

**NAVIGATING THE LEGAL, ETHICAL AND MORAL DIMENSION OF
EUTHANASIA IN NIGERIA**

BY

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**BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, ALEX
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DECLARATION PAGE

I declare that the work in this long essay titled: 'NAVIGATING THE LEGAL, ETHICAL AND MORAL DIMENSIONS OF EUTHANASIA LAWS IN NIGERIA' has been performed by me in the Faculty of Law, Alex Ekwueme Federal University Ndufu-Alike, Ikwo. The information derived from the literature has been duly acknowledged in the text and a list of bibliography provided. The content of this work is original and has not been submitted in part or full for the award of any degree of this or any other institution.

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CERTIFICATION PAGE

This is to certify that this research work titled navigating the legal, ethical and moral dimension of Euthanasia laws in Nigeria was carried out by Uchechi Janefrances Mamah Registration No. 2019/LW/12359 under my supervision

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DEDICATION

This work is dedicated to God Almighty who made all things possible and to my family: without whose support I would not have been able to complete this programme.

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LIST OF ABBREVIATIONS

AMA: American Medical Association

DNR: Do Not Resuscitate orders

EU: European Union

IMANA: Islamic Medical Association of America

MDPDT: Medical and Dental Practitioners Disciplinary Tribunal

NMA: Nigerian Medical Association

UDHR: Universal Declaration on Human Right

WMA: World Medical Association

ABSTRACT

Euthanasia often referred to as `mercy killing` or `assisted suicide` is a multifaceted and highly contentious issue that has sparked fervent debate worldwide. Defined as the deliberate termination of a person's life to alleviate suffering, it poses intricate ethical, legal and moral dilemma particularly within the Nigerian context. It challenges deeply ingrained beliefs regarding the sanctity of life, individual autonomy and the role of medical professionals in end of life care. Despite global debates on individual autonomy, euthanasia remains largely taboo in Nigeria as it grapples with deeply rooted cultural and religious beliefs which shape societal attitude and practices making the discourse particularly nuanced and multifaceted. Under the Nigerian law, it is trite law that murder is a crime but a clearly defined stand has not been taken on euthanasia. The Nigerian populace views euthanasia as a perplexing paradox, a masked form of murder, a situation where the supposed healer becomes a killer and so on. The aim of this research work is to navigate through the ethical principles, legal frameworks and moral sensitivities surrounding the right to a dignified death taking into account Nigerians rich cultural diversity. This research is vital as it exposes the practice of medicine in Nigeria especially at the end of life care: a situation nobody knows with certainty what is happening. People die in ICU without explanation, and there are claims that doctor one way or the other hasten the death of the patients. There is no adequate legal framework that regulate end of life care in Nigeria and there's need that some rules and regulations must be provided and laws amended based on the findings of this research, This essay is doctrinal in nature: primary and secondary sources like Constitution, statutes (Criminal Code and the Penal Code), law reports, journals, and books on euthanasia are going to be used. The subject matter is not new in Nigeria, different scholar and authors have written and commented on the issues of euthanasia and it ended only in their works and never made any impact to the society. This research work was able to come up with practical solutions like the Enactment of Specific Legislation on Euthanasia, embarking on value orientation and cultural preservation, the need to Address Legal Ambiguity, etc. as practical solutions to the debate surrounding Euthanasia in Nigeria today.

CHAPTER ONE

INTRODUCTION

1.1 Background of study

Only few subjects evoke great avalanche of human sentiments on legal, moral, ethical, religious and other considerations and the controversial subject of Euthanasia is not farfetched. Debate has been triggered by the interaction between the right to life and right to die. While murder is unquestionably illegal under Nigerian law, a clear position on euthanasia is yet to be formed. Euthanasia is widely regarded as an unjustifiable paradox, similar to camouflaged murder, in which the purported healer converts into a murderer. This dichotomy serves as the focal point for discussions within this study.

There is no legal framework to assist persons requesting help in dying in Nigeria but the grim reality is that euthanasia is practiced outside the safe boundaries of the law ranging from withdrawing life sustaining support or life prolonging treatment like fluid, drugs or food from ill patients, putting off life support machines, patient's refusal of medical treatments even where such decisions hasten their deaths, not delivering cardio-pulmonary resuscitation and even allowing a patient whose heart has stopped to die. The above are instances where it is tacitly carried out and when this is done, officials who sign death certificate only state the terminal disease the deceased person was battling with as cause of death. With the instances above, the need to specifically legislate to either prohibit or allow euthanasia in Nigeria becomes precisely imminent.

However, whether there is a contrary right to die is the pressing legal question that needs to be investigated and addressed in this study?, Whether a person can legally decide to die by euthanasia or by refusing health care options during medical treatment? The question of euthanasia arises but,

like right to life does a man have a right to die? Is physician aid in dying a crime? Do murderous crimes have a connection to one another? Given the safeguards of the right to self-determination and dignity found in the constitution, must the state force a patient to suffer a long and agonizing death in this day and age? This study exposes the issues so as to generate effective legal regulation of the concept in Nigeria. To this end the essay will explore some of these questions from the legal, ethical and moral dimension as it relates to Nigeria

1.2 Statement of the problem

When a patient is in serious pain, as a result of an incurable or terminal disease or is on a life support system, the question of euthanasia arises, does a man, however, have the same right to die as he does to live? Is physician-aid-in-dying a crime? Upon a careful look at the concept of euthanasia, one could see a clash between a person's fundamental human right to life and a person's choice of dying when the need arises. This poses a major problem in some part of the world, and Nigeria in particular that has not legalized euthanasia which its gradually becoming a global trend. Laws need to be enacted or reviewed before it becomes an issue. Hence the importance of this work, as it is geared towards critically analyzing and proffering practical solutions to this problem.

Four distinct research questions were addressed by the researcher in this study:

- 1) What is the position of euthanasia under the Nigerian legal framework?
- 2) How do cultural and religious beliefs influence attitudes towards euthanasia in Nigeria and what implications do these beliefs have for healthcare policy and practice?
- 3) What are the moral and ethical implications of criminalizing euthanasia in Nigeria and how do these implications impact the delivery of healthcare services?
- 4) What are the ways to improve the practices of euthanasia in Nigeria?

1.3 Aim and objectives of the study

The aim of this study is to navigate the legal, ethical and moral dimensions of euthanasia laws in Nigeria; identifying the gaps and challenges in the current framework and exploring options for reform. This long essay is a very elaborate and important one which seeks to achieve the following objectives;

- ❖ To examine the concept of euthanasia and the different arguments on it.
- ❖ To examine the legal position of euthanasia in the Nigeria. .
- ❖ To identify the adequacies and inadequacies of the legal framework governing Euthanasia in Nigeria.
- ❖ To make suggestions for improving Nigeria's euthanasia legislation and assessing the feasibility its legalization.
- ❖ To make a scholarly contribution to this field of law.

1.4 Scope and Limitation of Study

This research is limited to the study of the practice of euthanasia in Nigeria. It is restricted to the definition of euthanasia by the World Health Organization, which includes both passive and active euthanasia. In this research Nigerian legal framework is examined. The laws examined include Section 33, 34 and 35 of the Nigerian Constitution 1999 (as amended), the Penal Code law of Northern Nigeria, the Criminal Code, Medical and the medical and Dental Practitioners Act 2004 and Rules of Professional Conduct for Medical & Dental Practitioners (Code on Medical Ethics) in Nigeria. However, reference is made to other jurisdictions like Netherlands, Belgium, Australia and India with a view to studying their legal framework. The reason for selecting these countries

as a point of reference is because euthanasia has been legalized and practiced for a long time and drawing inference from them will help in determining its practicability in Nigeria.

1.5 Significance of the study

Research is conducted in order to find a solution to the problems affecting the society, organization and other professional practices. The practice of medicine in Nigeria especially at the end of life care is a situation nobody knows with certainty what is happening. People die in ICU without explanation, and there are claims that doctor one way or the other hasten the death of the patients. Furthermore, there is no adequate legal framework that regulate end of life care in Nigeria. There is need that some rules and regulations must be provided and even the laws must be amended based on the findings of this research.

The research also assists Nigerian doctors and medical students on the ethical issues regarding end of life decisions, and it will serve as reference materials for lecturers and students alike. Also, if the government adopts and implements some of the recommendations, the dilemma of doctors will be resolved.

1.6 Research Methodology

This essay is doctrinal in nature and in view of this, primary and secondary sources like Constitution, statutes i.e. (Criminal Code and the Penal Code) law reports, law journals, and books on euthanasia are going to be used. Also, reference sources such as newspapers, magazines, periodicals and dictionaries will come in handy where necessary to ensure that this work is a success. Of importance also, are the internet sources this will be made use of, due to the invaluable wealth of information available in the internet: owing to the fact that this is the age of information

communication technology (ICT), many authors now upload their writing works on the internet, and thus, will be greatly be exploited in the course of writing this work.

1.7 Chapter Analysis

Chapter 1:

This chapter started with background of study, the statement of problem, aim and objectives, scope and limitation and other issues contained under the preliminary pages. The Background of this research shows that it is a long existing debate which has received legislative support in some countries like Australia, Netherlands, and Belgium. However, in countries like Nigeria and Malaysia, the issue remains illegal and a crime. The raised research questions and the expected objectives to be achieved during the research were equally highlighted under this chapter as well as the research the chapter serves as a guide for exploring the research work

Chapter 2:

Titled conceptual theoretical framework and literature review, most of the important terminologies in this research were defined based on the views of some scholars. Jurisprudential schools of thought and their position on the subject matter were also examined with the view of unveiling some of the factors that influence the practice of euthanasia both in Nigeria and other jurisdictions. It is found that these factors may have a serious influence on the acceptance of this practice in Nigeria. At the same time in the literature review, works of other scholars and their contribution to this area of law were highlighted

Chapter 3:

It deals with the legal and institutional framework. It is settled that right to life is protected under the Constitution and other International Human Rights Instruments. The examination of the legal framework suggests that euthanasia is not contemplated within the Nigerian law. The provisions upon which the argument is based are Section 33 dealing with the right to life, Section 34 on the dignity of human person and finally right to personal liberty under Section 35 of the Nigerian Constitution. It is argued by some scholar's that reading together the above provisions, euthanasia can be inferred. National Instruments like The Penal code, Criminal Code and Medical Code of Ethics have prohibited any conduct like euthanasia. Under the Nigerian criminal justice system, consent or motive no matter how good will never be a defense to the offence of murder or euthanasia. Therefore, withdrawal of life supports where it becomes too burdensome or for whatever reason also amounts to murder. Doctors will be liable for both breach of professional conduct and criminally liable for their actions depending on what is proved before the court. The decision of the Supreme Court in *MDPDT v. Okonkwo* was examined as well as the provisions of some international human right instruments.

Chapter 4:

In this chapter, the researcher examined the practice of euthanasia in respect of the factors that have an influence on the acceptance or rejection of the practice in Nigeria under the moral and ethical framework. It was concluded that although these factors do not present a good case for euthanasia in Nigeria, there are however, reasons that will make euthanasia a case of necessity such as the need for donors in organ transplant to assist other patients with strong hope of survival. It was argued that culture or religion shall not be a reason not to consider amending the law. It has been identified that fear of the dying process especially with the technological advancement leading to subjecting patient into unwanted medical treatment with pain and agony make the

people in the west opt for easy and more dignified death. As it has been discussed in this chapter Africans fear death and they do not have the culture of taking their aggression inward, but outward.

Chapter 5:

Such as the name suggest, it covers the Summary, Observations, Recommendations, Contributions to knowledge, Suggested areas for further studies and Conclusions. These were all discussed under this chapter.

CHAPTER 2

CONCEPTUAL, THEORITICAL FRAMEWORK AND LITERATURE REVIEW.

2.1 Conceptual Clarifications

The concept of Euthanasia even though not known as such, dates back human history. In the words of Opadare, *'the concept of Euthanasia is much older than it is thought by many, even though it may no longer be the same designation all along'*¹ In the biblical days of thousands of years, it was recorded that king Abimelech asked his armor bearer to take his life because of his suffering as a result of several injuries to his head. The bible states, *Then he quickly called the young man who was carrying his weapons and ordered "draw your sword and kill me" so the young man ran him through and he died*²

The death of king Abimelech as recorded in the bible above, is a clear case of voluntary Euthanasia. The bible, also recorded that when Saul of Israel got overwhelmed and subdued by the military might of the Philistines, he demanded that his armor bearer take his life so that he may not fall in the sword of the "Uncircumcised" Philistines, *He said to the young man carrying his weapons 'draw your sword and Kill me, so that these godless Philistines won't gloat over me and kill Me' but the young man was too terrified to do it so Saul took his own Sword and threw himself on it.*³ He preferred to die with dignity; this is an instance of how ancient Jews viewed life And death; by accepting or allowing death to occur where they know it is incurable and at the same time to avoid unnecessary and perhaps inhumane living treatment.⁴

¹ O.S Opadare, 'Euthanasia: An Appraisal and the Nigerian perspective', *Nigeria Bar Journal* [2006] 4(63)

² Good News Bible Judges 9 v 54

³ 1Samuel 31 v 4 ibid

⁴O.S Opadare 'Euthanasia: An Appraisal and the Nigerian perspective', *Nigeria Bar Journal* [2006] 4(63)

History has revealed that Euthanasia has been accepted in some or other forms by various groups or societies some decades back. In ancient Greek city of Sparta, Babies who suffered from serious birth problems were executed. In several ancient communities, it was customary to perform voluntary euthanasia on elderly people.⁵ However, as Christianity developed in the West, Euthanasia gained moral and ethical disapproval and was perceived as an infringement of God's bestowed life. While certain modern denominations of Christianity, Judaism, and Islam allow limited types of passive euthanasia, most of them forbid active euthanasia.⁶

Generally, the term Euthanasia has been said to be of Greek origin, traceable to the Greek word, Eu (good) and thanatosis (death) meaning therefore, good death, gentle, and easy death or what has now become known as mercy killing.⁷ The first recorded use of the word Euthanasia was by Syletonius to describe the death of Augustus Caesar, who according to him, '*... For almost always on hearing that anyone had died swiftly and painlessly, he prayed that he and his might have alike Euthanasia, for that was the term he want to use.*'⁸

However, mention must be made that Augustus Caesar's death while been termed Euthanasia was not hastened by the actions of any person. Francis Bacon was the first person to use the term "euthanasia" in a medical sense in the seventeenth century. He referred to it as to an easy, painless or happy death. This entails a Physician's responsibility to alleviate the physical suffering of the body.⁹

⁵ ibid

⁶ ibid

⁷ S.B Odusi, 'Euthanasia under the Nigerian law: a call for charge', *A Publication of Council of Legal Education, Nigerian law school*. [2005] (5) 61

⁸ A general history of Euthanasia:<<http://www.life.org.nz.html>> accessed 19th may 2024

⁹ Francis Bacon, *The major works by Francis Bacon*, by Brian Vickers(ed) [1975] 630

Euthanasia, have its roots in the beliefs and practices of the ancient Romans and Greeks.¹⁰ They didn't believe that euthanasia meant a quicker death; instead, they were more concerned with whether the person's death was painless; The Greek and Romans, found the compassion dealing with those who are terminally ill. They allowed them the least painful mechanisms for their present situation, which was faced with a general feeling of discomfort and pain. The Romans and Greeks were sympathetic towards the act of Euthanasia, provided it was done for the right reason for instance, to end suffering during a terminal disease. They are in harmony with freedom to have the extent that it permitted the sick and dying to end lives.

Historically, the common law, forbids the act of Euthanasia such that for over seven (7) centuries, none of such was tolerated.¹¹ The first organization to promote for the legalization of voluntary Euthanasia in the United States and Great Britain were founded in 1938 and 1935 respectively. For several decades, these organizations, remained small and had little impact.¹² In October 1939, during the world war, Adolf Hitler ordered widespread mercy killing of the sick and disabled people, which act was coded *Aktion T4*¹³; the Nazi Euthanasia program to do away with 'lives unworthy of living'¹⁴ which includes the killing of new born and very young children, disabled children and adults. Hitler's decree of October 1939 enlarged the authority of some physicians to determine persons who by the ailment should be accorded mercy killing.

However, in the late 1970s, the pro- Euthanasia movement gained significant momentum after a highly publicized incident in the United States, where in 1975 a 21 years old woman named Karen

¹⁰H. A Abdul, A.O Sambo and A.B, Abdulkadir “ The Right to Die via Euthanasia: An Expository Study of the Shariah and Laws in Selected Jurisdictions ” : *journal of Advances in Natural and Applied Sciences* [2012] (5) 673

¹¹O.S Opadare, 'Euthanasia: An Appraisal and the Nigerian perspective', *Nigeria Bar Journal* [2006] 4(63)

¹²W Iyaniwura, ' Law, Morality and Medicine: The Euthanasia Debate *Global Journal of Human Social Science* [2014] (14) (2) 4

¹³S Benedict and J Kuhla, “Nurses Participation in the Euthanasia Programs of Nazi Germany.,” *Western Journal of Nursing Research* [1999] (2) 246

¹⁴M Hawkin , *Compulsory Death: A Historiographic Study of the Eugenics and Euthanasia Movements in Nazi Germany* (East Tennessee State University 2010) 3

Ann Quinlan, suffered a respiratory arrest that resulted in severe and irreversible brain damage, and left her in coma. Quinlan's parents requested that the artificial means of life support be removed, the hospital refused this request. After a lengthy legal battle, in 1976, the Quinlan's obtained a court order allowing them to remove the artificial respirator that was thought to be keeping their daughter alive. The New Jersey Supreme Court ruled that the Quinlan's could disconnect the device so that the patient could "die with dignity". The extent of a patient's right to control their own death has come under further scrutiny as a result of this ruling. Despite the respirator being taken off in 1976, Quinlan started breathing on her own. She didn't ever regain consciousness and survived until 1985.¹⁵

In the early 1990s, the decision in *Nancy B v Hotel- Dieu de quebec*¹⁶ in Canada, played a similar role in promoting awareness of issues surrounding Euthanasia. In this case, a young woman got paralyzed, as a result of the rare disease known as Guillian- barre syndrome. She wished to have the artificial breathing mechanism that kept her alive disconnected. Concluding that such refusal of treatment was permissible. In January 1992, a Quebec superior court judge authorized the woman's physician to remove the respirator. The first attempt, to legalize the medical help to die, can be traced to the United States, which has a long history of efforts on the issue, the earliest bill was introduced in the State of Ohio in 1906.¹⁷ In the same vein, the 30th general assembly of the World Medical Association declared Euthanasia unethical in 1987. But to the surprise of the world in 1993, Netherlands' legalized assisted suicide of terminally ill patient at the patient's request; Holland, Belgium and Switzerland followed suit thereby making Euthanasia legally accepted.¹⁸

¹⁵ *Re quinlan* Case (1976) 70 NJ 10 (355A)

¹⁶ *Nancy B v Hotel- Dieu de quebec* (1992) 86 FDLR 385

¹⁷ The Ohio bill, 1906.

