LET COMPETENT ADULTS DECIDE

A legal right to die is long overdue

David Benatar

EVEN most relatively free societies still deny their citizens and residents one fundamental freedom – the freedom to secure the assistance of those willing to help them die when they judge their lives no longer to be worth living. South Africa is among the many countries where this freedom is denied.

This imposes a terrible burden either on those who are consequently forced to continue living when they would rather die, or on those who defy the law to provide the desired assistance. It is usually the former burden that is borne.

However, there are some cases of the latter burden. For example, Professor Sean Davison of the University of the Western Cape, who was tried for helping his mother end her life in his home country of New Zealand.

In November 1998, the SA Law Commission submitted to the then-minister of justice its Report on Euthanasia and the Artificial Preservation of Life. The draft bill for the proposed "End of Life Decisions Act" contained three alternative proposals for euthanasia. One was that there be no legislative enactment. The other two allowed for active voluntary euthanasia – one requiring that the decision be made by a committee following a patient's request, and the other allowing the decision to be made, also following a patient's (repeated) request, by a medical practitioner after having consulted with another independent medical practitioner.

The draft bill seems to have been in a legislative coma these past 13 years. It has not been brought to Parliament and has not been the subject of further public discussion. It should be resuscitated and enacted with provisions that will allow assisted suicide and euthanasia when people's lives have become such a burden to them that they would rather die.

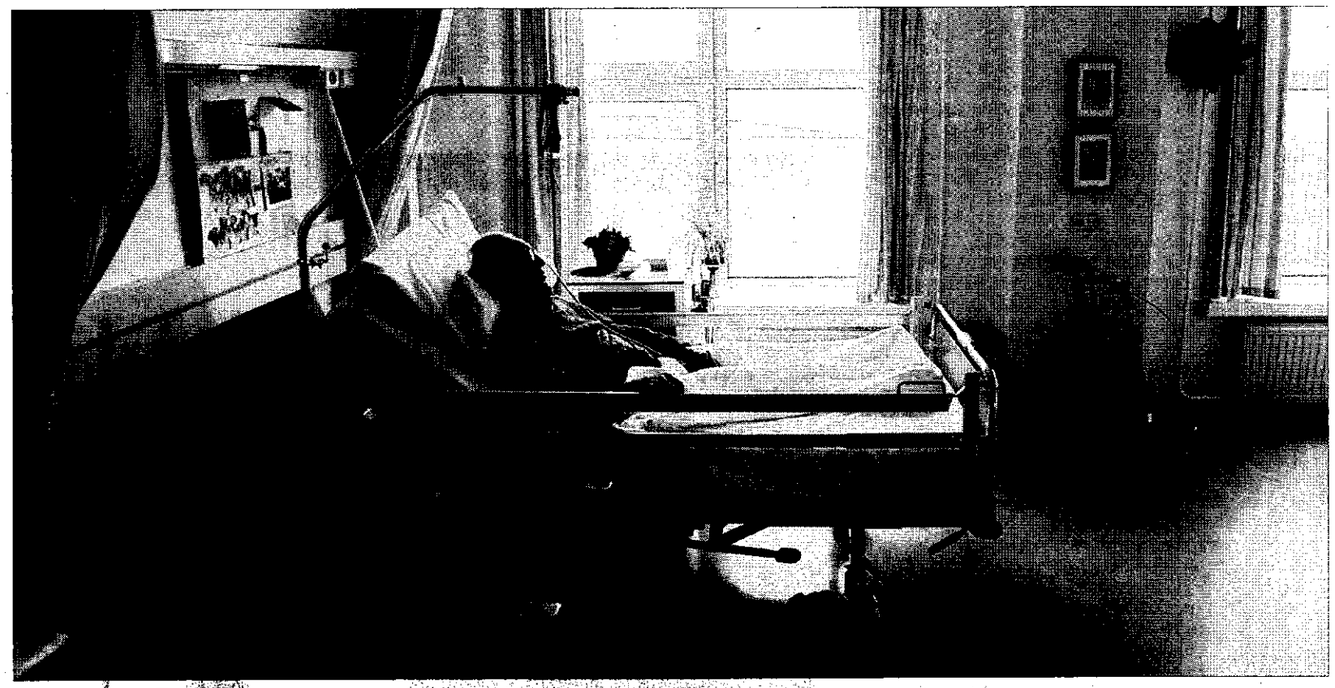
Many terrible fates can befall people. Among these are terminal diseases that are characterised by steady deterioration (such as progressive paralysis) until death. These and other conditions can cause people many indignities, including the inability to feed, dress or bathe themselves, or to perform toilet activities unaided. The decline is often also accompanied by pain and suffering, which can be palliated only by reducing people to a state of either minimal consciousness or unconsciousness.

