Legalizing *Euthanasia*: A Pedagoge’s Perspective

Dr. Sharmila Ghuge
Foreword

A great book 'Legalizing Euthanasia: A Pedagogue’s Perspective' has been sent to me by Dr. Sharmila Ghuge requesting for a foreword and I am not myself a legal scholar or philosopher expect that my contact with jurisprudence is largely attributable to my profession as advocate. As regards my holding office as Home Minister and serving as a judge for seven years in the Supreme Court of India, these qualifications do not entitle me to write a foreword for a book on Euthanasia. Life is given by God and logically, He alone can take it away. If the Euthanasia means the right of an individual to take away his own life that is a violation of the fundamental doctrine that what God has given man cannot take away at his fancy. There are situations where life is so painful that to continue it is unbearable. In such circumstances, God or no God if one can end pain by death, euthanasia becomes a necessity to save the body from pain.

Life itself has nearly three to four billion years of old and history gives us no lessons for ending life at our will. The right to life is a fundamental right under Article 14 of the Indian Constitution. Article 21 limits the rights to take away life individually or otherwise only according to the procedure established by law. Death sentence is one such. Shooting and killing during war is another common procedure where life is taken away as incidentally to operations during war. For a private individual to take away his own life is lawlessness and cannot be allowed. In cases of extraordinary agony, man prefers to end pain by courting death. In civilized societies, the right to die is conditioned by 2/3 expert doctors unanimously holding that the man's life is de facto non-existent. That is consciousness has come to a close and inflicting death on him is nothing more than formalizing a mere reality. The State can make a law legalizing euthanasia subject to the conditions that medical expert should examine a person in precarious condition and advise him or his close relations about taking away his life. Such cases will be rare. But euthanasia, according to procedure established by law, demands the enactment of a statute to distinguish euthanasia from murder and even suicide from murder.
The author Dr. Sharmila Ghuge has written a brave and erudite book on the subject of *euthanasia*. I myself as the Chairman of Kerala Law Reforms Commission drafted a bill and submitted to Kerala Government. But nothing has happened in the matter. I have nothing more to add except to pay tribute to Sharmilaji. Life is sacred and divine. It cannot be taken away except under the most precisely prescribed condition. Society will be grateful to Dr. Sharmila for providing value literature on the subject of *euthanasia*. Life is too precious to play with. I can only conclude by saying the most precious thing the man possess is life, and it is a fundamental right. Preserve it at all cost and sacrifice it only in the rarest of rare instances according to procedure established by law. The rule of law in such cases must support the rule of life and never barter away. This invaluable possession of a human I hope the Parliament of India, its President and Prime Minister will seriously consider the implications of life and its depravation. Never never death, but save *euthanasia* also. Let it receive the sanction of law because it is too sacred to be given up and humanity needs it only when it needs certain critical moments of pain to agree to death and irreparable act which once allowed can never be recalled. I am quoting Mr. John Donne:

> Death be not proud, though some have called thee,  
> Mighty and dreadful, for, thou art not so,  
> For, those, whom thou think'st, thou dost overthrow,  
> Die not, poor death, nor yet canst thou kill me.

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V.R. KRISHNA IYER
Preface

The most significant manner to understand the eminence of dignity and individual’s rights is to study about the terminally ill patient’s last phase of life and the legal scenario surrounding the highly debated issue — Euthanasia. As euthanasia is a form of extinguishing life, it is of immense importance to examine each cognate of life for the purpose of understanding the pros and cons of euthanasia. This book on legalizing euthanasia in India is an effort undertaken in the light of an extensive debate which is advancing at an accelerating stride and becoming increasingly prominent to provide death with dignity to terminally ill patients who lack representation in the society.

The moral and ethical connotation of euthanasia is preordained to the fact that life has intrinsic value. The issue of euthanasia is based on life, which includes its various cognates, such as, origin of life, meaning of life, value of life, quality of life, protection of life, sanctity of life and evaluative status of life. Value of life is concretely intertwined with the right to die or euthanasia debate. The difference of opinion about how to value life according to the changing state of human life adds to the euthanasia controversy.

Moreover, the debate of euthanasia, inter alia, is based on human dignity; it accentuates the pertinence of right to die a dignified death on par with the right to dignified life. Article 21 of the Indian Constitution upholds right to human dignity but denies right to a dignified death.

Euthanasia or right to die should not be for eternity considered to be intrinsically wrong, as required augmentation in legal arena shall not pose an insurmountable impediment to legalize euthanasia. Parliament and the judiciary, both have the power and the duty to address these issues carefully and acknowledge the inevitable uncertainty and complexity of decisions about life and death. In order to avoid illegal acts of euthanasia, there is a need to have a fresh look at the legal provisions for terminally ill patients. Though the State is duty bound to protect and preserve life of individuals in the society, there can be exceptions to the law on reasonable grounds. Especially, as the 20th century has experienced tremendous development in the medical technology, the doctor’s role of curing diseases and relieving
pain has now changed into prolonging life via medications, transfusions, respirators, dialysis machines, artificial feeding, etc.

A sincere attempt is made in this book to highlight the predicaments faced by the terminally ill patients and hence the need to have an appropriate legislation for terminally ill patients in India is emphasized. The change in concept of death, the artificial life support techniques, various diseases leading to terminal illness, the agony faced by the patients and emergence of advance directives are some important areas of concern which compel to have *euthanasia* legalized in any acceptable form adaptable in the society.

The model law drafted by me is just a minuscule attempt towards legalization of *euthanasia* which may not fathom the depth of this massive debate. Hence, I solicit suggestions for further enrichment of this book from the readers.

This book is based on my Doctoral Thesis “Article 21 of the Indian Constitution vis-à-vis Right to Die with Dignity in Rarest of the Rare Cases – A Critical Study”. Although my endeavour is like a drop in ocean, I hope and strongly believe that a skillfully crafted legislation for dying with dignity will definitely enable the courts to avoid the possibility of tension and conflict between the law and medical science while at the same time safeguarding the rights of terminally ill patients.

Mumbai

Dr. Sharmila Ghuge
Acknowledgements

The present book is a creation of my Doctoral Thesis based on research over a period of several years. In these years, during my research and completion of this book, I have experienced various phases of anxiety, excitement, nervousness, fretfulness, but, at this moment of completion of this book I have a feeling of satisfaction and contentment.

There are many people to whom I am indebted, but the first and foremost, I would like to express my heartfelt gratitude to Justice, V.R. Krishna Iyer, former Judge, Supreme Court of India, for kindly consenting and sparing his valuable time to write the foreword of the book. I fall short of words to express my sincere gratefulness to my guide and my mentor, Dr. Sadhana Pande, Professor and Head of the Department of Post Graduate Studies in Law, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, for the extensive guidance, valuable suggestions, motivation and endless encouragement provided throughout the years.

I extend my sincere thanks to my parents Dr. Ramakant Ghuge and Mrs. Ratnaprabha Ghuge, for their blessings and their incessant support. My mother’s honest espousal, sacrifice and unremitting buttress are the backbone of my life. I wish to express my regards to my husband, Sandesh for always being compassionate and understanding. I would also like to thank both my children, Radhika and Yash, who though are of tender age have been a great support throughout the completion of this book. Both my little ones have sacrificed their precious moments of childhood which they would have spent with me as their mother. I would specially like to thank my sister, Adv. Rajshree Dewani and brother-in-law, Adv. Shyam Dewani for their moral support and persistent motivation in crucial moments.

Lastly, I express my gratitude and appreciation to Himalaya Publication House Pvt. Ltd., Mumbai, for not only publishing this book but for rendering all the help and assistance I required for completion of this book.

Dr. Sharmila Ghuge
# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1 - 15</td>
</tr>
<tr>
<td>1. <em>Euthanasia, Life and Its Constitutional Parameters</em></td>
<td>16 - 50</td>
</tr>
<tr>
<td>2. Concept of <em>Euthanasia</em> and Its Various Forms <em>vis-à-vis</em> State’s Duty to Protect Life: An Analysis</td>
<td>51 - 112</td>
</tr>
<tr>
<td>3. Medico-legal Aspects of <em>Euthanasia</em></td>
<td>113 - 174</td>
</tr>
<tr>
<td>5. Legalizing <em>Euthanasia</em> in India: A Need for Constitutional Correction and Legislative Response</td>
<td>223 - 285</td>
</tr>
<tr>
<td>Conclusions and Suggestions</td>
<td>286 - 292</td>
</tr>
<tr>
<td>Appendices</td>
<td>293 - 295</td>
</tr>
<tr>
<td>Bibliography</td>
<td>296 - 319</td>
</tr>
<tr>
<td>Webliography</td>
<td>320 - 328</td>
</tr>
</tbody>
</table>
1

EUTHANASIA, LIFE AND ITS CONSTITUTIONAL PARAMETERS

INTRODUCTION

The moral and ethical connotation of euthanasia is preordained to the fact that life has intrinsic value. Like many other concepts foundational to the field of bio-ethics, life is an issue about which there is both, long standing conviction and increasing uncertainty. The beginnings and endings of life, as well as its creation, have become subject to enormous technological modification, particularly owing to the rise of the modern biological sciences and new reproductive and genetic technologies. The innovative highly advanced medical technologies, raise questions about the limits of what can or should be done to life itself with the control over the management, regulation and production of life and life support systems. It can be said that, scientific knowledge, at present has provided human beings with an unprecedented ability to manipulate not only life but also death.

Hence, the universal human attitude towards life is today accompanied by profound ambiguities concerning the meaning, value and definition of life.

Although it has not been pinpointed exactly, evidence suggests that life on earth has existed for about 3.7 billion years. A few scholars opine that life evolved through 3.5 billion years of tumultuous earth history, others state, life originated perhaps about 4 billion years ago. Thus, there is no scientific consensus as to how life originated and all proposed theories are highly speculative.

The issue of euthanasia is based on life, which includes its various cognates, such as, origin of life, meaning of life, value of life, quality of life, protection of life, sanctity of life and evaluative status of life. As euthanasia is a form of extinguishing life, it is of immense importance to examine each cognate of life for the purpose of understanding the pros and cons of euthanasia.

