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Criminalizing euthanasia in Nigeria: A stitch in time

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Abstract

It is a universal truth that the sanctity of life is globally held in very high esteem. This fact accords with the notion that life is a natural right which the law has always protected. It is also incontrovertible that terminal sickness of a loved one can be distressing, especially where the sick person is not only suffering but depends entirely on other individuals to do everything. This is where the issue of euthanasia has become a topical subject. It has therefore been proposed that, it is good to take the life of such a terminally sick fellow out of mercy for him or her to ease his or her pain, thus he or she is said to die a dignified death. This scholarship appraises the concept of euthanasia. The paper argues that euthanasia is not

the best option when one has distressing illness or approaching the end of life, particularly in a country like Nigeria where the culture of love is the bond that binds families together. It recommends inter alia the use of palliative care for terminally sick persons, and sometimes the aged, physically challenged and other vulnerable persons in the society. It further suggests that euthanasia be made a criminal offence in Nigeria in order not to create an unrestrained opportunity for people to demean the value of human life, and to ward off abuses that may erode virtues of love, trust and unity.

Keywords: euthanasia in Nigeria, criminalising, a stitch in time

1. Introduction

In modern constitutions of civilized nations, right to life is the most fundamental, the most basic, the most primordial and the most supreme which human beings are entitled to without which all other rights are either less meaningful or less effective ^[1]. Not only do municipal laws ^[2], recognize it; regional ^[3], and international ^[4], instruments accord it places of significance. However, one question that has pervaded global discourses but that has defied a commonly acknowledged answer is: does the right to life co-exist with the right to die? Put it differently, is there anything like the right to die?

In recent times, the debate on euthanasia or assisted suicide has taken the center stage of intellectual discourse in medical jurisprudence. Two schools of thought have emerged, namely those in favour of the legalization of euthanasia, and those opposed to it. As the debate in support for and against euthanasia continues, many countries have already legalized euthanasia ^[5]. Worst legal and medical dilemmas are staring some countries in the face, chiefly countries with no specific laws on euthanasia to regulate decisions of doctors and or terminally sick persons when confronted with complex situations of life and death.

In the light of the foregoing, it is the role of this paper to examine the concept of euthanasia as it is viewed globally, and to x-ray same within the Nigerian jurisprudential background.

2. The Concept of Euthanasia

Although the term "euthanasia" is devoid of a generally accepted definition ^[6], there is a growing consensus among authors and scholars that in defining the term emphasis is placed on "mercy killing" ^[7]. This is in tandem with the definitions given by Black ^[8] and Garner ^[9]. According to Gomerly, euthanasia arises when "the death of a human being is brought about on purpose as part of a medical care being given to him or her" ^[10]. It also involves providing a "good" death or easing the passing ^[11]. Etymologically, the word euthanasia is derived from the Greek 'eu' and 'thanatos,' meaning a "good death." A polysemous use of the adjective 'eu,' that is 'good' can be applied in several forms such as 'happy,' 'peaceful' or 'nice,' hence 'happy death,' 'peaceful death' or 'nice death.' Consequently, over centuries, euthanasia has been referred to a good "death one could hope for but never be assured of" ^[12].

The term is not without ambiguity. Accordingly, it is susceptible to different legal analyses. It has been noted that:

The translation of the word euthanasia – ‘easy death’ – contains ambiguity. It connotes that the means responsible for death are painless, so that the death is an easy one. But it also suggests that the death sought should be a relief from a distressing or intolerable condition of living (or dying), so that death, and not merely the means through which it is achieved is good and right itself. Usually, both aspects are intended when the term euthanasia is used, but when that is not the case, there can be consequences in legal analysis [13]

Advocates do not prefer to use the word euthanasia. They find it “distasteful because of its historical connotations in Nazi Germany [14]. They instead adopt “voluntary assisted suicide” because it is suggestive of individual choice [15]. It is sometimes referred by the law as second-degree murder, manslaughter, or criminally negligent homicide [16].

Incontrovertibly, the concept of euthanasia is a complex one, leading to divergence of opinions. Nevertheless, it can be safely said that the following attributes of euthanasia can be deduced from what the various opinions proffered:

- a. Exercise of a right or choice to die;
- b. Medical help in such exercise of sentence, right or choice;
- c. Putting an end to one’s life by another with the consent of the former;
- d. Bringing to an end the life of a person who is terminally ill on the ground of mercy.

3. Types of Euthanasia

Euthanasia has been classified into six types [17]. These include active euthanasia, involuntary euthanasia, and non-voluntary euthanasia. Other types of euthanasia are, passive euthanasia, and voluntary euthanasia.

3.1 Active Euthanasia

This is the class of euthanasia “performed by a facilitator (such as a health practitioner) who not only provides the means of death but also carries out the final death – causing it [18]. It is means taken by a physician or a medical team which specifically causes the death of a patient, being the resultant effect of the administration of a lethal injection on such patient [19]. It is otherwise called physician assisted suicide [20]. Where such assistance emanates from a doctor. For instance, where a patient swallows or takes an over dose of drugs under a doctor’s prescription. Lord Mustil had active euthanasia in mind when he said that:

Mercy killing by active means is murder... has never so far as I know been doubted. The fact that for some, although not all, transform the moral quality of his act but this makes no difference in law. It is intent to kill or cause grievous harm, which constitutes the mens rea of murder, and the reason why the intent was formed makes no difference [21].

A good example of active euthanasia is the case involving a terminally ill Michigan patient, Thomas Youk to whom his doctor, Jack Kevorkian administered a lethal medication [22].

3.2 Involuntary Euthanasia

There is involuntary euthanasia where in the conclusion of the executioner, it is the best interest of the patient that he or she be euthanized [23]. In this case, consent of the patient though competent, is absent [24]. Consent of the patient may not have been obtained because he or she does not choose to die or because he or she was not asked for the requisite consent [25].

3.3 Non Voluntary Euthanasia

This is a form of euthanasia involving an incompetent, and therefore, non-consenting patient [26]. The explicit consent of the patient is lacking, such as when the patient is in a chronic vegetable state [27]. The absence of the patient’s consent places the task of deciding his or her fate solely on his or her family. The case of Terri Schiavo [28] is a typical example. It has been argued that in most cases it is safer to include the physician in taking such decision, because the physician would be in a better position to know the health history of the patient [29].

