CHAPTER IV

LAWS GOVERNING EUTHANASIA IN SOME SELECTED COUNTRIES WORLD OVER AND THE JUDICIAL RESPONSE: A COMPARATIVE ANALYSIS

4.1 INTRODUCTION:

In this civilized society, law is extremely essential for appropriate conduct of individuals and good governance in the State. As law has become indispensable for human beings, it is pertinent to understand the limitation of law for issues related to life and death. Both life and death, have immense importance in human life. The tremendous progress in medical science and the enactment of a few legislations\(^1\) have resulted in control over the birth of human beings. Life today can be said to be under the dominance of law and medical technology. Likewise, can death also be controlled by law at least in some exceptional cases? The _euthanasia_ debate focuses on the right to die with dignity in rarest of the rare cases. Can legalization of _euthanasia_ help the terminally ill patient die a painless death? The present Chapter incorporates the discussion of laws governing _euthanasia_ in some selected countries. As the legalization of _euthanasia_ has been debated for centuries, the researcher has included the historical study with various religious dimensions of _euthanasia_. The comparative analysis incorporates the discussion of legal position of _euthanasia_ in nineteen countries. A Few States from the United States are also discussed at length. Especially the _Death with Dignity Act_, 1997 of Oregon is considered as role model legislation for legalizing _euthanasia_. A few landmark judgments from different countries are also discussed. The meaning and types of _euthanasia_ have already been discussed in the

\(^1\) For e.g., _The Assisted Reproductive Treatment Act_, 2008, Australia; _The Assisted Human Reproductive Act_, 2004, Canada; _Human Fertilization and Embryology Act_, 1990, UK.
Second Chapter. In this Chapter the researcher has made an attempt to highlight the fact that as euthanasia has been legalized in a few countries, other countries which prohibit euthanasia for terminally ill patients should reassess the pros and cons of euthanasia in order to legalize any form of euthanasia which is suitable.

“Death” is universally accepted as a “part of life”. However, “it should not be left to nature to dictate the way we die…” Euthanasia, [it is said] may be necessary in some cases in order to achieve eudaimonia.²

The principle of eudaimonia aims to achieve ultimate goal of happiness in life, it is similar to the principle of utility. Based on such principle every human in the world desires to seek pleasure in his life. This pleasure to provide the full continuum of choice has fuelled an international movement to recognize the greatest level of patient autonomy- the right to make affirmative decision to terminate one’s own life.³

A patient suffering from any terminal illness too has the same expectation. How does he bring happiness in such a phase of life filled with pain, suffering and agony? The simplest answer is by ending the misery once for ever- through death. Is this solution legally permissible? The answer differs from country to country. Hence it is necessary to analyse laws permitting euthanasia. The debate over euthanasia is not a recent phenomenon. Over the years, public opinion, decisions of courts in various countries, and legal and medical opinions towards euthanasia

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have been continuously conflicting. Although it is widely accepted that any form of killing is a crime, a clearly defined stand has not been taken on euthanasia in most of the countries including India.

In the 21st century most of the democracies have all sophisticated medical establishments resulting in increase of life expectancy. Apart from this, the mind-blowing advances in the medical technology and pharmacology which have been made in the course of this century have made it possible to sustain the life of terminally ill or otherwise hopelessly ill patients for extended and often indefinite period of time.

To add on this, all the developed nations have modern industrial society and increased population which acts as the basic cause of various diseases. It is estimated in Europe at about sixty-six to seventy one per cent people die of degenerative diseases, especially delayed- degenerative diseases that are characterized by late, slow onset and extended decline. This is not limited to Europe it extends throughout the developed world. Diseases like AIDS, cancer, atherosclerosis, chronic pulmonary diseases, liver, kidney, neurological disorders etc., are the diseases which commonly make the death not only difficult but have added to the demand of euthanasia laws over the entire world. In order to understand the euthanasia debate from its roots, it is important to discuss the origin of this debate in different countries and the religious opinions expressed about the termination of life.

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5 Ibid.
4.1.1 EUTHANASIA: THE HISTORICAL RIGHT TO DIE DEBATE WORLDWIDE

How did society arrive at this controversial debate of euthanasia or right-to-die legislation? In the past, most people died relatively earlier as a result of severe illness or lack of medicine. The situation at present has completely undergone transformation due to rapid increase in medical knowledge, technology and intervention which often forces the terminally ill to linger helplessly. Despite the advances in palliative care, the death process is too often protracted, painful and undignified.\(^8\)

Right to die is commonly captioned as “euthanasia”. Most of the times it is claimed that the debate on euthanasia is of a recent development, but the history demonstrates that the concept of euthanasia is deep rooted in the society since ancient period. The “right to die” is not simply a contemporary obsession or a novel brainwave. In fact, it has been proved that we are not dealing with a momentary item on the political agenda but rather with an idea that has taken over two thousand years to reach maturity.\(^9\) With the increasing liberalization of society, the movement grew more in the 1960 and 1970, but it is a century old controversy, with its roots taking hold before the First World War.\(^10\) Religion, faith, belief and more generally, ideology and world view, entail more than just participation in rituals or the acceptance of certain doctrine.\(^11\)

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This issue has fascinated and troubled sensitive and concerned persons through the countries. Many Greek philosophers advocated *euthanasia*. Plato, in the Republic, condemned physicians who allowed patients to suffer from lingering death and suggested *euthanasia*. So did Seneca when he raised the query of whether man is lengthening his life or death.

In Nazi Germany approximately two lakh mentally ill people were murdered under the guise of *euthanasia*. Physicians were implicated in almost every aspect of Nazi-*euthanasia* misnomer, of course, because these were outright murders, not ‘good death’, the order to kill came in 1939, directly from Adolf Hitler. Well-known philosophers and writers who have justified or supported the cause of individuals voluntarily opting for a dignified death include Epicurus, Thomas More, Francis Bacon, Schopenhauer, Koestler and Nietsche. According to some historians, there existed on the island of Cos- the birth place of Hippocrates- an ancient custom whereby very old people who had outlived their usefulness to society might gather annually as if for a banquet, and leave this world by drinking together a lethal portion.

The Indian philosophical tradition has justified the idea of willing one’s death (*ichcha Maran*), Sane Guruji and Veer Savarkar are the well-known examples of persons choosing to end their lives by refusing the intake of all nutrition. Even a person like Mahatma Gandhi, whose name is synonymous with non-violence, supported this idea. The opinions historically differed on *euthanasia*, but overall there were more negative

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views expressed about euthanasia in the past. During ancient period religious beliefs had the utmost effect on the social behaviour of human beings. Any act in contradiction to the religious principles was vehemently condemned in the society. Euthanasia was also considered inconsistent with the religious philosophy.

However, the social scenario during the ancient period was completely different as compared to the present situation. Should the religious views of that period be blindly followed today? Are all the religious notions acceptable in the changing circumstances? Has modern medical technology flabbergasted the base of religious thoughts on euthanasia? In the following segment an attempt is made to respond to these questions by analysing the views of different religions about euthanasia.

4.1.2 THE RELIGIOUS DIMENSIONS OF EUTHANASIA:

All the religions since times immemorial had a specific code of conduct to be followed in the society. The code of righteous conduct was evolved with the object of enabling an individual to establish control over his desires and senses and to be contented. The rules so formulated or evolved over a long period were meant to ensure peace and happiness to the individuals and the human society as well. They concerned every sphere of human activity.15 The “right to die” controversy is not merely a question of law, medical science, religion, ethics, moral will, but rather a social question that involves some of the fundamental theories.16 Nevertheless, unexamined traditions and religious thoughts have long prevented the legalization of euthanasia irrespective of the hopeless

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16 Supra note 9 at 1.
condition of terminally ill patients and their earnest pleadings for death.\textsuperscript{17} What views were formulated about \textit{euthanasia} in Hindu religion need to be answered.

4.1.3 \textbf{EUTHANASIA AND HINDUISM:}

The desire to refuse treatment in a life threatening situation and the wish to die a painless death lies in the ancient Indian sources of law. Two commentators of Manu, Govardhana and Kalluka, claim, that a man may undertake the \textit{mahaprasasthana} (permanent departure) on a journey which ends in death, when he is incurably diseased or meets with great misfortune and therefore it is taught in \textit{Shastras}, it is not opposed to the vedic rules which forbid suicide.\textsuperscript{18}

In India, today, the concept of withdrawing treatment is not unknown. In fact, the \textit{Transplantation of Human Organs Act, 1994}\textsuperscript{19} provides the appropriate atmosphere for the withdrawal of life support systems. When a patient has been certified as having suffered ‘brain stem death’ and if he has made a declaration making an anatomical gift, may lawfully withdraw the life support system. It is submitted that, a state where an individual has suffered brain stem death would necessarily fit Manu’s concept of ‘incurably diseased’ and the withdrawal of the life support systems would be symbolic of the individual embarking on the \textit{mahaprastrhana}. The Laws of Manu allow \textit{prayopavesha} for an ascetic, which includes permitting the body a slow and wilful dissolution to be

\textsuperscript{19} \textit{The Transplantation of Human Organs Act, 1994}, u/S. 2 (d), brain stem death means the stage at which all functions of the brain-stem have permanently and irreversibly ceased and is so certified u/sub section (6) of S. 3.
free from sorrow and fear and ultimately embrace death.²⁰ Mahabharat which is the most important source of Hindu religion reflects the origin of ‘ichcha maran’. Pitahmaha Bhishma was on the death bed when he desired ‘ichcha maran’, i.e., to die according to his wish.

In the Karma tradition, it is the imperative that an individual should die a natural death. In order to have a natural death it is essential that the individual is not subjected to artificial life prolonging support systems. Moreover, the necessity to die a natural death ought to be greater for an aged individual. As observed by Swami Satchidananda, the human body should not be forced to be alive by hooking to medical treatments. If there is no suitable treatment available, the patient should be allowed to die naturally.²¹

A desire expressed by an individual, when he is competent, that he would not like to have artificial life support treatment administered to him, when the dying process has started would certainly be positively accepted by proponents of Hindu Philosophy. Ancient Hindu jurists differentiated religious and moral rules from rules of positive law. ²² Administering lethal dose to kill a person has never been accepted by Hindu religion. It can be said that some form of euthanasia was unknowingly practiced but active euthanasia was always condemned as immoral, illegal and unethical. With this basic understanding of Hindu religious exposition on euthanasia let us now turn towards Christianity.

²⁰ http://archive.student.bmj.com/issues/08/09/life/310.php, [accessed on 21/12/09].
In Christianity, it is believed that life is a gift of God. Christianity also supports the proposition that ideally an individual should die a natural death. But any form of deliberately taking away life is condemned. Christian theological always treated right to die as not only illegal, immoral, sinful, but also an act of cowardice or a repudiation of the will of God.\(^\text{23}\) As for the abortion controversy Roman Catholics follow the principle of natural law. This means they believe all life is regulated and ordered by God so that the way things are is the way God intends them to be. Hence, in accordance to the Roman Catholic Church, people are destined to die through natural means as this is the way they see things operating in the world. For them, to go against natural death or to favour deliberate killing is to go against God’s will.\(^\text{24}\) The concept of *euthanasia* has been condemned by Church authorities and is considered legally indistinguishable from murder.\(^\text{25}\) The strong opposition to taking one’s own life expressed by Saint Augustine in the fifth century was further reinforced in the thirteenth century by Saint Thomas Aquinas, a great theologian and scholastic philosopher of the Roman Catholic Church.\(^\text{26}\)

However, in the present scenario, the opinion that a doctor need not resort to extra ordinary or heroic means to prolong the dying process of a patient and an individual is entitled to reject to imposition of life support systems on him when his life is ebbing out, finds support in Christian philosophy. The Church makes a clear distinction between actions which


\(^{25}\) *Supra* note 14 at 18.

\(^{26}\) *Id.*, at 55.
halt artificial life support and actions which directly cause death. A directive issued by Pope Pius in 1957, reflects the duty enjoined upon individuals, when faced with circumstances of medical futility. According to this directive, man has a right and a duty in case of severe illness to take the necessary steps to preserve life and health. This duty devolves not only as a moral duty but also as a lawful duty. But, while performing the duty to preserve life, only ordinary means should be employed. No person should be forced to undergo extraordinary means to protect life and health.

The concept ‘ordinary means’ is an extremely subjective concept which can be variously interpreted according to the personal circumstances, the law, the times and the culture prevalent. It is submitted that the concept however cannot in any circumstances be construed as a technique or procedure, which artificially and unnaturally prolongs the dying process of an individual.

Overall, the Christian religion disapproves any form of deliberately ending life. At the same time, it condemns artificial prolongation of life. In fact, Christianity supports passive euthanasia and rejects active euthanasia or physician assisted suicide. With this let us now switch over to Islam to assess what are the views generated regarding euthanasia.

4.1.5 EUTHANASIA AND THE ISLAM

While Islam recognizes the importance of medical treatment it emphatically states that death is a part of life. Life is a gift of God and cannot be taken away except by Him or with His permission. The Quran

in 67/2 verses states – “He who created death and life that He may try which of you is best indeed ….”\textsuperscript{29} It further states that life, death and resurrection are all in the control of the Almighty. Through 25/3 verses in the Quran, it has been made very clear that “…[n]or can they [human] control death nor life nor resurrection”\textsuperscript{30} The concept of dying at God’s will is categorically stated in the Quran. As per 3/145 verses of the Quran, “[n]or can a soul die, except by Allah’s leave, the term being fixed, as by writing”\textsuperscript{31}. Further, The Holy Quran – 3/156 verses declares that, “[i]t is Allah that gives life and death”.\textsuperscript{32} Hence, it is believed that a person dies when it is written in his destiny.

