



Euthanasia in South Africa: A Critical Analysis of Contemporary Legislative Issues in Light of Religious Values

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Abstract

Despite death being one of the certain eventualities of life, religious, medical, and philosophical factors appear to shape one's perception of death. Medical advancements have introduced the possibility of exercising control over an individual's death, prompting questions regarding the existence of a legal right to choose how and when to die, particularly in cases of suffering where euthanasia is administered by another party. Euthanasia and Physician Assisted Suicide (EPAS) represent one of the most contentious ethical debates globally. This debate is not novel; indeed, most countries outrightly reject the legalisation of EPAS, while others opt to enact legislation to legalise and regulate the practice of euthanasia under specific conditions. Legislators in South Africa have been hesitant to legislate on this contentious matter, leaving the judiciary in an uncertain position to make ad hoc judgments without any guidance from Parliament. Religion, moral principles, and constitutional rights are central to this debate. Clarity on this issue could foster a scientific contribution to South African law by enabling focused research into both the practical and ethical implications of legalised euthanasia, facilitating the development of safeguards and regulatory frameworks, and promoting research into the psychological impact on patients and healthcare providers.

Keywords: Christianity, Constitution, Dignity, Euthanasia, Islam.

Abstrak

Meskipun kematian merupakan salah satu kemungkinan yang pasti dalam kehidupan, faktor-faktor agama, medis, dan filosofis tampaknya membentuk persepsi individu terhadap kematian. Kemajuan dalam bidang perubatan telah membuka peluang untuk mengendalikan proses kematian seseorang, sehingga menimbulkan pertanyaan mengenai keberadaan hak hukum untuk memilih bagaimana dan kapan seseorang harus mati, terutama dalam situasi penderitaan yang melibatkan eutanasia yang dilakukan oleh pihak lain. Eutanasia dan Bunuh Diri dengan Bantuan Doktor (EPAS) merupakan salah satu perdebatan etika yang paling hangat dibicarakan di seluruh dunia. Perdebatan ini bukanlah fenomena baru; sebenarnya, kebanyakan negara secara langsung menolak untuk melegalkan EPAS, sementara negara-negara lain memilih untuk mengimplementasikan undang-undang bagi melegalkan dan mengatur praktik eutanasia dalam keadaan tertentu. Legislator di Afrika Selatan menunjukkan keraguan dalam merumuskan undang-undang mengenai isu yang diperdebatkan ini, sehingga sistem peradilan berada dalam posisi yang tidak menentu untuk membuat keputusan ad hoc tanpa panduan dari Parlimen. Agama, prinsip moral, dan hak-hak konstitusi merupakan inti dari perdebatan ini. Kejelasan mengenai isu ini dapat mendorong sumbangan ilmiah terhadap undang-undang di Afrika Selatan dengan memfasilitasi penelitian yang terfokus pada implikasi praktikal dan etika dari legalisasi eutanasia, mengembangkan kerangka perlindungan dan peraturan, serta mendorong kajian tentang impak psikologi terhadap pesakit dan penyedia perkhidmatan kesihatan.

Kata Kunci: Bunuh Diri; Martabat; Nilai Islam; Nilai Kristiani; Perundang-Undangan.



Introduction

Despite the South African legislator's silence on the issue of the legalization of Euthanasia and Physician Assisted Suicide (EPAS), the discourse surrounding this topic has significantly intensified in society over the past few years, remaining a contentious issue not only within contemporary South African society but also globally.¹ At present, no country on the African continent recognises euthanasia as legal. The debate regarding euthanasia centres on its legality and morality.² Some countries³ have outright rejected the notion of legalising EPAS,⁴ others have made provision for the practise of euthanasia as legal under certain conditions.⁵ while others have established provisions for the practice of euthanasia under specific conditions. Countries in favour of legislated euthanasia include the Netherlands,⁶ Belgium,⁷ Switzerland,⁸ Colombia,⁹ Canada,¹⁰ Ecuador,¹¹ Spain,¹² and Australia¹³ with more recent developments in New Zealand¹⁴ and England.¹⁵ Legislation in Portugal has been approved, thought promulgation is still awaited.¹⁶

¹ Ezekiel Emanuel, "Euthanasia and Physician-assisted Suicide: Focus on the Data," *Medical Journal of Australia* 206, no. 8 (May 2017): 339–40, <https://doi.org/10.5694/mja16.00132>; Jenaye Johnson, "What It Means to Legalize Assisted Death," *Thinking Global Health*, 2024, <https://www.thinkglobalhealth.org/article/what-it-means-legalize-assisted-death>.

² Liche Dominic, "Euthanasia in Zambia: An Ethical Assessment" (University of Zambia, 2009), <http://thesisbank.jhia.ac.ke/8741/>.

³ Jimoh Amzat et al., "Euthanasia in Africa: A Scoping Review of Empirical Evidence," *Health Science Reports* 6, no. 5 (May 30, 2023), <https://doi.org/10.1002/hsr2.1239>.

⁴ Amzat et al.

⁵ D. Benatar, "A Legal Right to Die: Responding to Slippery Slope and Abuse Arguments," *Current Oncology* 18, no. 5 (October 1, 2011): 206–7, <https://doi.org/10.3747/co.v18i5.923>.

⁶ Agnes van der Heide et al., "End-of-Life Practices in the Netherlands under the Euthanasia Act," *New England Journal of Medicine* 356, no. 19 (May 10, 2007): 1957–65, <https://doi.org/10.1056/NEJMsa071143>.

⁷ David Albert Jones, Chris Gastmans, and Calum MacKellar, "Euthanasia and Assisted Suicide: Lessons from Belgium," in *Euthanasia and Assisted Suicide: Lessons from Belgium*, Cambridge Bioethics and Law (Cambridge University Press, 2017), 278–283.

⁸ Anton Pestalozzi-henggeler, "Euthanasia under the Swiss Penal Code" 15, no. 3 (1961), <https://scholar.smu.edu/cgi/viewcontent.cgi?article=4110&context=smulr>.

⁹ Juliana María Mendoza-Villa and Luis Andrés Herrera-Morales, "Reflections on Euthanasia in Colombia," *Colombian Journal of Anesthesiology* 44, no. 4 (October 2016): 324–29, <https://doi.org/10.1016/j.rcae.2016.06.007>.

