

Legalising Euthanasia and End-To-Life Right

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Abstract:

Euthanasia is often referred to as ‘mercy killing’, involves intentional ending a person’s life due to terminal illness, who is about to die sooner or later. The term generally refers to taking out man’s life other than for malicious purpose. India is surrounded by various ethical, legal and societal concerns. India legalizes only passive euthanasia. This practice give rise to contradiction, whether legalizing euthanasia violated article 21 of the Indian constitution, or right to die with dignity is enforced. It arises questions like whether the constitutional guarantee ‘The Right to Life’ includes ‘The Right to Die’. This article discusses: whether Euthanasia can be made lawful only by legislation, is legalising euthanasia violating the article 21 ‘right to life’, how the government takes control and action over its abuse. This article also covers the present legal provisions.

Keywords: active euthanasia, passive euthanasia, assisted suicide, palliative care, terminal illness.

Introduction:

The word euthanasia originated from Greek language. It means good death (eu- good, Thanatos- death). Now, in present scenario, it is considered as ‘mercy killing’, for patients who are in severe pain, in terminal illness and expected that the patient will die sooner or later¹. Euthanasia is also termed as ‘dayamaran’. The concept of euthanasia is being controversial since its inception. There are two types of euthanasia- passive and active euthanasia. In passive euthanasia, the patient is withdrawn or withhold the life-supporting device. In active euthanasia, the patient is injected with lethal substances. It is a not a new technique, it is practised since 16th or 17th century². The topic of euthanasia originated in ancient Greek and Rome. Many philosophers including Pythagoras, Socrates, Aristotle, Plato and Epicurus indirectly discussed euthanasia. It was used by historian Suetonius to describe the death of Emperor Augustus while it acquired support from Plato, Socrates, and Seneca the Elder in those times³. Voluntary euthanasia is the start of a slippery slope that leads to involuntary euthanasia and the killing of people who are thought undesirable. The statement ‘do no harm’ given in Hippocratic oath, binds the medical practitioner to prolong the life of the patient’s life, is one of the safeguards against euthanasia.

The legality of euthanasia varies from country to country. In Belgium, Netherland and Canada, euthanasia and assisted suicide is legalised under strict guidelines. In countries like Belgium, Netherland, Luxembourg, Spain, United States, active euthanasia is legalised unlike in India⁴. However, many

¹ Article - ‘Euthanasia: Right to Die with Dignity’ – author: ‘Euthanasia: Right to Die with Dignity’

Kalaivani Annadurai , Raja Danasekaran , Geetha Mani

² Heilbron, J.L., 2023. *Electricity in the 17th and 18th centuries: A study of early modern physics*. Univ of California Press.

³ Star, C., 2015. Roman tragedy and philosophy. In *Brill's Companion to Roman Tragedy* (pp. 238-259). Brill.

⁴ Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls

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countries restrain from, legalising euthanasia for ethical, legal, religious and cultural belief, and fear of its misuse.

Some argue that euthanasia violates the right to life because it goes against the principle of right to life as life is priceless and cannot be limited. And other arguments includes; it weakens society's respect for life, implies that some lives are worth less than others, could lead to involuntary euthanasia, might not be in the patient's best interests, affects the right of others⁵.

On other hand legalizing euthanasia supports the 'right to die' by affirming an individual's autonomy over their life, particularly in cases of terminal illness or unbearable suffering. It will promote respect for personal autonomy, relief from suffering, dignity in death, avoiding burden on loved one, preventing prolonged suffering in end of – life case, ensuring peaceful death.

The sanctity of human life does not imply the forced continuation of existence in pain and suffering. Given that a person has the right to lead a dignified existence, he cannot be forced to live to his detriment. The right to life can include right to die.

Euthanasia is distinct from assisted suicide. Euthanasia is where a person who is asking assistance to die, that leads to their unnatural death (like injecting a lethal drugs), assisted suicide is when the person is prescribed drugs that they must take themselves to die. In countries like Australia, Canada, Belgium and other, assisted suicide is allowed, whereas in India it is not legalized⁶.