Seeking medical treatment is mandatory in Islam. The Prophet Mohammed has stated, “[s]eek treatments, subject of God, for to every illness God has made a cure”.\textsuperscript{33}

As per Islamic belief the doctor is well advised to realize his limit and not transgress it. If it is scientifically certain that life cannot be restored, then it is futile to diligently keep the patient in a vegetative state by heroic or artificial means. It is the process of life that the doctor aims to maintain and not the process of dying. In any case, the doctor shall not take a positive measure to terminate the patient’s life.\textsuperscript{34}

All the three religions discussed above accept the fact that the doctors should not artificially prolong life but at the same time reject any form of euthanasia. At this point, it is pertinent to detect what views the Buddhism has in store about euthanasia.

\textsuperscript{30} \textit{Id.}, at 889.
\textsuperscript{31} \textit{Id.}, at 164.
\textsuperscript{32} \textit{Id.}, at 168.
\textsuperscript{33} \url{http://www.islamicity.com}, [accessed on 20/09/2008].
\textsuperscript{34} \textit{The Islamic Code of Medical Ethics}, 1981, p.67. \url{www.bookrags.com}, [accessed on 21/12/2009].
4.1.6 BUDDHIST THOUGHTS ON EUTHANASIA:

The debate on euthanasia within Buddhism is tentatively uncertain with a suitably Buddhist reticence.\(^{35}\) As per Damien Keown, “the ultimate aim of Buddhism is to overcome death once and for all, and any affirmation of death or choice in favour of death is a rejection of this vision of human good”.\(^{36}\) However, it does not insist that life must be preserved at all costs. Acceptance of the insubstantiality of all existence lies at the heart of the belief, that any deliberate attempt to destroy life can be neither sanctioned, nor extraordinary means to preserve life should be allowed.\(^{37}\)

Whereas some exponents of Buddhism allege that the value of human life is to be found in the capacity for the individual’s conscious choice. In principle, therefore, the follower’s of Buddhism would support voluntary euthanasia, provided it is implemented with stringent guidelines.\(^{38}\) A few others argue contrary to this, claiming that Buddhism does not favour euthanasia, as it is against the principle of ‘karma’.\(^{39}\)

Parallel to all other religions dealt with earlier, Buddhism does not support deliberate taking of life.

All religions in the world preach welfare of individuals without causing any deliberate harm. The religious guidelines provide that an individual prepares himself in this realm for the union with the ultimate, whatever each religion may conceive it to be, whether Moksha or


\(^{36}\) Id., at 374.

\(^{37}\) Ibid.


Nirvana or Jannat or the Resurrection. They all propagate natural death for individuals. Therefore, it is expected that the principles guiding a doctor when treating his patient should ideally be beneficence and non-maleficence.

The proponents argue on the religious grounds, that God alone must determine when life shall begin and when it shall end. But at the same time it is opined that it is doubtful that God would disapprove of shortening life when it is done out of compassion and in accordance with the safeguards law and the medical profession could provide. It is more likely, on the contrary, that man has a moral obligation to permit avoidance of useless suffering.40

At the 1971 White House Conference on Aging, one of the recommendations to be given high priority was, “[r]eligious bodies and government should affirm the right to, and reverence for, life and recognize the individual’s right to die with dignity”.41 Dr. Arthur A. Levisohn, Professor of Medical Jurisprudence at the Chicago Medical School, appealed strongly for doctors and the public to replace traditional ways of thinking with human values and attitudes appropriate to the modern rapidly changing world.42 Many traditional religious doctrines, superstitions, and rule-of-thumb guides for behaviour no longer meet the needs of today. Death must be redefined, conceptions of life re-examined, and the role of terminally ill patients in controlling their own destiny should be re-evaluated.43 Due to the advent of modern medical

40 Supra note 14 at 16.
41 Id., at 24.
42 Id., at 48.
43 Ibid.
technology the prominence has shifted from the quantity of life to the quality of life.\textsuperscript{44}

The proponents of euthanasia argue that those who oppose euthanasia for religious or personal reasons euthanasia is not forced upon them and likewise, they should not impose their own moral standards on those who agree to euthanasia.\textsuperscript{45} Describing the relation between morality and religion, Amartya Sen writes about Akbar, the most celebrated Mughal Emperor in India, who believed that “[i]n making moral judgments we must not make reasoning subordinate to religious command, nor rely on ‘the marshy land of tradition’.”\textsuperscript{46} This means that religious views are supreme, but should not blindly relied on it only in the name of tradition. The religious convictions of some patients require maintenance of biological life as long as technically possible, while others believe that suffering the agonies of death leads to ultimate salvation.\textsuperscript{47} Reliance upon religious creed and ancient ideals, however, should not and cannot play a role in the administration of justice for suffering patients in contemporary times.\textsuperscript{48} In a democratic society there will always be conflicts between democracy and religious doctrines, especially when religious principles contradict the individual’s rights, however, these conflicts should be resolved within the reasonable principles of justice.\textsuperscript{49}

\textsuperscript{44} Id., at 49.
Whether ancient society with its religious thoughts accepted or rejected euthanasia, is not of much importance today. In the past, the medical technology was not as advanced as it is today and diseases leading to terminal illness were also unknown. However, as a few countries have already legalised euthanasia, it is inevitable to have uniform laws on euthanasia worldwide. Before we attempt to draft for India such a piece of legislation it would be sensible to have a formidable idea about law governing euthanasia which is in force in other countries.

4.2 LAWS GOVERNING EUTHERNASIA IN THE UNITED STATES OF AMERICA:

There are fifty States in the United States of America. A few States had made efforts to legalize euthanasia, but the attempts did not succeed in all the States. At present physician assisted suicide is legalized in the State of Oregon and recently in Washington as well.

4.2.1 LAWS GOVERNING EUTHERNASIA IN THE RETROSPECT IN THE USA:

The earliest American statute explicitly to outlaw assisting suicide was enacted in New York in 1828. The first push for physician assisted suicide and euthanasia in America dates back to the latter part of the nineteenth century and arose in the wake of Darwin’s book titled On the Origin of Species and Descent of Man. In 1920 the book, “Permitting the Destruction of Life Not Worthy of life” was published, which emphasized legalization of euthanasia. In 1931, the Illinois Homeopathic

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50 Nebraska State Legislature had introduced a Bill to legalize euthanasia in 1937, State of New York in 1939, attempts were also made in Michigan, Montana, Florida, Colorado and Alaska.  
Medical Association defended *euthanasia* for “imbeciles and suffers from incurable diseases”\(^{54}\). Earnest Hooton, Harvard Professor and a social Darwinist advocated *euthanasia* for the hopelessly diseased and the congenitally deformed and deficient was necessary if America was ever going to reverse what he saw as its continuing biological decline\(^{55}\). The first proposal in the western world for legalizing medical *euthanasia* was made in 1905 in the State of Ohio which was later rejected\(^{56}\). A similar situation was experienced in the Iowa State, no further proposals were made in the US until 1937\(^{57}\).

In February, 1937, a bill to legalize the practice of *euthanasia* was introduced in the Nebraska State Legislature by Senator John H. Comstock\(^{58}\). Later the Euthanasia Society of America [hereinafter referred as ESA] was founded by Charles Potter in 1938 in the U.S.A\(^{59}\). This movement gained momentum only in 1976 when *Quinlan*\(^{60}\) was brought to the notice of the general public by huge publicity. Consequent upon this in 1980, Derek Humphry founded the Hemlock society in the USA. The Society’s charter states that one of its aims is to promote a climate of public opinion which is tolerant of the right of people who are terminally ill to end their own lives in a planned manner. In 1991 the Hemlock Society published a controversial book called *Final Exit*, which contained detailed instructions on how people could take their own lives. The book was condemned as a suicide manual and there was evidence that it had been consulted by people who were not terminally ill but had

\(^{54}\) * Supra note 52.
\(^{56}\) Demetra, Pappas, M., “Recent historical perspectives regarding medical euthanasia and physician assisted suicide” in Dunstan, G.R., *supra* note 35 at 388.
\(^{57}\) Ibid.
\(^{58}\) * Supra* note 14 at 71.
\(^{60}\) 355 A2d 647(New Jersey, 1976).
committed suicide for other reasons. However, it sold over a million copies.\(^{61}\)

Since 1960’s the Dutch government along with its supporters and the leaders like Russell, Moore, Williams, Fletcher, Humphry, Dworkin, Battin, Brock, Cantor and Singer, favoured *euthanasia* emphasizing individual liberty based on autonomy. However, the movement still remains a controversial issue. The history of *euthanasia* movement in America lingers what Dowbiggen calls “a gravely complex social, political, economic and cultural matter.”\(^{62}\)

Numerous polls have been conducted in the USA by a number of research organizations over the past years to access public attitudes on the subject of *euthanasia*.

**National Opinion Poll for legalizing *euthanasia* in the U.S.A.**\(^{63}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>For <em>euthanasia</em></th>
<th>Against <em>euthanasia</em></th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>37%</td>
<td>54%</td>
<td>9%</td>
</tr>
<tr>
<td>1950</td>
<td>36%</td>
<td>54%</td>
<td>10%</td>
</tr>
<tr>
<td>1973</td>
<td>53%</td>
<td>40%</td>
<td>7%</td>
</tr>
<tr>
<td>1982</td>
<td>61%</td>
<td>34%</td>
<td>5%</td>
</tr>
<tr>
<td>1983</td>
<td>63%</td>
<td>32%</td>
<td>3%</td>
</tr>
<tr>
<td>1990</td>
<td>65%</td>
<td>31%</td>
<td>4%</td>
</tr>
<tr>
<td>1996</td>
<td>75%</td>
<td>22%</td>
<td>3%</td>
</tr>
</tbody>
</table>

\(^{61}\) The book ‘Final Exit’ was declared the best- seller of the 1991 in the United States of America. This fact proves that right to die with dignity has attracted the public attention.


From the above table it is evident that the public opinion in favour of *euthanasia* increased over the years as the votes in favour of *euthanasia* raised from thirty-seven per cent to seventy-five per cent.

Oregon, the State in U.S.A. which has enacted a law, the *Death with Dignity Act*, 1997, authorizes the physicians to prescribe lethal amounts of medication which patients then administer themselves. This legislation establishes a right to cause one’s own death in strictly defined circumstances. It creates an elaborate procedure to ensure the considered and voluntary nature of the action. In the first six years after the Act brought in to effect two hundred and sixty-five legal prescriptions have been reported of which one hundred and seventy-one were for committing physician assisted suicide.\(^{64}\)

However, the U.S. Supreme Court has diluted the movements seeking to legalize physician assisted suicide and *euthanasia*, by upholding the State law in New York which had banned physician assisted suicide as in consonance with the provisions of the *Constitution*, defeating arguments contenting suicide was protected by the “Due process and Equal Protection Clause.”\(^{65}\)

Moreover, some of the complex jurisprudential issues have come to light in the context of the American debates on *euthanasia* and the Court decisions in *Nancy Cruzan* \(^{66}\) and in *Wanglie, Re* \(^{67}\) *Terri Schiavo’s*. \(^{68}\) *In re Schiavos* from Florida brought the issue of *euthanasia* to the limelight in 2005. It focused on the legality of proxy decision making for the

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\(^{65}\) *Washington v. Glucksberg*, 138 L.Ed.2d 772 and *Vacca v. Quill* 138 L.Ed.2d 834.

\(^{66}\) *Cruzan v. Director, Missouri Dept. of Health* 110 S.Ct. 2841, 2852(1990).


incompetent. Under the existing laws in Florida if a person has made an advance directive, to an appointed proxy, regarding refusal to treatment or termination of life, such a wish has to be fulfilled.

Thus in U.S.A. Oregon and Washington are the only States which have legalized *euthanasia* whereas in other States it is an illegal act.

4.2.2 *EUTHANASIA: THE PRESENT STATE OF LAWS IN A FEW STATES OF USA:*

Medical management of dying process has been part of American culture for approximately one hundred and fifty years. The right to die movement started in the year 1937, grabbed the public attention in *Karen Ann Quinlan’s* case. This case made the public aware of the advancement that medical science has made to extend the life indefinitely in a persistent vegetative state. Apart from this a number of cases *Conroy*, *Brophy*, *Jobes* to *Cruzan*, were having precise circumstances under which it was thought appropriate to withhold or withdraw various forms of medical aids, such as, respiratory support, dialysis, artificial nutrition and hydration. Since *Quinlan*, the United States has developed an impressive body of case law and State Statute that protects, permits, and facilitates the characteristic American strategy of dealing with end-of-life situations.

The Hemlock society founded by Derek Humphry in 1980, a non profit educational organisation that supports the option of voluntary

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70 Supra note 60.
74 Supra note 66.
euthanasia for the terminally ill, has provided public awareness of euthanasia for the terminally ill patients to end their lives in a planned manner. A pro-euthanasia group in the State of Washington intends to expand its mission to include not only terminally ill but also incurably ill patients, and the Hemlock Society has sought to legalize physician assisted suicide for people with ‘incurable conditions’. The Hemlock society argues that modern western culture is now adequately educated, there is co-ordination of individuals in the society, and acceptance of social responsibility to obey the law, hence euthanasia should be legalized for hastening death of terminally ill patients only on their voluntary request.