3.4 Passive Euthanasia

Passive euthanasia, otherwise called negative euthanasia [30], occurs when the patient dies as a result of the withdrawal of his or her treatment [31]. Withdrawal of the patient’s treatment may occur in a number of ways including disconnecting the patient from a life support machine [32]. It can also occur when the patient is incompetent but the decision to stop his or her treatment is reached either by the legal guardian solely, or in conjunction with a medical team in charge of the patient [33]. Such withdrawal or withholding of treatment may occur when a respirator or feeding tube is withheld [34].

3.5 Voluntary Euthanasia

This arises as a result of a patient’s express request to a doctor to put an end to his or her life [35]. The request may be in the form of advance directive prior to the patient’s incapacitation [36]. Before such consent is given or obtained, two conditions must be fulfilled, namely the patient must attain the age of majority, and the consent must be either before or during vegetable state [37].

Voluntary euthanasia could be active voluntary or passive voluntary. It is active where the patient is assisted to take his or her life [38] and passive where treatment is withdrawn from the patient leading to his or her death [39].

4. Evolution of Euthanasia

A Roman historian Gaius Suetonius Tranquillus is said to be the first person who recorded the word euthanasia in his book *De Vita Caesarum – Divus Augustus* (The Lives of the Caesars – The Defied Augustus) to describe the death of Augustus Caesar [40]. Although Suetonius described Caesar’s death as “easy death... such as he had always longed for...,” Augustus’ death was not in the real sense hastened by any other person [41].

Between 15th and 17th Centuries, two prominent English men, Sir Thomas Moore and Francis Bacon advanced the euthanasia cause [42]. In his book *Utopia*, Thomas encouraged euthanasia when the Utopian priest was terminally ill, and Francis canvassed for easy dying of the body or outward euthanasia [43]. In 1935, Voluntary Euthanasia Legalization Society was formed under the presidency of Lord Mangham

[44]. In 1936, a Bill was sponsored to promote the aim of the society, but the Bill could not pass the stage of second reading [45]. In 1950, another Bill with the same purpose reached the House of Lords but did not still see the light of the day [46]. However, pressure mounted by the Euthanasia Society led to the passing of a Bill on euthanasia [47]. In 1969, Lord Raglan sponsored a Bill on euthanasia but it was rejected on the ground that it was a bad Bill [48].

In recent times, advocacy in support of euthanasia has continued to rise. Proponents of euthanasia have continued canvassed for its legalization. Today, the concept has been made legal in the Netherlands [48], Oregon, Washington, Vermont, Montana, and California in the United States of America [49], and Belgium [50]. In Canada, voluntary active euthanasia is legalized for people above the age of 18 years, and to prevent suicide tourism, only people under the Canadian health insurance are permitted to benefit from it [51]. Other countries such as Colombia [52], India [53], Switzerland [54], Luxemburg [55] and Sweden [56] have legalized euthanasia.

5. Multifarious Perspectives of Euthanasia

Euthanasia has evoked an avalanche of human, medical, legal, moral/ethical and religious sentiments all over the world. The reason is not farfetched. Any topical issue which borders on life and death draws a lot of debate.

5.1 Medical Perspective

The place of the physician in euthanasia cannot be gainsaid. The physician plays a fundamental role in the life of a patient on whom euthanasia may or may not be considered. As such, opinion of the average physician is apposite.

The view of the American Medical Association was made known in this manner:

The involvement of physicians in euthanasia heightens the significance of its ethical prohibition. The physician who performs euthanasia assumes unique responsibility for the act of ending the plaintiff's life. Euthanasia could also readily be extended to incompetent patients and other vulnerable populations. Instead of engaging in euthanasia, physicians must aggressively respond to the needs of patients at the end of life. Patients should not be abandoned once it is determined to receive emotional support, comfort care, adequate pain control, respect for patient autonomy, and good communication [58].

A survey was carried out by the Institute of Oncology and Radiology of Serbia, Belgrade, Yugoslavia, involving 123 test persons, which included 30 Oncologists, 31 family doctors, 31 Lawyers, and 31 Medicinal Students [58]. In the study, legalization of euthanasia was favoured by 43% of Oncologists, 30% of family doctors, and 23% of Medicinal students. Among the 123 test persons, 31% said they would apply euthanasia if a patient was to ask for it; and 36% said they would apply it if it was legalized. Approximately 40% of them believed that the decision for euthanasia should be left to the patient alone. None of the respondents believed that being a burden to the patient's family is sufficient reason for the termination of the patient's life [59].

Like most medical associations in the world, the view of the Nigerian Medical Association (NMA) can be deciphered from their code, which provides that:

One of the cardinal points in the Physician's Oath is the preservation of life and therefore, an act of mercy killing or helping a patient to commit suicide runs contradictory and anti-ethical. A doctor should not terminate life whether the person is in sound health or terminally ill. A practitioner shall be adjudged to be in breach of the ethical code if found to have encouraged or participated in any of the following acts; (a) termination of a patient's 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, and (c) termination of a patient's life through the administration of drugs with or without the patient's explicit request taking same to be in the interest of the patient [61].

5.2 Religious Perspective

(a) Christianity

Different denominations of the Christian faith hold diverse views of euthanasia. However, the foundation to this is in the Biblical injunction where in the Ten Commandments God says: "Thou shalt not kill [60]." It is strongly believed that God is the giver of life. No human has the power to take another person's right. In defence of the sanctity of human life, the Catholic Church made a following declaration on Euthanasia:

The deliberate decision to deprive an innocent human life is always morally evil, can never be licit either as an end in itself or as a means to a good end. It is in fact a grave act of disobedience to the moral law, and indeed to God himself, the author and guarantor of that law contradicts the fundamental virtue of justice and charity [61].

It has been argued that the Roman Catholic Church cannot speak for all Christians [62]. Nevertheless, since the Bible is the "moral code" for all Christians, and it forbids killing of one another [63], the position of the Catholic Church – being in line with the Biblical principle – must be taken seriously.

