version with emphasis on the principle of human dignity with its various civil, political, economic and cultural aspects. According to him, government must treat those whom it governs with equal concern and respect, that is, as human beings who are capable of suffering and frustration, and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived.\textsuperscript{22}

Another value oriented theory of human dignity is based on the key concept of protection of human dignity. Demands for human rights are identical with demands for

\begin{thebibliography}{9}
\bibitem{1} I. Kant, J. Ladd, (tr). The Metaphysical Elements of Justice, 43-44 (1965). Cited in \textit{supra} note 13 at 53.
\bibitem{4} K. Tanaka, South West Africa Cases, ICJ Reports, 290, 297 (1966). Cited in \textit{supra} note 13 at 56-57. Also see, \textit{supra} note 17 at 40.
\end{thebibliography}
wide sharing in all human value processes in human community. The proponents of this
approach specify eight interdependent basic values widely cherished, namely, respect,
power, enlightenment, well-being, health, skill, affection and rectitude. Human dignity is
the key concept in relation to all these values and to the ultimate goal of a world
community in which a democratic distribution of value is promoted. Judge Bedjaoui
approaches human rights with ‘man’s divinity and compassion’ oriented theory of human
dignity. He finds the concept of human dignity at the core of human rights ideology.

A synthesis of all these theories provides that there is one common and fundamental
principle of respect for human persona, the inherent dignity and worth of human being as
provided in the opening paragraph of the Universal Declaration of Human Rights.

‘Human body is the living temple of God’. This is the most fitting tribute ever paid
to human dignity. ‘God made man in his own image’, proclaim Indian Vedas and ancient
books. St. Paul said:

\[
\text{Know ye not that ye are the temple of God, and that the}
\text{spirit of God dwelleth in you?}
\]

Adi Granth says, ‘This body is the temple of the Lord; and the jewel of knowledge is to
be found therein’ (Hari mandir eh sarir hai; gyan rattan pargat ho). Such is the dignity
that religion and natural law both bestow upon man. All human rights derive from the
dignity and worth inherent in human person. And human dignity demands respect for life
of fellow human beings.

The signing of the United Nations Charter has proved a turning point in the history
of human dignity. According to the Charter and various other significant international
and national documents, human dignity is at the core of the concept of human rights. For
example, Article 1 of the Charter of Fundamental Rights of the European Union. 2000
reads: ‘Human dignity is inviolable. It must be respected and protected.’

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23 M. McDougal, et. al., Human Rights and World Public Order: The Basic Principles of an International
Law on Human Dignity at 82-93. Cited in supra note 13 at 68.
25 Id., at 72.
26 The Bible, 2 Cor 6:16. Cited in Id., at 68.
27 Id., at 73, 76.
28 Supra note 17 at 29.
29 Supra note 13 at 76.
Thus, human rights law thinking has bearing upon every other jurisdiction and field of law. It is emerging as a new approach, of looking at law, its meaning, nature, scope and purpose, which may rightly be called as human rights approach. With all this and more, the legal and political culture of the day, nationally as well as internationally, may well be characterized as the culture of human dignity.

2.4 The Right to Life

The right to life is the most basic and fundamental of all human rights. It is inalienable and is inherent in us. It cannot and is not conferred upon us. As one of the most essential human right, it has been guaranteed by following various significant documents at the international level:

(i) In 1776, the United States Declaration of Independence declared:

All men are endowed with certain inalienable rights and that among these are life, liberty, and the pursuit of happiness.

(ii) In 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms, was adopted by the Council of Europe. Article 2 declares:

Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(iii) Similarly, Article 4 of the American Convention on Human Rights, 1969 also declares:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
(iv) Article 3 of The Universal Declaration of Human Rights, 1948 states:

Everyone has the right to life, liberty and security of person.35

(v) Similarly, Article 6.1 of International Covenant on Civil and Political Rights, 1966 states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.36

(vi) Likewise, Article 4 of the African Charter provides that:

Human Beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his life.37

Right to life is also guaranteed by the Constitution of India under Article 21, which reads as follows:

21. Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law.38

Our society seems to define life by going beyond physiological definitions about what constitutes life.39 Discussions in the later chapters will show that right to life means something more than mere animal existence. It means a meaningful and respectful life i.e. a life of human dignity and worth till one’s death.

Such terms as “lacking sufficient quality of life,” “tragic circumstances,” “unwanted, burdensome,” “vegetable,” “devoid of meaningful life” and so forth are often used to depersonalize individuals or whole classes of human beings. Once depersonalized these people are seen as burdens or problems, rather than as human beings who hold ultimate value because they were made in the image of God. As individuals in our society attempt to make decisions about what life is and what it is not, the ultimate value placed

36 Supra note 34.
37 Ibid.
38 The Constitution of India, Art. 21.
upon life is diminished. Acts such as partial birth abortion and euthanasia, once considered barbarous are now everyday occurrences.40

Medical and technological advancements have produced dilemmas heretofore unknown for individuals and families. For example, we are able to keep a person alive by artificial means long after the body is capable of sustaining life. This produces complex situations in which life and death decisions must be made by individuals, families, doctors and judges. Add to this matrix the willful decision of some to actively end their own lives and to enlist the assistance of others, including doctors, and the result is much confusion, fear and controversy surrounding the end of life issues.41

As the people of our society age, the financial burden of caring for an aging population strains our medical resources. Society is tempted to find ways to lessen the burden by narrowing the definition of meaningful life. Some people contend that, in the interests of cost containment we cannot afford to devote resources to people who will soon die or whose lives are deemed to lack sufficient quality. Therefore, in the view of some, the right-to-die becomes an obligation to die.42 While others argument on the principle of autonomy and self-determination. Making available all choices that allow one to decide for oneself, is essential to human dignity.

2.5 The Right to Die

Right to die is not something new and unknown to our civilization.43 It is part of a constellation of life and death issues and involves various personal, religious, legal, medical, ethical, economic, emotional, social and political issues.44

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

40 Ibid
41 Ibid
42 Ibid
44 Supra note 15 at 182
and control to alleviate unnecessary suffering at the end of life.\textsuperscript{45} 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.\textsuperscript{46}

Therefore, 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 and dignified death\textsuperscript{47} In researcher’s view, many families and medical fraternity face this question very often. 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’.

\textbf{2.6 Does claim of a "right to die" fulfill the definitional requirements of a right?}

In order for any right to be recognized, at least three elements must be present. First, there must be a claimant to some possession or entitlement of free action. Next, the subject of that claim must be considered by the claimant to be of positive value or a good. Third, there must be some secondary institution or individual who seeks to deny the claimant the entitlement to this perceived good. Put succinctly, in order for a right to be recognized, it must first be asserted and denied. In the absence of conflicting claims, there is no need to distinguish a right from a positively fulfilled request.\textsuperscript{48}

When these definitions are applied to the concept of a "right to die," opponents will raise several challenges to the idea that someone can assert such a right. The most straightforward of these objections is that when someone asserts a “right to die,” the claimant is not asserting an entitlement to some good but, rather, is requesting permission to do what most individuals would consider to be evil. This objection cannot be overcome simply by arguing that what is evil to one person can be good to another.

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48 Raymond Whiting, A Natural Right to Die: Twenty Three Years of Debate, 50 (2002).
\end{flushright}
because such claims cannot be supported by our categorization of rights. This is true because if this entitlement is said to be a natural right, then it can no longer depend upon individual perception but must be a right that flows from the very nature of human existence. Further, if the claim is to be categorized as a civil right, it must be an entitlement created by some legislature and backed by the coercive power of the state. Finally, while the claim might possibly be asserted as a personal right, such rights are traditionally viewed as something that benefits the individual, while death, in and of itself, has never been seen as a general benefit. It is for this reason that our society generally supports the prohibition of suicide.

A second objection that can be made based on these definitional requirements is that the assertion of a right must seek an entitlement to that which some other institution or individual has the power to deny. Despite all wishes to the contrary, it is commonly maintained that one of the traits that distinguishes human beings from lower orders is that we are aware of our own mortality and, thus, are aware that no man or human institution has the power to deny death.

Proponents of the "right to die" often counter that such arguments are nothing more than a game of semantics and would point out that, while an abstract desire for death may, in fact, not be considered good, the ability to control the time, place, and manner of one's death is more clearly a claim for good. Further, it is equally clear that while the inevitability of death cannot be denied, control over its timing and manner can be denied and frequently is. It is this that distinguishes a claim for a "right to die" from an act of suicide, in that when an individual seeks to commit suicide, the asserted desire is simply for death, while the claim of a "right to die" is most frequently made in the face of impending death and only seeks to control the circumstances of that death so as to make the dying party more comfortable. When envisioned in this way, the claim of a "right to die" may, in fact, fit the definitional requirements of a right.

Those who intimately assert that there is a "right to die" are often infuriated by those individuals who seek to deny them this right. They see such efforts as attempts to

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49 Ibid.
51 Ibid.
52 Ibid.
interfere with what they consider to be the most personal of decisions. The difficulty with this assertion is that, by their very nature, rights are not entirely personal things. Quite to the contrary, the existence of a right implies a relationship between two actors that is characterized by conflict. This conflict is caused by the fact that when a right is either created or recognized in one party, it automatically creates a duty or obligation in some other party.53

While all advocates of the "right to die" would be willing to admit that such an entitlement can be created by legislative acts, many would maintain that such a right exists even in the absence of a right created by positive law. They would argue that the right of an individual to rationally control the time and nature of his or her death is part of what it means to be a free and autonomous human being; it thus need not be created by positive law, but rather need only be recognized by the courts as one of our natural or inalienable rights.54

2.7 The Concept of Dying with Dignity

Dying is an integral part of life. Human life forfeits its relevance when, by acute agony or incurable disease, the reality of dignified existence disappears. In such exceptional situations, the capacity to continue terrestrially, using the senses and faculties, becomes non est, nougat and the distinction between life and death ceases, being merely a matter of breath and heart beat. To be or not to be, is a decision that then belongs to the individual who owns his right to life and therefore, has also the concomitant right to disown it by giving it up as no longer worth keeping. This is a supreme freedom inalienably implicit in the Fundamental Right to Life.55

In Auckland Health Board v. Attorney General56 the court held that the values of human dignity and personal privacy belonged to everyone whether dead or dying.57 In the words of Mother Teresa:

Death with dignity is to die with grace, in the knowledge that you are loved.58

53 John Finnis, Natural Law and Natural Rights (1980). Cited in Ibid.
54 Id., at 53.
56 (1993) 1NZLR 235.
57 Lily Srivastava, Law & Medicine, 107 (2010).
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.\textsuperscript{59}

The ability to choose, and have those choices respected, is revered as a way of maintaining control, which can in turn help to preserve personal dignity in dying. Voluntariness is a central element here, since choice dictates volition and voluntarism denotes self-determination, all of which are associated with dignity.\textsuperscript{60}

How does one deal with a situation where one knows that the person he or she love dearly is going to die soon? Or, when he or she is no longer there, how does one cope with grief at such a loss? How does one who knows he or she is nearing the end feel?