In order to facilitate right to die present laws must be carefully modified to prevent its abuse. Derek Humphry advocates self-deliverance for terminally ill patients. According to him, “[s]elf-deliverance is the terminally ill individual electing a hastened death to avoid additional suffering. If a person cannot control his crucial phase of existence, what real freedom is there in his life?” Humphry supports his argument with a few examples: Quadriplegic Elizabeth Bouvia won from the highest Court in California, the right not to be force-fed. The family of brain-damaged Patrick Brophy in Massachusetts was given permission to take him off life-supports and be allowed to die naturally. The Court ruling in Grand Junction, Colorado, that a severely disabled

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78 Ibid.
79 Bouvia v Superior Court 225 Cal. Rptr. 297 (1986).
80 Supra note 72.
man, Hector Rodas, could starve himself to death without being tarnished with the libel of ‘suicide’. 82

Further, two important cases came before the US Supreme Court, from Washington and New York, both challenging the potential for a constitutionally protected right to physician assisted suicide. Groundbreaking decisions were handed down by the Ninth Circuit Court in Washington and Second Circuit Court in New York *Compassion in Dying v. State of Washington* 83 and *Quill v. Vacco*. 84 The Supreme Court in both cases unanimously ruled that there was no constitutionally protected right to physician assisted suicide.

Thus, the prohibition on physician assisted suicide in the legislation of both the States was accordingly upheld. The arguments in both cases were based on liberty-interest right and that there is a right to commit suicide which includes right to assistance in doing so. The Supreme Court in *Cruzan’s* 85 case had upheld the right to refuse medical treatment which did not include right to physician’s assistance in dying. A number of people who were to have a legal break through on the question of a constitutionally protected right to physician assisted suicide were extremely disappointed by the decision of the Supreme Court.

Nevertheless, as the heat of public opinion was on the rise more people started thinking for a quick and peaceful death through *euthanasia*. In the United States of America a series of State-wide referenda have been taken place throughout the 1990’s in Washington, California and Oregon. 86 Not only the citizens but also the doctors and

82 Supra note 77 at 105, 106.
83 *Compassion in Dying v. Washington*, 49 F. 3D 586.
84 *Vacco v..., supra* note 65.
85 Supra note 66.
nurses were in favour of *euthanasia* and active canvassing was on in many States to legalize *euthanasia*.\(^87\)

The State of Michigan, where Dr Jack Kevorkian has already assisted more than twenty suicides, has been in the forefront of this debate.\(^88\) The Michigan Supreme Court ruled that there was no constitutional right to physician assisted suicide and Dr Kevorkian was penalised for his illegal act.

Another important development in the USA has been the establishment of *Euthanasia Research and Guidance Organization* ERGO, a new organisation.\(^89\)

The ethical and legal dilemmas surrounding the case of Terri Schiavo, a woman who was in a persistent vegetative state after suffering cardiac arrest, became the centre of a national debate on *euthanasia*.\(^90\) Ms. Schiavo had been sustained by artificial hydration and nutrition through a feeding tube for fifteen years, and her husband was locked in a public legal struggle with her parents and siblings about whether such treatment should be continued or stopped. The Florida Trial Court Judge ruled that the diagnosis of a persistent vegetative state met the legal standard of ‘clear and convincing’ evidence, hence treatment should be discontinued and this decision was reviewed and upheld by the Florida second District Court of Appeal.\(^91\) Public opinion polls indicated solid majority in favour

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\(^87\) Basant, T., “*Euthanasia- Why A Taboo?*” in Menon, Anila, V., (ed.), *supra* note 69 at 119.

\(^88\) Supra note 35 at 346.

\(^89\) The *Euthanasia* Research and Guidance Organization carries on research on public policies, medical developments, national and international status of right to die and provides education on aid in dying in terminal illness. *See, supra* note 63 at 280.


\(^91\) Ibid.
of withdrawing Schiavo’s feeding tube and strong criticism of the frantic legal and political efforts to block the eventual outcome.\footnote{Kenneth, Jost, “The issues”, \textit{CQ Researcher}, vol. 15, No. 18, May 13, 2005, p. 424.}

All these events and the overwhelming public support resulted in making Oregon the first State in the United States to legalize \textit{euthanasia}.

\subsection*{4.2.2.1 OREGON: THE FIRST STATE TO LEGALIZE \textit{EUTHANASIA}}

In 1994, the legislation for Oregon \textit{Death with Dignity Bill} was introduced for the first time. During 1994 federal elections, a measure legalizing physician assisted suicide was approved by fifty-one per cent to forty-nine per cent majorities of the popular votes.\footnote{Supra note 35 at 345.} Among the American jurisdictions, Oregon is the first State to experiment the physician assisted suicide laws in practice. Epstein has hailed Oregon’s physician assisted suicide law as “tightly drafted legislation” and an “all too-conscientious attempt” to avoid cases of abuse, mistake, and pressure.\footnote{Supra note 52 at 116.} Similarly, Otlowski endorses, that “many fears associated with the legalization of physician assisted suicide [in Oregon] have simply proven unfounded”.\footnote{Supra note 63 at xx.}

The Oregon’s \textit{Death with Dignity Act} was approved in November 1994 general elections by 627,980 votes (51.3 per cent), the act was challenged by George W. Bush’s administration but the Supreme Court upheld the State legislature in 1997.\footnote{\url{http://wapedia.mobi/en/Oregon_Death_with_Dignity_Act}, [accessed on 16/10/2009].}

Although \textit{DWDA} being legal in Oregon for fourteen years, it remains highly controversial. On November 6, 2001, U.S. Attorney General John
Ashcroft issued a new interpretation of the *Controlled Substances Act*, which would prohibit doctors from prescribing controlled substances for use under the *DWDA*. The Attorney General’s contention was that, all the medications prescribed under the Act have been barbiturates, which are controlled substances and, therefore, would be prohibited by this ruling. On April 17, 2002, U.S. District Court Judge upheld the *Death with Dignity Act*. On September 23, 2002, Attorney General Ashcroft filed an Appeal, requesting the Ninth U.S. Circuit Court of Appeals to overturn the District Court’s ruling. The appeal was denied on May 26, 2004 by a three-judge panel. On July 13, 2004, Ashcroft filed an appeal requesting that the Court rehear his previous motion with an 11-judge panel. On August 13, 2004, the Court declined to rehear the case. On November 9, 2004, Ashcroft seeked the U.S. Supreme Court to review the Ninth Circuit’s decision.

However, On October 5, 2005, the Supreme Court of United Sates in *Gonzales v. Oregon*, overruled the Attorney General’s interpretation of the *Controlled Substances Act*. Chief Justice, John Roberts in this case held that “the Attorney General of United States can enforce Controlled Substances Act, against the physicians only if it is in compliance with the Oregon State law for physician assisted suicide.” Thus, *Oregon's Death with Dignity Act* remained in effect in the State of Oregon.

### 4.2.2.2 OREGON’S DEATH WITH DIGNITY ACT: SOME SALIENT FEATURES:

The Object of the *Death with Dignity Act* is to allow terminally ill patients a painless, easy, and quick death. The Act allows terminally ill

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98 Ibid.
100 http://www.deathwithdignity.org, [accessed on 01/03/2011].
Oregon residents to obtain and use prescriptions from their physicians for self-administered, lethal medications.\textsuperscript{101} Under the Act, ending one's life in accordance with the law does not constitute suicide.\textsuperscript{102} The DWDA specifically prohibits active \textit{euthanasia}, where a physician or other person directly administers a medication to end another's life.\textsuperscript{103}

To request a prescription for lethal medications, the DWDA requires that a patient must be:

- An adult (18 years of age or older)\textsuperscript{104}
- A resident of Oregon,\textsuperscript{105}
- Capable (defined as able to make and communicate health care decisions),\textsuperscript{106} and
- Diagnosed with a terminal illness that will lead to death within six months or so.\textsuperscript{107}

Patients meeting these requirements are eligible to request a prescription for lethal medication from a licensed Oregon physician.\textsuperscript{108} To receive a prescription for lethal medication, the following steps must be fulfilled:

- The patient must make two oral requests to his or her physician, separated by at least fifteen days.\textsuperscript{109}

\begin{footnotes}
\footnote{101}{127.805, 2.01, sub-cl. (1), \textit{Oregon’s Death with Dignity Act}, 1997 and \textit{Oregon Revised Statute}, 2007.}
\footnote{103}{Ibid.}
\footnote{104}{127.880, 1.01, sub-cl. (1), \textit{Oregon’s Death with Dignity Act}, 1997 and \textit{Oregon Revised Statute}, 2007.}
\footnote{106}{127.880, 1.01, sub-cl. (11), \textit{Oregon’s Death with Dignity Act}, 1997 and \textit{Oregon Revised Statute} 2007.}
\footnote{107}{127.880, 1.01, sub-cl. (12), \textit{Oregon’s Death with Dignity Act}, 1997 and \textit{Oregon Revised Statute}, 2007.}
\footnote{108}{127.880, 1.01, sub-cl. (10), \textit{Oregon’s Death with Dignity Act}, 1997 and \textit{Oregon Revised Statute}, 2007.}
\end{footnotes}
• The patient must provide a written request to his or her physician, signed in the presence of two witnesses.  

• The prescribing physician and a consulting physician must confirm the diagnosis and prognosis.

• The prescribing physician and a consulting physician must determine whether the patient is capable.

• The prescribing physician must inform the patient of feasible alternatives to DWDA, including comfort care, hospice care, and pain control.

To comply with the law, physicians must report to the Department of Human Services all prescriptions for lethal medications.

Reporting is not required if patients begin the request process but never receive a prescription. In 1999, the Oregon legislature added a requirement that pharmacists must be informed of the prescribed medication's intended use. Physicians and patients who adhere to the requirements of the Act are protected from criminal prosecution, and the choice of DWDA cannot affect the status of a patient's life insurance policies. Physicians, pharmacists, and health care systems are under no obligation to participate in the DWDA.

112 Ibid.
113 Ibid.
114 127.865, 3.11, sub-cl. (1) (a), Oregon’s Death with Dignity Act, 1997 and Oregon Revised Statute, 2007
115 127.815, 3.01, sub-cl. (1) (i), Oregon’s Death with Dignity Act, 19947and Oregon Revised Statute, 2007.
The Oregon Revised Statutes specify that action taken in accordance with the *DWDA* does not constitute suicide, mercy killing or homicide under the law.\(^{117}\)

It is to be noted that the *DWDA* provides that patients may obtain a prescription for medication enabling them to end their lives humanely with dignity, because the Act does not allow the third party to administer the medication, patients are required to take the lethal dosage themselves.\(^{118}\)

### 4.2.2.3 REPORTING SYSTEM UNDER DWDA:

Department of Human Service [hereinafter referred as DHS] is required by the Act to develop and maintain a reporting system for monitoring and collecting information on participation in the *Death with Dignity Act*. To fulfil this mandate, DHS uses a system involving physician and pharmacist compliance reports, death certificate reviews, and follow-up questionnaires from physicians.

When a prescription for lethal medication is written, the physician has to submit to DHS the required information. The DHS maintains the death certificates of the patients. These death certificates confirm patients' deaths, and provide patient demographic data, for *e.g.*, age, place of residence, educational attainment. In addition, using the authority to conduct special studies of morbidity and mortality, physicians prescribing lethal drugs are asked to complete a follow up questionnaire after the patient’s death. The information regarding physician’s reports, death certificates, insurance status and enrolment in hospice should be made available. It is also asked, why the patient requested a prescription,


including concerns about the financial impact of the illness, loss of autonomy, decreasing ability to participate in activities that make life enjoyable, being a burden, loss of control of bodily functions, uncontrollable pain, and loss of dignity.

4.2.2.4 **DWDA: DATA ANALYSIS: OREGONIAN EXPERIENCE:**

Despite dire predictions of a “death stampede”, and of “suicide tourism”, the number of people taking advantage of the law, to procure lethal doses of medication from physicians, has been small. A May 2006 Gallup poll on values and beliefs found that sixty-nine per cent of Americans still support right to die laws for terminally ill patients, whether through *euthanasia* or physician assisted suicide. Under **DWDA**, terminally-ill adult Oregonians are allowed to obtain and use prescriptions from their physicians for self-administered, lethal doses of medications. The key findings from 1998 to 2004 are listed below:

Lethal prescriptions issued and physician assisted suicides under *Oregon’s Death with Dignity Act*

<table>
<thead>
<tr>
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<th>1998</th>
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</tr>
</thead>
<tbody>
<tr>
<td>No of Prescription</td>
<td>24</td>
<td>33</td>
<td>39</td>
<td>44</td>
<td>58</td>
<td>67</td>
<td>60</td>
</tr>
<tr>
<td>No of assisted deaths</td>
<td>16</td>
<td>27</td>
<td>27</td>
<td>21</td>
<td>38</td>
<td>42</td>
<td>37</td>
</tr>
</tbody>
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From the above table it can be established beyond doubt that the number of deaths as compared to the number of prescriptions is very less.

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The patients are classified by year of participation based on when they injected the legally-prescribed lethal medication. Using demographic information from Oregon death certificates, patients are compared who used the *Death with Dignity Act* with other Oregonians who died from the same diseases. Annual rates were calculated using numerator and denominator data from the same year, when possible.

