HINDU VIEWS ON EUTHANASIA, SUICIDE AND ABORTION IN THE DURBAN AREA

by

ROMILLA DEVI GANGA

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SUMMARY

Advances in technology and medicine have greatly impacted on religious thought and have contributed to a large extent in bringing to the fore questions regarding euthanasia, suicide and abortion. This has raised a plethora of questions regarding actions and consequent ethical choices. What impact this has had on the Durban Hindu regarding the interpretation and re-interpretation of scripture to accommodate euthanasia, suicide and abortion is examined in the background of *karma* and *dharma.*

A cross-section of Durban Hindus consisting of lawyers, doctors, academics, school-teachers, Hindu scholars, priests and housewives were interviewed. Their views on *karma* and *dharma,* to what extent these concepts underlie their thinking with respect to euthanasia, suicide and abortion and what influence classical views based on Hindu scripture as well as Western thinking have had on the contemporary Hindus of the Durban area, are examined. Consequently, *karma* and *dharma* are viewed from a hermeneutical perspective and examined in the light of the phenomenological approach. The key hermeneutical concepts of *karma* and *dharma* have been modified and re-interpreted to accommodate changing circumstances. The views expressed range from the extremely liberal to the ultra conservative. Although the subjects were not all familiar with Hindu scripture, the views expressed were similar to scripture. Many Hindus therefore are reasoning on traditional lines, although the basis of their reasoning has shifted from scripture. Ethics and morality are not the only underlying principles affecting the euthanasia, suicide and abortion debate: financial and social considerations are also important. Although euthanasia and abortion are strongly condemned by the conservative Hindu they are accepted on medical, social and utilitarian grounds.

Title of thesis:

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Key terms:

Euthanasia; Suicide; Abortion; *Karma*; *Dharma*; Classical Hindu; Scripture; Contemporary; Interpretation; Re-interpretation; Medical; Legal; Ethical; Circumstances.

PREFACE

The advances in science and technology are extensive and they enrich human lives to such a degree that people generally accept these advances without reservations. However, the benefits of science and technology cannot always be counted as a blessing. This so called "progress" often creates complex dilemmas which can only be resolved by agonising decisions. The most difficult of these problems are not simply theoretical or technical questions requiring empirical research. They are instead moral questions which require research with the application of new information and skills. In most cases, these problems expose the inadequacies of our conventional, moral and legal systems. In other words developments in science and technology cause ripple effect in our system of beliefs. When this happens it is necessary to adjust our values and institutions in order to come to terms with the moral dilemmas posed by scientific and technological developments.

Moral questions that arise as a result of advances in medical science and technology cannot be treated lightly. Perhaps, the greatest problems are posed by the physician's ability to exercise extensive control over the processes of life and death. From a strictly medical standpoint, life and death decisions have become routine. From a moral point of view such choices are seldom easy to make. The dilemma is particularly acute when traditional medical ethics imposes conflicting requirements.

The question of euthanasia is one of a broad spectrum of moral problems of terminal medical care. It arises in those cases in which the duty to relieve suffering conflicts with the obligation to preserve life. In some respects this problem is related to that of abortion. When a pregnancy is terminated because the foetus is defective, abortion may constitute what can be referred to as foetal euthanasia. The

question of abortion for eugenic reasons or as a form of birth control or out of consideration for the mother, however, is a different matter. The crucial difference is that it is concerned with factors other than regard for the primary life that is terminated. The question of terminating "hopeless" life in order to secure vital organs for lives that can be "saved" differs from the question of euthanasia in the same way.

This study concerns itself with the morality of the deliberate termination of life for a particular purpose. Research has shown that euthanasia cannot be studied as a phenomenon in isolation, since voluntary euthanasia (as a form of suicide) and abortion are important facets of the euthanasia debate. Therefore, one would be doing gross injustice to the study of euthanasia if the accompanying phenomena of suicide and abortion were not included in the study. The aim of the study is to study the phenomenon from a theocentric perspective. Research has shown that the medical and legal dimensions of the question cannot be ignored. This entails taking into account not only the requirements of law and of professional medical ethics, but also the ways in which decisions are reached in the context of concrete cases. These standards and practices are analysed in order to discover the underlying ethical principles. Since this topic deals with Hindu views on euthanasia, suicide and abortion, these ethical principles are evaluated and interpreted in relation to the two fundamental Hindu principles of *karma* and *dharma* and their interpretation amongst Hindus in the Durban area.

The primary purpose of this study is to offer moral guidelines for medical decisions and for legal norms for medical practice in cases involving hopeless suffering. Until recently, this question has received little attention in Hindu ethics. It is hoped that

this research stimulates thinking of these issues (euthanasia, suicide and abortion) in the light of Hindu scriptures so that there is a reconciliation between their religious injunctions and their contemporary views.

I wish to thank the Lord Almighty (Lord *Hanuman* and Mother *Durga* in particular) for giving me the strength and the courage to undertake the study. It is my pleasant duty to acknowledge and thank the following people, for without their willing co-operation and assistance this research would not have been possible: to Professor C. du P. Le Roux (of the Department of Religious Studies, Unisa) for his constant guidance and supervision, to Mrs Carina Zeelie ex-staff of Unisa Library and Monica Strassner also of Unisa Library for their ever willing assistance in finding research material (literature), to Mrs. P. Ramkisson for typing the manuscript and Mr. P. Bisnath for reading and correcting the manuscript. I also owe my deepest gratitude to all those lawyers, doctors, academics, priests and housewives who were interviewed on the subject.

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INTRODUCTION

The question of euthanasia is one of the most difficult, complicated and controversial problems that arise in the context of terminal medical care. Because suffering and death are perennial this is an ancient problem, which has plagued the minds of men of yesteryear and each day presently becomes even more complex than the other because of the advances in the science of medicine. This thesis examines the ways in which this question has been understood and dealt with in the past and how present day Hindus, especially in Durban, cope with it. It is a question that is unique not only to a particular group or culture, but is a phenomenon that has been questioned universally both by Eastern and by Western thinkers, philosophers, moralists and theologians. As will be seen later in the thesis heated arguments are presented by lawyers and physicians alike who are either against or in support of euthanasia. The different arguments provide conflicting opinions (in a society that is so diverse in race, religion and culture) with regard to the morality of euthanasia.

The mental image that is created by the term "euthanasia" is often seen as a scene of a doctor or a close relative helping, perhaps in a clandestine fashion, a semi-moribund patient to cut short his agony or deliberately terminating the life of a malformed infant, thus "mercifully" delivering it from lifelong suffering. The Hindu, would probably interpret this act of mercy as a *dharmic* performance thereby relieving the subject of its *karma*, and hence providing an opportunity for the freed

soul to find a new healthy and disease-free body. In this image attention is focused not so much on death, which may be considered merciful, as on the act and motive by which death is brought about (Wilson 1975 : 17).

However, in order to understand the phenomenon of euthanasia (mercy killing) from a historical perspective it is necessary to study the history of euthanasia (easy death) as a rationale for allowing the suffering person to die and as a justification for taking his or her life.

The debate over euthanasia takes place primarily on moral and ethical levels. Although it can be understood and resolved only in the context of current medical technology and its consequences, it has become essentially a moral controversy. It involves such moral questions as: should life be preserved as long as technically possible? Is life being prolonged or is death being delayed? Are there circumstances in which life should be terminated? Should patients who are suffering and dying be allowed to die by withdrawing or failing to employ life-sustaining procedures? Should their lives be taken by death dealing narcotics? Should such steps be taken only at the request of the patient or in consultation with the family concerned and the physician in attendance.

The controversy over euthanasia is also concerned with the adequacy and the validity of rules or standards of medical practice. Implicit, if not explicit, in the various arguments on both sides of the question are basic ethical values and principles. These include such principles as the sanctity of life, the right to live, human dignity, personal autonomy, justice and least, suffering. So many different

factors are taken into account and so much time is taken sorting out the pros and cons that the essence of euthanasia is lost in a welter of arguments. It is with reference to ethical values that the moral standards of medical practice are criticised or defended. It is also on this basis that new standards of terminal medical care are proposed.

The way in which ethical values are interpreted and applied in moral norms is contingent upon changing historical and cultural situations. They are flexible in relation to a broad range of human capacities, needs and institutions. However, when fundamental human needs conflict and when the claims of the individual cut across those of society difficult choices often have to be made from among ethical principles, all of which are right for the time and situation in which one finds oneself. Circumstances alone determine the course of action, and at times legal and medical ethics are put "on hold". In relatively closed societies, however, religion or political ideology serves as the basis on which such decisions are made. The Hindus are very flexible and open-minded on such issues and their decisions are based on circumstances and situations, rather than on religious injunctions.

It is in the context of this crisis of values that the controversy over euthanasia must be understood. Conflicting arguments with regard to the validity of traditional moral standards of medical practice result from fundamentally different interpretations of ethical values. Even when there seems to be a common commitment to a given principle, there are sometimes important differences of opinion. The value of life, for example, is affirmed both by those who favour euthanasia and by those who oppose its practice. The meaning of "life", and "death",

however, is interpreted differently. Advocates of euthanasia emphasize the quality of life over mere existence and insist that the value of life is destroyed when it is accompanied by severe restrictions or suffering. Opponents of euthanasia emphasize the sanctity of life **per se** and claim that life always has value regardless of its quality.

Conservative Hindus on the other hand attribute suffering to the Law of *Karma*. If one is destined to suffer, then one must fulfill that suffering in this life time. Liberal Hindus on the other hand consider euthanasia as an act of *dharma*.

In the final analysis, decisions and actions are taken in the context of specific cases thus putting aside ambiguities of conflicting alternatives, consequences and obligations. This occurs when a suffering patient asks to die, when a member of his family requests that efforts to prolong his life be stopped or when a doctor orders an end to life-sustaining treatment or administers a lethal dosage. This may also occur when a district attorney fails to prosecute or a jury refuses to convict someone who has practised euthanasia. It will be seen later in the thesis how these decisions and actions transcend the limits of moral discourse. They momentarily bring moral deliberation to a halt by cutting through the complexities and by positing answers. These **ad hoc** solutions to the problems of caring for the suffering and dying, however, become subject to moral appraisal. This is the Western view. To the Hindu **ad hoc** solutions (to the problems of caring for the suffering and dying) bearing significant moral and ethical considerations may be termed *dharmic*.

There are two distinct (though they may seem closely related) issues involved in the controversy over euthanasia. The first is the question of the morality of various forms of euthanasia. The second question has to do with the legal aspect of euthanasia. Arguments against euthanasia generally appeal first to prevailing professional and legal standards of medical practice. They then appeal to basic ethical principles in order to validate these moral norms forbidding euthanasia. Arguments favouring euthanasia usually begin by appealing directly to ethical values in order to challenge the validity of current standards of medical practice and to sanction the practice of euthanasia (Wilson 1975 : 53).

The medical profession is said to be dedicated to the alleviation of suffering, the enhancement and prolongation of life and to the destinies of humanity. In complex cases in which all these values cannot be achieved, decisions have to be made regarding which of these values takes precedence. As will be seen in the thesis the legal system is more specific than professional medical ethics. It protects the right to life by enacting laws against homicide and at the same time it acknowledges the priority of other values by sanctioning certain forms of "justifiable" homicide. Nevertheless, when under the legal system, suicide is condemned and homicide at the request of the victim or in order to relieve suffering is equated with murder, the legal system places the value of life over the values of personal autonomy and least, suffering.

The validity of these moral rules and standards remains unchallenged so long as their requirements are compatible with the accepted ethical principles and values. Their adequacy for determining proper medical practice is not questioned as long as

the way in which basic values adhered to is consistent with human needs. Arguments in favour of euthanasia, however, challenge the relevance of these moral standards to the needs of the terminally ill, the fatally injured, the irreversible comatose, and the severely abnormal. This challenge takes the form of an "ethical criticism" both of medical practitioners that prolong life after hope of recovery has been abandoned and of legal norms that censure the practice of euthanasia (Wilson 1975 : 54).

Proposals to sanction the practice of euthanasia are based on essentially different conceptions in lieu of the order and priority of ethical values. There are five basic principles to which appeals are made for the practice of euthanasia.

In the first the dignity of life is said to be superior to the value of the life **per se.** Hindus in the Classical Period also agreed with this quality of life principle and supported euthanasia on these grounds. This claim serves as the basis of a variety of arguments. The belief is that man should have the right to die with dignity, just as he should have the right to live with dignity. A number of legislative proposals has been made to guarantee the right to die with dignity.

Secondly it is often argued that when a patient is suffering from an incurable disease the physician's responsibility to relieve the suffering is more important than his responsibility to prolong life. This is a re-interpretation of the Hippocratic Oath. When death is imminent and inevitable it is neither scientific nor humane to use artificial life-sustainers to protect the life of a patient. Instead, when all hope of recovery has diminished, it is right to choose only ordinary means to sustain his life

and it is the duty of the doctor to provide palliative care. Others approve of more direct measures of preventing suffering and agree with Glanville Williams that a man is entitled to demand the release of death from hopeless and helpless pain, and a physician who gives this release is entitled to moral and legal absolution for his act.

The principle of autonomy, or the right to be at liberty, is a third value which is often given precedence over the value of life which is radically restricted. For example, Joseph Fletcher insists that to prolong life uselessly, while the personal qualities of freedom, knowledge, self-possession and control and responsibility are sacrificed is to attach the moral status of a person, to deny morality and to submit to fatality (Wilson 1975 : 55).

In the fourth place, the principle of justice, or fair treatment, is cited in at least two ways as an important reason for permitting the practice of euthanasia. It is argued, frequently, that laws should be amended in fairness to suffering patients because legal requirements tend to cause their suffering to be prolonged unnecessarily. It is claimed that while an easy death is secretly granted to some, it is denied to many others. Legalizing the practice of euthanasia would make it available to all. On the other hand, appeals on the ground of the principle of justice are sometimes based on the claim that euthanasia should be permitted out of consideration for those other than the patient. Some claim that in fairness to doctors, who believe that the relief of suffering is their only principal duty, the risk of being accused of breaking the law in order to fulfill this obligation should be removed. The needs and the rights of the families of the hopelessly ill and deformed are also said to justify the

practice of euthanasia, since it is unfair to require of them the financial and emotional expense of prolonged and useless therapy. Euthanasia administered in such circumstances would be regarded *dharmic* in Hindu cosmology.

A fifth principle affirmed in some of the arguments for modifying current medical practices of prolonging life and for changing laws against euthanasia is the principle of utility. On the basis of this principle life is understood to be of value not as an end in itself but in terms of its usefulness as a means to the ends prescribed by society. The practice of euthanasia, therefore, is justified in certain circumstances, for those who are physically or mentally incapacitated, when treatment places a useless burden on society. In Hindu philosophy suicide and euthanasia are recommended for such people.

In most of the proposals with regard to appropriate medical practices and legal norms relative to cases in which there is no hope of recovery attempts have been made to preserve a number of ethical values and moral rights. Active euthanasia is frequently opposed, for example, because of the value of life itself. At the same time, however, passive euthanasia is often favoured on the basis of other values such as, least suffering. Furthermore, voluntary euthanasia is often advocated over involuntary euthanasia because the will or freedom of the individual is given precedence both over the value of life and over the needs or desires of family or society (Wilson 1975 : 56).

Those who oppose the practice of euthanasia simply defend their positions by appealing to customary rules and procedures. They argue the doctor's pledge in the

Hippocratic Oath. "I will use treatment to help the sick according to my ability and judgement, but never with a view to injury and wrong doing. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course". However, modern medicine is now asking for a re-interpretation of the Hippocratic Oath. It is not a matter of preserving life at all costs, but acting in the best interest of the patient should be the essence of the oath. Arguments of such a nature deal not only with strictly moral questions but also with empirical questions of terminal medical care. They express fundamentally different interpretations of medical problems of treating suffering patients and of the consequences of the various alternatives. Many who oppose the practice of euthanasia insist that dying patients continue to cling to life regardless of the circumstances and would not avail themselves of an early and easy death. The claims that euthanasia should be practised in order to relieve their suffering are rejected.

On the other hand it is often argued that there is no place for unbearable pain in modern medicine. It is also argued that doctors can and do make mistakes in diagnosis and prognosis that would result in unnecessary loss of life if euthanasia were permitted. The terms "hopeless" and "incurable" are said to be outmoded medical concepts. There might be a strong possibility that incurable conditions may in the future be cured by a new medical breakthrough and as a result life should be prolonged as long as possible.

Those who argued in favour of the practice of euthanasia insist that because of the improvements in medical science, the prolongation of life often becomes the prolongation of dying. They conclude that when death is inevitable and efforts to

prolong life cause suffering, doctors should hasten death for the benefit of the patient. The argument that life should be preserved as long as possible, because a cure might be found, is rejected by the claim that any new cure would be of no benefit to the patient for whom euthanasia would seem to be the most recommended and only alternative.

In addition to factual and moral disagreements relative to the practice of euthanasia, there are similar differences of opinion with regard to legalizing euthanasia. Opponents of euthanasia emphasize the difficulties and the negative consequences which they claim would result if euthanasia were legalised. People in the legal profession feel that it would be virtually impossible to determine whether a patient whose mind is so weakened by narcotics and pain really wants to die. They point out that such a patient would not be able to make an informed decision. In the second place, they argue that to permit euthanasia would require families to make life and death decisions when they are least able to do so emotionally. In the third place, they warn that legal sanctions for euthanasia would expand the power and responsibility of the physicians which is already so great. In the fourth place they claim that the practice of euthanasia would weaken medical research by taking away incentives to find cures for painful diseases. Finally, it is argued that if the public once came to think that their doctors might exchange the role of preserver for that of destroyer, their suffering and anxiety would far outweigh that is now attributable to the unnecessary prolonging of life (Wilson 1975 : 58).

Many who approve of limited forms of euthanasia have misgivings about legalizing its practice in any form. They too fear that the benefit to a few would be out-

weighed by the threat to many others. With those who oppose euthanasia altogether, they argue that, since there can be no adequate safeguards the practice would be open to serious abuse. On the other hand ardent proponents of euthanasia say that all abuse would be eliminated by the "Living Will". This argument was also supported by many of the Hindus who were interviewed.

Euthanasia of defective newborns is of particular interest in this thesis, since infants cannot speak for themselves. Hindus explain the defects in children according to their past *karmic* deeds, and say that these children should be left to live so that they can work out their *karma*. Any interference to shorten their life would mean a repetition of a similar birth and so the cycle would continue. More liberal Hindu views say that these children should be left to die and so shorten their miserable lives on earth. Hence one can see the re-interpretation of the fundamental Hindu principles of *karma* and *dharma*.

Suicide is both condemnatory and praiseworthy depending on the reason. In Classical Hinduism suicide was the highest form of sacrifice. As time went on, people resorted to suicide for reasons other than religious. In the Classical Period cremation and *sraddha* rites were denied to those who committed suicide. Contemporary Hindus cremate and perform post-cremation ceremonies for those who commit suicide. They do not discriminate against the dead.

However, Hindus recommend suicide for the physically incapacitated and the aged and for those who become a burden to society. Presently people commit suicide out of stress and frustration, disappointment in life, failure to achieve success (e.g. in an

examination) and generally to escape from the pressures of society and life. This type of suicide is strongly condemned by all people including Hindus. Durban Hindus who were interviewed said that the soul of the person who commits suicide does not reach its rightful destination, becomes an evil spirit and causes harm to others.

Abortion, according to the conservative view is *adharmic* and can never be condoned. This was the general view of most of the Hindus who were interviewed in the Durban area. Bad *karma* was being accumulated by those who performed and to those on whom abortion was performed. The *Vedas* and the *Upanisads* reject abortion and regard it as a heinous crime.

However, today the Western scholars and the more liberated Hindus are questioning the moral status of the unborn, and on those grounds support abortion. Hindu scripture supports abortion on certain grounds, especially when the mental and physical health of the mother is at stake. But research shows, and one can support this by newspaper articles, that abortions are carried out more for social reasons than any other reason. Another philosophy that is creeping in is the philosophy of utilitarianism. Unwanted babies are regarded as a burden on career women, hence they recommend foetal euthanasia. Because of the problems that unwanted babies bring into the world, people, including Hindus, are adopting a pragmatic view on the subject and say that it is right for those who think it is right and wrong for those who think it is wrong. Because of this relativity the legal aspect of this phenomenon is of crucial importance. One can reach consensus through the legal aspect.

Religion and morality have become relative issues to the whole controversy of euthanasia and abortion. It would be seen in the thesis that chaos would reign if the legal aspects of the phenomena are not taken into consideration. It is on these grounds, that an entire chapter is devoted to the legal and medical aspects on the phenomena in question.

Perhaps it might be appropriate to say at this point, that euthanasia is the heart of the thesis. Because of the complex and controversial nature of the subject, a lot more time and space has been devoted to that phenomenon than to the other two phenomena.

CHAPTER ONE

METHODOLOGY

1.1 AIM

The aim of this thesis is to examine what ethical choices and actions are taken or adopted by the Hindus of the Durban area in regard to the phenomenon of euthanasia, suicide and abortion. Ethics is about choices and actions that affect human welfare or what is right. Ethics is primarily a social phenomenon concerning relationships between human beings and how they treat each other. Is it possible for human beings to apply to others the same standards that they apply to themselves? What ought to be done and what is really done depends on circumstances and situations. Morals are relative. Moral beliefs and practices vary from place to place and from time to time (Reid 1981 : 7, 14). An attempt has been made in the thesis to show what impact the Classical views based on Hindu Scriptures, have had on the contemporary Hindus of the Durban area. It also attempts to show how these views, especially the key hermeneutical concepts of *karma* and *dharma*, have been modified and re-interpreted to suit the Hindu society in Durban, a community that has undergone a great deal of Westernization. The Hindu society is bound not by its scriptural laws and values, but by the law of the country, that is South Africa. South African law is based on Roman Dutch Law. The thesis also shows to what extent the law of the country influences individual ethics. The Hindu medical doctor's training along Western standards have also influenced their views on the phenomena in question. Although the research has

been conducted in a predominantly Hindu society, the views expressed by those interviewed has shown that a great deal of modification and re-interpretation has taken place to suit changing circumstances and needs of a society pressurised by social and economic norms.

1.2 *KARMA* AND *DHARMA*

Karma and *dharma* are pivotal to the Hindu view of life and death. For the Hindu the different facets of life and death revolve around these two concepts. It is imperative therefore that euthanasia, suicide and abortion be viewed against the background of *karma* and *dharma*. Scriptural teachings of life and death and consequent *Vedic* acceptance of euthanasia, suicide and abortion are to a large extent based on the understanding of *karma* and *dharma*. Order in the individual is the basis for order in society and the maintenance of this order could be achieved through rational action whose basis lay in scriptural injunctions. This included the performance of certain rituals. Although the idea of *dharma* involves the maintenance of order, the *Vedic* Hindu recognised the dynamic nature of this order.

Contemporary understanding of *karma* and *dharma* vary greatly from their *Vedic* interpretation. It becomes necessary therefore to understand these concepts that still constitute the basis of Hindu thinking. It is only through an understanding of these concepts can the changes they have undergone and their influence on contemporary thinking evaluated. Consequently, *karma* and *dharma* are viewed from an hermeneutical perspective and examined in the light of the phenomenological approach.

1.2.1 PHENOMENOLOGICAL APPROACH

In order to investigate the relevance of *karma* and *dharma* to the present study the phenomenological approach is adopted. Phenomenology, as a method, is directed at an investigation of the essence of phenomena. Avoiding "speculative constructionism" (Kruger 1982 : 17) the approach confines itself to an investigation of the experienced data. The human is an active, not a passive recipient of the data experienced: experience is, of consequence, intentional. The focus of phenomenology is therefore on data as these appear in human consciousness.

Intentionality

Aspects of human behaviour and experience which it cannot express in terms of causes or mathematized formulae, positivistic science tends to ignore or deny. In such a view human experience of and reaction to the Universe is largely unaccounted for. However human experience of the Universe is a consequence of particular situation and experience - which is therefore object-directed. This brings into focus the subjective intentionality (Kruger 1982 : 18) of experience which views an object as it appears to the consciousness of an experiencing subject. Far from being a passive recipient of data, the human is an active participant in the data he experiences. And it is this active participation that constitutes the basis for the interpretation and re-interpretation of data and concepts, for experience in each human is personal and unique.

Consequently the interpretation of *karma* and *dharma* is also situation and experience bound. Although Classical views of these concepts are accepted in broad

outline their interpretation, (which can be seen as utilitarian) in practice, is largely dependent on particular situations. Within these situations or circumstances euthanasia, suicide and abortion are accepted as the fulfillment of particular *karma*.

Euthanasia is viewed as putting-an-end to suffering and giving some dignity to the patient in death. This is also guided by utilitarian considerations, e.g. cost of keeping a terminally ill patient alive. Abortion is also viewed under similar considerations. To a large extent the (Hindu) medical profession sees itself as the agents in the fulfillment of the *karma* of such patients. It is felt that it is their *dharma* (where *dharma* is interpreted as "duty") as agents to perform actions that restore order (where *dharma* is interpreted as "wholeness" or "goodness"). Suicide is also interpreted as the product of a person's *karma*.

Epoche

Since intentionality is inherent in experience it is imperative that the investigator "suspend all previous assumptions". However, as assumptions cannot always be "suspended" the investigator must become aware of them so that they do not influence the judgement with regard to phenomenon being investigated. Thus the investigator is aware of *karma* - assumptions and that from a phenomenological perspective *karma* presents the perspective of human reality - a *jiva*-centric world. According to Sinha *karma* is the statement regarding the universal human condition in which man consciously reflects on his existential involvement. Although Sinha does not view *karma* as causal or deterministic, he attempts to investigate and interpret the causal and deterministic forces of *karma* through an analysis of human experience. Through such an analysis the relationship of *jiva* to the world order

could be understood: the world order exists for the individual who is the subject of experience. Through the cycles of death and rebirth, driven by *karmic* forces, Sinha recognizes the human individual - *jiva* - as the focus of the cosmos (Sinha 1987 : 347).

Sinha's view that *karma* can be seen in terms, not of empirical reality but of transcendental ideality, shows that the force of knowledge can destroy the bondage (when *karma* is seen as the causal element of rebirth) that is believed to be caused by vice and virtue. This negates the view that historicity is constitutive of *karmic* continuum. Experience is thus understood in terms of non-factual "essences" gained through "eidetic" insights.

This focus on *jiva* is evident as early as *Brahmanic* times where there is a shift from the changing or transforming world to the world of *samsara* (i.e. "the cosmic theatre of transmigration" (Sinha 1987 : 349). The centre of the changing cosmos is thus the experiencing human. Since the human is also experiencing a change, his is extricably linked to the object obviating the subject-object dichotomy. The human is therefore totally involved in the continuum of existence. The close link of Nirvana (*moksa* - freedom from the accumulation of *karma*) with *karma*, where the human attains freedom from the idea of self through knowledge or insight into the "... nature of things as they really are" (Sinha 1987 : 353) brackets (epoche: the reductionistic approach of the biological and psychological sciences) all presuppositions shifting the focus to what is presented to the senses from the surrounding world, but also how the experiencing subject is presented to the world. However, although attempting to break the subject-object dichotomy, this view

introduces the causal perspective into the meaning of *karma*. And it is this perspective from which *karma* is usually viewed. Self thus becomes an agent and is also understood as knowledge (Knowledge of the Self).

Essence

Since the Hermeneutical approach emphasises the living experience as the basis of its investigations, the phenomenological approach attempts to penetrate the primary experiences from which these concepts have been developed and formulated: from a pre-scientific viewpoint more fundamental than that of the sciences. Where the empirical sciences describe natural phenomena in terms of abstract symbols which intend to portray reality itself(in terms of a particular Weltanschauung), phenomenology tries to divest itself of all previous assumptions and to investigate the experiences themselves. In investigating experiences themselves it is realised that although rooted in the Hindu *Brahmanic*, Buddhist and Jaina traditions, *karma* and *dharma* also have non-*Aryan* sources. From these, over time *karma* grew into the "... stereotype of an ethico-metaphysical dogma (with almost a theological overtone)" (Sinha 1987 : 347). *Karma* thus came to constitute to some extent the basis for explanations regarding human conduct and situations. Closely related as it is to *dharma* - *rtam* - or the expression of Universal Order in the *Rg Veda*, the concept of *karma*, understood as action, is vital in the maintenance of this Universal Order. *Karma* thus introduces the idea of causality, retribution or a strict moral law. The existence of *dharma* or the world order, gives meaning to *karma*: human action or condition thus formed the basis of a deterministic world view or ethical determinism. Buddhism sees ignorance or *avidya* as the cause of *karma*: cycles of death and rebirth - of suffering and death - escape from which to *moksa* could be

achieved only through knowledge. This preoccupation with death and suffering led to a devaluation of the bodily self in favour of a spiritual self: "The true self must be of the nature of knowledge, for only in the knowing self is there found a changeless core of existence that transcends the ravages of *samsaric* existence" (Koller 1987 : 256).

Karma and *Dharma* Reinterpreted

Sinha outlines the change in the meaning of *karma* from *Vedic* times to the present (Sinha 1987 : 347 - 348). From the ritualistic ethos (rites and ceremonies) of the *Vedas* to the Buddhistic-*Upanisadic-Vedantic* interpretation in which *karma* came to be seen as action (of both mind and body). Buddha, however, emphasised the spiritual advancement aspect of *karma*, obviating the need for rites, rituals and sacrifices. From volition or mental action the meaning of *karma* in the *Gita* changed to freedom of the mind from attachment; even a sin could be committed if it were only a physical action! Thus volition, mental action or premeditation is very important before any action can be performed. This makes action deliberate and being deliberate the notion of responsibility is introduced into the performance of any action.

Later the idea of sense data from the external world contributed to the internal consciousness. The consequences of previous actions were believed to be stored as "mental deposits". Meritorious deposits were *dharma* and unmeritotious ones were *adharma*. These were produced by desire (*kama*), avarice (*lobha*), delusion (*moha*) and anger (*krodha*). All actions, virtuous or otherwise originate in these mental or inner states.

It is evident that with time the primary meaning of *karma* changed and came to be understood differently under changing times and circumstances. From the metaphysical law of *Vedic* times it came to be regarded as a "complexity of material particles" (that fill the soul) to radical idealism which regards *karma* as an invisible force. Those who viewed the world as delusive felt that in its highest sense *karma* has "no central reality of its own" (Sinha 1987 : 358) since the world of objects is not real. Nagasena (in Sinha) is of the view that it is only the *karma* which transmigrates at rebirth. Besides this it also produces an external world which a being has to refer to and experience.

Jaina tradition, although in a subtle form, sees *karma* as being material in nature. Buddhist systems do not recognise this material nature of *karma*. They introduce the idea of aura introducing the motion of colours around the soul, generated through ignorance. This could only be overcome by knowledge of the real nature of things.

Knowledge of this real nature according to the *Gita* could be attained through the performance of action in a detached manner; which rids the soul of ignorance. Unlike that of the Greeks, and consequently that of Christianity and modern man the visible "form of a creature is only the temporary garb of an inhabiting life" (Sinha 1987 : 363). The importance of such a view is that it accentuates the *karmic* view that of the continuance of the soul until freed by knowledge. From action in the form of rituals to human action itself born of knowledge it becomes obvious that the Indian view has changed from "idealities" or "pure apriorities" to "concrete realities" (Sinha 1987 : 364) of spiritual experience. The action of the experiencing

human subject becomes the basis of the realisation of freedom from *karma* or *karmic* conditions. Detachment becomes an important factor of this action pointing to the "core of human subjectivity" (Sinha 1987 : 364).

The phenomenological approach thus shows that the basic meaning of *karma* in its widest sense is action of *dharma*, order: individual and universal. To maintain this order it was necessary to act with knowledge. Knowledge and action thus become inseparable for order to be maintained both in the individual and in the universe.

Since knowledge was paramount in the attainment of *moksa* (the chief aim of life) the relevance of euthanasia and suicide in *Vedic* times can easily be understood. This was usually in the fourth *asrama* when the elderly retreated from active life to become ascetic and *sanyassins*. Although euthanasia and suicide were accepted abortion was abhorred. Abortion was acceptable only in exceptional cases. Where euthanasia and suicide were performed through choice and with knowledge of the Self, the child in abortion had neither choice nor knowledge. Nor was abortion accepted as retribution for this idea was not embodied in the concept of the *Vedic karma*.

With the Jaina view of *moksa* and the high moral standards set by the Jains and Buddhists the Jaina advocation of *sallekhana* (Koller 1987 : 257) can easily be understood as the path to *moksa*. Since suffering and death were also seen as the results of actions or *karma*, euthanasia became an acceptable way to rid the self of the body which is the vehicle of suffering.

1.2.2 HERMENEUTICAL PERSPECTIVE

Hermeneutics is generally concerned with the interpretation of what is regarded as the spiritual truth of scripture (especially the Bible) (Flew 1981 : 136). Within the context of historical change and the re-modelling of religious ideas, it becomes imperative to re-examine and to re-interpret religious text and consequently, concepts, in order to accomodate these in contemporary thinking and practice. New discoveries result in new experiences necessitating re-interpretation of religious doctrines. In this re-interpretation it is very important that due consideration be accorded the fact that whatever is being interpreted, for example, religious texts, must be seen to have their own life and individuality. They must therefore be re-interpreted in the context of their time which must be seen as living: for they are products and artefacts of a living past. The voice of the past lives and "speaks" to the present through its cultural products. Literature, art, music, artefacts of daily life, etc., are integral to an understanding of the past, as are religious texts, for they are products of human endeavour to place himself into, and to understand and accept his relationship to, and position in, the universe.

Religious doctrines, e.g. *karma* and *dharma* thus become not merely past "objects" or doctrines but cultural products with their own reality communicating across time and cultural differences (Kruger 1982 : 21). The past therefore becomes a part of the present due to its historical continuity, contribution and influence, so that its relevance in its own time as well as its relevance and relationship to the present is

re-interpreted and understood. It thus becomes necessary to investigate the experiences which resulted in the formulation and formalization of the concepts of *karma* and *dharma*.

1.3 KEY CONCEPTS : DEFINED

In carrying out this investigation it becomes necessary to understand what euthanasia, suicide and abortion really mean. The end result of all these phenomena mentioned is death. Death in this investigation or study is looked upon not as an event but as a process. Therefore, an attempt will be made to define these terms. These phenomena have been studied in relation to two fundamental Hindu principles, namely, *karma* and *dharma*. Hence *karma* and *dharma* have become key hermeneutical concepts.

1.3.1 DEATH

Death is commonly regarded as an event. A variety of circumstances in this investigation has forced us to come to the conclusion that death must be viewed as a process and not simply as an event. One of the most dramatic of these circumstances is the development of techniques or organ transplants. In such a case the "donor" must be dead enough to justify removing the organ, but "not dead enough" to the extent that the organ is not suitable for transplanting. Another relevant development has been the increase in sophisticated techniques to maintain biological life far beyond anything previously possible and in some cases far beyond the apparent termination of self-conscious personal life (Bube 1982 : 29 - 30).

Nelson (in Bube 1982 : 30) distinguishes four stages in the process of dying against which criteria for death are chosen.

1. Clinical death is the most commonly encountered and the simplest to ascertain. When respiration and heart beat stop, then clinical death has occurred. It is evident that clinical death is not irreversible for there are many cases of patients who have been revived after having been pronounced clinically dead. Presumed reports of life after death described in such books as Life after Life use death in this sense of clinical death. If an irreversible stage of death had been passed the people who report their impressions after clinical death would never have been revived to tell them.

2. Brain death is the second stage of death. It is well known that if the brain is deprived of oxygen for a critical period irreversible changes occur that prevent recovery of the living person. Brain death itself can be separated into two parts: first death of the higher brain functions that control consciousness followed by death of the lower brain functions that control the nervous system and operation of the heart and lungs.

3. Biological death implies the irreversible and permanent end of all bodily life.

4. Cellular death means the final termination of all life processes of any kind in the body, some parts of the body reaching this final termination more rapidly than others (Bube 1982 : 30).

As long as a human being is alive (that is not dead) regard for that human life calls for actions that will preserve it; when a human being is dead, however, a greater freedom of action is possible, as for example, arranging for transplants. It becomes a critical question therefore to consider "when does death occur?" Recognizing that death is a process and not an event, this question translates into another, when should efforts to preserve life be abandoned? Various suggestions have been advanced to answer this question. (1) Since the irreversible stage of dying centres on the cessation of brain function, then this cessation is the criterion for death. The test of brain function is a measurable electroencephalogram (E.E.G.) and therefore flat-line independent E.E.G. is the criterion of death. Although recovery from spontaneous flat E.E.G. patterns is rarely if ever encountered it is also known, however, that flat E.E.G. patterns can be induced by certain drugs from which recovery is commonly encountered. (2) A second suggestion calls for more extensive symptoms of death than simply a flat E.E.G. In addition to the latter it would include all the criteria of clinical death, lack of any response to stimuli or reflex action. All of these indications of death would be required to persist for a twenty four hour period before death was accepted. (3) A third and even more stringent perspective downgrades the significance of brain action, and looks instead to the total loss of the integrated functioning of the various parts and systems of the body as the necessary condition for death to be pronounced.

These criteria are of necessity essentially empirical and biological in nature. They leave unsaid however, other definitions of death that may be as important or even more important for the whole person. Such other definitions would focus on the

value of human life as being centred in personal existence: the ability to experience self-consciousness to relate to other human beings and to God, and to engage in rational and abstract thought (Bube 1982 : 30; Veatch 1975 : 27).

According to Barnard (Barnard 1980 : 36) a person is considered dead when:
There is no receptivity and complete lack of responsiveness. There is a total unawareness of externally applied stimuli and complete unresponsiveness - a state of irreversible coma. Even the most painful stimuli evoke no vocal or other response, not even a groan, withdrawal of a limb, or quickening of respiration.

There is no movement or breathing. Observation covering a period of at least one hour by physicians is adequate to satisfy the criteria of no spontaneous muscular movements or spontaneous respiration or response to stimuli such as pain, touch, sound or light.

There are no reflexes. Irreversible coma with absence of central nervous system activity is evidenced in part by the absence of elicitable reflexes. The pupils will be fixed and dilated and will not respond to a direct source of bright light. There is a flat encephalogram.

Cerebral death is confirmed when there is a loss of all responses to the environment. There is a complete loss of reflexes and muscle tone. There is an absence of spontaneous respiration. There is a mass drop in arterial blood pressure

when not artificially maintained. There is an absolutely linear electro-encephalographic tracing recorded under the best technical conditions even with artificial stimulation of the brain.

The Sydney Declaration (in Barnard 1980 : 49 - 50) read: "The determination of the time of death in most countries is the legal responsibility of the physician and should remain so". A complication is that death is a gradual process at the cellular level with tissues varying in their ability to withstand deprivation of oxygen. But clinical interest lies not in the state of preservation of isolated cells but in the fate of the person. Here the point of death of the different cells and organs is not as important as the certainty that the process has become irreversible whatever techniques of resuscitation that may be employed.

A person will be considered medically and legally dead if, in the opinion of a physician based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and because of the disease or condition which caused directly or indirectly these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation are considered hopeless; and in this event death will have occurred at the time these functions ceased, or a person will be considered medically and legally dead if, in the opinion of a physician based on ordinary standards of medical practice, there is absence of spontaneous brain function; and if based on ordinary standards of medical practice, during reasonable attempts either to maintain or to restore spontaneous circulatory or respiratory function in the absence of aforesaid brain function, it appears that further attempts at resuscitation or supportive maintenance

will not succeed, death will have occurred at the time when these conditions coincide. Death is to be pronounced before artificial means of supporting respiratory and circulatory function are terminated and before any vital organ is removed for purpose of transplantation.

1.3.2 EUTHANASIA

The definition of euthanasia consists of three components:

1. An act which has resulted in death. Legally there is no difference between acting and omitting to act if acting is a duty. Causing the death of the patient by action is the same as not helping him, with death as a result, when treatment is available. The act must have hastened death which would not have occurred without that act.

2. The act has to be performed at the request of the person who has died.

3. This request constitutes the borderline between euthanasia on one hand and murder and manslaughter on the other. Medical acts not requested by the patient but causing death legally fall under the second category.

From the above three components the following definition can be composed: Euthanasia is a deliberate life-shortening act, including an omission to act by a person other than the person concerned at the request of the latter (Leenen 1984 : 333 - 334). The word euthanasia is derived from the Greek **eu** = good and **thanatos**

= death meaning a good death. That should be the intention of the person who is performing euthanasia.

In other definitions other elements are sometimes included, for example, the phase of dying must have been entered, an incurable disease must exist and the victim must suffer unbearable pain. These elements however cannot be part of the legal definition, for two reasons. In the first place they would bring into the definition judgements on which people disagree. Such judgements cannot be part of the definition. Including them would bring into the definition a debate on the permissibility of euthanasia. They can play a role in legalisation or in court decision as prerequisites to be fulfilled before euthanasia is acceptable, but they cannot be a definitional instrument to determine whether a given set of facts legally constitutes euthanasia or not. Secondly, these elements cannot be delineated precisely and therefore would take away the discriminating character of the definition. Entering of the phase of dying cannot exactly be established. Dying is a gradual process, in which it is impossible to fix a moment when dying starts. If entering the dying phase was an element in the definition this moment would be very important because before that moment no euthanasia could exist. Suffering from an incurable disease is also too vague a criterion to be included in the definition. The incurability of different diseases is scientifically not very well defined, which is a requisite for inclusion into a definition. Furthermore, incurability as such is not significant for the delimitation of euthanasia. Would a healthy diabetic be eligible for euthanasia and a victim of a severe accident (no incurable disease existing) not? The same

problems arise with unbearable pain. If psychic pain is included, against which few arguments can be raised, then a broad scope of human suffering would fall within the definition, making it thereby vague and useless.

In the euthanasia debate differentiation of euthanasia is also used. Thus a distinction is made between voluntary and involuntary euthanasia, between active and passive euthanasia and between euthanasia by ordinary and extraordinary means. Voluntary euthanasia is euthanasia on request and falls within the definition and the legal concepts of murder and manslaughter. Including involuntary "euthanasia" in the definition is legally not possible. Another question is, whether the termination of a life without request can be justified at all. The distinction between voluntary and involuntary euthanasia has no legal basis and does not fit into the legal system. The concept of involuntary "euthanasia" seems to justify termination of life without request. But the request of the person concerned is a central legal criterion which cannot be set aside. As a consequence the request of others (next of kin or friends) is legally irrelevant and cannot justify the action of the doctor. There are also other reasons for this, for example, the human right of self-determination.

The distinction between active and passive euthanasia is based upon the difference between acting and not acting. The distinction, however, is not valid because as was mentioned, in law acting is the same as omitting to act if acting is a duty. Doctors often are of the opinion that non-acting is morally and legally different from acting. But this is not true. It is comprehensible, however, that the doctor mostly prefers to terminate a life on request by non-action and that psychologically the distinction

under discussion is relevant for him. The so-called passive euthanasia without a request of the patient is acceptable, which in fact is not. This legally does not constitute euthanasia but termination of life without request. Apart from the legal irrelevance of the distinction between active and passive euthanasia, the two methods also cannot be delineated from each other. Non-acting can cause the same effects as acting. Is, for instance, stopping resuscitation by turning off the machine different from not again turning it on after it has stopped by accident? Rachels points out that omitting to act is not non-acting: the doctor acts by letting the patient die. By way of example he refers to an omission to shake hands which in a given situation can be very insulting. Legally important is the relation between the instrument and the aim and the proportionality between these two, not the reaching of the goal by acting or omitting (Rachels 1979 : 146).

The distinction between ordinary and extraordinary means also has no legal consequences. It is the proportionality of means which is decisive. Moreover, it is difficult to circumscribe ordinary in comparison to extraordinary means. The condition of the patient is no criterion for deciding whether or not a method is ordinary. Giving antibiotics for pneumonia is ordinary and does not become extraordinary because the patient is mentally debilitated and needs a lot of nursing. Moreover, the development of modern medicine and technology causes shifts between the two types of methods; what was extraordinary yesterday is ordinary today. Finally, the place of treatment is a factor in determining whether a method is ordinary or not. What is ordinary in an academic hospital can be extraordinary in a nursing home and the nursing in the latter can mostly not be delivered by an academic hospital.

It can be concluded that the differentiations sometimes made in the concept of euthanasia as discussed above have no legal bearing. They do not provide the instrumentality to assess whether legally a given set of facts has to be defined as euthanasia or not (Leenen 1984 : 333 - 335; Weinfeld 1985 : 102; Helm 1984 : 20).

1.3.3 SUICIDE

Suicide is a term derived from the Latin **suicidium** meaning the taking of one's own life. In the broadest sense it is applied to any voluntary act by which one causes one's own death. In the strictest moral sense it means an unlawful moral act, positive or negative, by which one directly causes one's own death.

The concept of suicide can be interpreted in several ways. In the broad sense of the word, it is understood to mean anomalous kinds of death brought about by an unintentional interference of the subject with his life process whether by positive active self-participation or a negative passive attitude toward the dangers of life. In this sense, for example, the suicide is one who meets a premature death through an immoral act. In the narrow and strict sense on the other hand the suicide is one who intentionally and knowingly ends his life, who longs for death as such and is certain that his death will be brought about by his own action or failure to act. The swiftness of death is not the characteristic mark of the act, because one can also seek to die slowly and gradually. The negative passive attitude toward the dangers of life can similarly occur with suicidal purpose. As with every act of free will it depends on the intention (Masaryk 1970 : 7).

Self-sacrifice is also a form of suicide. While suicide is morally condemned, self-sacrifice is considered to be the highest human virtue (Masaryk 1978 : 8). Self-scarifice may be done so that another individual may benefit. According to Hindu belief such an act may be considered *dharmic*.

Of greater moral significance is the distinction between direct and indirect suicide. Suicide is direct when one has the intention of causing one's own death as a thing decried for its own sake (as when death is preferred to the meaninglessness of life or as a means to an end as when one hangs oneself to avoid prosecution or to provide one's heirs with insurance).

Suicide is indirect when death itself is not desired either as a means or as an end but when it is simply foreseen as a likely consequence of an act, the immediate effect and purpose of which is something other than death (as when a man turns his car out of the way and over a precipice to avoid a collision with an oncoming school bus).

1.3.4 ABORTION

Abortion or miscarriage means the separation and expulsion of the contents of the pregnant uterus before the twenty eighth week of pregnancy. The frequency of abortion is not known but it is estimated that ten to fifteen percent of pregnancies end in abortion. The common time for abortion to occur is from the eighth to the thirteenth week of pregnancy.

The cause of natural abortion may be found in the mother or in the germ cells, or in some completely extraneous factor. As far as the mother is concerned, the most common cause is an abnormality of the hormonal balance which controls the cause of pregnancy. The main defeat is a lack of progesterone. This hormone is secreted by the corpus luteum in the early weeks of pregnancy and subsequently by the placenta. The function of progresterone is to ensure the safe embedding of the fertilized ovum in the mother's uterus (or womb) and then to ensure that the uterus does not start contracting until the time for labour is due. It is thus obvious why a defective supply of progesterone can result in abortion.

Other natural causes of abortion include disturbances of endocrine glands or supply of hormones such as phyothyroidism or myxoedema and diabetes mellitus; high blood pressure; glomerulone phritis; and acute illness; congenital abnormalities of the uterus and any severe emotional disturbance (Thomson 1984 : 5).

Two oft-quoted classical causes of abortion are syphilis and drugs. Syphilis is certainly a dangerous disease for a pregnant mother to have, but it is more likely to cause the death of the foetus after the twenty eighth week of pregnancy, and technically this is not an abortion. Several drugs have achieved a popular reputation as abortifacients, or inducers of abortion, but the reputation is usually fallacious as many a misled woman has found it is incredibly difficult to induce an abortion by means of drugs in a healthy pregnancy. This even applied to pills containing lead, though there is no doubt that lead can induce an abortion.