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.\textsuperscript{51}

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

\begin{itemize}
  \item \textsuperscript{59} Patty James, “Dying with Dignity”. Available at \url{www.pregnantpause.org/euth/dignity.htm} (Accessed on 13.2.09).
  \item \textsuperscript{57} Visit \url{http://www.dyingwithdignity.ca/who_are_we/vision.php} (Accessed on 15.7.09).
  \item \textsuperscript{60} Hazel Biggs, Euthanasia, Death with Dignity and the Law, 1 (2001).
  \item \textsuperscript{51} Dictionary of American History, Available at \url{www.answers.com/topic/right-to-die-cases} (Accessed on 20.2.10).
\end{itemize}
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.  

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.  

Recent decades have witnessed social changes that have encouraged and empowered us to select options according to personal preferences in every other area of social life. Nowhere is this more apparent than in the realm of health care, where patients have been transformed into clients, who consume health care services and rightly demand information along with their perceived entitlements. Heightened public awareness of the scope, successes and failures of medicine, have led to consultation and involvement in medical decisions becoming the norm and increasingly regarded as a right. In this environment the ability to make choices about health and welfare has become a legitimate expectation. Yet, even where death is imminent and inevitable, and after careful consideration of all the alternatives, it is not lawful to seek and receive a deliberate medical intervention that will result in death.  

Concentrating on the rights and responsibilities of patients and health care professionals, this discussion focuses on medical decision-making at the end of life. Specifically, what decisions may legitimately be taken, when, and by whom? Choice is a central theme, especially where a person’s ideal choice might be to die sooner than would be considered natural by her professional and emotional carers. At present a patient’s request for a specific course of action as a preferred medical option is futile. Any medical practitioner carrying out that wish will be outlawed as a result, hence clinical and legal boundaries prevent deliberate assistance in the exercise of terminal choices. Dignity dictates however, that it is not only important to be able to make relevant choices for

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64 Supra note 60 at 1-2.
oneself. The ability to influence the choices made by others who have the power to
determine the extent and nature of the medical treatments that may or may not be
delivered, is also crucial. The argument is not necessarily one about institutionalising
right to die in form or the other, or providing bureaucratic mechanisms by which it can be
legitimated. What is more significant is recognition and respect for considered choices,
while avoiding sanctions for compassionate health professionals who voluntarily opt to
assist choices to be made, and that when medicine fails to provide a socially acceptable
answer many of these are referred to the law for solutions. Within this it becomes
apparent that perhaps neither law nor medicine are the appropriate disciplines to resolve
the profound dilemmas emanating from advances in biotechnology.65 We need to rethink
life and death in order to provide satisfactory answers to the moral choices presented.66

2.8 Euthanasia

It is sometimes the unfortunate fate of human beings to suffer unspeakable agonies
without hope of relief. Since such people are not able to live a dignified life, so they
demand the right to die with dignity at least, which may take various forms like
euthanasia, suicide, assisted-suicide. In fact, these are the species of the same genre.

The term euthanasia was coined by the English philosopher and statesman Sir
Francis Bacon in the early 17th century, but Bacon used it only to describe the painless,
peaceful natural death that people hoped to have.67

The concept has its roots in the beliefs and practices of the ancient Greeks and
Romans. For them, euthanasia did not mean the acceleration of death, rather their focus
was on whether or not the person died a painless death. The term is derived from Greek
word euthanatos, eu, ‘good’ or ‘well’ and thanatos, ‘death’.68 Thus, it literally means an
easy, good, pleasant, painless, peaceful or gentle death or dying well.69

65 Id., at 2.
66 Id., at 3.
67 Lisa Yount, Right to Die and Euthanasia, 7 (2007).
69 For details, see “Euthanasia” in Lawrence C. Becker, Charlotte B. Becker, (eds.), Encyclopedia of Ethics,
492-498 at 492 (2001); C. Wicksteed Armstrong, Road to Happiness: A New Ideology, 80 (1951); Ian S.
Markham, Do Morals Matter?: A Guide to Contemporary Religious Ethics, 127 (2007); Peter Singer,
Practical Ethics, 175 (1993); P.G. Chavan, “Pros and Cons of Euthanasia”, CrLJ (Journal Section), 148-154 at 149 (2011); The New International Webster’s Dictionary & Thesaurus of the English Language,
337 (2002); The Oxford English Dictionary, Volume V, 2nd Edn., at 444.
Originally it referred to intentional mercy killing. Its meaning changed in the 20th century. In the modern context the term is used as a doctrine that it is permissible for a medical man to painlessly kill a patient suffering from a mortal or incurable or terminal disease or incapacitating physical disorder and is in great pain or distress, by giving him a poisonous dose of opium or other narcotic drug or withdraw his treatment, in order to put an end to his suffering.\textsuperscript{70}

The Encyclopedia of Crime and Justice defines it as ‘an act of death which will provide relief from a distressing or intolerable condition of living’. The American Heritage Dictionary defines Euthanasia as ‘the action of killing an individual for reasons considered to be merciful’.\textsuperscript{71}

Butterworths Medical Dictionary defines euthanasia 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.’\textsuperscript{72} Thus, it means deliberately killing a person out of kindness. It is choice for death after ‘life’ in earnest has ended.\textsuperscript{73}

2.8.1 Euthanasia as Death with Dignity

As stated earlier, human dignity is a descriptive and value-laden quality encompassing self-determination and the ability to make autonomous choices, and implies a quality of life consistent with the ability to exercise self-determined choices. It is a concept that is gaining currency with modern political philosophers. Ronald Dworkin, for example, describes belief in individual human dignity as the most important feature of Western political culture giving people the moral right “to confront the most fundamental questions about the meaning and value of their own lives”.\textsuperscript{74}

People who examine the meaning and value of their lives in the face of imminent death often express concerns that their dignity may be compromised if the dying process is prolonged and involves becoming incapacitated and dependent. The ability to retain a

\textsuperscript{72} McDonald, Butterworth Medical Dictionary, 626 (1999).
\textsuperscript{73} Supra note 15 at 3.
\textsuperscript{74} Id., at 166.
similar level of control over dying as one has exercised during life is widely regarded as a way of achieving death with dignity.  

Madan argues that this is because:

Dignity does not come to the dying from immortality fantasies, or compensatory ideas, such as reincarnation and paradise, nor does it come from empowerment through modern medicine. It comes from the affirmation of values, not only up to the boundaries of death . . . but in a manner that encompasses dying under living and does not oppose the two in a stern dualistic logic.  

In line with this view advocates of euthanasia as death with dignity believe that respect for individual autonomy should allow patients the opportunity to choose euthanasia as an alternative to becoming dependent upon medical carers and burdensome to family and society.  

Patient autonomy, self-determination and control are given legal expression through the law of consent which theoretically offers every person the right to “determine what shall be done with his own body” and ensures that anyone who imposes medical treatment, involving physical contact or harm upon another, in the absence of valid consent, will be criminally culpable. Any patient with the mental capacity to give consent is also entitled to withhold consent, “even if a refusal may risk personal injury to his health or even lead to premature death”. Established exceptions to this general rule allow for treatment to be administered in the absence of consent if there is a duty to act or necessity. And failure to obtain consent where these exceptions are not present can amount to criminal assault and battery. The law pertaining to consent and issues relating

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56 Supra note 60 at 29.
59 Schloendorff v. Society of New York Hospital (1914) 105 NE 92, 93, (NY) per Cardozo J. Cited in ibid.
to it are therefore pivotal to an analysis of euthanasia and death with dignity. Euthanasia can offer the opportunity to select the time and manner of one’s dying in order to secure a peaceful death, unencumbered by intrusive medical technology, and such a death is perceived by many as inherently dignified. However it is important to identify the precise nature of dignity in this context. Human dignity is a quality with different connotations for different people and in the context of dying many consider it more dignified to take the opportunity to experience every second that life has to offer.

Yale Kamisar set out a number of developments as basis for demanding a case for euthanasia: a) new and improved medical technologies capable of sustaining lives well beyond the point that many people would desire; b) evolution of jurisprudence and medical ethics governing the withholding and withdrawal of Life Saving Medical Treatment; c) sophisticated palliative care techniques, especially drugs capable of both mitigating pain and hastening death; d) a shift in typical causes of death from virulent diseases to slower, progressive conditions carrying the prospect of lingering in a gravely debilitated state; e) changes in the nature and financing of the doctor-patient relationship away from a long-term relationship rendered on a fee-for-service basis and toward managed care carrying disincentives for expensive medical interventions; and f) acceptance of voluntary euthanasia or assisted suicide in the Netherlands, Belgium, Germany, Switzerland, and Oregon.

