

EUTHANASIA IN NIGERIA: A LEGAL, ETHICAL OR MORAL RELEVANCE?

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Abstract

The concept of euthanasia has remained controversial in Nigeria and other countries owing primarily to the legal, ethical and moral dilemma associated with it. The practice of euthanasia under the Nigerian law is seen as murder or at best manslaughter. There has been a tilt by the court towards a patient's right to informed consent as well as patients' autonomy. The question is, what is the quality of consent extracted from a patient who is going through excruciating pain? Is the patients' right to self-determination or autonomy absolute? The relevancy of euthanasia has not been fully addressed in view of the contents of the Hippocratic Oath and the constitutional guaranteed rights to liberty, privacy, religion, thought and conscience. This paper discusses the legal, ethical and moral relevance of euthanasia in Nigeria. This is achieved through a critical analysis of the statutes, case laws and scholarly works on the subject. The conclusion drawn is that the right of euthanasia in whatever form, does not have any relevance in Nigeria. Apart from being a taboo in Nigeria, there is no mechanism in place for the rigorous medical evaluation required to ascertain the quality of consent expressed. The high tendency for abuse and fear of extinction of moral values are some of the limiting

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factors. The paper recommends significant investment in care homes for the suffering in Nigeria, good governance that has the welfare of the poor in focus. In a helpless situation, a proper evaluation of actual intent of the sick should be carried out to weigh the quality of consent and prevent abuse.

Keywords: Euthanasia, Law, Consent, Hippocratic Oath, Morality, Ethics.

1.0 Introduction

The practice of euthanasia has its root in the beliefs and practices of the ancient Romans and Greeks. Their great concern was borne out of compassion for the *terminally* ill which led them into devising the least painful mechanism for alleviating their suffering from their situation of discomfort and pain. The Romans and Greeks accepted this sympathetic act of euthanasia only for the right reason. Euthanasia like many other practices, developed over times, from the stage of sympathy and mercy to the stage of exploitation and then outright prohibition which led to series of discussions, arguments and debates on the ethical, moral and legal implications of the practice in the modern society.

Over the years, public opinion, court decisions, legal and medical approaches to the issue of euthanasia have conflicted. In the last few decades, many countries have grappled with the dilemma associated with; the difficulties of unbearable suffering pain (more especially in situations that are terminal and hopeless) the rights of a patient to self-determination and autonomy, the duties of the physician where informed consent is refused, as well as the issue of correlating the legality and morality of euthanasia. Many have agreed that euthanasia, under whatever form, would, in the context of Nigerian laws, be considered as murder, manslaughter or aiding suicide. All of these are

criminal offences and punishable under the law.¹ While others have argued that the right to life guaranteed under the Constitution exist as a necessary adjunct to the right to die,² some held the view that the image of a terminally ill patient trapped within a body and undergoing constant and permanent pain, torture and suffering with no hope of recovering and without a possibility of medical euthanasia or assisted suicide, cannot be the intention of the makers of the Constitution in guarantying rights to life, privacy, religion and conscience. On the issue of the terminally ill and patients in a vegetative state, philosophers (thinkers) have concluded that there is a distinction between living and existence. To live means to enjoy life to the fullest in every sense of living, comfort, impact, significance etc. however, to 'exist' means to have breath, sleep every night and wake up the next day but find no meaning or purpose for doing this every day. At the stage where euthanasia is required, man has gone beyond the state of existence as described herein and into another state of vegetative existence or painful, terminal, hopeless and hollow existence.³

2.0 Conceptual framework on Euthanasia

2.1 The Meaning of Euthanasia

Over the years, many scholars, moralists and thinkers have tried to define the concept of euthanasia from the point of their beliefs, orientation or experiences. Etymologically, euthanasia is referred to as 'a good death'⁴. This definition is obtained from the Greek words 'éu' meaning 'well or good' and 'thanatos' meaning death. A combination of which will mean 'good death', 'well death or dying well'. It then becomes critical to question if there are bad death and what are the

¹ J.S. Aboyami, 'Euthanasia: Socio-Medical and Legal Perspective'(2014) *International Journal of Humanities and Social Science* , p.257

