CHAPTER 3
PHILOSOPHY OF LIFE AND DEATH

3.1 Evolution

The evolution of the earth is a long process when compared with the recency of human existence. But it is in turn a brief episode when compared with the evolution of our galaxy which for the cosmos is just a passing state, preceded by a beginningless, infinite process, just as it is to be succeeded by an endless, infinite process.¹ Thus, the human race and the planet on which it lives are an infinitesimal part of the cosmic universe of space and matter. Man’s greatest concern is with himself, with the earth on which he lives, with his origin, his destiny, and his relationship to other men. He longs to make his life on earth happier, more meaningful, and more satisfying.² The following are the main theories of evolution:

3.1.1 Darwinian Evolutionary theory

Almost all scientists hold that the universe is about fourteen billion years old, and that the earth and the rest of the solar system were formed about four and a half billion years ago. Life began on earth more than 3 billion years ago, they maintain, and the first very simple living things developed from inanimate matter, through natural chemical and physical processes. All creatures that have ever lived—bacteria, viruses, plants, and animals—are descended from these first forms of life (almost most certainly from a single ancestral form). The characteristics of species became modified in time, and single species gave rise to several or many new species by a process of splitting. As a result, the history of living things can be likened to a tress that puts out new twigs and branches even as old ones die and drop off (for most of the species that have ever lived have become extinct). The transformation that each species undergoes often results in better adaptation to the environment, and sometimes in new, unprecedented ways of life. Thus, all species, including humans, are descended with modification from common ancestors. The causes of modification and diversification are believed to be entirely natural processes including factors such as mutation of the genetic material, isolation, and natural

¹ Marvin Farber, Basic Issues of Philosophy, 219 (1968).
selection. Therefore, according to Darwinian thesis, the evolution of species is a matter of accidental mutation rather than divine design and that it has no divine purpose.

3.1.2 God as the Author of Everything Natural

The fundamentalists, in contrast, believe that everything in this world, every species and every characteristic of these species, was designed by an intelligent, purposeful artificer, and that it was made for a purpose. Nowhere does this contrast apply with more force than to the human species. The creator was purposive, not capricious or indifferent, as He planned and then created the Universe, with its particles and molecules, its laws and principles, its stars and galaxies, its plants and animals, and finally its human inhabitants. Thus, in the creationist concept, man is the highest of all creatures. Thus, they believe that evolutionary process is quite literally creative, for God is the author of nature. He is the master of the school of evolution. He laid the foundation, brick by brick raised the building. The school goes on forever, though the students change as also the teachers. The old ones qualify and the new ones are admitted. Genesis 1: 27 states that,

So God created man in his own image, in the image of God
he created him; male and female he created them.

Likewise it is stated in Genesis 2:7 that,

And the Lord God formed man from the dust of the ground
and breathed into his nostrils the breath of life, and man
became a living being.

We are the highest achievement of God’s creation. Each human being, not just the species as a whole, is a creative master-piece. He is spoken of as loving parent, as property owner, as law-maker, or as gift-giver i.e. the ‘gift of life’.

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2 Ronald Dworkin, Life’s Dominion, 76 (1994).
3 Supra note 3 at 49-50.
4 Supra note 4.
5 Supra note 4.
6 Ramanandji, Evolutionary Outlook on Life, 64 (1953).
8 Available at www.biblehub.com/genesis/2-7.htm (Accessed on 17.7.12).
9 Supra note 4 at 82.
10 Tom L. Beauchamp et. al., Philosophy and the Human Condition, 380 (1989). It should be noted that the physical sciences are inclined to treat the physical world as autonomous and self-sufficient, thus discouraging speculations about a creator God and have rendered obsolete such speculative theories about
3.1.3 Nature as the Creator

A secular form of the same idea, which assigns the masterpiece to nature rather than God, is also a staple of our culture – the image of a human being as the highest product of natural creation is one of Shakespeare’s most powerful, for example. Human beings are special among natural creations.12

3.1.4 Human Life as a Work of Art

Some nineteenth-century Romantic writers opined that a human life is literally a work of art. But that is a dangerous idea, because it suggests that we should value a person in the same way that we value a painting or a poem, valuing him for beauty or style or originally rather than personal or moral or intellectual qualities.13

3.2 The Divine Gift of Life

Life imperishable and eternal which, even if the whole figure of the universe were quite abolished, would itself still go on existing and be capable of producing a new universe in its place, must indeed, unless it be held back in a state of rest by some higher power or hold itself back, inevitably go on creating. All existence here is a universal Life that takes form of matter. It might for that purpose hide life-process in physical process before it emerges as sub mental sensitivity and mentalised vitality, but still it would be through the same creative Life-principle. There are here on earth three realms of the play of Force, the animal kingdom of the old classification to which we belong, the vegetable, and lastly, the mere material void. But by life, we only mean a particular result of universal force with which we are familiar and which manifests itself only in the animal and the plant, but not in the metal, the stone, the gas, operates in the animal cell but not in the pure physical atom.14

Life reveals itself everywhere as God’s visible token.15 There has been no greater gift in the past, nor will there be in the future, than the gift of life, for doubtless there is

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12 Supra note 4 at 82.
13 Id., at 83-84.
nothing dearer to one than one’s self. Rabindranth Tagore has very beautifully put forward the importance of life in the following words:

The same stream of life that runs through my veins night and day runs through the world and dances in rhythmic measures. It is the same life that shoots in joy through the dust of the earth in numberless blades of grass and breaks into tumultuous waves of leaves and flowers. It is the same life that is rocked in the ocean-cradle of birth and of death, in ebb and in flow. I feel my limbs are made glorious by the touch of this world of life. And my pride is from the life-throb of ages dancing in my blood this moment.

Human life begins in conception, extending through birth and childhood, culminating in successful and engaged adulthood and finally ending in natural death after a normal span of years. In _P Rathinam v. Union of India_19, the hon’ble Supreme Court of India, speaking through the Division Bench consisting of R.M. Sahai, J and B.L. Hansaria, J, very rightly observed that:

[L]ife is an "inexhaustible storehouse of mysteries, a realm of endlessly self-perpetuating novelties, in which the solution to any given problem gives rise to a plethora of other questions that beckon the always restless, never contended mind of Homo Sapiens to seek further for additional answers or, at least, to search out more intellectually refined, morally elevating, and spiritually salutary ways of pursuing the quest". So, life does not end in this world and the quest continues, may be after the end of this life.

Physical and mental health is integral part of life. Therefore, it has been rightly said by Dr. M. Indira and Dr. Alka Dhal that:

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18 Supra note 4 at 89.
19 AIR 1994 SC 1844
20 Id., at 1862.
[L]ife is not mere living but living in health. Health is not the absence of illness but a glowing vitality the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. Physical, social, spiritual and psychological well-being are intrinsically interwoven into the fabric of life.21

3.3 Sanctity or Value of Life

For some people, life is sacred. But do they mean so? If they did, killing animals or pulling vegetables would be equivalent to the murder of a human being. So, it is human life that they refer to. But what gives special value to human life? Some hold the view that it is the presence of particular property or properties that is fundamental to the protection of human life. Various properties have been nominated to fill the role, ranging through religiously grounded ones like the possession of a soul; biological based ones such as having reached a certain stage of foetal development; simply having been born; having become self-conscious; to having properties essential to being a person (as distinct from a human being). However, others take the view that it is when a human life is of an appropriate quality that such protection should be afforded.22

There are various interpretations of the principle of sanctity of life. The sanctity of human life has been advocated variously as a function of the absolute value (or respect) of human life, or of the infinite value of human life, or of the overriding value of a human life, or, most commonly, of the intrinsic value , or, inherent value of human life (or some combination thereof). It has also been considered crucial to the idea of the sanctity of human life that all human lives are, in consequence of their sanctity, of equal value (whether the value of human life be understood as being absolute, infinite, overriding, or intrinsic).23

3.3.1 Absolute Value of Human Life

Those who support this claim are clearly committed to thinking that each human life is of equal value and that it must involve an absolute prohibition on the intentional

23 Id., at 63.
killing of a human being and an absolute prohibition on intentionally failing to prolong
the life of a human being whenever such a life can be prolonged. They also reject
killing another in self-defence or to avoid greater number of deaths or to withdraw or
withhold medical treatment that is futile. They set it far too high in holding that there is
no amount of good that might be achieved, and no amount of bad that might be averted,
that could make it right to kill an innocent human being.

3.3.2 Infinite Value of Human Life

The proponents of this view deny that things of finite value, alone or in
combination, can override the infinite (or incalculable or unlimited) value of human life.
But this view does not hold that human life may not be outstripped by something else of
greater infinite value (i.e. except for another human life, nothing has a value compared
with that of a human life).

3.3.3 Inviolable Value of Human Life

Human life is inviolable because it is of overriding value or worth. Hence, there is
nothing (other than another human life) whose value is sufficiently great that its
realization would be worth the loss of a human life. For example, this view supports
crime-fighting defences. But it implausibly prohibits someone acting in self-
defence when he would have to kill multiple attackers. But, more importantly for
present purposes, it has to be asked: why should human life as such be considered to be
of more value than anything else? Why is it so that the value of the life of someone in, for
example, a persistent vegetative state or terminally ill patient is such as to override all
other considerations of value (like autonomy) even if his life has become intolerable, or
no longer worthwhile. The following reasons may answer these questions:

3.3.3.1 Instrumental Value of Human Life

The value of someone’s life is treated as instrumental when it is measured in terms
of how much his being alive serves the interests of others: of how much what he produces
makes other people’s life better, for example. When it is said that Mozart’s or Pasteur’s

24 Id., at 68.
25 Id., at 69.
26 Id, at 70-71.
27 Id, at 71-72.
28 Id, at 72.98
life had great value because the music and medicine they created served the interests of others, their lives are treated as instrumentally valuable.\textsuperscript{29}

### 3.3.3.2 Subjective Value of Human Life

A person’s life is treated as subjectively valuable (or personal value) when it is measured in terms of how much it values to him, i.e. in terms of how much he wants to be lived or how much being alive is good for him. So, if it is said that life has lost its value to someone who is miserable or in great pain, his life is treated in a subjective way.\textsuperscript{30} This would endorse the view that a person cannot want to end his life if it is worth living, and that he would not want to prolong his life where it is not worth living. But these beliefs are both doubtful. In a passing mood of depression, someone who normally gets a lot out of life may want to kill himself. And someone, who thinks that he will go to hell may wish to prolong his present life, however, miserable he is. But in spite of all this, his own views will normally be evidence of an overwhelmingly powerful kind.\textsuperscript{31}