¹⁸O. Bamgbose, "Euthanasia: another face of murder" : *International Journal of Offender Therapy and Comparative* [2004] (48) 111-121

It is important to mention that there were traces of acts of Euthanasia in the African society even though such acts may carry different names. The struggle for Euthanasia is not well entrenched in Africa because the colonization of African countries by Europeans brought about the rejection of any act of killing or termination of life since the laws they brought were all against the practice¹⁹ and in most cases, patients do not undergo futile medical treatments. Where a patient dies in a hospital his\her family do not ask or investigate what is the cause because Euthanasia is not contemplated as a normal practice among African doctors. This should not be the case; in the opinion of Sakali²⁰ whether Euthanasia or assisted suicide is debated in Africa, one cannot close his\her eyes to their existence so long as terminal diseases also exist in Africa. Some African scholars have already started calling for the recognition and practice of Euthanasia.²¹ In the view of Masaka, if an HIV/AIDS patient wish to end his\her life, it will be unfair for doctors to refuse to assist the patient because that will worsen his situation, thus he argued that voluntary Euthanasia can be morally acceptable to such kind of patients.²²

In Nigeria, right to refuse medical treatment was recognized in the decision of the Nigerian Supreme Court in *MDPDT v Okonkwo*²³. However, if the implication of removing the feeding tube and respirators is death, how then can a doctor in Nigeria escape criminal responsibility for removing the life-support on the request of the patient or his family? This is an act that constitutes a crime under the Nigerian law.²⁴ With this, the need to provide a regulatory framework becomes an issue. The struggle then was about the idea that there is no harm to the society if voluntary

¹⁹D.A Asch “ The Role Of Critical Care Nurses In Euthanasia And Assisted Suicide” : *N.E.J.M* (1990) (334) 1347-1402

²⁰ *ibid*

²¹F.P Omonzejele, “African Ethics and Voluntary Euthanasia”: *Journal of Allergy and Clinical Immunology* [2004] (3) 673

²² *ibid*

²³*MDPDT v Okonkwo* [2001] 7 NWLR (Pt 617) P208-255

²⁴Criminal Code 2004, Cap C38, S 311 and 316

Euthanasia is recognized and criminalizing, it violates the basic individual right to self-determination.²⁵

2.2 Classifications of Euthanasia

If a person provides informed consent for euthanasia, it might be categorized as

- ❖ Voluntary
- ❖ Non voluntary
- ❖ Compulsory or involuntary

2.2.1 Voluntary

This arises, when a person who is terminally sick request that his life be taken away to ease his pain and suffering.²⁶ This is when an individual, either in advance by a living will or when he is facing serious pain from an incurable disease express wish that in certain circumstances his life should be terminated. It is also voluntary Euthanasia when a patient makes a specific request that over-dose substance be administered on him or her so that he or she may die.²⁷ Voluntary euthanasia has been permitted since 2009 in a number of jurisdictions, including Oregon and Washington in the united state jurisdictions, Belgium, Luxembourg, The Netherlands, and Switzerland. When a person asks a doctor to end their life voluntarily and is fully aware of the consequences, this is known as voluntary euthanasia. This is further divided into;

- ❖ voluntary and direct Euthanasia and
- ❖ voluntary and indirect Euthanasia

²⁵J, Keown Euthanasia, *Ethics And Public Policy: An Argument Against Legalization* (New York: Cambridge University Press 2002) 35

²⁶ ibid

²⁷D.A Asch “ The Role Of Critical Care Nurses In Euthanasia And Assisted Suicide” : *N.E.J.M* (1990) (334) 1347-1402

It is **voluntary and direct**, when it is chosen and carried out by the patient and it is **voluntary and indirect**, when it is chosen in advance.

This can be further divided into;

- ❖ active voluntary Euthanasia and
- ❖ passive voluntary Euthanasia

Active voluntary Euthanasia: this type of assisted suicide includes taking a patient's life without causing them any suffering, usually when a doctor gives them a fatal dosage of medication. The fact that active Euthanasia is unlawful was emphasized in *Airedale Nhs v Bland*, where Lord Mustil stated that, '*Mercy killing by active means is murder...Mens rea for murder is defined as the intention to kill or cause great bodily damage; the reason the purpose was formed is irrelevant.*'²⁸

Passive voluntary Euthanasia: on the other hand, this involves not doing anything to prevent death²⁹ like Jehovah witness cases of refusal to take blood transfusion³⁰ in passive Euthanasia death is a foreseen consequence of an otherwise legitimate action whose intent may be to alleviate suffering, respect patient autonomy, cease interfering with the dying process, and so forth. Passive voluntary Euthanasia involves a patient's death resulting from the withdrawal of treatment, including disconnecting life support machines. Under these circumstances, the patient exercises their right to decide whether to keep their life support on or off. They are competent and have said that they would be prepared to stop treatment if it were ineffective. In all, the ethical and legal

²⁸*Airedale Nhs v Bland*, [1993] 1 All E.R. 821 at 890

²⁹J Keown, Euthanasia, *Ethics And Public Policy: An Argument Against Legalization* (New York: Cambridge University Press 2002) 35

³⁰*MDPDT v Okonkwo* [2001] 7 NWLR (Pt 617) P208-255

dimensions of voluntary Euthanasia continue to be subjects of profound debate in medical, legal, and ethical spheres.

2.2.2 Non voluntary

If a patient who is not competent to give or withhold consent undergoes Euthanasia, it is non-voluntary. This is Euthanasia conducted without consent. Because the patient is unable to make the decision for themselves, it is made by someone else. Those in this situation include; gravely deformed or severely retarded infants and people through accident, illness and old age have permanently lost the capacity to understand the issue involved.³¹ In this situation life of the patient is terminated without the consent of the patient. It may not be the wish of the patient to have his life terminated. It is only done with the belief that it is in his best interest or he is better off dead.³² This type of Euthanasia is usually considered as murder. Autonomy and self-determination is used to determine and control one's health issues and treatment. If the patient does not consent or request for it, it is considered a violation of such rights. This is the fear of majority of the opponents of Euthanasia that if voluntary Euthanasia is legalized it will lead to involuntary termination of life in the name of compassion and relieving pain³³. This is popularly known as slippery slope. The case will change from right to die to duty to die. People will be killed without their consent for whatever motive. This form of Euthanasia has generated a lot of controversies. This is because; it is believed that it will be abused. This form of Euthanasia is said to be immoral and thus should not be legalized.³⁴ The danger that usually arises as a result of this form of Euthanasia, either active

³¹J Keown, Euthanasia, *Ethics And Public Policy: An Argument Against Legalization* (Cambridge University Press 2002) 35

³²G Merrill, *Attitudes On Euthanasia and Physician-Assisted Suicide Based on Age, Gender, Religion and Level of Education in Muskegon County* (Grand Valley State University Allendale 2001) 3

³³E Donald and S Margaret, "Euthanasia Is Not Medical Treatment": *British Medical Bulletin* 106 [2013] (1) 45

³⁴ *ibid*

or passive, is the fear of being abused because of self-interest.³⁵ When a competent patient, undergoes Euthanasia even though she has not freely consented, it is called involuntary Euthanasia. Involuntary Euthanasia refers to the act of ending a person's life without their explicit request for aid in dying. This term is often applied to patients in a persistent vegetative state with little or no chance of recovering consciousness

In the case of *Malette v Shulman*,³⁶ On June 30, 1979, 57 year old Georgette Malette had an accident in which she had severe injuries. She was a Jehovah's Witness who carried a card stating her firm conviction that no blood products should be administered. Dr Shulman ignored her card and gave her a blood transfusion which he decided was medically indicated. In June 1980, exactly a year after, Mrs. Malette brought charges against Dr Shulman. Mrs. Malette had suffered emotionally and mentally, and the judge ordered significant expenses to be paid.

If the operation had resulted in her death, her family, if they shared the same faith, would have brought charges against the doctor. Killing can be regarded as Euthanasia only when the motive for killing is the desire to prevent suffering of the person. If the doctor had allowed Mrs. Malette to die without the blood transfusion, the duty and the responsibility of the doctor will be questioned.

This form of Euthanasia seems clearly immoral, whether active and passive. People don't have a right to over-ride someone else's decisions about their own lives and deaths or to substitute their judgment for another's about whether her life is worth living, Involuntary Euthanasia, whether Active or Passive, is clearly indefensible.

³⁵ *ibid*

³⁶ *Malette v Shulman* [1990] 72 O.R (2d) 417

2.3 Theoretical and Historical Foundation

The various philosophical perspectives on the current subject matter shall be examined in this section. John Stuart Mill's theory of utilitarianism primarily focuses on euthanasia through the lens of pleasure and pain. Mill argues that all actions undertaken by individuals, whether contributing to life or death, should ultimately result in happiness. Happiness is the central consideration in Mill's utilitarian philosophy. According to John Stuart Mill, the theory of euthanasia underscores the idea that individuals, possessing autonomy and self-determination, have the right to make decisions that lead to their own happiness and alleviate suffering³⁷. This perspective asserts that the choice between life and death rests solely with the individual, safeguarded by the right to privacy and non-interference. Moreover, this theory advocates for the exploration of euthanasia only after all other alternatives and treatments have been exhausted.

The naturalist School of Thought on the other hand formulated their moral principles based on human reasoning. They advocated for mutual respect and adherence to rules that are humane and not detrimental to individual existence. Central to their philosophy is the value of life and the autonomy of individuals, leading them to support voluntary euthanasia as a morally justifiable act. According to this school of thought, every person possesses the right to make choices. For instance, one individual may choose a painless end to their life, while another may prefer to let nature take its course. The humanist school of thought argues that denying an individual the right to choose their own fate constitutes a violation of their autonomy and does not benefit society as a whole. They emphasize the importance of fulfilling certain obligations before allowing voluntary

³⁷ Euthanasia And John Stuart mills theory on utilitarianism philosophy essay, online <http://www.ukessays.com/essays/philosophy/euthanasia-and-john-stuart-mills-theory-on-utilitarianism-philosophy-essay-php>>

euthanasia, such as consulting multiple medical professionals to ensure the decision is well-informed and voluntary. Euthanasia is prevented. Involuntary euthanasia is not acceptable or tolerated to the humanist school of thought.

The Pro-Choice School of Thought asserts that alleviating the suffering of a dying patient can be accomplished through euthanasia, presenting an opposing view to the pro-life perspective. Proponents of the pro-choice stance argue that an individual's right to privacy extends to the decision of when and how to end their life in a dignified manner, aiming to relieve suffering rather than prolonging it by allocating resources to a terminally ill patient³⁸. They maintain that these resources could be directed towards more hopeful scenarios.

Conversely, the pro-life ideology staunchly opposes euthanasia, emphasizing the sanctity and intrinsic value of life. Advocates of this belief system prioritize the preservation of life over mitigating the suffering of those facing terminal illnesses. They hold firm to the belief that despite existing circumstances, the possibility of health recovery remains viable. Former Chief Rabbi of England, Dr. Immanuel Jakobovits, underscored the sanctity and equality of all human lives, asserting that every individual, regardless of physical limitations, possesses equal human rights and privileges³⁹. The pro-life school of thought emphasizes that a physician's primary obligation is to preserve life, warning that legalizing euthanasia could compromise the integrity of the doctor-patient relationship. Proponents of this viewpoint argue that the value of life should not be undermined, regardless of the challenges posed by illness or disability.

³⁸ Matt LAMB, Pro-Life means opposing euthanasia, assisted suicide, online <https://studentforlife.org>

³⁹ Christian Nordqvist, euthanasia and assisted suicide online:http://www.academia.edu/22358241/Euthanasia_and_Assisted_Suicide>.

The school asserts that the primary responsibility of every physician is to preserve life. Legalizing euthanasia could jeopardize the doctor-patient relationship. Advocates for the sanctity of life argue that by providing patients with high-quality healthcare, suffering can be alleviated, eliminating the necessity for euthanasia.

2.4 Literature Review

Many Nigerian authors have written on the issue of 'Euthanasia', but their views on the concept's legal status differ. Some argue that the practice of the notion is illegal, criminal, and should be penalized because it is equivalent to the crime of murder or homicide. While some posit that the concept is legal and therefore should be decriminalized considering the fundamental rights of the patient- right to die and dignity. From the religious/moral jurisprudence, it is believed that life, sickness and death are divine and absolutely not within the control of human kind. From the medical point of view, the idea is observed from the perspective of the conditions, in which patients suffer owing to the presence of incurable diseases, and the duration of treatment, inevitability of the lethal outcome, physical suffering which patients consider unbearable and inadequacies or depletion of medical facilities to cater for the suffering patients, etc.

According to Karlsson, the term Euthanasia can be construed in a variety of ways, and a general issue in debates and studies appears to be a lack of a shared definition of the phrase. To him Euthanasia is derived from a Greek word which stands for 'good death'. Euthanasia is defined in the Netherlands as the deliberate medical killing of a patient at that person's request.⁴⁰ Gabrielyan while discussing the theoretical basis of the definition of Euthanasia gives the critical analysis of the interpretation of ontological, semantic and linguistic concept of Euthanasia. He stated

⁴⁰M Karlsson , *End- of-Life Care and Euthanasia: Attitude of Medical Students and Dying Cancer Patients* (Reprint AB 2011) 6

unequivocally that in order to analyze any legal phenomenon, it is important to provide an explicit definition. Scientific debate regarding Euthanasia focused on the etymology of the term and its numerous interpretations.. In terms of etymology, the term Euthanasia is composed of two Greek words, namely, “eu” means “good, positive, and excellent”. In ancient Greek mythology, "thanatos" was the name of the deity of death, but it later came to symbolize death. and later simply signified death. As according to the learned author, the first person who defined the scientific status of Euthanasia and put it into scientific use was the English Philosopher, Francis Bacon who used it in his work ‘Advancement of Learning’.⁴¹ The learned author believes that within the criminal justice system, Euthanasia is an intentional killing made by a medical person or any other person out of compassion for a patient in accordance with the explicit terminally ill patient’s request in order to end his/her physical and mental suffering caused by final stage of an incurable illness.⁴² Oniha agrees with Karlsson in the etymological meaning of Euthanasia that it is derived from the Greek word ‘eu’ and ‘thanatos’ which means ‘good faith’ or ‘easy death’.⁴³ While according to Black Law Dictionary, Euthanasia is the act of or practice of causing or hastening the death of a person who suffers from incurable or terminal disease or conditions especially a painful one, for reason of mercy.⁴⁴The Encyclopedia Britannica defines Euthanasia as the practice of painless putting to death of persons suffering from painful or incurable diseases or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing life support measures.⁴⁵

⁴¹M Karlsson , *End- of-Life Care and Euthanasia: Attitude of Medical Students and Dying Cancer Patients* (Reprint AB 2011) 20

⁴² Ibid p. 21

⁴³ B Oniha, *Legality of Euthanasia and the Right to Die in Nigeria* <<https://www.hospice.com>> accessed 7th June 2024

⁴⁴ BA Garner, *Black’s Law Dictionary*, 9th ed. (Law prose Inc 2009)p 634

⁴⁵ Encyclopedia Britannica, *Euthanasia* available at< <https://www.britannica.com>> accessed on 5th April 2024

According to Iyaniwura, the subject matter “Euthanasia” is clouded by uncertainties of definition. Steadman's Medical Dictionary contains two citations: quite painless death and the planned artificial death of people suffering from terminal or painless diseases. The former is etymologically correct, although the latter more nearly reflects popular opinion.⁴⁶ Somerville is of the view that euthanasia shall be defined in a legalistic term as:

“An intervention or non-intervention by one person to end the life of another person, who is terminally ill, for the purpose of relieving suffering, with the intent of causing the death of the other person. However, an intervention does not constitute euthanasia if the primary goal is to give medical care essential for the relief of pain or other indications of serious physical suffering., or the none provision, or withdrawal of treatment is justified, in particular, because there is a valid refusal of treatment or the treatment is medically futile (that would have no physiological effect).”⁴⁷

The learned professor tried to exempt the doctrine of double effect, refusing and withdrawal of treatment if there is a valid reason for doing so, like when the treatment is futile. However, it can be concluded that both have the same legal implication in a country like Nigeria.⁴⁸ For example, a crime, particularly the offence of murder, is to be shown by an act or omission in which the culprit has knowledge that his act or omission has the likely outcome of causing death.⁴⁹

In his work, Narimisa agreed with the etymological meaning of the concept as a derivative of the Greek term and further posits that Euthanasia is a means of ending patients' lives according to certain principles and under certain circumstances, where medicine cannot cure or provide an acceptable quality⁵⁰ Obi also agrees with the etymological terminology of the Euthanasia as

⁴⁶ Wole Iyaniwura, law, Morality and Medicine: The Euthanasia Debate *Global Journal of Human Social Science* [2014] (14) (4) 5.

