International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 28-12-2022, Accepted: 14-01-2023, Published: 30-01-2023
Volume 9, Issue 1, 2023, Page No. 240-247

An overview of self determination and the law on euthanasia in Nigeria

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Abstract
Historically, a deluge of perspectives has been propounded for or against euthanasia (or mercy killing) and assisted suicide. Perhaps one of the most passionate advocacies against euthanasia and assisted suicide has come from the ranks of the adherents of the principal religions of the world. To them, life is a gift of God (Allah). Therefore, man does not have absolute dominion or control over this gratuitous gift. Man is a mere 'steward' and not the Owner of his life and so the time, date and circumstances of his death cannot be determined by him. To them the principle of the sanctity of human life transcends all other rights. On the other hand, supporters of euthanasia and assisted suicide often call in aid, the principle of self-determination or autonomy of a patient expressed in the right to informed consent among others as an inalienable right. A legal regime of absolute prohibition of euthanasia and assisted suicide, as it is presently obtainable in most countries of the world, in their view, represent an unjustifiable encroachment of this equally sacred principle of self-determination available to and exercisable by all persons, irrespective of circumstances of ill health. This paper critically examines euthanasia and assisted suicide, the prevailing legal regime surrounding the acts in some selected jurisdictions. This is against the backdrop of the existence and application of the doctrine of self-determination of a patient expressed in the principle of informed consent, advance directives or living will, and the right to decline lifesaving treatments under common law, statutes, and medical law and ethics and the constitution in Nigeria. The state of the law in some other jurisdictions is also x-rayed with a view to determining whether or to what event the right to euthanasia and assisted suicide accords with the principle and right of a patient to self-determination. The paper concludes, with the identification of the right to euthanasia and assisted suicide as constitutional and legal rights embedded and constituting an integral part of the right to self-determination.

Keywords: Euthanasia, doctrine self-determination, assisted suicide, autonomy of a patient, medical law

Introduction

Euthanasia connotes an easy, quiet and painless death. Because of the sanctity of human life principle enjoined by law, society and religion, issues pertaining to euthanasia and assisted suicide have always been and remains one of the most contentious issues for ages. It is the end point of a process that involves the termination of the life of another, usually one suffering from an incurable or terminal illness either initiated by the patient, a privy or a physician.

The right to life is considered the most fundamental of all human rights in all jurisdictions. Globally, it is considered as sanctimonious and therefore worthy of recognition and protection in international human rights instruments and the municipal Constitutions and Laws of virtually all countries. For example, right to life provision is contained in the Universal Declaration of Human Rights 1948, the American Convention of Human Rights 1969 [23], European Convention for the Protection of Human Rights and Fundamental Freedom 1953 the African Charter on Human and people's Right 1981 [22].

At the municipal level, the 1999 Constitution of Nigeria in line with the above makes provision for the right of every person to life, save in the execution of the sentence of a court of a criminal offence of which he has been found guilty. Similar provisions are also contained in the Indian and Malaysian Constitutions among others. The principle of the sanctity of life is almost therefore universally agreed. But the question of whether there is therefore a corresponding right to die almost always draws out legal, ethical or moral, religious, intellectual combatants for or against the existence or respect of this right. Generally, the prevailing view point and legal regime in most jurisdictions of the world is that the practice of euthanasia and assisted suicide is illegal and criminalized. Only in few jurisdictions has euthanasia and assisted suicide become legal. They include: the Netherlands, Belgium, Luxembourg, Switzerland, Estonia, Oregon, Montana and the Canadians province of Quebec. Passive euthanasia has also become legal in India in the decision of the Indian Supreme Court in the Landmark case of Aruna Shanbang v The Union of India.

