

On Whether Euthanasia in China Should Be Legalized

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ABSTRACT

The term euthanasia originated in Greece and originally meant "to die happily.". With the progress of social technology and the development of ethics and morality, more and more people are beginning to support euthanasia, which means a "happy" and "painless" death, thereby reducing the pain of patients and reflecting end-of-life care for them. At present, countries such as the Netherlands, Belgium, Japan, Switzerland, Canada, etc. have enacted laws on euthanasia, while China currently does not have relevant regulations. This article will discuss whether euthanasia in China should be legalized.

KEYWORDS

Euthanasia; Intentional Homicide; Medical Treatment.

1. WHAT IS EUTHANASIA

"Euthanasia" refers to the method of death in which a patient, due to extreme physical or mental pain, requests the attending physician to terminate their life in a more humane manner in a rational and autonomous manner when the current medical level is unable to treat them.

Euthanasia can generally be divided into positive euthanasia and negative euthanasia. Active euthanasia refers to the conscious and proactive use of injection, medication, and other means to accelerate the depletion of a patient's life. Negative euthanasia refers to the abandonment of equipment and means for continuing medical treatment, allowing patients to move towards death without the help of external drugs and assistive devices, rather than deliberately reducing their life time, but no longer delaying their length of life.

2. THE LEGISLATIVE STATUS OF EUTHANASIA

As the first country to legalize euthanasia, the Netherlands recognized euthanasia through the establishment of laws and regulations. Later, Belgium, Japan, Switzerland, Canada, and some states in the United States also passed laws on euthanasia. At present, China has not yet introduced relevant laws and regulations, but it can be seen from past precedents. China is a socialist legal system, inherited from the mainland legal system, mainly dominated by written law. Although the country does not have relevant laws, similar events have also occurred.

In 1986, the first case of euthanasia occurred in Hanzhong City, China. Doctors performed euthanasia on patients at the request of their families and patients. Later, they were prosecuted by the prosecutor's office for the crime of "intentional homicide" and sent the doctor and the patient's son to court. This case has caused a great uproar in the medical and legal fields, and has also sparked discussions in public opinion about the act of euthanasia. The final judgment of the judicial authorities concluded that the act of euthanasia by the two individuals was intentional homicide, but the circumstances were

minor and the social harm was relatively small, and it did not constitute a crime. It compares active euthanasia with intentional homicide, based solely on its consequences and reasonable considerations, and does not impose criminal penalties on the defendant.

Afterwards, many behaviors similar to active euthanasia also occurred, and the judicial authorities sentenced them to "intentional homicide", indicating that China has not yet recognized euthanasia. But currently, under certain circumstances, patients are plagued by illness, but they do not have the ability to voluntarily end their own lives. At their request, there is a great controversy in society about whether doctors and their families can euthanize them based on "alleviating pain".

Here, I will focus on exploring the behavior of active euthanasia, which involves actively reducing the patient's life through injection, medication, and other means. The reasons for different viewpoints are as follows:

2.1. The Main Points of Agreement with One Party are:

- 1) Active euthanasia is actually the patient's autonomous choice of the right to life. Life belongs only to individuals, and we have the right to dispose of it freely according to our own wishes. Since we have the right to live, why don't we have the right to die?
- 2) Active euthanasia is the preservation of one's dignity as a human being. Human dignity has the highest value, and it gives people the freedom to choose, including the freedom to end their own lives.
- 3) The pursuit of quality of life through active euthanasia is an important goal in achieving the value of life. When a person can only wait for death in immense pain, the doctor's insistence on delaying in order to make them bear the pain is actually an inhumane abuse of the patient.
- 4) Active euthanasia is a way to save medical resources. Social resources are limited, and investing a large amount of medical resources into a hopeless terminally ill patient is actually a waste. These valuable and limited medical resources should be saved and used to assist those who may be cured.
- 5) Death is not always an enemy of humanity, and should be viewed correctly. Life and death are fundamental issues of all things in the universe, and death is just a part of the natural sequence of things.
- 6) Active euthanasia can alleviate the economic and mental burden on family and friends. For those who are about to die, their families spend a lot of manpower, material resources, and financial resources, even willing to smash pots, sell iron, sell houses, and sell cars, while continuing the patient's life. When the patient passes away, all these difficulties will be borne by the living relatives.