During 2008, eighty-eight prescriptions for lethal medications were written under the provisions of the *DWDA* compared to eighty-five during 2007. Of these, fifty-four patients took the medications, twenty-two died of their underlying disease, and twelve were alive at the end of 2008. In addition, six patients with earlier prescriptions died from taking the medications, resulting in a total of sixty deaths by involving the provisions of *DWDA* deaths during 2008. This corresponds to an estimated 19.4 *DWDA* deaths per 10,000 total deaths. Since the law was passed in 1997, 401 patients have died under the *DWDA*. During 2008,
two referrals were made to the Oregon Medical Board for incorrectly completed reporting forms. The Oregon Medical Board found no violations of “good faith compliance” with the Act and did not sanction any physicians for unprofessional conduct under the Act.

Thus from the above details it is evident that though euthanasia is legalised in Oregon, there are no incidences of misuse of law leading to the slippery slope argument. The Death with Dignity Act can be looked upon as model for other countries.

4.2.2.5 CALIFORNIA AND ITS NATURAL DEATH ACT:

In 1976, California became the first State to enact Natural Death Legislation. It allows a physician to withdraw or withhold “life-sustaining procedures” only from a patient with terminal condition. The California Natural Death Act, attempts to give dying patients a right to control their treatment. By means of a written directive, patients can direct their physicians to withhold or withdraw artificial-life-sustaining procedures when death is imminent regardless of treatment. Later on efforts were made for legalisation of physician assisted suicide, as the Natural Death Act does not allow active euthanasia. In 1988 the Hemlock society made an attempt to gather signatures to qualify the proposed initiative for the ballot, but did not succeed. Later, a Bill for Physician Assisted Suicide was defeated by fifty-four per cent to forty-six per cent in 1992. Again in May 1999 this Bill was strongly opposed causing many protests. Thus, legalization of physician assisted suicide for terminally ill patient has been an unproductive effort in California.


4.2.2.6 WASHINGTON AND ITS DEATH WITH DIGNITY ACT:

A Bill to legalize Physician Assisted Suicide was proposed by the Hemlock Society but was opposed by the Catholic Church and the Washington Medical Association, got defeated fifty-four per cent to forty-six per cent on November 5, 1991. Thereafter, proponents succeeded in the second attempt to legalize physician assisted suicide. On November 4, 2008, the State of Washington passed initiative 1000, the State's Death with Dignity Act, which became law on March 5, 2009.

The law states that, in order to participate, a patient must be:

- 18 years of age or above,
- a resident of Washington,
- capable of making and communicating health care decisions for him/herself, and
- diagnosed with a terminal illness that will lead to death within six months.

It is up to the attending physician to determine whether these criteria have been met. At least thirty-six terminally ill people died last year after taking lethal medication prescribed by doctors under Washington State’s new physician assisted suicide law. The report is based on data collected over ten months, beginning in March 2009, when Washington became the second State, after Oregon, to legalize physician assisted

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124 [http://www.religioustolerance.org/euth_usl.htm](http://www.religioustolerance.org/euth_usl.htm), [accessed on 30/10/2009].


126 Ibid.

suicide. The law, passed by ballot initiatives, allow mentally competent, terminally ill adults to obtain a doctor’s prescription for a lethal dose of medication.

4.2.2.7 MICHIGAN AND ITS EUTHANASIA LOBY:

Michigan was viewed as the home State of ‘physician assisted suicide’, because of its most visible practitioner, Dr. Jack Kevorkian. Although public opinion polls in Michigan show strong support for physician assisted suicide in certain circumstances, physician assisted suicide has been strongly opposed by a number of legislators and prosecutors, and by the politically powerful Michigan Right to Life lobby. Michigan Supreme Court in 1994 ruled that no Constitutional right to suicide exists including physician assisted suicide.\(^{128}\)

The Michigan law prohibits a physician from prescribing medications to terminally ill patients in quantities that would empower the patients to use the medications to hasten inevitable death, and prohibits them from instructing patients how to make use of the medications for this purpose.\(^{129}\)

4.2.2.8 EUTHANASIA: THE MONTANA EXPERIENCE:

The Montana Constitution provides Montanans with rights beyond those provided by the United States Constitution.\(^{130}\) Two of these rights, individual dignity and the right to privacy, could potentially provide terminally ill Montanans a right to medical assistance in hastening

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\(^{130}\) [http://www.compassionandchoices.org](http://www.compassionandchoices.org), [accessed on 1/3/2011].
death. \footnote{131} If this proves to be the case, existing Montana laws, which criminalize physician assisted suicide, may be found to be too broad and restrictive to pass the strict scrutiny test of constitutionality.

Montana's \textit{Rights of the Terminally Ill Act}, 2009, assures that withdrawal of life-support occurs only as the result of the terminally ill person making a considered and documented decision. There is possibility that Montana's current laws restricting physician assisted suicide may be challenged and fail to survive constitutional scrutiny. \footnote{132} It may be prudent for the people of Montana to consider legislation that would provide reasonable and constitutionally acceptable regulation of a terminally ill Montanan's right to medical assistance in hastening death. Montana could accomplish this by expanding the \textit{Montana Rights of the Terminally Ill Act} with provisions similar to those of Oregon's \textit{Death with Dignity Act}. \footnote{133}

Montana may become the third State in US to transform physician assisted suicide into a medical treatment for terminally ill patients. In order to avoid this, a Bill to prohibit physician assisted suicide in Montana has been introduced by Mr. G. Hinkle. \footnote{134}

On the other hand, the Montana Supreme Court ruled that the State law protects doctors in Montana from prosecution for helping terminally ill patients die. \footnote{135} In fact, in \textit{Baxter, et. al. v. Montana}, \footnote{136} on December 31, 2009, the Montana Supreme Court ruled that “terminally ill patients in
Montana have the right to choose aid in dying under State law". Thus, the situation of physician assisted suicide appears ambiguous in the State of Montana. There is no specific legislation allowing physician’s assistance in dying, at the same time the law protects doctors from legal liability for assisting a terminally ill patient die.

4.2.3 JUDICIAL RESPONSE IN THE U.S.A AND THE EUTHANASIA LAW:

*Euthanasia* law in any system basically ought to address the request for right to die with dignity for both, competent [those who are suffering from terminal illness and can decide on their own where and when to put in a request] and the incompetent [PVS] patients. *The* judicial tendency if directed towards equating incompetent patients with competent ones may create certainly difficulties, such as, autonomous choice, surrogate decision making, *etc.*, and sometimes turn a blind eye to the current, physical interests of the patients.138

A judicial decision is normally based not only on reasons which are “legal”, but also concern the application of general rules of logic and argumentation, common sense, the framework of culture, experience and values, and the recourse to probability.139

Judges Rothstein and Reinhardt established that all persons have an inherent right to choose their own fate as a persuasive argument for terminally ill patients.140 Justice Stevens and Souter approved the same,

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140 *Supra* note 52 at 76.
and Justice O’Connor refused to express his opinion with respect to terminally ill patients.\textsuperscript{141}

Karen Ann Quinlan\textsuperscript{142} and Theresa Marie Schiavo\textsuperscript{143} were the two controversial cases over the withdrawal of medical treatment for patients in persistent vegetative state. Both Quinlan and Schiavo spent their last days in a persistent vegetative state.

Ms. Quinlan had a breathing problem which led to prolonged anoxia (insufficient supply of oxygen in the blood), due to which she was dependant on a respirator for seven months. Her father requested to remove the respirator and allow her to die naturally instead of prolonging her life for no betterment. Because the situation was both for doctors and the law, it led to judicial reviews that culminated in a landmark 1976 decision that set the substantive norms for decision-making for incompetent persons in New Jersey and many other jurisdictions as well.\textsuperscript{144} The New Jersey Supreme Court proceeded by first finding that the State’s interests in preserving life, preventing suicide, and upholding medical ethics were not sufficient to outweigh a person’s common law and constitutional right to refuse necessary medical care.\textsuperscript{145}

The Court then made a pivotal move on which most State and federal analysis hinges that the incompetent patient should not have any fewer rights than the competent patient only because the patient is incompetent.\textsuperscript{146} It was also held that the decision of her father to have the respirator removed was reasonable, if Karen was in a position to do so she would have taken the same decision.

\textsuperscript{141} Ibid.
\textsuperscript{142} Supra note at 60.
\textsuperscript{143} Supra note 68.
\textsuperscript{144} Supra note 60.
\textsuperscript{145} Id., at 663,664.
\textsuperscript{146} Id., at 664.
One of the most significant and sensitive judicial decisions, *i.e.*, surrogate’s decision in case of incompetent patients, was granted by the Court against Mr. Quinlan’s request. Unlike the Lower Court, which felt that Mr. Quinlan’s decision would be distorted by his emotional involvement in his daughter’s plight, the New Jersey Supreme Court found no reason to depart from the ordinary presumption of guardianship by next kin.\(^ {147}\)

In practical terms, the *Quinlan* decision focused on Karen’s dismal prognosis, stating that “the focal point of decision should be the prognosis as to the reasonable possibility of return to cognitive and sapient life, as distinguished from the forced continuance of that biological vegetative existence to which Karen seems to be doomed.”\(^ {148}\)

This aspect of the decision was thus a fairly straightforward holding that, when a patient is reliably determined to have virtually no chance of returning to a cognitive existence, the patient’s family can choose to have treatment terminated.\(^ {149}\) The New Jersey Supreme Court’s recognition of a substantive approach based on substituted judgment became the legal paradigm of decision-making in most other States.

*Quinlan* was followed by Florida Courts in a few cases. Florida’s first major engagement with the issue occurred in 1984 in *John F. Kennedy Memorial Hospital v. Bludworth*,\(^ {150}\) a case holding that a guardian need not get Court approval to execute the terms of living will of a man who was comatose and terminally ill.\(^ {151}\) Likewise, in *re Storar*,\(^ {152}\) the Court

\(^{147}\) *Supra* note 138 at 383.


\(^{149}\) *Ibid.*

\(^{150}\) *John F. Kennedy Memorial Hospital v. Bludworth* 58. NJ 576 (1971)


\(^{152}\) 52 NY 2d 363 (1981).
not only articulated, but also took seriously, the legal requirement that the proponent of withholding or withdrawing treatment must prove by “clear and convincing evidence” that is what the patient would have wanted.\textsuperscript{153} Similarly, in Re Conroy,\textsuperscript{154} the Court focused on the patient’s physical pain and suffering, requiring that they outweigh any benefits of her life.\textsuperscript{155} Six years later in Re Guardianship of Browning\textsuperscript{156}, the Florida Supreme Court broadened the right and added that a person who was incompetent and comatose has a constitutional right to have her previously expressed wishes, whether expressed orally or in writing, followed by a guardian without the court approval.\textsuperscript{157}

These results were then codified in \textit{Health Care Advance Directive} provisions of Florida’s \textit{Civil Rights Statutes}.\textsuperscript{158} This statute is a very liberal law which allows removal of life support even if there is no evidence of a prior directive only to serve the best interest of the patient.

In \textit{Quinlan}’s case the family members requested the removal of the respirator but the doctors were reluctant to do so, while in \textit{Terri Schiavo}’s case there was dispute on removal of the feeding tube amongst the family members, \textit{i.e.}, her husband and her parents. In 1990, Terri suffered a cardiac arrest and brain damage due to lack of oxygen.\textsuperscript{159} She was given a Percutaneous Endoscopic Gastrostomy (PEG) to provide nutrition and hydration and Michael, her husband, was appointed her guardian.\textsuperscript{160} Several hospitals or rehabilitation facilities provided care for Terri over

\begin{footnotes}
\item [153] Supra note 138 at 376.
\item [154] Supra note 71.
\item [155] Supra note 138 at 377.
\item [156] 452 So. 2d 921 (Flo. 1984).
\item [157] Supra note 151.
\item [158] Ibid.
\item [160] Ibid.
\end{footnotes}
the next several years.\textsuperscript{161} At a certain point of time a dispute arose over the proceeds of the malpractice litigation arising from Terri’s treatment after her cardiac arrest, Michael and Terri’s parents disagreed over the course of the therapy being provided to Terri.\textsuperscript{162} In May 1998, Michael petitioned a Florida Court to authorize the removal of Terri’s PEG tube.\textsuperscript{163} The Schindlers, her parents opposed the request, claiming that Terri would have wanted to remain alive.\textsuperscript{164} Following a trial, Pinellas County Circuit Judge George Green ruled in February 2000 that Terri was in a persistent vegetative state and would have wanted the PEG tube removed.\textsuperscript{165}

The second District Court of Appeal upheld the ruling, and the Florida Supreme Court declined review.\textsuperscript{166} The Schindlers then began a series of legal actions that delayed the execution of the Court’s decision to have the feeding tube removed until March 18, 2005.\textsuperscript{167} Thereafter the media publicity and the intervention of George Bush made Terri’s case a controversial debate in the country. Her life was protected by the feeding tube, but there was no hope of recovery as Terri was in a vegetative state, thus the State’s interest in protection of life was in fact prolonging her death. A team of five neurologists was appointed to advice the Court on Terri’s health condition. At least three different guardians \textit{ad litem} served throughout the litigation, including professor of law and public health.\textsuperscript{168}

\textsuperscript{161} Ibid.
\textsuperscript{162} Ibid.
\textsuperscript{163} Ibid.
\textsuperscript{164} Ibid.
\textsuperscript{165} Ibid.
\textsuperscript{166} Ibid.
\textsuperscript{167} Ibid.
One extraordinary turn of events in this ongoing saga occurred in October 2003, when Florida politicians succeeded in stopping execution of the judicial order to have her feeding tube removed.\textsuperscript{169} This action occurred after all avenues of the judicial relief had been exhausted and the gastrostomy tube was withdrawn pursuant to Court order on October 15, 2003.\textsuperscript{170}

A state wide campaign led by Randall Terry of Operation Rescue fame, and supported by right to life and disability rights group, flooded the State legislature with e-mails, faxes, and other communications.\textsuperscript{171} The legislature, which was in a special session to consider medical malpractice reform, quickly passed, and Governor Jeb Bush signed, “Terri’s Law”, this law allowed the Governor “to issue a one-time stay in certain cases”, and the PEG was reinserted.\textsuperscript{172}

Although Michael Schiavo was ultimately successful in having “Terri’s Law” found unconstitutional, the litigation delayed final resolution of the case for another eighteen months until Terri’s death on March 31, 2005.\textsuperscript{173}

The Florida Legislature sought to pass a Statute that would undo the judicial ruling without running a foul of the separation-of-powers issues that undercut “Terri’s Law”, but the Florida Senate balked at a law requiring an explicit directive to have nutrition and dehydration withheld.\textsuperscript{174} Terri’s feeding tube was removed on March 18, 2005.\textsuperscript{175}
Republicans in the House and Senate reconvened to pass, with bipartisan supported a law granting jurisdiction to the United States District Court for the Middle District of Florida for *de novo* review of whether the Florida courts had respected Terri’s constitutional rights. The Federal Judge refused to reinsert the feeding tube, this decision was upheld by the United States Court of Appeals for the Eleventh Circuit and the United Supreme court denied to review the matter, and finally the legal battle to save Terri’s life was over. Schindler’s (Robert Schindler, Terri’s father) heart figuratively broke when both state and federal courts denied his family’s attempts to provide care for his daughter as her estranged husband Michael Schiavo sought her death.