² <https://www.researchgate.net>>347 'The Right to life versus the Right to Die 'Accessed 20 November, 2024

³ M. Heidegger, 'Being and Time' (Oxford Blackwell Publishers) (1973) p 19

⁴ <https://www.etymonline.com>>word 'Etymology of euthanasia by etymonline' Accessed on 29 of November, 2024.

components of a bad or good death. Can there be a good death when death is the end of it all?⁵

Today, euthanasia has acquired a broader and complex meaning. It includes any action that helps one achieve a painless death.⁶ The Black's Law Dictionary defines euthanasia as 'an act or practice of painlessly putting to death persons suffering incurable and stressing disease as an act of mercy'.⁷ Oxford Dictionary defines it as 'the practice of killing without pain a person who is suffering from a disease that cannot be cured'.⁸ The Medical Dictionary for Lawyers defines euthanasia as an 'act or practice which is advocated by many, of putting persons to death painlessly who are suffering from incurable and malignant diseases, as an act of mercy'.⁹ Euthanasia has been variously defined by writers over the years. It has been defined as the wilful, direct or indirect killing of the incurably sick, be it at their request or the request of the parents, guardians or any other representatives in the case of incurables who are incapable of deciding for themselves.¹⁰ E.g. infants, the irrevocable comatose and mental defectives;¹¹ addendum to final exit;¹² an action or omission which of itself or by intention causes death in order that all

⁵ A Echekwube, 'Euthanasia' in MKO Edogiawerie & FO Edogiawerie, *'The Socio – Ethical Implication of Euthanasia in the Contemporary Nigerian Society'* (2015) An International Peer-reviewed Journal. P3

⁶ DE Hirsch 'Euthanasia: Is it Murder or Mercy Killing 'A Comparison of the Criminal Laws in the United States, the Netherlands and Switzerland' (1990) 12 *Loy A Int'l & Comp L Rev*, p 1

⁷ Black's Law Dictionary 654 (4th edition) 1968

⁸ J. Pearsall, Oxford Dictionary of English (3rd Edition, UK Oxford, Oxford University Press, 2010

⁹ B.S Maloy, *'The Simplified Medical Dictionary for lawyers (3rd edn, Chicago Caliaghm and company, 1960*

¹⁰ <https://www.bj.admin.ch>formen> The various forms of Euthanasia and their position in law 'Accessed on 17 November, 2024

¹¹ B. Agidigbi, *Euthanasia , Conceptual and Ethical Issues*, in Iroegbu P. & Echekwube A. (eds.) Kpim of Morality, Ethics, General Special and Professional (Ibadan , Heinemann Educational Books 2005) p 50

¹² J.S Ayobami, 'Euthanasia Socio-Medical and Legal perspectives' (2014) 4 *International Journal of Humanities and Social Sciences*, 1 p 254

suffering may in this way be eliminated.¹³ Whenever euthanasia is intended, death is not considered to be an enemy but a friend for the patient.¹⁴

2.2 Types of Euthanasia

Euthanasia has two major classifications which are determined by,

- i. The nature of the third party's actions (active and passive euthanasia)
- ii. The nature of consent (voluntary and non-voluntary)

2.2.1 Active Euthanasia

This entails taking active measures to cut the life of a terminally ill patient, or a patient undergoing excruciating pains. Active euthanasia is also described as the active acceleration of a good death by use of drugs etc., whether by oneself or with the aid of a doctor. Active euthanasia is a direct action designed to intentionally end the life of a human being. It constitutes motions that are direct, definite and certain with the sole purpose of intentionally terminating the life of the terminally ill or suffering patient.

2.2.2 Passive Euthanasia

Passive euthanasia is the deliberate act of allowing one to die by withholding or withdrawing of medical interventions, which artificially sustain life.¹⁵ The point here is that the person died not by direct killing but by taking away what they need to survive.¹⁶ This form of euthanasia, in view of the right of privacy, right to refuse treatment and respect for individual autonomy, has been upheld to be constitutionally allowed in the case of *Medical and Dental Practitioners Disciplinary Tribunal v*

¹³ F Basterra *Bioethics* (Spain Ediciones Paulinas, 1991) p179

¹⁴ D Thomasma & G. Graber, *Euthanasia: Towards an Ethical Social Policy* (New York The continuum Publishing Company, 1991) , p 178

¹⁵ <https://medicine.missouri.edu.faq> / Euthanasia-MU School of Medicine' Accessed 23 November, 2024.

