ECONOMIC ANALYSIS OF EUTHANASIA

Ishita Shukla and Ayush Yadav

1. INTRODUCTION

Amidst the various indispensable rights, the Indian Judiciary has varied substantially with regards to Article 21, but it is not black and white on the Right to Die. This onset a debate that whether or not, Article 21 recognizes the 'Right to Die with dignity as a core to Right to Life and Personal Liberty. Many scholars across the globe fathom death as an inevitable part of life and hence advocate encircling the Right to Die within the ambit of Article 21.[1] Another section regards death as an autonomous phenomenon under no one's control. The assumption of rational autonomy, which has considerable value in many legal contexts, deserves to be treated with special caution when applied to medical practice.[2] Around the1900s Euthanasia evolved as one of the most controversial subjects in Europe, both in the medical and the legal aspect. The black law dictionary defines euthanasia as "the act or practice of painlessly putting to death persons suffering from incurable and distressing disease as an act of mercy."[3] The debate on Euthanasia has been dominated mostly by the ethicist and philosophers due to its emotive nature. However, the inclusion of Economics within the debate can help to access the situations more widely and form more rational decisions.

Economics focuses on more effective and equitable distribution of resources[4]. The paper does not rebut the ethical argument but focuses on the need to include economics to support the same. Ethics are mostly concerned with the individual, failing to recognize the societal impact. Economics includes both Individual and Societal Perspective.[5] Ethical considerations and Economics are corollary and should not be studied in isolation. The economic assessment of euthanasia can only be made once it is ethically accepted. Economic concepts can act as tools to solve ethical dilemma as economic analysis plays an important role in policy making as well, which takes value standards into consideration. In fact, economic analysis is often backed by

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[1] INDIAN CONST. art. 21.

[2] P.R. Ward, *Health Care Rationing: Can we Afford to Ignore Euthanasia*, 10 HEALTH SERVICE MANAGEMENT RESEARCH 1, 1-2 (1997).

[3] *Euthanasia,* Black's Law Dictionary. (10th ed. 2014).

[4] Stephen Heasell & David Paton, *Economics and Euthanasia*, 14 HEALTH SERVICE MANAGEMENT RESEARCH 50, 62-63 (2001).

[5] Charlie Sprauge, *The Economic Argument for Euthanasia,* THE FORUM (May 27, 2020, 10:05 AM), https://cmcforum.com/2009/opinion/06082009-the-economic-argument-for-euthanasia.

moral values in order to support it. Refocusing on the sense of community would be a correct approach. Consequentially, the approach to associate economics with ethics will help to solve such dilemmas. We cannot derive any benefit from killing a patient against his wish. No Euthanasia can be morally right unless done with the person's consent. Involuntary Euthanasia or Unethical Euthanasia will have the same effect as that of Homicide and Assisted Suicide.

