Studies and Legislation on Euthanasia in China

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Abstract. In China, there is no legislation on euthanasia, but this does not mean that there is no problem of euthanasia in Chinese society. On the contrary, there are often reports of euthanasia, even criminal cases, from various media. However, it is necessary to explain that the lagging of the legislation of euthanasia is not the inaction of the legislator, but the complex character of the problem, because it involves the determination of the concept, the puzzle of ethics, the complexity of the legislation, and the diversity of concrete events in reality. Through combing the above problems and reviewing the previous legislative practice, I hope that some ideas and help can be provided to some extent for the future legislation and practice.

Introduction

All At present, the nature of euthanasia is not specified in the laws of most Asian countries and regions. Only a few developed ones specify passive euthanasia through legislation or judicial precedents. In the following paragraphs, euthanasia in Japan, Korea and Chinese Taipei is overviewed. The first case of euthanasia in China attracted wide academic attention, and sparked a heated social debate. In the following paragraphs, euthanasia on Chinese Mainland is summarized in several aspects.

Definition and Classification of Euthanasia on Chinese Mainland

The first case of euthanasia in China attracted wide academic attention, and sparked a heated social debate. In the following paragraphs, euthanasia on Chinese Mainland is summarized in several aspects.

On Chinese mainland, euthanasia is meaning “death with peace and happiness”. The early researchers attached importance to the part of “peace and happiness”, believing that euthanasia was only to die with peace and happiness without any intent of killing. Euthanasia at that time was not defined, interpreted, or understood as “painless killing” or “mercy killing”[1]. It meant to scientifically adjust the dying process of those who ask for pain termination, so that their pain can be relieved or removed, and their death can be humanely[2].

Some Chinese scholars argue that passive euthanasia should not be classified into euthanasia and should be excluded. For instance, Zhu Shina et al argued that passive euthanasia referred to the termination of treatment and life support, rather than measures to relieve pain. It only led to “natural death, rather than “death with peace and happiness”, as this kind of death was not necessarily painless. Therefore, the so-called passive euthanasia, contradicting the definition of euthanasia, was more like an end-of-life disposal in clinical practice[3]. Dr. Zhai Xiaomei argued that at least from the perspectives of the direct cause-and-effect relationship between the doctor’s intention/action and death, as well as the type of death, there were differences between
euthanasia and the termination of life support. Therefore, the classification of passive euthanasia should be abandoned[4]. Additionally, now in China, it is usually deemed disrespectful for life to terminate those ineffective measures of life support in the name of euthanasia. The termination may worsen social controversy on euthanasia and moral doubt on the end to life support. Therefore, it can cause unnecessary trouble to the patients and their relatives, and make it more difficult to win legal and public support. To avoid the confusion caused by the unclear definition and misuse, some Chinese scholars believe that the statement of “passive euthanasia” should be abandoned[5]. But for the sake of a clear discussion, passive euthanasia is still referred to in this paper.

Ethics Concerning Euthanasia

Chinese scholars have been heatedly debating on the legalization of euthanasia, but there has been no clear social consensus.

Opponents of legalizing euthanasia argue that because life is sacred, a patient has no right to decide on his/her own death. The specific reasons are as follows: first, the security of life is the fundamental principle of humanitarianism; second, it is the medical staff’s professional ethics to heal the wounded and rescue the dying; thirdly, it does no good to medical developments to leave the incurable untreated; fourthly, euthanasia reflects a negative attitude toward life; fifthly, euthanasia gives rise to undesirable social consequences.

On the contrary, proponents of legalizing euthanasia argue that the principle of benefiting the patient must be obeyed. To be in the best interest of the patient is the NO.1 principle, which lays the foundation for any decision. It is the moral principle that dominates. In the ethical argumentation by supporters for euthanasia, the moral reason why a terminally ill patient is allowed euthanasia is the consideration of his/her interests and peace, as well as the respect for his/her will and value of life, rather than the consideration of benefiting other people and society. Although leading to the patient’s death, euthanasia is in the interest of him/her (on the condition that the patient asks to be euthanized). This exactly explains why euthanasia is ethically supported[6]. Proponents of euthanasia also argue that: first, euthanasia is in line with contemporary humanitarianism; second, euthanasia demonstrates the respect for the patient’s will; thirdly, euthanasia does not hinder modern medical developments; fourthly, euthanasia does not negate social responsibility; fifthly, euthanasia is of value in modern society[7].