¹⁶ W Sinnott-Armstrong, 'Moral dilemma,' in Frank Collins, 'To Die or Not to Die; Rethinking the Morality of Voluntary Euthanasia,' (2008) *loc cit*

*Okonkwo*¹⁷ The difference between active and passive euthanasia is that in active euthanasia something is done to end the patient's life, in passive euthanasia however, something is not done that would have preserved the patient's life¹⁸

2.2.3 Voluntary Euthanasia

Voluntary euthanasia is seen as the decision of an adult competent patient who wants to die and has expressed this choice. In voluntary euthanasia, respecting the patient's choice means killing them. The patient, in the case of voluntary euthanasia must have made an explicit request that his life be terminated either because the patient is suffering unbearable pain or is terminally ill.

A competent patient means a person who has a clear appreciation and understanding of the facts, the implications and the circumstances of his condition so as to be in position to consent to treatment.¹⁹ The method of ascertaining a patient competent enough to give consent to euthanasia or assisted murder is still hazy especially when the process of extensive evaluation might burden the terminally ill patient.²⁰

2.2.4 Non-Voluntary Euthanasia

Non-Voluntary euthanasia occurs when the person is unconscious or otherwise unable to make a meaningful choice between living and dying and an appropriate person takes the decision on their behalf. e.g. A very young baby or a person of extremely low intelligence.²¹

2.3 Euthanasia and Assisted Suicide differentiated

¹⁷ (2002) AHRLR 159

¹⁸ ibid

¹⁹ <https://pubmed.ncbi.nlm.nih.gov/> "Evaluation of Competence to Consent to Assisted Suicide 'Accessed 23 November 2024.

²⁰ ibid

²¹ <https://www.bbc.co.uk/overview> 'Forms of euthanasia-BBC Accessed 23 November, 2024.

These terms have been used interchangeably and been confused for each other. Assisted suicide is usually defined as a specific situation in which there is a suicide, that is, an act of killing oneself intentionally. Adding the word ‘assisted’ to suicide implies that another person provided assistance by supplying the means, the knowledge or both. It could be a physician. Euthanasia however, entails the direct administration of the means of death by the physician himself on the seriously sick patient²².

3.0 Literature Review

A lot of writers has offered their various perspectives on the issue of Euthanasia within the Nigerian context. Generally, euthanasia has been said to be unethical, not morally acceptable and illegal in Nigeria. Some writers have suggested that whereas Nigeria has outlawed euthanasia expressly, it has permitted indirect euthanasia.

Edogiawerie has cited Poverty and activities of government officials as situations that could lead to euthanasia in Nigeria,²³ otherwise, euthanasia is a taboo in Nigeria. Poor economic situations may cause family members and relatives watch helplessly as their loved one pass away as they could not afford to take care of the person or have exhausted financially, all efforts to save such one. Secondly, corrupt government officials encourage and practice euthanasia by the sheer fact that they withhold or divert funds meant for purchasing drugs and other medical supplies for hospitals and clinics to private and personal account or personal use.²⁴ These circumstances are indirectly admitting of euthanasia even though it is legally, morally and ethically reprehensible in Nigeria.

²² <https://www.maxim.og.nz> ‘What is the Difference between Euthanasia and assisted suicide? ‘Accessed 24 November 2024

²³ M.Edogiawerie, ‘The Socio-Ethical Implications of Euthanasia on the Contemporary Nigerian Society’ <https://core.ac.uk> Accessed 24 November, 2024.S

²⁴ ibid

Also, in reaction to a proposed bill legalizing 'Aid in Dying' law, for terminally ill patients by President Macron of France, some medical officers in Nigeria considered the chances of its replication in Nigeria slim. Olutunde²⁵, noted as follows:

'The possibility of being legalized in a deeply cultural and religious society like Nigeria is very slim. Even though euthanasia can be quite helpful to terminally ill patients who support the process. To adopt euthanasia, our values must change from what they are today, where people are deeply religious and don't want to accept that they are dying.'