Objective of the study:

The objective of the study is to explore various aspects of dealing euthanasia, culturally, socially, ethically. The main area to be probed is whether euthanasia is legal, whether it is valid, whether it does not violate article 21 of the constitution. The article tries to cover the far up to which validity of legalizing euthanasia in India and in abroad. As euthanasia is a controversial topic to be dealt with, it needs a more meticulous approach and as it is very sensitive for both in the society and culture present as of today, it needs a more careful steps while coming up with new rules and regulations. This article tries to cover the provision so far present and probable future challenges and scope to improve the legislation to more amicable decisions. The main agenda is to prevent any kinds of misuse of the framed legislature, to frame a more justified and appropriate law.

Literature review:

Euthanasia is prohibited in many countries due to ethical, moral, legal, societal concerns. Many Moral and some religious beliefs is against euthanasia. Many religious beliefs like Christianity, Hinduism, Islam, Judaism, holds that life is sacred and priceless and only a higher power has the right to end it. Euthanasia is often seen a practise against morality, as it is viewed as interfering with the natural process of life and death. Many cultures emphasize the inherent value of human life, regardless of the circumstances. Legalizing euthanasia could be seen as undermining this value, leading to concerns that society may start to view life as disposable. Medical ethics in many places, the professionals are taught to preserve life and may feel that euthanasia contradicts their role as caregivers. The Hippocratic Oath, historically taken by doctors, includes a promise to "do no harm", which some interprets as prohibiting assisted death⁷. Some

⁵ Ethics- euthanasia: anti- euthanasia arguments; BBC

⁶ Perspectives of Major World Religions regarding Euthanasia and Assisted Suicide: A Comparative Analysis [Graham Grove](#), [Melanie Lovell](#) , [Megan Best](#).

⁷ Suss, R.A., 2024. First Do No Harm Is Proverbial, Not Hippocratic.

argue that legalizing euthanasia could lead to its misuse, with pressure on patients, especially the elderly or disabled, to get euthanasia in the motive to avoid being a financial or emotional burden on their families or society. Euthanasia sometime fosters, slippery slope argument. Many healthcare professionals are taught to preserve life and may feel that euthanasia contradicts they're where the criteria for euthanasia expand beyond terminal illness to include cases of the disability, mental illness, or even non-consensual euthanasia. This could put vulnerable population at risk. Some countries emphasize improvising palliative care (care that relieves pain and suffering without hastening death) as to more ethical approach to dealing with terminal illness or to serve pain, rather than allowing euthanasia. Legal and procedural complexes are involved in government. Government and legal systems, often grapple with how to regulate euthanasia in a way that ensures informed consent and prevents abuse. The challenges of setting and monitoring clear criteria can lead to opposition to its legalization. Legalizing euthanasia varies from countries and territories. Efforts to change government policies on euthanasia of human in the 20th and 21st centuries have met with limited success in the western countries. Human euthanasia policies have also been developed by variety of NGOs (like World federation of right to die society, Dignitas, exit international), most advocacy organizations although medical associations, express a range of perspectives and supporters of palliative care broadly oppose euthanasia⁸.

Euthanasia can be legalised depending on different processes depending on the country or jurisdiction. Euthanasia must be voluntary, medicalized killing of a person without their consent is considered murder. Legalizing ensure that euthanasia is performed in a way that respect the patient's rights, such as their right to bodily integrity and self-determination. Legalization can establish criteria that much be met before euthanasia can be performed, such as the patient's request being made earnestly and with full conviction. In most cases, euthanasia is legalized through specific laws that clearly define the circumstances, procedures, and safeguard. In some cases, the court rulings have effectively legalized euthanasia. Court many interpret existing law to allow euthanasia in certain circumstances.

Euthanasia and assisted suicide laws differ globally. In Belgium, euthanasia has been legal since 2002, allowing adults with "constant and unbearable suffering" to request it⁹. Canada legalized Medical Assistance in Dying (MAiD) in 2016 for those with a foreseeable death. Australia permits euthanasia in some states under Voluntary Assisted Dying (VAD)¹⁰. The Netherlands decriminalizes euthanasia for patients with unbearable suffering and no improvement prospects. Luxembourg's "right to die with dignity" law allows euthanasia or assisted suicide for those enduring unbearable suffering¹¹.

