

SUGGESTING THE ISLAMIC LAW APPROACH TO THE PRACTICE OF EUTHANASIA IN NIGERIA

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ABSTRACT

Advancements in both medical technology and bioethics have generated various new moral issues regarding abortion, cloning, and euthanasia. Arguments on euthanasia often hinge on the 'right to life' and the 'right to die'. The first is a widely accepted basic human right and moral value, based on the fact that people generally want to live. However, what should be the case when seriously ill people choose to die because of unbearable pain? This concerns both medical and religious ethics and it becoming more pressing recently. How can a balance be maintained between the right to life and making death an alternative for a sick person experiencing unbearable pain? This, therefore, forms the premise under which this paper is written from the perspectives of Islamic ethics vis-à-vis medical ethics. The objective of this paper is therefore to consider the Islamic ethical position on

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ethanasia to appreciate its comprehensiveness and investigate medical treatment and practice of euthanasia. While adopting doctrinal and non-doctrinal methods, the findings of this study show that many people particularly in Nigeria unwittingly practice passive euthanasia as a result of religious doctrine or economic disadvantage. The study concludes that Allah grants human beings the right to live but not the right to die under any circumstance and that nature be allowed to take its course.

Keywords: *Islam, euthanasia, ethics, medicine, al-Qur'ān*

INTRODUCTION

Euthanasia⁴ or mercy killing, is an act of painlessly taking away the life of a person suffering from terminal ailments. It is controversial in the jurisprudence of rights, medical law, and bioethics making it an important interdisciplinary issue in Islamic ethics discourse. An inquiry into euthanasia reveals that the practice involves three parties namely, the dying patient, the legal heirs of the dying patient, and the doctor, who is to perform the action. This is his/her initiative to request a doctor to terminate his/her life out of distress. This type of euthanasia is known as 'voluntary euthanasia'. It is involuntary when it is performed without the consent of the patient but with the knowledge of the relatives of the patient who are worried about his pain and distress. The doctor, on the other hand, can terminate the life of a dying patient by recommending either an overdose of painkillers, or withdrawal of certain treatments, like switching off the life support machine. Technically, the former is called 'active euthanasia' while the latter is known as 'passive euthanasia'.⁵

While there are arguments for and against the permissibility and practice of euthanasia, the argument of the supporters of euthanasia remains that to leave somebody in a state of pain could be tantamount to allowing them to suffer more. They argue that the best thing to do is to help them terminate their lives. Religiously and more importantly, Islamic law

⁴ This is known as *qatl al-marḥamah* which means mercy killing in English. See Ibn Manẓūr, *Lisān al-'Arab*, vol. 12 (Bayrūt: Dār Ṣāder, 1992), 230.

⁵ Dharmender Kumar Nehra et al., 'Euthanasia: An Understanding,' *Delhi Journal of Psychiatry* (2013), <https://www.researchgate.net/publication/252626984>, accessed on 3 June 2021.

and some moralists are vehemently opposed to this position. To them, God is the Creator of lives and reserves the right to take them at the right time. They argued that; no matter the precarious condition of a creature of God, there is still hope for survival.⁶

Islam teaches that the control of life and death is in Allah's hands, and cannot be manipulated by human beings. Life itself is sacred, and it is therefore forbidden to end life deliberately, either through homicide or suicide. To do so would be to reject faith in Allah's divine decree. Allah determines how long each person will live⁷. The glorious *Qur'ān* condemns the act of killing oneself or killing one another except for a just cause⁸. The findings of this study revealed that many people in Nigeria withdraw their patients from hospitals when they have lost hope of survival of the patient. Because of their economic disadvantage, they prefer withdrawing treatment of the patient to save cost. Besides, many people are guilty of passive euthanasia based on their religious doctrine. All these will be discussed in this study.

EUTHANASIA: AN OVERVIEW

According to Blacks' Law Dictionary, Euthanasia, (also referred to as Mercy killing) is the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition especially a painful one, for reasons of mercy⁹

Etymologically, the term euthanasia has been said to be of Greek origin, traceable to the Greek word, Eu (good) and Thanatosis (death) meaning therefore 'good death' 'Gentle and easy death' or what has now become known as 'mercy killing'.¹⁰ The common synonym for euthanasia,

⁶ Rishad Raffi Motlani, 'Islam, Euthanasia and Western Christianity: Drawing on Western Thinking to develop an Expanded Western Sunni Perspectives on Euthanasia' (Ph.D Thesis, University of Exeter, 2011), 6.

⁷ Mahmud Adesina Ayuba, 'Euthanasia: A Muslim's Perspective,' *Scriptura Journal*, vol. 115/1 (2016): 1-13.

⁸ Qur'ān 6 (Surah al-An'ām) verse 151. See Al-Hilali, M. T. and Khan, M. M., *Translation of the Meanings of the Noble Qur'ān in the English Language* (Kingdom of Saudi Arabia, Madinah: King Fahd Complex For Printing The Holy Qur'ān, 1404A.H./2005).

⁹ *Blacks Law Dictionary*, 9th ed. (West Publishing Co.: St. Paul, MN, 2009).

¹⁰ Yinka Olomajobi, *Human, Rights and Civil Liberties in Nigeria; Discussions, Analyses, and Explanations* (Nigeria: Princeton & Associate Publishing Co. Ltd. Lagos, 2016), 32-33.

therefore, in the lay and professional vocabularies has been mercy killing. In Arabic works on euthanasia, the term has been rendered as *qatl al-raḥmah*, meaning (literally) ‘mercy killing’.¹¹ Merriam-Webster’s dictionary defines euthanasia as ‘an easy and painless death, or, an act or method of causing death painlessly so as to end suffering: advocated by some as a way to deal with victims of incurable disease’. The Oxford Advanced Learner’s Dictionary also defines euthanasia as ‘the practice of killing without pain of a person who is suffering from an incurable and painful disease’.

The Euthanasia Society of America, founded in 1938, defines euthanasia as the ‘termination of human life by painless means for the purpose of ending severe physical suffering’.¹² And the American Medical Association’s Council on Ethical and Judicial Affairs defines it as ‘the act of bringing about the death of a hopelessly ill and suffering person in a relatively quick and painless way for reasons of mercy’.¹³

MEDICAL CONCEPTION

Euthanasia means ‘Good Death’, ‘Gentle Death’, or ‘Easy Death’. Thus, euthanasia connotes ‘mercy killing’. The word euthanasia was first used in a medical context by Francis Bacon in the 17th century, to refer to an easy, painless, happy death during which it was a physician’s responsibility to alleviate the physical sufferings of the body¹⁴. It has, however, become an active and controversial research area in contemporary bioethics.

According to the World Medical Association, euthanasia means a deliberate and intentional action with a clear intention to end another person’s life under the following conditions:

- a) The subject is a competent informed person with incurable illness;

¹¹ Mahmud Adesina Ayuba, ‘Euthanasia: A Muslim’s Perspective,’ 1-13.

¹² Edward J. Larson, ‘Euthanasia in America -Past, Present and Future: A Review of A Merciful End and Forced Exit,’ *Michigan Law Review*, vol. 102 (2004): 1245, <https://repository.law.umich.edu/mlr/vol102/iss6/12>.

¹³ Edward J. Larson, ‘Euthanasia in America -Past, Present and Future: A Review of A Merciful End and Forced Exit,’ 1245.