2. CLASSIFICATION

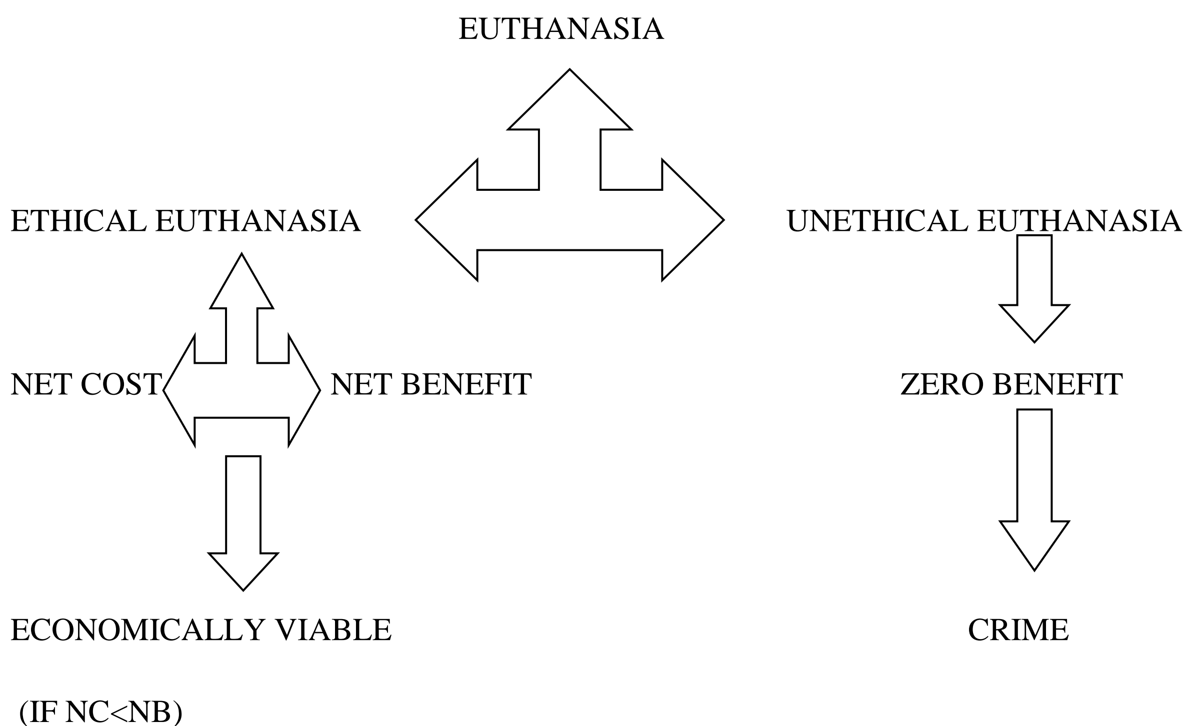

Illustration 1.1

3. LEADING JUDICIAL PRONOUNCEMENTS: RIGHT TO DIE

In the case of *Aruna Ramchandra Shanbaugv.Union of India&Ors*,[6] euthanasia has been broadly classified into two forms. Active euthanasia which is more direct and intense involves the act of killing a person by administering life terminating drugs to alleviate the pain and suffering. It appears to be morally wrong as it closely resembles murder and abetment to suicide. It is usually

[6] Aruna Ramchandra Shanbaug v. Union of India, (2011)4 SCC 454.

done by the doctors who are eventually accused of murder. By contrast, Passive euthanasia is an act of withdrawing life-saving measures to let the person die himself during a vegetative state. It is often considered as a negative right.

With the series of discussions and judgments, the Indian judiciary finally through its judgment in the case of *Common Cause v. Union of India*[7]gave legal sanction to Passive Euthanasia. Passive Euthanasia in the simplest form means, in case of a terminal illness, the patient has the right to terminate his life by removing life-saving measures. It permits living will by the patients on withdrawing medical support if they are suffering from incurable diseases and wish to terminate life. The Apex court, following the western paradigm, upheld the decision given in *Smt. Gian Kaur v. The State of Punjab.*[8]It incorporated 'die with dignity', as a part of Right to Life under Article 21 of the Indian Constitution. However, it does not render section 309 of IPC void as it differs from suicide in a number of ways.[9] Suicide happens for multiple reasons which are not justified under the Indian Constitution or any other law. It must not be confused with involuntary euthanasia as the court rightly observed the stance of passive euthanasia, which requires active consent from the patient at the time he is in his senses. A recent ray of hope in the Indian Legal system came with the advent of The Mental Healthcare Act, 2017. Section 115[10] of the same clearly excludes the application of Section 309 of the Indian Penal Code, 1860, to any person who attempts suicide on the assumption that he or she was under severe stress and hence cannot be tried.[11]Sub section 2 of the same section imposes a duty on the government to take care of that person, rehabilitate and provide proper treatment to avoid the chances of another attempt to commit suicide. For a country like India, allowing Euthanasia in its passive form was a great challenge as judicial precedents had always voted against its legality. One of the most challenging tasks was to get social acceptance as the orthodox Indian society has an upright perspective of death. The religious beliefs drive through the minds of the citizens and influence decisions including the end of life. Amongst many, Hindu mythology is the chief quibbler of euthanasia as its principles find death a result of Karma and depend on the wills and desires of the divine power.

[7] Common Cause v. Union of India, 2014 SC 1556.
[8] Smt. Gian Kaur v. The State of Punjab, (1996) 2 SCC 648.
[9] Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India).
[10] The Mental Health Act, 2017, § 115, No. 10, Acts of Parliament, 2017 (India).
[11] The Mental Health Act, 2017, § 115(2), No. 10, Acts of Parliament, 2017 (India).