Advancements in modern medicine, and palliative care, resulting in the prolongation and sustenance of life over previously unimaginable boundaries, the side effect of which is a corresponding elongation of illness, suffering and pains, particularly for the terminally ill, with no hope of survival or recovery, sometimes in a state of unconsciousness or Persistent Vegetative State (PVS), has provoked a contemporary debate on the existence of a right to die by euthanasia or assisted suicide. This question has also become more acute in the face of growing development of national and international human rights law. Arising from this, principles such as death with dignity, right to self-determination and informed consent have evolved to challenge and fight back against the legal regime of criminalization of the right to euthanasia and assisted suicide. They ask the question why should a terminally ill be refused permission to die in his own way at a time he choices when all hopes of survival is lost but rather be forced to endure unbearable pains, sufferings and indignity, perhaps hooked on to a life support machine, which only serves to preserve a life of anguish sometimes for decades. Emphasis they contend must now be not just on life as

quantity of existence but also qualitative life, flowing from respect for the right to self-determination.

Euthanasia and Assisted Suicide

Euthanasia: In Etymological terms, the word 'euthanasia is derived from the Greek word, "eu" and "thanatos" which means "good death" or "easy death". Since virtually everyone naturally desires a good or painless death when the inevitable moment comes, reference to euthanasia as good death may be regarded as a mere sign post to the real meaning of this highly volatile and controversial subject. We must therefore trudge further in our quest for a more revealing and explanatory definition.

According to Black's Law Dictionary, "Euthanasia is the act or practice of causing or hastening the death of a person who suffers from incurable or terminal diseases or condition especially a painful one, for reason of mercy. Similarly, the Encyclopedia Britannica defines euthanasia as; The practice of painless putting to death of persons suffering from painful or incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life support measures. It is important to underscore the fact that whilst it is true that the majority of cases where euthanasia is sought relate to a quest to end an incurable or terminal condition, this does not necessarily have to be the case. Euthanasia and assisted suicide have been known and reported to have been carried out in less extreme medical situations.

Assisted Suicide: The term assisted suicide as the term suggest is the intentional act of providing a person with the medical means or medical knowledge to commit suicide. Where a doctor provides the means, it is often referred to as "physician assisted suicide". Euthanasia differ from assisted suicide in that in the case of the latter, a person voluntarily brings about his or her death i.e. commits suicide with the assistance of another person who provides the means to end the patient's life, together with clear knowledge of the intention of the person to commit suicide arising from a medical condition. Unlike in the case of euthanasia, the provider does not necessarily act as the direct agent of death.

Forms of Euthanasia

Euthanasia may take the Active or passive form depending on the mode of execution.

Active euthanasia: Black's Law Dictionary, defines this form of euthanasia as one performed by a facilitator (such as a physician or health care practitioner) who not only provides the means of death but also carries out the final death causing act. It entails the taking of active positive steps to bring about the death of another, such as injecting a patient with a lethal injection or administration of killer medications, or an overdose of painkillers or sleeping medication.

Passive Euthanasia: This form of euthanasia is carried out by allowing a terminally ill person to die either by withholding or withdrawing life sustaining support such as respirator or feeding tube to a person who is incapacitated. This form of euthanasia is common in cases of patients who are unconsciousness or in more extreme circumstances in a persistent vegetative state. This distinction between this form and active euthanasia is that in the case of the latter, something is undertaken to terminate life, while in the former, something is withheld or withdrawn that could have preserved or elongated the life of another.

Types of Euthanasia

There are essentially three types of euthanasia. These are Voluntarily, Non-voluntary and Involuntary euthanasia.

Voluntary Euthanasia

This is euthanasia performed with the consent of a patient. Such a patient may grant consent at a time that he is lucid and competent by way of Advance directive or a living will be instructing that his life be terminated or requesting that lifesaving or prolonging treatment be not administered if at any time he becomes incapable or unable to communicate his desire. A notable example of this type of euthanasia is the celebrated case of Dr. Cox in 1992. Dr. Cox openly defied the law and assented to a 70-year-old Mrs. Boyes persistent request for active voluntary euthanasia. She was so ill that "she screamed like a dog" if any one touched her. Conventional medicine administered did not relieve her pains. In her last days, following her repeated request to die. Dr. Cox finally gave her an injection of potassium chloride leading to her peaceful passage. Dr. Cox was subsequently, convicted and given suspended sentence.

