

Exploring the legalisation of euthanasia in China

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ABSTRACT

The legalisation of euthanasia has triggered extensive discussions in China, especially in the field of end-of-life care, where the contradiction between the law and the real needs is highlighted. From the perspectives of right to life, death with dignity and criminal law, the legalisation of euthanasia has its theoretical basis. However, the legalisation of euthanasia also faces challenges such as legal risks, ethical disputes and medical abuse. It is crucial to comprehensively assess the feasibility of its implementation and potential challenges, and to conduct in-depth reflection on the current path of euthanasia legalisation in China. The aim is to provide theoretical support and practical reference for policy formulation and legal improvement, and to promote the harmony between medical ethics and the legal system while safeguarding the dignity of individuals and the rights and interests of life, as well as to promote the society to find a balance between respecting life and fulfilling reasonable needs.

KEYWORDS

Euthanasia; Legalisation; right to life

1 Current Situation of Legalisation of Euthanasia in China

1.1 Legislative and Judicial Status

In 1988, at the 7th National People's Congress, Yan Renying, a deputy to the National People's Congress, wrote in a motion that instead of letting some terminally ill patients you suffer painfully, it would be better to let them legally end their lives peacefully. There are data proving that since 1998, almost every year there are bills on euthanasia legislation appeared in the meeting of the National People's Congress^[1]. 1986, the case of Hanzhong in Shaanxi Province made the term of euthanasia break into the public's field of vision once again, but there was no characterisation of euthanasia in the case. In 2003, Wang Mingcheng, the defendant in the first case, requested euthanasia because of his terminal stomach cancer, but no one dared to carry out the request because of the legal gaps. China is a country of statutory law, and so far there is no relevant provision on euthanasia in the law.

In the case of Pu Liansheng and Wang Mingcheng, although they were eventually found not guilty of the offence of intentional homicide, the defendants were acquitted of the charge of intentional homicide for reasons of law and reason. In the case of intentional homicide Feng Gang, the court took into account the defendant because of the special difficulties of life, the victim suffered pain and incurable disease, for the purpose of helping the victim to alleviate the pain, non-intentional homicide, subjective malignancy and social harm are other kinds of homicide is obviously lighter, according to the law applies to the suspended sentence.

This shows that our judicial practice of 'euthanasia' behaviour because there is no legal basis for qualifying as a criminal offence, but that such acts of social harm is small, so as to take a very lenient attitude to punishment. It can be seen that China's judicial practice holds a negative attitude towards positive euthanasia and a tacit attitude towards negative euthanasia. For positive euthanasia behaviour, if it meets the constitutive elements of intentional homicide, most courts will find it to be intentional homicide, only to be lenient in sentencing. As judicial officers cannot rely on, they tend to handle euthanasia cases with the mentality of seeking stability, which makes the results of most cases too rigid and conservative, or even a blanket conviction of intentional homicide and sentencing, which produces unfair adjudication results^[2].

1.2 Acceptance of euthanasia legality among the public

In 2009, a survey of 777 people on euthanasia was conducted in Beijing. In the negative euthanasia survey, 61.6% of the respondents were in favour of negative euthanasia, 29.4% of the respondents did not support negative euthanasia, and 9.0% of them held a neutral attitude towards negative euthanasia; in the positive euthanasia survey, 79.2% of the respondents were in favour of euthanasia, and those who were not in favour of euthanasia accounted for 12.1% of the respondents, and 8.7% of the respondents held a neutral attitude towards it^[3].

A paper published in the Journal of Population in 2021 showed that 94.2% of respondents had heard of euthanasia, 55.2% of respondents were in favour of euthanasia, 44.8% were not in favour of euthanasia (including opposition and neutrality), with 7.1% of respondents explicitly opposing it, and 37.7% of respondents holding a neutral attitude^[4].

It can be seen that more people have learned about euthanasia, the proportion of the public who are clearly against or

clearly support euthanasia has decreased, and the proportion of those who hold a neutral attitude has increased, in general, the people of our country are cautious about the legalisation of euthanasia, and more people are in a wait-and-see state.

