

## THE RIGHT TO DIE: THE PLACE OF RELIGION, ETHICS AND THE LAW\*

### Abstract

*Life is the state of being alive; it is a prominent feature of any living being. There is a popular saying by some people that a life of pain, sorrow, unhappiness, anguish or acute pain is not worth living. For this set of people, death is perceived as a sweet and welcome relief. Death on the other hand is a journey every mortal must embark on. However, when it is prayed for or hastened because of the acute pain experienced, it changes the colouration of everything and tampers with the cycle of life which naturally starts with life and ends in death. The issue of 'right to die' and end-of-life-decisions deeply rooted in the concept of euthanasia has generated so much heated debates raising ethical, legal, religious issues among the dying, their care givers, the government and society at large. The concept of euthanasia is a debatable one, so many questions are raised; Does the government have the right to prolong one's life by artificial means whether one desire it or not? What exactly does life entail? Does it mean mere existence? Or does it include a meaningful life? These are some of the issues that are considered. The overall objective of this paper is to provide a better understanding of the concept as euthanasia will be considered from the religious, ethical, legal and global perspectives.*

**Key words:** *Euthanasia, Right to die, PVS*

### 1. Introduction

Life is the characteristic state or mode of living, the experience of being alive. It is sacrosanct, sacred and should not be taken away at will by any person except in accordance with the law of the land.<sup>1</sup> Various state constitutions<sup>2</sup> and international conventions<sup>3</sup> have in place many provisions to preserve, protect and safeguard the right to life. Apart from the right to life which is protected and guaranteed, advocates of a corresponding right to die have demanded legal protection for this class of right. Since 'death' and 'life' are usually in tandem, if there is a 'right to life', there should be an inherent 'right to die' if the holder of such right decide to waive his right to life. The right to die is a major concern for the critically or terminally ill patients, health practitioners, policy makers and the public at large, this is particularly fuelled by the different perceptions people have towards death and recent advancement in medicine. The right to die which is encapsulated in the concept of euthanasia has continued to generate heated debate and arguments; raising religious- cum –medico-legal issues. This paper will look into the controversies surrounding the right to die vis-à-vis the concept of euthanasia, the global trends in its practice and the religious perspective making recommendations where appropriate. However, before examining the controversies surrounding the concept, it is appropriate to examine the meaning of the word euthanasia and all the concepts surrounding it.

### 2. The Concept of Euthanasia

The word 'euthanasia' is kind of ambiguous, having several possible meanings hence, it is proper to explain it in certain and clear terms whenever it is used. Etymologically, the word is derived from the Greek word '*euthanatos*' meaning '*good death.*' It is the intentional killing by act or omission of a dependant human being for his or her alleged benefit.<sup>4</sup> It could mean the act of ending the life of a person from compassionate motives when he is terminally ill or when his pain or suffering has become

---

\*By **Itunu KOLADE-FASEYI LL.B(Hons)(Nigeria) BL, LL.M (Nigeria)**, Legal Practitioner and Research Analyst at Gilgal Partners, 47 Agboola Ajumobi Street, Magodo Phase II, Lagos State, Email: itunuehinmowo@gmail.com, Phone No.: +2348139012912

<sup>1</sup> See *Commonwealth v. Mink*(1887) 123 Mass 422, 429 (1877) where the Supreme Court of Massachusetts held that: 'The life of every human being is under the protection of the law and cannot be lawfully taken by himself or by another with his consent except by legal authority'

<sup>2</sup> See Section 33(1) 1999 Constitution of Nigeria

<sup>3</sup> See Article 3 Universal Declaration Of Human Rights 1948, Article 4 African Charter on Human and Peoples' Right 1981 (Entry into force in 1986), Article 2 European Convention on Human Rig1950 hts (Entry into force in 1953)

<sup>4</sup> Accessed from [www.euthanasia.com](http://www.euthanasia.com) on 1<sup>st</sup> December, 2016.

