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THE NATURE AND LEGAL ASPECT OF EUTHANASIA IN NIGERIA

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Abstract

Euthanasia or the practice of assisting persons suffering from painful or incurable diseases or incapacitating physical disorder to die is not new to Nigeria. In the pre-colonial era it is a well-known practice in our traditional system that where an individual in a critical medical condition defies all know medication, he is left to die by withholding food or further medication. However, modern legal framework in Nigeria criminalises euthanasia. In realisation of the legal nature of euthanasia in Nigeria, the authors proceeded to critically examine the legality of Euthanasia under the Nigerian law as well as the associated challenges to the medical profession, for instance, when confronted with administration of blood-transfusion as recommended life saver options. The authors therefore maintained the need for specific legislative enactment that will in certain circumstances accommodate euthanasia, mercy killing or assisted suicide as well as a proviso in advanced medical directives empowering medical practitioners administer appropriate treatment, even in face of irreversible condition tantamount to mercy killing, especially when it comes to the issue of assisting with third-party blood.

Keywords: Euthanasia, patient, blood transfusion, medical profession, legislation

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1. Introduction

Euthanasia or mercy killing is not novel to the regime of medical jurisprudence. However, the debate as to the legality or illegality of the practice has been on in most criminal jurisdictions. The resultant effect of the debate has led to the legalization of the practice, in some

jurisdictions, while in others, it has attracted criminalizing the act, on the ground that the practice in itself is against all morality and that life in itself is sacred. However, there has been a subsisting trend predicated on religious pursuance in Nigeria. This trend reflects the decision of the relatives of the endangered patient, who are incapable of giving consent on grounds of religious conviction. In this case, the Medical doctors deliberately withhold treatment or discharge the patient from the hospital, patients with no alternative of continued existence, but slumber to eventual death. There is another related practice involving ‘non-blood’ medical treatment, administered unarguably predicated on the consent of the patient. Although evidence abounds to show that treating patients with alternative blood medication is safer and more efficient, some have argued that a patient who refuse to accept blood transfusion in the face of serious medical condition is tantamount to signing his/her death warrant and hence can also be categorized as a form of euthanasia.¹ Drawing attention from the above, the authors strive to examine the legality or otherwise of this peculiar patient, ordinarily confronted with death. This work therefore investigates the nature and legality of euthanasia under the Nigerian law. The paper will also consider the practice in other jurisdictions.

The Black’s Law Dictionary defines Euthanasia 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 reason of mercy.’² Similarly, the Encyclopaedia Britannica defines Euthanasia as, “the practice of painless putting to death persons suffering from painful or incurable diseases or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life support measures.”³ Furthermore, in the Oxford Companion of Law,⁴ the term ‘euthanasia’ means ‘the causing or hastening of death, particularly of an incurable or terminally ill patient, and at their request.’⁵ The dictionary showed further the accompanying legal norm that governs euthanasia and differentiates it from other legal phenomena, stating that ‘generally, (euthanasia) is treated as illegal and not distinguishable from murder, largely because of the difficulty of distinguishing in legal rule and in fact between criminal and justifiable causing of death. A narrowly distinguishable case

¹ A. K. Anya, Right to object to particular medical treatment: Examining the implicated professional ethics and moral notion in a secular state, Kogi State University Law Journal, vol. 2 & 3 2008-2009, Pp. 144, 161.

² Bryan A. Garner, Black’s Law Dictionary 9th Ed. (Texas; Law Prose Inc., 2009), 634

³ Encyclopaedia Britannica, ‘Euthanasia’ available at <www.britannica.com> Accessed on 8th September, 2023

⁴ David M. Walker, *The Oxford Comparison of Law* (Oxford Press, 1980)

⁵ *Ibid.* at p. 441

is of refraining from seeking to prolong life in cases of great pain or inevitable death, which is generally considered morally and legally permissible.⁶

