

A CRITICAL APPRAISAL OF EUTHANASIA UNDER NIGERIAN LAWS

Abstract

The word 'euthanasia' evokes emotions, regardless of the way it is used. When pronounced, separate camps of irreconcilable proponents and opponents are drawn up. Debate over euthanasia is not a recent phenomenon. Over the years, public opinion, decisions of courts, legal and medical approaches to the issue of euthanasia in Nigeria have been conflicting. The connection between right to life and right to die has been attempted in a few debates. Although it is widely accepted that murder is crime under the Nigerian law, a clearly defined stand has not been taken on euthanasia. The Nigerian populace views euthanasia as an unnecessary paradox, murder in disguise, a situation where the supposed healer becomes a killer. This, therefore, forms the nitty-gritty of discussions in this article.

Key words: Euthanasia, Nigerian Laws, Right to Life, Critique

1. Introduction

In recent times, the concept of euthanasia has come increasingly under the spotlight due to the on-going *technicization* of medicine. There are several other compounding factors making the issue of euthanasia a pressing problem for contemporary society. First, there has been a shift in the perception and understanding of death; death, being *technicized* and depersonalized, is no longer a natural event at all particularly in Western societies. Human rights have become a cornerstone of modern medicine. In response, three European countries¹ have legalized both physician-assisted suicide and active euthanasia and the U.S states of Oregon and Washington have passed legislation regulating physician - assisted suicide. Drawing on the experience of these countries, it would be meaningful to examine how such proposals will affect Nigeria going by a shrewd call by the minority of her population to legalize the practice in Nigeria.

This article looks into the definition and classification of euthanasia exhuming the historical evolution of the concept in Nigeria, and treating in the main, the legal position of the practice in Nigeria. The study further strengthens, through a critical appraisal, the danger of decriminalizing the practice in the country.

2. Definition of Euthanasia

According to Encyclopedia Britannica, euthanasia is the act or practice of painlessly putting to death persons suffering from painful and incurable diseases or incapacitating physical disorder.² Etymologically, the word is a derivative of two Greek words 'Euthukos' which means 'good cheer', 'courage' or 'cheerful' and 'thanatos' which means 'death'.³ Euthanasia therefore implies painless termination of the life of a person who is suffering from an incurable, painful or distressful disease or handicaps. In the words of Black's Law Dictionary, euthanasia means "the act or practice of painlessly putting to death persons suffering from incurable and stressing disease as an act of mercy".⁴ The term normally implies an intentional termination of life by another at the explicit request of the person who wishes to die.⁵

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¹The Netherlands, Belgium and Luxemburg.

²B.A Omipidan "Euthanasia: The 21st Century Culture of Death" vol.7 No.1(2011) *Nigerian Bar Journal*, p.213

³R.I Adebayo, "Euthanasia in The Light of Islamic Law and Ethics" vol. 11, (2008) *Journal of Nigeria Association of Arabic and Islamic Studies* p.1.

⁴Black H.C, *Black's Law Dictionary* (USA: St Paul's Minn-West Publishing Co, 1991) p.554.

⁵C.B William, *Euthanasia* (Ohio: The McGrawHill Companies Inc., 2007) p.1.

Laber Cyclopaedia Medical Dictionary defines it as “an easy, quiet and painless death”.⁶ It further states that euthanasia involves “putting an end to the lives of people with incurable or terminal illness of unbearable suffering”.⁷ According to the Oxford English Dictionary, euthanasia is “bringing about a merciful and painless death for persons suffering from incurable and painful disease.”⁸ 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.⁹

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 months to live.¹⁰ In the Netherlands where euthanasia and assisted suicide are legalized, both concepts 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.¹¹

To some scholars, euthanasia is the intentional premature termination of another person’s life, either by direct intervention (active euthanasia) or by withholding life-prolonging measures and resources (passive euthanasia), either at the express or implied request of that person (voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia).¹² From a legal angle, Bamgbose views euthanasia as the taking of human life by another or with the assistance of another.¹³ It is pertinent to state here that there is no controversy as to the origin of the word euthanasia, just as the dictionaries afore-mentioned; almost all the authors and writers trace their definitions to ancient Greek. Euthanasia is therefore; generally defined as the act of killing an incurably ill person out of concern and compassion for that person’s suffering. It is sometimes called mercy killing, but many advocates of euthanasia define mercy killing more precisely as the ending of another’s life without his or her request.¹⁴

A close examination of these definitions above indicates that the practice involves three parties, namely, the dying patient, the family of the dying patient, physician and or the doctor who is to carry out the action. The dying patient out of distress may use his initiative to voluntarily request a physician to terminate his life. The concept of euthanasia would not apply to a person who sleeps away peacefully and painlessly without any intervention after a fulfilled life. Euthanasia requires an intervention by the person wishing to die or by a person acting on her behalf to hasten a wanted death.¹⁵

⁶Laber Cyclopaedia Medical Dictionary, vol. III, cited in ‘B.A Omipidan “Euthanasia: the 21st Century Culture of Death” p.213

⁷B.A Omipidan, *op cit.*, p.213.

⁸A. S. Hornby, *Oxford Advanced Learners Dictionary of Current English* (7th ed, New York: Oxford University Press, 1997) p. 500.