The Santhara practice is yet another instance, which was criminalized by the Rajasthan High Court. It was a much-debated topic as it is deeply rooted in the religious belief of Jain Community.[12] The practice is considered as a welcoming death by attaining a sense of religious liberation and self-realization. It questions the religious freedom of Jain Community who claims that the practice of Santhara is different from the meaning of Suicide given Under Section 309 of the IPC. Unlike Suicide, Santhara is a conscious process of spiritual purification where one does not desire death but seeks to reduce the influx of karmas. Eventually, the Supreme Court granted the stay on Rajasthan High Court's order. However, owing to the material differences, Santhara should not be considered as a form of passive euthanasia. Only the ends are same but means and purpose are different. The purpose of Santhara is to attain spiritual purification and to get rid of worldly desires.

Passive Euthanasia is done under the medical supervision and not by the patient himself whereas, Santhara allows the individual himself to take away his life. Moreover, it not only refuses or denies the treatment but also stimulates the advent of death by denying sustenance.

4. Compatibility of Ethics and Economics in Euthanasia

In cases of ethical dilemmas, any practice, policy or law can progress through its economic analysis. There is no clear distinction between what is good or bad, it depends on the situation and outcome. A law or policy can be acceptable in a certain situation where the society can reap its economic advantages. In simple words, economics is an accomplice to support or withhold the enactment of any law which may or may not have ethical barriers.

As a matter of fact, it is not practically possible to have a complete assessment of Euthanasia if the social standpoint is not taken into consideration[13]. By only taking individual standpoint and leaving behind the whole societal view, equity is abandoned. The subject economics is basically to understand how scarce resources are distributed and extracting maximum benefits from the production and distribution of these resources in the society. So, adding an economic perspective in the assessment regarding euthanasia will only be beneficial for the society at large.

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[12] Nikhil Soni v Union of India, AIR 2006 Raj 7417.

[13] P.R. Ward, *supra* note 2.

In reality, it is a misconception that Economics counters the current domination of ethics in the debate of Euthanasia. Hence, it is the need of the hour to understand the importance of including economics within the debate of euthanasia to rectify the misconstrued notion. It is contended that both ethics and economics must work in tandem to ensure the best interest of an individual.[14]Mooney and Mcguire suggest that when the patient is subjected to such intervention which is neither beneficial nor dignified, it must be called bad ethics as well as bad economics. The ethical argument supports claims such as personal autonomy, reduced suffering and, dignified death. Economics, on the other hand, focuses on the allocation of resources.[15]

Economics in fact aids in deciding the ethical dilemmas. For instance, if we take into consideration the concept of equitable distribution of resources in the context of euthanasia, the question of it being ethical or not can be looked into by considering the saved resources and time by euthanasia and its being used for the patients who can actually gain benefit from it.

5. FEASIBILITY OF EUTHANASIA

Euthanasia could be economically feasible if it satisfies the following equation:

$$px > n(1-p)\,h$$

where,

p = Probability of death in spite of providing medical care,

x = Cost of medical care,

h = Amount he will contribute to economy per year after getting cured,

n = prolonged years (number of years he will survive after getting medical care)

In case of Medical Insurance

$$px - I > n(1-p)\,h$$

[14] CHARLIE SPRAUGE, *supra* note 5.
[15] G. MOONEY & MCGUIRE, MEDICAL ETHICS AND ECONOMICS IN HEALTH CARE 23 (Oxford University Press 1986).

Where, I is the Insurance claim.

The above equation provides a possible way to assess the current argument of including economics within the domain of euthanasia. Euthanasia can be feasible under such circumstances where LHS > RHS. The equation is purely quantitative in nature hence does not recognize emotional and moral value related to the death of a person. As discussed above the choice to commit euthanasia mostly depends upon the chances of survival. Hence, the probability of death is the most significant factor which determines the choice of a patient. The equation considers only the contribution of the patient in the economy as a producer and not as a consumer. If we include the contribution as a consumer then even by being bed-ridden, he is being the consumer of the hospital services which will hamper the actual calculation as it will be contradictory to the cost of medical care.

6. ECONOMIC UTILITY PERSPECTIVE

There are several factors which determine the choice of a patient to opt for euthanasia, and these are:

(i) His chances of survival or how deadly is the disease.

(ii) The percentage of the medical cost that might be saved.

Often the certainty of these factors is questioned on ethical grounds but the proponents of Euthanasia largely concentrate on the second issue which in most cases is overlooked or has a little significance.