The foregoing definitions clearly denotes the idea of the taking of human or animal life for reason of mercy in order to hasten the death of a person who is suffering from an incurable or terminal disease and to save the individual from his/her miserable conditions. This often requires an intervention by the person wishing to die or by a person acting on his/her behalf to hasten a wanted death.⁷

There are three parties involved in euthanasia. They are: the dying patient, the dying patient's family, the doctor or physician who will carry out the action.⁸

2. Nature and forms of Euthanasia

There are basically two forms of Euthanasia.

i. Active Euthanasia

This type of euthanasia is implemented or carried out by a health care practitioner or a Medical Doctor who carries out the final death causing act.⁹ It involves the taking of specific steps to cause the death of another such as injecting the patient with a lethal injection or medication. In practice, this may be undertaken by the use of an overdose of painkillers or sleeping medication.¹⁰ It should be noted that active euthanasia is illegal in Nigeria and in most jurisdictions around the world.

ii. Passive Euthanasia

This is the withdrawal of medical treatment followed with a deliberate intention of allowing an individual to die naturally. It is the act of allowing a critically ill person to die either by withholding or withdrawing life sustaining support, such as a respirator or feeding tube.¹¹ In Nigeria, for instance, there is a common practice among Doctors who deliberately withdraw the treatment of patient for failure to offset medical bills by the relatives. In some other

⁶ *Ibid.* p.441

⁷ D. Brock, "Voluntary Active Euthanasia" in H. J. Curzer, (ed.), *Ethical Theory and Moral Problems* (Belmont: Wadsworth, 1999) 46-54.

⁸ Priscillia Agboroh, 'Legalization of the Right to Die (Euthanasia) - A Taboo In Nigeria,' 2021, Assessed online 8th September, 2023.

⁹ Bryan A. Garner, 'Black's Law Dictionary' 9th Ed. (Texas; Law Prose Inc., 2009), 634

¹⁰ Bright E. Oniha, 'Legality of Euthanasia and the Right to Die In Nigeria,' 2017

¹¹ Bryan A. Garner, *supra*

instances, patients are discharged against medical advice, requiring them to go home and die just because the patient's relatives can no longer afford the medical bills. The difference between active and passive euthanasia is that active euthanasia involves taking positive action to terminate or cause the death of the patient or another person. On the other hand passive euthanasia can be said to be an omission to act by withdrawing treatment which in turn leads to the death of the victim.

Euthanasia or mercy killing as an act is achieved in three ways which include the following;

A. Voluntary Euthanasia

This is the type of euthanasia that is carried out with the permission or agreement of the terminally ill person. Such patient may grant such consent in advance, sometimes by way of a living will or directive which may simply declare that his life be terminated or request that lifesaving treatment be stopped with full knowledge that it will invariably lead to his/her death. *R v Cox*¹² is a vivid illustration of voluntary euthanasia. In this case, in order to carry out the wish of his dying patient, Doctor Cox deliberately injected her with strong potassium chloride, a drug which is known to cause death. She died immediately after the injection. Her family felt that, by giving her the injection, Doctor Cox had released her from her pain and allowed her to die with dignity. However the Court found otherwise as Doctor Cox was convicted for deliberately carrying out the act that leads to the victim's death.

B. Non-Voluntary Euthanasia

This is the type of Euthanasia that is carried out on a patient who is incapable of having an expressed opinion about his condition or one who is incapable of giving consent. Non-voluntary euthanasia is therefore actualized when a patient is incapable of consenting¹³ to or agreeing to the prolongation of his or her life.¹⁴ The process thus involves the killing of a person who has not requested for aid in dying or without his/her explicit wishes or agreement to die. It may arise in situations where the consent of the affected person is unavailable such as where the patient is unconscious or is otherwise incapable of granting consent.¹⁵ The English case of *Airedale National Health Service Trust (N.H.S) v Bland* is very instructive.¹⁶ In that case, Anthony Bland, a 17 year old boy was crushed in the Hillsborough football club

¹² *R v. Lee Michael Cox* (1992) 12 BMLR 382

¹³ M. C. Obi, 'A Critical appraisal of euthanasia under Nigerian Laws,' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 5, 75-88, (2014)