2.8.2 Mercy killing

It should be noted that concept of euthanasia is often erroneously described as "mercy killing". Most forms of euthanasia are, indeed, motivated by mercy. Not so others. The term mercy killing describes the situation where a person (in practice this will often be a medical professional) deliberately takes the life of another in order to alleviate suffering. But the laws of almost all countries take no account of compassionate

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81 Id. at 30.
82 Id. at 32.
motives or of the status or profession of the individual concerned, “it always treats mercy killing as murder”. 87

2.8.3 Euthanasia vs. Suicide

Suicide is an act of intentionally and consciously taking one’s life i.e. death is self-inflicted. 88 Suicide and euthanasia are two different ways of ending life. While former is committed on the whims and fancies of the individual, the latter states a reasonable ground for one’s decision to rise above the everyday fight for survival. 89 In Maruti Shripati Dubal v. State of Maharashtra 90, 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 killing is nothing but homicide whatever the circumstances in which it is effected. 91

Another point of difference is that euthanasia or mercy killing essentially involves pain and suffering due to some incurable medical ailments while suicide need not necessarily 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. 92

89 Supra note 70 at 149.
90 1987 Cri LJ 743.
91 Id., at 752.
2.8.4 Euthanasia vs. Physician-assisted Suicide

Physician-assisted suicide (PAS) means that the physician does not directly kill the patient but provides the means or prescribes the drug which is taken by the patient himself. In other words, the doctor merely assists or aids the patient in committing suicide. Those who attempt to draw a moral line between the practices often emphasize that the patient exercises more control in assisted suicide, remaining the final causal actor in his or her own death, while in euthanasia another person assumes that role, thus creating a greater chance for physician malfeasance.93

Yet, morally, in cases of assisted suicide and euthanasia alike, the patient forms an intent to die and the physician intentionally helps the patient end his or her life. Though an analytical distinction exists between assisted suicide and euthanasia, there is a great deal they share in common, and those who support legalizing one tend to support legalizing the other for the same or similar reasons—whether it be out of a sense that fairness requires killing those who wish to die but who cannot kill themselves, a desire to promote individual autonomy whether it is expressed in terms of a desire to kill oneself or have another do so, or a sense that the actions serve a similar social utility in allowing patients to avoid needless suffering. In Dutch practice both are legal and they are “considered to be identical because intentionally and effectively they both involve actively assisting death.”94

The physical difference, too, between assisted suicide and euthanasia certainly need not be, and frequently is not, very great. As John Keown has asked, “What, for example, is the supposed difference between a doctor handing a lethal pill to a patient; placing the pill on the patient’s tongue; and dropping it down the patient’s throat?”95

For Yale Kamisar, the benefit of PAD was expeditious relief from prolonged suffering. That important benefit, however, had to be considered together with several other factors. The need for PAD depended on availability of alternative means of

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mitigating suffering like palliative or analgesic techniques as well as alternative legal means to hasten the death of a suffering patient.' The possible benefits of PAD had to be weighed against certain "utilitarian obstacles" - abuse of vulnerable patients in the administration of PAD and unsavory extensions of PAD beyond the realm of voluntary active euthanasia of competent patients nearing the end of a painful dying process. These predicted abuses would take the form of "unwilling or manipulated death[s] of the most vulnerable members of society." Some abuse would flow from medical mistake in diagnosis or mistake in assessing the competence of patients seeking PAD. Kamisar wondered how stricken patients facing terrible stress, pain, or effects of narcotic analgesics could possibly make careful, considered judgments about PAD.

2.9 Kinds of Euthanasia
There are two kinds of euthanasia - active and passive:

2.9.1 Active Euthanasia
It 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 involves killing by taking active steps like giving a lethal injection. There are three kinds of active euthanasia: voluntary, non-voluntary, and involuntary.

(i) In voluntary active euthanasia the doctor intentionally kills the patient at the patient's request and so with the patient's consent. It must be noted that euthanasia can only be considered 'voluntary' if a patient is mentally competent to make an informed decision, i.e. has a rational understanding of options and consequences. Competence can be difficult to determine or even

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62 Supra note 96.
Dignity here represents the capacity to exercise choice and have those choices respected. Thus if clinicians and carers acceded to requests for voluntary euthanasia they would not do so with malicious intent. They would do so through a compassionate desire to give effect to the autonomous wishes of patients seeking death with dignity.\textsuperscript{101}

(ii) 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. For instance, a patient may be in a coma or incompetent, and so his or her consent is impossible to get.

(iii) 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.

2.9.2 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. There are three kinds of passive euthanasia: voluntary, non-voluntary, and involuntary

(i) In voluntary passive euthanasia the doctor withholds or withdraws life-prolonging treatment so that a disease or injury, or both, kills the patient. Treatment is withheld or withdrawn at the patient’s request and so with the patient’s consent.

(ii) In non-voluntary passive euthanasia the doctor withholds or withdraws life-prolonging treatment so that a disease and/or injury kill the patient. Treatment is withheld or withdrawn without the patient’s request because the patient is unable to make a request or actively give his or her consent.

(iii) In involuntary passive euthanasia the doctor withholds or withdraws life-prolonging treatment so that a disease and/or injury kill the patient. Treatment is withheld or withdrawn without the patient’s consent when patient consent is possible to get but is not sought.

\textsuperscript{100} Lily Srivastava, \textit{Law & Medicine}, 150 (2010).

\textsuperscript{101} Supra note 60 at 15-16.
The lines between voluntary, involuntary and non-voluntary euthanasia are crucial in a society that values both self-determination and compassion.\textsuperscript{102} The case for voluntary euthanasia has some common ground with the case for non-voluntary euthanasia, in that death is a benefit for the one killed. The two differ, however, in that the former involves the killing of a person, a rational and self-conscious being and not a merely conscious person.\textsuperscript{103}

2.9.3 Withdrawal of Life Support System

With advances in science and technology, it is possible to prolong life by use of ventilator and artificial nutrition. In the case of patients with serious diseases or in last stages of a disease, where a body of medical experts is of opinion that the prolongation of life serves no purpose and there are no chances of recovery, the doctors have no duty in law to merely prolong life. This principle is now accepted in all countries as part of the common law. If, in such cases, the treatment is withheld or withdrawn, and the patient is left to nature or the body is left to nature, there is no criminal or civil liability in as much as there is no ‘duty’ in common law, to keep a person alive if informed medical opinion is that there are absolutely no chances of survival. Withholding or withdrawing life support is today permitted in most countries, in certain circumstances, on the ground that it is lawful for the doctors or hospitals to do so. Courts in several countries grant declarations in individual cases that such withholding or withdrawal is lawful. Thus, there are views propagating the practice of passive euthanasia to be morally permissible and active euthanasia morally impermissible.\textsuperscript{104}

However, others believe 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. Similarly, for Yale Kamisar no moral difference existed between pulling a plug and providing a poison or giving a fatal injection. He believed that neither form of hastening death - withdrawal of Life Saving Medical Treatment or Physician Assisted Death - was intrinsically immoral. He agreed

\textsuperscript{102} Supra note 88 at 492.
\textsuperscript{103} Supra note 15 at 193.
\textsuperscript{104} Law Commission of India, 196\textsuperscript{th} Report on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners), 159 (2006).

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with Joseph Fletcher that a deliberate act of omission, when death is the goal, is morally the same as a deliberate act of commission. 105

2.10 Historical Background of Right to Die and Euthanasia

The "right to die" question is not simply a question of law, majority or moral will, but rather a cultural question that involves some of the fundamental theories of the Western world. The "right to die" controversy is related to basic questions about the proper role of society, as well as the proper position of the individual within society. 106 The issue is not simply a modern fad or a new idea, it can be shown that we are not dealing with a momentary item on the political agenda but rather with an idea that has taken over 2000 years to reach maturity. With such a rich history, it is myopic to think that one can come to fully understand the nature of this debate by concentrating solely on the positive law of the modern age. The long history of this debate provides a deeper understanding for both sides of the controversy. It also provides support for those who would maintain that no government can give its citizens the right to take their own lives, while simultaneously demonstrating the historical foundation of the arguments that the right to self-ownership and autonomy mandates the existence of a "right to die." 107

If we are to have a clear understanding of the nature of "right to die" claims as they are made today, we must first understand the role of natural law in developing the foundation for such a right. 108 The "right to die" debate is inextricably tied to the evolution of natural law theory and the creation of the autonomous individual. 109 A review of the history of the rights of man shows a slow transition that took place from the ancient Greek conception of the state-centered understanding of man to an individual-centered understanding of society that allowed for the evolution of a theory of rights. The significance of this understanding to the present question is that, to a large extent, this transformation from a state-centered to an individual-centered understanding

106 Supra note 48 at 1.
107 Id., at 2.
108 Id., at 55.
109 Id., at 3.
of mankind was made possible by the emergence and development of the concept of natural law.\textsuperscript{110}

Feelings and laws about euthanasia, especially in the form of physician-assisted suicide, are closely related to those concerning suicide in general. Both have changed considerably throughout history.\textsuperscript{11} The origin of the word "suicide," with all its negative connotations, as a way of describing the act of self-killing is a relatively recent development within the human language, seeming to date from approximately 1662.\textsuperscript{112}

This should not be taken to mean that self-killing is simply a phenomenon of the modern age. Reports of self-killing can be found in the oldest written records of mankind. For example, references to such acts can be found in the earliest examples of classical Greek literature such as the Epikaste and the Oedipus myth, the narratives of Homer and the Homeric poems.\textsuperscript{113}

The ancient Greeks believed that suicide could be acceptable or even honorable or heroic under certain conditions, one of which was escaping the pain of an untreatable illness. In some Greek city-states, including Athens, people could request government help in killing themselves. The state could also order suicide as a punishment for crimes, as happened most notably in the case of the philosopher Socrates, whom Athenian magistrates commanded to drink poison hemlock in 399 B.C. after convicting him of corrupting the city's youth with his teachings. Socrates accepted his death sentence calmly.\textsuperscript{114}

Moreover, no evidence can be found to suggest that Athenian civil law considered such acts to be an offense against the community.\textsuperscript{115} But this should not be taken to mean that there was universal agreement on the appropriateness of such acts. Early Western philosophical debate about the propriety of self-killing generally focused on the quasi-religious grounds that self-killing would be displeasing to the gods, and it was with Socrates when, in the \textit{Phaedo}, he states:

\textsuperscript{111} Supra note 67 at 5.
\textsuperscript{114} Supra note 67 at 5.
\textsuperscript{115} Supra note 113.
There is a doctrine whispered in secret that man is a prisoner who has no right to open the door and run away: this is a great mystery which I do not quite understand. Yet I too believe that the gods are our guardians, and that we men are a possession of theirs. . . . Then, if we look at the matter thus, there may be reason in saying that a man should wait, and not take his own life until God summons him, as he is now summoning me.  