¹⁴ Kusum Rajendra Gandhi, ‘Euthanasia: A Brief History and Perspectives in India,’ *International Journal of Education and Research in Health Sciences*, vol. 3/2 (2017):105-108

- b) The person who is acting knows the state of the subject and about his wish to die and is carrying out the action with a sincere intention prompted by the desire to alleviate his incurable suffering; and
- c) The action is done with compassion and without any personal profit.¹⁵

CLASSIFICATION OF EUTHANASIA

The classification of euthanasia, according to Goel¹⁶ includes the following:

1. Active Euthanasia

This involves intentionally causing the death of a person through direct action by performing an action such as giving a lethal injection; either with or without the person's consent. If it is carried out with the person's consent, then it is voluntary and if not, it becomes involuntary. The Arabic term for active euthanasia is *qatl al-raḥmah al-ijāb*.¹⁷

2. Passive Euthanasia

This is a method of carrying out euthanasia by altering some form of support and letting nature take its course by following one of the following methods; withholding or withdrawing the necessary and extraordinary medical treatment, removing life support medical procedure, ceasing medication, stopping food and water and allowing the patient to dehydrate or starve to death. The Arabic term for passive euthanasia is called *qatl al-raḥmah al-salibī*.¹⁸

3. Physician-assisted Suicide

This is somewhat hybrid of passive and active euthanasia. Under this classification, a physician supplies information and or means of committing suicide, or other interventions to a patient (e.g, a prescription for lethal dose of sleeping pills, or a supply of carbon monoxide gas), so

¹⁵ John R. Williams, *Medical Ethics Manual* (France: The World Medical Association, 2015), 93.

¹⁶ Vaibhav Goel, 'Euthanasia –A dignified end of life,' *International NGO Journal*, vol. 3/12 (2008), 224-231.

¹⁷ Mahmud Adesina Ayuba, 'Euthanasia: A Muslim's Perspective,' 1-13.

¹⁸ Mahmud Adesina Ayuba, 'Euthanasia: A Muslim's Perspective,' 1-13.

that the patient can successfully terminate his or her own life. This can also occur when a person is assisted, either through instruction or other means to terminate his life¹⁹.

HISTORY OF EUTHANASIA

It is believed that euthanasia started in ancient Greece and Rome around the fifth century B.C²⁰. Some did this by abortions, and every now and then performed a mercy killing even though doctors were supposed to follow the Hippocratic Oath²¹: ‘I will give no deadly medicine to anyone if asked, nor suggest any such counsel’.

During the Middle Ages, euthanasia was pretty much out of the question. If one committed suicide, the law in Europe was for the body to be dragged through the streets or nailed to a barrel and left to drift downriver. During the Seventeenth and Eighteenth Centuries, euthanasia was a topic of discussion. However, people continued to reject euthanasia and assisted suicide. Sir Thomas More is often quoted as being the first prominent Christian to recommend euthanasia in his book *Utopia*, where the Utopian priests encouraged euthanasia when a patient was terminally ill and suffering pain. In 1828, the first law against assisted killing, known as anti-euthanasia was passed in New York.²² However, in 1870, the use of morphine and analgesic medications for assisting quick and painless death was suggested. Even though the use of analgesic for euthanasia was denied by the American Medical Association in 1885²³

In 1994, the Netherlands became the first country where euthanasia was accorded a formal acceptance. Killing in this context is meant to be easy and painless. The aim is that death would become a relief from a painful

¹⁹ Mike Chekwube Obi, ‘A Critical Appraisal of Euthanasia Under Nigerian Laws,’ *NAUJIL Journal*, (2014): 75-88.

²⁰ Bert Broeckaert, ‘Euthanasia: History,’ In *Encyclopedia of Global Bioethics*, eds. Ten Have H. (Springer, Cham, 2015), https://doi.org/10.1007/978-3-319-05544-2_180-1, 180-181.

²¹ The Hippocratic Oath is an oath of ethics historically taken by physicians. It is to be taken by a new doctor. See Ors Yaman, ‘The Hippocratic Oath: An Anachronism?,’ *World Health Forum*, vol. 14 (1993): 105-132. See also see Saurabh K. Gupta, ‘Hippocrates and the Hippocratic Oath,’ *Journal of the Practice of Cardiovascular Sciences*, vol. 1/1 (2015): 81-86.

²² Bert Broeckaert, ‘Euthanasia: History,’ 180-181.

²³ Edward J. Larson, ‘Euthanasia in America -Past, Present and Future: A Review of A Merciful End and Forced Exit,’ 1245.

condition of living. Therefore, death in this circumstance will become a resort and moral in itself rather than the means through which it is carried out. It was adopted in Belgium in 2001, though with strict conditions for doctors to avoid penal punishment²⁴. The state of Washington in the U.S. legalised assisted suicide in 2008.²⁵

EXAMPLES OF EXISTING LAWS ON EUTHANASIA

- a) In Europe, Euthanasia is only legal in the Netherlands and Belgium, provided certain conditions are met. For example, the patient's request must be voluntary and well-considered; the patient must be having unbearable physical or mental suffering, with no prospect of relief, the patients must be informed about their situation and prospects, and at least one other independent, doctor must be consulted²⁶.
- b) Netherlands emerged as the first country where euthanasia has been allowed. The practice of euthanasia became decriminalised in the Netherlands. Under the new legislation, a doctor will not be prosecuted for terminating a person's life providing s/he is convinced that the patient's request is voluntary and well-considered and that the patient is facing unremitting and unbearable suffering²⁷. However, in the Netherlands euthanasia is allowed for children aged between 12 and 16 years of age, with the consent of their parents/guardians and for individuals aged 16 years and over.
- c) In Belgium euthanasia is only allowed if the patient is an adult²⁸.
- d) Assisted suicide is legal in the Netherlands, Switzerland and the state of Oregon in the US but have certain conditions e.g.: the patients must be considered competent and aware of their situation.

²⁴ Bert Broeckert, 'Euthanasia: History,' 180-181.

²⁵ Edward J. Larson, 'Euthanasia in America -Past, Present and Future: A Review of A Merciful End and Forced Exit,' 1245.

²⁶ Sjeff Gevers, 'Euthanasia: law and practice in The Netherlands,' *British medical bulletin*, vol. 52/2 (1996): 326-33, doi: 10.1093/oxfordjournals.bmb.a011547.

²⁷ World Health Organization, *Bulletin of the World Health Organization*, vol. 79/6 (2001), 561-568.

²⁸ Shanthi Van Zeebroeck, 'Kill First, Ask Questions Later: The Rule of Law and the Belgian Euthanasia Act of 2002,' *Statute Law Review*, vol. 39/3 (2018): 244-257, <https://doi.org/10.1093/slr/hmx007>

- e) In Japan, only ‘passive’ euthanasia is permitted for patients who have been in a Coma for more than 3 months²⁹.
- f) Under the Nigerian Criminal Code applicable in southern Nigeria and the Penal Code in the North, the term euthanasia cannot be found. In the Criminal Code, a person who kills another is liable to be convicted either for murder or manslaughter, depending on the circumstance. If the person kills another at his request, he will still be so liable because consent is not a defense to either murder or manslaughter. These penal laws also make no provision for killing that is carried out with the assistance of a physician, the state of the patient notwithstanding. Therefore, euthanasia is considered murder under Nigerian law.³⁰

CASES OF EUTHANASIA

1. Case One -Gloria Taylor³¹:

Taylor was a postal worker, residential care worker, motorbike enthusiast and health advocate. She was born and raised in Castlegar, British Columbia, Canada. She began to experience the early symptoms of Amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease in 2003, and was diagnosed in 2009. On June 29, 2011 Gloria filed an application with The Supreme Court of British Columbia to be added as a plaintiff in the BC Civil Liberties' Association (BCCLA) death with dignity lawsuit. The BCCLA filed the lawsuit in April 2011 to challenge the laws that make it a criminal offense to assist seriously incurably ill individuals to die with dignity. The legal challenge sought to allow seriously and incurably ill, mentally competent adults the right to receive medical assistance to hasten death under certain specific safeguards.