As far as the economic aspect is concerned, many scholars advocate the act of euthanasia to assuage the burden on the vulnerable groups like women, people with no medical insurance and elder people who find themselves as the dead weight to the society. Euthanasia can potentially save time in addition to medical costs and resources. The family in order to save the last breath of the concerned person spends much of their time looking after the patient. Prolonging life may sometimes turn out to be futile for some elderly terminally ill patients with the least chances of survival and also for their families to see their loved ones in a miserable state. A survey conducted in the Netherlands suggests that the major percentage of the cost of medical care

comes at the later stage of life.[16]If seen from a radical perspective, when a bedridden, terminally ill patient, with no chances of survival, occupies a bed in the hospital then it in some ways loss of certain resources that are used to keep him alive. When a patient reaches a stage where all the treatments prove to be futile, any treatment given afterward in order to drag the life span goes in vain. The doctors and hospital staff spend their time which will cost the other patients. The recent situation of COVID 19 which has affected even though a large number of people which is actually a very few percentages of the total population and yet medical resources are scarce. In a country like India, considering the current situation in mind one must realize how pathetic the medical facilities are when there are not enough hospital beds, PPE kits for the doctors even extreme shortage of hand sanitizers and face masks in the market. Instead of focusing on the methods to keep a terminally ill patient alive, one should rather emphasize on whether there is an actual need to keep him alive because that way, he is not living but merely in a state of being alive.

This concept can help in reaching the ethical point of view also that the resources should be given to the needy first. It is only ethical to not to keep giving away the limited resources and time to a person who has no chance of survival but to the people whose lives can be fairly saved.

Cost of care in an ICU

The main objective of ICU is to treat patients suffering from trauma or who are in utter need of surgery, not those with terminal illnesses. But in present days ICUs are fully occupied with people suffering from untreatable diseases[17].There is a bleak chance that these people get benefitted by providing a high concentration of medical techniques.[18]The patient in ICU requires three times the equipment and five times the staff than the normal patients[19]. All the resources utilized by an ICU patient, suffering from terminal illness go in vain. The expenditure and cost of care on patients with no scope of survival is much more than those who can actually survive. The proponents and the health experts usually favor the cost-saving mechanism at the end of life

[16] P. Singer & F. Lowy, *Rationing, patient preferences and cost of care at the end of life,* 152 ARCHIVES OF INTERNAL MEDICINE 477, 478-479 (1992).
[17] R. Bone, *Intensive care, survival and expense of treating critically ill cancer patients,* 269 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 779, 783 (1983).
[18] L.H Cohn, *The paradox of high-tee health care: has our technology outstripped our ability to be ethical, cost-effective and timely in its delivery,* 93 CHEST JOURNAL 863, 864-867 (1988).
[19] IVAN ILLICH, MEDICAL NEMESIS: THE EXPROPRIATION OF HEALTH 48 (Marion & Boyars Publication 1976).

which not only cuts futile spending but also saves resources for others.[20] An experiment conducted in the USA suggests that people who opt out life-sustaining treatments during the last week of life can save up to 50% of medical and other expenditures like routine therapies, dialysis in case of kidney failure[21]. It is desirable to consider all the costs related to a patient and not just the cost of medicines and surgeries.

Cost savings of futile care withdrawal

The blend of ethics and economics is beneficial, not only to the patient but to the family and society as well[22]. Cardiopulmonary resuscitation (CPR), an emergency procedure given to intact brain functioning often proves to be futile for those suffering from cancer and other incurable diseases. CPR often works against the interest of patients as it neither increases the life of patients nor improves the quality of care. Moreover, prolonging the vegetative state of the patient with such methods stands against the concept of personal autonomy.

Caplan offers a radical view to cut down the cost during the last week of life. The view is quite extreme as it offers to cut down on food and life saving measures which is purely unethical. Caplan's theory is often criticized as it neglects the moral duty towards the patient at the end of life.[23]

Cost of hospice care

Hospice care serves as a complementary method that can be used as an alternative to medicines and drugs. Hospice care involves a well-structured system for people suffering from life-threatening diseases[24]. The WHO defines it as an "an approach that improves the quality of life of patients and their families facing the problems associated with a life-threatening illness, through the prevention and relief of suffering utilizing early identification and impeccable

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[20] J. C D'Oronzio, *Good Ethics, Good Health Economics,* N.Y. TIMES (Jun. 8, 1993), https ://www.nytimes.com /1993 /06/08/opinion/good-ethics-good-health-economics.html.

[21] P. SINGER, *supra* note 15.