Similarly, another notable case of voluntarily euthanasia is the case of the Belgian twins- Marc and Eddy Yer-bessem. Marc and Eddy Yer-bessem, 45-year-old identical twins were both born deaf. They sought to end their lives after learning that they would immediately go blind. They were also reported to have trudged from one medical condition to the other, including spinal and heart disease. Having spent their entire lives together, the brothers contended that not been able to see each other would amount to suffering unbearable pain within the contemplation of the law on Euthanasia in Belgium. Their plea was granted by lethal injections by doctors at the Brussels University Hospital, Belgium.

Non-Voluntary Euthanasia

This is euthanasia of an incompetent and therefore non-consenting person. It may arise in situations where the consent of the affected person is unavailable such as where he is unconscious or otherwise incapable of granting consent arising from factual or legal incapacity. The U.K. case of Airedale N.H.S v Bland (the Airedale case) decided by the House of Lords presents a typical instance of this form of euthanasia. In this case, one Anthony Bland, a 17-year-old Liverpool fan was one of the Liverpool football club supporters crushed in the Hillsbrough football club tragedy of 15th April 1989. In the cause of this unfortunate disaster, his lungs were crushed and punctured. Supply to his brain was interrupted. As a result, he suffered catastrophic and irreversible damage to his brain. For 3 years he was in could not see, hear or feel anything. In order to maintain him in this condition, he was fed and rehydrated by artificial names of nasogastric tube. According to eminent medical options, there was no prospect whatsoever that he would ever make a recovery from this condition, but there was every likelihood that he would maintain this existence for many years to come provided the artificial feeling and other measures aimed at prolonging his existence he stopped. However, since there was doubt

whether this might constitute an offence, the hospital sought a declaration from the high court on this issue. The case went to the House of Lords. The Lords were unanimous in granting leave for Anthony Bland to be allowed to die. The celebrated Indian case of Aruna Shanbaub v Union of India also falls squarely under his head.

Involuntary Euthanasia

This is euthanasia carried out on a competent non-consenting person. This type of euthanasia is performed on a person who would be able to provide informed consent but does not either because they do not want to die or because they were not asked. Involuntary euthanasia is widely opposed and criminalized in all legal jurisdictions. Reference to or fear of it is often used as a reason for opposition to other types of euthanasia. This type of euthanasia must be distinguished from non-voluntary euthanasia in that case of the former, the patient is unable to grant informed consent.

Self determination

According to Chambers 21st Century Dictionary, self-determination is "the freedom to make one's own decision without intervention from others". In relation to the rights of a patient in medical circumstances, "it means that patient have right and ability to make their own choices and decisions and within the boundaries of Law…"

The fundamental principle of self-determination or autonomy of patients is a major cornerstone of medical law and ethics. This right is of common law, statutes and constitutional law extraction. A principle aspect of the right to self-determination is expressed in the prerogative of a competent adult to informed consent to medical treatment or intervention which also extends to right to decline lifesaving treatment. Generally, therefore in the field of medicine, the relationship between a doctor and his patient is one firmly one a foundation of trust and respect by the former latter's right over his body. End of life decisions such as resort or a request for euthanasia or assisted suicide test the limits of the observance or respect for this rule, especially against the backdrop of the physician's subscription to the Hippocratic Oath.

The Concept of Informed Consent

According to Chambers 21st Century Dictionary in relating to something consent means "to give one's permission for it, to agree to it". Against the shallowness of the above definition, the concept of informed consent and entails a much deeper meaning. It is a legal and ethical necessity which must be obtained by physicians before administering any form of treatment on a patient. It derives from one of the main pillars of medical ethics. Touching/ treating a patient without his permission could rise to civil or criminal liability, even if the patient actually benefited from it. For consent to be valid, it must be informed consent. For this to be the case, it must be:

1. Given voluntary (without deceit or fraud, coercion etc.)
2. Given by an individual who has capacity.
3. Given by an individual who has been fully informed about the issues.

