DPSNMUN'15

30th - 31st October

DELHI PUBLIC SCHOOL NOIDA MODEL UNITED NATIONS CONFERENCE 2015

COMMITTEE – HUMAN RIGHTS COUNCIL

AGENDA – ETHICS AND LEGALITY OF EUTHANASIA WITH SPECIAL EMPHASIS ON RIGHT TO LIFE

Committee Description

The United Nations Human Rights Council (UNHRC) is a United Nations System inter-governmental body whose 47 member states are responsible for promoting and protecting human rights around the world.

The UNHRC is the successor to the UN Commission on Human Rights (UNCHR, herein CHR), and is a subsidiary body of the UN General Assembly. The council works closely with the Office of the High Commissioner for Human Rights (OHCHR) and engages the United Nations' *special procedures*.

The General Assembly established the UNHRC by adopting a resolution (A/RES/60/251) on 15 March 2006, in order to replace the previous CHR, which had been heavily criticised for allowing countries with poor human rights records to be members.

The UNHRC has addressed conflicts including the Israeli-Palestinian conflict and also addresses rights-related situations in countries such as in Burma, Guinea, North Korea, Côte d'Ivoire, Kyrgyzstan, Syria, Libya, Iran, and Sri Lanka. The UNHRC also addresses important thematic human rights issues such as freedom of association and assembly, freedom of expression, freedom of belief and religion, women's rights, LGBT rights, and the rights of racial and ethnic minorities.

The UN General Assembly elects the members who occupy the UNHRC's 47 seats. The General Assembly takes into account the candidate States' contribution to the promotion and protection of human rights, as well as their voluntary pledges and commitments in this regard. The term of each seat is three years, and no member may occupy a seat for more than two consecutive terms. The seats are distributed among the UN's regional groups as follows: 13 for Africa, 13 for Asia, six for Eastern Europe, eight for Latin America and the Caribbean (GRULAC), and seven for the Western European and Others Group (WEOG). The General Assembly, via a two-thirds majority, can suspend the rights and privileges of any Council member that it decides has persistently committed gross and systematic violations of human rights during its term of membership. The resolution establishing the UNHRC states that "members elected to the Council shall uphold the highest standards in the promotion and protection of human rights".

INTRODUCTION

The **right to life** is a moral principle based on the belief that a human being has the right to live and, in particular, should not to be unjustly killed by another human being. The concept of a right to life is central to debates on the issues of capital punishment, war, abortion, euthanasia, and justifiable homicide.

There are some people who are terminally ill, both young and old, or who have a disability and who may wish to end their lives because they may believe that they are a burden on their family and peers and/or they want to avoid the ongoing pain and expense. The practice of intentionally ending a life in order to relieve pain and suffering is called euthanasia. Euthanasia has been practiced since ancient times but it returned a few years ago and carries with it the 'right to die'.

It is important to note the different forms of Euthanasia in order to understand the concept better-

Active and passive euthanasia

In active euthanasia a person directly and deliberately causes the patient's death. In passive euthanasia they don't directly take the patient's life, they just allow them to die. This is a morally unsatisfactory distinction, since even though a person doesn't 'actively kill' the patient, they are aware that the result of their inaction will be the death of the patient.

Active euthanasia is when death is brought about by an act - for example when a person is killed by being given an overdose of pain-killers. Passive euthanasia is when death is brought about by an omission - i.e. when someone lets the person die. This can be by withdrawing or withholding treatment.

Traditionally, passive euthanasia is thought of as less bad than active euthanasia. But some people think active euthanasia is morally better.

Voluntary and involuntary euthanasia

Voluntary euthanasia occurs at the request of the person who dies. Whereas, Non-voluntary euthanasia occurs when the person is unconscious or otherwise unable (for example, a very young baby or a person of extremely low intelligence) to make a meaningful choice between living and dying, and an appropriate person takes the decision on their behalf.

Non-voluntary euthanasia also includes cases where the person is a child who is mentally and emotionally able to take the decision, but is not regarded in law as old enough to take such a decision, so someone else must take it on their behalf in the eyes of the law.

Involuntary euthanasia occurs when the person who dies chooses life and is killed anyway. This is usually called murder, but it is possible to imagine cases where the killing would count as being for the benefit of the person who dies.