⁹ Chamber 21st Century Dictionary (Cambridge: Cambridge University Press, 2000); See also T. Norchaya, *Euthanasia: A Malaysian Perspective* (Asia: Sweet & Maxwell, 2002) p. 7

¹⁰ ‘Oregon’s Death With Dignity Law and Euthanasia in the Netherlands: Factual Disputes’ available on <http://www.leg.state.vt.us/reports/04death_with_dignity_report.htm>accessed on 28 August, 2014; See also B.A Omipidan, *op cit.*, p.213.

¹¹ Ibid

¹²S. Vaknin “Euthanasia and Right to Die.”<<http://www.samrak.tripod.com/euthanasia.html>>Accessed on 26 August 2014.

¹³O. Bamgbose, “Euthanasia: Another Face of Murder” vol. 48 No.1, (2004) *International Journal of Offender Therapy and Comparative Criminology*, pp.111 – 121.

¹⁴C.B William, *op cit.*

¹⁵R.I. Adebayo, *op cit.*

3. Classification of Euthanasia

According to a Omipidan¹⁶, euthanasia can be categorized under six headings. They include: passive euthanasia; active euthanasia; physician-assisted suicide; voluntary euthanasia; involuntary euthanasia; and non-voluntary euthanasia.¹⁷

Passive euthanasia: This is hastening the death of a person by altering some form of support and letting nature take its course.¹⁸ Examples include such things as turning off respirators, halting medications, discontinuing food and water so as to allow a person to dehydrate or starve to death or failure to resuscitate. Passive euthanasia also includes giving a patient large dose of morphine to control pain, in spite of the likelihood that the painkiller will suppress respiration and cause death earlier than it otherwise would have happened. Such doses of painkillers have a dual effect of relieving pain and hastening death. Administering such medication is regarded as ethical in most political jurisdictions and by most medical societies. These procedures are performed on terminally ill, suffering persons so that natural death will occur sooner. They are also commonly performed on persons in a persistent vegetative state, for example, individuals with massive brain damage or in a coma form who likely may not regain consciousness.¹⁹

Active euthanasia: Active euthanasia involves causing the death of a person through a direct action, in response to a request from that person.²⁰ The important difference between active and passive euthanasia is that, in passive euthanasia, the doctor does not do anything directly to bring about the patient's death. The doctor does nothing, and the patient dies of whatever ills already afflict him. In active euthanasia, however, 'the doctor does something directly to bring about the patient's death: he kills him'.²¹ The physician is the instigator of the death.²² The doctor who gives the patient with cancer a lethal injection has himself caused his patient's death, whereas, if he merely ceases the treatment, the cancer is the cause of the death.²³ A well-known example of active euthanasia was the death of a terminally ill Michigan patient on September 17, 1998. On that date, Dr Jack Kevorkian videotaped himself administering a lethal medication to Thomas Youk, a 52-year old Michigan man with amyotrophic lateral sclerosis. CBS broadcast the videotape on 60 minutes less than a week later. Authorities subsequently charged Kevorkian with first-degree premeditated murder, criminal assistance of a suicide, and delivery of a controlled substance for administering lethal medication to a terminally ill man. There was no dispute that the dose was administered at the request of Mr. Youk, nor any dispute that Mr. Youk was terminally ill. A jury found Kevorkian guilty of second-degree murder in 1999, and was sent to prison.²⁴

Physician-assisted suicide: This is somewhat of hybrid between passive and active euthanasia. In this situation, a physician supplies information and or means of committing suicide (e.g. a

¹⁶B.A Omipidan, *op cit*.

¹⁷See Also L Robin, *Oregon's Death with Dignity Law and Euthanasia in Netherlands: Factual Disputes* (USA: Montpellier Publishing, 2004) p.3.

¹⁸C.B William, *op cit*.

¹⁹*Ibid*, pp.1-2

²⁰*Ibid*, p.2

²¹ V.B Louis-Jacques, "Voluntary Active Euthanasia: The Debate" in Kure(ed.) *The "Good Death" Controversy in Humans and Animals* (Croatia: Intech, 2011) p.34.

²² D. Brock, "Voluntary Active Euthanasia" in H. J. Curzer, (ed.), *Ethical Theory and Moral Problems* (Belmont: Wadsworth, 1999) pp.46-54.

²³ See J. Rachel, "Active and Passive Euthanasia" vol.292 No.19 (1975) *New England Journal of Medicine* pp.1911-1914.

²⁴²⁴ 'Oregon's Death With Dignity Law and Euthanasia in the Netherlands: Factual Disputes' available on <http://www.leg.state.vt.us/reports/04death_with_diginity_report.htm>accessed on 28 August, 2014; See also C.B. William, *op cit*.

prescription for lethal dose of sleeping pills, or a supply of carbon monoxide gas) to a person, so that that individual can successfully terminate his or her own life. This can also occur when a person is assisted, either through guidance or means to take his or her own life; same is called assisted suicide.²⁵ It has been explained as a physician providing medications or other interventions to a patient with the understanding that the patient intends to use them to commit suicide.²⁶ Physician assisted suicide received greater public attention after Dr Kevorkian, a retired pathologist from Michigan, participated in his first such procedure in 1990. Kevorkian set up a machine that allowed a 54-year-old woman suffering from Alzheimer's disease (a degenerative neurological condition) to press a button that delivered a lethal poison into her veins.²⁷

The U.S Supreme Court has made two important rulings on assisted suicide. In *Washington v. Glucksberg*,²⁸ three terminally ill patients, four physicians, and a non-profit organization had brought action against the State of Washington for declaratory judgment, that a statute banning assisted suicide violated Due Process Clause. The Supreme Court held that the state has right to prohibit assisted suicide.²⁹ In *Vacco v. Quill*,³⁰ the physicians challenged the constitutionality of the New York statutes making it a crime to aid a person in committing suicide or attempting to commit suicide. The Supreme Court held that New York's prohibition on assisting suicide did not violate the Equal Protection of the Fourteenth Amendment.

