

A LICENCE TO KILL PVS PATIENTS

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Abstract

Euthanasia remains the subject of ongoing intense debate worldwide. The practice of painlessly putting to death persons suffering from incurable conditions or diseases indeed brings together with it a lot of debate and medical dilemma. Groups in favour or opposing it both have their own strong arguments. The recent decision in the United States involving Terri Schiavo has indeed rekindled interest worldwide in this controversy. Claims that every human has the right to live are normally defeated by the "best interest argument". Thus this paper aims to focus on passive euthanasia applied upon terminally ill patients who are believed to no longer benefit from any curative treatment. Dilemmas and issues on whether to "withdraw" or "withhold" treatment in palliative care will also be attempted. Upon whom does the responsibility to decide such matters lie on and does it not turn people into playing God? The current method utilized in bringing about death and conditions allowing such practice to be done will also be included. Finally through a doctrinal approach, the paper will also shed light and analyse the controversial death of Terri Schiavo recently while at the same time compare the issue from the Islamic perspective.

EUTHANASIA AND TERRI SCHIAVO

The death of Terri Schiavo in March 2005 ended a hot controversial debate on her right to live. Terri Schiavo was once an active, cheerful but overweight teenager. After managing to loose 65 pounds, she became too anxious of regaining those extra pounds, which later caused her to suffer bulimia and stopped her heart for several minutes due to potassium imbalance. The heart attack had in turn cut off oxygen to her brain for several minutes

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resulting her to be declared by the courts and appointed doctors as being in a persistent vegetative state (PVS)³.

Being neurologically disabled, Terri lacked integrated functions of the cerebral cortex but retained involuntary brain stem reflexes. In other words, her behavior was automatic, non-purposeful and uninhibited reflexes. Worst of all, patients in a persistent vegetative state including Terri can never recover⁴. According to Leon Prockop, a professor of neurology at the University of Southern Florida, only 20% of Terri's total brain tissues still exist. The rest was totally damaged and nothing can be done to restore the brain tissues⁵.

Terri remained in this PVS state for 15 years. She was unable to eat or drink on her own. All the while a feeding tube connected to her, feeds her directly to the stomach. Looking at her worsening condition, her husband managed to obtain a court's approval to remove the tube and allow her to die by dehydration. He also claimed that Terri had, in two different occasions expressed her desire to never "live this way". Disagreeing with this, Terri's parents and family members appealed against this order and applied to re-insert the feeding tube. However all efforts were undoubtedly unsuccessful. So, 31st March 2005 was the exact date Terri Schiavo formally left the world and everything else behind.

Despite her death, controversial debates on her still continue. Two diverse groups emerged, one supporting Michael Schiavo her husband, who maintained that death was best for her while others fought steadily for her right to live. Some even expressed that it was the right time for her to go since the cost for her treatment was quite expensive and such amount could be used to save other hopeful precious lives. To them, Terri is considered lucky to be granted her "right to die"⁶.

In contrary for Terri's faithful supporters, she was not in a dying state, thus death was not within the description of doing a 'merciful' favour for her. Surely humans are free to make choices in their lives, but this does not include having the right to die. They believed that Terri was killed since her wishes to die were unclear and doubtful. The only evidence brought forward in the application to court, showing her consent for euthanasia was from her husband who claimed that she had expressed her desire to die twice, but at best it is still uncertain. She had left no advance directives and whatever she wished years ago isn't necessarily helpful in deciding what she would want now⁷. Firmly they maintained that an ethical and civil

3 Jane Roh. 23 April 2005. "Supreme Court Denies Parent's Plea". www.foxnews.com/printer_friendly_story/0,3566,151889,00.html p.3.

4 n.a. 23 April 2005. "Euthanasia and Terri Schiavo". www.religioustolerance.org/schiavo6.htm. p.2

5 *ibid.*

6 Melinda Penner. 1st. June 2005. "Does Terri Have a Right to Die". http://www.lifeway.com/wc/article_main_page/0,1703,A%3D159676%26M%3D200373 p.1

7 *ibid.* p.2

society should always favour the life of innocent human beings like Terri, who deserved protection, not intervention to cause her death!

THE RIGHT TO EUTHANASIA

Euthanasia is also popularly known as mercy killing. The word Euthanasia originates from the Greek word “eu” which means both “well” and “easy”, while the word “thanatos” is “death”⁹. So, literally, euthanasia is “good death”. Technically it is a practice of ending the life of a person suffering from incurable, often painful and distressing illness¹⁰. Euthanasia also refers to the deliberate ending of a person’s life by bringing about a gentle and easy death without any suffering¹¹. It is also described as the intentional premature termination of another person’s life either by direct intervention or by withholding life-prolonging measures and resources¹².