Any defect in the germ cells whether ovum or spermatozoon may lead to abortion if it is severe enough to cause gross malformation of the embryo. Finally reference must be made to criminally induced abortion (the aspect that is of great concern in this thesis). This may be attempted in a variety of ways, particularly the introduction of fluids or instruments into the uterus. It is a dangerous practice. This type of abortion is carried by unprofessionals known as "back street" abortions. As a result many women have died from sepsis (Thomson 1984 : 5).

1.4 TEXTS AND INTERVIEWS

A cross section of the Hindu population in the Durban area were interviewed, and consisted of Hindu priests, both old and relatively young, lawyers, doctors, Hindu academic scholars and housewives. Their views were compared with the Classical Texts (both *Sruti* and *Smrti*). Most of the Hindu lawyers and doctors were completely ignorant of scripture and Classical views on euthanasia, suicide and abortion. What was fascinating however, was that their views and values were rational and sound and similar to traditional Hindu views, that are not dogmatic. Hindu law and scripture had always taken into account changing circumstances. This shows that Hindus, irrespective of the era, think in a particular way, in keeping with local trends and situations. This shows that the Hindu religion does not have any binding rule, it is flexible and time and place play significant roles in Hindu ethics.

This research has been conducted on purely qualitative lines, hence it lacks a quantitative analysis.

1.5 CHAPTERS

Chapter Two deals with the classical background to the study of contemporary views.

In Chapter Three an attempt has been made to understand euthanasia, suicide and abortion from a legal, medical, ethical aspect.

Chapter Four deals with the contemporary views of the Durban Hindus on the phenomena in question and Chapter Five analyses and interprets views (contemporary) in terms of the Classical background, the influence of legal and medical ethics and the re-interpretation of *karma* and *dharma* (depending on situations and circumstances) in a society that is basically Hindu, but has undergone a great deal of Westernization. Chapter Six is the conclusion which sums up the essence of the thesis.

CHAPTER TWO

CLASSICAL CONTEXT

2.1 INTRODUCTION

The extreme debilitation of advanced old age and severe illness have plagued human beings whose awareness and self-definition encompass both the idea of death and the "marker events" that signal the dying process. Human beings the world over have tried to cope with the problem. Each individual tries to find a solution to the problem according to his own psychological and sociological make-up. Religion has also played an increasing role, in trying to understand and provide a solution to the problem. The Hindu religion in particular has been extremely flexible in trying to understand the phenomenon. Heroically living out the natural life span despite suffering, suicide to eliminate the difficult dying process, and murder whether by compassionate or selfish motives have all been human responses to this phenomenon (Young 1989 : 71).

2.2 EUTHANASIA AND SUICIDE IN CLASSICAL INDIA

The archaic meaning of euthanasia in classical India is the "freedom to leave", which permitted the sick and despondent to terminate their lives. An alternative working definition for this historical study is self-willed death with reference to the extreme debilitation of advanced old age and the seemingly terminal nature of disease. The Classical Indian view remained operant for a number of centuries

(unlike the discontinuity in the west regarding the practice and definition of euthanasia). A study of the Classical Indian view will be a major step in understanding the history of this phenomenon in India and a re-interpretation of this phenomenon amongst the Hindus in Durban, under the influence of Westernization and technology.

The study of the phenomena euthanasia, suicide and abortion cannot be complete without studying the phenomenon death. A brief study of the concept death will be undertaken to give greater meaning to the phenomenon in question. The concept will be studied from the Indian philosophical view, in keeping with the topic in question.

Death has been described as a central concern not only of Indian philosophy and religion but also of Indian sociology. Death is regarded as the single most polluting human experience.

When one approaches the topic of death in the classical Indian context, one encounters three basic types of death: natural, unnatural (being killed) and self-willed (killing oneself).

With reference to natural death one finds that there was a strong Brahmanical (Hindu) prescription to live a hundred years or at a least to the end of the natural life-span. The funeral or *sraddha* rites were performed for those who died a natural death. Those men who died naturally became the ancestors who were sustained

through the offerings, ostensibly until they were reborn (though the offerings also ensured that they became gods (*Visvadeva*) as part of the process, thereby creating a double buffer against the idea of death as annihilation).

Unnatural death by being killed in battle, by murder or by accident was viewed as violent and not to be marked by *sraddha*. Such death, however, was not necessarily perceived negatively and that violent death, especially that of a warrior killed in battle, was religiously powerful, for it led to heaven or deification.

Besides natural death and unnatural violent death, there also developed an acceptance of some forms of self-willed death. This category of self-willed death included three different types:-

2.2.1 TYPES OF DEATH

2.2.1.1 MORS VOLUNTARIA HEROICA

Mors voluntaria heroica was a form of suicide which was practised among warriors in ancient times. It was a way to avoid calamity and also when a warrior did not want to be captured by his enemy he resorted to **mors voluntaria heroica.** It was considered a courageous act (for if captured, a warrior could be enslaved, which was degrading and he could also be subjected to torture in order to release information). Consequently suicide in such circumstances was thought to result in enlightenment

or *moksa*. Suicide (self-willed death) by a woman attempting to escape rape or slavery by a conqueror was also considered a heroic act. It was also a way to allow peaceful succession to the throne.

2.2.1.2 MORS VOLUNTARIA RELIGIOSA

This was related both historically and conceptually to heroic self-willed death and emphasised the religious dimension (heaven, liberation or *moksa*: duty and social order based on religious principles). This type of suicide was found outside the warrior caste, but like **mors voluntaria heroica** was thought to lead to *moksa*. An example of this type of suicide was those who committed suicide, so as to avoid being sacrificial victims. The king had autocratic power, and he killed people (whom he desired) and they were considered as sacrificial victims. In order to avoid being such victims some committed suicide before they were captured and sacrificed (Young 1989 : 83). Another example of **mors voluntaria religiosa** was *sati*, where women committed suicide on the cremation fire of their husbands. The belief was that if women were cremated together with their husbands, they would gain *moksa*. This was an act of *dharma* whereby a person sacrificed her life to join her husband in the spiritual plane.

2.2.1.3 PASSIONATE SELF-WILLED DEATH

This type of suicide was different from the previous two types. It was prompted by passion, depression or uncontrollable circumstances. This type of suicide was prohibited for the circumstances under which it was committed, was not acceptable

as it was felt that it did not lead to *moksa*; being not on heroic or religious grounds. The degree of disapproval for this type of suicide is evident in the fact that *sraddha* (ceremonies) was not performed for those that committed suicide under such circumstances. Neither were such victims permitted cremation rites (Young 1989 : 74). The *Amarakosa*, which was written in the early Classical Period, places the category of death in the semantic domain (*varga*) of the warriors (*ksatriyas*): after citing thirty terms for killing (*vadha*), it gives ten terms for natural death (*marana*) and seven terms for dead (*mrta*) (Ramanathan 1971 in Young 1989 : 75). While there is no term for self-willed death in this text, reference to suicide, literally one who kills the self (*atmahan*), makes its textual appearance in the *Upanisads* and early Buddhism and may be related to a critic of heroic, self-willed death, which was beginning to occur in *Vedic* society. *Atmahatya* and *atmaghata* become the technical terms for suicide by the late Classical Period. The technical terms for the category of heroic and religious self-willed death, however, do not emerge until the Indian vernacular languages with the compounds *icchamarana* and *istamrtyu* (literally death that is willed or desired); nonetheless, the concept, if not the technical term, exists by the time of the *Mahabharata*. It is said in the *Mahabharata* that *Dhrtarastra*, along with his wife, *Gandhari*, and his sister-in-law, *Kunti*, was performing austerities for six months during *vanaprastha*, the stage of life when they had retreated to the forest. *Gandhari* took only water and *Kunti* had fasted for a month. One day while they were sitting on the bank of the *Ganga* in the forest a fire broke out. *Samjaya* who was with them warned them of the advancing fire but they were so weakened and thin by their austerities (*mandapranavicestitah*) that they decided not to escape arguing that "uniting with the fire we will attain the final state". *Samjaya* says despondently "that this futile death by fire (*vrthagnina*) will be not willed evil

(*anistah*). The reply is that, for we who have voluntarily renounced our home, this death is not willed, that is it is willed or desired. Further, dying through fire, water or wind by a hermit is praised". They tell *Samjaya* that because he is not a hermit, he should escape the fire (Young 1989 : 124).

Dhrtarastra is reminded that he had excessive indulgence for his proud son *Duryodhana* and paid court to those of wicked behaviour, which helped to instigate the great war. Because of such irresponsibility he must experience the fruit of his own actions and should not give way to grief. Moreover, indulgence in grief never wins wealth nor what is desired, much less salvation. Neither scriptures nor the dead approve of such tears. One should not mourn for dead warriors who have been slain in war, for youth, beauty, life, possessions, health and companionship are impermanent. All must die someday. Heroic death in battle ensures that the warrior will immediately gain fame and heaven. Others cannot attain heaven so speedily by sacrifices, gifts, asceticism or knowledge. Those ignorant people who suffer or meet with destruction as the consequence of their own actions will not attain the supreme goal (Young 1989 : 124).

What is interesting about this account is that it is the antecedent to the concept of self-willed death (*ista-mrtyu*) which is the Sanskrit equivalent of **mors voluntaria heroica** or **religiosa** and is viewed as legitimate for those who have become hermits or *vanaprasthins*.

In the *Mahaprasthanika Parva*, the royal suvivors of the great war decide to retire from the world to seek merit. Plans are made for an orderly succession of rule.

Yudhisthira and his brothers offer oblations of water to the elders, perform the *sraddhas* for the deceased kin, feed the sages, bestow great gifts on the *Brahmins* and inform the citizens of their intention (*samkalpa*). Clad in the bark of trees, they perform the preliminary rituals, which are to bless them in the accomplishment of their goal, and begin their journey with their faces to the east, resolved to renounce the world with *yogic* discipline. They wander through various kingdoms. They head south, southwest and finally north. Their circumambulation of the earth completed, they behold the Himalayas and finally the grand peak of Mount Meru. The first to fall is the princess *Yajnaseni*, then *Sahadev*, *Nakula*, followed by *Arjuna*, *Bhima*, and finally *Yudhisthira* (Narasimhan 1965 : 207).

Given this evidence of the phenomenon of self-willed death, the heroic and religious dimensions of which will become apparent in this study, introduction of the categories of **mors voluntaria religiosa** as distinguished from suicide are valuable to facilitate the discussion of euthanasia.

The present analysis necessitates a historical treatment to see how these categories developed and where the topic of euthanasia is to be situated in the more general discussion of self-willed death.

Different historical periods had very different understanding of the natural life span and acceptability of heroic, voluntary death and religious self-willed death. To illumine these historical vicissitudes with specific reference to the topic of

euthanasia, it is necessary to understand not only the major shifts of the *Brahmanical*/Hindu views through the main epochs, but also how they related to and are informed by the dynamic interaction with Jainism and Buddhism.

Katherine, K. Young (1989 : 76) has made five general observations.

1) Much sympathy was expressed in Classical India for euthanasia in the sense of "freedom to leave" by one suffering from an incurable disease or by one facing extreme old age.

2) Accordingly euthanasia belonged to the category of self-willed death and was never formally viewed as mercy-killing of another person. Once there was a formal declaration of the intent to perform self-willed death, helping the person was allowed. The individual's voice and willpower to implement it was therefore mandatory when euthanasia was accepted in the premodern Indian context.

3) The phenomenon of euthanasia was intimately related to the larger categories of heroic and self-willed death, which, in turn, were related to the yet broader context of violence and non-violence in Indian society and religion.

4) Although there was positive evaluation of euthanasia in classical Hinduism, strong criticism developed by the 10th century C.E.; which suggests that abuse occurred either of euthanasia proper or other forms of heroic and religious self-willed death to which it was closely associated, despite the attempt to define parameters.

5) The Indian Penal Code, based on British Law at the time of the Raj, views suicide as a criminal act. Because suicide has been interpreted as inclusive of all forms of self-willed death, euthanasia became illegal with the advent of British Law in India.

The Indian Penal Code on suicide was challenged by Justice T.K. Tukol (in Young 1989 : 77) in a series of lectures to the L.D. Institute of Indology, which was published under the title *Sallekhana* is Not Suicide (1976). While commentators on the Indian Penal Code have included the case of religious fasting to death among the forms of suicide, Justice Tukol argued that such fasting to death (*sallekhana; samadhimarana*) is not suicide:

upasarge durbhikse jarasi rujayam ca nihpratikare
dharmaya tanuvimocanamahuh sallekhanamaryah

The wise ones say that *sallekhana* is giving up the body when there is calamity (*upasarga*) suffering from famine (*durbhiksa*), old age and decay (*jaras*), painful disease (*ruja*) and incurable disease (*nihpratikara*) for the sake of *dharma*.

antarkriyadhikaranam tapah phalam sakaladarsinah stuvate
tasmadyavadvibhavan samadhimarane prayatitavyam

All systems of religion praise the result of austerities (*tapas*) which is control of mind and action; therefore one should try to attain dignity/emancipation from existence (*vibhava*) in *samadhimarana*.

These two verses (*Ratna-Karandaka Sravakacara* 22-23 text quoted by Tukol 1976 : 107; (translated by K. Young) describe the Jaina forms of voluntary death (*sallekhana*) as legitimate responses to debilitating old age and incurable disease. It is noted that other Indian religious systems have a similar method of death by austerities and meditation, presumably in the same circumstances which is dignified and salvific (Young 1989 : 77).

Since this chapter deals with the historical background of the phenomenon in question it becomes necessary to examine the different periods and to see how life, death and *moksa* were viewed, in relation to euthanasia and suicide.

2.2.2 LIFE AFFIRMATION AND THE ISSUE OF SELF-WILLED DEATH IN THE *VEDIC* PERIOD (ca. 1200 - 900 B.C.E.)

The earliest view of *Aryans* in India can be summarised by just three words Prosperity, Progeny and Longevity. In the *Rig Veda* (the earliest of the texts) it is revealed that men perform sacrifices for the gods (deities) in return for good health, long life and progeny. The god *Agni* is requested to bless the worshipper with good

progeny and long life. *Agni* is called the universal protector of bodies and is addressed as the source of strength who will give abundant vitality and exemption from sickness and danger. The Lord Himself is praised as the imperishable life principle and the *Asvins* (the physician gods) are beseeched for good health. To live for hundred years was the ideal of every *Aryan* (O'Flaherty 1983 : 99 - 100).

Thus the prayer: "O gods, may we hear with our ears what is beneficial, may we see with our eyes what is good. With firm limbs and sound bodies having sung your praises, may we reach old age, our minds steadfast on god. May one hundred years await as wherein old age is assured, wherein sons will become fathers. May no harm be done to us in the midst of the course of life" (Geldner 1951, 114 in Young 1989 : 77 - 78).

Life was precarious on account of disease and war in the *Vedic* Period, and the life span was relatively short. The deities were invoked to protect the body, invigorate it with energy, provide it with sustenance, exempt it from disease, or, if necessary, heal it so that one may live the full term of life, which is one hundred years. The deities themselves were regarded as the imperishable life force, they can take the individual across the difficulties of life. The prayers described in the *Atharvaveda* are in continuity with those in the *Rg. Veda*, namely long life and health (Griffiths 1968 : 39, 48, 51, etc.).

Thus, one finds in the *Atharvaveda* the following verse:- "Live thou, thriving a hundred autumns, a hundred winters and a hundred springs! May *Indra, Agni,*

Savitar, Brhaspati (grant) thee a hundred years! I have snatched him (from death) with an oblation that secures a life of a hundred years" (Bloomfield 1897 : 49).

Old age was regarded as a blessing from the gods. Prayers for health and protection from disease and other misfortunes indicate that the body was viewed positively. So strong was the *Vedic* life affirmation that immortality was viewed as a continuity to the good, long life albeit in another realm (*svarga*). Immortality itself was virtually a secondary interest. There was this continuous fear that *Yama*, the god of death, and his messengers would take someone away, and who that someone was remained a mystery, until such time was realised. Both the notion of premature death or relegation to the realm of *Yama* cast a shadow on happiness and reflect that life is indeed precarious. But by and large, optimism through confidence in divine protection (through praise, ritual, sacrifice and charm as human actions to foster the god's goodwill) became the order of the day. The underlying feature of *Vedic* rituals was the concept longevity, and this is clearly evident in the *Rg. Vedic* text. The expression of the life principle at the core of existence is nuanced by salient features of *Rg. Vedic* society.

Early *Rg. Vedic* society was an extension of the concept of family and kin, where religion and society immersed in each other and extended beyond the human realm (Young 1989 : 78). This collectivity includes 1) all ancestors and 2) all deities who cross over to the human sphere and communicate by virtue of their anthropomorphism. Although these forces (ancestors and deities) communicated with the beings on earth, yet they retained their natural cosmic and super human

traits. Because of the deities' difference from the human collectivity, they are to be treated with respect, deference and as allies to ensure the maintenance of order (*rta*) and well-being, including a long, healthy life surrounded by kith and kin.

In order to maintain this relationship sacrifice was in vogue. Sacrifice is primarily a way to forge a bond between humans and the deities, thereby forming a sacral relationship. This bonding ensured protection through life by the deities. As a result of this bonding death was annihilated and kept at bay. This was a gesture provided by the deities in return for sacrifice and praise. Some kind of a "barter system" existed between the *Vedic Aryans* and the gods.

This mutual relationship between the gods and humans provided the *Vedic Aryan* with an optimistic view of life, that is one hundred autumns, despite the precariousness of life and the relatively short life span.

With such life affirmation which was related to the sacramentalization of life, one finds no discussion of suicide in the *Veda* (Young 1989 : 78 - 79). Although *Vedic* commentators are divided on the point whether *Vedic* injunction allowed self-destruction, there is definite evidence from the hymns that human sacrifice was considered the best and that other forms were poor substitutes (Rao 1975 : 231).

2.2.3 LIFE AND VALUE IN THE *BRAHMANIC* PERIOD (ca. 900 - 500 B.C.E.)

There is a shift of emphasis in values from the *Rg. Vedic* to the *Brahmanic* Period. Much of the *Vedic* energy was consumed by family concerns, the establishment of

dominion over the lands and the founding of new *Aryan* settlements. By the time of the texts of the *Brahmanas* there is a desire to control human life, society and cosmos. To be specific, control was extended in two directions. It was extended over the gods who were subjected to the will of the emerging priests and intelligentsia (the *Brahmins* who call themselves gods on earth, for they can guarantee the results of the system of sacrifice). Control was also extended over the non-*Aryan* inhabitants who were gradually integrated into the social order. Hence a hierarchy was created between the ruler and the ruled. Kingship and the rudimentary caste system make their appearance in this period. The creation of kingdoms and the federation of tribes was a relatively peaceful process, yet there is evidence in Jaina and Buddhist literature that this epoch in Indian history was fraught with violence.

"However peaceful and harmless the *srauta* ritual may look, there can be no doubt about its violent origin in the heroic battle sacrifice epitomizing the warrior phase. Over the whole of the orderly an obsessively regulated *Vedic* ritual there still hangs the dark cloud of a heroically violent world where gods and *asuras* are forever fighting each other in endlessly recurring rounds of conflict" (Heesterman 1984 : 125 in Young 1989 : 80).

Hence it is necessary to understand the escalation of this violence at the time of the rise of kingdoms and the variety of reactions to it in the warriors milieu in order to appreciate the immediate context of 1) **mors voluntaria heroica** 2) the developement of suicide and non-violence and 3) the relationship of these to **mors voluntaria religiosa** and euthanasia. (Which began making their textual appearance

by the 6th century B.C.E). This aspect of extreme violence, including human sacrifice has been underestimated by historians in general and historians of religion in particular according to Young (1989 : 80).

During this period in Indian history one finds a transition not only from tribe to kingdom, but also the development of social hierarchy, in the form of caste distinction. When hierarchy is abused tyranny is born. Moreover "license is implicit in omnipotence", the two great licenses were "the sexual and the aggressive" and the early kings were expected to exercise both (Sagan 1985 : 320).

With reference to the latter, "a king was a king because he could kill" (Sagan 1985 : 321), even though he could be the benevolent protector of the land. The presence of sacrifice in complex societies testifies both to aggression and to an attempt to be omnipotent by controlling life and death. The latter is symbolized **par excellence** by human sacrifice. There is evidence of this in the *Brahmanas* where offerings were made of one hundred and sixty six men at eleven posts (Keith 1971 (b) : 347). However, Keith attributes this to priestly imagination, because there is lack of detail. Much evidence could have disappeared owing to re-editing of the texts (in the face of Buddhist and Jaina critics) to eliminate details of human sacrifice, which took on a more symbolic meaning as it did in the *Satapatha, Taittiriya* and the *Sutras.* According to Keith a human sacrifice was done in order to achieve human success.

The ideology embraced by the *Vedic* thinkers, perceives the other world as the realm of life itself and thus seeks access to that world as a means of renewing one's life. This world was characterised as a realm of death; in creating the cosmos it is said

that *Prajapati* "over [this world] created death who is the eater of men" (*Satapatha Brahmana* 10.1.3.1 in Tull 1989 : 72). The way to life was through sacrifice: "A man being born, is a debt (*rna*) by his own self he is born to death and only when he sacrifices does he extract himself from death (*Satapatha Brahmana* 3.6.2.16 in Tull 1989 : 72). Yet the mechanism of the sacrifice would seem to require the sacrificer to give up his own life to attain this renewal. According to Keith the "perfect form of sacrifice should be suicide" (Tull 1989 : 72; Eggeling 1979 : 165).

Suicide or self-sacrifice does not appear in the *Vedic* texts as a ritual method. Although such an act might have fulfilled the theoretical demands of the sacrifice, its finality would have been contrary to the sacrifice's practical purpose; that is, the attainment of the goods of life from the other world. This attainment could not be realised through a single ritual event but required a lifetime of ritual performances (which is another way of sacrificing one's life). "A year should not pass without sacrificing; indeed the year is life and life is this immortal state which he bestows on his own self" (*Satapatha Brahmana* 11.7.1.3 in Tull 1989 : 73).

There was also the belief that immortality could be achieved if one lived for a hundred years. "Those who depart before the age of twenty, they become attached to the world of the days and nights; those who [depart] above twenty and below forty [become attached] to that [world of] the fortnight; those who [depart] above forty and below sixty [become attached] to that [world of] the months; those who [depart] above sixty and below eighty [become attached] to that [world of] the

seasons; those who [depart] above eighty and below hundred [become attached] to that [world of] the year. Now only that one who lives hundred years or more indeed attains the immortal state" (*Satapatha Brahmana* 10.2.6.8 in Tull 1989 : 73).

At first in the *Vedic* Period five animals were sacrificed: man, horse, bull, sheep and goat. These five animals are said to represent all the animals (Tull 1989 : 83; Eggeling 1979 : 165). Animal sacrifice was further simplified in the *Vedic* Age. The ritualists proposed to slaughter only one animal in place of all five. They chose the goat for this role and thus they describe how the goat is equivalent to all the five sacrificial animals man, horse, bull, sheep and goat:

"Regarding why he slaughters this animal: in this animal indeed exists the form of all animals. As it is hornless and beardless, so it has the form of a man for man is indeed hornless and beardless; as it is hornless and possesssed of long hair, so it has the form of a horse, for the horse is indeed hornless and possessed of long hair; as it has the form of a bull, for the bull is indeed eight hoofed; as its hoof is sheep like, so it has the form of the sheep; as it is a goat, so it [has the form] of a goat, now when that goat is slaughtered by him, indeed all the animals are slaughtered" (Tull 1989 : 84; Eggeling 1979 : 165). It accomplishes the original purpose of the rite without too much bloodshed - the ritualists accept the sacrifice of a single goat as an alternative to the sacrifice of all the five animals (Tull 1989 : 84; Eggeling 1979 : 165). Because of this explanation human sacrifice was no longer in vogue. Sacrifice, at one stage was associated with blood only. As time progressed the concept of sacrifice took on a more subtle appearance.

The texts were watered down to give "sacrifice" a more sublime connotation. An example will be used to demonstrate this change of meaning. The king removed himself from the seat of government gave up his power and withdrew to the forest to lead a life of a mendicant or ascetic. The performance of the human sacrifice on this occasion no doubt is to symbolize the king's sacrifice of himself for the sake of his son. The son, in turn, will perform rituals at the time of of his father's death to secure heaven for his father.

Death in battle has been rewarded by most cultures, for there must be some compensation for male risk in battle beyond immediate material gain. "Warriors losing life in battle reap the same rewards that those who make gifts of a thousand cows in sacrifices secure" (Kane 1973: 58). Later texts indicate that death in battle is equated to participation in the *Brahmanical* sacrifice itself. Those that were killed in battle become pure by the destruction of their sins (Kane III 1973 : 58).

If attainment of heaven was guaranteed by heroic death in battle or self-willed death to escape capture, rape and slavery, then according to this cultural logic, warriors who did not die in or because of battle despite a valiant career were not rewarded. It was a sinful act for a *Ksatriya* to die in his house from some disease; the ancient code of conduct for him is that he should meet death from steel. However, according to Young this insistence on death in battle seems unjust to those old warriors who had risked their lives on numerous occasions in battle and yet survived. Surely these people too deserved salvation (Young 1989 : 83). It is likely that the close association of **mors voluntaria heroica** towards the end of life (as a subsitute for death in battle) leading to the attainment of heaven or deification, in

turn, posited the seeds for the general connection of self-willed death and the religious goal, heaven or enlightenment, in the emergent religions of the Gangetic plain, hence the phenomenon of **mors voluntaria religiosa.**

One common form of self-willed death, was death by fire, for the *Vedic* sacrificial cult was focused on the fire god (*Agni*). A sacrifice had a particular purpose, one had to give up something in order to obtain something. So also voluntary self-willed death became linked to a specific purpose: to obtain freedom (heaven or liberation) through an act of omnipotence, involving the sacrifice of the self. In that self-inflicted human sacrifice gave one omnipotence and the power over life itself. Although this power seemed negative power, nonetheless it could lead to the idea of liberation from violence. The extreme violence of the age provoked other reactions as well. One was non-violence. When a more non-violent self-sacrifice (such as fasting to death) was substituted for violent self-sacrifice, the goal remained the same. To many the more non-violent means seemed superior. If omnipotence through self-sacrifice was related to asceticism and withdrawal to the forest, as non-violent ways to escape the materialism and violence of the age, then such escapism was no longer a cowardly act to a warrior. Rather it was positively appropriated and converted into a religious path and goal epitomized by non-violence and a fast to death, which ensured heaven or liberation.

In this way violence and non-violence were intimately related in that non-violence was to be substituted for violence to achieve the goal of omnipotence. Killing the self may have taken more courage and heroism than aggression directed outwards. In the *Aranyakas* or the Forest Treatises, the sequel to the *Brahmanas*, one finds

both *Ksatriyas* and *Brahmins* withdrawing to the forest to practise asceticism (Young 1989 : 84).

While such equivalences and substitutions surrounding the issue of self-willed death no doubt appealed to the *Ksatriyas* and some *Brahmins*, they must have appeared as forms of suicide to those *Brahmins* who supported the *Vedic* prescription of the natural life-span.

2.2.4 THE *UPANISADIC* VIEW AND ADJUSTMENT OF THE *VEDIC* VALUE OF LONGEVITY (ca. 900 - 500 B.C.E.)

The new view presented in the *Upanisads*, which reflects integration of the challenges of the epoch, is based on a polarity between this - wordly suffering through death after death (*punarmrtyu*) later understood as birth after birth (the wheel of *samsara*) and the bliss of liberation (*moksa*), which transcends the human condition altogether. The rupture in existence is no longer the rupture of death caused by *Yama*, though this idea lingers. It is the rupture caused by the soul's disengagement from matter, nature, and body alike. This rupture is now viewed as categorically positive. Human life is no longer valued in its own right, more precisely for the sake of progeny, family, and material well-being, so central to *Aryan* thinking and identity in the *Rg. Veda*. However, human life is now viewed from two competing perspectives: human life as necessary for salvation, and the body as the cause of bondage. While the new theory of rebirth posits that the individual may have had or may have in the future other kinds of birth (for example as an animal) it is only in a human birth that an individual may seek enlightenment.

Hence, the value of human life is defined positively by the unique opportunity that it provides for the pursuit of salvation. Human status is a product of an individual's *karma*, a result of good actions in previous lives. Abuse of this human status leads to the accumulation of bad *karma*. The result may be loss of human status in the next life and with it opportunity for salvation, thus perpetuating the "bondage of rebirth" (*samsara*). At the same time, human status is viewed negatively, for the body is the expression of bondage and suffering. Thus the meaning of human existence has shifted to instrumentality, that is embodiment as a means to obtain the supreme goal. There is this opposition of soul and body and a stress on individual responsibility for salvation (Young 1989 : 86). Through *Yoga*, comprising austerities and knowledge one can cheat Death of its prey. This leads to real transcendence and immortality, understood as attaining the Absolute (*Brahman*) and the True Self (*atman*). *Vedic* sacrifices were designed to ward off death temporarily and to attain a full life span for men. A more total conquest of death was the goal in the philosophies of the *Upanisads*, Buddhism, and Jainism (Blackburn 1985 : 255).

The *Upanisads*, considered as the end or culmination of the *Veda*, present this new view of human existence, though the older *Vedic* perspective is generally incorporated. For example, in *Chandogya Upanisad* (11. 2) the *Gayatri* Chant (which reflects the *Vedic* orientation and the breaths of the *yogi* (which reflects the *Upanisadic* view) together ensure a long, prosperous life (the old *Vedic* ideal) (Radhakrishnan 1953 :375).

In *Kausitaki Upanisad* 4.8, it is said that the *Upanisadic Brahman* fulfills the *Vedic* goals of life such as longevity (Radhakrishnan 1953 : 786). When *Brahman* in the self is reverenced as the breath of life (*asu*), one "does not die before the time" (*Kausitaki* 4.13) (Radhakrishnan 1953 : 788). Therefore, the appreciation of longevity, which is related to the sacramentalization of life is often integrated into the *Upanisadic* perspective.

While the *Vedas* emphasise the physical aspect of man and his relationship to God through the material, example, sacrifice; the *Upanisads* emphasise the spiritual aspect of man the soul or *atman* and the close resemblance it bears to *Brahman* or God Himself. Greater emphasis was placed on the importance of sacrifice as a means of appeasing the gods in return for good health and long life, in the *Vedic* Period. The *Upanisadic* Period emphasised the importance of *yoga* (which replaced sacrifice) as the protector and preserver of life and ultimately the conqueror of death. Pursuit of *yoga*, however, may be relegated to the last stage of life. Thus a long healthy life is necessary to ensure that there is sufficient time for the pursuit of *yoga* culminating in enlightenment. Through *yoga*, one conquers sickness, old age, and also death (*Svetasvatara Upanisad* 2.12; Radhakrishnan 1953 : 722).

The *Upanisadic* view, however, poses a tension between the *Vedic* view of a life span of one hundred years and the idea that action (*karma*) creates bondage. To overcome this it is argued that although the renouncer may desire to live a hundred years, *karma* will not bind him after he has achieved liberation.

Even while doing deeds here,
One may desire to live a hundred years.
Thus on thee - not otherwise than this is it -
The deed (*Karma*) adheres not on the man
(*Isa* 2; Hume 1968: 362; Radhakrishnan 1953 : 569).

Although the *Upanisads* like the *Vedas* emphasised that long life was necessary to attain salvation, yet old age was viewed in a negative sense. "May I, who am the glory of the glories, not go to hoary and toothless, yea to toothless and hoary and driveling old age". Yea, may I not go to driveling old age. (*Chandogya* 8.14; Hume 1968 : 273; Radhakrishnan 1953 : 511).

Despite ambivalence over human life and the body, the *Vedic* respect for longevity and the natural life span remains the dominant *Brahmanical* attitude. This may be the reason for the following verse, which may be taken as condemning suicide, especially if suicide as a form of escape from violence is becoming common in society.

Devilish (*asurya*) are those worlds called,
With blind darkness (*tamas*) covered o'er.
Unto them, on deceasing, go
Whatever folk are slayers of the self
(*Isa* 3; Hume 1968: 362; Radhakrishnan 1953 : 570).

In order to give the topic a more comprehensive outlook it becomes necessary to examine Jaina and Buddhist views on the phenomena in question.

2.2.5 EPIC LITERATURE (*MAHABHARATA*) (ca. 900 B.C.E.)

The **locus classicus** for the desire to commit suicide is the example of old King Dhrtharastra in the epic *Mahabharata*. *Dhrtarastra*, overcome by grief as he faces the carnage of the great war and the slaughter of the kin (including his own sons), weeps uncontrollably, falls on the ground, laments, and resolves to go the long way that leads to the realm of *Brahma*. In other words, he wishes to die by the great journey (*Mahaprasthana*), which involves wandering until extreme sorrow that has provoked the king to escape his trials by suicide. *Vaisampayana* rebukes such self-pity and lectures him sternly on the meaning of death. In the arguments to dissuade *Dhrtarastra* from committing suicide, one finds an endorsement of an appeal to the *Ksatriya's* duty. *Kastriyas* are to fight, for warriors who die in battle win fame and heaven. Such death is described as a quicker and therefore easier means to heaven than sacrifices, gifts, asceticism, or knowledge. According to *Brahmin* authors death in battle is an easy way to attain heaven. As a result the warriors were attracted back into the *Brahmanical* view of the state (those that were attracted to Buddhist and Jaina Philosophy) by discourageing asceticism, suicide (and self-willed death) and promoting a philosophy of action.

While the definition of suicide seems to be all-embracing (any death as the consequence of one's own action), some *Brahmin* lawgivers, as well as authors of the epics make exceptions. If one who is very old (beyond seventy), one who cannot

observe the rules of bodily purification (owing to extreme weakness ...), one who is so ill that no medical help can be given, kills oneself by throwing oneself from a precipice or into a fire or water or by fasting, mourning should be observed for one for three days and *sraddha* may be performed for one. "... he who is suffering from serious illness cannot live, or who is very old, who has no desire left for the pleasures of any of the senses and who has carried out his tasks, may bring about his death at pleasure by resorting to *Mahaprasthana*, by entering fire or water or by falling from a precipice. By so doing he incurs no sin and his death is far better than *tapas*, and one should not desire to live vainly without being able to perform the duties laid down by the *Sastra*" (Kane 1974 2 : 926).

Thus it can be seen that *Brahmin* authors accepted the practice of euthanasia (if one understands the pre-modern meaning of euthanasia to be a good death, that is, self-willed and self-accomplished as a way to deal with the problems of extreme old age and severe illness).

Modern Western supporters of euthanasia argue that euthanasia should be allowed when one is no longer able to live with dignity and comfort and when the quality of life is intolerably undermined. *Brahmin* jurists have also sought to define biological, psychological and social limits for the phenomenon. This was necessitated by the considerable overlap between the desire to escape the difficulties of extreme illness and old age and the desire to commit suicide proper. For, not only are they both forms of self-willed death, they also may be prompted by extreme emotion, depression or uncontrollable circumstance (Young 1989 : 94).

Brahmin jurists proposed a number of constraints, in order to distinguish euthanasia from suicide. For example, either the illness cannot be treated and death is imminent or the condition of the aged person is such that there is no desire for pleasure. When social duties are finished it is natural to withdraw from life. The *Brahmin* authors of the legal texts also give a religious dimension to the context of euthanasia, which helps to distinguish it from suicide. Euthanasia may be performed when a person no longer can perform the rites of bodily purification, which may occur in the case of extreme illness or extreme old age. Because these duties are *dharmic* and required, the non performance of them, would ordinarily create demerit/sin (*papa*). Since the incapacitated person cannot perform mandatory, religious duties because of circumstances beyond control, it was necessary to create an exception to the general rule regarding required acts. Non performance of obligatory action by an incapacitated person is to be considered *dharmic*. If non performance of obligatory rituals is considered *dharmic* for an incapacitated person, then euthanasia, which is defined, in part, by the situation of incapacitation, may also be considered *dharmic*. If euthanasia is *dharmic*, then in *Brahmanical* terms, it is righteous and religious. If euthanasia is *dharmic* and therefore religious it belongs to the category of **mors voluntaria religiosa** and is definitively different from suicide. This was the logic of the times (Young 1989 : 95).

One important implication of this legal scope for euthanasia is that responsibility for self-willed death rests ostensibly with the individual. The Law of *Karma* is the key to understanding the issue for individual responsibility. It is important for an individual to consider the various criteria for euthanasia and to determine whether

the desire to die is legitimately a case of euthanasia or whether it is a case of suicide. The distinction is crucial, for the latter generates demerit or sin (*papa*) and leads to hell. While it was an individual responsibility to determine whether the desire to die is legitimate or not, the leaders of society were responsible for the larger issue of whether any kind of **mors voluntaria religiosa** should be legitimated. The decision was made on the basis of the scriptures, the practice of the good people, and societal conditions. There was a recognition of how human lives interconnected to determine the social order. Practices such as euthanasia were viewed critically in social terms so that the welfare of society was taken into consideration. Once this had been established, then an individual was free to choose actions that may be optional but must be *dharmic*, in that they contribute to the general good of society or at least do not obstruct it (Young 1989 : 96).

During the Classical Period under consideration, when much of the *smrti* literature is composed, two additional considerations arise for *Brahmins* reflecting on issues such as euthanasia: The principle of *ahimsa* or non-injury to any living thing, and the concept of *Samkalpa* or intention. The principle of *ahimsa* (non-injury) which is accepted by *Brahmins* in this period for their own code of conduct - as a reaction to criticisms made against them to their earlier endorsement of violence, especially sacrificial violence. Once *Brahmins* accept *ahimsa*, then how can they consider euthanasia to be *dharmic* when it involves killing the self and killing the self is an obvious denial of the principle of non-injury? Arvind Sharma has argued in his article "The Religious Justification of War in Hinduism" (in Young 1989 : 96) the pursuit and protection of *dharma* provides the religious justification of war. Whereas non-injury to living beings was a *sadharana-dharma* (duty which applies to

all human beings irrespective of stage and station or caste in life), *Ksatriyas* had protection of *dharma* also as a special duty of their caste, a duty which belonged to the category of *varnasrama-dharma* (duty according to caste and stage of life). According to Sharma in case of conflict between *varnasrama-dharma* and *sadhrana-dharma* (as in the case of the *Ksatriyas*) *varnasrama-dharma* which includes both defensive and aggressive warfare when *dharma* is obstructed - generally had precedence in Hinduism.

Since killing in this situation is considered *dharmic* one may assume that the same logic was operant in the *Brahmanical* understanding of euthanasia. Accordingly, euthanasia as self-willed death no doubt was viewed by *Brahmins* as *dharmic* given the new ideology of non-violence, because euthanasia supports *dharma* (by allowing an exception to the general rule of *dharma* in special circumstances). On the grounds of logic, it is likely that euthanasia was reconciled with the principle of *ahimsa*. (Arguing on similar lines, some *Brahmins* argued that ritual sacrifice was also a legitimate exception to *ahimsa*) (Young 1989 : 96).

Besides the principle of *ahimsa*, which helps to define the limits of the phenomenon of euthanasia, another important restraint imposed on **mors voluntaria religiosa** was the idea of decision or resolve (*samkalpa*). The idea of decision or resolve is first given religious significance in the context of *Vedic* ritual. The declaration of intent to perform a sacrifice is formalized (*samkalpa*). So important was the pronouncement of intent that the ensuing action and even goal was but the automatic sequel of the resolve (with the qualification that the action be done properly). The resolve or will, therefore, generates a power and this will-power, so

to speak defines destiny. Over time, the concept of *samkalpa* extended beyond the sacrificial context to other types of religious practices, **mors voluntaria religiosa** being included (Young 1989 : 97).

The *Mahabharata* makes reference to the fast to death by one who has gone to the end of the *Veda* (one who is enlightened) and who is twice-born (*dvija* : a *Brahmin*, *Ksatriya* or *Vaisya*).

2.2.6 THE BUDDHIST VIEW AND THE CONCEPT OF LIFE AND DEATH (ca. 624 - 544 B.C.E.)

Buddhism, too, had its roots in a reaction to the violence of the day. Buddha, who grew up among his own kin (the *Sakyas*) whose tribal territory was on the periphery of the Gangetic plain, which witnessed the rise of Kingdoms - was shocked when he first encountered the political violence by the *Ksatriyas* and the sacrificial violence by the *Brahmins* of the plains. Like the Jainas, Buddha gave a moralistic interpretation to non-violence, but sought a Middle Path. It was Buddha in particular, who promoted his message by castigating the sacrificial system of *Brahmins*. Moreover, he continually sought ways to solve disputes non-violently and to encourage warriors to lay down their arms and take up occupations that would not involve killing (Sinha 1986 : 25 - 26 in Young 1989 : 89).

Buddha condemns suicide in no uncertain terms (self-willed death). In the *Parajika*, Buddha says: "A monk who preaches suicide, who tells man: "Do away with this wretched life, full of suffering and sin; death is better", in fact preaches murder, is a

murderer, is no longer a monk" (De la Vallee Poussin 1922 : 125). Because this remark is addressed to monks, one can conclude that Buddha also excludes any form of religious self-willed death and warns against pessimism even in the midst of the religious path. Since one of Buddhas five precepts is not to kill any living thing (*ahimsa*) the prohibition on suicide follows logically. Similarly, the idea of self-willed death at the time when one's end is near is discouraged, if not altogether prohibited. Buddha, on the contrary, encourages individuals to seek enlightenment as early as possible. If suffering becomes overwhelming, one may not be able to have the right mindfulness so necessary to realize the Four Noble Truths. Disciples of Buddha also contemplated suicide, when suffering was prolonged and enlightenment was not forthcoming. Monks also contemplated suicide when they suffered from severe illness.

In *Samyutta* III.123, (in Young 1989 : 90) it is told how *Vakkali*, who is ill and suffering from great pain, is comforted by Buddha. Buddha tells him that his death will be auspicious. Then the Monk utters one final time the profession of faith and kills himself by the sword. It is strange that Buddha condoned this act (because he believed in the philosophy of *ahimsa*) but he must have considered this case an exception (given his compassion and the severity of the disease). Even though Buddha considered the experience of suffering as potentially redemptive, he was known to be a good physician. Probably because of this pragmatic orientation, he was willing to entertain euthanasia in exceptional circumstances. His position on euthanasia was also made possible because life has instrumental value in his

teachings; he did not have to worry about the sanctity of life. Buddha viewed self-willed death as a kind of extremism and preferred to substitute meditation on death as the means to achieve omniscience and omnipotence.

2.2.7 THE JAINA PHILOSOPHY OF LIFE AND DEATH (ca. 527 B.C.E.)

Both Jainism and Buddhism share the premise of *samsara* and liberation. *Samsara* is bondage, and bondage is suffering, while enlightenment is transcendence of the human condition. As an early ascetic movement, Jainism makes a categorical imperative out of non-violence, however, the idea takes on moralistic overtones. And yet the Jaina idea of liberation as radical autonomy (*Kaivalya*) and the custom of fasting to death (*sallekhana*) remain close to the ideas of: 1) asceticism as withdrawal from violence, and 2) omnipotence as the ability to kill the self (Young 1989 : 88).

Jainism is indeed the first religion to formalize and legitimatize the practice of **mors voluntaria heroica**, which was in vogue in the warrior and ascetic circles - as a kind of **mors voluntaria religiosa**. Jainism also seems to be the first Indian religion to associate **mors voluntaria religiosa** with euthanasia as a form of self-willed death at the time of "debilitating" old age or severe illness.

The practice of *sallekhana* is described in the Acaranga. It is said that the wise should know that the time for death has come. If one falls sick in the midst of the fast, one should take food until well. One should not long for life and death. One

should die by the elimination of food. One should lie on the ground, rejoice in pain, and even if animals feed on one's flesh, one should not kill them, nor stir from the position (Acaranga 1.7.8. 1 - 10; Jacobi 1884, 74 - 76 in Young 1989 : 88).

However, a striking feature of the Jaina religion is not only that asceticism and mortification of the flesh have been taken to the ultimate conclusion but a religion which has, as a cardinal doctrine *ahimsa* or non-injury to any living creature - including never killing an insect intentionally or unintentionally yet has an ideal: religious self-willed death. The rationale is that the virtually liberated person is beyond the opposition of life and death. The body will be eliminated anyway when the *karmas* are used up. A cognizance of imminent death together with perfect control and a peaceful means, which is gradual and mindful, is veritably the good death. That the almost enlightened one maintains *ahimsa* or non-injury to the very end or wild animals that eat away the flesh is considered a fulfillment of the religious code. Such was the attempt to reconcile the apparent contradiction between self-willed death and *ahimsa* given the internal logic of the religion. Thus, it may be argued that Jainism tried to harness the power of violent death through *yogic* control and fasting as a means to conquer totally death and *samsara.*

More specifically, fasting to death (*sallekhana*) was given a religious meaning by understanding it to be the means of removing those *karmas* that remain even after ascetic purification, especially those that define the existence of the body itself or bondage. *Sallekhana* was to be done in a religious framework by monks and nuns and was to be controlled by a number of constraints, such as years of preparatory purification, meditation leading to true knowledge, and timing toward the end of

life. By associating the fast to death with salvation and governing the practice through certain constraints, *sallekhana* was distinguished from both **mors voluntaria heroica** and suicide proper.

The purpose of *sallekhana* was ostensibly to eliminate the body for the purpose of eliminating bondage toward the end of the natural life span. Some monastics resorted to the practice earlier in life when faced by a seemingly incurable disease, even though the merits of doing so were debated in the early tradition. It was thought that the sick could not sustain the austerities involved in the controlled elimination of food (Young 1989 : 88 - 89).

2.2.8 RELIGIOUS, SELF-WILLED DEATH IN HINDU *SMRTI* TEXTS (ca. 600 B.C.E. - 500 C.E.)

Suicide was severely condemned during this period.

2.2.8.1 *DHARMA SASTRAS*

The writers of the *Dharmasastra* generally condemn suicide and those who committed suicide were regarded as sinners. According to the *Parasara* IV. 1 - 2) if a man or woman were to hang himself or herself through extreme pride or extreme rage, through affliction or fear, he or she would fall into hell for sixty thousand years. No water is to be offered for the benefit of the souls of those who kill themselves. It was also declared that those who committed suicide did not reach

blissful worlds. No death rites should be performed for those who killed themselves (Kane 1974, 2 : 924). The above discussion shows that a phenomenon of suicide was prevalent in the society at the time.

The *Brahmanical* desire to live out the natural life span is most apparent in the theory of the four *asramas* which is expounded in the *Dharmasastras*. The idea of four distinct stages of life is grafted onto the ancient *Vedic* idea of the long good life. The ideal of a hundred years remains presumably to allow time for the stages of student-ship (*Brahmacarya*), householdership (*grhastha*), retirement to the forest (*vanaprastha*) and wandering alone (*sannyasa*). The old *Vedic* values of prosperity and progeny are incorporated into the stage of being a householder. The value of longevity is promoted in the concept of the full allotment of time needed to accomplish all goals. The prescriptions of the *Ayurvedic* or medical texts are to be followed to ensure a long, healthy life (mentally as well as physically, through proper diet, exercise and discipline). The ideal of *vanaprastha* is an acknowledgement of the ascetics customary withdrawal to the forest and the *Ksatriya* custom of withdrawal to provide for a peaceful succession. *Moksa* (or heaven) is incorporated as a goal for the last two stages of life (Young 1989 : 103).

Despite *Brahmanical* reluctance to endorse self-willed death by a *yogi*, in later times figures such as *Jnanadeva* (1275 - 96 C.E.; a *Marathi Brahmin*) buried themselves alive on attaining liberation.

Jnanadeva, according to tradition, voluntarily ended his life in his twenties along with his two brothers and sister. They felt "they had accomplished their mission in life" (Walker 1968 : 2 : 505 in Young 1989 : 103). Another case is that of the Kashmiri Abhinavagupta (10th - 11th century) (Pandey, 1963, 23 - 25). It is said that by the time Abhinavagupta started to write his *Isvara Pratyabhijna Vivrti Vimarsini*, he had attained liberation (*jivanmukta*). The last scene of his earthly existence, upon the completion of his life's work, involved walking with twelve hundred disciples into the Bhairava Cave never to be seen again. Pandey visited this cave and discovered that one area was large enough to accommodate forty to fifty people. He concludes that it is plausible that Abhinvagupta went into the cave with some followers to take *samadhi*, "a natural termination of the earthly life of a person like Abhinvagupta" (Pandey 1963 : 25).