In this way, Socrates leaves us with the proposition that while self-killing is generally wrong, not all acts of self-killing can be condemned. The difference between the two categories seems to be whether or not one has been called home by the gods, a determination that is ultimately personal.

Similar to Socrates, both Pythagoras and Plato condemned self-killing. Pythagoras on purely religious grounds and Plato because he saw such acts as violating man's essential nature, as well as being acts against God. Aristotle also objected to acts of self-killing, but on entirely different grounds than Plato and Socrates. Aristotle, whose theories were heavily relied on by John Locke, maintained that it was part of mankind's nature to seek pleasure and to preserve himself and that it was this human attribute that served as one of the important tools in distinguishing between good and evil. Therefore, if man rationally follows his true nature, he should be inclined to preserve himself. However, Aristotle's main objection to self-killing was not that it violates man's nature, for the avoidance of pain could justify such an act, but rather that such an act is a threat to the authority of the community because for him, the citizen belonged to the state.

While those philosophers who established the early foundations of Western political thought clearly disapproved of self-killing, principally on religious grounds, this attitude took a radical shift with the introduction of the Stoic philosophy. Unlike their predecessors, the Stoics evolved a positive philosophy of self-killing that left decisions of

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117 Id., at 98-99.
life and death in the hands of the individual.\textsuperscript{121} Within the Stoic philosophy of natural law, the individual was seen as the sole authority in determining the time and manner of his own death. Hence, the Stoic morality of self-killing was not a matter for public dispute. If an individual found himself in an intolerable state of existence, the option of terminating one's own life was not only free of stigma, but was acceptable.\textsuperscript{122}

The Stoics thus inherited an atmosphere of civil ambivalence but philosophic/religious disapproval of self-killing from their Greek predecessors. Under Stoic philosophy the human being had become an individual, but an individual who was bound by the dictates of natural law as embodied in the Roman legal system. Therefore, the Stoics conceived of the individual not as free from all constraints, but as free to form one's own judgments concerning those personal matters of life that were not rightly subjects of positive law; even then, the constraints of natural law applied. Under these constraints, the Stoics saw the human being as an entity capable of making his or her own decisions regarding matters of personal destiny. While the state had the right to protect itself from extreme peril or to force military service for the protection of its existence, it was seen as having no authority over the issue of personal existence. Although this attitude was widely accepted among Stoic philosophers, Seneca (4 B.C.-65 A.D.) became its principal advocate. The Stoic philosophy of self-killing is embedded in their understanding of natural law. They viewed mankind as an animal with a noble existence, an animal possessing the physical embodiment of the soul, which is of great value in the whole of the physical universe, distinguishing mankind from lower animals and giving us liberty and dignity, which set us apart as free and equal creations. However, it is important to understand that while the Stoics recognized the existence of a soul, they did not recognize it as a distinct entity from the body; therefore the soul, like the body, was viewed as something ruled by those natural laws that govern the physical universe. As a part of the physical world, the Stoics viewed mankind as an animal gifted with the ability to use reason, and each individual was free to use his or her reason to determine the propriety of life or death. Seneca recommended that the aged should feel free to take their


own lives once their age and health had left them with little to face other than undignified decay. Old age, painful or chronic illness, or malignancy which rendered them or seriously threatened to render them incapable of fulfilling their functions as rational human beings served as clear justifications for taking one's own life. Under such conditions, the Stoics maintained that self-killing could not be considered inappropriate.\textsuperscript{123}

When we examine the acceptance within Stoic philosophy of acts of self-killing, we discover that they did not believe that death was good or in any way preferable to a healthy existence. Quite to the contrary, the Stoics frowned on what they would have seen as cowardly acts of self-killing to avoid one's responsibilities in life. For the Stoics, the main justification for ending one's existence was directly tied to questions concerning the quality of life, conceiving mankind as an animal that was intended to lead a healthy existence that allowed him to use his rational capabilities to understand the universal laws of nature. If at any time persistent ill health or old age interfered with these important qualities of life, it was permissible, but in no way mandatory, for one to terminate one's existence. In this sense, the Stoics did not see rational acts of self-killing to avoid the degrading experiences of illness or disease as an offense against the gods, but did see irrational acts of self-killing, akin to what we mean by "suicide" today, as sacrilegious events to be prevented. The distinction between the two categories of actions rests with a distinction between rationality and irrationality. If a person rationally views his or her life and, after drawing up a balance sheet, sees that death is preferable to life, then, in a free and rational act, one may end one's own life. However, self-killing out of irrationality, depression, or fear of responsibility was to be avoided.\textsuperscript{124}

The Roman justification for the authority of law was strongly influenced by the Stoic philosophy of natural law. Under early Roman law, self-killing was generally considered to be permissible, with only a few types of suicide deserving the attention of the state. Permissible factors, included (but not limited to) tedium, sickness, grief, insolvency, or madness.\textsuperscript{125}

\textit{Id.}, at 99-100.
\textsuperscript{125} \textit{Id.}, at 101.
The influence of this Stoic philosophy extended not just to its followers, but into the very heart of Rome. Seneca's philosophy of death is reported to have permeated not only the legal profession but the medical profession as well. Roman doctors did not view assisting in the act of taking one's life as contradictory to their function or oath of service. Rather, they saw assisting with rational acts of self-killing as a normal part of their function. While it is clear that, during the early period of Roman society, frivolous acts of self-killing resulted in a loss of dignitas, justifiable and rational suicide was viewed as clearly acceptable and in keeping with the natural law.

However, among Jewish scholars, Flavius Josephus argued:

Suicide is alike repugnant to nature which all creatures share, and an act of impiety toward God who created us. Among the animals there is not one that deliberately seeks death or kills itself; so firmly rooted in all is nature's law—the will to live.

The Christians of the first century seemed to follow the Roman traditions concerning self-killing and showed very little interest in the ethical issue of suicide. Early Christian writing contains no indication that taking one's own life was considered to be a sinful act, and early Christians responded pastorally, rather than condemningly, to instances of self-killing. In fact, it was not until the fourth century that Christianity began to systematically disapprove of all acts of self-killing. As the Christian church began to grow, it adopted an expanded version of the Platonic view of self-killing, maintaining that such an act was an offense against the authority of God. The church argued that God had created the body as a temple for the soul to rest in while here on Earth (temporale corporis habitaculum) and that it was not appropriate for any human being to force the soul to leave this resting place unless called to do so by God Himself and taking one's own life would be contrary to man's true nature.

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128 Ibid.
129 Ibid.
130 Ibid. at 102-103.
The Christian attitude concerning self-killing was ambivalent until St. Augustine (A.D. 354-A.D. 430), bishop of Hippo in the early fifth century, established a clear doctrine concerning such acts. Augustine maintained that taking one's own life was self-murder. Augustine also made the first appeal to Biblical writings in an effort to lay a foundation for the disapproval of all forms of self-killing. Augustine made great efforts to distinguish between simple acts of self-killing, which were never desirable, and genuine martyrdom. Augustine made it clear that the Christian martyr could kill himself only to avoid being forced into sin.\footnote{Id., at 103.}

He called suicide a “detestable and damnable wickedness.”\footnote{Augustine, quoted in Derek Humphry and Ann Wickett, The Right to Die: An Historical and Legal Perspective of Euthanasia, 6 (1990).} Unless done at the specific command of God, Augustine wrote, self-murder violated the sixth commandment, “Thou shalt not kill.”\footnote{Supra note 67 at 6.}

To a great extent, the shifting and competing attitudes within Christianity can once again be accounted for by shifting conceptions of the nature of mankind. Within the Old Testament, the principal word for the existence of life within a human being is nepes, which refers to the throat or breathing substance that makes up an individual. In this sense, it was the act of breathing that constituted a human being as a living individual. In addition to nepes, the word ruah directly meant breath, wind, or spirit; however, ruah had a distinct meaning that referred to "the vital influence of God upon human beings. . . . A human being's life principle." Thus, nepes lives and dies, while ruah does not. Ruah is God's living force communicated to human beings, but belonging to God. Therefore, nepes conveys life while ruah conveys the gift of God's sustaining power.\footnote{Supra note 48 at 103.}

This conception of man's nature predominated until the second century B.C. However, New Testament theology fully adopted the vocabulary of a body/soul distinction, thus reinterpreting the nature of man. Now, death was no longer to be considered an end to existence, but merely a shifting state of being.\footnote{Sena, Rev. Patrick J. "Biblical Teaching on Life and Death", in Donald G. McCarthy and Alvert S. Moraczewski, Moral Responsibility in Prolonging Life Decisions, 7-15 (1981). Cited in Id., at 104.} The importance of this distinction is captured in the work of Anton van Hooft, who maintains that, as a general historical rule, wherever a strong distinction is made between the body and the
soul and a totalitarian conception of society prevails, the individual is denied the right to take his own life.\textsuperscript{136}

While Augustine is the principal church father responsible for establishing almost all acts of self-killing as a sin, it was St. Thomas Aquinas (1225-1274) who fully embedded the position within modern Christian interpretation of natural law. In Aquinas’s view, all creatures had a natural inclination to preserve themselves, and natural law consisted of those things that aided in the preservation of life and condemned those things that sought to destroy it. So, he supported the principle that acts of self-killing and euthanasia constituted “the killing of the innocent” and condemned such acts as clearly contrary to the dictates of natural law. However, at the same time Aquinas did not believe that human beings were obligated to do everything possible to sustain their lives. He argued that, while we were all obligated to take advantage of ordinary medical practice, there was no need to take extraordinary measures to preserve one’s life. While Aquinas clearly opposed actively taking life, there is room within his theories for passive activities that can lead to a quickened natural death. Despite this possible flexibility within modern interpretations of Aquinas’s theory of natural law, his influence strengthened the authority of the medieval Christian Church; as a result, political theories concerning the potential propriety of self-killing all but disappeared from Western philosophy.\textsuperscript{137}