¹⁰ Joshua T. Landry, Thomas Foreman, and Michael Kekewich, "Ethical Considerations in the Regulation of Euthanasia and Physician-Assisted Death in Canada," *Health Policy* 119, no. 11 (November 2015): 1490–98, <https://doi.org/10.1016/j.healthpol.2015.10.002>.

¹¹ Jhuliana Alfoncina Pachar Carrión and Luis Mauricio Maldonado Ruiz, "Analysis of Judgment 67-23-in/24: Active Euthanasia in Ecuador in Relation to Comparative Law," *Espirales Revista Multidisciplinaria de Investigación Científica* 8, no. 51 (2024): 19–35.

¹² I Bernal-Carcelén, "Euthanasia: Trends and Opinions in Spain," *Revista Española de Sanidad Penitenciaria* 22, no. 3 (October 22, 2020): 112–15, <https://doi.org/10.18176/resp.00020>.

¹³ Lorana Bartels and Margaret Otlowski, "A Right to Die? Euthanasia and the Law in Australia," *Journal of Law and Medicine* 17, no. 4 (2010): 532–55.

¹⁴ Jessica Young et al., "The Euthanasia Debate: Synthesising the Evidence on New Zealander's Attitudes," *Kōtuitui: New Zealand Journal of Social Sciences Online* 14, no. 1 (January 2, 2019): 1–21, <https://doi.org/10.1080/1177083X.2018.1532915>.

¹⁵ Ezekiel J. Emanuel, "The History of Euthanasia Debates in the United States and Britain," *Annals of Internal Medicine* 121, no. 10 (November 15, 1994): 793–802, <https://doi.org/10.7326/0003-4819-121-10-199411150-00010>.

¹⁶ Anne-Sophie Alves, "Steps Towards Legalization of Euthanasia in Portugal," *Bioethica* 8, no. 2 (November 7, 2022): 85–96, <https://doi.org/10.12681/bioeth.31783>.

Due to advancements in medical science, South Africa, like the rest of the world, has witnessed the impact of sustaining life through current treatments in circumstances where individuals would likely have succumbed to natural causes. According to McKenney:

“Death is an inevitable part of human existence that every human being must face...’ The enormous strides modern medicine has made is its ability to prolong life and postpone death. This has changed our understanding of death itself. It can no longer be viewed as simply the cessation of the heart beating and the lungs breathing, because these can be maintained artificially, so the medical profession now asks whether the brainstem is dead in the sense of showing no activity.”¹⁷

Due to the inherent contentious ethical dilemmas¹⁸, the South African legislature has been slow—almost reluctant—to legislate for or against the legalisation of euthanasia¹⁹ based on the premise that South Africa is a constitutional democracy²⁰ that upholds the right to life and religious freedom.²¹ The arguments contributing to the absence of legislation regulating End-of-Life Practices are numerous, including the assertion that the role of the medical profession is to preserve life rather than to cause death, concerns regarding the potential for abuse wherein vulnerable individuals may be pressured into ending their lives, and the so-called “slippery slope” argument²² which raises apprehensions about a broader erosion of ethical boundaries leading to a societal context in which killing becomes more acceptable.²³

The lack of legislation regulating EPAS practices in South Africa has left the judiciary in an uncertain position, currently making ad hoc judgments without any guidance from Parliament. Although there have been notable court cases and discussions, a consistent and comprehensive legal framework on euthanasia remains glaringly absent,²⁴ resulting in a situation where legal interpretations can vary significantly depending on the specific circumstances of each case. These court decisions have exhibited a degree of flexibility, particularly in instances where a patient's right to self-determination is taken into account. However, these rulings have often had limited implications, leading to a lack of clear

¹⁷ Jessica McKenney, “Informed Consent and Euthanasia: An International Human Rights Perspective,” *International and Comparative Law Review* 18, no. 2 (December 1, 2018): 118–33, <https://doi.org/10.2478/iclr-2018-0041>.

¹⁸ Fainos Mangena and Ezra Chitando, “Euthanasia and the Experiences of the Shona People of Zimbabwe,” *Thought and Practice: A Journal of the Philosophical Association of Kenya* 5, no. 2 (2013), <https://www.ajol.info/index.php/tp/article/view/104309>.

¹⁹ Willem-Johan Steyn and Mukinay C. Bondo, “Perspectives and Attitudes of South African Medical Professionals towards Active Euthanasia,” *South African Family Practice* 66, no. 1 (September 27, 2024), <https://doi.org/10.4102/safp.v66i1.5926>; Carla Kotzé and Johannes L. Roos, “End-of-Life Care in South Africa: Important Legal Developments,” *South African Journal of Psychiatry* 28 (January 18, 2022), <https://doi.org/10.4102/sajpsy.28i0.1748>.

²⁰ Pieter Coertzen, “Constitution, Charter, and Religions in South Africa,” *African Human Right Law Journal* 14, no. 1 (2014): 126–41.

²¹ Section 15 of the Constitution of the Republic of South Africa, 1996.

²² Justo Aznar, “The Slippery Slope of Euthanasia,” *Medicina e Morale* 70, no. 1 (April 12, 2021): 111–20, <https://doi.org/10.4081/mem.2021.932>.

²³ Chris Jones, “The Right to Die: Unpacking an Ethical Dilemma in South Africa,” *The Conversation*, 2022, <https://theconversation.com/the-right-to-die-unpacking-an-ethical-dilemma-in-south-africa-185788>.

²⁴ Fundisiwe Cynthia Ntsebesha, “The Legalization of Physician-Assisted Suicide - a South African Constitutional Perspective” (University of Johannesburg, 2023), <https://ujcontent.uj.ac.za/esploro/outputs/graduate/The-legalization-of-physician-assisted-suicide-/9948108707691>.

guidelines for medical practitioners and the public at large. This situation is problematic, as regulation and/or legislation pertaining to EPAS practices is urgently required.

This article proposes a novel approach to the current position regarding EPAS in South Africa by advocating for the promulgation of legislation to regulate such practices, representing a departure from current practices and the absence of a legal framework surrounding end-of-life care. This approach aligns with recent court decisions that indicate a movement towards the adoption of more secular principles (as opposed to religious principles), thereby facilitating the practice and regulation of EPAS practices. A consideration of this matter follows in the article.

