

# Safeguards for the medical practitioners law medical essay

[Law](#)



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outlook of euthanasia : legal & moral side of criminal liability  
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**There is no good or evil in this world, it only appears when men start to think.**

**-William Shakespeare**

## **Introduction**

Within the very walls of society which we ourselves have built to keep order and discard chaos, which we still find questions that we cannot answer. One of the infamous term used during wars of all ages, that of which when a suffering man is dying and it is impossible to save him in that circumstances that we would choose to end his life to put him out of his misery. Mercy killing or the modernized version of it would be Euthanasia. The very essence of this term is a deadlock in our modern society as judges and learned people alike tries to solve this problem. We can look at this from a two major stand point that of the legal aspect and the moral or ethnic point of view, and the possible reformation regarding this issue in the events of criminal liability of the doctors or authority to allow euthanasia to take place be removed.

## **Euthanasia**

Firstly a brief understanding of the issue that of which comes of two types of euthanasia. The term " Mercy-killing" has undergone evolution when modernization took place and allowed even more scenarios to take place. Voluntary assisted suicide<sup>[1]</sup>is the lame man term for euthanasia, where in which a doctor would prescribe drugs that would accelerate death that is

imminent or soon to be state where the person would face a drastic change in physical abilities or mental state. Within this, three general types of euthanasia can be concluded.

### **Voluntary euthanasia**

This type concerns the patient or individual that has already given consent a dying wish that is involving family members, physicians, or even doctors to assist in his or her death. Most cases that involve this type would be a dreadful point that of which is painful to do by any assistor. This practice however is legal in a few countries.

### **Involuntary euthanasia**

This would be against a person's will or consent. As to opposite to voluntary, this is mostly done against the individual that is " for the best reasons" by any authority. This is used subjected to " good reasons" that majority of the population agrees. One of the criticism is that what kind of reasoning are people using? As Brad hooker stated, " we can distinguish between killing innocent people against their wishes but for their own good, and killing them for some other reason"[2]

### **Non-voluntary euthanasia**

A common case especially for new born infant who are deemed by doctors to be incurable or has defects that would in the parent's opinion would cause the infant to live a suffering life in the future should the infant be kept alive or allowed to live. One of the core aspects of this is that it is only allowed in Netherlands[3]and no other country for majority of the society has a negative moral reaction about this issue.

## Legal aspect

With so much moral conflicts that arise with this issue, one must wonder about its impact towards the legal system that every country has. The UK in terms of legal and parliament entities still has not made a firm decision regarding this issues that is indeed a pressing matter as more and more cases are arising, and the issue of the people's will that poses a question of the right to die.

## Key case

One of the key cases in UK regarding this issue is the case of Airedale[4]. In this case, the individual that is Mr. Bland is in a vegetative state that of which is said to be incurable. The doctors are requesting the court to allow them to end Mr. Bland life because of a few reasons. Firstly, it is a waste of resource to keep a patient alive that has no hope for recovery in a sense that instead of sustaining him, the facility could be used to save or assist another person whose life has hope of recovery. This is a economical setback to keep the patient alive as well as a disadvantage for the hospital or healthcare to fully utilize their capabilities to help others. Why save one person when you can save then? This case was brought up to the House of Lords in 1993 and it was considered as a " hard case" for the lawmakers and judges in the UK. The fact shows a distinctive conflict between morality and law. The question the judges must answer to this case is, should this decision made be objective wise or subjective. The leading judgment that was given by Lord Goff of Chievely[5]that can be summarized to three leading points. There is no rule that is absolute enough to prolong an individual life regardless of the circumstances. Following the principle of self determination, it is a must to

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fulfill the best interest of the individual. After considering the above conditions, yet all help is in vain then it is possible for the doctor or attending physician to be relieved from any liability to sustain the individual. For the 1st point, Lord Goff is speaking in terms of the quality and quantity of human life. An individual in the Lord opinion should be measured by its quality rather than quantity. Quality of life is that a person is able to make use of his or her body as well as enjoying life in productivity and pleasure. Rather than just pointing out a person should be a headcount out of the human population is not towards that aspect in quality. Mr Bland can no longer enjoy life as well as be a useful part of society yet we still count him in the numbers of the population. So the question remains that should Mr. Bland be viewed to be of quality or quantity? The second point is that of best interest as the principle laid down by Lord Goff. The main definition of best interest for an individual is what is best for that person in that situation to recover or relieve the person from its current state. In this sense, his lordship meant that if there is no quality in his life anymore shouldn't we relieve him from his "suffering"? That way, he can achieve a dignified death rather living without dignity. What is best apparently is to allow him to have a dignified death. The final point is a finalization point that allows the decision to be made after both points has been fulfilled. Referring to the case of Bolam[6], which a doctor was to act in accordance to practice in the professional sense. A doctor's primary purpose is to try and cure a sort of illness or problem in terms of body of the patient. That if all hope of recovery is lost, the only thing left for a doctor to do is to relieve the patient pain. This shows

that in view of such circumstances, the doctor cannot be held liable for just performing his duty as a professional person.