Olutunde continued on the factors that could limit the adoption of the process in Nigeria thus:

'I worry that our level of assessment and evaluation is not at the point where things can be done critically. Euthanasia is not easy to access, even in those places where it is legal, a lot of evaluation has to be done to make sure that it is done correctly and in the right circumstances to ensure that it is not just a patient who may be depressed and seeking to end their life or someone tired of taking care of their family member and wanting to end their life. Nigeria lacks rigorous checks and balances to make it something we should legalize'

Chioma²⁷ shares a similar view on adopting of medically assisted Suicide laws in Nigeria. She noted that religious beliefs and high

²⁵ Head of Department Radiation, and Clinical Oncology at the University of Port Harcourt Teaching Hospital

²⁶ www.nigeiainfo.fm, 'Aid in Dying' Law: Can it be Replicated in Nigeria? Accessed 24 November 2024.

²⁷ A consultant paediatrician at University of Port Harcourt Teaching Hospital

potential for abuse as limiting factors.²⁸ The implication of the assertion of the reputable medical officers is that there is no moral, ethical or legal relevance of euthanasia in Nigeria as at today.

Oniha has weighed in on the position of the law on consent given by a terminally ill patient to his death²⁹. Oniha argued that where consent is given by any person as regards the orchestration of his death in Nigeria, such consent would not exonerate the party who carried out the act or omission which caused the death from criminal liability.³⁰ Much as there is recognition and legislation of assisted Suicide or euthanasia in certain countries, many other countries including Nigeria are yet to embrace, let alone legalize it.³¹ The socio –cultural environment will not permit the embrace of euthanasia. Therefore, by virtue of the extant laws in Nigeria, the fact that one gives consent to his death does not exculpate the killer from criminal responsibility.

Audu,³² reaffirmed the stance of the Association against euthanasia, emphasizing that it remains illegal in Nigerian medical practice.³³ It was noted that the introduction of euthanasia in the medical practice in Nigeria requires careful consideration because of the ethical, legal, religious, social and cultural diversities. Euthanasia as of today, in whatever form is illegal and punishable by the provisions of section 306 of the Criminal code in Nigeria.³⁴

²⁸ ibid

²⁹ <https://edojudiciary.gov.ng>> ‘Legality of Euthanasia and the Right to Die in Nigeria’ Accessed on 27 October, 2024

³⁰ <https://www.harlemsolicitors.com>>> ‘An Appraisal of Euthanasia (Mercy Killing) under the Nigerian Laws’ Accessed 24 November, 2024.

³¹ Ibid

³² The newly elected president of the Nigerian Medical Association made the statement in a press conference held at Abuja. At the 64th Annual Conference of the Nigerian Medical Association which took place at Cross River State from 5 to 12 May 2024,

³³ ibid

³⁴ <https://punching.com>> ‘Mercy Killing illegal in Nigeria, says NMA’ Accessed on the 23 of November, 2024

It was further noted that euthanasia is a complex and sensitive topic in medical practice and that the subject remains controversial with no clear global consensus.

4.0 The Legality of Euthanasia under Nigerian Law

The question is, does the law permit the practice of euthanasia in Nigeria? It appears that there is nothing under the criminal jurisprudence in Nigeria permitting the taking of life under any circumstance. The Criminal Code applies to the Southern States while the Penal Code applies to the Northern States including the FCT. Sharia Penal codes also applies to some Northern States like Zamfara State.³⁵ These penal enactments in Nigeria criminalizes euthanasia and assisted suicide³⁶.