Method

This article presents an analytical qualitative study that employs a comparative analysis of current and prospective approaches to euthanasia in South Africa, examined through the lens of Christian and Islamic principles. The research is non-empirical and primarily consists of a literature review, drawing upon both primary and secondary sources. The primary sources for this study include various cases of euthanasia, particularly within the South African context, alongside relevant laws and regulations currently in force. An exploration of the religious perspectives from both Christianity and Islam is essential to offer a comprehensive understanding of the regulation of euthanasia in South Africa.

An analysis of euthanasia and physician-assisted suicide

Before proceeding to discuss EPAS, it is essential to provide a definition and draw a distinction between euthanasia and physician-assisted suicide (PAS). The term "euthanasia" is derived from the Greek words "*eu*," meaning "good," and "*thanatos*," meaning "death".²⁵ Euthanasia is defined as "Euthanasia is defined as "[T]he killing or allowing to die of another person with mercy or compassion for that person as the primary motive".²⁶ The concept of euthanasia encompasses both active and passive forms and can be classified as voluntary, involuntary, or non-voluntary. Active euthanasia involves administering substances that induce death,²⁷ whereas passive euthanasia entails the withdrawal of supportive measures that prolong life. Euthanasia is considered voluntary when the patient has requested it, non-voluntary when the decision is made without the patient's consent, and involuntary when the decision is made against the patient's wishes.

The distinction between euthanasia and physician-assisted suicide (PAS) lies in the final act that results in the patient's death. If the patient performs the last act themselves, such as taking prescribed medication to induce death, this is referred to as PAS. Conversely, if death results from a doctor administering a lethal injection, this constitutes euthanasia.²⁸

In relation to current research, euthanasia is generally understood to include the following elements:

1. that it is an act aimed at providing death; and

²⁵ T G Schwär, J A Olivier, and J D Loubser, *The Forensic ABC in Medical Practice: A Practical Guide*, 1st ed. (Pretoria: Haum Educational Publishers, 1988); Hennie Oosthuizen, "Doctors Can Kill--Active Euthanasia in South Africa," *Medicine and Law* 22, no. 3 (2003): 551–60.

²⁶ Oosthuizen, "Doctors Can Kill--Active Euthanasia in South Africa."

²⁷ David James Jackson Muckart et al., "Palliative Care: Definition of Euthanasia," *South African Medical Journal* 104, no. 4 (March 17, 2014): 259, <https://doi.org/10.7196/SAMJ.8016>.

²⁸ M. Pabst Battin, "Euthanasia and Physician-Assisted Suicide (Review)," *Journal of Health Politics, Policy and Law* 25, no. 2 (2020): 415–30.

2. that it is carried out to alleviate the suffering of the person who is dying, with the patient's uncoerced consent, and
3. the patient is terminally ill, with an irreversible condition that results in precariousness and a loss of dignity.²⁹

Euthanasia from a Christian perspective

Christians base their faith on the verses of the Bible and the teachings of the ministry. The New Testament serves as the primary record of the life, death, and teachings of Jesus Christ. Consequently, the Bible has always been authoritative for Christians—both in developing a Christian mindset and in guiding Christian behaviour.

From a Christian perspective, the IVP Dictionary of Pastoral Theology & Ethics defines euthanasia as: "*The intentional killing, by act or omission, of one whose life is deemed not worth living.*" While voluntary euthanasia is sometimes used synonymously with suicide, Christianity clearly distinguishes between the two, noting that euthanasia is not self-killing but the killing of the self by another.³⁰

A Christian understanding of end-of-life issues hinges on two factors: Firstly, life must be upheld under all circumstances, as it is God-given and therefore holy; and secondly, Christians should face death without fear, as death itself achieves the hope of communion with God. Essentially, this means that for Christians, death is not something to be feared but rather a transition to a glorious reunion with God and eternal life. Death becomes a fulfilment of God's promises. The Christian perspective is clear— all Christians (including those who are terminally ill and in pain) are expected to live a morally responsible life until their natural death and to cultivate a moral aversion to taking the life of any human being.³¹

Christianity encapsulates the significance and importance of every life. A strong emphasis is placed on the sanctity of life. Christians believe that they possess dignity because they are created in the image of God. It follows that, since Christians are taught that their life itself is a sacred gift from God and that divine comfort will be provided during the natural process of death, it is reasonable to conclude that there is an implied prohibition of euthanasia in Biblical theology.³²

Christian belief inspires all terminally ill Christians to live a morally responsible life until their death, and each individual must maintain a moral preconception against taking the life of another.³³ The Bible teaches Christians that every life is important. Christians trust God to end life at the appropriate time.

Christian opposition to euthanasia is based on the religious narrative that conditions and responses grounded in morality and one's personal hope for a better future after death transcend current suffering. While euthanasia is not tolerated according to the Christian

²⁹ Yelson Alejandro Picón-Jaimes et al., "Euthanasia and Assisted Suicide: An in-Depth Review of Relevant Historical Aspects," *Annals of Medicine & Surgery* 75 (March 2022), <https://doi.org/10.1016/j.amsu.2022.103380>.

³⁰ E De Villiers, "Euthanasia and Assisted Suicide : A Christian Ethical Perspective," *Acta Theologica* 2002, no. sup-3 (2002): 35–47, <https://doi.org/10.10520/EJC111135>.

³¹ Gen. 1:26-27: Then God said, "Let us make man in our image, in our likeness...So God created man in his own image, in the image of God he created him; male & female he created them"; 1 John 3:15 "Everyone who hates his brother is a murderer, and you know that no murderer has everlasting life remaining in him".

³² Graham Grove, Melanie Lovell, and Megan Best, "Perspectives of Major World Religions Regarding Euthanasia and Assisted Suicide: A Comparative Analysis," *Journal of Religion and Health* 61, no. 6 (December 29, 2022): 4758–82, <https://doi.org/10.1007/s10943-022-01498-5>.