2.2.8.2 *BHAGAVAD-GITA*

The *Bhagavad-Gita* (17.6) however disapproves of starving of the body. Those who mindlessly starve the composite of elements which is situated in the body, know them to be of demonic resolve (Sivananda 1980 : 183).

While the *Bhagavad-Gita* does not address the issue of self-willed death directly, it does place great importance on one's thought at the time of death determining one's future state:

Antakale ca mameva smaranmuktva kalevaram
yah prayati sa madbhavam yati nastyatra samsayah
(Gita 8.5; Sivananda 1980 : 102).

And at the time of death, whoever leaves the body remembering me alone, he attains my being. There is no doubt about this.

Yamyam vapi smaranbhavam tyajatyante kalevaram

tamtamevaiti kaunteya sada tadbhavabhavitah

(Gita 8.6; Sivananda 1980 : 102).

Or also whatever state of being he thinks of when he gives up the body at the end, that very state he obtains, *O Kaunteya*, always becoming that being.

The first verse suggests that meditation on God at the hour of death will lead to salvation. The second verse indicates that other thoughts will lead to rebirth, whether in lower heaven, or earth, or in hell. Full consciousness at the moment of death is extremely important. It is pivotal to one's destiny and may even hold the key to salvation. Because the *Gita* takes a stand against premature renunciation of action and severe asceticism leading to self-willed death, it substitutes a "mere thought" for the practice of self-willed death. In short, what one thinks at the moment of death, one becomes or attains (Young 1989 : 100).

This thought, which accomplishes what is desired as *samkalpa* does become an attractive solution to maintain the natural life span. A thought is much easier than death and such substitution helps the *Brahmins* to compete with the ideology of self-willed death with its promise of attaining the ultimate goal. This idea became very popular in the *bhakti* tradition. One desired not only to think of God at the moment of death, but also to be at a holy place and to die there.

2.2.8.3 *PURANAS*

During the *Puranic* period suicide was permissible at sacred places or *tirthas*. The concept of *tirtha* is fully developed in the Hindu epics *Dharmasastras, Puranas,* and *Agamas*. *Tirtha* is associated with: 1) any water which is sacred by definition: rivers, lakes, falls, artificial tanks, and by extension any powerful feature of the landscape; 2) cross-roads and fords; 3) the place where the gods have crossed over to be present in this realm, that is, the temple; 4) the place to conquer or cross-over the daily problems of life, therefore the place to request boons from the deities to insure prosperity, posterity, and longevity; 5) the place to cross from one phase of life to another, that is, a place to perform the rites of passage (*samskara*); 6) the place to cross from one life to the next, for example, the desire to die on the banks of the *Ganga* or at the *tirtha* or to perform the *sraddha* ceremonies there; 7) the place to cross to another *loka*, that is because of an excess of one's good merit (*punya*) a temporary, "vacation" in the paradise of heaven (*svarga*) or because of one's demerit (*papa*) a temporary "imprisonment" in hell (*naraka*); and 8) the place to cross to liberation (*moksa*) (Sastri 1982 : 271).

Since *tirtha* is a place to cross over, it becomes a place for religious self-willed death. The *Smrti* literature of the *Puranas* and the *Sthala-puranas* eulogize the fame of holy places and **mors voluntaria religiosa** by praising how death there ensures heaven (Young 1983 : 63 in Young 1989 : 105).

Ya gatiryogayuktasya samnyastasya manisinah
Sa gatistyajatah pranan gangayamunasangame

akamo va sakamo va gangayam yo vipadyate
sa mrto jayate svarge narakam ca na pasyati
(*Kurmapurana*, 1.37.16.39; Deshpande 1990 : 1495; Shastri 1982 : 271).

The goal which is obtained by the wise one - renounced immersed in meditation - the same goal can be achieved by one who has abandoned life at the confluence of the [river] *Ganga* and *Yamuna*. Whoever perishes in the *Ganga* with desire or without desire conquers death in heaven and does not see hell.

Jnanato jnanato vapi kamato pi va
gangayam ca srto martyah svargam moksam ca vindati
(*Padmapurana srsti* 60.65; Deshpande 1989 : 804).

[Whether] Knowingly or even unknowingly, intentionally or even unintentionally, a mortal, having gone [to death] in the *Ganga* obtains Heaven and *moksa*.

Srisaile santyajed deham brahmano dagdhakilbisah
mucyate natra sandeho hyavimukte yatha subham
(Shastri 1982 : 486).

A *Brahmin* whose sins have been destroyed should abandon the body at *Srisailam*. Indeed, he is freed from the body here as at *Avimukta* (*Benaras*); there is no doubt about it.

It seems that the *tirtha* called *Prayaga*, situated at the confluence of the great *Yamuna* and *Ganga* rivers, was the ideal place for death by plunging into the sacred waters. Death here guaranteed immediate attainment of heaven. Similarly, the *Ganga* and *Varanasi (Benaras)* as the sacred river and holy city par excellence became places for such activity. The idea spread to other holy places, for the *Sthala-puranas* advertised the fruit (*phala*) of pilgrimage (*tirthayatra*) and how easy heaven or easy *moksa* was available to all (Deshpande 1990 : 2631).

2.2.8.4 BUDDHISM (NEW DEVELOPMENTS)

There were new developments in Buddhism, regarding the practice of euthanasia. In the *Kathavatthu* 1.2 there is recorded the story of Godhika who no longer has the concentration to meditate on account of a painful disease. When he thought of killing himself by the sword, *Mara*, who represents the antithesis of Buddha and symbolises evil in the Pali Canon, approaches Buddha and says:

"Your disciple wants to die; he has resolved to die. Prevent him. How could one of your disciples die when he is not yet an *arhat*?" But as it is explained in the *Abhidharmakosavyakhya*, Godhika reached arhatship just after he began cutting his throat. It is said: Those who take the sword are without regard for life; they achieve insight (*vipassana*) and reach *nirvana*. "Thus act the strong ones (*dhira*) they desire not life; having removed thirst and the root of thirst (that is, ignorance), Godhika is at rest" (De La Vallee Poussin 1922 : 26). The last passage suggests that the practice of religious, self-willed death is being accepted into the Buddhist milieu.

In *Mahayana* Buddhism between the 2nd and 6th centuries C.E. a new ideal type is popularised: the *bodhisattva* who vows not to have final enlightenment until all sentient creatures are saved. The *bodhisattva* dedicates his life to helping others. The supreme form of gift is none other than self-sacrifice, even a gift of his body to feed a starving animal who is a sentient creature who must be helped and ultimately saved. Such accounts found in the *Jataka* stories and *Mahayana* texts must have inspired Buddhist aspirants along the *bodhisattva* path to sacrifice themselves in imitation of the *bodhisattva* described in the texts (Young 1989 : 106).

2.2.8.5 *MANU-SMRTI*

According to *Manu* (6.49), a mark of one who has attained liberation is that he is indifferent to everything: "Let him not desire to die, let him not desire to live; let him wait for [his appointed] time, as a servant [waits] for the payment of his wages" (Buhler 1984 : 207). But *Manu* (6. 31 - 32) says that the ascetic may die "fully determined and going straight on, in a north easterly direction, subsisting on water and air, until his body sinks to rest. A *Brahmana*, having eliminated his body by one of those modes practised by the great sages, is exalted in the world of *Brahman*, free from sorrow and fear" (Buhler 1984 : 204).

According to Young (1989) the statements of *Manu* appear on the surface to be contradictory. On the one hand, the liberated one (*jivanmukta*) is to wait for his appointed time of death. On the other hand, he may will his death freely on one of the modes practised by the sages. It is possible to reconcile these two statements by

suggesting that *Manu*, in general, does not want the *jivanmukta* to terminate his life prematurely. In other words, self-willed death should ideally occur in old age when the natural time of death is approaching.

Manu (6. 31) does allow a forest hermit suffering from incurable disease and unable to perform the duties of his order to start on the Great Journey (*Mahaprastha-nagamana*: walking until death overcomes) (Young 1989 : 101).

2.2.9 PHILOSOPHICAL SYSTEMS (ca. 100 B.C.E. - 100 C.E.)

2.2.9.1 *PATANJALI* (THE *SAMKHYA* SYSTEM)

Patanjali (Yoga Sutras 3.21 in Young 1989 : 101) says that by control (*samyama*, inclusive of the last three limbs of yoga) over *karma* that is fast-in-fruition (*sopakrama*) and slow (*nirupakrama*) comes knowledge of death (*aparantajnana*). In other words the *yogi* understands *karma* to be of two kinds. With reference to the past *karma* or *prarabdha*, which will come to fruition in this life, he can have power over it through *samyama*. One of his powers, (*vibhuti siddhi*) is the ability to know, and more importantly, to determine the time of death. Accordingly, one of the eight *siddhas* enumerated by *Patanjali* is *prakamya* or the power of an irresistible will which enables one to obtain anything simply by desiring it. Another power is *isitva* (sovereignity) by which one can rule "over all things and enjoy unrivalled glory becoming like a God, and even create and destroy creatures, past, present and future" (Walker 1968 2 : 349 in Young 1989 : 102). A *yogi* can will to live or to detach his subtle body from his physical body. Consequently, he can temporarily

disappear or create the outward appearance of death and change bodies. The idea that a *yogi* can know or determine the time of death suggests that he also has the power to voluntarily transmigrate. These *siddhis*, however, are to be distinguished from those powers that will put an end to the slow (*nirupakrama*) *karmas*, which will come to fruition only in future lives. *Patanjali* does not address directly the question of the self-willed death of the enlightened one, yet his discussion of *samyama* and the *siddhis* provides scope for extending the discussion to the context of one who is enlightened. For, in the final life when no slow *karmas* remain, a *jivanmukta* should be able to know or determine the time of death. He creates no new *karmas* and, as before, has power over the fast-moving (*sopakrama*) *karmas*. Consequently, he is able to determine the time of death. By knowing the time of death, he can determine death. And by determining death, he may make sure that the body is eliminated at the appropriate moment; this logic was derived by *Patanjali* (Prasada 1978 : 221 - 222).

In the case of a *yogi* the idea of self-willed death generated considerable debate among *Brahmin* thinkers. They often disagreed regarding legitimation of this form of **mors voluntaria religiosa**. The idea that the enlightened one (*jivanmukta*) is passionless builds on the logic that the *jivan-mukta* is indifferent to life and death, either because there is no reason to will death or there is no reason not to will death. Theoretically, one is totally indifferent to the body, after enlightenment and indifferent to whether one lives or dies. Accordingly, the *yogi* may or may not will death. A structural opposition develops between the idea of suicide as done by an individual out of passion and the self-willed death by an enlightened one who is completely beyond passion. Such a structural opposition creates firm boundaries to

the phenomenon of self-willed death by the ascetic. This, however, was not the case, for there was also the alternative view that there could be no final enlightenment until there was elimination of the *karmas* that defined the physical existence of the body. The body, in other words, was a constant reminder that final enlightment had not yet been achieved. A *yogi*, therefore, may choose to eliminate the body through self-willed death in order to attain enlightenment.

There may have been several reasons for *Brahmanical* reluctance to endorse self-willed death by a *yogi*. One of them was a desire to live out the natural life-span (hundred years), as advocated in the *Rig Veda*. Because a number of *Brahmins* may have become ascetics and were attracted to the idea of self-willed death, *Brahmin* thinkers may have been reluctant to endorse this form of **mors voluntaria religiosa.** Unlike the case of euthanasia - where extreme human suffering may be involved or the individual was virtually at the end of the natural life-span the self-willed death of an ascetic may have appeared to others as robbing life at its prime. If *Brahmins* and others were attracted to asceticism in early or middle age, their self-willed death may have been perceived as a loss for society, not to mention the families involved.

Perhaps the practice of self-willed death was abused in that it became an easy way to attain enlightenment and bypassed years of asceticism and meditation.

2.2.9.2 *MIMAMSA*

According to *Mimamsa*, the idea of command (*vidhi*) is related to *apurva* or capability that always comes into existence as a result of action. If it is to be

understood that public declaration of intent (*samkalpa*) is similar to a command (*vidhi*) in that it is also viewed as a source of law, because *samkalpa* always relates to action and every action has productive force (*bhavana*) this action produces the capability (*yogyata*) in the agent to hold as his own the fruit declared by law as of that action. This capability which was absent before the action and has come into existence only as the result of that action is known as *"Apurva"* in *Mimamsa*. This *apurva* rests in the agent of the action even after the overt act has perished, and continues to exist till the fruit of the action is realised .... This *apurva* rests in the agent, for the act also rests in him" (Deshpande 1971 : 154 in Young 1989 : 97). [One must act according to law not to obtain rewards but] "because my act will make me capable (*adhikrta*) for *artha* i.e. what is conducive to good or welfare. Thus the ultimate sanction of law is "Moral". The "codana" determines the validity, while *"artha"* determines the value of law (*dharma*). This is the nature of *apurva* according to the *Mimamsa*, which is the ultimate sanction of the rule of *Dharma* (codana *punarasambhah*) (2.15). The rules of law exist because this *apurva* exists .... Every right or claim has to come into being as a result of duty fulfilled .... Hence it is, that *Mimamsa* juris prudence starts with the analysis of duty and not of right.

To will death is so powerful that it can burn up bad *karma* and thereby expiate sin. It can produce good *karma* and thereby direct destiny, including a visit to heaven. And it can also influence the course of destiny by 1) eliminating all *karmas* that cause bondage thereby "triggering" salvation or 2) appealing to the Supreme Deity's grace to recognize this supreme self-sacrifice. Given the promise of these effects, one understands the importance of the intention (*samkalpa*), which is so intimately related to the goal (*artha*) through the intervening idea of will power. This idea of

formal (and publicly announced) intention and the resultant will power helps to separate the phenomenon of **mors voluntaria religiosa** from suicide, done usually in private out of passion, depression, and emotional disturbance.

2.2.9.3 *SANKARA (ADVAITA)*

Sankara (788 - 838 C.E.) (in Young 1989 : 102) for example argues, that one must live out one's life to allow the *karmas* to come to fruition. He implies that the moment of natural death signals the moment when there are no more *karmas* that create bondage.

"We should understand that right knowledge is the cause which renders all actions impotent". But the action by which this body has been brought into existence will come as an end only when their effects will have been fully worked out; for, those actions have already commenced their effects. Thus wisdom can destroy only such actions as have not yet begun to produce their effects, whether they are actions done in this birth before the rise of knowledge and along with knowledge, or those done in the many previous births. (*Samkaras* commentary on *Bhagavad Gita* 4.37; Sastri 1972 : 150 in Young 1989 : 102).

2.2.10 JAINISM

Jainism extended *sallekhana* to the laity, without the intermediary stage of mendicancy. Four different contexts for the fast to death are enumerated in the Jaina law books: 1) unavoidable calamity (*upasarga*), which includes captivity by an

enemy [and no doubt derives from the context of **heroica mors voluntaria**]; 2) great famine (*durbhiksa*); 3) old age (*jara*), especially when problems of disease, weakness, and senility start; and 4) severe illness (*nihpratikararuja*). There is a close association between religious, self-willed death and old age and severe disease in relation to euthanasia.

In the Jaina context of euthanasia, *sallekhana* is carefully regulated. One should obtain forgiveness and give forgiveness. One is to make a formal vow (*mahavratamarana*) after discussing all sins with the preceptor. Once the vow is taken, the attention is to be focused on scripture. Meditation on the real nature of the self is to be done while one abstains gradually from food and water. At the very end, just before the soul departs from the body, the *mantra namokar* is to be repeated. The necessary involvement of the *guru* and the making of a formal vow by the lay person who is extremely ill is a change from ancient times when a Jaina mendicant could start the fast on his or her own.

Between the 6th century B.C.E. and 10th century C.E. there was increasing prohibition against suicide at the same time that there was popularization of religious, self-willed death. This development affected Hinduism, Buddhism, and Jainism.

2.2.11 CRITICISMS OF RELIGIOUS, SELF-WILLED DEATH FROM THE 10TH CENTURY C.E.

During this period to commit suicide by heroic means became fashion. Therefore lawgivers began to view death in such manner in a new light. The Hindu lawgiver, Gautama, had already opined "that no mourning need be observed for those who wilfully meet death by fasting or by cutting themselves off with a weapon, or by fire or poison or water or by hanging or by falling from a precipice" (Kane 1974 2 : 926). Since no *sraddha* ceremonies or mourning was to be done for someone who committed suicide proper, one may assume that Gautama classified the above ways of death which may also be means of **mors voluntaria religiosa**, as suicide.

While there were attempts to bar religious, voluntary death on the basis of *sruti*, it was only in texts describing the *Kalivarjyas* (dated by Kane from the 10th century, C.E.) that one finds systematic prohibition of the practice. The *Kalivarjyas* are actions once authorized in *sruti* or *smrti*, which are discarded by the consensus of the good people in the *Kali* Age in order to guard people from the loss of *dharma*. In essence, they become a means to instigate reform. Significantly *Mahaprasthana*, or going on the Great Journey by an ascetic suffering from an incurable disease, and the religious voluntary death of very old people by falling into a fire or from a precipice (Kane 1974 : 3 : 939, 958 - 959; Narasimhan 1965 : 207) are now prohibited. The *Suddhitattva* holds the view that religious death is allowed in the *Kaliyuga* only to *Sudras*. Others, for example, *Nilakantha* in his commentary on the *Mahabharata*, argues that *Vanaparva* 85.83 refers to natural death at *Prayoga*, not self-willed death (Young 1989 : 109). The *Tirthaprakasa* forbids only *Brahmins* from

performing religious death there. So strong is the debate over religious, voluntary death that those who do not forbid such death nonetheless place increasing restrictions on the practice. Kane notes that the *Tristhalisetu* forbids the act by one who must support his old parents or young wife and children or by a woman who is pregnant, has young children or has not received the permission of her husband (Kane 1974 4 : 609).

2.2.12 ABUSE OF EUTHANASIA

It seems as if the *Kalivarjya* prohibitions and the underlying debate point to a situation of abuse. Thus the question arises, was euthanasia prohibited simply because of its association with **mors voluntaria religiosa** or was it also subject to abuse. While euthanasia was based on an open option by the individual concerned outside pressures cannot be ruled out completely. Take for example, the religious idea of withdrawing to the forest (*vanaprastha*). Such withdrawal was ostensibly to allow a man and perhaps his wife to begin the quest for liberation proper after their royal or family duties were finished. But it may also be possible that they may have faced pressures from the family to leave home and delegate their authority and financial resources to the younger generation. Such social pressure with its political and economic dimension may have led to a sense of abandonment, rejection, and pessimism on the part of the elderly. This in turn, may have led to walking into fire or jumping from a cliff, more as a form of suicide than an act to attain the supreme goal. It is possible, then, that euthanasia was abused (Young 1989 : 109). Alberuni

observed (11th century C.E.) the Hindu custom of religious, voluntary death including euthanasia and noted that, despite a special law prohibiting *Brahmins* and *Ksatriyas* from the practice it was still done.

"Note as regards the right of the body of the living, the Hindus would not think of burning it save in the case of a widow who chooses to follow her husband, or in the case of those who are tired of their life, who are distressed over some incurable disease of their body, some irremovable bodily defect, or old age and infirmity. This however, no man of distinction does, but only *Vaisyas* and *Sudras*, especially at those times which are prized as the most suitable for a man to acquire in them, for a future repetition of life, a better form and condition than that in which he happens to have been born and to live. Burning oneself is forbidden to *Brahmans* and *Ksatriyas* by a special law. Therefore these, if they want to kill themselves do so at the time of an eclipse in some other manner, or they hire somebody to drown them in the Ganges; keeping them under water till they are dead" (Sachau 1983 : 170 - 171).

Despite the extended debate and the *Kalivarjya* prohibitions, the custom of dying at a *tirtha* had such textual support in the *smrtis* and was so supported by popular imagination that it proved difficult to eliminate. The debate reopened with the vociferous critiques of the Christian missionaries. Abbe J.A. Dubois, writing at the end of the 19th century offered this comment: "There are still fanatics to be found who solemnly bind themselves to commit suicide under the conviction that by the performance of the mad act they will ensure for themselves the immediate enjoyment of supreme blessedness" (Dubois 1959 : 521).

2.2.13 *SATI*

The word *sati* literally means a "good woman" but conventionally refers to the act of *sati*, self-immolation of a woman on the funeral pyre of her husband or a woman who performs the act. *Sati* may be traced to a form of **mors voluntaria heroica** in the warrior circles in the Gangetic plain. The women who associated with warriors willed their death to avoid rape, capture, or death, especially when their husbands were captured or killed in battle. Gradually the practice extended beyond *Ksatriya* circles. By the time of the *Mitaksara* (14th century C.E. or later), *sati* was promoted as the ideal for all women. Such an act was considered *dharmic* because a woman is always "to follow her husband". Thus *sati* is the act of a woman joining the cremation of her husband. Moreover her action is considered religious, not suicidal, nor motivated by a desire to escape the plight of the inauspicious widow for a number of reasons. The result of her action is said to secure heaven immediately for herself and her husband. The orientation of a *sati* may be termed *patiyoga*, discipline for and union with (*yoga*) the husband/god (*pati*). For these reasons, it may be argued that *sati* belongs to the category of religious self-willed death. By the medieval period, it was considered, a "good death", even the ideal death, for a Hindu woman (Young 1989 : 111).

There were some, however, who opposed the practice of *sati*. Aspects of the debate over *sati* emerge in *Vijnanesvaras* commentary called the *Mitaksara*, on the *Yajnavalkya Smrti*. There were also objections to *Sati*. One objection raised is that the rule of *sati* does not apply to *Brahmin* widows. Another objection mentioned is that suicide is prohibited for both women and men because it involves "inordinate

love of enjoying heaven" which transgresses a prohibitory rule of law (which forbids suicide) (*Vidyarnava* 1974 : 168 in Young 1989 : 111). Finally, the objection is raised that one who wishes *moksa* should not die before the end of natural life, for the sake of attaining heaven, which is a temporary pleasure.

2.2.14 CONCLUSION

Mors voluntaria religiosa, over the years led to abuse. People committed suicide not because of any religious motive but as an easy way out of some suffering, e.g. *sati*, whereby a widow preferred to die on the husband's funeral pyre, rather than being abused or condemned by family members, which very often did happen in India. Even those in the *Vanaprastha Asrama*, did not go to the forest of their own accord. Some did go because of religious reasons, others could have been pressured by family members, who were keen to take over their financial resources.

In some cases although there were attempts to prevent abuse, abuse did occur. Accordingly euthanasia became a social issue and topic for debate.

2.3 ABORTION

At present, the nature and moral status of the human unborn, considered in various contexts (genetic research, in vitro fertilization, abortion, surrogate motherhood) form a topic of intense discussion in the Western world. In India, however, these issues, for the most part are still below the surface. Abortion is to be understood as the deliberate effecting of a miscarriage, a deliberate termination of pregnancy. Abortion is to be distinguished from involuntary miscarriage.

The Sanskrit terms for abortion and involuntary miscarriage are *garbha, bhruna, hatya vadha.* The former terms assume that a morally reprehensible killing (*hatya*) has taken place, rather than an ethically neutral evacuation, dislodging or excision. However the standard Sanskrit words for miscarriage refer simply to a falling or emission of the embryo (Lipner 1989 : 42).

2.3.1 ABORTION: MORAL EVALUATION IN *SRUTI*

The earlierst *Sruti* texts attest that the embryo in the womb deserves protection and that abortion is a morally intolerable act. In the *Rg. Samhita* (which embodies some of the earliest recorded canonical scriptures of the Hindus, dating possibly to before 1200 B.C.E.) the deity *Visnu* is referred to as "protector of the child to be": (*Rg. Samhita* VII.36.9 in Lipner 1989 : 43; 62; O'Flaherty 1983 : 290 - 292). Pre-natal *samskaras* were performed for the well-being of the embryo or the developing foetus (Pandey 1969 : 49). The implication here is clearly that the embryo requires special protection because of its moral inviolability and physical vulnerability; this

protection is sought from Visnu who, from *Vedic* times to the present, has always been regarded as the special preserver of life and order. The *Caraka Samhita*, a classical medical text, indicates that *Rg. Samhita* X.184.1 was used to invoke Visnu in the ceremonies prior to conception.

The *Atharva Veda*, too, expresses the same attitude towards the unborn child, with the added implication that abortion counts amongst the most heinous crimes. In VI.113.2 and VI.113.3 of the *Atharva Veda* one sees the horror of abortion. "Enter thou into the rays, into smoke, O Sin. Begone into the vapours and into the mists. Be lost in the foam of the rivers. While thou, O Pusan, wipe off (our misdeeds) on the slayer of the embryo (*bhrunaghni*)" (Bloomfield 1897 : 165). The *Satapatha Brahmana* (which belongs to a period after that of the *Vedic* hymns) invokes what is obviously the general view on human abortion when it condemns those who consume beef: "Such people have a bad reputation of the kind - He's extracted the embryo from the mother, He's an evil doer" (Lipner 1989 : 43 - 44).

Even the *Upanisads* disapprove of abortion. The *Brhadaranyaka Upanisad* one of the oldest *Upanisads* 8 - 9th century B.C.E.) notes: "Here the father is no longer a father, the mother no longer a mother, the (post-mortem) worlds are no longer such worlds, the gods no longer gods, the *Vedas* no longer *Vedas*. The thief is no longer a thief, the slayer of the embryo (*bhrunaha*) no longer a slayer of the embryo, the *Candala* and the *Paulkasa* are no longer such nor are the Monk and the ascetic. Both merit and demerit cease to have effect, for then one has crossed over every concern of the heart" (IV.3.22 Radhakrishnan 1953 : 263). The *Upanisad* is referring to a state of awareness in which the most significant worldly relationships

and designations for the Hindu cease to have meaning. The slayer of the embryo (*bhrunaha*), a contrast to the most idealised members of society (the monk and the ascetic) is relegated to a position among the vilest, viz., the thief (especially the culprit who steals from a *Brahmin*) and the most contaminating outcasts. In other words abortion violates *dharma* the socio-religious order in a serious way. This implies that the living embryo enjoyed a special moral status in the eyes of the Hindu and was specially deserving of protection and respect. Indra in III.1 of *Kausitaki Upanisad* says, "For him who knows me, his (post-mortem) world is not lost on account of any action not by stealing nor by abortion, nor by killing one's mother or father ..." (Radhakrishnan 1953 : 774). Here the text implicitly stresses that abortion (*bhrunahatya*) is a reprehenssible killing, for it is ranked alongside particularly heinous forms of murder.

From the above, one can deduce that abortion from the earliest of times was regarded as an act of horror and viewed with the greatest of contempt.

2.3.2 THE MORAL EVALUATION OF ABORTION IN THE *SMRTI*

The *Visnudharmasutra* or Law Book of Visnu protects the pregnant woman (and especially the embryo) by equating the killing of either with one of the most serious offences a Hindu could commit, viz., the killing of a *Brahmin*. In *Visnudharmasutra* (Law Book of Visnu) XXXVI.1 reads: "Killing a *ksatriya* or a *vaisya* engaged in sacrifice, a menstruating woman, a pregnant woman ... (and) ... the embryo (even) of

a stranger ... is tantamount to killing a *Brahmin*" (Lipner 1989 : 45). The penance of killing a pregnant woman unintentionally is the same as that of unintentionally killing a *Brahmin*.

In the same text, it is laid down that "the ferry-man or toll official who collects from a student (engaged in sacred study), a forest dweller (who has renounced worldly life), a religious mendicant, a pregnant woman, and one on pilgrimage (is to be fined) (*Visnudharmasutra* V.132 in Lipner 1989 : 64). The *Mahabharata* (XIII.107.50 in Lipner 1989 : 45; 64) also shows respect and protection of pregnant women in her delicate condition should be treated like a vessel brimful of oil (Sharma 1981 : 469). From these examples, the idea emerges that for the Hindus, pregnancy was a very special state and that the unborn had a moral status meriting protection. Therefore Hindu law givers legislated according to circumstances. The embryo of a caste Hindu (especially of a *Brahmin*) was more deserving of protection than the embryo of a slave, in the same way as the life of a virtuous person was deemed more valuable, for one reason or another, than the life of a rogue. Even in the case of a slave, abortion was regarded as punishable. In short abortion was an immoral act for all irrespective of one's standing in society.

2.3.3 THE *MAHABHARATA* CONDEMNS ABORTION

Abortion is regarded as an instance of extreme transgression. There are four contexts in the *Mahabharata (Mbh)* in which abortion is condemned. The *Mbh* (XII.86.26) says:

1. "If a king is intent upon the code of the (battle-field) but slays an envoy who speaks as he has been commanded - his ancestors incur (the crime of) abortion.

2. Abortion is referred to indicate the great importance in which legitimate procreation was held in society of the day (towards the chief end of begetting a son, for weighing economic, social and religious reasons). I.78.33. of the *Mbh* says: "He who does not accede, when importuned privately to a willing and available woman, is called a killer of the embryo by those wise in matters of law".

3. 1.1.205 of the *Mbh* says: "There can be no doubt that the wise man, having heard this *Veda* of Krsna (*Dvaipayana* i.e. the *Mbh*) would shed even the crime of abortion".

4. XII.56.31-2 says: "Bhisma advises *Yudhisthira*: O excellent one, the twice born (i.e. *Brahmins*) must be protected. Even if they are grave offenders you should only banish them from your dominions (harm them no further). Chief of all you should show mercy to the transgressors among them, even for slaying a *Brahmin*, violating the *gurus* bed, or killing an embryo (Lipner 1989 : 46 - 47).

The above contexts show clearly that abortion was regarded as a serious wrong.

Another story from the *Mahabharata* is that: "the powerful sage Vyasa once granted *Gandhari* (the wife of the king *Dhrtarastra*) a boon. *Gandhari* chose to have a hundred sons. In due course, she was made pregnant by the king and remained in this state for two years. Eventually and in despair no doubt, *Gandhari* - unbeknown to *Dhrtarastra* - aborted her womb with great effort, fainting with grief. A fleshy lump came out, compact as a ball of iron" which *Gandhari* sought to dispose of (*Mbh* 1.107.11 - 12a in Lipner 1989 : 47; 65). Vyasa had seen it all by his *yogic* perception and literally flew to the rescue to thwart the natural consequences of *Gandhari's* act. First he upbraids her ("What's this you've wanted to do!": *Kim idam te cikirsitam*), then he commands that a hundred pots (*kunda* - not unlike the womb in shape) be quickly filled with *ghee* and that the ball of flesh be sprinkled with cool water. "That doused ball then separated into a hundred parts, each an embryo no larger than a thumb-joint in size (*Mbh* 1.107.19). Each embryo was then deposited in one of the pots, and the pots were stored in a safe place. Having instructed *Gandhari* as to when the pots were to be broken for the 'delivery' of the children", Vyasa departed to continue his austerities. In time, *Gandhari*, got her hundred sons. According to Lipner this was the beginning of **in vitro** fertilization (Lipner 1989 : 47).

2.3.4 ABORTION: A MORAL AS WELL AS A SOCIAL CONCERN

Abortion is placed among transgressions which have not only undesirable social consequences, but which also attract strong moral condemnation. Abortion is listed with drunkenness, incest and illicit miscegenation of the castes (which are social transgressions), it is also listed with unchastity, thieving, violating one's guru's bed and especially killing, killing one's father or mother, and killing in general. The

Mitaksara a commentary on the *Yajnavalkya Smrti* forbids *sati*, an act with strong social overtones, to pregnant wives, implying thereby that the unborn have a moral status which must not be subjected to social demands. One cannot argue here that a stronger social need (producing children especially sons) takes precedence over a weaker social need (*sati*) (Lipner 1989 : 49). The *Mitaksara* does not say that pregnant women who already have the desired number or kind (that is males) of children may ascend the funeral pyre. Thus the unborn, in Classical Hindu tradition were accorded a moral status deserving of special protection and that abortion was generally reprehensible because thereby the integrity of the human person (of both victim and abortionist) was seriously violated.

However, abortion was permitted by an authoritative classical text. This is the *Susruta Samhita* a seminal medical treatise of uncertain date (3 - 4th century C.E.) though reference is made to an original which may have been in existence two or three centuries before the Christian Era. In the *"Cikitsasthana"* of this work, in the section called "The Foetus Astray" *(mudhgarbha)*, the eventuality of aborting the foetus is considered (Bhishagratna 1981 : 404). The text begins by pointing out that "there is nothing as difficult as the delivery of a foetus astray in the womb, for here ... the job must be done "by feel" ... by one hand, without injury to mother or foetus (if possible). *nato' nyat kastamam asti yaya mudhagarbha salyoddharanam atra hi ... karma kartavyam sparsena ... ekahastena garbham garbhinim cahimsata* (Bhishagratna 1981 : 404; Lipner 1989 : 65). The text continues: "If the foetus is alive, one should attempt to remove it from the womb of the mother (alive)". No doubt is left as to the ideal to be striven for: the safety of both mother and child. However, if the foetus is dead (*mrte garbhe*), it may be removed by cutting and

dismembering, if necessary. The text then considers the situation in which the live foetus cannot be safely delivered. In this event, it forbids removal by surgery. "For if (the foetus) be cut one would harm both mother and her offspring". In an irredeemable situation, it is best to cause the miscarriage of the foetus, for no means must be neglected which can prevent the loss of the mother (Lipner 1989 : 66). Abortion then is the last recourse when it is clearly a question of weighing life against life - the life of the mother against that of the foetus. When the foetus is known to be defective, or damaged beyond repair, and there is no hope for a normal birth, surgical removal is prescribed. ... Craniotomic operations, involving the destruction and subsequent removal of the foetus, are prescribed in certain cases of this nature (Bhishagratna 1981 : 405 - 407).

In Classical times, the question of abortion and of the status of the unborn was invested with at least as much moral as well social significance. Traditional Hindu society condemned inter-marriage. One had to marry within the same caste. The offsprings of mixed caste (miscegenation) were referred to by special names. **Anuloma** status was given to offsprings where the father was of a "higher" caste than the mother, and **pratiloma** status was given to offsprings where the mother was of a higher caste than the father. The greater the caste disparity between the partners, the more reprehensible both union and offspring. Such children were generally at a great disadvantage in society, most of them being regarded as virtually impure or untouchable. Among the most despised of such offspring were the *Candala* (the child of a *Brahmin* mother and a *Sudra* father) and the *Paulkasa* (usually the child of a *ksatriya* mother and a *sudra* father) (Lipner 1989 : 63). The situation was

complicated greatly by the fact that the offspring of **pratiloma** unions could themselves miscegenate, thus producing new categories of outcaste (Sheth 1987 : 43).

The aversion in which miscegenation in general was held in traditional Hindu society is evident from the popular texts. The *Bhagavad Gita* provides a good example. In the first chapter, the warrior *Arjuna* is recounting to his friend, Lord *Krsna*, the evil consequences of war: the social relationships, between the various clans become gravely upset.

"When the clan is destroyed, the enduring clan-rules collapse. When rule collapses, disorder overtakes the whole clan. From the ascendency of disorder, *Krsna*, the clan-women are vitiated. When the women are vitiated, then miscegenation occurs. Miscegenation results in hell for the destroyers of the clan and for the clan itself - for the ancestral fathers of such fall (from their heavens), their post (post-mortem) libations and offerings have lapsed. By these crimes of the clan destroyers - that is bringing about miscegenation - the eternal laws of the clan and of the race are abolished. Once the eternal clan-rules of the people are abolished, *Krsna*, one resides in hell eternal thus - have we heard" *(Mbh* VI.2.40 - 44 in Lipner 1989 : 51, 66).

Hence **pratiloma** persons were despised and condemned in society. According to Lipner no texts recommend that abortion be resorted to as an acceptable way out, either to avert an insufferable life for the **pratiloma** child to be or to safeguard the parents from ignominy (Lipner 1989 : 66). On the contrary elaborate provision was

made in the law texts concerning the avocations and rules of life of **pratiloma** persons. Clearly their right to life in the face of adverse social consequences both for themselves and for their parents was recognised and safe-guarded. The same protection was extended to the embryo of an adulterous union. "In the event of adultery , purity (of the woman occurs) in her season (viz. during the menses, if she has not conceived. If she is with child, she is to be abandoned; (similarly) when a woman slays the embryo or her husband or (commits some other) grave transgression" (*Yajnavalkya Smrti* 1.72. in Lipner 1989 : 66). The juxtaposition of adultery and abortion does not exclude condemnation of the latter when it was the consequence of the former.

2.3.5 HUMAN BEING VERSUS HUMAN PERSON

A distinction has to be made between the individual as a **Human Being** and the individual as a **Human Person.** According to moralists a **human being** is a member of the human species, but for various reasons is not yet a person - in fact may never be a person. The reasons may be: the lack of a recognisable human form (in the embryo/foetus); clear evidence (detected by mechanical devices) of insufficient (rather than abnormal) cerebral activity in some foetuses compared to cerebral activity, in other foetuses, which is accepted and established as pertaining to human persons at that stage of development. The moralists differ as to whether one or more of such reasons are sufficient to determine human personhood. Having established their satisfaction criteria, the Western moralists go on to affirm that abortion in the case of human **beings** is morally permissible for reasons which may not be valid when abortion of human **persons** is in question. In other words they

say that abortion in the early stages of pregnancy cannot be objected to morally with the same force as to abortion in the late stages of pregnancy. This is because in early pregnancy the human being has not yet developed - for one reason or another - into the human person with the latter's claim to a moral status qualitatively superior to that of the former (however "human person" may then be further defined) (Lipner 1989 : 51 - 52).

According to popular Hindu belief, the human person is a composite of two essentially disparate but intimately conjoined principles - spirit (*atman, purusa*). Spirit is essentially the locus of consciousness and bliss, and is impervious to substantial change; matter is essentially insentient, tending to diversification and change. Spirit and matter come together to produce the distinctive individual or human being. This union though finally dissoluble, is nevertheless a profound one and engenders the separate centres of self-awareness we experience ourselves to be. This experience is characterised by the congenital illusion which fails to distinguish between the "real" self that is the pure spirit and "false" or composite self (matter cum-spirit). Liberation, the human goal, about which the different schools have different views, necessarily consists in at least the internalised awareness of the distinction between the real self and the false self. So long as this enlightened knowledge is not attained each individual repeatedly dies and is physically reborn as a continuum of different personalities, each reborn individual beings determined as to the nature and life situation by the resultant of the continuun's past ego-centred *karma* (meritorious and unmeritorious action). This process of *karma* and rebirth is beginningless for each individual and may continue indefinitely. It is terminated by

enlightenment, and at death the enlightened soul is liberated from the wheel of rebirth (Lipner 1989 : 52 - 53).

Those who know the *atman* say that it is actionless, self-dependent, sovereign, all-pervading, and omnipresent; that it has conscious control over the body (that is, is a *ksetrajna*) and witnesses its doings. *Niskriyamca svatantram ca vasinam sarvagam vibhum vadanty atmanam atmajnah ksetrajnam saksinam tatha* (Sharma 1981 : 421 - 422). Later the innerself (*antaratman*) of the human person is described as essentially "eternal, free from disease, free from old age, deathless, free from decay; it cannot be pierced, cut or agitated. It takes all forms, performs all actions, is unmanifest, beginningless, endless and immutable".

In answer to how it is then that, in the human subject, the *atman* seems to manifest the contrary characteristics, viz. being a limited agent, mortal, dependent upon bodily functions, changeable, one is told that the false appearance of the *atman* results from the *atman's* union with matter (in the form of the body). The body, for its part, is described as the support of the conscious principle, constitutive of the totality of modifications of the five elements (which make up the matter), and maintaining the harmonious conjunctions (of its parts) (Lipner 1989 : 67).
"The five elements" are the fundamental forms of earth, water, fire, air and ether constitutive of *prakrti* or the material principle which unfolds from its subtle, unmanifest state into the material world as we experience it (Sharma 1981 : 428). Perhaps one may ask at what stage in the development of the foetus does the soul enter (the foetus).

2.3.6 ENSOULMENT AND CONSCIOUSNESS IN THE WOMB

"Conception occurs when intercourse takes place in due season between a man of unimpaired semen and a woman whose generative organ (menstrual) blood and womb are unvitiated when in fact, in the event of intercouse thus described, the individual soul (*jiva*) descends into the union of semen and (menstrual) blood in the womb in keeping with the (*karmically* produced) psychic-disposition (of the embryonic matter) (Sharma 1981 : 428). This seems to mean that conception coincides with the "descent" or presence of the spirit in the womb - from the beginning the embryo is the spirit-matter composite that constitutes the human person. There seems to be no scope according to this seminal authority for drawing the distinction between human being and human person, with the implication that abortion at some early stage of pregnancy may be permissible (Lipner 1989 : 53 - 54).

Another view, is that the soul unites with the embryo some time after conception. Here, it seems that grounds do exist for drawing a distinction between human being (the embryo before the union with the soul) and human person (the embryo after the union). This view is expressed in the *Garbha Upanisad* (circa 2nd - 3rd century C.E.?). This minor *Upanisad* according to Lipner (1989) is hardly recognised as an authority on such matters. According to the *Garbha Upanisad* the soul and embryo unite in the seventh month after conception.

"As the result of the intercourse in due season, the embryo forms in the space of a night, within seven nights a bubble forms; in the period of a fortnight, there is a

lump and by a month this becomes hard. In two months the head develops, in three months the region of the feet, and in the fourth month the ankles stomach, the loins form. In the fifth month, the back and spine form; in the sixth month, nose, eyes, and ears develop. In the seventh month, (the foetus) is joined to the soul, and in the eighth month it is complete in every part" (*Garbha Upanisad* in Lipner 1989 : 67).

Thus from the above descriptions, one may conclude that abortion in the very early stages of pregnancy may be permissible, though the text does not state it explicitly.

The *Visnu Purana* says: "An individual soul (*jantu*), possessing a subtle body (*sukumaratanu*), resides in his mother's womb (*garbha*), which is imbued with various sorts of impurity (*mala*). He stays there being folded in the membrane surrounding the foetus (*ulba*) .... He experiences severe pains .... tormented immensely by the foods his mother takes .... Incapable of extending (*prasarana*) or contracting (*akuncana*) his own limbs and reposing amidst a mud of faeces and urine, he is in every way incommoded. He is unable to breathe. Yet being endowed with consciousness (*sacaitanya*) and thus calling to memory many hundreds (of previous) births, he resides in his mother's womb with great pains, being bound by his previous deeds" (Lipner 1989 : 55).

The *Garbha Upanisad* elaborates on one aspect of the painful experience: Now (when the foetus) is complete in every aspect, it remembers its past births. Action pertains to what is done and not done, and (the foetus) thinks upon its good and bad deeds. Having surveyed (previous births) from thousands of different wombs (it thinks): "Thus have I enjoyed various foods and suckled various teats. Again and

again both the living and the dead are reborn. Alas! I am sunk in this ocean of sorrow and see no remedy. Whatever I've done good or bad for those about me - I alone must suffer the consequences, for they've gone on their way suffering the fruits (of their own deeds). If ever I escape the womb I'll study the *samkhyayoga* which destroys evil and confers the reward of liberation. If ever I escape the womb I'll abandon myself to *Siva* who destroys evil and confers the reward of liberation" (*Garbha Upanisad* in Lipner 1989 : 55). The above quotations show that the Hindus believed that there is consciousness in the womb.

The *Susruta Samhita* is more specific as to when consciousness develops in the womb: "In the first month (after conception) the embryo is formed, in the second ... there results a compact mass. If this is globular (*pinda*), its a male, if longish *pesi* its a female .... In the third month, five protuberances appear for the hands, legs and head. While the division of the other bodily limbs and sections is hardly visible (*suksma*). In the fourth month, the division of these other limbs and sections appears clearly while awareness as a distinct category (*cetanadhatu*) manifests itself in relation to, the appearance of the foetus heart .... Also in the fourth month, the foetus expresses desires in respect of sense object .... In the fifth month the co-ordinating sense (*manas*) becomes more aware, and in the sixth the intellect (*buddhi*) is manifest. In the seventh month, the division of the bodily limbs and sections is more defined; in the eighth month the life force (*ojas*) concentrates .... In one or other of the ninth, tenth, eleventh or twelfth months birth takes place or else (the pregnancy) is void" (Bhishagratna 1981 : 137 - 139). Cognisance should be taken of the fact that in its development the embryo does not undergo a quantum

leap, passing from one kind of human moral status (human being) to another (human person).

On the contrary, the language here is in terms of progressive manifestation of a personhood previously only latent rather than origination of personhood **ab initio.** The *Susruta Samhita* confirms this conclusion, when after describing the development of the foetus, it observes in the face of opposing views that the foetus undergoes an all-round (rather than sporadic) development from the very beginning. For its part, the *Caraka Samhita* implies that the conscious principle is active in the fertilized egg, directing its growth, right from conception. Thus the moral status remains the same irrespective of the stage of development of the foetus/embryo (Sharma 1981 : 421 - 422). Hence in the traditional context, there is no scope for a debate on abortion. The overriding evidence of the classical texts as a whole speaks in favour of according the status of human personhood to the unborn throughout pregnancy, with consequent implications for (the impermissibility of) abortion except in extreme circumstances as discussed earlier (Lipner 1989 : 56).

2.3.7 *KARMA* AND REBIRTH

Another reason which made abortion unacceptable in traditional Hinduism was the belief in *karma* and rebirth. This belief was firmly implanted in the Hindu psyche from very early times and had far-reaching consequences for Hindu practice. It militated against abortion, in that abortion could be regarded as thwarting the unfolding of the *karma* of both the unborn and the perpetrators of the act. The unborn's *karma* matures through its pre-natal and post-natal experiences, and

abortion unnaturally terminates the possibility of this maturation. Abortion thus gravely affected the outworking of a person's destiny, the more so since it is generally believed that it was as a human being that one could act most effectively to achieve liberation from rebirth. In theory, the different versions of the rebirth belief allowed for a person's rebirth on the one hand, in animal and plant form on the other, as celestials or gods (*devas*). In practice, however, the various texts including the theological treatises of thinkers like *Samkara, Ramanuja,* and *Madhva* are preoccupied with the nature, ethics and destiny of the human person and imply that a qualitative distinction exists between human and (at least) animal and vegetative life. A corollary of this implication, usually taken for granted and not given due philosophical analysis, is that it is in its human form that the soul can most effectively seek liberation (Lipner 1989 : 69).

Why could not abortion be permissible as itself (unwittingly) predetermined by *karma*? The Hindus countered this objection by maintaining that the experience of free choice was not an illusion, that the Law of *Karma* did not abrogate the laws of *dharma*, the right living in accordance with freedom and responsibility. In other words deliberate abortion as a free act violates *dharma* and as such, is reprehensible. In Hindu tradition, the real distinction between "timely" and "untimely" death was recognised (Lipner 1989 : 57).

2.3.8 THE EMBRYO: A SYMBOL OF LIFE

The embryo in the womb was sacrosanct because it was a potent symbol of a dominant motif regulating the traditional Hindu view of life - that of birth,

regeneration, new life, immortality. The theme of the primeval egg of creation from which the world of plurality emerges is a popular one in Hindu folklore. "When all this (universe) was originally darkness unillumined covered on all sides by obscurity, the Great Egg arose, the sole imperishable seed of creatures. They say that at the beginning of an age this is the great, divine cause, and that on which (it rests) is revealed as the true Light, the eternal *Brahman*" (*Mbh.* 1.1. 27 - 28 in Lipner 1989 : 69). There are a number of variants of this image of the egg of creation in the scriptural texts. The *Satapatha Brahmana* says that in certain rituals the initiate was compared to or associated with an embryo, no doubt because the latter was suggestive of new birth or life. In the light of these symbolisms abortion was condemned in traditional Hinduism (Lipner 1989 : 58).