## **Key Case Judgement**

The judgment that Lord Goff made was indeed a statement that transcends the odds of the law. That a guideline was given to both the society and the users of the law that which people in the future would definitely benefit from. In law context, it has in fact set a judicial case that would in the future guide judges to view this in a fair manner. Although much can be criticized because that after the speech that delivered this content, that this case of Airedale should not be used as a reference due to the subjectivity of this issue. This action highlights the fact that the judicial party still do not want to land a firm decision on this issue of euthanasia, which in truth is indeed the matter. What can be done by the judicial can be only to fulfill the lacuna that the parliament had missed out. At the end of the day it is up to the parliament to decide this matter.

## **Safeguards for the medical practitioners**

This landmark case not only impacted the judiciary but also the medical field at large in the UK. The medical committee has been given four safeguards<sup>[7]</sup> for doctors to follow and that is, Every effort should be made at rehabilitation for at least six months The diagnosis of irreversible PVS should not be considered confirmed until at least 12 months after the injury The diagnosis should be agreed by at least two other independent doctors. Generally, the wishes of the patient's immediate family would be given great weight. Each point is with respect to the points Lord Goff has given and

although this maybe the case, in the end the practitioner that would request this would still have to seek an opinion from the Family Division of High court for a final say.

## **Insignificant Criminal Liability for Doctors**

Pushing further in depth, euthanasia also involves the fact of administration of drugs that accelerates death. With respect to *R v Adams* 1957[8] in the House of Lords, the case was that Dr Adams was charged with murdering a patient of his by administration of a pain killer that in fact, in his knowledge an acceleration of the patient's death. Overlooking this case, the judge directed the jury Devlin J further explained the point of which the jury must look at the omission of the doctor. It is in fact as per explained before that the primary function of this profession is to cure the patient of his pain that if cannot be fulfilled. The doctor must do whatever left possible to relieve the pain and if acceleration of death is necessary then it is to be done. One must understand that although the doctor can be counted as a cause for murder, it is not the substantial cause of death. According to De Minimis principle[9], if the cause of death is so small that it is almost insignificant, then it is not to be said that the person who omitted the act be liable for the victims death. In this case, Devlin J clearly stated that the term of " cause" should be interpreted in a way that most common can see it by the public eyes. That the verdict in the end is depending on the " moral reaction" of the jury as Michael Allen described. However, Michael Allen did not specify the meaning of moral reaction that which what is moral? With this ending quote that, should we rely on the ambiguity of moral that Michael Allen says that Devlin was implying or should there be a more objective direction in leading future

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cases verdict?[10]Both the cases discussed the liability of the doctors can be excluded if fulfilled the dire points stated in the safeguards. However, besides the point of the doctors what of the people who would want to live if death or total vegetative state was imminent. In the case of *Burke v GMC*[11], where the patient (Burke) was aware of his impending situation and sought a audience in court to properly legalize the facts of which if ever he was in a vegetative state but still conscious about his surroundings yet has no possible way of communication to anyone else. That in that situation the doctors or authority decides to remove his life sustaining devices which is a terrifying situation that he wishes to resolve before being into that situation. Burke greatest point was that of the Human Rights Act of 1998 (HRA 1998), article 2[12]that of which the right to live. His determination to live on even after a vegetative state was accepted in the courts. However, that was not the end.

### **Human Rights Act 1998 interpretation**

The decision came through when GMC (Hospital) appealed and Burke lost in the end but the fact remains that before the appeal, that the judge used the rules given by Lord Goff and applied them[13]. Although sometimes we must give weight to the interest or consent before the individual can no longer communicate, we must also understand whether he or she is educated regarding the policy and procedures of the system that is euthanasia. One can actually understand how far the term " Best Interest" can go to the point where, in the end the court intervention is adequate to assist those who are less educated. Although the interpretation of the HRA 1998 was used correctly, but it must be also be only used when there is a significance to use



it. Looking at Burke case, if he was informed by the authorities and was able to obtain a confident answer from them, hence he would have gone through the hassle of settling this through court. This indicates the legal system in UK is still facing problems for access to justice where, the question arises when how does an individual fight for his or her rights if they were financial weak? Would they be also be included as part of society under the protection of the HRA and law? One of the questions which push the point even further that euthanasia should be legalized instead.

### **Moral Aspect**

With the legal aspect showing that within the law itself, judges themselves are reluctant to decide a case that deals with life and death, it would come to a point where the morality of the act itself that is euthanasia be questioned. If euthanasia is the act of removing a person's chance of living literally, does it not fall under the context of indirect murder?

### **How sacred is life?**

Professor Ronald Dworkin spoke of life to be pure and ultimate. He pushed for the point of human life as sacred and is to be kept if started. In terms of allowing a person to grow as nature wants it to, not to interfere with its course of action of a human being.[14]To put it bluntly, he believed in humans are the products of a divine power that should not be tampered especially with the act of euthanasia and even abortion to that matter. Abortion is in fact can be considered as an act of non-voluntary euthanasia. His theory of sacredness was criticized by Ari Kohen as to be fueled by religious if not philosophical principles that produce the term " sacred".