(b) Islam

Islam forbids suicide or acts assisting another person to kill himself or herself [64]. The Islamic religion is against a person killing another except for murder or spreading mischief in the land [65]. The reason advanced for inviolability of life hinges on sanctity of life. The precedent for this comes from Prophet Muhammed, who refused to bless the body of a person who committed suicide [66]. Murder, in the view of the Islamic religion, is compared to slaying the whole people in the land [67].

(c) Buddhism

The monastic code states

Should any bhikkhu intentionally deprive a human being of life, or search for an assassin for him, or praise the advantages of death, or incite him to die (thus): my good man, what use is this wretched, miserable life to you? Death would be better for you than life, or with such an idea in mind, should in various ways praise the advantages of death or incite him to die, he also is defeated and no longer in communion [68].

Consequently, it is unacceptable, inhuman and immoral "to

embark on any course of action whose aim is to destroy human life irrespective of the quality of the individual motive [69].”

An important feature of Buddhism is compassion. Conversely, for liberal Buddhists who are in support of euthanasia, compassion for a suffering patient is said to be the justification for terminating the life of such a patient so as to escape suffering associated with terminal sickness or incurable sickness.

(d) Judaism

Jewish scholars are divided, partly on denominational lines, over euthanasia. Generally, Jewish thinkers are vigorously opposed to euthanasia [70]. However, voluntary passive euthanasia is permitted in limited circumstances within the Conservative Judaism Movement [71]. In the case of Reformed Judaism, the preponderance of anti-euthanasia campaign has drifted in recent years in support for certain passive euthanasia options [72]. Another sect, secular Judaism, is in support for euthanasia. Popular among the Jews who express sympathy for euthanasia is the president of the Association of Humanistic Rabbis, Rabbi Miriam Jerris [73].

5.3 Military Perspective

In the event of war, soldiers and doctors are often faced with complex situations involving decisions to take or preserve lives. There may be situations where medical support system is inadequate, or where lives of victims of war are in danger. Therefore, certain principles governing war require decisions on the part of the doctors and or soldiers at war.

One of the oldest records of battlefield euthanasia is in the Bible, [74] while the first recorded case of physician assisted euthanasia, albeit committed indirectly, was done on mortally wounded soldiers after the fall of Turin [75].

The rule governing war is very clear on this. The first General Convention of 1948 states:

Members of the armed forces... who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the party to the conflict in whose power they may be... any attempts upon their lives or violence to their persons, shall be directly prohibited... they shall not willfully be left without medical assistance and care nor shall conditions exposing them to contagion or infection be created... [76]

In spite of the above provision that the enemy should be given fair treatment where he or she does not constitute a threat, soldiers often contravene this principle of war, and still torture their prisoners. It is for such reason that many soldiers opt for battlefield euthanasia for critically wounded soldiers as opposed to capture [77].

Although the law forbids euthanasia in battlefields, soldiers are often reported to practice it especially in critical scenarios where capture and torture by the enemy, as well as painful and slow death are inevitable. Roger Maylunet, a US Army Captain and Commander of the 1st Armoured Division in Iraq, who was court-martialed for shooting a fatally wounded driver said in his defence:

The driver was in a state I didn't think was dignified. I had to put him out of his misery... it was a right thing to do... it was the honorable thing to do...” [78]

6. Controversies Arising from Euthanasia

The practice of euthanasia has drawn a wedge between two intellectual traditions, namely proponents of euthanasia and opponents of euthanasia. Proponents of euthanasia have always advanced arguments for the concept, whereas those against it have raised arguments to demolish the ones raised by the other school of thought.

6.1 Arguments for Euthanasia

(a) Individual Autonomy

Proponents of individual autonomy are of the view that a person is the sole owner of his or her body, and so should deal with it however he or she wants, including killing himself or herself or being assisted to do so [79]. In the case of *Vacco v. Quill* [80], the American Civil Liberties Union filed an Amicus Brief [81] before the United States Supreme Court wherein it stated to the effect that, a competent but terminally ill person as a result of insufferable suffering, when denied the right to take his or her life amounts to a denial of such a person's right to liberty. Brock [82] defines the above scenario to mean the withholding of a patient's right to die when his or her condition has become unbearable. For these proponents, their arguments are based also on constitutional provisions and other statutes guaranteeing rights to individual autonomy, privacy and self-determination [83]. Such rights, they maintain, constitute sufficient authority to euthanasia [84]. In the event of the above, not only the patient but his or her physician is covered so that none of them would be liable [85]. More so, they are of the opinion that just as a person has the right to life, such a person also has the right to dispose of his life [86].

(b) Quality of Life

Proponents of euthanasia use quality of life as a weapon of argument for euthanasia. They hold that once a person is no longer active due to debilitating illness, he or she should be allowed to kill himself or herself, or be assisted to do so. Relying on the modern school of Utilitarianism [87], proponents of euthanasia argue that life not worthy of life should be eliminated. For them it would be useless to continually allow such a person to live.

(c) Health Cost Reduction

According to proponents of euthanasia, there is need to place emphasis on healthy lives over unhealthy lives. In other words, reduction in health care cost is cited as one of the strongest points in support of euthanasia [88]. If a terminally sick person is allowed to live, according to the proponents of euthanasia, more money would be spent on maintaining him or her. On the contrary, if euthanasia is allowed less money would be spent on procuring the death of the patient. For instance, while assisted suicide drug was said to cost about \$40, the cost of treating a pain to a satisfactory level could not be less than \$40,000 [89]. The Oregon's Death with Dignity Act of 1997 is used as a basis to support their claim. The state of Oregon had agreed to pay for those who intended to bring their lives to an end as a result of unbearable illnesses [90]. Consequently, based on the need to reduce cost of maintaining a terminally sick person who would still die at last, they contend that putting an end to such lives would enable the government concentrate on healthy lives rather than on unhealthy lives [91]. In other words, taxpayers' money would not be wasted on the terminally sick who after all would eventually die of the same ailment.

6.2 Demolishing the Arguments for Euthanasia

(a) Individual Autonomy is Limited

The view by proponents of euthanasia that a person owns his or her body, and therefore should be allowed to do what he or she pleases with it is erroneous. There is no gainsaying the fact that the right to individual autonomy is a fundamental one. However, such right neither extends to killing oneself nor being assisted to do so [92]. Not all individual acts are permitted under the principle of autonomy [93]. Euthanasia and assisted suicide negate autonomy [94]; for such act tantamount to slavery [95].