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ (1993) ALL ER 82 (HL)

tragedy of 15th April 1989. In the course of this disastrous incidence, his lungs were punctured and supply to his brain was interrupted. As a result, he suffered catastrophic and irreversible damage to his brain. For 3 years he was in a persistent vegetative state (PVS). He could not see, hear, or feel anything. In order to maintain him in this condition he was fed and rehydrated by artificial means of nasogastric tube. According to eminent medical opinions, there was no prospect whatsoever that he would ever make a recovery from this condition, but there was likelihood that he would maintain this state of existence for many years to come provided the artificial means of medical care was maintained. In this state, doctors were of the view supported by his parents that no useful purpose would be served by continuing medical care and that artificial feeding and other measures aimed at prolonging his existence should be stopped.

However, since there was doubt whether this might constitute an offence, the hospital sought a declaration from the English High Court seeking legal pronouncement on this. The case eventually went to the House of Lords. The House of Lords were unanimous in their decision that Anthony Bland be allowed to die. Lord Goff said:

I agree that the doctor's conduct in discontinuing life support can properly be categorised as an omission. It is true that it may be difficult to describe what the doctor actually does as an omission, for example where he takes some positive step to bring the life support to an end. But discontinuation of life support is, for present purposes, no different from not initiating life support in the first place. In each case, the doctor is simply allowing his patient to die in the sense that he is desisting from taking a step which might, in certain circumstances, prevent his patient from dying as a result of his pre-existing condition: and as a matter of general principle an omission such as this will not be unlawful unless it constitutes a breach of duty to the patient.¹⁷

C. Involuntary Euthanasia

This is the Euthanasia carried out on a competent non-consenting person. This type of euthanasia is performed on a person who would be able to provide informed consent but does not do so either because they do not want to die or because they were not asked. Like murder, involuntary euthanasia is widely opposed and regarded as a crime in all legal jurisdictions.

3. Conscientious Objection and the refusal of blood transfusion by some Religious Sect

¹⁷ *Ibid.*

Conscientious objection can be said to mean a carefully planned decision of a person objecting to or rejecting the doing of a thing. It is the act of refusing to obey a particular order or rule for moral or religious reasons.¹⁸ In the medical field, it is a long standing rule of medical practice for a patient to either accept or out-rightly reject a particular treatment prescribed for him by his doctors. Such refusal are termed ‘conscientious objection.’¹⁹

One noticeable area that have generated much controversy in this regard is the issue of blood transfusion by some Religious Sect especially Jehovah’s Witnesses.²⁰ According to the Oxford Advance learners Dictionary²¹ blood transfusion is defined as ‘the process of putting new blood into the body of a person or animal.’²²

This age long medical practice is believed to save the life of an individual in serious medical situation. However, among some religious sect, the taking of blood into the body through the mouth or veins violates Gods law on blood as stated in the Holy Scriptures. Therefore, such individuals refuse to accept blood transfusion, on religious grounds, irrespective of how this decision will impact on their lives. References are often made to the following scriptural admonitions; ‘Keep abstaining from things sacrificed to idols, from blood, from what is strangled and from sexual immorality.’²³ ‘For the life of the flesh is in the blood. And I myself have given it on the altar to make atonement for your-selves because it is the blood that makes atonement by means of life in it. That is why I have said to the Israelites ‘None of you should eat blood and no foreigner who is residing in your mist should eat blood.’²⁴ ‘Only flesh with its life –its blood- you must not eat.’²⁵

4. Advance Medical Directives

¹⁸ . Cambridge English Dictionary, *Conscientious objection*. Cambridge University Press, 2024 <[www.https://dictionary.cambridge.org/conscientious.objection](https://dictionary.cambridge.org/conscientious.objection)>. accessed March 22, 2024.

