

1. Carter v. Canada (Attorney General), 2015 SCC 5 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do>
Section 241 (b) of the *Criminal Code* says that everyone who aids or abets a person in committing suicide commits an indictable offence, and s. 14 says that no person may consent to death being inflicted on them. Together, these provisions prohibit the provision of assistance in dying in Canada...

Insofar as they prohibit physician-assisted dying for competent adults who seek such assistance as a result of a grievous and irremediable medical condition that causes enduring and intolerable suffering, ss. 241 (b) and 14 of the *Criminal Code* deprive these adults of their right to life, liberty and security of the person under s. 7 of the *Charter*. The right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Here, the prohibition deprives some individuals of life, as it has the effect of forcing some individuals to take their own lives prematurely, for fear that they would be incapable of doing so when they reached the point where suffering was intolerable. The rights to liberty and security of the person, which deal with concerns about autonomy and quality of life, are also engaged. An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The prohibition denies people in this situation the right to make decisions concerning their bodily integrity and medical care and thus trenches on their liberty. And by leaving them to endure intolerable suffering, it impinges on their security of the person.

Ending a person's life

2. Bereishit 9:5

וּמִיַּד הָאָדָם מִיַּד אִישׁ אָחִיו אֲדָרְשׁ אֶת־נַפְשׁ הָאָדָם

And from the hand of the man, from the hand of a man for his brother, I will seek the life of the man.

3. Rabbi Yechiel Michel Epstein (19th century Lithuania), Aruch haShulchan Yoreh Deah 339:1

ואף על פי שאנו רואים שמצטער הרבה בגסיסתו וטוב לו המות מ"מ אסור לנו לעשות דבר לקרב מיתתו והעולם ומלואו של הקב"ה וכך רצונו יתברך

Although we see that he is in great pain in his *goses* state, and it would be better for him to die, still, we are prohibited from doing anything to hasten his death. The world and all in it belong to Gd, and such is His will.

4. Talmud, Avodah Zarah 18a

הביאוהו וכרכוהו בס"ת, והקיפוהו בחבילי זמורות והציתו בהן את האור, והביאו ספוגין של צמר ושראום במים והניחום על לבו, כדי שלא תצא נשמתו מהרה.... אמרו לו תלמידיו... פתח פיך ותכנס [בך] האש! אמר להן: מוטב שיטלנה מי שנתנה ואל יחבל הוא בעצמו. אמר לו קלצטונירי: רבי, אם אני מרבה בשלהבת ונוטל ספוגין של צמר מעל לבך, אתה מביאני לחיי העולם הבא? אמר לו: הן. השבע לי! נשבע לו...

They brought [Rabbi Chanina ben Tradyon] and wrapped him in a Torah scroll, and bound him with vines and kindled them. They brought wool sponges and soaked them in water and placed them on his heart so that his life would not depart quickly... His students said to him... Open your mouth and let the fire enter! He said to them: Better that the One who gave it take it back, and not that I harm myself.

The executioner said to him: My master! If I were to increase the flame and remove the wool sponges from your heart, would you bring me to the next world? He replied: Yes. [The executioner said:] Swear to me! He swore.

5. Some of the justifications hinge on *lifnei iver*

- Concern for causing stumbling was overridden (Rabbi Moshe Feinstein, Igrot Moshe Choshen Mishpat 2:74:2)
- Violating *lifnei iver* to avoid such terrible pain was justified (Rabbi J. David Bleich, Tradition 30:3)

6. Some of the justifications hinge on specifics of the case

- Desecration of Gd's Name (Rabbi Eliezer Waldenberg, Tzitz Eliezer 4:13:2:7)
- It was withdrawal of treatment, but not murder (Rabbi Yisrael Meir Lau, Torah sheb'Al Peh 62)
- It's not self-wounding (Rabbi Shlomo Luria, Yam shel Shlomo to Bava Kama 8:59)
- The executioner was the answer to his prayers (Rabbi Moshe Stern, BiShvilei haRefuah 49)
- It is matter of choosing a 'better' death (Rabbi Menasheh Klein, Mishneh Halachot 7:287)

7. Rabbi Moshe Feinstein (20th century Russia/USA), Igrot Moshe Choshen Mishpat 2:74:2

וגם אפשר שבן נח אינו אסור ברציחה שהוא לטובת הנרצח ושאינו בזה האיסור לישראל מהאיסור לבן נח

It is also possible that a Noachide is not prohibited from performing such a murder, for it benefits the victim. In this regard, the prohibition for a Noachide may be different from that of a Jew.