CONCEPT OF LIFE AND ITS COGNATE MEANING

Life is divided into domains, which are sub-divided into further groups. The first attempt to classify organisms was conducted by Aristotle, the Greek Philosopher (384-322 B.C) who defined life as the possession of a soul or vital force, through which entity is rendered animate and given shape.  

Erasmus Darwin proposed that “competition among living things selected the survivors and thus the ‘fittest’ to beget the next generation. The word ‘life’ is often used to denote the living creature’s complete sequence of activities and experiences throughout the period during which it is alive…”

For moralists the dimensions of life are inexplicable. Human life itself is a fundamental human good. From the vantage point of modern life sciences, life itself has come to be associated with certain qualities, including movement, the ability to reproduce and to evolve along with the capacity for growth and development.

In relation to moral questions, life - the vitalistic motion of life as something inexplicable and deserving of reverence and protection is far more prevalent than the more mechanistic and instrumental account dominant with science. Scientifically, life is defined according to the modern life sciences in a biogenetic idiom, which constructs it as a continuous and connected force unto itself, manifested by the self-replicating properties of DNA. In the liberal humanist tradition, human life is also seen as a possession, and the persistent association of life with sacredness is well established.

As a mere word, ‘life’ is interesting in the fact that it is one of those abstract terms which has no direct antithesis, although probably more persons would regard ‘death’ in that light. A little consideration will show that this is not the case. In fact, “[d]eath implies the pre-existence of life and there are physiological grounds for regarding death as a phenomenon of life - it is completion, the last act of life.”

Instead, as definitions of both life and death are subject to ongoing transformation, so are the ethical frameworks brought to bear on the creation, management and protection of all life forms. Though there is no specific or a definite definition of life, yet one thing is undisputable that life has intrinsic value.

LIFE AND IT’S VALUE

Value of life is concretely intertwined with the right to die or euthanasia debate. The difference of opinion about how to value life according to the changing state of human life adds to the euthanasia controversy. Actually what people believe about ethics of euthanasia is likely to turn at crucial points on the account they give value

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of life. While trying to explain in which way one understands the ‘value of life’ and its intrinsic importance the term ‘person’ is used to denote a particular type of individual recognized by its capacities or powers rather than by its species partisanship.

Stoic and Epicurean philosophers thought that suicide and *euthanasia* were acceptable options when life no longer held any value. Most historians of Western morals agree that the rise of Judaism and even more of Christianity contributed greatly to the general feeling that human life is valuable and worthy of respect.

As observed by Sweet, “[l]ife is fundamentally valuable and if we say that life on the whole yields more pleasure than pain... then [the] actions by which life is maintained are justified, and there results a warrant for freedom to perform them, the life of the individual, then, is the basis of value.”

It can be alleged, that human beings are important because they permit the individuals to value their own existence and the most important characteristic of this account is that a person is the only creature capable of valuing its own existence. This also makes plausible an explanation of the nature of the wrong done to such a being when it is deprived of existence. Considering the practical reasonableness, one chooses to act in a manner which brings about consequences involving a greater balance of good over bad.

The life-cycle of every person passes through a number of junctures of different moral connotation. The individual from the time of inception in the foetus in womb undergoes several stages of development. Childhood, adolescent age, adulthood and then finally becomes capable of valuing her or his own existence, as a ‘person’. The point of deciding and having the liberty to choose between competing conceptions of how and indeed why, to live, is simply because it is only our life in the authentic sense. Hence, the value of own lives is the significance we attach to our life. The real rationalization for speaking of ‘rights’ is to make the point that, when it comes to characterizing intentional actions in terms of their openness to basic human values, those human values should be realized equally in the lives and well-being of others. In any case, just because there may be some people opposing *euthanasia* for themselves no matter how hopeless their condition is, that cannot be the reason to deny others the right to choose *euthanasia* when life no longer is of value.

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11 Ibid.
14 Ibid.
15 Ibid., at 139.
Euthanasia, Life and Its Constitutional Parameters

made on a random basis in order to avoid computing the relative value of various individual lives.\textsuperscript{17}

Recent medical innovations provide treatment options that implicate fundamental questions about the value of human life.\textsuperscript{18} Some questions compel to rethink how an individual can embrace a dignified death, \textit{e.g.}, should human life be valued irrespective of its deteriorating condition? Should the value of life be measured against the quality of life? Is life worth attributing value in undignified existence?

Life not only has value but also qualitative analysis. The value given to the life of each individual should also reflect the quality of life. Quality of life raises a pertinent question in the \textit{euthanasia} debate, \textit{i.e.}, what is more important, how long we live or how we live? The next segment aims to answer this question by evaluating quality of life versus the value of life.

\textbf{QUALITY OF LIFE \textit{VIS-À-VIS} \textit{VALUE OF LIFE}}

The measure of life lies not only in quantity but in its quality as well.\textsuperscript{19} The life sustaining-treatment aiming to protect the sanctity of life principle successfully improves the quantity of life, but at the same time diminishes the quality of life. At present, the impact of improved medical technology on the quality of life has participated an international quest for patient autonomy in health care decision making.\textsuperscript{20} The importance of good health and quality of life has been recognized since the dawn of civilization.\textsuperscript{21} The World Health Organization \cite[here in after referred as WHO]} has defined “Quality of life” as “the condition of life resulting from the combination of the effects of the complete range of factors such as those determining health, happiness (including comfort in the physical environment and a satisfying occupation), education, social and intellectual attainments, freedom of action, justice and freedom of expression”.\textsuperscript{22}

Nancy Rhoden while equating quality of life with “relational capacity” defines “life” as “the ability to participate at least minimally in those experiences that make life recognizably human” and measured by level of consciousness.\textsuperscript{23} The phrase “quality of life” can mean either the value of prolonged life for the patient or the value of others of prolonged life based on the patient’s contribution to and consumption of society’s resources.\textsuperscript{24} Courts generally agree that if quality of life considerations have any influence at all, the appropriate scope should be defined

\begin{itemize}
  \item \texttt{http://www.members.tripod.com/Aims_lee/fallingtree/eu.html}, [accessed on 19/3/2010].
  \item \texttt{http://www.international.westlaw.com}, [accessed on 20/3/2010].
  \item \texttt{http://www.who.int/en}, [accessed on 14/11/2009].
  \item \textit{Supra} note 18 at 1604.
  \item \textit{Id.}, at 1652.
\end{itemize}
by the value to the patient.\textsuperscript{25} The quality of life can be evaluated by assessing a person’s subjective feelings of happiness about the various life concerns.\textsuperscript{26} The importance of quality of life was also emphasized by great liberal philosophers, John Mill and Bentham. Mill embraced the principle of utility and considered “the maximization of pleasure or happiness as the moral end...but in contrast to Bentham, he argues that quality of the pleasure and not mere quantity of the pleasure has to be taken into account.”\textsuperscript{27} And for assuring maximum pleasure, “[t]he principle requires liberty of tastes and pursuits, of framing the plan of our life to suit our own character, of doing as we like...”\textsuperscript{28} A fruitful and meaningful life presuppose full of dignity, honor, health and welfare. According to the proponents of euthanasia the medical treatment of human beings in terminal ill patients offends a qualitative life - the quality that makes living beings different from dead organisms and inorganic matter. There is much ambiguity about what quality of life means, and consequently there is little agreement about the definitions of this criterion. Life relates to two different realities in this context. Firstly, vital or metabolic processes that could be called human biological life and secondly human personal life that includes biological life but goes beyond it to include other distinctively human capacities, \textit{e.g.}, the capacity to think or to choose. As per these two realities a patient in persistent vegetative state has biological life, but does not possess human personal life. Similarly qualitative life refers to several different realities. Most proponents of quality of life refer quality as an attribute or property of either biological or personal life. According to Richard McCormick, only one quality is to be considered as the minimum for personal life: the potential for human relationships. At the other end of the spectrum, Joseph Fletcher defined the indicators of “human hood” with fifteen positive qualities necessary to live a life of quality. James Walter suggested that the word quality should not refer to a property or attribute of either physical or personal life. The quality that is at issue is the quality of the relationship that exists between the medical condition of the patient, and patient’s ability to pursue human purposes. The concept of a life worth living merely implies that human beings can quite reasonably and with sound moral judgment decide that certain kinds of life and their prolongation are of no benefit to themselves or anyone else.\textsuperscript{29} The quality referred to is the quality of a relation and not a property or attribute of life.\textsuperscript{30}

\textsuperscript{25} Ibid.
\textsuperscript{26} Park, K., Preventive and Social Medicine 14, 14\textsuperscript{th} edn., Jabalpur: M/s Banarasidas Bhanot, 1995.
Critics of decision to withhold treatment argue that a quality of life approach to such decisions is actually an invidious method of denigrating the social worth of individuals. But the proponents argue that, a morally legitimate approach to decision making must involve some quality of life judgments, and such judgments must spring from a social consensus based on moral values and medical knowledge.

Dr. Robert J. Glaser, the Dean of School of Medicine of Stanford University, wrote, “[f]or those of us in medicine, the preservation of life remains a noble goal, but in seeking this objective we must more and more concern ourselves with the quality of life we preserve.”

Likewise in 1960, Dr. Perrin Long, the editor of Medical Times, through his article titled “On Quality and Quantity of Life”, was instrumental in attracting much support for euthanasia. Dr. Long expressed concern over the obsession with the quantity rather than the quality of life and urged for a more humanitarian approach to the problem of human suffering.

Quality of life is a complex concept especially since it is so difficult to measure. That is to say, what a poor quality of life is for one person may not be for another. Quality of life is subjective and, therefore, no matter what our views are about the level of quality of someone else’s life, the only test is what that person feels. The Law Commission of Canada believes that considerations of quality of life are legitimate factors in decision-making and are valid criteria in justifying certain acts.

Thus for patients to judge that they possess a quality of life means that the patients themselves would evaluate that based on their medical condition, they are able to pursue values important to them at some qualitative or acceptable level. The satisfaction of personal desires, freedom of choice, and a “quality life” have for many become irreducible entitlements in a democratic society.