³³ Gen. 1:26-27: Then God said, "Let us make man in our image, in our likeness...So God created man in his own image, in the image of God he created him; male & female he created them".

approach, Christians do not believe that life should be prolonged at all costs. Allowing someone to die by withholding treatment may reconcile these two sentiments, as the intention is to care for a person in the best way possible, rather than to cause death (own emphasis). Consequently, the use of pain relief medication and sedation, which can alleviate terminal suffering, is considered acceptable, provided it does not intentionally take away a person's life or opportunity for repentance. Notwithstanding Christian doctrine, with time and changes in circumstances, more people in South Africa, including Christians, are inadvertently influenced by the liberal value of individual autonomy. The late Archbishop Emeritus Desmond Tutu of the Anglican Church of South Africa himself advocated for support of assisted dying and stated:

"I have prepared for my death and have made it clear that I do not wish to be kept alive at all costs. I hope I am treated with compassion and allowed to pass onto the next phase of life's journey in the manner of my choice."³⁴

As affirmed by Archbishop Emeritus Desmond Tutu, not all Christians are prepared to relinquish decisions regarding medical procedures administered to them entirely to medical professionals, particularly when such procedures are likely to result in the prolongation and intensification of their suffering. In scenarios where death is imminent due to terminal illness, Christians may wish to have a voice in determining the timing and manner of their departure from this life. To ensure that this personal decision is respected, the terminally ill Christian would, of course, seek to navigate this process within the framework of the law, which, at present, remains inaccessible.³⁵

Euthanasia from an Islamic perspective

It is estimated that approximately 2% of the South African population identifies as Muslim. As indicated in the preceding discussion, the topic of euthanasia is controversial, particularly within religions that adhere to a stringent moral code. This is especially true in Islam, which advocates the doctrine of the sanctity of life, asserting that human life is sacred and is a gift from Allah (God).³⁶ Furthermore, Islam endorses the belief that it is Allah alone who grants life and who takes it away. From an Islamic perspective, euthanasia is regarded as morally reprehensible and is also considered a criminal act in most countries where Islam is the predominant religion. It is submitted that in nations where Islam is the dominant faith, the principles and rules of Islam will significantly influence any legislation or rulings pertaining to euthanasia. Religion serves as a pivotal factor in the formulation of any legislation regulating euthanasia within an Islamic context. Although Islamic jurisprudence prohibits euthanasia, the withholding or withdrawal of medical treatment in cases involving terminally ill individuals is deemed permissible.

³⁴ Sherwood, H. Desmond Tutu: I want right to end my life through assisted dying. Terminally ill people 'should have right to choose a dignified assisted death', writes archbishop on his 85th birthday *The Guardian* 2016 <https://www.theguardian.com/society/2016/oct/07/desmond-tutu-assisted-dying-world-leaders-should-take-action> (accessed 03/07/2024)

³⁵ Christian Life Resource, "Christian Life Resources Medical Decision Making | Pro-Life 101," accessed April 24, 2024, <https://christianliferesources.com/medical-decision-making/>.

³⁶ *Quran* 17:70: "Indeed, we have honoured the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures."

The primary sources of Islamic law that are consulted are the *Quran*³⁷ and the *Sunnah*.³⁸ There are verses in the *Quran* that support the view that euthanasia is impermissible according to Islamic law. From the relevant *Quranic* verses, it can be deduced that Allah, as the sole creator of all life, also possesses the sole authority over life and death. Consequently, births and deaths are predetermined and preordained solely through the will of Allah. Belief in this doctrine is an integral aspect of one's faith as a Muslim.

While the desire for relief and even the prayer for death may be acceptable in Islam, current Sunni thought insists that a higher value be placed on the sanctity of life than on an individual's quality of life³⁹ given Allah's supremacy over life and death. Although a distinction between murder, suicide, and assisted suicide has been acknowledged in Islam, this distinction is only pertinent in terms of the severity of sin and the degree of punishment prescribed for euthanasia and assisted suicide. As such, euthanasia and assisted suicide are almost universally regarded as forms of murder within Islamic law and, therefore, remain prohibited.⁴⁰

It is evident that Islam advocates the position that the taking of human life (murder) or the deliberate ending of life (euthanasia or suicide) without lawful justification is strictly forbidden.⁴¹ In other words, while Islam does provide for exceptions to this general prohibition, such exceptions apply solely in cases representing justice for crimes committed or under the instruction of Allah.⁴² All Islamic doctrines and schools of jurisprudence consider EPAS practice and euthanasia to be forbidden, which implies that adherents of Islam do not possess the right to end their own lives. Consequently, Islamic countries have not legalised PAS or euthanasia. These practices are, therefore, regarded as suicides when patients consent to the procedure and as homicides when physicians carry out the procedure.

Although it is not the sole reason, beliefs about the ethics of euthanasia and assisted suicide are often intricately connected to religious convictions. As a result of the inherent contentious ethical dilemmas associated with euthanasia, countries tend to be slow to legislate for or against its legalisation.⁴³ South Africa is one such country. A discussion regarding the position on euthanasia in South Africa will now be undertaken.

³⁷ The *Quran* is accepted by adherents of the Islamic faith to be the literal word of God as conveyed directly to the Prophet Muhammad (PBUH).

³⁸ *Sunnah* refers to the traditions of the Prophet Muhammad (PBUH) which includes his sayings, actions and approval or disapproval of the actions of others. The traditions of the Prophet Muhammad (PBUH) an important source of Islam as it demonstrates the way a certain injunction mentioned in the *Quran* has to be performed. The *Sunnah* constitutes the guiding principles to which all Muslims should strive to adhere.

³⁹ Ercan Avcı, "A Comparative Analysis on the Perspective of Sunni Theology and Hindu Tradition Regarding Euthanasia: The Impact of Belief in Resurrection and Reincarnation," *Journal of Religion and Health* 58, no. 5 (October 24, 2019): 1770–91, <https://doi.org/10.1007/s10943-019-00836-4>.

⁴⁰ Mahmud Adesina Ayuba, "Euthanasia: A Muslim's Perspective," *Scriptura* 115 (June 2016), <https://doi.org/10.7833/115-0-1175>.

⁴¹ *Quran* 17:33 "Do not take a 'human' life—made sacred by Allah—except with 'legal' right. If anyone is killed unjustly, We have given their heirs the authority, but do not let them exceed limits in retaliation, for they are already supported 'by law'."

⁴² *Quran* 17:33 "Do not take a 'human' life—made sacred by Allah—except with 'legal' right. If anyone is killed unjustly, We have given their heirs the authority, but do not let them exceed limits in retaliation, for they are already supported 'by law'." *Quran* 4:29 "Believers! Do not devour one another's possessions wrongfully; rather than that, let there be trading by mutual consent. You shall not kill yourselves. Surely Allah is ever Compassionate to you."