In the aftermath of Terri’s *euthanasia* death, Robert Schindler started a foundation with the rest of his family to help other disabled patients.

Prior to Terri’s case, in *Washington v. Glucksberg*, the Ninth Circuit held that the State of Washington’s ban on physician assisted suicide was unconstitutional because it denied a liberty interest—“the right to choose a humane, dignified death”—that was protected by the Fourteenth Amendment. However, the Supreme Court, in a unanimous decision, reversed the Ninth Circuit and held that Washington’s physician assisted suicide ban did not violate the “due process” or “equal protection” clauses. The Court upheld the State restrictions in order to protect the “vulnerable groups” from forced or non voluntary *euthanasia*.

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179 *Washington v…*, *supra* note 65.

On the other hand, the jury in St. Petersburg, Florida, on December 1, 1988, acquitted Dr. Peter Roiser from charges of aiding his wife to die who was suffering from cancer of lung, brain and adrenal glands.\textsuperscript{181}

Although two States, Oregon and Washington have legalised physician assisted suicide, active \textit{euthanasia} remains illegal in all the other States. The judicial decisions of different Courts from the USA recognize passive \textit{euthanasia}, the right to refuse or withdraw treatment. The United States Supreme Court has determined that no right exists for physician assisted suicide, however, States are free to enact laws to permit it.\textsuperscript{182}

\textbf{4.3. THE NETHERLANDS EXPERIENCE OF LEGALIZED \textit{EUTHANASIA}}:

The Netherlands is the first country to legalize \textit{euthanasia}. Active \textit{euthanasia} is prohibited by law but physician assisted suicide is permitted only if all the requisite conditions are fulfilled.

The Netherlands is one of the very few countries in the world with a regularly operating physician assisted suicide as a course of therapy.\textsuperscript{183} \textit{Euthanasia} has been accepted in the Netherlands as a responsible medical procedure long before it became legalized in April 2001. The Ministry of Public Health, Wellbeing and Sports claims that this practice allows a person to end their life in dignity after received every available type of palliative care.\textsuperscript{184} The socio-economic system of the country has its foundation in the Catholic social philosophy of “corporatism” that

\textsuperscript{181} Supra note 77 at 139-141.
\textsuperscript{182} Supra note 128
\textsuperscript{183} http://www.proquest.umi.com, [accessed on 18/8/2009].
\textsuperscript{184} Supra note 52 at 103.
\textsuperscript{184} http://www.findarticles.com/p/articles, [accessed on 27/10/2009].
abandons the capitalistic idea of competitive individualism in favour of an “ideology of common responsibility for the common good”.  

On ideological issues, such as, abortion or euthanasia where no definite resolutions could be sought, a policy of tolerance was practised and avoidance and neutrality became the methods by which the government would postpone having to make any decisions in the areas where life and death meet.  

The voluntary euthanasia movement in Netherlands as compared to the USA and the UK started at a later stage. Physician assisted suicide, understood as the termination of the patient’s life at the patient’s explicit and persistent request is the more frequent form of euthanasia. In most of the cases, the Dutch term euthanasia requires self-administration of the lethal dose by the patient himself in order to procure death, whereas a few cases in which a self-administered drug does not prove fully effective the physician’s involve in completion of the lethal process to attain death, is an accepted practice.

Before legalization of physician assisted suicide, according to the Dutch Penal Code, euthanasia was a crime. However, it was not qualified as murder, as it is in most of the countries, and was dealt under separate provisions. According to Article 293 of the Dutch Penal Code, “anyone who takes another person’s life at his explicit and earnest request will be punished by imprisonment to a maximum of 12 years.”

The euthanasia debate was revived with the Postma in 1973. The issue in this case was a death of a seventy-eight-year-old lady who was

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assisted in dying by her own son after administering morphine on her request. At that time there were no legal provisions in support of *euthanasia* or assisted suicide, hence the son was sentenced to jail for administering morphine.

In 1991, a comprehensive, nationwide study requested by the Dutch government, popularly known as the Remmelink Commission report, provided for the first objective data about the incidence of *euthanasia* and physician assisted suicide.\(^{190}\) Thereafter, in 1994, under highly exceptional circumstances, the Supreme Court ruled in *Chabot*\(^{191}\), that physician assisted suicide may be justified for a patient with nonsomatic, psychiatric illness like intractable depression, but such cases are extremely rare and require heightened scrutiny.\(^{192}\)

The present legal status of *euthanasia* permits termination of life, legally termed as the ‘life-ending on request’ by physician assisted suicide. The Dutch law protects doctors performing *euthanasia* from prosecution for homicide provided the physician has followed the guidelines given by the law.

The central provision of the guidelines is as follows:

Patient should make an explicit and deliberate voluntary request after having full information about his or her health condition and prospects.

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\(^{191}\) *Chabot* Netherlands Jurisprudentie, District Court Groningen, 1995 March.

\(^{192}\) Supra note 75 at 52.
Patient must have intolerable suffering or unbearable pain, without any hope of recovery and with no acceptable solutions to alleviate the patient’s situation.

Performing *euthanasia* or physician assisted suicide only after consultation of two physicians and with ‘due care’.

*Euthanasia* must be performed by a physician and not by nurse or any other person.\(^{193}\)

Based on these guidelines attempt may be made for physician assisted suicide. Eighty per cent of the Dutch citizens support that individuals should have a choice legally available at the end of life.\(^{194}\) Though people are satisfied with guidelines laid down and are in favour of physician assisted suicide in Netherlands, the opponents always express the fear of misuse of these legal provisions by physicians or relatives of the patients. Whereas the proponents of *euthanasia* have claimed that in Netherlands only voluntary *euthanasia* is permitted and non voluntary *euthanasia* is strictly prohibited. It is also asserted by the supporter’s of *euthanasia* that guidelines provided for physician assisted suicide are adequate, stringent and precise to prevent any ‘slide down a ‘slippery slope’ to *euthanasia* without request, and that there has been no evidence of such slide in Netherlands.’\(^{195}\)

John Keown discusses the slippery slope argument in two forms, one is the ‘logical’ form and other is the ‘empirical’ from. According to him based on logical form, the alleged justification of voluntary “*euthanasia* rests fundamentally not on the patient’s autonomous request *but on the*
doctor’s judgment that the request is justified because the patient no longer has a life ‘worth’ living.” 196 Whereas, the empirical form argument is based on a principle that even if there is a difference between voluntary and non-voluntary euthanasia, in practice it is complicated to prevent the misuse or abuse of the prescribed guidelines. 197

Similarly, Han Van der Horst, the Dutch historian, attempts to justify the public attitude towards physician assisted suicide in Netherlands. He claims that legalization of physician assisted suicide was possible in Netherlands because the Dutch people are egalitarian, tolerant, freedom loving, believers in social solidarity, practical, conscientious, careful, moralistic, paternalistic, inclined to respect authority, conformist, punctual, calm, and very attached to their privacy. 198

Dutch physicians do not advocate physician assisted suicide as a treatment option but is considered only when all other alternates for the terminally ill patient are exhausted. 199

The Netherlands has had a review procedure for euthanasia and physician assisted suicide since 1991. Although the system has increased reporting, around half of the cases remain unreported, non-reporting seems to be associated with a lack of consultation with another doctor.

In Netherlands physician assisted suicide is allowed not only on grounds of patient’s autonomy or even the alleviation of pain, but specifically on the “assessment of the patient’s quality of life as

196 Ibid.
197 Ibid.
198 Supra note 186 at 293-294.
“degrading” or “deteriorating” or “hopeless” [condition] stands as the ultimate justification for killing."

It is within this context that the medical practices and legal decisions of the Netherlands should be understood and as the Netherlands is the first country in the world to legalize euthanasia, all the other countries including India can learn lessons from the Dutch experiences.

4.3.1 THE LANDMARK DECISIONS IN THE NETHERLANDS AND THE EUTHANASIA LAW:

In Postma\textsuperscript{201} a Dutch physician, was tried for homicide and after a very closely followed trial, received only a conditional one-week jail sentence along with one year of probation.\textsuperscript{202} Between 1969 and 1980, at least three other prosecutions for physician assisted suicide in the Netherlands resulted in jail sentences ranging from six to eighteen months.\textsuperscript{203}

However, in 1984, in Alkmaar\textsuperscript{204} (commonly known as Schoonheim case), the Dutch Supreme Court allowed a doctor’s appeal against conviction for intentionally assisting one of his elderly patients to death at her explicit request.\textsuperscript{205} The facts of the case were an unnamed ninety-three-year-old woman was bedridden due to a hip fracture, unable to eat or drink and slipping in and out of conscious.\textsuperscript{206} When the patient regained conscious, she had requested to be euthanized and her physician consented for the same.\textsuperscript{207} The Supreme Court decided this case on

\footnotesize{
\begin{itemize}
  \item \textsuperscript{200} Supra note 52 at 111.
  \item \textsuperscript{201} Supra note 189.
  \item \textsuperscript{202} Ibid. See, supra note 52 at 104.
  \item \textsuperscript{203} Ibid.
  \item \textsuperscript{204} Alkmaar (Schoonheim case) Netherlands Jurisprudentie, 1985, No. 106, SC. Nov, 1984.
  \item \textsuperscript{205} Supra note 195 at 263.
  \item \textsuperscript{206} Ibid.
  \item \textsuperscript{207} Ibid.
\end{itemize}
}
conflict of duties. The doctor in this case had a duty towards the patient to alleviate hopeless suffering as she suffered substantial deterioration, at the same time the doctor’s duty towards law was to preserve and protect the patient’s life. The doctor was ensnared in a contradictory situation. It was held by the Court that, “a doctor will not be convicted if he or she has carefully balanced the conflicting duties and made a decision that can objectively be justified, taking into account the special circumstances of the case.” In this case the Dutch Supreme Court defended the doctor’s conduct, not because of an apparent need to justify the patient’s autonomy, but rather because of a perceived necessity resulting from a conflict of duties. Later, the case was referred to the Court of the Hague, which too acquitted the doctor from his charges.

Almost after a decade, in Chabot, the Dutch Supreme Court further widening the scope of physician assisted suicide held that, for a request for physician assisted suicide to be justified on “necessity” grounds, it is not mandatory that the patient suffers physical pain, or the patient is terminally ill, it can be justified on purely psychological suffering and may qualify a patient for an act of euthanasia.

The 2001 Bill approved by the Dutch Parliament permits physician assisted suicide and euthanasia on complying with certain prerequisites, as per Chabot’s decision does not specify ‘terminal illness’ or any ‘physical ailment’ as a prerequisite. In case of a request for euthanasia a doctor must consider only the ‘suffering’ of the patient.

\[208\] Supra note 35 at 328.
\[209\] Ibid.
\[210\] Ibid.
\[211\] Supra note 191.
\[213\] Dunstan, G.R., British Medical Bulletin …, Id., at 105-106.
Euthanasia is legalised in the form of physician assisted suicide in Netherlands. It is evident from the various judicial decisions that euthanasia was practiced in Netherlands even prior to the passing of the Bill.

4.4. LEGALIZING EUTHANASIA: A STRUGGLE IN THE UNITED KINGDOM:

The struggle to legalize euthanasia in United Kingdom has not been an easy task. The proponents have made efforts to pass the bill for legalizing euthanasia a couple of times but in vain. The fight for legalization is not yet over, in fact, it is in process for last eight decades and may continue till the proponents win the battle to legalize euthanasia in the UK.