4.1 Criminal Code and Relationship with Euthanasia

Under the Criminal Code, any form of killing of any person is unlawful unless such killing is authorised, justified or excused by law.³⁷ Euthanasia is a form of killing and therefore prohibited by this law. An offender of this law could be found guilty of murder or manslaughter depending on the facts and circumstances of the case.³⁸ The Criminal Code further states³⁹ ‘Except as hereinafter set forth, any person who causes the death of another, directly or indirectly by any means whatsoever is deemed to have killed that other person. Euthanasia (active or passive) is deemed killing by the law. The Punishment for the offence of murder in Nigeria is death while the punishment for manslaughter is life imprisonment.⁴⁰ The offence of murder was clearly defined in the Act⁴¹ and death caused by administering any stupefying or overpowering things for the purpose or causing death and death caused by wilfully stopping the breath of any person for the purpose of

³⁵ Sharia Penal Code Law No 10 of 2000 of Zamfara State

³⁶ <https://www.ajol.info> > ‘A Critical Appraisal of Euthanasia under Nigerian Laws

³⁷ Criminal Code CAP ‘C38, LFN 2004. S.306

³⁸ Ibid s. 315

³⁹ Ibid s.308

⁴⁰ Ibid s. 319

⁴¹ Ibid s. 316

killing the person was criminalised as murder. It is expressly provided that it is immaterial if the offender did not intend to hurt the person killed.

Under the Criminal Code, a person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.⁴² Whoever accelerates the death of another by whatever means is deemed to have killed the person under the Law in Nigeria.

Furthermore, the Criminal Code specifically made aiding suicide an offence and the punishment is life imprisonment.⁴³ Any person who procures another to kill himself or counsels another to kill himself and thereby induces him to do so, or aids another in killing himself is guilty of felony and is liable to imprisonment for life,

Under the law, consent to death is not a defence. Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.⁴⁴

This position of the Nigerian legislations criminalizing euthanasia was upheld in the case of *State v Okezie*,⁴⁵ where the accused who in a bid to test the efficacy of some charms on the deceased with the consent of the deceased, shot him in the chest, as a result of which he died, was convicted of murder.

4.2 Penal Code and Relationship with Euthanasia

The Penal Code also created the offence of murder and manslaughter. The Penal Code refers to murder as Culpable Homicide punishable with

⁴² Ibis s. 311

⁴³ Ibis s. 326

⁴⁴ Ibid s.299

⁴⁵ (1972) 3 ECSLR 419

death,⁴⁶ and manslaughter as culpable Homicide not punishable with death.⁴⁷ Under the Penal Code, abatement of suicide of persons lacking in legal capacity such as those under the age of 18, insane person, a delirious person, any idiot or any person in a state of intoxication in committing suicide is criminalized and made punishable with death.⁴⁸ Also, abatement of suicide generally is made an offence punishable for a term which may extend to ten years in addition to a fine.⁴⁹ In consonance with the provisions in the criminal code, the penal code provides that whoever administers to or causes to be taken by any person or any stupefying, intoxicating or unwholesome drug or things with intent to cause hurt to that person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment for a term which may extend to 10 years and shall be liable to a fine.⁵⁰ Under the penal code,⁵¹ any form of killing (except one exempted) under the Nigerian law, attracts death Penalty.

It is therefore without doubt that the Nigerian Criminal Jurisprudence expressly forbade any form of killing including euthanasia.

4.3 The 1999 Constitution in Relationship with Euthanasia

The Constitution⁵² is the grundnorm. Right to life is a constitutionally guaranteed right,⁵³ which shall not be deprived intentionally save, in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. There are only three situations expressly provided by the constitution in which a person's

⁴⁶ Penal Code Law CAP 89 s.221

⁴⁷ Ibid.s.222

⁴⁸ Ibid s 227

⁴⁹ Ibid s.228

⁵⁰ Ibid s. 249

⁵¹ Ibid. s220 and 221

⁵² 1999 Constitution of the Federal Republic of Nigeria

⁵³ Ibid. S.33

right cannot be said to have been denied⁵⁴ Euthanasia was not included. The African Charter on Human and People's Right also guarantees right to life to all humans⁵⁵

It has been argued that section 33(1) of the Constitution cannot be read in isolation but must read together with section 34 which guarantees Right of dignity of Human person and section 35 which guaranteed Rights to personal liberty. Both sections of the constitution borders on the quality of human life and therefore held ancillary to section 33 (1) of the Constitution.⁵⁶ The issue to explore here is whether the outright grant of right to life connotes also the grant of the right to death. In other words, would the right to life guarantee the holder of that Right the right to decide when to die by the instrumentality of euthanasia? This has been a subject of controversy by scholars over the years. Some have asserted that euthanasia is not a derogation from the right to life under the Nigerian Legal system.⁵⁷ Others have contended that the Nigerian Constitution which provides for every person's right to life and sets out circumstances under which a man's life can be taken does not include euthanasia or mercy killing as one of those circumstances.⁵⁸ Others alike in analysing the concept of right to die, held the view that the right to die exist as a necessary adjunct to right to life.⁵⁹

