

# The Criminalization of Euthanasia in the Context of the four 'Liberty-limiting Principles of Criminalization'

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**Abstract:** There has been a hot debate going on in recent times over the criminalization or decriminalization of Euthanasia or mercy killing. It is one of the most absorbing issues that have ethical, moral, religious, and legal dimensions. It is interesting to note that all major religions in the world are against legalizing euthanasia as they consider life to be a precious gift by the almighty God that can't be extinguished by human beings based on compassion. The values and ethical considerations of a society change over time and there is a need to relook at mercy killing in the context of the scientific and legal frameworks. Criminalization is an extreme coercive form of State action as it suppresses liberty and imposes punishment for doing such an act. It should be used as a last resort *i.e., ultima ratio*. The unrestrained liberty can't be permitted by the State as one has to give up certain liberty to live in a civilized society. The four Liberty-limiting Principles justify restraining liberty under certain circumstances. Can these four principles be successfully employed to justify the criminalization of Euthanasia? Is it acceptable for someone to die with dignity in such an unsatisfying and meaningless situation because of their terminal illness or other reasons? To put things another way, does the right to a meaningful and dignified life extends to incorporate the right to a dignified death? Is the sanctity of life given to us by God so sacred and precious that it shouldn't be overridden by human rights and freedoms? Once a person's life is over, it cannot be resurrected. These are some of the complex questions that we are needed to be dealt with.

**Keywords:** *Euthanasia, Criminalization, Liberty-limiting Principles, Paternalism.*

## 1. Introduction

It is a great honor and privilege to be born on this planet. A child is born into this world, and he or she lives out the rest of his or her life in accordance with the timetable set by God. A person's life experiences are stored in his or her soul as he or she makes the sacred

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journey from conception to demise. His personality is shaped by the experiences he has on the road, both good and bad. During this journey, he sometimes finds tears in his eyes, but he also experiences a burst of light and joy.

Jeremy Bentham believes that pleasure and pain are both natural. Humans are ruled by pleasure and pain, and they must be served in all aspects of their lives, including in the realms of politics and religion as well as the realms of speech and action. Thus, morality's entire superstructure is built on a foundation of pleasure.

Arthur Schopenhauer says, "the scenes in our life resemble pictures in a rough mosaic; they are ineffective from close up and have to be viewed from a distance if they are to seem beautiful".<sup>1</sup> To put it another way, life itself is an ocean filled with hazards that people try to steer clear of with the utmost caution and care, yet they are well aware that even when they succeed in doing so with all their might and ingenuity, they are edging ever closer to the ultimate, the total, the inevitable, and the irreversible shipwreck that is death.

In the end, it's worse for him than all the rocks he's avoided on this long journey. As a counterpoint, a person may find that the pain and suffering they experience in life can sometimes become so unbearable that even death — the ultimate escape from the misery and suffering they have endured — becomes appealing and they rush to meet it.<sup>2</sup>

Although most people, unless they are in a state of extreme distress, prefer to live their lives on a daily basis, and postpone death. Death is the greatest misfortune because we are deprived of life and life is the only thing we have.<sup>3</sup> The true meaning of life and freedom can only be appreciated in an atmosphere of physical and psychological development. Individuals must have an aura in order to be identified as having an inner soul. People are able to thrive in this environment because the State grants them fundamental freedoms. In both developing and developed countries, the fight for civil liberties continues.

Fundamental freedoms, including spiritual growth, have not come about suddenly. This is important to be kept in mind. Since the dawn of time, people haven't been able to exercise their rights. When the Renaissance and Industrial revolutions came around, however, a major shift occurred. During and after the industrial revolution, the concept of individual

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<sup>1</sup> Arthur Schopenhauer, *Essays and Aphorisms* (Middlesex: Penguin Books 1970)

<sup>2</sup> Arthur Schopenhauer, *The Vanity and Suffering of Life (Oswald Hanfling) Life and Meaning* (Oxford: Blackwell 1987)

<sup>3</sup> Mary Mothersill, *Death (Oswald Hanfling) Life and Meaning: A Reader* (Oxford: Blackwell 1987)

rights was widely accepted. Enlightenment was made possible in large part because of the recognition of individual rights.