Spain's 2021 law allows euthanasia and assisted suicide for people with severe, chronic, or incurable pain. In the U.S., euthanasia is illegal, but assisted suicide is legal in 10 states. Colombia has legalized active euthanasia for terminally ill adults with irreversible conditions. Portugal permits both euthanasia and assisted suicide. New Zealand legalized assisted dying for terminally ill individuals suffering unbearable pain with less than six months to live¹².

⁸ Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls
J Pereira.

⁹ Raus, K., Vanderhaegen, B. and Sterckx, S., 2021, February. Euthanasia in Belgium: shortcomings of the law and its application and of the monitoring of practice. In *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine* (Vol. 46, No. 1, pp. 80-107). US: Oxford University Press.

¹⁰ Onwuteaka-Philipsen, B., Willmott, L. and White, B.P., 2019. Regulating voluntary assisted dying in Australia: some insights from the Netherlands. *The Medical Journal of Australia*, 211(10), p.438.

¹¹ Onwuteaka-Philipsen, B., Willmott, L. and White, B.P., 2019. Regulating voluntary assisted dying in Australia: some insights from the Netherlands. *The Medical Journal of Australia*, 211(10), p.438.

¹² Suss, R.A., 2024. First Do No Harm Is Proverbial, Not Hippocratic.

These laws reflect diverse approaches to end-of-life choices, with each country defining eligibility criteria based on medical, ethical, and legal standards¹³.

Many world convention is framed for euthanasia. **WMA Declaration on Euthanasia and Physician-Assisted Suicide**¹⁴: the World Medical Association (WMA), is firmly against euthanasia and physicians assisted suicide. The WMA says that physicians should not be forced to involve in the practices, and physicians can represent patients' rights to decline medical treatment¹⁵.

Human right and euthanasia in 1996 the paper from the Human Right unit promotes public discussion in the right to euthanasia. The paper discusses the relevance of international human rights norms to the debate, and the impact of Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR). - which says 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 life¹⁶.

Anglican Church Resolution Against Euthanasia, the Anglican Church, a major branch of Protestant church, confirmed a resolution against euthanasia during 1998 Lambeth Conference¹⁷.

However, the law for euthanasia differs in many countries. Each country has established rules, guidelines and safeguard to ensure that euthanasia is done with patient's informed consent.

Conceptual framework:

Why is right to die with dignity important? Right to die with dignity emphasize an individual's autonomy over their own life and decision. It allows the people to make their own choice about their own body and end -to- life care. It provides sense of relief and control for patients with terminally illness and unbearable pain. More people prefer quality of life over mere existence, right to die with dignity prevents from prolonged suffering that may otherwise intolerable. It helps to hasten their death in a peaceful, humane, and dignified manner¹⁸.

Euthanasia is legalised in different ways in different parts of the world. For instance, in the landmark case, **Belgium Time Nys case**¹⁹, 38 years old Tine Nys, died on 27th November 2010. Her sister argued that her death should not been allowed under the Belgium euthanasia law. her family argued that the reason she seeking for the death is due to failed relationship, for short far short of the "serious and incurable disorder" as required under Belgian law. It was found that the three doctors who attended her could face long jail terms. According to Belgium law, the confirmation of terminal illness should be ensured to administer euthanasia legally and the patient should be competent and conscious at the time of seeking to end their life. Euthanasia given in this case there is absence of palliative care and impulsive agreement to patient's request is violating the right of a person to Life.

In another landmark case, **Netherland, Aurelia Brouwers**²⁰, 29 years old girl with severe mental health issues, experienced unbearable and hopeless torture. The doctors after confirming that patient is suffering

¹³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC3070710/> - National Library of Medicine.

¹⁴ WMA Declaration on Euthanasia and Physician-Assisted Suicide- euro news Published on 02/11/2023; THE WORLD MEDICAL ASSOCIATION, INC. L'ASSOCIATION MEDICALE MONDIALE, INC ASOCIACION MEDICA MUNDIAL, INC.

¹⁵ World Medical Association, 2021. WMA declaration on euthanasia and physician-assisted suicide. *Adopted by the, 70*.

¹⁶ Wicks, E., 2010. *The right to life and conflicting interests*. Oxford University Press.

¹⁷ <https://www.anglicancommunion.org/resources/document-library/lambeth-conference/1998/section-i-called-to-full-humanity/section-i14-euthanasia.aspx> - Anglican communion.