[22] L. Emanuel et al., *Advanced directives for medical care - a case for their greater use,* 324 NEW ENGLAND JOURNAL OF MEDICINE 889, 889-895 (1991).

[23] H Caplan, *We can't afford to prolong so many hopeless lives*, 59 MEDICAL ECONOMICS 60, 62-66(1982).

[24] R. Kane et al., *Randomised control trial of hospice care,* 323(8382) THE LANCET, 890—894 (1984).

assessment and treatment of pain and other problems, physical, psychosocial, and spiritual."[25] It acts as a two-edged sword that ensures personal autonomy and reduces medical costs. These factors determine the significance of economics in the debate of euthanasia.

Socio-economic approach

Unlike developed nations, India does not have any uniform health care system. Data indicate that only 3-5 percent of people in India have a blanket of insurance to cover medical costs and expenditures. This small proportion consists only of the healthiest and the wealthiest. The inefficient health care system aggravates inequalities and socio-economic problems in India. In 2003, the government attempted to implement an effective medical and health care system by rolling out a universal health insurance scheme. However, it was ineffective as it failed to cover the poor class of people.[26]

To defend euthanasia there can be arguments from many perspectives. Majorly, sympathy towards the patient's painful condition, his or her right to die with dignity, the progression of the society, and economic requirements are the few arguments in support of euthanasia.

If a utilitarian point of view is considered if an action provides the maximum benefit of everybody it is morally acceptable. It can be said that in at least some cases euthanasia serves the best interest of everyone and hence euthanasia can be morally justified from a utilitarian point of view.[27] It is important to ascertain that who may be benefitted from the voluntary act of euthanasia. In the case of a voluntary act of euthanasia, the patient is getting a death which is easier than suffering and it is a death with dignity. Not just for the patient, it will be easier for the family and relatives also because they will not have to watch their loved ones suffer hopelessly anymore. More importantly, the doctors and hospital staff would be able to divert their attention towards the other patients. In addition to that, other patients would receive medical benefits like resources that were earlier used up for non-productive purposes and more attention from the hospital staff. These arguments somewhat succeed in convincing that euthanasia is not wrong per se.

[25] World Health Organization, *WHO Definition of Palliative Care*, WHO (May 12, 2020, 12:45 AM) http://www.who.int/cancer/palliative/definition/en.
[26] Arunangshu Ghoshal et al., *Economics of Palliative and End-of-Life Care in India: A Concept Paper,* 23 INDIAN JOURNAL OF PALLIATIVE CARE 456, 456-461 (2017).
[27] JAMES RACHELS, THE END OF LIFE, EUTHANASIA AND MORALITY 122-123 (Oxford University Press 1986).

It is not a question of ethics and economics. Without a wider use of economics in health care, we will go on spending large sums of money to save a life in one way, when similar lives but in greater number could be saved in another way. The price of inefficiency, inexplicitness and, irrationality in health care is paid by death and sickness. Is that ethical?

7. THE OTHER SIDE OF THE COIN: ECONOMIC DRAWBACKS

It is more likely that the vulnerable people considering the economic advantage of euthanasia might treat this as an option rather than last resort. The greatest victims are children and the women who depend on the Karta of the family, mostly males. Euthanasia jeopardizes the life of these vulnerable groups as the willful death of the male counterpart will have nothing for them to live off. In the long term scenario, it is unpropitious as it might hamper national income. The act of euthanasia shall be condemned where there is even a bleak chance of survival because he might contribute to the economy not as a contributor but as a consumer. In the health sector, patients resemble consumers.

Behavioral Economics puts another limitation on the choice of those people, opting for Euthanasia. Under certain circumstances, the emotions and psychology of the concerned person or relatives of the concerned person might outweigh the cost- benefit analysis. For instance, the patient or his relative may get carried away by their emotions due to the lack of knowledge of the future cost and expenses that would occur. Now the main consideration of the patient or his family might either be elimination of his suffering or saving his life, both depending on the psychology of the concerned people, differing from case- to- case basis. In both these cases, the decision will be independent of economic point of view, thus, going against the economic analysis.