Indirect euthanasia

This means providing treatment (usually to reduce pain) that has the side effect of speeding the patient's death. Since the primary intention is not to kill, this is seen by some people (but not all) as morally acceptable.

There are many differing views, opinions and concepts that have been raised about euthanasia. While for some people euthanasia is a manifestation of individual autonomy; a right to self-determination, a compassionate response to someone's immense suffering or a clinical imperative to act in the patient's best interest, for other people euthanasia is tantamount to or merely a euphemism for murder, the violation of human life and an infringement on the human right to life, contradicting the sanctity of life doctrine and facilitating the abuse of vulnerable persons.

Upon closer inspection, euthanasia can be seen to be a violation and infringement on human life according to the 1948 Universal Declaration of Human Rights (UDHR). This Declaration states in its Preamble that "the foundation of freedom, justice and peace in the world" is the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family." More specifically, according to UDHR Article 6 "everyone has the right to life" and under UDHR Article 7 "all are equal before the law and are entitled without any discrimination to equal protection of the law."

The legally binding 1966 International Covenant on Civil and Political Rights (ICCPR) Article 6, further elaborates upon the rights in the UDHR, stating that: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

In some cases, if the pain is excruciating and the suffering severe and it is caused by chronic diseases, it may be argued that if the patient requests help from a doctor to end their life that they may be under the influence of pain, psychological pressures and the high cost of treatment. Further, it can be argued that patients with life-threatening illness often have a greatly impaired capacity to make rational judgments about complex matters.

There are however, opposing arguments in favour of legalising euthanasia and assisted suicide, such as the increasing interest throughout many regions of the world regarding the right human beings have to determine the way they die and to ask for professional assistance in order to ease pain and suffering. Further, laws which permit euthanasia, in certain specified conditions, in the Netherlands and in the northern territory of Australia, along with the well-advertised accomplishments and publications of some scholars and physicians in the United States, also support the case for euthanasia.

CASE STUDIES

Case Study (India)

On the night of November 27, 1973, Miss Aruna from Kerala, was strangulated by a dog chain. She was then sodomized in the basement of Mumbai's King Edward Memorial Hospital by a ward boy a day before she was proceeding for her weeding with her Doctor Fiancée. The ward boy walked free from jail after six years of imprisonment and is supposedly working in a Delhi Hospital. The strangulation caused hypoxic damage to her brain cells and left her paralyzed, blind and deaf – virtually a vegetable. For 42 long years Aruna remained in a vegetative state and did not see sun-light for four odd decades. No one from her family was concerned about her existence. Her parents expired.

Aruna's suffering finally ended with her death on 18 May 2015 when she died from pneumonia at the age of 66. She was religiously and sincerely fed by the sisters of the hospital; also looked after by the hospital.

Pinki Virani, a journalist from Mumbai brought this incidence to light through newspaper and published a book on Aruna's state. On 17 December 2010, the Supreme Court, while admitting the plea to end the life made by activist-journalist Pinki Virani, sought a report on Shanbaug's medical condition from the hospital in Mumbai and the government of Maharashtra. On 24 January 2011, the Supreme Court of India responded to the plea for euthanasia filed by Aruna's friend, journalist Pinki Virani, by setting up a medical panel to examine her. A three-member medical panel was established under the Supreme Court's directive. After examining Shanbaug, the panel concluded that she met "most of the criteria of being in a permanent vegetative state".

While it turned down the mercy killing petition on 7 March 2011, the court, in a landmark decision, allowed passive euthanasia in India. While rejecting Pinki Virani's plea for Shanbaug's euthanasia, the court laid out guidelines for passive euthanasia. According to these guidelines, passive euthanasia involves the withdrawing of treatment or food that would allow the patient to continue living.

Case Study (Europe)

1. Switzerland

On September 12th Daniel James, aged 23, travelled to Switzerland with his parents and killed himself by lethal injection in a suicide clinic run by Dignitas, an organisation that exists to facilitate voluntary euthanasia.

Daniel was the youngest British person of the 100 people who have taken their own life by this route.

In March 2007, during a practice session at Nuneaton Rugby Club, the U-16 England International was paralysed from the chest downwards when a scrum collapsed on top of him, breaking his neck. His mother explained: "he couldn't walk, had no hand function, and had constant pain in his fingers. He was incontinent, suffered uncontrollable spasms in his legs and upper body, and needed 24-hour care".

