

THE UTILITARIAN VIEW OF EUTHANASIA: CHANGING NIGERIA'S PERSPECTIVE ON LEGALIZING EUTHANASIA

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ABSTRACT

This paper reacts to the situation in Nigeria where loved ones to terminally ill patients, who are still medically fit and active face the possible precarious situation of their own life being untimely terminated owing to the challenge of continually caring for such patients. A situation which challenges the veracity of the belief in the sanctity of life as a ground for condemning euthanasia and which is behind the call against legalizing euthanasia in Nigeria. Using the qualitative method of research, this study analyzes texts on Singer's utilitarian position on euthanasia which argues that euthanasia accords with the principle of utility to the effect that it stands to improve life than allowing terminally ill patients to continue in their suffering until they experience natural death. Although some of the arguments like valuing the lives of some animals than deformed humans and terminally ill patients, which Singer used to support his argument for euthanasia are not endorsed in this paper, it argues that, contrary to the position of his critics, his position is not against the belief in the sanctity of life. This paper argues that preserving the lives of loved ones to terminally ill patients, endangered by continually caring for the patients, accords more with the belief in the sanctity of life. Correspondingly, this paper calls for legalization of euthanasia in Nigeria arguing that the problem likely to be faced by the country if euthanasia is legalized is not abrogating the right to life of terminally ill patients but rather, upholding the right to life in a country where corruption has eaten deep into all its sectors. Thus, the moral problem to be envisaged is not reneging on the belief in the sanctity of life supported by the African culture, but that of Nigerians not living out this belief. While recommending legalization of euthanasia in Nigeria statutorily through legislative acts and interstitially through case law, this study also calls for Nigerians' reappraisal of their conduct towards moral issues concerning life and death.

Keyword: Utilitarian view, Euthanasia, Changing, Nigeria's Perspective, Legalizing Euthanasia

INTRODUCTION

The attraction for this paper is the fact that in Nigeria where euthanasia is seen as a taboo, loved ones to terminally ill patients encounter agonizing experiences that can even terminate their own lives while the patient still lives. This creates a puzzle to the belief in the sanctity of life, a puzzle which it seems could only be resolved by making a choice between the life of the terminally ill patient and those of his or her loved ones (Kuhse 2002). Making that choice is not easy as it throws up a dilemma. Accordingly, this paper, using the qualitative research method, seeks to rely on the utilitarian perspective on euthanasia advanced by Peter Singer, in resolving the dilemma by advocating for legalization of euthanasia in Nigeria. The aim is to canvass for a change of mindset and attitude towards euthanasia among Nigerians.

The paper is divided into seven sections with the ongoing introduction as section one. Utilitarianism as an ethical theory will be briefly explained in section two which will be followed by section three which also briefly explains the concept of euthanasia. Section four presents Singer's argument on euthanasia based on the utilitarian theory, while section five exposes Nigeria's current position on euthanasia. In section six arguments for changing

Nigeria's perspective on legalizing euthanasia will be presented. This will be followed by section seven which is the conclusion.

UTILITARIANISM

Utilitarianism is a theory of morality that advocates actions that foster happiness or pleasure and oppose actions that cause unhappiness or harm. When directed toward making social, economic, or political decisions, a utilitarian philosophy would aim for the betterment of society as a whole. The major principles of utilitarianism are three. They include:

1. Pleasure, or happiness, is the only thing that has intrinsic value. To say that something has intrinsic value means that it is simply good in itself. Intrinsic value contrasts with instrumental value. Something has instrumental value when it is a means to some end.
2. Actions are right if they promote happiness, and wrong if they promote unhappiness. This principle is quite controversial since it involves that the moral quality of an action is decided by how big or small its consequences are. So long as an action produces maximum benefits for the greatest number of people, utilitarianism does not care whether the results are driven by immoral motives. It therefore endorses the Machiavellian argument of ends justifying the means.
3. Everyone's happiness counts equally. Although this axiom may seem quite obvious, this principle of equality was radical and progressive in Bentham's time. Then, it was commonly accepted that some lives and some people's happiness were simply more important and valuable than others. Bentham's principle of equality makes the government responsible for creating policies that would benefit all equally, not just the elite (Audy 1999:824-825)

These principles indicate that for utilitarianism, it is a virtue to improve one's life better by increasing the good things in the world and minimizing the bad things. This means striving for pleasure and happiness while avoiding discomfort or unhappiness. Thus, utilitarianism would say that an action is right if it results in the happiness of the greatest number of people in a society or a group. It promotes "the greatest amount of good for the greatest number of people. When used in a socio-political construct, utilitarian ethics aims for the betterment of society as a whole. Utilitarianism is a reason-based approach to determining right and wrong, but it has limitations. This ethical approach does not account for things like feelings and emotions, culture, or justice. Utilitarianism is associated with Jeremy Bentham and John Stuart Mill. They were two British philosophers, economists, and political thinkers. Bentham describes his 'greatest happiness principle, as follows, "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them, (pain and pleasure) alone to point out what we ought to do, as well as, to determine what we shall do" (1970:64 – emphasis mine). Mill on his own maintains that:

The creed which accepts as the foundation of morals utility, or the greatest happiness principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure (2007:44).

