

EUTHANASIA: THE SCHISM BETWEEN THE CORPOREAL AND HOLISTIC DICHOTOMY OF RIGHT TO LIFE

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Abstracts:

The paper is a research essay with an introduction that will outline the congenital values appended to life and gauge their severability owing to the lack of judicial stance of European Court of Human Rights, American and Canadian Constitutional Courts on the *morality* of the issue. It is followed by the vexed problem of medical ethics along with the issue of a healer's objective. Thereafter, the blurred lines of morality vis-à-vis Human Rights are scrutinized to extrapolate whether qualification of life's *value* is permissible on relative morality. These arguments are subsequently juxtaposed with the *risk of abuse* like the slippery slope of involuntary euthanasia. The conclusion highlights the judicial deference to the legislature with its future effects in the field of interpretation and application of Human Rights.

Keywords: *Dignity, Euthanasia, Life, Medical Ethics, Morality*

The words 'thou shall not kill' ensue moral obligations that drench our socio-legal system with deference to 'sanctity of life.' This tradition has been met by a turbulent debate of competing interests between *preservation of life* vis-à-vis *self-autonomy*. The religious commandment itself was qualified by exceptions befitting the dynamics of passage of time in social context justified by criminal jurisprudence and sovereign affairs. Against the backdrop of this time-induced metamorphosis, the western liberal world witnessed contemporary legal interpretation of *life* embracing the *right to die*, as an extension of the former. Whilst this view is not ubiquitous, it is further obscured in practicing jurisdictions based on the dichotomy of *suicide* and *assisted suicide*. When the common law tradition celebrates

the right to *self-autonomy* of an individual wherein, imposition of treatment against the patient's will tantamount to 'battery'; what then, is the moral authority that limits the expansion of self-sovereignty to include 'assistance' in *right to die*? Is the distinction of right-possession between able-bodied and non-competent persons justified? Is there really a substantial contrast between medical *inaction* against the *positive act* of respecting the patient's will, both leading to the same outcome? Does this bruise the arena of medical ethics or is it instead sustained by 'physician-assisted-suicide?' What is the stance of Constitutional Courts and do they support their position with moral clarity? The present essay endeavors to unveil the present legal and moral positions on the issue of 'assisted suicide' in the liberal western rights-based democracies.



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Rights, American and Canadian Constitutional Courts on the *morality* of the issue. It is followed by the vexed problem of medical ethics along with the issue of a healer's objective. Thereafter, the blurred lines of morality vis-à-vis Human Rights are scrutinized to extrapolate whether qualification of life's *value* is permissible on relative morality. These arguments are subsequently juxtaposed with the *risk of abuse* like the slippery slope of involuntary euthanasia. The conclusion highlights the judicial deference to the legislature with its future effects in the field of interpretation and application of Human Rights.

1. CAN LIFE BE SEVERED FROM ITS CONGENITAL VALUES?

Life cannot be defined in clinical terms that gauges it solely based on the process of bodily functions divorced from the cognitive process. It connotes the cumulative value of *autonomy, dignity, liberty, identity, personhood, choice, prevention of suffering* and *our experiences and memories*.¹ The question raised in view of proscription on assisted suicide is based on the quantification of these rights and whether they can be severed from right to life. It is contested that life is *sacrosanct*² and must be preserved in order to satiate *state interest* and uphold *medical ethics* enshrined under the Hippocratic Oath.³ However, can the state interest trump self-sovereignty of an individual or does it in fact cast justifiable limitation upon state interest? The courts

¹ Prof Kai Moller, Seminar on Euthanasia, LSE, 12 February 2015

² Cruzan v. Harmon [1988] 760 SW2d [408] [419]

³ Leslie L Mangini, 'To Help or not to Help: Assisted Suicide and its Moral, Ethical and Legal Ramifications' 18 Seton Hall Legis J 728 1993-1994, 747



have hesitated to venture into the *moral* grounds in support of their arguments, yet we can infer the *implicit* moral fiber woven in their legal interpretation of the *Right to Life* wherein, America and the European Court of Human Rights consider such right weak when pitted against State interest in promoting the ‘value of life.’ Canada held a similar stance until 2015, when it partly shared the liberal view of Netherland in affirming the negative right to assisted dying, as an intrinsic part of *dignified living*.

