

Self-Inflicted Death in Criminal Law of Iran

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Abstract

Self-inflicted or sweet death is a kind of death occurred in regard with terminal and incurable illnesses. In medical terms, it refers to any intentional act or omission, whether at the instance of the ill person or not, to end the life of the permanently ill persons, avoiding them from suffering more pain. In Islamic and traditional societies, Suicide has been considered as sin and all human and divine doctrines have discouraged it because it is contrary to the fundamental values, human dignity and social order. Hence, suicide is among the forbidden conduct and is worthy of punishment. To put an end to one's own life is considered by all Monotheistic Religions as a mortal sin. Throughout the governance of different secular or Islamic thoughts, the law of Iran has rejected the self-inflicted death and has made the definite cure of patient as the main duty of physicians and has considered self-inflicted death as a crime. The present paper aims at recognizing and criticizing that part of Iran Criminal Law related to the self-inflicted death. This is an analytical study.

Keywords: self-inflicted death, terminal illness, suicide, homicide for the sake of pity, right of death

1. Introduction

Human dignity and life shape the fundamental values of social order. To determine and announce the actual examples of forbidden conducts breach of which are worthy of punishment is the duty Iran Criminal Law. Therefore, to put an end to one's life and to provide human with a sweet and placid death is a duty, the realization of which is upon the Criminal Law (Goldouzian, 2009).

Despite the significant improvements in the medical knowledge, incurability of some diseases and prolongation of a painful life raise the question that whether a human has the same right of death as that of life (Hemati, 2012). Brain death is a kind of homicide for pity's sake (Sarikhani, 2011). Does the permanently ill person have the right to request for sweet death, according to the Principle of Autonomy? (Moghadami, 2005) then is the intentional homicide for relieving the permanently ill persons from terminal illness shameful and hideous? (Hosseini Suraki, 2009)

Like most other countries, Law of Iran rejects the obedience to self-inflicted death (Euthanasia), reminding this slogan that "Thou shalt not kill". The legislator also emphasizes the necessity of humanizing death and one's dominance on his/her last moments of life. In addition, the duty of physician towards the patient is not limited to patient's definite cure; rather using sedatives (tranquilizers) (if necessary) is a part of people's right.

Regarding the research subject, there are many different views of the Criminal Law of Iran, which have some basic differences (Tafazolli, 2004). Believing this fact that the death and life of all humans is in God's will (God is Lord over life and death) avoids us from making the Euthanasia free (Najafi, 1989). Additionally, regardless of religious principles or new interpretations, considering patients and their opinions with their acute conditions may actually lead to the solution of eliminating the punishment for euthanasia. The existent paradox needs the practical attempts and providing new and appropriate ideas. This paper aims to mention some of the difficulties regarding the sweet or self-inflicted death in the Criminal Law of Iran, and then to analyze them. Adopting library research method, this paper seeks new views on the subject matter by using journals, books and internet data.

2. Attorney of Defending the Right of Death

70 years old Swiss lawyer, Ludwing Minelli is one of the advocates of self-inflicted death and a member of the EXIT Society for decades. In 1998, he founded the institution DIGNITAS in Zurich with the purpose of defending the right of

those foreigners who want to relieve from the unbearable pain of terminal illnesses. So far, more than 2500 persons from different countries have taken the membership of this institution. To accept this membership means that they can use the facilities for placid and self-inflicted death.

For this purpose, an apartment with the two bedroom and a black panel on which the word "DIGNITAS" is written is designed. Each member who is the volunteer to have a Journey to the latter end, after arriving Zurich and meeting Mr. Minelli offers all documents and radiophotographs related to the medical examinations to a Swiss Physician. If the physician confirms that the volunteer suffers a terminal illness, then a certain date (day and hour) is determined to execute it.

Swiss Statesmen afraid that by liberating the activities of, such institutions as DIGNITAS, the Swiss is known as the center of suicide. The above mentioned is an example of the self-inflicted death notion in countries which are advocates of it.