2.2. The Main Viewpoints of the Opposing Party are:

- 1) Life is sacred and supreme, and medical ethics require doctors to do everything possible to save the lives of patients.
- 2) The implementation of euthanasia can lead to an ethical crisis. At present, China values a culture of filial piety, emphasizing the care of children for their parents in their old age and the care of their parents. Therefore, whether it is children or patients, their choice of euthanasia is easily criticized by the traditional Confucian society.
- 3) Every life has a certain value and is a constituent molecule of humanity. Society not only has the right to resettle its members, but also has the obligation to protect them. It is the basic responsibility of human society to treat patients who are mistakenly perceived as social burdens.
- 4) Irreversible diagnosis by doctors may not be accurate, and euthanasia deprives patients of the healing opportunities brought about by medical development. Life is only once, and when death arrives, it cannot be reversed no matter what. The worst consequence of not terminating treatment is

to maintain the status quo. However, the consequences of a wrong euthanasia are unavoidable, irreversible, and can directly lead to human death.

5) The patient's desire for euthanasia may not necessarily be a rational and genuine expression of their intention, but rather a temporary request for mental emptiness.

6) The law allows euthanasia to be used by malicious individuals for criminal purposes, and euthanasia may be used by criminals. The legalization of euthanasia will evolve into a tool for excommunication of murder. Although theoretically, patients are a key factor in the execution process of euthanasia, they will be influenced by relatives, doctors, and other factors. When their relatives and doctors constantly suggest that they can choose euthanasia and should choose it, it will bring about their "expected death", from involuntary to voluntary.

7) Euthanasia may lead to involuntary "voluntary" euthanasia by patients. Especially for parents, when they see their children going bankrupt to treat their illnesses, running around for medical expenses, and losing their jobs to take care of themselves, they cannot bear it. Although they are unwilling to die, they also want to reduce the burden on their children and voluntarily "voluntarily" euthanasia.

3. THE DIFFERENCE BETWEEN EUTHANASIA AND INTENTIONAL HOMICIDE

China has experienced many behaviors similar to active euthanasia, and the judicial authorities have all sentenced it to intentional homicide. So what is the difference between active euthanasia and intentional homicide?

Article 232 of the Criminal Law of our country clearly defines the concept of intentional homicide, which refers to the act of intentionally and illegally depriving others of their lives. It is one of the most heinous criminal acts, not only causing serious burden to the judicial and public security system, but also bringing a series of negative impacts to society. As a method of death chosen by patients who are on the brink of death and implemented by doctors, euthanasia has many differences from intentional homicide in criminal law. However, the current criminal law in China regards euthanasia as an extension of intentional homicide, with only a slight difference in sentencing. The author believes that the differences between the two are:

3.1. Differences in the Application of Basic Principles of Criminal Law between the Two

The law, as a social normative tool for regulating people's behavior, clearly stipulates their behavioral norms, so as not to cause people to be inexplicably punished for not knowing that a certain behavior cannot be done. The principle of legality of crime and punishment is a fundamental principle of China's criminal law. "Without explicit provisions in the law, it is not a crime, and without explicit provisions in the law, it is not punished." In the criminal law, various criminal behaviors are clearly defined, which correctly guides people to act legally and makes the criminal law more operational. The Criminal Law provides clear and specific regulations for the crime of intentional homicide, but there is no explicit provision in the Criminal Law that euthanasia or similar acts are criminal acts. This indicates that the reasonable implementation of euthanasia is not explicitly prohibited by Chinese law. Therefore, the conviction and punishment of euthanasia as intentional homicide lacks legal basis and is also a violation of the principle of legality in criminal law, which reduces the authority of the law.