2 The theoretical basis for the legalisation of euthanasia in China

2.1 Providing legal support for euthanasia from the perspective of right to life

First of all, the right to life should include the domination of citizens over the interests of life; the right to life in the Universal Declaration of right to life in 1948 is a kind of right to life, absolute right, i.e., the right to dominate one's own interests of life excluding the interference of others^[5]. Liu Guifang, a deputy to the National People's Congress, believes that euthanasia recognises the patient's right to choose to die, which is an advancement of civilisation. Life is a citizen's right, so death should also be a citizen's right, and should begin at birth and end in death. Secondly, the implementation of euthanasia is the embodiment of the value of the right to freedom^[6]. Citizens have the freedom to enjoy their rights and exercise them, but they should also have the freedom to give up their rights. The act of giving up life is not prohibited by law, and the choice to give up one's life is a citizen's freedom. Freedom is relative, citizens should not be prohibited from choosing to die in a way that does not endanger the interests of the state, collective interests and the interests of others. Finally, Article 38 of China's Constitution provides that the human dignity of citizens of the People's Republic of China is inviolable. It is prohibited to insult, defame or falsely accuse citizens by any means. Human dignity refers to a citizen's honour, self-respect and the right to be treated with a minimum of respect by society and others. Human dignity gives people the right to choose, and this choice includes living and dying^[7]. In the case of euthanasia, which should be done out of the voluntary choice of the patient, the choice to die with dignity is both a citizen's right and a respect for his or her dignity as a human being. Since we are able to choose how we want to live our lives within the limits of our freedom under the law, why shouldn't we be able to choose how we want to end our lives? The point of euthanasia is not to end life, but to alleviate the suffering of the patient so that he or she can leave with dignity and more honour.

2.2 Analysing euthanasia from the perspective of criminal law

Using 'euthanasia' and 'criminal case' as keywords, a search on the China Judicial Instruments Network revealed 15 cases, 5 of which were related to euthanasia. Four cases were convicted of intentional homicide and one case was convicted of arson. Euthanasia as a way to end the life of another person is basically regarded as intentional homicide in China's judicial practice. However, euthanasia does not meet the subjective elements of intentional homicide. Although euthanasia objectively kills and violates the lives of others, subjectively it does not have the intention to deprive others of their lives, but is based on the patient's commission and the purpose of alleviating the patient's pain. Such an act is not socially dangerous. If another person clearly demonstrates the intention to give up his or her life, it is sufficient to show that the legal interest itself should not be the exclusive domain protected^[8]. Criminal law should not intervene in the case of a dying patient who voluntarily gives up his or her life through euthanasia. This point of view is also one of the reasons why the first euthanasia case in China was acquitted, which argued that the defendant was already on the verge of death, and the conviction and sentence did not have any practical significance. Thus, euthanasia does not meet the constitutive elements of intentional homicide, at the same time on the verge of death voluntarily give up the life of the patient's rights and interests of life should not be criminal law to intervene, so it seems, for the implementation of euthanasia are taken across the board for intentional homicide is not appropriate behaviour.

3 The risks and challenges of the legalisation of euthanasia in China

3.1 Euthanasia and traditional thinking collision

In our country, euthanasia mainly refers to the patient in modern medicine is diagnosed as suffering from incurable diseases, in unbearable disease pain and suffering, death has been foreseeable state, the physician out of consideration for the patient's point of view, at the request of the patient side, negatively maintaining or withdrawing the patient's life-supporting measures, or the use of medical means of early termination of the patient's life of the way of death^[9]. Traditional ideas such as better to die than to live have been passed down from generation to generation and have been engraved in the genes of the Chinese people. Since even the damage of hair is regarded as an unfilial and immoral act, let alone the act of going to deprive others of their lives! The Confucian concept of life and death embraces the idea of reverence for life. Under the influence of China's traditional thinking, although euthanasia is for the purpose of alleviating pain so that the patient can rest in peace, but its way is cruel and achieved at the cost of ending life. Therefore, to people with the idea of reverence for life, there is no doubt that this method is generally unacceptable. At the same time,

Confucianism attaches great importance to filial piety, and when the elders are ill, the younger ones should show filial piety before the sick bed. Under the influence of this kind of thinking, comparing euthanasia with non-support, the former is more likely to be morally condemned.

3.2 Euthanasia may hinder medical development

Firstly, it is contrary to the traditional thinking. It is a doctor's vocation to save people's lives, and euthanasia is contrary to this. Traditional medical ethics require doctors to do their best to save patients' lives. Secondly, euthanasia may provide an excuse for medical personnel to avoid medical slackness, medical negligence or even abuse of medical rights, which may undermine the trust between doctors and patients, and thus aggravate the conflicts between doctors and patients. Finally, is not conducive to the development of medical progress, the patient suffers from the disease once identified as existing medical conditions can not be cured, the choice of euthanasia, then the disease will face the loss of the treatment of the disease, resulting in the disease can not be overcome, so that the development of medical stagnation.