The Predicament of Medical Ethics:
The dominant fraction of the medical community condemns the idea of assisted suicide on the grounds of incompatibility with the profession⁴however; the other group simultaneously supports this practice on the assertion that *beneficence*⁵is the ultimate objective recognized by the practice of assisted suicide. This is a valid argument with the answer being contingent upon the definition of *morality* and *how* it is associated with *value of life*. If morality saves the living body, then assisted suicide is inconsistent with the objective of a *healer* however, if morality guards the *autonomy* and *dignity* associated with life, then such exercise furthers the *ends* of medical practice.

3. THE MORAL INTERROGATIVES:

This issue is ridden with pluralistic interrogatives and few answers, as there are myriad grey areas that further perplex the legal and moral code of the society. When a competent person possesses the right to die, then what is the moral basis for discriminating against personal

characteristics of those who are less abled? When a person has the inherent right to deny treatment, thereby the inaction on part of the physician effectively ending her patient’s life, then why does similar recognition of a patient’s will to seek assistance in terminating his life render immoral? The answer to these rests upon the fundamental query, ‘Is the moral question focused on *life* in strict sense i.e. preservation of the living being or does it propose to protect the *dignity* associated with the living being?’⁶

The Canadian Court has decided that refuting the insertion of *assisted suicide* fundamentally abuses the *right to life* as the patient may be compelled to end his or her life in advance as opposed to the foreseeable future in order to eschew a *degraded* living sans any aid to execute their *free will* to terminate their life on dignified terms on their own volition.⁷ They also have the right to be remembered as solemn respectable members of the society without having tainted their memories of the pernicious vicissitudes of their last moments.⁸ Therefore, assistance in aiding the commission of suicide via action or inaction is not the moral conundrum but tracing the true consent/choice of the person is the germane question. Hence, safeguard mechanisms need to be put in place in order to ascertain that such self-autonomous choices are not corrupted by external influence, damaging the interests of the *vulnerable* class.

⁴*Ibid* n 3, 749

⁵*Ibid* n 3, 728

⁶ Adam J Macleod, ‘The Mystery of Life in the Laboratory of Democracy: Personal Autonomy in State Law’ 59 Clev St L Rev 589 2011, 612-614

⁷*Carter v Canada (Attorney General)* [2012] BCSC 886 [17]

⁸*Cruzan v Director, MDH* [1990] 497 U.S. 261 (Dissenting Justice Blackmun, Marshall and Brennan)



3. THE INHIBITING FACTORS THAT TAINT THIS RIGHT

The traditionalists considered suicide as *malum in se*,⁹ inherently *wrong* and *criminal* as in the United Kingdom until its repeal in 1961.¹⁰ It is *morally wrong* to kill, and this view was widely accepted until the decriminalization of *attempt to suicide* in the western democracies.¹¹ Therefore, the *historical* and *traditional* line of argument has continued to prohibit the inclusion of this negative right as a fundamental interest, pronounced by the Hon'ble Apex Court of the United States of America in *Washington v. Glucksberg*.¹² Majority western countries have not approved of this right.¹³ The right to life does not encompass the right to terminate it, which is considered sacrilegious and found to violate the 'State Interest' in *preservation of life*.¹⁴ Right to Life is inclusive of *security* that translates to the 'well-being' of the person and right to deprivation of this life stands in direct contravention with security.¹⁵ (Although it is debatable since well-being redirects us to *quality* and not prolongation of life) The justification is posited in the *rationale* behind the erstwhile criminalization of 'attempt to suicide' and the abolition of 'death penalty'.¹⁶

The primary inhibition in embracing the inclusion of this negative right is the *risk of abuse*,¹⁷ as the nature of the act is *irrevocable*¹⁸ and the potential risk of *malice* and *mistakes* cannot be ruled out.¹⁹ However, this may not be a valid justification on the part of the state, especially when it is denying a Constitutional Right to its subjects. There has been an elongated debate over autonomous right to abortion²⁰, wherein the State conceded to the primacy of self-sovereignty over *life preservation* but this was rendered possible due to the clinically calculated design of trimesters whereas such appraisal of the human mind has yet not been conceived.²¹