His parents supported his decision to die: "Daniel continually expressed his wish to die and was determined to achieve this. He was not prepared to live a second-class existence...his death was, no doubt, a welcome relief from the prison his body had become and the day-to-day fear and loathing of his living existence".

Although no-one has ever been successfully prosecuted for assisting suicide in the UK, the police investigated the case and sent a file to the Crown Prosecution Service. Did the parents do the right thing in assisting Daniel to die?

A **Utilitarian** might argue that they did. Utilitarians seek to maximise happiness or pleasure or preferences of individuals. Daniel clearly chose to die: no-one forced him. His life had become intolerable, we are told. And parents and friends were consulted, and so presumably, though sad, were happy that his wishes were fulfilled or they would not have driven him to Switzerland.

And yet something about this case leaves us uneasy. Even from the Utilitarian standpoint, can we be sure Daniel's life wouldn't have improved? Part of the problem with Utilitarian ethics is that we cannot be sure of the consequences. We aren't God: we cannot precisely predict the future. Daniel's physiotherapist expressed deep shock: "I was totally shocked. Daniel was improving and still had the use of his arms and hands. He could feed and dress himself...most paralysed people do improve over time...perhaps two or three years after the accident. It was early days for Daniel". So not only are we uncertain of the future consequences, in this case Daniel's closest carer suggests he would have improved. How can we be sure he wasn't simply suffering from depression, which might have lifted as his condition improved?

To a natural law theorist (like Aquinas) suicide is an absolute wrong because it breaks the intrinisic relationship between the primary good of self-preservation and the sanctity or

sacredness of life. If you are a Christian natural law theorist, you might go further: God knit us together in our mother's womb (Psalm139:13) and his gift of life is something only God can take away. It is our job to minimise suffering, not to take the role of God in ending life. Such an action is to repeat the sin of Eden, where Adam and Eve usurped the power of God by eating of the tree of the knowledge of good and evil.

Kantian ethics would seem to provide a more complex answer. Kantian ethics has three main strengths. It is *reasonable* because decisions should be universalisable. It promotes equality because the individual is seen as morally autonomous (ie can take his or her own decisions), and it is *consensual*, because laws should go through a moral parliament where most people should agree.

2. European Court of Human Rights

As of February 13, 2014 two noteworthy cases are before the European Court of Human Rights (ECHR). The ECHR, which consists of the member states of the Council of Europe, enforces the European Convention on Human Rights. Among the rights the Convention guarantees is the right to life, as articulated in its Article 2.

The first case is Lambert and Others v. France. Vincent Lambert, a 39-year-old French citizen, suffered serious head injuries in a car accident in 2008 and has been in a dependent, "minimally conscious state" since that time, receiving artificial nutrition and hydration. His wife sought to discontinue the nutrition and hydration, and the French High Administrative Court, the Conseil D'Etat, ruled in her favor. Mr. Lambert's parents and siblings opposed this action and filed an application against France with the ECHR. The Grand Chamber of the ECHR — the judgments of which are enforceable against Council of Europe member states — held a hearing on January 7, 2015. The chamber has not yet issued a judgment.

The second case is Tom Mortier v. Belgium. The Alliance Defending Freedom has filed an application with the ECHR on Tom Mortier's behalf challenging the Belgian law that permits doctors to euthanize patients who are "in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated resulting from a serious and incurable disorder caused by illness or accident." Motier's mother, Godelieve De Troyer, age 65, was euthanized by an oncologist — who was not her doctor and had never treated her — because she suffered from severe depression. Her own doctor of 20 years refused her request to be euthanized. Mortier was informed of his mother's death when the hospital called him to retrieve her body. According to the Alliance Defending Freedom, the ECHR has not yet decided if it will admit the case.

The last instance in which the Grand Chamber of the ECHR rendered a judgment on a right to assisted suicide was 2002, in Diane Pretty v. the United Kingdom. Diane Pretty, who suffered from an incurable, debilitating disease, wanted her husband to assist in her suicide, as she could not do so alone because of the effects of her illness. She wanted the state to agree not to prosecute her husband; when the United Kingdom would not give such

assurances, she claimed that it had effectively prevented her from taking her own life, violating a number of rights under the European Convention, including her right to life. The ECHR found that none of these rights had been violated. It states, with respect to Article 2:

Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.