Types of Consent

The Nigerian Supreme Court in the case of Okekearu v Tanko defined consent generally as follows "Consent is the act of giving approval or acceptance of something done or proposed to be done. It is an exact conduct flowing from the person giving the consent…." Consent may be express or implied.

a. **Express Consent:** This form of consent may be oral or written. It is consent clearly and unmistakably stated. Within the context of health care provision, it entails the express grant of approval to medical treatment or procedure. Patients undergoing invasive procedures will normally give express consent either by signing a consent form or stating expressly that they agree to proceed with treatment.

b. **Implied Consent:** Is a form of consent which is not expressly given by a patient, but may be inferred from the patient's action and the facts and circumstances of the case. For instance, a patient who rolls up a sleeve for blood sample to be obtained is deemed to have granted implied consent.

Competency to Consent

Competence to consent means that a person possesses the following:

1. An ability to understand the situation, the alternative options and the risk and benefits.
2. The ability to use the information in a logical and rational way to reach a decision;
3. Ability to communicate the decision (either verbally or through other effective means).

In common law jurisdictions, adults are presumed competent to grant consent. This presumption is however rebuttable where there exists legal incompetence such as a condition of insanity. Children or minors on the other hand are generally presumed to be incompetent; in such a case informed consent is obtained from their parents.

Informed Consent

When the patient is found or deemed competent, in what circumstances will consent to medical treatment be deemed lawful? Under medical law and ethics, general consent is sufficient to avoid liability by health care provides. According to Chris Cox, director of Legal Services, Royal College of nursing in an Article, there are two further critical conditions for a valid consent. First, the patient's consent must not have been obtained by fraud or any fundamental deception on the part of the health care professional, such as to the nature of the treatment, to be provided, or the identity of the professional and the individual's consent must have been made of their own freewill. The second condition for a valid consent is whether the individual received sufficient information about the treatment, the possible side effects and alternative treatment options, so that consent was properly obtained. This spotlights the principle of informed consent in medicine.

What is informed Consent?

According to Black's Law Dictionary, informed consent entails:

1. 'A person's agreement to allow something to happen made with full knowledge of the risks involved and the alternatives….'
2. A patient knows choice about a medical treatment or procedure, made after a physician or other health care

provider, discloses whatever information a reasonably prudent provider in the medical community would give to a patient regarding the risks involved in the proposed treatment or procedure". Informed consent is also termed knowing consent. Informed consent forms the basis of the relationship between a patient and a physician.

Elements of Informed Consent

The basis of the principle of informed consent is patient's self-determination. According to Y.Z. Lawal, E.S Garba et al the elements of informed consent include:

1. Explanation of the procedures to be followed and the purposes of each. Those procedures that are experimental should be identified as such.
2. Description of any attendant discomfort and risk that can reasonably be expected.
3. Description of any benefit that can reasonably be expected.
4. Disclosure of any appropriate procedures that might be advantageous to the patient.
5. Instruction that the person is free to withdraw his consent or to discontinue treatment or participation in this project or activity at any time without prejudice to the subject.

There has been host of judicial decisions relating to the meaning, scope and application of the principle of informed consent under medical law and ethics.

In the US case of Truman v Thomas, a physician recommended that a woman should undergo a pap smear. She refused and later had cervical cancer. She instituted an action against the doctor on grounds that he had an obligation to inform her of the risk she faces by refusing the Pap smear. Her application was upheld by the Court. This case is popularly referred to as the doctrine of informed refusal.