In Britain, the Voluntary Euthanasia Legalization Bill was introduced in the House of Lords by Lord Ponsonby,214 which described euthanasia as the termination of life by painless means for the purpose of avoiding unnecessary suffering. The proposed Bill of 1936 provided for a competent adult who has resided in Great Britain for at least one year and is suffering unbearably as a result of a terminal illness to receive medical assistance to die at his/her considered and persistent request. The Bill also incorporated various qualifying conditions and safeguards to protect the interests of patients and clinicians. Though certain conditions were put forth the Bill was refused as the safeguards for euthanasia stated in the Bill were cumbersome.215

215 Supra note 63 at 334.
In 1950, Lord Chorley moved the Lords that the matter should be inquired into, but the motion was lost.\textsuperscript{216} During the same period, the Voluntary \textit{Euthanasia} Society was set up to campaign for patient’s right to die in terminal illness the membership of which by 1997 stood at 20,000. Most of them were women of sixty or over and many of them having nursed their husbands through the final stages of illness\textsuperscript{217}. Two widely published medico legal cases in the United Kingdom had prompted renewed debate about the moral and legal validity of providing assistance to die\textsuperscript{218}. The debate was fuelled by publication of the report of a House of Lords Select Committee set up to consider the \textit{Assisted Dying for the Terminally Ill Bill}.

As a matter of principle, right to die with dignity reinforces current trends towards greater respect for personal autonomy.\textsuperscript{220} It also provides a logical extension to the well established principle in English Law that competent adults are entitled to withhold or withdraw consent to life sustaining treatment. In practical terms, legislation to permit physician assisted dying, responds to the predicament of the minority of terminally ill patients whose suffering cannot be relieved by even the best palliative care and who wish to end their lives but cannot do so only by refusing life sustaining treatment. Examples include people with progressive paralyzing illness that compromises respiration, speech, and swallowing difficulties but preserves sensation and conscious, as well as those for

whom loss of autonomy, dignity and quality of life are of paramount importance.

However, creating rights or allowing extravagance of personal choices is open to challenge if it produces a corresponding risk to society as a whole or to specific and possibly vulnerable section within it.\textsuperscript{221} Society, through its democratic processes, should be the arbiter to resolve the conflicts.

The major factor which presses the debate of \textit{euthanasia} is the increasing public opinion in favour of right to die with dignity which is reflected from the following National Opinion Polls:

National Opinion Poll for legalizing \textit{euthanasia} in the United Kingdom.\textsuperscript{222}

<table>
<thead>
<tr>
<th>Year</th>
<th>For \textit{euthanasia}</th>
<th>Against \textit{euthanasia}</th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>69%</td>
<td>17%</td>
<td>14%</td>
</tr>
<tr>
<td>1985</td>
<td>72%</td>
<td>21%</td>
<td>8%</td>
</tr>
<tr>
<td>1989</td>
<td>75%</td>
<td>16%</td>
<td>9%</td>
</tr>
<tr>
<td>1993</td>
<td>79%</td>
<td>10%</td>
<td>11%</td>
</tr>
</tbody>
</table>

The National Opinion Poll results on between 1976 and 1993 show ten per cent increase in favour of \textit{euthanasia} and seven per cent decrease against \textit{euthanasia}. A successive National Opinion Poll surveys show the


percentage in favour of assisted dying rose from sixty-nine per cent in 1976 to eighty-two per cent in 2004.\textsuperscript{223}

In 1994, formal representations offered by professional bodies to an earlier House of Lords Select Committee opposed a change in the law. In evidence to the 2004 Select Committee, the General Medical Council, Royal College of Physicians on behalf of the Academy of Medical Royal Colleges, and the Royal College of General Practitioners all adopted a neutral stance, but the British Medical Association and Royal College of Nursing maintained their opposition to physician assisted suicide.\textsuperscript{224}

As the 20\textsuperscript{th} century has experienced the transformation from a confined medical problem into broader social concern, it is important to explore the legal implications of this change. The British government faces an ongoing controversy over its end-of-life law, which has now reached beyond its nation’s border.\textsuperscript{225}

The \textit{euthanasia} movement in England resulted in formation of the British Society for legalization of Voluntary \textit{euthanasia} in 1934. In fact the \textit{Euthanasia} Society of America [hereinafter referred as ESA] took inspiration from the British \textit{euthanasia} movement. The Bill was defeated a number of times, but the British Society influenced by the ESA made efforts in the required direction. In 1979, following its annual meeting, the society changed its name to ‘EXIT’.\textsuperscript{226}

In 1981, the society dropped the name EXIT and reverted back to its former name, ‘The Voluntary \textit{Euthanasia} Society’ which it has since

\textsuperscript{223} Supra note 216 at vol. I, Appendix 7.
\textsuperscript{224} Ibid.
\textsuperscript{225} Pfeffer, Lindsay, “A Final Plea”…, supra note 48 at 497.
\textsuperscript{226} Supra note 63 at 270.
The Society’s object is to promote legislation permitting *euthanasia* for adult person, suffering from terminal illness and severe pain.

As Professor Glanville William puts it, the law does not leave the issue in the hands of doctors, it treats *euthanasia* as murder. The *euthanasia* movement in UK attracted public attention by *Airedale National Health Service Trust v. Bland*.

Some eminent authors like John Keown, John Harris, Ronald Dworkin, and many others added to the publicity of *euthanasia*. In England suicide is no longer a crime, assisting suicide is a crime attracting up to fourteen years of imprisonment, it even bans publication of any matter which might incite or abet suicide. Despite the fact that law prohibits any form of *euthanasia*, the public opinion is growing in favour of physician assisted suicide.

In April 2004 the Parliamentary Assembly of the Council of Europe debated a report from its social, health and family affairs committee, which questioned the council of Europe’s opposition to legalising *euthanasia*.

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227 Ibid.


230 The Suicide Act, 1961, u/s. 2. Person can be prosecuted for offence contrary to section 2 in case of aid, abet, counsel or procure the suicide of other.

231 Pfeffer, Lindsay, “A Final Plea”…, *supra* note 48 at 499.

Although two-thirds of Britons think *euthanasia* should be legal, in 2004 the *Assisted Dying for the Terminally-Ill Bill* was rejected in the lower political chamber, House of Commons, by 4-1 margin.²³³

Among active proponents of *euthanasia* is perhaps the leading NGO is the UK’s Dignity in Dying, the successor to the (Voluntary) *Euthanasia Society*.²³⁴

Recently Prime Minister Gordon Brown has welcomed new physician assisted suicide guidelines issued by the Director of Public Prosecutions, saying that, without having changed the letter of the law, the new guidelines have “weakened” the push for the legalization of physician assisted suicide.²³⁵

Debbie Purdie, one of Britain’s leading *euthanasia* and physician assisted suicide campaigner, welcomed these guidelines as she has suffered from multiple sclerosis and has fought in the Courts to change the law to allow her husband to help her commit suicide. She stated that, “[t]he important thing about guidelines is they’ve been able to really clarify the difference between malicious encouragement and compassionate support for somebody’s decision”.²³⁶

In English law at present, *euthanasia* would constitute a murder. The consent of the ‘victim’ would be irrelevant to the liability as the law does not recognize consent to cause death. However, a High Court in England in its historic ruling has held that administration of ventilation by artificial means against the claimant’s wishes has been an unlawful

²³⁴ [http://www.internationaltaskforce.org/rpt2005_1.htm#204](http://www.internationaltaskforce.org/rpt2005_1.htm#204) [accessed on 30/10/2009].
trespass.\textsuperscript{237} In a number of cases the Courts have respected the right of self-determination and autonomy\textsuperscript{238} of the patient but \textit{euthanasia} as an act remains illegal and any form of physician assisted suicide or \textit{euthanasia} is not legalized in the United Kingdom till date.

\subsection*{4.4.1 Judicial Decision in the UK: On Doctrine of Double Effect and Euthanasia:}

As discussed in the above segment, \textit{euthanasia} is not legalized in any form in the United Kingdom, however, the doctrine of double effect is medically and legally allowed in the country. This takes us to the question what this doctrine of double effect stands for and how important it is to analyse it in legalizing \textit{euthanasia} debate. The doctrine of double effect means when the therapeutic drugs are given in large doses by the doctor it may bring about the patient’s death.

The doctrine of double effect has been incorporated in the English Law,\textsuperscript{239} through \textit{R. v. Adams}.\textsuperscript{240} This doctrine is based on a distinction between results which are intended and those which are merely foreseen as non-intended consequences of one’s action. As per this doctrine a doctor can legitimately administer palliative drugs which hasten death if the primary aim is to relieve the patients suffering, though foreseeing that this may indirectly hasten the death of the patient. However, a doctor may never deliberately give a patient an overdose with the intention of killing the patient. One possible interpretation of Justice Devlin’s direction to the jury in the \textit{Adams}\textsuperscript{241} case is that in circumstances involving

\begin{itemize}
\item \textsuperscript{239}Kennedy, I., & Grubb, A., \textit{Medical Law} 1205, 2\textsuperscript{nd} edn., London: Butterworths Publication, 1994.
\item \textsuperscript{240}Kennedy, I. (1957) \textit{Cri. L. R.} 365.
\item \textsuperscript{241}Ibid.
\end{itemize}
administration of palliative drugs, a doctor will not be criminally liable unless he or she actually intended to bring about death.\footnote{Ibid.} However, the difficulty with this interpretation is that it is inconsistent with strict criminal law principles. As observed by Professor Williams “[t]here can be no legal difference between desiring or intending a consequence as following from your conduct, and persisting in your conduct with the knowledge that the consequence will inevitably follow from it”.\footnote{Williams, Glanville, The Sanctity of Life. 286, London: Faber & Faber Ltd, 1956. See, supra note 239 at 1206.} According to him when the result is foreseen as certain it is the same as if it was intended by the person. After the decision in Adams case the doctrine of double effect stands as a well accepted principle in England.

Although the doctrine of double effect is sometimes invoked to justify the administration of palliative drugs which incidentally hasten death, the distinction between intending and probably knowing the consequence of one’s act. Whilst the analytical basis of the Adam’s case may be open to interpretation, which finally gives an authority to the doctor, that the doctor may lawfully administer palliative drugs in extreme quantity to relieve the patient’s suffering even though the doctor is well aware of the fact that the patient is likely to die as a result of the medicine, the doctor’s act will not be equated to an intention to kill the patient.\footnote{Supra note 63 at 176.} Indeed some commentators have questioned the authority of the Adam’s case and have suggested that there may still be some uncertainty about the law as it concerns the use of pain-killing drug which incidentally shorten life.\footnote{Trowell, H., The Unfinished debate on Euthanasia 35, London: SCM, 1973.}

Apart from Adam’s case, one more case which had grabbed the public attention in England was Dr Nigel Cox.\footnote{R. v. Cox (1992) 12 BMLR 38.} Dr Nigel Cox is the only
British doctor who has been convicted of attempted *euthanasia* and was given a twelve months suspended sentence in 1992.\(^{247}\)

Thus the struggle for legalizing *euthanasia* which began in 1936 is still in process. At present, no form of *euthanasia* is legalized in the United Kingdom.

### 4.5 THE CANADIAN STRUGGLE TO LEGALIZE EUTHANASIA:

As compared to the *euthanasia* movement in the United States and the United Kingdom, the *euthanasia* movement in Canada is not deep rooted in the history. The proponents of *euthanasia* in Canada took inspiration from the other countries and began their struggle to legalize *euthanasia*.

*Euthanasia* movement in Canada started in 1968. Since then, Gallup Canada has regularly conducted polls using the same poll question in which respondents were asked, “when a person has incurable disease which causes great suffering, do you think that competent doctors should be allowed by law, to end the patient’s life through mercy killing, if the patient has made a formal request in writing?”\(^{248}\) This has been answered in the following way:

\(^{247}\) *Ibid.*  
\(^{248}\) *Supra* note 63 at 261.
Gallup Poll on legalizing euthanasia in Canada.\textsuperscript{249}

<table>
<thead>
<tr>
<th>Year</th>
<th>For euthanasia</th>
<th>Against euthanasia</th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>45%</td>
<td>43%</td>
<td>12%</td>
</tr>
<tr>
<td>1974</td>
<td>55%</td>
<td>35%</td>
<td>10%</td>
</tr>
<tr>
<td>1979</td>
<td>68%</td>
<td>23%</td>
<td>9%</td>
</tr>
<tr>
<td>1984</td>
<td>66%</td>
<td>24%</td>
<td>10%</td>
</tr>
<tr>
<td>1989</td>
<td>77%</td>
<td>17%</td>
<td>6%</td>
</tr>
<tr>
<td>1990</td>
<td>78%</td>
<td>14%</td>
<td>8%</td>
</tr>
<tr>
<td>1991</td>
<td>75%</td>
<td>17%</td>
<td>9%</td>
</tr>
<tr>
<td>1992</td>
<td>77%</td>
<td>17%</td>
<td>6%</td>
</tr>
<tr>
<td>1995</td>
<td>75%</td>
<td>17%</td>
<td>8%</td>
</tr>
</tbody>
</table>

As per the above poll results, seventy-five per cent Canadians in 1995 supported the view that a doctor should be allowed by law to end the life of a terminally ill patient at the patient’s voluntary request. Whereas the voting in favour of euthanasia in 1968 was only forty-five per cent. There has been a total increase of thirty per cent in favour of euthanasia over a period of almost thirty years.

In Canada patients have a right to refuse self-sustaining treatment, but they do not have right to demand physician assisted suicide or active euthanasia. The Supreme Court of Canada in \textit{Rodríguez v. Attorney General for British Columbia},\textsuperscript{250} has also held that a complete ban on physician assisted suicide is necessary and that the interests of the State in protecting its vulnerable citizens superseded the individual rights of a citizen who sought physician assisted suicide.

The right to Die Society of Canada was formed in 1991, based at Victoria, British Columbia. The purpose of the society is to provide a

\textsuperscript{249} \textit{Id.}, at 262.