Countries and their legal position

Legality of Euthanasia in the US:

While Euthanasia is illegal in the United States, Physician Assisted Suicide- or the prescription of lethal doses of medication to terminally ill patients by a doctor- is legal in 5 states. The debate over euthanasia and the right to life relates to the conflict between "quality of life" and "preservation of life". This has given rise to "aid in dying" movement, however, the issue still remains controversial. Oregon was the first US state to legalize assisted suicide or physician-assisted suicide in November of 1994, followed by Washington in November of 2008, Montana in December of 2009, Vermont in May of 2013 and California in October of 2015.There is no United States federal law on Euthanasia and Assisted Suicide. The federal government and all 50 states prohibit euthanasia under general homicide laws. Assisted suicide laws are generally handled at the state level.

Aid In Dying movement:

The Aid In Dying movement grew traction in the United States in the 20th century, with the advocacy group Compassion & Choices at its forefront. Giving a fading patient the opportunity for a peaceful and dignified death is not suicide, the group says, which it defines as an act by people with severe depression or other mental problems.

According to a survey conducted by Gallup in 2013 (with a random sample of 1,535 American adults) public support has grown from 53% to 70% for a doctor "being allowed to end a patient's life by some painless means if the patient and his or her family requests it." But when the phrase "doctor-assisted suicide" is used, support is only 51%. The Aid In Dying movement moves with the ideology that aid in dying and assisted suicide are separate practices with one being a medical practice and the other a felony.

Right To Die in the United States:

The most influential legal doctrine in the area of "right to die" is the constitutional right of privacy and bodily integrity as provided under the US constitution. In the Nancy Cruzan case the Supreme Court entered the realm of "right to death" by approving the termination of medical treatment, however, the Court rejected an argument that stated prohibiting assisted suicide violates the Equal Protection Clause of the 14th Amendment. The term "right to die" has been used to describe a variety of underlying issues in the U.S, including suicide, passive euthanasia (withdrawal of medical treatment), assisted suicide (providing person with the means to commit suicide), active euthanasia (causing the death of a patient through direct action such as administering lethal doses of medication) and physician-assisted suicide (also known as voluntary passive euthanasia/situation where the physician provides information or the means of committing suicide). One of the major policy contentions regarding the "right to

die" has been the concern that recognizing a "right to die" in one circumstance will be generalized to include other circumstances i.e. while some may restrict the assisted suicide debate to terminally ill patients, others may expand this parameter to include those with incurable conditions.

Death With Dignity Acts:

Currently, only four US states have enacted Death With Dignity acts, which are laws that allow mentally competent, terminally ill adult state residents to voluntarily request and receive a prescription medication to hasten their death. These are the states of Oregon, Washington, Vermont and most recently, California. In 2009, in the *Baxter vs. Montana* case, the Montana Supreme Court ruled that while the right to physician-assisted dying is not guaranteed under the Montana State Constitution, such assistance is not deemed illegal. However, it is important to note that the state doesn't currently have a law safeguarding physician-assisted death. Oregon voters approved the Death With Dignity Act in 1994, and the law went into effect in 1997. According to Oregon Department of Human Services, 105 terminally ill patients have used the Oregon law to hasten their deaths in 2014. Washington voters enacted their law in 2008 and it was implemented in 2009. According to The Washington Department of Health, which monitors and enforces compliance with the Washington Death with Dignity Acts, 176 terminally ill patients used the state law in 2014. Vermont became the third state to enact the Death with Dignity Act in 2013; the law immediately going into effect after the governor signed it on May 20th. Recently, California became the fourth state with a Death with Dignity law, which was signed on the 5th of October 2015. The End of Life Option Act was passed in the state senate and assembly in September and was inspired by Brittany Maynard, the 29-year-old San Francisco Bay Area resident who gained national attention for her decision to move to Oregon to take advantage of the state's longstanding aid-in-dying law. Maynard had been diagnosed with terminal brain cancer, but as a California resident, could not pursue end-of-life options at home.

The law will go into effect next year.

Legality of Euthanasia in Asia

1. India

While rejecting Pinki Virani's plea for Aruna Shanbaug's euthanasia, the court laid out guidelines for passive euthanasia. According to these guidelines, passive euthanasia involves the withdrawing of treatment or food that would allow the patient to live. Forms of active euthanasia, including the administration of lethal compounds, legal in a number of nations

and jurisdictions including Belgium and the Netherlands, as well as the US states of Washington and Oregon, are still illegal in India.