In Hidding v Williams, the Court required the surgeon to disclose his alcoholism. This case suggests that apart from the risk of surgery, the personal and professional characteristics of a physician constitute part of informed consent to include a disclosure of surgeons H.I.V. status as was the case in the case of Scoles v Mercy Health Corporation of South Eastern Pennsylvania. Under English common law a physician carrying out treatment without the informed consent of a patient in non-emergency circumstances may be liable for assault, battery or an action in negligence. This is the case whether or not the motive of the physician was hostile. This quite clearly also obtains in a situation where the doctor obtained consent from the patient to perform one type of treatment for which consent was not obtained. This was the issue in the case of Mary Schloendorff v Society of New York Hospital. In this case, the plaintiff was admitted into hospital for medical examination under anesthetic to access the cause of her abdominal pain. Whilst under anesthetics, the surgeon removed a fibroid that was discovered during the examination. There were post-operative complications leading to the institution of an action against the hospital. The Court held as follows:

"In the case at hand, the wrong complained of is not merely negligence, it is trespass. Every human being of adult years and sound mind has a right to determine what shall be done to his body and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages."

Advance Directives or Living will

This represents another avenue recognized by law through which informed consent may be granted by a patient to a physician. As we have seen, an incompetent person is incapable of giving informed consent to medical treatments or procedure. Under the law, liberty is conceded to a competent adult at a time of legal competence to exercise a right to issue advance directive or 'a living will' outlining the mode of treatment or non-treatment they wish to receive if a situation of incompetence arises. Such directive is usually in writing. A physician is legally obliged to act within the confines of the directive of the patient unless there is evidence that the patient revoked same while competent. Practical application of advance directives can be very difficult to interpret and follow. Unclear wordings like 'no life prolonging treatment' leaves room for different interpretations, depending on the underlying conditions.

In the South African case of Clarke v Hurst, a well-known medical practitioner and politician, Dr. Frederick Clerk, suffered a sudden drop in blood pressure and went into cardiac arrest whilst undergoing epidural treatment; his heart and breathing stopped, Resuscitative measure were instituted but by the time his heart beat and breathing were restored, he had suffered serious and irreversible brain damage due to prolonged oxygen shortage. He was in Coma and remained in that condition permanently. While still active and competent, he had a living will. Three years after the tragedy, his wife applied for an order of court appointing her as curatrix to her husband's person with special powers to authorize the withdrawal of any artificial medical treatment including any nasogastric feeding. The application was opposed by the Attorney-general. One of the main grounds of opposition of the A.G. was that the withdrawal of any life sustaining treatment would hasten his death and would therefore be the cause of his death as a probable result of the withdrawal of the artificial treatment, making her liable to be guilty of murder. The specialist physicians and neurologists who examined him were in agreement that he was in a persistent vegetative state. They also agreed that his condition was irreversible and no improvement was possible. He was incapable of movement, could not speak, did not have any sense or sensory capacity and could not communicate. He also could not swallow and take fluid naturally. In spite of all these his automatic nervous system was largely impaired. His respiratory system, kidney, heart and lungs were functioning satisfactorily.

The court held that judged by the legal convictions of the society, the feeding of the patient did not serve the purpose of supporting human life as it is commonly known. Accordingly, Dr. Clarke's wife would be acting reasonably and would be justified in discontinuing his artificial feeding. No wrongfulness would attach to her conduct. Dr. Clarke was therefore discharged after artificial treatment was withdrawn and taken home to be treated. He died at his home in August 1992. 4 years he suffered the cardiac arrest.

Right to Refuse Medical Treatment

Under the common law, the existence of a right of a competent adult to refuse medical treatment is well established. This right rooted to informed consent is an integral part of the principle of self-determination or

autonomy of the person. As informed consent is generally required for medical treatment, conversely, a patient generally possess the right not to consent that is to refuse treatment. The US case of Cruzan v Director, M. O. Dept. of Health, was the first case in which the US Supreme Court considered the right to refuse lifesaving medical treatment under the US condition. At issue in this case was a request to terminate artificial nutrition and hydration on behalf of Nancy Cruzan, a woman in persistent vegetative state. The US Supreme Court recognized and upheld the constitutional and common law right under the due process clause of the fourteenth Amendment in refusing unwanted medical treatment that must be balanced against the state's interest in preserving life.