Gloria Taylor told reporters in Vancouver she did not want to die, but she also did not want to die an agonizing and horrible death. She added that she was fighting so that all the people of Canada would have the choice in the way they want to die. Taylor had won a constitutional exemption at a lower court for a medically assisted death in 2012, but that decision was overturned in subsequent appeals.

²⁹ World Health Organization, *Bulletin of the World Health Organization*, 561-568.

³⁰ Criminal Code Law, Section 315; Constitution of the Federal Republic of Nigeria.

³¹ *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015].

On October 4, 2012, Taylor died as a result of a severe infection resulting from a perforated colon. Due to the acute nature and brief course of her illness from the infection, Taylor did not need to seek the assistance of a physician to end her life. In the end, Gloria's death was quick and peaceful. Taylor died in the hospital, with her mother and a close friend by her side.

2. Case Two -Craig Ewert³²:

Craig Ewert when he was at his 59 years, was a retired college professor who was diagnosed with motor neuron disease (MND), a neurodegenerative kind that affects the nervous system and could lead to difficulty in gripping, walking, swallowing, speaking and breathing.

He decided to end his life rather than spend the rest of his life in a living tomb. However, since euthanasia was still illegal in Britain, he travelled to Switzerland to die and assisted by the Dignitas Clinic in Zurich in September 2006. He was already 5 months paralyzed prior to his televised death. He first said goodbye to his wife, drank the poison, asked for an apple juice, requested Beethoven's symphony no.9, said thank you, and died peacefully.

3. Case Three- Frank Van Den Bleeken

Frank Van Den Bleeken was a Belgian convicted of serial murder and rape who has been imprisoned for almost three decades. He was temporarily released and convicted of other brutal convictions. He sought the right to die because he was suffering unbearably from his psychiatric condition. Unable to control his urges, the convict had no prospect of living in freedom. He clearly said that he did not want to leave prison because he did not want to risk creating further victims. He said that seeing himself as a danger to society, he could no longer live.

After doctors agreed that his psychological condition was incurable, Belgium's justice minister approved his transfer to a hospital where doctors would end his life on January 11, 2015. But on January 6, the justice

³² Mary Helen Spooner, 'Legal consensus eludes Europe,' *Canadian Medical Association Journal*, vol. 180/3 (2009): 282-283, <https://doi.org/10.1503/cmaj.081965>

minister announced that Van Den Bleekin's right to die was withdrawn by his doctors. He was instead transferred to a psychiatric prison ward³³.

THE NIGERIAN EXPERIENCE

The Nigerian law is silent on the terminology 'euthanasia'. Any such case is treated as murder as stated in Nigerian's criminal code, penal code, and constitution of the federal republic of Nigeria.

Studies, however, show that the majority of doctors in Nigeria have negative attitudes toward euthanasia. It is found that though 30.8% of Nigerian physicians received requests for euthanasia (11.7% for active, 17.3% for passive, and 1.5% for Physician-assisted suicide) from patients and relatives, few were favourably disposed towards the practice of both active and passive euthanasia³⁴. This negative disposition towards euthanasia may be because doctors in Nigeria are highly religious and may strongly believe in divine healing. The majority of doctors in this part of the world see euthanasia as a form of murder or going contrary to God's commandment, as well as a violation of the Hippocratic Oath. The factors affecting and influencing the attitude (acceptability or rejection) to euthanasia in Nigeria are multifactorial, ranging from religious, moral, economic, and legal medical factors, while some relatives resort to requesting termination of their relative patient's life due to economic constraint or religious belief.

Furthermore, findings show that many people request discharge of their patients from hospitals when they lose hope in the recovery of the patients. They take the patient home without the needed treatment and the patient would later die. Some refuse treatment because of their religious creed. This was what happened to Mrs. Okorie, a 29-year-old woman, who was delivered of a baby at a maternity hospital on 29 July 1991. She was admitted as a patient at Kenayo Specialist Hospital for a period of nine days from 8 August to 17 August 1991. She complained of severe pain in her body system and she was diagnosed with a severe ailment that required a blood transfusion. The patient and her husband did not give consent for the blood transfusion because of their religious belief as Jehovah's witness. Dr Okafor of the Kenayo Specialist Hospital discharged the patient and

³³ Bert Broeckert, 'Euthanasia: History,' 180-181.

³⁴ Nwankwo T.O. et al., 'Physicians Disposition to Active/Passive Euthanasia in Nigeria: A Survey of Doctors in Enugu, Nigeria,' *Journal of Clinical Obstetrics, Gynecology & Infertility*, vol. 1/2 (2017).

gave her a document that stated that despite the fact that the patient was threatened with her condition and advised that if the blood transfusion was not carried out, it might lead to her death, she and her husband remained adamant. Thereafter, they proceeded to Jeno Hospital on 17 August 1991. They did the same thing there by refusing the blood transfusion. Although, Dr. Okonkwo admitted the patient and provided an alternative treatment, she later died. The treatment was adjudged unproductive by the Nigeria Medical and Dental Practitioner Tribunal, and thereby Dr. Okonkwo was found liable for passive euthanasia. Dr. Okonkwo challenged the decision of the disciplinary tribunal and the Supreme Court held that the doctor was not liable because killing is an offense under criminal code and it is only the Court of competent jurisdiction can try same. In addition to this, the court held that the doctor was not free to ignore the patient's instruction and religious beliefs³⁵.

EUTHANASIA: THE ISLAMIC PERSPECTIVES

The ethical and legal implications of euthanasia are more far-reaching than those surrounding suicide. The difference between suicide and euthanasia is present in Islamic jurisprudential works of Imams Abū Ḥanīfah, Shāfi'ī and Ḥanbalī, where essential distinctions are drawn between suicide (*intiḥār*), assisted suicide and homicide (*qatl*). The delineations between them are made mainly to recommend different penalties for different cases. From the Islamic perspective, the difference between euthanasia and suicide could be seen from legal and ethical grounds. The reason is that it is prohibited for a person to commit self-killing (suicide), whereas in euthanasia, it would be prohibited for both the one who seeks self-killing as well as the one who assists such a person in committing suicide³⁶.

The sanctity of life remains central in the arguments and debates on suicide and euthanasia. Moreover, Jurists like Imam Abū Ḥanīfah, Shāfi'ī and Ḥanbalī classify homicide into intentional, quasi-intentional, and inadvertent homicide. Intentional homicide occurs when a person intentionally uses an object that could kill against another person whose blood is sacred and which consequently leads to the death of that person.

³⁵ Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo (SC 213/1999 (2001) 10 (02 March 2001).