On one hand, we want to respect patients wishes to relieve suffering, and put an end to superficially futile medical treatment, hence we allow patients to refuse life-sustaining treatment, and on the other hand, we want to affirm the supreme value of life and to maintain the salutary principle that the law protects all human life, no matter how poor its quality is. The purpose of medicine, in fact, is to improve the quality of life and not to diminish it by simply prolonging the life.

31 Supra note 18 at 1602.
32 Id., at 1603.
33 Supra note 16 at 27.
34 Id., at 140-141.
The quality of life in general differs from the quality of life in clinical decisions. The requirement of having a legislation to allow euthanasia or physician assisted suicide, arises in case of terminal illness or any irremediable disease. In view of this, it is important to shed light on the quality of life in clinical and legal perspective.

QUALITY OF LIFE IN CLINICAL DECISIONS

The quality of life discussed in the earlier part of this chapter refers to the evaluative status of life, where as the quality of life discussion in this segment narrows down to highlight the importance of quality of life in clinical decisions and its legal perspective.

A definition of quality of life includes a composite measure of physical, mental and social well-being as perceived by each individual or by a group of individuals comprising of happiness, satisfaction and gratification as it is experienced in such life concerns as health, marriage, family, work, financial situation, educational opportunities, self-esteem, creativity, belongingness and trust in others.40 This quality of life can be evaluated by assessing a person’s subjective feelings of happiness or unhappiness about the various life concerns.41

The most important issues related to quality of life in clinical decisions are:

- Assessments about what is considered normatively human or property of life decisive in making a clinical decision to treat or not to treat.
- The limits or exceptions to moral obligations to preserve life and the moral justifications for these limits or exceptions.

At this point it is important to distinguish cases where quality of life judgments are made by patients who posses decision-making capacity, and those cases where patients are in Persistent Vegetative State [here in after referred as PVS] in which they lack the capacity to decide. Once patients with decision making capacity are permitted to make treatment choices based on their own assessments of quality of life, a number of issues may arise. However, these problems may arise in comparison to the application of the quality of life criterion to situations where a surrogate must make a decision to terminate treatment.

It is argued by some authors that only competent patients can make these judgments for themselves, no one may morally substitute for quality of life judgments for someone else. Proponents of quality of life argue that the medical indications policy could be devastating for these patients. The patients may be condemned to live with pain and suffering if the surrogate does not apply some measure of quality of life.

The moral obligation to treat or not to treat patients is derived from the objective presence or absence of a valued property that gives worth and moral standing to the patient’s life. As per Fletcher’s moral theory, any moral claim about the value

41 Supra note 26 at 139.
of a patient’s life or any moral duty to provide medical treatment depends entirely on the patient or on others whose interests are involved in the situation. Some proponents hold that quality of life is a patient-centered way of discovering the “best interests” of a patient.

It is further argued that in the clinical situation for the incompetent patients, the emphasis should be to discover what is in their best interests. In such cases surrogates can legitimately include quality of life considerations in incompetent patient’s treatment decisions, but these considerations are valid only where the treatment itself would cause either excessive harm or leave the patient in a debilitated state. Proponents of “patients’ best interests”, argue that medical intervention to continue the lives of accurately diagnosed PVS patients are unwarranted. These patients have reached the limits of their moral obligations to preserve their own lives, based on an assessment of their best interests.

The spectrum of definitions and positions representing quality of life makes it difficult to identify anyone quality of life ethic for analysis or critique. Though there are some shared features among the various positions, in the end it is necessary to assess the validity or invalidity of each position on its own merits. Vitalists, who believe that all lives are valuable, regardless of its quality, simply reject the idea of termination of life support system. Others, however, insist that it is wasteful, to spend limited resources, which does not benefit the patient but only sustains the lives of permanently unconscious patients.

What is probably most important is to implement procedures that are fair and open to wide participation, are sensitive to varying viewpoints and embrace a respect for citizens as persons. Not only the Quality of life in clinical observation but also the quality of life in legal standpoint is of intense significance in the euthanasia controversy. The following segment analyses the quality of life in the legal perspective.

**QUALITY OF LIFE IN LEGAL PERSPECTIVE**

Law has addressed quality of life issues primarily in the context of the withholding or withdrawal of life sustaining medical intervention. The legal dilemma arose when medical technology became capable of keeping persons alive with gravely debilitating and potentially fatal afflictions long beyond the point that most people would wish to live. The questions that arose are - under what circumstances is the removal of life support lawful? Can decisions to remove life support be grounded on quality of life factors? Can a terminally ill patient request to die as his quality of life diminishes?

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42 Supra note 16 at 45.
45 Supra note 37 at 126.
The quality of the decisions resides in the quality of the reasons adduced to support it and the quality of process by which those reasons are arrived at, responding more or less effectively to the particular points made by the parties concerned to the medical treatment.46

Quality of life considerations are confined to factors, from the patients own perspective which sometimes makes existence intolerable and unbearable due to any terminal illness from which the patient is suffering.

The opponents of using quality of life factors in ending patient’s lives cite numerous concerns such as the traditional focus of both and protecting all human life, regardless of quality. The quality of life will be measured in terms of utilitarian elements such as cost of care, social productiveness of the patient and burdens imposed upon people caring for the patient. Thus such a utilitarian calculus would place the lives of weak and elderly - at a particular risk. Some sanctity of life proponents prefer to protect even severe degeneration only to uphold sanctity of life against the quality of life.

This tension between the sanctity of life and quality of life has surfaced in a number of legal settings. Humans are ultimately “biological, psychological, social and spiritual beings...[and] addressing problems in any one of these realms while ignoring others will ultimately prolong disease, increase costs, and reduce the satisfaction...”47 Thus, there is indeed a need to resolve the tension between quality of life in clinical decisions and quality of life in legal perspective.

The value of life and quality of life in totality give rise to the evaluative status of life. The euthanasia debate rests on the pillars of quality and the status of terminally ill patients’ lives. Hence, it is inevitable to discuss the importance of evaluative status of life in the euthanasia debate.

LIFE AND ITS EVALUATIVE STATUS

When quality of life is defined by reference to a property or attribute of physical life, then some basic questions are raised about the value of physical life itself. What is the value of physical lives? Do we value biological existence in and for its own sake, or, because of the presence of some property or attribute in that life, for example, cognitive ability? What philosophical justifications can be offered for one’s evaluations of life? Many who define quality of life basically by reference to a property do not attribute intrinsic value to physical life. Based on the physiological value, existence as such is not a value if that life lacks any potential for a mental-creative function.

David Thomasma described physical life as only a conditional value. As per this position, what is valuable or worthwhile about physical life is either the properties

that inhere in life or the values that transcend biological existence but whose pursuit is conditional on the presence of physical life.\textsuperscript{48}

When quality of life is not defined as a property or attribute but rather as a qualitative relation between the patients medical condition and his or her ability to pursue human values, then a different evaluative status is accorded to physical life. Walter has argued to acknowledge that physical life is objectively a value in itself, though it may not always be experienced as such by some patients.\textsuperscript{49} Thus, physical life is not minimally a useful or negotiable good and on the other hand, neither it has an absolute value that life must be preserved in every instance. For e.g., life cannot be considered as any product which is used in our day to life, it has intrinsic importance as compared to any other tangible thing on this earth. However, this does not mean that only because life has intrinsic importance it should be sustained even if it is not worth doing so. And in such situations the quality of life is embattled in case of terminally ill patients.

Opponents of euthanasia, refer quality of life to the idea of excellence, they further argue, one may fear that patients whose lives cannot achieve the expected level of imagined or desired excellence, such as the handicapped or the dying, will either not be offered any life sustaining treatment or will be actively killed. Thus the idea of legalizing the right to a merciful death for human beings raises many important moral, social, legal and medical questions.\textsuperscript{50}

The questions raised by the opponents of euthanasia mainly focus on the fact that life is inviolable and sacred. Though the quality of life aims to give the evaluative status of life, yet it cannot be forgotten that life needs to be protected as a universal fact.

LIFE AND ITS PROTECTION: A BASIC REQUIREMENT

The argument in favour of life and its protection seems to be in contrast to the quality of life argument. Irrespective of the value and quality, life is always protected as a basic requirement of universal human rights law.

Ronald Dworkin, a renowned philosopher emphasizes the importance of recognizing that life is not exclusively or even primarily understood by many people in terms of scientific explanation, but rather in terms of a value more akin to sacredness.\textsuperscript{51}

Jeremy Bentham preaches the importance of individual right. According to him “[n]ature has placed mankind under the governance of two sovereign masters, pain and pleasure”.\textsuperscript{52} He further adds that, “[t]he logic of utility consists in setting out, in all the operations of the judgment, from the calculation or comparison of pains and

\textsuperscript{48} Supra note 30.
\textsuperscript{49} Ibid.
\textsuperscript{51} Dworkin, Ronald, Life’s Dominion ...supra note 43 at 11.
pleasures, and in not allowing the interference of any other idea.” Bentham’s theory of utility based on individualistic principle advocates the liberty of individuals in life as pleasure and restrain on such liberty as the pain.

Dworkin’s approach thus differs from the more utilitarian arguments about the beginnings and the endings of life propounded by philosophers and other commentators who use rights or interest based approaches to questions of the meaning and value of life.

In the discussion of abortion and euthanásia, two of the most controversial areas of debate concerning human life, life does not present itself as a question of objective fact, but rather as a truth, or a principle held to be self-evident through “primitive conviction”. The ancient opinion about abortion and euthanásia has been persuasive about the value of human life.

In the highly debated issue of abortion, both the definitions of life and the value of human life are paramount and explicitly formulated. Arguments of opponents of abortion are based on the fact that life begins at conception and therefore termination of pregnancy amounts to taking of human life which is immoral and can be equated to murder.

Proponents of women’s right to control her own fertility, including the choice to terminate her unwanted pregnancy, argue on the basis that the moral value of an act should be measured with reference to its outcome. The U.S. Supreme Court in Roe v. Wade, determined abortion law in United States. By valuing a woman’s right to privacy over potential human life and by imposing a trimester standard that reads like a legislative abortion code, Roe became a “lightening rod” for critics of judge-made rights. The same standards hold in Great Britain. The Indian Parliament has also enacted The Medical Termination of Pregnancy Act, 1971, to legalize abortions in exceptional cases.