2.3.9 SOCIAL AND RELIGIOUS REASONS

A more practical reason for safeguarding the life of the embryo stemmed from the social and religious need to produce, especially male offspring. Hindu society being in the main patriarchal, male progeny in particular were necessary not only to maintain social and economic stability (a proper functioning of the caste system) but also for religious purposes (the performance of the priestly and domestic ritual, especially the *sraddha* rite to ensure that deceased parents entered a satisfactory post-mortem existence). Production of children was a public duty, rather than a purely individual expression of parental rights and choices. One of the traditional debts the householder owed society was maintaining society's numbers by continuing the line in accordance with *dharma*. It would be unHindu, therefore, to regard procreation and concomitant issues (such as abortion) as a private concern of

matter (or family) alone. Therefore in the light of the above abortion was condemned.

2.3.10 *AHIMSA*

The influence of the principle of *ahimsa* or non-injury in Hindu tradition was an important factor militating against the performance of abortion. Although the *Bhagavad Gita* supports just war undertaken out of selfless duty, it still exerts a powerful influence on the Hindu mind with reference to particularly vulnerable forms of life, such as the embryo.

2.3.11 CONCLUSION

Thus one may conclude from earliest times, especially in the formative Classical Period, both in canonical and colloborative orthodox Hindu literature, abortion (viz. deliberately caused miscarriage as opposed to involuntary miscarriage) at any stage of pregnancy, has been morally condemned as violating the personal integrity of the unborn, unless it was a question of preserving the mother's life. No other reason, social or otherwise, seems to have been allowed to override this viewpoint.

Modern India, a secular democracy, permits abortion by law, under certain circumstances. It is a law availed by some. The issues relating to the moral status of the unborn and abortion have neither been aired nor properly identified in Indian minds and literature according to Lipner. In public the topic is by and large taboo. Illegal abortionists in the back street or the bush continue to ply their trade often

with dire consequences for their customers. The question of abortion and the moral status of the unborn is yet to be addressed (Lipner 1989 : 61).

The views of the Durban Hindus who were interviewed were influenced by many factors. Religious belief was only one of the factors that influenced their views. Their views to a large extent were influenced by legal and medical ethics. Therefore, the next chapter concerns itself with the legal and medical ethics that govern the phenomena in question.

CHAPTER THREE

LEGAL, MEDICAL, ETHICAL CONTEXT

3.1 INTRODUCTION

Professional medical ethics do not stand separate from the law. Medical ethics are intrinsically interwoven with and have a continuous influence on the doctor-patient relationship. What the rules of medical ethics demand of a physician, will at the same time and to a large extent also be the legal obligation that has to be fulfilled. It is in the medical professional field much more than in any other social relationship between men that ethical considerations are inextricably linked with considerations of a legal nature, and this seems to be true for all times. However, in Classical India legal and medical ethics were closely linked with religious injunctions. The law of the country was in the scripture itself. In modern Western societies, the law and religion are distinct from each other. This is because modern societies are very cosmopolitan in nature. In South Africa (Durban in particular), if the law of the country were based on scripture, then it would be a disaster because of the diversity in culture and religion.

However, once a profession is established and recognised as having its own, protected position of autonomous freedom, it is likely to have a dynamic of its own, developing new ideas or activities which may only vaguely reflect the established ethical principles that the great majority of medical professionals and society would probably subscribe to.

It is certainly true that any duty which may be owed by the physician to his patient is not the duty which is imposed on him by the Hippocratic Oath, or by any code of professional ethics which may be prescribed by the medical profession or the medical association of which he or she is a member and it is equally true that the medical profession cannot lay down the law in regard to it. However, it still becomes necessary for the law and for society and also for the courts if called upon to take cognizance of established codes of medical ethics not as professionals would perhaps wish, as conclusive evidence as to the legal duty or legally acceptable standards, but in order to understand from what educational professional background and ethical commitment physicians normally proceed when exercising their profession on patients. It is, therefore, important to ask what set of moral obligations the doctor or physician has towards his patient and to himself in addition to operating within a framework of legal and medical ethics (Giesen, 1988 : 669).

It is in the sense of moral obligations as perceived by the profession, of course, that traditional medical ethics tends to be depicted in the various national and international codes of medical ethics and enforced by the respective professional bodies, e.g., the General Medical Council to which the individual professional belongs. The starting point for an inquiry into this background always was, (often is) and probably would be the Hippocratic Oath which, as tradition has it, goes back directly to the father of medicine, Hippocrates, and by tradition is one of the most important oaths administered to new arrivals to the profession. There the aspiring physician swears by the ancient gods and goddesses that, "I solemnly swear to place my life in the service of mankind. I will practise my profession conscientiously and with dignity. The preservation and restoration of the health of my patient will be

the overriding principle of my actions. I will honour all secrets with which I am entrusted. I will do everything in my power to uphold the honour and noble tradition of the medical profession and will not discriminate in the execution of my medical duties on groups of religion, nationality, political affiliation or social position. I will respect every human life from the moment of conception and even under duress will not use my medical skills in any way which contradicts the demands of humanity. I will show my teachers and colleagues all the respect that is due to them. I swear all the foregoing solemnly upon my honour. While I continue to keep this Oath unviolated, may it be granted to me to enjoy life and to the practice of the Art, respected by all men, in all times. But should I trespass and violate this Oath, may the reverse be my lot." (Giesen 1988 : 671).

Thus the Hippocratic Oath becomes the basis of the medical ethics of all the World's Medical Associations. It is only used as a basis, but it cannot be applied in toto as can be seen later in the thesis. The Hippocratic Oath has to be modified from time to time to suit changing circumstances and situations. Hindu doctors who were interviewed also felt that the Hippocratic Oath cannot be applied directly but it has to be modified from time to time.

Human beings throughout the world are the same irrespective of their nationality, race, colour or creed, therefore medical or legal issues concerning their biological existence ought to tally. One's moral obligation towards human beings especially, from the point of view of the physician or doctor, should be the same irrespective of in which (what) part of the world he or she operates (functions). In this chapter

reference will be made to the British and American legal and medical ethics concerning euthanasia, suicide and abortion. Euthanasia, suicide and abortion have become universal problems, hence a concern for all mankind.

3.2 EUTHANASIA

As a result of the dramatic advances made in medical technology, the question of euthanasia has received increased attention in the recent years. While the problem itself is an ancient one, rooted in the conflict between the duty to relieve suffering and the duty to preserve human life, it has assumed, however, new proportions with the advent of modern medicine. Decisions to determine the time and the circumstances of one's dying have become both more frequent and more complex in view of the capacity of modern medical science to sustain biological life almost indefinitely by artificial means.

The new technological capacity poses serious moral issues, concerning the quality of life that can be maintained through the employment of such technology. It also raises far reaching questions regarding the cost of terminal medical care, the rights of the patient, the need for an updated definition of death, and the allocation of scarce medical resources. These and related issues have important implications in the field of law as well as of medicine. They pertain to the rights of an individual and of the welfare of society. Thus Hindu *dharma* concerns itself not only with the individual in question but takes into account the society and cosmology in general. Therefore in Classical Hinduism, suicide was recommended to the physically and mentally incapacitated individual.

Euthanasia in the broad sense of that term raises problems which cut across a number of interrelated fields. Hence, any adequate approach to such problems needs to include insights from each of these perspectives (that is moral, medical and legal). Decisions related to the election of death are not simply medical decisions in the technical sense; they are also choices which are deeply influenced by religious, moral, legal and economic considerations. Medical decisions are made within the framework of legislation that defines the responsibility of the physician to the patient in terms of law and establishes public policy with regard both to the quality and to the general availability of health care services.

Decisions relating to the use of "extraordinary" procedures for maintaining life are severely limited by the economic resources available to the patient and the patient's family as well as by the resources that are at the disposal of the physician through various agencies. In addition to the medical, legal and economic factors, euthanasia also involves fundamental ethics, relating to the nature and limits of the physician's responsibility to his patient, the rights of the patient and the responsibility of the patient's family as well as that of society in the care of the dying. The moral dimensions of euthanasia do not exist alongside the medical, the legal and the economic dimensions, rather, the former so permeate and condition the latter that even these cannot be adequately perceived unless they are understood also in a normative ethical context (Wilson 1975 : 10; Robinson 1978 : 107; Maguire 1972 : 420).

3.2.1 LEGAL AND ETHICAL ASPECTS

According to Glanville Williams, "Under the present law, voluntary euthanasia would, except in certain circumstances, be regarded as suicide in the patient who consents and murder in the doctor who administers; even on a lenient view most lawyers would say it could not be less than manslaughter in the doctor, the punishment for which according to the jurisdiction and the degree of manslaughter, can be anything up to imprisonment for life (Glanville Williams in Trowell 1973 : 34). If the doctor gave the fatal injection, the doctor was a murderer, for his hand committed the deed.

"But it remains the fact, and it remains the law, that no doctor nor any man, no more in the case of the dying than of the healthy, has the right deliberately to cut the thread of life" (Trowell 1973 : 35).

Any deliberate, planned substantial shortening of a patient's life could be regarded as murder. Thus if someone had a recurrence of cancer, but was expected to live several months, and a narcotic drug was given, either as a single large lethal injection, or in very rapidly rising doses (the amounts given being far in excess of that required to control the pain in this particular patient), so that as a result of the large amount of drugs the patient died within a few hours or days the charge would be one of murder (Trowell 1973 : 36).

Throughout life it is part of one's human predicament that one cannot exercise full control over the accidents that may maim one for life and the diseases which may

cause disability and death. Careful thought can decrease accidents and diseases. One cannot opt out of pain and distress as they are part of life. One can only hope for death like life to be painless, but one cannot demand it at all costs (Trowell 1973 : 120). "To conclude: the question whether a person has a right to die has a smirking insincerity concealed in its euphemistic phraseology: Right sounds a noble sentiment, the right to die calls to mind those who die for their country or for their political faith or for their ideals. It is the stuff of warriors and martyrs. But the right to die, when applied to sick persons, is something fundamentally different, and it conceals the fact that it is really an argument about whether one has a right to get someone else to do the killing; and that someone is the doctor who will cast a cloak of respectability, if not anonymity over the whole act" (Trowell 1973 : 125). Thus from the dawn of history to the present day, all peoples of whatever race, religion and political outlook have always felt the greatest horror, if not repugnance, in killing someone else (Trowell 1973 : 125).

3.2.2 MEDICAL OBJECTIONS

Before discussing the ethical basis of the patient's alleged "right to die", it is essential to weigh the reasons which forbid for all time and in all circumstances the patient's medical practitioner from any association with legalised voluntary euthanasia. The doctor who looks after a patient must never be associated with euthanasia and the patient must know this. The six points which follow do not rest on religious beliefs, however, important or unimportant one may consider these to be; they rest on facts and attitudes which are built into the doctor-patient relationship; especially as it is seen in the care for the enfeebled, the elderly and the dying.

First of all, it is seldom certain beyond any reasonable doubt, that the patient will not subsequently change his mind and cancel his request for euthanasia. Have other drugs, other doctors, other nurses been tried? Perhaps they will be more skilful in relieving the pain and the patient will find life worth living. There are institutions in which there is almost always success in alleviating the pain and distress of terminal diseases; there would be change of mind if the patient was transferred. Psychiatrists who have observed patients during terminal stages of fatal illness stress the changing moods vacillating between denial and acceptance changing between hope and despair.

Secondly, even if the nearest of kin and the closest relatives have agreed to the euthanasia and discussed it with the patient, bereavement brings such emotional trauma that those who are left are often full of recrimination, guilt and anger. These feelings are even at present often directed against the doctor. The relatives may consider that they never gave consent to the euthanasia. They may spread dangerous malicious gossip; they may take legal proceedings especially in the light of the findings reported at the post-mortem examination.

Thirdly, the doctor knows more clearly than anyone else that any decision about euthanasia must be based on a firm statement of the diseases present. From his student days he has attended too many autopsies where even the most eminent consultants were confounded. Yet he dares not disclose to the patient and the relatives the measure of his uncertainty without undermining confidence. Perhaps he has to name the diseases present on some written report; if this is not done the

relatives may give an unbalanced account of the medical indications for euthanasia. If this is done then diseases stated to be present during life can be checked against those found at any autopsy and written in the death certificate.

Fourthly, even if all the medical facts are correctly known, the doctor can never be certain that the external circumstances which are the basis of the choice for euthanasia will not change. A decision to die is always taken against a social background of certain circumstances and the most unpredictable events may occur, perhaps when it is too late to reverse the decision about euthanasia.

Fifthly, in practical terms the doctor is the last person to administer euthanasia. He has become mentally conditioned by reason of long habits; he cannot regard the matter impartially or consider the issue fairly or perform the act calmly. His professional training has been channelled into the protection of life and the enrichment of its quality. He has an inbred respect for human life speaking of the sanctity of life. This is the ultimate basis of the only creed that most doctors understand.

He has acted as counsel for the defence of the life of his patient, he cannot easily reverse his role and become prosecutor for the sentence of death. He cannot sit calmly in judgement on this schizophrenic split in his own personality and his role acting as judge and summing up the evidence for and against the termination of life, and as jury giving the verdict and even acting as executioner. He cannot be prosecutor, defender, judge, jury and executioner all in one person. He will polarize to one role or the other. It will be a sad day for many of his patients if he polarizes

too easily towards termination. Every doctor in general practice has a score or more incurable patients on his books, consuming to little purpose his time, ability and patience. Some doctors are naturally pessimists, some have morbid minds, and some develop insanity. It would be a dishonourable day for any doctor if a crop of unexpected euthanasias were the first sign of commencing insanity. The press and television would not be slow to publicise the news.

Sixthly, the whole basis of medical practice is built on a position of trust. There has been an agreement to be a patient and an agreement to be the doctor, but this is more than a contract. One reaches round for some other word, signifying a deep and abiding trust between the two parties. Patient and doctor have covenanted to keep faith for better for worse in sickness and in health, till the gates of death do them part. Herein lies the heart of the euthanasia problem.

If any country should ever be so unwise as to enact legislation on voluntary euthanasia, these six weighty reasons, which rest on no foundation of religion or private system of ethics, demand that the patient's own doctor and any consultant or specialist with whom this doctor may confer, must stand for all time and in all circumstances completely outside any question of euthanasia. They must never be even a party to advising the patient, let alone facilitating, his legalised application for assisted suicide. Doctors, all persons designated as doctors, must be completely excluded from the role of the person who terminates life. The public must know this for all time and for all places and for all circumstances (Trowell 1973 : 126 - 130).

But Hindu doctors in Durban feel that it is the doctor who should decide whether euthanasia should be administered or not since it is the doctor more than any legal or religious authority that knows the physical body of the patient.

3.2.3 MERCY-DYING VERSUS MERCY-KILLING

A distinction should be made between taking a life and letting one die. The former may be wrong, whereas the latter in the same situation need not be wrong. For example, to withdraw the medication from the terminal patient and to allow him to die naturally need not be a moral wrong. In some cases where the individual and or loved ones consent - this may be the most merciful thing to do. If an illness, indeed, is incurable and the individual is being kept alive only by a machine, then pulling the plug may be an act of mercy.

This is not to say that a doctor should give medicine or perform an operation to speed death that could very well be murder. But this position does imply that mercifully permitting the sufferer to die is morally right whereas precipitating his or her death is not. Medicine should be given to relieve suffering but not to hasten death. If, however, the lack of medicine or machine can lessen suffering by allowing death to occur sooner, then why should one be morally bound to perpetuate the patient's suffering by artificial means. In brief killing involves taking the life of another whereas natural dying does not; it is merely "letting one die". A man is responsible for the former, but God is responsible for the latter. A conflict arises between a lawyer and a doctor; a lawyer might be termed a legal moralist, but a

doctor is a compassionate being who undergoes trauma and stress while the patient suffers physically. This was a reason that was put forth by many of the Hindu doctors who were interviewed in the Durban area.

However, when both God and medical science have been given ample opportunity to cure the disease and yet it appears beyond all reasonable doubt that this patient will have little more than a "vegetable" type of existence, then one may conclude that God wants him to die a natural death. The basic moral principle behind this conclusion is that one ought not to perpetuate an inhumanity while futilely waiting for a miracle. Hoping for a cure while the patient is undergoing suffering cannot be regarded as a merciful act and hence it is not morally justifiable. Waiting without reasonable expectation for grace is not a justifiable basis for refusing to allow mercy to do its work. Hindu doctors who were interviewed felt that they were agents of the Lord, and as agents they should help God to attain the end in the shortest time possible. Hence, there is a need for a re-interpretation of the Hippocratic Oath where one acts for the good of the patient and not preserve life at all costs.

There is another overall moral principle at work here. The obligation of humans to perpetuate it if it is no longer a human life in any significant sense of that word. As a matter of fact, it is morally wrong to perpetuate an inhumanity. If a monstrously deformed baby dies naturally it should be considered an act of divine mercy. A doctor should not feel morally obligated to resuscitate a monster or human "vegetable". Just as the moral command is not to take a human life so one's duty is only to perpetuate a human life (Geisler 1976 : 12 - 14).

Proponents of euthanasia will attack as insignificant the distinction between killing and letting die. The distinction certainly makes no difference in many cases for example homicide by omission of care which one has a legal duty to provide is as much homicide as a killing by a positive performance. However, the law does distinguish between acts of omission to which one is not legally obligated - here there is no crime even if the omission results in preventable death and acts of commission. The basis of this distinction is not irrational, since everyone can forbear to kill others, and demanding this forbearance provides a great deal of protection for each individual's share of the good life (Grisez et al 1979 : 226). There also is the practical consideration that if one omits to save another, the other may survive even so, perhaps with the aid of some third party; while if one kills another, alternative possibilities for preserving life are eliminated at a stroke.

3.2.4 ACTIVE EUTHANASIA

Proponents of active euthanasia believe that persons should be able to determine how and when they die, and that if they need assistance, the physician, although not legally obligated, may be morally justified in providing it. As seen in the previous chapter Classical Hinduism supported active euthanasia at the request of the patient. This argument is based on an assumption of the supremacy of human dignity, free will, and the exercise of choice. It assumes that it is morally permissible, and even sometimes obligatory to violate laws against mercy killing in the interest of the individual freedom and the compassionate relief of suffering. Respect for personal autonomy supports allowing a physician to hasten a death in response to a patient's explicit request in well-defined circumstances. These

circumstances would be present when the patient had made an informed and competent decision and death was clearly imminent and inevitable regardless of the physician's intervention. In this context, the act of mercy killing is best viewed not as causing a death but as slightly hastening it (Meier et al 1983 : 295 - 296).

However, exercise of the right to request a mercy killing is limited because it depends upon the participation of another agent. The principles of informed consent for example are intended to protect persons from interventions they do not want, but they do not apply equally to the converse - that persons have a right to any intervention they desire. In fact, the profession of medicine is charged by law with dispensing its services only to those who, according to the best professional judgement, truly need those services (by virtue of their physical or mental disorders). For example, patients do not have a right to controlled drugs simply on demand. The patient's right to decide must be considered together with the physician's own judgement and autonomy. A health professional who has moral objections to assisting a terminally ill patient to die is justified in refusing treatment.

A person wanting to put an end to his life with the help of another person, was acceptable in Classical Hinduism. The person who was assisting the sick and diseased to end his life, was performing a *dharmic* act.

Thus the autonomy argument may justify an act of mercy killing only on these conditions:

1) when the fully informed patient refuses therapy or requests a mercy killing;
2) when death is imminent; and

3) when the physician agrees that what the patient requests is in that patient's best interest (Meier et al 1983 : 295 - 296; Calaluca et al 1984 : 158).

3.2.5 PASSIVE EUTHANASIA

In order to adopt that approach in which treatment of the patient is controlled by the desire to help him die well, rather than to fruitless efforts to maintain his life, the conclusion must have been reached that the process of dying is really all that the medical profession can anticipate for the patient. This must be accepted as a necessary ultimate stage in every personal existence, and not as a failure of the medical profession. Having adopted this position or stand does not mean that the patient must therefore die, as though God's healing activity were somehow discounted as a possibility, but simply that from the perspective of human medicine, no ultimate restoration of health is possible.

The desire to aid in dying well as opposed to keeping alive by all means possible, changes drastically the types of treatment decided on. So many of the techniques for prolonging life in the case of terminal illness have the effect of sustaining biological life, but of destroying personal life. Instead of being sustained in a friendly atmosphere surrounded by those whom the patient loves and cares for the patient is isolated in a sterile hospital room separated from any personal contact except that of the busy impersonal technicians and is subjected to drugs and medical apparatus with its tubes, needles, catheters and other such devices, which reduce the

patient to a biological mass incapable of dignity, self-expression or personal relationships (Bube 1982 : 32). Hindu philosophers and Durban Hindus in general who were interviewed do not approve of this mode of dying.

To help the patient to die well, one must know and respect what the patient wishes. At this crucial stage, the biological and the personal must not be separated. A misguided reverence for biological life that leads one to go to all lengths to preserve it, may actually be involving one in an assault on a person.

This process of helping the patient to die well by respecting his wishes and not necessarily invoking extraordinary measures to sustain life at all costs is called "passive euthanasia". It is called "euthanasia" because specific measures are not used to prolong life; it is called "passive" because specific measures are not used to shorten life. Such a distinction overlooks the fact that when measures are not used to prolong life, this in itself is a measure used to shorten life. Attempts therefore to make a sharp demarcation between "passive" and "active" euthanasia may be inappropriate.

If a terminal condition is diagnosed before the patient has entered into extended technological treatment, his decision not to enter this treatment or the decision of others on his behalf, is regarded as an example of passive euthanasia within the rights of the patient. If, however, the patient has already been under treatment using extraordinary drugs and or machine involvement at the time when the terminal condition is diagnosed subsequent "pulling the plug" may be regarded as a case of active euthanasia, with the patient being open to the charge of suicide or

those who made the decision on his behalf being open to the charge of homicide. There appears to be no fundamental moral difference between these two types of action, and although the latter will undoubtedly have generally more psychological complications; other reasons for considering it less acceptable than the former seem unfounded (Bube 1982 : 33).

Another major grey region between passive and active euthanasia is that involving the giving of drugs to remove or reduce pain in the case of terminal illness when it is known that the biological effects of the drugs will actively shorten life. Again the distinction between maintaining biological life and sustaining personal life is a crucial one, although it is not claimed that it will always be easy to make. Particularly incongruous would be the refusal to grant use of a pain-relieving drug because it was addictive. If care for the person as a whole, that is, relieving severe pain and permitting personal experience, can be promoted by the use of a drug which has life-shortening properties, there should be no moral sanctions against it if chosen by the patient according to Slater 1973 (in Marcinek 1981 : 130; Calaluca et al 1984 : 158).

3.2.6 ACTIVE VERSUS PASSIVE MEANS

The nature of a second party's acts distinguishes active euthanasia from passive euthanasia. Passive euthanasia caused by an act of omission has been approved judicially in both voluntary and involuntary cases. Although unplugging a respirator and switching off a dialysis machine are arguably acts of commission an increasing number of judges and commentators have accepted these acts as permissible passive

euthanasia in both voluntary and involuntary settings. Although these authorities purport to respect the patient's "right to die", they limit that right to a patient's right to die naturally.

Focusing on the distinction between a second party's active or passive involvement obscures the more important distinction between voluntary and involuntary euthanasia. The law should rest upon the decision-maker's status and not upon the degree of second party assistance. In voluntary cases the only relevant legal concern should be whether the terminally ill patient has made an informed and competent decision. It is legally inconsistent to honour a terminal patient's request that life support equipment be removed but to deny a similarly situated patient's request for an immediate and painless end merely because a second party's active assistance is needed to implement the latter request. Prohibiting a second party from helping a patient commit self-euthanasia by imposing legal sanctions on that party is effectively equivalent to denying the patient the right to make the decision in the first place (Wolhandler 1984 366 - 367).

Although many doctors might be willing to assist a terminally ill patient commit self-euthanasia once the patient has made an informed and competent decision to do so, laws criminalizing active assistance in suicide deter them from providing such assistance. But in Classical Hinduism outside assistance was permissible if a person wished to put an end to his or her life because of some incurable disease or illness. Furthermore, the potential for criminal prosecution inhibits doctors from engaging in a free and open exchange of information about euthanasia with their terminal patients. The vast majority of terminal patients are inadequately informed about

the euthanasia option and are thus prevented from exercising their right of self-determination as protected by the constitutional right to privacy (Stehbens 1986 : 190; Calaluca, 1984 : 156).

3.2.7 VOLUNTARINESS

Voluntary euthanasia is performed with the informed consent or at the informed request of a legally competent patient. A terminal patient's rational decision to commit suicide is an exercise of free will. In the related area of a patient's right to refuse treatment where the patient's life is at stake courts have defined legal competence as the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgement upon such facts (Wolhandler 1984 : 366 -367). In the euthanasia context, legal competence is the incurable's ability to understand that in requesting active euthanasia he is choosing death over life. Only clear and convincing evidence should suffice for finding of an incurable's competence.

3.2.8 VOLUNTARY ACTIVE EUTHANASIA : THE DEBATE

Objections to voluntary euthanasia are based on both religious and non-religious grounds. Yale Kamisar has raised the major non-religious objections to euthanasia. He argues that the risks of abuse outweigh the benefits that would accrue to a small number of terminal patients. Kamisar identifies two major risks of euthanasia (Wolhandler 1984 : 377).

The first perceived risk is commonly known as the "wedge theory". Its proponents contend that once society accepts that life can be terminated because of its poor quality there is no rational way to limit euthanasia and prevent its abuse. According to this theory voluntary euthanasia is just the thin edge of a wedge that once in place, will be driven deeply into our society. Kamisar concludes that legalized voluntary euthanasia inevitably would lead to legalized involuntary euthanasia because it is impossible to draw a rational distinction between those who seek to die because they are a burden to themselves and those whom society would kill because they are a burden to others. Put simply the legalization of voluntary euthanasia will encourage or promote involuntary euthanasia. On this view the mortality of the first step "rests" in part on what the second step is likely to be.

Glanville Williams believes that the wedge theory is not as persuasive as Kamisar and its other proponents suggest. He contends that courts can establish workable guidelines that permit the free exercise of the right to self-determination and also protect against the abuses Kamisar fears. Although establishing such guidelines may be difficult the cases clearly justifying active voluntary euthanasia can be defined. Relief should not be denied in these clear cases merely because of difficulties in distinguishing between the less clear cases which fall closer to the line separating justifiable from unjustifiable euthanasia (Wolhandler 1984 377 - 378). Although courts and legislators must proceed cautiously in euthanasia matters, this caution does not compel Kamisar's conclusion that no line can be drawn that will protect the innocent and help the competent terminally ill.

Kamisar's second perceived risk is the potential for abuse or mistake in allowing euthanasia. Abuse can most easily occur in establishing voluntariness. Kamisar is concerned that unscrupulous doctors, nurses or family members may coerce a weakened patient, for any number of improper reasons, into consenting to euthanasia that does not reflect the patient's true intent. Family members may not be entirely rational, during the latter stages of the patient's illness, and may not keep the patients best interest firmly in mind. Kamisar would forbid all forms of euthanasia because of the inevitable uncertainty surrounding a patient's true desires. Kamisar fails to consider, however, that courts often make determinations about a person's state of mind or true intentions (Wolhandler, 1984 : 378).

Related to the problem of abuse is the problem of mistake. A doctor may incorrectly diagnose a patient as terminal. A decision to administer euthanasia based on an incorrect prognoses would be a tragic error. In addition even if a patient is incorrectly diagnosed as terminal some relief or a full cure may become available before the patient's natural death. Such medical discoveries are usually foreseeable, however, and doctors working with terminal illnesses generally are appraised for developing experimental treatments. An informed patient would have full notice of a potential cure. The risk of an incorrect diagnosis or the possibility of a relevant medical breakthrough are factors that an informed patient should consider when deciding on euthanasia (Wolhandler 1984 : 378 - 379).

Kamisar finds that the risks of mistake and abuse of involuntary euthanasia outweigh the benefits of "easing pain" for a small group. The balancing of these concerns against the benefits of a quick painless death, however, should properly be

reserved for the individual patient. The right to privacy demands no less; government should not interfere with a terminal patient's assessment of his personal situation and his subsequent decision concerning euthanasia in the absence of legitimate state interests. The law should impose safeguards ensuring that terminal patients, have access to adequate information with which to assess their alternatives and that they are free from coercion in making their decision. The legal system should minimize the risks and abuses associated with involuntary euthanasia. However, in cases involving a competent terminal patient the right to privacy doctrine demands that the patient not be precluded from seeking and securing the assistance of others in committing self-euthanasia. Only patients with access to the necessary information and assistance can make a meaningful choice (Muldoon et al 1982 : 44 - 47).

3.2.9 VOLUNTARY ACTIVE EUTHANASIA : SOME PRACTICAL GUIDELINES

In certain circumstances, assisting a competent terminally ill patient in implementing his voluntary, informed decision to commit suicide (voluntary euthanasia) should not be subject to criminal sanctions. Exempting those who assist the suicide of a terminally ill patient from sanctions will often be necessary to protect the patient's right to privacy in making this very personal decision. The following are suggested legal guidelines for dealing with voluntary active euthanasia. To avoid criminal liability, those assisting a competent terminally ill patient commit suicide should be required to demonstrate satisfactory compliance with these guide lines.

1. The patient must be terminally ill. For a patient to be deemed terminal, two independent corroborative medical opinions must agree that the patient has less than six months to live. In termination of treatment cases, courts and hospitals successfully use the standard safeguard of verifying prognoses through two independent medical opinions.

2. The decision must be voluntary. A patient's decision in favour of euthanasia is only voluntary if made free of coercion. The patient's motive for making his decision is irrelevant. Many factors including pain, debilitation emotional and financial burden on loved ones, and the quality of his remaining life may affect a terminal patient's euthanasia decision. For example a patient may choose to die in order to spare his family the trauma of watching him reduced to a suffering vegetable. Although the euthanasia decision may be made for the benefit of others, it is nevertheless the patient's own choice.

The patient should request voluntary euthanasia by signing a request form in the presence of two witnesses not otherwise involved with the patient. Second parties may discuss the euthanasia alternative with a terminal patient but if they request that the patient consent to euthanasia a presumption of involuntariness could arise. A candid exchange of information about alternative means of dying particularly between a doctor and the terminal patient, will ensure that the patient's decision is fully informed as well as voluntary. Doctors should carefully document all information exchanges as evidence of voluntariness.

3. The patient must be legally competent. Two independent psychiatric opinions must confirm that patient's competence. Euthanasia involving an incompetent patient is involuntary and in such cases the state interests in avoiding abuses weigh more heavily against the patient's right to privacy than they do in the case of a legally competent patient (Wolhandler, 1984 : 381). Individuals fearful of being left incapacitated and without legal competence to terminate their lives may prepare living wills.

4) The patient's decision must be informed. A patient should be aware of the stages of degeneration accompanying his illness, the likelihood of temporary or permanent remission, the possibility of recovery, and any other medically relevant information. Full disclosure is essential to the unfettered exercise of the right to self-determination. Each disclosure provides a terminal patient more time to consider his limited options carefully before his thought process becomes inhibited by pain-relieving drugs. During this time period, the patient may want to participate in support group discussions with other patients who have suffered serious illness and contemplated euthanasia but have since recovered (Wolhandler 1984 : 382).

5. To further evidence voluntariness the doctor must prescribe the least active means to effectuate death. Because a fully informed request by a competent terminal patient for assistance in the act of self-euthanasia is presumptively acceptable, the burden should normally rest on a prosecutor to demonstrate that the euthanasia choice was improperly honoured by a physician. A

person more capable of causing his own painless death needs less active second party participation. Thus, the use of a more active method when less active means are available suggests improper conduct by the doctor.

If the above five conditions are satisfied, doctors and the judicial system should honour a terminal patient's decision regarding the time and manner of his death (Wolhandler 1984 : 380 - 382).

3.2.10 ORDINARY VERSUS EXTRAORDINARY TREATMENT

It is the accepted rule that a doctor has the duty to administer ordinary means to preserve life, but there is no duty to administer extraordinary means. The logical question then becomes: What criteria should the physician use in deciding when to withhold life-prolonging treatment. In 1957, Pope Pius XII felt it necessary to address this issue in a speech before the International Congress of Anaesthesiologists.

... Man has the right and duty in the case of serious illness to take the necessary treatment for the preservation of life and health. But normally one is held to use only ordinary means - according to the circumstances of persons, places, times and cultures - that is to say means that do not involve any great burden for oneself or another (Calaluca et al 1984 : 158).

The primary consideration, therefore is whether the treatment offers a reasonable hope of benefit. All medicines and treatments should be those that can be obtained

and used without excessive expense, pain, or inconvenience. To justify continuance of treatment, there should be a reasonable belief that the patient will be restored to health or to some degree of normal functioning. Extraordinary means are considered those which do not involve these factors. Admittedly, the standards set forth for determining what constitutes ordinary medical treatment are vague. However, they have directed decision-makers to consider such factors as the patient's condition, the availability and effectiveness of remedies, and the financial and emotional cost to the family (Calaluca et al 1984 : 158).

3.2.11 WHO HAS THE RIGHT TO DECIDE?

The definitions of death might be philosophical, medical, physiological, ethical, theological or phenomenological. Who is to control the manner and timing of death in its formal sense is who is to decide when to terminate treatment and when to begin the other actions and procedures that were previously regarded as depending on the occurrence of death. Who has the right to decide? And equally important, who does not have the right to decide? The whole idea of rights is based into a legal question. Ethical issues concerning life and death are thought to hinge on rights such as right to life, the right to die, the right to be treated , the right to refuse treatment, the right to decide when to turn off the respirator (Brock, 1979 : 131). A number of questions may be asked about any alleged right. Firstly who are parties in the relationship?

Secondly, what kind of performances or forbearance is required of the right owner? Here one may provisionally distinguish between positive rights, rights that require

positive acts of some sort or other and negative rights, that require non-performance e.g. non-interference. The question of whether a right is positive or negative becomes relevant to the issue of euthanasia when we ask what sort of performance or non-performance is required by the alleged right to life or the alleged right to die. Do they require positive acts of one sort or other, or do they require only forbearances, e.g. the abstention from killing or the abstention from treatment.

This is in reference to one. Following tradition it is useful to distinguish between rights held against a particular person or group and rights held against everyone, "that is rights that are said to avail against the whole world". These are usually called rights **in personam**, rights that imposed duties on specific persons and the rights **in rem**, rights that impose duties on everyone. Right owners are groups of persons who might be called "people" or society and they may be said to have "ideal rights" (Ladd, 1979 : 131).

Thirdly, a number of questions arise about the formal properties of an alleged right. How and when can it be exercised? Can it be waived or not? Can one exercise the right of another person on his behalf, as a proxy? Is the right in question a **prima facie** right or is it an absolute right in the sense that it can never be overridden? In connection with the formal properties of a right, one must also be told what other secondary rights follow from it, such as the right to compel others to comply or the right to reparation for violations of a right.

Finally, anyone who asserts that there is a right must be prepared to furnish as to where the right came from : that is one must be able to provide its basis . Right may

arise out of contracts (or promises) out of positions and roles, out of conditions and circumstances, and out of various acts of oneself or of others. Theologians maintain that some rights, example the right to life, were given to man by God; natural rights are supposed to stem from the rational social animal. Liberal philosophers often suppose that rights are based on interests of one sort or another. Still others maintain that rights are based on needs. Unless the proponent of a right is able satisfactorily to answer this question about the source or basis of the right his claim that there is such a right either in general or in a specific instance, must be rejected. The burden of proof rests on the proponent of the right to show that there is such a right by showing where it comes from (Ladd, 1979 : 131 - 132).

3.2.12 INDIRECT EUTHANASIA

The notion "indirect euthanasia" is used when the pain killing measures administered by a doctor result in the shortening of the patient's life. The aim, however, is not to terminate life, but to alleviate the patient's suffering. For administering such a pain killer the informed consent of the patient is needed. If the patient cannot express his will, it may be presumed that he has consented to such pain-killing measure as every reasonable patient would want. The administration of the pain-alleviating method can be qualified as an act with double effect, the unavoidable shortening of life, but according to the aim of it, which is to combat the pain of which the patient is suffering. Many medical acts and drugs have side effects, but nobody will define them from the viewpoint of these side-effects. The same is true for pain-killing (Leenen 1984 : 336).

Euthanasia can be voluntary but indirect. The choice might be made either **in situ** or long in advance of a terminal illness, example by exacting a promise that if and when the "bare bodkin" or potion cannot be self-administered somebody will do it for the patient. In this case the patient gives to others - physicians, lawyers, family, friends - the discretion to end it all as and when the situation requires, if the patient becomes comatose or too dysfunctioned to make the decision pro forma ... (Fletcher 1973 : 673).

3.2.13 DIRECT EUTHANASIA

Euthanasia may be direct but involuntary. This is the form in which a simple mercy-killing is done on a patient's behalf without his present or past request. An example would be when an idiot is given a fatal dose or the death of a child in the worst stages of Tay-Sachs disease is speeded up, or when a man trapped inextricably in a blazing fire is shot to end his suffering, or a shutdown is ordered on a patient deep in a mindless condition, irreversibly, perhaps due to an injury or an infection or some biological breakdown. It is in this form, as directly involuntary, that the problem has reached the courts in legal charges and indictments.

According to Fletcher (1973) Uruguay is the only country that allows it. Article 37 of the Codiga Penal specifically states that although it is a "crime" the courts are authorized to forego any penalty. In time the world will follow suit. Laws in Colombia and in the Soviet Union ... are similar to Uruguay's but in their codes freedom from punishment is exceptional rather than normative. In Italy, Germany

and Switzerland the law provides for a reduction of penalties when it is done upon the patient's request ... (Fletcher, 1973 : 673).

Euthanasia might be both indirect and involuntary. This is the "letting the patient go" tactic which is taking place every day in the hospitals. Nothing is done for the patient positively to release him from the tragic condition (besides making him comfortable), and what is done negatively is decided for him rather than in response to his request.

Ethically speaking, this indirect involuntary form of euthanasia is manifestedly superficial morally timid, and evasive of the real issue. Fletcher says, "it is harder morally to justify letting somebody die a slow and ugly death dehumanized, than it is to justify helping him to avoid it". (Fletcher 1973 : 673).

3.2.14 TERMINATION OF A MEDICALLY POINTLESS TREATMENT

Medical treatment is justified by its sense; the means used must be proportional to the aim sought to be achieved. If the situation arises that continuation of a treatment is medically pointless then medicines capacity to heal or to help has come to an end. This can be the case when a cure is no longer possible, no improvement of the medical condition can result from medical acts and when available means are unproportional for instance when they merely prolong dying. The doctor is then entitled to end the medical treatment. Law is restricted to what is within the field of human control and nobody is bound to do the impossible. Accordingly, when medicine is powerless to heal or improve then it has to recognize that it is empty

handed and has to stop treating the patient. This falls beyond the professional competence of the doctor. When treatment has become medically pointless, the patient has to be informed and the normal care and sedation of pain has to be administered. If communication with the patient, because of his condition is not possible, the patient can of course not be informed (Leenen 1984 : 336).

3.2.15 REFUSAL OF MEDICAL TREATMENT

No patient may be treated without his consent and it is his right to refuse and to withdraw the given consent. This can result in the death of the patient. Sometimes doctors are of the opinion that in such cases they commit euthanasia by omitting to act. This opinion, however, has no legal basis: the doctor is not even allowed to treat. Sometimes the patient is put under pressure, even denied his presence in the hospital if the patient refuses treatment. Such pressures are against the law. The patient has the right to refuse and after refusing is entitled to normal care. Because of the contractual relationship between the doctor, hospital and patient it would be a breach of contract, in some countries also a criminal act, if normal medical and nursing care would be withdrawn (Leenen 1984 : 337). Because of civil and criminal liability the doctor is entitled to ask from the patient a written statement containing his refusal.

3.2.16 EUTHANASIA OF DEFECTIVE NEWBORNS

While one may empathize with the parents of a defective infant one cannot at the same time ignore the fact that the innocent life of an untreated child is involved.

Such an infant, irrespective of it condition, is a person with a right to life, a right that is the basis of one's social order and legal system (Robertson 1975 : 216). One ought to consider the plight of the child more than the plight of the parent. Hindu philosophy explains the situation through the Law of *Karma*. The fact that the parent has to take responsibility for the child also becomes his *dharma* (duty). According to Hindu philosophy one cannot escape the Law of *Karma* and *dharma*. If one tries to do this, then one is hindering one's own spiritual development. Handicapped children too need love and care. If these children are neglected and rejected by their parents, there will be no one else to protect or even articulate their interests. From the infant's perspective withdrawing care would appear to be a serious infringement of a basic right.

According to Robertson the courts have not yet ruled directly on the criminal liability of persons who refuse ordinary life-saving medical care for defective infants, under traditional principles of criminal law, the omission of such care by parents, physicians and nurses creates criminal liability (Robertson 1975 : 217). The crimes committed may include murder, involuntary manslaughter, conspiracy and child abuse or neglect .

3.2.16.1 THE PARENT'S DUTY TO THE DEFECTIVE INFANT

Parents no doubt have a legal and moral duty to provide care, including medical assistance to a helpless minor child, irrespective of its condition. The fact that the parent is responsible for bringing the child into the world, the parent should be responsible for the child's well-being.

The parental duty of care also arises when a lawfully aborted viable foetus dies because medical care is withheld after removal from the mother's body (Robertson 1975 : 218 - 219). Although a mother has not yet been prosecuted for such omission her duty to care for the **live abortus** can be found on two grounds. First, if the infant is alive after removal, a human being has been born and the parental duty to provide medical care attaches, until parental rights and obligations are terminated. Second, even if the direct parental duty is inapplicable, the mother has a legal duty to act on the theory that one who places another in peril, however innocently, is liable legally. While after delivery the mother can reasonably be expected to do very little one reasonably can expect steps to assume care of the infant to be taken before birth. If a woman is fully informed of the alternative outcomes of a late-term abortion by hysterectomy, including the possibility of a **live abortus**, she would be under a duty to assure that the child would be cared for. At the minimum she cannot request pre-operatively that the infant be refused treatment and allowed be to die.

Horan has outlined nine ethical propositions with regard to the defective newborn (Horan 1977 (a) : 198 - 199). They are:-

1. Every baby born poses a moral value which entitles it to the medical and social care necessary to effect its well-being.

2. Parents bear the principal moral responsibility for the well-being of their new born infant.

3. Physicians have the duty to take medical measures conducive to the well-being of the baby in proportion to the fiduciary relationships to the parents.

4. The state has an interest in the proper fulfillment of responsibilities and duties regarding the well-being of the infant, as well as an interest in ensuring an equitable apportionment of limited resources among its citizens.

5. The responsibility of the parents, the duty of the physician and the interests of the state are conditioned by the medico-moral principle, "do no harm without expecting compensating benefit for the patient".

6. Life preserving intervention should be understood as doing harm to an infant, who cannot survive infancy or will live in intractable pain, or cannot participate even minimally in human experience.

7. If the court is called upon to resolve disagreements between parents and physicians about medical care, prognosis about quality of life for the infant should weigh heavily in the decision as to whether or not to order life-saving intervention.

8. If an infant is charged beyond medical intervention and if it is judged that its continued brief life will be marked by pain or discomfort, it is permissible to hasten death by means consonant with the moral value of the infant and the duty of the physician.

9. In cases of limited availability of neonatal intensive care it is ethical to terminate therapy for an infant with poor prognosis in order to provide care for an infant with a much better prognosis.

The propositions put forward by Horan are sound and logical. One has to weigh the situation carefully, before making a decision. Sometimes it might be in the infant's best interest, if it is just left untreated rather to subject it to some complicated surgery. The end result may be futile. Doctors in the Durban area who were interviewed said that medical care should not be denied to children with mental impairment (e.g. the Downs Syndrome). One doctor said that if a normal infant with duodenal atresia needs corrective surgery then the same should apply to an infant who happens to have Downs Syndrome. There is a difference between mental and physical impairment. Most of the people who were interviewed agreed that children with mental impairments should not be denied corrective surgery. Physically they would be able to lead a better life if corrective surgery is performed (e.g. duodenal atresia). Foot argues that everyone irrespective of his or her condition has a right to life and medical care (Foot 1979 : 37). This argument can be viewed in a different dimension as well. It is judged better for an irreversibly dying infant to be cradled in the arms of loving parents than to expire while fully connected to some rescue technology that can only prolong dying. Rickham (1969) and Taub (1982) have also said that painful decisions have to be made concerning surgery with defective newborns. Both parents and physicians have to decide as to what is best for the infant concerned (Rickham 1969 : 251; Taub 1982 : 5 - 7).

Therefore parents, physicians and nursery care providers have to make sensible decisions. Competent individuals who may be in the same plight as the helpless infant have the right to refuse life-prolonging treatment, so it is on this basis that Western scholars on this subject argue that it could be morally acceptable for one person to refuse life-prolonging treatment for an incompetent person, in this case an infant, as long as the grounds for refusal are all expressions of the patient's best interest. These are painful decisions but nevertheless, they are made in the best interest of the infant. Hindu *dharma* deals with duties that have not only short term results but also take into account long term consequences. Killing or letting die may be allowed if it is done in the patient's best interests or to society in general.

3.2.16.2 INTOLERABLE LIFE

Children born with severe physical and mental impairment will lead a life that will be intolerable. Some Hindus argue that these children even when they grow up will not be aware of their mental or physical condition; hence one cannot say that they are leading an intolerable life. Their life or rather their condition will be intolerable to their parents or those who provide care for them. Caring for such children, who will become adults some day is agonising itself. Those who are of sound mind and body suffer more because of their level of consciousness. Those who are impaired do not have this level of consciousness, they are not aware of themselves and the outside world in which they exist. Therefore one cannot say that their life is intolerable. People who are associated with these defective infants (parents and other care-givers) do so because of their *karmic* action. *Karma* is individual, group and collective. It is also their *dharma* to look after these children. *Dharma* is also

individual, group and collective. However, the concepts of *karma* and *dharma* have been re-interpreted. Many argue that because of their defects, these infants should not be subjected to any extraordinary care. By introducing extraordinary measures, one is prolonging the life of such infants. Death in Hinduism is not looked upon as an evil occurrence, but a blessing, an event that liberates the soul from its bondage. Death will be a blessing for such children. The soul can find a new healthier body. It is through the physical body that the soul is able to evolve spiritually. Defective infants cannot perform action (*karma*), hence they cannot develop spiritually. It may seem cruel to allow these infants to die, but it can also be considered *dharmic* for one is liberating the soul and giving it a chance to evolve spiritually.

As much as one would object to active euthanasia in the defective newborn, one would welcome passive euthanasia or "letting die" However, those who are engaging in such acts are not aware of the spiritual consequences. People resorting to passive euthanasia (of defective newborns, even adults who lack quality of life) are doing so not because of the reasons outlined above, but because of other reasons, that do not concern the welfare of the individual. The reasons given by physicians were:- the maintenance of a defective baby will drain the resources of its family and health care institutions. Resources of both family and community could be used for other purposes. Among these legitimate purposes is the protection and preservation of other people who now or may in the future live in its family or community (Smith 1974 : 40 - 41). No amount of extra or palliative surgery will remove the child's mongolism and so this drain will continue no matter what is done. His death is the only alternative to living with the problem. This verdict may be well known to parents, physicians and any relevant legal authorities. Thus the

baby represents a serious threat to lives, a threat which cannot be removed in any other way. Once this verdict is impartially pronounced, an act destroying the child is justifiable infanticide rather than murder.

Others argue that euthanasia is not the only answer to this kind of problem. There are many ways in which the family can be saved, short of the death of the baby. The child can be institutionalised. Those in the legal profession feel that it is the "life" that is in question and not the quality of life. There might be cases where there are defective newborns where the parents are missing, and decisions are left to the physician and society. This deserted baby will not only lack the advantages of a home but he will also represent an unusually serious drain on society's resources. Who decides for this baby? Many argue that euthanasia is the answer to this problem; others disagree on the basis that there might not be anyone willing to take responsibility for such an infant. Nobody will even want to adopt such an infant. Making a decision for such an infant is no easy task.