³⁶ Sayed Sikandar Shah Haneef, *Homicide in Islam: Legal Structure and the Evidence Requirements* (Kuala Lumpur: A.S. Noordeen, 2000), 1420/200. In his treaty titled; Homicide in Islam: Legal Structure and the Evidence Requirements

Quasi-intentional homicide occurs when a person injures another man without having the intention of taking his life but due to the injury sustained, the victim eventually dies. A homicide becomes inadvertent when an offender intends a target other than a human being but he mistakenly hits a human being, causing his death. The classification above reveals that intentional homicide has a close connection with euthanasia, as it is intentionally carried out by the doctor on a person whose life is protected by law for a reason known to him. While Quasi-intentional and inadvertent homicide could be classified under professional negligence in the medical profession.³⁷ The position of Islam is very clear on the protection of a life, sanctity of human life in the Islamic Law is in fact held very sacred. The very objectives of the Islamic Law is ab initio are based on *Maṣlaḥah* as which is all that concerns or promotes the subsistence of human life, the completion of man's livelihood, and the acquisition of all that his physical and intellectual qualities require of him. Whereas, *ḥifẓ al-nafs* (preservation of life) is second to protection of faith. Interestingly, one of the Islamic legal maxim states that 'Al-yaqīnu lā yazūlu bi al-shak' meaning 'Certainty is not overruled by doubt.'³⁸ Certainly, being alive is certain but the death of the patient is absolutely not in the knowledge of anyone not the doctor nor any legal heir as this is among the knowledge Allah restricts to Himself³⁹.

Some leading Muslim Jurists have likened euthanasia to murder and therefore concluded that the practice is *haram* (forbidden). For instance, the Late Grand Mufti of Saudi Arabia, Abdul-Aziz bin Abdullah bin Baz declared it un-Islamic for anybody to decide the death of a person before he is actually dead. Al-Qaraḍāwī equally issued a *fatwa*⁴⁰ equating euthanasia to murder⁴¹. According to Shah Haneef⁴², the Islamic Code of

³⁷ G. I. Serour, 'What is it to practise good medical ethics? A Muslim's perspective,' *Journal of Medical Ethics*, vol. 41/1 (2015): 121-124, <https://www.jstor.org/stable/43283241>

³⁸ Medical Ethico-Legal Issues: An Islamic Perspective, Presented article at a training workshop on medical ethics at Nairobi on 26th July 2008

³⁹ 'Indeed, Allah (alone) has knowledge of the Hour and sends down the rain and knows what is in the wombs. And no soul perceives what it will earn tomorrow, and no soul perceives in what land it will die. Indeed Allah is Knowing and Aware'. Qur'ān 31 (Surah Luqmān) verse 34.

⁴⁰ Jurisprudential decree or legal opinion.

⁴¹ Omipidan Bashiru Adeniyi, *Legalizing Euthanasia: With Special Reference To Nigerian, Dutch (Netherlands) And Islamic Law*' (Ph.D Thesis, Law Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2010).

Medical Ethics issued by the First International Conference on Islamic Medicine states that Mercy killing, like suicide finds no support except in the atheistic way of thinking. The claim of killing for painful hopeless illness is also refuted, for there is no human pain that cannot be largely conquered by medication or by suitable neurosurgery⁴³.

There are verses of the Qur'ān⁴⁴ as well as prophetic traditions (*al-ḥadīth*) which revolve around this subject matter. A patient who asks his physician to end his life in one way or another is considered committing suicide. In their collections of authentic *ḥadīths*, al-Bukhārī and Muslim related through Abū Hurayrah that the Messenger of God said: Whoever hurls himself off a mountain and kills himself will be [repeatedly] hurled into the flames of Hellfire, where he will abide eternally. Whoever drinks poison and kills himself, will be in the Hellfire eternally; his poison will be in his hand and he will drink from it. Whoever kills himself with an iron blade, the blade will be in his hands and he will stab himself in the stomach in Hellfire eternally⁴⁵.

The Prophet (SAW) said that the blood of a Muslim who testifies that there is no deity other than Allah and that he is the Messenger of Allah is not lawful [to shed] except for one of three cases: a life for a life, a married person who commits *zinā* (adultery) (*al-thayyib al-zānī*); someone who leaves Islam and abandons the majority (of Muslims)⁴⁶. This *ḥadīth* highlights the categories of people that are liable to be killed under certain circumstances that are legally justified. A severely sick person is not included.

Prophet Muḥammad once told this story that among the nations before him there was a man who got wounded, and growing impatient (with pain), he took a knife and cut his hand with it. The blood did not stop until he

⁴² Sayed Sikandar Shah Haneef, *Homicide in Islam: Legal Structure and the Evidence Requirements*, 1420/200.

⁴³ Mahmud Adesina Ayuba, 'Euthanasia: A Muslim's Perspective,' 1-13.

⁴⁴ See Qur'ān 2 (Surah al-Baqarah) verse 195, Qur'ān 3 (Surah Ali-'Imrān) verse 145, Qur'ān 4 (Surah An-Nisā') verse 29, 93, Qur'ān 6 (Surah al-An'ām) verse 151, Qur'ān 17 (Surah al-Aḥzāb) verse 33, Qur'ān 22 (Surah al-Ḥajj) verse 66 in Al-Hilali, M. T. and Khan, M. M., *Translation of the Meanings of the Noble Qur'ān in the English Language* (Kingdom of Saudi Arabia, Madinah: King Fahd Complex For Printing The Holy Qur'ān, 1404A.H./2005).

⁴⁵ Ṣaḥīḥ al-Bukhārī, Book 71, (Bayrūt: Dār Ibn Kathīr, 1401/1981), ḥadīth no. 5778, <https://sunnah.com/bukhari:5778>.

⁴⁶ Ṣaḥīḥ Muslim, The book of legal punishments, (Istanbul: Dār al-Salām, 2007), ḥadīth no. 1695. Sunnah.com

died. Allah (Exalted be He) said that His slave hastened his demise and He had forbidden Paradise for him⁴⁷.

Based on this and in reference to euthanasia in its two forms, it is considered a major sin, as attested to by a mass of Prophetic reports. It is incumbent upon physicians to know, even if the patient makes a request, that there is no obedience to other people in a matter that constitutes disobedience to God. The Prophet said that there is no obedience to a human being if it involves disobedience to the Creator. Obedience is only in *Ma'rūf* (that which is judged as good, beneficial, or fitting by Islamic Law)⁴⁸. Euthanasia is meant to relieve the pain and suffering of a terminally-ill patient⁴⁹ but Muslims are forbidden from such an action. This is not unconnected to the fact that when dealing with sickness in Islam, it is quite understandable that there is no ailment except that its cure exists. It is narrated by Abū Hurayrah that the Prophet said that there is no disease that Allah has created, except that He also has created its cure⁵⁰. A severe sickness, calamity, fatigue, sadness, sorrow or ailment is believed to be a form of expiation of sin for the Muslims⁵¹. Moreover, the request of a sick person, however severe, for his life to be terminated, is a sign of a retrogressive faith in Allah. Allah forbids the Muslims not to despair of His Mercy⁵². Besides, anything that might be detrimental to human soul is sacrilegious in Islam⁵³ and that speaks more of why the protection of human life is highly respected by the Islamic Law.