3. Definition and Review of Literature

Euthanasia originated in the Greek word "EU" meaning "goodly or well" and "euthanasia" meaning "death"; euthanasia is also the name of the death Goddess in Greek myths (Jafari Langroudi, 1999). Generally it is referred to as sweet death and in legal terms, it is a kind of death occurred in regard with terminal illnesses (Ghomami, 2006). This term for the first time was used by the English philosopher, Francis Bacon in his book "New Organon" in 1620 (Mojtaba, 2001). In Persian culture there are no references to euthanasia. Euthanasia is a physician assisted death, which is done with the permission and consent of the patient or for the sake of pity towards the patients to relieve them from the pain and sufferings caused the illness recovering from which is impossible. Sweet death means: "to end painlessly the life of a person who has no hope for recovery from a serious illness or senility and is forever deprived of a joyful life" (Etemadian, 1964).

This issue was raised in the second half of the 20th century and the early 21st century. Much earlier than 20 centuries, the ancient Romans and Greeks didn't believe that life needed to be preserved at any cost and were, in consequence, tolerant of suicide in cases where a person no longer cared for his life. However, it has only been in the last hundred years that there have been significant attentions towards the sweet death or Euthanasia and some concerted efforts to make legal provision for voluntary euthanasia. For example, the issue of assisting in suicide has been legally tolerated in Switzerland for many years. However, many countries, including Iran have still disagreed with such suicide and considered it as contrary to the legal and moral principles. In Iran, this kind of death (homicide) is illegal and illegitimate and it is considered as murder, which deserves retaliation (Mohammadi, 2012).

In Islam it is believed that in the case of sufferings and adversities, God, with His Mercy, invites us to be tolerant (Najafi, 1989). Then, any euthanasia or suicide is forbidden. This issue is emphasized in many Verses such as Verse 33 of Mad Surah, Verse 151 of An'am Surah, and Verse 29 of Nassau' Surah, as well as in many Narratives. From them, it can be concluded that Islam does not recognize death as a human right and disagrees with any kind of suicides and in consequences, euthanasia (Rafi'e manesh, 2007).

Euthanasia or sweet death has had so far many supporters and opponents, each attempting to make it legal or to forbid it (Yazdanifar, 2012). The first measure for making euthanasia legal was taken in 1903 when more than 1500 physicians from New York demanded for the right of acceleration in the death of those patients suffering from cancer whose illnesses were required after the operation (Mojtaba, 2001).

For making legal the patient's suicide, some bills were suggested to England, Parliament in 1936, to the Nebraska Legislative Assembly in 1937 and to New York Legislative Assembly in 1947. However, some barriers such as ethical standards, customs, caution in enacting law, and fear of its consequences cause these bills to be rejected.

Another example is a bill submitted by a committee of 1776 physicians in New York, which want to make legal the patient suicide. Thousands of other physicians support this bill whose provisions are as follows:

1. Any wise and above 21 years person who suffers from a fatal and terminal illness may submit to the court a signed petition with the physician's verification of illness incurability.
2. The court appoints a commission comprising three persons, at least two of whom are physicians, for examining the issue from all aspects and reporting whether the said patient actually perceives the petition and whether all requirements are available.
3. If the report is favorable, then the court will accept it and suicide is performed by the physician or other person chosen by the patient, provided that the patient does not withdraw from his/her decision (Fletcher, 1954).

Today, ending the life of permanently ill persons who are disappointed about their lives is legal only in Belgium (2002); Columbia (1994); Netherland (2002); the states of Oregon, Washington, DC, and Montana; Albany (limited);

Swedish (limited); and Australia (limited). Euthanasia is not accepted in Law of Iran and according to the Articles 205, 286 and 612 of the Islamic Penal Code, it is considered as crime (Bonakdar, 2006). Article 205 of the Islamic Penal Code of Iran mentions retaliation as the punishment for premeditated murder. This Article is absolute in that homicides, for compassionate reasons are not excluded from the examples of murder. However, Article 286 of the same Code states that in cases where the victim, before death, pardons the criminal, the right for retaliation is discharged and next of kin or authorities or authorities who are entitled to receive blood money cannot claim for retaliation after the death, repatriation, Furthermore, it should be noted that according to Article 612 of the Islamic Penal Code, in the case of repetition, the court can sentence the criminal to 3 to 10 years of imprisonment. It seems that, if the patient asks the physician not to cure him/her, then the physician will have no responsibilities. However, generally euthanasia is not accepted in Iranian Penal Code and is considered as crime (Yazdanifar, 2012).

