

## Research Article

### Euthanasia in Iranian Criminal System

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**Abstract:** Mercy killing, euthanasia or killing a person who is terminally ill is not an allowable murder and all kinds of direct killings are in a sense of willful murder. Indirect mercy killing is considered as assisted suicide. According to Iranian criminal system, mercy killing is not allowable because human is a creature superior to an animal and will experience the result of their acts in the eternal world. A lot of efforts are done in many countries for the legalization of euthanasia or mercy killing.

**Keywords:** Brain death, euthanasia, killing of the character, mercy killing, organ transplantation, peaceful death, suicide

#### INTRODUCTION

Murder is one of crimes against humanity that has been condemned in various religions and they have denounced it. Punishment is prescribed for it in the Torah, "Jewish religion" and in the Bible "Christian" and it is an ugly and bad act. Euthanasia or mercy killing is a phenomenon that human community will face it whether intentionally or not. It is one of categories studying in medical rights and is of considerable importance. Information obtained by medical community particularly legal procedure in Iran has been translated into one of important goals of this legal discipline but the point is that mercy killing is to some extent distinctive following willful murder because the motivation of the offender is based on mercy. On the other words, in euthanasia, the person commits a murder based on mercy so the patient who is terminally ill will die and does not feel pain anymore and it is implied that the action taken by the doctor does not contrast with the medical mission and not only the perpetrator does not commit a crime but also the rescues his patient from the pain. This research is aimed to determine the meaning and place of euthanasia and mercy killing in Iranian criminal system.

#### MATERIALS AND METHODS

**Euthanasia definition:** It has been derived from a Greek term meaning good and comfortable and the word euthanasia has also been derived from Thanatan, the goddess of death in Greece and it means good death and is referred to a painless action taken by a patient or the person who is responsible for a terminally ill patient that results in death of the patient. Euthanasia includes end life people meaning terminally ill people who suffer from severe pains and heavy costs and expenses

are imposed on them and their relatives due to consumption of medicines and hospitalization (Eslamitabar and Shahriar, 2007). This word was firstly introduced in medicine by Francis Bacon who defined the vessel without pain. According to American medical judicial council, euthanasia is act of dying with a painless and quick method based on mercy to a patient who is suffering from a terminally ill (Ashrafi, 1988).

**Euthanasia history:** Historically euthanasia has a long history and voluntary death was occurred in Greece for the first time and was condemned by Socrates. Primitive communities and tribes had different opinions for treating terminally ill patients. There were two kinds of groups regarding these patients in primitive communities. Some of them accepted patients and behaved them kindly but the other one killed the patient and ate him (Taheri, 1991). Attempts to legalize euthanasia in Britain began in 1935 when the Euthanasia Society was founded (the same, 1991:117). Euthanasia association was established in America in 1938. Special circumstances of euthanasia are permitted in countries such as Netherlands, Switzerland, Belgium, France, Austria and Oregon State in America but its legalization is still under discussion due (Etemad Journal, February, 2007).

**Different kinds of euthanasia:** Euthanasia is divided into different kinds as follows:

- Voluntary active euthanasia
- Non voluntary active euthanasia
- Mandatory active euthanasia
- Voluntary passive euthanasia
- Non voluntary passive euthanasia

Active euthanasia causes death of a person suffering from pains by therapeutic and mechanical devices but passive euthanasia is to accelerate patient's death by stopping taking him medicine meaning let the illness follows its natural course (Ashrafi, 1988). Voluntary active euthanasia is to inject drugs intentionally or other actions that result in patient's death. It is done based on request of the patient with his fully conscious satisfaction. The main point is that the goal of both physician and the patient is to put an end to patient's life (Ashrafi, 1988). In voluntary active euthanasia, two conditions are necessary:

- Decision of the patient
- Intolerable pain without life expectation

Non voluntary active euthanasia is to inject drugs intentionally or other actions that result in patient's death. But in this case the patient is not qualified to make decision and mentally cannot ask this action (Ashrafi, 1988). Voluntary active euthanasia is to inject drugs intentionally or other actions that result in patient's death. In this case the patient is qualified to make decision and does not ask explicitly this action (Eslamitabar and Shahriar, 2007). In voluntary passive euthanasia, the patient rejects his treatment in order to accelerate his death. On the other hand, the patient denies his treatment from the beginning. It is applied in patients who are in a chronic and severe situation and physicians are sure that he cannot be treated so they stop treatment and do not give food or medicine to the patient. If the patient is affected by an infection, no treatment will be started for him. Separation of a patient with brain death from supportive devices and machines is considered as non voluntary passive euthanasia (Eslamitabar and Shahriar, 2007). Euthanasia is divided into direct and indirect ones. In indirect euthanasia analgesics or drugs for pain reduction are administered but it results in respiratory arrest of the patient. Another indirect euthanasia is when the physician gives necessary information, comments and guides to the patient to put an end to his life or he gives the patient medicines and prepares other measures for him in case of he knows that the patient will use them to commit suicide (Mosavi, 1993). What are common in all euthanasia are its intentionality, easiness and painlessness and the keyword is intentionality meaning if death of patient is willful, it is not considered as euthanasia. If euthanasia is done by the physician, it will be considered as a murder and if it is done by the patient, it will be accounted as suicide and if it is done by help of the physician and agreement of the patient, it is called assisted suicide but in every euthanasia, the difference is behavior of the physician (Mosavi, 1993). The most important reasoning in favor of euthanasia is severe pain tolerated by terminally ill patients. Opponents of euthanasia believe that if euthanasia is legalized, the potential for abusing it will be in hands of

health care personnel. Realizing euthanasia in the society where it has been legalized makes other steps easy. It is called slippery slope. One of opponents of euthanasia is Bill Kamiyar, law professor of Michigan University, presented a triple reasoning against euthanasia:

- Abuse of euthanasia by health care givers
- Slippery slope
- Risk of fault and mistake

On the contrary, supporters of euthanasia believe that although risk of abusing is certainly existed, it is not a threat for committing euthanasia because firstly formulation of accurate laws against euthanasia prevents it and secondly committing euthanasia in certain situations and conditions avoids any ambiguities (Mosavi, 1993).

#### **The place of euthanasia in Iranian criminal laws:**

Euthanasia has not been outlined explicitly in Islamic laws of Iran but there are similar cases in the law. In Islam, manslaughter has been condemned strictly and is followed by retaliation for manslaughter but there are some exceptions:

According to remark 3, article 259 of Islamic criminal law, when manslaughter and battery are occurred due to carelessness, lack of skill, lack of considering to related regulation so that if the regulations had been considered, nothing would be happened, the battery or manslaughter will be quasi-intentional.

Or according to article 268 of Islamic criminal law if the victim forgives the murderer before his death, the right of retaliation will be canceled and the parents of the victim cannot request for retaliation for manslaughter. Since one of criminal issues is to obtain the intention of offender and on the other hand, a compassionate motivation and merciful intention for replying to the request of the patient in order to release him from severe pain by dying are cases of penalty mitigation so mercy killing is one of forbidden murders in Iran even the allowance of the opposed does not cause a permissible crime and has no effect on guilty offender (unless in cases that satisfaction causes termination of one of organs of crime occurrence).

According to article 612 of Islamic criminal law, if a person commits a murder and has no claimant or has claimants but they forgive the offender and if his acted crime does not disturb security and regulation of the society, the offender will be imprisoned from three to ten years. Therefore euthanasia in Iranian law should be studied based on duty-based and situational judgments:

- Duty-based judgment implies permission, meaning is this murder allowable or not?  
According to opinions of jurisprudents, any act that puts an end to human's life is forbidden (by

religion) and included all general acceptations of manslaughter and permission of the killed person does not change these general acceptations and their allocations (Toosi, 1986).

- **Situational judgment:** It means retaliation and blood-money. Are retaliation and blood-money terminated by permission of the killed person? This issue has less been addressed but there is a similar issue in juristic references that is not different from this issue regarding its criterion so they both can be applied for one issue. Thus if a person tells the other one: if you do not kill me I will kill you: is it allowable to kill her/him? It is not allowable in duty-based judgment although it has been abhorred but regarding situational judgment meaning proving the right of retaliation and blood-money for parents of the killed, there are two theories: the first one is based on termination of retaliation and blood-money. Some of jurists believe that retaliation and blood money are terminated due to satisfaction of the killed to his/her death and legatee cannot ask for this right (Horr-e-Amoli, 2011, in lunar year).

Shahid Sanni believed that if we do not believe in scale proof, there are two theories for proof of blood money whether the blood money belongs to the legatee after death of the killed or it belongs to the killed until the last moment of his/her life then it will be transmitted to the legatee. Therefore the murderer is responsible for paying blood money and permission of the killed for murdering cannot terminate the right of blood money. In the second theory, the murderer is not responsible for paying blood money because the killed has terminated it (Shahid Sanni, 1403 in lunar year) so abhorrence does not affect sin of murdering and retaliation proofs and there is no difference between abhorrent murderer and his independency however the judgment is the same (Motahari, 2008). According to the articles mentioned in Iran, euthanasia is considered as a willful murder and there is no exception in it and it is derived from religious doctrines of Muslims and no attempts have been still done widely for legalization of euthanasia in Iran and the legislator has not determined any article in this case.

### CONCLUSION

Killing sick people is being increased in the present century and risks of its legalization should be addressed

because it threatens the world. In Iranian criminal system all mercy killings are considered as intentional murder including active and passive euthanasia or euthanasia with contest of patient and his/her parents and even by the physician and retaliation of manslaughter is proved. If the aim of euthanasia is to mitigate pain of diseases, killing the patient is not the only way of pain reduction rather different motifs of the patient for euthanasia in reduction of pain should be removed by using different therapeutic approaches. As a result, killing patient does not have a moral and reasonable justification. If the legislator allows mercy killing, some offenders abuse this situation and this crime will be spread among those suffering from terminally ill. In addition, the legislator does not allow organ transplantation of terminally or with brain death unless its necessity is proved. As a result, paying attention to euthanasia not being compassionate to the patient and ignoring him/her is a kind of nonexistence of compassion to him because human body is valuable and it is necessary to protect from it. What is recommended as a strategy is that if euthanasia is outlined in Iran, studies should be done in scientific, technical, social and personal fields. At first, the patient should be informed about his/her status. Second, the disease cannot be treated and its pain is intolerable and the patient takes the lead for his request freely, explicitly and in written form.

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