### 3.3.3.3 Intrinsic Value of Human Life

Some people think that it is wrong to kill people. Some think that it is wrong in all circumstances, while others think that in special circumstances (say, in a just war or in self-defense) some killing may be justified.\textsuperscript{32}

#### 3.3.3.3.1 Being Alive is Intrinsically Valuable

Life of any human organism has intrinsic value whether or not it also has instrumental or personal value. It should be respected, honored and protected as it is marvelous, most important in itself. Therefore, something is intrinsically valuable if its value is independent of what people happen to enjoy or want or need or what is good for them. Most people think that great paintings, for example, are intrinsically valuable. They are valuable and must be respected and protected, because of their inherent quality as art, and not because people happen to enjoy looking at them or find instruction or some pleasurable aesthetic experience standing before them. The thought of their being destroyed is horrifying and seems as a terrible desecration. Moreover, some things are incrementally valuable i.e. what someone wants more of, no matter how much he already

\textsuperscript{29} Supra note 4 at 72.
\textsuperscript{30} Id., at 72-73.
\textsuperscript{32} Id., at 114.
has. But, human life is not valued that way. Instead, human life is treated as sacred or inviolable. The hallmark of the sacred as distinct from the incrementally valuable is that the sacred is intrinsically valuable because and therefore only once it exists. It is inviolable because of what it represents or embodies. Thus, something is sacred or inviolable when its deliberate destruction would dishonor what ought to be honored. Once a human life has begun, it is very important that it flourishes. And it is an inherently bad event when the investment in that life is wasted. There are two dimensions of investment, natural and human investments in a human life. The former is dominantly more important than the latter and that choosing premature death for a person who could be kept technically alive longer, either by injecting lethal drug or by withdrawing life support, cheats nature and therefore euthanasia is the greatest possible insult to life’s sacred value. This forms the most powerful basis for the strong conservative opposition to all forms of euthanasia throughout the world. To preserve life is commendable and to destroy it is condemnable. Thus, the life of every single human organism commands respect and protection, then, no matter in what form or shape. Therefore, a person should bear the pain, or be cared for unconscious, until his life ends naturally i.e. other than through a human decision to end it, because deliberately ending a human life, either in the form of suicide or euthanasia, denies its inherent, cosmic value and therefore against God’s will.

There are various interpretations of the principle of sanctity of life. Albert Schweitzer’s ‘reverence for life’ was unrestricted, applying to all living things, not only human beings. Similarly, the teachings of Buddhism attach sanctity to the whole animal kingdom. The Christian tradition, on the other hand, attaches a unique significance to human life. Some sanctity of life theorists ground their moral principle in theological doctrine, while others hold it to be independent of theology, a kind of moral ultimate, ungrounded in anything beyond itself. Among the theological interpretations, there appear many and various metaphors to explain the relation between the Creator and the

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33 Supra note 4 at 73-74.
34 Id., at 74.
35 Id., at 213-214.
37 Supra note 4 at 84.
38 Id., at 195.
created, that life is sacred. Thus, the conviction that human life is sacred probably provides the most powerful basis for resisting euthanasia in the different forms and contexts. The Roman Catholic Church is the sternest, most vigilant, and no doubt most effective opponent of euthanasia. Though, in the summer of 1991, one major denomination, the general Assembly of this Church of Christ, formally accepted the legitimacy of suicide for the terminally ill. According to the Jewish law, life is to be preserved, even at great cost. Each moment of human life is considered to be intrinsically sacred. Preserving life supersedes living the 'good life'.

Thus, there are two versions of this category. The absolutist version holds that the slaughter of animals, the abortion of human fetuses to save mother’s life, the withdrawal of life support systems for the hopelessly ill, the killing of enemy soldiers or civilians in war, or the capital punishment of criminals or the right of self defence is absolutely impermissible morally. For example, Mahatma Gandhi said:

Cow slaughter and man slaughter are in my opinion the two sides of the same coin.

While the weaker version (which is far more common) hold that killing human beings is permissible if and only if it seems on reasonable grounds to be necessary to save the lives of (other) innocent human beings.

Thus, instead of a blanket claim in support of the inviolability of human life, the most that can be justified is a presumption in favour of protecting human life, a presumption that may, nevertheless, sometimes justifiably be set aside when an individual’s quality of life fails to reach a certain threshold i.e. the quality of a human life is diminished to a degree that it is unacceptable to the individual in question (or if the individual is in no position to judge, when his surrogate judges that he would find it unacceptable).

39 Supra note 11 at 379-380.
40 Supra note 4 at 195.
43 Supra note 11 at 380.
45 Supra note 11 at 380.
46 Supra note 22 at 61-62.
3.3.3.3.2 Being Human is Intrinsically Valuable

For something to be intrinsically valuable it must be valuable for its own sake, rather than for any of the things that it may produce, or to which it may lead. If this is so, then to accede to the wish of a person to end his life is objectionable because it will lead to the loss of something intrinsically valuable.\(^7\) Human life has some special value, a value quite distinct from the value of the lives of other living things. The view that human life has unique value is deeply rooted in our society and is enshrined in our law. In every society known to us there has been some prohibition on the taking of life. Presumably no society can survive if it allows its members to kill one another without restriction. Presumably who is protected, however, is a matter on which societies have differed. In many tribal societies, the only serious offence is to kill an innocent member of the tribe itself. Members of other tribes may be killed with impunity. In more sophisticated nations, state protection has generally extended to all within the nation’s territorial boundaries, although there have been cases like slave owning states in which a minority was excluded. Nowadays, most agree in theory if not in practice, that apart from special cases like self defence, war, possibly capital punishment, one or two other doubtful areas, it is wrong to kill human beings irrespective of their race, religion, class or nationality.\(^8\) At this point we should pause to ask what we mean by the terms like ‘human life’ of ‘human being’.

3.3.3.3.3 The Speciecist Doctrine: Membership of the species Homo Sapiens

This particular thinking is based on what is sometimes called ‘speciesism’ or the ‘member of the species Homo Sapiens’ i.e. human life being treated as having a special priority over animal life simply because it is human.\(^9\) There was a special theological motivation for the Christian insistence on the importance of species membership: the belief that all born of human parents are immortal and destined for an eternity of bliss or for everlasting torment. A second Christian doctrine that led to the same conclusion was the belief that since we are created by god, we are his property, and to kill a human being is to usurp God’s right to decide when we shall live and when we shall die. As Thomas Aquinas put it, taking a human life is a sin against God in the same way that killing a

\(^7\) Id., at 72-73.
\(^8\) Peter Singer, Practical Ethics, 85 (1993).
\(^9\) Supra note 31 at 118.
slave would be a sin against the master to whom the slave belonged. Non-human animals, on the other hand, were believed to have been placed by God under man’s dominion, as recorded in the Bible (Geneses 1:29 and 9:1-3). Hence humans could kill non-human animals as they pleased as long as the animals were not the property of another. The analogy is with racism, in its purest form, according to which people of a certain race ought to be treated differently simply because of their membership of that race, without any argument referring to special features of that race being given. This is objectionable partly because of its moral arbitrariness: unless some relevant empirical characteristics can be cited, there can be no argument for such discrimination. Moreover, if we go back to the origins of western civilization, to Greek or Roman times, we find that membership of Homo Sapiens was not sufficient to guarantee that one’s life would be protected. There was no respect for the lives of slaves or other barbarians; and infants had no automatic right to life. Greek and Romans killed deformed or weak infants by exposing them to the elements of a hilltop. Plato and Aristotle thought that the state should enforce the killing of deformed infants. The celebrated legislative codes said to have been drawn up by Lycurgus and Solon contained similar provisions. In this period it was thought better to end a life that had begun in auspiciously than to attempt to prolong that life, with all the problems it might bring.

According to Robert Young there are two grounds on which objections may be raised here. First, that there is no way of justifying the claim that human life is intrinsically valuable. Second, that even if there is a way of justifying this claim, there is no reason to think that the intrinsic value of a human life outweighs all other values (either other intrinsic values or instrumental values). Because he fails to see what it is about the life of a human being who is brain dead, or in a permanently vegetative state, that makes his life valuable for its own sake. He further says that the so-called properties (mentioned above) which make a human life intrinsically valuable are only relational properties to being a human. And this equally applies to the claim that what underpins the

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50 Supra note 48 at 88-89.
51 Supra note 31 at 118.
52 Supra note 48 at 88.
intrinsic value of human life is that human, and only human, are able to enter into a relationship with God.\textsuperscript{53}

3.3.3.3.4 Ronald Dworkin’s Creative Investment as Life’s Intrinsic Value

Ronald Dworkin’s proposes that we derive our intrinsic value from the creative investment that, first, others, and, then, we, make in our lives. But, Robert Young criticized him on the ground that it is not clear, why such investment should be thought to produce something of intrinsic value. Certainly, the more that is invested in a human life the greater the loss, in at least one intelligible sense, when the life is ended, but that does not establish that the life has intrinsic value. Furthermore, even allowing that the loss is to be considered a loss of intrinsic value, the idea of investment in a living thing hardly applies uniquely to humans, so Dworkin’s account fails to show why only human life is sanctified. Finally, Dworkin’s proposal is incompatible with each human life having equal value (given the differential investments made in human lives), and so strays too far from the traditional understanding of the sanctity of human life.\textsuperscript{54}

3.3.3.3.5 John Keown’s idea of Life as a mere ‘Basic Good’

John Keown, criticizes that even though human life is a basic good, ‘it is not the highest good, a good to which all other basic goods must be sacrificed in order to ensure its preservation’. Thus, the sanctity of human life does not require the preservation of human life at all costs (or, to put the point as others might, human life is not of overriding value). However, elsewhere he makes clear his belief that it cannot ever be right for someone to judge that his life is no longer worth living. In other words, even though the intrinsic value of a human life can be outweighed by other intrinsic values, it cannot be outweighed by the value autonomy has for the patient (even though the best understanding of autonomy is that it, too, is of intrinsic value). Therefore, John Keown was criticized by Robert Young, who said that it is hardly surprising that when Keown confronts the crucial matter of whether a patient’s autonomous choice to die is capable of outweighing the intrinsic value of his human life, he falls back on what he refers to as the ‘fundamental’ value of human life- in contradistinction to his earlier claim that its value was merely ‘basic’, and in opposition to his acknowledgement that the intrinsic value of

\textsuperscript{53} Supra note 22 at 73.