It is important to state that the two most popular religions in the world, Christianity and Islam do not support individual autonomy. It is believed that God is the giver of life, so only He should decide its termination.

If we agree with the submission that the decision to take one's life is a private choice and a matter of autonomy which the society has no right to be concerned with [96], it presupposes that a person has an unfettered right to ask another to take his life, and at the same time justifies taking of such life on the basis of willful consent and request [97].

(b) Sanctity of Life

Using the depreciating value of human life as a justification for taking life reduces the sanctity of human life. No matter the health of person, taking the life of the sick should never be an option. This is the position of those opposed to euthanasia.

It is the view of the opponents of euthanasia that all religions of the world hold in high esteem the sanctity of life. Allah admonishes adherents from killing one another [98]. He likens the killing of one person to the killing of everybody in the land [99]. However, the only instance where killing may be allowed is when it is used as a punishment for a person where such a person had earlier killed another [100]. This Sharia principle has legal semblance of unlawful homicide under the Nigerian Criminal Law [101]. Similarly, killing is permitted in Islam, if a competent Shari'ah Court passes a sentence of guilt on adulterers who are married or an apostate [102].

In the Christian faith, the position of the Church on euthanasia is clear and unequivocal [103]. In addition, the Catholic community in Washington condemned euthanasia and assisted suicide. Accordingly, the practice of euthanasia and or assisted suicide would lead to "a fundamental change in civil law that reduces the value of life to its "usefulness" in utilitarian terms [104]."

It is instructive to reflect on the position of the House of Lords select committee of the United Kingdom parliament on euthanasia. The Law Lords stated that:

Society's prohibition of intentional killing... is the cornerstone of law and we do not wish that protection to be diminished and we therefore recommend that there should be no change in the law to permit euthanasia and assisted suicide... The death of a person affects the lives of others, often in ways and to an extent which cannot be foreseen. We believe that the issue of euthanasia and assisted suicide is one in which the intent of the individual cannot be separated from the interest of the society as a whole [105].

The different views expressed in opposition to euthanasia and or assisted suicide depicts the importance attached to the

sacredness of human life. Under no circumstances whatever should taking one's life or being assisted to do so be an option. Where a decision to take life is considered as an option in the face of sickness, not only does the cornerstone of law but dignity attached to life, which the law seeks to protect, is violated.

(c) Euthanasia Kills the Love for One Another:

Whether it is viewed as a means of reduction of health care cost, as a result of depreciating value of life resulting from the debilitating illness or as individual ownership of life, euthanasia and or assisted suicide kills the love for one-another. This is the view of the opponents of euthanasia and or assisted suicide. Killing one another for reason of terminal illness negates the essence of a family, which is love [106]. The essence of the family is to share not only love but sorrow together [107]. These include sharing together and caring for one another even in the event of critical ailment [108]. Once there is an option to kill one another, then that sense of love, affection and care is diminished [109]. Once the law legalizes euthanasia, the urge to kill may be ignited in many especially people who are in the position to inherit the deceased's wealth and property [110].

As a primordial community [111], where the larger society is bred and raised [112], the family is an institution where the bond of love and unity is shared [113]. Euthanasia places this bond of love and unity in an endangered state.

(d) Euthanasia Usurps and undermines the Role of Doctors

By virtue of their medical calling, doctors are expected to save lives and not to kill. The Hippocratic Oath places some responsibilities on the shoulders of doctors, and chief among these is "to please no one will I prescribe drug nor give advice which may cause death." Where euthanasia and or assisted suicide are permitted, it has been argued that the doctor's role is reduced from savers of life to takers of life [114], which is in contradiction of the Hippocratic Oath [115]. In the same vein, in line with the fight against euthanasia, the American Medical Association has thrown its weight on the war [116]. Human dignity is not lost where a person is terminally ill. Rather, human dignity is lost where a doctor who took an oath to save life, to treat a patient with compassion and to value a patient's life, turns around to be the very one taking the patient's life [117].

7. The Position of the Law in Nigeria

Euthanasia is not expressly provided for under the Nigerian law. Similarly, there seems to be no government statement to ascertain its position on the contemporary debate on euthanasia in Nigeria. In view of this lacuna, recourse would be had to the Constitution of Nigeria and the Nigerian Criminal Law.

7.1 The 1999 Constitution of Nigeria

The term "Constitution" may be used in the loose, abstract sense to mean "the system of laws, customs and conventions which define the composition or powers of organs of the state, and to regulate the relations of the various state organs to one another and to the private citizens [118]." In the concrete use of it, it may refer to the document containing the substance of the law.

One remarkable feature of the 1999 Constitution of Nigeria (as amended) is that it is supreme [119], having binding force

on all authorities and persons in Nigeria. It therefore means that the Constitution of Nigeria is the Grund Norm ^[120]. By section 1 of the 1999 Constitution, which contains the supremacy clause, all authorities and persons are subject to the Constitution, the Federal Republic of Nigeria must be governed in accordance with the provisions of the Constitution; and the Constitution shall prevail and any other law that is inconsistent with the provisions of the Constitution shall be void.

Subject to section 12 of the 1999 Constitution ^[121], all the fundamental rights provided under the Charter of the United Nations Declaration on Human and Peoples Right (1948), have been made effective under the Nigerian Constitution ^[122]. Section 33(1) of the 1999 Constitution provides that: “every person has a right to life and no one shall be deprived intentionally of his right, save in execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty in Nigeria.” The effect of this provision is that the Nigerian Constitution recognizes the sanctity of life. However, subsection 2(a), (b) and (c) provides for circumstances where a person’s right cannot be said to have been denied. In these circumstances, the government aims at ensuring peace and security of lives and property of citizens. When such occurs, same cannot be said to constitute denial of a person’s right to life.