⁴⁷Margaret Somerville, *Death Talk: The Case against Euthanasia and Physician-Assisted Suicide*(McGill-Queen's University Press 2001) 46

⁴⁸ Obinuchi Chimezule, “Euthanasia in Nigeria”: *Social Sciences Research Network* [2015] (2) 92

⁴⁹ Penal Code Cap P3 Laws of the Federation of Nigeria 2004

⁵⁰ M Narimisa , ‘Euthanasia in Islamic Views’: *European Scientific Journal* [2014] (2)170

provided earlier. For him, Euthanasia implies painless termination of the person who is suffering from an incurable disease or distressful disease or handicaps.⁵¹ William in his book on the other hand defined Euthanasia as an intentional termination of life by another at the explicit request of the person who wishes to die.⁵² The idea is described as an easy, quiet, and painless dying in the *Laber Cyclopedia Medical Dictionary*.⁵³ While *Chamber 21st Century Dictionary* defines Euthanasia as an act or practice of ending the life of a person who is suffering from an incurable and often painful or distressing illness.⁵⁴ Langrial and Muslim gave the medical definition of the concept as the act or practice of killing hopelessly sick or injured individuals (as persons or domestic animals). Mercy killing refers to the act of letting a terminally ill or damaged patient to pass away with minimal medical intervention out of compassion and can also be a reasonably painless procedure.⁵⁵ In the Oregon's Death with dignity Act, 1997, a person is qualified to be euthanized when he or she is terminally ill and in the opinion of a physician, he or she has only six or less than six month to live.⁵⁶ In Netherlands where Euthanasia and assisted suicide are legalized, both concept are defined as a situation where an individual experiences intolerable pain or suffering (even if such person is not terminally ill), such that the illness is irreversible.⁵⁷ According to some academics, euthanasia refers to the deliberate, early termination of another person's life, either directly (euthanasia through active involvement) or indirectly (euthanasia through withholding resources and life-extending measures), either at the express or implied request of that

⁵¹ Obinuchi Chimezule, "Euthanasia in Nigeria": *Social Sciences Research Network* [2015] (2) 92

⁵² C William , *Euthanasia* (McGraw-Hill Companies Inc. 2007) 1

⁵³ *Laber Cyclopedia Medical Dictionary* vol. III

⁵⁴ *Chamber 21st Century Dictionary* (Cambridge University press, 2000)

⁵⁵ A.H langrial and M Muslim, legitimacy of euthanasia (mercy killing) and Assisted suicide : *an Islamic perspective* [2005]13(1)

⁵⁶ Oregon's Death With Dignity Law and Euthanasia in Netherlands: Factual Disputes" available at https://www.beyondintractability.org/essay/human_rights_violations%20 accessed on 5 April 2024

⁵⁷ *ibid*

person (voluntary Euthanasia), or in the absence of such approval (non- voluntary Euthanasia).⁵⁸From the legal angle, Bamgbose views Euthanasia as the taking of human life by another or with the assistance of another.⁵⁹ Thus, the act of killing a terminally ill person out of empathy and compassion for their suffering is the common definition of euthanasia. Although it is commonly referred to as "mercy killing," many proponents of euthanasia defined it more explicitly as taking another person's life at that person's request or not.⁶⁰ Though, just like in the conventional system where there is no specific or universal definition of the concept 'Euthanasia' so also from the religious point of view. In Arabic it is called **qatlar-rahama** i.e. mercy killing⁶¹. In light of the sanctity of human life, the idea is thus prohibited in Islam. All religious and social philosophers, with the exception of materialistic philosophers, are thought to have accepted the sanctity of human life. It is viewed that all the religious and social philosophers believed in the sacredness of human life except the materialistic philosophers.⁶² Human beings under the sharia are created as *Khilifat Ulla* i.e. vicegerents on the earth. In whatever circumstances under the sharia killing of human being except justified by law is considered haram and criminal.⁶³ It is said that one of the worst form of killing is to kill oneself (suicide) and the prophet (S.A.W) has told about a person who committed suicide whether he was severely injured in a battle.⁶⁴ Atlaf H. Langrial and Muhammad Muslim viewed that the act of killing in the name of mercy under the Islamic law is actually brutal action and could not be named as so called 'mercy killing, as in the act of mercy one should try

⁵⁸S Vaknin, *Euthanasia and Right to Die* available at <<http://www.samrak.tripod.com/euthanasia.html>> accessed on 5 April 2024

⁵⁹ O Bamgbose, "Euthanasia: another face of murder" : *International Journal of Offender Therapy and Comparative* [2004] (48) 111-121

⁶⁰ Ibid

⁶¹A.H langrial and M Muslim, legitimacy of euthanasia (mercy killing) and Assisted suicide : *an Islamic perspective* [2005]13(1)

⁶² Ibid p.41

⁶³ Quran 2:30; 95:4; 2: 84, 178; 4: 93 etc

⁶⁴ SahihBuhkhar vol.2, Hadith No. 1363 p. 96

his best to save life, to provide best treatment, and to encourage the patient. They see it as the actual act of mercy that Islam preaches, one that guides a person toward Jannah and delivers them from the hell.⁶⁵ They see it as the actual act of mercy that Islam preaches, one that guides a person toward Jannah and delivers them from the hellfire. Judeo-Christians held comparable opinions about the topic at hand. The Jews and Christians' Holy literatures cursed the man who accepts money to kill an innocent person. According to the New Testament, the act of killing a person is a satanic action; Jesus came to save, restore, and renew life. Satan comes to steal, kill and destroy.⁶⁶ In addition, well-known Egyptian scholar Sheikh Yusuf al-Qaradawi recently expressed his opinion while under a fatwa—a religious decree—that equates euthanasia with murder while permitting needless medical intervention.⁶⁷

From the above therefore, one sees that both from the Islamic and Judeo-Christian jurisprudence that Euthanasia is condemned to the highest prohibition; in that life is considered on the basis of divinity and its sacredness. Sickness, life and death are not within the power of human kind.

⁶⁵ A.H langrial and M Muslim, legitimacy of euthanasia (mercy killing) and Assisted suicide : *an Islamic perspective* [2005]13(1)

⁶⁶ Good News bible, *Deuteronomy 27: 25; John: 16-17; 8:44; 10: 10.*

⁶⁷ Narimisa M, 'Euthanasia in Islamic Views': *European Scientific Journal* [2014]

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR EUTHANASIA IN NIGERIA

3.1 NIGERIAN LEGAL FRAMEWORK

The legal landscape regarding euthanasia in Nigeria is primarily governed by statute, with the Penal Code⁶⁸ applicable in Northern Nigeria and the Criminal Code⁶⁹ in Southern Nigeria. Within these legal systems, an individual's agreement to an act that causes death is not considered a defense. While the term "euthanasia" is not officially used, the rules implied address conduct that may fall into this category. Under Nigerian penal law, killing a human being regardless of the circumstances or motive, is considered homicide and is classified as either murder or manslaughter. The laws make no distinction between whether the killing was performed with the assistance of a physician, at the request of a patient, or due to the patient's health situation. Consequently, any type of euthanasia is legally regarded as murder⁷⁰. In the same vein, provisions of the Criminal Code expressly prohibit all forms of euthanasia or assistance- in-dying. Being terminally sick or agreeing to euthanasia is not a justification, and it has no bearing on the criminal culpability of those who cause such death.

A critical examination of the Nigerian 1999 Constitution (as amended) reveals that there is a right to life but there is no corresponding right to die. In fact, the statutes contain no provision for making or determining end-of-life decisions when the holder of such life is terminally sick or suffering from extreme agony. The law in Nigeria now states that killing or hastening a person's death is a

⁶⁸ Penal Code Cap P3 Laws of the Federation of Nigeria 2004

⁶⁹ Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004

⁷⁰C.O Okonkwo, *Medical Negligence and the Legal Implication* in B.C. Umerah (ed.) *Medical Practice and the Law in Nigeria*. (Longman 1989) 119 – 120.

crime that can result in either murder or manslaughter. In navigating the legal dimension of Euthanasia in Nigeria, the concept of Human right will be assessed because Right to life, dignity and personal liberty is the cornerstone of every discussion regarding euthanasia

3.2 THE CONCEPT OF HUMAN RIGHT

The concept of human right existing today is not new, it has being in existence and has progressively developed with history of mankind.⁷¹ Human rights are those rights that are inherent in man without which man's humanity will be diminished.⁷²

The most banal statement on the concept of human rights is that, it is a modern name for what is traditionally known as natural right.⁷³ According to Ezejiolor, '*these rights may be defined, as moral rights, which every human being enjoy in Contradistinction with other beings he is rational and moral*'.⁷⁴

The right to life, which is sacrosanct and central to the act of euthanasia, is the most basic, fundamental, primordial and supreme right which human beings are entitled to have and without which the protection of all other human rights becomes meaningless or less effective.⁷⁵ The right to life because of its overwhelming importance also finds expression in the Holy Bible⁷⁶ and the Holy Qur'an.⁷⁷ The provisions of these two principal spiritual grundnorm are unanimous on the fact that nobody has the right to take life; every man is entitled to the preservation of his life. Right to life, is a first generation right, which is referred to as civil and political right. And this right has

⁷¹A Ibidapo –obe and T Yerima, *Law, Justice and Governance* Essay in Honor of Hon. Justice A Ajakaiye Petoa *frontiers of Nigeria journal* [2008] (112) 201-202

⁷² *ibid*

⁷³G Ezejiolor, *The Development of The Concept of Human Right: Definition and Philosophical foundation* in D.F Atidoga and Shaba S, *The Act of Euthanasia and Right to Life: The Nigeria Human Right and Criminal Law Perspective: Frontiers of Nigeria Law Journal* [2008] (12) 329

⁷⁴ *ibid*

⁷⁵ *ibid*

⁷⁶Good News Bible, *Exodus 20: 13*

⁷⁷ Qur'an, 6:15

been acknowledged in both our municipal and international instrument. And no doubts, the universality of right to life form the basis for its inclusion in the grundnorm of the existing legal order in Nigeria.

3.2.1 Right to life

All human rights are based on the right to life, which is inherent in every human being⁷⁸. Different scholars believe that human life is of divine origin and therefore beyond human capacity to dispose of. It is a right that is the most important of all rights, without which all other rights are meaningless⁷⁹. This right is considered more sacred than other rights; however, despite the sanctity of this right, issues like abortion and euthanasia are gaining support day by day in many Western worlds⁸⁰. Some countries have started enacting laws to permit euthanasia as part of human rights to autonomy and self-determination.

Section 33 (1) of the Nigerian Constitution provides:

Everybody has right to life, and nobody shall be deprived his right to life intentionally save in execution of a sentence of a criminal offence which he has been found guilty in Nigeria, and he shall not be deemed to have been deprived the right to life if he dies as a result of the use to such extent and in such circumstances as are necessary for the defense of any person from unlawful violence or for the defense of property, or in order to effect a lawful arrest or to prevent the escape of a person lawfully detained or for the purpose of suppressing a riot, insurrection or mutiny⁸¹

Section 33 of the Constitution of the Federal Republic of Nigeria does not suggest termination of life as provided under the exceptions. Thus, cases of euthanasia have not been established⁸².

⁷⁸ Christian Frodl, "Protection of the Human Rights and Dignity of the Terminally Ill and the Dying": *Council of Europe, Parliamentary Assembly* [2003]

⁷⁹ Katrina Haller, *The Right to Life* (Melbourne, 2015) 2

⁸⁰ Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977) 279

⁸¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33

⁸²O. J Lokulo-sodipo, "An Examination of the Legal Rights of Surgical Patients under the Nigerian Laws": *Journal of Law and Conflict Resolution* 1 [2010] (4) 8.

Neither do the sections include the right to die. Nigerian Courts⁸³ having the sole duty of interpreting the law, refused to go beyond the traditional meaning of the right to life to include other essential conditions of life. If the Court does not define the right to life to include a healthy environment or health, it will be difficult to assume that the section suggests termination of life. The Court restricts the meaning of the right to life only to its literal interpretation which is a deprivation of life in a manner other than the due process of law⁸⁴. Therefore it will be difficult to assume that Section 33 will be interpreted to include the right to termination of the life of a patient who is in pain.

There are disputing views about right to life and euthanasia among all the philosophers. Proponents of euthanasia claim that right to life include the right to control one's life which include right to die. John Stuart Mill⁸⁵ is of the view that euthanasia is part of the individual right to liberty. He argued that every person is a guardian over his own body and therefore is part of human nature to desire to terminate one's life. John Stuart⁸⁶ maintained that government has no right to interfere with the individual right thereby stopping him from dealing with his own body as he so wishes. Therefore, government prohibition of terminating one's life is wrong and a violation of the right of the person.

However, other philosophers like Thomas Aquinas and Thomas Hobbes⁸⁷ believe that euthanasia violates natural law. All human beings have a natural wish to remain alive; therefore any act of violating this wish is unnatural and wrong. Hobbes argued that it is contrary to the wish of many

⁸³ Bello v AG Oyo State [1986] 5 NWLR 828.

⁸⁴ Hakemli Makale, "Cross-Cutting Issues on The Right To Life in The Context of Law," Hacettepe HFD 5, no. 2 (2015): 117.

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide."10.

human beings to have their lives terminated; therefore, the government should be seen as authority to protect the right to life of its citizens.

3.2.2 Right to personal liberty

A Similar position is a case where the Constitution in Section 35 requires a person to be allowed to exercise his right to personal liberty. Consequently, liberty here does not include the permission for termination of life. The Court⁸⁸ in Nigeria has interpreted right to personal liberty to be a right that relates to situations where citizens are deprived right to engage in their lawful personal activities. The only situation where such right is violated is where a person is arrested and detained for over 24 hours without being charged to court, or more than the mandatory period during a criminal trial. The only place where this section relates to the patient is when secluding patient with the contagious disease for the purposes of their care or the purposes of protecting the larger society. This does not include terminating the life of the patient because he is extremely or terminally ill.

3.2.3 Right to human dignity

Human dignity entails the values and self-respect for the human person. This value is contained in Section 34 of the Constitution of the federal republic of Nigeria. Thus, this Section suggested being interpreted together with other sections to presume euthanasia in Nigeria. However, from the reading of the section euthanasia or termination of life cannot be presumed.

The Nigerian Courts explain the right to dignity devoid subjecting a person to torture or any inhuman degrading treatment⁸⁹. It may be assumed that is because no case dealing with termination

⁸⁸ Dokubo-Asari v FRN [2007] 12 NWLR 360

⁸⁹ Kalu v FRN & Ors[2016] 34 SC (48)

of the life of a patient who is suffering from extreme pain in the hospital. However, this section is not anticipated to be interpreted to include terminating the life of a patient because of the extreme or hopeless health situation. The court will not accept this argument unless the law is amended to provide a better solution to a patient in such situation.

3.3 Euthanasia versus the constitution

The 1999 constitution of the Federal Republic of Nigeria⁹⁰ is regarded as the grundnorm, i.e. is the law, from which other laws derive its sources. The implication of the above statement is that any other law that is inconsistent with the provisions of the constitution, that other law shall become void and the constitution will take precedence. Thus *section 1(1)* of the constitution provides; this constitution is supreme and its provisions shall have a binding force on all authorities and persons throughout the Federal Republic of Nigeria. *Sub section (3)* of the said section also provides:

If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.

The implication of the above provision is that any other law that is not in line with section one, sub- section three of the constitution shall be void. This provision is the main reason why there is a problem between the rules of ethics of medical personnel⁹¹ and the Nigerian constitution⁹². The rule prohibits all kinds of euthanasia⁹³ and but the Supreme Court has declared that rejection of treatment, sometimes known as passive euthanasia, is a fundamental right⁹⁴.

⁹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁹¹ Rules Of Professional Conduct For Medical & Dental Practitioners, Code On Medical Ethics In Nigeria, Medical and Dental Act, Cap.M8 Laws Of Federation Of Nigeria 2004

⁹² Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁹³ Rules Of Professional Conduct For Medical & Dental Practitioners, Code On Medical Ethics In Nigeria, Medical and Dental Act, Cap.M8 Laws Of Federation Of Nigeria 2004 Section 68

⁹⁴ MDPDT v Okonkwo [2001] 7 NWLR (Pt 617) P208-255

It is important to emphasize here that Nigeria being a signatory to the charter of the United Nations Declaration on Human and People Right (1948)⁹⁵, and is consistent with other International Human Rights instruments such as, the American convention on Human Rights⁹⁶ the European Convention for the Protection of Human Rights and Fundamental Freedoms⁹⁷ and the African Charter on Human and Peoples Rights⁹⁸ all of which provide for and guarantees right to life gave adequate attention to the issue of human right in its constitution.

The 1999 Constitution of Nigeria, clearly provides; for the right of every person to life and that no one shall be deprived intentionally of his life, save in the execution of the sentence of a court of a criminal offence of which he has been found guilty in Nigeria⁹⁹. Section 33(2) (a-c) goes so far as to omit specific circumstances from the definition of deprivation of life in which death may result. From the provisions of section 33 of the 1999 Constitution, like the above International Human Rights Instruments, it would appear that euthanasia is prohibited under the Constitution. The same can also be said of assisted suicide. The view has been strongly argued by anti-euthanasia/assisted suicide advocates.