Enabling a person to take his own life

8. Rambam, Mishneh Torah, Laws of one who Wounds and Harms 5:1

אסור לאדם לחבול בין בעצמו בין בחבירו, ולא החובל בלבד אלא כל המכה... דרך נציון הרי זה עובר בלא תעשה

One may not wound himself or any other person.

9. Rabbi David ibn Abi Zimra (15th century Spain/Israel), Commentary to Mishneh Torah, Laws of Sanhedrin 18:6

שאינו נפשו של אדם קניינו אלא קנין הקב"ה שנאמר "הנפשות לי הנה" (יחזקאל י"ח) הילכך לא תועיל הודאתו בדבר שאינו שלו, ומלקות פלגא דמיתה הוא.

A person's life is not his property; it is the property of Gd, as Yechezkel 18:4 says, 'The souls are Mine.' Therefore, one's admission regarding something that is not his cannot be effective. [This is even true if the admission would lead not to death but only to lashes, for] lashes are a partial death.

10. Rabbi Shlomo Zalman Auerbach (20th century Israel), Minchat Shlomo 1:91:24

הענין של "חיים" אין לנו שום קנה - מידה כמה למדוד את יוקרם וחשיבותם אפילו לא בתורה ומצוות, שהרי מחללין את השבת גם על זקן חולה מוכה שחין אף על פי שהוא חרש ושוטה גמור, ואינו יכול לעשות שום מצוה וחיייו הם רק למשא וסבל גדול על משפחתו וגורם להם ביטול תורה ומצוות, ונוסף לצערם הגדול הרי הם אזלי ומדלדלי... אבל מ"מ הואיל וסוף סוף החיים של המשותקים הם רעים ומרים, וגם יש אשר טוב להם המות מהחיים, לכן בכגון דא מסתבר שאין חייבין לעשות מעשה של נתוח בקום ועשה...

We have no measuring stick for "life", to gauge its value and importance even without Torah and commandments. We violate Shabbat even for an elderly, ill, boils-ridden person, even if he is deaf and mute and entirely insane, and he can perform no commandment, and his life is only a burden and great suffering for his family, and he takes them away from Torah study and other commandments, and in addition to their great pain they are deteriorating... But still, because the lives of people who are entirely paralyzed are bad and bitter, and for some of them death would be better than life, in such a circumstance it is logical to say that there is no obligation to operate...

11. Samuel I 31:3-4

(ג) ותכבד המלחמה אל־שאול וימצאֶהוּ המורִים אֲנָשִׁים בְּקִשָׁת וַיִּחַל מְאֹד מִהַמּוֹרִים: (ד) וַיֹּאמֶר שְׂאוּל לְנִשְׂא כְלָיו שֵׁלֶף חַרְבֶּךָ וְדַקְרָנִי בָּהּ פְּוִיבֹאוּ הָעֲרָלִים הָאֵלֶּה וְדַקְרָנִי וְהִתְעַלְלוּ־בִי וְלֹא אָבָה נִשְׂא כְלָיו כִּי יָרָא מְאֹד וַיִּקַּח שְׂאוּל אֶת־הַחֶרֶב וַיִּפֹּל עָלָיָהּ:

And the war turned heavily against Saul, and the archers found him, and he suffered greatly from the archers. And Saul said to his armour-bearer: Unsheathe your sword and stab me with it, lest these uncircumcised ones come, stab me and mock me! But his armour-bearer would not, for he was very afraid. And Saul took the sword and fell on it.

12. Ramban, Torat haAdam, Shaar haSof – Inyan haHesped 18

וכל המאבד עצמו שלא לדעת אין מונעין ממנו כל דבר. ומעשה בבנו של גורגנוס בלוד... ואמר ר' טרפון אין מונעין ממנו כל דבר מפני שהיה תינוק וכשלא לדעת בגדול דמי. וכן מצוינו בגדול שאיבד עצמו לדעת מפני האונס שמספדין אותו, כגון שאול מלך ישראל שאבד עצמו אלא שהיה אבודו מותר לו, כדאמרינן בבראשית רבה (פל"ד)... לפיכך לא היה בכלל מאבד עצמו לדעת...