Euthanasia can generally be divided into two major categories namely:

- a) Active Euthanasia; and
- b) Passive Euthanasia

Active euthanasia refers to any positive action to terminate life. Such action is deliberately done with the intention to end a person’s life for example by giving instructions and consent to the physician to induce death by administering a lethal injection or fatal dosage of medication to hasten death and relieve any pain and sufferings while waiting for death to come¹³.

Passive euthanasia on the other hand refers to inducing death through an omission to act. For example by withdrawing or withholding life-support treatment so that nature can take its course¹⁴. Therefore, death occurs due to natural causes and not of poisonous substances in the body. Passive euthanasia can be further classified into voluntary and involuntary euthanasia respectively.

Voluntary passive euthanasia is the situation whereby a life is terminated at the patient’s request. This specifically applies to adult persons who are in command of his faculties to have his life ended by a physician, pursuant to his own intelligence and informed request, under specific conditions prescribed by law like the person is subject to intolerable pain or disability, suffering from terminal illness and is not pressured by any other person¹⁵ and the procedure must be done by painless means¹⁶.

8 *ibid*

9 Sam Vaknin. 1st. June 2005. “Euthanasia and the Right to Die”. www.buzzle.com/editorials/4-2-2005-67971.asp p.1.

10 *Chambers 21st Century Dictionary*. 1996. Cambridge University Press. p.4.

11 Peter De Cruz. 2001. *Nutshells Medical Law*. 1st. edition. Thomson Sweet & Maxwell. p.235.

12 Sam Vaknin. 1 June 2005. “Euthanasia And The Right To Die”. www.buzzle.com. p.1.

13 *Ibid*.

14 *Ibid*.

15 Mason.J.K, Smith. McCall and Laurie.GT. 2002. “*Law and Medical Ethics*”. p. 529.

This category includes patients whose symptoms of terminal illness are expected to cause severe distress to him causing incapability in leading a rational existence. Known also as 'legally assisted suicide', it can only be effected by:

- a) A mentally competent terminally ill adult who is aware of his condition and expresses his wish and consent for euthanasia.
- b) An incompetent patient who is incapable of communicating his wish due to unconsciousness or coma but had in advance written and signed a declaration (advance directives) requesting for Euthanasia in certain situations.

To the contrary, involuntary passive euthanasia refers to the termination of life of an incompetent patient who is unable to make a rational decision about his life¹⁷. This category includes patients in persistent vegetative states (PVS) including those suffering from irreversible brain damage, are permanently unconscious and whose lives are artificially prolonged. PVS patients are also known as 'permanent vegetative state' which is a condition in which the cortex of the brain (the part responsible for thinking and the senses) is destroyed but the brain stem (which controls reflexive functions, such as the heartbeat, breathing and digestion) continues to function¹⁸. The patient can breathe unaided but such a patient cannot communicate with the world and feels no pain.¹⁹ They normally receive palliative care where the treatment regime recognises cure as impossible and only aims to alleviate sufferings and pain. Legally, these patients are still alive and death will only be declared when the whole of an individual's brain stem has ceased functioning.

Passive euthanasia is similar to "letting to die" as decided in the English landmark case of *Airdale NHS Trust v. Bland*²⁰ concerning Anthony Bland (AB), a 21-year-old patient who had been in a PVS for 3 years, after a severe crash injury. All his physicians opined that there was no hope of recovery or any slight improvement to his condition. He neither had cognitive functions, no senses nor communicated in any way. However he still had reflective functions of the body that coordinated his heart beat, breathing and digestion since the brain stem regulating this was still functioning. AB was inserted with a nasogastric tube through his nose, down into his stomach to maintain him through artificial feeding and hydration.

The health authorities in charge of AB's health conditions, parents and family members applied to the court for declarations that the physicians

16 Cheang.M. 1977. "Voluntary Euthanasia". *Singapore Medical Journal*. Vol. 18 No. 4. pp. 265-269 at 266.

17 Peter De Cruz. 2001. *Nutshells of Medical Law*. 1st. edition. Thompson Sweet Maxwell. p. 235

18 Brendan Greene. 2005. "Understanding Medical Law". Cavendish Publishing. p.183

19 *Ibid*.