In liberal democracies throughout the centuries, the progenitors of utilitarianism spawned variants and extensions of its core principles. Some of the questions they wrestled with include: What constitutes 'the greatest amount of good'? How is happiness defined? How is justice accommodated?

In today's Western democracies, policymakers are generally proponents of free markets and some base level of government interference in the private lives of citizens so as to assure safety and security. Although the appropriate amount of regulation and laws will always be a subject of debate, political and economic policies are geared primarily toward fostering as much well-being for as many people as possible, or at least they should be. Where there are disadvantaged groups who suffer income inequality or other negative consequences because of a utilitarian-based policy or action, most politicians would try to find a remedy. Most companies have a formal or informal code of ethics, which is shaped by their corporate culture, values, and regional laws. Today, having a formalized code of business ethics is more important than ever. For a business to grow, it not only needs to increase its bottom line, but it also must create a reputation for being socially responsible. Companies also must endeavour to keep their promises and put ethics at least on par with profits. Consumers are looking for companies that they can trust, and employees work better when there is a solid model of ethics in place. On an individual level, if one makes morally correct decisions at work, then everyone's happiness will increase (Tardi 2011:72-81). However, if one chooses to do something morally wrong—even if legal—then one's happiness and that of and that of others, will decrease. Altogether, there are two types of utilitarian ethics practiced in the business world, namely, 'rule' utilitarianism and 'act' utilitarianism. Rule utilitarianism helps the largest number of people using the fairest methods possible, while act utilitarianism makes the most ethical actions possible for the benefit of the people. An example of rule utilitarianism in business is tiered pricing for a product or service for different types of customers. In the airline industry, for example, many planes offer first-, business-, and economy-class seats. Customers who fly in first or business class pay a much higher rate than those in economy seats, but they also get more amenities—simultaneously, people who cannot afford upper-class seats benefit from the economy rates. This practice produces the highest good for the greatest number of people. And the airline benefits, too. The more expensive upper-class seats help to ease the financial burden that the airline created by making room for economy-class seats. An example of act utilitarianism could be when pharmaceutical companies release drugs that have been governmentally approved, but with known minor side effects because the drug is able to help more people than are bothered by the side effects. Act utilitarianism often demonstrates the concept that 'the end justifies the means' or it's worth it.

EUTHANASIA

Euthanasia is the practice of ending the life of a patient to limit the patient's suffering. The patient in question would typically be terminally ill or experiencing great pain and suffering. Etymologically, the word is a derivative of two Greek words 'Euthukos' which means 'good cheer', 'courage' or 'cheerful' and 'thanatos' which means 'death' (Adebayo 2008:1). The idea is that instead of condemning someone to a slow, painful, or undignified death, euthanasia would allow the patient to experience a relatively "good death." An example of euthanasia is when a doctor deliberately gave a patient with a terminal illness a drug he or she do not otherwise need, such as an overdose of sedatives or muscle relaxant, with the sole aim of ending the person's life. According to Encyclopedia Britannica, euthanasia is the act or practice of painlessly putting to death persons suffering from painful and incurable diseases or incapacitating physical disorder (Omipidan, 2011:213). Euthanasia therefore implies painless termination of the life of a person who is suffering from an incurable, painful or distressful disease or handicaps. In the words of *Black's Law Dictionary*, euthanasia means "the act or practice of painlessly putting to death persons suffering from incurable and stressing disease as an act of mercy" (Black 1991:554). The term normally implies an intentional termination of life by another at the explicit request of the person who wishes to die



