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JUSTIFICATION OF THE RIGHT TO DIE UNDER THE NIGERIAN JURISPRUDENCE

ABSTRACT

The existence of a right to die via euthanasia, also known as mercy killing and assisted suicide, is a question that crosses geographical boundaries and legal systems. Globally, prevalent jurisprudences prohibit and criminalizes assisted suicide and euthanasia. However, due to improvements in medical technology that have significantly increased our capacity to sustain and lengthen human life well beyond what was previously attained, along with a corresponding expansion of human rights law, many nations, including Belgium, the Netherlands, etc., have legalized euthanasia and assisted suicide. As a matter of fact, Switzerland was the first Country in the world to legalize assisted suicide in 1941. The right to life is unquestionably recognized on universally. The core issue in the ongoing discussion over euthanasia is whether or not there is a countervailing argument.

The purpose of this article is to examine the law indirectly governing assisted suicide and euthanasia in Nigeria. This article examines the definition, kinds, perspectives, and legal position of euthanasia and assisted suicide internationally and locally; particularly using factual cases, the Constitution of the Federal Republic of Nigeria,¹⁹⁹ (As Amended), international legislation and authorities.

It is noteworthy that Nigeria has constitutional basis to introduce the right to die. The laws regulating the topic under reference are outdated and antiquated. Therefore, there is an urgent need to modify to the current criminal legislation and implementation of specific legislation regarding assisted suicide and euthanasia. Due to the unique nature of each terminal illness euthanasia and assisted suicide could aid the patients and family members gain closure without seeing loved ones go through severe pain for a long period of time, of course, this will be contingent on the availability of sufficient legal protections against misuse of such laws.

INTRODUCTION

In Etymological terms, the word *euthanasia* is derived from the Greek word “*eu*” and “*thanatos*” which means “good death” or “easy death”.¹

According to Black’s Law Dictionary, Euthanasia as:

“the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition especially a painful one, for reason of mercy”.²

¹ Oniha B. E. and Oniha M. O., ‘Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria’ <www.nigerianlawguru.com.url> accessed on 18 July 2023.

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

Similarly, the Encyclopedia Britannica defines euthanasia as:

“the practice of painless putting to death persons suffering from painful or incurable diseases or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life support measures”.³

Euthanasia is either effected actively by lethal injection, medication and or passively by withholding or withdrawing life sustaining support, such as a respirator or feeding tube. Euthanasia could also be done voluntary by the ill patient consenting and asking for the procedure or non-voluntary where the ill patient is unconscious or in a persistent vegetative state (PVS).

The term *assisted suicide* as it connotes is the intentional act of providing a person with the medical means or medical knowledge to commit suicide, here a doctor provides the means, it is referred to as “physician assisted Suicide” (PAS). Euthanasia differs from assisted suicide in that in the latter case, a person voluntarily brings about his or her own death with the aid of a medical professional.

Assisted suicide, mercy kill and euthanasia are often used interchangeably, like other life and death issues e.g. abortion. This topic has globally sparked intense debate of divergent opinions. The foundations these disparities include legal, religious, ethical/moral, social, and economical beliefs.

It is pertinent to state that those who oppose euthanasia are ideally the pro-life activists, they are of the belief that human life is sacred and that it must be treated with the utmost regard. As a result, they act quickly to enlist the support of several national and international legal frameworks that uphold and protect the sanctity of life, these includes but not limited to; the African Charter on Human and People's Rights of 1981⁴, the Universal Declaration of Human Rights (UDHR) of 1948⁵ and the International Covenant on Civil and political Rights (ICCPR) 1966.⁶

Although the status quo is presently challenged by the advancement in Human Rights Law and the vast growth in Medical technology, remarkable progress has been made in the development and usage of highly sophisticated ways and means of artificial or mechanical prolongation of human life. With the production of modern medicine, it is now physically viable to prolong and sustain life for decades, even in a persistent vegetative state (PVS).

³ Encyclopedia Britannica, 'Euthanasia' < www.britannica.com > accessed on 18 July 2023.

⁴ Article 4.

⁵ Article 2.

⁶ Article 6.