3.2. Euthanasia Does Not Meet the Constitutive Requirements of Intentional Homicide

Firstly, analyze the conformity of the constituent elements, which includes both objective and subjective elements. Firstly, analyze the objective constituent elements: from the perspective of the actor, the perpetrator of the latter can be anyone, while the former can only be a doctor in a hospital authorized by law; From the perspective of the object of behavior, the victim of the latter is an involuntary deprivation of life, which is the victim's right to life and health, while the former is a patient who is seriously ill and cannot recover, and with the permission of themselves and their families; In terms of behavior, the latter is the subjective and objective implementation of "evil", which deprives others of their lives. The former is a well intentioned motivation to actively euthanize patients in order to alleviate their pain, that is, to actively reduce their lives through injection, medication, and other means; In terms of results, the latter's completion is based on the death of the victim, while the former's result is the death of the patient who was euthanized; From a causal perspective, the latter is the act of doctors implementing euthanasia that leads to the death of patients, while the former is the act of the perpetrator that infringes on the victim's right to life and health. Further analysis of subjective constituent elements: the latter has two situations: intention and negligence, while the former only has intention and no negligence.

Then analyze the illegality, which includes both statutory and non statutory reasons for obstruction. The analysis of the illegality of intentional homicide is quite complex, and I will not discuss it here. The author will focus on analyzing the issue of victim commitment in euthanasia. The victim's commitment, also known as the victim's consent. Victim commitment refers to the act of obstructing criminal harm based on the victim's commitment to allow others to infringe upon their disposable rights and interests. It is of great significance for the perpetrator to bear criminal responsibility, reduce the accountability of the behavior, and even exclude the illegality of the perpetrator's behavior. In the Chinese Criminal Code, there is no clear provision on the issue of victim commitment, which can be applied in judicial practice. The authority and scope of the commitment are as follows: firstly, to make a commitment not to the legal interests of others; Secondly, one cannot promise to cause serious harm to oneself; Thirdly, the scope that can be promised includes minor harm to oneself, property, freedom, and reputation. From this, it can be seen that the scope of the victim's commitment does not include serious harm to oneself. Since the victim's promise does not include causing serious harm to themselves, it cannot include depriving oneself of life.

Finally, analyze accountability, including age and mental state. The subject of euthanasia can only be authorized doctors in hospitals, and it is obvious that doctors who carry out euthanasia have a sense of responsibility. The perpetrator of intentional homicide can be anyone other than a person under the age of 12 and a mentally ill person who cannot fully recognize their own behavior.

3.3. Differences in Essential Characteristics between the Two

According to the theory of criminal law in our country, crime refers to behavior that has criminal illegality, social harm, and should be punished. Among them, serious social harm is the primary and essential feature among the three basic characteristics of crime. Another criminal law issue arising from the harm to society is the issue of the modesty of criminal law. The so-called "modesty of criminal law" refers to the fact that while punishment has a strong protective effect on legal interests, it can also cause many drawbacks. Therefore, criminal law, as the last barrier to protect legal interests, should be cautious. Only when there is a legal interest infringement or threat that requires the use of punishment, can criminal measures be used to impose sanctions. The social harmfulness and likelihood of recidivism are different between the two.

4. ANALYSIS OF THE INFEASIBILITY OF IMPLEMENTING EUTHANASIA IN CHINA

The author believes that the issue of whether euthanasia should be legalized cannot be viewed solely. The feasibility of legalizing euthanasia in China should be judged based on the actual situation.

4.1. From a Macro Social Perspective, the Legislative Environment for Euthanasia in China is Not Yet Mature

4.1.1. Euthanasia Legislation Lacks Constitutional and Legal Basis, and the Legal Situation is Not Perfect

From the current legal situation in our country, neither the Constitution nor laws have made corresponding provisions for euthanasia. In fact, euthanasia is contrary to the current laws in China.