Which is rather vague, because sacred is itself built upon the fundamental knowledge of religion or maybe a personal belief of a certain subject by an individual. Dworkins however, explained further that humans are sacred in the sense of that a potential of living breathing human being is divine itself. That each of us serves the community or society in which we live in, and this act is to be considered a even more so inviolable. Like a painter and his painting, humans are like the painter and no one should interfere with how the painter paints. His firm belief is often criticized to be highly imaginative and radical in the sense of how he describe sacred to humans which are simple beings rather that the normal use of sacred upon holy objects or inspirational people.

### **Religion as an obstacle**

On the other hand, although euthanasia cases are often debated among the judiciary and medical field in countless countries, others are not. One of the greatest advocates against euthanasia is religion. One of the more relevant examples is our very own country that is Malaysia. The country we live in is technically an Islamic country with Islam as its main religion altogether the constitution upon this country was formed was also based on the values that exist within the teachings of Islam. Based on the comments made by Kiarash Aramash[15], on the teachings of the Koran from Islam euthanasia is forbidden as well as any form of life taking procedures. As compared to Dworkin in his theory of sacredness, it is partially similar that Islam focus upon the part that humans are not masters of their own fate and should allow Allah to decide how or when they should leave this world. Hence, euthanasia is a sin in religion and illegal in Malaysia itself.

## **Gradual integration**

Looking at the world in a big picture, we can say that not many societies can actually accept euthanasia due to its morals and religion oppositions. Nearly all the countries are against this yet it is a necessary step to cope with the growing numbers of people who has dying wishes. Are we to sacrifice the minority due to the majority thinking? For the maximum happiness of the population or the rights of an individual?[16]It can be said that, although many societies are still not able to legalize it, be it because of religion or the rights of liberty. In the end, euthanasia should be allowed with the growing number of support for liberty rights in every corner of the world.

## **Reformation**

Legalization of this issue should be the first step to allow a better understanding for the public as well as a more standardized procedure for judges to follow. Parliament should interfere with this issue as soon as possible because this on going debate cannot be dragged on forever. Similar examples of legalization can be seen in other countries such as the Netherlands which in fact gives more weight to human rights. Without these steps, the UK will be a backward nation in terms of the judiciary.

## **Conclusion**

Doctors and physicians alike should not be charged for criminal liabilities due to the fact that they are indeed just doing their job and looking at what is best for the patient. One must understand that it is never an easy thing to do that is taking another's life and being the fact it's their job to do it even makes it harder. By looking at the legal and moral aspects of this issue by

cases and views, it is for the best that euthanasia be legalized with the safeguards given.

**(Word count : 2966 )**

## Reference List

Allen Michael 2009, Criminal Law, Oxford University Press, Oxford. BBC 2011, Euthanasia, viewed 2 January 2011, <http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml>

Kohen Ari 2006, The Problem of Secular Sacredness: Ronald Dworkin, Michael Perry and Human Rights Foundationalism, Digital Commons University of Nebraska-Lincoln, <http://digitalcommons.unl.edu/poliscifacpub/37>

Judiciary of England and Wales 2011, Judgement Summary: Burke v GMC, viewed 2 January 2011, <http://www.judiciary.gov.uk/media/media-releases/2005/jud-sum-burke-v-gmc05>

Ministry of Health, Welfare and Sport of Netherlands 2011, Euthanasia: The Netherlands New Rules, viewed 2 January 2011, [http://english.minvws.nl/en/folders/ibe/euthanasia\\_the\\_netherlands\\_new\\_rules.asp](http://english.minvws.nl/en/folders/ibe/euthanasia_the_netherlands_new_rules.asp)

LaFollette, Hugh (2002). Ethics in practice: an anthology. Oxford: Blackwell. p. 27, [http://books.google.com/books?id=o5peQpgSTTIC&printsec=frontcover&dq=Ethics+in+practice:+an+anthology+By+Hugh+LaFollette&hl=en&src=bmrr&ei=iaUfTeOLBsnSrQfmgcHECw&sa=X&oi=book\\_result&ct=result&resnum=1&ved=0CCMQ6AEwAA#v=onepage&q&f=false](http://books.google.com/books?id=o5peQpgSTTIC&printsec=frontcover&dq=Ethics+in+practice:+an+anthology+By+Hugh+LaFollette&hl=en&src=bmrr&ei=iaUfTeOLBsnSrQfmgcHECw&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCMQ6AEwAA#v=onepage&q&f=false)

Legislation.gov.uk 2011, Human Rights Act 1998, viewed 2 January 2011, <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Procon.org, 2011, What are Muslim perspective on euthanasia and physician-assisted suicide?, viewed 2 January, <https://assignbuster.com/safeguards-for-the-medical-practitioners-law-medical-essay/>

<http://euthanasia.procon.org/view.answers.php?questionID=000156UK>  
Clinical Ethics Network, R(On the Application of Burke) v General Medical Council, viewed 2 January 2011, <http://www.ethics-network.org.uk/commentaries/r-on-the-application-of-burke-v-general-medical-council-2004-ewhc-1879-admin>