⁴³ Grove, Lovell, and Best, "Perspectives of Major World Religions Regarding Euthanasia and Assisted Suicide: A Comparative Analysis."

Judicial developments regarding euthanasia in South African law

To date, judicial precedent, as one of the primary sources of South African law, has been instrumental in matters relating to euthanasia and assisted dying. The South African courts have exhibited considerable leniency towards individuals who have euthanised others out of a sense of mercy or compassion in instances of severe suffering or terminal illness. In none of the reported South African cases concerning euthanasia has effective imprisonment been imposed. The judgments are discussed below.

In *R v Davidow*,⁴⁴ the first case concerning euthanasia in South Africa, the accused shot his mother, who was suffering from a terminal illness, to relieve her of her suffering. While the court considered the actions of the accused illegal and charged him with murder, the jury acquitted him. The court held that the accused was not guilty of the crime, as he did not possess the necessary capacity to commit murder; thus, the question of euthanasia did not need to be decided.

S v Hartmann,⁴⁵ represents the first case in South Africa in which a medical practitioner actively euthanised another person. The accused, a medical practitioner, was charged with the murder of his father, who had cancer and was enduring intolerable pain.⁴⁶ Hartmann's father had cancer and was suffering intolerable pain. The accused ended his father's suffering by administering a lethal injection of Pentothal.⁴⁷ Dr Hartmann was prosecuted and convicted of murder.⁴⁸ The judge considered mitigating factors during sentencing, stating that "*this is a case, if ever there was one, in which, without having to be unfair to society, full measure can be given to the element of mercy*".⁴⁹ The court emphasised that, while it could mitigate in appropriate circumstances, it was not within the judiciary's purview to legislate.⁵⁰ Dr Hartmann received a suspended prison sentence, and his name was removed from his profession's roll, although he was reinstated after a period of time.

In *S v De Bellocq*⁵¹ the accused, a medical student, was charged with the murder of a baby who, at birth, suffered from toxoplasmosis.⁵² The court found her guilty of murder.⁵³ However, in sentencing the accused, the court acknowledged mitigating factors and held that she should be discharged on the condition that she entered into recognisances to appear for sentencing within the next six months if called upon.⁵⁴

The issue of assisted voluntary euthanasia was brought to the attention of the South African public with the judgment in *Stransham-Ford v The Minister of Justice and Correctional Services*.⁵⁵ The applicant, diagnosed with prostate cancer, had undergone various unsuccessful treatments. He was bed-bound, in pain, and aware that there was no hope of recovery.⁵⁶

⁴⁴ Unreported; June 1955 as discussed in Van Dyk "Die Davidow saak" 1956 *Tydskrif vir die Hedendaagse Romeinse-Hollandse Reg* 286.

⁴⁵ *S v Hartmann* 1975 3 SA 532 (C).

⁴⁶ *S v Hartmann supra* 533.

⁴⁷ *Ibid.*

⁴⁸ *S v Hartmann supra* 535.

⁴⁹ *S v Hartmann supra* 537.

⁵⁰ *S v Hartmann supra* 535. The common law of South Africa recognises the principle of *ius dicere non facere*. Translated literally, the principle states that "judges speak the law, they do not make it".

⁵¹ *S v De Bellocq* 1975 (3) SA 538 (T).

⁵² The prognosis for toxoplasmosis was the baby would have to be fed with a tube via the nose and there was essentially no chance that the baby would survive.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Stransham-Ford v the Minister of Justice and Correctional Services and Others* 2015 (4) SA 50 (GP).

⁵⁶ *Stransham-Ford v Minister of Justice supra* 56.

Accepting that he was approaching death, he sought an urgent order from the court to direct a medical practitioner to lawfully end his life by administering a lethal agent. Mr *Stransham-Ford* relied, inter alia, on section 39 of the Constitution (the 'interpretation clause'), section 10 (human dignity), and section 12 (freedom and security of the person)⁵⁷ as well as the provisions of a living will that he had executed previously.

The court held that the applicant was permitted to be assisted by a willing and qualified medical practitioner in bringing his life to an end.⁵⁸ In instances where the medical practitioner agreed to assist with the suicide, the practitioner would not be subject to prosecution by the National Director of Public Prosecutions⁵⁹ nor would they face disciplinary proceedings from the Health Professions Council of South Africa. The actions of the medical practitioner would not be deemed unlawful.⁶⁰ The court granted the applicant's request for medically administered suicide, but stipulated that the order was specific to this case and would not automatically apply to all cases.⁶¹ The court a quo not only granted the order but also determined that the outright prohibition of physician-assisted suicide (PAS) and physician-assisted euthanasia (PAE) constituted an unjustifiable limitation of the applicant's rights to human dignity and freedom to bodily and psychological integrity.

It subsequently transpired that the applicant passed away a few hours before the High Court judgment was delivered. The applicant's death was decisive in the decision of the Supreme Court of Appeal (SCA),⁶² which set aside the High Court's judgment without engaging with the arguments for or against euthanasia. The SCA opened the door for similar future applications to the court, concluding that assisted suicide is not unlawful in all circumstances. Any future applications will need to be evaluated based on individual facts within the context of the Constitution, which protects the right to life and human dignity.

It is important to note that the *Stransham-Ford* decision does not hold binding precedent regarding the law pertaining to euthanasia. As the law currently stands, the consent of the patient to euthanasia does not render the medical practitioner's conduct lawful; the doctor would still commit the crime of murder.

In 2019, the Western Cape High Court (WCHC) found Professor Sean Davison guilty of assisting three men in dying.⁶³ Professor Davison received a suspended sentence of eight years, which included house arrest and community service, following a court-approved plea agreement in the WCHC. The compassionate motivation behind assisting these individuals with a dignified death, their requests for his assistance in dying, the support of their relatives, and his remorse were all considered mitigating factors. Nevertheless, Professor Davison is a convicted murderer, a criminal with a criminal record, as to kill someone upon request, for example, with a lethal injection—voluntary euthanasia or mercy killing—is classified as murder. Likewise, providing someone with the means to commit suicide—assisted suicide—constitutes murder, provided that the supply and self-administration of the means are closely

⁵⁷ These constitutional rights will be discussed in this article under 4.2 Legislative Development.