ANALYSIS OF LEGAL PRINCIPLES IN OTHER JURISDICTION

A classic example is the famous Indian case of ***Aruna Shanbaug v. Union of India***⁷. In this case, an Indian nurse was the victim of a severe sex attack, which resulted in major brain damage and her being placed in a persistent vegetative state (PVS). Because all types of euthanasia were banned in India at the time, she was medically maintained alive in this unconscious condition for 42 years before dying naturally in 2015. However, the Supreme Court of India passed a historic judgement permitting passive Euthanasia in the Country in 2018. This circumstance/scenario has prompted "pro-choice" supporters to advocate for the acknowledgment and legality of the right to die or die with dignity. According to prominent English physicist **Professor Stephen Hawkins, "keeping someone alive against their will is the ultimate indignity."**⁸

Many nations have capitalized on the legal renaissance and have so legalized euthanasia. The Netherlands, Belgium, Ireland, Columbia, India, and Luxembourg are among these countries. While assisted suicide is allowed in Switzerland, Germany, Japan, Albania, and Canada, as well as Washington, Oregon, Vermont, Montana, and California in the United States.⁹

It is pertinent to note that in 2014 Belgium became the first country in the world to remove all age restrictions on euthanasia, thereby legalizing euthanasia of young children but the law requires the child's ability to understand and there must be a written consent by the parents.¹⁰

Meanwhile, in Netherlands, children younger than 12 years cannot seek euthanasia. However, children from the age of 12-15 years, can request euthanasia with parental consent. Nevertheless, the procedure would not be carried out in the event that a parent refuses to consent.

Nonetheless, children from the age of 16 do not need express parental consent but the parents are involved in decision-making process. Meanwhile, from the adult age of 18 a citizen in the country under reference has the right to request euthanasia without parental consent or involvement.¹¹

⁷ (2011) 4 SCC 454.

⁸ Stephen Hawkins, 'I would Consider Assisted suicide' <www.theguardian.com> accessed 18 July 2023.

⁹ Legality of Euthanasia, <<http://en.wikipedia.url>> accessed on 18 July 2023

¹⁰ ABC News, 'Euthanasia law: Belgium passes legislation giving terminally ill children right to die' <www.abc.net> accessed on 18 July 2023.

¹¹ European union agency for fundamental Rights, 'requesting euthanasia' <<http://fra.europa.eu/en/publication>> accessed on 19 July 2023.

There are different reasons why euthanasia is necessary, recently, in 2017, the European court on human rights refused to set aside a ruling of the Supreme court of the United Kingdom to withdraw life support treatment to 10 months old Charlie Gard who has brain damage and a rare genetic condition called encephalomyopathic mitochondrial DNA depletion syndrome (MDDS)¹² which has no cure.

In June 2016, Bill C-14 was passed by the Canadian Parliament and later amended the Canadian Criminal Code as to legalize physician- administered euthanasia (PAE) and Physician- assisted suicide (PAS) and this process referred to as Medical assistance in dying (MAID)¹³ to allow terminally ill adults to control their deaths. In 2021, more than 10,000 people died by euthanasia in Canada.¹⁴

Another classic example of the need for euthanasia may be found in the English case of **Airedale N.H.S v. Bland**¹⁵, decided by the House of Lords (now Supreme Court of the United Kingdom). In that instance, 17-year-old Anthony Bland was one of the supporters of Liverpool football club who was injured in the Hillsborough football club disaster on April 15, 1989. His lungs were crushed and perforated during this awful incident. The blood flow to his brain was cut off. Hence, he sustained devastating and permanent brain damage. He was in a persistent vegetative state (PVS) for three years. According to eminent medical opinions, there was no prospect whatsoever that he would ever make a recovery from this condition, but there was likelihood that he would maintain this state of existence for many years if provided top-notch medical care. The parents and doctors decided there was no use prolonging his medical care and they filed to the English High Court seeking legal pronouncement on their action. The case eventually went to the House of Lords, wherein the House of Lords were unanimous in their decision that Anthony Bland should be allowed to die. This decision was made relying on the Indian case of Aruna Shanbaug.¹⁶

NIGERIAN LAWS FOR/AGAINST THE RIGHT TO DIE

There is no specific law on euthanasia in Nigeria. The law on euthanasia and assisted suicide is embedded in the penal laws of the country and therefore

¹² Bowcott, Owen, 'Charlie Gard: European court rejects plea to intervene in life support fight' <www.theguardian.com> accessed on 19 July 2023.