Voluntary euthanasia: Voluntary euthanasia arises where a person requests a doctor to put an end to his or her life. In this situation, the patient understands the nature of her demand and its implication. That is to say that he or she is matured, sane and competent enough to understand her action or demand.³¹ The patient might have also given this consent in the form of an advance directive before he or she becomes incapacitated, or unconscious (coma) as a result of the sickness.³² Voluntary euthanasia can be either voluntary active³³ or voluntary passive.³⁴ According to Omipidan,³⁵ passive voluntary euthanasia occurs when a patient dies as a result of the withdrawal of his or her treatment. This withdrawal includes disconnecting the patient from a life support machine.³⁶ Under this circumstance, the patient is competent and has already expressed her/his willingness to be disconnected from a life support device should the continuation of treatment become futile in the future.³⁷

²⁵The assistance referred to here, includes a situation where the person concerned orally takes an overdose of drugs prescribed or made available to him by a physician, doctor, nurse or even a Chemist.

²⁶*Oregon's Death with Dignity Law and Euthanasia in England: Factual Disputes*, p3.

²⁷ It should be noted that Kevorkian was charged with murder several times but was not initially found guilty. In December 1994, Michigan's Supreme Court in *People v. Kevorkian*, 447 Mich. 436, 527 N.W.2d 714, held that there is no constitutional right to commit suicide, with or without assistance, and upheld the Michigan statute that made assistance suicide a crime, and his further appeal to the Supreme Court was refused.

²⁸ 521 U.S. 702, 117 S.Ct. 2258, 138 L.Ed.2d 772, 65 (1997).

²⁹ The Supreme Court position is that (i) asserted right to assistance in committing suicide was not a fundamental liberty interest protected by Due Process Clause, and (ii) Washington ban on assisted suicide was rationally related to legitimate government interests.

³⁰ 521 U.S. 793, 117 S.C.T. 2293, 138 L.Ed.2d 834 (1997)

³¹ B.A. Omipidan, *op cit*.

³² *MDPDT V. Okonkwo* [2001] 7NWLR (PT.617.) P208-255; [2001] FWLR (Pt.44) 542

³³ See *Oregon's Death with Dignity Law and Euthanasia in The Netherlands: Factual Disputes*, *op cit.*; See also D.W Brock, *op cit*.

³⁴ B.A. Omipidan, *op cit*, p.216.

³⁵ B Omipidan

³⁶ *Ibid.*; See also F. Adaramola, *Basic Jurisprudence* (Nigeria: Raymond Kunz Communications, 2004) pp.67-71.

³⁷ See D.E. Meier, "A National Survey of Physician Assisted Suicide and Euthanasia in the United States" vol.338 (1998) *Washington State Journal of the Medicine* pp.1193-1201; See also Y. Kamisar, "The Reasons So Many

Voluntary active euthanasia, on the other hand, is intentionally administering medications or other interventions to cause a patient's death at the patient's explicit request and with full informed consent.³⁸

Involuntary euthanasia: The term involuntary euthanasia is used to describe the killing of a person who has not explicitly requested aid in dying. This term is most often used with respect to patients who are in a persistent vegetative state and who probably will never recover consciousness³⁹. In a bit similar to the above definition, Omipidan sees involuntary euthanasia as a situation, "when, in the conclusion of the executioner, it is in the best interest of the patient that he or she is euthanized." According to Robin, involuntary (active) euthanasia is intentionally administering medications or other interventions to cause a patient's death when the patient was competent but without the patient's explicit request and or full informed consent (e.g. patient was not asked)⁴⁰. Research has shown that majority of those who are victims of involuntary euthanasia are mostly infants or babies born with deformities by physicians in conjunction with the parents of such babies.⁴¹

4. History of Euthanasia in Nigeria

The practice of euthanasia and assisted suicide can be said to be denuded of any history in Nigeria. What may however be said to be something similar to non-voluntary euthanasia was practised by the beleaguered Nupe in the present Niger State. This practice was not limited to them alone; it also extended to all other ethnic groups who were involved in inter and intra tribal wars of the 19th and 20th centuries.⁴² The nature of this non-voluntary euthanasia was the killing of infants. These infants were usually exposed by their parents as a way of running for cover to avoid being caught by the enemies. Considering the fact that lots of things happened during wars, the children usually cry endlessly, largely due to illnesses and hunger. These cries may attract the enemies to know the hiding place of their allies. So as a way of avoiding being caught, they will abandon the children. This is so because the wailings of the babies could attract enemies to their place. To therefore avoid being caught by the enemies, babies will be abandoned while they too scurry to hide. Thus after being bitten by rain, sunshine, infections and most importantly hunger, many of them died.⁴³

What may be viewed as the present day euthanasia can also be related to the old practices in the present southeastern part of the country, wherein the custom and tradition of the people permits killing of twins. It was seen as abomination for a woman to give birth to two set of children at a blow. The custom made it compulsory for the parents of such baby twins to kill them immediately or sooner after their birth, and throw them at the evil forest.⁴⁴ However, what should call to our mind is the manner such infants were killed. It could be noted that some parents had the mind or morale to physically kill those children by either strangling them to death or stopping their breath. Some who could not have such mind looked for certain herbal

People Support Physician-Assisted Suicide and Why These Reasons Are Not Convincing," in R. Baergen(ed.) *Ethics at the End of Life* (Idaho: Wardworth, 2001) pp. 175-184.