20 [1993] 1 All. ER 821.

could lawfully discontinue artificial nutrition and hydration and need not furnish medical treatment to AB in order to allow him to die peacefully. The judge granted the declarations sought. However, an appeal was filed to the House of Lords contending that the withdrawal of the life support was a breach of the physician's duty towards his patients and constituted a criminal act. The main issue debated was whether artificial feeding and antibiotic drugs may lawfully be withheld from an insensate patient with no hope of recovery and that the patient will surely die afterwards. The House of Lords unanimously dismissed the appeal and held as follows: -

- a) Where an adult patient is incapable of deciding whether or not to consent to treatment, the physician who has the patient in his care is under no absolute obligation to prolong that patient's life, regardless of the circumstances²¹.
- b) A physician is under no duty to continue treatment upon an unconscious patient where a large body of informed and responsible medical opinion is of the view that continuing further treatment was futile and would not confer any benefit. Existence in a vegetative state with no prospect of recovery is also included²².
- c) Treatment may be discontinued where it is no longer for the best interest of the patient. It is not appropriate to prolong a patient's life when the treatment has no therapeutic purpose, is futile and there is no prospect of any improvement in his condition.

In this celebrated case too, Lord Goff further mentioned that the act of the doctor switching off a life support machine, withholding treatment or artificial feeding to the vegetative patient who has no chances of recovery at all is not considered as a breach of his duty as a physician, but is actually an omission since the doctor is not obliged to continue in a hopeless case. The discontinuation of life support is no different from not initiating life support in the first place thus, such omission is lawful²³ and indirectly the patient is left to die of his pre-existing condition naturally.

However it is advisable for the physicians to seek guidance from the court before withholding life-prolonging treatment from PVS patients in all cases. Applying this case to Terri Schiavo, indeed it seems that her death was justified and the act of withholding hydration was mainly an omission. Therefore, though Terri and AB's case took place in different territorial jurisdictions, basically the same principle applies where discontinuation of futile and non-beneficial treatment upon PVS patients is allowed and considered as lawful. Moreover, such treatment is believed to no longer contribute to the best interest of such patients.

21 *Ibid*, Lord Goff, p.866

22 *Ibid*, Lord Keith, p.861

23 *Ibid*, p.873.

Generally, when dealing with PVS patients, the doctors are always trapped in a dilemma. Many regard continuing to maintain them as unethical because it is futile and cannot benefit the patient²⁴, while others contend that human life is far too precious thus treatment should be continued indefinitely²⁵. Another lingering dilemma whether to withhold or withdraw treatment. Indeed the implication of both may be the same where the result will be the end of a patient's life, nevertheless the process differs.

Withholding treatment implies that the therapy in question has never been started, while withdrawing suggests that the treatment previously given and considered beneficial will be discontinued depending on the patient's medical condition. For PVS patients, though they cannot request for treatment withdrawal, therapy can still be legitimately terminated if its futility denotes that to continue with it, would be contrary to the best interest of the patient. Indirectly, termination is justified²⁶ and therefore, therapies such as antibiotics and artificially administered nutrition and hydration may be selectively withdrawn to allow the patient to die peacefully²⁷. However, it is also doubtful that unlimited access to high technology medicine could also be a factor, which can expedite death since certain treatment may indirectly sustain body organs from functioning²⁸.

In the case of Terri, her loving parents believed that Terri was minimally conscious and aware of her environment and her own bodily pain. She was capable of thinking, although she was unable to communicate the thoughts to others. To survive, Terri only needed a tube for nutrition and fluids, however she was not depending on any life-support machines. They were positively sure that if Terri was not deprived of nutrition and hydration, she was likely to survive for many more years. Further intensive therapy if administered to her might even regain some of her mental and physical faculties²⁹.

WHO CAN DECIDE?

PVS patients normally have a poor prognosis and usually life expectancy is approximated for not more than 6 months. Once a patient has all the three pre-requisites listed below, a PVS patient is confirmed.

- 24 Hazel Biggs. 2001. *"Euthanasia, Death with Dignity and the Law"*. Hart Publishing. England. p.39.
- 25 J.Boyle, "A Case for Sometimes Feeding Patient in PVS" cited in Hazel Biggs. 2001. *"Euthanasia, Death with Dignity and the Law"*. Hart Publishing. England. p.39.
- 26 *Airedale NHS Trust V Bland* [1993] 1 All ER 821, Lord Goff, p.870
- 27 Hazel Biggs.2001. *"Euthanasia, Death with Dignity and the Law"*. Hart Publishing. England. p.45
- 28 Margaret Brazier. 1992. *"Medicine, Patients and the Law"*. Penguin Books. England. pp.455-457
- 29 n.a. 23 April 2005. *"Euthanasia and Terri Schiavo"*. www.religioustolerance.org/schiavo6.htm. p.3

- a) The diagnosed illness offers no remedy nor cure;
- b) Death is just around the corner; and
- c) Nursing effort becomes palliative, not curative in nature³⁰.