At present, a clear consensus on ethics concerning euthanasia has not been reached in China. Han Yuehong et al argued that in the ethical argumentation of euthanasia, there existed “a paradox of dignity”: whether in favor of or against euthanasia, they all defend their stance on the basis of dignity; it was indeed a paradox that the same ethical reason resulted in two distinct ethical claims. From the perspective of quality of life and personal dignity, proponents of euthanasia oppose the belief that life is sacred. Based on the principle of safeguarding the patient’s right to disposal of life, euthanasia is defined as an act to defend the dignity of human beings, which is surely of morality. But opponents of euthanasia argue that the dignity of humans is premised on the dignity of human life, and euthanasia violates the dignity of life. To forbid euthanasia is to safeguard life and defend its dignity, and life-safeguarding is the permanent standard for dignity in the life-sacred belief[8].
Legislation Concerning Euthanasia

Decriminalization of Euthanasia

It is noteworthy that there are differences between decriminalization of euthanasia and legalization of euthanasia. Most of Chinese scholars believe in the crimelessness of euthanasia or its de facto decriminalization.

Some argue that the essential feature of a crime is that it causes serious social harm. Consisting of both subjective evil intent and objective detriment, the harm is the infringement of legal interests. But for a dying patient with an incurable disease, death is inevitable, and the life-prolonging treatment is merely a way to postpone it. And euthanasia terminates the patient’s prolonged pain, and the extra burden of the medical staff and the relatives. It surely does no harm to society[9]. With different subjects and objects, euthanasia and murder are also distinct from each other in nature: euthanasia does no harm to society, while murder does. Therefore, euthanasia is neither intentional murder nor any other crime. Without any harm to society, euthanasia shall be decriminalized[10].

However, Liang Genlin argued that it was not ready for China to entirely decriminalize or even legalize euthanasia, and it was inappropriate to officially and entirely decriminalize euthanasia in the criminal legalization or in legalization. But he claimed that some specific cases of euthanasia could be de facto decriminalized under certain conditions by the interpretations of application of the criminal law in the judicial review[11].

Legalization of Euthanasia

Legalization of euthanasia has been heatedly debated in China’s academia.

Proponents argue that if the systems on subject, object, standard and purpose are established, euthanasia shall be legalized. The legality of euthanasia includes two aspects: first, euthanasia is justified, which shall be allowed; second, euthanasia is related to law, which shall be specified by it. Just as the importance of freedom of speech for an individual leads to the specific validation by law, the right to euthanasia also is vital to the patient and needs to be validated by law[12].

Opponents of legalizing euthanasia argue that the right to euthanasia will be at the risk of being abused. In reality, some relatives may kill the patient in the name of euthanasia just to shake off the burden. This is also one of the reasons why it is difficult to legalize euthanasia in China.

But proponents of legalizing euthanasia argue that justifiable defense and urgent danger prevention are also at the risk of being abused or falsely used, but they’re still legalized in all countries[13]. Any crime occurs for an internal reason, and it is also true of murder by euthanasia. Euthanasia is not the fundamental reason for murder, but an external condition that can be taken advantage of. If a criminal is internally driven by the motive of murder, he/she can seek and use various external conditions and opportunities to commit the crime. It cannot be prevented by prohibiting euthanasia[14].

Against legalizing euthanasia, Liang Genlin argued that euthanasia was not ready to be legalized, although it was justifiable, humanitarian, economical and scientific. He claimed that according to the act of euthanasia in Netherlands, the euthanasia administered by the doctor under certain conditions was legally not punishable, but this didn’t mean that euthanasia was formally recognized and supported by law. Liang thought that euthanasia was not legalized in Netherlands, but only exonerated under certain conditions. In his opinion, the act validated the
shift from unofficial de facto decriminalization of specific cases to general official decriminalization by law. However, decriminalization does not equal legalization. The definition of legalization is to legally recognize and protect the acts that used to be negated or not supported by law through formal legislative procedures. Under the system of statutory law, legalization on certain acts and objects entails legalized legislation and changes in official judgment and policy. Therefore, legalization mirrors the formal adjustment and innovation of the system. After legalized, the acts and objects are officially recognized and protected by law. Their legalization reflects the formal, affirmative and positive evaluation and judgment of both criminal law and the authorities. There haven’t been appropriate moral, ethical, medical, legal and social conditions for the “legal decriminalization” of euthanasia in China, so it is hugely risky to legally decriminalize euthanasia in a careless and hasty manner.