¹⁸ Cantor, N.L., 1993. *Advance directives and the pursuit of death with dignity*. Indiana University Press.

¹⁹ Nys, H., 2022. Medical law in Belgium.

²⁰ Sharma, B. and Thareja, S., 2022. Euthanasia As A Virtuous And Rightful Act. *Trinity Law Review*, 2(1), pp.5-10.

from “unbearable pain with no scope of improvement” and there is “no reasonable alternative in the patients situation”, gave her poison to drink (by active euthanasia). It is observed that there is no substantive remark that euthanasia is administered on “terminal illness”. The active euthanasia is given merely, at the preference of the patient whether to live or die. In the cited case there is no ground on terminal illness, but only severe, mental health issues. The question here is whether, the intention to terminate the life is severe suffering or is a symptom of the mental illness?

Whereas judicial outlook in India is different from other countries; first euthanasia was held unconstitutional, in the landmark case, **P. Rathinam v. Union of India 1994**²¹, the issue was raised. Whether Section 309, which punishes attempted suicide with up to one year in prison, violates the constitutional right to life and personal liberty. The supreme court ruled that article 309 was unconstitutional.

However, in the case **Gian Kaur v. State of Punjab**²², 1996 the court decided that section 306 and 309 of Indian Penal Code (IPC), is constitutionally valid and does not violate Article 21 and 14 of the constitution.

In India, passive euthanasia is legal under certain circumstances, in case of terminally ill or in vegetative state. In landmark case, **Aruna Shanbaug v. Union of India, 2011**²³, Aruna Ramachandra Shanbaug was employed in King Memorial Hospital, where a sweeper strangulated her with a dog chain, and sodomized her on her menstruation. This incident left her in permanent vegetative state. Her friend filed a petition in supreme court on article 32 of the Indian constitution, after 36 years of the incident. The court permitted passive euthanasia as a ‘rarest of rare cases’ under strict conditions. the permanent vegetative state or comma state is when there is failure of the brain stem, is also amounted to death.

Common cause v. Union of India 2018²⁴, The NGO common cause approached the court praying for the declaration of ‘the right to live with dignity’ added to article 21 of constitution be inclusive of the right to ‘die with dignity and directions for adoption of suitable procedure for executing 'Living Wills', in which a person, when in sound mind and good health, may record his wish that he should not be kept alive with the help of ventilators, if doctors, at any stage of his life, opine that he cannot be kept alive without life support system.

Gap in Literature:

Despite the studies, there are notable gaps in the literature concerning the emotional aspects of a person. The mentioned studies only deal with the social, ethical based decisions. In the present global trend, there is immense increase in focus on the emotional perspective of a person. The mental state of a person is being more centralised in the present society. The euthanasia may be extended to the mental illness in India as well as in May other state, as in Netherland and Belgium.

According to Mental Healthcare Act (MHCA) 2017²⁵, in India decriminalizes the attempt to die by suicide for people with mental illness. The act aims to ensure that people who attempt suicide are offered rehabilitation instead of being tried or punished. But in other hand, active euthanasia is illegal and crime under 302 of the Indian Penal Code (IPC). Physician- assisted suicide is also a crime under section 306 of

²¹ P.Rathinam vs Union Of India on 26 April, 1994 : Indian kanoon

²² Smt. Gian Kaur vs The State Of Punjab on 21 March, 1996: Indian kanoon

²³ Aruna Shanbaug v. Union of India, 2011 – Indian kanoon

²⁴ Common Cause (A Regd. Society) vs Union Of India on 9 March, 2018: Indian kanoon

²⁵ https://mohfw.gov.in/sites/default/files/Reference%20Manual%20for%20Implementation%20of%20Mental%20Healthcare%20Act%202017%20for%20Care-givers%20%28CMHA%29_compressed.pdf - Mental Healthcare Act, 2017

the IPC. Herein a contrary is present with respect to Mental Healthcare Act (MHCA) and criminalising active euthanasia, whether Section 309 of IPC is strictly enforceable, or it could be decriminalized, is a main area to be probed. At the same time, how far the euthanasia can be permitted, is still a complex question.