Regarding one who kills himself without intent, no [honour] is withheld. It happened with the [minor] son of Gurginos in Lod... and Rabbi Tarfon said, "We do not withhold any [honour], for he was a child; he is like an adult who lacks intent." And we find this regarding an adult who kills himself intentionally due to *oness* – we eulogize him. For example, Saul, King of Israel killed himself, but his suicide was permitted for him, as we say in a midrash... He was not in the category of one who kills himself intentionally...

13. Rabbeinu Asher (13th century Germany/Spain) Commentary to Moed Katan 3:94

היה איבוד מותר לו כדאיתא בבראשית רבה ואך את דמכם לנפשותיכם אדרוש מיד נפשותיכם אדרוש את דמכם יכול אפילו נרדף כשאויל תלמוד לומר אך לפיכך לא היה בכלל מאבד עצמו לדעת

Suicide was permitted for him, as seen in a midrash, "But only, your blood for your lives I will seek; from your lives I will seek your blood." I might say this even for one who is pursued, like Saul? For this reason it says 'But'. Therefore, he was not within the category of willful suicide.

14. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 5:Ramat Rachel 29:2

כידוע מבואר בחז"ל ובדברי הפוסקים כי במסיבות ששאל היה נמצא בו לא נחשב כמאבד עצמו לדעת... ובכל זאת לא הועיל נתינת רשותו לגר העמלקי לקרב את גמר מיתתו מלפוטרו על כך. וא"כ מכש"כ שלא מועיל שום נתינת רשות של החולה לקרב את מיתתו יהיה באיזה מצב של יסורים שיהיה, באשר גם הוא בעצמו מוזהר על כך.

As is known, it is explained by our sages and in the words of legal authorities that in Saul's circumstances, his was not considered a case of intentional suicide... But his permission to the Amalekite convert to hasten the conclusion of his death was not effective in exempting him for it. If so, then certainly no granting of permission to hasten death by a patient, in any circumstance of suffering, will be effective, since the patient is personally prohibited from doing it.

What about liberty and security

15. Deutsche-Welle, *Belgium approves assisted suicide for minors*, 2/13/14

The vote on Thursday by Belgium's House of Representatives removed all age restrictions on the right of the incurably sick to end their lives, a vote that has caused considerable controversy.

16. Sharon Kirkey, *Possibility that incurable depression meets criteria for doctor-assisted suicide raises ethical concerns*, National Post 2/13/15

Though largely overlooked in the debate sparked by last Friday's Supreme Court of Canada ruling legalizing doctor-assisted death, the decision applies to more than just patients with incurable physical illnesses.

People with treatment-resistant depression — a crippling form of the disease that actor Robin Williams was said to have battled before killing himself last August — fulfil the criteria for assisted-suicide set out by the high court, argues Udo Schuklenk, a leading Canadian bioethicist.

17. Jane Parkis and R. Warwick Blood, *Suicide and the Media*, Crisis: The Journal of Crisis Intervention and Suicide Prevention <http://psycnet.apa.org/journals/cri/22/4/146/>

Reviews 42 studies concerning the relationship between nonfiction media reporting and portrayal of suicide and actual suicidal behavior and ideation. Studies of nonfiction newspaper, television, and book accounts of reported suicide were examined. Results show an association between nonfictional media portrayal of suicide and actual suicide. The association satisfied sufficiently the criteria of consistency, strength, temporality, specificity, and coherence for it to be deemed causal.

18. Margaret Dore, *Preventing Abuse and Exploitation*, ABA Senior Lawyers Division 25:4

I have had two clients whose fathers signed up for the lethal dose. In the first case, one side of the family wanted the father to take the lethal dose, while the other did not. He spent the last months of his life caught in the middle and traumatized over whether or not he should kill himself. My client, his adult daughter, was also traumatized. The father did not take the lethal dose and died a natural death.

In the other case, it's not clear that administration of the lethal dose was voluntary. A man who was present told my client that his father refused to take the lethal dose when it was delivered ("You're not killing me. I'm going to bed"), but then took it the next night when he was high on alcohol. The man who told this to my client later recanted. My client did not want to pursue the matter further.

But what's the alternative?

19. Talmud, Ketubot 104a

סליקא אמתיה דרבי לאיגרא, אמרה: עליוני' מבקשין את רבי והתחתוני' מבקשין את רבי, יהי רצון שיכופו תחתונים את העליונים. כיון דחזאי כמה זימני דעייל לבית הכסא, וחליץ תפילין ומנח להו וקמצטער, אמרה: יהי רצון שיכופו עליונים את התחתונים. ולא הוו שתקי רבנן מלמיבעי רחמי, שקלה כוזא שדייא מאיגרא [לארעא], אישתיקו מרחמי ונח נפשיה דרבי.