7.2 The Criminal Code Act ^[123]

Neither the Criminal Code nor the Penal Code ^[124] deals specifically with the issue of euthanasia. However, certain provisions of the Criminal Code are worth examining. The Criminal Code, for instance, criminalizes unlawful killing of another person except it is authorized, justified or excused by law ^[125]. The Code further defines killing as causing the death of another directly or indirectly, by any means whatever ^[126]. Euthanasia, as earlier discussed, could occur where it is facilitated by the assistance of another person, such as a physician ^[127], without the consent of a competent patient ^[128], may involve an incompetent and so non-consenting patient ^[129], or as a result of the withdrawal of the patient’s treatment ^[130], or with the patient’s express request ^[131]. On this note, the Criminal Code provides that any person who:

1. Procures another to kill himself;
2. Counsels another to kill himself and thereby induces himself to do so; or
3. Aids another in killing himself is guilty of a felony and is liable to imprisonment for life ^[132].

It is crystal clear that the above provision is on “aiding suicide”. The Penal Code agrees with this where it provides that, “If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to a fine ^[133].”

Should section 33 subsection 1 of the 1999 Constitution, sections 306, 308 and 326 of the Criminal Code, and Section 228 of the Penal Code be read together, same will not only reveal the principle of sanctity of life but will show that unlawful taking of life is prohibited in Nigeria.

8. Recommendations

The untimely and avoidable death of Terri Schiavo ^[134] and Eluana Englaro ^[135] was caused by absence of definite legislation on euthanasia in America and nebula nature of the Italian law on passive euthanasia, respectively. In addition,

the decision of the court in Martha v. Medical and Dental Practitioner Council ^[136] was predicated on euthanasia and assisted suicide. The decision opened some contradictions between the Nigerian Constitution and Code of Medical Practitioners in Nigeria. This was due to the lacuna in the law, in the sense that there is no clear legislation on euthanasia in Nigeria.

It is therefore recommended that the Criminal Code Act be amended to expressly criminalize euthanasia. The provisions should contain clear and stringent clauses and conditions in favour of the terminally sick patients, children born with deformities, disabled and aged persons. In other words, the Code should criminalize euthanasia and assisted suicide in very clear terms. Where this is not done, many interpretations would be given to section 311 of the Criminal Code.

In all the modern constitutions of civilized nations of the world, right to life is sacrosanct. In other words, all human beings in the world are clothed with right to life. This right is not only recognized by the municipal law ^[137] but it has also received blessings of regional ^[138] and international ^[139] instruments. The prohibition of taking life is based on highly placed ethical and religious conviction ^[140]. This is supported by the assertion that life is a gift from Nature to man over which man has stewardship, but not final control. On the basis of the above, this paper submits that human life is of divine origin, and out of human disposal. Under no circumstances should the life of another be taken, or be assisted to be taken because of terminal illness, disability, or age.

In Africa, despite the importation and imposition of foreign cultures ^[141], the family values of love and care are still on the front burner. In Africa, high premium is placed on love, which is the cultural and moral adhesive that brings people and families together. Importation of euthanasia, and legalization of same will change the culture of love in the family to that of death and hate. Thus, if euthanasia is not curbed, love and sympathy which has been the foundation of most families in the world will be destroyed.

Euthanasia will make the government, health care providers and relations of sick persons, aged and other vulnerable persons in the society to shy away from the responsibilities of taking proper care of this set of people. Continued palliative care should be administered, while further researches are intensified in search for remedies.

In a world where greed has run amok and where love has gone on extinction, legalizing euthanasia is a license to some people to kill property owners and inherit such property. The law must guard against that. One veritable way of doing it, is to outlaw euthanasia so as not to be used as an instrument of fraud in the hands of desperate relations.

9. Conclusion

It would amount to national negligence that may result in legal and medical tragedies of epic proportions if Nigeria as a nation does not take proactive and decisive steps towards criminalizing euthanasia. Without a specific legislation to address frontally the complex issues of euthanasia, not only would physicians find themselves in the dilemma of choosing between adhering to the Hippocratic Oath and taking lives of the terminally sick on the advice of the latter and their relations; the courts may be persuaded to rely on trivial reasons like self-autonomy to make decisions. On the strength of the foregoing, it is therefore submitted that Nigeria should deal with the problem directly by taking the

bold steps to come up with a law criminalizing euthanasia, thereby leading the preservation of African culture of love in the family, which, if euthanasia is legalized, would be easily eroded. A stitch in time, it is said, saves nine.