The opinion that euthanasia is morally permissible is traceable to Socrates, Plato, and the Stoics. According to Socrates, the unexamined life is not worth living (Plato 1954). This implies that one can at any time he or she discovers that he or she can no longer rationally will his or her action, Plato and the stoics supported 'eugenics', that is, killing of deformed people. It is rejected in traditional Christian belief, chiefly because it is thought to contravene the prohibition of murder in the Ten Commandments. The organized movement for legalization of euthanasia commenced in England in 1935, when C. Killick Millard founded the Voluntary Euthanasia Legalisation Society (later called the Euthanasia Society). The society's bill was defeated in the House of Lords in 1936, as was a motion on the same subject in the House of Lords in 1950. In the United States the Euthanasia Society of America was founded in 1938. The first countries to legalize euthanasia were the Netherlands in 2001 and Belgium in 2002. In 1997 Oregon became the first state in the United States to decriminalize physician-assisted suicide; opponents of the controversial law, however, attempted to have it overturned. In 2009 the Supreme Court of South Korea recognized a "right to die with dignity" in its decision to approve a request by the family of a brain-dead woman that she be removed from life-support systems Pirani 2015:102-105). Different practices fall under the label 'euthanasia'. However, there are some distinctions demarcating different versions giving rise to different types of euthanasia. Types of euthanasia depend on the manner in which it is administered, whether the consent of the patient is considered, who administered it, or a combination of these factors. Based on the manner in which euthanasia is administered, we have active and passive euthanasia. Active euthanasia as a type of euthanasia is killing a patient by active means, for example, injecting a patient with a lethal dose of a drug. It is sometimes called 'aggressive' euthanasia. Passive euthanasia is intentionally letting a patient die by withholding artificial life support such as a ventilator or feeding tube. Some ethicists distinguish between withholding life support and withdrawing life support (that is, the patient is on life support but then removed from it) (Pirani, and Shirin 2015:1023-1028). Considering the issue of consent, we have voluntary euthanasia, involuntary euthanasia, and nonvoluntary euthanasia. Voluntary euthanasia is when it is done with the consent of the patient. Involuntary euthanasia is when it is done without the consent of the patient, for example, if the patient is unconscious and his or her wishes are unknown. Some ethicists distinguish between "involuntary" (against the patient's wishes) and 'nonvoluntary' (without the patient's consent but wishes are unknown) forms. Based on who administers it, we have self-administered euthanasia, other-administered euthanasia and assisted euthanasia. Self-administered euthanasia occurs when the patient administers the means of death. Other-administered euthanasia occurs is when a person other than the patient administers the means of death. Assisted euthanasia occurs when the patient administers the means of death but with the assistance of another person, such as a physician. The possible combinations of the above types of euthanasia give raise to other types. Thus, we have such forms of euthanasia as assisted voluntary forms, which are legal in some countries. They include mercy-killing and physician assisted suicide. The term "mercy-killing" usually refers to active, involuntary or nonvoluntary, other-administered euthanasia (William 2007:36). In other words, someone kills a patient without their explicit consent to end the patient's suffering. Physician-assisted suicide refers to active, voluntary, assisted euthanasia where a physician assists the patient. A physician provides the patient with a means, such as sufficient medication, for the patient to kill him or herself. Some instances of euthanasia are relatively uncontroversial. Killing a patient against their will (involuntary, aggressive/active, other-administered), for instance, is almost universally condemned. During the late 1930's and early 1940's, in Germany, Adolf Hitler carried out a program to exterminate children with disabilities (with or without their parent's permission) under the guise of improving the Aryan 'race' and reducing costs to society (Proctor 1998:56-57). Everyone now thinks this kind of euthanasia in the service of a eugenics program was clearly morally wrong.