3.2.16.3 RATIONALIZATIONS

Proponents of euthanasia have put forth many rationalizations for its use with persons who have severe disabilities. Some arguments focus on the good to society of "allowing" disabled individuals to die. For example at a time when care in a special care nursery can cost thousands of dollars, questions are increasingly being asked about withholding treatment from some infants on the grounds that providing it is excessive in cost. Other arguments for euthanasia centre on the good to the individuals families of "allowing" the family member to die. Fletcher has proposed

that the plight of the family should be heavily considered in deciding upon whether to treat an infant with severe disabilities. However, the most persuasive of the rationalizations for euthanasia and the most convincing appeal is for the good of the individuals themselves. Rationales that allude to the good of the individuals can be particularly appealing to those who are parents, professionals and friends of persons with disabilities. We are not easily convinced that euthanasia is the right practice when we are told that it costs society too much to serve people with severe handicaps or that it costs families too much in time, energy and finances to raise children with severe disabilities. But we find ourselves questioning our own beliefs about euthanasia when we are told that it is really the best alternative for handicapped persons themselves. Unless we are clear in our own position about the absolute worth of each life, we can be readily drawn into agreeing that individuals with severe handicaps would be better off dead (Lusthaus 1985 (a) : 87 - 88).

Thus it is imperative to look at the rationalizations that are put forward to justify euthanasia of handicapped persons "for their own good" and to consider some refutations of these rationales.

RATIONALIZATION 1 : THE INDIVIDUALS ARE NOT "REALLY" PEOPLE

In the first rationalization it is proposed that the individuals in question are not "really" people, and therefore they would be better off dead than to exist as a nebulous species of non persons.

Central to this argument according to Robertson (1975) is the notion that some offspring of man and woman are human and that some are not. Conception and birth by human parents does not automatically endow one with personhood .... Some other characteristic or feature must be present in the organism for it to be vested with personhood (Robertson 1975 : 247).

What are the characteristics that are required for humaneness? Intelligence is an important component. Proponents of this point of view say that if an individual lacks a certain level of intelligence he or she is not really a person. Another Western writer on the subject asks, "Whether class five (profound mental retardation) can be regarded as being humanly alive in the sense in which he usually understands these words (Robertson 1975 : 251). Joseph Fletcher (1975) also reflected this point of view when in all seriousness he claimed that any individual of the species **Homo sapiens** who falls below the I.Q. 40 mark in a Standard Stanford Binet Test ... is unquestionably a person; below 20 mark not a person. Fletcher wrote that a father who gave instructions to withhold medical treatment for his son with Downs Syndrome should feel no guilt for guilt is only relevant when wrong is done to a person. According to Fletcher a Downs is not a person.

Other characteristics that are thought to be required for humanhood are a sense of self-consciousness and the ability to have human relationships. Whatever the characteristic the individuals in question are not considered "really" people unless they have an adequate amount of the feature. An infant, although born of a human, but who cannot relate to other human beings (have certain values and norms and form relationships) are not regarded as persons.

However, the above point can be refuted and all persons as fully human is that abuse is typically imposed on those defined as subhuman. Robertson, a lawyer, argued that all persons must be considered persons because of the dangers inherent in calling some persons non-human. All human offspring are human. In this position, it is argued that all offspring of human parents are human no matter what limitation the offspring may have. "According to this view" said Robertson "human parentage is a necessary and sufficient condition for personhood, whatever the characteristics of the offspring" (Robertson 1975 : 247). The offspring of a man and a woman is a human, and no other criteria must be used to measure humaness. According to Robertson it is unethical to question anyone's humanity (Robertson 1975 : 247 - 248). Reasoning of this nature can lead to abuse and mistreatment of the mentally retarded.

A second argument for defining all persons as fully human and fully entitled to life is also not easily understood. How is one to determine the cut off point? In the Nazi euthanasia programme, the criteria for who was human changed rapidly and became increasingly global. The victims began with those who were severely impaired and grew to include those with odd-shaped ears and very dark hair (Lusthaus 1985 (a) : 89).

A third argument for refuting the rationales for involuntary euthanasia is based on religious convictions as well as moral beliefs. This argument was stated by Paul Ramsey who said that no human feature is required in order to provide humaneness because the newborn possesses humanhood of irreducible dignity as a free gift of God. Robertson said that "All creatures are sacred containing a spark of the divine

and should be so regarded" (Robertson 1975 : 213). Gustafson agreed that "the intrinsic value or rights of a human being are not qualified by any given person's intelligence or capacities or productivity ... rather they are constituted by the very existence of the human being ..." (Gustafson 1973 : 553).

Paul Ramsey a Christian theologian had this to say regarding the involuntary euthanasia of children with handicaps:
"Ordinarily, the neglected infants are not born dying. They are only born defective and in need of help. The question whether no treatment is the indicated treatment cannot legitimately be raised", as God does not support persecution (Ramsey in Gustafson 1973 : 556).

Gustafson also appealed to unifying principles of religious belief systems in arguing against involuntary euthanasia of infants with handicaps. He cited a central theme of Old and New Testaments. "You shall love your neighbour as yourself" (Lev. 19.18) and "Love your neighbour as yourself" (Matt 22 : 39) and "Each of you must regard not his own interests but the other mans" (1 Cor. 10 : 24). Gustafson argued eloquently that to be "human is to have a vocation, a calling, and the calling of each of us is "to be for others" at least as much as "to be for ourselves" (Gustafson 1973 : 556).

RATIONALIZATION 2 : THE INDIVIDUALS LACK QUALITY OF LIFE

In this rationalization it is proposed that the individuals lack a necessary quality of life, and therefore they would be better off dead than to exist in a meaningless life, often with suffering and sorrow.

Central to this argument is the notion that someone can judge whether another individual can experience meaning in his or her life. First proponents of this point of view typically express their opinion on what makes life have value, meaning and worth. What is the quality of life that is considered necessary for a meaningful existence? Several factors are usually used in trying to make a determination of the quality of someone's life. These include the severity of the individual's disability including the prognosis for development and or prediction of future suffering, the stress or demands on the individual's family and the cost to society of supporting the individual.

Quality of life depends on the degree of the child's retardation or physical handicap, the disturbance his life would cause to his family and the resources available in society to assure him of a meaningful life. Numerous value judgements determine the standard for adequate quality, the doctor's original diagnosis of the child's potential the parent's commitment and expectations for their child, and the general attitude of the society towards unprofitable numbers.

Using the quality of life as a basis for deciding who should live and die is very common. A quality of life ethic has been advocated by many physicians who think

that it should replace a sanctity of life ethic. For example potential quality of life was found to be the most important factor among physicians in making decisions about whether to treat infants with Downs Syndrome. Quality of life has also been advocated as a basis for ethical and legal standards about whether to treat infants with disabilities. At its heart, the quality of life view depends on the value that is put on someone's life. The value of the person is judged to be relative to the predicted quality of his or her life (Gustafson). It is thought that lives that are not worthwhile which are seen to have no worth to self, family or society can be legitimately terminated. The above reasons can be refuted, and other reasons can be posited to make all persons worth to life regardless of their alleged quality of life.

One argument against the quality of life rationalization is based on the impossibility of defining quality of life. How is one to determine as to what comprises quality? How does one know whether there is adequate quality in life for it to be worthwhile, or for a person to be considered worthwhile? It is not ethical to make judgements on other people's life and say that their life is not worthwhile. Is it ethical for parents, physicians and society to assume that a child with severe handicaps would rather be dead? A study was carried out in America in which a large number of children with severe impairments due to thalidomide were questioned (Robertson 1975 : 254). The study indicated that the children "do indeed value their lives, that they are glad they were born that they look forward to the future with hope and anticipation".

Robertson also puts forth a similar argument, when he asks how could a "proxy" accurately conclude that someone with severe handicaps would not want to live.

Would a "person with different wants, needs and interests, if able to speak, agree that such a life were worse than death" (Robertson 1975 : 254). How can someone else say, he questioned, that a child with an I.Q. of 20 would rather be dead, than live the life he is living? He warned that the "proxy" making this judgement is probably not a disinterested party but one who would be responsible for the person's care, and he questioned who is being spared in the decision to withhold treatment. He argued that we cannot judge the meaning or worth that is inherent in life even when life is severely restricted. Life and life alone, whatever, its limitations might be of sufficient worth to the defective (Robertson 1975 : 254). The interest of the caretakers is being safeguarded, when euthanasia is recommended for defective newborns. Euthanasia, for such reasons, according to Hindu philosophy, will be regarded as *adharmic*.

Another difficulty with the quality of life perspective lies in the likelihood that persons making quality of life predictions about individuals with severe disabilities may hold unduly pessimistic ideas about their ability to grow, develop and enjoy life. This issue has been visible in the debates over the euthanasia of infants born with **spina bifida**. Lorber is an outspoken proponent of the selective non-treatment of infants whom he has designated as too handicapped to have a good developmental prognosis. In 1973 he reported that his hospital did not treat twenty five of the thirty seven newborns with **spina bifida** born during a twenty one month period because their conditions were too severe according to his clinical criteria. All died within nine months. In contrast Zackary is convinced that many paediatricians engaging in selective non treatment of **spina bifida** in infants are unduly pessimistic about the

future awaiting such infants. He indicated that these children are often depicted as living completely miserable and unhappy lives but he has not found this to be the case for the children with **spina bifida** whom he had treated (Robertson 1975 : 254).

Differing opinions about the potential development of persons with **spina bifida** became acutely apparent in April 1982, when an infant in this condition was denied treatment and apparently was being starved allegedly because of the physician's and parent's pessimistic predictions about the future quality of the child's life. The **Spina Bifida** Association of America assumed an advocacy rule in this case by publicly calling for "treatment of this baby and of every infant born with **spina bifida**" because ninety percent of children born with this condition today grow up to live normal healthy lives (Robertson 1975 : 254).

Garland also classifies children in the intensive care nursery into 3 categories: (1) those who must be treated; (2) those who at the parent's discretion may either be treated or allowed to die and (3) those who should be allowed to die (Garland 1977 : 15).

3.2.17 THE EUTHANASIA DEBATE : A SOUTH AFRICAN VIEW

Based on religious or ethical grounds one finds the notion of mercy-killing unacceptable. According to Bernard Ficarra, the euthanasia issue is part of the conflict between two systems of thought: the system which recognises its obligation to God and His Law, and the other system which claims that man need have no higher motive than the gratification of his own desires. Ficarra accuses the

proponents of mercy killing of "flirting with moral insanity". When one adopts euthanasia in any form, he says, one is on the path back to the jungle (Strauss, 1991 : 336 - 337).

Modern South African criminal law is unequivocal in its rejection of active euthanasia. One should consider the following cases that have come before the courts:

State vs de Bellocq (1968). The accused's three week old baby was diagnosed to have toxoplasmosis which in effect meant that the child would be physically and mentally incapacitated and not live for any length of time. She was charged with murder subsequent to her drowning the child. In finding her guilty of murder the court found extenuating circumstances to be present and no effective sentence was imposed on her (South African Law Reports, 1975 (3) SA 538 (T) Duncan et al 1975 (3) 538 - 539).

State vs Hartman (1975). The accused, a medical practitioner caused the death of his eighty-seven year old father who was terminally ill and in a critical state by administering an overdose of drugs. Dr. Hartman was convicted of murder and sentenced to one year imprisonment. However, he was to be detained only until the rising of the court and the balance of the sentence was suspended for one year, subject to the condition that during that period the accused was not to commit an offence involving the intentional infliction of bodily injury (1975 (3) SA 532 (C) Duncan et al 1975 (3) : 532 - 537).

State v McBride (1979). The accused killed his wife whom he believed to be dying of cancer. He attempted to shoot himself thereafter but was prevented from doing so. The court found him not guilty on account of his mental illness (1979 (4) SA 313 (W) Barnett et al 1979 : 313 - 324).

3.2.17.1 THE "LIVING WILL" AND THE "RIGHT TO DIE"

The modern physician has to a large extent become master over life and death. What might have been regarded as a hopeless case a few decades ago, may now be viewed as a still treatable case. The doctor has at his disposal techniques and instruments which belonged to the realm of science fiction not so long ago. Therefore the voluntary euthanasia movement which has adherents in many countries, represents a concrete expression of the attitude that the patient should have the conclusive say on whether or not he should be the subject of life-prolonging procedures a decision which, on account of the circumstances of a terminal patient, is frequently taken by the doctor or the patient's next of kin.

It is significant that medical men and nurses have played an active role in the voluntary euthanasia movement. The South African Living Will Society (its acronym is SAVES) was founded in 1974 by a nursing sister, Mrs. Sylvia Kean. Its current president is Professor Harry Grant-Whyte. The Society's membership in this country has grown steadily and in 1991 exceeded twenty thousand.

The society distributes the so-called "Living Will" for execution by its members. The document contains a declaration directed to the signatory's family and physicians that reads as follows: "If the time comes when I can no longer take part in decisions for my own future, let this declaration stand as the testament to my wishes. If there is no reasonable prospect of my recovery from physical illness or impairment expected to cause me severe distress or to render me incapable of rational existence, I request that I be allowed to die and not be kept alive by artificial means and that I receive whatever quantity of drugs may be required to keep me free from pain or distress even if the moment of death is hastened".

One may ask whether the Living Will is a legally valid document?
The Living Will is not a will in the technical testamentory sense of the word. Legally it is a declaration in which a person in **anticipando** by way of an advance directive refuses medical attention in the form of being kept alive by artificial means.

In principle every person is legally entitled to refuse medical attention, even if it has the effect of expediting his death. In this sense the individual has a "right to die". All that is required is that the declarant at the time when making his refusal known is **compos mentis**. The declaration remains valid even though the declarant may at a later stage become **non compos mentis** as a result of physical or mental illness, or for any other reason. Strauss says, "if a man in a concrete situation, where it is proposed that he should immediately be subjected to a particular form of treatment, is entitled to refuse that treatment, there is no reason why he would not be entitled to express a "standing" refusal at any earlier stage". Such a refusal, if properly

recorded, would then stand until revoked by the person who has made it. It should be seen as nothing but a statement to the following effect: "I am stating here and now that I am not consenting to medical procedure X being performed upon me, should this at any stage be proposed". Naturally such a statement remains freely revocable, but unless revoked remains legally effective (Strauss, 1991 : 344 - 345).

Doctors and hospital staff must respect the declarant's statement of refusal. Should a doctor disregard it and keep the patient alive by artificial means, the doctor will be technically guilty of an assault, both from the point of view of civil law and criminal law. According to Annas et al (Strauss 1984 : 388), the Living Will is "a legal statement of the patient's; there is no public policy against the terminally ill patient refusing treatment". This statement, made in the American context is just as valid for South African law, according to Strauss.

It is immaterial what the signatory's motive is, be it fear of prolonging his suffering when terminally ill or critically injured, a desire to spare his next of kin the agony of watching him over a long drawn period of illness, or a desire to save his estate the major expense involved in lengthy treatment in a hospital's intensive care unit.

If a doctor or a hospital staff were to disregard the fact that a terminal patient has signed a Living Will, nothing much can be done about enforcing the patients' rights, unless someone, e.g. a relative, were to intercede on behalf of the patient. Should there be such a disregard, the court may be approached for appointment of a curator **ad litem** for the patient, in order to bring an application for an interdict against the doctor.

As regards the part of the Living Will in which the patient requests that "I receive whatever quantity of drugs may be required to keep me free from pain or distress even if the moment of death is hastened", the situation is not without problems in South African law (Strauss 1991 : 344 - 345). According to a South African judgement to hasten death is in fact to cause it. In R versus Makali 1950 (1) SA 340 (N) the court declared: "The true enquiry is whether the deceased would have died when he did but for the accused's unlawful act. If this enquiry gives an affirmative answer the accused is responsible for the death because he caused it to take place when it did that is to say because he hastened it".

That stipulation of Living Will which expresses the patient's desire to receive whatever quantity of drugs may be required to keep him free from pain or distress, even if his death is hastened, therefore, seems to be legally unassailable. As long as the doctor acts in good faith using the usual pain-relieving substances, in reasonable quantities with the intent to relieve pain and not to kill there will be no question of criminal or civil liability on his part (Strauss 1984 : 389 - 390).

3.2.17.2 THE TERMINALLY ILL - A SOUTH AFRICAN NEW LEGAL PERSPECTIVE

New laws officially recognising the "living will" - the right of terminally ill patients to be taken off life-support machines have been proposed by the South African Law Commission. In a new report, the commission makes suggestions for legislation and asks for public comment on the proposals.

The commission stresses it is considering "passive" euthanasia only; that is, stopping treatment which prolongs life or giving pain-relieving drugs to make a dying patient comfortable even if this has the indirect effect of hastening death. No changes have been proposed to the legal ban on "active" euthanasia - a practice outlawed in most countries and one most South Africans appear to oppose.

One commission says there are a number of problems associated with the living will. While the rights of patients to refuse treatment must be respected, arrangements must also be made for situations in which the patient can no longer communicate. There is also a conflict between the tendency of many medical professionals to try to prolong life for as long as possible, while the priority for most people is to be allowed to die with dignity and without pain. Doctors fear if they do respect patient's wishes not to have their lives prolonged, they could be exposed to legal action. At the same time, doctors should not be obliged to act against their consciences.

The legal situation is changing with the courts recently beginning to soften their attitude to passive euthanasia. Some have agreed to allow doctors to switch off machines keeping patients alive artificially once it becomes clear that there is no hope of recovery because the patient is in an "irreversible, persistent vegetative state".

Faced with these and other problems the commission suggests the confusion would best be resolved if parliament passed new laws clearly setting out when the artificial preservation of life can be stopped. The draft laws propose that anyone over

eighteen can make a "written directive" that, if they should ever suffer from a terminal illness, all medical treatment should be stopped except that needed to ease suffering. The draft also says that anyone can sign a power of attorney appointing someone as an agent to take decisions about ending treatment if they themselves cannot do so.

If there is no living will anyone with a personal interest could ask a court to order that all medical treatment except pain control be stopped. Doctors may only allow the living will instructions if they are convinced the person is suffering intolerably and will not recover, or if the patient is "brain dead". At least one other uninvolved doctor must confirm these conditions have been met. The doctor must also be satisfied that the living will is authentic. If the family is opposed to his following the Living Will instructions, he should not do so unless there is a court order.

If there is no "written directive" the chief medical officer at the hospital may permit treatment to be stopped. However, doctors would not be obliged to do anything they felt conflicted with their consciences or ethics. The proposed law states that stopping treatment would not be unlawful just because it would contribute to the patient's death, but it also says clearly that it cannot be used to cause the death of someone who is not terminally ill (Sunday Times 27/2/94).

Hindus in general support euthanasia if and when the circumstances arise that euthanasia seem to be the only option. Most Hindus disapprove of artificial life support systems. The laws regarding euthanasia might be subject to alteration in the new South Africa and these laws will also affect the Hindus.

3.3 SUICIDE

As a form of human behaviour suicide is probably as ancient as man himself. Suicide has been practised for thousands of years in primitive and historic societies, but the antiquity of the phenomenon has been associated with a wide diversity of attitudes and feelings in the judgement of suicidal behaviour. Societal responses to the act of self-destruction can be viewed as a spectrum ranging from outright condemnation on the one hand through mild disapproval to acceptance and incorporation into the socio-cultural system on the other. But, just as societies vary in their reactions to suicide, so attitudes within a society have changed in the course of time.

History provides perspective for present views of suicide. An historical approach makes it possible to see suicide in different temporal contexts, and try to understand the meaning it has for people of varying backgrounds and experiences. Moreover, by examining suicide not simply as a medical or psychological phenomenon, but rather as an element in a process of social change over time, it is possible to study it in relation to various facets of a population or a society (Perlin 1975 : 3 - 4). Perhaps it might be appropriate to ask the question as to whether suicide (self-destruction) is becoming a problem to society, or is there something drastically wrong in society itself that man is finding a solution in suicide and suicide alone as a means of solving his problem.

3.3.1 THE MORALITY AND RATIONALITY OF SUICIDE

Among the problems that have been regarded as good and sufficient reasons for ending life, one finds in addition to serious illness the following: some event that has made a person feel ashamed or lose his prestige and status; reduction from affluence to poverty; the loss of a limb or of physical beauty; the loss of sexual capacity; some event that makes it seem impossible to achieve things by which one sets store; loss of a loved one; disappointment in love; the infirmities of increasing age. However, one cannot deny that such things can be serious blows to a person's prospects of happiness.

Feelings of being unwanted and unneeded affect all age and population groups, and if these feelings coming from significant other people are strong enough and global enough, they can present sufficient stress to result in suicidal death (Pretzel 1972 : 40).

The ability to cope with stress is a more difficult quality to measure or to describe. When feelings of self-esteem are high, when there have been enough positive inter-personal experiences in one's past that he feels worthwhile as a person, he will normally be able to deal with most stress in an appropriate and competent way and not feel that his basic worth as a human being is in jeopardy. When one has not had the benefit of these early feeling and caring experiences, however, or for some reason has been unable to incorporate them and build on them, he will be left with grave uncertainty about his own self-worth and will be more likely to collapse under

the force of continued severe stress not having the personality reserves to cope with the struggle. When this happens, he may be overwhelmed and become suicidal.

Erik Erikson talks about this quality of self-esteem as coming from infancy, and he refers to it as being a basic trust in life. Most suicidal people have strong feelings of alienation and isolation, and these often seem to develop early in life if he has suffered what Erikson calls **bad mothering.** If he has been the victim of a broken home, either from death or divorce, and especially if he had to tolerate the suicide of a parent, this failure of basic trust can be acute (Pretzel 1972 : 40 - 41).

The normal suicidal individual will think of several different alternatives and will consider these for some time finally making a selection. The development of the suicidal plan is a critical stage in the build up toward death and may open the door to a suicidal rehearsal or suicide attempt (Pretzel 1972 : 43). This build up to suicide may take months or years. It serves two functions: to make the victim more comfortable with the thought of killing himself and to provide a warning for those who care about him. The myth that those who talk about suicide seldom do it, has been proved both erroneous and dangerous. Suicidal communications are an integral part of the build up toward suicide and should be taken very seriously.

Although not all depressed people are suicidal and not all suicides are depressed, yet depression is a common factor in many suicides. The feelings of depression include feelings of incompetence and failure.

The prohibition of suicide or self-killing, can be looked upon as a matter of natural aversion, primitive, superstition, religious belief or philosophical argument; but there has always been a current of liberarian opinion which has succeeded in removing most of the penal sanctions against suicide. Suicide differs from euthanasia in that the latter is either an assisted suicide or a killing by another for humanitarian reasons and by merciful means generally with the consent of the person killed, in which case it is referred to specifically as voluntary euthanasia (Edwards 1967 : 43). Hindu philosophy also offers an explanation regarding the soul of those who commit suicide.

Hinduism maintains that the soul inhabits many bodies on its journey through the cosmos until it reaches its final destiny. Souls are to be found in all living beings which being essentially equal are all only different through *karma*. The shell or integument of subtle and gross matter imprisons the soul which leads to successive rebirths in different types of bodies. Although the emphasis is on the freeing of the soul from matter, suicide is not prescribed to rid the imprisoned soul from this state of affairs.

There are however various circumstances which may justify the taking of his own life by a person. Suicide as a form of expiation appears first as permissible in the Laws of *Manu*. In cases where suicide has been committed not for this purpose but merely to end one's present existence, the Law of *Manu* states that "Libations of water shall not be offered to those who neglect the prescribed rites, and may be said to have been born in vain to those born in consequence of an illegal mixture of the

castes to those who are ascetic (of heretical sects) and to those who have committed suicide" (Buhler 1984 : 89).

A person is allowed to end his life in certain circumstances, for example when such a person is contaminated with an incurable disease which if it spreads, will be harmful to the whole community. A person who experiences unbearable pain and thus excessive suffering, may jump from a mountain, drown himself or enter a fire.

A *sanyassi* who has renounced everything to live a life in solitude and meditation may not return to his wife and ordinary life. If he does live with his wife again, the only means of expiation is suicide for him and his wife, this could be done by any means as he has broken his promise. He and his wife must commit suicide together.

The attitudes of primitive societies to suicide and voluntary euthanasia vary greatly. Often suicide is acceptable, and even when it is not, it may be tolerated, or indeed expected when incurable disease or old age become a burden upon both individual and society.

3.3.2 DEONTOLOGICAL ARGUMENTS

Deontological arguments asserted that suicide is wrong, not because it produces adverse consequences but because in itself it violates the meaning and purpose of human life and destroys the dignity of human nature. According to this kind of argument it is not the results of the action that make it wrong, but something about its very nature.

Suicide is often thought to be cowardly. But is suicide always cowardly? For example a mother may take her own life rather than leave her family destitute from providing her medical care. While one might deplore the conditions that led to such destitution and perhaps even judge the action wrong, it hardly seems to be an example of cowardice. The ardent opponent of suicide Immanuel Kant, rejected the argument that suicide is cowardly: "Even right thinking people declaim against suicide on wrong lines. They say it is arrogant cowardice. But instances of suicide of great heroism exist. If by 'cowardice' is meant moral cowardice, that is, shirking one's duties and responsibilities - then not all acts of suicide appear to be cowardly" (Lebacqz et al 1977 : 681 - 682).

Kant argued that suicide is a contradiction, because one destroys the very self that one wishes to save from pain or suffering. Kant held that humans ought to act freely and rationally and that to take one's life subverts human freedom and thus the possibility of acting according to the moral law. That is since suicide is logically contradictory, it cannot be willed as a universal law or maxim for human action and thus fails the first test for the morality of human action that one must be willing to have the maximum of one's action become a universal law.

It is argued that life is a gift from God and that therefore since God has given it only God may take it away. As Kant expressed it, "Human beings are sentinels on earth and may not leave their posts until relieved by another beneficent hand" (Lebacqz et al 1977 : 684 - 685). To kill oneself is therefore to act against God's purposes for human life, and in this way to violate the meaning of human life. If a specific injunction from God is needed in order to show that suicide is wrong, it is

sometimes thought that the sixth commandment "Thou shalt not kill" provides such an injunction. Suicide is always wrong, therefore, because it violates a specific commandment from God.

The argument that suicide is always wrong rests on the general duty to preserve human life. The prohibition of suicide is a derivative from this general duty. One can claim that the sanctity of human life is such that it should never be directly taken, whether by self or by others. Suicide is wrong, therefore, because it violates the sanctity of human life. According to the traditional theist, God is a personal all powerful being, a sovereign who rules over his creation. Hence, man is merely the custodian of life, not its master. ... It is man's duty to accept the decisions of God, not to pass judgements on them. If God has created and bestowed life upon man, it does not fall within the right of man to destroy it. Man is not absolutely master of his own life and body. He does not have dominum over it, but holds it in trust for God's purposes (Kohl 1974 : 5). However, suicide may be permissible in certain cases.

3.3.2.1 VOLUNTARY EUTHANASIA

There are certain circumstances in which normal obligations of covenant fidelity cease because their fulfillment is impossible. Under certain life circumstances such as terminal illness accompanied by great pain, it may be impossible to fulfill normal covenant obligations to one's family and friends. If so these obligations cease and thus the right to dispose of one's life is not contravened by any restraining duties

(Lebacqz et al 1977 : 690). In these circumstances, the right to suicide cannot be defeated because the circumstances themselves defeat the possibility of fulfilling any obligation to the other.

3.3.2.2 COVENANTAL SUICIDE

If the first instance in which suicide is morally justifiable is that in which covenantal obligations have to be fulfilled. Suicide need not be covenant-breaking; it can be covenant affirming. There are two types of convenants affirming suicide: the first is the "suicide pact" or joint suicide in which marriage partners, close friends, or others who live in covenantal relationship bind themselves "even unto death". The second is the "self-sacrificial" suicide of one who chooses to die rather than to burden one's family or friends (for example one who kills oneself rather than deplete resources with expensive medical treatment affirms the covenant with one's family in so doing). Whether any particular instance of "covenantal" suicide is justifiable depends on the extent to which it fulfills rather than violates other covenantal obligations. An act of suicide which fosters some covenants at the expense of others might still be wrong. But in cases where the act does not violate the **prima facie** duty of covenant fidelity, it is not **prima facie** wrong (Lebacqz et al 1977 : 691).

3.3.2.3 SYMBOLIC PROTEST

In the first two instances of justifiable suicide, the suicide was not judged to be wrong either because the duty of covenant fidelity ceased or because it was supported by suicide. But there may be cases where the suicide appears to violate

covenants but may yet be justifiable. Lebacqz et al say that there might be one such as that of suicide as "symbolic protest". Suicide is occasionally used as an act of symbolic protest against great evil and injustice, for example, against war or imprisonment and is meant to support in a radical fashion respect for persons generally. Classical Hindus also committed suicide for similar reasons.

In such cases suicides appear to violate one's immediate obligations of covenant fidelity, since family and friends may be abandoned in order to make symbolic protest. However, the intention of the act is to protect those institutions and structures which undermine the very conditions that make human life and covenant fidelity possible. When suicide as symbolic protest provides a significant contribution to the struggle against forces which would destroy the freedom of others, taking one's own life can be at root an affirmation of the dignity of persons. We might say that in this form of suicide, the individual aligns himself or herself with more basic loyalties than those to family and friends - namely the community of moral agents. The need to struggle for justice may in circumstances be more compelling than obligations to one's immediate family and friends. Viewed within the perspective of justice, therefore, there are at least two instances in which suicide may be right: those in which **prima facie** obligations of covenant fidelity cease to exist, those in which the suicide fulfills **prima facie** obligations of covenant fidelity are superseded by demands of justice on a larger scale (Lebacqz et al 1977 : 691 - 692).

3.3.3 SUICIDE AND THE SOUTH AFRICAN LAW

Suicide is not a crime in South Africa, but a person, who aids and abets another to commit suicide and in so doing kills that other, is guilty of murder, even though the suicide is jointly responsible for his or her own death.

The **actus reus** of the crime consists in causing the death of another human being. One unusual way of causing death and thus committing the crime deserves special mention. That is where somebody instigates, assists or puts another in a position to commit suicide, as in the so called "Suicide Pact" cases. In certain circumstances this can amount to causing death and therefore to murder. The mere fact that the last act of the person committing suicide is his or her own voluntary act does not necessarily mean that the chain of causality, beginning with the instigator's conduct, is broken (Joubert 1981 : 227).

An accomplice's liability depends upon his own action; he is not vicariously liable. For instance, a person who intervenes and assists in an offence at a late stage, although he is liable for his own acts, does not, unless he assists in pursuance of a previous agreement, become criminally liable for what took place before his intervention. Before a person can be liable as accomplice it must be proved that he participated in or assisted the perpetrator in the commission of an offence (Joubert 1981 : 229).

Consider the case the State vs Gordon 1962 (4). SA 727 N.
The accused, a twenty seven year old married Indian male school teacher concluded

a suicide pact with his unmarried lover as a result of domestic problems arising from their relationship. The accused supplied the deceased with fifteen Noludar and eight of Phanandorm tablets which she consumed at the same time that the accused consumed an equal number of identical tablets. The deceased died as a result hereof, whereas the accused survived and subsequently attempted to drown himself but was prevented from doing so. The accused was charged with murder on the basis that he supplied the tablets to the deceased knowing that she would ingest them to cause her death. The court acquitted the accused finding that the deceased took the tablets herself and that the final act brought about her death (Duncan et al 1962 (4) : 727 - 731).

State vs Hibbert 1979 (4) SA.

The deceased stated in an argument with her husband, the accused, that she might as well commit suicide as the result of their marital discord. When the deceased indicated that she would shoot herself, the accused loaded and assembled his rifle which he handed to the deceased. She shot herself in the forehead. The accused was convicted of murder on the basis that he had the intention to kill the deceased in that he was reckless as to the consequences of his conduct (Barnett et al 1979 (4) : 717 - 723).

3.4 ABORTION

Abortion is a complicated problem, a source of social and legal discord, moral uncertainty, medical and psychiatric confusion, and personal anguish. There is scarcely a nation in the world which believes it has discovered the perfect solution to the legal, social and medical problems of abortion. Neither is there any religious group in the world most of whose members are in agreement on the moral issue of abortion.

Only on one point there seems to be some global consensus: the medical danger of backstreet abortions. However, there are many who think that abortion is moral or immoral. The matter becomes yet more complicated when the problem is reduced to philosophico-theological question, "When does life begin?" Many proponents of abortion on demand see the question only in terms of feminine and civil rights: giving to women the full right to decide for themselves whether to terminate or complete a pregnancy. But the issues are not disposed of so easily. Abortion is at once a moral, medical, legal, sociological, philosophical, demographic and psychological problem, not readily amenable to one-dimensional thinking.

It is a moral problem because it raises the question of the nature and control of incipient human life. It is a medical problem because the doctor is the person normally called upon to perform an abortion; both his conscience and his medical skills "come into play". It is a legal problem because it raises the question of the extent to which society should concern itself with unborn life, with motherhood, with family life, with public control of the medical profession. It is a sociological

problem because, as Edwin M. Schur (Callahan 1970 : 1) has pointed out, it touches on "woman's role in our social system, family organisation and disorganisation, national demographic policy, and the role of informal and formal sanctions". It is a demographic problem because, at one level, it raises the question of whether abortion provides a useful, desirable and legitimate method of population control where such control is needed. At another level, there is the fact that, for good or ill, it is already being so used in many parts of the world. It is a psychological problem because, in one way or the other, the attitude of human beings toward conception, pregnancy, birth and child rearing touches deep-rooted drives, instincts, emotions and taboos (Callahan 1970 : 1 - 2).

The fact that there seem so few real options available in abortion decisions, rather than simplifying the problem, actually seems to complicate it. A woman may decide to have an abortion or not to have an abortion; there is no third way. So, too, a doctor may decide to perform an abortion or not to perform an abortion. Society can decide to allow abortion on demand or request, prohibit it altogether or allow abortion under certain specified legal conditions. It is not easy to imagine a fourth possibility. The narrow range of choices confronting both the individual and society means that however elaborate and complex the reasoning which points to one or another solution there are very few final options available (Callahan 1970 : 3).

3.4.1 INFANTICIDE AND ABORTION : A MATTER OF CONVENIENCE

Ancient testimony strongly points to a diverse range of publicly admitted reasons for the justification of either infanticide or abortion.

The typical reasons, according to Carrick (Carrick 1985 : 102 - 103) include:

1) the desire to preserve what some women viewed as their sexual as opposed to their maternal beauty;

2) the desire to avoid the inconvenience and loss of freedom occasioned by caring for very young children;

3) the desire to avoid poverty occasioned by the added material costs of child care;

4) the related desire to limit competition for scarce resources by limiting the size of their community's population;

5) the desire to have male offspring based on perceived military and economic advantages;

6) the desire to protect the women from a life-threatening, difficult pregnancy;

7) the desire to rid society of future citizens who because they were born weak or defective are considered to be a worthless burden to themselves or society;

8) the desire to conceal adultery and the desire to protect one's family or estate from a child of doubtful legitimacy.

3.4.2 THE MODERN DEBATE

3.4.2.1 THE STATUS OF THE FOETUS

The factual question is: In the reproductive process, at what point does the human individual originate? In other words, as human life is passed on in a continuous process where do the individual lives of the parents end and where does the individual life of the offspring begin? Western scholars argue that a foetus cannot be regarded as a human being or a person because it cannot exercise a "right". Generally the person is considered to be the subject of rights and once it is admitted that a person exists, there will be a very broad consensus that he has at least a **prima facie** right to continued life , since this right is more fundamental than any other (Grisez 1972 : 273).

Others, including Hindus. argue that a soul is present from the moment of conception. Once conception has taken place, then the zygote or embryo begins developing and bears the resemblence of a human being. If a foetus belongs to the category **"Homo sapiens"** it must be a human being. Since there is no qualitative difference between the embryo at the moment of conception and at the moment of quickening, the embryo must be considered a human being (Kohl 1974 : 29 - 30).

All persons or human beings pass through the foetal stage. If all foetuses were destroyed because they did not have any rights and since they were not regarded as persons, then human beings and persons would become extinct. Therefore, it is not

logical to conclude that foetuses can be aborted on the grounds that they are not persons and do not have rights.

According to Tooley the foetus inside a human mother is a human life (Tooley 1972 : 56). Others maintain that foetuses, at least up to a certain point, are not human beings. Even philosophers are led astray by this usage. Thus Wertheimer says "except for monstrosities, every member of our species is indubitably a person, a human being at the very latest at birth" (Wertheimer 1973 : 34). Is it really indubitable that newborn babies are persons? Or is this a wild contention? Very early in its development the foetus acquires human characteristics. By the tenth week for example it already has a face, arms and legs, fingers and toes; it has internal organs and brain activity is detectable.

Tooley says that a person should have certain properties in order to claim a serious right to life. These include:

1. The capacity to envisage a future for oneself, and to have desires about one's future states. In order for something to have a right to life it must either now possess, or have possessed at sometime in the past, the capacity to understand what it would be like for it to continue to exist, together with the capacity to have desires about its future states.

2. Being a self. In order for something to have a right to life it must now be, or have been at some time in the past, conscious, continuing subject of experiences and other mental states.

3. The capacity to have a concept of a self. In order for something to have a right to life it must either now possess, or have previously possessed the capacity to have the concept of a self, that is the concept of a continuing subject of experiences and other mental states.

4. Self-consciousness. In order for something to have a right to life it must now be the case, or it must have been the case at some time in the past, that the organism possesses the concept of a self as a continuing subject of experiences and other mental states, that it is such an entity, and that it believes that it is such an entity.

5. The capacity for self-consciousness. In order for something to have a serious right to life it must either now possess, or have previously possessed the capacity for self consciousness (Tooley 1972 : 59 - 60).

3.4.3 ARGUMENTS IN FAVOUR OF AND AGAINST ABORTION

The most popular arguments in support of abortion are rape, incest and a deformed child. There is a great deal of public sympathy in support of abortion for the above reasons. However, research shows that most of the abortion that takes place is due to socio-economic reasons. Abortion for socio-economic reasons received the lowest rate of approval by those who were interviewed (especially amongst the conservative and the elderly). They felt that people should act more responsibly, since there was a variety of ways of preventing pregnancy.

However, in addition to the above reasons in support of and against abortion, people have resorted to other arguments, some seem technical, others philosophical. Some maintain that some contraceptions are abortifacient, therefore they argued that although contraceptions were used to prevent pregnancy, in its more scientific analysis contraceptions were in fact causing abortions.

Garrett Hardin, an ardent proponent of abortion, has argued that nothing of great value is destroyed. He compares the genetic information contained in the fertilised ovum to a set of blueprints for a structure. By analogy he argues that the destruction of the zygote is no more destruction of a human being than the destruction of blueprints for a fifty thousand dollar house. He admits only to two deficiencies in the analogy. One that the DNA of the first cell was replicated in every cell of the body. But to him this is an insignificant fact since hundreds of DNAs are destroyed when one is brushing the teeth (Hardin 1968 (a) : 250). However the difference between the fertilized ovum and the blueprint is that the former is alive and the latter is not. The fertilized ovum is in active interchange with its environment in the developmental process, the blueprints have no such dynamism. The fertilized ovum does not contain a model of the articulated structure as if there were in two dimensional prototypes of all the parts and organs of the body. Blueprints do not contain such a model. For this reason the blueprints in no sense become part of the house; they remain outside it. The fertilized ovum, however, is in vital continuity with the developed individual. A human being grows while a house is built (Grisez 1972 : 276). It is strange that Hardin, a biologist does not observe this difference. What is aborted even by the prevention of implantation is not a fertilized ovum but an already developing individual. The conclusion that

Hardin is really interested in is that the fertilized ovum should not be regarded as a person, with a right to life. However, he does not say this implicity, but uses a rather confused analogy.

According to Ashley Montagu life begins, not at birth, but at conception. This means that a developing child is alive not only in the sense that he is composed of living tissues, but also in the sense that from the moment of his conception, "things happen to him" (Grisez 1972 : 277). Furthermore, when things happen to him even though he may be only two weeks' old, and he looks more like a creature from another world than a human being, and his birth date is eight and a half months in the future he reacts. Inspite of his newness and his appearance, he is a living, striving human being from the very beginning.

However, when an opponent of abortion cites this book (a book published for pregnant women by Montagu), Montagu responds that the embryo, foetus and ıewborn of the human species, in point of fact, do not really become functioning ıuman until humanised in the human socialization process. Humanity is an .chievement not an endowment.

Aontagu declared that he favoured abortion whenever the child's "fulfillment as a ıealthy human being" would be in any way "menaced" or would in any way "menace" he mother's health or society's at large. Obviously, this criterion of personality ıpens the door to infanticide as well as to abortion. This also implies that those vho regard themselves as humanized and socialized would be justified in doing ıway with any group that they did not consider "functionally human" if the existence

of that group menaced society or if its own "fulfillment" were menaced. But if any degree of humanization, whatever is to be counted as sufficient to constitute a person, then the foetus already is a person for Montagu himself shows in his book such factors as a pregnant mother's emotional states and her work schedule do influence the temperament and behaviour patterns of the child. Even before birth a human being is never an individual isolated from the patterns of culture. Because the mind and body are not distinct entities, but only aspects of a unified human being, socialization is a psychosomatic process. Because the embryo develops an interaction with the maternal organism socialization has its beginnings in the most fundamental modes of biological communication.

Some might argue that although socialization begins before birth the process is not completed until subtler forms of communication such as language, can have their effect. Undoubtedly, it is true that "functional humanity" is not completely attained before birth. But in referring to it as an "achievement not an endowment", Montagu suggests what is in fact false - namely, that at some point socialization is complete (Grisez 1972 : 278). In truth "functional humanity" is always more or less unachieved. One goes through life trying to become what one may be, yet even one's whole life together falls short of what it might have been. A single lifetime is not sufficient to achieve what one sets out to achieve, therefore in Hindu philosophy there is this concept of rebirth or reincarnation whereby an individual is given a chance to achieve his goals and this achievement is closely tied up with the law of *karma* and *dharma*. Human life is a process and not a product.

To reason as Montagu does implies that human development is like the construction of an automobile. It becomes an automobile only at the end of the production line when someone can actually drive it. But a human being has a variety of abilities, some of which are lost as life passes. Grisez says that one shoud not romanticize childhood to the extent of supposing that the best years of one's life is the earliest one, but one should not romanticize the "functional humanity" which is achieved by "socialization" so much as to deprive infancy and even life before birth of all human quality (Grisez 1972 : 278 - 279).

Montagu, an anthropologist, and Hardin, a biologist, have flaws in their analogies. The potentiality of life is not fulfilled by an extrinsic agent bringing together already existing components, but by self-actuation. Both Montagu and Hardin look upon the unborn as not persons, but mere objects. Hindus look upon the foetus as a person in the making.

3.4.4 ABORTION: LEGAL AND MEDICAL IMPLICATIONS (THE SOUTH AFRICAN VIEW)

Abortion may be procured by a medical practitioner only for the following reasons:

1. Where the continued pregnancy endangers the life of the woman.
2. Where the continued pregnancy constitutes a serious threat to the woman's physical health
3. Where the continued pregnancy constitutes a serious threat to the woman's mental health, and is of such a nature as to create the danger of permanent

damage to her mental health, and the abortion is necessary to ensure her mental health.

4. Where there exists a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will be irreparably seriously handicapped.
5. Where the foetus was conceived in consequence of rape.
6. Where the foetus was conceived in incest (Strauss 1984 : 227).

An abortion not falling within these provisions, constitutes a criminal offence and is punishable by a fine not exceeding R5000 and/or imprisonment not exceeding five years.

What is the legal position of a doctor who performs a hysterectomy on a pregnant woman and destroys the foetus in the process? If the doctor knew that the woman was pregnant and performed the operation in circumstances where there was no urgency, without complying with the provisions of the Act, the doctor may be found guilty under the Act. In performing the operation the doctor indirectly destroyed the foetus. Even if one of the six legal indications were present, the pregnancy may not be terminated before the certification requirements in terms of the Act have been met. If the doctor had no idea that the woman was pregnant and did not forsee that possibility, he cannot be found guilty of the crime. Intent to terminate a pregnancy by killing the foetus is an element of the crime. A **bona fide** but mistaken belief that the accused was lawfully entitled to procure an abortion would constitute a defence to the charge, whether the mistake was for fact or law.

A difficult problem may arise where it is established that a woman is pregnant with twins and medical tests indicate that one of the foetuses is decidedly deformed or defective to the extent that it may lawfully be aborted by virtue of the fourth indication mentioned above (or earlier). Its abortion will, however expose the other foetus to the risk of also being killed. The doctor would not incur liability for the death of the healthy foetus, provided he has complied with the certification requirements in respect of termination of the life of the defective foetus, and has exercised reasonable care in endeavouring not to harm the healthy foetus. (Strauss 1991 : 208 - 209).

One of the first reported cases decided under the Act was State v Kruger (1976 (3) SA 290 (0) in (Strauss 1991 : 209). The accused was convicted by a regional magistrate on a number of charges of abortion, attempted abortion, statutory "pimping" and rape. It appeared that the accused had recklessly used an enema apparatus, and in some cases a car wheel pump fitted with a home-made nozzle to inject an irritating reed fluid into the wombs of pregnant women. He charged fees of R150 or more per "case". Some of his "patients" addressed him as "Doctor".

On appeal, the question arose whether the common-law crime of abortion still existed or had been substituted by the Abortion Act. If the common-law offence still existed, the court could in the imposition of punishment merely be guided by the penalities prescribed in the Act; if the Act substituted the common law offence, however, the court was bound to give effect to the prescribed penalities. Mr. Justice Erasmus held that the Act had substituted the common law offence. It was significant, the judge observed, that the penalty clause of the Act also referred to

persons other than medical practitioners. He further ruled that for the purposes of a conviction in terms of the Act it was sufficient if there was evidence from which it could be inferred that the foetus was living, irrespective of how long the woman had been pregnant. Even where the product of conception is medically still known as an embryo, it consistutes a foetus for the purposes of the Act.

It does not mean that the common law defence of necessity in life and death emergencies was abolished because the Act now states that abortion may be procured only in the circumstances described in section 3, i.e. the six indications outlined earlier.

State vs Collop (1979 (4)).
In an appeal against convictions on four counts of contravening S2 of Act 2 of 1975, and sentence six months' imprisonment on each, the court confirmed the conviction and sentence on one count as it was satisfied on the medical evidence that the foetus concerned was a live foetus, but allowed the appeal on the other counts, as the court was not satisfied that an admission by the appellant that she had interfered with the pregnancies in such counts so that the pregnancies were terminated clearly included an admission that the foetuses aborted were living at the time of the abortion (Barnett et al 1979 (4) : 381).

All the laws regarding abortion may be subject to alteration in the new South Africa.

3.4.5 THE ADVANTAGES OF LEGALIZING ABORTION

The number of illegal abortions in the country would be reduced. This had implications for maternal health and would reduce the pressure on medical resources required for treating complications arising from illegal abortions.

The provision of legal abortions would make it possible for women to have access to medically safe and painless procedures by trained medical personnel in clinical settings.

Legal abortions provided a back up for contraceptive failure or omission to use contraception. The availability of legal abortions strengthened the credibility of contraceptive protection and promoted reinforced or initiated contraceptive practice, which ultimately reduced the need for abortions. Legal abortion proved to be safe with less risk and had been preferred to illegal abortions. Legalised abortions had advantages in terminating unwanted and or illegitimate pregnancies in high risk groups, such as adolescents. This in turn had social implications for instance in preventing the disruption of school and college careers, undesirable forced marriages and even suicides.

Abortion could help women avoid three other types of high risk pregnancy should these women become pregnant through lack of contraception or failure of a method: pregnancies after the age of thirty five, pregnancies after four or more children, and pregnancies that were spaced less than two years apart.

The psychological consequences of abortion were determined primarily by the circumstances affecting the availability of abortion. Where abortions were illegal, perceived as immoral, unsafe or otherwise stigmatized abortion might have a negative impact. If abortion was offered legally it would be more likely that the abortion experience would be neutral or even positive.

By making legal abortion services available through a family planning programme to all who needed them, legalised abortion had an equalizing function. Where abortion was illegal, the poor often had no recourse except to terminate a pregnancy themselves or had to bear an unwanted child. Affluent women could afford to travel elsewhere to obtain a legal abortion. Where abortion was legal and available, facilities were accessible and standards were set by the government, it was the poor who had benefited the most.