Also Against legalizing euthanasia, Han Dayuan argued that based on constitutional values, the sacredness of life could not be defied by euthanasia. According to modern constitutionalism, the decision on the right to life is not exercised by an individual. Besides, a basic right is a reflection of the values pursued by social communities, so in line of the objective value order, an individual is not entitled to terminate his/her own life. To conclude, human life is the most important social value, and the basic unit of a social community; disposal of one’s own life not only is a citizen’s personal choice, but also impacts social choices on values. In this sense, an individual does not have the legal right to commit suicide or the right to euthanasia.

Judicial Practice and Legislative Developments Concerning Euthanasia

In its current legislation, China has neither approved nor negated euthanasia. Influenced by various theories, China’s local courts made different rulings on the act of euthanasia at the request of a terminally ill patient.

Wang Mingcheng and Pu Liansheng, two defendants in the first case of euthanasia in China, were acquitted by the court of first instance, and the court of second instance affirmed the judgment. Part of the verdict by the court of first instance read, “Wang Mingcheng, the defendant, repeatedly asked the attending physician Pu Liansheng to euthanize his incurable mother Xia Suwen by injecting drugs. Although Wang intentionally deprived his mother of the right to life, his act was not of a serious nature and caused little harm, not constituting a crime. Repeatedly asked by Wang, several doctors and Pu Liansheng, the other defendant, injected Xia with some death-facilitating drugs, and Pu accelerated Xia’s death. Although Pu intentionally deprived Xia of the life to life, his act was not of a serious nature and caused little harm, not constituting a crime.” In the euthanasia cases that ensued, some courts, in accordance with the 232nd article of the criminal law, ruled that although guilty of murder, the defendants were sentenced to probation, which indicated China’s stance of light punishment in these cases.

Legislative Developments Concerning Euthanasia

In July, 1988 and October, 1994, Shanghai saw two national symposiums on euthanasia, in which, relevant medicine, social issues, ethics and legislation were discussed. Besides, some deputies repeatedly submitted the legislative proposal on euthanasia to the National People’s Congress (NPC is the organ of supreme power and top legislative body in China). Early in 1989, the General Office of the NPC Standing Committee submitted a report on the handling of
deputies’ advice to the sixth session of the seventh NPC standing committee. According to the report, there had been 11 deputies proposing to make laws on “euthanasia”; after much deliberation, the Ministry of Health believed that euthanasia was a kind of death with special meanings, which was complicated and sensitive, concerning medicine, law, society and ethnics; and although it was not ready for China to legalize euthanasia, relevant preparations like “death education” should be carried out in a timely and vigorous manner. In March, 1994, 32 deputies from the Guangdong delegation jointly requested a legislative proposal on euthanasia. The NPC Legislative Affairs Commission replied that the legislation on euthanasia concerned law, medicine, ethics and other aspects; as there hadn’t been a consensus on euthanasia around the world, most countries adopted a prudent policy toward it; the department concerned in China would be urged to attach more importance to euthanasia. In March, 1995 and March, 1996, there were some deputies who submitted euthanasia proposals to the third and fourth sessions of the eighth NPC. In March, 1996, the Shanghai delegation presented a proposal in the fourth session of the eighth NPC, calling for the NPC to allow Shanghai to make local euthanasia legislation[15].

Summary
When a society is developed enough in morality, humanitarianism, rule of law, medicine and welfare, it is necessary and possible to legally decriminalize or even legalize euthanasia. If social conditions are insufficient, some specific cases of euthanasia, according to Liang Gensheng, can be de facto decriminalized conditionally in the judicial review. By accumulating practical experience and social support, the society will become more and more euthanasia-friendly, so that legal decriminalization or even legalization of euthanasia will be possible in the future when there are sufficient conditions[16]. Additionally, before there is an ideal solution, euthanasia can be temporarily placed in the grey zone between “legality” and “illegality” or “law” and “morals”.

References