¹⁹ A K Anya, supra, note 1

²⁰ See again, A K Anya, Withheld Consent and Attendant Death: Emerging Development in Nigeria, Vol. 5 No. 1, Port Harcourt Law Journal, April 2013, Pp. 74, 81

²¹ A. S Hornby, *Oxford Advance learners Dictionary* 10th edition, Oxford University Press, 2020. P. 154

²² *Ibid*

²³ Watch Tower Bible and tract Society of New York, *New Word Translation of the Holy Scriptures*, 2013. Act 15:29

²⁴ *Ibid*, Leviticus 17:11 & 12

²⁵ *Ibid*. Genesis 9:4

The adherence to advance medical directives operates to obviate the associated difficulties confronting medical practitioners. The advance medical directives provides that in an effort to prevent blood transfusion, some persons may fill a form known as ‘advance medical directives’ wherein they let the Doctors know in advance their wishes for end-of-life care in the event that they are no longer capable or able to speak for themselves. This form is properly signed by the patient and their witnesses.

A. Types of Advance Directives

Advance directives can take many different forms. They can come in the form of instruction directives or proxy directives.

i. Instruction directive.

Instruction directive is a form of an advanced directive that specifies particular health care interventions that a patient anticipates he or she would reject or accept during treatment for a critical or life-threatening illness²⁶. Examples include values, Blood, therapy goals, and care preferences in a variety of clinical settings. Here such directives are given by the patient and no one else.

ii. Proxy directives.

Under this type of advance directive, the patient may specify another person ‘a proxy’ or health care representative who will make decisions on the patient's behalf if he or she loses capacity. This includes, for example, a father, mother, husband, or one’s kids.

iii. Instruction directive and proxy directive.

A medical directive can also exist both as an instruction directive and proxy Directive wherein the patient can specify clearly the particular health care intervention he needed and also states that in case he or she loses capacity, his/her proxy or health care representative will take decisions on his behalf.

Advanced medical directives have been shown to have beneficial effects. It aids in resolving treatment options disagreements between patients, Doctor and their families, making patients more physically and mentally comfortable during the dying process, and improving communication and trust between patients, their families, and health care professionals.²⁷

²⁶ < <https://medical-dictionary.thefreedictionary.com/instructional+directive> >. accessed on 9th March, 2024

²⁷ Priscillia Agboroh, supra.

B. The Role of Consent in the Medical Practice

Consent according to the oxford advance learners' dictionary²⁸ is the 'permission to do something.' It is the permission given to another to act. Generally speaking, for a person to consent, he must have the capacity to do so. He must not only be a matured adult by law but also possess the right mental state to give such consent or permission. Sometimes parents or the court can give consent on behalf of a child or an incompetent adult, particularly in relation to surgery which is needed in an emergency. The law on capacity was set out in the judgment of *Butler-Sloss LJ in Re MB (1997)*²⁹ wherein the learned Judge stated.

Every person is presumed to have the capacity to consent to medical treatment; that presumption can be rebutted. A person lacks capacity if some impairment or disturbance of mental functioning renders the person unable to make a decision whether to consent.³⁰

Such inability to make a decision will occur when the person is unable to:

- a. Understand and recall information which is material to the decision, especially as to the likely consequences of having or not having medical treatment;
- b. Use the information and evaluate it in the balance as part of the process of arriving at a decision.

In *Gillick v West Norfolk and Wisbech Area Health Authority*³¹ the House of Lords said that a parent continues to be able to give consent on behalf of their child until 'the child achieves a sufficient understanding and intelligence to enable them to understand fully what is proposed,' a situation now known as being 'Gillick competent.' The case concerned the question of whether doctors could give girls under the age of 16 Contraceptives if the girls consented, without having also to seek their parents' consent. The answer was that doctors could if the girls were 'Gillick competent.' The scope of the Gillick competence test has since been restricted to situations where the child gives a positive consent; if a Gillick competent child refuses treatment then a parent's consent can override that refusal.

C. Consent and Euthanasia

Euthanasia arises where a person agrees to another taking his life, which is likely to arise where a person is terminally ill and in pain. Or in situations where the victim is unconscious

²⁸ A. S Hornby, *Oxford Advance learners Dictionary*, 10th edition, Oxford University Press, 2020.