With the advent of the Renaissance, the authority of the Catholic Church began to wane and secular philosophy began to work against the traditional religious attitude concerning self-killing. Under the control of the Christian Church, the power and authority of the state merged with the church’s dualistic conception of man’s nature. Under such conditions, there was little room for the emergence of any philosophy respecting the right of an individual to terminate his own life. However, the rise of the secular state opened the way for such philosophy to emerge. While the church saw man as consisting of a distinct body and soul and saw itself as having authority over both, the secular state saw only a unified individual or, at best, maintained that it had authority only over the physical matter that made up the human being. As a result, the secular state

\textsuperscript{136} Ibid.
\textsuperscript{137} St. Thomas Aquinas, Summa Theologica (1948). Cited in Id., at 104-105.
found itself with a view much closer to that held by the Stoic philosophers than that of the Christian Church.\textsuperscript{138}

The ideal society described in Sir Thomas More's \textit{Utopia} (1516), for example, encouraged assisted suicide to end painful and incurable illness. Some Enlightenment intellectuals also accepted suicide, at least under some circumstances. The 16th-century French essayist Michel de Montaigne and the 17th-century English poet John Donne are among those whose writings suggest that they condoned suicide. In \textit{Biathanatos}, Donne offered an explicit defense of suicide and a refutation of the reasoning behind the Christian prohibition of the act.\textsuperscript{139}

The sixteenth century marked the emergence of a conception of human nature that viewed mankind as a collection of autonomous individuals who possessed not only liberty over their own bodies but also natural and inalienable rights. The emergence of this conception of man's nature brought with it a panoply of individual rights, as well as the rejection of totalitarianism. As a result, the question of the "right to die" could once again be raised.\textsuperscript{140}

John Locke was deeply intrigued by natural law. However, his theories led him to reject the proposition that self-preservation is the principal, or first, law of nature. This is not to say that Locke approved of acts of self-killing; rather, Locke saw the rule of self-preservation as advantageous rather than obligatory. This was quite different from his view of other human actions that Locke strictly held out as forbidden by natural law. For example, among these forbidden deeds were the acts of theft and murder. In this way, Locke appears to have rejected the arguments of the Christian Church, which attempted to equate acts of self-killing with murder and to forbid both through the authority of natural law and scripture. Locke did, however, seem to maintain that self-preservation was a natural instinct and that those things that generally contributed to the preservation of life were probably virtues. Thus Locke writes that man "has not liberty to destroy

\textsuperscript{138} \textit{Id.}, at 105.
\textsuperscript{139} \textit{Supra} note 67 at 6. The English philosopher, Francis Bacon (1561-1621), was the first to discuss prolongation of life as a new medical task, the third of three offices: Preservation of health, cure of disease and prolongation of life. Bacon also asserts that, 'They ought to acquire the skill and bestow the attention whereby the dying may pass more easily and quietly out of life.' Bacon refers to this as outward euthanasia, or the easy dying of the body, as opposed to the preparation of the soul. It appears unlikely he was advocating 'mercy killing'; more likely he was promoting what we would term better 'palliative' care.
\textsuperscript{140} \textit{Supra} note 48 at 105-106.
himself. . . . For man being all the workmanship of one Omnipotent, and infinitely wise Maker lives and dies at His pleasure not our own”. For Locke, life was not something to be held on to at all costs.141

Later in the eighteenth century, the right of an individual to take his own life would be defended by such theorists as Montesquieu (1689-1755) and David Hume (1711-1776). Montesquieu used natural law theories to argue in favor of a set of natural rights that were considered to be inherent in the individual and possessing sufficient authority that they could limit governmental authority, thus placing many individual decisions beyond the control of government. Similarly, Hume argued in favor of the Stoic philosophy of man and maintained that an individual should not be forced "to prolong a miserable existence, because of some frivolous advantage which the public may perhaps receive from him"142

On the other hand, Hume's contemporary, German philosopher Immanuel Kant, opposed suicide because, he said, its motive was self-interest, which he did not consider a justifiable reason for an action. Kant also believed that suicide showed a disrespect for life. He agreed with Aquinas that the act usurped a power that belonged only to God and violated one's duty as a created being: “Human beings are sentinels on earth and may not leave their posts until relieved by another beneficent hand. God is our owner; we are His property.”143

Therefore, while the neo-Platonic and Christian conception of the duality of mankind prevented them from entertaining any question about the right to die, the sixteenth-century philosophers saw man as a free individual having the right to make his own decisions concerning the personal matters of life, whether it be his choice of occupation, his religious beliefs, or the end of his life. Any interference with such choices on the part of the state, beyond what was strictly necessary for its self-preservation, was seen as an invasion of the autonomous individual's rights. Under such conditions, the individual was considered to be the undisputed master of his own life. Decisions concerning his desire to live or die were held out as matters of personal choice.144

142 David Hume, Two Essays, 19 (1783). Cited in Id., at 107.
143 Immanuel Kant, quoted in Pence, Classic Cases in Medical Ethics. Cited in supra note 67 at 7.
144 Supra note 48 at 107.
For centuries, suicide was against the law in most countries as well as proscribed by religion. Anti-suicide laws usually required the heirs of a suicide to forfeit some or all of the person’s property to the state. Such laws began to be withdrawn in the 19th century, not because people found suicide any more morally acceptable than before, but because they came to feel that punishing the suicide’s family was unfair. Suicide was further decriminalized in England in the 20th century because the act came to be seen primarily as a result of mental illness. Similarly, suicide and attempted suicide are no longer against the law in any state of the United States. On the other hand, assisting in a suicide, even that of a terminally or incurably ill person, has always been illegal in most states. The earliest American statute explicitly to outlaw assisting suicide was enacted in New York in 1828 and many of the new States and Territories followed New York’s example. In 1872, for example, the Ohio Supreme Court ruled in the case of a man who had made poison available to such a person:

> It is immaterial whether the party taking the poison took it willingly . . . or was overcome by force . . . . The lives of those to whom life has become a burden of those who are hopelessly diseased or fatally wounded . . . are under the protection of the law equally as the lives of those who are in the full tide of life’s enjoyment.145

Euthanasia, in its modern meaning of “mercy killing,” was even more surely illegal: technically, it was simply a form of murder. As stated earlier, the term was coined by the English philosopher and statesman Sir Francis Bacon in the early 17th century, but Bacon used it only to describe the painless, peaceful natural death that people hoped to have. Its meaning changed in the 20th century.146

Illegal and nameless though it might have been, euthanasia in its present meaning has no doubt always existed. Although family members or friends might occasionally have killed sick people to end their suffering, that unhappy task, in ancient times as well as today, was most likely to be performed by a physician. Physicians are uniquely well placed to assist suicide or perform euthanasia for their patients because of their medical

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146 Supra note 67 at 7.
skills and access to painlessly lethal drugs. Whether doing so is an extension of the physician’s role as healer and comforter or the ultimate violation of it has been hotly debated.\textsuperscript{147}

By far the best known ancient statement about such activity is found in the Hippocratic Oath, which many doctors still take when they graduate from medical school. Part of the Oath reads:

\begin{quote}
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.'
\end{quote}

Although this oath is often considered to be the ultimate statement of the physician’s moral creed. Michael Uhlmann points out that Hippocrates, the Greek physician of the fourth century B.C. to whom the oath is credited, was not expressing the common medical viewpoint of his time. Hippocrates’ views were probably derived from those of the philosopher Pythagoras, who held (as Christian theologians also later would) that human souls contained sparks of divinity and thus should not be wantonly destroyed. During the Christian era, physicians probably were as repelled as anyone else by the idea of deliberately hastening death under most circumstances. Nonetheless, despite the official disapproval of church, law, and their profession, some doctors—perhaps even a majority—once in a while quietly speeded a suffering patient’s dying process by drugs or other means. Beginning in the late 19th century and increasingly as the 20th century progressed, a few physicians dared to mention this hidden practice in print and even to demand that it be given legal sanction.\textsuperscript{149}

\textsuperscript{147} Id., at 8.
\textsuperscript{149} Supra note 67 at 8. Until the end of the nineteenth century, euthanasia was regarded as a peaceful death, and the art of its accomplishment. An often quoted nineteenth century document is, ‘De euthanasia medico prolusio,’ the inaugural professorial lecture of Carl F. H. Marx, a medical graduate of Jena. ‘It is man's lot to die’ states Marx. He argued that death either occurs as a sudden accident or in stages, with mental incapacity preceding the physical. Philosophy and religion may offer information and comfort, but the Physician is the best judge of the patient’s ailment, and administers alleviation of pain where cure is impossible. Marx did not feel that that his form of euthanasia, which refers to palliative medicine without homicidal intention, was an issue until the nineteenth century. The prevailing social conditions of the latter nineteenth century began to favour active euthanasia. Darwin's work and related theories of evolution had challenged the existence of a Creator God who alone had the right to determine life or death. The first
2.11 Assisted Suicide and Euthanasia in the 20th Century

The first attempt to legalize voluntary euthanasia performed by physicians in the United States was a bill introduced into the Ohio legislature in 1906. According to a contemporary newspaper, the bill proposed that when an adult of sound mind has been fatally hurt and is so ill that recovery is impossible or is suffering extreme physical pain without hope of relief, his physician, if not a relative and if not interested in any way in the person’s estate, may ask his patient in the presence of three witnesses if he or she is ready to die. Three other physicians are to be consulted.\(^{150}\)

If the patient acquiesced and the other physicians agreed about the person’s medical condition, the doctor could provide a painless death. The bill called this act euthanasia, applying the term, perhaps for the first time, to the deliberate causing of death in order to relieve suffering. The bill met powerful opposition. An editorial warned of many of the same dangers that opponents bring up in connection with physician-assisted suicide and euthanasia today, including the possibility that people would use such a law to rid themselves of burdensome relatives or gain inheritances. It also claimed that such a law would destroy the trusting relationship between patient and doctor, so that “the patient would look forward to the visit of the physician with dread.”\(^{151}\)