\textsuperscript{250} (1994) 85 CCC (3 d) 15.
mechanism by which Canadians supporting the introduction of legislation permitting ‘physician aid in dying’ for the terminally ill can achieve law reform. The society has its journal and website to provide information about the rights of the terminally ill patients.

In 1992 the society initiated court action on behalf of Sue Rodriguez to challenge the constitutionality of the provision of the Canadian Criminal Code which prohibits physician assisted suicide. But the Court upheld the ban on physician assisted suicide.

According to the Criminal Code in Canada, individuals are prohibited from endangering the lives of others by their acts or omissions and are obliged to provide ‘the necessaries of life’ to persons under their charge. In fact, the common-law doctrine of informed consent and right to self-determination clearly prohibits physicians from performing medical treatments without consent but does not allow physician assisted suicide.

4.5.1 EUTHANASIA AND JUDICIAL DECISIONS IN CANADA

In Malette v. Schulman, the Ontario Court of Appeal ruled that the State has a strong interest in protecting life, but this interest does not override the common-law right to refuse treatment.

The right to refuse or withdraw treatment has been granted by the Courts in a few cases but right to physician assisted suicide is still a struggle in Canada. All the cases of euthanasia, being active killing for

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251 Supra note 63 at 283
252 Section 241 (b) of the Canadian Criminal Code, 1985, which prohibits physician assistance is dying was upheld.
253 Lemmens, Trudo, “Towards the right to be killed?” in Dunstan.G.R., (ed.), supra note 35 at 347.
254 Ibid.
256 Supra note 253.
compassionate reasons, can be considered murder under Section 235 of the *Criminal Code* and prescribes life imprisonment as the minimum sentence for murder.

In *Nancy B v. Hotel-de Quebec*,257 Nancy B’s request to be disconnected from respirator was respected and allowed by the Court, as she had Guillain-Barre syndrome, a neurological disorder that left her irreversibly paralysed and dependent on a respirator.258

In Canada, the debate on physician assisted suicide has revolved around *Sue Rodriguez*.259 Rodriguez, a patient of amyotrophic lateral sclerosis, a degenerative disease, had requested for physician assisted suicide. However, the Canadian Supreme Court rejected her plea on the basis of State interest to protect and preserve life. After this case proposals were introduced in the Parliament for legalizing physician assisted suicide with appropriate guidelines but no such legal provision has been enacted, till date.

It can be stated that, Canadian practice for withholding and withdrawing treatment is similar to that in the United States. Documents which set out guidelines for dealing with life-sustaining medical procedures are under the Provincial control, in Ontario under the ‘*Health Care Consent Act, 1996*’.260

In Canada some issues like abortion and *euthanasia*, are too controversial for Parliament to take on, the result has been that the Courts are asked to resolve these issues.261 However, unless the Parliament

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258 Supra note 253 at 348.
259 Supra note 250.
260 [http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm), [accessed on 27/10/2009].
legalizes an act allowing physician assisted suicide, the Courts are compelled to rule against any form of *euthanasia*.

### 4.6 EUTHANASIA AND THE AUSTRALIAN EXPERIENCE:

Voluntary *euthanasia* societies have been established in Australia in the mid-1970. Such societies exist in all Australian States and territories. As Australia is a federal country, the formation of separate societies is justified. The main objective of all the Australian societies is, essentially to promote public understanding and acceptance of voluntary *euthanasia* and to secure reform of the law in the country for terminally ill patients.

The statement of aims contained in the literature for the Victorian, New South Wales, and Queensland societies is fairly representative, namely to “promote legislation giving effect to the widely held public opinion that any person suffering through illness or disability, severe pain or distress for which no remedy is available, should be entitled by law to a painless and dignified death in accordance with that person’s expressed direction.”

Since the early 1960’s, Australians formed a positive opinion towards active voluntary *euthanasia*. The Morgan Gallup Poll on legalizing *euthanasia* conducted a survey to check the public opinion and the outcome is stated below:

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262 *Supra* note 63 at 283.
263 *Id.*, at 284.
**Morgan Gallup Poll on legalizing euthanasia in Australia.**

<table>
<thead>
<tr>
<th>Year</th>
<th>For euthanasia</th>
<th>Against euthanasia</th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>47%</td>
<td>39%</td>
<td>14%</td>
</tr>
<tr>
<td>1978</td>
<td>67%</td>
<td>22%</td>
<td>11%</td>
</tr>
<tr>
<td>1983</td>
<td>67%</td>
<td>21%</td>
<td>12%</td>
</tr>
<tr>
<td>1986</td>
<td>66%</td>
<td>21%</td>
<td>13%</td>
</tr>
<tr>
<td>1987</td>
<td>75%</td>
<td>18%</td>
<td>7%</td>
</tr>
<tr>
<td>1989</td>
<td>71%</td>
<td>20%</td>
<td>9%</td>
</tr>
<tr>
<td>1990</td>
<td>77%</td>
<td>17%</td>
<td>6%</td>
</tr>
<tr>
<td>1991</td>
<td>74%</td>
<td>20%</td>
<td>6%</td>
</tr>
<tr>
<td>1992</td>
<td>76%</td>
<td>18%</td>
<td>6%</td>
</tr>
<tr>
<td>1993</td>
<td>78%</td>
<td>15%</td>
<td>7%</td>
</tr>
<tr>
<td>1994</td>
<td>78%</td>
<td>13%</td>
<td>9%</td>
</tr>
<tr>
<td>1995</td>
<td>78%</td>
<td>14%</td>
<td>8%</td>
</tr>
</tbody>
</table>

Public support for euthanasia can be justified by the figures mentioned in the Table. The voting in favour of euthanasia in 1962 was only forty-seven per cent which almost doubled in 1995 by reaching seventy-eight per cent. It should be noted that the opinion against euthanasia dropped down from thirty-nine per cent to only fourteen per cent in a period of thirty-two years.

The first significant legislative move towards the legalization of active voluntary euthanasia in Australia was put forth by Mr. Michael Moore, in June 1993, who introduced into Australian Capital Territory [hereinafter referred as ACT] Legislative Assembly the *Voluntary and Natural Death Bill, 1993.* As per this Bill a person who has attained

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265 Supra note 63 at 263.

266 Id., at 342.
the age of 18 years, is of sound mind and is suffering from a terminal illness which cannot be cured even by extraordinary measures may request a physician to administer or assist to administer a drug to induce death to himself or herself. This Bill was widely criticised for its loose drafting and possibility of misuse of such law. In February 1995, the Chief Minister of the Northern Territory introduced a Bill for legalization of active voluntary *euthanasia* and physician assisted suicide. *Euthanasia* was legalised in the Northern Territory of Australia in June 1995. This Act was called the *Rights of the Terminally Ill Act* and came in force on July 1, 1996. The guidelines set up for *euthanasia* were similar to the guidelines which have been developed in the Netherlands for the practice of *euthanasia*. The validity of the Act was upheld by the Supreme Court in *Northern Territory in Wake v. Northern Territory of Australia* a subsequent federal constitutional challenge to the legislation succeeded.

However, the Australian Federal Government overturned the *Rights of the Terminally Ill Act* on March 27, 1998 consequent to the State’s legislation being strongly condemned by opponents including church leaders and aborigines.

In more recent years, there is increasing public awareness and acceptance of active voluntary *euthanasia*. However, the first attempt to legalize *euthanasia* has been turned down by the opponents.

Helga Kushe insists in her thesis that non-voluntary killings in her home country of Australia, where physician assisted suicides are illegal,
transpire more regularly than in the Netherlands.\textsuperscript{272} Kushe and Peter Singer conducted a survey and as per that survey, within Australia, their most fundamental finding was that voluntary \emph{euthanasia} and physician assisted suicide collectively represent approximately 1.8 per cent of all deaths.\textsuperscript{273} Singer, DeCamp Professor at Princeton University’s Centre for human values is, like Kuhse, a vocal exponent of legalizing physician assisted suicide.\textsuperscript{274}

In Australia, a replication of the Remmelink Commission study originally performed in the Netherlands found that of deaths in Australia that involved a medical end-of-life decision, 28.6 per cent involved withholding or withdrawing of treatment, 30.9 per cent involved the use of opiates under the principle of “double effect”, and 1.8 per cent involved voluntary active \emph{euthanasia} (including 0.1\% physician-assisted suicide), though neither are legal.\textsuperscript{275}

Dr. Philip Nitschke, a prominent Australian \emph{euthanasia} advocate, opined that the results highlighted a need for legal reform in the country, where the practice is illegal.\textsuperscript{276} Hundreds of elderly Australians are making or illegally importing a banned \emph{euthanasia} drug, Nembutal to end their lives.\textsuperscript{277} Recently an Australian Court ruled in case of a quadriplegic patient Christian Rossiter, that the doctors would not be criminally responsible if they stopped feeding and hydrating severely paralysed.\textsuperscript{278}

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\textsuperscript{272} \textit{Supra} note 52 at 134.
\textsuperscript{273} \textit{Id.}, at 135.
\textsuperscript{275} \textit{Supra} note 75 at 60.
\textsuperscript{278} “Oz man wins right to be starved to death”, \textit{Mumbai Mirror}, Mumbai, Saturday, August 15, 2009, p. 14.
\end{flushright}
However, there are indications that the successful passage even for a certain period of time, of the Rights of Terminally Ill Act has heightened interest in the issue of active voluntary euthanasia elsewhere in Australia, and several Bills have been put forward in other Australian jurisdictions.\textsuperscript{279} It can be said that the issue of active voluntary euthanasia is likely to remain on the political agenda in Australia. Decriminalisation of euthanasia in Australia is supported by the Liberty and Democratic Party as well as the Australian Greens.\textsuperscript{280}

All forms of euthanasia and physician assisted suicide are legally prohibited in South Australia. Recently in a surprise victory for pro-life advocates, South Australia’s Upper House has narrowly voted down an amendment to their palliative care legislation that would have legalised euthanasia.\textsuperscript{281}

4.7 THE IRONY OF EUTHANASIA IN GERMANY:

The debate of euthanasia finds its origin deeply rooted in Germany. The proponents of euthanasia condemn the wrong meaning attributed to euthanasia by Nazi acts. In fact, the fear to legalize euthanasia is a misconception put forth by the Nazism.

Germany law had no penalty for either suicide or physician assisted suicide since 1751, although it rarely happens there due to the hangover taboo caused by Nazi mass murders, plus powerful, contemporary, church


\textsuperscript{280} \url{http://www.ldp.org.au/federal/policies/Assisted_Suicide.html}, [accessed on 27/10/2009].

\textsuperscript{281} Patrick, Craine, B., “Euthanasia Bill Unexpectedly defeated in South Australia”, \url{http://www.lifesitenews.com}, [accessed on 22/3/10].
influences. Direct killing by *euthanasia* is a crime. In part because of its very painful history of Nazism, German medical culture has insisted that doctors should have no role in directly causing death.

In a few countries the right to refuse medical treatment, withdrawal or withholding of life support system *etc.*, are approved to a certain extent. Right to physician assisted suicide is also recognised in some countries in different forms.

In the last few years, some Germans have begun to approve of *euthanasia* in the Dutch sense, based on the Greek root, *eu-thanatos*, or “good death”, a voluntary choice by the patient for an easier death, but many Germans still associate *euthanasia* with the politically motivated exterminations by the Nazis and view the Dutch as stepping out on a dangerously slippery slope. German law has not prohibited assistance in suicide since the Frederick the Great in 1742, stated that every person is capable of exercising control over his actions, and also has a right to act according to his choice.

In the German practice, doctors are prohibited from assisting a person to die but a family member or a friend may assist in suicide if the patient is a competent adult and voluntarily makes a request to do so. A German Society for Dying in Dignity (Deutsche Gesellschaft fur Humanes Sterben) [hereinafter referred as DGHS], provides support to its members and the terminally ill in choosing good death as an alternative to terminal illness. Open, legal assistance in suicide has been supported by a feature

283 Supra note 75 at 53.
284 Passive *euthanasia* is legal in Sweden, England, India, *etc*.
285 Physician assisted suicide is lawful in Netherlands, Belgium, Switzerland, Luxemburg, *etc*.
286 Supra note 75.
287 Ibid.
of the German language that makes it possible to conceptualize it in a comparatively benign way.\textsuperscript{288}

There are four terms in German language; \textit{Selbstmord} (self-murder), \textit{Selbsttotung} (self-killing), \textit{Suizid} (suicide) and \textit{Freitod} (free-death).\textsuperscript{289} The DGHS frequently uses \textit{Freitod} rather than the other terms which are more negative to publicize the practice of euthanasia. The DGHS has focused on legalizing the advance directives, providing information to people about pain control, palliative care and hospice. Reported suicide rates in Germany are only moderately higher than in the Netherlands or the United States, though there is no reason to think that terminal-illness suicides in all countries are often reported as deaths from the underlying disease.\textsuperscript{290}

Germany does not prohibit physician assisted suicide, but rejects involving a physician in active \textit{euthanasia} as per the \textit{German Physician Code of Ethics}.\textsuperscript{291} The Nazi practice had its intellectual roots in the eugenics movement which became increasingly influential in German medical circles from the end of the nineteenth century.\textsuperscript{292} Germany criminalizes direct killing by \textit{euthanasia} though it does not penalize physician assisted suicide.\textsuperscript{293} This principle of killing human beings because they are mentally ill, handicapped, deformed or incurable cannot be accepted as it violates the basic human rights. Right to physician assisted suicide in exceptional cases of terminal illness may be justified on grounds of quality of life but the other cases directly attack the principle of sanctity of life.