²⁹ (1997) 2 FLR 426 (CA)

³⁰ *Ibid*

³¹ (1986) AC 112

and the relatives and Doctors feel that to stop medical treatment and thereby allowing the victim to die is the best option under the circumstances. In most jurisdictions there is an ongoing debate as to whether euthanasia should be legalized whereas in many other Countries some form of euthanasia has been legalized. Some of these Countries include Belgium, Ireland, Columbia, India (passive euthanasia) and Luxembourg.³² On the other hand, assisted suicide is legal in countries like Switzerland, Germany, Japan, Albania, and Canada and in the United States of Washington, Oregon, Vermont, Montana and California.³³ Presently in Nigeria, euthanasia can constitute the offence of murder even if it is established that the victim consents to his death. Those in favour of the legalisation of euthanasia have argued that it allows a person the opportunity to select the time and manner of their dying in order to secure a peaceful end to their life. Conversely those against the practice has argued that life is sacred and should be respected and protected using the best medical means possible hence stricter punishment is meted to any who assists a person to take his/her life.

D. The Conundrum of Informed Consent, refusal of blood transfusion and medical ethics in Nigeria and other jurisdictions

Informed consent and the refusal of blood transfusion are not devoid with challenges in the medical practice. Some of the challenges include the likelihood that the patient decision will interfere with the Doctors clinical judgment. This can be seen clearly where a Doctor recommends blood transfusion, whereas the patient chooses to do otherwise by consenting to non-blood medical treatment even in severe medical situations. Other Challenges include lack of clarity in some patients' instructions, especially, for instance, when an advance directive is unclear or confusing. In this case, a physician may act otherwise against the patient wish.

Doctors generally are committed to applying their knowledge, skills and experience in fighting diseases and death in order to ensure that their patients gets the best medical treatment.³⁴ However when it comes to the use of blood, a Doctor may feel that the patient choice of non-blood medical treatment may tie his hands and thus prevent him from putting into practice what he seems to know best. This therefore becomes a big challenge for the Doctor. It should be noted that most Physicians often forgets the principle of informed

³² Bright E. Oniha, 'Legality of Euthanasia and the Right to die in Nigeria, (2017)

< <https://edojudiciary.gov.ng/wp-content/upload/2017/07> >

³³ *Ibid*

³⁴ Lowel Dixon J., "Blood: Whose Choice and whose Conscience" New York State Journal of Medicine, 1988

consent in the medical profession. The principle is to the effect that a Doctor must inform his patient of the potential result of the various treatments or medical options to be carried out on the patient and it is the duty of the patient to make his choice as to what he will submit to. The position under the law is that any adult patient who is not incapacitated has the right to refuse treatment no matter how detrimental such a refusal may be to his health. In the US case of *RE: Storar* the New York Court of Appeal stated that

The patient right to determine the course of his own treatment is paramount...A Doctor cannot be held to have violated his legal or professional responsibilities when he honours the rights of a competent adult patient to decline medical treatment.³⁵

Similarly in *Rivers v Katz* the New York Court of Appeal also observed that;

The ethical integrity of the medical profession, while important to the Doctor, cannot outweigh the fundamental individual rights here asserted. It is the needs and desires of the individual, not the requirements of the institution that are paramount.³⁶