Popular advocate of active euthanasia in the nineteenth century, was a schoolmaster, not a doctor. In 1870 Samuel Williams wrote the first paper to deal with the concept of ‘medicalised’ euthanasia. He stated: "In all cases it should be the duty of the medical attendant, whenever so desired by the patient, to administer chloroform, or any other such anaesthetics as may by and by supersede chloroform, so as to destroy consciousness at once, and put the sufferer at once to a quick and painless death; precautions being adopted to prevent any possible abuse of such duty; and means being taken to establish beyond any possibility of doubt or question, that the remedy was applied at the express wish of the patient." Though reprinted many times, the paper was seemingly ignored by the British medical profession, and in 1873 Lionel Tollemache took up his arguments in the Fortnightly Review. Writing under the clear influence of utilitarianism and social Darwinism, he described the incurable sick as a useless to society and burdensome to the healthy. Although his views were simply dismissed as revolutionary, similar views were emerging with the new science of eugenics, as ideas of sterilising the mentally ill, those with hereditary disorders, and the disabled, became fashionable. In 1889, the German philosopher, Nietzsche, said that terminally ill patients are a burden to others and they should not have the right to live in this world. In 1895, a German lawyer, Jost, prepared a book called “Killing Law.” Jost stressed that only hopelessly ill patients who wanted death, must be let die. According to Jost, life sometimes goes down to zero in value. Thus, the value of the life of a patient with an incurable illness is very little. Visit, www.life.org.nz/euthanasia/about_euthanasia/history-euthanasia/ (Accessed on 1.9.2013).\(^{150}\)


\(^{151}\) When the bill was sent to the legislature’s Committee on Medical Jurisprudence, it failed by a vote of 78 to 22. Outlook, February 3, 1906, quoted in Humphry and Wickett, The Right to Die, at 12. Cited in Id., at 9.
Another important effort to legalize voluntary euthanasia was made in Great Britain in the 1930s. C. Killick Millard, health officer for the city of Leicester, drew up a draft bill for this purpose in 1931, and the British Voluntary Euthanasia Society was formed in 1935 to promote the bill. Although it did not use the term, the society was essentially the world’s first right-to-die organization. Its members included such prominent figures as H. G. Wells, George Bernard Shaw, and Bertrand Russell. Nonetheless, when the bill was introduced into Parliament in 1936, the House of Lords voted it down by 35 to 14. The society continued its advocacy efforts but was unable to bring another euthanasia bill into Parliament until 1950.152

Charles Potter, a Unitarian minister, formed a similar group, the Euthanasia Society of America, in the United States in 1938. Some of its members proposed legalizing euthanasia not only for terminally or incurably ill people who requested it but also for infants with severe mental and physical defects (“nature’s mistakes”) and even “criminals and hopeless lunatics.”153 The society tried to introduce a bill legalizing voluntary euthanasia for terminally ill adults into the New York legislature in 1939 but could find no legislator to sponsor it. Later attempts, continuing until about 1960, met with similar failure. In opinion polls taken in the 1930s, about 40 percent of Americans and as much as 69 percent of Britons favored euthanasia for the terminally or incurably ill under at least some circumstances. Even when family members were arrested for assisted suicide or euthanasia of terminally ill people, they were seldom convicted or punished. In 1938, for example, a New York grand jury refused to indict Harry C. Johnson for gassing his cancer stricken wife (at her request, he said) after three psychiatrists testified that he had committed the act while temporarily insane. Several parents who killed children with severe mental retardation were also acquitted or given suspended sentences.154

Such cases lent support to the claim in a 1939 Time article that there were “unwritten laws condoning mercy killings,” although judges invariably reminded juries that the written laws said otherwise. During World War II, however, Nazi Germany gave

152 Ibid.  
154 Ibid.
the word euthanasia a sinister connotation that it has yet to shake. Between 1939 and 1941, the Hitler government carried out a so-called T4 euthanasia Program for people possessing what the Nazis deemed leben unwerten leben, or “life unworthy of life.” The program started with mentally disabled children, then expanded to include mentally and physically disabled adults. The rationale behind the program was partly economic—a desire to spare the state the expense of caring for “useless” people—and partly biological, stemming from a belief in eugenics, which claimed that only the healthy should reproduce. The Nazi “euthanasia” program is estimated to have killed as many as 100,000 disabled people, all Aryan Germans. The infamous “final solution” to the problem of Jews and other minority groups, whom the Nazis also eventually dubbed “unworthy of life,” grew out of this program. Indeed, the euthanasia program was a sort of dress rehearsal for the Holocaust, featuring the same combination of gas-emitting fake shower stalls, ever-running crematoria, and most tellingly, modern opponents of euthanasia say—the full cooperation of many German physicians. Leo Alexander, an investigator for the Nuremberg War Crimes Tribunal, wrote in 1949:

It started with the [German physicians’] acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as life not worthy to believed. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted and finally all non-Germans. But it is important to realize that the infinitely small wedged-in lever from which this entire trend of mind received its impetus was the attitude toward the non-rehabilitable sick.

Needless to say, modern supporters of the right-to-die movement disavow any similarity between the Nazi program and the activities they propose to legalize. They emphasize that their programs, even at their furthest extension, would approve only

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155 Leo Alexander, quoted in Humphry and Wickett, The Right to Die, at 27. Cited in id. at 10.
euthanasia requested by competent adults or, in the case of incompetent people, by written directives made at an earlier date when the people were competent. In the case of never-competent people, family members or other legally recognized surrogates would have to request euthanasia for them. The Nazi program, by contrast, made no pretense of fulfilling sick people's requests or asking anyone's permission.156

Although some details of the Nazi euthanasia program were not revealed until 20 years after it occurred, enough emerged after the war to make the American public leery of the subject. In a 1947 Gallup poll, only 37 percent of those polled answered yes when asked, “When a person has a disease that cannot be cured, do you think doctors should be allowed by law to end the patient's life by some painless means if the patient and his family request it?” By contrast, 46 percent had answered yes to a similar question in 1937 and 1939 Gallup polls.157

Demand for a way to control events at the end of life began to build again in industrialized countries during the 1950s and 1960s, however, chiefly because of the unexpected effects of medical technology's success in extending life expectancy. As antibiotics and other advances did away with many infectious diseases and other formerly common causes of a relatively quick death, more people lived into old age and began to suffer from chronic conditions such as cancer, heart disease, diabetes, and Alzheimer's disease. Death from such illnesses was often preceded by years of slow and sometimes painful decline in physical or mental functions.158

For the first time, too, technology became able to prolong, sometimes for years, the process of dying. Dying people began to be “rescued” by respirators or ventilators and by machines that used electric shock to restart the heart. These devices sometimes restored people to normal life, but at other times they returned them only to coma or a few extra days of pain. Tubes that carried water and nutritive solutions into the stomach could maintain the life of a comatose person for decades. A doctor noted in a New York Times article,

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157 Ibid.  
158 Ibid.
Our medical inventions have invented our own dilemma. Sometimes the machines are a blessing. And sometimes they are a curse. But we haven’t invented laws or rules yet to tell the difference.159

An important indication of a change in feelings about some forms of euthanasia came in a statement that Pope Pius XII made in 1957. The pope continued to oppose active euthanasia, but he told a conference of anesthesiologists that Catholics and their families did not have to continue extraordinary treatments such as the use of artificial respirators in seemingly hopeless cases. He also sanctioned the “double effect,” in which pain-controlling narcotics might ease someone into death. In short, the Pope said that passive euthanasia was acceptable.160

Another factor that encouraged public thinking about a right to die was the rise of what has been called the “rights culture” in the late 1960s and early 1970s. Students in America and Europe envisioned, and indeed tried to insist on, a society in which all people could “do their thing” without interference, so long as they did not harm others. They expressed, sometimes violently, a distrust of and resistance to all forms of authority.161

Women, African Americans, and other minority groups demanded an end to discrimination and unequal treatment and a recognition of their individual rights, and many of their demands were put into law. Individual liberty and autonomy, always high on the list of American values, began to be celebrated almost to the exclusion of everything else. A combination of increasing technology and specialization, which tended to depersonalize medicine, and people’s growing demand to have a say in decisions that affected them eroded the worshipful respect with which most Americans had regarded the medical profession in the 1950s. Instead, the public began to view doctors as paternalistic, greedy, and indifferent to the feelings of patients and their families. The result was the patients’ rights movement of the 1970s. One of the medical rights that people demanded was the right to have a voice in end-of-life decisions involving themselves or loved ones. At very least, they wanted to be able to refuse medical

159 Quoted in Humphry and Wickett, The Right to Die, at 129. Cited in Id., at 11.

160 Ibid.

161 Ibid.
treatment that they considered futile or excessively painful, even if it (after a fashion) preserved life.162

In 1973, Dr. Gertruida Postma, who gave her dying mother a lethal injection, received light sentence in the Netherlands. The case and its resulting controversy launched the euthanasia movement in that country. The Dutch Voluntary Euthanasia Society (NVVE) launched its Members' Aid Service in 1975, to give advice to the dying. It received twenty-five requests for aid in the first year.163

In 1976, Dr Tenrei Ota, upon formation of the Japan Euthanasia Society (now the Japan Society for Dying with Dignity), called for an international meeting of existing national right-to-die societies. Japan, Australia, the Netherlands, the United Kingdom, and the United States were all represented. This first meeting enabled those in attendance to learn from the experience of each other and to obtain a more international perspective on right to die issues.164

In 1978, Jean's Way was published in England by Derek Humphry, describing how he helped his terminally ill wife to die. The Hemlock Society was founded in 1980 in Santa Monica, California, by Derek Humphry. It advocated legal change and distributed how-to-die information. This launched the campaign for assisted dying in America. Hemlock's national membership grew to 50,000 within a decade. Right to die societies also formed the same year in Germany and Canada.165

The Society of Euthanasia assembled in Oxford in the last months of 1980, hosted by Exit. The Society for the Right to Die with Dignity. It consisted of 200 members represented 18 countries. Since its founding, the World Federation has come to include 38 right to die organisations, from around the world, and has held fifteen additional international conferences, each hosted by one of the member organisations.166

On 5 May, 1980, the Catholic Church issued a Declaration on Euthanasia by the Sacred Congregation for the Doctrine of the Faith. According to this declaration, nothing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable

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162 Ibid., at 11-12.
164 Ibid.
165 Ibid.
166 Ibid.
disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it, either explicitly or implicitly. Nor can any authority legitimately recommend or permit such an action. For it is a question of the violation of the divine law, an offense against the dignity of the human person, a crime against life, and an attack on humanity.\(^\text{167}\)

It should be noted that the legal position of euthanasia and right to die with dignity in various countries of the world in the last few decades has been discussed in chapter 5 of this research work.