³⁸E. Emmanuel, "Euthanasia: Historical, Ethical, and Empiric Perspectives" vol. 154 (1994) *ArchInternMed*,

³⁹C.B. William, *op cit*, pp.3-4.

⁴⁰B.A. Omipidan, *op cit*, p. 216.

⁴¹Ibid.

⁴²Information supplied by Dr. B.A. Omipidan, Sub-Dean, Faculty of Law, University of Ilorin. (5th September, 2014).

⁴³F. Adaramola, *Basic Jurisprudence* (3rded, Nigeria: Raymond Kunz Communications, 2004) p. 68.

⁴⁴Information supplied by Late Madam T. Okpaluba, a woman leader, and Pupil Teacher, (Akpo: 1996).; See also M.C. Obi, "Right to Life with Reference to Euthanasia: A Legal Insight, (Seminar Paper Presented to LL.M Class, University of Ilorin, 2014) p.11

concoction which they either prepared themselves, or obtained from a herbalist and administer such poisonous locally-made substance orally to the newly born twins, which would incidentally lead to their death.⁴⁵

It could be noted that it is obligatory upon the parents of such infants to kill them, because giving birth to twin is considered as taboo then, and any parents or family that refused to perform the killing would be either ex-communicated or banished from the village. It could be gathered that this practice persisted till late 1940's when the missionaries and foreign humanitarians such as Mary Sellessor fought vigorously against it. It took a serious intervention from both the Nigerian government and foreign humanitarians to stop this practice. But that notwithstanding, the practice kept on going until it was criminalized as infanticide. Thus, in the case of *R v. Chima*,⁴⁶ a woman gave birth to twins and within an hour afterward, she killed them because of a custom prevalent in her town that it was an abomination to give birth to twins. She was convicted of murder but on appeal, it was held that the conviction, if any, should have been for infanticide, and not murder.

The history of euthanasia in Nigeria cannot be without mentioning the Supreme Court decision in *Medical and Dental Practitioners Disciplinary Tribunal v. John Nicholas Okonkwo*⁴⁷. In that case, the Supreme Court per Ayoola JSC held among other things that, 'if a competent adult patient exercising his right to reject lifesaving treatment on a religious grounds, thereby chooses a patch 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, perhaps than to give the patient the comfort?'⁴⁸ It was also the Supreme Court decision in this case that a patient has a constitutional right to object to medical treatment on religious grounds. In that decision, the Court held that "the right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief."⁴⁹ The court also stated that the physician can lawfully withdraw any form of treatment on a patient who by refusal of blood transfusion consented to die on ground of religion. A careful perusal of this judgment by the apex court in the country shows that the Supreme Court of Nigeria has expressly or by implication approved passive euthanasia in Nigeria.

Apart from these instances, euthanasia and assisted suicide have no place in Nigeria because like every typical African customary laws, suicide and deliberate killing of the one who is ill is a taboo and an abomination in the country.⁵⁰

Thus it can be said that euthanasia and or assisted suicide is illegal in Nigeria. This illegal status is however not as a result of any special legislation, but as based on existing laws which do not specifically provide for euthanasia and assisted suicide.⁵¹ As started from the ancient time, across the countries and jurisdictions that have legalized same till date, debates on same are already on. A school of thought may be of the opinion that a call for legislation at this stage is premature, since agitation on the issue is yet to begin.

⁴⁵ Ibid

⁴⁶ (1944) 10 W.A.C.A. 223

⁴⁷[2001] FWLR (pt. 44) 542.

⁴⁸*supra*, per Ayoola J.S.C, pp. 244-245.

⁴⁹*supra*, p 219.

⁵⁰M.C. Obi, *op cit*, p.11.

⁵¹ Information supplied by Dr. B.A. Omipidan, *op cit*.

5.State of Euthanasia under the Nigerian Law

The penal laws in Nigeria are governed by statute. Under the Penal Code⁵² applicable in Northern Nigeria, and Criminal Code⁵³ applicable in Southern Nigeria, consent of a person to an act causing death is not a defence. The term euthanasia is not used in the penal laws in Nigeria, but an inference to that effect is provided for. The killing of a human being by another is a crime under homicide, amounting to murder or manslaughter, depending on the intent with which the killing is done. The penal laws do not distinguish between a 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.⁵⁴

There is a cultural dimension to the issue of euthanasia in Nigeria. Nigeria is a multi-ethnic nation with a diverse culture. Law is organic and functional in human societies; however, it functions differently from one society to the other. Under some Nigerian cultures and from a sociological perspective, euthanasia or suicide has not been recognized as a viable option. A proverbial saying in *Igbo* has it that *mkpomkpo ndu kaonwu mma*. Literally interpreted, it means the worst health is better than death⁵⁵. In some occasions, patients who are terminally ill and in an intolerable situation because of physical or mental incapacity will not wish to remain in a deplorable condition that will bring about shame and pity from a cultural perspective. Moreover, family members, out of pity, may not wish to see the patient in agony. With the statutory penal laws in place, however, any act of terminating such patient's life would be regarded as murder.