The position above is to the effect that the law does not permit a medical practitioner to treat a patient against his/her wish. It does not also allow a Doctor to transfuse blood to an unwilling patient who refuses same etc. This was the position adopted by the Supreme Court of Nigeria, in the case of *Medical and Dental Practitioners Disciplinary Tribunal v Dr John Emewulu Okonkwo*.³⁷ In this case, the Nigeria Supreme Court upheld the right of a patient to consent to medical intervention/treatment in pursuit of her exercise of the right to freedom of thought, conscience and religion under the constitution. The decision, it is submitted effectively endorsed passive voluntary euthanasia by way of the exercise of a patient's right to self-determination expressed in his refusal of medical intervention even where it will surely lead to death, where such intervention runs contrary to her constitutionally guaranteed right.³⁸ In this case, the patient Mrs. Martha Okorie, her husband and one Dr. John Emewulu Okonkwo are all members of Jehovah's Witness, a Christian religious sect. This sect passionately holds the belief that blood transfusion is contrary to God's injunctions for Christians not to "eat blood." The patient Mrs. Martha Okorie, having had a baby developed post-delivery complication and was admitted at one Kanayo Specialist hospital for a period of 9 days. A diagnosis was carried out and it was found that she had a serious condition for which blood transfusion was needed but she declined transfusion on religious ground. Because of this she

³⁵ RE: Storar, Supra.

³⁶ *Rivers v Katz*, 504 NYS 2D 74, 80n6, 495 NE 2d 337, 343 n 6 (NY 1986)

³⁷ (2001) 3 S.C. 76; See also [2001] FWLR (Pt. 44) 542

³⁸ Bright E. Oniha, supra

was discharged from the hospital. Afterwards, the husband took her to another hospital where Dr. Okonkwo practices. Here, she presented the doctor with a card directing that in accordance with her rights as a patient and her beliefs as a Jehovah's Witness, no blood transfusion should be carried out on her. Her husband also executed a similar document. The doctor therefore went ahead to treat her without blood transfusion in line with her wishes. She died afterwards. The doctor in charge was later charged before the Medical and Dental Practitioner's disciplinary tribunal on two (2) counts of acting contrary to his oath of practice and negligence. The tribunal found him guilty of the charge and he was suspended from practice for 6 months. Dr. Okonkwo then appealed to the Court of Appeal and succeeded, therefore necessitating a further Appeal by the tribunal to the Supreme Court. The Supreme Court held (unanimously dismissing the appeal), that the patient was well within her legal and constitutional rights to decline medical treatment which include blood transfusion and the doctor could not have done anything infringing this right.³⁹ According to Ayoola JSC:

The patient's constitutional right to object to medical treatment or particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 constitution as follows: (1) Right to privacy: Section 34, (ii) right to freedom of thought, conscience and religion, section 35. All of these are preserved in section 37 and 38 of the 1999 Constitution respectively. The right to privacy implies a right to protect one's thought, conscience or religious beliefs' and practice from coercive and unjustified intrusion and one's body from unauthorized invasion. The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification from choosing the course of one's life... if a competent adult patient exercising his right to reject lifesaving treatment on religious grounds thereby chooses 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's comfort. More so against the back drop of the fact that prevailing medical ethical practice does not without exceptional demand that all efforts towards life prolongation be made in all circumstance, but seems to recognize that the dying are often in need of comfort than treatment.⁴⁰

A careful analysis of the above decision is to the effect that where a patient chooses a non-blood medical treatment as against blood transfusion, a physician should not do otherwise but respects the patient wish. The only exception to this is a situation where there is a Court Order directing that blood transfusion be administered to the patient.

³⁹Academia, 'Euthanasia under the Nigeria Criminal Jurisprudence,' <<https://www.academia.edu/84672226>> assessed on 6th March 2024

⁴⁰MDPDT v Okonkwo, supra, per Ayoola (JSC)

The ability to give consent is not limited to the statutory age of maturity.⁴¹ In medical treatment, a competent minor of less than the legal age of majority can give a valid consent as long as he/she is fully informed of the medical procedure and totally understands the implication of such treatment or procedure.⁴² It is believed that parents have the capacity and wisdom to make accurate and informed decisions that affect the lives of their children.⁴³ This may be premised on the fact that parents bear the long-time effect or consequences of choice of treatment on behalf of their children.⁴⁴ In spite of the rights of parents to take decision on behalf of incapable minors, they do not have the legal right to solely make decisions regarding some medical procedures such as sterilization and removal of vital organs of a living child for donation, as well as choosing for the minor the right to die-martyr.⁴⁵ However in the case of a mature minor who has the capacity to understand the choice of treatment and its consequences, then he/she can give a valid consent to care as though he were an adult. This principle of a mature minor was determined in the Supreme Court case of *Re: Ernestine Gregory*.⁴⁶