Similarly, the concept of euthanásia has been debated for centuries, the proponents’ support their arguments as rights of individuals are based on self-determination, where as the opponents argue that allowing to die or to assist in dying is not only immoral but also illegal. In view of the proponents, “[t]he liberal State should help preserve life, but should not insist on prolonging the lives of patients who feel that such an action would undermine their dignity.”

54 Dworkin, Ronald, Life’s Dominion …supra note 43 at 195.
57 In Great Britain, under S. 1(1) d., lawful termination of pregnancy has been possible since the passing of The Abortion Act, 1967.
58 In India, under S. 3, 3 (2) (b) (i) and (ii) of The Medical Termination of Pregnancy Act, 1971, termination of foetus is allowed in exceptional cases, for e.g., where the continuance of the pregnancy would involve a risk to life of the pregnant woman or grave injury to her physical or mental health.
Many of the ethical questions, e.g., is it right to commit suicide; is it ethical for someone else to help die; is it sensible to put others to death at their own request or at the request of family members; related to life itself concern the degree of protection it requires. These questions are important because they help to define our society and our culture. The way people deal with and respond to issues of life and death serves to shape the nature of our society. That is why, society must attempt to decide what is right, what is ethical conduct for the various actors in our communities when we face death. These issues in turn, depend on how life is defined. Whether these questions concern the beginnings or endings of life, its creation, redesign or sustenance under technological conditions? The meaning of bodily life, which was once determined by an account of its excellent functioning and limited by its subject to fortune, will now be determined by its susceptibility to technological control.60 The underlying definition of life itself is a fundamental force shaping ethical decision making. The fact from which the principle of human worth is a generalization belongs to the common places of morality.61 The right to life, the protection of life, value of life and the quality of life are extended to some degree to other life forms, on the principle of avoiding cruelty and suffering.

In this civilized era all the democracies in this world, uphold protection of life as a fundamental right and impose a corresponding duty upon the State in their respective constitutions.62 In addition, the doctrine of sanctity of life also emphasizes the need to protect life. The next segment critically evaluates the principle of sanctity of life which contradicts the quality of life and rises in opposition to the right to die.

LIFE AND ITS SANCTITY IN THE EUTHANASIA DEBATE

Life and its various cognates encompass equal significance. However, the sanctity of life principle, accentuates that life escalates on the highest pedestal as life is sacred, inviolable and God gifted, and it should be protected under any circumstances irrespective of the quality of life.

In fact the protection and respect for life commences from the moment of conception as per the doctrine of sanctity of life. And hence, according to the laws of humanity, respect for human life should be maintained from its conception.63 The evaluative status of life sometimes contrasts the quality of life ethic with the sanctity of life ethic. Although the absolute attribution of personhood from conception is a dramatic and emotional platform for the right to life movement as

62 For e.g., the Indian Constitution under Article 21 imposes a duty upon the State to protect individuals right to life.
Legalizing Euthanasia: A Pedagogue’s Perspective

the concept lacks the scientific, historical and cultural basis of moral universalism. The proponents of sanctity of life ethic do not argue that physical life itself is an absolute value. On the basis of sanctity of life position it can be argued that, quality of life denies that all lives are inherently valuable, and so it leaves open the possibility that some lives can be deemed ‘not worth living’. It is also argued that the sanctity of life position is far superior because it affirms the quality of life on the basis that physical life is truly a value or good in itself. However, the vital difference is between understanding and accepting the intrinsic value and artificial importance. Though sanctity of life overrides the quality of life, concept of respect of persons cannot be overlooked. Therefore, more importance should be attributed to the value of life inculcating respect for humans at least in exceptional circumstances with due respect to principle of sanctity of life. It can also be argued that the doctor’s duty to do good and to uphold the sanctity of life principle will, on occasion, justifiably, override patient’s autonomy.

Len Doyal, Professor of Medical Ethics and Law Queen Mary, St Bartholomew’s and The London Medical School, suggests, “[t]he sanctity of life is that, life can be – but need not necessarily be – precious and worthy of protection then there is no argument. However, I submit that this cannot be what sanctity entails. Otherwise, why not just use the word precious.”

From Professor Doyal’s arguments it flows that it is not the inherent value of human life that counts. The value that resides in what humans wish to try to do with their lives – in the value that they do or might attach to such actions. This is why some lives are not worth living or saving – there is no such potential. The sanctity of life is, however, about proper and full respect for human life, it therefore requires that we respect all life and never intend its destruction or ending.

In contrast, Peter Singer a world-renowned philosopher, argues that the right to life is not an absolute right which must be protected in all circumstances. Rather, criteria based on the value, utility, and quality life can be factored into the equation along with, and sometimes at the expense of, concerns about the sanctity of life.

Dworkin’s theory of the sacred returns to the abortion and euthanasia debate a term that many philosophers have tried to eliminate from these discussions because of its association with the sanctity of life doctrine.

The sanctity of life doctrine, thought of as secular despite its use of the word “sanctity”, has been taken to imply the following:

68 Ibid.
Euthanasia, Life and Its Constitutional Parameters

(1) that innocent human life is inviolable, that is, killing intentionally or allowing someone to die intentionally is prohibited, and
(2) that all human life has equal value, regardless of its stage of development or its quality.70

According to Professor Dworkin, someone who thinks his own life would go worse if he lingered near death on a dozen machines for weeks or stayed biologically alive for years as a vegetable believes that he is showing more respect for the human contribution to the sanctity of his life if he makes arrangements in advance to avoid that, and that others show more respect for his life if they avoid it for him.71

So the appeal to the “sanctity of life raises here [for euthanasia] the same crucial political and constitutional issue that raises about abortion.”72 In such situations, the proponents of euthanasia argue that, “our firm belief in the sanctity of human life is to put the supreme test in situations where the life of elderly or comatose patients is sustained by artificial procedures developed through medical science and technology.”73 There is a strong correlation between opposition to abortion, opposition to the death penalty, and opposition to the right to die, suggesting that there is a “sanctity of life” thread that may somewhat temper conventional ideological distinctions.74

The fact that sanctity of life should be upheld cannot be overlooked. But at the same time, while upholding sanctity of life to protect the life, the right to self-determination should not be violated. The right to self-determination is a predominant fact in the discussion on euthanasia. The subsequent segment highlights the importance of right to self-determination which has been upheld by the judiciary in landmark judgments.

PROTECTION OF LIFE VIS-À-VIS SELF-DETERMINATION

According to the principle of self-determination, each person is worthy of respect, and bearer of basic rights and freedoms, including the right to final determination of his or her destiny. The main argument in support of the legalization of active voluntary euthanasia is based on the principle of autonomy or the right to self-determination.75

Proponents argue that an individual, who has decision making capacity, has the right to control his or her own body and should be able to determine how and when he or she will die as long as this does not interfere with the rights of others.

71 Dworkin, Ronald, Life’s Dominion … supra note 43 at 216.
72 Ibid.
74 Supra note 44.
Legalizing Euthanasia: A Pedagogue’s Perspective

All persons have a right to life which includes right to decide what happens to your body.\textsuperscript{76} The law must recognize the principle of personal autonomy and self-determination which is the right of every human being to make decisions regarding his own body and have these decisions respected.\textsuperscript{77} This right of every human being stands in contrast to the principle of sanctity of life.

Undoubtedly, “[t]he essence of the individualistic fallacy is that human rights are founded on, or can be deduced from, the nature of human beings as individuals and can therefore only be granted to, or recognized for individual human persons.” This view was clearly expressed in the American Declaration of Independence and French Declaration of the Rights of Man and the Citizen.\textsuperscript{78}

It is this human self-determination, the capacity of individuals to choose and pursue their particular life-plan, which is said to give persons their special moral status and is an essential component of the dignity that attaches to rational personhood.\textsuperscript{79} Having created the individual as the source of his own circumstances, choice plays a central role.\textsuperscript{80} It has been argued that to deny voluntary euthanasia is not only a form of tyranny but an attempt to control the life of a person who has his or her own autonomous view about how that life should go, and this constitutes an ultimate denial of respect for persons.\textsuperscript{81}

According to the proponents of euthanasia, in order to uphold the patient’s interest in self-determination, doctors should be free to act upon the request of an informed and mentally capable patient for active voluntary euthanasia without fear of criminal liability.\textsuperscript{82} Proponents also argue that maintenance of the present legal prohibition on active voluntary euthanasia is an unjustifiable infringement of the liberty of those persons who would choose to be killed.\textsuperscript{83} The arguments of some proponents for the legalization of active euthanasia rest on a form of utilitarian humanism which demands the decriminalization of certain acts of euthanasia and suicide.\textsuperscript{84}

On pure utilitarian principles, active euthanasia would be justified in circumstances where the patient, and persons involved in the case of the patient are suffering a balance of pain over pleasure and where the killing of the patient would, on utilitarian calculations, produce the greatest good for greatest number. As per this

\textsuperscript{76} Supra note 13 at 14.
\textsuperscript{77} http://www.ag.org/top/beliefs/contempissues_18_euthanasia.cfm, [accessed on 20/1/2010].
\textsuperscript{82} Mason, J. K., et. al., Law and Medical Ethics 552, 6th Edn., U.K: Butterworths, 2002.
\textsuperscript{83} Humphry, Derek, Dying with Dignity Understanding Euthanasia 34, New York: Carol Publishing Group, 1992.
\textsuperscript{84} Supra note 16 at 232, 233.
Euthanasia, Life and Its Constitutional Parameters

The demand of proponents is that, “the legislation must enhance, not diminish human happiness”. 85

Different patients will inevitably have different goals and values which can best be respected by giving effect to the patient’s interest in self-determination and allowing the patient to make decisions based on his or her quality of life assessment.