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3. African Charter on Human and Peoples Rights, 1981.
4. Article 3, United Nations Declarations on Human Rights, 1948.
5. Euthanasia has been made legal in Netherlands, Canada, Colombia and India. Luxemburg, Sweden, and the American States of Oregon, Washington, Montana, Vermont, and California have legalized euthanasia. See notes 50 – 57.
6. For instance, euthanasia has been defined in various ways, such as “the practice of killing without pain a person who suffers from a disease that cannot be cured,” “an umbrella term connoting decisions made in relations to ending the life of a patient,” and “the act of either killing oneself or assisting one to die in the event of depilating disease.” See Oxford Advanced Learner’s Dictionary, 7th ed., p. 500; M. Davis, *Textbook on Medical Law*, 2nd ed. (Great Britain: Blackstone Press Ltd., 1998) p. 344; Bamgbose, U. (2004) “Euthanasia: Another Face of Murder,” *International of Offender Therapy and Comparative Criminology*, Vol. 48, No. 1, pp. 111 – 121, respectively. In *Airedale NHS Trust v. Bland* (1993) A.C. 808, Bingham M.R. described euthanasia as the removal of life support from a patient in a persistent or permanent vegetative state.
7. The arguments for euthanasia are underpinned by painless death, prevention of suffering and good death. See *The Encyclopedia Britannica Online*, “Thanatology”. See <http://search.eb.com/eb/article.9071928>. Accessed 9, June 2019; Alubo A. O. and Angwe, B., “Assault on the Right to Life: Contemporary Perspectives on Euthanasia and Physically Assisted Suicide in Angwe B. and Dakas C.J.D., *Readings in Human Rights* (Lagos: Innovative Communications, 2005) p. 224.
8. To connote mercy killing, Black defines euthanasia as the act or practice of painlessly putting to death persons suffering from incurable and distressing diseases.” See Henry C. Black, *Black’s Law Dictionary*, 16th ed. (St. Paul Minnesota: West Publishing Co., 1991) p. 554.
9. Garner describes euthanasia as “the act or practice of hastening the death of a person who suffers from an incurable or terminal disease or condition, especially a painful one, for reason of mercy. See Bryan A. Garner, *Black’s Law Dictionary*, 9th ed. (St. Paul Minnesota: West Publishing Co., 2009) p. 631.
10. Gomerly L. (1994) “Euthanasia: Clinical and the Law,” *The Linacre for Health Care Ethics*, London, p. 11.
11. J. S. Mason and M. Smith, *Law and Medical Ethics*, 4th ed. (London: Butterworths, 1994) p. 413.
12. Alubo, A. O. and Angwe, B. op. cit. no. 7, Quoting Reimer, J.D. “The Modern Art of Dying: A History of Euthanasia in the United States” by SHAIJ Law Book Review Essay 27 *J. Legal Medicine*, 109.
13. Morgan, “Euthanasia” in 2 *Encyclopedia of Crime and Justice*, 709, 709 (Standford H. Kadish ed. 1983). In B. Garner, op. cit, note 9, p. 631.
14. Carl, L.R.N. “The Right of Voluntary Euthanasia”, 10 *Whittier L. Rev.* 489, 1988 – 1989.
15. Ibid.
16. Ibid.
17. See B. Garner, op. cit. note 9, p. 631.
18. Ibid.
19. R. Baegen, *Ethics at the End of Life* (Idaho: Wadsworth, 2001) p. 191.
20. T. Norchaya, *Euthanasia – a Malaysian Perspective* (Asia: Sweet & Maxwell, 2002) p. 7.
21. R. V. Cox (1992) 12 *MBLR* 38.
22. *People v. Keverkian* (1994) 527 N.W. 2d. 714
23. F. Adaramola, *Basic Jurisprudence*, 3rd ed. (Lagos: Raymond Kunz Communication, 2004) pp. 67 – 71.
24. B. Garner, op. cit. note 9, p. 631.
25. E. J. Ezekiel (1994) “The History of Euthanasia Debate in the History of United States and Britain” 121 *Annals of Internal Medicine*, vol. 205, pp. 793 – 205.
26. B. Garner, op. cit. note 9, p. 631.
27. L. Hugh, *Ethics in Practice: An Anthology* (Oxford: Blackwell, 2002) pp. 25 – 26.
28. (2006) 37 *Loy U. Chi. L.* 297.
29. L. Hugh, op. cit. note 27, pp. 25 – 26.
30. “Oregon’s Death with Dignity Law and Euthanasia in the Netherlands: Factual Disputes”, available on http://www.leg.state.vt.us/reports/05death/death_with_dignity_report.htm.> Accessed on 11 June, 2019.
31. D. E. Meier, C. Emmons, S. Wallenstein, T. Quill, R. Morrison, & C. K. Cassel, “A National Survey of Physician Assisted Suicide in the United States” 338 *Washington State Journal of Medicine* (1998) pp. 1193 – 1201.
32. T. Norchaya, op. cit. note 20, p. 7.
33. Ibid.
34. B. Garner, op. cit. note 9, p. 631.
35. Ibid.
36. Asch, D. A. (1990) “The Role of Critical Care Nurses in Euthanasia and Assisted Suicide”, *NEJM*, vol. 334, pp. 1347 – 1402.
37. Ibid.
38. See Black A. L., Wallace J. I., Starks, H. E. & Pearlman R. A. (1996) “Physician Assisted Suicide and Euthanasia in Washington State,” *Journal of the American Medical Association*, vol. 275, pp. 919 – 925.
39. Ibid.
40. Available at http://life.org.nz/euthanasia/abouteuthanasia/history_euthanasia1/ Accessed on 1st July 2019.
41. Ibid.
42. Kiyersohot, D.D. (2000) “Euthanasia: The Right to Die. The Euthanasia Debate,” *UniJos LSJ*, vol. 5, p. 109
43. Ibid.
44. Eike-Henner, W.K. *The Ethics of Deliberate Death* (Washington: Kennikat Press, 1981) p. 10.
45. Ibid.
46. Ibid.
47. Suicide Bill of 1961, which provides to the effect that it is no more a criminal offence for a person to commit suicide, but any offence to aid or abet the suicide act, is