unbearable.<sup>5</sup> According to Manson and McCall Smith, euthanasia is a quiet, painless death and intentionally putting to death by artificial means of persons with incurable or painful diseases.<sup>6</sup> From the above, the term can be said to imply that the means or method adopted for death are painless thus tagging it 'good death' and that the death sought would be a relief from an intolerable condition of living so that death and not merely the means through which it is achieved is good. The primary aim of euthanasia as postulated by pro-euthanasia advocates is to ease the pain and suffering of the patient who is confronted with an imminent death without any foreseeable medical solution. The definitions in the Black's Law Dictionary and Chambers Century Dictionary lay credence to this assertion where the term euthanasia was defined as 'The act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition especially a painful one for reasons of mercy killing.'<sup>7</sup> It is also seen as 'an easy mode of death; the act or practice of putting painlessly to death especially in cases of incurable suffering.'<sup>8</sup> A general overview of the concept of euthanasia and the definitions aforementioned seem to suggest that giving the patient a 'quiet, painless death' is of utmost importance not necessarily the mode or method employed in achieving that aim. It is on this premise that the different categories of euthanasia which has evolved over the years will be examined.

### 3. Classification

- a) Active Euthanasia is the most controversial form of euthanasia where an agent (usually a health care practitioner) not only provides the means of death but also carries out the final death-causing act. An example was the euthanasia performed on a patient with Lon Gelin's Disease by Dr. Jack Kevorkian, a Michigan physician. The patient was afraid the advancing disease would cause him to die a horrible death and opted for a quick painless exit from life. The doctor injected controlled substances into the patient, thus causing his death. Dr Kevorkian was found guilty of 2<sup>nd</sup> degree murder in 1999.<sup>9</sup> Active euthanasia is legal in Netherlands.<sup>10</sup>
- b) Physician Assisted Suicide may be considered a form of active euthanasia which involves the intentional act of providing a person with the medical means or medical knowledge to commit suicide. An example is prescribing lethal dose of sleeping pills to knock the patient out, supplying carbon monoxide gas to the patient so that he can easily terminate his own life.
- c) Passive Euthanasia occurs when a terminally ill patient is allowed to die either by withholding or withdrawing life sustaining support or life prolonging treatment. It involves hastening death by altering some form of support and letting nature take its course. Example include unplugging the respirator or feeding tube and allowing a patient dehydrate or starve to death or not delivering Cardio-pulmonary resuscitation and allowing a patient whose heart has stopped to die.
- d) Voluntary Euthanasia is performed on a competent and consenting terminally ill person, it is usually in the form of an advanced directive before patient becomes incapacitated or consent may be prior to the development of illness or during its course. What makes it voluntary is the fact that on his or her own volition, before he became incapacitated, the patient states clearly in writing how his or her medical treatment during the debilitating state of his illness should take a particular form.<sup>11</sup> In countries where it is legal like Belgium, Luxemboug, Netherlands, it is important that consent be both verbal and written and the patient is not pressurised by caregivers or relatives in giving the said consent.
- e) Involuntary Euthanasia is the euthanasia performed on a person who has not explicitly requested aid in dying. The patient here is usually competent, non consenting adult. Advocates of involuntary euthanasia believe that/put up the defence that where life has become convulsively valueless; when the patient is in a permanent or persistent vegetative state and may never regain consciousness, then what is best for such patient is euthanasia.

---

<sup>5</sup>V Goel, 'Euthanasia- A dignified end of life!' (2008) 3(12) *International NGO Journal* [www.academicjournals.org/journal/INGOJ/article-full-text-pdf/3B0D3B437042](http://www.academicjournals.org/journal/INGOJ/article-full-text-pdf/3B0D3B437042) accessed on 4 December 2016.

<sup>6</sup> J.K Manson and R.A McCall Smith, *Law and Medical Ethics* (London: Butterworths, 1991) p. 319

<sup>7</sup> B A Garner, (ed.) *Black's Law Dictionary*, 9<sup>th</sup> edition( USA; St Paul Minn- West Publishing Company. 2009)

<sup>8</sup>A M Macdonald (ed.) *Chambers Twentieth Century Dictionary*.

<sup>9</sup> S B Odunsi, 'Euthanasia under Nigerian Law- A Call for Change' (2001) 5(1) *NLPJ*, 61

<sup>10</sup> By virtue of Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002

<sup>11</sup> B A Omipidan, 'Euthanasia: The 21<sup>st</sup> Century Culture of Death' (2011) 7(1) *NBJ*

- f) Non Voluntary Euthanasia: As against involuntary Euthanasia, for non voluntary euthanasia, for non voluntary euthanasia, the patient is usually incompetent and non consenting. Non voluntary euthanasia is usually justified by doctors and health practitioners who believe the patient would not want to continue suffering in their present condition others are of the view that Non Voluntary Euthanasia is permissible when the patient had communicated their desire to have euthanasia performed on them at some earlier time (for example in the form of living will or advanced directive) when they were alert and competent<sup>12</sup>.