In respect of assisted dying/suicide, the position of the law is clear. Section 326(3) of Criminal Code Act⁵⁶ provides that 'any person who aids another in killing himself is guilty of felony, and is liable to imprisonment for life.' The syllogism here is that consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.⁵⁷In *State v. Okezie*,⁵⁸ the accused, a native doctor, prepared some charms for the deceased. The deceased then invited the accused to test the charm on him by firing a shot at him. The accused shot him in the chest and killed him. He was convicted of murder. It is a criminal offence attracting life imprisonment for aiding someone to commit suicide in Nigeria. Thus, section 326 of the Criminal Code Act provides that: 'any person who aids another in killing himself is guilty of felony, and is liable to imprisonment for life.'⁵⁹ This is contrary to the laws of some western states, such as the Oregonian Death with Dignity Act, where in assisted suicide is not a crime but, rather an aspect of medical treatment. So far as the practitioner (i.e. the assisted killer) complied with the procedural safe-guard enshrined under the Act, the practitioner or any other person(s) he/she acted in concert with (e.g. family relation of the deceased patient) is exonerated from any criminal liability, thereby protected under the

⁵²Cap.P3 LFN, 2004.

⁵³ CAP.C38, LFN. 2004.

⁵⁴ C.O. Okonkwo, "Medical Negligence and the Legal Implication" in B. C. Umerah(ed.), *Medical Practice and the Law in Nigeria*. (Lagos: Longman, 1989) pp.119 – 120.

⁵⁵ Though *Yoruba* custom which approves suicide (eg, the option of committing suicide by *Oba* or *Alaafin* upon presentation of empty calabash) may also approve euthanasia, but carrying out such an act in *Igbo* land amounts to taboo, and the body of such person to be thrown to evil forest with no form of any burial/funeral ceremony, thereby, stamping indelible stigma in the deceased's family. See M.C. Obi, *op cit*, p.11.

⁵⁶ Cap. C38, LFN 2004.

⁵⁷ See C.O. Okonkwo, *Criminal Law in Nigeria* (Ibadan: Spectrum Law Publishing, 1994) pp.231-232; see also subsections (1) and (2) of section 316 of the Criminal Code; also see sections 229 and 222(5) of Criminal and Penal Codes, 1990 respectively.

⁵⁸ (1972),2 E.C.S.L.R. 419

⁵⁹Section 326, Criminal Code, 1990.

Act.⁶⁰ However, in Nigeria, there is no such qualification as regards aiding another in killing himself. The community reading of sections 220 and 221 of the Penal Code shows that any form of killing, (except one exempted under the Nigeria Law, which fortunately and unfortunately does not include euthanasia) attracts death penalty under Nigerian Law. Thus, section 220 of Penal Code⁶¹ provides that: Whosoever causes death –

- (a) By doing an act with 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 is likely by such act to cause death; or
- (c) By doing a rash or negligent act, commits the offence of culpable homicide.⁶²

From the above position of the law, it does not matter whether the deceased person is a terminally ill patient suffering from pain or incurable disease, or that the patient's life span is six (6) months or below, or that he /she or the family members consented to his /her killing. Under the Nigerian Law, it is a crime for someone to facilitate suicide of another person, whether old or young, sick or healthy.⁶³ Thus, section 326 of criminal code states that 'any person who counsels another to kill himself and thereby encourages him to do so is guilty of felony, and is liable to imprisonment for life'.⁶⁴ However, in Nigeria, any person that attempts to kill himself has committed an offence and that person would be tried by the state authority. Thus, section 327 of the Criminal Code provides that "any person who attempts to kill himself is guilty of misdemeanor and is liable to imprisonment for one year."⁶⁵ The pertinent question is whether consent to die exonerates criminal liability on the physician who assisted patient in dying? Under the Nigerian law, consent by any person of his own death does not exonerate the killer from criminal liability. Section 299 of Criminal Code provides that "consent by a person to the causing of his own death does not affect the Criminal responsibility of any person by whom such death is caused."⁶⁶

Thus, in the case of *State v. Okezie*⁶⁷ the accused, a native doctor, prepared some charms for the deceased. The deceased then invited the accused to test the charm on him by firing a shot at him, on the chest, and he died. He was convicted of murder despite the fact that the accused acted with the consent of the deceased. In a related development, section 222(5) of the Penal Code provides that "culpable homicide is not punishable with death when the person whose death is caused, being above the age of eighteen years suffers death or takes the risk of death with his own consent".⁶⁸ The combined reading of sections 222(5) and 224 of the Penal Code shows that the offence of killing a person of full age and capacity whether suffering from terminally ill and or painful sickness and or otherwise, with the deceased's consent, attract life imprisonment or any less term or with fine or with both.

⁶⁰ See ORS 127.800- 127.897

⁶¹ Section 220 of Penal Code 1963

⁶² Ibid

⁶³ See Section 326 of Criminal Code.

⁶⁴ See section 326 (1) and (2) Ibid

⁶⁵ See section 327, Ibid

⁶⁶ See Section 299 of Criminal Code.

⁶⁷(1972), 2ECCLR. 419

⁶⁸Section 222 (5) of Penal Code.

As earlier stated, what may be seen as a legal nod to passive euthanasia in Nigeria is reflected in the reasoning of the Supreme Court in *MDPDT v. Okonkwo*,⁶⁹ where in the apex court held *inter alia* that:

The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary.' ... Law's role is to ensure the fullness of liberty when there is no danger of public interest. 'This is why, if a decision to override the decision of an adult competent patient not to submit to blood transfusion or medical treatment on religious grounds, is to be taken on the grounds of public interest or recognized interest of others, such as dependent minor children, it is to be taken by the courts.