Legal framework:

In India passive euthanasia is legalised only in some specific conditions. In India active euthanasia is crime under 306 or at least section 309 in IPC. Section 306 forbids abetment of suicide and 309 forbids commitment of suicide²⁶.

On 9th March 2018, the supreme court gave a landmark verdict making the way for passive euthanasia also named as Physician Assisted Euthanasia (PAE). The court reiterated that dying with dignity is a fundamental right, as already has held by the constitutional bench in Gian Kaur case earlier, and declared that an adult human being, having mental capacity, to take an information decision, has right to refuse medical treatment including withdrawal from lifesaving device.

It was also held that, a person of competent mental faculty is entitled to execute an advance medical directive.

Should the Right to die be included in Article 21 is a controversial question. Article 21 provides 'Right to Life'. It states that 'No person shall be deprived of his life or personal liberty except according to the procedure established by law' fundamental rights that fall under the category of 'personal liberty'²⁷. Such rights to live with dignity, the right to shelter and the right to privacy among the other rights. Life as envisaged under Article 21, has been broadly understood by the supreme court and has been given expansive interpretation.

Right to life is interpreted in various ways by the Indian judiciary, to include several new rights such as right to live with dignity, right to livelihood, right to shelter, right to privacy, right to get education, right to get pollution free air and water. Such rights are essential for improving the conditions of the life ie. to true enjoyment of Right to life.

Right to life with dignity is also said to include the smothering of the process of dying in case of terminally ill patient with no scope of recovery. The legal position as it stands today is that 'right to life' does not include 'right to die' but 'right to life with dignity does includes 'right to die with dignity'. But it is well clarified that the right to die with dignity at the end of life is not to be confused or equated with right to die an unnatural death curtailing the natural span of life²⁸.

The decision rendered in P. Rahthinam, Gian Kaur v. State of Punjab, the appellant was found guilty by the lower court of the offence punishable under section 309 of the Indian Penal Code, 1860. The conviction as challenged inter alia on the ground that Section 309 of the Indian Penal Code is unconstitutional. The right to Life with dignity of Article 21 is construed as life with human dignity²⁹.

²⁶ Jain, R., ATTEMPT TO COMMIT SUICIDE WITH SPECIAL REFERENCE TO EUTHANASIA AND THE PRACTICES OF SANTHARA AND THALAIKOOTHAL.

²⁷ 'No person shall be deprived of his life or personal liberty except according to the procedure established by law' fundamental rights that fall under the category of 'personal liberty'.

²⁸ [https://indiankanoon.org/doc/133438875/#:~:text=5.8%20The%20Law%20Commission%20of,s%20306%20IPC\)%20or%20of-Indian Kanoon](https://indiankanoon.org/doc/133438875/#:~:text=5.8%20The%20Law%20Commission%20of,s%20306%20IPC)%20or%20of-Indian Kanoon).

²⁹ Islam, S.S., 2015. Right to life and personal liberty and euthanasia: A critical analysis. *International Journal in Management & Social Science*, 3(8), pp.123-131.

On March 9, 2018, the Supreme Court (SC) in a landmark judgement declared the right to die with dignity as a fundamental right and passed an order allowing End of Life Care (EOLC), passive euthanasia in common parlance, in the country. Justice D.Y. Chandrachud, a member of the five-judge bench of the apex court headed by the Chief Justice of India Dipak Misra, said, “Life and death are inseparable. Every moment our bodies undergo change. Life is not disconnected from death, dying is a part of the process of living.”

The bench issued guidelines in recognition of the “living will” made by terminally ill patients. The Supreme court said that directions and guidelines laid down by it shall remain in force till a legislation is brought on the issue.

The Supreme court of India ruled that for terminally ill patients, passive euthanasia is permitted in the landmark case *Common cause v. Union of India*. The court also established guidelines for living will. The court recognized validity of the living will also known as the ‘advance directive resolution (ADR)’. The court also rules that active euthanasia can be legalized through legislation.

On July 19th, 2019, the Indian Society for Critical Care filed a miscellaneous application requesting a 5-Judge Constitution Bench to modify some of the guidelines prescribed in the 2018 Judgment³⁰.