The concept of euthanasia or assisted suicide is totally against the traditional Hippocratic oath taken by medical practitioners. According to these medical ethics the doctors' sole duty is to treat the patient and help them to cure by using all the expertise and skills that he or she possesses. Doctors are not supposed to use treatments that are not necessary for the betterment of the patients. The consent of the patients is very important here as the doctors are not supposed to use their expertise to treat in a frivolous manner. But this Hippocratic Oath could not turn out to be

of any significance in preventing doctors from using their skills for their agendas, be it for making some extra profit or satisfying their egos. Doctors, needless to mention that not all of them mostly use their exclusive knowledge to manipulate the patients and their naïve families into believing that certain overtreatment or extra tests are necessary which in reality are not. This has strained the trust relationship between the doctor and a patient and also has lowered the agency cost. This greed is somewhat an important factor in the conflict over assisted suicide but one opinion says that the legalization of assisted suicide will not resolve this issue.[28]

Another opinion regarding this could be in favor of legalizing euthanasia. The reason for this opinion is based on the ground that the doctors, as mentioned above, for their personal motives on several occasions over-treat the patients that cause the families of those patients a lot of extra money that goes in vain. Any family in such a case will not mind spending as much as required for the treatment if there is even a single ray of hope but when a terminally ill patient has no chance of recovery, the useless over treatment for making more money hamper the interests of the families. If it is decided and certain that there is nil chance of recovery of a patient, he or his family could use the option of euthanasia for saving the money from the overtreatment. The stumbling block here will be the authority or the credibility of both the aforementioned pieces of information, the certainty of irrecoverability and the questionability of the treatment, leaving the question open-ended.

The argument of a slippery slope is very common when euthanasia is debated. The primary base of this argument is that in case euthanasia is legalized it will cause a reduction in the value of human lives.[29] Not only that but the people who might not be able to afford the treatment, would compulsorily go for euthanasia which will jeopardize the voluntariness.[30] Abortion is an example that can be used against this argument as even abortions were legalized and it has been a successful practice with the help of professionals and dignified and effective services. [31] Even in India, abortion is legal with limitations to curb the misuse. There can be possible misuses of all the rights and liberties but that is no ground to deny any right or liberty. It is possible to monitor the necessity and number of euthanasia in clinics or hospitals. A control mechanism will be

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[28] Nelson Lund, *Two Precipices, One Chasm: The Economics of Physician-Assisted Suicide and Euthanasia*, 24 HASTINGS CONST. L. Q. 903,1004-1005 (1997).
[29] J. CONWAY, EUTHANASIA. RIGHT OR WRONG (Aug., 1981) (Unpublished M.A dissertation, Nuffield Institute for Health).
[30] G.H. Fairburn, *Kuhse, singer and slippery slopes,* 14 JOURNAL OF MEDICAL ETHICS 120, 132-134 (1988).
[31] J. CONWAY, *supra* note 28.

required to regulate it. Without legalization, it cannot be completely ruled out that there can be immoral and substandard treatments.[32] If safeguards are properly implemented the argument of the slippery slope will not stand.[33]

Economic perspective calls to cut down the avoidable life-sustaining treatments that are not going to help in anyway but this is countered by ethical arguments despite euthanasia being for the patients' interest. But in reality, this conflict is not as complex as it seems, there is no contrasting conflict. The debate is due to different individual and societal points of view but this can be resolved by proper measures and regulations. It can be instituted in medical professionals from the very beginning that inclusion of societal as well as economic point of view is important. Economics and ethics can be made to work simultaneously in this debate as both are playing a major role in deciding for voluntary euthanasia.

8. CONCLUSION

The research was started keeping in mind a neutral approach. In the process of reaching the conclusion it was clear that economics does play a very crucial role in the debate of euthanasia to which, unfortunately, not much heed is paid. Economics adds to the reasons and justifications in support of voluntary euthanasia. Ethics and economics both need to be balanced to derive a more definitive answer to this long-lasting debate. On one hand where economics proved to be much in favor of euthanasia, a few drawbacks were also discovered on the other hand. What is noteworthy is that the positive aspects overshadow the negative aspects of legalizing euthanasia when we add economic factors. The only difference is that the negative aspects can be checked by proper rules and regulations. Every law comes with the lawbreakers and loopholes but that is no reason to not to bring the law altogether. The authors suggest that such implementation of economics can potentially restrict the sufferings of individual in addition to the conservation of time and resources. Even if a very small percentage of people opt for voluntary euthanasia, in order to limit pain and sufferings, it is incumbent upon the state to respect their autonomy. Therefore, the author believes that the blend of economics within the debate of Euthanasia would be advantageous for not only the people but for the state as well.

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[32] J. CONWAY, *supra* note 30.
[33] JAMES RACHELS, *supra* note 26.