Firstly, from a constitutional perspective, the Chinese Constitution does not provide for the right of citizens to self-determination in life. In China's legal system, the Constitution is the fundamental law of the country and has the highest legal effect. Other laws and regulations are derived from the Constitution. In terms of human rights, we believe that both the right to life and the right to euthanasia should belong to the basic rights of patients. The basic content of human rights should be reflected in constitutional norms. The new constitutional amendment has explicitly included "the state respects and safeguards human rights" in the constitution, but does not provide clear provisions on the specific content of human rights.

Secondly, from the perspective of criminal law theory, although euthanasia does not have social harm and is not fundamentally a criminal act, judicial authorities can only handle such behavior in accordance with relevant provisions of the Criminal Law. In addition, apart from the lack of clear provisions on euthanasia in the Constitution and Criminal Law, other departmental laws have never addressed the issue of euthanasia.

4.1.2. The Political and Economic Development in China is Unbalanced, and the Healthcare and Welfare Systems are Not Sound

The Netherlands and Belgium, which legalize euthanasia, are both highly developed social welfare countries with sound medical and health security systems, which can indeed provide patients with good medical conditions. However, the economic development in various regions of our country is uneven, with a large urban-rural gap. Moreover, only a small proportion of people in China enjoy public funded medical care or participate in medical insurance, and the majority of people require self funded or semi self funded medical care. The high medical costs prevent many patients from receiving timely and effective treatment, and even force them to give up treatment.

4.1.3. Limited Medical Level and Research Ability, Making it Difficult to Determine Death and Euthanasia Criteria

The legislation on euthanasia must have a scientific basis. So far, there is no unified definition of euthanasia in the world, and scholars at home and abroad have not reached a consensus on the basic theoretical issues of euthanasia, including its definition, nature, applicable objects, and conditions. In this situation, it is difficult to make clear and unified provisions on the legislative content of euthanasia.

4.1.4. The Constraints of Traditional Ethics, Morals, and Values Require a Shift in Public Attitudes

The traditional Chinese society has been influenced by Confucianism for thousands of years, emphasizing the importance of "father, son, and son", respecting parents, receiving them physically, mentally, and physically, emphasizing "living is better than dying", and emphasizing "filial piety".

Therefore, the current overall society does not have a high tolerance for euthanasia, which is easy to be condemned by the group and circle it belongs to.

4.1.5. The Public's Understanding of the Essence of Euthanasia Needs to Be Deepened

From the current situation, the vast majority of people are not clear about the true meaning of euthanasia, and their understanding of the basic issues of euthanasia is not deep enough. The understanding of many issues related to euthanasia is mostly based on emotions and is relatively superficial. In addition, most of the surveys conducted on euthanasia are conducted in large and medium-sized cities, while in rural areas, traditional moral concepts have a deeper influence, and the understanding and acceptance of new ideas and concepts are relatively low. There are still significant obstacles to the penetration of euthanasia concepts into people's hearts.

4.2. From a Micro Perspective, There are Safety Hazards in the Implementation of Euthanasia

4.2.1. Whether the Patient's Wishes and Self-determination Rights Can Be Respected Cannot Be Determined, and Euthanasia May Become a Tool for "Legal Homicide"

The final decision on whether to implement euthanasia should be in the hands of the patient themselves, and no one can make a decision on behalf of the patient. All rights can be abused, and the right to euthanasia can also be abused, which is one of the reasons for the complex legislative process of euthanasia. In addition, the mental burden of critically ill patients will also be extremely increased, and they may worry about becoming the subject of euthanasia. It cannot be ruled out that the phenomenon of voluntary and forced euthanasia may occur on the surface.