In that case, Ernestine; a 17year old Jehovah Witness was on admission for Leukaemia. The age of maturity in Illinois, United State was 18 years. He refused blood transfusion as it was against his faith; his mother was in support of his decision. Because he was a minor, the Child Welfare Officials in Chicago sued his mother for medical negligence. The trial court ordered blood transfusion in spite of the evidence that the patient had sufficient maturity to make such decision. The patient appealed against this decision. The Court of Appeal affirmed the decision of the mature minor. The Supreme Court also re-affirmed the position of the appellate court and overruled the decision of the trial court on the ground that the patient has shown enough competence to make such decision and hence cannot be forced to submit to blood transfusion as his right of self-determination must be respected.⁴⁷

E. The place of Euthanasia under Nigeria Law

In fact, there is no place for euthanasia in Nigeria. In Nigeria, euthanasia is a crime that attracts either the death penalty or life imprisonment. It is not a defence that a person consents

⁴¹ The Constitution of the Federal Republic of Nigeria, 1999, LFN, 2004 prescribes 18 years as age of majority where a citizen can exercise his/her franchise.

⁴² F. O Esiri 'Medical Law and Ethics in Nigeria' (Malthouse Press Ltd, 2012} p304

⁴³ *Ibid*

⁴⁴ D.W Brock 'Children for Health Care Decision Making' in J.A Dada 'Legal Aspect of Medical Practice in Nigeria'

⁴⁵ Re: T (1992) WLR 782, 4 ALL ER 649

⁴⁶ Re Ernestine Gregory 133 IU 2d 98549 NE 2d 322(1989)

⁴⁷ *Ibid*

to the act that resulted in his/her death. This is clearly provided for in the Penal Code that is applicable in Northern part of Nigeria and the Criminal Code in Southern part of Nigeria. Consequent on the above, there is need to examine the Nigerian situation.

i. Euthanasia under the Penal Code

Under the Penal Code⁴⁸ applicable in Northern Nigeria, consent of a person to an act causing death is no defence. The penal code makes no distinction between a murder, homicide committed with the assistance of a physician, a request from a patient, or the patient's health status. The effect is that euthanasia is murder. Sections 220 and 221 of the Penal Code⁴⁹ show that any form of killing, except stated under the Nigeria Law, which doesn't include euthanasia, attracts the death penalty under Nigerian Law.

ii. Euthanasia under the Criminal code

The Criminal Code⁵⁰ is applicable in the southern part of Nigeria. Consent to die under the criminal code is immaterial. The approval of a person to an act causing death is not a defence as the killing of a human being by another is a crime under homicide relying on *section 229* of the criminal code.⁵¹ In respect of assisted dying/suicide, the position of the law is stated in *Section 326 (3)* of the Criminal Code Act which provides that 'any person who aids another in killing himself is guilty of a felony, and is liable to imprisonment for life.'⁵²

The reasoning here is that a person's consent to the cause of his own death has no bearing on the criminal liability of the one who causes it.⁵³ In *State v Okezie*,⁵⁴ the accused, a native doctor, prepared some charms for the deceased. The deceased then invited the accused to test the charm on him by firing a shot at him. The defendant shot him in the chest and killed him. He was convicted of murder. *Section 327* of the Criminal Code also provides that, "Any person who attempts to kill himself is guilty of a misdemeanour and is liable to imprisonment for one year."⁵⁵

F. Euthanasia in other Jurisdiction

⁴⁸ Penal Code Act Cap.P3 LFN, 2004

⁴⁹ Ibid, at Sections 220 & 221

⁵⁰ Criminal Code Act, CAP.C38, LFN. 2004

⁵¹ Ibid, at Section 229

⁵² Ibid, at Section 326 (3)