This paper avers that it is only the giver of life that has the right to take it. However, the one upon whom the right is bestowed can decide how best to enjoy same as long as he does not by enjoying the Rights

⁵⁴ Ibid s.33 (a) –(c)

⁵⁵ African Charter on Human and People's Rights 1981, Article 4

⁵⁶ M. Aniekam, 'Status and limit of Human Rights: Right to Life under Nigerian Constitution, 1999 with focus on Rural Women in Akwa Ibom State'(2014) S (26) *Mediterranean Journal of Social Sciences*, p158

⁵⁷ Ibid

⁵⁸ S.J. Ayobami, 'Euthanasia: Socio-Medical and Legal perspective'(2014) 4 , *Internal journal of Humanities and Social Science*, 257

⁵⁹ <http://pmc.ncbi.nlm.nih.gov>PM> 'Euthanasia: Right to life vs right to die- PMC' Accessed on 25 of November, 2024.

interfere with the rights of others to freedom of thought, conscience and right to mental well-being. It also within such a person, to choose to either enjoy his said rights or to waive them. Therefore, a person who chooses euthanasia can simply be said to have waived his right to life. Euthanasia therefore has no legal relevance in Nigeria. It is expressly prohibited by the relevant laws in Nigeria.

5.0 Euthanasia and Medical Ethics

While advocates of euthanasia view doctors as rescuers from despondent situations, opponents argue that giving such a right to doctors would destroy the relationship between physicians and their patients as the patients will no longer trust their doctors.⁶⁰ It is argued that euthanasia violates codes of medical ethic which has existed since antiquity. Some ethical questions raised with regards to the practice of euthanasia are; should the physician aid a patient in bringing his life to an end? Does the act tally with the Physicians professional obligation? Is the practice acceptable to the society in which the physician live? Is it legal to do so or does it attract criminal responsibility?

The Hippocratic Oath is one of the oldest binding document in history.⁶¹ There are two versions of the Hippocratic Oath, the classical version and the new version. The original oath included an introduction by which physicians swore to gods and goddesses to respect such principles as beneficence, non – maleficence and prohibition against abortion, euthanasia and sex with patients.⁶²

⁶⁰ T.U Uzokwe, 'Right To Die: A Comparative Review'(2012) 6 *NJI Law Journal* p 17

⁶¹ <https://einsteinmed.edu>> 'the History of the Hippocratic Oath: Outdated, inauthentic, and Yet Still Relevant 'Accessed 14 November, 2024.

⁶² <https://abort73.com>>abortion. 'The Case Against Abortion: Abortion and the Hippocratic Oath' Accessed on 23 of November, 2024.

Woodbury noted that the principles of patient autonomy and social justice were noticeably absent in the Hippocratic Oath.⁶³ Thomas Percival amended the Oath in the 1700s. Creating the modern version of the oath, which is said to inculcate a vision of the physician as a 'gentleman'⁶⁴ The Hippocratic Oath forbids the medical practitioner from taking the life of his patients. On the contrary, the oath requires the physician to save life at all cost. In parts of the Oath, the Physician undertakes.....most especially must I thread with care in matters of life and death.' The Geneva Declaration as well as the Nigerian Code of Medical Ethics also provides: I will apply, for the benefit of the sick, all measures that are required. I will maintain the utmost respect for human life⁶⁵

The ethics of the medical profession requires the physician neither to persuade nor interfere with the patient's choice and autonomy by indirectly influencing their decision. Without such autonomy or self-government, the individual's welfare is at the mercy of others, including the courts and government of the State.⁶⁶ This requirement of consent is constitutionally guaranteed and further enshrined in Order 16 of the Code of Medical Ethics.⁶⁷ The point however is that euthanasia is never part of the options made available to the patient on requiring the consent. How then can a patient choose 'end of life measures 'when same is not made available to him, especially when neither the laws of Nigeria nor the medical ethics allow the practice of euthanasia. This right to informed consent has been described as a corollary to the right to refuse treatment as was affirmed in *Medical and Dental practitioners*