Quite clearly this will only be consistent with a literal interpretation of this section of the Constitution. After all, the language of section 33(1) seems to forbid the deliberate taking of another person's life, which is what euthanasia and assisted suicide must entail.

But it is submitted that the interpretation of this section and indeed constitutional provisions must necessarily go beyond this rather over simplistic approach in order for one to accord the true and effectual meaning to the Constitution. In this regard, it is further submitted that section 33(1) of

⁹⁵ ibid Article 3

⁹⁶Ibid Article 4

⁹⁷ ibid Article 2

⁹⁸ ibid Article 4

⁹⁹Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33

the Constitution cannot be read in isolation. In its interpretation, this section must be read together with other related provisions of the Constitution, particularly section 34(1)¹⁰⁰ this approach is consistent with the mind-set of Nigeria's apex court in this respect. The Nigerian Supreme Court has declared in numerous cases that the Constitution should be interpreted literally and broadly, especially when it comes to the articles pertaining to fundamental human rights. All relevant provisions of the Constitution must be read together, and not disjointedly. In other words, what is often referred to as 'the whole reading' or 'community reading rule' must be adopted. This rule requires that constitutional provisions must be read in community and not in isolation, they must be accorded broad and literal interpretation rather than narrow and restrictive interpretation which the literal approach often engenders.¹⁰¹

With the above Supreme Court roadmap, it is submitted that section 33(1) of the 1999 Constitution cannot be read in isolation but together with Sections 34 and 35(1) of the Constitution¹⁰², which borders on the quality of human life and therefore ancillary to section 33(1) of the constitution. By the provisions of Section 35(1) every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in cases spelt out therein and in accordance with a procedure permitted by law. In the event that this guide is implemented, a terminally ill patient's associated rights to human dignity and personal liberty cannot be disregarded because the Constitution protects his life. No doubt, it has been rightly contended that this basic right to life is the most important of all rights, upon which plank other rights rests, but it is suggested that the right to life must unavoidably go beyond the continuing functionality of essential human organs.

¹⁰⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 34

¹⁰¹B Oniha, *Legality of Euthanasia and the Right to Die in Nigeria* <<http://www.hospice.com/history/>> accessed 7th June 2024

¹⁰² Constitution of the Federal Republic of Nigeria 1999 (as amended) s 34, 35

Consideration must be given to the nature and quality of such life. This is the intention of the makers of the Constitution in section 33(1). This is made more imperative with modern technological advancement which enables human organs to be kept alive even where a patient is functionally dead and in a permanent and hopeless vegetative state. This cannot be what section 33 of the constitution contemplates.

Additionally, every human being has the intrinsic and fundamental right to dignity, which is a corollary to the right to life and the right to be free of a permanent state of torture and inhuman or degrading treatment within the contemplation of section 34(1) of the Constitution. The image of a terminally ill patient trapped within a body, and undergoing constant and permanent pains, torture and suffering, with no hope of recovering and without a possibility of Medical euthanasia or assisted suicide cannot. It is little wonder that even staunch anti-euthanasia advocates, often times when faced with this situation in the case of a family member or friend, breathe a sigh of relief when such terminally ill relation or friend in the above conditions of excruciating pains and suffering finally dies. It's not unusual to overhear people murmuring under their breath In reference to the deceased, '*At least let him go and rest*'.¹⁰³

In addition, it is argued that the right to personal liberty guaranteed by section 35 of the Constitution needs to be understood to encompass more than only the freedom of movement. The idea of individual autonomy, self-determination, or the freedom to make one's own decisions must be included. This right continues to inure even to the terminally ill and indeed becomes more imperative. The right to Voluntary euthanasia or assisted suicide must necessarily find accommodation within section 35 of the Constitution. therefore, it is submitted that a denial of the

¹⁰³B Oniha, *Legality of Euthanasia and the Right to Die in Nigeria* <<http://www.hospice.com/>> <<https://www.hospice.com/history/>> accessed 7th June 2024

right of a terminally ill adult with full mental capacity to choose to die by way of euthanasia or assisted suicide or to decide to choose or reject a medical mode of treatment which may result in his death constitute a breach of sections 34 and 35 of the Constitution.

This submission, it must be added does not necessarily derogate from the provisions of section 33, thereof and is consistent with the reasoning and the decision of the Nigerian Supreme Court in the celebrated case of *Medical and Dental Practitioners Disciplinary Tribunal v Dr. E.N. Okonkwo*¹⁰⁴ The Supreme Court of Nigeria supported a patient's right to self-determination within the context of their constitutionally guaranteed freedom of religion and conscience. It also upheld the paramouncy of a patient's right to consent to Medical intervention/treatment. Where, therefore upon evidence that the patient was a mature and competent adult. The constitutional right to privacy include that Such a patient has the constitutional right to privacy to decline treatments that could extend his life. Even though that refusal may seem unwise, foolish or ridiculous to others and may ultimately lead to death. In this same case, the Supreme Court, per Ayoola JSC went ahead to state as follows:

Prevailing 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 is 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 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 than to give the patient's comfort?....

In light of the aforementioned ruling, it would seem reasonable to wonder aloud and pose the following query: If a patient is entitled to a constitutional right to foolishly refuse medical care that is both necessary and life-saving, so increasing the likelihood of their death, such as Mrs. Okolie

¹⁰⁴ibid

in this case, which in the view is akin to one Should a terminally sick patient who is experiencing excruciating pain and suffering be denied their fundamental constitutional rights when it comes to taking their own life voluntarily? Under sections 34 and 35, and hence receive distinct treatment. Without a doubt, this will be discriminatory and violate the Constitution's section 42 of the Constitution.¹⁰⁵ It is argued that this Supreme Court ruling unequivocally upholds the fundamental ideas supporting assisted suicide and voluntary euthanasia. Terminally ill persons cannot in deserving and compelling cases be denied the right to euthanasia or assisted suicide simply because of general right to life even where it is obvious that what one is seeking to preserve is not life within the meaning of the Constitution. It is life devoid of any form of dignity but 'hell'.¹⁰⁶

3.4 Euthanasia and the Nigerian criminal law

The Nigerian criminal Law is regulated predominately by two codes¹⁰⁷. The Penal Code regulates the Northern states, while the Criminal Code regulates the Southern states. All the codes, including the most recent penal code prohibit the act of killing. The Penal Code¹⁰⁸ provides:

Whoever causes death:

- (a) by doing an act which the intention of causing death; or such bodily injury as is likely to cause death; or
- (b) by doing an act with the knowledge that he likely by such act to cause death ; or
- (c) by doing a rash or negligent act, commits the offence of culpable homicide.

¹⁰⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 42

¹⁰⁶B Oniha , *Legality of Euthanasia and the Right to Die in Nigeria* <<http://www.hospice.com/history/>> accessed 7th June 2024

¹⁰⁷Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004 and Penal Code Cap P3 Laws of the Federation of Nigeria 2004

¹⁰⁸Penal Code Cap P3 Laws of the Federation of Nigeria 2004 s 220 (a) (b), and (c): s.221 (a) (b)

It is important to note that sub-paragraph (a) and (b) of the fore-going provision is applicable and covers the act of euthanasia, the act of euthanasia is done with the intention of causing death, and with knowledge that the nature of the act is likely to cause death. The Criminal Code, on the other hand defines killing, thus, '*...any person, who causes the death of another, directly or indirectly by any means whatever, is deemed to have killed that other person*'¹⁰⁹.

The Criminal Code also provides:

*It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to have caused any consequences which result to life or health of the other person by reason of any omission to perform that duty*¹¹⁰.

The Criminal Code further provides as that any person who:

1. Procures another to kill himself; or
2. Counsel another to kill himself and thereby induces him to do so; or
3. Aids another in killing himself;

is guilty of a felony, and is liable to imprisonment for life¹¹¹. Therefore death through the act of euthanasia is not excusable by law. It therefore means that the fact of euthanasia of any description is a Criminal act under the Nigerian Criminal Justice System as it is today. Killing someone is illegal unless the law permits, justifies, or excuses act in question¹¹². From the foregoing, one sees that involuntary euthanasia is unlawful. It is still the case that euthanasia in any other form is illegal

¹⁰⁹Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004 s 299

¹¹⁰ Ibid s 300

¹¹¹ ibid s 326

¹¹² ibid s 306 s 308

in Nigeria. The patient's consent or free will serves as the basis for legalizing alternative forms¹¹³. The term "euthanasia" is not used in the Criminal Code or the Penal Code when someone kills another person; it is considered homicide and can be classified as either murder or manslaughter, depending on the motive behind the killing. The Penal laws do not distinguish between killing that is carried out with the assistance of a Physician, or a request emanating from a patient, or the state of the patient's health. The effect is that euthanasia is Murder and Murder is the most grievous kind of homicide. It is defined in *section 316* of the Criminal Code¹¹⁴ as when a person unlawfully kills another, if the offender intends to cause the death of the person killed, or that of some other person.

Nonetheless, under our Penal laws, freewill or consent cannot be the defense of murder under the Criminal Code or homicide under the Penal Code. In other words consent by a person to the causing of his/her death does not affect the criminal responsibility of the accused¹¹⁵. Thus; euthanasia under the criminal jurisprudence is murder. This is because the Doctor is either killing his victim intentionally or upon the request of his patient notwithstanding the consent of the patient. In this respect, the Doctor's action towards his patient is culpable for consent to cause death will not exempt him from criminal liability¹¹⁶. This is because the Doctor shall be a supposed healer and not a killer and by invoking medical substance to accelerate the death of his patient that implies that he intended for his victim to die, or that he should have known the inevitable results of his actions. In the case of *Bolaji oreno v The State*¹¹⁷, it held that an "intention", to cause death or grievous bodily harm, is established if it is proved, that the accused deliberately and intentionally

¹¹³ Wole Iyaniwura, 'Law, Morality and Medicine: The Euthanasia Debate' *Global Journal of Human Social Science* [2014] (14) (4) 5.

¹¹⁴ Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004

¹¹⁵ *Ibid* s 299

¹¹⁶ *Ibid* s 299

¹¹⁷ *Bolaji oreno v The State* [2014] LPELR-22806 (CA)

did an act knowing that it was highly probable that it would result in the death of the victim, even though he did not desire that result.

It is clear that there is no legal frame work in place in Nigeria to address the fact that some people who are terminally ill could request assistance to die. Upon cursory examination of the Criminal Code's definition of murder, it is evident that the act of euthanasia demonstrates purpose as well as *mens rea*. Therefore, a doctor who requests that a certain substance kill his patient does so at his own risk because he knew and intended the consequences of his actions. And the Doctor causing the death of his patient establishes the *actus reus* The Doctor owes his patient the duty of care and must take reasonable precautions while performing his duty as a professional. It is not his responsibility to end a patient's life due to unbearable pain. In accordance with the contract, the physician promises to treat the patient as best he can.

It is often viewed that the motive for euthanasia is love or concern for the suffering of the victim¹¹⁸ but the reality is that in Nigeria, Euthanasia or whatever name you call it, is murder; the motive notwithstanding.

3.5 Case law and Euthanasia

Presently, the only case law on the concept of euthanasia and assisted suicide in Nigeria is the one relating to the right of a patient to refuse treatment. An examination of this case is very important considering the decision of the Supreme Court of Nigeria on it. It is also relevant because of its effect on the concept of euthanasia and assisted suicide in Nigeria.

a. Medical and Dental Practitioners Disciplinary Tribunal v Dr. E. N. Okonkwo¹¹⁹

¹¹⁸ TJ Gardner and TM Anderson, *Criminal Law* (Thomson Wadsworth 2006) 267

¹¹⁹ MDPDT v Okonkwo [2001] 7 NWLR (Pt 617) P208-255

In this case, a patient, Mrs. Martha Okonkwo and her husband, being members of the Jehovah's Witness sect i.e. a Christian religious sect, gave birth to a baby. She subsequently refused life-saving blood transfusion after complications arose. She was later re-admitted in the hospital of the respondent, himself also a Jehovah's Witness, who managed the patient without life-saving blood transfusion until she eventually died on 22/08/1991.

The respondent was subsequently suspended for six months by the Medical and Dental Practitioners Disciplinary Tribunal after it was determined that they had engaged in professional negligence. He appealed to the Court of Appeal. After his successful appeal at the Court of Appeal, the tribunal appealed to the Supreme Court. The Supreme Court upheld the paramourcy of a patient's right to consent to medical intervention/treatment. Where, therefore upon evidence that the patient was a mature and competent adult, like a patient's constitutional right to decline medical care that could extend his life. Even if it can seem foolish to refuse, right to privacy include the right of such a patient to refuse treatment that may prolong his life. Even though that refusal may seem unwise, foolish or ridiculous to others and may ultimately lead to death. The Supreme Court, per Ayoola JSC went ahead to state as follows:

Prevailing 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 is 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 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 than to give the patient's comfort?....

b. The Case of Terri Schiavo¹²⁰

¹²⁰ Michael schiavo v Robert Schindler & Mary Schindler [2005] file no 90-2908-GD-003, fla.6th judicial circuit

Terry Schiavo, a Philadelphia woman in the United States of Roman Catholic faith, on February 25, 1990, she collapsed in her Florida home in full cardiac arrest and suffered massive brain damage. She went into a vegetative state. In this state, she remained for over 15 years. Both her doctors and court appointed doctors returned the opinion that there existed no hope of recovery. Her husband and also her legal guardian by Florida law, Michael Schiavo, contended that it was his wife's wish that she was not to be kept alive through unnatural mechanical means and that her feeding tube be removed. This diagnosis and Prescription was strongly opposed by her parents, Mr. and Mrs. Schindler. A highly publicized and prolonged series of legal challenges presented by them and by State and Federal legislative intervention caused a 7-year delay. During which time her husband described her state this way, *'I see a shell of somebody I used to know. Somebody I loved and adored very much. And now she's a shell....she is not existing, That's not life'*.

After all attempt at appeals through the Federal Court system, including a futile signing of legislation designed to keep her alive by the US President, George W. Bush, doctors at the Pinellas Park Hospital facility, where Terry was being cared for disconnected her feeding tubes on 18th March, 2005. Terry died 13 days later.

c. The Case of Aruna Shanbang¹²¹

Aruna Shanbang was a nurse in India. In 1973, while at work at King Edward Memorial Hospital, Mumbai, she was sexually assaulted by a ward boy, Sohanlal Bhartha Walmiki, a sweeper in the same hospital. During the process of the sexual assault, he choked her with a dog chain. The asphyxiation cut off oxygen supply to her brain, resulting in brain stem contusion injury and cervical cord injury, leaving her cortically blind and in a vegetative state. An application for her

¹²¹Euthanasia and case law: The Aruna Shanbang < professionals.blogspot.in/2011/03/...legal-issues-inaruna-case.html> accessed on 27th April 2024

to be allowed to die after having spent 37 years in this state was refused by the Indian Supreme Court. However, the case of Aruna Shanbang, in a landmark judgment, made passive euthanasia legal in India.

3.6 International Human Right Instruments

International Human Rights Instruments do not support the practice of euthanasia. The instruments promote respect and preservation of life. Universal Declaration of Human Rights (UDHR) 1948¹²², specifically Article 3, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) 1966¹²³, Article 2 of the European Convention on Human Rights (UCHR) 1953¹²⁴, Article 4 of the American Convention on Human Right (ACHR) 1969¹²⁵ and Article 4 of the African Charter of Human and People's Right (ACHPR) 1981, all go to show the extent to which right to life is having universal standard and acceptance.

It is these international instruments that make the right to be entrenched and enshrined in all the Constitution in the world including Nigeria. However, for the purposes of understanding, some cases that apply the instruments shall be considered. In an English case of *Airedale v Bland*¹²⁶ European Court of Human Rights faced a similar challenge on whether Article 3 which is in pari material with the Sections 33 of the Constitutions of Nigeria shall allow termination of life on

¹²²UN General Assembly: Universal Declaration of Human Rights [1948] <<http://www.refworld.org/docid/3ae6b3712c.html>> accessed on 27th April 2024

¹²³United Nation, International Covenant On Civil And Political Rights, 1966. <<http://www.refworld.org/docid/3ae6b3712c.html>> accessed on 27th April 2024

¹²⁴ Council of Europe, European Convention on Human Rights, 2010

¹²⁵ UNTS, American Convention on Human Right. 1969

¹²⁶ *Airedale NHS Trust v Bland* [1993] AC 789 885 789

request. The Court stated that although euthanasia is not within the exceptions to protecting the right to life, the reason that there are circumstances where deprivation of life is allowed like death sentence does not mean right to life is an absolute right, thereby warranting terminating it as one wishes

The *case of Dian Pretty*¹²⁷ is another good illustration on the stand of the European Court. In the case, she challenged the Director for Public Prosecution before a domestic court for not giving her assurance that her husband will not be prosecuted if he assists her to die¹²⁸. The patient suffered from *Motor Neuron Disease* and as she entered the final stage, she wanted to avoid painful and undignified death. She was unsuccessful in her claim and she proceeded to the European Court of Human Rights on the ground that Article 2 of the European Convention on Human Rights guaranteed her right to control the time and manner of her death. And that the article does not only aim at protecting people from any unlawful act of third parties, but it also includes freedom of choice. She also argued against the Suicide Act of 1961 that makes assisted suicide a crime in England and Wales that it is against her right to choose to be assisted to die. And it is out of respect for the right to autonomy and self-determination that the offence of suicide was decriminalized while maintaining assisted suicide as a crime reflects the respect for the sanctity of sacred nature of human life. In rejecting the argument of Dian Pretty the court said:

“It is not enough for Mrs. Pretty to show that the United Kingdom would not be acting inconsistently with the Convention if it were to permit assisted suicide; she must go further and establish that the United Kingdom is in breach of the Convention by failing to permit it or would be in breach of the Convention if it did not permit it. Such a contention is in my opinion untenable.”¹²⁹

¹²⁷ Regina (Pretty) v Director Public Prosecution [2001] 61 UKHL 800

¹²⁸ The Consent to Medical Treatment and Palliative Care Act 1995 (SA) (Consent Act).1

¹²⁹ Regina (Pretty) v Director Public Prosecution [2001] 61 UKHL 800

The Court, in this case, did not recognize the right to life to include right to die although the court referred the matter as something within the power of every country to make a law allowing euthanasia and assisted suicide. The court, however, opined that a patient shall not be subjected to a too burdensome medical treatment. This view of the court seemed to encourage supporters of euthanasia to pursue it rather more vigorously. The court held that;

(1) Member states have an absolute and unqualified obligation not to inflict the proscribed treatment and also to take positive action to prevent the subjection of individuals to such treatment.