As a starting point, individual rights were concerned with protecting individuals' physical bodies and other tangible assets. The recognition by the State of an individual's right of control over his body was the next development in individual rights.

For the State to recognize individual rights, it had to overcome the conflict between an individual's freedom and society's moral values. Many of today's personal liberties were considered immoral not so long ago. It was because of this that they were anti-religious. The State gradually provided breathing space and freedom after the infusion of logical thinking, fairness, equity, reasoning, and good conscience into the legal system. However, there is still a wide disparity between countries when it comes to an individual's right to privacy on his own body.

Every society has its set of moral and religious ideals to determine. Good values are taken into account in every society. The members of society may reject an individual's actions based on their perceived impact on good morals.

Abortion was illegal at first because it was deemed blasphemous by many religions. Medical termination of pregnancy became permissible under certain circumstances later on, however, in the interest of women's health, the prevention of sex abuse, and family planning. Prostitution was also decriminalized in many legal systems around the world to prevent health crises, psychological crises, unemployment, etc. In addition, the rights of lesbians, gays, and transgender people have been recognized in nearly every civilized country. When it comes to things like a sex change, silicone breast implants, tattoos and piercing on the body as well as organ transplants are all examples of the legal recognition of a human right to control one's body. Individualistic rights were bolstered by the recognition of the right to marry and live-in relationships. Surrogacy has become a hot topic in recent years, with debates taking place in India and around the world on the matter.

In addition, the right to have a dignified death is another issue that deals with the right to have control over one's own body and fate as well as the right to determine when and how one dies. Suicide, assisted suicide, and euthanasia (both active and passive) all fall under the umbrella of the term (including physician-assisted suicide).

Recent years have seen a rise in support for legalizing euthanasia in the western world. Some people support the idea and those arguments that it is a violation of human rights. Euthanasia, like abortion, has become a divisive issue around the world due to its connection to compassion and human mortality. The Hon'ble Judge Stephen Reinhardt, in the famous case of *Compassion in Dying v. State of Washington*<sup>4</sup>, put human life and death as the most fundamental of human concerns, and that we must strike a balance between the desire to prolong life and the wish to die peacefully and with dignity in this debate. Many people will be affected by this debate and the Courts will confront this issue more than any other issue.<sup>5</sup>

The right-to-die movement refers to those who advocate the legalization of assisted suicide or lethal injection as a method of ending one's life. The name is odd, given that death is the only certainty for everyone. The movement's supporters are not defending the right to die, but rather the right to choose when and how one dies — *i.e.*, “the Right To Die”. Right-to-die advocates believe that people with inoperable degenerative or debilitating disorders should be entitled to request aid in dying, even if the sickness is not fatal. However, people who are against the movement argue that no one's right should take precedence over the responsibility of the State to preserve life and the obligation of a physician to treat patients with care. If assisted suicide is legalized, they fear that vulnerable members of society — the aged people, disabled people, chronically ill, the destitute, and minorities — will be coerced and even forced to die against their will. In the end, they say, the so-called right to die will turn into a moral obligation.<sup>6</sup>

Death from being a social phenomenon transformed into a solely biological one over the last few years. As medical therapy has become a mainstay for a patient on the deathbed, the role of the family has been reduced from caring and loving to nearly obligatory assistance. Because of its spiritual and social qualities, death is no longer seen as something to be revered and celebrated, but rather as something to be feared and kept away from the rest of one's family and friends.<sup>7</sup>

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<sup>4</sup> *Compassion in Dying v State of Washington* [1995] 79 F.3d 790

<sup>5</sup> R. Cohen-Almagor, *Euthanasia in the Netherlands: The Policy and Practice of Mercy Killing* (Dordrecht: Kluwer Academic Publishers 2004) 8