#### **4. The Religious Perspective to the Practice of Euthanasia**

Religion is the strong belief in a supernatural power(s) that control human destiny. It is a conceptual belief rooted in the believer's conscience the practice of which may inspire or hinder the flow of thoughts of prospective believers or heathens. The debate on the propriety or otherwise of the practice of euthanasia took a new dimension as religious adherents hinge the concept on the sanctity of life doctrine; that life is sacred and belong to God, no matter the pain or suffering experienced, taking one's life (euthanasia) should never be an option to be considered.<sup>13</sup> While holding the sanctity of life doctrine in high esteem,<sup>14</sup> most Christians believe human beings have no justification to end life as they cannot create one. To them, the cycle of life starts with being born and ends in death<sup>15</sup> and that cycle should never be tampered with. Their reasoning is rooted in the belief that life originates from God and therefore beyond the reach or control of mere mortals. A close look at the Catholic Church standpoint reveals euthanasia as morally wrong; the church regards any law permitting euthanasia as an intrinsically unjust law holding that 'nothing and no one can in anyway permit the killing of an innocent human being, whether a foetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying'<sup>16</sup> Life is the most basic gift of a loving God, a gift we have stewardship but not absolute dominion. For them it is an aberration to claim to have a right to die as euthanasia in whatever form it comes, is a rejection of God's sovereignty over life and death. In its place, proposal for palliative healthcare for the dying or terminally ill patient is put forward. For the unorthodox or liberal Christians, the preservation of life or prolonging the death of terminally ill patient is not advocated. It appears that for these sects of Christians, withdrawal or withholding of treatment is only permissible when continuation of treatment on such patient will yield no visible result or if there is no hope of recovery.

The Muslims' also recognize and lay emphasis on the sanctity of human life; this principle of Islamic medicine is derived from the Al-Quran: 'Whosoever save a human life, save the life of the whole mankind.'<sup>17</sup> In Islam, all forms of euthanasia is prohibited and forbidden. There are quranic teachings and passages<sup>18</sup> to the fact that man is the vicegerent of Allah on earth and he who commits suicide whether assisted or not run away from his obligation to God. It is also widely believed that God owns life; as he starts it from conception and only Him will end it through natural death at the appointed time.<sup>19</sup> However, an Islamic group, The Islamic Medical Association of North America (IMANA), holds the view that 'when death becomes inevitable, as determined by physicians taking care of terminally ill patients, the patient should be allowed to die without unnecessary procedures.'<sup>20</sup> They do not believe in prolonging the misery of dying patients who are terminally ill or in a persistent vegetative state. For them, such artificial life support can be withdrawn or unplug at any time. However, it is pertinent to note that while turning off such life support, hastening death with the use of certain pain-

---

<sup>12</sup> M Warnock & E Macdonald, *Peaceful Death: Is there a case for assisted dying?* (Oxford: Oxford University Press, 2008) p. 16

<sup>13</sup> This position perhaps explains the reaction of King David in the bible who ordered the death of a soldier who lied about aiding King Saul in Dying. Further see 2 Samuel 1; 9-10

<sup>14</sup> [www.religioustolerance.org/euthanas.html](http://www.religioustolerance.org/euthanas.html)

<sup>15</sup> Ecclesiastics 3:2 'A time to be born and a time to die....'

<sup>16</sup> [www.religioustolerance.org/euthanasia](http://www.religioustolerance.org/euthanasia)

<sup>17</sup> Quran 5: 32

<sup>18</sup> See Surah Al-Hajj 22:66, Surah An Nisa 4:29

<sup>19</sup> Quran 40:68, Quran 10:56, Quran 3:145

<sup>20</sup> Sahid Athar et al: Islamic Medical Ethics: The IMANA Perspective. Journal of the Islamic Medical Association of North America. 12(4), Oct-Dec 2005 at page 234

killing drugs is not allowed as this would equate to euthanasia. It is important to note that the sanctity of life principle postulated by religious adherents has manifested in some judicial pronouncements. In *R v Carr*<sup>21</sup> it was stated that: 'However gravely ill a man may be...he is entitled in our law to every hour....that God has granted him. That hour or hours may be the most precious and most important hours of a man's life. There may be business to transact, gifts to be given, forgiveness to be made, bits of unfinished business which have to be concluded.' Though decision to end life is usually treated on a one-by-one-basis, more often than not, it is left to the patient but where such patient cannot give an informed consent, his doctor or next of kin can.