- an offence.
48. Noble, W.C. *Coli, Great Healer of Men: Biography of Colebrook F. R. S.* (London: Heinemann Medical Book Ltd, 1974) p. 4.
 49. Termination of Life on Request and Assisted Suicide (Review Procedure) Act, Van 1 April, 2001, (Article 2, Sections 3 and 4). See also Jassen, A. (2002). "The New Regulation of Voluntary Euthanasia and Medically Assisted Suicide in the Netherlands," *IJLPF* Vol. 16, No. 2, pp. 260 – 269.
 50. In most States of America, euthanasia is illegal. However, in the aforementioned States, assisted suicide is legal. See O. Reilly and B. Kevin (January 18, 2010) "Physician Assisted Suicide Legal in Montana Court Rules" *American Medical News*, and "Washington State Legalized Assisted Suicide" <http://www.medicalnewstoday.com/articles/141318.php>. Accessed 9 March 2019. See also Oregon's Death with Dignity Act, 1997 (ORS 127.800 – 8987) passed into law in November 1994 but became effective in the late 1997.
 51. The Belgian Act on Euthanasia of May, 2002, vol. No. 10 (2003) *European Journal of Health Law*, 329 – 333.
 52. In *Carter v. Canada* (2015) SCC5, the Supreme Court of Canada ruled in favour of euthanasia, striking down Canada's ban on medically assisted suicide.
 53. Colombia's Constitutional Court had in 1997 ruled that "no person can be held criminally responsible for taking the life of a terminally ill patient who has given clear authorization to do so". See *Redaccion Salud* (19 February 2015). "Los Principios para regular la euthanasia" (in Sp). *ELESpectador.com*; <http://www.highbeam.com/doc/1p2 - 738421.html>. Accessed 16 July, 2019.
 54. On 7 March 2011, the Supreme Court of India legalized passive euthanasia by means of withdrawal of life support to patients in a permanent vegetative state. See "India joins select nations in legalizing "passive euthanasia."" *Chennai, India: The Hindu*. 7 March, 2011. Retrieved 16 July, 2019; Magnier, Mark (8 March 2011). "India's Supreme Court lays out euthanasia guidelines." *LA Times*. Retrieved 16 July 2019.
 55. Administration of deadly drugs may be prescribed to a Swiss person or foreigner. By virtue of Article 115 of the Swiss Penal Code, suicide is considered a crime if the motive is selfish. See Cassani, U. (1997). *Assistance au suicide – le – point de vue la penaliste, medicine et Hygiene*, vol. 55, pp. 616 – 617.
 56. "Luxembourg Parliament adopts Euthanasia" <<http://www.reuters.com/article/worldnews/idUSL201198330080220>>. Accessed 16 July, 2019.
 57. "Sweden allows Passive Euthanasia". *The Swedish Wire*. AFP. 26 April, 2010.
 58. Letter written on behalf of AMA by its General Counsel Krik John to the erstwhile Michigan Attorney-General Frank Kelley, October 1995.
 59. S. Mojsilovic, "Attorney of Oncologists, Family Doctors, Medical Students and Lawyers on Euthanasia." (*Support Care Cancer*, 1998). PubMed-NCBI available at www.pubmed.com.
 60. *Ibid.*
 61. Rules of Professional Conduct for Medical and Dental Practitioners, Code on Medical Ethics in Nigeria, Medical and Dental Practitioners Act (CAP 221), Laws of the Federation of Nigeria, 1990; Decree No. 23 of 1998.
 62. Exodus 20:13 (King James Version).
 63. Pope John Paul II, "On the Value of Inviolability of Human Life" (*Evangelium Vitae*, 1995). See also "Declaration on Euthanasia," Sacred Congregation for the Doctrine of Faith. (5 May 1980).
 64. H. McDougall, "It's popularly hinges on that Catholics are anti-euthanasia. Do Catholic believe we don't have the freedom to do as we like?" *the Guardian* (27 August 2009) cited in Wikipedia: www.wikipedia.org. Accessed 16 June, 2019.
 65. Exodus 20:13.
 66. Translation of *Sahih Muslim Book*: University of Southern California cited by Wikipedia: www.wikipedia.com/euthanasia/religion. Accessed 16 June, 2019.
 67. Qur'an Sura 4.
 68. Translation of *Sahih Muslim Book*, op. cit. note 66.
 69. Qur'an 17:23; 5:32
 70. K. Damien, "The End of Life: The Buddhist View," (*Lancet*, 2005) 954.
 71. *Ibid.*
 72. Available on <http://www.ifshj.net/id91.html>. Accessed 16 June, 2019
 73. *Ibid.*
 74. *Ibid.*
 75. *Ibid.* See also https://www.google.com/search?biw=1137&bih=686&ei=rJYzXZ_aOYzIgQbtubyoCA&q=Rabbi+Miriam+Jerris.&oq=Rabbi+Miriam+Jerris.&gs_l=psy-ab.12..0i22i30.50905.50905..52401...0.0.0.198.198.0j1.....0...2j1..gws-wiz.....0i71.xNJgIGaAVVQ&ved=0ahUKEwif4IHvxsTjAhUMZMAKHe0cD4UQ4dUDCAo. Accessed 21 July 2019.
 76. 1 Samuel 31:2-4, where, in a fierce battle with the Philistines, Saul commanded his armour bearer to kill him but the armour bearer refused. Saul took a sword and killed himself.
 77. G. Keynes, *The Apologies and Treaties of Ambroise Pare – 1585* (Dover Press, 1968) p. 21.
 78. Article 12, Chapter 2.
 79. D.L. Perry, "Battlefield Euthanasia: Should Mercy-Killings be Allowed?" Presented at the International Society for Military Ethics Annual Meeting (27 January 2011) 10.
 80. *Ibid.*
 81. M. Battin, *Last Least Worst Death: Essays in Bioethics on the End of Life* (New York University Press, 1994)
 82. (1997) 117, S. Ct. 2293, 138 L.E. 2d.
 83. This is a legal document filed in appellate court cases by non-litigants with a strong interest in the subject matter, providing or advising the court of relevant, additional information or arguments that the court might wish to consider.
 84. Brock, D. W. (1992) "Voluntary Active Euthanasia," *Hastings Cent. Rep.* Vol. 22, pp. 10 – 22.
 85. *Ibid.*
 86. Allen, M. L. "Crossing the Rubicon: The Netherlands Steady March Towards Involuntary Euthanasia" 31 *Brook J. Int'l.* 535.
 87. *Ibid.*
 88. Eike-Henner, W. K. op. cit. note 44, p. 129.
 89. The Utilitarian Principle is aimed at sacrificing lives