Some people desperately want to avoid these fates. Suicide is not illegal, but it can be either messy or unsuccessful. Those who would like to take their own lives might not wish to subject others to finding and removing their mutilated remains, and they might fear that alternative suicide methods could fail, leaving them in a still worse situation. Starving oneself to death is also an option, but that can be the kind of slow, lingering death that those wanting to die are seeking to avoid.

There are thus occasions when people who want to die either need or prefer the help of others, especially health care professionals. There are some such professionals who would be willing to provide this assistance in some circumstances, but are legally prohibited from doing so. This imposes a severe burden on those who would rather die and constitutes a serious restriction of their freedom. Is there any way of justifying this?

Some will suggest that it is immoral to end one's life or to assist others in ending their lives, even if the quality of life has dropped to the lowest levels. I shall not say here why I think that this argument fails. Instead, we need only note that moral (as well as religious) disagreements are aplenty and it is often not the law's place to adjudicate them.

For example, people are deeply divided on whether a foetus has a right to life, and yet the law grants women to choose whether or not to abort their foetuses. If anything, assisted suicide and voluntary euthanasia are simpler. In these latter cases, and unlike the case of abortion, the life and death decision is in the hands of the person whose life is in the balance.



QUALITY OF LIFE: There are occasions when people who want to die either need, or prefer, the help of others, says the writer.

It is not the state's business to force somebody to continue living when he would rather die. Put more generally, the state exceeds its authority when it prohibits purportedly immoral conduct to which only consenting adults are party.

This is why most opponents of a legal right to die typically muster arguments without this moralistic face. One such argument is the so-called "slippery slope" argument, according to which, assisted suicide and euthanasia should remain illegal even if there are instances of these practices that are not immoral. This, it is said, is because if we were to legalise the morally permissible instances, we would be led inexorably to legalising impermissible instances.

Those who advance this argument are fond of citing the case of the Netherlands, where there has been a steady liberalisation of the law concerning end-of-life decisions. At first it was only voluntary euthanasia that was permitted, but now non-voluntary euthanasia (that is, euthanasia of those, such as babies, who are incapable of deciding for themselves) is also permitted. Similarly, it was permitted at first only for physical illnesses, but then intractable psychic pain was also deemed an acceptable basis.

There is a crucial problem with this argument, however. It is not enough to show that the law on end-of-life decisions has become more permissive over time. One must also show that the end point is morally unacceptable. Those who advance the slippery slope argument seem to assume this, rather than argue for it.

Yet, many defenders of euthanasia claim that euthanasia is morally permissible in a broader range of cases and that it ought to be legal in those cases, too. Because they realise that a conservative electorate is unlikely to reach the desired point in a single legislative step, they often seek an initial liberalisation of the law. They hope that once people realise this is not so bad, they will be more receptive to the next and then the next step towards an appropriate law.

A second argument often advanced by opponents of a legal right to die is that if we were to permit assisted suicide and voluntary euthanasia, the law would likely be abused. People would violate the law and either end or help to end lives that should not be ended. Those defending this claim say that no legal safeguards can protect perfectly against such abuse.

What they fail to notice, however, is that this argument, if it were successful, would prove too much. It would prove that cars and prescription drugs, for example, should be banned. After all, there are no legislative or other safeguards that can ensure that there is no abuse of these items. Every year, the abuse of cars causes the death of hundreds of people in South Africa – not sick, suffering people, but perfectly healthy people. The appropriate response is not a ban, but rather the strengthening of safeguards, imperfect as those may be.

Moreover, it is naive to think that our choice is between the legalisation of euthanasia with instances of abuse, and the banning of euthanasia without any abuse. Banning things very often does not prevent them, but instead drives them underground. Prostitution and liquor are prime examples, but there is good reason to think that the same is true of euthanasia. Active euthanasia is already occurring, often under the guise of palliation. Abuse can occur whether euthanasia is legal or illegal.

Thus, if opponents of a legal right to die want to invoke the abuse argument, they need to show not merely that there is abuse and not merely that the amount of abuse is an unacceptable cost of the right, but also that denying the right does not incur an unacceptable cost. Yet, one obvious cost of denying a legal right to die is the restriction of a freedom that means a great deal to some people.

Those who would like to see the continued criminalisation of euthanasia and medically assisting suicide typically think that the only options are either that these practices remain legally prohibited or that they become legally permitted. That is a reasonable assessment of the politically possible options. However, to evaluate those two options, it is worth considering a third – namely, either a legal requirement to assist people who want to die, or a legal requirement to die when one's life drops beneath a given quality threshold.

Anybody proposing this third option would rightly be met with outrage. How dare one compel people to act in violation of their conscience and require them to kill? How dare one require people to die when they take continued life to be in their interests? However, we should note that it is similarly outrageous to require people to continue living when they, with good reason, find their lives not to be worth continuing.

We do not have to agree when life is and when it is not worth continuing – only that competent adults should get to make this decision for themselves rather than have a decision forced upon them by others.

That is what the law should recognise, especially in a state that is committed to the rights of individuals.

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