Legalised abortion and accessible abortion services enabled all women, but especially the poor, to avert a substantial number of unwanted births allowing them to maintain whatever family size they deemed economically and emotionally viable.

Legal abortion had an important function as a fertility control method, especially in backward areas and in the intervening period of diffusion of family planning norms and the acceptance of modern contraceptives. The legal abortion experience presented the opportunity for post-abortal contraceptive instruction and service. This view was expressed by Ferreira (1985 : 15) and was supported by Hindu lawyers who were interviewed. On the other hand Ferreira's views were criticized very

strongly by conservative Hindus. Since contraceptives are available so easily and freely people should act more responsibly. If abortion was legalized, then there would be mass-scale abortions and a total disrespect for life.

3.4.6 DISADVANTAGES OF LEGALIZING ABORTION

The government legalisators, policy makers and the promoters of family planning programmes that provided abortions were likely to be targets for criticism from anti-abortion interest and conflict groups and campaigners.

Opposition may be expected from churches and other religious organizations.

If legalized abortions were justified on the grounds of achieving demographic goals such legalised abortions could be politicized.

Where abortions were to be provided through the family planning programme, the mobilization of funds for the provision of services and establishment of facilities to meet the demand for legal abortions would be costly and problematic. Not only will it result in a heavy demand on medical services and resources but anti-abortion activists might openly attack the channelling of medical resources to fund abortions.

Medical personnel might be reluctant to participate in an abortion service, as might administrators of medical institutions be to allow their facilities to be used for abortion. Medical doctors who were interviewed said that they would not perform abortions if it was done for social reasons.

3.4.7 ABORTION AND THE NEW SOUTH AFRICA

Safe abortion on demand will probably not be a right in the new South Africa. The main political parties, still dominated by men, either refuse "to stick their necks out" on the issue - or condemn abortion outright (Daily News 15/5/92).

The African National Congress Women's League, regarded as one of the most progressive women's organisations, is not prepared to support the liberalisation of abortion laws. However, some of the women support abortion strongly. They feel that women must be given a free choice. They also feel that facilities must be provided for clinical abortions (Agenda 17/4/94).

The Democratic Party spokeswoman, Caroline Knott, said abortion was a "highly emotive and religious issue" of which everybody has a personal view.

The Inkatha Freedom Party's response to abortion is that the matter has not been discussed on central committee level.

The government opposes changes to the present legislation and the Conservative Party believes abortion is a sin. The Conservative Party spokesman, Chris van der Heever, said that his party was Christian and nationalist and "absolutely against abortion".

The Pan African Congress believes the high occurrence of backstreet abortions means legislation should be reviewed. The Pan African Congress secretary of

health Saman Silva said that their organisation is very concerned about the complications of backstreet abortions. The legislation should be replaced by new legislation that will have to reflect a balance between the moral value system of the historically indigenous people and the hard, clinical facts of backstreet abortions".

Azanian People's Organisation supported abortion on demand and criticised other political parties for their lack of interest in women's reproductive freedom. The president of the women's organisation (Azapo) said: "Men must stop deciding for us. We have to come out in support of abortion. If we don't, we are not helping the very people we are trying to represent. Backstreet abortion and women struggling to cope with unwanted children affect the day to day lives of women".

In private, many politicians support the liberalisation of abortion laws.

Even a National Party president's councillor, Adrienne Koch said that she supported the right of women to abortion on demand before the 10th week of pregnancy.

The Government of National Unity will debate the issue of abortion (Daily News 15/5/92).

Chapter Four deals with contemporary Hindu views on euthanasia, suicide and abortion in the Durban area.

CHAPTER FOUR

CONTEMPORARY CONTEXT

4.1 INTRODUCTION

The views of the Durban Hindus (who were interviewed) were many and varied according to age, sex and occupation. What was also interesting to note was that people of the same age and sex had different views. Views also varied according to one's values in life and view of life itself. Therefore, it would be wrong to say that people of a certain age group had a particular view, or that all females thought alike and all males did likewise.

According to many the religious views or precepts worked in theory only. One had to take cognizance of utilitarian and practical aspects. Although many were aware of the religious principles and beliefs, circumstances alone determined the course of action. Financial and economic considerations also played an important role.

The ethics and values surrounding the study of this phenomenon was determined greatly by financial considerations. Decisions concerning life and death could not be made on religious beliefs and values alone. Utilitarian and practical considerations overruled religious belief and values of individuals concerned. Old religious beliefs were given new interpretations because of the demands of the circumstances in which people found themselves: the theory of *karma* and *dharma* have been given new interpretations because of changing circumstances.

4.2. EUTHANASIA

Almost all the views expressed were in support of euthanasia in some form or another. The debate surrounding euthanasia was based on the question of whether one was "prolonging life" or "prolonging death".

4.2.1 TYPES OF EUTHANASIA

4.2.1.1 PASSIVE EUTHANASIA

This form of euthanasia was supported by almost everyone, once the hopelessness of the situation was established. Nowhere is it stated in the scriptures that a person be kept alive by artificial means nor is it stated in the Hippocratic Oath which has been discussed at length in the preceding Chapter. These were neither known of nor available at that time. Those that held on to religious beliefs stated that one should "let nature take its course". One respondent felt that nature should not be interfered with too much.

The most important person in the euthanasia debate was the patient. His wishes and requests had to be respected at all times. Obviously, the patient concerned had to be in a conscious state and mentally sound in order to make his wishes and requests known to the family and the physician concerned. If the patient was well aware that his condition was such that no amount of medication or treatment would benefit him then he had every right to ask for the cessation of treatment and medication. All respondents agreed that the patient had the final say.

However, some did feel that if the patient had to be kept alive by artificial means then one should do so. They felt that if life support systems were available they should be used to keep patients alive. One should do one's very best to keep patients alive, according to some views. To them this was an act of *dharma*, righteousness or duty. Yet others felt that this could not be performed due to the lack of finances. Here one can see clearly how the financial factor determined one's duty, value and ethics in the euthanasia debate.

4.2.1.2 ACTIVE EUTHANASIA

One of the most important tenets of the Hindu religion is the Law of *Karma*. "As you sow, so shall you reap". The application of this law is beyond manipulation, intervention or corruptibility. The wrong doer will definitely be punished for his wrong deeds. Nobody can escape the penal provisions of the law. Its application allowed neither escape nor exception. Similarly a pious man performing good actions would according to the law be rewarded for his good deeds. Each and every good or bad action would have equal and appropriate reaction and would invariably rebound on the doer attracting just reward or punishment.

Therefore, according to this law physical suffering was the result of some past deed or action. As stated earlier there was no escape from this. If one was to apply the Law of *Karma* then obviously there was no place for active euthanasia in the traditional Hindu views. By administering active euthanasia on a person who was going through a lot of pain and suffering, one was interfering with the Law of *Karma*, one was hampering the Law of *Karma* from doing its work and relieving the

person from this state. According to the theory of reincarnation the person concerned would come back in the next birth and undergo the same suffering. Spiritually more harm was caused by administering active euthanasia, one was not giving the individual a chance to work out his or her *karma*. If this was done repeatedly then the individual concerned made no progress in his spiritual development. This was the view expressed by the older generation and priests in particular.

However, other Hindu philosophers and academics thought differently. They felt that the end result of passive euthanasia and active euthanasia was the same so why not choose the latter. After all, they argued that euthanasia was supposed to mean a quick and painless death. Active euthanasia, in their opinion, was more in keeping with the definition of euthanasia. In passive euthanasia the patient lingered on for days if not months in suffering. Therefore, passive euthanasia served no purpose at all.

Yet others gave *karma* a new interpretation and supported active euthanasia. The person who administered active euthanasia, the lethal dose, or injection was according to those believers the agents of the Lord who were chosen to perform active euthanasia and thereby put an end to suffering. Any action that one did at any time or moment in the present tense would give its fruit immediately and on the spot. It was called *kriyaman karma*. In this case it was releasing the soul from a body that was diseased or handicapped by some illness, and could not perform action. According to the Law of *Karma* action was necessary all the time. It was through action that the soul evolved or devolved. Any action was bound to have

reaction, any cause was bound to have its effect and any effort was bound to result into fixed destiny. This was the immutable Law of *Karma*. Human beings are rational beings and they act according to their rationality. According to man's rationality, putting an end to suffering was a *dharmic* act. Hence *karma* and *dharma* the two most fundamental beliefs of Hinduism has been given a new interpretation. This view is shared by medical doctors and younger priests.

The medical profession wholeheartedly supported active euthanasia, while some said that they would give the lethal injection if a situation arose and if it was legally permissible, others who favoured active euthanasia were in doubt whether they would be able to actually administer the lethal dose. Active euthanasia seemed to have great support in theory, but when it came to the actual administration of the lethal dose there was a great deal of doubt and controversy as to who should really administer or perform active euthanasia.

Those who supported active euthanasia also felt the need for the Living Will. Those in the medical and legal professions felt that every individual should consider the "Living Will". Since no one was sure as to what was going to happen to a person (in cases of accidents, terminal illness) one should leave behind a will, so that it would be easy for those taking care of such inmates to make a decision when the time arose.

Some also felt that even if there were a proper institution to decide for the patient, corruption and abuse would somehow creep in. Even those patients who could decide for themselves would probably opt for active euthanasia even if they did not

want to. They could feel that they were a burden to their families, hospital and society in general. Some patients had a tremendous threshold for suffering. They would prefer to carry on suffering than to die. To some life was sacred irrespective of the quality. How often does one hear, "as long as there is life, there is hope".

Yet there were others, housewives, in particular, who felt that active euthanasia was just not acceptable. They argued that it was a wrongful act, *adharmic*, to take another person's life irrespective of the circumstances. Human beings should not play God; death and dying is the work of the Lord, and it should be left in God's care. They should only pray and beg God to take away a life that was not worth living. One should not be involved actively in taking away another's life. Those who hold this view, would never do it, neither would they expect their family or physician to do it. Rather they would let nature take its course. A sense of guilt deterred them from participating or supporting any form of active euthanasia.

The debate surrounding active euthanasia was too intense and consensus could not be reached. No conclusive answer could be arrived at due to the complexity of the issue and the debate surrounding it.

4.2.2 ORDINARY VERSUS EXTRAORDINARY MEANS

It was an accepted rule that a doctor had the duty to administer ordinary means to preserve life, but there was no duty to administer extraordinary means. This was the view of the medical profession. According to other views, the doctor is a human being and can only do so much, and that no one can expect him to perform any

miracles. However, ordinary and extraordinary means were terms that were relative. Medicines and treatments should be such that these could be obtained without excessive expense, pain and inconvenience. The administration of such medicines and treatments should bring about some positive results in the patient's condition and pave the way to the patient becoming a normal human being capable of looking after him or herself. If this could be established then treatment could continue. This was the general view.

One respondent interviewed felt that extraordinary means if available should be used to assist the patient concerned. To this respondent life was so sacred that it had to be preserved if the possibility was there. Even if there was a very slim chance of recovery one ought not to give up. As long as there is life there is hope.

Others felt that the emotional and financial cost to the family be considered. Sometimes the emotional strain on the family was greater than the strain on the patient himself. Especially if the patient was comatose no emotions were expressed. At times family consideration was greater than the consideration for the patient.

4.2.3 WHO HAS THE RIGHT TO DECIDE?

There was general agreement that the patient had the right to decide provided that his mental faculties allowed it. If the patient concerned was unable to decide then obviously the next of kin (mother, father, husband, wife) or some other relative or friend together with the institution concerned had to make the decision.

As mentioned in the introduction of this chapter, financial considerations were an important factor in decision making. Many felt that one had to be practical and utilitarian. "It would be foolish to spend one's life savings on a hopeless case". Once it had been established that the patient was going to die within a few months, weeks or days, then it would be unwise to keep the patient alive, especially if it was a financial burden on the family to keep such a patient alive. The money spent on such a patient could be used profitably by some other member of the family. Wise decision making was of paramount importance. Sometimes one was left with no choice, so one either resorted to active or passive euthanasia. One had to experience the situation in order to appreciate the choice of the decision that had to be made. It was not an easy task for the person who had to make the decision finally.

4.2.4 KILLING AND LETTING DIE

Although the end result of "killing" and "letting die" was the same many would prefer the latter. Many were anti-killing. Although many desired the result, that was death (for terminal patients), they felt that death should be the responsibility of God. They would rather pray and ask God to end the suffering. Therefore, many Hindu's performed the *Gaudhan* prayer for very ill patients (see end notes). Many felt that their conscience would not allow them to terminate a life, irrespective of the quality of that life. Some medical doctors felt that they would terminate such suffering if the need arose, provided they were permitted to do so.

4.2.5 REFUSAL OF MEDICAL TREATMENT

The patient had a right to refuse medical treatment. No doctor, family or legal advisor could force a patient to undergo medical treatment if he did not want to. This could lead to the patient's death. Sometimes doctors were of the opinion that they committed euthanasia by omitting to act. However, this opinion had no legal basis: the doctor was not even allowed to treat. Sometimes the patient was put under pressure, even denied presence in the hospital if the patient refused treatment. According to the views of the medical profession such pressures were against the law. The patient had the right to refuse and after refusing was entitled to normal care. Because of the contractual relationship between the doctor, hospital and patient it would be a breach of contract or it would also be considered criminal in some countries if normal medical and nursing care should be withdrawn. Because of civil and criminal liability the doctor is entitled to ask from the patient a written statement containing his refusal of treatment.

4.2.6 EUTHANASIA OF DEFECTIVE NEWBORNS

The general view was that all parents should be responsible for the care and upkeep of all infants irrespective of their condition. Like any infant the deformed child was a person with a right to life, a right that was the basis of one's social order and legal system. Medical doctors and some parents did state that if the defect was such that it did not have any of its vital organs and as a result its survival became an impossibility, then such infants should be left to die at birth. The decision so made must be to the benefit of the infant in question. Other infants with minor defects

had a right to life, to education and to medical treatment, like all other normal children. If such children required expensive surgery then they should not be denied this. Mothers in particular were very sympathetic towards children with defects. Some felt that parents were responsible for defects in their children. Mothers who had previously taken birth control pills had caused defects in their children. This was proved in the case of thalidomide babies.

Those who were more familiar with Hindu religion and philosophy felt that defects in babies were the result of *karma*. These children had to work out their *karmas*; therefore, they should be allowed to live and develop like everybody else. Those who were not familiar with Hindu philosophy argued that the other children were being deprived of time because parents spent more time and paid more attention to the abnormal child. Yet others felt that these children had a role to play in society. Handicapped children were no longer regarded handicapped, because of the different opportunities presented to them by various organisations, so that they too could contribute to society.

Should such infants be starved to death? (Those with very severe defects). The answer was definitely "no". Many and especially Hindu doctors said that it is criminal to do so. These infants should be fed like all other infants and made comfortable but should not be given any specialized treatment. It is cruel and illegal to starve someone to death, irrespective of the condition.

4.2.7 SHOULD EUTHANASIA BE LEGALISED?

There were both pros and cons to this question. If euthanasia were to be legalised, people were afraid that it could lead to maladministration and abuse. Others felt that if it was conducted on the recommendation of a board, as stated earlier, and in Chapter three in particular, then there should be no loophole for abuse. The medical profession gave wholehearted support for the legalization of euthanasia. Perhaps they know better, because of the suffering they witness daily in their lives.

4.3 SUICIDE

Very sympathetic views were expressed towards those who had committed suicide. Some felt that those who had committed suicide might have had deep psychological problems. According to them no person in his proper frame of mind would want to commit suicide. Survival was not an easy task in this day and age. Not all people can cope with stress. Because of demands of society, family life and work situations people live very stressful lives. Some are able to cope while others cannot. Those that committed suicide did so as a form of escape. Very often young men and women committed suicide, as a result of disappointment and being let down by their loved ones. Sometimes a person might be ashamed of something that he has done, and cannot face society. While some regarded suicide as an act of bravery and was praiseworthy, others regarded it as cowardice and condemnatory.

According to some Hindu theologians suicide is looked upon as a crime. One has to face realities of life. One could not escape it by committing suicide. It is wrong to

commit suicide. The consequences of committing suicide were much more serious than the problems of life itself. According to one belief the person who committed suicide did so for seven generations. Hence, that soul would not be able to evolve spiritually. The soul of those who committed suicide did not find a rightful abode. The astral body roamed about and caused havoc. It became a harmful spirit. People with evil intentions used these spirits to harm innocent people.

The soul was supposed to leave the body only when the Lord willed it. If the soul left the body prematurely, then this soul roamed about causing mischief. Only when the time was proper did the soul go to its rightful abode. This was the view of some of the Hindus.

4.3.1 DISPOSAL OF THE BODY

According to early Hindu scriptures, the corpse of those who had committed suicide was to be buried and not cremated (Dehejia 1979 : 72 - 73; Pandey 1969 : 273). This view has changed. Personal observation showed that those who had committed suicide were also accorded proper cremation rites and post funeral ceremonies. The argument used was that one could not discriminate against the dead.

4.3.2 CONFLICTING VIEWS

According to some views suicide is wrong because it is against the Law of *Karma*. According to the Law of *Karma* a person who had committed suicide to escape the sufferings and the ills of the world was destined to take birth and start from where

he had left off. According to Hindu philosophy there is no escape from suffering, one will come back over and over (*samsara*) again to fulfill that suffering. Suffering was looked upon as a task that had to be completed at all costs. Therefore, it is believed that one should try not to escape it. Suffering is essential to the soul, if the soul is to evolve.

Suicide is permissible in certain circumstances only. A person who had committed *sati* was praiseworthy. The soul of such a person was liberated. Suicide in the form of voluntary euthanasia is acceptable in Hinduism. According to one Hindu philosopher (a Senior Lecturer in Hindu Philosophy) suicide should be committed in the last stage of a person's life. A *sannyasi* usually committed suicide through fasting and meditating. His body was so weakened through the lack of food and water that he gradually passed away. It was a very peaceful passing away and not a bloody or violent one as is seen in contemporary times. However, it is criminal to assist a person commit suicide. In suicide pacts if the one survived accidentally then he or she became liable for the other's death.

4.3.3 LIFE IS A GIFT FROM GOD

Many argued that life is a gift from God and that, therefore, since God had given it only God might take it away. To kill oneself is therefore, to act against God's purposes for human life and thus to violate the meaning of human life. The argument that suicide was always wrong rested on the general duty to preserve human life. The prohibition of suicide was derivative from this general duty. One

could claim that the sanctity of human life was such that it should never be directly taken whether by self or by others. Suicide is wrong because it violates the sanctity of human life.

4.4 ABORTION

One view saw the unborn child possessing inviolable rights including the right to life from the moment life began in the womb. The other view saw the unborn child as less than human often as merely "a part of the mother's body", whose rights necessarily yielded to the convenience of its parents and society at large. These contemporary attitudes on taking foetal life were organic developments of two fundamentally different legal mentalities, the ancient and the modern. In the abortion debate it was not merely two individual's facing each other; it was a confrontation between the world views of two fairly distinct cultures, one traditional and dated, the other new and untested. The debate now centred on a practical legal question, should existing laws against abortion be relaxed to make abortions easier to obtain? Many views expressed showed that there were no clear cut answers. While they supported abortion on certain grounds, they were against abortion in other instances. In other words, abortion had both advantages and disadvantages. Females and the older generations expressed views on abortion that highlighted its disadvantages.

4.4.1 WHEN DOES LIFE BEGIN?

Here the views were varied although many felt that life began at conception, others felt that it was at birth, or at quickening. Yet there were many others, especially the young, who were not sure exactly when life began or at what stage of the development of the foetus did the soul enter it.

4.4.2 PRO-ABORTION OR LIBERAL VIEWS

Those that supported abortion felt that it would have several advantages. Firstly the number of unwanted children in the world would be lessened. This would be an advantage to the rest of the children, because there would be more resources at hand. Hence the quality of life would improve since these children would be exposed to a better education. The mother herself would not be saddled with unwanted children. If she had fewer children then she would be able to give them more of her time. She would also be able to provide them with better resources. The mother, the children and society at large would benefit if abortion were permissible. Many also felt that the mother had the right to decide, since the foetus was totally dependent on her for survival. The foetus was attached to the mother's body, and therefore, one could say that it was a part of the mother's body. One had sole rights over one's body. It would be unfair for someone else to make decisions for the mother. Although it might seem wrong in the eyes of others, it was the mother's decision that one had to respect.

4.4.3 AT WHAT STAGE OF THE DEVELOPMENT OF THE FOETUS IS ABORTION PERMISSIBLE?

If abortion has to be performed, then it should be done in the first trimester of pregnancy. Medical opinion is that it should be done within six weeks of pregnancy and not later than that. Some said that it should be done before quickening. However, the cut off period was six weeks. There was a general consensus amongst Hindu doctors on this cut off period.

4.4.4 GROUNDS FOR GRANTING ABORTION

As stated in chapter three abortion should take place if the pregnancy is as a result of rape or incest, if the pregnancy is a threat to the mother's physical or mental health and if the foetus is defective. However, there were counter arguments. One could have been raped because of one's *karma*. All actions are as a result of accumulated *karma*. The foetus that was being carried by the rape victim might have been a perfectly healthy foetus. Why should this foetus be aborted? The foetus cannot be blamed. If it was in the person's *karma* to bear and bring up this child then she must do so. Probably she might owe it to this foetus or child to be. She could not escape this. She may be destined to be a mother in this way. Others felt that it was her *karma* to realise that this foetus would remind her constantly of the rape incident and it would also cause her social embarrassment; therefore, she must abort. She was in the position to realise the consequences of such birth.

Some felt that even if the pregnancy was detrimental to the mother's physical and mental condition she should still have the baby. This was taking the Law of *Karma* in all its seriousness. If the mother had to die because of the pregnancy, then this was also in keeping with *karmic* action. Even if the mother had to die in child birth, and the child survived, then it was this child's *karma* to live without a mother. It works both ways, the child and the mother's *karma* interact.

A mother carrying a defective foetus should allow this foetus to be born. Defect is as a result of *karma*. By aborting, one did not give the child a chance to work out its *karma*. The soul of such a foetus would stagnate. Therefore, if one wanted the soul to evolve, then one should allow this infant to take birth. This was a view shared by priests and people familiar with Hindu philosophy. Others argued that mothers and siblings of such infants also suffered. This was true and it was a result of collective *karma*. The entire family shared this suffering and one could not avoid this.

However, personal observation and local newspaper articles showed that abortions took place (backstreet) more because of social reasons than reasons listed above. Teenage abortions showed that it was done without the knowledge and consent of parents. Many feared that their careers would be in jeopardy and sought illegal backstreet abortions. Many have died because of this. Many were embarrassed and felt that they brought disgrace upon themselves and their families. Therefore, most of the abortions that took place were for social reasons. According to newspaper articles it was pathetic to note the manner in which the foetuses were disposed.

Some mothers with teenage daughters did not approve of abortion. If the mother was incapable of looking after the child (finance, study, careers) then adoption was the solution to unwanted babies. This was the advice that young Hindu mothers would give to their teenage daughters. They would also respect the daughter's decision if they disapproved of abortion. However, mothers were willing to counsel their children regarding sex and abortion.

Those in the medical profession felt that those who were seeking abortion needed counselling. Some people in the medical profession and especially the young support social abortions. They are not prepared to have unwanted children. Sometimes this was in conflict with their wives' views.

It was found that once a defect in the foetus was detected through scans and amniocentesis, most of the young mothers preferred to abort. They were not prepared to go through the suffering with the child. It would be too much of a burden on them. Even those mothers who could not bear children were not prepared to have an abnormal child. The fact that the child with a defect was a child with "life" some mothers did not take this into consideration.

Miscarriage was nature's way of aborting the defective foetus. The view of one doctor was "why not help nature along". He felt that it was a natural thing to abort a defective foetus.

4.4.5 REJECTION OF ABORTION

The traditional view is that there should be no abortion for anyone at anytime irrespective of the circumstances. Life is too sacred to be terminated at any stage of its development. Life, despite its quality is better than no life at all.

Chapter Five analyses and interprets the contemporary views of the Durban Hindus and examines to what extent their views are influenced by scriptural injunctions and South African legal and medical ethics. It also shows to what extent their views have been re-interpreted and modified to suit changing times and circumstances.

END NOTES

GAUDHAN

Gaudhan translated literally means giving a cow as a gift. It is the most important of the pre-death rituals amongst the Hindi-speaking Hindus. First mentioned in the *Sutra* period its origins lie in the myth of the soul having to cross the *Vaitarani River.* The river itself is symbolic of suffering. *Gaudhan* is made to assist the critically ill overcome their suffering either to recover or to pass away peacefully. It was made to a *Brahman* as he was considered the intermediary between the living and the supernatural. The cow given to the *Brahman* would therefore reach the soul (of the deceased), assist it in crossing *Vaitarani* (a river of pus and blood) and guide it to *Yama* (God of death). This ceremony could also be considered as an act of charity since charity is considered one way of cleansing one of sin. But since *gaudhan* was made at other *samskaras* (the *Vivaha samskara*) it could also be considered as charity to the bridegroom (Pandey 1969 : 212 - 213). These days money is used in the place of a cow, which serves the same purpose, charity or payment.

CHAPTER FIVE

INTERPRETIVE CONTEXT

5.1 EUTHANASIA

The problem of extreme old age and severe illness or terminal disease have plagued the minds of people over many centuries. The manner in which people have dealt with the problem have varied from age to age, from culture to culture and from person to person. Religion has also played a role in finding a solution to the problem. The problem today becomes even more complicated due to the advances in technology and the progress in medicine. The phenomenon euthanasia in the Classical Period was not as complicated as it is today. People in those days did not have very many alternatives or any alternative at all. Therefore, the phenomenon of euthanasia was really a phenomenon of suicide in the Classical Period and scripture makes reference more to suicide than to euthanasia.

However, the Hindu in the Durban area, with all the advances in high technology and scientific development is faced with serious dilemmas. Hindu scripture does not provide the answers. It merely provides guidelines and spells out certain consequences of such acts concerning euthanasia and suicide.

The Hindu in Durban does not live in a predominantly Hindu society, but exists side by side with the other religious groups. The life of all South Africans including the Durban Hindu (irrespective of their religious denomination) is governed by codes of

Roman Dutch Law. Religion is a personal issue and plays a very small role (or no role at all) concerning the life and death of another individual. Research has shown that decisions concerning such issues of life and death especially of other individuals is based on the law of the country and medical ethics.

Hindus in Durban have been born and brought up in a society that is predominantly Western. As a result Western values have made a tremendous impact on Hindu life-style. The Hindu principles of *karma* and *dharma*, have been re-interpreted to suit changing circumstances and situations. Research shows that situation ethics rather than religious teachings is the guiding factor in decision making regarding euthanasia.

5.1.1 ARGUMENTS FOR AND AGAINST EUTHANASIA

Research shows that arguments presented in favour of euthanasia is based not on religious beliefs, but on circumstances. The views expressed by Hindu lawyers and doctors and other academics were not different from those of Western scholars. The explanation is simple. These people have studied at institutions that operate according to Western standards. From childhood they have been trained along Western lines. Doctors are constantly updating their knowledge through British and American medical journals. Although Hindus practise their religion and perform certain rituals and *samskaras*, their outlook on matters concerning life and death are not stringently based on scripture and Hindu beliefs. Thus debates about the rightness or wrongness of mercy killing generate heated displays of emotion. Some consider it cruel deliberately to end the lives of relatively powerless individuals who

are dying that they tend to imagine that only people who are merciless like the prototype Nazi agent could engage and sanction such acts. At the same time there are others who find it so cruel to wait for death if a dying person is suffering that they tend to regard opponents of mercy killing as insensitive moral legalists, willing to be inhuman for the sake of obedience to absolute rules. Both the proponents and opponents of mercy killing think of themselves as merciful, but each finds it virtually impossible to think of the other as merciful. Each feels that he is doing the "right thing" without taking into consideration what the other feels.

5.1.2 LIFE NOT WORTH LIVING

Much sympathy was expressed in Classical India for euthanasia in the sense of "freedom to leave" by one suffering from an incurable disease or facing extreme old age. Accordingly, euthanasia, belonged to the category of self-willed death and was never formally viewed as mercy killing of another person. Once there was a formal public declaration of the intent to perform self-willed death, helping the person was allowed. The individual's choice and will-power to implement it was therefore, mandatory when euthanasia was accepted in the premodern Indian context. The phenomenon of euthanasia was intimately related to the larger categories of heroic and religious self-willed death which in turn were related to the yet broader context of violence and non violence in Indian society and religion. "Euthanasia was permissible only in the case of debilitating old age and terminal illness where the person concerned was not able to enjoy the pleasures of life" (Young, 1989 : 94 - 96). This is the argument used by proponents of euthanasia today. Modern Western supporters of euthanasia argue that euthanasia should be allowed when one is no

longer able to live with dignity and comfort and when the quality of life is intolerably undermined. This view was greatly supported by Hindu doctors who were interviewed in Durban. Perhaps they are in a better position than others to support this view, since they witness the suffering on a daily basis. Nobody knows the state or condition of the physical body better than a physician. One respondent (a medical doctor) felt that the decision concerning euthanasia should be left to the physician concerned. Most of the doctors who were interviewed felt strongly about the legalization of euthanasia. They criticised the lawmakers as people who had witnessed very little suffering and therefore, were not sympathetic to the supporters of euthanasia. The question that was of great concern was one of abuse. Most of the medical doctors agreed that it would definitely lead to abuse if euthanasia was not carried out in the proper manner. The decision was not to be made by a single individual. The family together with two or more physicians (outsiders) rather than the attending physician should assist in decision making, if the patient was mentally incapacitated or in a comatose state.

Although euthanasia was permitted in the Classical Period in India, the decision had to come from the individual concerned. He had to make a public declaration, that he no longer wished to live, and on those grounds outside help was permissible. However, there is no clarity with regard to persons who were not able to make a public declaration.

The Western view is that persons who want to end their lives should resort to suicide and not to euthanasia. This is supportive of individuals who are mentally and physically capable, have access to drugs (if crude method's are to be avoided)

and can act in such a way that no other person would appear to be in a position to have prevented it. This is rare for patients in hospitals. To be certain of success, suicide would be premature and in some cases the unnecessary result of mistaken self-diagnosis. There is a suggestion of a compromise by an amendment of the Suicide Act (American) to permit doctors to supply the sleeping pill, but not themselves administer it (Wilshaw, 1974 : 6). The impression the doctor gets here is that although one desires the end result that is death, one does not want to be legally or morally implicated in this act of killing. Although the physician might be willing to assist, he does not want to be the direct party to it. However, some of the Hindu doctors who were interviewed recommended active euthanasia. Some said that they would be able to implement active euthanasia themselves, while others recommended it, but were not sure whether they would be in a position to actually administer it. Some felt that it was a duty or a *dharmic* act to administer active euthanasia and thereby put an end to suffering. This view is in keeping with the Classical tradition in that euthanasia is a *dharmic* act; and therefore the person performing euthanasia should be free of guilt. Euthanasia is a positive act according to Hindu thinking (both past and present). Hindus largely influenced by Western views on the other hand, although they desire the end result think it immoral or criminal to actually perform the act of euthanasia.

Sometimes it becomes necessary to review and re-interpret the Hippocratic Oath, so that one acts in the best interest of the patient. A good doctor is aware of the distinction between prolonging life and prolonging death. According to some Hindu doctors who were interviewed certain doctors are practising a suppressed form of euthanasia. If this is so, it is without the firm knowledge of the patients' wishes.

This leaves very many thousands of sufferers in protracted stages of disintegration and distress, instead of assisting them to die peacefully.

Orthodox Hindus feel that these people (who are in extreme pain) must live out their natural lifespan. Suffering is the result of one's *karma*. If active euthanasia was performed on them, then these individuals would take birth again and fulfill that suffering. Since human life is not guaranteed in the next birth, they should not be deprived of working out their *karmas* in the present life. By performing active euthanasia, one may be putting an end to physical suffering, but spiritual progress is being hampered. To a Hindu spiritual progress is of utmost importance. Others have argued that the one who performs active euthanasia is the agent of the Lord. He is chosen by the Lord to put an end to that suffering. It is that individual's *karma*, that his suffering be only for that particular period. Hence the principles of *karma* and *dharma* have been re-interpreted. Religious principles have to be modified at times to suit the needs of society. The Hindu religion teaches that religion is dynamic and not static. If religious principles are not modified, then they become outmoded and outlived. In order for them to survive they have to undergo a process of change and modification. Hinduism has survived for many, many years because of its flexibility. This can be seen in scriptures, how the concept of life and death has been viewed in the different eras. Hinduism also teaches us that there are many paths to salvation.

The Hindu doctors who were interviewed said that euthanasia is not a matter of killing patients, the disease from which they are suffering does that. Death for such patients becomes a slow process, euthanasia merely hastens it. It is a matter of

advancing the inevitable end of a life which has become useless and burdensome. The person who performs euthanasia does so according to his or her own *dharmic* belief and act. The act becomes *dharmic* only in so far as it is done for the person concerned and for cosmology in general and not for any selfish motives. One of the reasons in the Classical Period for euthanasia was social order; society would not be able to shoulder the burden of providing for the extreme aged and the incurably diseased.

Supporters of voluntary euthanasia desire the merciful release to be effective before suffering has been prolonged. It should also be remembered that compassionate doctors too, share the sadness which surrounds the helpless case when further efforts are futile. Hence merciful doctors are placed in an unfair position. This is the view shared by Western scholars as well as the Hindu doctors who were interviewed. Due to newer techniques for prolonging the failing life of a dying patient without hope of restoring the person to a worthwhile existence, doctors are left with the heavy responsibility of decision on their course of action. The possibility of authentic knowledge of the patient's wishes should be available to the doctor. The liberty of an individual is of paramount importance. It implies complete freedom of action in so far as it does not interfere with the moral and civil rights of others. It embraces the right (within this framework) to direct one's own mode of life according to conscience, judgement and desire and should also enable one to determine that he shall not die in prolonged distress where it could be otherwise.

Others have argued that the services of doctors are welcome and necessary to the care of personal well-being, but it must be emphasised that every individual still remains the owner of his own person and may dispose of it at will. Hence it is indisputable that personal liberty justifies the moral right of a person to decide whether or not his death be gentle.

5.1.3 HOW CAN THE RIGHT TO CHOOSE TO DIE BE LEGALLY ESTABLISHED?

Most of the academics and Hindu scholars who were interviewed stated that they belonged to the South African Voluntary Euthanasia Society (SAVES). The Voluntary Euthanasia Proposal is that adults who wished to do so would sign a declaration setting out that in the event of an illness or affliction from which death is the only release, then the period of useless suffering and distress would be shortened by euthanasia. This type of declaration or will is also supported by Western scholars (Wilshaw, 1974 : 6).

The main parts in the declaration would read:-

"If I should at any time suffer from a physical illness or impairment of a severely distressing character reasonably thought in my case to be incurable and expected to cause me extreme suffering or render me incapable of **rational existence**, I request in advance the administration of euthanasia at a time or in circumstances to be indicated or specified by me or, if it is apparent that I have become incapable of giving directions at the discretion of a physician in charge of my case.

In the event of my suffering from any of the conditions specified above, I request that no active steps should be taken and in particular that no resuscitatory techniques should be used, to prolong my life or restore me to consciousness.".

The declaration would be witnessed by two persons of approved standing, testifying that the declarant knew its meaning. The declarant could cancel the declaration at any time simply by tearing it up or ordering its destruction. Unless revoked, the declaration would be valid throughout the life of the declarant as a will. Wilshaw says that the intention is that people would make their declarations while in normal health, and as a safeguard against impulsive active action, a month is suggested as a period for "second thoughts" before euthanasia could be applied (Wilshaw 1974 : 6). A consultant in addition to the doctor in charge of the patient would have to certify that recovery was hopeless before resorting to euthanasia. The form would normally be kept by the patient's doctor or other trusted person who would forward it to any hospital where the declarant became an in-patient. A duplicate declaration stated to be a duplicate and bearing the name and address of the holder of the original could be retained by the next of kin. Most of the people who were interviewed supported the "living will". Nobody wants to be a burden to their family or society at large. Even the very old people, plus or minus seventy year age group were not in support of life support systems. They felt that one was merely prolonging the agony and interfering with nature. While the younger generation supported active euthanasia, the older generation was against it. Here again they felt that one was interfering with nature. Suffering was the result of one's *karma*, and one could not escape that. The cessation of life was the work of God and not of

man. The Classical Period on the other hand supported active euthanasia, and their view of the phenomenon was the same as that of Western scholars and the younger generation of the Hindus in Durban.

5.1.3.1 PRESSURISATION

Some argued that if euthanasia was legalised, then people would feel pressured to support euthanasia. The old and the sick, even if they were against euthanasia, would probably give in to euthanasia, so as not to be a burden to family and society. A life worth nothing to society might be worth very much to the person whose life is in question.

The fear that it would be possible to persuade an old weak willed relative to sign a declaration in order to get him out of the way is without substance according to some proponents of euthanasia. In the first place there would be two impartial persons of recognised standing to ascertain and certify that no pressure is applied; these witnesses would be aware of the possibility of pressure and therefore, guard against it.

However, suppose the witnesses were careless or were deceived and the chronic but meek invalid did sign a declaration this would not bring instantaneous death. There is the factor of thirty days in which to keep up the enforced resolution. If the patient's condition does not justify euthanasia at that stage the doctor would say so; certainly he would not be able to get a consultant to concur to the contrary. Therefore, the pressurised meek would be in a stronger position than before and

would not be pressured by his hostile family (as well as in his own mind) for the doctor in charge does in fact remain in charge and would say, "No!" to any premature euthanasia. The only means of circumventing this safeguard would be collusion and corruption by the doctor, the consultant and the two witnesses of established standing. If the doctors were so minded, there are easier and less risky ways of achieving their end.

This is equally true of the chronic sick or senile who might feel they are becoming a burden to relatives or society and sign a declaration on that account. Euthanasia would only come their way to avoid unnecessary suffering in the last extremity; nevertheless, it would be a comfort to most people to know that their life would not be allowed to end in protracted anguish and distress.

For many this may seem to be a very sensible and democratic solution to the problem of euthanasia; where the answer comes from the individual himself in a legal manner. Other individuals are free from guilt, for they would not be performing an act of their own accord, but will be merely carrying out an instruction. This modern idea ties up very closely with the Classical view; there the individual concerned had made a public declaration that he did not wish to live any more. Outside assistance was also permissible then and will be permissible now if such a declaration had been made in writing. In the Classical Period, it was just a one man decision. In the modern period this declaration only comes into practice after the situation has been monitored carefully by the medical team; the chances of any corruption or malpractice is further lessened.

There does seem to be some consensus on euthanasia from the Classical to the Western view. Contemporary views also are very similar to the Classical and Western views. All ideas and views are being taken into consideration and common solutions are being formulated. Although the problem seems to be a very complex one, there seems to be a great deal of consensus on the phenomenon of euthanasia both from Eastern and Western viewpoints and also from those who share Eastern and Western views.

5.1.3.2 THE DANGER OF MISTAKEN DIAGNOSIS

Some people recount that they were at one time told that they had only a short time to live and are in fact living years later. Such predictions are rash and irresponsibly made in the early stages of an illness. It is well for the lay person to bear in mind the difference between being very seriously ill and actually dying. The former often recover, the latter never do. Euthanasia would only be considered when the patient was definitely fighting a losing battle.

The average doctor knows when a patient is dying. In those cases where euthanasia might be considered in accordance with the known wishes of the patient, the law would require that a specialist also be consulted. Such consultations could, no doubt, reduce the percentage of wrong diagnoses which otherwise occur. Indeed the opinion of the consultant might serve this to prolong a useful life rather than shorten it. The remote possibility of a mistake occurring in these circumstances is one that a declarant would be prepared to take. Man takes chances all the time.

It is also true that new cures are continually being discovered for conditions that were at one time incurable. When a new cure is found, euthanasia would be out of the question for that complaint. Unfortunately, however, the physical condition of an already seriously afflicted patient degenerates faster than medicine advances. In all such matters it is necessary to deal with conditions as they are known to be - not as they might be at some future date (Wilshaw, 1974 : 11 - 13).

5.1.4 RESPECT FOR HUMAN LIFE

Respect for human life is fundamental to society and this respect must be preserved. But this respect need not be based on some concept of absolute value. Just as one recognizes that human life is not infinite in duration, one should face the fact that its value varies with time and circumstance. Just as religious tradition teaches one that the duty of preserving life, does not itself hold life to be of absolute value, and of recent times the medical tradition shared this view. Both religious and medical tradition looked upon death as a natural part of life, not as an unmitigated evil, or as a sign of the physician's failure. Hindu belief looks upon death as the ending of one and the beginning of another phase of existence. There is no finality in death. Death is only the annihilation of the physical body and the finding of a residence for the *atma* (soul) which is immortal. This is the argument used by Hindu doctors who have a fair knowledge of Hindu philosophy in support of euthanasia. One is merely releasing the soul from bondage. The body is disintegrating slowly and the person who performs euthanasia is merely aiding the cessation of all bodily function.

Western authors believe strongly that there are circumstances when it is morally and ethically acceptable to allow a patient to die without extraordinary means to prolong his life. This belief is based on two humane and significant concerns.

1. Compassion for those who are painfully and terminally ill (Dyck 1973 in Marcinek 1981 : 132). According to Kohl (in Marcinek 1981 : 132) allowing a person to die if he is terminally ill and is suffering can be considered an act of kindness. To the extent that one believes kindliness to be a virtue, this is a virtuous act (*dharmic* according to Hindu belief).

2. Concern for human dignity associated with freedom of choice (Dyck 1973 in Marcinek 1981 : 132). If one defines human dignity as the right to make decisions which affect oneself as does Kohl then one has the right to decide to refuse medical treatment (intervention) by extraordinary means to prolong life when one is terminally ill. One of the major fundamental moral principles is that of freedom and autonomy. One can restrict a person's freedom only if this restriction demonstrates respect for the person as a person (Ruf 1977 in Marcinek 1981 : 132 - 133).

The argument used by many who were interviewed especially academics was that if a terminally ill person wishes to die without any heroic measures to prolong life can one logically or morally force him to prolong his painful existence on the basis that one respects him as a person? If an adult knows what he is doing and is not harming anyone else in the process, is one not violating that person's right to autonomy by not permitting him to die peacefully, comfortably and with dignity?

The principle of human worth or respect for life derives from the view that human life has an intrinsic value. The physician's duty to do no harm grounded in the Hippocratic tradition of fiduciary relationship between patient and doctor is an extension of this ethical principle because it involves the intentional active ending of a life (Meier et al 1983 : 294).

Some respondents of the medical profession say that respect for life can be redefined. The foregoing arguments against mercy killing appeal to the principle of respect for life and urges one to act to preserve this value. But what does it mean to respect the life of a dying older person. The preservation of life may be an inappropriate goal in the suffering terminally ill who expresses the wish to die.

Especially in the elderly, as the prospects of cure diminish, the responsibility to care and comfort grows in importance. This often demands even greater skill, stamina and attention from health professionals. Is it wrong one may ask if these caring measures slightly shorten life? Perhaps the principle of respect for life should be redefined to direct terminal care away from futile attempts to prolong life and toward efforts to ease pain, maximize function and lessen the sense of abandonment and loneliness so often cited by the dying. This shift in emphasis in no way weakens the moral foundation of the physicians' role. It requires compassion and courage to accept the responsibility of administering a dose of morphine that eases pain but may shorten a life. In a limited and appropriate context, this measure may improve the moral strength of the medical profession by demonstrating respect for the life of the person instead of respect only for the maximum duration of biologic existence (Meier et al 1983 : 297).

However, mercy killing must not be a substitute for optimal medical care. Prior to any consideration of any act that might hasten death, the care-giver must be sure that all other avenues of pain relief including physical and spiritual support have been tried to their limits. Often further examination of available data about the patient's illness, fears and options can eliminate the need for the practice of mercy killing. Excellent home care and hospice options are sometimes available and their development should be supported. Increasing awareness of proper pain control techniques should permit comfort in almost all patients who are terminally ill; only in very rare cases does the administration of adequate pain medication pose a serious risk to life. Efforts to improve the quality of life for the dying patient should therefore, reduce the demand for active euthanasia. Thus what is needed in the vast majority of cases is the appreciation of the special needs of patients in this phase of their lives, and the expertise and compassion to meet them (Meier et al, 1983 : 297). Euthanasia in such cases where everything else fails, becomes a virtuous act. Death even killing becomes an act meriting the greatest award according to proponents of euthanasia.

Brahmin authors of the legal texts also gave a religious dimension to the context of euthanasia, which distinguished it from suicide. Euthanasia may be administered when a person no longer can perform the rites of bodily purification, which may occur in the case of extreme illness or extreme old age. Because these duties are *dharmic* and required, the non performance of them, would ordinarily create demerit/sin (*papa*). Since the incapacitated person cannot perform mandatory religious duties because of circumstances beyond his control it was necessary to create an exception to the general rule regarding required acts. Non-performance

of obligatory action by an incapacitated person is to be considered *dharmic*. If non-performance of obligatory rituals is considered *dharmic* for an incapacitated person, then euthanasia, which is defined in part, by the situation of incapacitation, may also be considered *dharmic*. If euthanasia is *dharmic*, then in *Brahmanical* terms, it is righteous and religious (Young 1989 : 95).

One implication of this legal scope for euthanasia is that responsibility for self-willed death rests with the individual. The Law of *Karma* is the key to understanding the issue of individual responsibility. It is important for an individual to consider the various criteria for euthanasia and to determine whether the desire to die is legitimately a case of euthanasia or whether it is a case for suicide. According to Young the distinction is crucial for the latter generates demerit or sin (*papa*) and leads to hell (Young 1989 : 95). While an individual was responsible to determine whether the desire to die is legitimate or not, the leaders of society were responsible for the larger issue of whether any kind of **mors voluntaria religiosa** should be legitimated. The decision was made on the basis of the scriptures, the practice of the good people, and societal conditions. There was a recognition of how human lives interconnected to determine the social order. One definition of *dharma* was social order. Practices such as euthanasia were viewed critically in social terms so that the welfare of society was taken into consideration. Once this had been established, then an individual was free to choose actions that may be optional but must be *dharmic*, in that they contribute to the general good of society or at least do not obstruct it (Young 1989 : 96).

Just as the people in the Classical Period (*Brahmin* jurists) used *dharma* (social order) to justify euthanasia, Western scholars and the modern Hindu in Durban use the theory of utilitarianism to justify euthanasia. The principle of utility attempts to balance the consequences of actions so that the greatest good is achieved. It can justify differing policies, depending on what is viewed as a good. For example, some persons favour "living will" legislation because it would save money that would otherwise be spent on old and dying patients; they argue that preserving life in the chronically ill elderly does not serve the best interests of society. However, opponents of mercy killing argue that loss of protection for weaker dependent members of society might easily follow such. They fear that the value of a life could become inversely proportional to its burden to society. As a result, older persons might feel pressure to opt for active euthanasia for fear of becoming emotionally or financially burdensome to their families or to society at large. These arguments appeal to the principles of autonomy and respect for life that prohibit the involuntary sacrifice of individual lives, even if the overall social welfare appears to benefit from such an action. However, the principle of utility may also be interpreted in a manner consistent with these values mandating constraints on killing which became of a less tangible but perhaps more fundamental benefit to society (Meier et al 1983 : 297).

5.1.5 SANCTITY OF LIFE VERSUS QUALITY OF LIFE

Joseph Fletcher, one of the greatest proponents of euthanasia says "one should drop the Classical sanctity of life ethic and embrace a quality of life ethic instead". Contemporary views in the Durban area strongly support Fletcher's view of quality

of life instead of the sanctity of life. Personal integrity according to the supporters of this view is more important than biological survival. *Brahmin* jurists in the Classical Period in India also supported the quality of life principle. The highest good is not just being alive, but "how alive". Biological existence (life) is not sacrosanct anymore as established by religious tenets and medical piety. In the realm of medical care the sanctity of life has had priority at all costs (Fletcher, J. 1975 : 46 - 47). However, this view is changing rapidly, moreso, amongst medical practitioners and new meanings are now given to the Hippocratic Oath. In the light of technological development, fabulous biomedical gains have been made in neonatology resuscitative treatment, artificial life support systems and organ replacement by means of transplanted tissue or implanted artificial substitutes. The question of human or medical initiatives in living and dying is therefore, a problem caused by success not by failure. Now man can preserve and prolong life, a task that was not even dreamed of by one's grandfather, so much so that one can at last see why prolonging living may paradoxically be prolonging dying. Along with the problem of how to save life comes the problem of when to stop it.