According to the court, 'that the patient's consent is paramount has been determined in several cases in the United States of America where this area of law has received considerable judicial attention.'⁷⁰ The Supreme Court further emphasized that 'the constitutional right of privacy includes the right of a competent, mature adult to refuse treatment that may prolong one's life even though that refusal may seem unwise, foolish or ridiculous to others.'⁷¹ In the court's judgment in that case, it was further held that

If a competent adult patient exercising his right to reject life-saving 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, perhaps than to give the patient comfort?⁷²

It is also the opinion of the court that '... the court has refused to override the patient's decision, in others, they have found ways round the problem of the paramountcy of the patient's consent.' So far as the Supreme Court was concerned in this case, 'what is important is that in no case has the decision to override the patient's decision been left with the medical practitioner or the hospital'- citing *In re Yetter*⁷³ in approval. The Supreme Court also affirmed in approval, the case of *In re Osborne*⁷⁴ wherein the court affirmed the lower court's order refusing to appoint a guardian to give consent for the administration of a blood transfusion to a patient who had refused it on religious grounds, and whom the physician feared would die without blood, upon evidence that the patient had validly and knowingly chosen this course and upon the lower court's finding that there was no compelling state interest which justified overriding the patient's decision to refuse blood transfusions.

⁶⁹Supra.

⁷⁰ See *Superintendent of Belkerton State School v. Sackewicz*, 93 ALR3d 75.

⁷¹*Medical and Dental Practitioners' Disciplinary Tribunal v. John Nicholas Okonkwo*, supra, p. 245, Paras. G. H.

⁷² See also the opinion of Uwaifo, JSC. At p.255

⁷³ (1973) 62 Pa D & C2d 619, In this case, upon evidence that the patient was a mature, competent adult, had no children, and had not sought medical attention and then attempted to restrict it, the court said that the constitutional right of privacy includes the right of a competent, mature adult to refuse treatment that may prolong one's life even though that refusal may seem unwise, foolish or ridiculous to others.

⁷⁴ (1972), Dist Col App 294 A2d 372,

Also in the affirmative, the Supreme Court adopted the opinion of Lord Scarman, in *Sideway v. Board of Governors Bethlem Royal Hospital*⁷⁵ where it opined that "... the court should not allow medical opinion of what is best for the patient to override the patient's right to decide for himself whether he will submit to the treatment offered him"; and that of Lord Templeman,⁷⁶ who was also of the view that 'the patient is free to decide whether or not to submit to treatment recommended by the doctor.'

6. Examining the Positions under the Nigerian Laws

Whilst majority of the stake-holders' view favour the maintenance of the status quo (i.e criminalizing active euthanasia) in Nigeria,⁷⁷ almost all the views are silent as regards passive euthanasia such as with-holding and or withdrawal of the treatment.⁷⁸ It is also the opinion of some stake-holders that some artificial method of sustaining life, more especially via feeding tube and or respirator, that aimed to be of permanent nature is worse than euthanasia itself and should be discouraged. Surprisingly, however, this study shows that the impression created by the Criminal Code and Penal Code that all forms of euthanasia and or assisted suicide are illegal in Nigeria can no longer be sustained.⁷⁹ The major important finding shows that the Supreme Court by its decision in *John Okonkwo's case*⁸⁰ has approved passive euthanasia (though not expressly, but by implication) as legal.

With all due respect, the Supreme Court decision in this case, placing the right to privacy and right to freedom of thought, conscience and religion over and above the "mighty" right to life, which is the mother of all the rights in the constitution, is a dangerous oversight, which will, and can never augur well with the Nigerian jurisprudence. There is no way the above two rights can take precedence over the right to life. If the trend is allowed in our legal system, there is every opportunity for our citizens to indulge in all sorts of practices, including euthanasia, on the ground that it accords to their conscience and privacy. In view of this, it is suggested that when opportunity arises, the Supreme Court will reverse itself.

It is also the opinion of this author that there is the need to amend the provisions of sections 308 and 222(5) of the Criminal and Penal Codes respectively, in a more specific terms, putting into consideration, the inadequacy of medical facilities in Nigeria. If these provisions are applied widely as provided, it means that most physicians in Nigeria will become the tenants of Nigerian prison yards. The shortage of some medical equipment in Nigeria such as issue of 'ventilator' may force some medical practitioners into indulging in some acts capable of being interpreted as passive euthanasia (or indirectly causing the death of person).⁸¹

While this author agrees with the Supreme Court that a patient has a right to object to particular treatment, this he disagrees with the court that the patient under the law has right to prefer death where there is available medical treatment such as blood transfusion that can help to revive the patient's health. It is quite understandable that the patient has right to reject certain treatments

⁷⁵ (1985) 1 ALL E R.p.645

⁷⁶ *Ibid*, p. 666.

⁷⁷ The writer was able to interview the stake-holders in the course of this research, including the medical doctors, lawyers, priests, patients, among others.

⁷⁸ Although, K.K. Eleja, Esq. (Principal Partner in K.K Eleja & co, Ilorin) in his interview with the writer, is of the view that withholding or withdrawing treatment e.g. life support machine or ventilator does not fall within any class of euthanasia, Olaniran maintains in his interview that such act amounts to killing.

⁷⁹ See *MDPDT Okonkwo, supra*.