This right further contravenes the collective societal interest, as the deceased would deprive the society from enriching in human experiences in their interaction with the said person whilst also depriving himself or herself from the learning experiences that courses from the enduring of suffering.²² This line of argument may be *speculative* at best, as we cannot ascertain the scope of such personal and inter-personal enrichment. Justice Stevens has urged the court to weigh each case on its merit thereby precluding an imbalance between individual and State interest. These countervailing arguments are also based on the anticipated perils of legalized assisted suicide, which may crane itself to include *involuntary euthanasia*.²³ The courts consider the policing of such an inflated right, an implausible feat especially owing to the involvement of family

⁹*Ibid* n 5

¹⁰*Ibid* n 3, 733

¹¹*Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519

¹² [1997] 521 US 702

¹³ There is an exception of Netherlands; Washington, Oregon, Montana and Vermont in the United States of America

¹⁴*Ibid* n 8 and 9; *Pretty v U.K.* [2002] 35 E.H.R.R. [9]

¹⁵*Ibid* n 8

¹⁶*Ibid* n 9

¹⁷*Ibid* n 8

¹⁸*Ibid* n 12 (Justice Stevens)

¹⁹*Ibid* n 8, 9, 12

²⁰*Roe v. Wade* [1973] 410 US 113

²¹*Ibid* n 12 (Justice Scouter)

²²*Ibid* n 3, 737; *Ibid* n 12

²³*Ibid* n 8 (Justice Rehnquist CJ)



members.²⁴ Whilst the *risk of abuse* is a crucial factor, it is not beyond redress and apposite safety valves can ensure that vulnerable sections are not negatively impacted by such practice.

4. EPILOGUE:

Whilst the courts have produced their arguments on a legal parapet in the discussed cases, they have avoided a clear evaluation of the right on 'moral grounds' thereby leaving a vacuum in the moral explication of the issue. The Constitutional Courts of Canada as well as the United States of America have reiterated against venturing into 'explaining every feasible area on the issue' and steering clear of theological and philosophical responses to the moral issues at hand.²⁵ This apprehension can be traced in the following court expressions, "*This Court need not, and has no authority to, inject itself into every field of human activity where irrationality and oppression may theoretically occur, and if it tries to do so, it will destroy itself.*"; "*...in answering the important question presented by this tragic case, it is wise "not to attempt by any general statement, to cover every possible phase of the subject."*"; "*Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician assisted suicide. Our holding permits this debate to continue, as it should in a democratic society.*"; and lastly "*...In my opinion, the Court should answer this question without reference to the philosophical and theological considerations fuelling the debate on the morality of suicide or euthanasia.*"

They have instead deferred the matter to the legislature who is alleged to be better equipped to weave the moral quotient consistent with social aspirations. However, the question about whether such Constitutional Courts can avoid their obligation to ascertain Constitutional Rights based on speculative faculties of the legislature (which has so far not been able to resolve the moral debate itself) becomes questionable and leaves us with further marred moral clarity on the issue of assisted suicide. The distinction carved by the new Canadian judgment upholding the constitutional right to terminate life with assistance juxtaposed with Justice Stevens' distinguishing view, which addresses the court's all encompassing verdict bereft of appreciating circumstances, maintaining that not all individual freedoms are trumped by collective interests of the society or state interest, is a welcome contrast against the conventional limitation imposed upon *Right to Life*.²⁶

Netherlands perhaps a precursor of a wider elucidation of the moral question on life, which affirms the morality of *life with dignity* under individual autonomy²⁷ hence, awaiting a likely lifting of the ban on assisted suicide in other jurisdictions treading towards a more self-autonomous approach to interpretation of Life. However, in the absence of the Constitutional Court's unequivocal *moral explication* of the interpretation of right to assisted suicide, the debate over this utterly complex issue is projected to remain convoluted in the moral territories.

²⁴Ibid n 12 (Justice Scouter)

²⁵Ibid n 8, 11, 12

²⁶Ibid n 12

²⁷Ibid n 3, 731, 775-777