The majority's recognition above of the state interest in preserving life generated strong dissent. Dissenting opinion called into question the nature of 'life' as an interest that the constitution protects. According to Justice Brennan in his dissenting opinion on this point; medical technology has effectively created a twilight zone of suspended animation where death commences while life, in some form, continues. Some patients …. Prefer a plan of medical treatment that allows nature to take its course and permits them to die with dignity…. Highly invasive treatment may perpetuate human existence through a merger of body and machine that some might reasonably regard as an insult to life, rather than its continuation…. Nancy Cruzan is obviously 'alive' in a physiological sense. But for patients like Nancy Cruzan, who have no consciousness and the Declaration of Independence…. Lives do not exist in abstraction from persons, and to pretend otherwise is not to honour but to desecrate the state's responsibility for protecting life".

Controversy and conflict between the advance directives and the role of physicians is rife in cases where such advance directives or living will are founded on religious grounds. This is so because, what the patient may consider his best interest on religious grounds in the circumstance, conflict with what physicians or orthodox medicine generally so consider. Perhaps nowhere is this conflict more acute than in the area of advance directives or living wills prevalent on religious grounds among adherents of the Jehovah's Witness Sect.

Right to Refusal to Consent to Treatment on Religious Grounds: the Jehovah's Witnesses' controversy

According to Charles H. Baron of the Bosom Law School, one of America's flourishing religious groups is the watch tower Bible and tract society-commonly known as "Jehovah's Witnesses." Born in the early 1870s as a Christian Bible Study group in western Pennsylvania, it has grown into a worldwide organization comprising over 4 million adherents in over 200 countries. A central tenet of the group is a commitment to the Bible as the word of God (Jehovah) representing a literal truth. Members of the group devote a great deal of effort to bringing the world of the Bible to non-members. They distribute literature from house to house and public places. Because of their activities, government agencies have often tried to regulate them in ways which invariably has led to a whole lot of litigation. Among the beliefs that set apart witnesses is their conviction that the Bible forbids them to accept blood transfusion even to save lives-because it would constitute the sin of "eating blood". The line of thoughts that results in this condition is twofold:

1. Witnesses read the Bible as, "prohibiting Christians from eating blood"
2. They believe that 'eating blood' includes not only ingestion by mouth but also ingestion by other means including blood transfusion.

Pursuant to this belief, reference is often made to the book of Leviticus 17:10-12 for example, where God said to Moses:

"As for any man of the house of Israel or some alien resident who is residing who is residing as an alien in their midst who eats any sort of blood. I shall certainly set my face against the soul that is eating the blood, and I shall indeed cut him off from among his people. For the soul of the flesh is in its blood, and I myself have put upon the altar for you to make an atonement for your souls, because it is in the blood that makes atonement by the soul in it. That is why I have said to the sons of Israel. 'No soul of you must eat blood and no alien resident who is residing as an alien in your midst should eat blood".

Similarly, reference is also made by then to the book of Genesis 9:1-4 where God says to Noah after the flood:

"As in the case of green vegetation, I do give it all to you only the flesh with its soul- its blood-you must not eat".

The best known early American case on the conflict between the beliefs of the Jehovah's Witness and modern medicine is the case of Application of the President and Directors of Georgetown College Inc. In this case, one Mrs. Jesse Jones had been brought by her husband to the emergency room of the Georgetown Hospital. She had lost two-third of her body's blood supply from a ruptured ulcer. The doctors who took charge of her case believed that she stood a good chance of survival with a blood transfusion but that she would die without one. Mr. and Mrs. Jones were Jehovah's Witnesses. They were eager to have the doctors treat her but they would not consent to blood transfusion. The doctors considered their refusal to grant consent to be medically irrational and sought to override the Jones' refusal. They therefore sought an order of Court allowing them to do so. The US federal Appeal Court granted the order sought.