<sup>6</sup> L. Yount, *Right to Die and Euthanasia* (2007) 3-4

<sup>7</sup> R. Whiting, *A Natural Right to Die: Twenty-Three Centuries of Debate* (Westport, Conn: Greenwood Press 2002) 3

Imagine a scene of impending doom at a hospital. Sitting at the hospital bedside is an anxious relative who fears the imminent arrival of the Grim Reaper and the death of a close friend or family member. But the patient's deathly visitation has not come, and he or she continues to languish. There is no hope of recovery, but the likelihood of death diminishes over time. After a while, it becomes clear that medical technology has gone beyond its capacity to prolong life and has instead begun an epic journey of prolonging death itself. The options for this patient's care and treatment are clearly visible. He can be kept alive indefinitely, or he can be allowed, or even made to, die at any time. Due to both social norms and criminal law, these options are restricted in their availability. There are profound implications for the patient, his family, and loved ones, the medical care providers, and the allocation of scarce resources. His predicament raises complex issues of law, society, ethics, and medicine, none of which have simple answers. How long should he be allowed to live? The question is whether it is morally acceptable to keep him alive simply because we can, or whether we should allow him to die. Is his family able to demand that he be kept alive or that he be taken off life support? What are the patient's and his family's legal rights? What are the responsibilities of medical professionals? Is it legal to stop providing care? When it comes to his or her own medical care, does the patient have any say in the process? Every day, people all over the world wrestle with similar issues.<sup>8</sup>

Due to terminal or incurable disease, trauma, and old age, those involved may face their own personal dilemmas. What happens to them next is more important than how they got there in the first place. In the past, people would have died if they had been kept alive or if they had been brought back from the brink of death. But what kind of life are they living, and how can their caregivers respond to this? Nowadays, modern medicine is extending the lives of a growing number of patients, mostly but not exclusively the elderly, who are in states of coma, severe incapacity, or excruciating pain. They have to decide if they want to continue with life-prolonging treatments, or if should it be ethical for them to administer narcotic drugs to hasten their deaths if no such treatment is being given.<sup>9</sup>

Similarly, to the hypothetical patient depicted above, for these patients, living may amount to nothing more than survival. Only by extending the dying process has life been preserved, and even then, the quality of that extra time is debatable. This situation raises fundamental

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<sup>8</sup> H. Biggs, *Euthanasia, Death with Dignity and the Law* (Oxford: Hart Publishing 2001) 10

<sup>9</sup> *Ibid* at 9

questions about the definition of life and death. If medical and technological advances continue at their current rate, will our understanding of these concepts need to adapt?

“The traditional ethic will not be able to accommodate the current demand for control over how we die” – says Peter Singer.<sup>10</sup> As a corollary of his argument, he suggests rethinking the definitions of death and life, and also law must be changed. More and more people are calling for the right to die with dignity, rather than enduring the perceived humiliation of being dependent on another person.<sup>11</sup>

The concept of human dignity, on the other hand, is open to a wide range of interpretations. The current emphasis on self-determination as a means of expressing individual autonomy is reflected in the close connection between euthanasia and “death with dignity” that has emerged in the current debate. Respect for all sensible beings’ autonomy, in more classical Kantian terms, demonstrates each person’s essential worth, as well as the respect and innate dignity that everybody deserves. As a means of ensuring one’s own autonomy and dignified death, euthanasia is frequently advocated.<sup>12</sup> Even so, the ability to achieve dignity through euthanasia is contingent on the specifics of each case.

### 1.1. Euthanasia: the Literature Review

The two issues of which one is euthanasia and the other is Physician-Assisted-Suicide (PAS) are being debated across the globe. The issue of legalizing euthanasia in India has again come to the fore with the recent Apex Court ruling in the famous case of Aruna Shabhaug v. Union of India<sup>13</sup> which issued guidelines while allowing passive euthanasia.