### **5. Medical Ethics and the Global Trends in the Practice of Euthanasia**

Medicine is the science and art of preserving health and treating illnesses. It is a science because it is based on the knowledge gained through careful study and experimentation and an art because of the skill medical practitioners use when applying their knowledge with patients. Technological advancement in medical science has brought with it various ethical challenges- like with the introduction of life prolonging treatment or life support machines, when is a clinically dead person said to have died?

There are countries in the world<sup>22</sup> where the practice of euthanasia have received legal backing with the necessary legal machinery put in place for its implementation while in others<sup>23</sup> it is illegal, outright murder and clearly sanctioned. In Netherlands for example, the right to refuse medical treatment is generally acknowledged and the idea that medical interventions should not be performed at all cost is popular. An euthanasia law was passed in 2002<sup>24</sup> making the practice legal and allowing people to end their life with dignity after having received every available type of palliative care with no visible improvement. Some of the highpoints of the Act is that requests for euthanasia must come from the patient, be entirely free, voluntary, well considered and persistent. Patient must be experiencing intolerable sufferings (Physical and mental) with no prospect of improvement and with no capable solutions to alleviate his situation. The euthanizing act must be performed by a physician after consultation with an independent colleague who has experience in this field.<sup>25</sup> In September 2004, another twist was added to the practice of euthanasia when the Groningen Protocol was developed and passed with its provisions extending euthanasia to babies and children with deformities.<sup>26</sup> Though the Protocol was severally criticized for introducing a new culture of death, it is worthy of note to state that the Protocol sets a minimum standard of practice for doctors to responsibly end the life of severely ill newborns or babies with deformities or with a hopeless prognosis and unbearable suffering most of whom are infants with severe form of spina bifida.<sup>27</sup> In the United States of America, by virtue of Article 210.5 of the American Model Penal Code, helping another to commit suicide is a criminal act and thus illegal. Active euthanasia is illegal in most of the states; patients however retain the rights to refuse medical treatment even if their choices hasten their deaths (passive euthanasia). However, in the state of Oregon by virtue of Death with Dignity Act,<sup>28</sup> Physician Assisted Suicide is legal when patient is in intractable pain; any other form of euthanasia is illegal.

The earliest known issue of euthanasia in Britain can be traced to January 1936 when King George V who was suffering from cardiorespiratory failure was given a fatal dose of morphine and cocaine by his personal physician, Lord Dawson to hasten his death, this was kept secret for over fifty years.<sup>29</sup> Today in Britain, euthanasia has not been legalized but the government has published guidelines regarding situations when assisting in a suicide will amount to a crime or not. In the United Kingdom, voluntary

---

<sup>21</sup> *The Sunday Times* (of Britain) 30 Nov, 1986. Pg 1 per Mars-Jones J.

<sup>22</sup> Netherlands, Belgium, Luxembourg

<sup>23</sup> Mexico, Thailand, Estoria, California

<sup>24</sup> Termination of Life on Request and Assisted Suicide( Review Procedure) Act 2002

<sup>25</sup> Ibid; see Article 20B

<sup>26</sup> A B Jokowitz and Glicks. 2006 'Groningen Protocol: Another Perspective' *Journal of Medical Ethics*, 32(3) pp.157-158

<sup>27</sup> A not uncommon congenital defect in which a vertebra is malformed

<sup>28</sup> See section 2 (1) of the Oregon Death with Dignity Act

<sup>29</sup> [www.nytimes.com/1986/11/28/world/d](http://www.nytimes.com/1986/11/28/world/d)