3.3 Abuse of euthanasia

One of the reasons for the opposition to euthanasia is the fear that the legalisation of euthanasia will result in the death of innocent people. Euthanasia gives doctors certain rights, and China's doctor-patient relationship itself is in a tense state, the trust between doctors and patients is not enough to make each other believe that they do not have selfishness, which may make the doctor-patient care evolve into more tense. At the same time it is also very likely to give lawless elements to provide a legal path to murder.

4 Reflection on the legalisation of euthanasia in China

4.1 Establish a correct concept of life and death

Some scholars believe that the reconstruction of family ethics on the basis of traditional thought, and actively abandon the old concepts and ideas that affect the development of modern harmony^[10]. First of all, reverence for life is valuable, but we also need to learn to face death correctly and establish a correct view of life and death. Death is a part of life and is inevitable for everyone. Facing up to the reality of death helps us to better cherish life and experience it more fully. Secondly, in China, there is also the idea that 'there is no filial son in front of the bed of the chronically ill', which also indicates that there are patients who are not only suffering from pain but also have no one to take care of them. Euthanasia can provide protection for this group of people, and can greatly improve the quality of life and dignity of patients. Finally, the culture of filial piety in China should emphasise that parents should be respected and cared for both materially and spiritually. Apart from providing material protection for parents, we should also provide spiritual care for them. The implementation of euthanasia can greatly improve the quality of life of dying patients, alleviate their suffering and enable them to leave in peace. Respecting the wishes of parents is not a kind of filial piety.

4.2 Improving the medical system and easing the conflicts between doctors and patients

The implementation of euthanasia requires extremely rich medical resources and a perfect social security system. First of all, we should improve the medical insurance system, to provide economic support for citizens to exercise their rights. At the same time, it is also necessary to promote China's medical and health care level and improve medical technology. Secondly, the trust between doctors and patients should be strengthened to enhance the patient's understanding of the work of medical care, increase the understanding between doctors and patients, so as to ease the contradiction between doctors and patients. Finally, euthanasia will not prevent the development of medicine, the implementation of euthanasia can maximise the use of medical resources, the development of medicine is not all to the human body as an experiment.

4.3 Improve the euthanasia implementation system

First of all, to clarify the conditions for the application of euthanasia, such as to whom to propose, by whom to accept, by whom to review, by whom to record and acceptance and review time, specific to who can apply for such as strictly limited to the person himself or herself, if he or she has been unable to act in person can be ensured that his or her true meaning by recording video. The applicant should have the conditions to carry out euthanasia should be strictly limited, such as near death, the type of disease that can not be cured by existing medical treatment, the level of suffering. The subject of the euthanasia should be qualified as a medical doctor and should pass a professional as well as an ethical examination to become a subject of the euthanasia. The means of euthanasia should be generally accepted by the public

and strictly limited by laws and regulations. Secondly, the supervision mechanism of euthanasia should be improved, such as the establishment of a special supervisory organ and strict supervision by a government organ trusted by the public. To improve the supervision process, the supervisory organ should be involved in the whole process of euthanasia review, execution and filing. Finally, the establishment of accountability system, for the violation of the operation of the relevant provisions of the criminal law or civil law to pursue the legal responsibility of the perpetrators.

5 Conclusion

The legalisation of euthanasia is in line with the world trend, China's current law does not qualify it, the judicial practice of euthanasia to take a cautious attitude to identify it as a crime, but from the point of view of criminal law, it does not have the subjective elements of the crime. The legalisation of euthanasia is in conflict with China's traditional thinking, and its complexity makes the legalisation of euthanasia in judicial practice still a long way to go. From the perspective of safeguarding and respecting right to life, firstly, the implementation of euthanasia can improve the quality of life, which is the respect for the right to life; secondly, the implementation of euthanasia is the value embodiment of the right to freedom, and euthanasia provides people with a free choice to end their lives; finally, the legalisation of euthanasia embodies the respect of citizens' human dignity, and safeguards the dignity of human beings in the last stage of life. We should carefully examine the rationality and feasibility of euthanasia on the basis of respect for life, and think of solutions to the risks and challenges that may arise.

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