\textsuperscript{54} Id., at 73-74.
human life can be outweighed by other intrinsic values. Keown, therefore, fails to give supporters of the legalization of medically assisted death or euthanasia, who believe a competent individual may appropriately judge his life no longer worth living, a compelling reason to alter their standpoint.\(^{55}\)

### 3.3.3.3.6 The Personhood Doctrine: Being Conscious is Intrinsically Valuable

Even those who do not think that killing is always wrong normally think that a special justification is needed. The assumption is that killing can at best only be justified to avoid a greater evil. But they believe that the life of permanent coma is in no way preferable to death. For permanently comatose existence is subjectively indistinguishable from death. Thus, from subjective point of view, there is nothing to choose between the two.\(^{56}\) Schopenhauer saw this clearly when he said that death itself consists merely in the moment when consciousness vanishes, since the activity of the brain ceases. The extinction of the stoppage to all other parts of the organism which follows this is really already an event after death. Therefore, in a subjective respect, death concerns only consciousness.\(^{57}\) Thus, being alive is only of instrumental value and it is consciousness that is intrinsically valuable. Thus, this version rejects the speciecism doctrine. There can be two types of consciousness, ‘a mere consciousness’ and ‘a high level of consciousness’. The former consists simply in awareness or the having of experience. When one is awake, he is aware of his environment. He has a stream of consciousness that comes abruptly to a halt if he faints or fades out or sleeps. While the latter refers to a person’s experiences in terms of the extent to which they are varied, complex or subtle, or the extent to which they involve emotional responses, as well as various kinds of awareness. For example, we sometimes say that men are at a higher level of consciousness than animals. Humans have abilities that other animals do not, such as the ability to speak or to do highly abstract reasoning, but it is not only by virtue of these abilities that we say people are conscious. And there is no neurophysiological evidence that suggests that humans alone can have experiences. At least with our present ignorance of the physiological basis of human consciousness, any clear cut boundaries of consciousness, drawn between one kind of animal and another, have an air of

\(^{55}\) *Id.* at 79

\(^{56}\) *Supra* note 31 at 115.

\(^{57}\) A. Schopenhauer, *The World as Will and Representation*. Cited in *Ibid.*...
arbitrariness. If the whole basis of the ban on killing were the intrinsic value of ‘mere consciousness’, killing of higher animals would be as bad as killing humans because there seems at least no reason to regard the higher animals as less aware of their environment as ourselves. It is possible to continue to hold ‘mere consciousness’ to be of intrinsic value and either to supplement this principle with others or else to abandon the priority given to human life.  

Joseph Fletcher, a Protestant theologian and a prolific writer on ethical issue, has compiled a list of what he calls ‘indicators of humanhood’ (or personhood) that includes the following: self-awareness, self-control, a sense of the future, a sense of the past, a capacity to relate to others, concern for others, communication, and curiosity. Thus, the embryo, the latter fetus, the profoundly intellectually disabled child, even the new born infant all are indisputably members of the species Homo Sapiens, but are not persons. The Oxford Dictionary defines the term ‘person’ as a self-conscious or rational being. John Locke defines a person as ‘a thinking intelligent being that has reason and reflection and can consider itself as itself, the same thinking thing, in different times and places’. Thus, the term person (or human) is not strictly, a biological term. The Oxford English Dictionary defines ‘human’ to mean ‘of belonging to, or characteristics of man’; or in a slightly different sense, ‘having or showing the qualities or attributes proper to or distinctive of man’.  

There are four possible reasons for upholding that a person’s life has some distinctive value over and above the life of a merely sentient being:

1. the classical utilitarian claim that since self-conscious beings are capable of fearing their own death, killing them has worse effects on others.
2. the preference utilitarian calculation that counts the thwarting of the victim’s desire to go on living as an important reason against killing.
3. A theory of rights according to which to have a right one must have the ability to desire that to which one has a right, so that to have to life one must be able to desire one’s own continued existence.

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58 Id., at 115-118.
59 Supra note 48 at 86-87.
4. respect for autonomous decisions of rational agents.

3.3.3.7 Being Rational is Intrinsically Valuable

David Velleman also aims to provide a non-religious account of the sanctity of the lives of persons (i.e., following Kant, beings with rational natures). According to him, the dignity or worth that a person has in virtue of his rational nature is to be distinguished from the value his life has for him. Human worth or dignity is an interest-independent value. Once a person exists, he has a dignity or worth that is incommensurable with the value his interests have for him. A person’s good can matter only if he matters for his own sake. Thus, the value that inheres in a person cannot be traded off against the value of a person’s interests. The value of what is good for a person is only a shadow of the value inhering in the person, and cannot overshadow or be overshadowed by it. So, on his account, to destroy the intrinsic value that inheres in a person in order to promote interest-dependent values would be to violate Kant’s maxim that a person must never be treated as a means only but always at the same time as an end in himself. So, he opposes suicide, assisted suicide and voluntary euthanasia insofar as these practices are motivated by a desire to promote the interests of the person assisted to die. But, he does not wish to rule out all assisted dying. Medically assisted death is, he thinks, ‘morally justified to spare the patient from degradation’. So, if a patient’s life is degraded to such an extent that his rational nature is threatened, including when that results from unbearable suffering, it is not disrespectful to cut it short. For then the person’s value will drop out of the picture entirely in the event that he is no longer rational but merely remains in existence. In such a circumstance, interest-dependent values will be permitted to prevail. When a person’s dignity serves as grounds for his death, then his interests may also be taken into account, without any disrespect to his dignity. He believes that if a patient is in an intolerable condition his capacities must be impaired and so, that whenever a patient is capable of rational judgment he cannot be in a genuinely intolerable condition and must, therefore, go on living to ensure that his intrinsically valuable life is not destroyed just to promote his interests in avoiding further suffering. But this view has been criticized by Robert Young who was unpersuaded that interest-dependent values are incommensurable.

61 Supra note 48 at 194.
with people’s worth or dignity as well as that assistance with dying entails a lack of respect for, or a rejection of the dignity of a person. It certainly seems to be possible to recognize a person as an end in himself while agreeing to his request for assistance with dying (whether by withdrawing or withholding life support, placing him in pharmacological oblivion and not providing artificial food and fluids, or by administering a lethal injection). Moreover, honoring a relevant advance directive of a no longer competent person by helping him die, clearly shows respect for his dignity because it recognizes a choice he made when rational. He further says that Velleman’s position would rule out not only the more controversial forms of medically assisted death, like physician assisted suicide and voluntary euthanasia, but also refusals by competent patients of life-sustaining medical treatment (because, for him, such refusals are tantamount to suicide). Therefore, according to him, Velleman’s argument is not compelling.  

3.3.3.8 Qualitative Value of Human Life

According to Robert Young, there can be moral justification on occasion for not protecting or preserving the life of a human being. Hence, it can be granted that when other things are equal human life ought to be protected or preserved, but it has to be added that other things will not always be equal. Most importantly, for present purposes, nor are they equal when a human being who competently judges that he would be better off dead because his life has become irreversibly intolerable, but is unable to end his life without medical assistance, requests such assistance. Human life should be considered inviolable when it is qualitatively significant, namely, when it is at or above a specifiable threshold, rather than inviolable because of its sanctity. Further, there are instances where an individual is competent, or has competently issued a relevant advance directive, but his life lacks the quality he wants it to have. There are also instances where a judgment may have to be made about whether an individual’s life retains sufficient quality, or holds the promise of regaining sufficient quality, for it to be worth keeping him alive. In other words, an individual’s life can be lacking in sufficient quality as assessed either by him, as a competent individual, or by his proxy. Life prolonging

62 Supra note 22 at 74-77.
63 Id., at 80.
medical treatment need not be continued if that would be medically futile i.e. when it will not restore or maintain an acceptable quality of life for a patient. However, some of the implications this has are far from uncontroversial. For instance, it is an implication that human lives do not all have the same quality (though this is not to say that they do not have equal worth). It is a further implication that some human lives lack the quality needed to make them worth living any longer. It is quite consistent to maintain that each human life is of equal worth, and so is deserving of equal respect, but that some human lives, from the perspective of those living them, are not worth living because they are of unacceptably diminished quality. Just where a threshold should be set is a matter of dispute but the following considerations seem to bear directly on the quality of a dying person’s life and hence to be relevant to setting the threshold: how imminent death is for the person; whether he is having to endure pain and suffering that is finding hard to bear; whether he is able to communicate with others or, at the very least remain aware of them; and how much autonomy he is able to exercise, in particular, whether he can make competent decisions, and whether he is dependent on, for example, machines or pharmaceutical products for the maintenance of a tolerable existence. The list is not intended to be either definitive or complete but merely indicative of the sorts of considerations that are relevant to someone’s assessment of the quality of life (or to its assessment by others on his behalf). Whether the items to be included should be based wholly on subjective considerations, wholly on objective considerations, or on some combination of the two.64

Those who think that the quality of a person’s life is to be determined solely by reference to his preferences (and so he is the best judge of what is in his interests) think that subjective considerations should determine the person’s quality of life. However, since preferences may be uninformed their satisfaction doe not guarantee that life will be of the desired, let alone of an acceptable quality. Even if preferences are formed after all relevant information has been taken into account their satisfaction is no guarantee of a qualitatively satisfactory life. This is because informed agents may suffer weakness of will, or be irrational about certain matters, or make mistakes in reasoning. These

64 ibid., at 81-82.
difficulties for wholly subjective accounts of the quality of life have led many to the view that the quality of a life should be judged by reference to considerations that are independent of preferences and so, in that sense, are objective. This, of course, carries with it a risk that people’s autonomously formed preferences may be paternalistically overridden. The autonomously formed preferences of competent individuals, including those of the dying, must surely, however, have a role in the determination of the quality of an individual’s life and that is why it is plausible to believe that a wholly objective set of considerations will not furnish a suitable account of the quality of a human life anymore that a wholly subjective set. Instead, a mixed set seems to be needed which is reflected in the above list.\textsuperscript{65} Merely remaining alive when all quality of life has been lost need not be regarded as of supreme importance for humans. Since medical assistance with dying shows no disrespect for human life, it should be made legally possible for a competent human who judges that quality of his life is no longer acceptable to be assisted to die, if that is his choice. He determines whether the quality of his life has so diminished that remaining alive is no longer of importance to him. This would obviously necessitate the removal of existing legal barriers to the facilitation of such a choice. In the case of someone who is not competent to make such a choice, and who has not, while competent, issued a relevant advance directive, any decision to end his life (whether by ceasing to offer mechanical and other life-sustaining support, or via voluntary medically assisted death) must be based on the judgment that he would be better off dead, i.e. that the quality of his life has fallen below the threshold deemed appropriate. The judgment must be based on the basis of whether further treatment would be futile.\textsuperscript{66}