⁸⁰ *Ibid*

⁸¹ Opinion of Prof. A.O. Mahmud, Medical Consultant, University of Ilorin Teaching Hospital, Ilorin, in an interview with the writer (15 September, 2014).

too artificial enough to sustain his life (such as respirator, or feeding tube, etc.), but will not bring him/her back to a normal or manageable condition.⁸²

It is also gathered that the culture of the people plays important role on their end of life decisions. Therefore, the yardstick for dignity of human life depends on each individual countries' perspectives. While the culture of Oregon sees assisted suicide as dying with dignity, the African culture, especially that of Nigeria perceives same as suicide, which is recognized by the Nigerian culture as a taboo. However, while the western culture particularly that of Oregon appreciates conscious death, seeing death as a result of protracted chronic sickness as offensive and degrading, Nigeria people do not see anything degrading in such a death. Rather, they prefer worst health to death. It is therefore, a well-known fact that it is only on rare circumstances it may be heard that a "pure" Nigerian patient requests for death, as Nigerians believe that tomorrow or future 'may carry better thing come'.

There is fear that the legalization of euthanasia will have detrimental effect with regard to vulnerable population and to the fact that it will transform a healing profession into a killing profession. The slippery slope argument should be enough reason to criminalize euthanasia and or assisted suicide. This is so because if euthanasia is legalized, people especially the physicians and family members or relations who may have certain interests on the death of the patient may take advantage of the legal frame-work in place to coax the patient into voluntary euthanasia. As noted, there are certain interests that infiltrate in the mind of the decision makers of euthanasia which include: the relatives- who may have a vested interest in the estate of the terminally ill person; the doctor who has lost interest in a protracted and difficult case; and the hospital administrator, who is short of beds. These factors play a secrete role when deciding on what becomes of the terminally ill patients. In view of this, no other person will bear witness as to what transpired between the family relatives and the physician except death.

Adoption of Slippery slope principle as argued by the opponents of euthanasia cannot be jettisoned in a swift of hurry. It should be noted that legalizing euthanasia alone does not cause much ado, but its future consequences. In considering the implication, the situation regarding the practice of euthanasia in Germany should be called to mind. Initially those targeted for euthanasia were the terminally ill and the mentally and physically handicapped; only those with the most florid schizophrenic and paranoid psychos and children with severe mental and physical handicaps – the idiots. At first, it was only the children under 3, and then the age limit was raised to 8, then 12 and then 17. The little ones were killed by mixing increasing doses of sedatives with their food, the older ones by injection and later on by gassing. All these were done by doctors who considered themselves pioneers in social medicine, just like the present proponents claiming dignity in dying". The total number of people killed is not known but it does include more than 300,000 mentally retarded and more than 1,000,000 (One million) children who were killed for reasons stated, such as odd shaped ears, chronic bed wetters, behaviour problem, difficult to educate, and those with very dark complexions and dark eyes, World War I amputee's, the aged, the infirm and the ill who could not work.⁸³

In view of this, it is opined that legalizing euthanasia in a country like Nigeria, where "anything can happen", will progress to other vulnerable communities and may begin to be used by those who feel less worthy, based on their demographic or socio-economic status. Here, vulnerable population and patients might be subjected to assisted dying without their genuine consent.

⁸² M.C. Obi, "Right to Life and Right to Die: A Comparative Study of the Nigeria and Oregonian Laws on Euthanasia (Thesis Submitted to Unilorin for Award of LL.M in Common Law) p.214.

⁸³ See M.C. Obi, *op cit*, pp.217-218.

As observed, some people do not talk about euthanasia so much in the present time, but death with dignity, instead. The pertinent question to be asked then, is, what does that mean. Is death ever dignified? When one has been seriously ill for some time and has lost weight, and one is short of breath and probably confused and is dying, does having a lethal injection make it all dignified? If we suffer a debilitating illness and we are emaciated and at times confused but surrounded by those who love us as a person, who tend to our needs compassionately, and enrich one closing days with love and a feeling of worthiness right to the very end, that strikes this writer more as death with dignity.⁸⁴

In a related development, it could be observed that certain discriminating and devaluing names such as “vegetative” have been ascribed to the patients with terminal sickness. In opposition to such trend of thought, one is of the view that a person, even if seriously sick or prevented in the exercise of his higher functions of faculties, is and always will be person. The intrinsic value and personal dignity of every human being do not change depending on their circumstances. Not only does the sick person in a vegetative state have right to basic health care, such as warmth, cleanliness, hydration, nutrition, etc. such natural means of preserving life should be considered obligatory.

The likelihood of probabilities, founded on waning hopes for recovery when the vegetative state is prolonged beyond a year, cannot legally and or ethically justify the termination of minimal care such as nutrition and dehydration for the patient. The only possible outcome of such an act is death by starvation or dehydration. In this case, it ends up becoming, if done knowingly and willingly, voluntary passive euthanasia. Such an act is always contrary to both the natural law and the Universal Declaration of Human Rights, which Nigeria is a signatory to. Therefore, it is unacceptable under these laws for killing a human person. However, discontinuing medical procedures that are extremely dangerous, extraordinary, or disproportionate to the expected outcome, can, however, in certain circumstances where death is imminent, be legitimated. In this circumstance, the intension of the doer is not to cause death but *prima facie*, to allow the nature to take its course.⁸⁵

However, the quality of life often imposed by socio-economic and psychological pressures cannot take precedence over general principles according to which even the simple doubt of being in the presence of a living person morally obliges one to respectively abstain from any act that aims at anticipating the person’s death.