The dilemma which confronts a number of people is to find some way to give effect to the autonomy and self-determination of the patient, but at the same time, to protect the autonomy of others. This dilemma can be resolved by holding that the patient’s right of self-determination does not necessarily translate into an enforceable legal right to demand assistance to die, the patient’s interest in self-determination can be appropriately protected by recognizing liberty 86 to choose an earlier death and have the assistance of a doctor to bring it about. Recognition of self-determination combined with procedural safeguards, such as, full information, repeated requests, and consideration of all alternatives and other restrictions, viz., requiring that the patient be in a terminal incurable condition to reduce the likelihood of most serious consequences seems to cover what is morally at stake in the issue of physician assisted death. 87

The right to make one’s own choices – the right to self-determination also incorporates the right to choose what is to be done with one’s body. It is evident from the following cases that this right of self-determination has been recognized and upheld by courts throughout history.

In Natanson v. Kline, 88 the Court observed that, the Anglo-American law is based on the principle of self-determination. And relying on this principle it is considered that each man is the master of his own body, if he is of sound mind. In accordance to the principle of self-determination a doctor is not legally permitted to substitute his own judgment for that of the patient by any form of artificial treatment, life saving surgery or any other medical treatment. 89

In Europe also one has seen an assertion in this regard. Article 8 of the European Convention on Human Rights has been interpreted to protect the physical integrity of patients and has been asserted in the following cases dealt with below:

In X & Y v. Netherlands, 90 it was observed that, “[p]rivate life was held to cover the physical integrity of the person.” 91 Earlier, in X v. Austria, 92 the commission

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85 Supra note 27.
86 For a definition of a ‘liberty’, see for e.g., Grisiz & Boyle, Life and Death with liberty and Justice 453, South Bend: University Notre Dame Press, 1979.
87 Supra note 60 at 29.
89 Ibid.
91 Ibid.
referring to the right of self-determination stated explicitly that, “compulsory medical intervention, even if it is of minor importance, must be considered as an interference with his right.” The right of a person to control his own body is a basic societal concept long since recognized in the common law. In *Sidaway v. Board of Governors of the Bethlem Royal Hospital*, Lord Scarmon described the existence of a patient’s right to make his own decisions about treatment as a “basic human right protected by the Common Law.”

In fact, Courts of England have gone further than recognition of self-determination of the patient and have vocalized that non observance or respect of this autonomy may amount to battery in certain circumstances. In the classic case of *Wilson v. Pringle*, it was held that the common law prohibits intentional, non-consensual touching, and doctor who treats a competent patient without consent commits a civil and criminal battery.

In the United States of America, this right of self-determination has assumed the status of a patient’s prerogative grounded in the constitutional protection of liberty. The courts have in the past dealt with numerous cases in which this issue was involved. The following are the illustrations of judicial statements on this issue:

In *Re Quinlan*, the court observed that “Karen Quinlan, if competent would be constitutionally entitled to resist life sustaining medical intervention. Her entitlement flowed from the 14th Amendment to the US Constitution and its protection of liberty.” Later, in *McKay v. Bergstedt*, it was held that “Kenneth Bergstedt had a constitutional privacy right to discontinue further medical treatment.” Subsequently, *Washington v. Glucksberg*, focused on the patient’s liberty interest in bodily integrity – meaning freedom from unwanted bodily invasions, as opposed to a broader prerogative to control the manner and timing of death.

The right to self-determination has also been extended to include within its ambit the right of refusal of medical treatment. This was recognized in England in *In Re T*, wherein Lord Donaldson M.R. stated in summary that every adult had the right to decide whether to accept the medical treatment or to refuse it. Even in case the refusal may risk permanent injury to his or her health or even lead to premature death. Irrespective of the reasons for the refusal were rational or irrational, unknown or even non existent. It is not always in the interest of

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93 Ibid.
94 (1985) A.C. 871 at 882.
95 Ibid.
96 (1986) 2 All ER 440.
97 Ibid.
99 Ibid.
100 (1990) 801 P2d 617 (Nev Sup Ct).
101 Ibid.
103 Ibid.
104 (1992) 4 All ER 649.
preserving the life. In *Airedale NHS Trust v. Bland*, Lord Keith observed that “a person is completely at liberty to decline to undergo treatment, even if the result of his doing so will be that he will die.” Later, in *St Georges Healthcare NHS Trust v. S.*, Lord LJ stated, “[e]ven when his or her own life depends on receiving medical treatment an adult of sound mind is entitled to refuse it.”

This reflects the right of self-determination of each individual. It is interesting to note that this right of self-determination includes within its ambit the right of refusal of treatment which has also been given credence to, by the Canadian judiciary, even in life threatening situations. For e.g., *Mallette v. Schulman*, involved a Jehovahs witness who was unconscious when brought in after an accident, and who possessed a card on her person – stating that no blood or blood products be administered to her. As per Robins J.A., “the right of self-determination... obviously encompasses the right to reject a specific treatment or to select an alternative form of treatment, even if the decision may entail risks as serious as death and may appear mistaken in the eyes of medical profession or of the community.”

*Re Jobes*, also concerns a Persistent Vegetative State patient. The Court by following *Quinlan*, upheld the principle of self-determination of the incompetent patient.

Thus, it is clear from the forgoing analysis that the principle of self-determination is centrical to the case for legalization of *euthanasia* as the self-determination theory is a general theory of human motivation and is concerned with the choices people make with their own free will and full sense of choice, without any external influence and interference.

Apart from the principle of self-determination, the best interest of the patient should be given special attention in the debate of *euthanasia*. It is evident from the developments in the medical field that medicine and medical professionals aim to relieve the patients from their pain and suffering by appropriate treatment. Generally, this can be considered as the treatment given to the patients for the best result in the patients’ interest. However, when a terminally ill patient, suffering from immense pain pleads for death as no medicine relieves his anguish, what is in his best interest? Is it allowing the patient to die? Or is it in assisting the patient to die? Or is it in forcing the patient to tolerate the pain? At this juncture, it is important to know what is the meaning of the best interest standard and when can

105 Ibid.
106 (1993) 1 All ER 321 (HL) at 860.
107 Ibid.
109 Ibid.
111 Ibid.
113 Ibid.
it be invoked. In the next segment an attempt is made by the author to put forth what amounts to ‘the best interests of patients.’

**BEST INTERESTS OF PATIENTS: A CORALARY OF SELF-DETERMINATION**

The value of patient’s best interest is at the heart of medicine. It forms the core of doctor-patient relationship and is the legal standard for the treatment of patients who lack the capacity to take part in their own medical decisions. The physician must always base his advice on what is best for a particular patient’s health and well-being.114

The philosophical discussion relevant to ‘best interests’ has been conducted mainly in terms of concept of ‘well-being’.115 Based on this concept of well-being, it is said that happiness or pleasure is the only intrinsic good and unhappiness or pain the only intrinsic bad. Because of the unique nature of a substantive theory of well-being, it seems that a substantive theory of well-being can play a useful role in making prudential judgments about life and death issues and in making decisions that are in the best interests of the parties involved.116

The General Medical Council of United Kingdom has set up certain guidelines for the patient’s best interest and the Law Commission has also made certain proposals for the legal approach to patients’ best interests.117

The best interest’s calculus generally involves an open ended consideration of factors relating to the treatment decision, including the patient’s current condition, degree of pain, loss of dignity, prognosis, and the risks, side effects, and the benefits of each treatment option.118

It is stated or assumed that, where a patient is incapable of consenting, an effective consent may be given by his spouse, or some near relative.119 Relatives and doctors caring for the patient will often agree that it is in the patients’ best interests to die rather than receive the life-extending treatment.120 Most countries that put a value on individual liberty allow competent adults to refuse any medical treatment even if such treatment is in the patient’s best interests; even if it is life-saving.121

As defined by A.Brett, “[t]he best interest standard is invoked when the patients’ preferences were unknown. This standard, by definition cannot apply to the patients’ preferences. Instead it seeks the surrogate to choose the course of action

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117 Dworkin, Ronald, *Life’s Dominion … supra* note 43 at 32.
that promotes the patients interests according to a more impersonal standard, e.g., that which most reasonable persons would choose.”

If one were to analyze the above definition of the best interest standard, one would observe that the basic concept is erect on that of ‘beneficence’ which in turn is derived from ‘ paternalism’ which has its roots in the Hippocratic Oath. The Hippocratic Oath, inter alia, calls upon doctors to take the utmost care of their patients – it flows as follows:

“I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients and abstain from whatever is deleterious and mischievous.”

In Airedale NHS Trust v. Anthony Bland, Lord Goff was also of the opinion that the correct framing of the question in these cases was of crucial importance. The question is not whether the doctor should take a course which will kill his patient, or even take a course which has the effect of accelerating death. The question is whether the doctor should or should not continue to provide his patient with medical treatment which, if continued, will only prolong his patient’s life. The question to prove over here is “whether it is in the best interests of the patient that his life should be prolonged by the continuance of this form of medical care or treatment.”

In Re H, wherein the issue related to a 43 year old woman who had existed for three years in a severely brain damaged state following a vehicular accident, was brought before the Court which in turn held that, “[t]he sanctity of life is of vital importance [but] not paramount.” The Court in this case, was satisfied on the count that “it is in the best interests of this patient that the life sustaining treatment should be brought to a conclusion.” This judgment was based on the idea of “respect for persons.” It reflects concern for patients welfare, respect for their wishes, for the intrinsic value of their lives and for their interests.

The recent judicial decisions mark a turning point away from an absolutist view of the sanctity of life in all circumstances to a new respect for ‘quality of life’ assessments of person’s best interests, at least when they are comatose and unlikely to recover.