The answer to the "right to die" controversy contains within it important consequences for life in the United States and the whole of the Western world. The "right to die" controversy is not an issue that will soon slip from the political agenda of our day. Quite to the contrary, there is compelling evidence to suggest that many countries, particularly the United States, have trapped themselves into a position that will lead either to the unchecked use of euthanasia against potentially innocent and unwilling victims or to the legalization of the "right to die" under the control of state regulators. It is important to our future that decisions in this area are made with a thorough understanding of the rights and societal obligations involved.\(^\text{168}\)

2.12 Theological Perspectives on Euthanasia

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.\(^\text{169}\)

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. In Judaism, Christianity, Buddhism, Hinduism, Sikhism and Islam, respect is shown to the principle of sanctity of life. Every life is valuable and precious to God. It is easier for a religious person to see the life of a person in Persistent

\(^{167}\) Ibid \(^{168}\) Supra note 48 at 2. \(^{169}\) Supra note 99 at 405.
vegetative State (PVS), as valuable and precious than it is to someone without faith. The person in PVS is still valued and loved by God and hence is precious, even if no earthly person can relate to him or her. There might be thought to be a slight paradox here. For a non-religious person, it might be thought that death is a ‘tragedy’ and the end of everything; whereas for many with a religious belief there is hope of some kind of afterlife. It might therefore be thought that a religious view would be less concerned about causing death than a non-religious view.\footnote{Id., at 540-541}

As previously stated, within Christianity, it is the Roman Catholic Church, which has been most vociferous in its rejection of euthanasia and support for sanctity of life. Life is a gift from God, which we are to treasure, preserve, nourish and steward and not destroy.\footnote{Id., at 468-469. For Christians, the problem of euthanasia is the same as the problem of suicide. Suicide is forbidden because it is an ungracious act of rebellion by a creature towards the creator, so to opt prematurely for death is a comparable act of gratitude. Ian S. Markham, Do Morals Matter? – A Guide to Contemporary Religious Ethics, 132 (2007).}

As a result, it maintains that any statute legalizing a "right to die" would unjustly injure our society's respect for innocent life and contribute to the moral decay that threatens the maintenance of a good society and our security within it. It is argued that we have moral responsibility to protect life and that, although individuals may wrongly choose to turn away from this obligation, as a society we must never institutionalize the acceptance of ending innocents' lives. It is equally clear that religious institutions within the United States, particularly the Roman Catholic Church, have played important roles in opposing the legalization of a "right to die." In an attempt to continue these efforts, the Roman Catholic Church created "The National Right to Life Committee" as a secret lobbying organization for the purpose of carrying on the fight against the legalization of euthanasia.\footnote{Norman St. John-Stevas, The Right to Life, 50 (1964); Henry R Glick, The Right to Die: Policy Innovation and Its Consequences, 38, 58, 202 (1992). Cited in supra note 48 at 63-65.}

Moreover, taking human life can only be permitted in the defence of yourself and others. The Catholic Church condemns euthanasia as a crime against life. Its teachings rest on several core principles of Catholic ethics, including the sanctity of human life, the dignity of the human person, concomitant human rights, the unavoidability of death and
the importance of charity. It must be noted that churches have played a significant role in the creation and support of hospices.

Human beings are accorded great dignity, created uniquely as God's image and likeness, little less than gods themselves, intimately known by God, joined to him as in a marriage covenant, destined and oriented to him as their ultimate goal (Gen 1:26-31; 9:6; Job 12:10; Ps 8; Wis 2:23; Isa 57:16; Hos 2; Zech 12:1; 1 Cor 11:7; Eph 5: Rev 1:16; cf. Aquinas, 5 Th Ha Use 1-5). The Incarnation and Redemption further dignify human beings: the Son of God himself became human, and died to redeem all people and make them 'children of God'. In the Christian view of things, life is a trust given into our stewardship by God; we are called to choose life not death, and the ways of life not of death: any killing demands justification and the taking of innocent human life is always contrary to God's law and to that trust (Gen 4:8-11; 9:1-6; Ex 20:13; 21:22-25; 23:7; Deut 5:17; 30:19; 2 Kings 8:12; 15:16; Jer 7:30-32; 19:4; 26:141-15; Mt 19:18 etc.).

Congregation for the Doctrine of the Faith (1980) states that:

Human life is the basis of all goods, and is the necessary source and condition of every human activity and of all society . . . No one can make an attempt on the life of an innocent person without opposing God's love for that person, without violating a fundamental right, and therefore without committing a crime of the utmost gravity . . . It is necessary to state firmly once more that nothing and no one can in any way permit the killing of an innocent human being, whether a foetus or an embryo, an infant or an adult, an old person or one suffering from an incurable disease, or a person who is dying.

As the Catholic Church has recently put it:


Supra note 99 at 468.


Scripture specifies the prohibition in the fifth commandment: 'Do not slay the innocent and the righteous' (Ex 23:7). The deliberate murder of an innocent person is gravely contrary to the dignity of the human being, to the golden rule and to the holiness of the Creator. The law forbidding it is universally valid: it obliges each and everyone, always and everywhere.177

Even if motivated by 'mercy' or a concern for the 'best interests' of someone who is thought to be 'better off dead', no one should assume the role of the Author of Life and Death. Catechism (1994) states that,

An act or omission which, of itself or by intention, causes death in order to eliminate suffering constitutes a murder gravely contrary to the dignity of the human person and to the respect due to the living God, his Creator. The error of judgment into which one can fall in good faith does not change the nature of this murderous act, which must always be forbidden and excluded.178

Vatican Council II states that:

The varieties of crime are numerous. They include all offenses against life itself, such as murder (cuiusvis generis homicidii), genocide, abortion, euthanasia and suicide . . . all these and the like are criminal: they poison civilization; they debase the perpetrators even more than the victims; and they offend against the honour of the Creator.179

This sanctity of life principle is said to be deeply embedded in the law and ethics throughout the world, recognized in international human rights documents, and basic to our common morality. Thus, classical medical ethics have held that physicians might not

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be called upon to act as public executioners. Likewise it has traditionally excluded both active and passive euthanasia.

However, the Declaration on Euthanasia (1980), issued by the sacred Congregation for the Doctrine of the Faith allows people to decline heroic, disproportionate or extraordinary medical treatment to prolong life when death is imminently inevitable. The Declaration rejects the inhuman implication that patients must always accept life-prolonging treatment, no matter how painful or costly such treatment may be.

Generally speaking, Jewish thinkers oppose voluntary euthanasia, often vigorously. No one is permitted to ask for this act of killing either for himself or for another person entrusted to his care, nor can he consent to it, either expressly or impliedly. No authority can legitimately recommend or permit such an action. At the heart of the Jewish approach is the notion that there is a ‘time to die’ and that should not be inappropriately delayed nor foreshortened. The difficulty is in defining what is an impediment to death and this has led to a debate over whether and when, for example, life support machines can be switched off. Jewish medical ethics have become divided partly on denominational lines, over euthanasia and end of life treatment since 1970s. There is some backing for voluntary passive euthanasia in limited circumstances within the Conservative Judaism movement in recent years. However, most Jewish religious scholars draw up a sharp distinction between accelerating the death of a dying person, which is prohibited, and removing an impediment to death, which is permitted.

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182 Peter Singer, “Right to Die”, Available at http://www.utilitarian.net/singer/by/20070E (Accessed on 12.11.10)
183 Ibid. Orthodox Judaism does not accept the concept of ‘brain death’ and defines death as the absence of respiration, cardiac function and brain function. The Jewish religious authorities are of the view that soul is present in a comatose patient and suggest a need to maintain life. Lily Srivastava, Law & Medicine, 147 (2010).
184 D. Sinclair, Jewish Biomedical Law, 182 (2003). Both Christians and Jewish clergypersons agree that there is no religious reason to use artificial life support systems to prolong the dying process, although there is also no religious reason not to use the systems if the patient and the family want to do so. Members of the clergy also agree that it is the primary right of the patient and not of the family, to decide whether a particular treatment or surgery or machine is to be used. These matters, therefore, should be discussed with the patient, ideally early enough in the illness so that he or she is strong enough to consider them and to express wishes. Although it is painful and difficult subject to bring up, most families of patients find that when they do so, the patient is way ahead of them. He or she has already been thinking about life and death and usually welcomes an invitation to talk about how the various stages of his illness should be handled. Linda Leopold Strauss, Coping when a Parent has Cancer, 106-107 (1988).
Islam tends to take a strong stance against euthanasia and assisted suicide. The prohibition on the intentional taking of life is emphasized in much Muslim writings and Quranic verses. There is an emphasis on the idea of life being given on trust by Allah and therefore not being a person’s to dispose of as they wish. Allah will and should control when a person will die. However, the general Muslim view appears to be that this does not require doctors to provide futile treatment in a desperate bid to save someone’s life.\(^{185}\)

Key to Buddhist thinking on the issue is the precept not to take life and the virtue of passion. His Holiness Dalai Lama has stated, ‘From a Buddhist point of view, if a dying person has any chance of having positive virtuous thoughts, it is important and there is a purpose for them to live even just a few minutes longer.’ To Buddhist thought the moment of death and its quality is important. This leads some Buddhist thinkers to support the hospice model of enabling calm and controlled dying, without active intervention to hasten death. The idea of meeting death mindfully is seen as important. Others argue that Buddhist tradition is in fact tolerant of suicide and euthanasia where doing so enables a person to have a conscious and dignified death. However, the majority of Buddhist opinion appears to be that the high value of life placed by Buddhism cannot support euthanasia.\(^{186}\)

In Hindu philosophy the practice of euthanasia may also be logically deemed illegal as Hindus believe in the doctrine of karma or destiny.\(^{187}\) According to it, we enjoy or suffer the effects of our own good or bad deeds of our past birth(s). A man cannot fly away from such effects either by powers and wisdom or by magic and incantations. His past deeds go ahead of his soul in its sojourn. What is lotted cannot be blotted. A man dies not before the appointed time, even if he is riddled with shafts. However, a wound from the tip of a Kusa sprout proves fatal at the right moment. A man receives that which he is fated to receive, goes only there where fate leads him, and finds only that much pleasure or pain which he is destined to meet in this life. The effects of one’s karma bide their time and become patient only on the right occasion. They forcibly draws him to the

\(^{185}\) Supra note 99 at 468. [According to Prophet Mohammed’s last address, all killing (except that prescribed by the courts as punishment for certain well-defined crimes) is prohibited. There is no mercy in such killing. Lily Srivastava, Law & Medicine, 146 (2010)].