euthanasia is treated as murder and the penalty for such is life imprisonment. The law makes no distinction whether the person assisting is a doctor or whether the person assisted is dying. In *R v. Cox*,<sup>30</sup> Dr. Cox literally followed the instructions of his patient one Mrs. Boyes who had rheumatoid arthritis and in constant pain. He injected her with strong dosage of potassium chloride which eventually caused her death. Though Mrs. Boyes' family members considered that the doctor had provided a merciful release for her, the jury thought otherwise and after convicting him, the judge regarded the act of injecting Mrs. Boyes with potassium chloride as the cause of death and a breach of the doctor's 'unequivocal duty' towards her. Dr Cox was eventually given a suspended prison sentence. In the case of *Airedale National Health Service Trust v. Bland*<sup>31</sup> the court decided the legality or otherwise of discontinuing medical assistance and all lifesaving treatment to enable a patient who has been in a persistent vegetative state for three years to end his life with dignity. The court characterized withdrawal of treatment as an omission and that the hospital would only be culpable if there was a duty to act which they failed to carry out. Since continuation of treatment would not improve Bland's condition, the treatment is effectively useless because the condition will never improve. According to Lord Goff,<sup>32a</sup> patient's right to refuse medical treatment could be extended to incompetent patients in cases where they have expressed their wishes at an earlier date.<sup>33</sup> He however added that such consent should be relevant when the medical decision has to be taken. Although Professor Keown<sup>34</sup> is of the view that the decision in Bland's case amounted to permission to intentionally cause the death of an incompetent patient by omission, it is the opinion of this writer that since there was no hope of Bland ever regaining brain functions, continuation of treatment would lead to futility.

There are several notable cases of patients in persistent vegetative state being kept alive by artificial means: Terri Schiavo,<sup>35</sup> Tony Nicklinson,<sup>36</sup> Brittany Maynard,<sup>37</sup> Aruna Ramchandra Shanbaug etc. Of particular interest is the case of Aruna Shanbaug who was one of the comatose patients for the longest duration of time. She was sexually assaulted while at work at King Edward Memorial Hospital, Mumbai in 1973 and remained 'locked in' for 42 years. Although the Indian Supreme Court had allowed passive euthanasia for patients in persistent vegetative state, her caregivers at the hospital refuse the mercy killing of Aruna. Her case served as a test-run for the debate on euthanasia: following the petition by Pinki Virani as her next friend, the Supreme Court laid down guidelines for passive euthanasia which includes the filing of petition for passive euthanasia in the court after which the Chief Justice of the court will constitute a bench of at least two judges. The judge(s) are to seek the opinion of doctors (neurologist, psychiatrist, and physician) nominated by the bench. Notices of hearing should be given and issued to the state and close relatives at the end of which verdict entered is made public. The practice of euthanasia in Australia was not as successful as that of Netherlands. Euthanasia was legalized in 1995 but repealed within six months due to illegal and unauthorized euthanasia practice. In Canada, it is worthy to note how the laws on euthanasia have evolved through the years from *Rodriguez v. AG British Columbia*<sup>38</sup> to *Carter v. AG Canada*.<sup>39</sup> In the former case, the prohibition of assisted suicide was challenged as contrary to the Canadian Charter of Rights and Freedoms by a terminally ill woman suffering from Amyotrophic Lateral Sclerosis. She applied to court for an order that section 241 of the Canadian Criminal Code<sup>40</sup> be declared invalid on the ground that it violates her rights under Sections

<sup>30</sup> (1992) 12 B.M.L.R 38

<sup>31</sup> (1993) 1 All ER, 821

<sup>32</sup> Op cit 866 e-f

<sup>33</sup> This is a clear example of advance directive or living wills. See the case of *Clarke v. Hurst* 1992 (4) SA 630 D

<sup>34</sup> Keown. *Euthanasia, Ethics and Public Policy: An Argument against legalization*. 2002. New York: Cambridge University Press

<sup>35</sup> She collapsed and went into vegetative state and remained 'locked in' for 15 years, after series of legal battles her feeding tubes were disconnected and she died in March 2005.

<sup>36</sup> Nicklinson had stroke in 2005 that left him 'locked in' for seven years. He fought for the right to legally end his life in court but his application for euthanasia was denied. Nicklinson later starved himself to death 6 days after the court ruling on his euthanasia application. See further [www.bbc.com/news/uk-england-193417222](http://www.bbc.com/news/uk-england-193417222)

<sup>37</sup> Was assisted to die on 21/11/14. See [www.independent.co.uk](http://www.independent.co.uk)

<sup>38</sup> (1993) 3 S.C.R 519

<sup>39</sup> (2015) SCC 5, (2015) 1 SCR 33

<sup>40</sup> 'Everyone who (a) counsels a person to commit suicide or (b) aids or abets a person to commit suicide whether suicide ensues or not is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14years.'