Thanatology is exploring the more realistic and contemporary terms the question of where one is to draw the line between prolonging living and prolonging dying. Whereas the so called "human vegetable" was once an infrequent problem in terminal wards of hospitals, it is now a common daily problem because of medical success. The loss of personal integrity now often occurs long before biological death. Death has changed its meaning, instead of being an event is now a process. The old fashioned death-bed (in traditional Hindu homes a mat strewn with *kusa* grass), scene of final farewells, family gatherings, and the family priest offering

prayers (*gaudhan*), the *ganga jal* and *tulasi* leaf is replaced; death comes now in hospitals from chronic rather than from acute diseases which are more apt to be metabolic than infectious or contagious. Patients do not meet death anymore; the end comes for them while comatose, betubed, aerated, glucosed, narcosed, sedated not conscious not even human anymore. Given this picture it is no surprise that the "white coat is losing some of its shine" in patient's eyes and that people begin to fear senility more than death (Fletcher, J. 1975 : 47). According to popular Hindu belief it is very important for a person to be conscious when he is dying. His last words and desires determine his next birth. Very often a person who is dying repeats the word *Ram* or *Krsna*. In the olden days people named their sons *Ram* and *Krsna*, and when they were dying even if they called their sons by their name (*Ram* or *Krsna*), *moksa* was granted to him, by virtue of the fact that he had uttered the name of *Ram* and *Krsna*. Uttering the very name *Ram* or *Krsna* was more important to the dying than the thought of God itself. This is an old Hindu belief. His thoughts at the moment of death determine his next birth; therefore, it is very important for a person to be conscious when he is dying.

Not only are the conditions of life and death changing but definitions of life and death are also changing. The medical profession is at last accepting the ancient philosophical theological idea that humaness consists not in spontaneous organ function, but in the **ratio**, man's rational faculty or cerebral function. One may ask the question when did Senator Robert Kennedy die? When the assassin's bullet smashed his midbrain or eight hours later when the Classical medical criteria, absence of pulse heart beat breathing papillary light reflexes and so on said so? What one calls "mind" is what the brain does its function or product. In the new

view death has ensued when brain function is lost irreversibly, no matter if heart beat or blood circulation or breathing persist. The traditional criteria for the determination of death are subordinated and have been replaced by the concept of "brain death" and confirmed by retina and de-oxygenation tests.

The essence of the new life death concept, which favours human being rather than mere biological functioning is caught up in a famous surgeon's remark: "When the brain is gone there is no point in keeping anything else going". This can be illustrated by the following example:

"Doctors told us that Navi's brain stem was damaged. They kept her under observation from Tuesday and conducted the last test on Thursday morning before telling us that there was no chance of a recovery", he said. He said that the family had agonised for two days over whether they should keep her alive but believed it would be futile. Dr Rajah said that the family members had asked doctors to make certain that there was no chance of recovery before they took the decision to switch off the life-support machine (Tribune Herald 4/4/93).

Death should not be looked upon as an enemy, it can also be a friend. Death is part of the natural order and likely to remain so for a long time. Perhaps it may be appropriate to quote Dr Eliot Slater, a biologist on the necessity of death. "Death performs the inestimable office of clearing up a mess too big to mend. ... In human communities if the aged and the sick did not die within a short time after they had ceased to be self-supporting the burden on society would become disastrous. The position of the biologist asked to contemplate the death of the individual is that this

is an end devoutly to be wished. Death plays a wholly favourable indeed an essential part of the human economy (Williams 1966 : 182). Without natural death human societies and the human race itself would certainly be unable to thrive". Perhaps when one realizes this, one may realize at the same time that there is a point in the degeneration of one's body when life loses its value and then one may be prepared voluntarily to leave the science to his successor (Williams 1966 : 187).

Those that opposed euthanasia, said that life had value, irrespective of its quality. As long as there is life there is hope. Can one legitimate a stewardship of life and death as well as of health? One takes the initiative and exerts control over disease and injury, interfering with the natural processes of illness and accident. The "artificial" interference with nature is exactly what medicine is i.e. - a human intervention in what some religious believers would call God's providence. Given such a simplistic theodicy, they would then argue that to prevent a conception or birth or to hasten or contrive a death is an impious invasion of the divine monopoly that by special providence living and dying are in God's hands and that life is God's to give and only God's to take (Fletcher, J. 1975 : 48 - 49).

This human concept of life and death fits for example with urgencies of organ and tissue transplantation from cadavers in cases where the recipient's life will be lost if the replacement has to wait until all the donor's functions have ceased spontaneously. This quality of life ethic, is so much less selfish and egoistic, so much more socially conscientious and so much more adapted to saving real life, as well as showing more respect for personal integrity. This can be seen as the extension of

the philosophy of utilitarianism. According to the *Bhagavad Gita* this would be a selfless duty.

According to Hindu belief, a person suffers out of his own choice. This may not be acceptable to the medical profession and Western scholars. All the pleasures that a person enjoys and all the sufferings that he or she endures is as a result of his or her *karma*. Suffering therefore, according to Hindu philosophy, is an integral part of life and a person has no choice in the matter but to endure it, it is through his own doings that he is in the position that he is in. It is neither God's providence nor God's will.

5.1.6 THE DILEMMA OF EUTHANASIA OF DEFECTIVE NEW-BORNS

Euthanasia in the paediatric age group involves a constellation of issues that are materially different from those of adult euthanasia. The difference lies in the somewhat obvious fact that infants and young children are not able to decide about their own futures and these are not persons in the same sense that normal adults are. While adults usually decide their own fate others decide on behalf of young children. Although one can argue that euthanasia is or should be a personal right the sense of such an argument is obscure with respect to children. Young children do not have any personal rights, at least none that they can exercise on their own behalf with regard to the manner of their life and death. Hence someone else decides for him (Engelhardt 1975 : 180).

The response from the Hindu housewives was that these children should be treated like any other child. One should not treat them any differently because they have a defect. According to these Hindu housewives, it is the parent's duty to provide for these children. Medical care should also be given to these children whenever necessary. Many felt that these children be given extra and special attention; than one would probably give to ordinary children.

The possibility of saving the life of severely handicapped infants cause ethical problems for physicians and parents alike. Very often questions are asked as to whether these children be saved or allowed to die. What practice and ethical principles should be applied for treatment or non-treatment of these infants? Some try to escape the ethical problem by arguing that such infants be aborted (Varga 1982 : 441).

Popular American magazines have presented accounts of parental decisions not to pursue treatment. The decisions often involve a choice between expensive treatment with little chance of achieving a full normal life for the child and "letting nature take its course" with the child dying as a result of its defects. As this suggests many of these problems are products of medical progress. Such children in the past have died. The quandaries are in a sense an embarrassment of riches now that one can treat such defective children. Must one treat these children? And if one need not treat such defective children may one expedite their death (Engelhardt 1975 : 181).

Observations reveal (discussion with teachers of handicapped children in schools, institutions for the handicapped, etc.) that many of the defective children in the Indian community (including the Hindu community) have taken birth in very poor homes. The families in which they are born are relatively large. The breadwinner of the family is normally the father. With inflation taking its toll on everybody, this poor father can barely feed, clothe and shelter his family. The care of the defective child becomes an added burden. Sometimes these children have to undergo expensive surgery. Most parents can barely afford them. State help in this regard is at its minimum. The debate goes on should money be spent on such inmates of society? Many feel that these children will be a burden as long as they live. The maxim, "If life was a commodity that money could buy, then the rich and only the rich will live and the poor will die". In this day and age, there seems to be a great deal of truth in this maxim. The cost of medical care and surgical operations is so great that only the rich can afford it. Today the rich can have a longer life-span, than the poor. But unfortunate as it may be, seven times out of ten, it is the poor who face this plight. In the Classical Period these children probably died at an earlier age because of the lack of medical treatment at times.

Since infants and small children cannot commit suicide their right to assisted suicide is difficult to pose. Children are not persons (according to Western scholars) because they cannot exercise their own rights; they belong to parents and to society. However, adults belong to themselves in the sense that they are rational and free and therefore, responsible for their actions. Adults are **sui juris**. Young children, though are neither self-possessed nor responsible while adults exist in and for themselves as self-directive and self-conscious beings. Young children, especially

newborn infants exist for their families and those who love them. They are not, nor can they be responsible for themselves. If being a person is to be a responsible agent, a bearer of rights and duties children are not persons in a strict sense. They are rather persons in a social sense others must act on their behalf and bear responsibility for them. They are, as it were, entities defined by their place in social roles example, (mother-child) (family-child) rather than separate individuals. They cannot decide for themselves. Young children live as persons in and through the care of those who are responsible for them and those responsible for them exercise the children's rights on their behalf. In this sense, children belong to families in ways that most adults do not. They exist in and through their family and society (Engelhardt 1975 : 183).

The Hindu housewives in the Durban area, said that they would never recommend euthanasia for the defective newborns or handicapped children. Even the Hindu doctors who were interviewed said that parents should care for these children and euthanasia was out of the question. According to these doctors, children belonging to this category, should be fed and cared for like any other children and not be starved to death as some Hindu doctors propound.

Dr John M Freeman (in Varga 1982 : 440) mentions a practice of not properly feeding defective infants. The children are highly sedated and are fed only "on demand". "With the gentle help of sedation and feeding on demand ... children starve to death without making too much noise". Starving somebody to death when he could be fed can hardly be taken as an innocent omission of an act. It is rather a deliberate termination of the life of a human being. It is puzzling to note that some

persons are unequivocally against the active killing of defective infants and do not perceive the omission of feeding or of medically useful treatment of the defective infant as equivalent to killing them. Whether a person is killed by active or passive means it does not make any difference from the ethical point of view (Varga 1982 : 440 - 442).

Some young Hindu doctors (married with no children) felt that starving these children to death would be in the best interest of the child. One doctor said that such children should not be allowed to be born in the first instance. Such children only become a burden onto themselves, to their parents and to the community at large. Hence, one can see that utilitarianism takes precedence over humanitarianism. One cannot condemn this view **in toto**. Hindu *dharma* looks at the welfare of the people at large rather than at the individual in particular.

Hindu respondents on the other hand (housewives and doctors) said that it was criminal to starve a child to death (irrespective of its quality). They said that they would never do this nor will they ever make such a recommendation.

The crux of the question is then, to determine when and under what circumstances is the omission of an act ethically justifiable? When is it not duty to treat a defective or sick infant and let him die? Many defective newborns died in the past because there was no effective treatment available. Since about 1950, however, many of these children can be saved and can live a good number of years notwithstanding some burdensome handicaps they have to carry their entire life. Antibiotics and

new developments in infant surgery can save defective infants. The price of survival can be enormous in suffering and inconvenience for the patients themselves for the families involved and in medical expenses (Varga 1982 : 442 - 443).

Taking the above into consideration, would it be in the interest of the defective newborn and of the family involved to let him die? When is it ethically justifiable to let a newborn baby die and not to subject him to "heroic" and excessive treatment? The choice may be agonizing for those who have the responsibility to make the decision. Medical science has made a tremendous breakthrough in this respect in terms of medicines, treatments, life-prolonging techniques and public awareness through conferences and symposiums, books and articles dealing with this and the ethical dilemma is on the increase. All these provide guiding principles for helping the selection of babies who may be allowed or should be allowed to die and of those who should be treated. There is no unanimous decision in regard to this controversial question. Progress in medical science and the increase in high technology complicates the issue even further and makes decision-making even more complex. Even those Hindus who were interviewed had differing views. It is difficult to obtain a unanimous view on such delicate issues. Experience, social and emotional constitution of people differ from individual to individual. It is based on these factors, that people have expressed their views on defective new-borns.

Some doctors who were interviewed felt that those newborns who had very severe impairments should not be subjected to complicated surgery and costly treatment. They should (that is the defective infant) be fed, kept clean and made comfortable only. The rest should be left to God. The purpose of medical intervention is to cure

the patient or, at least help him live with impairment. Medical intervention in the case of defective babies must be seen as a useful means for curing some of the baby's disorders or offer reasonable hope of benefit for strengthening the vital functions of the newborn so that further development and improvement will be possible. Perhaps, it may be unreasonable to apply useless means. Nourishment is a basic necessity for maintaining and developing any vital functions. Consequently corrective surgery that would restore the possibility of feeding the baby is an ethically mandatory medical intervention unless the infant is already dying of other impairments as well. A baby has the right to life and the parents have the duty to protect this right by means which are effective and are normally available to them. "Useful" and "useless" have been used instead of "ordinary" and "extraordinary" means. The reason for the former terminology is to avoid confusion and misunderstandings. For the average layman, the term " extra ordinary means" signifies some unusual or experimental therapy not readily available in all hospitals. The popular opinion would hold, then, that the application of ordinary means is ethically obligatory and one may omit only the use of extraordinary means. The fact, is that sometimes the use of ordinary, that is, customary means is useless and consequently it is not reasonable or ethically obligatory to apply them (Varga 1982 : 443 - 444). One has to take into account the excessive hardship that the application of the customary means would impose on the patient and on those who are involved in caring for the patient. Traditional natural law of ethics states that an affirmative duty admits of excuse because of the possibility of excessive hardship. No negative natural duty must be violated however, in connection with the omission of an act that would involve excessive hardship. Thus no defective infant may be directly

killed in order to avoid the excessive hardship of caring for him or her. Varga says that it is a negative duty "never to kill an innocent person". It follows from this that one may not kill a person to free him from suffering or inconvenience either.

When medical experts judge that the efforts to save the life of a defective infant is hopeless, the parents have nothing else to rely on in the decision than the opinion of competent physicians. Doctors themselves may be in doubt as to the effectiveness of a certain medical intervention and the excessive hardship it creates for the infant and parents. In doubtful cases when the doubt is about a fact and not about the existence of a duty one has to choose the safer course, that is, one has to make an attempt to save the infant's life.

Very often people ask the question whether human life can be measured in terms of monetary value? Many have argued that when it comes to saving a life expenses should not be considered at all because human life is priceless. However, it is not a simple monetary valuation of human life; the issue is more complex than one can imagine. Money pays for the scarce medical resources and scarce expert services. The expenses are so high, that it cannot be borne by one family alone. The community assists with the soaring costs of medical care. The principle of distributive justice must be invoked here to determine a certain order of priorities since not all medical or other kinds of needs can be satisfied. This is the reality of the human condition. The excessive expenses may become a practical and moral impossibility either for the family or for the whole community. Nobody is obliged to do the impossible. The ethics involved here is situation ethics and Hinduism supports situation ethics. Decision making is dependent a great deal on situation

and circumstances. Eastern and Western views on such issues are based on common grounds. Thus it is ethical to take into consideration excessive expenses when one decides whether or not a patient should be treated. Many sick people die because of a lack of life-saving means. Health care whether of infants or of adults must take an important place among the priorities of a nation's economic planning. But it must be realised also that there is a limit to the resources that can be spent on health care. Human life is "priceless" but maintaining it has its price which sometimes may be impossible to pay (Varga 1982 : 446). It has become common knowledge that to maintain defective children is a costly affair; therefore, Hindu professional women feel that defective children should be aborted in the foetal stage. The psychological impact and crises created by birth of a defective infant is devastating. Not only is the mother denied the normal tension released from the stresses of pregnancy but both parents feel a crushing blow to their dignity, self-esteem and self-confidence.

Caring for such a child in the home environment is not an easy task. Difficult and demanding adjustments have to be made to accommodate such a child. Parents must learn how to care for a disabled child, confront financial and psychological uncertainty, meet the needs of other siblings and work through their own conflicting feelings. Mothering demands are greater than with a normal child particularly if medical care and hospitalization are frequently required. Younger siblings may react with hostility and guilt, older with shame and anger. Family resources can be depleted (especially if medical care is needed), consumption patterns altered or standards of living modified. It may become necessary to find a home near a hospital, and plans for further children changed. The modern view is that these

children are looked upon as a burden to society in general and to their families in particular. Coping with family is no easy task for a working mother. Having a defective child adds to the burden of family care. One has to be realistic.

While one sympathises with a parent who has to bear the brunt of having a defective child, at the same time one cannot view life in utilitarian terms only. The experience of living through a crisis is a deepening and enriching one accelerating personality maturation, and giving one a new sensitivity to the needs of spouse, siblings, and others. As one parent of a defective states: "In the last months I have come closer to people and can understand them more". The hard hearted can become soft and compassionate, and view all living beings with a deep sense of compassion and feeling. Out of every evil cometh some good.

Life is an experience of both pleasure and pain. As has been stated earlier, all that one experiences in one's lifetime, is as a result of one's past deeds (*karma*). As a Hindu, one ought to accept this, and do that which his *dharma* permits him to do. Eastern as well as Western views display similar sentiments with regard to the defective child. "Thus while social attitudes regard the handicapped child as an unmitigated disaster, in reality the problem may not be insurmountable, and often may not differ from life's other vicissitudes. Suffering there is, but seldom is it so overwhelming or so imminent that the only alternative is death of the child (Robertson 1975 : 258 - 259).

Physicians and nurses also suffer when parents give birth to a defective child; maybe not to the degree of the parents. To the obstetrician or general practitioner

the defective birth may be a blow to his professional identity. He has the difficult task of explaining the defects, their causes and dealing with the parents' resulting emotional shock. Often he feels guilty for failing to produce a normal baby. Nurses too suffer role strain from care of the defective newborn. They face the daily ordeals of care - the progress and relapses, and must deal with anxious parents.

Care of the defective newborn also imposes societal costs, the utility of which is questioned when the infant's expected quality of life is so poor. Medical resources that can be used by infants with a better prognosis or throughout the health care system generally are consumed in providing expensive surgical and intensive care services to infants who may be severely retarded, never lead active lives and die shortly. The taxpayer is also burdened.

If the non-treatment of defective newborns has become deeply ingrained in medical practice, one can only hope that it will only be confined to those cases in which the clearest and most indisputable grounds for withholding care exists. The attending physician is a partial check on parents who would unjustifiably deny treatment, even if the criminal law is not. Although the decisions of physicians are mainly medical , they too can become moral agents when a situation demands it, as in the case where a parent denied surgery to a Downs Syndrome suffering from duodenal atresia and the child died of starvation. Although moral decision should not lie with physicians, they do have a right to make ethical decisions if it is to the benefit of the patient. Hence legal and medical ethics is an integral component of the euthanasia debate.

The whole controversy can be resolved if each person accepts his responsibility and does his duty (*dharma*) without any selfish motives. The performance of one's duty in Hindu philosophy is of ultimate concern. Even *moksa* can be attainable through selfless duty. In this way the *rta* (order) or the balance or cosmology can maintain its equilibrium. The essence of the *Bhagavad Gita* is the performance of one's duty in a selfless manner. Religion must be lived out, and should not be confined to the temple, mosque or church.

The views of Durban Hindus regarding the defective new-born are numerous and varied. Interviews with the different groups revealed that their views were largely dependent on and influenced by their educational background, professional training, age, to a very large extent, Western influences and utilitarian bias. Generally, however, those interviewed felt that handling of the defective child depends largely on the degree of defectiveness. This greatly influenced the views of those in the medical profession: depending on the nature and degree of defectiveness. Measures should be taken to treat the child to the fullest extent possible. Many parents and the older generation also felt the same way. Educated younger parents, especially when both were working, argued that euthanasia could be a welcome relief for the child. It would ensure that other children all receive the same amount of attention.

Many of those interviewed attempted to be rational and mainly based their decisions on utilitarian grounds. Scriptural injunctions played very little part in their views. Some of the respondents (both young and old), however, did give their views in terms of *karma* and *dharma*. Often the reinterpretation of these concepts was

necessitated in order to uphold certain views. Thus the new-born's defect was seen as being the consequence of such child's *karma*, and consequently, it would be improper to administer euthanasia on such an infant. Since the defect was the consequence of the child's *karma*, the child should be allowed to run the normal course of its life and bear the outcome of its defects in order to complete or to fulfill the requirements of its *karma*. And it was the *karma* of the family members to live with and to bear the problems that came with such defects. It was the *karma* of the family to accept the child and do whatever they could for its comfort and well-being. The life of the family would have to be greatly modified in order to accommodate and cope with the child's defects. It also becomes a challenge to medical personnel, and others, associated with such a child to think of and invent ways to alleviate the child's suffering, so that its defects become less burdensome. In this way, therefore, it can be seen that *karma* of those associated with the child becomes closely intertwined with that of the child: it is their *karma* to endure with patience and love the challenges and frustrations that such a child could bring. The challenges also bring, in their solution, and increase in understanding and knowledge of the defects. This would constitute the basis for the completion of the child's *karma*, as well as of those associated with the child: the basis or the requirements for the advance and evolution of the child's *karma* and also of those associated with such children.

Those in favour of euthanasia, however, argue that it is the *karma* of the child to be the subject of euthanasia. And it is the *karma* of the person administering euthanasia to be associated with the child and to perform this function. Thus the suffering of the child is ended and that of the family alleviated, so that they can continue to live a "normal life". In this way the *karma* of the child is also associated

with those around it. Thus when a person dies "naturally" it is assumed that such a person has lived and fulfilled a "normal" life-span. Consequently, when a defective child is allowed to live and those associated with it do all they can to make its life and problems bearable and "liveable", this constitutes the basis for the advancement in the *karma* of all concerned. In this way *karma* becomes closely intertwined with and a part of *dharma*. For the small circle of its associates, the child becomes the centre from which patience (to help, comfort, nurse and develop the child), love knowledge and understanding, and of consequence, acceptance, are built up. With acceptance of the problem assistance to the child is performed with love. This is then accepted as a duty (of parents, family, doctors, associates, etc.). It is the creation of an order; and the performance of this duty to uphold the order is a part of *dharma*. *Karma*, therefore, in its association with, becomes an integral part of *dharma*.

5.2 SUICIDE

Suicide is the ultimate vehicle of escape from intolerable circumstances of life. Painful feelings of social isolation, loneliness, frustration, failure, purposelessness spur the suicidal person into seeking relief by crying out for help or by inviting death to take him; often he seeks both help and death in an act of suicide.

5.2.1 SUICIDE IS *ADHARMIC* AND CONDEMNATORY

Interviews amongst Durban Hindus revealed a condemnation of suicide yet a sympathetic attitude towards the victims of suicide. It was felt that those who

committed suicide did so because of circumstances beyond their control. Victims committed suicide because they could not cope with the stressful situations brought about by the demands of society and found suicide "an easy way out of a difficult situation".

Suicide in contemporary society could be considered as passionate self-willed death. This would not have been accepted in Classical times. The victims would have been denied *sraddha* (post-cremation ceremonies) and even the cremation rites, as the Classical Period found only **mors voluntaria heroica** and **mors voluntaria religiosa** acceptable. Research shows that no persons commit suicide for the above reasons, hence suicide cannot be condoned on religious grounds. The souls of those who committed suicide on passionate grounds (emotional stress, psychologically unstable, etc.) did not gain *moksa*. Such a soul would continue in the wheel of birth and death (*samsara*). This was a view shared by Hindus in the Classical Period. Contemporary society would permit such cases (i.e. those committing suicide) both cremation rites and the *sraddha* ceremony. The view is that the dead should not be discriminated against. Further *sraddha* (rites performed for the dead) not only benefit the dead but also the living. Therefore, one performs the rites out of a sense of duty (*dharma*) for oneself and one's own spiritual development.

5.2.2 SUICIDE: THE PERFECT FORM OF SACRIFICE

Although some Hindus in Durban do sacrifice, the only animal that most Hindi-speaking Hindus sacrifice is a goat (a male goat). The sacrifice of man is definitely out of the question. At first in the *Vedic* Period five animals were sacrificed: man,

horse, bull, sheep and a goat. These five animals are said to represent all the animals (Tull 1989 : 83; Eggeling 1979 : 165). Animal sacrifice was further simplified in the *Vedic* Age. The goat was the only animal that was chosen to be sacrificed as it suitably represented the other four animals as well. The idea was not to shed too much blood. Human sacrifice was no longer in vogue. Thus it can be seen that in the *Vedic* Age itself there was emphasis in simplification and re-interpretation of rituals. *Moksa* through suicide was replaced by the desire to live out the natural life-span (that is one hundred years). It was believed that if one lived for a hundred years then one automatically obtained *moksa*. Sacrifice also took on a more symbolic form. Renunciation from worldly existence was also a form of sacrifice or "suicide". Many chose to sacrifice their lives in this way to gain liberation or *moksa*.

Sacrifice of animals by contemporary Hindus is done sometimes out of fear and tradition. Most of them do not even know why the "goat" in particular is sacrificed. Orthodox Hindus feel that animals have to be sacrificed to appease the Gods. Others show their love to God by offering flowers, garlands, milk, honey and sweetmeats. These are *sattvic* offerings devoid of flesh and blood. The *Arya Samajists* perform only the *havan* ceremony, whereby only *samagree* and *ghee* are offered into the fire. A great deal of re-interpretation has taken place, and rituals are being constantly simplified. In contemporary times, no one commits suicide for religious reasons. Suicide for the attainment of liberation or *moksa* is now unheard of.

In the *Vedic* Period suicide was also recommended for those suffering from extreme old age and terminal diseases. In present times, suicide is not recommended for such people. The problem now rests with the family and the attending physician. In present times, it is not a problem of suicide, but a matter of euthanasia.

5.2.3 IS SUICIDE THE ANSWER FOR LIBERATION OR *MOKSA*?

The human life and the physical body is particularly important for salvation (*moksa* or liberation). The body according to one Hindu in the Durban area may also be viewed as the "vehicle" for salvation. It is through the physical body that one performs actions and yoga. If the action that the individual performs is *dharmic*, then these *dharmic* acts help the soul to evolve spiritually. Thus one cannot disregard the physical body entirely, for it is only through the physical body that one attains *moksa*. Hence suicide is definitely not the answer for salvation. While the theory of rebirth (the wheel of *samsara* and the bliss of liberation(*moksa*) states that the individual may have had or may have in the future other kinds of birth (e.g. animal), it is only in the human birth that an individual may seek enlightenment. According to the belief of one Hindu (a scientist by profession) once a person has taken a human birth, he would not retrogress in his future births, that is he would take a human birth. This Hindu believes in the theory of evolution as understood by Darwin. He believed that the soul and the physical body did not evolve at the same pace. A person might be an "animal in human clothing". Hence the value of human life is defined positively by the unique opportunity it provides for the pursuit of

salvation. Human status is a product of an individual's *karma*, a result of good actions in previous lives. Abuse of this human status is productive of bad *karma*, according to Hindu scholars.

Many of those who were interviewed felt that human life should be used meaningfully; and that salvation or *moksa* should be the goal of every individual. The longer one lived, the greater the chance was for salvation; provided that one performed righteous deeds, accumulated good *karma* and performed one's duty (*dharma*) with distinction. The person who committed suicide (according to those interviewed) had wasted his human birth and his opportunity for *moksa*. This is very similar to the *Upanisadic* view.

According to one Hindu scholar the soul of a person who had committed suicide would roam about aimlessly and would be used by others to perform evil deeds. Further, this soul would for the next seven generations take birth in a body that would commit suicide. Hence there would be no spiritual development for this soul for a very long time. Therefore, the soul of those who commit suicide do not benefit from post-cremation ceremonies. The surviving relatives performed *sraddha* (ceremonies) for those who had committed suicide out of a sense of duty. It is believed that those who perform these ceremonies (*sraddha*) also benefit. In this case (suicide) only the performer of the ceremony benefit and not the one for whom the ceremony is performed. Therefore, one can conclude that contemporary Hindus (especially in the Durban area) strongly condemn suicide; for the attainment of *moksa* or enlightenment for the contemporary Hindu can be achieved through various ways without resorting to suicide. Those who are ritually inclined, perform

rituals (*puja*) at home or in temples. This takes the form of offering fruits, flowers and sweetmeats to their chosen deities, *Lakshmi, Durga, Shiva, Hanuman*, etc. There are also a few who offer animal sacrifice (goat) dedicated to mother *Kali*. These are *Bhakti* worshippers, who feel offerings must be made to the deities out of a sense of duty (*dharma*) devotion and love. There are also those who resort to meditation and practise austerities and visit holy places like the *ashrams*. These people are also interested in widening their spiritual knowledge (*jnana yoga*). Many Hindus attend *Ramayan* and *Gita* classes regularly. There is a great urge to learn, and those who are learned in the scriptures (especially the *Ramayan* and the *Gita*) the desire to teach. Contemporary Hindus feel that by engaging in such activities one is paving the way (path) towards liberation (*moksa*); hence a re-interpretation of *karma* and *dharma*. Many *sathsang* classes are held in private homes and shrines where people engage in prayer, meditation, *bhajans* and *kirtans* (singing the praises to the Lord through their chosen deities) as a means of spiritualising and coming closer towards God-realization. Thus there is this shift of emphasis of spiritualising through the use of the physical body rather than committing suicide. Suicide in the Classical Period was an easy way out, which often led to abuse.

From the above one can deduce that for the contemporary Hindu suicide is not the answer for liberation and *moksa*, since there are more meaningful ways of attaining salvation (*moksa*). Renunciation (i.e. giving up worldly existence) was another way of attaining *moksa*. In the Classical Period this was regarded as a form of suicide and was confined to the third or fourth stages of a person's life.

However, this type of renunciation is not always possible for the contemporary Hindu. The contemporary Hindu cannot wander away from home and live in the open subsisting on water and air till his body sinks to rest (Manu 6 : 31 in Young 1989 : 101). Time and place and circumstances do not permit this type of renunciation. Those Hindus who are spiritually inclined, renounce a worldly existence (based on material wealth) and adopt a more religious attitude. This he does in the third stage of his life, in the *vanaprastha asrama*. He leads a simple life, visits holy places, goes on pilgrimage (India, Benares, Gaya) and spends most of his time in prayer and meditation. This is his way of attaining God-realization. Renunciation itself has been re-interpreted by the contemporary Hindu.

5.2.4 SERVICE TO MAN IS SERVICE TO GOD

Yet there are other Hindus who feel that the goal for attaining *moksa* or enlightenment should not be left to the latter half of a person's life. A person should sacrifice his or her entire life towards serving other people. This service should be selfless. Hence one can say that suicide is now re-interpreted as a selfless sacrifice for the benefit and upliftment of fellow-beings. The bloody sacrifice (killing of animals to appease the gods) of the *Vedic* Period, has been re-interpreted in the *Bhagavad Gita*, as selfless service (sacrifice of the personal self to serve other beings, humans in particular. The entire teachings of the *Bhagavad Gita* emphasises selfless service. *Karma yoga* is a very important aspect of a person's life; by performing one's duty truthfully, honestly and sincerely for the good of the people one can attain *moksa*. Even the *jivan mukta* (having attained self-realization) works

for the spiritual upliftment of mankind. The *Gita* discusses service to mankind in general and not to the Hindu in particular. The teachings of the Hindu religion, all the scriptures, and the *Gita* in particular are Universal in character.

Others interviewed said that there should be a balance between the material and the spiritual aspect of man. By utilizing one's wealth not only for oneself (or for one's progeny), but for others (who are totally unrelated) also is a means of attaining salvation.

While the *Ramayan* teaches how *dharma* (*Ram* being the epitome of *dharma*) operates in a holistic sense for the general maintenance of *rta* (order) in the cosmos, the *Gita* is more personal in its approach. The *Gita* teaches that each individual has a particular duty to perform and that each one should perform that particular duty selflessly.

Therefore, one can conclude that suicide is now re-interpreted as sacrifice of the self in terms of service to others. Yet others argued (i.e. those Hindus who were interviewed) that a balance should exist between the different yogas, *bhakti, jnana, karma* and *raja* for a person to attain *moksa*. Their view was that each of the yogas was of equal importance. The different yogas took prominence in different stages of a person's life.

5.2.5 SUICIDE AND REBIRTH

Hindu philosophy holds that life in its broadest terms does not end with death. According to Hindu belief death opens the door to the next life whose type is determined by the way the preceding life was utilized. This is the Law of *Karma* or cosmic justice, or the theory of reincarnation that occupies the central place in the *Vedantic* philosophy. Hindu priests who were interviewed also share a similar view. Each individual who is born has to go through the different stages of life, student, householder, retired individual and an ascetic or *sannyasi*. Not all individuals reach the third and fourth stages. Many die a natural death before that. The quality of life that each individual enjoys or suffers is determined by the actions of his previous life. This is one's *karma*. As stated in Chapter One, one cannot escape the Law of *Karma*. People who resort to suicide, take birth again and again to fulfill their *karma*. *Sankara* also argues that one must live out one's life to allow the *karmas* to come to fruition (Young 1989 : 102). He implies that the moment of natural death signals the moment when there are no more *karmas* to create bondage. Suicide according to the Hindu priests is interfering with God's work or the natural order of succession.

5.2.6 MODERN HINDU BELIEF AND THE INFLUENCE OF WESTERN THOUGHT

Those Hindus (especially the youth) who had very little or no knowledge of Hindu philosophy and who were greatly influenced by Western thinking condemned suicide. These Hindu youth think that suicide is an evil act and it can never be

lawful. No motive can justify suicide. No good can be derived nor can an evil be averted from such an act. If one has to analyse this reasoning, one finds that it is based on religious belief and tradition and on sound reasoning. God is the author of life hence life is a gift of God given to man in order that he may give glory to his maker by good deeds (*dharmic* acts) preformed in life, until he returns to his maker to receive the reward for his good deeds or the punishment for the evil he did on earth (good or bad *karma* according to Hindu belief). Hence one can deduce that Hindu and Western beliefs on the phenomenon of suicide are very similar. Suicide is contrary to man's strongest natural inclination of self-preservation. The moral consensus of mankind, which look upon life as a thing of greatest value has always disapproved of suicide. Suicide is primarily a sin against God, because He alone has the right to dispose of man's life. Those who commit suicide are punished by God. This is very similar to Hindu thinking for they believe that *moksa* will be denied to those who commit suicide.

Hindu lawyers who were interviewed also condemned suicide. Suicide is an unnatural act. Life does not belong to man it is only on loan to man from God. It is only for God and God alone to decide as to when the loan period should expire. Suicide is interfering with God's work. In civil law suicide is not considered a crime. However, anyone inducing or aiding another to commit suicide is punishable by law, even if the suicidal attempt was unsuccessful. It is a criminal offence to help someone commit suicide.

Although suicide is condemned by all Hindus, yet the attitude towards those who commit suicide is one of sympathy and identification. Various reasons were given as

to why "these poor folks" resort to suicide. Political, economic and social conditions influence the rate of suicides for it is higher in cities and industrial centres, than in rural areas. The reason is that civilization brings not only progress, but also anxieties, unattainable wants, intoxication, religious indifference, boredom with life, which are all factors favourable to suicide.

5.2.7 THE SYMPATHETIC VIEW

However, the more important causes leading to suicide are rooted in the spirit of the individual himself. Demands made by modern social living, exacting professions or burdensome responsibility, further heightened by excessive mental strain, which stresses anxieties, preoccupations and distress. To this must be added a lack of high ideals, aims and aspirations for, if man no longer has an objective in view, he ceases to appreciate the beneficial force for imperatives, duties and missions. Life loses its attractiveness, the future becomes dark and bleak. The idea of suicide begins to take root in his depressed and tired spirit. Other causes are impoverishment from financial set backs, gambling losses, disappointment in life, the death of a loved one among elderly couples nostalgia and brooding reminiscence. All these factors help create the ideal environment for the suicide.

It has also been found that not only adults, but also a great number of children resort to suicide. Suicide among children and adolescents is on the increase throughout the world and Durban is no exception. The causes differ from those which influence adults to self-destruction.

It may seem that a child should be the last one to contemplate suicide, since the incentives for suicide action are generally absent from a child's young life. Instead due to a precocious and excessive degree of sensibility partly from unhappy or poor environment conditions, too. Many youthful lives are caught in the midstream of suffering, disappointment, frustration and neglect. The causes that are more likely to drive a young boy or girl to suicide are fear of cruel and humiliating punishment; severe castigation administered either by overly severe, sick or degenerate parents, continuous physical or moral maltreatment, humiliation, derision and the like, physical illness and pain, constant quarrelling, failure in an examination, finally in adolescents a drawing passion of love with all its delusions (Sunday Times Extra 12/12/93).

A more serious error contributing to the suicides of children into which too many parents and teachers fall, is to consider infantile disappointments as infinitesimally trifling or insignificant in comparison with the suffering of an adult. This may be true in an absolute sense, but one must admit that, the passions and sufferings of the young are less violent than those of adults so too their capacity of control is less pronounced and more tender and sensitive are their emotions. Defective training or unhealthy environment may also create in the life of a child conditions of grave injustice or suffering from which he finds it difficult to escape.

Also to be remembered as a fact that because of pressing economic necessities, one's bustling and feverish pace of living seems to have a tendency to cause children to mature prematurely. Such a premature exposure to a complicated life places an untimely burden of studies on his mind, robs him too soon of his precious simplicity,

throws him into a tense existence of adult living and subjects him to the contagion of emotions that are too big for his age; all of which easily leads to various forms of instability that may culminate in irreparable tragedies (Roberti et al 1962 : 1177 - 1181).

As indicated earlier, the Durban Hindu, condemns suicide on the one hand, yet is very sympathetic on the other. It is only when one experiences the problems and lives the life of the suicidals can one identify with such people, and offer a hand of sympathy. Even if one is a staunch Hindu and has in him the ingrained philosophy of *karma* and *dharma*, having been placed in a situation of the above nature one would probably resort to suicide. That would probably be the most prudent thing to do at that time.

As has been said by one Hindu doctor, it is the *karma* of these people to engage in such an act (suicide) and put an end to their suffering. Some may view this as a demonic, others may view this as a spiritual act. Suicide may sometimes be viewed as an act of great courage (**mors voluntaria heroica**).

5.3 ABORTION

The most fundamental question involved in the long history of thought on abortion is: How does one determine the humanity of a being? The theological notion of ensoulment could easily be translated into humanistic language by substituting "human" for "rational soul"; the problem of knowing when a man is a man is common to theology and humanism. The positive argument for conception as the

decisive moment of humanization is that at conception the new being receives the genetic code. It is this genetic information which determines his characteristics, which is the biological carrier of the possibility of human wisdom which makes him a self-evolving being. A being with a human genetic code is "man" or "person" (Noonan 1973 : 15).

5.3.1 ABORTION IS *ADHARMIC* AND CAN NEVER BE CONDONED

According to the old conservative view abortion is *adharmic*. This was the general view expressed by people of the older generation plus or minus fifty year age group. Learned Hindu priests also expressed a similar view, that is, the condemnation of abortion. By performing such an unkindly act, they felt that those who performed the abortion, and, those on whom the abortion was being performed accumulated bad *karma*. Such an act can never be considered *dharmic*. The *Vedas* and the *Upanisads* also condemn abortion. According to these scriptures abortion violates *dharma*, the socio-religious order in a most serious way. This implies that the living embryo enjoyed a special moral status in the eyes of the Hindu and deserved protection and respect. The older Hindus felt that a soul was present from the very moment of conception. Hence any wilful destruction of the zygote or embryo was regarded as "murder".

Today the Western world questions the moral status of the unborn. Those Hindus in Durban who are greatly influenced by Western beliefs and views also question the moral status of the unborn and have thus favoured abortion on these grounds.

5.3.2 ARGUMENTS FOR AND AGAINST ABORTION

Academics from the legal and medical fields say that abortion raises subtle problems for private conscience, public policy and constitutional law. There is no single problem of "the status of the unborn". The unborn entity changes and grows continuously, assuming new and dramatically different characteristics along the way, some of which could have crucial moral significance. For that reason it would be wise to adopt the careful terminology of the embryologists and speak of the status of the "ovum", the "zygote", the "conceptus", the "embryo", the "foetus" or the "infant" (Feinberg 1973 : 1 - 2).

5.3.2.1 THE ARGUMENT FROM INNOCENCE

Those Hindus interviewed in Durban, presented many arguments against abortion. One argument that had made a very strong impression was the argument from the point of innocence. According to them, every living foetus, regardless of its stage of development, is a human being and any act which is a deliberate and direct destruction of that innocent life is therefore an act of murder. Perhaps more simply put the killing of an innocent human being is immoral. Therefore, abortion is the killing of an innocent human being, hence it is immoral. These people were not familiar with scriptural views on abortion, however, their arguments had very sound reasoning and were similar to scriptural views.

Marvin Kohl a Western scholar asks two questions concerning abortion. Firstly, is it true that each and every killing of an innocent human being is immoral? And

secondly, can one correctly say that a human foetus is a human being? Kohl says that the best way to answer the question is in the negative and that the argument from innocence must be rejected.

He has illustrated his argument by the following example. "An obstetrician discovers in the middle of delivery that he is dealing with a twin pregnancy. It is a case of locked twins; a case where the first child presents by the breech and the second by the vertex where the two heads have locked in such a manner that the second fits into the neck of the first child making its delivery impossible. The question Kohl asks is what should the physician do if he cannot displace the head of the second child? Should he decapitate the first and save the second, or should he allow both to die?" (Kohl 1974 : 38 - 40). This is a situation in which a physician might be placed in. One Hindu doctor who was interviewed said that sometimes it might be necessary to kill one in order to save the other. But all efforts should be made to save both. But if this fails, all efforts should be made to save at least one of the twins. It would be immoral to allow both to die. The argument is that a physician should save what he can.

According to Hindu belief or *dharma*, it is not a matter of doing the right thing but doing what would be the most prudent thing given the circumstances. Even killing is permitted in Hindu *dharma*, if circumstances demand it. There are ample examples in the *Bhagavad Gita* to illustrate this. The Lord Himself (*Krsna*) commands *Arjuna* to kill out of a sense of duty. Killing in special circumstances becomes a *dharmic* act. The importance of a value, according to Hindu law givers, does not lie in the abstraction but only in the context in which it is embodied. Its importance or worth

may vary from time to time (*kala*) and from place to place (*desa*). No value can be universalised or absolutized as good for all times and all regions. Even *dharma* cannot be invested with such universal meaning. *Bhisma* says in the *Mahabharata* "what is *dharma* in one place (or instance) may be *adharma* in another and what is *adharma* in one place may be *dharma* in another (Sheth 1987 : 22). One can draw an analogy with Joseph Fletcher's philosophy of situation ethics. Circumstances alone determine the course of action.

One is faced here not with a moral law, but rather with a rule which if properly formulated would read : generally speaking one ought not to kill innocent human beings. The fact that it is a rule does not detract from its importance nor does it imply that exceptions are numerous. Nevertheless they do exist. For there are times when this rule conflicts with another moral rule, namely that one ought to be as just as is humanly possible. In the case of locked twins, justice requires that an exception be made to the rule concerning the killing of innocent human beings. For if it is unjust to kill one innocent human being, then it is a greater injustice to kill two equally innocent human beings? Here it is assumed that the foetus is a human being (Kohl 1974 : 38 - 40).

5.3.2.2 AT WHAT STAGE OF THE DEVELOPMENT OF THE FOETUS IS ABORTION JUSTIFIABLE?

Those who approved of abortion (especially Hindu doctors) said that the cut off point should be six weeks. According to all the Hindu medical doctors who were interviewed abortion should not be performed after six weeks. According to the

liberal view, the foetus should be disposable upon the mother's request until it is viable, thereafter it may be destroyed only to save the mother's life. Those Hindus who had adopted an extreme liberal view, said that the foetus is like an appendix, and may be destroyed upon demand anytime before its birth. A moderate view is that until viability the foetus should be disposable if it is the result of felonious intercourse or if the mother's or child's physical or mental health would probably be gravely impaired. This position is susceptible to wide variations. The conservative view is that the foetus may be aborted before quickening, but not after, unless the mother's life is at stake. For the extreme conservative, the foetus once conceived, may not be destroyed for any reason short of saving the mother's life. Hindu scripture also makes allowance for abortion on these grounds.

The crux of the controversy is that the foetal life is looked at differently by different people, although they may belong to the same religious group. Some view the foetus, as a "human life"; some as a "human being"; some as a person, yet others view it as a "potential human being" only. It is on these grounds that people either approve or disapprove of abortion at the different stages of its development. Some say that every member of the human species is indubitably a person, a human being, at very latest at birth, if not at conception. These are controversial issues, some argue that personality and self-consciousness must be present for a human being to be a human being.

The defense of the extreme conservative position runs as follows: The key premise is that a human foetus is a human being, not a partial or a potential one, but a fully fledged actualised human life. Given that premise, the entire conservative position

unfolds with a simple, relentless logic, every principle of which would be endorsed by any sensible liberal supposed human embryos. Their innocence is beyond question so nothing could justify destroying them except, perhaps, the necessity of saving some other innocent human life. That is, since similar cases must be treated in similar ways, the abortion of a pre-natal child can be considered if a comparable consideration would justify the killing of a post-natal child.

5.3.2.3 ABORTION IS RIGHT AND WRONG

Some Hindus who were interviewed gave a very simplistic answer to the problem of abortion (not based on any ethical argument but expressed in popular discussion) in that "abortion is right for those who think it is right and wrong for those who think it is wrong". Hindu philosophy certainly has no problem with this reasoning, because it believes in the law of *karma*; one has to take responsibility for one's action, be it positive or negative. Hinduism does not prescribe to a person as to what he or she should do, but leaves it to his or her better judgement (**ratio**).

This attitude of "rightness" and "wrongness" takes two different forms. Some feel that the moral issue is settled by the opinion of each individual judging his own case. Others suggest that morality is relative to the particular culture to which one belongs, so that abortion is right where and when a society views it as such and wrong when that is the view taken of it.

If complete subjectivism or relativism were correct, then neither agreement nor disagreement is possible (Grisez 1972 : 271).

Moreover, it can be argued that if this attitude were correct in regard to abortion, it is difficult to see why it should not also be correct with regard to any other kind of act. Actually this kind of reasoning is unacceptable. One cannot do those things that one wants to do. People live in a society which operates within certain constraints. A person cannot do those things that pleases him only. If abortion is right for those who live in a society where it is accepted and wrong for those who live in a society where it is forbidden, then the same must be true for other kinds of act. Relativism would lead to defiance. Society has to be regulated, and people will have to conform to certain norms. Therefore, the law interferes with certain issues like abortion.

Unsound as the subjectivist and relativist positions are, they are often implicit in popular argument about the morality of abortion. If such issues like abortion and euthanasia were decided by traditional religions, there would be chaos. Religious prohibitions are no longer valid. They are relative. Religious and traditional norms have lost their fervour. People no longer feel themselves bound by the moral standards their parents accepted without question. How much more chaos would there be in a country like South Africa with such great diversity in religious belief, if there was no single law regarding such issues as euthanasia and abortion which all citizens had to adhere, despite their culture and religious beliefs. Thus the legal aspect of a country is so important in that it helps to regulate and maintain order especially in a country with such diversity in religion and culture. Hence the law of the country becomes more binding, than any religious tradition.

But the sociological fact that a change of attitudes is occurring by no means settles the question as to which attitudes are in fact the sounder. Yet the ethical questions were settled by the mere fact that attitudes are changing, then subjectivism or relativism would be correct. It would follow that the new attitudes would be no better than the old ones, but only different and that no reasonable grounds could be given for preferring the new morality to the old. One reason for the appeal of subjectivism and relativism undoubtedly is the promise they hold out that one's own moral judgement will be automatically validated (Grisez 1972 : 271 - 272). Everyone must follow one's own conscience, for one's conscience is nothing else than one's best judgement as to what one ought to do. (People act according to their own *dharma*). No one is guilty who does his best to find what is right and then acts according to the best judgement he can make. But such a judgement, for all its sincerity, need not be correct (*Bhagavad Gita* 3 : 35).