\textsuperscript{288} \textit{Id.}, at 54.
\textsuperscript{289} \textit{Id.}, at 56.
\textsuperscript{290} \textit{Id.}, at 55.
\textsuperscript{291} \textit{Id.}, at 56.
\textsuperscript{293} \textit{Supra} note 87 at 119.
4.8 EUTHANASIA LAWFUL IN BELGIUM: AN EXPERIENCE

Movement in favour of legalization of euthanasia started in 1980 and was legalised in 2002. In Belgium—where universal access to health care exists, including broad access to team based palliative care, and where primary care doctors often remain involved in their patient’s care through to the end of life—legalising euthanasia has not led to a high frequency of hastened death.

Strict regulations have been carved to be adhered for physician assisted suicide. The opinion of two doctors is a condition to be fulfilled before the final decision of physician assisted suicide. The person should be an adult, must make a voluntary request and should have been a resident for at least six months before restoring euthanasia. Police authorities are to be informed before the act of physician assisted suicide. However, Belgian legislators and medical establishment are urged to reflect and ponder over so as to prevent potential abuse.

Proponents of euthanasia state that prior to the law, several thousand illegal acts of euthanasia were carried out in Belgium each year. According to proponents, the legalisation incorporated a complicated process, which has been criticized as an attempt to establish a “bureaucracy of death”. Nevertheless, euthanasia is now legal and its proponents in the country hope that it will soon stop many illegal practices of euthanasia.

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298 Ibid.
4.9 SWITZERLAND: THE ONLY COUNTRY TO LEGALIZE TOURIST EUTHANASIA:

Switzerland is attached to the principles of democracy and it is in this soil that democracy has taken deep and durable roots. Euthanasia is practised in Switzerland since 1941. Switzerland has an unusual position on physician assisted suicide, it is legally condoned. The conditions for physician assisted suicide are same as those in Belgium. The only difference is regarding the resident clause. The position of Switzerland is diverse as much as it does not stipulate the involvement of doctors or that the patients should be residents of Switzerland. Deadly drugs may be prescribed to a Swiss person or to a foreigner, where the recipient takes an active role in the drug administration. More generally, Article 115 of the Swiss Penal Code, which came into effect in 1942, considers physician assisted suicide as a crime if and only if the motive is selfish.

There is no bar even for foreigners to have a physician assisted suicide in Switzerland provided they are terminally ill. Recently a British citizen Edward Downes, 85 years and his wife Joan Downes, 74 years both suffering from terminal illness died peacefully at a physician assisted suicide clinic in Zurich run by the Dignitas.

However, the Swiss politicians have stepped up efforts to battle “suicide tourism” as one-hundred and fifteen Britons have died at physician assisted suicide operations run by Dignitas in Switzerland.

301 Supra note 87 at 120.
302 www.amazon.com/euthanasia-right-Die-Comparative, [accessed on 27/10/2009].
Dignitas is the only Swiss physician assisted suicide operation that allows foreigners. Dignitas has helped more than seven hundred and fifty terminally ill patients kill themselves. British citizens battling with terminal illness feel that it is preferable to go to Switzerland and peacefully end the life instead of undergoing a sentence for helping a person to die in the United Kingdom.

Debbie Purdy, a British lady, multiple sclerosis sufferer won a battle in the House of Lords on physician assisted suicide. She sought legal permission from Britain’s Highest Court of Appeal to travel to a country where physician assisted suicide is legal, such as Switzerland. But, it is to be noted that all forms of active euthanasia like administering lethal injection remain prohibited in Switzerland. Swiss law only allows providing means to commit suicide. At present, physician assisted suicide is legally permitted to citizens and aliens in Switzerland.

4.10 ATTEMPTS TO LEGALIZE EUTHANASIA IN SOUTH AFRICA

South Africa currently criminalizes physician assisted suicide. However, with the global trend shifting towards pro-euthanasia, a Bill is under active discussion in the Parliament (Bill on the rights of the terminally ill).

In the African context, it has been argued by Omonzejele, that it is economically and morally right that health resources be used for those

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309 Supra note 87 at 121.
who are most likely to benefit from them, instead of extraordinary health care for irreversibly terminally ill patients who have requested for assistance in dying, in order to avoid the distressful end stages of their lives. At present, there is no law allowing any form of euthanasia in South Africa.

4.11 LUXEMBURG: THE THIRD EUROPEAN COUNTRY TO LEGALIZE EUTHANASIA:

The country’s Parliament passed a Bill legalizing euthanasia on 20 February, 2008 in the first reading with thirty of fifty-nine votes in favour. On 19 March, 2009 the Bill passed the second reading, making Luxembourg the third European Union country, after the Netherlands and Belgium, to decriminalise euthanasia. The law stipulates that the doctors who carry out euthanasia and physician assisted suicide will not face ‘penal sanctions’ or civil law suits as long as they first consult a colleague to ensure that the patient has a terminal illness, is in a ‘grave and incurable condition’ and has repeatedly asked for right to die. Terminally ill people will be able to have their lives ended after receiving the approval of two doctors and a panel of experts.

4.12 PUBLIC OPINION IN FAVOUR OF EUTHANASIA IN TURKEY:

Physician assisted suicide or any form of euthanasia is legally prohibited in Turkey. Nonetheless, the public opinion is developing in favour of euthanasia and to a certain extent medical professionals also

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312 Ibid.

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favour physician assisted suicide.\textsuperscript{315} The cross-sectional study was administered between April and September 2006, participants were doctors, nurses and midwives, and they all contributed in favour of euthanasia for terminally ill patients.\textsuperscript{316}

### 4.13 EUTHANASIA AND DOCTRINE OF DOUBLE EFFECT IN FRANCE:

Physician assisted suicide or euthanasia is legally prohibited, but the doctrine of “double effect” is legally permitted. The law allows doctors to administer drugs to ease suffering even if they shorten life.\textsuperscript{317} This situation is directly against euthanasia but indirectly by allowing doctrine of double effect euthanasia is practically exercised. It appears as if the debate of euthanasia in action is pushed out from the door and allowed to enter from the window.

### 4.14 EUTHANASIA PROHIBITED IN SWEDEN AND NORWAY:

Both the countries prohibit physician assisted suicide. Any person found guilty of physician assisted suicide might be charged with manslaughter or by levelling the charges of ‘accessory to murder’.\textsuperscript{318} However, recently Sweden has allowed passive euthanasia only in case of terminally ill patients.\textsuperscript{319}

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\textsuperscript{316} Ibid.


\textsuperscript{319} “Sweden allows Passive Euthanasia” Politics, 26\textsuperscript{th} April, 2010. \url{http://www.swedishwire.com}, [accessed on 29/05/2011].
4.15 **EUTHANASIA UNLAWFUL IN JAPAN:**

The Japanese government has no official laws on the status of *euthanasia* and the Supreme Court of Japan has never ruled on the matter. Japan’s *euthanasia* policy has been decided by two local Court cases, one in Nagoya in 1962, and another after an incident at Tokai University in 1995, the first case involved ‘passive *euthanasia*’ and the latter case involved ‘active *euthanasia*’.  

As modern medicine creates new ways to extend life artificially, more Japanese, like the Dutch, are opting for simpler and, as many believe, more dignified death. The Tokyo-based Japan Society for Dying with Dignity receives increasing requests for membership each day as the Japanese continue to debate whether they should allow the terminally ill to choose their own death. The right to die issue is particularly pertinent in Japan, where medical advances for a large elderly population have resulted in the highest global rate of longevity. At present, any form of *euthanasia* is not legalized in Japan.

4.16 **EUTHANASIA IN ALBANIA: A CONTROVERSIAL ISSUE:**

*Euthanasia* was legalised by Albanians in 1999, stating that any form of voluntary *euthanasia* was legal under the *Rights of Terminally Ill Act*, 1995. However, later it was turned down. Passive *euthanasia* is considered legal when three or more family members consent to the decision. Albania’s *euthanasia* policy has been controversial among life groups and Catholic Church, but due to other more prominent countries

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321 *Supra* note 199 at 830-831.
also legalizing forms of *euthanasia*, it has met a more relaxed world attitude to the matter.

4.17 ATTEMPTS TO LEGALIZE EUTHANASIA IN MEXICO:

In Mexico, active *euthanasia* is illegal but since 7 January, 2008 the law allows the terminally ill- or closet relative if unconscious- to refuse medication or further medical treatment to extend life in Mexico City.\(^{324}\) in the central State of Aguascalientes \(^{325}\) and in the Western State of Michoacan\(^{326}\). A similar law extending the same provisions at the national level has been approved by the Senate \(^{327}\) and an initiative decriminalizing active *euthanasia* has entered the same legislative chamber on 13 April 2007.\(^{328}\)

4.18 EUTHANASIA LEGALLY PROHIBITED IN HUNGARY:

Hungary has one of the highest suicide rates in the world, caused mainly by the difficulties the peasant population has had with adapting to city life.\(^{329}\) Physician assistance in suicide or any form of *euthanasia* formally constitutes homicide, but may be excused on right to self-determination of the patient in case of terminal illness.\(^{330}\) However, active *euthanasia* practiced by physicians was ruled as illegal by Hungary's Constitutional Court in April 2003.\(^{331}\) Recently, passive *euthanasia* is


\(^{328}\) [http://uk.reuters.com/article/idUKN1238979720070413](http://uk.reuters.com/article/idUKN1238979720070413), [accessed on 30/10/2009].

\(^{329}\) [http://www.assistedsuicide.org](http://www.assistedsuicide.org), [accessed on 29/05/2011].


\(^{331}\) *Supra* note 77.
allowed in Hungary complying with the provisions of Health Care Act, 1997.  

4.19 URUGUAY: A DIFFERENT EXPERIENCE OF EUTHANASIA:

In Uruguay the legal status of euthanasia is not clear. Article 37 of the Penal Code, 1933 provides that the judges are authorized to forgo punishment of a person whose previous life has been honourable, and where the person commits a homicide motivated by compassion, induced by repeated requests of the victim. Euthanasia is not legally permitted in Uruguay, however, the penal provisions provide exemption for bringing about such death.

All the countries discussed above have different status at present regarding euthanasia laws. The Netherlands, Switzerland, Belgium and Luxembourg are the only four countries which have legalised physician assisted suicide. Two States, Oregon and Washington from US have also legalised physician assisted suicide. Out of the remaining countries in the world, some have made efforts to legalize euthanasia while some are struggling to do so. Most of the countries have formed the Society for the Right to Die in favour of the euthanasia movement. These Societies work under the guidance of the World Federation of Right to die Society. In the next part of the thesis it is attempted to evaluate the present status of the World Federation of Right to Die Societies.

4.20 THE WORLD FEDERATION OF RIGHT TO DIE SOCIETIES: STRIVING TO LEGALIZE EUTHANASIA:

The first international meeting on voluntary euthanasia was held in Tokyo in 1976, followed by a meeting in San Francisco in 1978.\textsuperscript{335} As a result of these early meetings, the World Federation of Right to Die Societies was founded in Oxford, with twenty-seven groups from eighteen countries joining as founding members.\textsuperscript{336}

At present, the World Federation, founded in 1980, consists of forty-four Right to die organisations from twenty-five countries.\textsuperscript{337} The federation provides an international link for organisations working to secure or protect the rights of individuals to self-determination at the end of their lives.\textsuperscript{338}

According to the World Federation of Right to Die Societies, “[a]ll competent adults-regardless of their nationalities, professions, religious beliefs,… ethical and political views- who are suffering unbearably from incurable illness should have the possibility of various choices at the end of their life.”\textsuperscript{339} It is further emphasised that the voluntarily expressed will of individuals, once they are fully informed of their diagnosis, prognosis and available means of relief should be respected by all concerned as an expression of intrinsic human right.\textsuperscript{340} The federation publishes a World Right to Die Newsletter twice a year.

Though a number of organisations plead for euthanasia, globally the position of euthanasia is different. For a number of countries, though

\begin{itemize}
\item \textsuperscript{335} \textit{Supra} note 63 at 286.
\item \textsuperscript{336} \textit{Ibid}.
\item \textsuperscript{337} \texttt{http://www.worldrtd.net}, [accessed on 22/3/2010].
\item \textsuperscript{338} \textit{Ibid}.
\item \textsuperscript{339} \texttt{http://euthanasia.procon.org/viewsource.php}, [accessed on 22/3/2010].
\item \textsuperscript{340} “Toronto Manifesto”, \texttt{www.worldrtd.net}, [accessed on 22/3/2010].
\end{itemize}
physician assisted suicide is not covered by specific legislation, it is addressed by general provisions concerning homicide.\textsuperscript{341}

The World federation continuously puts in efforts to legalize \textit{euthanasia} for the relief of terminally ill patients.

The present comparative analysis discussed in the various segments of this chapter demonstrates a powerful and convincing argument in support of legalizing \textit{euthanasia} in India. It is time to consider the proposal of physician assisted suicide in isolation from the other terms, for e.g., suicide, active and passive \textit{euthanasia}. After perusing laws governing in some select countries the researcher is convinced to frame a model law for India. For this purpose the positive aspects from \textit{The Oregon Death with Dignity Act}, 1997 can be considered.

In the forthcoming chapter, the researcher has examined the justification behind legalizing \textit{euthanasia} debate in the light of \textit{Indian Constitution}, \textit{Indian Penal Code}, and \textit{Human Rights} of terminally ill patients. With the help of this further attempt is made to draft a Model Law for India to assist the terminally ill patients- one of the most vulnerable groups in the society.