Pralika Jain asserts in her article, “Euthanasia and the Society”<sup>14</sup> that our Constitution should be viewed as a social document. In this sense, it is a reflection of society as a whole. Our understanding of it will be incomplete unless we are aware of society’s fundamental characteristics. Only if the Constitution takes into account the social structure will it be able to withstand the passage of time. The Constitution and society are inextricably linked as they progress and change together. Changes and developments in society are taken into

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<sup>10</sup> *Ibid* at 10

<sup>11</sup> *Ibid* at 11

<sup>12</sup> Biggs (n 8)

<sup>13</sup> *Aruna Shabhaug v Union of India* Writ Petition (Criminal) No. 115/2009

<sup>14</sup> Pralika Jain, ‘Euthanasia and the Society’ (*The Buddhist Channel*, 26 November 2008)

<<https://www.buddhistchannel.tv/index.php?id=70,7438,0,0,1,0#.YxSLOXZBw2w>> accessed 4 July 2022

account in the Constitution A democracy means that it is governed by, for, and owned by the people, and this is the case in our country. People's power is enshrined in the Indian Constitution. For the benefit of the people, the power of the people has been given to them. Rights and responsibilities are established by the Constitution. The rights and duties influence our moods and emotions as well.

Ronald Dworkin in his book says that – “life is a process that we have to go through”.<sup>15</sup> Assuming that human existence begins from conception to birth, childhood, culminating in successful, engaged adulthood, and eventually leading to natural death after a normal span of years. He believed in the sacredness of human life in all its guises and that the choices we make concerning birth and death should be made in a way that honours and respects that sacred value.

Human life is unalienable and unaffected by the laws of nature. It is imperative that a human life that has begun is allowed to grow and flourish without being squandered. Even though we care greatly about the existence of a work of art, we don't give much thought to how many more of them are made. When the deliberate destruction of something would be an insult to what should be revered, it is considered sacred or inviolable. He describes death in two ways. There are two ways to look at death: as the end of our lives and as a final scene in a play in which everything is magnified and put under the spotlight, or as a defining moment in the narrative of our lives.

According to him, it is trite that our entire life is spent in death's shadow, however, it is also true that we spend our entire lives in the shadow of our deaths as well. Oblivion is the most frightening aspect of death, as it is the complete and utter loss of all light. A person's thoughts and words about dying, as well as how much emphasis they place on “dignity” in their final moments, show how important it is that their life ends in accordance with their wishes, and how much importance they place on “dignity” in their final moments.

Sujata Pawar contends in “Right to Die, how far Right?: Judicial Responses”<sup>16</sup> – that Article 21, even so, couched in a tone that is not positive, casts a positive duty on the state to improve the quality of life and dignity of its citizens, as has been correctly stated. Indian courts have interpreted the context of Article 21 to include a wide range of other rights

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<sup>15</sup> R. Dworkin, *Life's dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Vintage Books 1994)

<sup>16</sup> Sujata Pawar, 'Right to die, how far Right? : Judicial Responses' (2010) *Criminal Law Journal* 116

that are essential to a person's right to life, though the text has remained unchanged. In Sujata's view, death is synonymous with the end of all life as we know it. The Indian Supreme Court<sup>17</sup> rightly believes that the only certainty in life is death. Things that are born must die

Alan Meisel & Kathy L. Cerminara,<sup>18</sup> argues in their book that the expression "right to die" refers to the right of an individual to decline medical treatment that will result in death, both in popular and legal contexts. Although the term "natural death" or "death with dignity" hasn't been referred to in all legal cases, it's a popular term to be used by courts, sometimes in conjunction with the phrase "natural death". Mercy killing or euthanasia may also be used as a synonym for the term.

## 1.2. The Hypotheses

Everyone desires to have their loved ones around for as long as they can. It's heartbreaking to watch a loved one deteriorate, lose their quality of life and dignity, and then die. As a side note, every human being has the right to die peacefully.