UTILITARIAN VIEW OF EUTHANASIA

The utilitarian view of euthanasia examined in this paper is that adumbrated by Singer. Singer's advocacy for euthanasia was welcomed as a revolution in medical ethics. It is noted that, "as might be expected of a philosopher, Singer takes pleasure in exposing the hypocrisy involved in changes in the way the injunction 'thou shalt not kill' is interpreted" (Pollitt 1999:10). This is a common approach is to change the definition of death, or life, and hence of killing. Thus, following the recommendation on of a group of Harvard experts (mainly doctors), most of the civilised world has adopted the 'irreversible loss of all brain function' definition of death in place of the traditional 'total cessation of the circulation of the blood and of respiration' (Wright 2000:27-32). Similarly, debate on abortion, and on the stage of pregnancy at which it is permissible, has centred on definitions of the beginning of life. These range from conception, the point where the possibility of twinning is lost (14 days), the onset of brain activity ('brain birth', as it were) at 54 days, the first detection of ECG activity (brain waves) at 14 weeks, the onset of continuous brain-wave activity (32nd week), quickening of the foetus, to the stage at which the foetus becomes viable (capable of living outside the womb). The Harvard Committee argued that the new definition was needed on the grounds that keeping alive comatose persons who had lost their intellect was a burden on themselves, their families, and on hospital resources, and that the new definition enabled organs for transplants to be harvested in a fresh and unimpaired state (Jones 2015). This is a Catholic theological point if an embryo is capable of splitting into two to form twins, it can hardly be thought of as a human individual. Another evasion of the issue, in Singer's view, is the sharp distinction often made between killing and allowing to die. Infanticide of anencephalic (brainless) babies may be accomplished by means of lethal injection or by starving them of food or not giving them the medical care needed to keep them alive. Similarly, euthanasia may be accomplished by active or passive means. Singer quotes Arthur Hugh Clough's couplet, 'Thou shalt not kill: but need'st not strive officiously to keep alive and notes it's ironic intention' (Singer 1990:36). He scorns altering definitions of death to accommodate changing technology and changing attitudes because he believes in facing the fact that killing human beings is sometimes morally justified. He is in favour of abortion, infanticide, and euthanasia. He would replace the 'sanctity of life' ethic with 'a quality of life' ethic. This ethical position leads him to prefer to kill a human rather than an animal, where the animal's quality of life (cognitive and emotional capacity) exceeds that of the human (Singer 2015b). These views are reinforced by the belief that the world is overpopulated and that further population growth will either deny underdeveloped countries further development or, if they do develop along It is Singer's view that Western lines, cause gross pollution and global warming with catastrophic consequences. Like other population pessimists, Singer sees the increase in the number of alimentary tracts rather than in the number of brains on which 'human capital' optimists focus. An objection to definitions of life and death is their arbitrariness. Embryonic and foetal development is a gradual process, as dying often is also, so that the singling out of a particular point in the process as marking its beginning or end is bound to be arbitrary. Nevertheless one can see practical and psychological advantages in having clearly defined beginning and end points: without them one can imagine endless disputes on ethics committees and in courts of law on whether a certain act was justified or legal (Singer 1972: 231-235). Singer denies that there is any marked difference between a foetus and a new-born baby; suggests that 'a period of twenty-eight days after birth might be allowed before an infant is accepted as having the same right to life as others' and has elsewhere (Singer 2011:217). The idea is that parents are to be given a 'cooling-off period', as it were, similar to that granted with respect to door-to-door and real-estate transactions. However, he concedes that this boundary is arbitrary, and is attracted by the consideration that 'no other line, than the moment of birth, has the visibility and self-evidence required to mark the beginning of a socially recognised right to life', but remains unsure on this

matter. While insisting that we are responsible for our omissions as well as our acts, Singer does admit that there is a distinction between killing and failing to keep alive. He says:

Unless our responsibility is limited in some way, the new ethical approach could be extremely demanding. In a world with modern means of communication and transport . . . there is always something we could do, somewhere, to keep another sick or malnourished person alive. That all of us living in affluent nations, with disposable incomes far in excess of what is required to meet our needs, should be doing much more to help those in poorer countries achieve a standard of living that can meet their basic needs is a point on which most thoughtful people will agree; but the worrying aspect of this view of responsibility is that there seems to be no limit on how much we must do. . . Is failing to give to aid organisations really a form of killing, or as bad as killing? (218-219)

The new approach needs not regard failing to save as equivalent to killing. Without some form of prohibition on killing people, society itself would not survive. Society can survive if people do not save others in need — though it will be a colder, less cohesive society. Normally there is more to fear from people who would kill you than there is from people who would allow you to die. So in everyday life there are good grounds for having a stricter prohibition on killing than on allowing to die. In addition, while we can demand of everyone that he or she refrain from killing people who want to go on living, to demand too much in the way of self-sacrifice in order to provide assistance to strangers is to confront head-on some powerful and near-universal aspects of human nature. Perhaps a viable ethic must allow us to show a moderate degree of partiality to ourselves, our family and our friends. These are the grains of truth within the misleading view that we are responsible only for what we do, and not for what we fail to do (Singer 2015a:95-6). Singer imputes five ‘commandments’ to the traditional morality not to be confused with the ten in Exodus but seeks to replace them with five ‘new commandments’. They are as follows:

OLD COMMANDMENT NEW COMMANDMENT

1. Treat all human life as of equal worth. Recognise that the worth of human life varies
2. Never intentionally take innocent human life. Take responsibility for the consequences of your decisions.
3. Never take your own life and always try to prevent others taking theirs.
4. Be fruitful and multiply.
5. Treat all human life as always more precious than any non- human life.