Once it is clear that remaining alive is not of absolute value, is not of infinite value, is not of overriding value, and not valuable for its own sake (or, even if it is, that its value does not outweigh all other relevant values), it is reasonable to reject the claim that is impermissible to offer medical assistance with dying because to do would violate the sanctity of human life.\textsuperscript{67}

\textsuperscript{65} \textit{Id.}, at 82.
\textsuperscript{66} \textit{Id.}, at 83.
\textsuperscript{67} \textit{Ibid.}
3.3.3.4 Spiritual Value of Human Life

Life is a road to Divinity.68 We have to gather all types of experience. Through honour and dishonor, good and evil, and joys and sufferings we must pass. And rung by rung, we have to mount this great ladder to evolution.69 We must fulfill our destiny one day, sooner or later. We are not allowed to escape it.70 Life has meaning and worth only when it has reference to the soul, the soul’s unfolding, its progress and its growth. Many people are reluctant to accept this, but, it is true that we are, each one of us, more than just a body and a mind, reason, will, emotions and affections. Each one of us has a soul-the innermost core-which came from God, indwells in our bodies here on earth and goes on to God when life is done.71 Death is just a drop-scene, where activity goes on at the back.72 We have a gracious, kind, loving, compassionate and caring Master above our heads. His love unutterable, His grace unspeakable.73

According to Christianity, life is a pilgrimage from God through this earthly life to God again.74 1 Corinthians 6:19-20 states that,

Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God?
You are not your own; you were bought with a price.
Therefore honor God with your body.75

Similarly Romans 14:8 states that,

If we live, we live to the Lord; and if we die, we die to the Lord. So, whether we live or die, we belong to the Lord.76

Psalm 139:16b states that,

All the days ordained for me were written in your book
before one of them came to be.77

68 Supra note 7 at 16.
69 Id., at 8.
70 Id., at 7.
72 Supra note 7 at 9.
73 Id., at 67.
74 Supra note 71 at 126.
76 Ibid.
77 Ibid.
Job 14:5 states,

Man’s days are determined; you have decreed the number of his months and have set limits he cannot exceed.78

I Samuel 2:6 states that,

The Lord brings death and makes alive; he brings down to the grave and raises up.79

According to Hinduism (Kathopanishad), birth, decay and death occur only to the material body but there is something beyond the body which does not perish. It is the atman hidden in the heart’s cavity.80

But who is God? Does He exist? Almost all religions explain that God is non-corporeal, unique, not limited in either His powers or His knowledge, not bound by fates. He is all-good, all moral being, unarnished, repository of all virtues. He is immeasurable. He is a perfect Being (ontological argument). He is the eternal creator of the beautiful nature and the universe (cosmological argument) and its remarkable, outstanding, orderly and well-designed systems, structures and patterns (teleological argument), the revealer to mankind of his divine will, performer of miracles, governs the world etc.81 In the words of Mahatma Gandhi:

God alone is immortal, imperishable. God alone is truth and everything else is transitory and illusory.82

A theist believes God does exist. An atheist rejects the existence of God on following grounds. Firstly, such religious beliefs have too often stood in the way of human progress-social and political. Secondly, people believe in God merely because such belief satisfies their psychological needs. Thirdly, in light of all the evil and suffering in the world, how can one believe in the existence of God? An agnostic believes that available evidence is insufficient to decide the matter.83

78 Id., at 4.
79 Ibid.
82 Supra note 44 at 77.
Existence of God is not a problem of logic. It is a problem of life and of evolution. The question arises that if God is all good and all powerful then why He allows evil or suffering in the world? There are following traditional theodicies to answer this question. The contrast theodicy explains that we recognize good only when we experience its opposite evil. According to the moral quality theodicy, in order to allow us to possess the prized moral qualities like, courage, mercy, and compassion which can be exercised in a world in which evil exists. The punishment and warning theodicy explains that evil is a tool to punish the guilty, a tool to warn those who are tempted to sin, a tool to justice in the universe. The free-will theodicy explains that evil in the world is due to the abuse of human freedom, an ability which God had given him to choose how he will behave. The purpose theodicy elaborates that God created evil in the world in order to give human life meaning and purpose.84

What, then, is the purpose of human life? If we accept the explanations of natural science, life cannot be said have a purpose,85 the world is not a purposeless chaos.86 But, there is a purpose that is vastly bigger than ourselves and that will outlast our own short lives.87 We are visiting this earth only temporarily. We are here today, tomorrow we are gone: mere shadows in a cosmic dream. But behind the unreality of these fleeting pictures is the immortal reality of Spirit.88 Spiritualism is like a bug-bear to those who do not understand it. It is not a rejection of life. Nor it is a massacre of one’s susceptibilities. It is, rather the total acceptance of life, with all its shortcomings. It is an integral outlook on life.89 Spiritualism teaches no escape from life. It advocates no cowardice. It does just the reverse.90 It does not mean apathy towards the world. It means self-less love, sympathy and service. It means that we should transcend greed, passion, hatred, malice, attachment and everything that is lower, all that is for misery and keeps man down. It raises a vision of the Divine Life before man. It awakens man to an understanding of the

84 Supra note 81 at 116.
86 Carl Olson, Indian Philosophers and Postmodern Thinkers, 131 (2002).
87 Supra note 71 at 21.
88 Supra note 14 at 457.
89 Supra note 7 at 13.
90 Id., at 14.
plan of evolution. It calls him to fulfill his noble destiny and studies the higher aspects of evolution i.e. superhuman stage, and shows the way to it.91

Suffering, pleasure and pain are just a part of life. “Our life is woven wind”, Joseph Joubert once remarked. We weave threads of various hues and textures together to make the fabric that is our life. In Shakespeare’s words,

The web of our life is of a mingled yarn, good and ill together.92

Mahatma Gandhi said,

A life without vows is like a ship without an anchor or like an edifice that is built on sand instead of solid rock.93

Elsewhere, he said,

What is life worth without trials and tribulations, which are the salt of life.94

Mahabharata contains the following account on pleasure and pain. The body is the basis of pleasure and pain. Whatever is agreeable to one is ‘pleasure’, what is disagreeable is ‘pain’. These come in succession to all human beings and the whole world is in their grip. Everyone wishes to have pleasure, and everybody is distressed by pain. Pains are of two kinds: physical and mental; they arise from each other; without the one, the other cannot exist. Physical pain has four causes: disease, accidents, hard labour and the loss of persons who are dear to one. Mental pain is caused by old age, loss of wealth, to have to live with those who one does not like and to lose those who one does, bondage, woman and on account of one’s son.95 An important basis of pleasure and pain is the doctrine of *Karma* followed in Hinduism, Sikhism and some other religions. Similarly, Lord Rama said to his brother:

As two pieces of wood come together on the waves of a river by the action of the waves and force of the winds and float along for a while, so when our Karma is over, that

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91 *Id.*, at 15-16.
92 *Supra* note 71 at 18.
93 *Supra* note 44 at 104.
94 *Id.*, at 104.
95 *Supra* note 16 at 227-230.
momentum is broken and like the pieces of wood, each of us goes his way.96

Thus, problems are inevitable in life. Sufferings, pain and failures are quite natural.97 And it is not possible to flee or retreat from suffering.98 Mahatma Gandhi once said:

God does not punish directly. His ways are inscrutable. He is the hardest taskmaker I have known on this earth and He tries you through and through. His ways are more than man’s arithmetic.99

In the words of G.A. Studdert Kennedy:

Blessed are the souls that solve the paradox of pain, and find the path that, piercing it, leads through to peace again.100

Suffering brings a message from the beloved Master, a message of strength and balance which we should receive well. When the storm is raging high, when clouds and thunders are upon you, remember that the loving Master is behind the drama. Suffering, in whatever way it comes, deepens our consciousness. Therefore, suffering is a friend worthy of respect, not any enemy.101 There is an oriental proverb worth remembering when we feel self-pitying and resentful because misfortune has overtaken us:

I was without shoes, and I murmured, till I met a man without feet.102

God understands everything. He knows He has sent us to this terrible place. He grieves in His heart at our sufferings. Nothing hurts Him more than to see us grovel in the mud of delusion. He wants us to come back His heavenly home.103 In other words, there is a plan working in our lives and fashioning them, and our earliest wisdom should be to trace its outlines and get our lives in harmony with it.104

97 Supra note 7 at 14.
98 Supra note 86 at 125.
99 Supra note 44 at 77, 78, 108.
100 Supra note 71 at 92
101 Supra note 7 at 31-33.
102 Supra note 71 at 90.
104 Supra note 71 at 100.
According to a Roman philosopher and statesman, Seneca, the end of being is to find God. William Penn of Quaker fame believed that the truest end of life is to know the life that never ends. Dr. William Temple, the Archbishop of Canterbury held that man’s chief end is to glorify God and (incidentally) to enjoy Him forever. Life is wasted and meaningless, if one has not achieved salvation. We are here for evolution and not to regard human existence and suffering as a curse and thereby seek liberation from the bondage of physical existence. We are not in a jail here and Master of Evolution is not a jailor, keeping guard over us. He has given us the privileged admission in this highest institution, because he wants us to evolve rapidly. So, love Him, trust Him, dedicate your life to His loyal service, live for Him, worship His holy Name, endure suffering because without pain there is no glory, submit yourself to His will, obey fate, wage a constant warfare against sin, live with holiness, courage, joy, passion, bright hope, expectation of something wonderful yet to be, and finally pray to Him. There lies the fulfillment of life.

From the elemental we have been pushed up to the human stage, through vegetable and animal existence by the Master of Evolution. Superhuman status awaits us. Such a great purpose life has got. So, one should not trifle with it.

3.4 Death

Death possesses an overwhelming power over all living things. All creatures have to die. Life is but death. It is not a fiction; it is a profound reality, universal, more real and absolutely certain fact than anything in life. It is a process, an integral and inevitable phase of living. It implies extinction of life. It is a natural part of the life cycle.

Mahatma Gandhi once said:

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105 Id., at 136.
106 Supra note 85.
107 Supra note 7 at 45-46.
108 Id., at 68.
109 Id., at 3.
110 Supra note 86 at 126, 127.
111 Supra note 80 at 6.
112 Linda Leopold Strauss, Coping when a Parent has Cancer, 118 (1988).
114 Supra note 112 at 115.
It is as clear to me as daylight that life and death are but phases of the same thing, the reverse and obverse of the same coin.  

Death closes the book. It is the final full stop. It announces an event over which the subject is not master, an event in relation to which the subject is no longer a subject. It erases our bodies, minds, and everything our bodies or minds have achieved in our lives. It destroys all human happiness, success, fortune, worldly status and hope. One can deny the existence of God, but one cannot deny the existence of death. Life is that which must go, and death, that which must come.

