Defining the Point of Death

What is the issue?

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- Some hold that the cessation of a heart beats marks death but others argue hold that the brain’s dis-functionality constitutes death.
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- There is hence no clearly accepted point where a person can be declared dead, thereby mandating a legal definition for what constitutes death.
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What has triggered the current debate?

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- A while ago, Kerala government issued protocols to confirm brain death cases with the intention of making organ transplantation more transparent.
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- This has brought to the fore, the lack of clarity, medically and ethically, about assessing when the moment of death has occurred.
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- India needs clear standard operating procedures as well as a legal definition of death in order to ensure ethical conformity questions of life and death.
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How did death become a grey concept?

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- Historically, life was strongly linked to heart pumping blood and death was consequently identified by cardio-respiratory failure.
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- Doctors would feel for a pulse, check for breath, and sometimes even hold a mirror before the nose to test for condensation.
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- But the arrival of the modern ventilator upended the metrics of life and as intensive care medicine took shape, defining death became more complex.
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- Advances in medi-care also furthered neurosciences and terms like “death of the nervous system” and “irreversible coma” are no longer valid.
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- Hence, defining life and death has now gone beyond the mere factual bodily indicators and has encompassed the domain ethics and philosophy.
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What is the current legal status of death in India?

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- Presently, in India, two Acts give different answers.
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- **Brainstem death -** This (different from brain death) is acknowledged in the Transplantation of Human Organs Act, 1994.
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- According to this, a deceased person is one “in whom permanent disappearance of **all evidence of life** occurs”.
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- It encompasses in its ambit both “brain stem death” and “cardio-pulmonary” cessation, at any time after live birth has taken place.
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- **Record Keeping Act -** “Registration of Birth and Death Act, 1969” excludes the diagnosis of brain death and covers only cardio-respiratory aspects of life.
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- Notably, while a patient on ventilator support is not deemed dead as per this act although he might be brain dead.
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How is the ambiguity on life and death playing out elsewhere?

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- In the U.S., the case of Jahi McMath who was declared brain dead at 13 has fuelled the debate on what constitutes death.

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- Notably, she is now 17 and survives on life support, and even attained puberty in the 4 years after she was declared brain dead.
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- **Experts -** Many opine that although legal definitions typically indent to define a bright border between life and death, biology of life is a lot more fluid.
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- Further, diagnosis of brain death functions is a self-fulfilling prophecy as once the ventilators are dis-connected, cardio-respiratory death follows invariably.
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- While biology and law function differently, clear standard operating procedures and a legal definition would nonetheless help in functionality.
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Source: The Hindu

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