Meanwhile, the pleas of the terminally ill who sometimes request death should not be understood as implying a true desire for euthanasia, but it is mostly an anguished plea for help and love. Legally and religiously speaking, intentionally causing one’s own death, or suicide, is a rejection of God’s sovereignty and loving plan, and flight from the duties of justice and charity owed to one’s neighbor and to society. The natural moral law imprinted on each man’s heart obliges us not to permit in any way the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or a person who is dying. It is worthy of note that the moral law forbids that a person requests this act of killing, either for himself or for another person entrusted to his care. Nor can any authority legitimately recommend or permit such an action. This is so because it amounts to violation of not only the constitution of

⁸⁴ Opinion of Rev Fr. Dr Innocent Ozoemenam Dim, Former Pastoral Director, Catholic Diocese of Awka, (personal communication 03 September 2014)

⁸⁵ *Ibid*

the country⁸⁶, but also that of the divine law, an offence against the dignity of the human person, a crime against life, and an attack on humanity. The moment a positive law deprives a category of human beings of the protection which civil legislation ought to accord them, the state is denying the equality of all before the law. What a sick person needs, besides medical care, is love the human and supernatural warmth provided by those close to him such as family, nurses and doctors.

Nonetheless, the assisted suicide and or euthanasia are a very delicate subject and a painful problem. Analyzing it with freedom and responsibility does not mean to blame its supporters. There are some circumstances such as abandonment and isolation a situation where such a patient cannot even dream of any sort of help and or assistance from any person a situation where he/she may be denied of any form of love, caring, charity, or even an ordinary assistance. How then can one blame such terminally ill patient if he or she opts for euthanasia and or assisted suicide? Whatever the outcome is, it is clear that this area needs much more open debate from all strata of society, not just those groups who hold steadfast, but extremist's view on either side of the argument.

That notwithstanding, if euthanasia is legalized in Nigeria, people and their loved ones will certainly be affected. The practice of medicine would change because healing and killing would become equally valid goals of the medical profession. If death becomes a legal right, doctors will feel obligated to offer death as an option to all of their patients whose treatment they find a bit difficult. Those at risk of being killed without consent or against their own wishes would become fearful of seeing a physician, being hospitalized or entering a nursing home. One would stand viewing medical professionals and even one's own family members with suspicious fearing that they will choose death by lethal injection, without one's consent, or even against one's wishes.

7. Conclusion and Recommendations

It has been observed that the impression that all forms of euthanasia are criminalized in Nigeria is not the truth, as the Supreme Court's decision in *Okonkwo's case*⁸⁷ impliedly approved passive euthanasia. The prohibition of all forms of killing (euthanasia inclusive) by both the Penal Code and Criminal Code, and approval of passive euthanasia vide Supreme Court judgment amount to double jeopardy, which may lead to legal tsunami in Nigerian jurisprudence. It is equally observed that the reason for criminalization 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. Further, the disadvantageous aspect of legalizing or decriminalization of euthanasia in Nigeria through legislation will outweigh its advantages. There is also high probability of emergency of slippery slope in the practical aspect of the law, were it enacted in Nigeria.

In view of the foregoing it is recommended that the Nigeria government especially the judicial and legislative organs should take a bold stance on how to address what amounts to double standards in the existing laws governing euthanasia practice in the country. As it stands now, no one can surely say whether or not passive euthanasia is a crime under the Nigerian law. To this end, it is recommended that either the Supreme Court reversed itself in *John Okonkwo's case*⁸⁸ as being reached *per incuriam*, or if there is no possibility of doing so in the near future, we then suggest that the National Assembly abrogate or nullify the decision in the course of

⁸⁶ See section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁸⁷ *Ibid*

⁸⁸ *Ibid*

legislating. This is because the National Assembly has the power in the course of making law to nullify or abrogate decisions of any court of law, including that of Supreme Court (being a common law), and once that is done, that particular decision of the court will no more have the force of law, and court of law cannot question the *vires* of the legislature to nullify or abrogate the common law⁸⁹

There is an urgent need for Nigerian Government to enact a specific law, guiding or governing the euthanasia/assisted suicide. Going by the modern trend in medical technology, the issue of euthanasia has become a global trend which requires a specific law to either expressly criminalize or decriminalize the practice. The taciturnity of the Nigerian law on the subject has become overdue, hence the need for a specific legislation on that aspect.

Nigerian authorities should not bend only in criminalizing euthanasia via its criminal law. They should also do well in providing an alternative treatment or care centres such as hospice care, palliative care, and other medical centers for the management of terminally ill patients. They should make the services of such centers either free of charge or affordable within the reach of every citizen of Nigeria suffering pain as a result of terminal sickness. This, when done is believed to achieve much results rather than criminalizing it. Even if such practice is criminalized without adequate hospice care or other life care services, the law will not be effective; people will go ahead doing “their thing” underground. There is also a need for value orientation among Nigerians pertaining to their steadfastness in upholding their cultural perspectives on the sanctity of life. They should not allow western civilization to make them jettison their cultural value in this aspect. To achieve this goal, the press, mass media, and other social networks have a pivotal role to play. Moreover, seminars and workshops should be always organized to enable our citizenry uphold the doctrine of sanctity of life enshrined in the Nigeria constitution.⁹⁰

Finally, it should be advised that the pleas of the terminally ill patients, who sometimes request death, should not be understood as implying a true desire for euthanasia, but an anguished plea for help and love. In view of this it is suggested that we should always show this people love and care, rather than canvass for their death via euthanasia. Life is a precious gift from God, which is sacred and should always be treated as such.

⁸⁹See *A. G. Abia State v. A. G Federation* [2006] 16NWLR (Pt.1005) 454.

⁹⁰ Section 33, *Ibid*