\(^{186}\) Ibid.

place where death or fortune awaits him. Then why to make such a heavy stock of misery out of it?\textsuperscript{188}

In \textit{Garuda-Purana}, Part 2, Chapter 13, verse 1, Lord Krishna said:

As in a herd of a thousand cows.

A calf finds his own mother.

So the action performed in a previous life

Finds its doer in this life.\textsuperscript{189}

Moreover it is also a part of a Hindu’s Dharma (duty) to take care of the sick. Apart from this the Hindu religion strongly puts forth the principle of Ahimsa against all beings including oneself. Only those will approve of violence that are disordered, fools, men of no faith, doubtful about the self and are not highly regarded either.\textsuperscript{190} The \textit{Mahabharata} maintains that:

Ahimsa is the highest \textit{dharma}, highest form of self-control, highest offering, highest austerity, highest \textit{yajna}, the best fruition, the best friend, the greatest happiness. Not all the sacrificial rituals, nor all the giving as charity, nor all the bathing in the holy waters, together, will ever be equal to non-violence.\textsuperscript{191}

Hindu Scriptures do not explicitly refer to Euthanasia. However, writings from various scriptures indicate that killing by any means is wrong. For example, \textit{Taittiriya Upanishad} 1.11.2 states:

Let your mother be a God to you. Let your father be a God to you.\textsuperscript{192}

The three powerful words, \textit{ahimsa paramo dharma}, ‘not to do violence is the highest \textit{dharma}’, resound in the \textit{Mahabharata} throughout. They are spoken numerous times, in different voices and in different contexts. For example, it is said that:

\textsuperscript{188} Ruth Smith, (ed.), \textit{The Tree of Life}, 101-102 (1949).
\textsuperscript{191} Id., at 115.
Whatever is not agreeable to him, that he should not do
unto others. This is dharma; all else is only selfishness. He
who wishes himself to live, how can he take the life of
another? The good one seeks for one’s self, he should seek
for others as well.\textsuperscript{193}

Similarly, Bhagavad Gita 14.16 states:

The fruit of good action is said to be beneficial and pure,
the fruit of passionate action is pain, the fruit of ignorant
action is laziness.\textsuperscript{194}

Some Hindus accept that a willed death may be right in certain cases. This means
that an old and weak person will refuse to eat or drink as he or she waits for death. This
could be classed as euthanasia or even assisted suicide, but some Hindus could agree that
as the person will die shortly anyway, to do this would not interfere with the cycle of
Samsara (reincarnation) and is therefore acceptable. However, this would apply only in a
minority of cases.\textsuperscript{195}

According to the Hindu Vedantic philosophy, death is not the end of life. It is only
the sr̥tuṣ̥a sharīra (physical body), that dies. It is the sukṣma sharīra (the astral body),
that does not perish with the death of the body. The sukṣma sharīra is very complex,
consisting, among other things, of the life breath of vital principle, mind, buddhi
(intelligence), and, some philosophers believe, of ahankaras (false egos) also. The
impressions of past karmas (thoughts and deeds) remain in the sukṣma sharīra or astral
body, and are retained even after death and goes to bhuvarloka antariksha (the astral
plane) and then to svargaloka (heaven or the mental plane). The astral body then
disintegrates and the components are merged in the ocean of energy with the Eternal
Parama Brahma (The Supreme Creator). Thereafter, they return by the will of God to
another physical body, and the individual is reborn on this earth in accordance with that
person’s deeds and karmas.\textsuperscript{196}

\textsuperscript{193} Supra note 190 at 125.
\textsuperscript{194} For details, see Marilynn Hughes, The Voice of the Prophets: Wisdom of the Ages, 71 (2005).
\textsuperscript{195} Supra note 187.
\textsuperscript{196} Kusum, Suicide – Some Reflections, 22 (1995).
The Parama Brahma created the human being. God is present in the soul of the human being. Life is offered to us by Him in order for us to offer obeisance to God, to obey dharma, to perform duties that are assigned to us, and to tread the path of righteousness. God is the material cause and instrumentality of all joys, happiness, woes, sorrows, deeds, and karmas of humanity. Just as He gave life to us, He takes it away from us as well. He is the creator as well as the doer and the destroyer of this body.197

This takes us to two different 'philosophies of death. One, if life is given and taken by the will of God alone and we only obey His commands, do we possess the right to do away with our lives at our will whatever may be our circumstances? We cannot desire death deliberately even if death is inevitable. The other view is that if the entire universe and all living beings are nothing but the manifestations of God Himself and if the world is not only the body of God but His remainder, if we are only a droplet of energy of the great ocean of energy and will finally merge with that ocean of energy and will finally merge with that ocean of energy, if we arise from Him and upon death return to Him again, and if God is in us and we are a part of God, then where is the wrong in meeting death of our own free will and desire at any time we like? Since we will then merge with the Almighty, how can it be an act of sin or crime worth punishment? The great saints, seers and sages of India from time immemorial have been following the latter law of religious philosophy. They Beckoned, welcomed, and met death at will in the later part of their ascetic lives by taking Samadhi (complete absorption in God-consciousness) to attain peace and moksha (salvation). Many of them were even blessed with the greatest human virtue of Ichchha mrityu (commanding death at will). They could not be killed or die otherwise. They were idolized out of reverence and obeisance was made to them. Such saints were worshipped as Gods. Thus, there were no laws to restrict a saint, seer or ascetic from taking Samadhi at will.198

The Jain faith in totality is also opposed to suicide or euthanasia. It does not advocate death as a means to end suffering but as a means to attain a higher enlightenment. The need for death is not felt due to any worldly troubles or suffering but due to a higher

197 Id., at 23.
198 Id., at 23-24.
calling and death is not brought about suddenly and painlessly but through starvation
(\textit{Santhara}) and meditation.

According to Sikhism, \textit{Waheguru}, who is eternal, wise and omniscient, is the
master of destiny, while the world is fickle and impermanent.\textsuperscript{199} Just as poison-bearing
plants also grow in a beautiful garden, so suffering is an inevitable part of life. Joy and
suffering are two aspects of worldly life which makes life worth living. One may find the
way through the grace of the Master to accept pain and pleasure with equanimity.\textsuperscript{200} For
example, \textit{Guru Arjan Dev Ji} seems to be concerned with maintaining a balance between
the two extremes of renunciation and worldliness. Throughout his works, He rejects not
only the ideals of asceticism and self-mortification, but also indulgence in and love of
worldly attractions. Rather, the main emphasis is on moderate living and disciplined
worldliness, the two cardinal principle ideals which are an integral part of the spiritual
path laid down in the \textit{Adi Granth}.\textsuperscript{201} In His \textit{Sufi Hymn}, He proclaims:

\begin{quote}
One is blessed with the rarest opportunity of the human
birth through the grace of the Guru. One’s mind and body
become dyed deep red (with the love of the Divine Name)
if one is able to win the approval of the True Guru.\textsuperscript{202}
\end{quote}

Indeed, the human being has been called the epitome of Creation. Human life is the
most delightful experience that one can have with the gift of a beautiful body. Although
the existence of physical deformity and ugliness in the world is sometimes explained as a
result of previous \textit{karma}, it is intended for a higher Divine purpose which is beyond
human comprehension. This situation can, however, change through the functioning of
the Divine Grace. The cripple can cross a mountain and the blockhead can become an
accomplished preacher, the blind can see the three worlds through the grace of the
Guru.\textsuperscript{203} Thus, Sikh Gurus rejected suicide (and by extension, euthanasia) as an
interference in God’s plan. Suffering is part of the operation of \textit{karma}, and human beings

\textsuperscript{200} \textit{Id.}, at 260.
\textsuperscript{201} \textit{Id.}, at 261.
\textsuperscript{202} \textit{Ibid.}
\textsuperscript{203} \textit{Ibid.}, at 263.
should not only accept it without complaint but act so as to make the best of the situation that karma has given them.204

Religions are different roads converging to the same point. Belief in one God is the cornerstone of all religions.205 Some people, when faced with extreme suffering and grief, lose their religious faith entirely. “You are not my father as I was taught”, they say bitterly to God. “All you are is a big failure. You say that you answer prayers; but you don’t. You say that you respond to cries for help; but I don’t hear you responding. Why should I believe in you anyway?”206

Many, many people go through this questioning process when their faith is tested by cancer or some other similar suffering. Some do lose their faith altogether. Some lose it for a time, and then find their way back to belief. Religion may provide people with answers.207 Some however believe that religion only has validity because of death. If there is no death, nobody would have bothered about religion at all.208

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.209 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

207 Id. at 108-109.
something that you do. But the extent to which people should have control of their or another’s death is highly controversial.\textsuperscript{210}

\textsuperscript{210} Supra note 99 at 405