(2) Suffering attributable to the progression of a disease may amount to such treatment if the state can prevent or ameliorate such suffering and does not do so.

(3) In denying Mrs. Pretty the opportunity to bring her suffering to an end the United Kingdom will subject her to the proscribed treatment.

(4) Since it is open to the United Kingdom under the Convention to refrain from prohibiting assisted suicide, the Director of Public Prosecutions can give the undertaking sought without breaking the United Kingdom's obligations under the Convention.

(5) If the Director may not give the undertaking, Section 2 of the 1961 Act is incompatible with the Convention.”¹³⁰

The stand of the EU Court that right to die has not been contemplated by Article 2 which is similar to Section 33 of the Nigerian Constitution, did not stop the proponents from carrying their argument further that euthanasia is legal even in Nigeria¹³¹. The argument is that the implication

¹³⁰ Ibid

¹³¹O Aborisade , “Euthanasia and the Experiences of the Yoruba People of Nigeria” : *Ethics and Medicine* 31 [2015] (1)31

of Section 33, 34 and 35 suggesting that patient under life support are experiencing serious pain and the treatment they receive is in total violation of their right to dignity¹³² and personal liberty, just as it was held by the EU Court above. If a patient request for an end to their life, there is nothing unconstitutional for allowing them. One of the arguments is that it is not correct to say that the decision to end one's life is a private affair and a matter of individual autonomy which nobody has right to question.

The case of *Karen Ann Quinlan*¹³³, she was a lady of 21 years who after taking the combination of Valium, Aspirin, and three tonics in a party fall into a coma and remained in a persistent vegetative state for ten years. Her parent saw the whole event as burdensome and therefore asked the hospital to withdraw the life support and allow her to die, but because she reached the age of 21 years, the hospital demanded a court order appointing the parent as next friend to Karen to enable them to do so. This is even though the parent signed a form exonerating the hospital from any liability because she did not satisfy the meaning of brain death under the New Jersey Law. Meanwhile, doctors certified that her situation is irreversible and the sum of 450 dollars is spent every day.

When Karen family's lawyer failed to secure the order on the ground of brain death which does not satisfy the requirement of the New Jersey law, her lawyer got his brief of argument amended to include the right to religion. It is the patient's religious belief that she should be allowed to die. The lawyer also compared the doctor's treatment with a prison guard punishing a prisoner. He further related the issue to privacy as in the case of *Roe v Wade*¹³⁴ on abortion, making it a right to

¹³²A Plomer , *The Law and Ethics of Medical Research: International Bioethics and Human Rights* (Cavendish publishing limited 2005) 91

¹³³ Re quinlan Case (1976) 70 NJ 10 (355A)

¹³⁴ Roe v Wade [1973]410 US 113

make a personal decision. The human right provisions relied on is also contained in the Nigerian Constitution, for example Section 34, 37 and 38.

However, since no case comes before any of the Nigerian courts where a clear meaning will be given relating to the question of the right to withdraw lifesaving treatment that will lead to death. Nobody knows the future verdict of the court. However, any attempt to withdraw such supporting machine will amount to murder. Therefore, if there is no legal framework to deal with the situation doctors will remain in a dilemma.

3.6.1 African Charter on Human and Peoples Right.

Article 4 of the Charter states: *“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”*¹³⁵ 8 A close look at the provisions of both the African Charter of Peoples and Human Rights and European Convention on Human Rights reveals that life is sacrosanct and must be protected except in the circumstances prescribed by law.

¹³⁵ African Charter on Human and Peoples Rights, 1986.

CHAPTER FOUR

MORAL AND ETHICAL FRAMEWORK OF EUTHANASIA IN NIGERIA

4. MORAL FRAMEWORK

4.1 Religious dimensions of Euthanasia in Nigeria

Many view the act of Euthanasia which entails the intentional taking away of life, to be an affront to the sanctity and divine origin of life, which is the basis of most religious doctrines. Thus euthanasia cannot be considered without a highlight on the views and positions of the world major religions. Religion is defined as “the belief in the existence of God or gods, and the activities that are connected to the worship of them”¹³⁶. One of activities connected to the worship of most religion is sacredness and divinity of life. And the topic of euthanasia is this mortal existence, which is seen as "holy and divine." Everything on earth was made to honor God the creator according to the belief of many different religious organizations. Therefore, God made man to exalt him under all circumstances. Thomas Aquinas' writings mirrored this philosophy when he stated:

*that there is no supreme evil. Evil are in manner uncaused, because that are not realities in the same way as good things are. The creature, whose defect constitutes evil, is caused by God. God made good and bad and whichever one that befalls us, we should give glory to him. This required total submission, no contemplation or inquisition that is total surrender.*¹³⁷

That also is the reason Karl Marx, defined religion as ‘opium of the masses’.¹³⁸ For persons that are religiously inclined, their argument is centered on the fact that since humans are incapable of

¹³⁶ Oxford Advance Learners’ English Dictionary 6th ed. P. 990

¹³⁷ The summa theological of St Thomas Aquina 2nd revised edition (1920)

¹³⁸ karl Marx, *An overview of Law and religion* <[http:// www./karl Marx/religion/overview Law and religion.html](http://www./karl Marx/religion/overview Law and religion.html)> accessed on 24th August 2024

creating life, he has no justification for ending it. Only God should determine when a man's life should end. Most religious inclination disapproves of euthanasia with a closer appeal to forbidding the procedure. The common position and reason is maintaining that the procedure is a form of murder, which is precluded in many religious books and tenets. Below are a few religious positions on the procedure.

4.1.2 CHRISTIANITY

Christians maintain that man is made in the image and likeness of God and as a result, preserve the decision on life to God. Believers in their faith insist that when a person tries to interfere or meddle in, with the method of living or putting to death of life, irrespective of the circumstances, they assume the place of God. Christians also place importance on the value of life-it is believed that no life should be seen as important over another. They also teach that suffering have their value and should not be seen as a reason to end life. From the Christendom's view, the argument against euthanasia is based on the Ten Commandments that say '*Thou shall not kill*'.¹³⁹ To Judeo-Christians, euthanasia and assistant suicide are completely unacceptable, indeed inconceivable and being contrary to the Holy Bible. They hold a strong belief that life is a gift from God.¹⁴⁰ The Christian holy book the bible maintains this argument there in:

- Matthew 5:11 -blessed are ye when men shall revile you, and prosecute you, and shall say all manner of evil against you falsely for my sake

¹³⁹ KJV, 1Exodus 20:13

¹⁴⁰B Oniha , *Legality of Euthanasia and the Right to Die in Nigeria* <<http://www.hospice.com/history/>> accessed 7th June 2024

- 2 Timothy 3:12- for therefore we both labor and suffer reproach because we trust in the living God, who is the savior of all men especially of those that believe.
- 1 Peter 4:16- yet if any man suffers as a Christian, let him not be ashamed but let him glorify God on his behalf
- Genesis 9:6 -whoso sheddeth man's blood, by man shall his blood be shed for in the image of God made he man.
- Deuteronomy 27:25- Jesus came to save, restore and renew life. Satan comes to steal, kill and destroy.

Catholic leaders and moral teachers believe that life is the most basic gift of a loving God, a gift over which we have stewardship but not absolute dominion. This belief is hinged on the following:

- **Right to die:** The right to die is not recognized by the Roman Catholic Church, which holds that although people are free agents, this freedom does not include the ability to end one's own life. Euthanasia and suicide are both a rejection of God's absolute sovereignty over life and death. The church believes that each human life is a manifestation of God in the world, a sign of his presence, a trace of his glory "*the life which God offers to man is a gift by which God shares something of himself with his creature.*" A human being, who insists that they have the right to die, is denying the truth of their fundamental relationship with God¹⁴¹

¹⁴¹ Sacred Congregation For The Doctrine Of Faith" Declaration On Euthanasia" 5th May 1980

Refusing aggressive Medical treatment: Refusing severe medical care is ethically acceptable according to the church; it is not euthanasia but rather a suitable acceptance of the human predicament in the face of extreme and aggressive medical measures to maintain life.¹⁴²

- Assisting suicide: the church also stated that helping someone commit suicide is immoral as suicide itself is immoral. In the catechism on euthanasia¹⁴³., the church made it clear that genuine compassion results in experiencing another person's suffering rather than killing the person whose suffering we cannot bear¹⁴⁴.
- Particular respect should be shown to those whose lives are weakened or diminished. People who are ill or disabled should be assisted in leading as normal a life as possible.
 - Particular consideration should be shown to those whose lives are weakened or diminished. People who are ill or disabled should be assisted in leading as normal life as possible.
 - Regardless of the reasons and methods, direct euthanasia is morally wrong because it involves ending the lives of sick, disabled, or dying people. Therefore, any act or omission that intentionally or by itself results in death to end suffering is murder which is seriously against human dignity and the respect that the living God, his creator, deserves. The mistake of judgment that one may make in good faith does not alter the nature of this murderous act, which must always be prohibited and excluded.

¹⁴² Ibid

¹⁴³ Catechism Of The Catholic Church Article 5 s 2276-2279

¹⁴⁴ Pope John Paul II *Evangelium Vitae*, 1995

- It is acceptable to stop medical operations that are burdensome, risky, unusual, or out of proportion to the intended result; this is known as "overzealous" treatment. Here, the inability to prevent death is simply accepted; there is no will to cause it. Those legally authorized to act on behalf of the patient, whose reasonable will and legitimate interests must always be respected, should make the decisions if the patient is competent and able to do so.
- Even if death is thought imminent, the ordinary care owed to a sick person cannot be legitimately interrupted. The use of painkillers to alleviate the sufferings of the dying, even at the risk of shortening their days, can be morally in conformity with human dignity if death is not willed as either an end or a means, but only foreseen and tolerated as inevitable palliative care is a special form of disinterested charity. As such, it should be encouraged.

The church teachings also recognize that there are times when a life that is not innocent must be taken for instance; in self-defense within the duties of law enforcement work to protect threatened innocents or unjustly waged war.¹⁴⁵ However, regardless of the circumstances or other factors such as the killer's insanity, the willful taking of an innocent human life is murder, even if the killing is self-inflicted.

Finally, the church teaches that sufficient palliative (pain relieving) care institutions can provide a viable moral alternative to suicide. At the same time, avoiding or abandoning aggressive or harmful medical procedures can be justified if the goal is not to cause death, but rather to accept the inability to prevent it.¹⁴⁶ Among the protestant denominations vary widely on their perception

¹⁴⁵ Sacred Congregation For The Doctrine Of Faith” Declaration On Euthanasia” 5th May

¹⁴⁶ *ibid*

on the act of euthanasia and Physician assisted suicide. Since the 1970s, Evangelical churches have worked with the Roman Catholic on the sanctity of life approach, though the Evangelicals may be adopting a more exception less opposition. While liberal protestant denominations have largely eschewed euthanasia, many individual advocates, and many euthanasia society activists, have been Protestants clergy and laity.¹⁴⁷ Physician assisted suicide has gathered much support, some liberal protestant denomination have offered religious argument and support for limited form of euthanasia.¹⁴⁸

4.1.3 Islam

Believers of the Islamic faith view life as sacred hence are vehemently against euthanasia. They believe only Allah gives life, and such can only decide how long a person's life should be. Under Islamic law, Allah is regarded as the sole law Giver. The primary sources of Islamic law are the Holy Quran, Sunnah of Prophet Muhammad popularly known as hadith, the consensus of the Ulama (yma') and analogical deduction (Qiyas). Therefore, whatever may have been decreed lawful remains lawful and that which is forbidden remains forbidden. It is in the light of the above, Islamic law believes that all human life is sacred because it is given by Allah, and that Allah chooses how long each person will live, human beings should not interfere with it.¹⁴⁹ in the course of justice¹⁵⁰ Allah decides how long each of us will live; When their time comes they cannot delay it for a single hour nor can they bring it forward by a single hour¹⁵¹ And no person can ever die

¹⁴⁷ Euthanasia in general Scholarpedia encyclopedia <<http://www.Scholarpedia.org/scholari/euthanasia.html>> accessed 3rd September 2024

¹⁴⁸ ibid

¹⁴⁹ Euthanasia and religion <www.bbc.co.uk/religion/islam/islamethics/euthanasia.html> accessed 3rd September 2024

¹⁵⁰ Holy Qur'an 17:33

¹⁵¹ Ibid 116:61

except by Allah's leave and at appointed time¹⁵² Suicide and euthanasia are explicitly forbidden Destroy not yourselves surely Allah is ever merciful to you¹⁵³ The prophet said; amongst the notions before you there was a man who got a wound and growing impatient (with its pain), He took a knife and sliced his hand, and the bleeding continued till he died. Allah stated, "My slave hurried to bring death upon himself, so I have forbidden him (to enter) paradise."¹⁵⁴

End of life decisions and DNR orders: Many observant Muslims feel that Do Not Resuscitate (DNR) orders are a gentle form of euthanasia, which is completely prohibited in Islam¹⁵⁵. Muslims cannot kill or be complicit in the killing of another person unless it is necessary for justice¹⁵⁶. The Islamic code of Medical Ethics declares that it is fruitless to retain a patient in a vegetative state using heroic efforts. The doctor's goal is to preserve both the process of life and the process of death."¹⁵⁷

This means doctors can stop trying to prolong life in cases where there is no hope of a cure. According to, Islamic Medical Association of America (IMANA), "when death becomes inevitable, as determined by physicians taking care of terminally ill patients, the patient should be allowed to die without unnecessary procedures."¹⁵⁸IMANA say that turning off support for patients deemed to be in a persistent vegetative state is permissible. This is because they view all mechanical life support techniques as transitory measures.¹⁵⁹. While shutting off life support is

¹⁵² *ibid* 3:145

¹⁵³ *ibid* 4:29

¹⁵⁴ Sahih Bukhari 4.56.669

¹⁵⁵ Euthanasia and religion <<http://www.bbc.co.uk.html>> accessed 3rd September 2024

¹⁵⁶ *ibid*

¹⁵⁷ *ibid*

¹⁵⁸ *ibid*

¹⁵⁹ *ibid*

permitted, hastening death with the use of some painkillers is not permitted because this would constitute euthanasia.¹⁶⁰ Following from this, the Islamic code of medical ethics notes that

Mercy killing like suicide finds no support except in the atheistic way of thinking that believes that our life on this earth is followed by void. The claim of killing for painful hopeless illness is also refuted, for there is no human pain that cannot be largely conquered by medication or by suitable neurosurgery.¹⁶¹

From the religious perspective, it is believed that human life itself is divine and therefore, out of human disposal. Islamic jurisprudence, based on the convincing interpretation of the Holy Koran, does not recognize a person's right to die voluntarily. The Islamic law argument on this concept is based on two main reasons.

First, life is sacred and euthanasia and suicide are not included among the reasons allowed for killing in Islam. Second, Allah decides how long each of us will live.¹⁶² Under the Islamic law, death of a living is not determined by sickness, for Allah says if you are sick He is the one to cure you¹⁶³. This means that no amount of drug will be administered on a patient will cure him until Allah has hand in it. Sickness and death are controlled by Allah.

Thus, in Islam, the concept is forbidden due to the sanctity of human life. All religious and social thinkers, with the exception of materialistic philosophers, believed in the sacredness of human life.

¹⁶⁴ Human beings under the sharia are created as Khilifat Ulla, vicegerents on the earth.. Under Sharia, killing a human being unless when justified by law is considered haram and criminal. It is claimed that one of the harshest forms of killing is to kill oneself (suicide), and the prophet has

¹⁶⁰ ibid

¹⁶¹ "The Sanctity of Human Life. In: Islamic Code of Ethics. In Islamset Site.," 2012

¹⁶² Narimisa M, 'Euthanasia in Islamic Views': *European Scientific Journal* [2014] (2)170.

¹⁶³ Quran

¹⁶⁴ AH Langrial and M Muslim,

told of a person who committed suicide, whether he was severely hurt in a war.¹⁶⁵ Atlaf H. Langrial and Muhammad Muslim viewed that the act of killing in the name of mercy under the Islamic law is actually brutal action and could not be named as known as "mercy killing," since one should do everything in their power to save a life, treat a patient as best they can, and support them. To them it is the real mercy that Islam has preached and it leads person towards the path of jannah and saves him from the fire of hell.¹⁶⁶

Those who denied the existence of the Creator can however maintain a different strict view. It is not difficult to construct a utilitarian argument in favor of such a position which is founded on the proposition that the consequence of allowing the taking of life is ultimately destructive of greater societal happiness.¹⁶⁷ Nevertheless, few of those who recognize its value will deny that life may be taken at least in some circumstances. The principle of self defense either in the private context or in the context of a just war may admit to the killing of others. In a similar vein, those who often oppose murder may yet believe that judicial execution is a suitable component of criminal justice.¹⁶⁸

4.1.4 Customary Law

Certainly, there were killings that were executed among some African traditional societies which might seem to be euthanasia. In some African communities, for instance, in the traditional Yoruba community of Nigeria, new-born twins, or "Ibeji," were killed immediately they were born. They were believed to be evil, monstrous abnormalities, and infanticide was a common practice.¹⁶⁹ It is

¹⁶⁵ M.C. Obi, *Right to Life and Right to Die: A Comparative Study of the Nigeria and Oregonian Laws on Euthanasia* (PhD Thesis of the Faculty of law Unilorin).