However, case law in the United States and most other jurisdictions worldwide has clearly since moved away from an outright prohibition of the right of adherents of the Jehovah's Witness sect to refuse blood transfusion to a recognition of such right on the basis of patient's autonomy or self-determination. For instance, in the case of Re Hughes, a case involving a patient who is a Jehovah's Witness, whose surgeon, despite her earlier instruction to contrary, had transfused her when complications arose. When she came around, she sought a reversal of the order of the judge authorizing her transfusion while she was incompetent. In relation to the right not to be transfused, the court held that:

"(A) Competent Jehovah's Witness or person holding like views has every right to refuse some or all medical treatment, even to the point of sacrificing life…. Should a patient decide with full knowledge of the potential situation to refuse life sustaining medical treatment and the patient communicates this decision via clear and convincing oral directives actions or writings, the patient's desires should be carried out".

Concept of Patient's Autonomy and the Informed Consent in Nigeria

The law on patent's autonomy and informed consent in Nigeria is embedded in the common law, statute and the 1999 constitution (as amended), Professionally, medical practice in Nigeria and the conduct of doctors is regulated statutorily by the Medical and Dental council of Nigeria. One of its statutory functions is as follows: "Reviewing and preparing from time to time a statement as to the code of conduct which the council considers desirable for the practice of the profession in Nigerian."

Pursuant to its statutory duties, the council has prepared and reviewed from time to time statements as to code of conduct which it considers desirable for the practice of the medical and Dental profession in Nigeria. A Code of Medical Ethics in Nigeria has therefore been published by the council. Under the code, elaborate provisions are made for the principle of informed consent. By the provisions of this code, practitioners involved in procedure requiring the consent of the patient, his relation or appropriate public authority must ensure that the appropriate consent is obtained before such procedures, either for surgery or diagnostic purposes are done, be they invasive or non-invasive. The rule further provides that consent form should be in printed or in written form either as a part of case notes or in separate sheets with the institutions name boldly indicated. Explanations to patients from whom consent is being sought should be simple, concise and unambiguous about expectations. Proper counseling should precede the signing of the consent form. Where the patient is under age (below 18 years by Nigerian Law) or is unconsciousness, or is in a state of mind constituting a mental impairment, a next of kin should stand in. in the absence of a next of kin, the most senior doctor in the institution can give appropriate directive to preserve life. In special situations, a court order may need to be procured to enable lifesaving procedure to be carried out.

In respect of clinical management of religious adherent, the code makes specific reference to the adherents of the Jehovah's Witness faith. It provides:

"…. practitioners should therefore be aware that society and indeed the law recognize the individual's right to accept or refuse medical treatment. Of all religious, the Jehovah's Witness are the most prominent group in respect to choose of medical treatment. While objections by the other groups are focused on dietary components which do present little or no problem to the practitioners, the Jehovah's Witness in equating blood transfusion to the eating of blood present a challenging dimension in offering them medical treatment in the field of surgery anesthesiology or medicine".

In managing such patients, therefore the code further provides "… It becomes essential to establish the religious views held by them and fully record same in the notes. Their acceptance and rejection of treatment should likewise be recorded and witnessed…." The practitioner should decide if he is willing to accept the limitations in management and if so, the practitioner should plan and offer optimal care. If not, the practitioner should withdraw care and refer such patients for further opinion and to other health care centers which might be willing to handle such case.

In the case of Okekearu v Tanko the plaintiff sustained an injury in his left finger and was taken to the clinic of the defendant. Without due care and skill, the defendant negligently amputated plaintiff's finger, an exercise that permanently disfigured and incapacitated the plaintiff in handling objects. The defendant also failed to seek plaintiff's consent before amputating the finger alleging that the plaintiff's aunt asked him to carry on with "whatever treatment was necessary". Upon an action for battery brought by the plaintiff against the defendant that went all the way to the Nigerian Supreme Court, the apex court held inter alia that where a patient's finger is intentionally amputated by the doctor without the consent of either the patient or his guardian, the doctor is liable to battery.