In his book, Kasturi Basin took the view that death is not life’s simple opposite but rather its completion. Life is said to be pilgrimage towards death, which is the greatest mystery of life. Ronald Dworkin described death in two ways. One, death is the far boundary of life and every part of our life including the very last, is important, and second, death is special, a peculiarly significant event in the narrative of our lives, like a final scene of a play, with everything about it intensified, under a special spotlight.

Death is ever-present in our subconscious if not in our conscious mind. It is both personal and imminent. It is always a part of our future, but is often effectively denied. It is the most unpleasant and distasteful subjects to talk about, even to think about. We do not like anything associated with death and we shy away from even discussing it. Be that as it may and though we do not relish the thought, we are, all of us, dying men. Each day we live, we move one day nearer to that last event of our earthly careers which now we dread even to think about. This is the wrong way to look upon an essential fact of life which makes no exception; it comes to kings as well as to beggars, to the rich and the poor alike.

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115 Supra note 44 at 47.  
117 Supra note 80 at 3.  
118 Supra note 86 at 125.  
119 Supra note 80 at 10.  
120 Supra note 86 at 126.  
121 Supra note 80 at 10.  
123 Supra note 4 at 102.  
125 Supra note 71 at 122.
poor, to saints as well as sinners, the aged and the young. We simply cannot turn a blind eye to it and fool ourselves into believing that death comes to other people but will spare you. It will not. It is best to prepare oneself for it when it comes. Death need not necessarily be a matter to cry over and can be a subject of jest as well. It has become a taboo subject and we have removed it from the fabric of everyday life. As a result it has become more fearful.

Death, you are a monster Proud and vain;
Tragedy is the mark of your reign;
However deep one’s despair;
You listen to no prayer;
You never undo your vicious act;
No matter how mournful its impact;
Unconquerable is your might;
Irrevocable your acts;
You heed no supplication;
You are moved by no grief;
You know not to give relief;
Death, you are a monster Proud and vain;
Tragedy is the mark of your reign.

How we think and talk about dying, the emphasis we put on dying with ‘dignity’ shows how important it is that life ends appropriately, that death keeps faith with the way we want to have lived. Some believe that even in the death of the body, there is no cessation of life, only the material of one form of life is broken up to serve as material for other forms of life. The energy is not destroyed. All renews itself, nothing perishes. Science tells us that death is just a law of nature.

126 Supra note 80 at xi.
127 Id. at xii.
129 The Tribune, Saturday Extra, 3 (25 June 2011).
130 Supra note 4 at 199.
131 Supra note 14 at 164, 177.
132 Supra note 71 at 127.
Nothing in life is simple anymore, not even the leaving of it. Once the process of dying has begun, death can arrive at anytime. Some patients die quickly; some linger for months with conditions that ought to have been quickly fatal. People may have dramatically different attitudes towards death. Some would rather be dead than existing permanently sedated or incompetent i.e. they want to die when their natural time comes, while others would want to ‘fight on’ even in terrible pain. However, some may think that whether they live or die, once they fall permanently unconscious does not matter to them at all. Those who want to be better off dead think they have strong reasons for not staying alive. The badness of the experiences that lie ahead is one, terrible pain or constant nausea or the horror of intubation or the confusions of sedation, undignified or bad or degrading to be wholly dependent or to be the object of continuing anguish, trouble, pain or expense to others responsible for their care. A conscious patient’s judgment is crucially affected by his sense of integrity, critical interests and shape, character, coherence of his life. Others want to live on either because they want to finish a job or learn something they have always wanted to know or see some particular event. Some would want to live so long as they have any sense at all, they think just being alive is something. When we ask what would be best for such a person, we are not judging only his future and ignoring his past. We worry about the effect of his life’s last stage on the character of his life as a whole, as we might worry about the effect of a play’s last scene or a poem’s last stanza on the entire creative work.

In spite of everything we say or do, in our innermost hearts we are, most of us, frightened by death and dying. But some think that a healthier attitude towards death is to compare it with far worse things, like to live as a slave under a tyrant, to live in dishonor, cowardice, or disgrace, or in hopeless mental illness, interminable sickness, excruciating pain without surcease, disability beyond hope of reclamation. The words of a wise man of ancient Israel come to mind:

Death is better than a bitter life or continual sickness.
3.4.1 Meaning of Death: When Does a Person Die?

There was a time when it was obvious to even the casual observer that a person had died. There would be no respiration or pulse and the body would cease to function finally and irrevocably. This is no longer the case. Even lay people now have the knowledge and ability to resuscitate a person who has suffered a heart attack or respiratory failure and effectively bring them back from the dead. Medical professionals, aided by technology, have the expertise to revive a person who in earlier times would have been considered dead, and to keep a body alive even after the brain has died. As a result, questions of exactly when life ends and how death is defined have been clinically and legally perplexing. Indeed some commentators have regarded the definitions of death available to them as highly ambiguous, such that:

At whatever level we choose to call death, it is an arbitrary decision. Death of the heart? The hair still grows. Death of the brain? The heart may still beat.\(^{139}\)

Modern medicine relies extensively on technology to mechanically support life while diagnostic and therapeutic procedures are undertaken and in some situations diagnosing death has itself become an equally complex process. For example, when a person is warm to touch and rosy to the eye but breathing with the aid of a machine, how can we tell if she is alive or dead?\(^{140}\)

3.4.1.1 Layman’s conception of death

When a layman speaks of death, he is referring to somatic death, or the death of the entire organism. The traditional signs of somatic death are rigor mortis (the stiffening of certain muscles), algor mortis (the cooling of the body) and liver mortis (the purplish-red discoloration of the skin caused by the settling of the blood). Somatic death includes the death of all bodily tissues, but an individual is commonly said to be ‘dead’ long before all his tissues have died. The death of the ‘person’, then is only one stage in what an increasingly number of doctors tend to think of as a distinct physiological process.\(^{141}\)


\(^{140}\) Hazel Biggs, Euthanasia, Death with Dignity and the Law, 16 (2001).

\(^{141}\) Supra note 128 at 269.
3.4.1.2 Dictionary Meaning of Death

Many dictionaries define death as ‘the extinction or cessation of life’ or as ‘ceasing to be’. The Black’s Law Dictionary defines ‘death’ (decay or demise) as the ending of life; the cessation of all vital functions and signs. The term ‘natural death’ (*mors naturalis*) has been defined as bodily death as opposed to civil death i.e. death from causes other than accident or violence i.e. death from natural causes. As life itself is notoriously difficult to define and everyone tends to think in terms of what is known, the problems in defining death are immediately apparent. The most useful definitions of life are those that stress function, whether at the level of physiology, of molecular biology and biochemistry, or of genetic potential. So, death should be thought of as the irreversible loss of such functions.\(^{142}\)

3.4.1.3 Medical Death or The Biological Conception of Death: Shift from Stoppage of Circulation (or respiration) to Brain-stem Death as a result of Advances in Medicine, Science and Technology

When the first heart transplant surgery was performed in South Africa in 1967 this question took on a new significance. To transplant a heart successfully the operation must be performed before the organ stops functioning in order to ensure that it is not damaged. But if death is defined in terms of continuing respiration and circulation, the removal of the heart would apparently cause death and could be regarded as murder. If patients are to be offered the benefits of now commonplace techniques such as artificial ventilation and organ transplantation without clinicians being exposed to legal sanction, an accurate and readily understandable definition of death is clearly essential. Similarly, the assessment of potential criminal culpability for euthanasia and assisted death depends upon cognisance of exactly when and how a person has died. Death does not occur in an instant but is the result of the culmination of the processes of dying. After the cardiovascular and the respiratory systems have ceased to function, the death of the body tissues at cellular level is a gradual and variable process. Some tissues and organs continue to live even after others have died, a phenomenon that was clearly described more than twenty years ago in a report by the Conference of the Medical Royal Colleges, with the words:

\(^{142}\) Supra note 116 at 982-983.
Death is not an event: it is a process, the various organs and systems supporting the continuation of life failing and eventually ceasing altogether to function, successively and at different times.\textsuperscript{143}

However, although most body tissues have the capacity to withstand a degree of oxygen starvation and to repair themselves once their oxygen supply is restored all tissues die if they are permanently deprived of oxygen. This, together with the progressive nature of dying, necessitates the identification of those organs which are most vital to the maintenance of life and whose failure effectively defines death. The cells of the brain and spinal cord are unique in that they do not possess the capacity to regenerate; once brain damage has occurred it is irreversible. But some areas of the brain, most notably the brain stem, are less susceptible to oxygen deficiency than others and can endure longer periods of hypoxia before permanent damage occurs. All the autonomic functions of the body, including respiration, are controlled by the brain stem so if it is damaged breathing will stop. The cessation of spontaneous respiration due to circulatory arrest or “intercranial catastrophe” caused by disease or trauma,\textsuperscript{144} will ultimately result in death, although it may be many minutes before cardiac failure finally occurs.\textsuperscript{145}

At this point modern medical technology can interrupt the natural processes and the patient may be resuscitated and placed on a mechanical respirator. Breathing and circulation will then continue even though the brain stem has ceased to function. Nevertheless a person whose brain stem has been damaged in this way can never regain the ability to function independently. In the light of the impact of medical advances and authoritative academic and medical comment from around the world,\textsuperscript{146} the Report of the Medical Royal Colleges considered how death should be defined in 1976 and recommended that “permanent functional death of the brain constitutes brain death”. The following recommendations for the diagnosis of brain stem death were also contained in the 1976 Report:

\begin{itemize}
\item Editorial, “Diagnosis of Death” (1979) 1 British Medical Journal 332. Cited in supra note 140 at 17.
\item C. Pallis “Return to Elsinore” (1990) 16 Journal Medical Ethics 10. Cited in Ibid.
\item Perhaps most influential was the Report of the Harvard Brain Death Committee, Journal of the American Medical Association, August 1968. Cited in Id., at 18.
\end{itemize}
• the patient should exhibit fixed and dilated pupils (the eyes move with the head and there is no “dolls eye” response),
• there should be no response to touching the eye with a wisp of cotton wool or similar material,
• there should be no eye movement in response to cold water being passed into the ear,
• there should be no gag reflex,
• there should be no response to pain,
• there should be no respiratory response, i.e. the patient will fail to breath spontaneously when the respirator is withdrawn.147