Note that the old commandments all are, while the new commandments are not, simple unambiguous rules. Singer’s ‘commandments’ are not really commandments at all: they give no guidance as to what is right or wrong. They tell us, in effect, to take sensible, considered, and responsible decisions, good advice, no doubt, but totally non-specific measures. Consider Singer’s replacement of ‘Never intentionally take innocent human life’ with ‘Take responsibility for the consequences of your decisions’: these hardly belong to the same realm of discourse. Presumably, Singer has in mind a propensity to avoid hard moral choices by appealing to simple moral imperatives, as, for example, a refusal to hasten the death of a terminally-ill person in great agony. Most reasonable people recognise that moral imperatives sometimes conflict with one another, and a choice has to be made. However, the fact that simple moral rules are inadequate

for some occasions does not mean they should be abandoned, if they are appropriate in the great majority of situations just as the injunction 'thou shall not kill' is. Singer himself states that, 'Without some form of prohibition on killing people, society itself would not survive' (Singer 2019:195). Hence, his new commandment presumes the existence of the old one in the background. The injunction 'be fruitful and multiply' is nowadays more honoured in the breach than the observance, even among Roman Catholics, so that in this instance Singer would appear to be pushing at an open door. To say that the life of a healthy animal is of greater value than that of a human in a vegetative state is one thing, while to say 'do not discriminate on the basis of species' is another. Singer would have us empathise with the whole of humanity. Singer is against the killing of fish.

Singer urges us to respect a person's desire to live or die. A person's desire to die will often strike the observer as irrational, and often will be irrational, in that the person concerned would judge subsequently that life was temporarily out of his mind. The problem with suicide, as with judicial execution, is its finality. Singer's argument for variation in the worth of human lives is illustrated with reference to malformed babies, elderly men with advanced Alzheimer's disease, anencephalic babies, and so on. He argues, reasonably, that it is absurd to regard such cases as equally deserving of ethical consideration as less hopeless cases (Feyerabend 1989:249-251). However, once we acknowledge differences in the ethical value of different persons, there may not be a stop to the list of categories of persons to be discriminated against. Abortion of female fetuses and killing of girl babies was previously practised on a large scale in China and India. In China it happened largely because of the government's one-child-per-couple policy, which means that the opportunity cost of having a girl is not having a boy, or suffering the penalties associated with breaking the one-child rule (Alexander 1980:39-43). In India girls were unwanted because of the need to provide them with dowries if they are to be married out. These examples show how the sanction against taking innocent human life may be broken for inhumane reasons rather than the humane ones envisaged by Singer. The 'slippery slope' argument will occur to most readers with respect to all of Singer's proposals for abandoning traditional ethical belief (Wright 2000:177-179). He ignores it, except in respect of the use of euthanasia in the Netherlands, where a 1990 survey revealed 1,000 cases of non-voluntary euthanasia: 'a worrisome trend', according to the Supreme Court of Canada, which 'supports the view that a relaxation of the absolute prohibition takes us down the "slippery slope"' (Singer 2019:150). Singer argues against this interpretation, pointing out that these cases represented only a small proportion, 2 per cent, of deaths associated with medical decision making and in most cases consisted of the administering of morphine or other drugs to patients who were near death and clearly suffering grievously. Singer presents the data as follows:

Deaths following decisions to withdraw or withhold treatment, deaths following administration of drugs to alleviate pain which the doctor knew might cause the patient to die more rapidly Active voluntary euthanasia, medically assisted suicides, non-voluntary euthanasia enactment of this Dutch legislation, nor for contemporaneous practice in other countries (152).

When the injunction not to kill comes into conflict with other powerful moral considerations, there are several possible policy responses. One is to uphold the sanctity of life absolutely. This has the advantage of being a very clear-cut rule, at least in a relative sense: ambiguities still exist concerning the beginning and ending of life, as do questions of intentionality and so on. Its disadvantage is that its consequences are widely regarded as inhumane. A second approach is that advocated by Singer, namely, to replace the sanctity of life by a 'quality of life' ethic and weigh up each case of moral conflict as best one can, under the guidance of reformed laws and legal precedents (Friedlander 1989:88-92). This is attractive to utilitarians and humanists, but