Elsewhere in the world active euthanasia is almost always illegal. The legal status of passive euthanasia, on the other hand, including the withdrawal of nutrition or water, varies across the nations of the world. As India had no law about euthanasia, the Supreme Court's guidelines are law until and unless Parliament passes legislation. India's Minister of Law and Justice, Veerappa Moily, called for serious political debate over the issue. The following guidelines were laid down:

1. A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
2. Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned.
3. When such an application is filled the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. A committee of three reputed doctors to be nominated by the Bench, who will give report regarding the condition of the patient. Before giving the verdict a notice regarding the report should be given to the close relatives and the State. After hearing the parties, the High Court can give its verdict.

2. China

Euthanasia is a criminal offense in China. For example, in Shanghai a 67-year-old man was sentenced to 5 years in prison when he euthanized his 92-year-old mother when she emerged from a hospital procedure only able to move one finger and one toe. The sentence was considered lenient, because he had displayed filial piety toward his mother.

While active euthanasia remains illegal in China, it is gaining increasing acceptance among doctors and the general populace. In Hong Kong, support for euthanasia among the general public is higher among those who put less importance on religious belief, those who are non-Christian, those who have higher family incomes, those who have more experience in taking care of terminally ill family members, and those who are older.

3. Philippines

Euthanasia is illegal in the Philippines. In 1997, the Philippine Senate considered passing a bill legalizing passive euthanasia. The bill met strong opposition from the country's Catholic Church. If legalized the Philippines would have been the first country to legalize euthanasia. Under current laws, doctors assisting a patient to die can be imprisoned and charged with malpractice

However, it is still practiced by some, mostly are from the poor segment of the country. They have no other choice but to use euthanasia to stop the patient from suffering, and to avoid expenses on medical treatments. Additionally, medical technologies and professionals here in the Philippines are not entirely advanced. Common Filipino physicians may have inadequate skills to efficiently cure complicated diseases.

Legality of Euthanasia in Europe

The Healthcare policy of the European Union collectively is complicated. It meshes economic policy, human rights, criminal law, professional licensing and many other areas into one concept. Furthermore, the cultural expectations are incredibly diverse. Even the role of the patient and the physician varies from nation to nation. Therefore, any part of the European superstructure that has the potential to significantly alter the functioning of any part of a member state's healthcare system will be highly controversial. We will be providing the legal positions of **Netherlands** and **Switzerland** in the background to make you understand Euthanasia in Europe.

1. Netherlands

In the Netherlands, euthanasia began the path to decriminalization in 1973 with the Potma Case concerning a physician who had facilitated the death of her mother following repeated explicit requests for euthanasia. While the physician was convicted, the court's judgment set out criteria when a doctor would not be required to keep a patient alive contrary to their will. This set of criteria was formalized in the course of a number of court cases during the 1980s. The development of euthanasia legislation follows the opinion polls showing marked increase of approval, from 40% in 1966 to more than 70% support continuously since 1990. The Court of Leeuwarden found that a doctor could be shielded from criminal liability when substantive and procedural requirements had been met. The Supreme Court made the most important court decision on this issue in 1984 when it accepted the termination of life upon explicit request providing certain criteria were met. Thus the path was paved for the practice of euthanasia in the European country most famed for its tolerance and social progressiveness. Prior to the legislative amendments, and agreement was forged between the Minister of Justice and the Royal Dutch Medical Association to not prosecute physicians as long as they complied with the agreed notification procedures. The courts would allow euthanasia as long as the requirements were fulfilled. There were several potential areas to allow doctors protection, but the Supreme Court opted to fit euthanasia under the defence of necessity. In The Netherlands, necessity (also called duress) allows the transgression of law in cases of emergency, severe distress or conflicting duties; euthanasia was framed in terms of conflicting duties for a physician between a duty to maintain and preserve life and a duty to end unbearable, hopeless suffering. This laid the groundwork for the introduction of legislation to formally decriminalize euthanasia.

Euthanasia in the Netherlands is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act" from 2002. It states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with criteria of due care. These criteria concern the patient's request, the patient's suffering (unbearable and hopeless), the information provided to the patient, the absence of reasonable alternatives, consultation of another physician and the applied method of ending life. To demonstrate their compliance, the Act requires physicians to report euthanasia to a review committee.