The right to terminate life after being diagnosed as a PVS patient actually varies in different jurisdictions. In the United States for example, family members are to make the decision on behalf of the PVS patient. This is also known as "family consent statutes" whereby they may apply to the court to be appointed as the legal guardian of the PVS patient. Upon the court's approval, then only the guardian can decide on behalf of the PVS patient. However, the substituted judgment where the surrogate makes the approximation of what the patient would want is adopted only when direct and actual express wishes of the patient is not available³¹.

In the United States too, three standards are followed in the descending order of acceptability. The first is the subjective test where the real wishes of the patient are considered. If this is lacking, then the substituted judgment test where a surrogate makes his or her best approximation of what management schedule the patient would have wanted will be the next resort. Only at the last stage will the best interest standards be adopted³².

In *Re Quinlan*³³ for example, a comatose young woman attached to a life-support machine was allowed by the Supreme Court of New Jersey to be removed from the respirator through substituted judgment. Later in 1990, the Supreme Court of United States further affirmed that decision in *Cruzon v. Missouri Department of Health*³⁴, which clearly allowed the removal of feeding tubes and other life saving apparatus upon comatose, PVS patients even through substituted judgments.

However comparatively in England, the House of Lords in *Re F*³⁵ vested the decision-making on doctors with reference to the Bolams test³⁶. Here, the doctors are judged against one that would be taken by a responsible and competent body of relevant professional opinion as to what amounts to the best interest of the patient. So, the task in deciding either to leave the patient to die or to prolong the life even without affirmative benefits being obtained though treatment is given³⁷, is shouldered upon the doctors.

In the case of *Blands*³⁸ their Lordships were in complete agreement that

30 Kenneth C. 1988. "Ethical Implications of Terminal Care, Medicine, Ethics and the Law: Current Legal Problems." MDA Freeman (edn) Stevens. London. pp 103-119.

31 *ibid*

32 J.K Mason, R.A Mc Call Smith and G.T. Laurie.2002. "Law And Medical Ethics". 6th edition. Butterworth. London . p.524.

33 (1976) 355A 2d.647

34 111 L Ed 2d 224 (1990) (USA)

35 1990 (2) AC 1

36 *Bolam v Friern Hospital Management Committee* [1957]1 WRL 582

37 *Airedale NHS Trust v Bland* [1993]1 All ER 821 at 883

38 *ibid*, p 883.

a doctor is under no duty to provide or continue treatment that is not in the patient's best interest. Since PVS patients' conditions are irreversible, so continuation of invasive and burdensome treatment is futile. However, doctors will not be in neglect of his duty of care if it is demonstrable that other doctors too would also treat patients with the same condition and prognosis in the same way. Consequently, doctors have considerable discretionary powers to decide what amounts to the best interest of the patient by referring to its own standard while simultaneously considering the best interest criterion³⁹. The case of *Re J*⁴⁰ had witnessed how the best interest consideration included stopping acts to prolong life by further mechanical ventilation as to prevent a longer life of pain while simultaneously ending life with dignity.

Clearly the practical distinction between the practices in UK is completely different compared to the US. In UK, the best interest test is a consideration that must be taken by doctors in making the right decision concerning PVS patients. However for the latter, substituted judgment is adopted only if direct and actual express wishes of the patient are not available.

THE PRACTICE IN MALAYSIA

In Malaysia, euthanasia issues are becoming more popular. Normally, once confirmed as a PVS patient, aggressive treatment would cease based on various tests that it would no longer benefit the patient. However, the patients are still hydrated and fed through nasogastric feedings and ensured to be relieved from pain and sufferings through palliative treatment. Only treatment comprising of medication to prevent infections and ventilators are withheld. Patients are then discharged and care is then continued at the patients' respective homes.

However, if the patient is already being artificially ventilated, the machine will not be switched off since in this situation, even with the ventilating machine still on, a combination of poor prognosis of the patient and withdrawal of medication, still the patient's heart will stop on its own. The doctors face no guilt nor dilemmas since it is part of their professional duty, thus no criminal responsibility should follow⁴¹. Even until today, no physician has yet faced prosecution in Malaysia for hastening a patient's death or allowing a patient to die⁴².