¹⁶⁶ *ibid*

¹⁶⁷ Wole Iyaniwura, *Law, morality and medicine: the euthanasia debate* (faculty of law Ado Ekiti Nigeria 2003)3-4.

¹⁶⁸ *ibid*

¹⁶⁹The Yoruba People of south West Nigeria, Africa.< <http://review.ebay.com.html>> accessed 6th may 2024

also noted by Helen and Catherine that: A perspective held by southern Bantu groups: found in south Africa is that twins have a strong association with wild animals. In this context twins are viewed as unpredictable, deceitful and disruptive to the society. It has been suggested that this association of twins with disruption and negative impacts leads to a fear of twin babies being born, which in turn may cause one or both of a pair of twins to die -“twin infanticide”¹⁷⁰ The action of killing twins, as explained above is not euthanasia; it is sheer infanticide due to ignorance of human genetics. This kind of killing has no good reason that would qualify it to be called euthanasia even though it might seem to be active non-voluntary euthanasia. Here, the twins are mercilessly killed without necessarily suffering from any severe disease or condition; they are killed for some cultural taboo reasons which are rooted in the people’s ignorance of the root cause of twins’ birth. Another instance that might be easily confused with euthanasia in Africa, is the way the traditional Kikuyu: Community the largest ethnic group in Kenya treated their terminally ill or the dying elderly. In short, they used to abandon their dying patient in the bush with some food so that he may die by himself. If euthanasia means good death or merciful killing, does this kind of death qualify to be called euthanasia? It seems to be passive euthanasia but it is not because, euthanasia should not be painful for it is primarily supposed to relieve one from painful dying process. Suppose the food got finished before the patient dies, the patient will then die of hunger! This is neither good death nor merciful death; therefore, this practice is not euthanasia by definition. It is important mention also, that euthanasia even though such acts may carry different names, for instance in the words of Iyaniwura¹⁷¹ where he said: There were wide oral reports amongst the Igala people: the present day eastern part of Kogi state Nigeria that a one-time chief was a victim of Non – Voluntary euthanasia:

¹⁷⁰ L.B Helen and M.H Catherine, *Re-evaluating Twin Infanticide: Current anthropology* (The University of Chicago Press 1996) (37)5 p. 856-863

¹⁷¹ Wole Iyaniwura, *Law, morality and medicine: the euthanasia debate* (faculty of law Ado Ekiti Nigeria 2003) 2.

A lot of practices of African tribes could be described today as acts of euthanasia for instance, in bassa land of Niger state extremely deformed children at birth are often victims of euthanasia before now .

4.2 Medical Ethics on Euthanasia.

The word Ethics is a derivate of the Greek word “ethos”, which means customs, Habits, or practice.

It represents a set of principles that help to answer the question, ” what should be done in a given situation, are all things considered?” Ethics is viewed as a morally required duty that members of a profession voluntarily adopt as a code of conduct and behavior. The study of moral principles and assessments in relation to medical practice is known as medical ethics. They serve as a supplement to the statutory laws that control the practice of medicine and dentistry in a particular location.¹⁷² Medical ethics is the study of moral values and judgments applied to medical practice.

They supplement the statutory laws that govern medical and dental practice in any given place.¹⁷³

A conduct is said to be unethical, when it derogates from those moral principles or standards. An infamous conduct is one that results in a major violation of the ethical norms required of a medical professional. . In *R v Dudley & Steven*¹⁷⁴ Lord Coleridge, observed that ‘*the absolute divorce of law from morality would be of fatal consequence*’ Medical ethics, permeates the activities of all physicians. They are the foundational beliefs which guides and influence the actions of clinicians in the care of their patients. A common framework used in the analysis of medical ethics, is the “four principles” approach postulated by Tom Beauchamp and James Childress in their textbook *principles of biomedical ethics*.¹⁷⁵ It acknowledges four fundamental moral precepts that should

¹⁷²M.O Emmanuel, *Ethics & Medico- Legal Aspects Of Medical Practice* (Jaron industries, 2010) 16

¹⁷³ A.H Rafindadi, *A Handbook Of Forensic Pathology*, (Amana publishers, 2003) 97

¹⁷⁴*R v Dudley & Steven* [1884] 14 QBD 273

¹⁷⁵ Tom Beauchamp and James Childress, *principles of biomedical ethics* (Oxford University Press inc ,2001)

be evaluated and contrasted with one another, with consideration given to the extent to which they can be applied. The leading ethical principle includes;¹⁷⁶

- ❖ **Respect for Autonomy-** the patient has the right to refuse or choose their treatment.
- ❖ **Beneficence-** a practitioner should act in the best interest of the patient.
- ❖ **Non-maleficence-** first, do no harm.
- ❖ **Justice** – concerns the distribution of scarce health resources, and the decision of who gets what treatment (fairness and equality).
- ❖ **Respect for persons-** the patient (and the person treating the patient) have the right to be treated with dignity.
- ❖ **Truthfulness and honesty-** the concept of informed consent, the patients right to self-decision can be effectively exercised only if the patient is given sufficient information to enable him make intelligent choices.

In medical ethics, euthanasia, commonly referred to as physician assisted suicide or mercy killing, is the practice of denying or discontinuing care in a patient's natural course of dying. To put it another way, it is hastening the natural course of death for patients who are near death, at which point all available treatments are either ineffectual or too excruciating for them to endure.¹⁷⁷ Hippocrates, the father of medicine, created an oath around 300–400 BC that is still taken by newly graduated medical students.

*I will give no deadly medicine to any one if asked, nor suggest any such, counsel, speaks against physician assisted suicide.*¹⁷⁸

¹⁷⁶R Gillon, “Medical ethics”: *four principles plus attention to scope* a *British Journal* [1994] (309) 184

¹⁷⁷ Ethics on euthanasia;<[http:// www.bbc.co.uk/ethics/euthanasia/overview/introduction.shtml](http://www.bbc.co.uk/ethics/euthanasia/overview/introduction.shtml) accessed on 6th July 2024

¹⁷⁸E.S Akpata, *Medical Ethics* (Lagos University Press 1982) .

4.2.1 Rules of Professional Conduct For Medical and Dental Practitioners in Nigeria

Every country has its own code of medical ethics and sometimes some codes are designed by some associations to regulate the practice of its members. These codes are moral rules referred to as rules of professional conduct. The Hippocrates, a physician regarded as the founder of modern medicine, established the first and the earliest of the rules.¹⁷⁹ His statement is widely known as the Hippocratic Oath,¹⁸⁰ which today becomes the guiding principle of all medical practitioners; even the World Medical Association (WMA) built its Code of Ethics from the Hippocratic Oath. The Oath has now become the oath administered to newly admitted medical practitioners before they start the medical practice, they swear to uphold the professional ethical standard. Let me quote the portion relevant to this research even though countries adopt it with necessary modification, '*I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly, I will not give a woman a pessary to cause an abortion*'.

This portion directly relates to the question of euthanasia and assisted suicide. The World Medical Association (WMA) and some other International Association have made some changes to the original oath, but without losing the message of prohibiting euthanasia and assisted death. History has shown that before the coming of this oath medical doctors served dual functions, they are both healers and killers, The principal objectives of the medical or dental practices in Nigeria, is regulated by the Medical and Dental practitioners Act, which relates to Code of Medical ethics,¹⁸¹ where it also empowers the Medical and Dental council to review and prepare from time to time, a statement as to the code of conduct which the council considers desirable for the practice of the

¹⁷⁹ Wole Iyaniwura, 'Law, Morality and Medicine: The Euthanasia Debate *Global Journal of Human Social Science* [2014] (14) (4) 5.

¹⁸⁰ *ibid*

¹⁸¹ Rules Of Professional Conduct For Medical & Dental Practitioners, Code On Medical Ethics In Nigeria, Medical and Dental Act, Cap.M8 Laws Of Federation Of Nigeria 2004

Profession in Nigeria.¹⁸² The Code of Medical ethics in Nigeria, is a formal statement of the correct attitude expected of Physicians universally, it is the instruction for maintenance of discipline within the Medical and Dental professions and every Practitioner is given a copy on induction and the provision of the Code of Medical ethics in Nigeria, binds every medical and dental practitioner practicing in Nigeria.¹⁸³ The only Code that can be said to contain a section that expressly addresses the problem of assisted suicide and euthanasia is the one listed above. This is due to the fact that the topic of assisted suicide and euthanasia is covered in detail. According to the language of the Code, the Nigerian Medical Association takes the matter very seriously, just like the majority of health organizations worldwide.

Thus the section provides, *'One of the cardinal points in the physician's oath is the preservation of life and therefore, the act of mercy killing or helping a patient to commit suicide runs contradictory and anti-ethical. A doctor should not terminate life, whether the patient is in sound health or is terminally ill'*.

A practitioner shall be adjudged to be breach of the ethical code of practice if found to have encouraged or participated in any of the following acts:

- Using medications to end a patient's life, even when the patient specifically requests it.
- Prescribing or providing medication with the specific goal of allowing the patient to take their own life.
- Drug administration to end a patient's life, whether or not the patient specifically requests it and it is believed to be in their best interests.¹⁸⁴

¹⁸² section1 (2)(c) ibid

¹⁸³ section 9(a-q) ibid

¹⁸⁴ section 68 ibid

The aforementioned clause makes it clear that Nigerian medical professionals are prohibited from performing assisted suicide and euthanasia. It also forbids, withdrawal or withholding of treatment, including refusal of treatment. It is crucial to note that the severity of Nigeria's medical ethics code is what led to a doctor being prosecuted by the body's disciplinary committee for disobeying a patient's request that a blood transfusion be prohibited by her religion.¹⁸⁵

4.2.2 Rights of a Patient

At this juncture, it is rather pertinent to take a cursory look at the rights of a patient;

- **Right to life** Although the Federal Republic of Nigeria's 1999 constitution, as amended, grants an adult with healthy mental faculties the right to refuse life-saving treatment, it equally guarantees his right, this constitutional provision reinforces the tenets of the Physicians' Oath, and obliges the Physician to take all necessary measures and precautions to safeguard the life of his patient.
- **Right to accept or refuse any recommended Medical treatment including blood transfusion:** This is illustrated by the following decided cases;
 - *Medical and Dental Practitioners Disciplinary Tribunal v Dr John E.N Okonkwo*,¹⁸⁶ in this case one Mrs. Martha Okorie, a member of Jehovah's Witness, a religious sect strongly refused on religious grounds blood transfusion, despite appeals, that she may die. She (together with her husband) requested for a discharge from the first hospital based on her refusal to take blood transfusion and serious warning from the doctor of the consequence of such. She eventually died in the hospital as a result of insufficient blood. The Medical and Dental Practitioners Disciplinary Tribunal which tried the charge of negligent,

¹⁸⁵MDPDT v Okonkwo [2001] 7 NWLR (Pt 617) P208-255

¹⁸⁶ ibid

Professional misconducts, among others brought against the doctor, found him guilty. The Supreme Court, upturned a conviction and absolved the doctor of any blame and held that a competent adult patient exercising his rights to privacy freedom of thought, conscience, and religion under the constitution may reject lifesaving treatments and choose a path that may ultimately lead to his death.

A patient can refuse life-saving treatment if:

- He is an adult;
- He has reached the decision freely without coercion;
- He has clear and current decisional capacity; and
- He is well informed about the nature, purpose, benefits, risks and alternatives of the proposed treatment.¹⁸⁷

- **Right to Continuity of Medical Care:** Once a doctor assumes the responsibility to care for a patient, his right to withdraw such a service would arise only for a good cause. He should not relinquish the management of the patient to the detriment of that patient.
- **Right to Confidentiality:** The right to Confidentiality impacts on the constitutional right of privacy of the citizen enshrined under section 37 of the constitution,¹⁸⁸ which provides: The privacy of citizens, their homes, correspondences, telephone conversation and telegraphic communications are hereby guaranteed. This guaranteed and protects the patient's information and encourages patients to open up to their doctors. The resultant of truth telling aids greatly in diagnosis of diseases. Physicians must therefore respect these rights by not disclosing patient information obtained during the doctor- patient relationship.

¹⁸⁷ M.L Smith: "Ethical Perspectives on Jehovah's Witness Refusal of Blood": *Cleveland Clinic Journal of Medicine* [2000] (64) 475-481

¹⁸⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended)

It must however, be noted that under section 45(1) (d) of the same constitution,¹⁸⁹ a doctor may disclose aspects of patient information in the interest of Public Safety or Public Health. Other rights of a patient are highlighted below- Right to dignity, respect and prompt attention to patients' needs;

- Right to free choice in the selection of their physicians;
- Right to a second medical opinion;
- Right to appropriate privacy; and
- Right to refuse to be informed about his medical condition.

4.2.3 Fundamental Rights of Patients

The Nigerian Medical Association (NMA) has articulated ten fundamental Rights of patients.

These rights which are germane to proper patient care are paraphrased below as follows:

- Right to receive treatment without discrimination on any basis whatever including race, colour, religion, sex, tribal origin, source of payment or inability to pay.
- Right to considerate and respectful care in a clean and safe environment devoid of unnecessary restraints.
- Right to emergency care in appropriate circumstances.
- Right to necessary information regarding the name and status of the doctor in charge of patients care.
- Right to information regarding the name, position and functions of any other hospital staff involved in the care of the patient.

¹⁸⁹ ibid

- Right to receive itemized bill, and appropriate explanation of all charges, including the right to receive receipts of all payments, at each visits to the hospital.
- Right to complete information regarding the diagnosis, treatment and prognosis of the patient's condition without prejudice to the therapeutic privilege of doctors.
- Right to be given all necessary information, to enable consent for any proposed procedure or treatment.
- Right to privacy, while in the hospital or clinic, and confidentiality of all patient information and records.
- Right to participation in all decision concerning treatment and discharge from hospital.

4.2.4 Duties and Obligations of a Physician

The ancient guarantees contained in the Hippocratic Oath, is now modified and it is now called the Geneva or the physicians' Oath, it also gives an insight to the doctor-patient relationship. Every medical practitioner must subscribe to the physicians' Oath on induction, it provides:

I solemnly pledge, to consecrate my life to the service of humanity; I will practice my profession with conscience and dignity, the health of my patient shall be my first consideration, I will respect the secrets that are confided in me, even after the patient has died. I will not permit consideration of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation or any other factor to intervene between my duty and my patient I will maintain the utmost respect for human life, I will not use my medical knowledge to violate human rights and civil liberties even under threat. I make these promises solemnly, freely and upon my honor¹⁹⁰

¹⁹⁰ Emmanuel M.O, *Ethics & Medico- Legal Aspects Of Medical Practice* (Jaron industries, 2010) 16

It is obvious from the tenets of physicians' oath that "the patient is the centre of the medical universe around which all our world revolves and towards which our efforts as physicians tend"¹⁹¹ here are some highlights of the its duties and obligations;

- ❖ It is the duty of a doctor to treat all his /her patient equally and provide them with the same level of concern.
- ❖ To protect life within the confines of a patient's right to physical autonomy and decision making power.
- ❖ To ensure that patients are not subjected to cruel inhumane or degrading• punishment or treatment, and to report instances where such occur.
- ❖ To protect the privacy and confidentiality of his/her patients and only disclose health care treatment diagnostic and other health information with the patient's informed and written consent or when authorized to do so.
- ❖ To respect the religion, beliefs, and opinions of their patients, even if it differs from their own and not to force any patient or colleague to prescribe any religious belief or opinion.
- ❖ They also have the responsibility to listen to their patients and take their views into consideration.
- ❖ They also have the responsibility to ensure that they exercise their occupation within the limits set by the law.
- ❖ To ensure that the principles of administrative justice are adhered to if they are in positions of authority, policy making and decision making that affects people.
- ❖ To assist in legal proceedings, when called upon as expert witnesses.¹⁹²

¹⁹¹ ibid

¹⁹² ibid

A medical practitioner may, however, withdraw treatment in the following circumstances: Where a patient insists upon an unjust or immoral conduct in the course of his treatment¹⁹³ or if he deliberately disregards a valid agreement as to fees or expenses involved in his treatment.¹⁹⁴

4.3 Arguments on Euthanasia

Euthanasia is an area that surrounded not only by legal doubt but also by difficult and ultimately insoluble questions of moral philosophy. Under most penal systems, a person who kills another at the other's request will be liable for murder because consent is no defense.¹⁹⁵ The debate on euthanasia has divided our contemporary society into two groups namely, those who argue for euthanasia (the pro euthanasia) and those against it (the anti-euthanasia). The pro- euthanasia groups maintains that a person is entitled to ask for an end to overwhelming and helpless pain and that the doctor who provides the relief should be legally absolved from blame. On the other hand the anti- euthanasia groups contends that there are no circumstances in which it can be right for a person to take his/her life, or that of another.¹⁹⁶ These different arguments which support and oppose the practices of Euthanasia will be discussed below:

4.3.1 Pro- Euthanasia Perspective

The Pro- euthanasia groups argues that a civilized society should allow people to die in dignity and without pain, and should also allow others to help them do so if they cannot manage it on their

¹⁹³ Rules Of Professional Conduct For Medical & Dental Practitioners, Code On Medical Ethics In Nigeria, Medical and Dental Act, Cap.M8 Laws Of Federation Of Nigeria 2004

¹⁹⁴ *ibid*

¹⁹⁵ L. Q Kieran and S. D Allan, *Medical Assistance in Dying* (JAMA Int. press, 2017) 7.