This definition of death was affirmed by the Conference of the Medical Royal Colleges in 1979 with the statement that brain death could be diagnosed when brain “functions” had, “permanently and irreversibly ceased”.148 The tests outlined above are designed to determine that brain functions cannot be restored. The use of the word “functions” was carefully chosen to eliminate the possibility of failure to diagnose death in circumstances where continuing metabolic or electrical activity in isolated areas of the brain is demonstrable. Such activity does occasionally occur but if the criteria and tests used to diagnose brain stem death have been satisfied it has no bearing on the patient’s prospects of recovery. The medical definition of death is now associated with this kind of irremediable damage to the brain and patients who have sustained such trauma have been variously described as “brain dead” or “brain stem dead”. The body remains artificially alive but the brain has died. Adopting this definition of death has had wide-reaching implications for the law, as well as for the practice of medicine. Once it is recognised that a patient’s body can be artificially maintained, beyond the point where brain death is established but that somatic death has not yet occurred, then it must be accepted that a doctor’s role is no longer one of merely treating disease and saving life.149

Indeed the role of the doctor has inevitably been broadened to include the ability to, “take decisions which may affect the span of human life”.150 Defining death as

149 Ibid
occurring when the brain ceases to retain the capacity to maintain the bodily functions can also sit uneasily with everyday understandings of life and death. Intuitively a dead person is thought of as inanimate, cold and pale, but the appearance of a person who is “brain dead” and connected to a life support system contradicts this image. While respiration and circulation continue the body appears to be alive, even if the stimulus is inorganic, and this can create false impressions. Those who care for patients maintained in this way habitually refer to them as if they remain alive as do visiting relatives and friends.\textsuperscript{151} It is alien to human understanding to relate to a warm “breathing” body as if it were dead; to do so seems disrespectful and destructive of human dignity. Conversely, some commentators argue that to remain alive but devoid of the ability to function as an independent human being, for example when a diagnosis of permanent vegetative state (PVS) has been made, is an undignified state which ought to be defined as death. A correct diagnosis of PVS or long term coma means that the ability to function as a social human being will never be regained. Spontaneous respiration and circulation can continue but the capacity for cognitive awareness or interaction with the world is permanently absent. Cognitive function is what gives value to human life and when it is permanently lost the unique reasoning character of the human personality disappears with it. Theories of mind/body dualism where the body and the mind are regarded as distinct, help to inform the supposition that a human being amounts to more than just a functioning, breathing body. Here the physical presence of the flesh, bones and organs of the body constitutes the tangible person, but it is the mind that “differentiates a man from other less interesting objects in the world—plants, rocks, and masses of gas, for example”.\textsuperscript{152} The mind is also regarded as the ultimate repository of the individual human personality so that, “cerebral function is manifested in consciousness, awareness, memory, anticipation, recognition and emotions [and] there is no human life in the absence of these”.\textsuperscript{153} Therefore, if “the personal, identifiable life of an individual human

\textsuperscript{151} Peter Singer, \textit{Rethinking Life and Death}, 32 (1995).
can be equated to the living function of that part of the brain called the cerebrum the individual must be considered dead once cognitive or cerebral function has ceased.

A definition of death that centres on the distinctiveness of the entity which is the human being, and provides that once that distinctiveness is lost that person is dead, means that death may be diagnosed when “the medical tests have in fact determined that there is no potential for spontaneous cerebral brain function, even if spontaneous respiration continues”. But the implications of adopting these notions about what constitutes death extend beyond the realms of the practical and obvious to the philosophical and religious. Janet Daley eloquently explains the problem: “to move from the religious idea that what sanctifies human beings is the possession of an immortal soul, to the rationalist one that the only thing that is sacred—the only thing that gives us a right to live—is a fully functioning mind, is a moral shift of considerable significance”. That moral shift is one that the medical profession appears not to have embraced, since “doctors invariably regard such [PVS] patients as alive” and cognitive death remains peripheral to established medical criteria for defining death and is consequently not definitive. The treatment of patients in a persistent vegetative state who have suffered cognitive death can be problematic. Frequently the relatives do not wish their loved one to be maintained in such a condition indefinitely, and the demands on scarce medical resources dictate that there is reluctance to persist with costly but futile treatment. The courts have been required to decide whether or not a person must be maintained or may lawfully be allowed to die, and the significance of brain stem death and cognitive death has been assessed in order to establish a legal definition of death.

3.4.1.4 Legally Alive

There is no statutory definition of death in the United Kingdom, although the merits and demerits of introducing such a definition have been widely discussed. By

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154 Ibid.
155 Ibid.
Comparison, in America death has been defined by statute for many years with an early example, Kansas Statutes 1971 including the rather ambiguous statement that:

A person will be considered medically and legally dead if,

in the opinion of a physician, based on ordinary standards

of medical practice, there is the absence of spontaneous

brain function."\(^{160}\)

The situations where a clear legal definition of death can be a significant advantage are many and diverse.\(^{161}\) It may be necessary to determine exactly when a person died in order to establish who will benefit from the deceased’s estate, or to allocate criminal responsibility for causing the death, or to absolve professional carers of responsibility by negating any possible duty of care. Each of these situations has featured in cases that have sought to clarify the issue of when a person is legally dead.\(^{162}\)

*Smith v. Smith*\(^{163}\) 47 was an early American case which sought a legal definition of death. Mr. and Mrs. Smith had died following a road accident. Mr. Smith was declared to be dead on arrival at hospital but Mrs. Smith was unconscious and remained so until certified dead seventeen days later. The Smiths had no children and each had made a will to the effect that their property should pass to the other in the event of death. At issue was who should inherit the Smith’s estate? If Mrs. Smith had not died in the accident then Mr. Smith’s property would pass to her and thence to her beneficiaries on her death. But, under the established law, if they had died simultaneously in the accident then the joint estate would pass to Mr. Smith’s family. Reflecting a traditional approach to the issue, the Court held that while a person continued to breathe, even if aided by a machine, he or she remained legally alive.\(^{164}\)

However, as medical technology advanced this approach became increasingly problematic, as is demonstrated by the British case *R v. Potter*.\(^{165}\) Here the “victim” was admitted to hospital with severe head injuries following a fight with the defendant in the case. Fourteen hours later he stopped breathing and was placed on a respirator. After

\(^{160}\) *Supra* note 140 at 20.

\(^{161}\) *Ibid.*

\(^{162}\) *Id.* at 21.


\(^{164}\) *Ibid.*

twenty-four hours a kidney was removed for transplantation and subsequently the respirator was switched off. He then failed to breathe spontaneously and was declared dead. The traditional definition of death dictates that the victim/patient remained alive while respiration and circulation continued, even if this was artificially maintained. Therefore the kidney had been removed while he was still alive, without consent, and for no purpose which was beneficial to him, thus the surgeons had committed a battery. Furthermore, the defendant then argued that the actions of the doctor had broken the chain of causation between the assault, for which he was responsible, and the death of the victim. The court appears to have agreed because the assailant was convicted only of common assault. The medical definition of death was already clearly in need of refinement when the advent of two important criminal appeal cases made it imperative that the law keep pace with medical developments.

In *R v. Steel* the victim was a young woman, Carol Wilkinson, who left her job in a bakery at about 9 a.m. on 10 October 1977 to walk home. At some time between 9 o’clock and 9.30 a.m. she was attacked, stripped of her clothing and beaten about the head with a fifty pound stone that was later found near. She was discovered in a field next to the road soon after and taken to hospital where she was found to have suffered multiple skull fractures and concomitant brain damage. Ms. Wilkinson was connected to a ventilator but this was disconnected two days later when no electrical brain activity could be detected. The post-mortem examination suggested that decomposition of the brain had already begun. The question was, when did she die?

The same question arose in *R v. Malcherek* which involved a violent marital dispute between Malcherek and his wife Christina, culminating in her receiving nine stab wounds. One wound penetrated her abdomen necessitating surgery to remove a section of intestine but Mrs. Malcherek was initially expected to make a full recovery. Unfortunately she later collapsed and was transferred to another hospital for more specialised treatment. She deteriorated further and was thought to have suffered a massive pulmonary embolism, a recognised complication of major abdominal surgery. Resuscitation and surgery were performed. A large blood clot was removed from her

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167 Id., at 21-22.
168 Supra note 166.
heart which then resumed normal functioning. But, because there had been no circulation for approximately thirty minutes, anoxic brain damage was anticipated. Mrs Malcherek was placed on a ventilator and an electro-encephalogram was performed to determine the level of brain function. The prognosis was poor. She did breathe spontaneously for a while until a further deterioration occurred, which was attributed to a blood clot in the brain. Tests were carried out to confirm that there was irreparable damage to the brain. Consultations then took place with the relatives before the life support system was switched off and she died. At the trials of both Malcherek and Steel, the juries were advised to consider only the established facts and the intentions of the defendants. Both defendants were convicted but appealed, arguing that the juries should have been invited to consider the issue of causation. They suggested that death had actually been caused by the doctors switching off the machines and not by the actions of the defendants; a view which was consistent with traditional definitions of death. It was held on appeal that in each case, the medical treatment had been competent and adequate. The wounds inflicted on the victims remained “a continuing and indeed substantial cause of death” such that the defendants must be convicted. Lord Lane said:

Where the medical practitioner using generally acceptable methods, came to the conclusion that the patient was, for all practical purposes dead and that such vital function as remained were being maintained solely by mechanical means and accordingly discontinued treatment, that did not break the chain of causation between the initial injury and death.¹⁶⁹

The judgment recognised that the action of the doctors was not responsible for the death of the patients and that there could be multiple causes, but it did not explicitly define what constitutes death.¹⁷⁰ In Re A (A Minor)¹⁷¹, child A was admitted to hospital via the accident and emergency department following an injury suffered at home. No heart beat could be detected and initial attempts at resuscitation proved unsuccessful until

¹⁶⁹ Supra note 140 at 22.
¹⁷⁰ Ibid.
eventually cardiac function was restored. The next day he was transferred to another hospital for assessment and intensive therapy, but still no signs of recovery could be induced. The consultant overseeing A’s treatment carried out tests to determine whether the child was in fact, brain stem dead, according to the criteria outlined by the Medical Royal Colleges. When the tests confirmed that he was indeed clinically dead they were repeated by a second consultant, a paediatric neurologist, who reached the same conclusion. It was then proposed that Child A be disconnected from the ventilator. Child A and his siblings were the subject of an emergency protection order under the Children Act 1989. This order decreed that parental responsibility for the children was conferred upon the local authority under section 44(4)(c), but that this was imposed without absolving the parental responsibility of the parents. The parents were hostile to the clinicians and their findings because suspicions had been raised that the child had sustained non-accidental injuries. They refused to give permission for the life support to be withdrawn. Therefore the local authority sought a precise declaration as to the child’s status and the legal position should artificial life support be withdrawn. After hearing the evidence Johnson J. declared:

A is now dead for all legal, as well as medical, purposes, and . . . [I] make a declaration that should the consultant, or other consultants . . . consider it appropriate to disconnect A from the ventilator, in so doing they would not be acting contrary to the law. . . . I hold too that it would be wholly contrary to the interests of that child, as they may now be, for his body to be subjected to what would seem to me to be the continuing indignity to which it is subject.