7,12 and 15 of the Charter. While dismissing her application, the court held that respect for life transcends individual, religious and cultural values. However, in the latter case, the reasoning of the court was that the sanctity of life is no longer seen to require that human life be preserved at all cost and by implication, an individual's choice about the end of her life should be respected.

The practice in South Africa is somewhat peculiar this is because the known cases are High court decisions peculiar to the parties involved. Although the South African Law Commission published a report on euthanasia accompanied by a draft legislation that would govern the practice in 1998, both documents were ignored and till date, no legislation was ever passed. In spite of this, the court in the case of *Stranham-Ford v. Minister of Justice and Correctional Services*<sup>41</sup> went ahead and made far reaching pronouncements. The court points out that autonomy extends to most aspects of an individual's life - choices made, consent to medical treatment, or the way and manner a person dies. Though judgment in *Stranham-Ford's* case given on 29<sup>th</sup> April, 2015 remains a watershed decision, appeal had been entered and we all await the decision of the appellate court on this all-important issue.

### **6. The Right to Die: Nigeria in Perspective**

In Nigeria, the debate on the right to die albeit euthanasia is at infancy stage this is because there are no special and specific provisions either in law or legislation<sup>42</sup> that address the issue directly. As a matter of fact, there is nothing yet like 'right to die' and by implication 'euthanasia' in Nigeria. Under most legal system, when a person kills another on the other person request, he will be liable for murder even if the person consented to the killing; the position is not different in Nigeria. Any act or omission leading to the death of another is criminalized under the criminal and penal codes in operation in Nigeria. Killing of a person by another can amount to murder or manslaughter; any person who causes the death of another directly or indirectly is deemed to have killed that person, the law makes no distinction between physician assisted suicide and the patient requesting aid-in-dying. A critical look at provisions of the criminal code<sup>43</sup> shows that none of the categorized classification of euthanasia is legalized in Nigeria. Section 326 Nigerian Criminal Code provides that: 'Any person who (1) procures another to kill himself ; or (2) counsels another to kill himself and thereby induces him to do so, or (3) aids another in killing himself; Is guilty of felony and is liable to imprisonment for life. By section 311 Nigerian Criminal Code: 'Any person who does any act or makes any omission which hastens the death of another person who, when the act is done or omission is made is labouring under some disorder or disease arising from another cause, is deemed to have killed that person.' (Underlined for emphasis). From the above section, it is clear that aid-in-dying, active and assisted euthanasia in whatever form it presents itself is criminalized and the patient being 'terminally ill' is not a justification. Section 299 Nigerian Criminal Code expressly provides that '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'

Where a patient voluntarily and of his own free will consent to being euthanized, the caregiver or person instrumental to his death will not be exonerated and such person will be found criminally liable for the death. It is important to state that the intent of the caregiver whether to hasten death or to aid the dying is of no relevance. Similarly the defence of necessity or duress cannot avail the accused person. While looking at the concept of euthanasia, a learned scholar<sup>44</sup> who researched into the cultural dimension to the issue opined that under the Nigerian cultural and sociological perspective, euthanasia is recognized as a viable option. As it is not uncommon to hear remarks like 'iku ya ju esin' (death is preferable to ridicule) or when a patient is in acute and endless pain people wonder why 'death has not come to him' this no doubt shows there are hidden euthanasia tendencies in people and if given the avenue to exhibit them, they will be manifested. From the foregoing, the law as it is in Nigeria today is to the effect that

---

<sup>41</sup> (2015) ZAGPPHC230; 27401/15. See also *Clarke v. Hurst* 1992 (4) SA 630 (D)

<sup>42</sup> A critical examination of Chapter Four of the Nigerian 1999 Constitution on Fundamental Rights only reveal there is a right to life, it appears a corresponding right to die is not envisaged. Article 68(a)- (c) of the Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria which has specific and unambiguous provisions forbidding the practice of euthanasia has no backing in the Criminal Code

<sup>43</sup> See generally Sections 300,308, 343(1)(e)(f)

<sup>44</sup> O Bamgbose, 2004. Euthanasia: Another face of Murder. *International Journal of Offender Therapy and Comparative Criminology* 48(1) 111-121

killing a person, or aiding his death can either amount to murder or manslaughter depending on the intention with which the killing is done. There is no legal framework to assist terminally ill patients who may request aid in dying.