A doctor’s general duty is to treat patients in their best interests, although a competent patient can refuse the treatment offered, there is no extensive legal guidance on how the best interests are to be decided. Some common law cases

124 Supra note 106.
125 Ibid.
126 (1997) 38 BMLR 11.
127 Ibid.
128 Supra note 81 at 10.
129 Supra note 67 at 125.
have tackled the issue of whether it can ever be in a person’s best interest to be dead.\textsuperscript{130}

A decision to terminate life saving treatment implicates compelling State interests. Hence the State should apply a best interest’s inquiry to set the limits.\textsuperscript{131} The actual basis of decision must be an evaluation of the patient’s best interests\textsuperscript{132} and “the interest [to be protected] is the expectation of the ordinary citizen...in his life that he may carry on his private discourse freely [and] openly...”\textsuperscript{133}

The reasons, it is said, for favouring physician-assisted-suicide are not difficult to determine as they consist mainly of the interests that dying patients have in the process of dying being as painless and dignified as possible because they rely on the interest of patients in determining the time and manner of their death.\textsuperscript{134}

Thus, as per the proponents of euthanasia the traditional concept of best interest of patient should now encompass peaceful dying without suffering in pain and agony as a part of best interest of the patient. In accordance to this, advocates of euthanasia opine that, “[w]here both the patient and the doctor agree that a single lethal injection would in fact represent the most humane course of action, the blanket ban upon euthanasia obstructs the doctor’s ability to act in the best interests of the patients”.\textsuperscript{135}

The patients’ best interests not only revolve around the principle of self-determination but also include the right to liberty with human dignity. But, do terminally ill patients have right to self-determination? Does the law attribute right to dignity to such patients? Can the terminally ill patients practically enforce their rights? Does the Constitution protect these rights of terminally ill patients? For the purpose of gaining clarity, it is of immeasurable importance to make an attempt to answer these questions by examining the interrelation between the Constitution, human dignity, and euthanasia.

CONSTITUTION, HUMAN DIGNITY, AND EUTHANASIA: A TRILOGY

Constitutional Law of all the countries including India is not an ordinary law but is accepted as a document having special legal sanctity which sets out the frame work and the principal functions of the organs of the State and declares the fundamental rights of individuals enforceable in the court of law. These fundamental rights embody the principle of human dignity. The law provides and protects human dignity of individuals. The debate of euthanasia, inter alia, is based on human dignity; it emphasizes the right to die a dignified death on par with the right to

\textsuperscript{130} Hope, Tony, Medical Ethics and Law ... supra note 43 at 31.
\textsuperscript{131} Supra note 18 at 1597.
\textsuperscript{132} Id., at 1649.
\textsuperscript{134} Dworkin, Gerald, et. al., Euthanasia and Physician-Assisted-Suicide (For and Against) 3, U.K: Cambridge University Press, 1998.
Euthanasia, Life and Its Constitutional Parameters

dignified life. Article 21 of the Indian Constitution upholds right to human dignity but denies right to a dignified death.

ARTICLE 21 OF THE INDIAN CONSTITUTION AND RIGHT TO DIE

Since the world’s first modern, written national Constitution was drafted for the “United States of America in 1787... [there after there has been] equal astounding explosion of constitutions and constitutionalism throughout the world.”136 397 countries in the world have their own Constitutions. The Constitution is not just a law, but it is the supreme law in all the democratic States.

As opined by the Constitutional Court of South Africa in, Shaballala’s case,137 “[t]he Constitution is not simply some kind of statutory codification of an acceptable or legitimate past. It retains from the past only what is acceptable and represents a radical and decisive break from the part of the past which is unacceptable...”138

History is evident to prove that adaptation of change is a rule of nature. Whatever was acceptable to the people in the past centuries may not be accepted by the present generation. Change in thoughts and opinions result in a demand to have new competent legislation. The Constitution explicitly protects a “range of individual rights from government intrusion...[T]oday... abortion, gay rights, and the right to die dominate the privacy wars”.139

Article 21 of the Indian Constitution states that, “[n]o person shall be deprived of his life or personal liberty except according to the procedure established by law.”140

Article 21 is one of those Articles which, though not textually amended, have been totally transformed by virtue of important judicial pronouncements.141 The important components of Article 21 are (i) person; (ii) deprivation of life; (iii) deprivation of personal liberty; (iv) procedure established by law.

Relevant to the fourth component is the decision in Maneka Gandhi v. Union of India142 which has broadened the horizon of Article 21 by the demand that the procedure must not only be “established by law” but that “it must be just, fair and reasonable.” It is not enough that there is, in force a law which is formally enacted by a competent legislature and which authorizes the deprivation of life or liberty. The procedure must be such that “it is in conformity with justice, fairness and

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139 Supra note 56 at 127.
142 Maneka Gandhi v..., id., at 598.
reasonableness.” Subsequent judicial pronouncements have spelt out the operation of this principle in varying situations.

A favorite strategy of the Indian Courts has been to interpret in the widest and most liberal terms the Fundamental Right to life enshrined in Article 21 and read into it various other rights, thereby giving them a certain constitutional legitimacy. Thus, right to liberty is one of the Fundamental Rights having the widest amplitude guaranteed under the Constitution of India. Liberty denotes the desirable abstract quality of freedom from interference in one’s choices, beliefs and actions. Complete liberty implies no objection that conflict with it.

However, “[f]irst, liberty may mean total absence of legal restraint, but then individuals would still be restrained from their desires by natural limitations of power and environment, and would be abjectly at the mercy of those with greater actual power.” If some activities must be restrained, on what basis shall they be selected? Right to die falls under the restrained area.

The right to die is not legally recognized in India either by the Courts of law or by any statute. Nonetheless, the principle in terms of the right to autonomy, or self-determination or the right to choose and live a dignified life is constitutionally guaranteed under Article 21 of the Constitution. The Constitution of India enshrines the inalienable rights guaranteed to all individuals in a democracy. The most important of them is the right to liberty. According to R.K. Bag, “[i]n India, the individual patient’s right of self-determination will flow from the fundamental right enshrined in Article 21 of the Constitution”. The question whether the right to die is included in Article 21 of the Constitution came for consideration for the first time before Bombay High Court in State of Maharashtra v. Maruti Sripati Dubal, wherein it was held that the right to life guaranteed by Article 21 includes right to die, and consequently the Court struck down Section 309 of Indian Penal Code, which provides punishment for attempt to commit suicide by a person as unconstitutional. The judges opined that

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143 Supra note 141.
147 Ibid.
149 1987 Cri.LJ 549.
150 S. 309, Indian Penal Code, 1860 reads as “whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine.”
everyone should have the freedom to dispose of his life in certain circumstances when the condition of life becomes unbearable.

Justice Sawant speaking for the Court started by stating that the desire to die was not intrinsically unnatural, and that no stigma should be attached to it as such. In the same vein, it ruled that the right to life guaranteed under Article 21 included in its scope the right to die. The Court also acknowledged, that every positive right conferred by the Fundamental Rights chapter of the Constitution includes within its scope a negative right. The Court referred to Excel Wear v. Union of India, in which it was ruled that the right to freedom of trade contained in Article 19(1)(g) includes the right not to carry on a business. Furthermore, as held in R.C. Cooper v. Union of India, the three main Fundamental Rights namely the rights to freedom of equality, liberty and life, enshrined in Article 14, 19, and 21 respectively, are to be read together. Hence, what applies to one must necessarily apply to others as well. Accordingly, if the right to trade includes within itself the right not to trade, the right to life must contain the right to die. Consequently, Section 309 was held ultra vires Article 21. The Court also ventured into an extensive discussion on how different religions and cultures treated suicide differently. It enumerated five instances of suicide traditionally accorded a degree of legitimacy in ancient India, namely, johar (mass suicide or self-immolation); sati (self-immolation of a widow); Samadhi (termination of life by self-restraint on breathing) prayopaveshan (starving to death); and atmaarpan (self-sacrifice).

It was also observed that if Section 309 of IPC is indeed unconstitutional, Section 306 must also be unconstitutional, as it deals with abetting suicide. Since the act of suicide itself ceases to remain a crime, continuing to treat abetting suicide as a criminal offence defies logic. For this reason, euthanasia and mercy killing cannot be treated as illegal any more.

Finally, the Court noted that the wording of Section 309 was ambiguous and open to doubt. There was no precise definition of what acts constituted an attempt to suicide. Moreover, the Section treated all suicide by the same measure, regardless of the circumstances involved, and this amounted to treating unequal cases equally. For these reasons, the Court held that Section 309 also violated the right to equality contained in Article 14. If a logical justification for destruction of human life is found in the negative aspect of right to life in Article 21 then the State can easily embark upon a policy to encourage genocide on the plea that proper management of resources are vital and necessary for the upkeep of life with vigor and dignity.

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151 Supra note 149 at 748.
152 AIR 1979 SC 25.
153 AIR 1970 SC1318.
154 Supra note 151 at 749-51.
155 Id., at 752.
156 Ibid.
157 Id., at 753.
Legalizing Euthanasia: A Pedagogue’s Perspective

On the other hand, the Andhra Pradesh High Court in *Chenna Jagadeeswar v. State of Andhra Pradesh*, held that the right to die is not a fundamental right within the meaning of Article 21 and hence Section 309 of IPC is not unconstitutional. It summarily rejected the contention that the right to live includes the right to die. The Court also held that Section 309 does not violate Article 14 and finally, it ruled that Section 309 and 306 are inherently linked and if former is struck down it is very unlikely that the latter will survive.

Before *Maruti* and *Chenna’s* case Section 309 of IPC was criticized as “anachronism in society” by Justice Sachar in *State v. Sanjay Bhatia*. Later, in *P. Rathinam v. Union of India*, a Division Bench of the Supreme Court comprising Hon’ble Mr. Justice M. Sahai and Hon’ble Mr. Justice Hansaria agreeing with the view of the Bombay High Court in *Maruti Sripati Dubal’s* case held that a person has a ‘right to die’ and declared Section 309 of IPC as unconstitutional. The right to live in Article 21 includes the right not to live as no person can be forced to enjoy right to life to his detriment, disadvantage or disliking. However, the Court rejected the plea that “euthanasia (mercy killing) should be permitted by law, as in euthanasia a third person is either actively or passively involved about whom it may be said that he aids or abets the killing of another person. There is a distinction between an attempt of a person to take his life and action of some others to bring to an end the life of a third person such distinction can be made on principle and is conceptually permissible.

The philosophy of life in Indian tradition has never approved escapism, by legally permitting suicide public will be encouraged to do so owing to frustration in love, failure in examinations, failure to get a job etc., leading to many social problems.

This controversial issue was again raised in *Gian Kaur v. State of Punjab*. A five judge Constitution Bench of the Supreme Court overruled *P. Rathinam’s* case and held that “right to life” under Article 21 of the Constitution does not include “right to die” or “right to be killed”. “The right to die”, is inherently inconsistent with the “right to life” as is “death with life”.