The maintenance of the sanctity of life is further enhanced when Allah commanded not to take life which Allah made sacred, other than in the

⁴⁷ Ṣaḥīḥ al-Bukhārī 3,463, Book 55, vol. 4, ḥadīth no. 669

⁴⁸ Imām Aḥmad, *Musnad*, vol. 1, (Baghdād: Dār al-Salām, 2012), 49; al-Bukhārī, *Fatḥ al-Bārī*, (Cairo: Dār al-Ḥadīth, 2004), ḥadīth no. 7144; *Ṣaḥīḥ Muslim (Sharḥ Al-Nawawī)*, vol. 12, (United Kingdom: Kube Publishing Ltd, 2009), 226 and Tirmidhī, *Sunan al-Tirmidhī* (Sharjah U.A.E: Darussalam, 2007), ḥadīth no. 1707; Abū Dāwud, *Sunan Abū Dāwud* (Sharjah U.A.E: Dār al-Salām, 2008), ḥadīth no. 2626.

⁴⁹ Mike Chekwube Obi, 'A Critical Appraisal of Euthanasia Under Nigerian Laws,' 75-88.

⁵⁰ Ṣaḥīḥ al-Bukhārī, Book 71, vol. 7, ḥadīth no. 582.

⁵¹ Ṣaḥīḥ al-Bukhārī, Book 70, vol. 7, ḥadīth no. 544-546.

⁵² Allah says: 'O My servants who have transgressed against themselves, do not despair of the Mercy of Allah. Indeed, Allah forgives all sins. Indeed it is He who is the Forgiving, the Merciful' (Qur'ān 39:53). This explains why it is *Haram* for a patient to request for his life to be terminated.

⁵³ Qur'ān 2 (Surah al-Baqarah) verse 195.

course of justice.⁵⁴ The Qur'ān confirms that no person can ever die except by Allah's leave and at an appointed time⁵⁵.

In sum, the argument is multidimensional due to the advancement in medical research and apparatus. For instance, if a person is in a condition of irreversible coma but continues to breathe through the help of some medical devices, do we have the right to withdraw such devices? There is no obligation on anybody to keep such a person alive in such condition. This position was corroborated in a deliberation on the use of Life Sustaining Treatments (LSTs) for a patient who suffers brain death, the Islamic Organization for Medical Sciences (IOMS) in Kuwait, the International Islamic Fiqh Academy (IIFA) and the Islamic Fiqh Academy (IFA) agreed that forgoing LSTs from such patient is justified from the Islamic perspective. It is posited that brain dead patient would have no life to sustain. Though, not all Islamic scholars agreed that brain death is a real death. However, some among who disagreed that brain death is a real death also agree that there can be a limitation in the LSTs for the brain dead patient because of the irreversibility (*lā yurjā bur'uhu*) of the patient terminal condition.⁵⁶

CONTEMPORARY ISLAMIC SCHOLARS' OPINIONS

According to S. S. Shah Haneef⁵⁷, citing Ibn Qudāmah, the Islamic stand regarding euthanasia is strict prohibition as it is, in fact a suicide in disguise. He further contends that in Islam, suffering and ailments expiate sins and they are to be borne with hope and trust in the Almighty Allah. Similarly, assisting someone to ease his pain by putting an end to his life in the latter case is an act of abetting suicide. However, with the advancement of medical technology, if a person is in a state of irreversible coma but continues to breathe by certain medical devices, do we have the right to plug off such devices? The answer is very clear. There is no obligation on anybody to keep such a person alive in such a manner. But to take the life

⁵⁴ Qur'ān 17 (Surah al-Isrā') verse 33.

⁵⁵ Qur'ān 3 (Surah Ali-'Imrān) verse 145.

⁵⁶ Mohammed Ghaly, 'Islamic ethical perspectives on life-sustaining treatments,' *East Mediterr Health J*, vol. 28/8 (2022): 557–559, <https://doi.org/10.26719/emhj.22.044>

⁵⁷ Dr. Sayed Sikandar Shah Haneef is a professor of Fiqh at International Islamic University Malaysia. See <http://irep.iium.edu.my/profile/628>

of a person, out of mercy or compassion, to end his sufferings, as in the case of Euthanasia, is undoubtedly *Haram* in Islam⁵⁸.

Al-Qaraḍāwī⁵⁹ was cited by H. R. Nikookar and S. H. J. Sooteh (2014), posited that Euthanasia or Mercy Killing is the act or practice of ending the life of an individual suffering from a terminal ailment or an incurable condition, through lethal injection or the suspension of extraordinary medical treatment. Thus, this act is forbidden under the Islamic law because it encompasses a positive role on the part of the physician to terminate the life of the patient and hasten his death via lethal injection, electric shock, a sharp weapon or any other way. This is an act of killing, and, killing is a major sin and thus forbidden in Islam. However, withholding treatment that is deemed useless to the patient's life is allowed to ease his death and to preserve the equipment and medical tools for others who are still living⁶⁰.

Supporting the noble argument, Dr. Muzammil H. Siddiqi⁶¹ pointed out that Islam considers human life sacred. Life is to be guarded and promoted as much as possible. It is not permissible in Islam to kill another human being, even to kill one's own self (suicide). If, however, a number of medical experts determine that a patient is in a terminal condition and hopeless for in his recovery, then it could be permissible for them to stop the medication. If the patient is placed on life support machine, it may be permissible, with due consultation and care, to decide to switch off the life support machine but under no condition it is permissible to induce his death⁶².

⁵⁸ Sayed Sikandar Shah Haneef, *Homicide in Islam: Legal Structure and the Evidence Requirements*, 1420/200.

⁵⁹ President, the European Council for Fatwa and Research -ECFR

⁶⁰ 'Fatwah Bank', *Islamonline.net*, accessed on 8 July 2021.

⁶¹ Chairman, Fiqh Council of North America.

⁶² Hamid Reza Nikookar and Seyed Hassan Jaafarian Sooteh, 'Euthanasia: An Islamic Ethical Perspective,' *European Scientific Journal*, vol. 10/10 (2014): 179-185; <https://aboutislam.net/counseling/ask-the-scholar/misconception/euthanasia-allowed-islam/>, accessed on 29 May 2021.

JUSTIFICATION

Having considered the verdict rendered by the above mentioned Islamic scholars, jurists and medical experts, we unequivocally look at euthanasia from the perspective premised under the above discourses, and most especially on the ground of human rights in Islam *al-Ḥuqūq al-Insāniyyah*, which arguably covers right to life, religion, and others. Islam of course grants the right to life which is, in fact one of the intents of Shariah, i.e., *Maqāṣid al-Sharī'ah*.

Islam, therefore, grants the right to safeguard life and does not grant the right to put an end to life. Putting an end to life is exclusively the right of the Owner, which is Allah. There are, however, some instances when Islam gives an exception:

Killing is allowed only in a declared war situation when it conforms with the principles of Jihad. The court of law may sentence an offender found guilty of capital offences such as premeditated murder (homicide), fornication – *zinā*, *ḥirābah* and apostasy (*irtidād*). Based on the above premises and by way of analogical deduction, it would not be considered right or legal, even if the patient gives his consent in taking his life because doing so is tantamount to a transgression of right.

Therefore, the Islamic law on euthanasia is that Life is sacred, and only Allah can give or take it away. It is wrong for any person, even a patient or doctor, to end or request to end a life before Allah does, because it would go against Allah's plan for that life.

In summary, human life is sacred because it is given by Allah, and He chooses how long each person will live. However, turning off a life support machine for someone suffering from an irreversible ailment is permissible, this is termed passive euthanasia which is an exception to the general rule of prohibition of euthanasia, but active euthanasia is *Haram* because God gives life and only He has the right to take it. It is therefore important to examine the permissibility of passive euthanasia under Islamic Law as discussed below.