⁶³ E. Woodbury, 'The fall of the Hippocratic Oath: Why the Hippocratic Oath should be Discarded in Favour of a Modified Version of Pellegrino's Precepts' (2012) 6, Georgetown University Journal of Health Science, p 10

⁶⁴ *Ibid*

⁶⁵ The 2nd General Assembly of the World Medical Association of 1948, which adopted the Declaration of Geneva, amended.

⁶⁶ P. Lewis, ; *Assisted Dying and Legal Change* (Oxford University Press 2007) p. 12

⁶⁷ Code of Medical Ethics of Nigeria 2004

*Disciplinary Tribunal v Okonkwo.*⁶⁸ Here, one Mrs Martha Okorie, a twenty –nine year old woman who belonged to the Jehovah witnesses, a religious sect that does not believe in blood transfusion. During the process of delivery, she had some complications that required blood transfusion. However, she refused, citing her religious beliefs. Consequently, a written directives was signed by the husband and the Uncle. Dr Okonkwo (Def) heeded this belief. After explaining the danger of refusing to take blood transfusion to both couples, coupled with firm disapproval of taking blood transfusion from the couple, the doctor proceeded with other treatment. Five days later, the patient. The doctor was summoned to appear before the medical and dental practitioners Tribunal. The case against the doctor is that he did not exercise due care and diligence in the exercise due care and diligence in the handling and treatment of the deceased's case according to the medical practitioner's rule of professional conduct. The Doctor was suspended from practice. On Appeal, the Tribunal's verdict was set aside. The Respondent proceeded with to the Supreme Court where the court ruled based on sections 37 and 38 of the 1999 Constitution which deal with individual autonomy and held that the doctor acted upon individual autonomy and self-determination.

It is evident that the decision in this case contradicted with the Rule and professional conduct for Medical and Dental practitioners in Nigeria⁶⁹ which provides that 'one of the cardinal points in the physicians Oath is the preservation of life.' The idea of euthanasia or mercy killing runs contrary to medical ethics and as such has no ethical relevance in Nigeria. The implication of the decision in *Medical and Dental practitioners Disciplinary Tribunal v Okonkwo*⁷⁰ is that an individual can waive his right to life under the idea of self – determination.

⁶⁸ (2001) 7 NWLR (Pt 711) 206 SC

⁶⁹ Rule and Professional Conduct for Medical and Dental Practitioners in Nigeria. S.6 (2001) 7 NWLR (Pt. 711) 206 SC 8

⁷⁰ *Supra*

6.0 Euthanasia and Morality

Morality {from the latin word ‘moralitas, ‘manner, character, proper behaviours’) is the categorisation of intentions, decisions and actions into those that are proper or right and those that are improper or wrong. Morality can be a body of standards or principle derived from a code of conduct from a particular philosophy, religion or culture, or it can derive from a standard that is understood to be universal. Morality may also be specifically synonymous with ‘goodness’ ‘appropriateness’ or ‘rightness’⁷¹

The morality of euthanasia is a complex topic that involves many different perspectives, including religious beliefs, arguments about sanctity of life and whether it’s acceptable to kill an innocent person. Most religions disapprove of euthanasia. Some of them absolutely forbid it.⁷² The Roman Catholic Church, for example is one of the most active organisations in opposing euthanasia. Virtually all religions state that those who become vulnerable through illness or disability deserve special care and protection and that proper end of life care is a much better thing than euthanasia. These religious opposition stems from the fact that God has forbidden euthanasia. The command from a supreme in the Holy Scriptures says ‘you must not kill’. There is argument that human life is sacred and should be protected and preserved, whatever happens. They saw life as being special⁷³ because man is made in the image of God and so have value and dignity and it does not depend on the quality of a particular life. Taking a life therefore violates that special value and dignity, even if its one’s own life and it doesn’t matter if such life is filled with pain and suffering.