Delivering the unanimous judgment Justice J.S. Verma observed, that any aspect of life which makes life dignified can be considered as a part of Article 21 of the Constitution but any right which extinguishes life would be inconsistent with the existence of life. In the Court’s view ‘Right to life’ was a natural right embodied in Article 21 but suicide being an unnatural termination or extinction of life and,

159 1988 Cri. LJ 549.
160 *Id.* at 557.
162 *Surpa note 149.*
163 *Supra note 159.*
164 1985 Cri. LJ 931.
165 (1994) 3 SCC 394.
166 *Supra note 149.*
167 AIR 1996 SC 1257.
168 *Supra note 165.*
incompatible and inconsistent with the concept of ‘right to life’ cannot be read with Article 21. Referring to protagonists of euthanasia’s view the Court alleged that existence in PVS was not a benefit to the patient of terminal illness being unrelated to principle of “sanctity of life” or the right to live with dignity.\(^{169}\) Summing up, the Court held that this argument was no assistance to determine the scope of Article 21 of the Constitution for deciding whether the guarantee of “right to life” therein includes “the right to die”.\(^{170}\)

The Court, thus, made it clear that “the right to life” including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right of a dignified life up to the point of death including a dignified procedure of death.

This may include the right of a dying man to also die with dignity when his life is ebbing out. But the right to “die with dignity”, at the end is not to be confused with the right to die an unnatural death curtailing the natural span of life. The Court reiterated that argument to support the views of permitting termination of life in such cases where a person who is terminally ill or in a vegetative state by accelerating the process of natural death when it was certain and imminent was not available to interpret Article 21 to include therein the right to curtail the natural span of life. Thus, the Apex Court made it very clear that right to die is not included under right to life.

The interesting point in the above judgment is that, no individual has a right to curtail the natural span of life, but the question which arises in terminal illness is whether the patient is living a natural life or is artificially alive because of the advanced medical technology?

In Rustom Cavasjee Cooper v. Union of India,\(^{171}\) it was then stated that it is not and cannot be, seriously disputed that fundamental rights have their positive as well as negative aspects, for example, freedom of speech and expression includes freedom of silence. Similarly, the freedom of association and movement includes freedom not to join any association or move anywhere. So also, freedom of trade and profession includes freedom of not to do business. It was, therefore stated that logically it must follow that right to live ought to include right not to live, i.e., right to die or to terminate life atleast in certain compelling situations.

But this analogy is criticized as the negative aspect of the right to live would mean the end or extinction of the positive aspect. Leading principles regulate and govern every department of our law, though they are sometimes applied with modifications in order that justice may be done.\(^{172}\)

In the opinion of Alan. A. Stone, professor of Law and Psychiatry in Harvard University, the right to die inevitably leads to the right to commit suicide.\(^{173}\) Thus a

\(^{169}\) Ibid.

\(^{170}\) Ibid.

\(^{171}\) (1970) 1 SCC 248.


“slippery slope argument” therefore emerges as an appeal that forces decision makers to focus on the future implications of what they do today.\textsuperscript{174} The phrase ‘right to die’, probably, is misleading. What people really wish to establish is something related to that, but different; individual control as far as is possible, of the process of dying such a wish has been made urgent as a direct consequence of certain advances in medicine. What remains unclear is whether assisted suicide should be declared acceptable and legal; and to what extent the practice, with all its gray areas, can be regulated in a way that protects the vulnerable and guards against abuse.\textsuperscript{175}

The Constitution protects the choice of a pregnant woman to terminate a pregnancy by a pre-viability abortion. The same Constitution protects the choice of a pregnant woman to continue her pregnancy, and precludes the State from forcing her to have an abortion for any reason whatsoever. By the same token, the same Constitution must protect the right of the terminally ill to make the choice to hasten inevitable death as it equally protects the right of the terminally ill to make the choice not to hasten inevitable death.

The utility of history in the explication of a Constitutional provision is limited. History is more often than not ambiguous; therefore, it should seldom be determinative.\textsuperscript{176} Such conclusiveness not only imposes unwarranted restrictions upon the Court’s flexibility, but also subjects the Court to unnecessary and destructive academic criticism. Rather, history should serve as one analytical weapon in the Court’s interpretative arsenal, because while dealing with a written Constitution, history is no doubt essential, but its proper function is to illuminate the permissible alternatives open to the court and to provide an insight into the wisdom and experience of the past.\textsuperscript{177}

It is necessary to draw a bright line distinction between euthanasia and suicide which will be dealt in the next Chapter. Article 21 of the Constitution also embodies the right to privacy as a fundamental right. It is relevant to find out whether right to privacy if properly interpreted paves way for legalizing euthanasia.

**ROPING IN ARTICLE 21 OF THE INDIAN CONSTITUTION: RIGHT TO PRIVACY A LODESTAR FOR LEGALIZING EUTHANASIA**

The Preamble to the Indian Constitution, \textit{inter alia}, emphatically recognizes the importance of dignity assuring the dignity of individual. This concept of dignity is in consonance with Article 1 of the \textit{Universal Declaration of Human Rights} which asserts that, “all human beings are born free and equal in dignity and rights. They


Euthanasia, Life and Its Constitutional Parameters

are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The charter of United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of human person as envisaged in the Preamble and Directive Principles of State Policy in the Constitution.

The State protects the right of privacy interests as granted by the Constitutions in different countries but right to die does not form a part of privacy right. The term “privacy” is derived from the Latin words “Privatus” and “Privo” meaning “to deprive”, the stem of privacy is the same as in the word privilege, which means a “favouring opportunity”; privacy emphasizes the individuality of human being.

As observed by the Supreme Court in C.E.R.C v. The Union of India, “the expression life assured in Article 21 does not connote mere animal existence or continued drudgery through life... The right to life with human dignity encompasses within its fold, some of the inner facets of human civilization which makes life worth living.” Again the Supreme Court reiterated, “right to life is not merely animal existence, [but] life full of dignity and honor. Right to personal liberty is also very important.”

It is submitted that the right of patient autonomy protects a patient’s dignity. The right and ability to make free choice as regards what is done to one’s body is a fundamental aspect of a human being. This is especially the case as far as the individual is terminally ill. Some are barely conscious while others appear frightened, miserable and unresponsive to the efforts to mitigate their pain. In such circumstances, a life sustaining treatment where the vital systems of the individual are failing, would be invasive and would amount to inflicting extreme terror on patients unable to understand the reasons for their burdens. The burdens of such life sustaining treatment would far exceed the benefits from such treatments. People desire to live with dignity and leave this world with dignity. If an individual decides when competent that he desires to refuse treatment at the end of life, which serves no purpose except that of artificially prolonging the persons dying process, is he entitled under the Constitution, to choose a natural and dignified end of a process which has already begun? The answer is in the negative as the law aims to protect and not to terminate life. Law, as a means in the service of human purpose, requires for its justification the proof that it is a right means for a right purpose.

The “right to privacy” is the only common law right with a specific, known birth date. State protects two types of privacy interests: the interest in ‘repose’ –

181 Ibid.
182 AIR 2000 Kant 59.
freedom from unwanted intrusions – and the interest in autonomy or freedom of thought.\(^{185}\) Although the legal concept of a “right to privacy” was originally conceived by Louis Brandies as merely “right to be left alone”, in the intervening century since he put that idea forward it has been substantially elaborated to encompass more philosophical elements, such as, human integrity, dignity, and autonomy.\(^{186}\) Though Article 21 grants liberty and privacy to individuals, there are certain limitations laid down by the Constitution as every individual is a part of the society. Liberties and rights, no matter how loudly they are proclaimed to be “self-evident”, are always the result of social negotiations, often painfully arrived at, on matters of common concern.\(^{187}\) Privacy protects our interests in our individuality and in our social, economical, and political relationships.

Proponents of euthanasia contend that individual liberty is a fundamental constitutional guarantee, and that the right to privacy should protect the right of an individual to choose to die. Some proponents emphasize that, “[i]t is morally acceptable, and so ought to be legally permissible, for a physician to take the life of a competent, terminally ill patient who requests it, or for a physician to assist the competent, terminally ill patient in taking his or her own life?”\(^{188}\) All conceptions of privacy imply a domain of the personal as contrasted with the public sphere include the concept of limited access by others to one’s body or mind, and imply freedom from unwarranted and unauthorized intrusion.\(^{189}\) Privacy is an essential part of the complex social practice by means of which the social group recognizes – and communicates to the individual – that his existence is his own.\(^{190}\) Privacy illustrates Constitutional decision-making under conditions of uncertainty brought about by rapid changes in technology.\(^{191}\) The right to life has come to mean the “right to enjoy life – the right to be let alone, like one of Darwin’s embattled species, the law must grow a new appendage to deal with advancing civilization...”\(^{192}\) The right to privacy does not allow a peaceful death, as any form of taking life unnaturally is unlawful in India at present. The enterprise of defining rights, including Constitutional rights, should not be founded on an inquiry into tradition, moreover, traditions should be assessed, not replicated.\(^{193}\) We now prolong life with therapies that include the last several decades bodies have become chimeras – part animal or machine and part humane.\(^{194}\)

Considering the fact of the evolution of science the focus must be on the reflection of the highly advanced medicinal technology on human being. Use of such

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\(^{189}\) Jeroo, Kotval, “Genetic Privacy in the Health Care System”, supra note 186 at 154.
\(^{190}\) Ibid.
\(^{193}\) Supra note 138 at 68.
\(^{194}\) Supra note 187.
technology should be for the betterment of society and not for causing harm. Laws affecting privacy require balancing interests in a host of different areas of human activity in light of uncertain predictions about the technological future.\textsuperscript{195}

Article 21 includes right to health within the scope of right to life. A plethora of judgments evidentially prove that the Supreme Court of India has not only protected but also upheld right to health.\textsuperscript{196} But, what is right to health? How can it be interpreted for terminally ill patients? The next segment embodies a discussion on right to health and its judicial interpretation.