4.2.2. Potential Technical Hazards in Implementing Euthanasia

At the technical level of euthanasia, medical personnel play a crucial role, and their technical level affects the implementation of euthanasia. The main body implementing euthanasia should be medical personnel and strictly follow the legal procedures. The medical and health industry is highly specialized, and according to Chinese law, medical personnel must obtain a professional qualification certificate to engage in medical and health work. The implementation of euthanasia involves the safety of citizens' lives. Therefore, for this special medical service, strict enforcement subjects must be established, and individuals other than family members or medical personnel should not be included in the enforcement subjects of euthanasia. At present, due to the uneven economic development in different regions, there is a significant gap in the medical level and equipment conditions among hospitals in different regions, and the technical level of medical personnel varies. Therefore, in the current situation, it is difficult to ensure the scientific and accurate diagnosis of whether a patient is terminally ill and on the brink of death.

4.2.3. Medical Humanitarianism for Medical Personnel May Experience a "Landslide"

Considering the role played by medical personnel in euthanasia, the author is concerned that if euthanasia is legalized, it will undermine the traditional trust relationship between doctors and patients, weaken sympathy and care for terminally ill patients, and make medical personnel feel that implementing euthanasia is easier and more effective in the face of suffering patients. Over time, this will change the understanding of medical purposes among healthcare professionals. If a society allows or encourages euthanasia, the implementation of euthanasia will start with patients with behavioral abilities, develop into patients without behavioral abilities, coma patients, children, and people with mental disabilities. This has led to a humanitarian decline for medical personnel.

4.2.4. The Motivation for the Patient's Family Members to Agree to Euthanasia is Difficult to Determine

The implementation of euthanasia is closely related to the interests of the patient's family members. When the family members voluntarily request and understand that the patient cannot be cured, they

cannot bear to see the patient suffer extreme pain and make a decision to agree to euthanasia, which is entirely for the sake of safeguarding the patient's interests. It is naturally understandable. However, some people, driven by economic considerations, are unwilling to continue bearing high medical expenses even when the patient is not yet on the brink of death in order to protect their own interests. Furthermore, in pursuit of personal gain, such as competing for inheritance, and in the name of respecting the wishes of patients and safeguarding their rights and dignity, it is strongly supported that euthanasia for patients will inevitably lead to the abuse of euthanasia.

4.2.5. Medical Institutions Have Weak Legal Awareness and Inadequate Management Systems

There are many issues that cannot be ignored in hospital management and other aspects of medical institutions. The rules, regulations, and operating procedures of medical institutions are formulated with patient service as the center, medical ethics as the foundation, and high responsibility for patients as the highest ethical standard, requiring medical personnel to abide by them. Only by effectively implementing various rules and regulations, strictly adhering to the rules and regulations and operating technical standards, can we improve the efficiency and quality of work, and ensure the safety of medical work. Allowing euthanasia to be implemented, if medical institutions and staff have weak legal awareness and cannot comply well with the regulations on euthanasia implementation, it will lead to many tragedies.

5. CONCLUSION

If euthanasia is legalized in China now, there will be many problems. The author actually supports the legalization of euthanasia, but by no means at present, euthanasia should not be legalized in China at present. When our country has sufficient conditions to implement euthanasia, we can first pilot it on a small scale, explore enough experience, and then combine it with foreign practices to gradually improve relevant laws and gradually promote it. This process is definitely lengthy, and there will be countless controversies in between. But after all, it involves life and death, and no amount of caution can be excessive.

REFERENCES

- [1] Jiang Zichao. The basis for the crime of euthanasia - the reasons for illegal obstruction under the social class system [J]. *Medical and Legal Science*, 2023,15 (01): 97-104.
- [2] Wang Zhiyao. Research on Euthanasia from the Perspective of Criminal Law [J]. *China Health Legal System*, 2022, 30 (05): 67-70. DOI: 10.19752/j.cnki.1004-6607.2022.05.013.
- [3] Zhang Yutang. Do we have the right to die? A Legal Reflection on the Euthanasia Debate [J]. *Law*, 2001 (10): 8-15.