⁵⁸ *Stransham-Ford v Minister of Justice supra* 71.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Minister of Justice and Correctional Services and Others v Estate of Late Robert James Stransham-Ford and Others* 2017 (3) SA 152 (SCA) (6 December 2016).

⁶³ Anrich Burger was a quadriplegic. Justin Varian has motor-neuron disease and Richard Holland suffered brain damage when he broke his neck. These three men repeatedly begged Prof Davison to assist them to die as they were suffering unbearably and there was no hope of recovery for them.

causally connected. It is evident from the discussion above that there has been no significant progress in the legal developments concerning euthanasia since the first case was reported.

Legislative developments concerning euthanasia in South African law

The debate regarding the legalization of EPAS in South Africa has intensified following the promulgation of the Constitution, driven by an increased awareness of human rights. Twenty-six years ago, a draft Bill concerning EPAS was developed and proposed in Project 86 of the South African Law Commission.⁶⁴ Despite the draft Bill proposing legislation on inter alia the regulation of end-of-life decisions, it was not enacted into law.

Active euthanasia is regarded as illegal in South Africa, in contrast to the approach of the courts and scholars who have progressively acknowledged the necessity of balancing the realisation of an individual's rights to inter alia life, human dignity, self-determination, and respect for patient autonomy. These rights are not unique to South Africa; they are also enshrined in various international instruments and declarations. They are guaranteed in the Constitution, and unless the limitation of these rights is justified in terms of section 36 of the Constitution, it is contended that they should be upheld by both the legislator and the judiciary.

In the case of *S v Makwanyane*⁶⁵, Justice O'Regan emphasised the intrinsic connection between the fundamental right to human dignity and the right to life. Justice O'Regan described these two rights as "entwined," noting that the right to life is foundational, as no other rights can be experienced without it. However, she clarified that the Constitution protects the right to a human life, not merely the existence of organic matter. Consequently, the right to dignity plays a significant role in shaping the content of the right to life. Human dignity, often referred to as the "cornerstone" of the Constitution, is recognised both as a fundamental right and as a foundational value. These two essential rights have sparked numerous legal debates, including issues surrounding the right to die.

The Constitution acknowledges the right to human dignity in the Bill of Rights, and it follows that when an individual's interest in autonomy is recognised, human dignity mandates that such an individual must be granted control over their own life's decisions. It follows that the recognition of autonomy encompasses the right to die, which becomes even more significant when a person is confronted with a loss of dignity. A discussion of the provisions of the Constitution advocating for the enactment of legislation legalising and regulating EPAS follows:

The right to dignity

Human dignity constitutes the essence of what defines us as individuals and as members of our respective societies and communities. There is no 'us' or 'me' without dignity, or ubuntu, as articulated in the Nguni language groups of South Africa.⁶⁶ Human dignity is often referred to as the 'cornerstone' of our Constitution, with provisions made for human dignity both as a constitutional right and as a constitutional value.⁶⁷ While protection for dignity is

⁶⁴ Kotzé and Roos, "End-of-Life Care in South Africa: Important Legal Developments."

⁶⁵ 1995 (3) SA 391 (A).

⁶⁶ South African Human Rights Commission It's a Matter of Life and Death 2019 <https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/1796-it-s-a-matter-of-life-and-death> (accessed 03/07/2024).

⁶⁷ S 1 provides that: 'The Republic of South Africa is one, sovereign, democratic state founded on the following values: Human dignity, the achievement of equality and the advancement of human rights and freedoms.'

commonly found in international instruments, the precise meaning of the term remains ambiguous. However, it is evident that these international instruments suggest a meaning that is noticeably broader than that provided by the common law of South Africa. Within the common law framework, the concept of dignitas (referring to the inviolability of an individual's personality or self-esteem) is recognised.⁶⁸ In contrast, international law attributes a broader interpretation to the concept of dignity, establishing it as a core right. The Constitution is firmly aligned with international human rights discourse and mandates a transformation in our society.

South Africa has a well-established system of rights encompassed in the Bill of Rights within the Constitution, and it is evident from case law that human dignity occupies the apex of the moral framework provided. Freedom and equality are specific derivations of that higher value. To take freedom and equality seriously necessitates the articulation of a system of rights that places at its apex the value that unifies both: human dignity.

Although human dignity is a concept that implies different meanings for different individuals, it remains a fundamental human right inherent in everyone and must be respected. The Constitution's reference to dignity as inherent indicates that it is not a right granted by the state to its citizens, but rather something that is intrinsic to a person by virtue of their humanity. By its very nature, it demands respect for all a person's rights. Even if a particular right does not possess explicit protection in the Constitution, the Constitutional Court will ensure its safeguarding if it is related to dignity.

One of the reasons why defining the right to dignity proves challenging is that it cannot be easily separated from other fundamental rights in the Bill of Rights, such as freedom, security of individuals, privacy, and life. The right to dignity is inherent in or overlaps with such rights. In *S v Makwanyane*, O'Regan J stated that the right to human dignity and the right to life are 'entwined.' The right to dignity informs the content of the right to life. The Constitutional Court provided an extensive interpretation of the right to dignity in *Gardener v Whitaker*.⁶⁹

In the context of healthcare, dignity is often equated with quality of life, and the dignity of a person who no longer possesses a quality of life is typically significantly impaired. The independent freedom to choose whether to endure suffering until death or to avoid extreme pain or suffering when the capacities that rendered life meaningful are lost remains an autonomous choice. This would also ensure that the individual retains some degree of personal dignity.

In the judgment delivered by the Constitutional Court in the landmark case of *S v Makwanyane*, Justice O'Regan stated that:

"The importance of dignity as a founding value of the new Constitution cannot be overemphasised. Recognizing a right to dignity is the acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many of the other rights."⁷⁰

⁶⁸ Miriam Griffin, *Dignity in Roman and Stoic Thought*, vol. 1 (Oxford University Press, 2017), <https://doi.org/10.1093/acprof:oso/9780199385997.003.0003>.

⁶⁹ *Gardener v Whitaker* (1994) 5 BCLR 19(E) 36.

⁷⁰ *S v Makwanyane* *supra* para 328.

In South African constitutional law, human dignity serves both as a value and as a human right.⁷¹ In constitutional terms, fundamental elements of this concept have been transformed and are now integral to the broader legal understanding of humanity. These elements include the recognition that every individual possesses inherent human dignity and is entitled to the acknowledgment and respect of his or her self-worth.