In cases where the patient is unconscious but the brain is not severely damaged, after proper medication and observation are provided, normally the patient will regain consciousness. Basically, PVS are only declared once

39 Kennedy & Grubb. 2000. "Medical Law". 3rd edition. Butterworths. p.2105

40 1990 (3) All ER 930

41 Norchaya Talib. 2002. "Euthanasia-A Malaysian Perspective". Sweet & Maxwell Asia. Malaysia. pp. 109-110

42 *Ibid*, pp. 88-89.

all necessary aggressive treatment has been given and provides no cure at all, and the patient remains unconscious. At this stage, treatment will then be withdrawn to allow nature take its course. So, a combination of poor prognosis on the part of the patient, together with no treatment administered, will then cause the patient to die naturally from his original illness.

In Malaysia, physicians are not required to strive officiously to keep alive a patient whose condition will not benefit from the process of keeping alive. By withdrawing the treatment too, the physician is also performing one of his duties that is to relieve pain and sufferings of the patient. In situations where the patient can no longer communicate and is unconscious, the decision making process will normally be done by the physicians and the relatives of the patient. So, it is left to the patient's relatives upon consultation with the attending physicians to make the decision⁴³ based on the best interest of the patient.

Though generally euthanasia is prohibited in Malaysia, we do not have a specific Act that deals with Euthanasia issues in particular. However, S.81 of the Penal Code⁴⁴ can be useful. The section explains that it is actually a question of fact when dealing with cases where it must be decided whether the harm to be prevented or avoided was of a nature and so imminent, as to justify or excuse the risk of doing an act with the knowledge that it was likely to cause harm. Trying to fit this section to passive euthanasia, it can be said that though the act of withdrawing or withholding treatment would most likely cause death to the PVS patients, but that act was to allow nature to take its course and promoting death to come naturally. At this point too, even if the treatment were administered, it would just be meaningless and futile.

Definitely there is no point in sustaining a PVS patient who does not even know, feel nor is able to appreciate life, which is totally assisted and has no hope of recovery at all. Unnecessary treatment will only further burden and cause pain to the body. So, an act likely to cause harm, when done without any criminal intent and to prevent other harm is not considered an offence. Logically, it is justified and not offensive in nature to allow a PVS patient to die by withdrawing or withholding curative treatment that is definitely futile. Passive euthanasia does not and should not constitute the offence of culpable homicide and murder under section 299 and 300 respectively of the Code⁴⁵ too since it is done in good faith and without any criminal intention.

THE ISLAMIC PERSPECTIVE

Muslims believe that only Allah alone has the sole power to decide the

43 *Ibid.*

44 Penal Code (revised 1997) Act 574

45 Norchaya Talib. 2002. "Euthanasia-A Malaysian Perspective". Sweet & Maxwell Asia. Kuala Lumpur. p.87.

time of death. Islam considers ending one's life as an action of deadly sinful act. Thus, humans do not have such rights to end his or other people's life. The Qur'an reminds Muslim that:

"It is not given to any soul to die, save by the leave of God, at an appointed time"⁴⁶ and "God gives lives, and He makes to die"⁴⁷

Euthanasia is actually a new phenomenon, thus has never been discussed by classical jurists. Contemporary Muslim jurists refer euthanasia as *qatl al-rahmah* (mercy killing) and *taisir* or *tashil al-maut* (assisted suicide). However, does Islam allow a PVS patient or doctors to resort to euthanasia after all hopes of recovery has completely diminished? Is euthanasia considered as committing suicide or it is just an act to allow nature do its part? Therefore, in examining the permissibility of applying euthanasia upon PVS patients, it is indeed crucial to comprehend the Islamic perception of death and legal rulings available on committing suicide and seeking treatment first.

Majority of Muslim scholars view that active euthanasia is a sin and similar to committing suicide and indeed playing God since it directly hastens death by giving lethal injections or fatal dosages. As humans, we cannot interfere in such matters. This rule is based on *hadith* that means:

"There was a man in olden times who had an infliction that taxed his patience, so he took a knife, cut his wrist and bled to death. Upon this God said: "My subject hastened his end, I deny him paradise"⁴⁸.