⁵³ C.O. Okonkwo, Criminal Law in Nigeria (Ibadan: Spectrum Law Publishing, 1994) .231-232

⁵⁴ (1972),2 E.C.S.L.R. 419

⁵⁵ Ibid, at Section 327

i. Belgium

Belgium, which decriminalized euthanasia in 2002, highlighted certain rules or conditions to be met before euthanasia can be said to be valid. These conditions are as follows:

- a). The patient is of the age of majority (for an emancipated minor) and capable and conscious at the time the request is made.
- b). The illness is serious and incurable
- c). The patient is in a medically futile condition of constant and unbearable physical/mental suffering that cannot be alleviated or relieved.
- d). The patient's request must be in writing.
- e). Advance directive is only valid if it is drafted or confirmed not more than five years prior to the patient's loss of the ability to express his/her wishes⁵⁶

ii) Luxembourg

Luxembourg in the year 2009 decriminalized both euthanasia and assisted suicide. The following are the conditions:

- a) The patient is of legal age of maturity and capable and conscious at the time of the request.
- b) The request is voluntary, considered carefully, and repeated, as warranted: not the result of any external pressure.
- c) The request to resort to euthanasia or assisted suicide is made in writing.
- d) The patient is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a disorder caused by illness or accident.
- e) Advance medical directives or decision are taken into account; it may be held, reiterated, cancelled, or adapted at any time. It is recorded in an official system, and the government authority must ask the person to confirm it every five years⁵⁷.

iii) Switzerland

In Switzerland, euthanasia is prohibited,⁵⁸ but the penalty for performing it (killing a person out of compassion at this person's express request) is less severe. As for assisted suicide, the Penal Code includes a provision that prohibits assisted suicide, unless this

⁵⁶ Priscillia Agboroh 'Legalization of the Right to Die (Euthanasia) - A Taboo In Nigeria' 2021 Assessed online 8th September, 2023.

⁵⁷ Ibid

⁵⁸ *Swiss Penal Code*, Sect. 114, 'Compassionate murder,' and Sect 115, 'Assisted suicide' <<http://www.admin.ch/ch/f/rs/3/311.0.fr.pdf>> Assessed on 28th September, 2023.

assistance is provided without any selfish motives. Assisted suicide is thus decriminalized if it is shown that the person assisting does not directly or indirectly benefit.

5. Conclusion

It has been demonstrated that the subsisting legal frameworks both in Nigeria and some other jurisdictions prohibit euthanasia or mercy and subsequently classify it as killing which is a crime punishable with death or life imprisonment because it is akin to murder which is a capital offence in Nigeria. However it has been established that an individual patient could consent to certain treatment options or may decide to withdraw from the services of a medical practitioner at the hospital. In these two situations, a medical practitioner may decide to respect the patient wish or consent. It has been shown that a physician's duty is to give his patient the best treatment possible. However in carrying out this duty, the right of the patient must be respected in all circumstances. Flowing from the above, it is therefore recommended as follows:

- A. That there should be a specific legislative enactment that will in certain circumstances accommodate euthanasia, mercy killing or assisted suicide.
- B. That advanced medical directive should be made compulsory for patient undergoing serious medical conditions so as to make it easier for Doctors to know the kind of treatment to give at the appropriate time especially where it comes to the issue of blood. This will also assist the physicians to know who to call to take decisions where the patient is incapable of giving consent.
- C. The need to strengthen our health institutions so as to be able to give the best treatment possible to patient irrespective of their individual circumstances.
- D. The need for the provision of Palliative Care at hospital in Nigeria. The services of these institutions should be either free or reasonable, putting patient within reach of medical treatment.
- E. There should be continuous training and re-training of medical practitioners in Nigeria on the various non-blood medical treatment options and how to apply these treatment options in accordance with best practices.
- F. There should be proper enlightenment of the general public on euthanasia. If the public fully understands the concept of euthanasia, as well as how to complete advance directives and the benefits of doing so, the legitimacy of enforcing euthanasia in deserving cases will be recognized.



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