Termination of Life on Request and Assisted Suicide (Review Procedures) Act took effect on April 1, 2002. It legalizes euthanasia and physician assisted suicide in very specific cases, under very specific circumstances. The law was proposed by Els Borst, theD66 minister of Health. The procedures codified in the law had been a convention of the Dutch medical community for over twenty years.

The law allows medical review board to suspend prosecution of doctors who performed euthanasia when each of the following conditions is fulfilled:

- the patient's suffering is unbearable with no prospect of improvement
- the patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs)
- the patient must be fully aware of his/her condition, prospects and options
- there must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above
- the death must be carried out in a medically appropriate fashion by the doctor or patient, and the doctor must be present
- the patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents)

The doctor must also report the cause of death to the municipal coroner in accordance with the relevant provisions of the Burial and Cremation Act. A regional review committee assesses whether a case of termination of life on request or assisted suicide complies with the due care criteria. Depending on its findings, the case will either be closed or, if the conditions are not met, brought to the attention of the Public Prosecutor. Finally, the legislation offers an explicit recognition of the validity of a written declaration of will of the patient regarding euthanasia (a "euthanasia directive"). Such declarations can be used when a patient is in a coma or otherwise unable to state if they wish to be euthanized.

2. Switzerland

Switzerland has legislatively permitted assisted suicide since 1942. For example, lethal drugs may be prescribed as long as the recipient takes an active role in the drug administration. Euthanasia (such as administering a lethal injection) is not legal. The law does require a physician to be involved. It does not require the recipient to be a Swiss national. This latter aspect of the law is unique in the world, and the nation has come to be known for the phenomenon of "suicide tourism".

The legality of assisted suicide is a result of article 115 of the Swiss Criminal Code, in effect since 1942, which provides:

"**Inciting and assisting suicide:** Any person who for selfish motives incites or assists another to commit or attempt to commit suicide shall, if that other person thereafter commits or attempts to commit suicide, be liable to a custodial sentence not exceeding five years or to a monetary penalty."

Consequently, assisting suicide is a crime only if the motive for doing so is selfish such as personal gain.

When an assisted suicide is declared, a police inquiry may be started. Since no crime has been committed in the absence of a selfish motive, these are mostly open and shut cases. Prosecution can occur if doubts are raised about the patient's competence to make an autonomous choice, or about the motivation of anyone involved in assisting the suicide.

Article 115 was interpreted as legal permission to set up organizations administering life-ending medicine only in the 1980s, 40 years after its coming into effect.

However it must be noted that: **All forms of active euthanasia like administering lethal injection remain prohibited in Switzerland. Swiss law only allows providing means to commit suicide (PAS), and reasons for doing so must be altruistic.**

Legality of Euthanasia in Africa

1. South Africa: The position of Euthanasia in South Africa is widely debated. On one hand, the law prohibits actively assisted suicide or euthanasia. On the other hand, the law allows life-sustaining treatment to be withdrawn in order to cause death. Irrespective of this position, the court establishes that the "right to life" must include the right to life with dignity. But since "dignity" has a subjective connotation, it is highly situational for the courts to decide if euthanasia is to be permitted or not.

An important case to be kept in mind is Clark vs. Hurst NO and Others where

Dr. Frederick Cyril Clarke, a life member of the SA Voluntary Euthanasia Society, went into cardiac arrest on 30th July 1988 following which his heartbeat and breathing ceased. By the time his heartbeat and breathing were restored, he had suffered serious and irreversible brain damage due to prolonged oxygen shortage. He was in coma and remained in that condition permanently.

During his life time, Dr. Clarke signed a living will and had, at various points of time, indicated his support for passive euthanasia and physician assisted suicides in the form of public speeches. After three years of Dr. Clarke's tragedy, his wife applied for a court order appointing her as *curatrix* to her husband's person, with special powers to authorize the

withdrawal of any artificial medical treatment. The Attorney General opposed her application on the grounds that such withdrawal of life-sustaining treatment would hasten Dr. Clarke's death and would effectively lead to her being liable for murdering her husband in the eyes of the law.

Since legally Dr. Clarke was still alive, with his respiratory system, kidneys, heart and lungs functioning satisfactorily, the court did not acknowledge the statements made by his doctors who stated that Dr. Clarke was in a persistent vegetative state with no improvement possible. The court also disregarded the existence of the living will signed by Dr. Clarke before the incident.