PERMISSIBILITY OF PASSIVE EUTHANASIA UNDER THE ISLAMIC LAW

The medical spirit of the sanctity of life signifying an unqualified duty to preserve life at all costs has faced a challenge of the notion of ‘allowing to die’ or passive euthanasia⁶³. What called for this challenge is the perception of ‘death with dignity’. This notion is taking away the obligation ‘to preserve life’ to the concept of duty to ‘prevent suffering’. Often, a patient with a terminal disease is considered in his best interest to be treated by providing him with the optimum comfortable conditions for death rather than using increasingly invasive techniques to prolong his existence in suffering⁶⁴. An unconscious patient is unable to make a decision as to make choice between ‘preserving his life’ and ‘preventing his suffering’. It is presumed that the unconscious patient of a terminal disease agrees to die with dignity. However, the conscious dying patient has the opportunity to make his decision which is a cornerstone of medical practice ethics. Physicians are faced with crossroads because continuing treatment of the patient contrary to the patient’s instruction may earn them a tortuous liability. Therefore, the doctor has a duty to his patient to show that the evil avoided is greater than the evil performed and it is arguable that the greatest of all evils is death. Moreover, if the doctor abnegates his duty, it may end up within the compass of manslaughter which may also equate to passive euthanasia.

It is important to note that passive euthanasia may be justified based on the doctrine of ‘ordinary’ and ‘extraordinary’ means of treatment. This implies productive and non-productive forms of treatment respectively or what treatment a patient needs from the doctor and what he does not require⁶⁵. The condition of the patient determines the means.⁶⁶ Doubt arises as to the justification for passive euthanasia. Is it justified to kill both pain and the patient, or to leave the patient in pain? The conditions to determine whether the decision falls within the compass of passive euthanasia may be summed up as follows:

⁶³ J. K. Mason, *Forensic Medicine for Lawyers* (London: Butterworths & Co Publishers Ltd, 1988), 339.

⁶⁴ J. K. Mason, *Forensic Medicine for Lawyers*, 340.

⁶⁵ Donald Coggan, ‘On dying and dying well,’ *Proceedings of the Royal Society of Medicine*, vol. 70/2 (1977), 75.

⁶⁶ Sacred Congregation for the Doctrine of the Faith, *Declaration of Euthanasia* (Catholic Truth Society, 1980).

- a) If the treatment given to the patient adds no value to his health, but is just a mere treatment, the withdrawal of such treatment will not be tantamount to passive euthanasia.
- b) Where the withdrawal of the treatment of the patient will hasten the death of the patient, such practice will amount to passive euthanasia.
- c) Where the treatment of the patient has nothing to do with the longevity of his life but to suppress the suffering of the patient, the withdrawal will lead to tortuous liability for the suffering encountered by the patient as a result of the withdrawal. However, such withdrawal will not amount to passive euthanasia.
- d) Where the withdrawal of treatment of the patient would kill both pain and patient, such would amount to passive euthanasia.
- e) Where the withdrawal of the treatment of the patient would remove suffering of the patient but hasten the death of the patient, such practice will amount to passive euthanasia.
- f) Where the withdrawal of the treatment will affect a patient who suffers from senility, delusion, imbecility, dementia or any other sickness that affects mental capacity of the patient, the court order need to be sought. It must be noted that patient of legal incapacity is as good as minor who cannot take decision on his own⁶⁷.
- g) In case of infant or minor who suffers from terminal disease, and a need arises to decide whether the treatment should continue or be withdrawn, in this situation, infant or minor is never able to make an autonomous decision. The decision will be made on his behalf by the parent and the doctor collaboratively. However, where the parent and the doctor are not in agreement as to the decision to discontinue treatment or not, the court will be resorted to because the doctor would be in the state of dilemma. Once the court order is obtained, the decision will be taken in accordance to the court order. In *Re 'B'*⁶⁸, the parents of Mongol child refused permission for a surgery to relieve intestinal obstruction of the minor. The doctor believed that it was in the best interest of the child to conduct the surgery. The child was made a ward of the court and the court ordered that the surgery be carried out.
- h) Where a patient suffers senility, delusion or dementia or any disease that affects his mental capacity, and a decision has to be made at the

⁶⁷ Ese Malemi. *Law of Tort* (2013) Lagos, 144.

⁶⁸ *Re 'B' (a minor)* (1981) 1 W. L. R. 1421 CA.

time when he is not a master of his intention, the doctrine of good faith would be invoked. The doctor is entitled to relieve pain or suffering of the patient, even if the measure he takes may incidentally shorten the life of the patient. Here the primary intention of the doctor which is to remove or reduce the suffering of the patient and not to kill the patient. Therefore, this cannot be regarded as passive euthanasia⁶⁹.

- i) Another area that gives room for passive euthanasia is poverty strike or non-availability of resources to take care of the patient. In a situation where the patient is financially incapable for his treatment and there is no assistance from relative, friend and government and he dies as a result of his financial incapability to take care of his medical bill and drug, such will not amount to passive euthanasia. However, those who have obligation on him like parents, children, spouse and government who are financially capable but refuse to assist, such person(s) may be guilty of passive euthanasia. This is because the person who is capable to assist but refuses to assist would be in breach of duty of care to the patient⁷⁰. It is therefore important to briefly discuss negligence and duty of care.

NEGLIGENCE AND DUTY OF CARE

1. Negligence

People may encounter suffering or injury as a result of careless or negligent acts or neglect from another person. Negligence is the breach of a duty to take care of another person. The breach leads to suffering for the other person. According to Lord Wright in *Lochgelly Iron and Coal Vs. Macmullan*, negligence is described as strict legal analysis, which means more than headless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owing⁷¹ *Anderson B in Blyth Vs. Birmingham Water Work Co.* defined negligence as the omission to do something which ordinarily regulates the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.⁷² *Akpata JSC in Odinaka Vs. Moghalu*

⁶⁹ Lord Edmund-Davies, 'On dying and dying well,' *Proceedings of the Royal Society of Medicine*, vol. 70/2 (1977), 73.

⁷⁰ Ese Malemi. *Law of Tort* (2013) Lagos, 284.

⁷¹ (1934) AC 1 at 25

⁷² (1856) 11 Ex 781 at 784; 156 ER 107; (1843-60). All ER 478

summed up negligence as the omission to do something that a reasonable man would do, under similar circumstances, or the doing of something that a reasonable and prudent man would not do.⁷³ Generally, negligence is a breach of duty of care that makes another person to suffer injuries or damages. It is important to explain what duty of care is.

2. Duty of care

Duty of care is the duty a person owes in Law to be careful so that his conduct will not injure another person. It is the duty of a person to take care so that his actions or omissions do not injure another person⁷⁴. Here, another person is referring to a neighbour who is anyone anywhere in the world, will be injured by negligence in the conduct of the other person. It is important to note that one will not be liable for breach of care if an injury is not reasonably foreseeable. As a general rule, a person owes a duty of care whenever a lack of care in his conduct will cause injury to another person or his property. Therefore, whenever a duty of care is owed by one person to another if the person owing the duty of care breaches it by exercising substandard care, liability attaches⁷⁵. It is important to note that one will not be guilty of breach of duty of care if the person owing the duty of care has no capacity, because of the doctrine of *Nemo dat quod non habet* – you cannot give what you do not have.