5.3.2.4 THE PHILOSOPHY OF UTILITARIANISM

Many Hindus, especially students and career orientated young people have adopted the philosophy of utilitarianism. These people feel that one should be practical and that one should not allow an unwanted pregnancy or child ruin their careers. Western scholars have also weighed the pros and cons of such a philosophy.

The view that abortion is justified whenever the woman wants it, because she has a right to control her own reproductive capacity, is ruled out as soon as one grants that the foetus also is a person with rights. For if this is true, the foetus's right to life obviously is more important than the woman's right to dispose of her own

reproductive capacity. An obligation to forego abortion no more infringes on her rights than an obligation to forego infanticide infringes on parental rights. One has a responsibility towards one's dependent. This dependent has a life and one must respect life for what it is irrespective of the quality; it is not a material object that one can dispose of at will.

Arguments that no unwanted child should be permitted to be born and that one must value quality of life more than mere quantity of life have also been introduced into the abortion controversy. However, a utilitarian theory of morality can use these arguments even on the supposition that the unborn are persons (or potential persons). A utilitarian theory would be even more likely to argue the justifiability of abortion in particularly difficult cases, for example, when the mother's health is seriously endangered, when the child will be seriously defective when the circumstances of the child's conception render its prospects very dim, or when the birth of the child would seriously lessen the chances of several brothers and sisters for a good life.

Utilitarianism holds that the moral good or evil of human acts is determined by the results of the acts. If an act has good consequences then that act will be good; if it has bad consequences, it will be bad.

Those Hindus in Durban who believe strongly in the utilitarian philosophy regard the life and well-being of the mother rather than those of the developing foetus. They say that everything possible should be done to save and give quality to the mother's life. Therefore, basing one's arguments on these principles one would

support abortion. It would be right to induce abortion if it is necessary to save the mother's life, since otherwise both she and the baby would die together, and it is better to save one than to lose both lives. Classical literature also made allowance or permitted abortion on these grounds. Then, even if it is the case of either or it usually will be better to kill the baby (foetus) since the mother's life will normally mean more to herself and others than the unborn's life will mean to it and to others. Next, the lack of advanced awareness and susceptibility to mental anguish in the unborn (or even in the young child) will justify killing it if its continued existence will spoil someone else's life (the mother's health; the well-being of existing children; the protection of society from the population explosion). If the child's own life will be one of misery than of joy it may be killed (defects of a serious sort; perhaps, the burden of being illegitimate and perhaps even being in the sad condition of being unwanted). Thus in the abortion debate (according to utilitarian ethics) the mother is more important than the embryo or foetus, because one can relate to the mother and not to the foetus, which cannot play any role in society. The argument continues, the existence of an unwanted child will spoil someone else's life (the mother's health, the well-being of existing children, the protection of society from the population explosion). If the child's own life proves to be one of misery than of joy, then the most prudent or rational thing to do is to put such a child away at the outset. This would be an act of *dharma*, according to Hindu philosophy, because killing is allowed in Hindu philosophy, if it is the most apt thing to do. *Karma* and *dharma* have been given a new interpretation here. The argument is that the child's suffering should be short lived. The question is why should one prolong suffering if one can shorten the period of suffering. The counter argument (as presented by older Hindu priests who were interviewed) would be that

if the child is destined to suffer (together with those around him) then this child should be allowed to go through that alloted period of suffering and fulfill its *karma*. A person should not interfere with God and the natural course of events. By giving the child the chance to suffer and fulfill its *prarabdhakarma* one is indeed assisting the child in its spiritual progress. By killing the foetus, one is hampering it from its spiritual development. Each individual should help the other individual in his quest for salvation or *moksa*. However, one must realise that the path or the quest for salvation is not an easy one. In utilitarian ethics the sympathy lies with the mother and everyone associated with the problem. In the eyes of some this philosophy might seem selfish. It is sad that the foetus cannot speak for itself, and hence it is not given the representation it deserves. In matters concerning such issues, the law of the country plays a vital role. Popular discussion shows that religion is now becoming a matter of convenience. Fundamental principles of a religion (example *dharma* and *karma* in the Hindu religion) are now becoming a matter of convenience. If everyone interpreted the principles of religion according to his "own brand of thinking" and to suit his or her own convenience can one imagine what would happen to the phenomena of euthanasia and abortion and also other issues concerning life and death. Therefore, the law of the country is so important, because it gives some consensus on such matters. Matters concerning such issues cannot be left to religion alone. Therefore, a great deal of emphasis has been placed on the ' ;al aspect of the phenomena in question, in this thesis.

Although there are many who think that a foetus of about twenty six weeks or less cannot be considered as a living child there are many who think otherwise. Human life is precious and ' o be respected and safeguarded regardless of the condition in

which it is to be found. Glanville Williams, a utilitarian, has this to say: "Even the modern infidel tends to give his full support to the belief that it is our duty to regard all human life as sacred however disabled or worthless or even repellent the individual may be" (Williams 1958 : 19). Williams, a consistent utilitarian explicitly regards not only abortion but also infanticide and euthanasia as morally right in appropriate cases.

According to Joseph Fletcher, no act is intrinsically wrong, moral quality arises from the consequences. Fletcher explicitly declares that his theory takes over from utilitarianism the strategic principle of "the greatest good for the greatest number". The teachings of the *Bhagavad Gita* and Hindu *dharma* in general agree with Fletcher's policy. For Fletcher, however, not pleasure but love that is the pursuit of the good of others on the widest possible scale is the goal (Fletcher 1966 : 37 - 39, 127).

Fletcher's system seems to differ from Classical utilitarianism in some ways: First his emphasis on love and service to others seems to imply that a morally upright person should leave his own interest altogether out of account, except to the extent that the good of others requires self concern (Fletcher 1966 : 39). This would differ from Classical utilitarianism which counts the self equally and directly along with all others. Fletcher says that one has to sacrifice one's personal principles for the good of the other. Abortion is morally wrong, but if it is done for the good of the others, then it becomes morally acceptable. Fletcher claims that Christianity by faith in God's love toward man provides a new motive for love, but otherwise love functions

in setting moral standards exactly the same for believers as for unbelievers. On these grounds Fletcher can accept a completely secular view of abortion, yet claim his position to be the only true Christian one.

Fletcher's argument on killing (in this instance abortion) is not very different from the Hindu view. Killing is *dharmic*. In the *Gita Arjuna* is instructed by *Krsna* Himself (the Lord) to kill out of a sense of duty. Although the Hindus believe in *ahimsa* (non injury) an exception is made in ritual sacrifice. Killing in Hinduism is a religious act; in like manner Fletcher accepts abortion on Christian lines. There seems to be a great deal of similarity between Eastern and Western belief and logic. Human beings act according to their **ratio** and is able to rationalise religion in the most rational of terms.

However, utilitarianism does not justify spasmodic senseless violence. No violence should be expedient and calculated to yield the greatest net good. Thus the rule excluding the birth of unwanted children is not to be taken as an application of a general outlook favouring the killing of anyone who happened to come into one's way. Rather the argument is that unwanted babies, their parents, and society at large are on the whole better off if unwanted babies are aborted. But this may not always be true, some unwanted babies, after they are born receive all the love and care.

The attempt to justify abortion in cases involving prospective birth defects is open to criticism. If life is a common good even a defective life is better than no life at all. Defects cannot touch many central values of the human person. The real reason

behind this argument is the philosophy of utilitarianism - the supposition that the infant is like a product, and that imperfect specimens be destroyed. This is what the debate (arguments) of the pro-abortionists boil down to.

A sound appraisal of the moral significance of abortion as a method of eliminating the defective was given by Martin Ginsberg, a New York State Assembly man in the 1969 New York legislative debate. The proposed bill would have permitted abortion "when there is medical evidence of a substantial risk that when the foetus is born would be so grossly malformed or would have such serious physical or mental abnormalities, as to be permanently incapable of caring for himself" (Grisez 1972 : 342).

Ginsberg, a thirty eight year old lawyer who was crippled by polio at the age of thirteen months, walks only with difficulty using metal crutches and leg braces. According to Ginsberg (himself) there are a number of people who have achieved greatness despite handicaps, Toulous Lautrec, Alec Templeton, Charles Steinmetz, Lord Byron and Helen Keller. Then he goes on: "What this bill says is that those who are malformed or abnormal have no reason to be part of our society. If we are prepared to say that a life should not come into this world malformed or abnormal, then tomorrow we should be prepared to say that a life already in this world which becomes malformed or abnormal should not be permitted to live" (Grisez 1972 : 342). This is very sound reasoning, and it shows that those who support abortion on these grounds, do not look at the alternative reasoning. This argument is indeed food for thought.

Abortion used as a form of birth prevention or population control - whether in cases of illegitimate children, or in cases of economic hardship or in simple reluctance to have a child cannot be justified. Getting down to the bottom of things, the very essence of the phenomenon in question is that one is getting rid of a baby, is robbing the child of its very existence. The continued existence of the child is simply rejected. The ulterior motive governing the phenomenon is avoiding future hardship for already existing children in an impoverished family. However good these motives may sound and win sympathy and compassion, they do not ethically justify the abortifacient procedure because "no deliberate killing" can ever be justified, be it viewed medically, legally or theocentrically.

Moreover, the "goods" sought in all such cases are achievable otherwise. The unmarried mother should be helped and arrangements made for the child's care whether or not she wishes to bring it up. Such children can be given up for adoption. One has to take responsibility for one's action, one cannot simply produce and destroy. People who advocate and who have engaged in such actions need to do some soul searching. Those who do not want children need not conceive them; they do so by their own free acts. The theory of *karma* says that one must take responsibility for one's action.

It seems appropriate at this stage to ask the question what happens to a woman who is raped and conceives a child of her attacker? In this case, she has had no choice, the child has come through no act of hers. Moreover, it is not clear that her precise concern is to kill the child. She simply does not wish to bear it. If an artificial uterus were available she might be happy to have the baby (foetus) removed and

placed in such a device, later to be born and cared for as any infant that becomes a social charge. Hindus look at the child conceived under such circumstances, in various ways and have tried to find a solution to the problem. The Law of *Karma* again plays a vital role in understanding such complicated issues. According to a Hindu academic in Criminology, it is the *karma* of that individual to be raped and conceive a child under such circumstances. Legal, medical and religious ethics in general have viewed this matter with a great deal of sympathy, especially towards the bearer and have made exceptions to general rules. It is not easy to pass judgement on such a case. Each individual's judgement will obviously be coloured by his own beliefs and values. The general attitude of people (including Hindus in the Durban area) irrespective of their religions and religious beliefs is that one should say yes to abortion in the case being discussed.

If one has to analyse this answer critically, surely it does not mean that abortion in such a case would be ethically right. It is appropriate to ask at this point what basic human good is achieved if the developing foetus is aborted? This foetus might have the potential of growing into a perfectly normal intelligent human being, capable of making a great positive contribution in this "sick" world. Abortion of the foetus cannot alter the fact that the victim of the rape has been violated. The unborn infant is not the attacker. It is hers as much as his. The fact that she does not want to bear the child is an understandable emotional reaction. Here is a case of life versus emotion. But really at stake is only such trouble, risk and inconvenience as is attendant on any pregnancy. To kill the baby for the sake of such inconvenience reveals an attitude toward human life that is not in keeping with its inherently

immeasurable dignity. As has been stated abortion does not alter the bare facts of what has already transpired, alternatives have been suggested, without placing undue burden on the victim, so why not choose the alterative than resort to "killing".

Psychologically the rape victim is clouded with a sense of guilt, killing the innocent foetus adds to the guilt. Her problem is largely to accept herself, to realise that she is not inherently tainted and damaged by her unfortunate experience. The unborn child is partly hers, and she must accept herself in it if she is really to overcome her sense of self rejection. To get rid of the child is to evade the issue not to solve it; a woman who uses such an evasion may feel temporary relief but may be permanently blocked from achieving the peace with herself she seeks. It may be viewed as an act of *dharma* to give birth, nurture and provide for a child, that has come into this world, without her own doing. As already discussed, what has been done cannot be undone the "life" that has resulted out of this act should become the focus, and not the act itself. In an instance of this nature, one cannot prescribe as to what is moral or not.

Decisions are made according to one's values and interpretations; whatever decision is taken one cannot weigh it in terms of its wrongness or rightness. One merely sympathises and respects the decision of the victim. It may not be correct for the onlooker to pass judgement on such issues.

Abortion on grounds of incest is permissible both by law and religion. Such acts should not have occurred in the first place. In the Hindu religion, the act itself is viewed with great contempt. Adults ought to learn to be responsible for their

actions. Both parties involved are as much to blame. Human beings are not animals, they have the intelligence to choose their marriage or sexual partners. Animals engage in incestuous relationships that human beings should never. This may be regarded as one of the most important factors that discriminate man from beast. The offsprings of such relationships are also not healthy. Therefore, in the Hindu community (particularly the Hindi speaking) people are not allowed to marry cousins, uncles and aunts, irrespective of the degree of relationship (first, second, third, etc.). The older generation and the more conservative Hindu practise this staunchly. It seems that their knowledge of biology and especially genetics was far more advanced than that of the present generation. Hinduism is a very practical religion, their rules and restrictions have taken many things into consideration, which perhaps the younger generation may not understand. There is a very close link between religion and science in Hindu philosophy. Because of the lack of understanding and the lack of knowledge (on the part of the young) the older conservative Hindus are termed "old-fashioned".

If abortion is justified, then it should be performed in a way that gives the child a chance of survival, if there is any chance at all. The effort to save the aborted child and to find ways of saving all who are justifiably aborted would be a token of sincerity that the death of the child really was not in the scope of the intention (Grisez 1972 : 344).

One might wonder about the moral status of birth control methods that are probably or possibly abortifacient like in the case of the intra-uterine device (IUD) and the pill (Tredgold 1964 : 1253). If one recognises that human life is at stake if

these methods do indeed work in an abortifacient manner then it is clear that the willingness to use them is a willingness to kill human beings directly. The effect of killing the already conceived individual if it occurs, is no accident, but the precise thing sought in committing oneself to birth prevention. **If one is willing to get a desired result by killing, and does not know whether he is killing or not he might as well know that he is killing**, for he is willing to accept that as the meaning of his act. One could conclude that those who know the facts and those who prescribe or use birth control methods might be abortifacient are abortionists at heart. Hindu doctors who were interviewed also shared similar views.

Western scholars on the abortion debate see the judgement more clearly by considering it from the point of view of someone who sincerely believes conception prevention to be legitimate and any interference after conception to be unjustifiably killing a person. On these assumptions it is clearly insufficient to know that a given method prevents births, such a person would be willing to prevent conception but absolutely unwilling to interfere once conception has occurred. The abortifacient character of a technique, even if certainly known to occur in only a small percentage of cases, could not be viewed as incidental to the intended conception prevention, since in those cases there would be no conception prevention. Nor could the abortions which might occur be outside the scope of the intention defined as birth prevention would be abortion. Uncertainty about the methods mode of action would perhaps be tolerable if the uncertainty regarded side effects. Here however, the uncertainty is concerned with the very meaning of the intended birth prevention be it conception prevention or abortion (Tredgold 1964 : 1253; Grisez 1972 : 344).

Young Hindu women who are using the intra-uterine device, do not know how it exactly functions. They are not aware that it indeed is an abortifacient. All they know is that it is a means of birth control; all that they are interested in is that they do not give birth to an unwanted baby, even if conception does occur and the zygote is washed away with the menstrual flow is of little concern to them. It might be adviseable for attending gynaecologists to explain and educate women on the workings of the intra-uterine device. Most people are only interested in the end result; no one is interested in the process leading to the end result.

It is often argued that abortion should not be equated to murder. The argument indeed becomes a legal issue. On the other hand, "murder" also has an ethical sense: it is the wrongful and purposeful taking of human life. Others argue that one must question the morality of abortion before equating it with murder. Having examined the phenomenon in detail, it is accurate and appropriate to say that abortion whenever it involves the direct attack on human life (which very often is the case) is murder. The end result of abortion and murder is the same (that is, killing a life irrespective of the circumstances). The term murder arouses an emotional reaction, hence people who perform the act, and those on whom the act is performed, prefer using the word abortion, giving the act more dignity. By utilising a softer term one is merely sanctifying an evil act.

To say this, however, is not to assert that everyone who has an abortion or who performs the abortion incurs the full responsibility for murder. Many who do the evil deed do not know, or do not fully appreciate what they do - this is true of all murder, not only of abortion. Some act through fear, through anxiety and through

shame. Probably they feel less guilty than those who act through cool and brutal calculation such as a utilitarian. If one's lack of appreciation of what the deadly deed really means or if one's weakness to resist is a product of one's own habit of treating the good of life lightly or of one's willingness to see and feel the wrong one does, then responsibility is not lessened but increased.

An act of such a nature (namely abortion) should only be performed with due consideration to the very act itself; what the opponents of abortion are really asking for is a little more responsibility on the part of those engaged in such acts. In such acts conscience should play an important role.

5.3.2.5 THERAPEUTIC ABORTION

The question is asked timeously, what should one save, the mother or the foetus? If the one to be aborted has a right to life equal to that of its mother, can a therapeutic exception be accepted. Abortion, unquestioningly is performed when the mother's life is in jeopardy. The law and religion has made an allowance for this type of abortion. However, Hinduism, taking the Law of *Karma* in all its seriousness, has questioned therapeutic abortion, on the grounds that what criteria must one use to say that the soul of the mother is more important than the soul of the foetus (taking for granted that as soon as conception takes place the soul is present in the embryo, foetus or zygote). The mother might be destined to die or suffer ill health, during her pregnancy. This might be her *karma*. On the other hand therapeutic abortion might be looked upon as an act of *dharma*; thereby saving the mother. It is merely on convenience, that society and the law justify therapeutic abortion, but one must

be guarded against abuse and extension of the act. Whenever a life is involved irrespective of whose, or the very quality of life, one has to act within a certain code of ethics. A decision that has to be made must be made within that code of ethics. In other words decisions must be rational and not rash. Or to put it in the words of Daniel Maguire, "Good ethics is based on reality and makes real distinctions where they are real differences. It is furthermore fallacious to say that if an exception is allowed, it will be difficult to draw the line and therefore no exception should be allowed. It has been said quite rightly that 'ethics like art is precisely a matter of knowing where to draw lines'" (Maguire 1973 : 195).

Much can be done in cases that involve birth defects. Institutions providing care in this area are inadequate (as are insane asylums and facilities for the aged). As the causes of many defects become known, ways of treating or preventing them can be found. The important lesson of thalidomide babies is that there are no new thalidomide babies, there will soon be no more German measles or babies suffering from its consequences. The public commitment to the care and training of the handicapped could be increased. Social security should be extended to give more help to parents of severely defective children, for such parents make a contribution of great value to society. By allowing the defective babies to be born, one would be helping them to work out their *karmas*. Those that will be helping to provide adequate means for these babies to survive will be performing an act of *dharma*.

Also to be borne in mind that even if everything possible were done, no public effort can eliminate the factors which probably underlie the majority of abortions. These factors are simple. Babies are conceived through irresponsibility of intercourse

"protected" by a contraceptive and enjoyed with an attitude of complete rejection toward the new life which might arise. Having been irresponsibly conceived, the babies are unwanted and rejected. Being weak, invisible and unknown to society at large such babies are easily killed and disposed of without detection. The act is imagined to be as insignificant as the victim is small. Those immediately concerned especially abortionists have selfish motives for acting. Society tends to accept the practice, because it is a fact, to compromise with it because it is intractable, and even to legitimatize it, so that the pressure on society is minimized (in terms of finances).

5.3.2.6 CONTEMPORARY HINDU VIEW

Those who oppose abortion, argue that human life begins at the moment of conception and that the foetus has a right to life. Abortion is murder. A foetus that is six to ten weeks old, has a heart beat, fingernails and a capacity to experience pain. Abortion can also be regarded as euthanasia. If abortion were legalised then it would encourage the decline of morality and loss of reverence for the sanctity of life. Promiscuity will be encouraged by legal abortion. Sexual misbehaviour should be punished. She had her fun now let her suffer the consequences of irresponsible sex. A physician is trained to preserve life and not to destroy it. Abortions in late pregnancies will result in killing of viable foetuses who will cry in surgical trash cans before they die. In deciding the fate of the foetus, the father as well as the mother should have an equal say. Some argue that no such right exists, it is the moral duty of each married couple to engage in responsible sexual relations. The rights of the individual woman must be weighed against other rights - those of the foetus's and of

society to uphold its moral integrity. The right to privacy does not extend to a "right" to murder the innocent and helpless. Women who have had abortions are held in very low esteem in Hindu society. A young Hindu woman (unmarried) seeking abortion needs counselling according to one Hindu doctor. This doctor has been doing a lot of counselling, instead of recommending abortion. He will by no means perform an abortion. If abortion has to be performed, it must be done in a hospital (under the care of proper authorities). The cut off point for abortion (if it is absolutely necessary) should be six weeks. A termination performed late in the pregnancy is more repulsive because one is dealing with an almost fully formed baby. For this reason, if for no other, it is most desirable that, if a termination is to be performed it be done early. On the other hand, if abortion is provided for, the woman must be given time to realize that she is pregnant and to make arrangements. The longer the time given the better from her point of view. A woman who starts by wanting an abortion sometimes changes her mind; if the operation is postponed, therefore, there is a chance that it will not be needed (Williams 1966 : 199 - 200).

Another Hindu doctor said that he would recommend abortion for social reasons, and that he himself will perform abortion if he has to. He also felt that abortion should be performed at or before six weeks of pregnancy. However, his wife (a nurse) would not approve of abortion on social grounds. Housewives with teenage children, said that they do not approve of abortion. However, they would respect their children's decision concerning abortion. Another Hindu doctor said that all

defective foetuses should be aborted. A mother carrying an abnormal foetus normally miscarries. Miscarriage is an act of nature. Therefore, he feels that it is an act of *dharma* to abort a defective foetus.

Some felt that legal abortion will decrease the number of unwanted children, battered children, child abuse cases and possibility of subsequent delinquency, drug addiction and a host of social ills believed to be associated with neglectful parenthood. Legal abortion will also decrease the number of illegitimate births. Legal abortion could decrease the tragedy of the birth of deformed children. Legal abortion provides the only humane disposition of a pregnancy resulting from rape or incest.

Others with a more humane attitude said that deformed children have as much a right to live as others; many deformed persons lead normal and constructive lives. If one were to sanction the disposal of deformed foetuses, then probably one might also decide to do away with the elderly and the useless or the non-productive adult. If one has to adopt this attitude, then one must do away with the hungry, the starving, those walking the streets aimlessly and those suffering from mental decadence. If one has to weigh or value an individual in terms of his contribution to society, then surely those mentioned above are nothing but a total burden or menace to a society.

Others feel that the mother should have the sole right in deciding whether she wants to have the baby or not. The father only becomes a father after the child is born. He may contribute fifty percent of the genes, but he does not have to bear and to

fully care for the outcome. Some partners may not be husbands and in case of disagreement and a husband's denial of abortion the woman is subject to compulsory pregnancy and involuntary servitude.

If women feel this way that they have the right to decide, then they should act in a responsible manner, for babies do not come of their own accord. If one wants to be treated with dignity, then surely one must act with dignity, that means that one must accept responsibility for one's actions irrespective of the consequences. If one wants to exercise one's rights then surely one must respect the rights of others, no mater how great or how small (or negligible), they might be. The right to one's privacy does not extend to a right to end the life of the innocent.

A foetus that is conceived through rape, should be aborted. This was the general view of the people that were interviewed, including Hindu academics. The child would be a constant reminder of the incident and this would create much unpleasantness.

Abortions are being carried out in some Hindu homes by elderly women who sincerely feel that they are helping people (getting them out of trouble). To those who perform this act(murder of the innocent), is an act of *dharma.* An article that appeared in the Tribune Herald (9-5-93) shows that no remorse is felt for their acts.

Some women are performing abortions on themselves. Many land in hospitals with incomplete abortions. The age group varies from sixteen to forty years. Many married women are also having abortions. They do this privately without the

husband's knowledge; since the foetus is often conceived through extra marital affairs and sometimes incest (Tribune Herald 4-10-92). For many having an abortion is just getting rid of an unwanted object. Many of these women die in the process. This is a regular occurrence in some of Durban's hospitals. Some of the Hindu doctors who were interviewed said that this is a regular feature. These people (who perform and have abortions) are well aware that it is an immoral act. These people hail from all backgrounds, so one cannot attribute this to socio-economic reasons. The person who performs the abortion gets some money, and the person on whom the abortion is performed is freed of all responsibility. It is a mutual benefit to both people. The articles that appear in the local newspapers, reveal that these people do not have a conscience.

It was only the older priests and those people who understood and believed in the Law of *Karma* and *Dharma*, said no to abortion. The others said that they approve of abortion because it sorts out many a problem, even younger priests, and academics in Hindu and Indian philosophy supported abortion. Thus it can be seen that the utilitarian philosophy is making a great impression on people. Any act it seems becomes "good" because it produces the greatest good. Everybody seems to be interested in the end result of the act and not in the act itself. Disturbing as it may seem this is how the modern Hindu in Durban think.

5.4 RE-INTERPRETATION OF *KARMA* AND *DHARMA* WITH REGARD TO EUTHANASIA, SUICIDE AND ABORTION

Having examined the phenomena, euthanasia, suicide and abortion, one finds that the concepts of *karma* and *dharma*, the two fundamental principles of Hinduism have been re-interpreted to suit the changing times and social norms. Hindu religious principles are not constant, they are flexible. These principles (*karma* and *dharma*) are modified and re-interpreted to suit changing circumstances and situations. The importance of a value, according to Hindu lawgivers, does not lie in its abstraction, but only in the context in which it is embodied. Its importance or worth vary from time to time and from place to place. No value can be universalized or absolutized as good for all times and all regions. Even *dharma* cannot be invested with such universal meaning. Therefore, one cannot talk about the rightness or wrongness of an act. *Bhisma* in the *Mahabharata* says that what might be *dharmic* for one person, might be *adharmic* for another, and what might be *adharmic* to one might be *dharmic* to another (Sheth 1987 : 21 - 22). *Bhisma's* reasoning can be applied in the present times. Euthanasia and abortion, might be acts of *dharma* for some individuals, and *adharmic* for others.

Hindu principles and beliefs are guidelines, no scripture advocates its implementation, in its totality, provision has always been made for changing circumstances, especially in terms of time and place. A great deal of faith is placed upon mankind himself, especially on his **ratio**. Man (**Homo sapiens**) being an **intelligent being** has to decide on what course of action he must follow. His action must be such that order and equilibrium in the universe must be maintained at all

times. Therefore, man himself thinks that he is the agent of the Lord. He has the intelligence to realise what is good and the ability to perform an action that brings about the necessary good. The Hindus in the Durban area have reasoned in this manner, and have supported euthanasia and abortion on these grounds. Life to them is not always good, some lives have to be destroyed in order to maintain *rta* (order) in the cosmos. Hindu doctors believed that the destroying of some lives were acts of *dharma*. They understood euthanasia and abortion (only in specific cases) to be *dharmic* acts. It was also the patient's *karma* that he be put to death at a certain time (especially in the case of incurable and terminal illnesses). The suffering of the patient was meant only to be for a certain period. There was no need for prolonged suffering if that life could be terminated sooner. The quality of life ethic was taken into consideration. The patient's *karma* and the physician's *dharma* work interchangeably to provide the desired result. Killing becomes a noble and a most desired act.

Sometimes one may wonder whether the re-interpretation of *karma* and *dharma* as has been discussed in Chapter Four is not a matter of convenience. An act only becomes *dharmic* if it is done for the good of others. Sometimes euthanasia is performed not for the good of the person on whom it is performed, but for the good of oneself or others concerned. This is not euthanasia, and such an act is considered *adharmic*. For those who have performed and intend performing such acts with the motives just mentioned accumulate bad *karma* for themselves, and the person on whom such euthanasia is inflicted rises to a higher level of spiritual development.

According to Hindu philosophy, the selfless service to mankind far outweighs the benefits of the direct worship to the Lord Himself. The entire teachings of the *Bhagavad Gita* is based on similar lines.

Others have argued that to care and nurse such patients is service to the Lord. The caring and nursing of patients become acts of *dharma*. These patients have to undergo the suffering, it is their *karma*. Premature termination of this suffering will result in the patient returning in the next life to fulfill that suffering. Therefore, it would be better if that suffering were completed in the present life.

As has been stated earlier, with due consideration to all the factors that one has to take into account, decisions of people, irrespective of their religions and religious belief are greatly influenced by the financial factor. One can safely conclude that the ethics governing life and death is greatly determined by economic and social ethics.

As regards suicide, although Hindu scriptures do not condemn it, it surely cannot condone it for the reasons that people commit suicide today. People commit suicide today to escape the problems they face in life. As has been discussed earlier in the chapter **stress** and **frustration** are great contributory factors. There is no salvation (*moksa*) for those who commit suicide, for they do so not for heroic or religious reasons but as a form of escape.

Chapter Six deals with the conclusion that was arrived at after the investigation.

CHAPTER SIX

CONCLUSION

6.1 EUTHANASIA

The human being, (of all living beings) is free to shape his future. He is a rational being in transit to other worlds. The how and when thereof depend on his destiny. Though he is bound in the fetters of his previous actions or hereditary impressions he can never do anything by his independent volition, yet he has to improve his conduct and purify his intelligence. He has to fructify his life and respond to the spiritual evolution by developing and manifesting the potential divinity of his soul identified with God as prescribed in Hindu scriptures (Mishra 1978 : 56).

Liberation, realization of one's destiny as *atman* (self) with *Brahman* (ultimate reality) takes time. First one has to feel the desire to look (for realization) and a great deal of experience on the part of man as a self-conscious (finite) being, engaged in fulfilling desires for the enjoyment of good things in life, with their accompanying frustrations, has to happen before the prospect of looking for liberation may even look attractive. This requires transcendence of desires and a life force must fulfill its desire for being to the full through phenomenal existence in many forms seeking and experiencing all possible human pleasures before finding that they no longer attract and something more is needed for total fulfillment. But as long as desire for pleasures remains, the death of one life cannot mean the end of existence altogether for the impulse or force that constitutes that life, it can only

mean a reconstitution of that impulse in another form in another existence so as to enable it to continue its search for enjoyment. Lives in any one generation are thus not new beginnings but a remodelling of previously existing forms and in this process all of existence participates so that interchange between different forms of life and even between the living and the non-living takes place. That is to say, organic forms may arise out of the inorganic and the organic lapse into the inorganic and human beings may be reborn as animals and animals as humans. All this is possible in the Hindu view because it does not see the physical, the vital, the mental, the conscious and the spiritual as being absolutely distinct and cut-off from one another. They constitute a continuum, the beginning and the end of which meet (Bowes 1987 173 - 174).

In this continuing process things happen not haphazardly but according to law. The law, in the case of human rebirth is known as the Law of *Karma* (action) and its functioning is part of a more comprehensive functioning according to law, through cause-effect relationship, present throughout the universe. This is known as *dharma* (*rta* of the *Rg Veda*). Each thing functions according to its own nature (*svabhava*) in interrelation with other things also functioning in this way - this interrelation being part of the *dharma* of cosmic existence itself. All change and development takes place according to this law-governed nature of things whereby things seek the maximum fulfillment of their inherent potentalities in interdependence with other things whereby the balance of existence is maintained even though creation contains things of opposite nature.

It is strongly stressed in the scriptures that a man "doing his duties must desire to live a hundred years". By performing appropriate action, man secures for himself a better life in the next birth. It is also stressed in the Scriptures (*Upanisads*) that he (a human being) may free himself from all bondages of action in a single life span if he strongly desires and endeavours appropriately (meritorious deeds or actions).

The human body is a spot where the soul has to maintain its positive existence and improve its metaphysical status as it comes nearer to the Supreme Lord (*Brahman*). For this reason the life of a human being is the most precious and the most sacred asset to the soul. The *Yogis* practically confirm this scriptural statement by proving that the whole universe is centred in a single human physical frame but requires it to be developed by means of *Yoga*-practice. The human body is the sporting ground and *yoga* is the game. Victory or salvation is dependent on how well the game (*yoga*) is played. In playing the game people of advanced nature are treated as the support of others in their respective fields and help to make the human community run smoothly. Just as a beggar approaches a man of means for alms, a student for education approaches a teacher, likewise a sick man seeks for a medical practitioner to recover his health.

This kind of relationship is a "hopeful relationship" because the man in need hopes that his desires will never be frustrated. But the relationship between a sick and a medical man is sacred too. A man physically afflicted seeks inevitably for the service of a doctor. This means that a patient surrenders his precious life to the mercy and discretion of a physician. He sacrifices most of his happiness and wealth to rid himself of the troubles. He even follows the grim advice he receives even if it

may be against his will and means (Mishra 1978 : 57). The greatly responsible doctors who discharge their duties consistently often find themselves at a loss when they come to treat a sick person suffering severely from an incurable disease causing great pain. The doctors are moved by compassion and feel with the patient. At such a crucial moment the question arises whether euthanasia is practicable or not. In ancient India there were evidently some prescribed measures in practice to end life at such a stage. The *Smritis, Puranas* and the *Mahabharata* strongly oppose suicide but they also advise the people suffering from irremediable diseases to end their lives by *yoga* practice, by fasting to death, entering the sacred fire or immersing themselves in the Ganges until they drown.

A soul enshrined in a body that is suffering from old age or incurable disease is stagnant, due to the lack of action. Such a body cannot perform appropriate action due to its condition, thereby souls trapped in such bodies cannot progress or retrogress due to the lack of action. Hence euthanasia is recommended.

The understanding of the concept and the practice of the phenomenon is very different today as understood and practised by the Hindus of the Classical Period. Euthanasia in the Classical Period was really suicide. It was self-inflicted and the decision came from the individual himself. The reasons given for self-euthanasia were sound and logical. A public declaration (as compared to present day Living Will) was made and outside help was permissible. However, euthanasia, understood and practised by Durban Hindus today are very similar to Western ways. The reasons that were put forth by the majority of the Hindus who were interviewed were similar to the Western proponents of euthanasia.

According to some Hindu views, euthanasia can be considered both *dharmic* and *adharmic* depending on the circumstances and situations in which it is administered. One of the leading proponents of euthanasia in Western culture is Marvin Kohl. His main argument for euthanasia is that as the terminally ill persons cannot be cured of their illness and as their death is inevitable, it is an act of kindness to intervene in the course of the illness, if their pain or suffering is too great. In a Plea for Beneficent Euthanasia he advocates the administration of increasing doses of drugs (such as morphine) to relieve suffering until the dosage of necessity reaches the lethal stage. In defining a kind act he states "not so obvious is the recognition that harm intended as help is neither helpful nor kind and that kindness results only from the combination of good intentions and beneficial consequences" (Kohl 1975 : 234). Such an act according to Hindu belief would be *adharmic*. The objections to euthanasia would be on two grounds that of *karma* and the mode of death.

A terminal illness represents the repayment of a *karmic* debt. If the complete evaluation of the *karmic* debt were to be disrupted by an active intervention on the part of the physician it would then need to be faced again in a future existence. One might not be able to attain a human existence in the future; therefore, one would have to face the same ripening *karma* in a disadvantageous realm of existence. It would be preferable to face the results of one's past actions in this lifetime with spiritual teachers, friends, family and health professionals to assist one. This non-interference with *karma*, however, does not exclude the compassionate intervention of relief of physical pain with analygesics (of necessity not leading to lethal doses or to soothe mental distress) with sympathetic listening and counselling.

For the compassionate Hindu tender love and care and not euthanasia is recommended for the terminally ill.

Next is the argument based on the mode of death. In most discussions, as to the mode of euthanasia, especially for the conscious individual large doses of narcotics are presented as a merciful and ideal way to die. Hindus strongly disagree with this ideal of the comatose death. The act of dying and the dying process are felt to be a vital link between this and subsequent existence. The state of consciousness and the level of mindfulness are of crucial importance. Since the mind at the time of dying is approximate cause of the continuation into the next lifetime, it is important to use the mind near the time of death in practice. No matter what has happened in terms of good and bad within this particular time what happens right around the time of death is particularly significant.

These goals are obviously not possible if the dying person is in a narcotic-induced coma. It is difficult to know how Kohl views death within the context of a cohesive view of existence. In a Plea for Beneficent Euthanasia he apparently identifies with "ethical humanists" (Kohl 1975 : 234). However, he never clearly states the cosmology assumed in his arguments. If death is viewed in the modern materialistic perspective in which death is the final termination of the individual, euthanasia then might be considered a truly merciful act, as any suffering near the time of death would be completely pointless. However, when death is viewed as an important link between this and subsequent existences it gains meaning through as in the case of the terminally ill in which death is shortly inevitable, its acceptance and the willingness of the dying person to work with it makes the death experience valuable

not completely pointless nor unnecessary. Death's significance obviously depends upon one's cosmology (Lecso 1986 : 56).

The more conservative and the older Hindus and especially those who were familiar with Hindu religion and philosophy gave a different interpretation. They understood the phenomenon through the two fundamental Hindu concepts *karma* and *dharma*. Those who steered the middle course (between Eastern and Western thinking) re-interpreted the concepts of *karma* and *dharma*.

Since the subject lends itself to such great controversies, arguments for and against euthanasia are many and various. Sound logical arguments were presented from many standpoints. This was clearly evident in the research that was undertaken. Every argument had a counter-argument. The very tools that were used to understand the phenomenon of euthanasia also became centres of controversy. New meanings and new interpretations were accorded to the concepts of *karma* and *dharma*.

Although terminal patients do not desire death they nevertheless must confront it. They should be free to choose between a slow delibilitating painful death and a quick painless one. The constitutional right to privacy protects a competent terminal patient's right to determine for himself the time and manner of his death. The law should protect those who do not choose euthanasia of their own volition or who are incapable of making such decisions for themselves. This is necessary to protect society from the danger inherent in allowing euthanasia decisions to be made by anyone other than the patient. Nevertheless, a voluntary request by a

legally competent terminal patient for a gentle passing should be honoured. In addition second parties whose assistance is needed should be protected from legal sanctions.

Man is a social being, his joys and sorrows are shared by those around him. At one stage "methodological individualism" was the dominating tendency in Indian metaphysics when it dealt with the question of *moksa*. *Moksha* in Indian metaphysics was purely an individual affair. At the social level, however, Indian thought has adopted what may be termed "methodological collectivism". Because methodological collectivism has dominated Indian social thought it is not surprising that group *karma* finds an important place there (Pappu 1987 : 308).

Thus the euthanasia debate centres around not only on the individual concerned but also on those who interact with him and especially the family. Hence the suffering is not individual, but the entire group is affected. Decisions have to be made, and if the decision taken is for the benefit of the individual concerned and for the welfare in general then such a decision can be considered *dharmic*. People are born and live in a society, their actions affect one another. Since groups have their own *karmic* properties an individual is an heir both to his own *karmic* deeds and also to the other *karmic* properties of the group in which he is born. The *Dharma Sastras* which constitute the social philosophical thought of India, state in this connection that *moksa* or release from *karma* is possible for the individual by performing his obligations (*dharmas*) to the group to which he belongs. According to the *Gita* one's *karma* determines one's caste (individual *karma*). One's *dharma* (duty) is also dependent on one's caste (*varna*). Each of the four *varanas* has a particular duty to

perform. Hence, one acts collectively (Sivananda 1980 : 63). It is because of one's individual *karma*, a person is born; when a person is liberated from his *karmic* bondage, it is he alone who is liberated. But between birth and attainment of *moksa* his *karmic* deeds can take place only in groups and it is impossible for him not to be a participant in group *karma*. Defective infants and their parents is a clear example of how group *karmas* interact.

Situation ethics fits medical ethics because it is built on the Clinical Model. That is situationists like clinicians are case focused and empirical: they do not find the answers to right or wrong questions by consulting theories but by examining the situations just as physicians do for particular patients. They follow the line of milieu therapy in psychiatric medicine; field theory in psychology and context analyses in sociology. Situationists do not approach decisions with prefabricated "a priori" solutions, of the order of universal negatives like "we must always maintain life" or we may never interrupt a pregnancy or to end an innocent life is murder. These according to Fletcher are the cliches of an irrelevant ideology (Fletcher, J. 1975 : 50).

Therefore, the rightness or wrongness of euthanasia or easy death whether direct or indirect depends on the situation. Neither form is intrinsically or invariably good or evil. Sometimes mercy killing is right; sometimes letting the patient go is wrong. Circumstances alone determine the course of action. And this is the case with respect to the voluntary-involuntary distinction as well as the direct-indirect distinction. If patients choose their death it is suicide for voluntary euthanasia is a form of suicide. Euthanasia is still very much a controversial subject. Therefore, in

the final analysis euthanasia may be wrong for those who think it is wrong and right for those who think it is right. Given all the due considerations as has been discussed in the entire thesis euthanasia is neither right nor wrong. More than the rightness or the wrongness of the phenomenon is the very situation in which the phenomenon finds itself.

The research clearly shows that the majority of the Durban Hindus support euthanasia in some form (since euthanasia takes various forms). However, their reasons varied according to their beliefs and re-interpretation. Situations and circumstances and also financial considerations played a key role in the euthanasia debate.

6.2 SUICIDE

The phenomenon of suicide has also undergone much change from the Classical Period to the present times. Suicide was regarded as heroic and religious. It was committed for heroic and religious reasons in the Classical Period. As time went on **mors voluntaria heroica** and **mors voluntaria religiosa** led to abuse even in the Classical Period. Hence suicide lost its efficacy in this period.

The meaning of suicide also changed in the different historical periods. This was also due to new ideas or interpretations accorded to the concept of God, Man, Cosmology and *moksa*.

At one stage suicide was regarded as the highest form of sacrifice in an era where animal sacrifice was in vogue and the sacrifice of man was not uncommon. Today sacrifice is re-interpreted as service to man. The *Ramayan* and the *Gita* the two most popular scriptures amongst Hindus in Durban are replete with such examples. Sacrifice also takes the form of duty. Sacrifice which took the form of killing in the *Vedic* and *Brahmanic* Period, lost its essence in the *Smrti* Period. Although one finds animal sacrifice occasionally, it is losing its popularity. Hence suicide as a form of religious sacrifice is no longer in vogue. Suicide is now condemned by modern Hindus. Suicide is regarded as a cowardly act, a form of escape from problems and situations, which one cannot face. Although many empathise with those who commit suicide one does not accept suicide on religious grounds. There are many paths to salvation and suicide in contemporary times is definitely not one of the paths.

Contemporary Hindus do not discriminate against the dead. In the Classical Period cremation and post-cremation rites were denied to those who committed suicide. In present times those who commit suicide are cremated and post-funeral ceremonies are performed by their surviving relatives for them.

Conservative Hindus feel that the souls of those who commit suicide do not reach their rightful abodes. Such souls (of those who commit suicide) do not evolve spiritually. Therefore, one should never commit suicide, for if one does then one is stagnating the soul and depriving it of its spiritual progress. These souls also retrogress spiritually. This is a belief held by many conservative Hindus. This belief might also act as a deterrent against those who contemplate suicide.

Suicide in Durban is very common amongst the young. The reasons have been discussed earlier in the thesis. Religion does not play any role in the motivation for those who commit suicide. Familial and societal pressures become too intense for many to bear, hence suicide seems to be the only easy option.

6.3 ABORTION

Hindu Scriptures strongly condemn abortion. The *Vedas* and the *Upanisads* state explicitly the consequences resulting from abortions both for the person who performs the abortion and on whom the abortion is performed. The Scriptures also make allowances where abortion may be permissible.

Although many are aware of the ills of abortion, yet backstreet abortions are on the increase. Morality and ethics are receding into the background the world over and Durban is no exception. Research shows that people's morals and ethics are governed by the philosophy of utilitarianism. Today people do not want to shoulder the responsibility of their irresponsible conduct. Abortion seems to be the easy option out of a "sticky" situation. Although abortion may be permissible for valid reasons (health of mother, abnormal foetus, etc.) research shows that the abortions that are carried out today are not for such reasons, but they are more for selfish and social reasons. Most of the abortions are done privately and performed by incompetent persons. Many victims die in the process when these abortions are incomplete and when infection sets in. Some elderly Hindu women perform private abortions (Tribune Herald 9-5-93). When such persons perform abortions, they

regard it as a *dharmic* act. They actually feel that they are helping people and they do not see it as morally wrong. Exorbitant fees are charged for private abortions.

While abortion is condemned on social grounds, it may be permissible or even regarded as an advancement in medical technology in other instances. Selective foeticide is being practised by some doctors. Doctors have killed a Downs Syndrome affected foetus - one of twins allowing the other twin to go to term and be born normally. Doctors have urgently called for the South African Abortion Act to be re-examined to take recent advances in medical technology into account.

In the South African Medical Journal (February 1994 issue) the doctors said that couples who opted to have the procedure, needed thorough counselling about the risks of losing both babies, the risks for the remaining twin (including termination of the wrong twin) possible risks for the mother and ethical questions. The final decision should be left to the parents (Daily News 16-3-94).

Pro-life supporters see the abortion issue as a human rights issue. They believe the unborn foetus has rights too, protected by the Bill of Human Rights. But pro-choice supporters say its a womens' rights issue, that the unborn foetus is not an entity until it is outside the womb. Therefore, the woman who is carrying the foetus has all the rights (Sunday Tribune 29-5-94).

For years the battle between the pro-life and the pro-choice has been a fairly evenly matched one, but as real democracy has dawned on South Africa, the balance of power may be tipped in favour of newly acquired women's rights.

Despite what doctors, psychiatrists and gynaecologists may think about the question there is a growing movement towards a more liberal and permissive attitude in dealing with unwanted pregnancies and there is a growing popular pressure towards a liberalization of the law as well as the practice in relation to abortion. This pressure comes to some extent from women themselves expressing the idea that they should be able to exercise a larger measure of control over their own destinies and the destinies of their families than has been up to now allowed to them in patriarchically organised societies. This pressure has also been strongly influenced by the revolutionary force of ideas produced by the world-wide population explosion and from that of the individual man and woman is towards what Sir Douglad Baird has called a fifth freedom, freedom from the tyranny of excessive fertility (Gillis 1975 : 212).

The psychiatrist's role in dealing with an unwanted pregnancy and a request for abortion is not a simple one. His role can only be an advisory one, as in any case it is the gynaecologist who will have to carry out the actual abortion procedure. In addition the psychiatrist's advice will be governed not only by his own clinical opinion but will also be clouded by the laws of the land in which he happens to live.

Public pressure is now increasingly directed towards social rather than medical indications for abortion. This trend which culminates in abortion upon demand may create serious personal conflicts among physicians confronted with such requests, since their medical training (Hippocratic Oath) with its emphasis on the preservation of life has fostered attitudes not conducive to this view.

Abortion is a common feature today in South Africa amongst all groups of people irrespective of their colour, race or religion. It is common not only amongst the young but also the middle-aged (Tribune Herald 4-10-92).

The government of National Unity, instead of legalising abortion and providing abortion clinics should engage in family planning and counselling. These can take the form of public lectures and seminars. Health workers should visit schools and counsel students. Females as well as males need counselling on the subject of abortion. This will result in more responsible behaviour.

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3. Convicted grandmother says she has been traumatised I've been shunned. Tribune Herald 9/5/93.

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6. Hollands Parliament is first in the world to allow doctors to terminate life. Daily News 10/2/93.

7. Doctor is sent to prison after bungled abortion. Daily News 15/6/93.

8. Right-to-die man goes home. Sunday Times 9/8/92.

9. Nurses unhappy about judge's remarks in mercy killing case. Sunday Tribune 21/6/92.

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13. Dr. Clarke comfortable at home after court decision. Sunday Tribune 9/8/92.

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18. Islam body sanctions share deals. International Muslim organisation also decides to allow practice of euthanasia. Daily News 15/5/92.

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37. Leaders to oppose abortion on demand. Sunday Times Extra 30/10/94.

38. Medical trio faces abortion charges. Tribune Herald 28/8/94.

39. Three out on R5000 bail over alleged abortions. Sunday Times Extra 28/8/94.