However, a patient is to be allowed to die passively by the withdrawal of artificial life support only in the most extreme cases such as when he is brain dead and medical experts opine that death is imminent and chances of recovery are nil. As long as there is hope, we can say that at least there should be dignity. The Indian legal system does not recognize any form of right to die. As a result, a National Policy Decision is long overdue.

## 3. Liberty-Limiting Principles

Self-determination is the essence of liberty. Liberals think that people should be entitled to do whatever they choose, as long as it doesn't harm anyone else. Mill asserted that utility and liberty are principles that are mutually supporting and are widely accepted among philosophers. Individuals must have the right to pursue the things that give them pleasure if they are to be part of a jovial society. Our pursuit of pleasure might conflict with others' pursuit of pleasure. There is, of course, a range of conflict here.

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<sup>17</sup> *P. Rathinam v Union of India* (1994) AIR 1844

<sup>18</sup> A. Meisel, K.L. Cerminara, & T.M. Pope, *The Right to Die: The Law of End-of-Life Decisionmaking* (Wolters Kluwer Legal & Regulatory U.S. 2004)



After all, in today's world, it's nearly hard to do anything without interfering with someone else's right to enjoy their own private life. My neighbor who is an elder woman, for example, enjoys working in her garden because it is peaceful and quiet. She claims that my hobby of listening to songs is physically and aesthetically distressing to her since I play at such a high volume. This inevitable contradiction between private and public interests must be resolved in any community that is devoted to the seeking of private pleasure or happiness and the freedoms essential to sustain it. As a result, philosophers have put out a wide range of freedom-restricting concepts over the years.

### **3.1. Harm to Others**

There is just one limiting principle for libertarians, and that is the harm done to others. These people's method is to discriminate between actions that do not hurt or infringe on the rights of others and those that do. Liberal societies can govern behaviors that infringe others' rights but not acts that are solely self-serving, they maintain. Of course, living under a libertarian regime requires thick skin. Without proof that my children's safety is at risk because of my neighbor's nasty barking dogs, we must put up with them. Because of my noisy guitar playing, barking dogs, and screaming children, my elderly neighbor may occasionally need earplugs. The State's coercive power should not be used to address these kinds of disagreements unless there is a danger to others involved. If my neighbor's dog gets out and snaps at my children regularly, the Government has a good argument for enforcing regulations against him (or the actions of his dogs).

### **3.2. Harm to Self**

Because words rarely "hurt" other people, libertarians view communication as self-regarding. If you want to break my bones, you can use sticks and stones, but names can never hurt me! According to certain libertarians, such as John Stewart Mill, unrestricted speech increases our chances of discovering the truth because of the multiplicity of viewpoints represented.

Some sorts of communication, however, are clearly harmful to others. It is possible to inflict unnecessary injury on others when I falsely call out "FIRE!" in a packed theatre, even though I know that there is no fire at all. We can inflict harm on others while using our right to free speech when we make false or violent accusations against them. It's possible that other modes of communication could hurt public institutions. Suppose I

wanted to criticize the Indian Government's tax policy, I could give a speech in which I advocate tax avoidance. Slavery, for example, may never have been abolished if the free speech had been exploited as a means of limiting governmental institutions.

### **3.3. Hard and Soft Paternalism**

Throughout history, philosophers have suggested a variety of liberty-limiting ideas, including injury to others, harm to oneself, offense, and legal moralism. They realized that "harm to others" was the most important, if not the only valid, liberty-limiting factor. Some suggest that "injury to self" can be used as an example of a principle limiting freedom. For the purpose of providing an undesirable advantage or preventing someone from injuring oneself, acts of paternalism frequently necessitate breaching a value based on morality, liberty, etc. In hard paternalism, it is acceptable to deliver an unwelcome advantage to a rational person or to remove damage. It's called "soft paternalism" when the person we're trying to help is illogical. People, organizations, and even the government can engage in paternalism. Although certain paternalistic actions are morally acceptable, not all of them are.