This statement effectively incorporates the definition of death adopted by the medical professions in 1976 into the common law by accepting that the legal and medical definitions of death are the same. Brain stem death can now be regarded as definitive of

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173 Section 2(b), Children Act, 1989
death both medically and legally, provided that the procedures and recommendations of the Report of the Royal Colleges have been strictly adhered to and the brain stem has totally and irreversibly ceased to function. But it is clear that brain stem death is not universally accepted as the most appropriate method for assessing life’s end. Some of the philosophical concerns about distinguishing brain death and cognitive death already discussed were emphasised in the highly publicised case of Airedale NHS Trust v. Bland.175 Anthony Bland had been in a PVS for four years when his family and doctors applied to the Court for a declaration that to withdraw nutrition and hydration would be lawful. Advocates of the theory that individuals who have permanently lost cognitive function should be regarded as dead would argue that Anthony Bland had been dead since the accident that resulted in his irreversible coma. Those caring for him regarded him as alive but accepted that there was no prospect of recovery and that treatment withdrawal would lead to his death. In view of these tensions the Law Lords carefully considered the issue of when death occurs.

As a result of developments in modern medical technology, doctors no longer associate death exclusively with breathing and heartbeat, and it has come to be accepted that death occurs when the brain, and in particular the brain stem, has been destroyed.176

The Law Lords concluded that:

In law, Anthony is still alive. It is true that his condition is such that it can be described as a living death; but he is nevertheless still alive . . . The evidence is that Anthony’s brain stem is still alive and functioning and it follows that, in the present state of medical science, he is still alive and should be so regarded as a matter of law.177

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176 Ibid.
177 [1993] 2 WLR 316, per Lord Goff at 368. Cognitive death is not therefore a state presently recognised as death by medicine or the law. Were it to be so it would raise serious problems concerning the cause of
3.4.1.5 Brain Death

(i) Meaning

Brain death is physiological decapitation. It arises when intracranial pressure exceeds arterial pressure, thereby depriving the brain of its blood supply as efficiently as if the head had been cut off. There are tremendous developments in the field of intensive care and the emergence of new controversies concerning ‘point of no return’. Modern technology now makes it possible to maintain ventilation (by respirators), cardiac function (by various pumping devices), feeding (by the intravenous route) and the elimination of the waste products of metabolism (by dialysis) in a body whose brain is irreversibly dead. Many people are prepared to say that when all of the brain is destroyed the ‘person’ no longer exists, because the ‘person’ is generally associated with the functioning part of the head—the brain. The higher functions of the brain that have been described are placed, for the most part, in the cortex. The brain stem (in many ways more closely allied to the spinal cord) controls primarily visceral functions. When the total brain is damaged, death in all forms will ensue because the lower brain centers that control the circulation and respiration are destroyed.

Most authorities now use brain-oriented criteria to determine and define death.

(ii) Functions of the Brain-stem

The brain stem is the area at the base of the brain that includes the mesencephalon (midbrain), the pons, and the medulla. It contains the respiratory and vasomotor centres, which are responsible, for breathing and the maintenance of blood pressure. Most importantly, it also contains the ascending reticular activating system, which plays a crucial role in maintaining alertness (i.e. a generating the capacity for consciousness); small, strategically situated lesions in the medial tegmental portions of the midbrain and rostral pons cause permanent coma. All of the motor outputs from the cerebral hemispheres are routed through the brain stem, as are the sympathetic and parasympathetic efferent nerve fibres responsible for the integrated functioning of the organism as a whole. Most sensory inputs also travel through the brain stem. This part of death in trauma victims and the victims of crime, as well as for the care of brain damaged infants and adults. Supra note 140 at 25.

178 Supra note 116 at 983, 984.
179 Supra note 133 at 392.
the brain is, in fact, so tightly packed with important structures that small lesions there often have devastating effects. By testing various brain stem reflexes, moreover, the functions of the brain stem can be assessed clinically with an ease, thoroughness, and degree of detail not possible for any other part of the central nervous system. It must be stressed that if there is no functioning of the brain stem, there can be no meaningful or integrated activity of the cerebral hemispheres, no cognitive or affective life, no thoughts or feelings, no social interaction with the environment, nothing that might legitimize adding the adjective sapiens (wise) to the noun Homo (man). The ‘capacity for consciousness’ is perhaps the nearest one can get to giving a biological flavor to the notion of ‘soul’. The capacity to breathe is also a brain-stem function, and apnea (respiratory paralysis) is a crucial manifestation of a non-functioning lower brain-stem.  

(iii) Mechanisms of Brain-stem Death

From as far back as medical records have been kept, it has been known that patients with severe head injuries or massive intracranial hemorrhage often die as a result of apnea: breathing stops before heart stops. In such cases, the pressure in the main (supratentorial) compartment of the skull becomes so great that brain tissue herniates through the tentorial opening, a bony and fibrous ring in the membrane that separates the spaces containing the cerebral hemispheres and the cerebellum. The brain stem runs through this opening and a pressure cone formed by the herniated brain tissue may dislocate the brain stem downward and cause irreversible damage by squeezing it from each side. An early manifestation of such an event is a disturbance of consciousness; a late feature is permanent coma. This was nature’s previous way out.

With the widespread developments of intensive care facilities in the 1950s and ‘60s, more and more such moribund patients were rushed to specialized units and put on ventilators just before spontaneous breathing ceased. In some cases the effect was dramatic. When a blood clot could be evacuated, the primary brain damage and the pressure cone it had caused might prove reversible. Spontaneous breathing would return. In many cases, however, the massive, structural intracranial pathology was irremediable. The ventilator, which had taken over the functions of the paralyzed respiratory centre,
enabled oxygenated blood to be delivered to the heart, which went on beating. Physicians were caught up in a therapeutic dilemma partly of their own making: the heart was pumping blood to a dead brain. Sometimes, the intracranial pressure was so high that the blood could not even enter the head. Modern technology was exacting a very high price: the beating-heart cadaver.\textsuperscript{182} Brain-stem death may also arise as an intracranial consequence of extracranial events. The main cause in such cases is circulatory arrest. The usual context is delayed or inadequate cardiopulmonary resuscitation following a heart attack. The intracranial repercussions depend on the duration and severity of impaired blood flow to the head. In the 1930s the British physiologist John Scott Haldane had emphasized that oxygen deprivation ‘not only stopped the machine, but wrecked the machinery’ circulatory arrest lasting two or three minutes can cause widespread and irreversible damage to the cerebral hemispheres while sparing the brain stem, which is more resistant to anoxia. Such patients remain in a ‘persistent vegetative state’. They breathe and swallow spontaneously, grimace in response to pain, and are clinically and electrophysiologically awake, but they show no behavioral evidence of awareness. Their eyes are episodically open (so that the term \textit{coma} is inappropriate to describe them), but their retained capacity for consciousness is not endowed with any content. Some patients have remained like this for many years. Such patients are not dead, and their prognosis depends in large part on the quality of the care they receive. The discussion of their management occasionally abuts onto controversies about euthanasia and the ‘right to die’. These issues are quite different from that of the ‘determination of death’, and failure to distinguish these matters has been the source of great confusion. If circulatory arrest lasts for more than a few minutes, the brain stem-including its respiratory centre-will be as severely damaged as the cerebral hemispheres. Both the capacity for consciousness and the capacity to breathe will be irreversibly lost. The individual will then show all the clinical features of a dead brain, even if the heart can be restarted.\textsuperscript{183}

In one of the California case, Judge William J. Hayes told the jury that ‘a person may be pronounced dead if, based on usual and customary standards of medical practice,
it is determined that the person has suffered an irreversible cessation of brain function.\textsuperscript{184} In this case one Dr. Shumway said, “The brain in the 1970s and in the light of modern day medical technology is the sine qua non- the criterion for death. Anyone whose brain is dead is dead. It is the one determinant that would be universally applicable, because the brain is the one organ that cannot be transplanted.\textsuperscript{185} Ian Kennedy also takes death to be biological question and eventually argues for brain-stem death as a criterion of death. If brain-stem is destroyed nothing can function. There can be no breathing, no heart beat, no thought. Thus, what is crucial to personality is the brain-stem, not the total brain. Death, therefore, is the total and irreversible loss of all brain-stem function.\textsuperscript{186} John Harris also agrees that death is the permanent cessation of the functioning of the organization as a whole.\textsuperscript{187} The Black’s Law Dictionary defines ‘brain death’ (also termed as legal death) as the bodily condition of showing no response to external stimuli, no spontaneous movements, no breathing, no reflexes and a flat reading (usually for a full day) on a machine (electroencephalogram) that measures the brain’s electrical activity.\textsuperscript{188} A. Schopenhauer takes the view that death itself consists merely in the moment when consciousness vanishes, since the activity of brain ceases. Therefore, death concerns only consciousness.\textsuperscript{189}

(iv) Diagnosis of Brain-stem Death

The diagnosis of brain-stem death involves three stages. First, the cause of the coma must be ascertained, and it must be established that the patient (who will always have been in apneic coma and on a ventilator for several hours) is suffering from irremediable, structural brain damage. Damage is judged ‘irremediable’ based on its context, the passage of time, and the failure of all attempts to remedy it. Second, all possible causes of reversible brain-stem dysfunction, such as hypothermia, drug intoxication, or severe metabolic upset, must be excluded. Finally, the absence of all brain-stem reflexes must be demonstrated, and the fact that the patient cannot breathe, however strong the stimulus, must be confirmed. It may take up to 48 hours to establish that the preconditions and

\textsuperscript{184} Derek Humphry and Ann Wickett, \textit{The Right to Die}, 284 (1986).
\textsuperscript{185} \textit{Supra} note 133 at 392.
\textsuperscript{186} Ian Kennedy, \textit{The Unmarking of Medicine}, 200 (1983).
\textsuperscript{187} John Harris, \textit{The Value of Life}, 240 (1983).
exclusions have been met; the testing of brain-stem function takes less than half an hour. When testing the brain-stem reflexes, doctors check for the following normal response:

- Constriction of the pupils in response to light,
- Blinking in response to stimulation in the cornea,
- Grimacing in response to firm pressure applied just above the eye socket,
- Movements of the eyes in response to the ears being flushed with ice water, and
- Coughing or gagging in response to a suction catheter being passed down the airway.\(^{190}\)

All responses have to be absent on at least two occasions. Apnea, which also must be confirmed twice, is assessed by disconnecting the patient from the ventilator. All these tests are carried out systematically and without haste. There is no pressure from the transplant team.\(^{191}\) The development of the death industry is also a by-product of the technological revolution and of modern attitudes to death.\(^{192}\) And in a contentious environment, the law has even invaded the intensive care unit, influencing the decisions of physicians concerning the withdrawal of treatment or the determination of death. A wit has remarked that in the modern era, the only sure sign that a man is dead is that he is no longer capable of litigation.\(^{193}\) The new definition of a ‘brain dead’ person enables the removal of organs while the person is connected to an external mechanical aid largely enhancing the chances of a successful transplantation in another person.\(^{194}\)

Section 46 of the Indian Penal Code, defines ‘death’ as the death of a human being unless the contrary appears from the context. ‘Brain-stem death’ is defined under section 2 (d) of the Transplantation of Human Organs Act, 1994, to mean the stage at which all functions of the brain stem have permanently and irreversibly ceased and is so certified under sub-section (6) of section 3. Further, section 3 (6) provides that where any human organ is to be removed from the body of a person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such

\(^{190}\) Supra note 116 at 986.
\(^{191}\) Id. at 986.
\(^{192}\) Id. at 993-994.
\(^{193}\) Ibid.
\(^{194}\) Lily Srivastava, Law and Medicine, 102 (2010).
manner and on satisfaction of such conditions and requirements as may be prescribed, by
a Board of medical experts consisting of the following namely:
(a) the registered medical practitioner in charge of the hospital in which brain-stem death
has occurred;
(b) an independent registered medical practitioner, being a specialist, to be nominated by
the registered medical practitioner specified in clause (i), from the panel of names
approved by the Appropriate authority;
(c) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner
specified in clause (i), from the panel of names approved by the Appropriate Authority;
and
(d) the registered medical practitioner treating the person whose brain-stem death has
occurred.

The 2011 amendment to the Act provides that where a neurologist or a
neurosurgeon is not available, the registered medical practitioner may nominate an
independent registered medical practitioner, being a surgeon or a physician and an
anaesthetist or intensivist subject to the condition that they are not members of the
transplantation team for the concerned recipient and to such conditions as may be
prescribed. It also made it mandatory for the Intensive Care Unit (ICU)/ treating medical
staff to request the relatives of brain-dead patients for organ donation. It has also
empowered the Union Government to prescribe the composition of authorization
committees for granting approvals for donating organs.195 It also provides for a “Human
Organ Retrieval Centre”, which means a hospital, which has adequate facilities for
treating seriously ill patients who can be potential donors of organs in the event of death;
and which is registered under sub-section (1) of section 14 for retrieval of human organs:
Sub-section 7 further provides that notwithstanding anything contained in sub-section (3),
where brain-stem death of any person, less than eighteen years of age, occurs and is
certified under subsection (6), any of the parents of the deceased person may give
authority, in such form and in such manner as may be prescribed, for the removal of any
human organ from the body of the deceased person. Thus, the Act has also accepted brain
stem death. The new definition, independent of the desire for transplant, now permits the

195 Id., at 111.
physician to ‘pull the plug’ without even committing an act of passive euthanasia. The patient will first be defined as dead; pulling the plug will merely be the harmless act of halting useless treatment on a cadaver.\footnote{Supra note 11 at 392.}

Some take the view that while the new definition of death avoids one complex problem of euthanasia, it may create others equally difficult which have never been fully defined or visualized. For it grants the right to pull the plug, it also implicitly grants the privilege not to pull the plug. These cadavers would have the legal status of the dead with none of the qualities one now associates with death. They would be warm, respiring, pulsating, evacuating, and excreting bodies requiring nursing, dietary and general grooming attention, and could probably be maintained so for a period of years.\footnote{Ibid.}

Dr. Austin Kutschér, one of the creators of the Foundation of Thanatology, takes the view that the decision to accept brain death as death itself may be valid, but it can hardly be argued that the definition was framed for the benefit of the dying.\footnote{Supra note 128 at 270.} But at the same time, if we choose to, we could, with the technology already in hand, legally avail ourselves of these new cadavers to serve science and mankind in dramatically useful ways. The autopsy, that most respectable of medical traditions, that last gift of the dying person to the living future, could be extended in principle beyond our current recognition. To save lives and relieve suffering, we could develop hospitals, banks, or farms of cadavers which require feeding and maintenance, in order to be harvested.\footnote{Supra note 11 at 392-393}

It is important to note that keeping into mind the cost-benefit analysis, a further refinement of death has been proposed by Willard Gaylin. At present, we use total brain function to define brain death. The source of electroencephalogram activity is not known and cannot be used to distinguish between the activity of higher and lower brain centers. If, however, we are prepared to separate the concept of ‘aliveness’ from ‘personhood’ in the adult, as we have in the fetus, a good argument can be made that death should be defined not as cessation of total brain function but merely as cessation of cortical function. New tests may soon determine when cortical function is dead. With this new definition, one could then maintain neomorts without even the complication and expense...
of respirators. The entire population of decorticates residing in chronic hospitals and now classified among the incurably ill could be redefined as dead. At the same time, William May argues that such neomorts command a certain respect because it reminds us of that human presence which once was utterly inseparable from it. Hans Jonas, in his *Philosophical Essays*, insisted that nothing less than the maximum definition of death will do: brain death plus heart death plus any other indication that may be pertinent—before final violence is allowed to be done.

The above account only insists that sustaining life is an urgent argument for any measure, but not if that measure destroys those very qualities that make life worth sustaining. While “brain death” seems to be the best indicator today, it may be supplanted by new technology in the future.

3.4.1.6 Death involves moral question rather than biological

Robert Veatch (Veatch, 1981:242) takes death to be a moral rather that biological question. He argues that it is appropriate to treat someone as dead, ‘when his moral standing changes so radically that the same right claims attributed to loving persons are no longer attributed.’ He is convinced that moral standing disappears when a person loses ‘an embodied capacity for consciousness or social interaction.’

3.4.1.7 Death as a Psychological Event, as an Experience

This aspect is more elusive. The principal obstacle to its study has been the fear of death on the part of patients, relatives, doctors, nurses, and the dispensers of funds for research. A dying patient reminds others of their death too, which they are not eager to consider. As a result, the first problem faced by the dying patient is to discover the truth about his condition.

While in most cases doctors, nurses and relatives join in a conspiracy to conceal the patient’s actual condition, there are rare circumstances when doctors make a practice of

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200 Id., at 396.
202 Ibid.
203 Ibid.
204 Supra note 75 at 5.
206 Supra note 128 at 265-266.
telling patients the truth immediately. The reason for withholding the truth, doctors and relatives say is that the patient would find it too upsetting, that he needs hope in order to keep on fighting for life. But the pretense naturally grows harder to sustain as the dying patient approaches a final decline. Few patients refuse to recognize the truth, ignoring the most obvious clues (such as the visit of a distant relative) and insist up until the end that they will be better in no time. However, in most cases, patients eventually sense they are not getting better and either ask their doctors directly or set verbal traps for nurses and relatives, checking their responses for every discrepancy.\textsuperscript{207}

Ross (1969) mentions five stages of dying people, namely: the stage of denial and isolation, the stage of anger, the stage of bargaining, the stage of depression and the stage of accepting the inevitable (and then comes a time for ‘the final rest before the long journey’).\textsuperscript{208}

\subsection*{3.4.2 Theological Perspectives on Death}

In the biblical view, death occurs when the human spirit leaves the human body.\textsuperscript{209} Death is depicted as the consequence of Adam’s sin.\textsuperscript{210} The Holy Bible refers to death as a going to rest, a going to sleep, when “the evening comes, and the busy world is hushed, and the fever of life is over, and our work is done”. Jesus shows us that death is a gate through which we pass into immortal life. Death is also described in the Holy Bible as a going forth from a bondage to a realm of liberty, as an act of liberation and emancipation freeing us to go forward into the promised land. St. Paul presented a third Biblical view of death as a setting out to sea, an unmooring. A fourth Biblical view of death is that of a going home after being wayfarers and strangers in an alien land. However, Genesis says that death is a punishment.\textsuperscript{211}

Mahabharata gives the following account of death:

\begin{quote}
Life and body are born together, grow together, and end together.\textsuperscript{212} Accumulation ends in destruction, rise ends in fall, the coming together ends in parting, and life ends in
\end{quote}

\textsuperscript{207} \textit{Id.}, at 266.
\textsuperscript{208} \textit{Supra} note 205 at 159.
\textsuperscript{209} \textit{Supra} note 75 at 5.
\textsuperscript{211} \textit{Ibid.}
\textsuperscript{212} \textit{Supra} note 16 at 228.
213 Death is connected with life from the moment one is born.214 There is equality of death.215 And there is equally absolute uncertainty of the time of its visit.216 In the midst of all planning and agenda of man, death gathers him under her control.217 To every living being, death is a disaster; at the time of death all living beings shake fearfully.218

The Gita put it so beautifully:

Like a man casts off old garments to put on new ones... so does the soul.219

3.4.3 Death and Spirituality

Spirituality has a lot to teach on this inevitable and integral part of life. Death is a perfectly natural and normal event in our life’s story, like being born, and like birth. It just begins that part of life which is beyond our sight. It is only a watershed, a landmark, which divides life here from life there.220

Death is not the end of a man’s journey but a door to God. One should not fear death but regard it as a long, relaxed sleep from which you wake up to a brighter dawn. People who are afraid of death cannot relax in sleep, because sleep is also a very small death that comes every day.221 For John Donne, death was, ‘One short sleep past, we wake eternally. And death shall be no more: Death thou shalt die’.222

Death is universal. Each one of us is going to die someday. No man gets out of this world alive. Death is a purpose for life no man can afford not to fulfill.223 Thus, in researcher’s view, law must give answer to all questions pertaining to life and death.

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213 Id., at 231.
214 Id., at 179.
215 Id., at 174.
216 Id., at 178.
217 Id., at 179.
218 Id., at 124.
219 Id., at xix.
220 Supra note 71 at 124-125.
221 Supra note 80 at 7.
222 Tomichan Matheikal, English Poetry from John Donne to Ted Hughes, 7 (2001).
223 Supra note 71 at 122.