

# The try to change the law.lord neuberger's

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The law says assisted suicide is not legal in the U. K., but if a patient of sound mind refused to consent treatment, then it is legal to give effect to their wishes even when it is not in their best interest. This leads to the person dying a slow, sometimes painful and undignified death while their families watch hopelessly because they cannot do anything to help.

The only other option for those that want to commit suicide, but need assistance, is to go to Switzerland, where Euthanasia is legal; the only condition is that they cannot involve a third party, thus those that want to die surrounded by their loved ones cannot get that last dying wish. It has been brought to the attention of the public that the decisions the courts are holding when it comes to cases involving assisted suicide are not delivering a positive outcome towards the defendants in the cases, nor does it serve as a way to change the outcome of future cases involving the same situation. There is a debate whether the courts are doing what is right within the limits of their powers or if they should take a more active role and try to change the law. Lord Neuberger's judgment on the Nicklinson case has made room for discussion as to whether judges are imposing unnecessary limits to their power by not making a declaration of incompatibility between s.

2 (1) of the Assisted Suicide Act 1961 and art. 8 (1) of the Human Rights Act 1998, or if their dictum is within the jurisdiction of their judicial powers while respecting the principles of Parliamentary Sovereignty and the Separation of Powers. One of the first cases where it was brought that there might be an incompatibility is the case of R (Pretty) v DPP case, in which the courts at first held that the Suicide Act 1961 didn't violate her rights under art 8 and 14 of the Human Rights Act, this case was brought to the European Court of <https://assignbuster.com/the-try-to-change-the-lawlord-neuberger/>

Human Rights in which it was held that they did violate her rights under art. 8 (1) because she had the right to choose how to die, and involving a third party didn't breach art 8 (1); they also held that art 8 (2) justified the breach of art. 8 (1), because it protected the vulnerable people who might do not want to commit suicide but were influenced to commit suicide by their helpers. The only way for people in cases like Pretty's to die a dignified death at the time of their choosing would be if the courts declared an incompatibility between Suicide Act 1961 s. 2 and Human Rights Act 1998 art.

8. Although the Courts could have declared an incompatibility after the Pretty case to prevent more people in cases like hers to die an undignified death, they choose against doing so. If they would have filed a declaration of incompatibility, they would not have gone against the principle of Parliamentary Sovereignty, because declarations of incompatibility are within the Court's jurisdiction according to Human Rights Act 1998 s. 4 (2). What might prevent them from doing so? The most likely answer would be that there are many moral discussions about assisted suicide. On the one hand, you have people that value human life and think that committing suicide or assisting someone to die goes against the principle of preserving human life, but then, on the other hand, you have those who think that humans are their own person and each person should have the liberty of choosing how and when to die. Both of this morally compelling arguments prevent the Courts from reaching a decision that might be more favourable to those in a situation like Pretty's or Nicklinson's. Which side is right? I will argue that human life is valuable and in most cases, it should be preserved at all costs,

but sacrificing the autonomy of some human beings for a greater moral good is not the right answer, we all deserve to die as humanely and painfully as possible.

But even if the Courts agreed with this point of view, making a decision would have brought a conflict of interests not only morally, but also about the extent of the Court's powers when it comes to a final dictum. Other cases in which Lord Neuberger and other judges abstained from declaring incompatibility between the Human Rights Act 1998 art 8 and the Suicide Act 1961 are the R. (On the application of Nicklinson) v Ministry of Justice case in which they agreed on the incompatibility, but didn't declare it, choosing instead to bring the matter to Parliament for them to discuss since the law says it is their duty to make or unmake the law. Even though Parliament is in charge of changing the law, letting the Courts decide would help in addressing the issue effectively and in a timely fashion. The Court's decision of letting Parliament handle the situation resulted in keeping the law unchanged. It should also be taken into consideration that, even if the Courts made a declaration of incompatibility, Parliament is in their own right of keeping the law unchanged, according to the Human Rights Act 1998 s. 4 (6) therefore leading to the same result they got from the Nicklinson case. Since then, another case, R.

(on the application of Conway) v Secretary of State for Justice came, but the courts still refused to declare incompatibility because now, not only would they be going against precedent, but also because Parliament is currently considering an Assisted dying Bill thus, being the sensible thing not to

declare incompatibility while there is an on-going legislative process, because if they did it would be seen as institutionally inappropriate. This analysis suggests that, even if the House of Lords approved the Assisted Dying Bill, just like the Suicide Act 1961, this Bill might not be compatible with the convention rights because it makes no exceptions. It would only include those who are terminally ill therefore excluding those like Nicklinson and Lamb, those with a lock-in syndrome, which have as much right as those terminally ill; excluding them might violate their rights under art. 14 of the Human Rights Act 1998. In Conclusion, although it could be argued that in cases where there are compelling moral arguments like those of Nicklinson, Conway and Pretty the Courts should make use of their role as judiciary in a more active manner in order to change the law or bring the attention of Parliament towards the issue and for them to find a solution. In many cases the Courts might refuse to do so because it might interfere with decisions Parliament might make or has already settled, and challenging or meddling with Parliamentary decisions is both inappropriate and unconstitutional, which proves that they are not imposing limits on themselves but rather applying the law as they should.