### **3.4. Offense Principle**

The offense principle, which stipulates that – "I am free to pursue my own private interests so long as I do not offend others", is another commonly stated premise for limiting liberty. We all have various levels of sensitivity, which makes it challenging to implement this idea consistently. Some people have a hard time being offended. Breastfeeding in public locations might elicit the wrath of some people. They might insist that only in private it should be done. In contrast, if public spaces are controlled so as to prevent all possible sources of offense, our collective liberty would be greatly hampered, and our public places would become dull. It's possible that what I find objectionable may not be offensive to someone else. A few people are outraged by pop music, long hair, short skirts, and expensive gadgets, to name a few offenders. To put it another way, restricting freedoms based on the offense principle may make life somewhat uninteresting. Hence the need for an agreed-upon, a public standard for the offense concept. All libertarians agree that the idea of voluntariness is the most important aspect of their ideology. As a result, it can be concluded that public behaviors that offend a large segment of the population can only be banned if they are forced on others without their consent. For example, if one goes to an

art display with the knowledge that it displays nude paintings, one cannot later claim that one was offended. You can't be intentionally insulted! Volunteerism alone doesn't appear to be a solution.

### **3.5. Legal Moralism**

Legal Moralism, a liberty-limiting philosophy, asserts that morality may be enforced in a civilized society. Thus, those who adhere to this theory believe that a moral code that is trusted and implemented by the Government might justify limiting the freedom of individuals, even if no injuries or transgressions have been done.

In Gujarat, for example, I'm not allowed to buy, sell or drink alcohol. For justifying its law, the State cannot argue that buying, selling, or drinking alcohol either damages or offends someone else. The law exists because the State believes that it is morally wrong to drink alcohol in the State of Mahatma Gandhi. Legal moralism can also invade the private and self-regarding spheres. Laws prohibiting sodomy, polygamy, and fornication could serve as ideal instances of such laws. The most difficult part of enforcing morality through the authority of the state is deciding which moral standards to enforce. With so many religious groups practicing in India, legal moralism might result in a severe restriction of private and public existence.

## **4. Conclusion**

As far as justifying the criminalization of euthanasia from the perspective of four liberty-limiting principles is concerned, none of the four principles justifies the criminalization of euthanasia.

The seeming contradiction between legal heteronomy and moral autonomy may be put into question because we can say that the law is in some aspects a moral system. It's a misconception the law has no business enforcing morals. For the most part, criminal court decisions can be used to demonstrate that the criminalization of behavior is not done by law solely for the purpose to avoid causing harm to others. In contrast to the harm principle, paternalism can be seen as a case where the law, whether correctly or incorrectly, aims to safeguard what is considered to be morally upright, regardless of whether harm has been prevented or not.

One form of Paternalism holds that the state has a responsibility to safeguard, assist in the upbringing of, and guide a particular segment of the population it governs. Essentially, this is a political concept. According to a certain set of circumstances, this belief is expressed through the institution of law. What is called “legal paternalism” distinguishes it from other forms of paternalism? In India, legal paternalism is embodied in the Constitution’s directive principles.

As a moral person, interested in discovering the ideological roots of legal paternalism in India. Paternalism cannot or should not be expressed through the institution of law, and this motivation is based on a fundamental understanding of the structure and function of law. It is only possible to do so at the expense of some fundamental legal principles. The ontology of a legal system is one of the most fundamental principles of a legal system. All legal subjects must be treated equally in terms of their status in the legal system. The law has traditionally been depicted as a blind and impartial arbitrator. In order to practice paternalism, it is necessary to identify and distinguish a specific group of people or a group of causes. Legally, defining a class violates the abovementioned principle.

It’s clear that criminalizing euthanasia doesn’t make sense from a libertarian perspective. All those laws that go against basic legal principles only serve to perpetuate injustice and disorder if justice is the goal of the law. This is what is argued in this article is true in India, where paternalism has been used as an excuse to violate the law’s fundamental principles.