However, when it came to questioning whether stopping artificial feeding would be unlawful and wrong under the circumstances, the court judged the quality of life of the patient as a determining factor. Finally, the court came to the decision that while doctors and family members are consulted in making a decision on whether or not to institute life-sustaining procedures, an external decision maker can never have the right to impose death.

Coming to its decision, the court said,

"…The hastening of a person's death is ordinarily not justified and is therefore wrongful even when the person is terminally ill and suffering from unbearable pain… This is, however, no absolute rule. It has come to be accepted that the doctor may give a terminally ill patient drugs with the object of relieving his pain, even if, to the doctor's knowledge, the drugs will certainly shorten the patient's life…."

The killing of terminally ill patients is still considered murder in South Africa. Although Section 9 talks about the "right to life" no specific mentions of a "right to die" exist within the ambit of the Constitution. The debate on whether a person can request a termination of her life on medical grounds carries on.

Legality of Euthanasia in North and South America

1.Colombia:

Colombia is the fourth country that currently has legal euthanasia-the others being Netherlands, Belgium and Luxembourg. In July of 2015, the nation carried out its first legal euthanasia for a cancer patient, immediately firing off a debate against the Colombian Catholic Church, who issued warnings on the grounds of the belief that euthanasia is morally unacceptable. The Catholic Church also threatened to close its hospitals across the country.

There is also the concern of a state with one of the world's highest murder rates approving euthanasia as a law.

Despite the contentions, the Colombian Constitutional Court declared in May 2015 "no person can be held criminally responsible for taking the life of a terminally ill patient who has given clear authorization to do so,". The court also defined the term “terminally ill” persons as those with diseases such as "cancer, AIDS, and kidney or liver failure if they are terminal and the cause of extreme suffering,". The ruling specifically refused to authorize euthanasia for people with degenerative diseases such as Alzheimer's, Parkinson's, or Lou Gehrig's disease.

Since the ruling directly contradicts current law, the court directed the country's Congress to develop procedures to "regulate" the practice of euthanasia, leaving it up to the legislators to determine "how the terminally ill who want to die may express their consent and how they should be killed".

The main area of concern comes from within Colombia, with the Catholic Church staunchly opposing this law. With 90% of the population being Catholics, religious acceptance plays a huge factor in the reception of this law by the people.

2.Canada:

On June 15, 2012, Justice Lynn Smith struck down the criminal code prohibition of euthanasia in Canada, which made euthanasia culpable homicide. After hearing an appeal of the government against Justice Smith’s decision in October 2014, The Supreme Court unanimously released a decision on February 6, 2015, which found that the prohibition on voluntary euthanasia violates section 7 of the Canadian Charter of Rights and Freedoms. As a result of this verdict, voluntary euthanasia will be legal for “a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition”

In addition to this, in June 2014, the Quebec government passed the End-of-life Care Act that would allow “medical aid in dying”. Under this new legislation, “medical aid in dying” is permitted for patients who have health insurance, are of full age and are capable of giving consent, are at the end of life, suffer from a serious and incurable illness, are in an advanced state of irreversible decline in capability and experience constant and unbearable physical or psychological pain that cannot be relieved

By February 5, 2016 (at the latest) euthanasia will be legal in Canada

Questions to Consider:

- Does your domestic law grant its citizens the ‘Right to Die’?
- What is the difference between assisted Suicide and euthanasia?
- What will be the United Nations’ scope with respect to assisted suicide/euthanasia?

- What are the religious inferences of Euthanasia?
- What can be the misuses of Euthanasia by facilitating criminal activites?
- Should the "Right to Die" be defined as a fundamental Human Right?
- Can a living will be used to grant persons euthanasia?

FURTHER LINKS FOR RESEARCH

1. Journal Article, Right to life v/s Right to Die- http://icmr.nic.in/ijmr/2012/december/Editorial2.pdf
2. Movie : Million Dollar Baby (directed by Clint Eastwood)
3. Ethical rights - http://www.ethicalrights.com/submissions/human-rights/83-the-right-to-die-with-dignity-euthanasia.html
4. UN HRC discussion on Euthanasia - http://www.unhchr.ch/tbs/doc.nsf/0/dbab71d01e02db11c1256a950041d732?Opendocument