ADVANCE MEDICAL DIRECTIVE (AMD)

This occurs where a patient leaves instruction in respect of his decision on whether his treatment be continued or discontinued when his health condition has reached terminal and his soul is irreversible. An Advance Medical Directive (AMD) may be written or oral statement of the patient made when he is mentally capable to make decision in respect of his future medical treatment when he may likely be incapable to make such decision. It occurs where it is foreseeable to the patient that he would not be able to communicate his decision in respect of his future medical treatment because of his terminal disease that he suffers from.⁷⁶ AMD is also

⁷³ (1992) 4 NWLR pt 233, p. 1 at 15 SC.

⁷⁴ Donoghue vs. Stevenson (1932) AC 562 HL

⁷⁵ Heaven vs. Pender (1883) 11 QBD 509 at 509.

⁷⁶ Putri Nemie Jahn Kassim & Fadhlina Alias, 'Advance directives for medical treatment: The current legal status,' *Malaysian Law Journal*, vol. 3 (2015): i-xx.

regarded as ‘Living Wills’. In developed countries, it is taken as a way of enhancing the maintenance of a patient’s autonomy in the event he becomes mentally incapacitated. In 2007, England and Wales legalised AMD via the Mental Capacity Act, 2005.⁷⁷

In Nigeria, AMD is yet to be legalised. However, patients are allowed to make preference of healthcare they desire and professionals as well as representatives to take care of them in the event of becoming incapacitated in the future. This is anticipatory instruction in respect of their medical treatment in case their consent is needed in making decision in respect of their future medical treatment when they might have become incapacitated. The National Health Act, 2014 only provides for a situation where the patient is willing to donate any part of his body or tissue to be used after his death for the purpose of: (a) training of students in health sciences; (b) health research; (c) advancement of health sciences; (d) therapy, including the use of tissue in any living person; or (e) production of a therapeutic, diagnostic or prophylactic substance. In doing that, he is expected to be fully capacitated as in full capacity to make will under the law of succession.⁷⁸ However, AMD has no place in Nigeria medico-legal system.⁷⁹

In Islam, patient’s illness does not take away his right of thought. His wishes is accorded respect so far his illness does not affect his mental capacity.⁸⁰ This is rooted in the tradition of Prophet Muḥammad which was narrated by ‘Ā’ishah as follows:

حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، حَدَّثَنَا سُفْيَانُ، قَالَ
حَدَّثَنِي مُوسَى بْنُ أَبِي عَائِشَةَ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ ابْنِ عَبَّاسٍ،
وَعَائِشَةَ، أَنَّ أَبَا بَكْرٍ . رَضِيَ اللَّهُ عَنْهُ . قَبَّلَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ
مَيِّتٌ. قَالَ وَقَالَتْ عَائِشَةُ لَدَدْنَاهُ فِي مَرَضِهِ، فَجَعَلَ يُشِيرُ إِلَيْنَا، أَنْ لَا

⁷⁷ Okeowo Ademola Oladimeji, 'Living Will' and the Nigerian Law: The Need for Legislative Intervention (December 11, 2007), <https://ssrn.com/abstract=1032121> or <http://dx.doi.org/10.2139/ssrn.1032121>

⁷⁸ National Health Act 2014, Part vi, Section 5.

⁷⁹ Okeowo Ademola Oladimeji, 'Living Will' and the Nigerian Law: The Need for Legislative Intervention.

⁸⁰ Mohammad Mustaqim Malek et al., 'Honouring wishes of patients: An Islamic view on the implementation of the advance medical directive in Malaysia,' *Malaysian Journal of Medical Sciences*, vol. 28/2 (2021): 28-38.

تَلْدُونِي. فَعُلْنَا كَرَاهِيَةَ الْمَرِيضِ لِلدَّوَاءِ. فَلَمَّا أَفَاقَ قَالَ " أَلَمْ أَهْكُمُ أَنْ
تَلْدُونِي ". فَعُلْنَا كَرَاهِيَةَ الْمَرِيضِ لِلدَّوَاءِ. فَقَالَ " لَا يَبْقَى فِي الْبَيْتِ أَحَدٌ إِلَّا
لَدِّي . وَأَنَا أَنْظُرُ . إِلَّا الْعَبَّاسَ فَإِنَّهُ لَمْ يَشْهَدْكُمْ ".

“Abū Bakr kissed (the forehead of) the Prophet (ﷺ) when he was dead. ‘Ā’ishah added: We put medicine in one side of his mouth but he started waving us not to insert the medicine into his mouth. We said, “He dislikes the medicine as a patient usually does.” But when he came to his senses he said, “Did I not forbid you to put medicine (by force) in the side of my mouth?” We said, “We thought it was just because a patient usually dislikes medicine.” He said, “None of those who are in the house but will be forced to take medicine in the side of his mouth while I am watching, except al-‘Abbās, for he had not witnessed your deed.”⁸¹

This tradition emphasises importance of patient’s consent in receiving or refusing medical treatment. It emphasises that giving medicine by force to a patient may be approved or disapproved by the patient. However, where the medicine is a means of survival of the patient, he cannot reject the administration of the medicine because the Holy Qur’ān says that

وَلَا تُلْفُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ ﴿١٩٥﴾

“...and do not throw (yourselves) with your (own) hands into destruction.”

(Surah al-Baqarah, 2:195)

It must be noted that this tradition is relevant on the patient’s consent on medical treatment to be given to him where such medicine is not helpful to his medical improvement. The tradition shows that the Prophet later died despite giving him the medicine by force. Patient’s consent may not be resorted to where withdrawal of such medical treatment will amount to euthanasia. AMD can be permissible only where it would not amount to euthanasia.

⁸¹ Ṣaḥīḥ al-Bukhārī 5709-5712, Book 76, Ḥadīth 29, Vol. 7, Book 71, Ḥadīth 610, <https://sunnah.com/bukhari/76/29>, accessed on 14/05/2023.

THE APPROACH OF ISLAMIC LAW

Islamic Law considers sanctity of life as essential. The Law Giver values life to the extent of comparing whoever saves a soul as good as saving the entire mankind. He also equates whoever terminates a soul as bad as terminating the souls of the entire mankind⁸². The right to life and existence is guaranteed under Islamic Law and whatever way be it intentional or unintentional killing, it is forbidden under Islamic Law to kill a soul without a just cause. The position of Islamic Law on the offence of murder is the classification of the offence into crime and tort. If it is intentional, it is criminal, if it is unintentional, it is tortuous and if it is quasi-intentional, it would attract retributive punishment, which is *diyah*. Passive euthanasia may fall within the three categories because the yardstick to determine the classification is *mens rea* or intention, which can be determined by the *actus rea*. The *actus rea* is of three kinds:

- a) Direct act: some Islamic Law jurists describe a direct act of killing as an act that directly kills the victim without any intermediary and the act itself is the cause of death of the victim. For example, administering Lethal Injection to a patient to terminate his life. This is more related to active euthanasia because it is deliberate.
- b) Cause of death: This act of killing in which the victim is not directly attacked by the killer, but the killer knows that his action can lead to the death of the victim. For example, where the killer digs a well and covers it with something that cannot prevent the victim from falling into it so that when the victim steps on it, he would not escape it. Such an act is regarded as a cause of death. The cause of death can be sensory, legal, or customary. It is sensory if such an act is in the mind of the killer under duress. It is legal when the killer gives false evidence against the victim with the intention to earn the victim a death sentence. If such a victim is sentenced to death based on the killer's false evidence, the killer would be guilty of murder. Killing would be in a customary manner when it is neither sensory nor legal. For example, if the killer applies poison to the victim's food, he would be guilty of murder if the victim dies as a result of eating the poison. If a deliberate omission to treat a patient leads to his death, such an omission will fall under the passive euthanasia. It is under the cause of death because the omission leads to the death of the patient.