The above *hadith* indicates that whoever hastened his death will be subjected to divine punishment in the Hereafter. Muslims do not have any rights to end his life for whatever reason. Considering the fact that humans only have the stewardship and not the ownership of his body, so as a "tenant" of his own body, it is his duty to take care of it completely. One should bear in mind that the responsibility to preserve one's health and life is one of the *maqasid shari'ah* (objective of *shari'ah*) that is to protect the soul (*al-nafs*⁴⁹). Hence, any decision taken to terminate one's life is against this objective and against the patient's interest (*maslahah*). An *ayat* in al-Qur'an mentions:

"Seek your help in patience and prayer; Surely God is with the patient. Surely We will try you with something of fear and hunger, and diminution of goods and lives and fruits; yet give thou good tidings

46 Al-Qur'an. Ali-Imran 3:145

47 Al-Qur'an. Ali-Imran 3:156

48 Sahih Bukhariyy Hadith 4.56.669

49 The doctrine of *Maqasid Shari'ah* can be found in Imam Al-Shatibi's great work *Al-Muwafaqat*. The rest of the objectives of *Maqasid Shari'ah* are to protect lineage, reasoning, religion and property. However some scholars vary in determining these objectives.

unto the patient who when they are inflicted with affliction, say:
Surely we belong to God, and to Him we return⁵⁰.

Resorting to euthanasia (active euthanasia) with a belief that expediting death would then cease all the pain and sufferings as well as saving a large amount of financial expenditures are not valid justifications to end one's life. This indirectly reflects frustration and impatience in facing divine decrees from Allah. The so called action either from the doctors, upon the wish of the family or upon the wish of the patient to end the patient's life by giving lethal injection is not permissible whether such an act as a result of the endless treatment hope or to relieve any pain.

Meanwhile, passive euthanasia is another part of the discussion. In justifying the permissibility of passive euthanasia, contemporary Muslim jurists have first defined the meaning of death. According to Dr Bakr Abu Zaid, traditionally death is defined as a complete stoppage of the heart or respiration and the total separation of the soul from the body. He listed in his book *Fiqh al-Nawazil*⁵¹, eight indications of death according to *fiqh*. According to him, if there is any doubt regarding the indication of death, it is to be assumed that the person is still alive until death is proven conclusively. He further elaborated that brain death does not always provide an ultimate answer. Furthermore, with reference to the *fiqh* principle *al-yaqin la yazalu bi shak* (certainty is not removed by doubt) it negates brain death as a conclusive sign for death. However, modern technology nowadays has the ability to keep signs of life through respiratory support in a brain dead patient. This development has raised the question of whether brain death can still be recognized as a valid formulation of death.

According to traditional definition of death above (death as total separation of the soul from the body), the patient is considered alive even though he is breathing using a ventilator. This view however contradicts the view of Dr. Daud Bakar⁵² who accepts brain death, as a conclusive sign of death though he believes that all legal rules relating to dead person are still not applicable to brain dead person. This is also the medical definition of death that defines death to be when the brain totally loses its function, resulting to no physical movement at all, disability to think, to eat and to communicate⁵³. However, the writers suggest that a combination of both definitions would best define the exact meaning of death as all these indications consequently mean that there is a total separation of the soul

50 Al-Qur'an: Al-Baqarah 2:153-157

51 *Fiqh Nawazil*, 1470H, Riyadh: Maktabah al-Rushd. Vol.1 pp 215-236

52 See Mohd. Daud Bakar. "Pembunuhan Rahmat (Euthanasia) daripada Perspektif Teori Perundangan Islam». *Shari'ah Journal*. Jilid 4 Bil.1. Januari 1996. Fakulti Syariah. Akademi Pengajian Islam. pp 72-90.

53 *Ibid*. See also Zouzou F. et al 2004. *Abhath fi Qadhaya Fiqhiyyah Mu'asirah*. Kuala Lumpur. pp 150-152

from the body. Accordingly, the legal rules regarding a dead person such as inheritance and *'iddah* (if applicable) will only be effective after the machine is removed.

For brain dead patients with no hope of recovery, contemporary Muslim jurists including Sayyid Tantawi, Shaikh Yusuf al-Qaradawi, Kuwaiti Darul Ifta, The Council of Islamic Jurisprudence and The European Council for Fatwa and Research have concluded that removal of life support machines is permissible to allow nature to take its course. Thus, when a patient is totally dependent on life support machines and feeding tubes due to neurological disabilities, removal of such machines is permitted. The permissibility was made based on the original rule of seeking treatment or taking medication. This machine is regarded as similar to taking medication or seeking treatment. This view illustrates that a Muslim is encouraged to seek treatment for a better life. Shaikh Yusuf al-Qardawiyy views that this rule falls under the discussion: *hal al-tadawi ahsan min tarkihi?*⁵⁴ (Is seeking treatment better than its abandonment?) He views that a Muslim is strongly encouraged to take medication as Muslims believe that there is no disease that Allah has created without its treatment except death.