- unworthy of life, such as lives of the disabled, terminally sick persons and in some cases the aged for the good of the society.
90. Rita L. Marker, "Assisted Suicide and Containment" <http://www.internationaltaskforce.org>. Accessed 17 July 2019.
 91. Ibid.
 92. Bach, A. (1986) "Medico-Legal Journal 103 – 106.
 93. For the Utilitarian Principle, see note 89.
 94. Callahan, D, "When Self Determination Runs Amok", *Hastings Lent Rep.* Vol. 22, pp. 52 – 55.
 95. Ibid.
 96. Kass, L.R. "Is there a Right to Die?" *Hastings Lent Rep.* Vol. 23, pp. 34 – 43.
 97. Mill, J. *On Liberty*, Indianapolis, Ind: Hackett Publishing Company Inc. 1978.
 98. Oludoro, A. (2004) "Euthanasia: Human Right and Criminal Law in Perspective" *EBSUJ* 61.
 99. Ibid.
 100. Translation of Sahih Muslim Book: University of Southern California cited by Wikipedia: www.wikipedia.com/euthanasia/religion. Accessed 16 June, 2019.
 101. Qur'an, Sura 5.
 102. The Qur'an (al – Maidah:32).
 103. Unlawful homicide may be murder, infanticide, or suicide. For the crimes of murder, infanticide and suicide, see Sections 306, 327, 326 of the Criminal Code Cap (77 Laws of the Federation of Nigeria, 2004.) However, some of these offences attract imprisonment, not death.
 104. A R. Omar, *The Right to Religious Conversion: Between Apostasy and Proselytization*, in *Peace – Building by, between, and beyond Muslim and Evangelical Christians*, Editors: Abu-Nimer, Mohammed and David Augsburg (: Lanham: Lexington Books, 2009), pp.179 -194
 105. The doctrine states that, "When inevitable death is imminent... it is pertinent in conscience to take the decision to refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to a sick person in similar state is not interrupted." Sacred Congregation for the Doctrine of Faith: *Declaration on Euthanasia and or assisted suicide* (1980); see also Pope John Paul II, *op. cit.* note 63.
 106. Utilitarian terms, already explained note 89, connote sacrificing lives unworthy of life for the good of the society.
 107. Euthanasia is criminalized in the United Kingdom. However, it is lawful in certain cases to withhold or withdraw life-prolonging treatment from patients, thus hastening their death. See Tiedemann, M. and Valiquet D., *Euthanasia and Assisted Suicide: International Experiences, Law and Government Division, Parliamentary and Research Service, Revised 17th July, 2008.*
 108. Margaret Somerville, *The Last Great Act of Living*. Available at <http://www.mercatornet.com/articles/view/thelastgreatactofliving>. Accessed 9 July, 2019.
 109. Ibid.
 110. Ibid.
 111. Ibid.
 112. Inheritance constitutes of the probable consequences of licensing to kill. Evidently, in the assisted suicide laws of Oregon and Washington, it is provided that none of the witnesses of those seeking to die through assisted suicide must not be a person who is likely to inherit the property of the deceased. Euthanasia will open a floodgate of selfish desires to claim other peoples' properties.
 113. M.U. Udoekpo, *The Limit of a Divided Nation* (Enugu: Snaaps Press Ltd, 1999), p. 17
 114. Ibid.
 115. Ibid.
 116. S. Hutching, *Legalizing euthanasia and or assisted suicide needs careful thought*. Available at <http://www.invernesscourier.co.uk/news>. Accessed 9 May, 2019.
 117. By the provisions of Article 68 (a – c) of the Rules of Professional Conduct for Medical and Dental Practitioners, Code on Medical Ethics in Nigeria, euthanasia is Illegal.
 118. American Medical Association Policy, E. 2.21 on Euthanasia and Assisted Suicide, 1990.
 119. Ibid.
 120. O.H. Philips and P. Jackson, *Constitution and Administration Law*, 6th ed. (London: Sweet & Maxwell, 1978) p. 5.
 121. During the military era, this was subject to the provisions of Decrees with constitutional extents which were, in essence, a part of the Constitution.
 122. This means that all other laws draw their power from the Main Law or Grund Norm, the Constitution. Where any law does not bear legal consistency with the Grund Norm, it is void.
 123. Section 12 of the Constitution provides for domestication of international laws.
 124. The whole of Chapter V of the 1999 Constitution of Nigeria is devoted to human rights.
 125. Cap 77, LFN, 2004.
 126. Cap P3, Laws of the Federation of Nigeria, 2004.
 127. Section 306 of the Criminal Code.
 128. Section 308.
 129. Physician assisted euthanasia. See B. Garner, *op. cit.* note 9, p. 631.
 130. Ibid.; see also E. J. Ezekiel, *op. cit.* note 25. pp. 793 – 205.
 131. See L. Hugh, *op. cit.* note 27, pp. 26 – 27. See also Terri Schiavo (2006) 37 *Loy U. Chi. L.* 297.
 132. T. Norchaya, *op. cit.* note 20, p. 7.
 133. B. Garner, *op. cit.* note 9, p. 631. See also Asch, D. A. *op. cit.* note 36, pp. 1347 – 1402.
 134. Section 326 of the Criminal Code.
 135. Section 228.
 136. 37 *Loy U. Chi. L. J.* 297 (2006). The Court of first instance had granted the right to assisted suicide on the basis of equal status accorded letting to die and active killing. The decision was squashed on appeal. The controversy surrounding the status of killing and letting to die is such that, some scholars contend that killing should be called active euthanasia; while letting to die should not be called passive euthanasia but should be called letting to die. See Greer, G. W. Circuit Judge, "In Re: Guardianship of Theresa Marie Schiavo, Incapacitated. File No. 90 – 2906 – GD – 003, Fla. 6th Judicial Circuit, 25 February, 2005.

137. "Eluana Englaro to Die by Dehydration After Italian High Court Rulin." Available at <https://www.lifesitenews.com/archives/search>. Accessed 21 July, 2019. Eluana, is here referred to as Terri Schiavo because the former's case is similar to the latter's case. Terri Schiavo was involved in an auto accident, and was subsequently on a feeding tube. Her husband sought to remove the tube so she could die. The parents of Terri resisted the idea, which culminated in legal battles. The American Supreme Court ruled in favour of Terri's husband, and the tube was removed leading to her death. In the case of Eluana, 37 years of age, who had been on life support for 17 years, the lower court in Italy had decided that her feeding tube be removed so that she would be dehydrated and starved to death at the request of her father. The decision was challenged by the state, which reasoned that such a decision would mark the beginning of legalization of euthanasia and assisted suicide in Italy. The state quickly fast tracked legislative process to make a law against it. The Bill was to be assented to by the President, whose refusal to assent to the bill led to the Italian Supreme Court ruling that Eluana's feeding tube be removed. That was done, and she died.
138. (2001) 7 NWLR (711) 206 S.C.
139. Sections 33(1) and (2) of the Constitution; Section 306, 308, and 326 of the Criminal Code, Sections 220, 221, 223, and 228 of the Penal Code. See also section 200 Sharia Penal Code.
140. African Charter on Human and Peoples Rights adopted in Nairobi on June 27, 1981, and entered into force on 21 October, 1986.
141. Universal Declaration of Human Rights, Article 3.
142. Exodus 20:13; The Qur'an (al-Maidai:13); The Qur'an (al-Maidai:32)
143. The concepts of importation and imposition of foreign cultures are terms used to explain the various imperialistic relationships that existed between colonial masters and their colonies, thereby importing foreign cultures from the center to the periphery. See Daniel Offiong, *Globalization and Africa* (Lagos: Apex Books Ltd, 2013); D. Offiong, *Imperialism and Dependency* (Enugu: Fourth Dimension, 1980); Claude Ake, A. *Political Economy of Africa* (London: Longman, 1981).