feared by conservatives lest it lead to a more general breakdown of moral values and of society. A third policy is that of near-absolutism: upholding the sanctity of life while tolerating, though not encouraging, some types of killing. This used to be the case with abortion in that it is illegal but tolerated and is the case with euthanasia and infanticide. With mercy killing being illegal, albeit frequently treated leniently by prosecutors and juries, the potential perpetrator is under a strong incentive to think long and hard before he acts (Specter 1999:47-51). The onus is on him to justify his actions before a court. This approach appeals to those who wish to maintain a very strong sanction against killing human beings but who recognise that killing is sometimes justified on humane grounds. It recognises that the appearance is important, as well as the reality. As Benhart Schöne-Seifert and Rippe, K. P observe, the 'progressive' Dutch have retained the legal prohibition of killing: they simply do not prosecute doctors performing active euthanasia provided they follow certain safeguarding procedures (1991:20-27). Singer classifies euthanasia as voluntary, involuntary, or non-voluntary. Voluntary euthanasia is that to which the subject consents. He argues in favour of voluntary euthanasia and some forms of non-voluntary euthanasia, including infanticide in certain instances, but opposes involuntary euthanasia. Bioethicists associated with the disability rights and disability studies communities have argued that his epistemology is based on ableist conceptions of disability (Alford 2011:73-75). Singer's positions have also been criticised by some advocates for disability rights and right-to-life supporters, concerned with what they see as his attacks upon human dignity. Religious critics have argued that Singer's ethics ignores and undermines the traditional notion of the sanctity of life. Singer agrees and believes the notion of the sanctity of life ought to be discarded as outdated, unscientific, and irrelevant to understanding problems in contemporary bioethics (Camosy 2012: 44-46). Disability rights activists have held many protests against Singer at Princeton University and at his lectures over the years. Singer has replied that many people judge him based on second hand summaries and short quotations taken out of context, not on his books or articles, and that his aim is to elevate the status of animals, not to lower that of humans.

NIGERIA'S PERSPECTIVE ON THE PRACTICE OF EUTHANASIA

Naturally, people's culture influences their thoughts about the nature of life and what is expected when living the life becomes a dilemma. That is how cultural differences has affected divers people's thinking on euthanasia. Thus, other countries' perspectives on dying with dignity diverge from African cultures, particularly in Nigeria, where it is regarded as suicide, a severe taboo. In areas like Oregon and the Netherlands, assisted suicide is viewed as dying with dignity. However, Nigerians are among the people who find death to be the least dignified. They believe in the sacredness of life. Euthanasia and assisted suicide are also strongly prohibited in most Nigerian societies' traditional law. This is evident in some communities, where the body of a deceased person who died by any of these methods is customarily buried in the "evil forest," and everyone who took part in the procedure is purified by some traditional means (Agboroh 2021). Such purification is also followed by a lengthy process of atonement and cleansing of the community or land. Most African traditionalists believe that life is sacred, and no one should be deprived of his or her life come what may. Euthanasia is not also an acceptable practice under the Christian religion because it is believed that life can only be given by God and no one has the right to terminate the life of another person for any reason. It is regarded as an act that is not compatible with the Christian religion. Christian religion does not support the recognition and enactment of euthanasia into Law (Bamgbose 2004:111-115). It is regarded as murder simpliciter and an offence against the dignity of the human life. Islam also forbids euthanasia and its legislation or enactment into law. However, both religions support the withdrawal of medications where the patient's condition is critical. These religions also do not support the most common form of euthanasia which is the physician assisted suicide despite being legalised

in some jurisdictions. The positions of African traditional religion, Christianity and Islam on euthanasia, tally with the idea of human right with respect to the right to live. Conceptually, human right, human right is defined as an absolute right in the sense that there could be no justification for derogating from it. Akaruese has this to say on the nature of human right that: Even upon its reduction to state control in the nature of fundamental rights, the Nigerian constitution does not make situations as euthanasia a justification for violation of the right to life. Section 33(2) of the 1999 Constitution of the Federal Republic of Nigeria as Amended, provides that a person shall not be regarded as having been deprived of his life in contravention of the right to life, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such forces as is reasonably necessary:

- (a) for the defence of any person from unlawful violence or for the defence of property
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

None of these provisions is to the effect that euthanasia is permitted by the Nigerian legal system.

Just like suicide, there is no specific legislation that criminalises euthanasia in Nigeria, probably because the African tends to make such act as euthanasia inconceivable. However, the *Penal Code* and *Criminal Code* make provision for unlawful termination of human life and attempted suicide. In the case of suicide, it is impossible to punish a man who dies by suicide because a dead man is lifeless and cannot feel any pain or be subjected to punishment after he is gone. The main criminal law statutes, which are the *Criminal Code* and *Penal Code* have provisions that can be directly or indirectly associated with suicide and euthanasia. Section 306 of the *Criminal Code* provides that any form of killing of any person is unlawful unless such killing is authorized, justified or excused by law, any person who causes the death of another person directly or indirectly by any means whatsoever is deemed to have killed the person.⁵¹ The provisions of section 306 and 308 *Criminal Code* are clear examples of unlawful termination of life that may lead to murder and manslaughter. It is evident that by virtue of section 315, murder can be committed under the following instances: Where the offender intends to cause the death of the person killed or that of some other persons: if the offender intends to do to the person killed or to some other person some grievous harm:

if death is caused by means of an act done in the prosecution of an unlawful purpose which act is of such a nature as to be likely to endanger human life; if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence; If death is caused by administering stupefying or over powering things for either of the purpose aforesaid; If death is caused by wilfully stopping the breath of any person for either of such purpose.