Meanwhile Imam Al-Ghazaliyy⁵⁵ together with some other Sufis are of the view that it is better for the sick person to live without treatment as it is a sign of humble acceptance of God's appreciation (*tawakkal*) and a sign of piety. This view is based on a *hadith*⁵⁶: there was a sick woman complaining to the Prophet that she is having epilepsy and was asking the Prophet to pray for her health. The Prophet replied to her by saying: "If you prefer to be patient with your illness, you will enter the paradise, but if you want me to pray for you, I will pray to God to cure your illness". Furthermore, the blessed Prophets' companions are also reported for not seeking any medical treatment when they were sick⁵⁷. Thus, if one supports this view, definitely the issue of withdrawing or even withholding treatment for brain death person is clearly not a disputable matter. Accordingly, the physician does not bear the responsibility to provide any curative care or provide life support machine regardless of his condition of sickness since giving treatment is only optional.

However, Shaikh Yusuf al-Qardawiyy views that seeking for medical treatment is a must for serious disease such as cancer and when there is hope for cure⁵⁸. He is also of the view that the rule for seeking medical treatment is a desirable and recommended act (*sunnah*) though not mandatory. In this matter, the writers are inclined to the opinion of Shaikh

54 Nurdeen Dueraseh & Hanisah Yaacob. 26th April 2005. "Issues on Medical Treatment in Islam" *The Yale Journal of Humanities in Medicine*. Connecticut: The Yale New Haven Medical Center. 28th December 2005. <http://info.med.yale.edu>

55 *Ihya' Ulumiddin*. n.d. Cairo: Dar al-Fajr li al-Turath. Vol. 4. pp. 378-382

56 Al-Nawawiyy. Y.S. n.d. *Riyad al-Salihin*. Mansoura: Dar al-Wafa'. Bab al-Sabr. 11/35. p.28

57 Al-Qardawiyy, Y. 1994. *Fatawa Mu'asirah*. Mansoura: Dar al-Wafa'. Vol. 2. p.528

58 *ibid.*

Yusuf al-Qardawiyy, as it is actually an individual's responsibility to improve the quality of human life. Furthermore, there is a *hadith* reporting how the Prophet himself tried to ease his headache by applying some henna to his head and he is also reported as saying: "A Muslim has to seek for treatment as God has made the illness and the cure"⁵⁹. As long as there is hope in the treatment, a person has to try what ever means to achieve the betterment of living as it will increase his/her productivity and become a healthy person to fulfill all his religious and worldly observances.

However, Muslim jurists have also stipulated a condition that before removing the ventilating machines, at least three physicians must confess that the illness is irrevocable and a total brain death exists⁶⁰. The Council of Islamic Jurisprudence had ruled as follows:

*"It is permissible to switch off the life support system with total and irreversible loss of function of the whole brain in a patient if three attending specialist physicians render their opinion unequivocally that irreversible cessation of brain functions has occurred. This is so even when the essential functions of the heart and the lungs are externally supported by life support system. However, legal death cannot be pronounced except when the vital functions have ceased after the external support system has been switched off"*⁶¹

Similarly, this is also the view of South African Darul Ifta' that only permits euthanasia by withholding treatment or ventilators if it is reasonably determined by consultant physicians that pursuing a particular course of treatment is proportionally more harmful than allowing nature to take its course. The view mentions:

*"Passive euthanasia where patients may withhold treatment or artificial life support is only permissible if a trustworthy, reliable specialist feels that there is no hope of survival"*⁶²

To the writers' best of view, asking for death is sometimes undeniably a better solution in order to save one's faith. This is proved by the act of Yusuf⁶³ and Maryam⁶⁴ who asked for death to save their faith. However, we should bear in mind that both Maryam and Yusuf are the God's pious servants and definitely death is the desirable destination. Thus, there is no question of lack of preparation of '*amal*' or religious observances arising. For ordinary Muslims, death is the termination of one's '*amal*', and before

59 This *hadith* was narrated by Tarmizi and Ibn Majah. See *Ihya' 'Ulumiddin*. n.d. Cairo: Dar al-Fajr li al-Turath. Vol. 4. p. 378