Rebbe's maid ascended to the roof and said, "The Heavens request Rebbe and the earthly realm requests Rebbe. May it be Gd's will that the earthly realm should overpower the Heavens!"

When she saw how often Rebbe had to go to the washroom, removing his phylacteries and then putting them back on, and how he was in great pain, she said, "May it be Gd's will that the Heavens should overpower the earthly realm!"

The sages were not silent in their prayers for Gd's mercy, so she took a pitcher of water and threw it from the roof. The praying people paused, and Rebbe passed away.

20. Rabbeinu Nisim (14th century Spain) to Talmud, Nedarim 40a

פעמים שצריך לבקש רחמים על החולה שימות כגון שמצטער החולה בחליו הרבה ואי אפשר לו שיחיה.

Sometimes one needs to pray for mercy for the patient to die, such as where the patient is in great pain due to his illness and he cannot live.

21. Rabbi Shlomo Zalman Auerbach (20th century Israel), *Minchat Shlomo* 1:91:24

גם באותה שעה שמבקש ומתפלל לד' שהחולה ימות ג"כ חייב הוא להתעסק בהצלתו ולהלל עליו את השבת אפילו כמה פעמים...

Also, as one requests and prays to Gd for the patient to die, he is also obligated to involve himself in saving the patient and desecrating Shabbat for him, even many times.

22. Rabbi Dr. Mordechai Halperin, <http://98.131.138.124/db/showQ.asp?ID=6936>

I wish to receive counsel and guidance regarding my 91-year old mother, who has fractures all along her spine due to osteoporosis. Recently she fell and was bounced around, and since then she has experienced great pains.

The advice of the doctors is to sedate her, to prevent pain. According to the doctors she will not return to walking, or to moving her lower body. She can move her arms [only] lightly. However, she is still lucid. The question: May one go along with the doctor's advice and introduce her into sedation to prevent pain? I understand that this sedation would become a permanent state for the rest of her life.

Response: The discussion is of a lucid woman. Therefore, this depends exclusively upon her desire, and one should ask her directly.

23. Rabbi Eliezer Waldenberg (20th century Israel), *Tzitz Eliezer* 13:87

כל היכא שתכשירי הרפואה הניתנים, הן בצורת כדורים והן בצורת זריקות, נתנים המה ע"י הרופא במטרה כדי להקל מעליו יסוריו הקשים מותר לו לתת לחולה, הגם שמאידיך המה מזיקים לו ועלולים גם לקרב יותר את מיתתו, כי נראה שזהו ג"כ בכלל נתינת הרשות שנתנה התורה לרופא לרפאות...

Whether the medical means are pills or injections, so long as they are given by a doctor with the goal of lessening his great suffering, one may give them to the patient even though they will also harm him and they could bring his death closer. It appears that this is part of the Torah's permission to the physician to heal...

24. Washington State Medical Association, *Pain Management and Care of the Terminal Patient* (1992)

Adequate interventions exist to control pain in 90 to 99% of patients.

25. Rabbi J. David Bleich, *Treatment of the Terminally Ill*, *Tradition* 30:3 (1996), pg. 62

[E]very prudent effort should be made to alleviate the patient's suffering. This includes aggressive treatment of pain even to a degree which at present is not common in current medical practice. Physicians are reluctant to use morphine in high dosages because of the danger of depression of the cerebral center responsible for respiration. The effect of morphine administered in high doses is that the patient cannot control the muscles necessary for breathing. There is, however, no halakhic objection to providing such medication in order to control pain in the case of terminal patients even though palliation of pain may ultimately entail maintaining such a patient on a respirator. Similarly, there is no halakhic objection to the use of heroin in the control of pain in terminal patients. The danger of addiction under such circumstances is, of course, hardly a significant consideration. At present, the use of heroin is illegal even for medical purposes. Judaism affirms that everything in creation is designed for a purpose. Alleviation of otherwise intractable pain is a known beneficial use of heroin. Marijuana is effective in alleviating nausea that is a side-effect of some forms of chemotherapy. There is every reason to believe that these drugs were given to man for the specific purpose of controlling pain and discomfort. Jewish teaching would enthusiastically endorse legislation legalizing the use - with adequate accompanying safeguards - of those substances in treatment of terminal patients.