Section 220 of the *Penal Code* also provides that death may be caused by doing an act with the intention of causing death or such bodily injury or doing an act with the knowledge that he is likely to cause death or by doing rash or negligent act. Conversely, killing of oneself is not a crime and it is not provided for under the *Criminal Code* except where it fails. Where a person attempts to kill himself and he fails, that is, attempted suicide, the person will be liable to imprisonment for one year.⁵² However, Section 311 of the *Criminal Code* provides that a person who does any act or make any omission which hastens the death of another person who, when the act is done or

the omission is made, is labouring under some disorder or disease arising from another cause is deemed to have killed the other person. This provision could be said to anticipate an instance where death of a patient is accelerated or there is mercy killing. Thus, when read in conjunction with Section 306 of the *Criminal Code*, raises the question whether mercy killing is excused, authorized or justified? However, since the law recognizes the fact that some killings are excused or justified, then mercy killing may be justified on health ground most especially where the patient has no chance of survival. These questions seem to be answered by the provision of Section 326 of the *Criminal Code* which provides that: Any person who- (1) Procures another to kill himself, or (2) Counsel another to kill himself and thereby induces him to do so; or (3) Aid another in killing himself; is guilty of felony and is liable to imprisonment for life. The Penal Code also does not criminalize suicide but makes specific provision for abatement of suicide in section 228 which states that if a person commits suicide, anyone who abets the commission of that suicide shall be punished with imprisonment for a term that may be extended to ten years and payment of fine. This provision is silent on consent in euthanasia. It expressly punishes anyone who kills or counsels or aids in killing another person. Any physician who kills a patient is liable under this section. When read alongside Section 299 of the *Criminal Code* that provides that consent by a person to cause his own death does not affect the criminal responsibility of any person who caused the death. In other words, consent is immaterial in murder, and in certain situation in Nigeria, euthanasia may not be legally defensible. This will also be based on the facts and circumstances of each case.

CHANGING NIGERIA'S PERSPECTIVE ON LEGALIZING EUTHANASIA

The Nigeria Medical Association (NMA), continually reaffirm its stance against euthanasia, otherwise called mercy killing, emphasising that it remains illegal in the Nigerian medical practice. However, in a press conference organized by the Association in Abuja on Wednesday...., to mark the end of its 64th Annual General Conference which took place in Cross River State from May 5 to 12, 2024, the newly elected president of the Association, Dr. Bala Audu, reiterated that:

Euthanasia, often referred to as “mercy killing,” is the act of painlessly putting to death a person who is suffering from an incurable and painful disease or in an irreversible coma. This year’s conference had the theme: “Reversing the Trend of Health Sector Brain Drain.” The sub-theme was “Euthanasia in Medical Practice.” “The AGC/DM noted that euthanasia is a complex and sensitive topic in medical practice and that the subject remains controversial with no clear global consensus.”

The import of this statement is that the NMA is abreast of the nature of debates on euthanasia and even though Nigeria is yet to legalize the practice, the Association, is also aware that a global consensus on the topic of euthanasia may affect the stands of medical practice in Nigeria. This is because the question of the existence of a right to die by euthanasia is one that transcends national boundaries and diverse legal systems. The dominant legal regime around the world is that euthanasia and assisted suicide is unlawful and criminalized. However, with advancements in medical technology leading to remarkably greater ability to sustain and prolong human life far beyond what was previously thought possible, coupled with corresponding growth in human right law, many countries such as Belgium, Netherlands, etc. have legalized the acts of euthanasia and assisted suicide.

There is no doubt that there is global acceptance of a right to life. The question that is the bedrock of the euthanasia controversy is whether or not there is also conversely a right to die. Singer supports the view that medical intervention into the ageing process would do more to improve human life than research on therapies for specific chronic diseases in the developed world. He states that:

In developed countries, aging is the ultimate cause of 90 per cent of all human deaths. Thus, treating aging is a form of preventive medicine for all of the diseases of old age. Moreover, even before aging leads to our death, it reduces our capacity to enjoy our lives and to contribute positively to the lives of others. So, instead of targeting specific diseases that are much more likely to occur when people have reached a certain age, wouldn't a better strategy be to try to forestall or repair the damage done to our bodies by the aging process? (Singer 2011:88)