60 Malaysian Muslim physicians are inclined towards this view. See *The News Straits Times*. 21st June 2006.

61 Cited in Abdul Aziz Sachedina. "Brain Death in Islamic Jurisprudence". *Issues in Contemporary Islam*. www.people.virginia.edu/~aas/article/article6.htm - 27k

62 Zouzou F. et al 2004. *Abhath fi Qadhaya Fiqhiyyah Mu'asirah*. Kuala Lumpur. pp 150-152

63 Al-Qur'an. Yusuf 12: 101

64 Al-Qur'an. Maryam 19: 23

the coming of such divine decree, one has to be prepared with all 'amal salih' (religious observances) and purify themselves from sins (*taubah* or repentance). Not only one has to prepare and fulfill his religious observances, the other obligations towards other people, such as paying debts, giving sufficient maintenance to his family and so on have to be fulfilled as such.

However, we should bear in mind that, in the condition of permanently vegetative state, can one increase his 'amal or iman (faith)? Doesn't the life support system only prolong the patient's miserable conditions? Therefore, under the principle of public interest (*maslahah 'ammah*- in this case, the interest of the family and the patient) the Muslim jurists have adopted the view that it is permissible for the patient under permanently vegetative state to refuse any treatment⁶⁵. This principle also demands that an individual's life must also be weighed in the scale of the general wellbeing of those closely related to the patient.

CONCLUSION

Every treatment sought and given is primarily aimed to heal patients' illnesses and is curative in nature. Such treatment administered should benefit the patient by restoring or maintaining his health. However, when illnesses cannot be reversed or treated, treatment given then becomes palliative in nature. This treatment regime then aims to ease the patients by lifting pain and sufferings while trying to provide a chance for the best or quality limited life for these patients and their family.

The writers both agree to the concept of maximizing treatment be it curative or palliative. However at a certain stage, where the patient ends up being in a PVS state we positively support the idea of applying passive euthanasia upon him especially when all necessary treatments administered would no longer be for his best interest to recover. There is indeed no point of administering treatment to PVS patients while they benefit nothing from it. We also feel that it does not make humans playing God, rather by withdrawing treatment we are actually allowing nature to do its part. The patient will be allowed to die naturally however, pain and sufferings must be alleviated from him to let him leave in peace. Even so, this must be strictly applied and legalised upon terminally ill PVS patients with no hope of recovery only. Thus, if the patient still has sparks of hope to recover, exhaustive extensive efforts must be taken to help cure him.

With respect to the issue of withholding treatment, the writers are more inclined to allow and suggest the doctors to first try their best in saving one's life. It is definitely unfair for us to decide or judge whether a patient should be saved or not just at the first instance of looking at him.

65 Al-Qardawiyy, Y. 1994. *Fatawa Mu'asirah*. Mansoura: Dar al-Wafa'. Vol. 2. pp.525-529. See also Zouzou, F et al. 2004. *Abhath fi Qadaya Fiqhiyyah Mu'asirah*. Kuala Lumpur. pp 150-152

All efforts must first be done exhaustively to give the patient a chance to be cured and saved by all necessary means. Only if nothing works or signs of recovery are not demonstrated at all, then only treatment should be withdrawn since euthanasia is not a license to kill people according to our wishes.

However, the writers are reluctant to accept the method used where PVS patients are left to die in dehydration and pain. We believe that such cruel act indirectly tortures the patient as what happened to Terri Schiavo. Abrupt withdrawal of feeding and hydration results in a slow and potentially torturous death¹⁶². By simply discontinuing artificial hydration too, not only the patient suffers from his original illness, but he is added with the pain of being starved and left dehydrated. For example, it took Terri 13 days to die. One simple question that bothers us is was it really in Terri's best interest that she should be starved to death?

Even in the case of *R v. Stone*¹⁶³ and *Airdale NHS Trust v. Bland*¹⁶⁴, there were even discussions arguing that doctors have a duty to feed patients even by means of using the nasogastric tube. Failure to abide to that duty would possibly make them guilty of manslaughter, if not murder. It was also further argued in both cases that feeding by nasogastric tubes was not included as part of the medical treatment administered and therefore, withdrawal of treatment only includes stopping aggressive medication and removing the ventilation machine, which seem more justified and fair for everyone.

To conclude, as Muslims we must accept the fact that death matters are upon Allah alone to decide. Even if the patient is left to die on his own, if Allah (*SWT*) has not destined death for him, it will never happen! Thus, even though euthanasia can hasten death, its practice must be legally justified and never be regarded as a license to kill.

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