⁸² See Qur'ān 5 (Surah al-Mā'idah) verse 32.

- c) Conditional cause: the act termed as the condition is an act which is not in itself the cause of death and it is not a direct act of killing the victim but is instrumental in making another act that directly kills the victim. For example, if a person throws the victim into a well, the act of throwing in leads the victim to fall into the well which eventually leads to the death of the victim. Another example is where the victim needs water to survive, if such person in possession of water denies the victim the water, the person will be accountable for wilful murder because it is premeditated. This is relevant to passive euthanasia where the treatment of the patient is deliberately withdrawn to allow him to die.

Following the *Fatwa* -Islamic verdict issued by the European Council for Fatwa and Research regarding euthanasia, the Council concluded that even though the advocates of euthanasia justify their stance that:

- a) Euthanasia would relieve the patient and alleviate his suffering, agony, and pains that he cannot endure.
- b) Euthanasia would reduce the suffering of the patient's relatives and friends who take care of him or her, and it would also spare the costs and economic burdens the family or society bear.
- c) Besides, the advocates of euthanasia believe that the patient has a personal right to decide his or her fate and has the right to be killed if he or she so desires.

In their own contribution having considered the different legal stands and claims concerning euthanasia, according to the consensus of all the four major imams, the European Council for Fatwa and Research held that a person will be accountable if his act becomes the cause of victim's death⁸³. Thus, according to the Council, killing a patient suffering from a terminal illness is not permissible for the physician, the patient's family, or the patient himself. The patient, whatever his illness, and however sick he (or she) is, shall not be killed because of desperation and loss of hope in recovery or to prevent the transfer of the patient's disease to others, and whoever commits the act of killing will be a deliberate killer. The Qur'an confirms without a shadow of a doubt that homicide is forbidden, as Allah Almighty says: And take not life, which Allah has made sacred, except by way of justice and law⁸⁴. The Almighty also says, because of that We ordained for the Children of Israel that if anyone kills a person not in

⁸³ Shams al-Dīn al-Ramlī, *Nihāyah al-Muhtāj*, vol. 6 (Cairo: Dār al-Ḥadīth, 1004AH), 238, 243, 263.

⁸⁴ See Qur'an 6 (Surah al-An'am) verse 151.

retaliation of murder or for spreading mischief in the land—it would be as if he killed all mankind⁸⁵.

It is unlawful for the patient to kill himself (or herself) and it is unlawful for somebody else to kill him (or her) even if he is given consent to kill him. The former case will be suicide and the latter will be aggression against the other by killing him, for his permission does not render the unlawful act lawful.

It was reported from the Prophet that the person who commits suicide will be tortured in hell the same way he killed himself. If he believes that suicide is lawful, he will be a disbeliever and will abide in the Hellfire forever; otherwise, he will be severely punished⁸⁶. It is unlawful to kill the patient for fear that his (or her) disease may transfer through contagious disease. It is unlawful to kill him with the intent to prevent spreading, for there are many other means of prevention, such as quarantine. On the contrary, the patient must be protected as a human being and be provided with the required food and medicine till his or her life ends naturally. Hope is not lost because Islam believes that there is no disease without cure, even if he is terminally sick, such as one suffering from any terminal disease. Therefore, it is not permissible to kill a terminally ill person because it is incurable, nor on the pretext of protecting the healthy people from it.

Moreso, there is the consensus of Muslim scholars that killing to reduce pain or suffering from sickness is not allowed in Islam. Having said this, we can say that if a number of medical experts decide that there is no hope for a certain patient to recover, then it could be permissible for them to stop the medication because the available medication is not useful for the patient because he cannot conceive, feel or be sensitive to anything because of the damage of the brain. Keeping the patient in that state would be tantamount to wasting vital resources and would prevent other patients whose diseases are curable from benefiting from the instruments being occupied by the practically dead patient⁸⁷.

In view of the above, killing is allowed only in a declared just war situation when the enemy comes to attack, then killing of the enemy is allowed for self-defense. The court of law may pass a death sentence against a person as a punishment for some crimes such as premeditated

⁸⁵ See Qur’ān 5 (Surah al-Mā’idah) verse 32.

⁸⁶ Muḥammad Ibn Ismā‘il Bukhārī, *Ṣaḥīḥ al-Bukhārī* 5,778, vol. 7, Book 71, Ḥadīth no. 670 (Dār al-‘Arabiyyah, the University of Michigan, 1985).

⁸⁷ Retrieved from www.islamonline.net on 26 February 2023

murder or other serious crimes⁸⁸. However, there is no provision in Islam for killing a person to reduce his pain or suffering from sickness. It is the duty of the doctors, patients' relatives, and the government to do their best to reduce the pain and suffering of the sick, but they are not allowed under any circumstances to kill the sick person. If, however, the number of medical experts determine that the patient is in a terminal condition and there is no hope for his recovery, then it could be permissible for them to stop the medication. If the patient is on life support, it may be permissible, with due consultation and care, to decide to switch off the life support machine and let the nature take its due course. Under no condition it is permissible to induce death to a patient⁸⁹.

CONCLUSION

Findings have shown that many people in Nigeria unintentionally commit passive euthanasia for religious belief or economic disadvantage. Islam considers human life sacred. Life is to be protected and promoted as much as possible. It is neither permissible in Islam to kill another human being, nor even to kill one's own self (suicide). Killing is allowed only in a declared war situation when the enemy comes to attack, then killing of the enemy is allowed for self-defense. The court of law may pass a death sentence against a person as a punishment for some crimes such as premeditated murder or other serious crimes whose penalty is death as stated in the Shariah. However, there is no provision in Islam for killing a person to reduce his pain or suffering from sickness. It is the duty of the doctors, patients' relatives, and the state to the patients to do their best to reduce the pain and suffering of the sick person, but they are not allowed under any circumstances to kill the sick person. It has been demonstrated in this paper that withdrawal of treatment of a patient who later died as a result of the withdrawal falls within the ambit of passive euthanasia except where the treatment has no impact in prolonging his existence. Where the treatment is to be withdrawn, the conscious patient needs to decide as to allow the withdrawal or not. In case of the unconscious patient, his relative has to decide for him but in collaboration with a physician. It is important to note that relatives, friends, and government owe the patient a duty of care and the same must be reasonably exercised for them not to be guilty of passive euthanasia. This duty of care must be exercised in all causes of the withdrawal whether due to religious belief or economic reasons.

⁸⁸ Retrieved from www.islamonline.net on 26 February 2023

⁸⁹ Retrieved from www.islamonline.net on 26 February 2023

The body that God gives an individual is not a personal possession. No one is free to dispose of their body as they wish because it is a trust for which they will be held accountable by the Creator (Allah SWT) on the Day of Judgment. He begins human life from conception and He alone can end it through natural death or as predestined. Consequently, euthanasia is not allowed from both textual and derivative evidence in Islamic Law. This paper recommends enough awareness campaigns to enlighten the public on the practice of euthanasia and its implications under Islamic law.

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