¹³ Government of Canada, 'Medical assistance in dying: Overview' <www.canada.ca> accessed on 19 July 2023.

¹⁴ Euthanasia in Canada, <https://en.m.wikipedia.org/wiki/Euthanasia_in_Canada> accessed on 19 July 2023.

¹⁵ (1993) ALL ER 82 (HL).

¹⁶ Supra n.7

statutory. Also germane to the law on euthanasia and assisted dying are the human rights provisions of the 1999 Constitution (as amended) which brings a constitutional dimension to euthanasia law in Nigeria.

A number of Criminal Code Act provisions relate either directly or otherwise to euthanasia and assisted suicide. For instance, any form of killing of any person (euthanasia clearly inclusive) is unlawful unless such killing is authorized, justified or excused by law¹⁷. Therefore, except as set forth, any person who causes the death of another directly or indirectly, by any means whatsoever is deemed to have killed that other person.

Similarly, under the acceleration of death provision of the Criminal code, a person who hastens the death of another person who, when the act is done or the omission is made is laboring under some disorder or disease arising from another cause is deemed to have killed that other person.¹⁸ This provision quite clearly speaks directly to the practice of euthanasia and assisted suicide in all but name. That consent was given is irrelevant and not a defense. The same also applies to Penal Code.

It is pedestrian that under the legal regime in Nigeria, **the Constitution of the Federal Republic of Nigeria 1999** (as amended) is (*grund num*) supreme and its provisions shall prevail against any other law in the nation and where any other law is inconsistent with the constitution, that other law(s) shall be void¹⁹ and the Constitution shall take precedent.

According to **Augustine Alegeh SAN** "*Perhaps the greatest gift of mankind as far as law is the evolution of Fundamental Human Rights as inalienable rights*"²⁰. In essence the global practice and country's treaty obligation, the Constitution of the Federal Republic of Nigeria 1999 (As Amended) makes provision in its Chapter IV for the fundamental Human Rights, have direct bearing on the law and practice of Euthanasia and assisted suicide.

Under this Chapter of the Nigerian Constitution, the right to life is guaranteed²¹ therefore no one shall be deprived intentionally of his life, except in situations where an accused has been found guilty of a crime punishable by death and sentenced to death. For the purpose of this essay, specific mention shall be made to the

¹⁷ Section 306 Criminal Code Act Cap 41 Laws of Federation of Nigeria 2004

¹⁸ Supra n.12 section 311.

¹⁹ Section 1(1) and 1(B) of the 1999 Constitution of Nigeria (as amended)

²⁰ Alegeh Augustine, Law and Natural development: the Annual Justice Idigbe Memorial Lecture (2016).

²¹ Ibid Section 33(1).

following: right to human dignity²² under which there is freedom from torture or inhuman or degrading treatment freedom from all forms of discrimination²³, thought Conscience and religion²⁴, right to personal liberty²⁵ and right to self-determination²⁶.

Although the right to life is seen as the most important, the apex court in Nigeria, the Supreme Court has stated emphatically that Constitutional provisions, particularly as they relate to fundamental human rights must be read broadly and together and not disjointedly.²⁷

For the enjoyment of the constitutionally guaranteed right to life to have any meaning at all, the makers of the 1999 constitution clearly envisage that there shall also be a corresponding enjoyment of the right to life as inseparable from other rights highlighted above.

It's doubtful that the initial authors or drafters of the Constitution of the federal Republic of Nigeria intended for a terminally ill Nigerian citizen residing in Nigeria to exist in a persistent vegetative state with no chance of recovery or survival, suffering excruciating pains, be kept mechanically and medically alive but functionally dead by life support devices, and being denied the right to assisted suicide and/or euthanasia.

Therefore, it is my opinion that the right to euthanasia, assisted suicide, or simply to die be acknowledged and safeguarded by essential implication within the 1999 Constitution as a fundamental human right and a key component of the right to life.