The final biological stages of a person's life and the manner of their death significantly influence the lasting memories held by others, including those who witness the event. If individuals were solely preoccupied with physical pain and other unpleasant bodily experiences, they would not express concern if their bodies were permanently in a comatose state. Each individual may form their own perspective on what constitutes a manner or condition that is unworthy or existentially unacceptable; such views need not align with the beliefs or opinions of others. The enactment of legislation that legalises and regulates End-of-Life Assistance (EPAS) will significantly contribute to safeguarding the dignity of terminally ill patients enduring severe pain and suffering.

The right to life

Section 11 of the Bill of Rights provides that “[e]veryone has the right to life”. How should one balance the right to life against other constitutional values and rights? In *Christian Lawyers Association of South Africa v Minister of Health*,⁷² the Constitutional Court held that:

“There are a number of other provisions designed to protect the rights of members of communities. They underline the constitutional value of acknowledging diversity and pluralism in our society and give a particular texture to the broadly phrased right to freedom of association contained in section 18. Taken together, they affirm the right of people to be who they are without being forced to subordinate themselves to the cultural and religious norms of others and highlight the importance of individuals and communities being able to enjoy what has been called the ‘right to be different’.”⁷³

In instances where an individual is experiencing a diminished quality of life and expresses a desire not to continue living, compelling such an individual to persist in life may be regarded as fundamentally at odds with the spirit and intent of the right to life.⁷⁴ Additionally, it is important to acknowledge that the Constitution stipulates that the right to life is not absolute, but rather subject to limitations as outlined in section 36 of the Constitution.

The right to personal security

Section 12 stipulates that an individual must not be treated or punished in a cruel, inhuman, or degrading manner.⁷⁵ This section further asserts that all individuals possess the

⁷¹ S10.

⁷² *Christian Education South Africa v Minister of Education* 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000).

⁷³ Par 24.

⁷⁴ Moni Wekesa, “The State of the Law on Euthanasia in Kenya,” *Journal of Medical Law and Ethics* 8, no. 1 (2020): 1–14, <https://doi.org/10.7590/221354020X15922956412951>.

⁷⁵ Section 12(1) of the Bill of Rights provides that: “[e]veryone has the right to freedom and security of the person, which includes the right –; (a) not to be deprived of freedom arbitrarily and without just cause; (e) not to be treated or punished in a cruel, inhuman or degrading way.”

right to bodily and psychological integrity.⁷⁶ When analysing the phrase ‘control over’ one’s body, it implies the protection of bodily autonomy or self-determination against interference; that is, the right to live one’s life as one chooses. This right thus embodies the value of individual autonomy.

While the right to choose which medical treatment one is willing to accept or decline clearly falls within the scope of the freedoms protected under section 12(2), it is less clear whether there is a protection for the “right” to certain “treatment” that will inevitably result in death. In South African law, the freedom to seek treatment that will undoubtedly lead to death is de facto acknowledged in cases where the so-called “double effect” applies. The “double effect” refers to situations in which a person is administered drugs or treatment primarily aimed at alleviating pain, while it is also recognised that such treatment will concurrently shorten or terminate the patient’s life. This indicates that, in principle, an individual has the right to choose active treatment that will shorten or end their life.

The right to equality

Section 9 of the Bill of Rights is commonly referred to as the non-discrimination clause within the Constitution. This section asserts that all individuals are equal before the law and that no one may be subjected to unfair discrimination. The purpose behind discriminatory conduct or actions is a critical factor in determining whether such discrimination is deemed unfair. In the context of euthanasia, it becomes evident that many individuals who are suffering have the capacity to commit suicide, an act that is no longer criminalised.⁷⁷ Conversely, others who are suffering yet are unable to end their own lives due to physical disabilities face discrimination. Seeking assistance from another individual to expedite their own death would render such assistance a criminal act. The distinction between these two groups raises concerns regarding substantive equality, as they are clearly not being treated equally based on their disabilities. Although it is improbable that such discrimination is intentional, it is predicated on one of the grounds enumerated in Section 9, which creates a presumption of unfairness until proven otherwise.

The right to privacy

Privacy also enjoys constitutional protection, impacts *inter alia* on those processes including the record-keeping and consultation about euthanasia.⁷⁸ Physical and moral integrity. Personal autonomy privacy rights protect against any interference with, and intrusions on, the private life of any individual who must be allowed to make important decisions about their lives in accordance with the law, without intervention.

The right to freedom of religion, belief and opinion

Section 15 (1) of the Bill of Rights provides that “[e]veryone has the right to freedom of conscience, religion, thought, belief and opinion.” The right to freedom of religion, belief, and opinion, as enshrined in section 15 of the Constitution, is central to the ethos that celebrates

⁷⁶ Section 12(2) provides that “[e]veryone has the right to bodily and psychological integrity, which includes the right... (b) to security in and control over their body.”

⁷⁷ *Minister of Justice and Correctional Services and Others v Estate of Late Robert James Stransham-Ford and Others* 2017 (3) SA 152 (SCA) (6 December 2016) para 42.

⁷⁸ S 14 of the Bill of Rights provides that “[e]veryone has the right to privacy, which shall include the right not to have –: (a) their person or home searched; (b) their property seized; (c) their possessions seized; or (d) the privacy of their communications infringed.”

the diversity of South Africa's "rainbow nation."⁷⁹ Respect for freedom of religion not only upholds the right to belief but also reinforces the intrinsic value of human dignity, which is regarded as the cornerstone of South African democracy.

In the context of euthanasia, this right should not be a source of significant contention. Its primary implication is that individuals whose beliefs oppose euthanasia should not be compelled to participate in the act. The most evident consequences are that a person cannot be coerced into undergoing euthanasia if it contravenes their beliefs, and similarly, a medical practitioner cannot be obligated to perform euthanasia if it conflicts with their convictions.

The right to access healthcare

Everyone is granted the right to healthcare in terms of Section 27, and the Constitution imposes an obligation on the state to achieve the progressive realisation of these rights.⁸⁰ In the context of euthanasia, it is posited that the legalisation of euthanasia, accompanied by appropriate safeguards, constitutes an obligation on the state. Should the state fail to implement the right to euthanasia, it bears the burden of justifying its inaction. Furthermore, when Section 27 rights are considered alongside the rights to human dignity and psychological integrity, a terminally ill patient who cannot benefit from curative care may possess a right to palliative care services. In instances where a patient cannot derive benefit from palliative care, it is argued that a similar right may emerge in relation to euthanasia.