Singer worries that "If we discover how to slow aging, we might have a world in which the poor majority must face death at a time when members of the rich minority are only a 10th of the way through their expected lifespan, thus risking that "overcoming aging will increase the stock of injustice in the world. Singer cautiously highlights that as with other medical developments, they would reach the more economically disadvantaged over time once developed, whereas they can never do so if they are not. As to the concern that longer lives might contribute to overpopulation, Singer notes that success in overcoming aging could itself, delay or eliminate menopause, enabling women to have their first children much later than they can now and thus slowing the birth rate, and also that technology may reduce the consequences of rising human populations by, for instance, enabling more zero-greenhouse gas energy sources. In 2012, Singer's department sponsored the "Science and Ethics of Eliminating Aging" seminar at Princeton (Pollitt 199:10). In view of this, it is opined that legalizing euthanasia in a country like Nigeria, where "anything can happen", will progress to other vulnerable communities and may begin to be used by those who feel less worthy, based on their demographic or socio-economic status. Here, vulnerable population and patients might be subjected to assisted-dying without their genuine consent. As has been discussed above, to Nigerians, it appears that euthanasia will always be contrary to both the natural law and the Universal Declaration of Human Rights, which Nigeria is a signatory to. It is unacceptable under these legal outfits for killing a human person (Emiri 2009:34-36). However, discontinuing medical procedures that are extremely dangerous, extraordinary, or disproportionate to the expected outcome, can, in certain circumstances where death is imminent, be legitimized. In this circumstance, the intention of the doer is not to cause death but *prima facie*, to allow the nature to take its course. Nature taking its course is an *omnibus* concept as it is also in man's nature to advance means of making life worth living. Those jurisdictions that have legalized euthanasia are not ignorant of the arguments presented for not legalizing the practice in Nigeria. They may have once resisted moves to legalize the practice based on similar arguments. Also, the fact that majority of Nigerians find in those jurisdictions where euthanasia is legalized, destinations safe and conducive than the Nigerian jurisdiction signals that life in the country may not be negatively affected by legalizing euthanasia, rather it may improved.

The problem to be envisaged in Nigeria legalizing euthanasia is therefore not so much as dissuading Nigerians from upholding their moral and ethical convictions on the sanctity of life than that based on not adhering to the claimed convictions, practice of euthanasia would be utilized to perpetuate injustice. After all, a person consenting to euthanasia expresses profound love and empathy toward loved ones negatively affected by his or her condition and invariably upholds the sanctity of life given that the condition he or she finds himself or herself could also, though indirectly, lead to untimely termination of the lives of loved ones who are overwhelmed by



the challenges of the situation. Thus, what is required of Nigerians to understand and embrace the legalization of the practice of euthanasia is the right frame of mind which is also a conviction to practice it in line with the belief in the sanctity of life. It is this attitude that will make the patient, loved ones and the doctor not to take undue advantage of legalizing the practice. Even, presently, there is in Nigeria, an evidence of case law in support of passive euthanasia, the case of *Medical and Dental Practitioners Disciplinary Tribunal v John Nicholas Okonkwo* ([2001]FWLR pt.44 542). This decision of the court in this case contradicts the statutory prohibition of all forms of euthanasia as provided by the Penal Code and the Criminal Code. One may regard this contradiction as a double jeopardy, but we should not be ignorant of the role of judicial activism in changing the law. Thus, legalizing euthanasia in Nigeria could be effected by the courts interstitially altering the statutory provisions on the practice. Such move can continually impinge in the minds of Nigerians the thinking that euthanasia is not after all, as evil as they presently think, and dispel the fear that if euthanasia is legalized in Nigeria healing and killing would become equally valid goals of the medical profession (Adebayo 2008:8). Eventually, Nigerian legislature could see reasons to legalize the practice statutorily.

CONCLUSION

The thrust of this paper is that given the utilitarian perspective on euthanasia as presented by Singer, the practice is worth legalizing in every jurisdiction. It therefore calls for a concerted effort to legalizing euthanasia in Nigeria. not undermining the pro-life argument for sanctity of life and the fact of cultural differences, this paper argues that legalizing euthanasia in Nigeria could help improve living standard in the jurisdiction citing the fact that majority of Nigerians find in some jurisdictions where the practice is legalized, a safe heaven. Hence, Nigerians are eager to live and invest in those jurisdictions. The paper in addition, views euthanasia as one of the ways that medical practice can impact positively on the lives of people thereby helping to uphold the argument on the sanctity of life. Thus, it presents legalization of euthanasia in Nigeria, not as a counter reaction to the belief in the sanctity of life prevalent in African culture.

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