Similarly, in the case of Medical and Dental Practitioners Disciplinary Tribunal, the Nigerian Supreme Court upheld a patient's constitutional right to object to medical treatment or in particular, blood transfusion on religious grounds as being one founded on fundamental rights protected under the constitution (sections 37 and 38) of the 1999 constitution. It further held that since the patient's relationship with the practitioner is based on consensus, it follows that the choice of an adult patient with a sound mind to refuse informed consent to medical treatment, barring state intervention through judicial process, leaves the practitioners helpless to impose a treatment on the patient. 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 perhaps, then to give the patient comfort. According to Uwaifo JSC;

"I am completely satisfied that under normal circumstances no medical doctor can forcibly proceed to apply treatment to a patient's consent, particularly if the treatment is of a radial nature, such as in amputations or radical's surgery".

Self Determination and the Legalization of Euthanasia/Assisted Suicide in Nigeria

Euthanasia and assisted suicide are illegal in Nigeria. Under the Criminal Code Law any form of killing of a person is unlawful unless such killing is authorized, justified or excused by law. Therefore, except in circumstances set forth under the code (euthanasia not inclusive) any person who causes the death of another directly or indirectly, by any means whatsoever is deemed to have killed that other person. Depending on the circumstances of the case, an offender may be guilty of murder or manslaughter. It is immaterial that the offender did not intend to hurt the person killed. Similarly, under the acceleration of death provision of the Criminal Codes, 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. In addition, assisted suicide is particularly criminalized under section 326 of the code. 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. The penal code (applicable to the Federal capital territory and the Northern states of Nigeria) contain similar provisions.

From the above penal provisions, any person who carries out euthanasia on another or assists that other in the commission of suicide will be criminally liable for murder or manslaughter depending on the circumstances of the case. However, in spite of the above position of the law, the right of a patient to self-determination expressed in form of the right to grant informed consent to medical treatment

procedure and to refuse medical treatments even where they are lifesaving, often comes in conflict with the practice of euthanasia and assisted suicide in jurisdictions where euthanasia and assisted suicide is otherwise illegal. This is particularly true in common law countries such as the United Kingdom, Canada, India, Nigeria, Ghana etc. In these countries, courts have been willing to allow passive euthanasia by way of the withdrawal of life support or other artificial means of sustenance in cases of terminally ill or incapacitated patients on the basis of these common law, statutory and constitutionally recognized right to withhold consent or decline medical treatment, even where it leads invariably to death. In the U.K case of Airadale NHS Trust v Bland, in spite of the fact that euthanasia is generally criminalized in the United Kingdom, the House of Lords upheld the right of a patient in a persistent vegetative state, even where it invariably would lead to his death. This quite clearly, it is submitted amount to the legalization of euthanasia, albeit in its passive form. Similarly, in the landmark decision of the India Supreme Court in the case of Aruna Shanbaug v Union of India, the India Supreme Court relied on the reasoning in the Airedale's case and a host of others, in legalizing passive euthanasia in India.

The Nigerian Supreme Court in the aforesaid case of Medical and Dental Disciplinary Tribunal by its decision in upholding the right to decline treatment & (blood transfusion), even where it led to death o Mrs. Okorie basically towed the line of the above 2 decisions in upholding the right to passive euthanasia as an integral part of the right to self-determination of a patient.

Conclusion

From the foregoing, it is clear that the fundamental right to self-determination as evident in the right to grant informed consent and to refuse medical treatment, has not only transcended common law rights but has generally become statutorily and constitutionally recognized and protected in most jurisdictions, Nigeria inclusive. No longer are physicians or other health care providers the sole determinant of what they perceive as the best interest of their patients. The exercise of this right has become the basis upon which courts in jurisdictions where euthanasia is illegal to legalize a form of euthanasia-passive euthanasia in deserving and compelling cases.

Recommendation

The first victim of the present judicial attitude to passive euthanasia as a constitutional entitlement in exercise of a patient's right to self-determination is the penal laws of Nigeria. These laws represent a wholesale categorization of all forms of euthanasia as murder. With the decisions of the courts such as Supreme Court decision in the Okonkwo case it has become imperative to amend the criminal and penal codes of Nigeria to exclude, passive euthanasia law in Nigeria to bring them in line with prevailing judicial decisions in this area. This will also serve to bring those sections of the codes in line with the provisions of the constitution. It is so recommended.

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