**ARTICLE 21 WITH SPECIAL REFERENCE TO RIGHT TO HEALTH AND ITS JUDICIAL INTERPRETATION**

Health is a common theme in most cultures. In fact, all communities have their own concepts of health, as part of their cultures. Among definitions still used probably the oldest is that, health is the “absence of disease”.\textsuperscript{197} Jeremy Bentham referred health as a part of pleasure in life. According to him, “simple pleasures are those which can be immediately referred to our organs...especially the blessing of health, that happy flow of spirits, that perception of an easy and unburden some [sic] existence...”\textsuperscript{198} Bentham further adds, “[i]n point of general sensibility, a man who is under the pressure of any bodily indisposition, or, as the phrase is, is in an ill state of health, is less sensible to the influence of any pleasurable cause...”\textsuperscript{199}

During the past few decades there has been a reawakening that health is a fundamental human right and a worldwide social goal. It is essential for the satisfaction of basic human needs and to an improved quality of life and that it is to be attained by all people.

Health is also defined as, “soundness of body or mind, that conditions in which its functions are duly and efficiently discharged”\textsuperscript{200} and “the condition of being sound in body, mind or spirit, especially freedom from physical disease or pain”.\textsuperscript{201} The definition given by the World Health Organization (1948) in the Preamble to its Constitution is the widely accepted definition of health. It defines health as, “a

\begin{footnotes}
\item[197] *Supra* note 26 at 11.
\item[198] *Supra* note 53 at 21.
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state of complete physical, mental and social well-being and not merely an absence of disease or infirmity”. \(^{202}\)

Since four decades, this statement has been amplified to include the ability to lead a “socially and economically productive life”. \(^{203}\)

The new Philosophy of health, thus, makes health as a fundamental Human Right and is also central to the concept of quality of life. The right to health was one of the last to be proclaimed in the Constitutions of majority of countries of the world.\(^{204}\) At the international level, the *Universal Declaration of Human Rights* established a breakthrough in 1948, by stating in Article 25 that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family...” The Preamble to the WHO Constitution also affirms that it is one of the fundamental rights of every human being to enjoy “the highest attainable standard of health”.

The concept of right to health has generated questions like, right to medical care, best interests of the patients, removal of life support system, physician assistance in dying etc. Can a patient suffering from terminal illness be assumed to be healthy? Or can an attempt to prolong such patient’s life be termed as protection of right to health? The answer for both the questions may not be in the positive. Considering the case of terminally ill patients, right to health should be analyzed for the well-being of the patients. The right to health incorporated as a part of Article 21 is silent about the protection of terminally ill patients’. Article 21 not only protects but also upholds human dignity. However, it does not consider the terminally ill phase of life worth conferring a death with dignity. The right to human dignity is parallel to *euthanasia* debate.

**HUMAN DIGNITY AND ITS PROMINENCE IN THE EUTHANASIA DEBATE**

Very closely related to the foregoing arguments based on self-determination and best interest of the patient is the argument that legalization of *euthanasia* is necessary in order to promote human dignity.

The word *dignity* comes from the Latin words *dignitas* means “worth” and *dignus* stand for “worthy”, suggesting that dignity points at some standard by which people should be viewed and treated.\(^{205}\) Dignity arises from the individual’s sense of self, both “dignity” and “death with dignity” are highly personal, individual and situational issues.\(^{206}\) Respect for human dignity is an ethical mandate to which both

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\(^{203}\) WHO (1978), Health for All, Sr. No. 1 http://www.who.int, [accessed on 6/12/2010].


\(^{205}\) Supra note 37 at 59.

Euthanasia, Life and Its Constitutional Parameters

the sides of many bioethical debates appeal, for example, the State of Oregon legalized physician assisted suicide by passing the Death with Dignity Act, 1997, but opponents claimed that legalizing the practice would instead undermine the dignity of elderly, disabled and dying patients.207 At the same time the proponents welcomed the State law as a mark of respect for dignity of individuals.

According to Kant, human beings have autonomy, dignity and accordingly, human dignity requires that a human being be treated “never merely as a means” but always as an end.208 Kant’s emphasis on people as “ends in themselves”, focuses attention on the fact that each individual mandate which flows from rooting human dignity in reason. Proponents argue that the notion of human dignity demands that individuals have control over significant life decisions, including the choice to die, and that this control is acknowledged and respected by others. Respecting human dignity entails treating humans as persons capable of planning and plotting their future. Thus, “respecting people’s dignity includes respecting their autonomy, their right to control their future...”209

This argument is well encapsulated by Fletcher where he states that ‘to prolong life uselessly, while the personal qualities of freedom, knowledge, self-possession and control and responsibility are sacrificed, is to attack the moral status of a person.210 Dr. Joseph Fletcher wrote in Harper’s in 1960, “[d]eath control like birth control is a matter of human dignity. Without it persons would become puppets”. He further stated that the practice of “keeping vegetables going and dragging them back to life only to prolong the agony or continue a meaningless existence is to be deplored, and that to bow to blind, brute nature is outrages to the limit.”211 Advances in medical technology have greatly increased the capacity of the medical profession to prolong life. In many cases, however, death can be merely forestalled and patients may face the prospect of a prolonged and agonizing death. For terminally ill patients, the principal fear is not pain or even death itself, but the loss of control of bodily and mental functions and the resulting helplessness and dependence on others – in short the “depersonalization of dignity” while dying.

According to the proponents of right to die, preservation of human dignity can only be assured with the acceptance of voluntary euthanasia and the recognition of the liberty of the individual to determine the manner and timing of his or her death. A new freedom being demanded today: The freedom to choose death. More and more people are now realizing that the right to die with dignity, so long denied to countless people, is a basic human right that should be available to those hopelessly ill patients who request it.212

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207  Supra note 37 at 58.
211  Supra note 16 at 45.
212  Id., at 16, 17.
Legalizing Euthanasia: A Pedagogue’s Perspective

Dr. H. Leslie Wenger, distinguished American surgeon of New York has stated that there are times when it is morally right to speed life’s end, as “[p]rolonged and hopeless physical anguish degrades and dehumanizes. When medical science can no longer cure or relieve the pain of terminal illness, a man has the right to die in peace and dignity with no further suffering.”

But opponents of euthanasia have challenged this reasoning on two fronts. First, they claim that all individuals have intrinsic worth and dignity and it would therefore be immoral to sanction the death of any individual. It is further argued that, it is because of their respect for human worth and dignity that they steadfastly disapprove of active voluntary euthanasia.

Secondly, they assert that the argument based on the “notion of human dignity logically entails that all who live in an unalterably undignified form of existence [due to terminal incurable illness] ought to be killed.”

But the above arguments raised ignore the important correlation between preserving human dignity and upholding the patient’s interest in self-determination. It is through the recognition of the principle of self-determination that respect is shown for individuals and human dignity is promoted. It is not unreasonable to suppose that most of us hope to die peacefully and with dignity.

Professor Kallen expressed the view that one of the prime attributes of one’s humanity is concern for reduction of suffering; he thought that the most of those who oppose euthanasia do so because they have never themselves experienced the agonies of incurable distress.

Protection of human dignity is not only a Fundamental Right but also a duty of the State. The Supreme Court of India in various cases has also imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity.

The definition of Human Rights stated under the Protection of Human Rights Act, 1993 also guarantees a life full of dignity.

Surprisingly, in the International Law, there has been virtually no commentary on human dignity, its source, content and boundaries. Traditionally this has not been of great importance because international human rights law has not relied on

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213 Id., at 47.
217 Supra note 16 at 119.
219 See, S. 2(d).
violation of human dignity, but rather on the breach of a specific right which itself derives from the duty to respect human dignity.

Human dignity has been retained as the conceptual keystone in international instruments, namely, the Council of Europe’s Convention on Human Rights and Biomedicine and UNESCO’s Universal Declaration on Human Governance and Human Rights.\(^{220}\)

Since we all have an equal claim to dignity by virtue of the fact that we are all created human,\(^{221}\) every individual’s right to dignity as is protected during the life should equally be protected at the time of his death.

The universal principle of protection of human dignity is deeply embodied in the Constitution, the Suprema lex of India. Article 21 of the Indian Constitution encompasses the right to live with human dignity.

Respect for persons and their right to self-determination is a basic component of human dignity which should not be denied to terminally ill patients. Moreover, this idea of respect for persons is encapsulated as ‘Human Dignity’ under national and international legal provisions. When the discussion narrows towards euthanasia on grounds of protection of human dignity till the last breathe or till biologically life exists, it results negatively as the law is concerned to protect life and not to take it away, as per the present Indian legislation.

It is very clear from the precedents laid down by the Apex Court, that right to die with dignity at the last phase of life is not to be confused with terminating one’s life unnaturally there by curtailing the natural cycle of life. However, as rightly stated by Lord Denning, “[i]n order to ensure this recourse, it is important that the law itself should provide adequate and efficient remedies for abuse or misuse of power from whatever quarter it may come.”\(^{222}\) The only admissible remedy for any abuse of or misuse of power - in a civilized society - is by recourse to law.\(^{223}\)

At present, there is no legislation in India to tackle the problem of incurably terminally ill patients demanding a peaceful death by physician assisted suicide. The debate is fueled by cases that extend far beyond passive euthanasia to active consideration of euthanasia by physicians. The need for a sophisticated but lucid exposition of the two sides of the argument is now urgent. Hence, there is an immediate need to put forth a well crafted statute to deal with the pros and cons of euthanasia. Such a law will definitely protect the constitutional rights of individuals including the right to human dignity and the State’s interest to protect life.

The next Chapter incorporates the detailed analysis of different forms of euthanasia practiced and also legalized in a few countries. Right to autonomy and informed consent which form the fundamental for arguing in favour of euthanasia

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\(^{223}\) Ibid.
Legalizing Euthanasia: A Pedagogue’s Perspective

shall also be discussed. The present prohibition on *euthanasia* results from the confusion between suicide, *euthanasia* and physician-assisted suicide. In order to clear such cobwebs rattling these concepts, a comparative analysis is also put forth. *Euthanasia* is often confused with mercy killing which is misleading for the debate of *euthanasia*. A discussion drawing a bright line between the two with decided cases is elaborated. Based on some historic precedents the judicial approach will help to understand the legal status of *euthanasia*. The greatest task in this debate of *euthanasia* is to balance the individual interest of right and liberty based on self-determination and autonomy with the State’s interest to protect life of individuals which is also attempted in the next Chapter.