### 7. The Legality of the Right to Die

The general principle of law is that competent patients are entitled to choose to forgo treatments including those that sustain life no matter how irrational that decision may be.<sup>45</sup> The principle is traceable to the common law principle of self-determination and autonomy. The debate and arguments on the legality or otherwise of euthanasia has been an ongoing battle revolving round religion, ethics and various ideologies. Apart from the religious adherents and the sanctity of life doctrine, the issue of individualism and absolute autonomy is put forward to back the call for legalizing euthanasia; a person should have the right to determine what happens to him without interference or pressure from others.<sup>46</sup> This right to self determination may include the treatment he desires to maintain. Though the duty to end life may arise out of medico-moral compassion, respect for patient autonomy has been in the front burner as the main argument in favour of the acceptance of euthanasia.<sup>47</sup> When there is no visible improvement in a patient's health and he continues to experience excruciating pains will it not be morally justifiable to stop such futile treatment or when such individual no longer wish to be sustained or kept alive on machines while incurring heavy medical bills and being a burden to loved ones; is it not justifiable to accede to their request and grant their dying wish? It is therefore contended that to force such patients to live under such undignifying conditions would amount to placing an unwarranted premium on survival at the expense of human dignity, quality of life and the value that comes from allowing death a natural and timely entrance.<sup>48</sup>

Antagonists of the right to die are of the view that legalizing euthanasia will demean the role of doctors who have sworn the Hippocratic Oath<sup>49</sup> to save life and not to kill. It is also argued for them that when patients are euthanized, the possibility of discovering new treatment to alleviate their pains or cure them will be checked over as the practice contradicts the natural human instincts of survival. Their objection is generally against the projected consequences of euthanasia practice; the elderly, sick, disabled patients pushed to death just to spare the families energies, emotion and money. The American Medical Association while condemning the practice of euthanasia advocate the care of patients until natural death occurs. Their reasoning is that if euthanasia is legalized, doctors would become the ones to determine how a patient ends his or her own life.<sup>50</sup> The basic idea behind this reasoning is that even though the patient is critically ill, steps should not be taken to end life but nature should take its course. Medical professionals who have sworn the Hippocratic Oath are known for saving lives and not helping people die. In literature and public debate, there are arguments in favour of euthanasia. One of such is the right to die. According to this argument, end-of-life-decisions should be left to the individual who is concerned. In medical ethics, patient autonomy is a central pivot. Adult patients of sound mind have the right to choose from the array of medical treatment available at their disposal, they are free to evaluate the risks or benefits of the proposed treatment and other available options or to refuse treatment even if this leads to their death.<sup>51</sup> This submission is consistent with the reasoning of the Supreme Court in *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*.<sup>52</sup> In that case a patient who refused blood transfusion because of her religious belief eventually died after complications arose. The doctor who managed her case was found culpable of professional negligence by the appellant and he was suspended for six months. On appeal to the Supreme court, per Ayoola JSC said: 'Prevailing

<sup>45</sup> See *B v. NHS Hospital Trust* (2002) EWCA 429, *M.D.P.D.T v. Okonkwo* (2001) 7 NWLR (PT. 711) 206, SC

<sup>46</sup> Widdershoven G A.M. 'Beyond Autonomy and Beneficence: The Moral Basis of Euthanasia in The Netherlands' retrieved from www.

<sup>47</sup> H Jochemse, Euthanasia in Holland: An ethical critique of the New law (1994) *Journal of Medical Ethics*, 20:212-217 accessed from www.jme.bmj.com on 9<sup>th</sup> July, 2014

<sup>48</sup> J O Lokulo-Sodipe, p. 419

<sup>49</sup> '.....to please no one will I prescribe a deadly drug, nor give advice which may cause death....'