The limitation clause

Can the ongoing degradation and ineffective treatment of a terminally ill individual be deemed reasonable and justifiable within an open and democratic society that is founded on principles of human dignity, equality, and freedom?

Examining the preamble to the Universal Declaration of Human Rights (1948), it is evident that provisions are made to recognise these rights as inviolable. In *S v Makwanyane*, the Constitutional Court articulated the following with regard to the limitation clause in the (interim) Constitution:

"The limitation of Constitutional rights for a purpose that is reasonable and necessary in a democratic society involves the weighing up of competing values, and ultimately an assessment based on proportionality. This is implicit in the provisions of section 33. The fact that different rights have different implications for democracy, and in the case of our Constitution, 'for an open and democratic society based on freedom and equality,' means that there is no absolute standard which can be laid down for determining reasonableness and necessity."⁸¹

The Constitution permits the legalization of voluntary euthanasia and may even mandate it, provided that the risks of abuse can be reduced to an acceptable level. Therefore,

⁷⁹ "Rainbow nation" is a term coined by the former Archbishop Desmond Tutu to describe post-apartheid South Africa due to its multicultural, multi-ethnic and multi-religious society. See Rautenbach (2003) *Islamic Marriages in South Africa: Quo Vadimus? Koers* 69(1) 121-152.

⁸⁰ S 27 of the Constitution provides that: "(1) Everyone has the right to have access to –; (a) health care services, including reproductive health care; (b) sufficient food and water; and; (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. (3) No one may be refused emergency medical treatment."

⁸¹ *S v Makwanyane supra* para 104.

if these risks can be sufficiently mitigated (although they can never be entirely eliminated), it is posited that euthanasia should be legalised.

The equilibrium of constitutional rights and religious values in the context of euthanasia in South Africa

It is a well-established principle that legislative provisions should not be interpreted in isolation; consequently, the Bill of Rights constitutes an integral component of a system of fundamental rights that is inextricably linked. Chapter 2 of the Constitution of South Africa, which encompasses the Bill of Rights, affirms that everyone possesses the right to freedom of religion, belief, and opinion. Therefore, it is evident that no individual can be compelled to accept euthanasia, as the decision is profoundly personal. Given the significant role that religion plays in the lives of billions of adherents globally, it is essential for lawmakers to consider these perspectives alongside those who hold a conscientious objection to the complete lack of legal recognition of the right to choose a dignified death. However, within a constitutional democracy, the issue of euthanasia should not primarily be addressed as a theological matter, but rather through the lens of constitutional rights and legal principles. While religious beliefs are significant and warrant respect, they should not dictate legal decisions, particularly in a society that values diversity. The balancing of differing rights and state interests will be influenced by the respective "weights" attributed to these rights. In the context of euthanasia, the permissibility of restrictions on such rights may be affected by, *inter alia*, the patient's age, physical condition, or mental state. Rights enshrined in the Constitution may only be limited to the extent that such limitations are reasonable and justifiable in an open and democratic society founded on human dignity, equality, and freedom. It is submitted that where ambiguity exists in the interpretation of a constitutional provision, that ambiguity should favour the liberty of the individual.

The constitutional values of dignity, freedom, and equality all support an interpretation that permits euthanasia. However, it can be argued that euthanasia does not limit the right to life; rather, it completely disregards it, and that dignity can only be a concern where the individual is alive. Furthermore, the state has an interest in the preservation of life; historically, the protection of life often took precedence over the protection of freedom and physical integrity. This is no longer the prevailing view—society now generally accepts that one may refuse life-sustaining treatment. Increasingly, our legal framework is shifting towards favouring freedom of choice. Euthanasia encompasses not only philosophical, theological, sociological, psychological, political, economic, or legal dimensions, but is also a matter of consciousness as experienced from a first-person perspective. This debate necessitates discourse within the public domain.

Most objections to the legalisation of euthanasia are either rooted in religious beliefs or amount to concerns regarding the potential for abuse, commonly referred to as the "slippery slope." In South Africa, where freedom of religion is upheld, religious objections cannot impose restrictions on individuals who are not adherents of such faiths. These objections are theological in nature, rather than legal arguments.

Conclusion

Although practised in ancient times, the debate regarding euthanasia and physician-assisted suicide (EPAS) has gained relevance in recent decades due to the increasing emphasis on respecting individual autonomy, as well as rapid advances in medical science. However, as previously discussed, the religious perspectives based on Christian and Islamic principles are

unequivocal—euthanasia is not permitted on the grounds of the sanctity of life. The issue surrounding cultural and religious objections to euthanasia imposes these views on the entirety of society (own emphasis). This is not only unjust but also undermines an essential principle that the enjoyment and practice of culture and religion should not be inconsistent with other provisions of the Bill of Rights, particularly the right to dignity, which underpins the argument for euthanasia (own emphasis). Following the advent of the democratic era in South Africa, there has been a growing legal and ethical debate surrounding euthanasia, with discussions increasingly focusing on a patient's right to choose their own death, especially in the context of unbearable suffering. While the South African Constitution protects the right to life, it also underscores the right to dignity, prompting some to argue that this necessitates a paradigm shift from merely preserving life to also ensuring a quality of life.

The right to life and the right to dignity, as enshrined in our Constitution, have generated numerous legal questions, including whether the right to life encompasses the right to die. Given that a dying person remains a living individual, it follows that to die without dignity is to live without dignity. Notwithstanding the fact that euthanasia remains unlegislated, some judicial intervention has occurred, notably in the landmark judgment of *Stransham-Ford*. While earlier South African courts emphasised the sanctity of human life and the state's interest in the preservation of life, the focus has shifted from mere preservation of life to the quality of life. In accordance with the Constitution and with specific reference to the inherent fundamental rights enshrined in the Bill of Rights, the legalisation of euthanasia in South Africa could be justified by principles of patient autonomy, the right to a dignified death, and the potential for alleviating suffering in terminal illnesses. This approach would represent an advancement of human rights by acknowledging freedom of choice and the right to make decisions regarding one's own body (own emphasis).

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