¹⁹⁶ *ibid*

own. This group asserts that our bodies are ours' and we should be allowed to do what we want with them. The group maintains that it is wrong to make anyone live longer than what he/she wants, and that making a person to go on living when he/she does not want to, violates personal freedom and human rights. The argument for euthanasia centers on many different theories or concepts which are now considered:

Right to Die with Dignity

The Universal Declaration of Human Right 1948 stated that human beings have inherent dignity and all human beings must have respect for the dignity of their person. It is on this basis, that the proponents of euthanasia argue that it is a violation of a person dignity to allow him to go through the pain that cannot be alleviated without being given the opportunity to terminate his life in the manner he chooses. Everybody wants to have control of his body and mind, while serious ill health results in the loss of body control or even loss of cognitive function which is very dehumanizing. The fear of going through pain and inability to exercise some level of control makes many patients resolve in terminating their lives as the only means to avoid being subjected to an undignified death.¹⁹⁷ Supporters of this practice believe that human being is an autonomous being with the faculty of reasoning to know what is the best for him and that such individual shall be allowed to choose when and how to end his life freely.¹⁹⁸ The law shall allow patient with a terminal illness to have access to medical assistance, to have an easy and dignified death voluntarily. Majority of Americans believe that question of death and dying shall be left to the patient, his family and

¹⁹⁷ Melanie Ann and Radhika Selvalingam, *Physician-Assisted Death in England and Wales* (Newcastle University, 2014) 159.

¹⁹⁸ V Adefarasin ,“Euthanasia: An Act of Mercy or Murder ;*Journal of Arts and Contemporary societies*, 2, [2010] (69) 10

caregivers, not the government or the court.¹⁹⁹ That is to say, it is the right of the patient or his family where he could not be able to take a rational decision whether to die or to live.²⁰⁰

Suffering from Excruciating Pain

This view has been one of the most considerable arguments for euthanasia. Patients shall not be left in an excruciating pain especially if the case is hopeless. Life shall be terminated as a form of mercy if it only subjects a person to hardship and suffering. According to Rachel,²⁰¹ terminally ill patients undergo a serious pain that will not reasonably be acceptable and cannot be explained by those who have not experienced it. He carries the argument further that the experience is enormous that those who do not perceive it would not like to read or think about it. Allowing a patient to remain in such an excruciating pain or in a permanent vegetative state, will run counter to the feelings of family and friends who must have seen the patient at the time he is healthy and active.²⁰² Euthanasia is the only solution to such pain and it shall be allowed. It is in the patient's best interest to relieve him from the pain. Rachel avoids the argument using the utilitarian version of greatest happiness to the greatest number which he subscribed because if his reason for supporting euthanasia is for mercy it will contradict the general idea of the utilitarian school of thought. In the sense that, being merciful for taking the patient's life the greatest number of people will not be of any benefit.²⁰³

¹⁹⁹ Dowbiggin, "From Sander to Schiavo: *Morality, Partisan Politics, and America's Culture War over Euthanasia, 1950-2010.*" [2011] 265

²⁰⁰ S Ann et al. "Psychological Perspectives on Euthanasia and the Terminally Ill: *An Australian Psychological Society Discussion Paper,*" [1998] 1.

²⁰¹ James Rachel, *Medical Ethics and the Rule against Killing: Philosophical Medical Ethics*, In S. Stuart, & H. T. Engelhardt (eds) [1977] 207.

²⁰² Abayomi Samgson, "Euthanasia: Socio-Medical and Legal Perspective," : *International Journal of Humanities and Social Science* [2014] (10) 2

²⁰³James Rachel, *Medical Ethics and the Rule against Killing: Philosophical Medical Ethics*, In S. Stuart, & H. T. Engelhardt (eds) [1977] 207.

Furthermore, Rachel argues in support of doctors who take life for the reason of mercy to relieve pain and suffering. He argued that just like the case of the American criminal several requests to let life go. The patient shall not be left in an extreme pain especially ache that cannot be alleviated. Extreme pain, particularly discomfort that cannot be relieved, should never be left on the patient. If a patient is permitted by law to decline or stop receiving medical treatment

This is the situation in Nigeria whereby the law criminalizes termination of life but allows refusing treatment that can lead to death. The law requires an amendment to find a solution to the dilemma of the Nigerian doctors.

Stop the Hidden Practices of Euthanasia

The proponents of euthanasia insisted that a law must be made to allow and regulate its practice. Criminalizing it makes doctors do it secretly which makes the law incapable of regulating it.²⁰⁴ Doctors terminate and assisting patients to die with no monitoring or control. A study in San Francisco revealed that about 53 percent of doctors who work with HIV patients provide aid in dying despite that it is illegal to do so.²⁰⁵ More investigation is revealing a lot of doctors supporting the legalization of protect vulnerable against wrongful death.²⁰⁶

It should further be contended that there is a serious hypocrisy in the law because it criminalizes euthanasia and allows certain practices that are not having any significant difference with euthanasia. Citing the permission to administer seductive drugs to manage pain even though they have the consequences of hastening death, and why should the law allow withdrawal of life support and refuse to allow active euthanasia?

²⁰⁴ K John, *Euthanasia , Ethics and Public Policy An Argument against Legalization*, vol. 1 (Cambridge University Press, 2015) 212.

²⁰⁵J.G, Faye *Voluntary Euthanasia Should Be Legalized*, in David M and Devid L (eds), *Euthanasia Opposing View Point* (Green haven Press Inc., 2000) 69

²⁰⁶ *ibid*

They should rather leave the patient in his pain, the situation which may take a longer time to die while the patient continues to suffer. It is true not legalizing voluntary euthanasia and allows some practices that hasten death is not in the best interest of the patients. Doctors can do many things that hasten death and get away with it because it is hardly investigated, and the medical practice is secretly regulated. For this reason, the amendment of the law becomes necessary to ensure patients are protected against abuse and to clear the dilemma of doctors.

2.4.1.4 Euthanasia Provides a Good Opportunity for Organs Harvest

There is the manifest inadequacy of human body organ all over the world today. Those that are in dire need outnumbered the available organs; many died while waiting for one organ or the other and this has caused the increase of financial burden on dialysis as the alternative to organs substitute. It is the practice in Belgium²⁰⁷ that organs of months can be removed for the purposes of donation, except otherwise communicated and euthanasia presents a good opportunity for such harvest.²⁰⁸ Especially that research has shown that about 20% of those who died through euthanasia their organs are very good and useful.²⁰⁹ Around 2005 to 2007 four euthanasia patient have donated their organs.²¹⁰ In the Netherland from the year 2010 to 2014 organ donation increase from 216 to 271 and the number of those waiting for organ decreased from 1300 to 1044.²¹¹ Yet this development could not solve the problem of organ need and this makes post dead donation via euthanasia become an option. This practice is sensitive but ethically acceptable because it has the potential of increasing donation from 200 to 400 every year.

²⁰⁷C A Raphael, "First Do No Harm: Pressing Concerns Regarding Euthanasia in Belgium," : *International Journal of Law and Psychiatry* , no. 5–6 [201] (36)515.

²⁰⁸P Deepa, "Bio-Ethical Perspectives on Euthanasia" (: Thesis Submitted to Pondicherry University, 2013), 61.

²⁰⁹<<http://www.mercatornet.com/careful/view/8598/.html>> Accessed 3rd September 2024

²¹⁰ Raphael C A, "First Do No Harm: Pressing Concerns Regarding Euthanasia in Belgium," : *International Journal of Law and Psychiatry* , no. 5–6 [201] (36)515.

²¹¹ L H Cristina "Religious Perspectives on Assisted Suicide," :*The Journal of Criminal Law and Criminology* 88, [2016] (3)1147–54.

One may fear that there will be abuse because of the need to urgently harvest the organ, however It must be noted that even countries that allow it, the requirement of the law is that a request for euthanasia must be approved before one can make an organ donation. A number of cases indicated that patient and the family will be happy to see after euthanasia some other people will be able to live from the donation of their patient who died through this process.²¹² On this ground, euthanasia advocate sees reasons in permitting euthanasia since other people can live a better and healthier life. It was also suggested that brain death shall be used as the only criteria for establishing death so that the organ can be harvested to save more lives.

4.3.2 The Anti Euthanasia Perspective

The anti-euthanasia or opponents of euthanasia has argued that life is given by God, and only God should decide when to end it. They contend that it is wrong and immoral for anyone to terminate human life.²¹³ They believe that human being is the creation of God, and that this imposes certain limits on us. They maintain that to terminate one's life or to get someone else to do it for us, is to deny God and His power to choose the length of our lives, and the way our lives end. Proponents of the struggle for legalizing euthanasia were opposed. Somerville has been one of the leading campaigners against allowing euthanasia practice.²¹⁴ The opponents of euthanasia (both religious and secular opponents) based their arguments on different theories and concepts which are considered below;

✓ Sacred Nature of Human life and its Sanctity

²¹²D Olivier et al., "Organ Donation after Physician-Assisted Death," :*Transplant International* [2008] (21) 9

²¹³Ann Sommerville, "Changes in BMA Policy on Assisted Dying," *British Medical Journal* [2005] (331) 686.

²¹⁴ *ibid*

The arguments consider the sanctity and holiness of life. These opinions consider that whether a person has the low or high quality of life, human life should be respected and preserved. It should not be accepted that because one is suffering from a debilitating illness and his quality of life has completely gone, he should be allowed to kill himself or be assisted to die. Human life has an intrinsic value which must be respected. Practicing active euthanasia is “Playing God”, only God can take an innocent life. Permitting it is a blatant violation of all religions, particularly Islam and Christianity.²¹⁵

Greek philosophers like Plato and Aristotle²¹⁶ discouraged euthanasia that people have to live with what nature has offered for them. Previous scholars also rely on intrinsic nature of human life; their view is that terminating any one’s life is like stealing from God what God owns. One of the recent scholars Thomas Hopes²¹⁷ argued that people will have to live under civil authority where their life would be protected and ensured. The only responsibility of that authority is to ensure lives are not terminated unjustly. Therefore, any government legalizing euthanasia has defeated its own purpose and it has failed. This is the principle in both Islam²¹⁸ and Christianity. In Islam ill health is one of the tests Almighty Allah has bestowed upon individual. A person is expected to endure and persevere to get a tremendous reward.²¹⁹ This assertion is further supported by the Islamic Code of Medical Ethics, ‘*Mercy killing, like suicide, finds no support except in the atheistic way of thinking that believes that our life on this earth is followed by void. The claim of killing for painful*

²¹⁵M.O Emmanuel, “Ethics & Medico- Legal Aspects Of Medical Practice”(Jaron industries Jos 2010) 16

²¹⁶ ibid

²¹⁷G Williams, “Thomas Hobbes: Moral and Political Philosophy:” *Internet Encyclopedia of Philosophy* : A Peer-Reviewed Academic Source, 1995< <http://www.iep.utm.edu/hobmoral/#H4.html> > Accessed 11th July 2024

²¹⁸ M Mizan and N J Puteri, “The Legality of Euthanasia from the Malaysian and Islamic Perspectives : *An Overview*,” *Medicine and Law* [2017] 167.

²¹⁹ The Holy Quran

*hopeless illness is also refuted, for there is no human pain that cannot be largely conquered by medication or by suitable neurosurgery*²²⁰

Simply the decision to live or die is not for any human being to take is for the creature who knows which life is worth living or worth dying. Any attempt to take this decision is playing God.

✓ **Slippery Slope**

Slippery slope means if voluntary euthanasia is legalized involuntary euthanasia cannot be controlled. Arguments indicated that euthanasia should be discouraged if it is allowed, it will be against public policy, because if the law is to be made for those who wish to voluntarily end their lives, however, the vulnerable will not be safe.²²¹ In other words, it will open a door for involuntary euthanasia where people will be put to death against their wish. It was established that half of the people euthanized under the Belgium euthanasia practice is done without the patient's consent.²²² It was reported that the practice in the Netherlands is suffering from serious abuse and the law will not be able to control it.²²³ In thousands of euthanasia cases, evidence has shown that doctors have continuously violated the law and the guidelines.²²⁴ It is also part of the argument that legalizing euthanasia is just like endorsing and bringing back the horrible thing that happened during the Nazi period,²²⁵ where children and vulnerable human being were killed with poison and other dangerous substance.²²⁶ Government inability to bring the practice of euthanasia under control is one of the major challenges of permitting it.

²²⁰ Islamic Organization of Medical Sciences, *The Islamic Code of Medical Ethics Endorsed by the First International Conference on Islamic Medicine* (Kuwait, 1981).

²²¹ R.S Barry, *Understanding Bioethics and the Law* (Wesport Connecticut, 2008)

²²² Wole Iyaniwura, 'Law, Morality and Medicine: The Euthanasia Debate' *Global Journal of Human Social Science* [2014] (14) (4) 34

²²³ R Cohen-Almagor, *Euthanasia in the Netherlands: The Policy and Practice of Mercy Killing*(Belmont: 2004)

²²⁴ William L. Saunders and Michael A. Fragoso, "Should We Legalize Voluntary Euthanasia and Physician Assisted Suicide?" *Family Research Council*, [2013] (800) 1.

²²⁵ W Van der Burg, "The Slippery-Slope Argument": *The Journal of Clinical Ethics* 4 [1992] (4) 256.

²²⁶ Susan Benedict "Nurses' Participation in the Euthanasia Programs of Nazi German. :*Western Journal of Nursing Research* 21[1999] (2) 246.

Unfortunately, we have seen cases where euthanasia was used in a completely unacceptable situation even to those who advocate for it. It was reported that some twin brothers who were born deaf, were killed in Belgium because they were told by their doctors that they will soon go blind because they cannot withstand the agony of not being able to see each other they requested for euthanasia and was systematically applied.²²⁷

This is exactly the fear expressed by the opponent for passing any law allowing an act of killing even with the voluntary consent of the patient because time will come when people who do not deserve it will request for it or even push to go for it. Another bad case for the proponent of euthanasia is the case of a rapist who was sentenced for murder and rape, he was of the view that his life is unbearable and miserable, his stay in prison caused him psychological pain and he requested for euthanasia. Since then there were about fifteen similar cases of prisoners requesting for euthanasia in Belgium.²²⁸ It is obvious this is not the intention of the lawmakers. What has been designed to assist patient in terminal sickness and in extreme and excruciating pain is now taking to be a convenient way to end life at any time one so wishes. This is on the side of the patient, a much more serious situation exists from the side of the doctors who prescribe the substance or carry the action themselves with or without the consent of the patient. There will be serious abuse according to the opponent if the law is passed to allow euthanasia.

✓ **Euthanasia is against the Professional Role of Doctors**

once euthanasia becomes legal.²²⁹, the primary role of doctors will be usurped. The practice is an anathema to the practice of medicine, It will take medical practice back to the olden days when

²²⁷ < <http://www.Euthanasia.ws/hemerotca/t270pdf/Mailonline.html>> [2013]:25.

²²⁸Charlotte McDonald-Gibson, 'Unbearable Suffering' of Life in Prison": *Independent journal* [2014] 67

²²⁹ Julia Amanda Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide," [2003]

doctors were both killers and healers.²³⁰ This will have the negative effect of preventing patients from going to the hospital to seek treatment; the fear and anxiety of being put to death are enormous. The World Medical Association (WMA) vehemently rejected the idea of legalizing euthanasia in the following words:

Euthanasia, that is the act of deliberate ending of the life of a patient, even at the patient's own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.²³¹

The same association expressed further rejection of Physician-Assisted Suicide in 1992 in Spain where it said:

...physician assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession. Where the assistance of the physician is intentionally and deliberately directed at enabling an individual to end his or her own life, the physician acts unethically. However, the right to decline medical treatment is a basic right of the patient and the physicians do not act unethically even if respecting such a wish result in the death of the patient."²³²

The ultimate fear of the medical profession is the respect and reputation of their profession. The trust and confidence people have in them will be eroded. It will also lead to a situation where doctors will not be encouraged to pursue vigorously the cure for their patients. This position is followed by other National Medical Associations around the world. Although, in 2005 British Medical Association shifted ground and declared a neutral stance as against their previous position of opposing euthanasia.²³³

However, up to this time, American Medical Association (AMA) did not change their position.

The AMA made a statement expressing its position on euthanasia, '*Physician-assisted suicide is*

²³⁰ *ibid*

²³¹ World medical association statement < <http://www.wma.net/en/30publications/10policies/p13/>. > Accessed 25th August 2024

²³² *ibid*

²³³ Ann Sommerville, "Changes in BMA Policy on Assisted Dying," *British Medical Journal* [2005] (331) 686.

*fundamentally inconsistent with the physician's professional role," and patients' requests for such actions signal that more efforts need to be made to treat pain and psychological discomfort*²³⁴

The above statement was made by AMA showing its implication to the doctor-patient relationship. About forty other medical associations challenging the permission of physicians assisted death in the case of *Washington v. Glucksberg*,²³⁵ whereas the associations encouraged pain management rather than taking life. They further assert that inadequate pain management is the only cause of such request for death. Many will agree with their argument that there will be some psychological problem where a patient is asking for doctors to terminate him. Instead of complying with his request a means shall be provided to alleviate his suffering, fear and distress. This is one of the reasons this researcher supports some level of paternalism because not all patient has a better appreciation of their medical condition like doctors do, and some wishes of the patient have to be overridden, especially where it involves life and death. The historical antecedent that happened in the Georgetown College a long time ago is illustrative, where a lady who lost half of her blood to ulcer requires transfusion but refused on the religious ground being Jehovah's Witness who considered blood transfusion a bad thing. The College Attorney sought and obtained an order to go ahead with the transfusion to save her life.²³⁶ This is in order to show how important doctors shall take their role to save a life. The same position was upheld in Nigeria as provided in the Code of Medical Practice: "One of the cardinal points in the Physician's Oath is the preservation of life and therefore, the act of mercy killing or helping a patient to commit suicide runs contradictory and antithetical. A doctor should not terminate life whether the patient is in sound health or is

²³⁴Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide." <[http://: euthanasia.procon,html](http://euthanasia.procon.html)>

²³⁵ *Washington v Glucksberg* [1997] 138 L .E d. 838.