⁷¹ <https://en.wikipedia.org> ‘Morality ‘Accessed 23 November, 2024

⁷² <https://www.bbc.co.uk/ethics> ‘Religion and Euthanasia-BBC Accessed 23 November, 2024

⁷³ *ibid*

Some eastern religions⁷⁴ have the same conclusion but approached it from a different perspective. Hinduism and Buddhism see mortal life as part of a continuing cycle in which we are born, live, die and are reborn over and over again.⁷⁵ The ultimate aim of each being to get free of this cycle, and so be completely liberated from the material world. During each cycle of life and death human beings make progress towards their ultimate liberation. How they live and how they display a vital part in deciding what their next life will be, and so in shaping their journey to liberation⁷⁶. Shortening life interferes with the working out of the laws that govern this process (the laws of karma), and so interferes with a human being's journey to liberation. Killing living things is therefore abhorred even if they want to die.

As we have seen above, the morality of euthanasia has been the concern of philosophers over the years. The idea of being 'better off dead' has been criticised. Life is inviolable and a person can never be better off dead.⁷⁷ Other Philosophers have argued that a person can be better off dead when the life that remains in prospect for that person has no positive value for him/her.⁷⁸ Others have also contended that God is the only one reserved the autonomy to give and take life at will, irrespective of how decomposed, deteriorated or degraded life may be. They argue that the purported act of 'mercy' by physicians which involves ending

⁷⁴ *ibid*

⁷⁵ <https://www.khanacademy.org> > 'Hindism and Buddhism, an introduction' Accessed 17 of November, 2024

⁷⁶ *ibid*

⁷⁷ E. Jackson & J. Keown, *Debating Euthanasia* (Oxford Hart Publishing, 2012) p.11, J. Keown, *Euthanasia Ethics and Public Policy: An Argument Against Legislation* (New York Cambridge University Press 2002) p. 20

⁷⁸ J. McMahan, *The Ethics of killing: Problems at the Margin of Life* (Oxford: Oxford University Press, 2002) p.12; N. Bradley, 'Well-being and Death' (Oxford, Clarendon Press 2009), p 30

the lives of their patients is an attempt to play God.⁷⁹ Euthanasia therefore does not have any moral relevance in Nigeria.

7.0 Recommendations and Conclusion

Inherent in the concept of ‘informed concept’ is a total awareness of the issues at stake as regards the failing health of the patient. One wonders what the state of mind of a patient going through excruciating pain will be or even the mind of his relatives as regards making this informed consent? What is the scientific means of evaluating the quality of the consent garnered from either the sick patient or his relatives in Nigeria? The answer unfortunately is none. The consequence is that if this proper evaluation is not methodically carried out, such consent to die could amount to making a permanent decision in a temporary situation.

It is therefore recommended that the government should invest heavily in the ‘home’ for the suffering as part of its welfare scheme. This could be a way of directly impacting the life of the citizens. Where a family is unable to care for the sick emotionally or financially, such sick persons should be taken care of by the state until they recover or pass on if inevitable.

Secondly, it is to be noted that the patient’s right to self-determination or autonomy is not absolute. The patient’s right stops where the right of another begins. The physician or whoever is called upon to assist or aid the dying has right to freedom of thought and conscience. He has a right to live with himself. He also has the right to adhere to the tenets of his religion. The patient’s right to self-determination therefore is not sacrosanct. The competing rights should be weighed before any decision on euthanasia should be given.

⁷⁹ M. Hassan, ‘Euthanasia: Should Humans be given Right to Play God?’ (2008) Serendipity, available at <https://seredipstudio.org> exchange. Accessed on 13 November, 2024.

Government should heavily subsidize drugs so that it will be within the reach of the common man and any form of diversion of funds meant for the supply of drugs at the hospital or any attempt that increases the price of these drugs out of reach should be criminalized in Nigeria. A death penalty is suggested as such act a form of indirect euthanasia

Good governance and careful articulation of policies that will alleviate poverty is advocated. This will ultimately make life worth living. At the root of euthanasia is hopelessness and thoughts of been ‘better off dead’ Government should find a way of making life worth living and worth fighting for instead of succumbing to death.

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