In Nigeria, this view finds express agreement in the landmark decision of the Nigeria Supreme Court in the case of **Medical and Dental Practitioners Disciplinary Tribunal v. Dr John Emewulu Okonkwo**,²⁸ In this case the Nigeria Supreme Court upheld the right of a patient to consent to medical intervention/treatment in pursuit of her exercise of the right to freedom of thought, conscience and religion under the constitution. The decision, it is submitted effectively endorsed passive voluntary

²² Ibid Section 34

²³ Ibid Section 42

²⁴ Ibid Section 38

²⁵ Supra n.19 Section 35

²⁶ Chapter 1, Article 1, part 2 United Nation Charter and resolution; article 1 of International Covenant Civil and Political Rights (ICCPR) and article 1 of International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 3 of Declaration on the Rights of Indigenous Peoples.

²⁷ Osondu & Anor v A.G Enugu & Ors (2017) LPELR - 43096 (SC).

²⁸ (2001) 3 S.C. 76.

euthanasia by way of the exercise of a patient's right to self-determination expressed in his refusal of medical intervention even where it will surely lead to her death, where such intervention runs contrary to her constitutionally guaranteed right. *Ayoola JSC held that:*

The patient's constitutional right to object to medical treatment or particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 constitution as follows: (1) Right to privacy: Section 34, (ii) right to freedom of thought, conscience and religion, section 35. All of these are preserved in section 37 and 38 of the 1999 Constitution respectively. The right to privacy implies a right to protect one's thought, conscience or religious beliefs' and practice from coercive and unjustified intrusion and one's body from unauthorized invasion. The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification from choosing the course of one's life.... if a competent adult patient exercising his right to reject lifesaving treatment on religious grounds thereby chooses a path that may ultimately lead to his death, in the absence of judicial intervention overriding the patient's decision, what meaningful option is the practitioner left with other than perhaps to give the patient's comfort. More so against the back drop of the fact that prevailing medical ethical practice does not without exceptional demand that all efforts towards life prolongation be made in all circumstance, but seems to recognize that the dying are often in need of comfort than treatment.²⁹

CONCLUSIONS

In light of the aforementioned, it is asserted that the right to assisted suicide and euthanasia for those deemed terminally ill and have little or no likelihood of recovery is not inconsistent with the right to life. The patient's constitutionally guaranteed rights to liberty (self-determination), the dignity of the human person, privacy, freedom of thought, conscience, and religion, as well as against discrimination, are, on the other hand, violated by any insistence on keeping the patient alive against his will, in excruciating pain and anguish, or in a permanent vegetative state, typically in an undignified manner.

Euthanasia and assisted suicide should therefore not be criminalized broadly, as we have seen in Nigeria's criminal and penal code, without taking into account the unique and special circumstances of deserving cases of euthanasia and assisted suicide. This is contrary to the spirit and letter Chapter IV of the 1999 constitution

²⁹ Per *Ayoola JSC* at 103-104. See also the case of *Esterhuizen v. Administrator, Transvaal* (1957) 3 S.A 7 10T where the court decided that a person of sound mind may refuse medical treatment irrespective of whether it would lead to his death or not.

and is therefore unconstitutional. Exceptions should be made as reflected in the case of MDPT v. Okonkwo³⁰.

RECOMMENDATION

There is no debate as to whether Nigeria's criminal laws are old, archaic and consequently unjust. For instance, the Nigerian Criminal Code was established on June 1st, 1916.³¹

Evidently, the sections of the criminal and penal code regarding murder, manslaughter, and assisted suicide, as well as its unambiguous ban on euthanasia and assisted suicide outdated and this presents a gaping disconnect between these penal laws and modern technological advances and development in medicine, human rights law and society in general.

It is suggested that existing penal laws be thoroughly revised with the goal of granting an exemption to worthy instances for the practice of euthanasia and assisted suicide rights. Additionally, special euthanasia regulations should be created, outlining the scope of the practice in Nigeria as well as the circumstances under which it is acceptable. Adequate legal precautions against misuse are also included, similar to the Belgium Act on Euthanasia of 2002³².

Possibly the amendment of Chapter iv of the 1999 Constitution to include Euthanasia as an exception in right to life, as this would give a complete definition and satisfaction of the Fundamental Human Rights as intended by the draftsman.

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³⁰ Supra n.26

³¹ Supra n.16.

³² The Belgian Act on Euthanasia (2002) < <https://apmonline.org/wp-content/uploads/2019/01/belgium-act-on-euthanasia.pdf> > accessed on 19 July 2023.