<sup>50</sup> www.ama-assn.org

<sup>51</sup> See *Didaway v. Board of Governor, Bethlemem Royal Hospital* (1985) 1 A.C 871 and *Malette v. Shulman* (1990) 67 D.L.R (4<sup>th</sup>) 321(Ont. CA)

<sup>52</sup> (2001) 7 NWLR (PT. 711) 206

medical ethical practice does not, without exception demand that all efforts towards life prolongation be made in all circumstances but seem to recognize that the dying are more often in need of comfort than of treatment. If a competent adult patient exercising his right to reject lifesaving treatment on religious grounds, thereby choosing a path that may ultimately lead to his death, in the absence of judicial intervention overriding the patient's decision, what meaningful option is the practitioner left with other than, perhaps to give the patient comfort? ... the sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has put in a nutshell, is that an individual should be left alone to choose a course for his life...'<sup>53</sup>

The question that comes to mind at this point is that when a competent adult refuses medical treatment that is essential which eventually leads to death such as the case above, why can't a terminally ill patient be treated differently? Is it morally conscionable to (in) directly force a person to continuously suffer pain, degradation and dehumanization against his will? It is the humble opinion of this writer that a strict compliance to the sanctity of life doctrine would definitely lead to devoting huge sum of money and health care resources in futile attempts to keep alive someone who is incurably ill and in agonizing pains. In *Washington v. Glucksberg*,<sup>54</sup> the court held that terminally ill patients do not have a constitutional right to Physician Assisted Suicide (PAS), the decision reversed a Ninth Circuit Court of Appeal decision that a ban on PAS embodied in Washington's Natural Death Act of 1979 was a violation of the 14<sup>th</sup> Amendment's Due Process clause. However in 2008, the state of Washington voters by a 58% to 42% votes<sup>55</sup> approved the Washington Death with Dignity Act<sup>56</sup> making Washington the second state in the United States to legalize euthanasia.<sup>57</sup> The State of Washington following the Oregon's model<sup>58</sup> laid down guidelines to regulate how critically ill patients can get and use prescriptions from their health or caregivers to end their lives. The patient must be an adult resident of Washington<sup>59</sup> and must be terminally ill with less than six months to live and this fact must be verified by two physicians. In addition, the patient must make two oral and one written request which must be voluntary and verified by two physicians; however, there should be a 15 day waiting period between the first oral request and the written one. Apart from this, a 48hour waiting period is stipulated between the written request and when the prescription is eventually given. However, before this is done, the patient must be informed of other options available to him including hospice and palliative care. It is worthy of note that if the patient changes his mind at any point in time, he is entitled to rescind the request.<sup>60</sup> Finally, when the euthanizing act is carried out, the attending physicians who sign the death certificate only list the underlying terminal disease as cause of death and nothing more. Such persons and others acting in good faith and in compliance with the laid down procedure are usually immune from criminal or civil litigations that may arise.

## 8. Conclusion and Recommendations

The grim reality is that euthanasia is carried out in Nigeria without articulated regulations despite the so-called provisions in the criminal laws of the country. There is an urgent need to reform the criminal code to amend the relevant sections barring aid-in-dying and to enact fresh laws on euthanasia this will help in containing the practice within the safe boundaries of the law. The choice between life and death should not be left solely to the state; it is a personal decision and should be treated as such. The concept of euthanasia and the right to die are in themselves not degrading concepts as widely believed and it is submitted that euthanasia should be considered a form of 'medical treatment' available only to those who are critically ill, experiencing excruciating pains without hope of improvement and mentally competent to request for it. Such request must be voluntary and persistent with due diligence and care being the highpoint so as to prevent its abuse when this is done, we will hear less of patients in persistent vegetative state and 'locked in' for years till they died or of people secretly committing euthanasia.

---

<sup>53</sup> Per Ayoola JSC at page 243-244

<sup>54</sup> 521 U.S 702 (1997)

<sup>55</sup> Retrieved from [www.doh.wa.gov/DeathwithDignityAct](http://www.doh.wa.gov/DeathwithDignityAct) on 9/11/2015

<sup>56</sup> RCW 70.245

<sup>57</sup> The first being Oregon.

<sup>58</sup> See Oregon's Death with Dignity Act ORS 127:800-897

<sup>59</sup> See 70.245.130 Washington Death with Dignity Act

<sup>60</sup> See 70.245.100 Washington Death with Dignity Act



This writer is of the opinion that survival is important; however, when life becomes painfully unbearable due to debilitating sickness coupled with excruciating pains, then that 'survival' invariably becomes a burden. This writer is also of the humble opinion that keeping incurably ill patient alive 'at all cost' is not only cruel but unjust