²³⁶ C.C William, "Indicated Blood Transfusions and the Adult Jehovah' S Witness : *Trial Judge ' S Dilemma*" Valparaiso University Law Review 2, [1967] (1) 55.

terminally ill. A practitioner shall be adjudged to be in breach of the ethical code of practice if found to have encouraged or participated in any of the following acts:

(a) Termination of a patient life by the administration of drugs, even at the patient's explicit request.

(b) Prescribing or supplying drugs with the explicit intention of enabling the patient to end his or her life.

(c) Termination of a patient's life without the patient's explicit request and thinking same to be in the interest of the patient.”²³⁷

The above rule categorically prohibits any practice that lead to termination of life. The expectation of medical practitioners is to preserve life. The implication is that if doctors can terminate life on the request of their patient, it will lead to involuntary termination of life.

4.3.3 The Global Perspective

It is pertinent to consider the position of the law in a few countries to over the years -

- ❖ **Netherlands:** Netherlands was the first country in Europe to legalize euthanasia. The term euthanasia when used in Netherlands refers to voluntary euthanasia, other types of euthanasia are infrequently meant.²³⁸
- ❖ **Belgium:** in the Belgian parliament became the second country in the world to approve active euthanasia under certain restrictions in May 2002. Similar to Dutch legislation, Belgian law permits physicians to carry out euthanasia only on patients who are in excruciating pain and have little chance of recovery. The request to die must be made

²³⁷ Rules Of Professional Conduct For Medical & Dental Practitioners, Code On Medical Ethics In Nigeria, Medical and Dental Act, Cap.M8 Laws Of Federation Of Nigeria 2004

²³⁸ Wole Iyaniwura, law, Morality and Medicine: The Euthanasia Debate *Global Journal of Human Social Science* [2014] (14) (4) 5.

voluntarily, often, thoughtfully, and in writing by the sufferer. To confirm the patient's condition, further medical professionals must be consulted. Every euthanasia must also be reported to the appropriate government for examination.²³⁹

- ❖ **Germany and Switzerland:** In German- speaking countries, the term “euthanasia” is generally avoided because of its association with the Eugenicist policies of Nazi era. The law therefore tends to distinguish between assisted suicides (beihilfezum suizid) and “active assisted suicide” (aktive sterbehilfe).²⁴⁰ In Germany and Switzerland, active assisted suicide, for example a doctor prescribing and handing over lethal drug is illegal.²⁴¹ In some situations, however, assisted suicide is permitted by German and Swiss legislation.²⁴²
- ❖ **United Kingdom and Wales:** This jurisdiction treats voluntary euthanasia as murder, punishes those who help someone commit suicide with up to 14 years in prison, and punishes voluntary euthanasia with life in prison. The law does not differentiate between those who assist a dying person or those who are a doctor.²⁴³
- ❖ **Canada:** In Canada, euthanasia, sometimes known as passive assisted suicide, is illegal. However, murder and assisted suicide are treated differently under Canadian law, which classifies both as serious crimes that carry a maximum sentence of fourteen (14) years in jail.²⁴⁴

²³⁹ <<http://www.patientsrightscouncil.org/belgium/legalises/euthanasia.html>> accessed 5th August 2024

²⁴⁰ <[http:// www.theguardian.com/society/2004/jul/17/euthanasia-assisted-](http://www.theguardian.com/society/2004/jul/17/euthanasia-assisted-).html> accessed 5th August 2024

²⁴¹ ibid

²⁴² ibid

²⁴³ <<http://www.schorpedia/haroldshipman/mrdeath.html>> accessed 5th August 2024

²⁴⁴ <http://catholicinsight.com/online/political/euthanasiaandarticle_320.html> accessed 5th August 2024

- ❖ **Norway and Denmark:** Both of these nations criminalize euthanasia²⁴⁵. In stark contrast to England and Wales, the punishment for the act has been reduced to as little as 60 days in jail, putting it into line with other European nations.²⁴⁶
- ❖ **The Vatican City and India:** Having a very strong condemnation of euthanasia, in February 2000, Pope John Paul, in an address to commemorate the 5th anniversary of his “Encyclical Evangelium Vitae,”²⁴⁷ described euthanasia as “unjustifiable evil.”²⁴⁸
- ❖ **South Africa:** According to South African law, which upholds the sanctity of human life, active euthanasia and assisted suicide are both illegal. Murder is the result of the unlawful taking of another person's life, regardless of the reason for the conduct.²⁴⁹

4.3.4 The Nigerian Perspective

The Nigerian stance on euthanasia is very clear. Suicide is seen as a taboo and an evil in Nigerian and African Customary law. However, history shows that euthanasia was practiced in ancient times and the people saw it as an act of bravery, self determination and self respect. This does not negate the reality that euthanasia is completely unknown to Africans. Instances of this were popular during the slave trade and intertribal wars.²⁵⁰ It is important to state here, that a type of Compulsory euthanasia was practiced by the beleaguered Nupes in Niger state of Nigeria, as well as other ethnic groups in Nigeria during the Inter and intra tribal wars of the 18th to 20th century. During this period, infants who due to some illness or physical pain (including acute hunger and thirst) and who cried ceaselessly, while their family or parents took refuge in a cave or other hideouts were

²⁴⁵ <<http://www.bbc.com/news/health/11sep2015.html>> accessed 5th August 2024

²⁴⁶ *ibid*

²⁴⁷ Encyclical Evangelium Vitae 31

²⁴⁸ *ibid*

²⁴⁹ Euthanasia and south Africa <[http:// www.wikipedia/euthanasiaandsouthafrica.html](http://www.wikipedia/euthanasiaandsouthafrica.html)> accessed 5th August 2024

²⁵⁰ Wole Iyaniwura, ‘Law, Morality and Medicine: The Euthanasia Dabate’ *Global Journal of Human Social Science* [2014] (14) (4) 5.

killed to avoid possible discovery by the marauding slave traders²⁵¹. Indeed, this type of Compulsory euthanasia was commonly practiced. Parents while fleeing from their military adversaries as a result flung away their own little children when the cries became too loud and long not to attract the attention of the enemy, and abandoned them to die.²⁵² More so, in the Oyo Kingdom, during the pre-colonial Era, if the “Are Ona Kakafo” (the person in charge of war) should lose a war, he would be required to commit suicide.²⁵³ It makes sense that suicide is viewed as abnormal and euthanasia as anathema given the widespread belief that God is the source of both life and death. Because of this, by executing rituals to satisfy the gods, loved ones continue to harbor the intense hope of recovery even when a patient or individual faces the possibility of death.

To underscore this fact, for example among the Yoruba’s on the western part of Nigeria, there is a saying that: “ebo die, oogun die lo ngbaalaare la” meaning “a little medicine and a little ritual (sacrifice) to appease the gods eventually heal the sick.”²⁵⁴ It is against the norm to give up on life. While every effort should be made to save life, when death does occur and is not related to witchcraft or sorcery, it is considered a gift from God sent.²⁵⁵ Nevertheless, suicide is seen as offence under the Nigerian criminal law. Nonetheless, it is a reality that euthanasia is usually disapproved upon in African society. The religious consciousness of the people in Nigeria makes this rejection even more noticeable. Eighty –five per cent (85%) of Nigerian could be said to be either Christians or Muslims and as such that affect people’s negative perception towards euthanasia.²⁵⁶ In Nigeria, the Penal Laws are governed by statutes, called Penal Code for the North, Criminal Code for the South generally, under these statutes; consent of a person for an act causing

²⁵¹ F. Adaramola, Basic Jurisprudence 3RD ed.(Raymond Kunz Communications, 2004) p. 68

²⁵² F. Adaramola, Basic Jurisprudence 3RD ed.(Raymond Kunz Communications, 2004) p. 68

²⁵³ *ibid*

²⁵⁴ *ibid*

²⁵⁵ *ibid*

²⁵⁶ *ibid*

his death is not a defense. Although the term "euthanasia" is not specifically mentioned in the statutes, it is argued that, stripped of all linguistic embellishments, the practice of euthanasia in any of the aforementioned categories falls under the definition of homicide, which, for instance, in Southern Nigeria includes the criminal offense of murder, among other things²⁵⁷. According to the statute, killing someone else is a crime under homicide, which may encompass a combination of murder or manslaughter, depending on the motivation behind the killing. It is reasonable to assume that euthanasia, in any form, would be regarded as murder, attempted suicide, or aided suicide under Nigerian criminal statutes, all of which are crimes with legal penalties²⁵⁸. Additionally, the Nigerian Constitution expressly provides for every person's right to life and sets out circumstances under which a man's life can be taken. Obviously, these do not involve compassion killing or euthanasia.²⁵⁹

²⁵⁷ Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004 s (306) (308) (326) (327)

²⁵⁸ *ibid*

²⁵⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 31 (1) (2).

CHAPTER 5

CONCLUSION

5.1 Summary of Findings

The research work commenced with a concise overview of the project carried out under the background of study. It was accompanied by identification of issues outlined in the statement of problem. Questions such as whether or not a man have the same right to die as he does to live and whether or not physician-aid-in-dying is a crime were raised. Definition of terms was not left out. Terms such as Euthanasia, Right to life and assisted suicide were expounded on for easy comprehension of the work. The concept of euthanasia was discussed; the classification of euthanasia was equally analyzed. In another chapter, the ethical and moral perspective on euthanasia amidst global argument was undertaken wherein a comprehensive examination on Medical ethics was embarked on leaving no aspect untouched regarding the ethics of a Medical practitioners relating to the subject matter. The rules of the Professional conduct for Medical and Dental Practitioners Act were reviewed particularly those relating to the Code of Medical ethics. Notably, this Code stands out as the sole provision explicitly addressing the issues of euthanasia and assisted suicide in Nigeria. The divergent views on the Religious perspective were also explored encompassing the provisions of the Cannon Law (Christianity) which emphasizes the sanctity of life and the Islamic law perspective which upholds Allah as the sole law Giver. Euthanasia is an area not only fraught with legal uncertainties but also by difficult and ultimately insoluble questions of moral philosophy. Nigeria perspective was critically scrutinized where euthanasia is viewed as a taboo and a severe transgression against the law. Chapter three specifically was dedicated to discussing all matters concerning the legality of euthanasia due to

the paramount importance of criminal law to the society. As a general rule, a person is criminally liable for any of his/her act which contravenes the criminal law. The act of euthanasia is not excusable by law. It therefore means that the fact of euthanasia of any description is a criminal act under the Nigerian Criminal Justice System as it today. The Nigeria constitution as the supreme law was analyzed, shedding light on the right to life and the right to dignity human dignity. Navigating these divergent perspectives necessitates a meticulous consideration of ethical principles, legal frameworks and moral sensitivities. Ethically, some contend that it is morally reprehensible as it violates the sanctity of life and violates religious doctrines. Legally, some argue that legalizing euthanasia could pave the way for abuse and potentially create a slippery slope where terminating someone's life without their consent becomes easier. From a moral standpoint, the arguments are complex and varied as various things come into consideration such as the role of the family in end of life decision care, religious beliefs and practices, the concept of `filial piety` and more.

The existing prohibition of euthanasia, notwithstanding its approval in certain circumstances, raises concerns of double standards within the legal framework, potentially leading to legal complexities. . While valid arguments exist on both sides of the debate, finding a balanced approach that upholds individual autonomy, prevents abuse and reflects cultural values is imperative. Nigeria can strive towards formulating a framework for end of life care that upholds human dignity, promotes compassion and ensures the well being of its populace.

5.2 Recommendations

The following are my recommendations:

1. Addressing Legal Ambiguity: The Nigerian government, particularly the judicial and legislative branches, should endeavor to resolve the ambiguity surrounding the legal status of passive euthanasia. This could entail a reassessment of the Supreme Court ruling in Okonkwo's case or legislative measures to bring clarity.

2. Enactment of Specific Legislation: Given the prevailing global trend in medical advancement and the need for a clear legal framework, Nigeria should enact specific legislation governing euthanasia and assisted suicide. This legislation should either expressly criminalize or decriminalize the practice, providing clear guidelines.

3. Establishment of Care Centers: In addition to legal considerations, the government should establish alternative treatment or care centers, including hospice care and palliative care. These services should be made either free or affordable to ensure accessible care for terminally ill patients.

4. Value Orientation and Cultural Preservation: There is a need for value orientation among Nigerians to uphold cultural perspectives on the sanctity of life. The press, mass media, and social networks play a crucial role in promoting these values through seminars and workshops.

5. Compassion and Support for the Terminally Ill: Recognizing that pleas for death from terminally ill patients may be expressions of anguish, there should be a focus on providing love and care. Advocacy for life should take precedence over considerations of euthanasia.

Ultimately, life is considered a sacred and precious gift, and any decisions regarding end-of-life care should be approached with careful consideration of ethical, cultural, and legal implications.

5.3 Contributions to Knowledge

This research work is an innovation on euthanasia using doctrinal method in the Nigerian context.

The project work was able to unveil that:

1. The subject matter euthanasia is not new in Nigeria, different scholars, authors, and even publicists have written and commented on the issues of euthanasia, and it ended only in their works and never made any impact to the society.
2. Most western countries, like the pro-euthanasia countries or the anti euthanasia countries have a well-defined Law on euthanasia and made their stand clear and unambiguous. But in Nigeria the only place the word Euthanasia is mentioned, is in the Medical and Dental Act. A lot of citizens are not aware of the Act, or even do not know that such a section concerning euthanasia exist.
3. It is sad that if a terminally ill person chooses a dignified death in Nigeria, it would be said to be against the law. What happened to the same law that guarantees respect for the dignity of his person? How come the same Law that guarantee right to life is violating same by subjecting the person to inhuman and degrading treatment and not respecting his dignity when he is in dire need of an easy death?
4. There seems to be a clash with sections 34 and 35 of the Nigerian Constitution, and the Medical and Dental Practitioner Disciplinary Tribunal. Where the latter advocate for the Right of the individual from inhumane treatment and personal liberty of a person meaning passive euthanasia can be allowed and the former, where the tribunal, reiterate that no form of euthanasia is allowed.

The study adds to the stock of knowledge and understanding of the dilemma patients, family and doctors find themselves at the end of life care, thereby making suggestions on the ways out of the dilemma

5.4 Areas for Further Studies

Future research in this area of jurisprudence should be actively promoted and encouraged, particularly utilizing non doctrinal methodology. The research methodology could also adopt a mixed method approach encompassing both quantitative and qualitative methodologies. It is imperative to delve into how Nigerian medical practitioners navigate end of life decisions particularly in cases involving children born with a severe deformities and critically ill patients. Furthermore, Practical investigations should be conducted to examine the dynamics within families who exhaust their resources in prolonging lives they acknowledge as precarious, yet are constrained by religious, moral and legal considerations. Interviewing legislators to elucidate their perspectives and rationale for their reticence on such pivotal topic is essential. Engaging stakeholders from diverse sectors to facilitate inclusive dialogue is imperative

5.5 Conclusion

For religious adherents, death is not the determinant of sickness. Death is an inescapable reality, where every soul must ultimately succumb. Whether one is sick or not will not exonerate him from death once his time comes. Patients' excruciating situation does not mark the end of their existence. They retain their inherent right to life and therefore no one by law is to be allowed to accelerate or induce death claiming that the patient has right to die with dignity. Right to life and right to dignity of human persons are distinct concepts within the realm of human right. Sickness and death transcend human intervention. They are divine occurrences. It is wrong to equate a patient's

suffering with torture or inhuman treatment. The Constitution of the Federal Republic of Nigeria safeguards the Citizens right to life and on no account should this right be deprived save as provided under the constitution.

However, it has come to light that the notion that all forms of euthanasia are outlawed in Nigeria is erroneous, as the Supreme Court's ruling in Okonkwo's case tacitly endorsed passive euthanasia. The simultaneous criminalization of all forms of killing by both the Penal Code and Criminal Code along with the validation of passive euthanasia by the Supreme Court amounts to a legal conundrum that could trigger a jurisprudential crisis. It is equally evident that the rationale behind the prohibition of euthanasia and or assisted suicide (though not expressly stated) under the Nigerian criminal law is not far from cultural perspectives of Nigerians on the sanctity of human life.

It is imperative to acknowledge that euthanasia has suffered a lot of criticism, with only a minority propagating its gospel. The legal stance in numerous jurisdictions and the prevailing societal perception about the immorality of euthanasia are primarily underpinned by moral and religious considerations. It is crucial for courts, particularly the Nigerian Apex courts to uphold the right to voluntary euthanasia and assisted suicide for the terminally ill individuals who are ensnared in a regime of unbearable pains, suffering and despair with no hope of recovery. Socrates exemplifies moral rectitude suggesting that 'it is better to die than to live without dignity'. Thus, if the act of taking a life is deemed criminal, it is even more reprehensible to impose the duty of life upon someone who legitimately wishes to be relieved of it. Necessary legislations must be put in place as has been done in some countries of the world where euthanasia and assisted suicide has been legalized. This will also entail effecting amendments to existing penal laws which clearly seek to discourage the exercise of these rights. The proposed new legislations shall not only recognize and

make provisions for voluntary euthanasia and assisted suicide in special circumstances depending on the facts of each case, but must also= include safeguards to prevent potential abuse.

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