On 24 January 2023, a five-judge Constitution Bench, modified the 2018 Euthanasia Guidelines to ease the process of granting passive euthanasia to terminally ill patients³¹. Passive euthanasia involves withholding treatment or artificial life-support for a terminally ill patient until the remainder of their life. With respect to the medical professionals, the omission of the doctors in giving or continuing the medical treatment will not be amounted to crime (as under section 304 (A)). According to the Medical Technology and Law Act, the direct intervention of the doctor for the purpose of the good of the patient is illegal³². A patient in intensive unit care with only few days or months to live till the inevitable death, would rather have the right to privacy over his own life and grant right to die with dignity. But when forced medical intervention is involved unless otherwise the mentioned case, the act of the doctor will amount to assault and battery.

Solution and recommendation:

- **To consider the mental state of the patient:**

In the evolving world, the mental element is becoming paramount. The society is giving a significant importance to the mental status, be it incompatibility, or illness. A person in severe mental illness may be considered under euthanasia as in other countries.

- **State should intervene to make sure ‘at most palliative care’:**

Palliative care to the terminally ill patients beyond the stage of recovery is an allied aspect which needs to be taken care of by the Governments. Making palliative care affordable and free for the needy people, training of doctors and medical students in pain-treatment and palliative care are the needs of the day. The medical profession apart from giving effect to passive euthanasia where necessary must ensure that the dying patient receives proper care in a peaceful environment inside or outside the hospital.

³⁰ MOHAN, S. and DHAR, S., 2024. PROTECTIVE DISCRIMINATION OR PERPETUAL DISCRIMINATION: A NEED FOR CHANGE IN RESERVATION SYSTEM IN THE CONTEXT OF INDIA.

³¹ On 24 January 2023, a five-judge Constitution Bench, modified the 2018 Euthanasia Guidelines to ease the process of granting passive euthanasia to terminally ill patients.

³² Agarwal, A., 2023. Towards a 'Good Death': Uncovering the Confusion in End-of-Life-Care Law in India. *NUJS L. Rev.*, 16, p.1.

Future scope:

The evolving agreement to assisted suicide: The perspective view of the society may also change with time. The modern society as of now have evolved, requires the right assisted suicide as in other countries.

Advances in palliative healthcare: While some legal and medical advancements have been made, the practice is not fully legalized, and significant reform is needed to regulate euthanasia properly. The medical professional should be in par with latest medical procedures and techniques. Make sure they abide by the Hippocratic oath. The professional should not fail to be qualified by Bolam's test.

Legal and ethical development: Some legal arguments like can right to life also includes right to die is valid and justifiable, is still a complex, and arguable topic. The ethical argument against euthanasia is also having to be considered. Whether it will weaken the societies perception of life or could lead to killing of people undesirable is still a question. What if it will not be the best interest of the patients, violating their right, or the rights of others, is still to be analysed.

Shift of societal perception: Is Right to Die is also a part of Right to Life. This may become valid in the future as views of the society changes. The society is always dynamic in its views and perspective. It may adopt the ideas from other countries to become more liberal toward euthanasia. The current trend to shifting towards western ideologies have guaranteed more probability for more acceptance for euthanasia.

Conclusion:

Legalizing euthanasia is being a controversial subject since its existence. While some consider it is immoral, it is a form of murder and believe in sanctity of life and supremacy of God who controls over one's life, others claim that it a person's liberty and autonomy to decide the way their death should take place. No other person or the State can intervene in personal decision as to will of a person to die. But this would suggest of decriminalizing Section 309 and 306 of Indian Penal Code (IPC). Which subsequently raises the question that it is necessary to decriminalize them.

The Government have taken chary initiatives toward legalizing euthanasia. The State cannot intervene in personal decision of a person for Right to die with Dignity, but it cannot refrain from enforcing Right to life or validate to Die or in other words commit suicide.

The Government have taken substantive step, provided guidelines for effective implantation of the "Right to die with dignity". Rational and humanitarian outlook is required in this area of complex matters. Even though the court has rejected the 'Right to Die' it has recognized 'Right to Die with Dignity' as a fundamental right. It has also provided scope for legalizing euthanasia in the future basis.

The challenge it to well calculate the balance between the safeguards and discretion, and by restricting the administration of euthanasia to well defined situation.