4. Types of Euthanasia

Euthanasia is generally divided into 2 types:

1. Direct euthanasia
2. Indirect euthanasia

Direct euthanasia is subdivided into two types:

1. Active euthanasia
2. Passive euthanasia

Active euthanasia means to end the life of a person with incurable illness by means of drug or some other mechanical tools. In the other words, it means to end the life of a person with incurable illness by doing some positive guiding actions (Tahami, 2005). Passive euthanasia means allowing a patient die by withholding treatment.

Indirect euthanasia means suggesting suicide to the permanently ill person by physicians, for example by putting hypnotic drugs around the bed of a patient and emphasizing that taking an overdose of these drugs is fatal.

There is also another classification for euthanasia as follows:

1. Euthanasia or sweet death with the consent of patient
2. Euthanasia or sweet death with the pity of the physician
3. Euthanasia of or sweet death due to the request or consent of patient's parents (Mojtaba, 2001). In the first case, the patients may submit themselves for the fatal (doubtful) action to the physician. In the second case, the physician may directly end the life of patients without the consent of the patient or their parents, just due to feeling pity for them. In the last case, the patient's parents may request the physician to end the life of the patients.

5. Examining the Euthanasia with the Consent of the Patient

Active euthanasia is defined as the action taken by the physician to end the life of a permanently ill person by air injection or using some other mechanical tools; therefore, the physician contributes the permanently ill persons' loss of life through a positive physical act. However, it can be seen in this assumption that physician ends the life of the patient with his/her frequent request and consent. Then, in this section, it will be examined that whether the patient's consent and permission to the physician to kill them causes the concession of action and consequently make applying "murder" to such cases irrelevant; if this permission has no effect on the action of the physician and in any cases, the act is considered as murder and worthy of being punished; or whether patient's permission doesn't make the physician act permissible but discharges the punishment (Yazdanifar, 2012).

In order to executing crime to be realized, all its fundamental elements are necessary; the elements by virtue of which the crime is realized. Lack of any physical, mental and legal elements may not cause the realization of crime (Mojtaba, 2001). In Law of Iran, the main principle of murder is to deprive others of their lives, whether intentionally or not, which in the former case it is called murder and in the latter one it is referred to as "homicide" or "negligent homicide" or mere mistake (Aghainia, 2006). Hence, it can be seen that to deprive the patients of their life, which is the main principle of homicide, is ascertained because the physician has had the intention to murder the patient and he has committed an action which according to law it is referred to the prosecutable homicide.

Article 176 of Iranian Former General Penalty Code has specified such cases, stating that "in cases when one gives the other spices of alcohol causing their death or diseases or disability, it seems as if s/he caused that action by assault and battery and then entails the same punishment." Therefore, regarding this Article, when the physician causes the death of the patient by drug, air injection or any other spices accelerating the death, it is considered as the instances

of murder and worthy of Islamic punishment. The exact punishment has not explicitly mentioned in this Article and the case should be examined and adapted in terms of Article 206 of Islamic Penal Code (Hosseini, 2004). Article 206 of Islamic Penal Code stipulates that: "homicide is considered as murder in the following cases (Mansour, 2005):

- A. Cases where the murderer intends to kill a specific person or one or more non-specific persons of a group, whether the action is typically fatal or is not fatal but causes the death.
- B. Cases where the murderer, though not intending to kill them, do some intentional actions which are typically fatal.
- C. Cases where the murderer does not intend to kill and do some actions which are not typically fatal but that actions are so dangerous for the persons who are involved with some disease, senility, disability, childhood, etc., and the murderer is aware of it.

Analyzing three Clauses of the said Article reveals that the physician's action in depriving the patient of life fully corresponds to Clause "A" of Article 206 because firstly: the physician's intention is murder (intentional killing); however, Islamic jurists have different views about whether such cases are worthy of retaliation. The discussion and conclusion will be offered after stating these views and adapting them with the subject of article. The death of Early Humans was more due to struggle for survival than being natural (Zakeri, 1999). Execution of the murderer, whether as revenge or retaliation was not only an immutable matter among primitive people and nations but also a matter violation of which was considered as severe assault. In Islamic Shariah, punishment is a means of achieving objectives (realizations if ends); hence, punishment has no substantial values. Rather, sentences are the shell (surface) of religion and its essence is attention to that and achievement of human bliss in this and the other (Fallahi, 2008). Murder means: to deprive one of his/her life by another person (Shahid Sani, 1387). Article 204 of Islamic Penal Code divides homicide into three main types of murder, negligent homicide and homicide by mistake. However, some other forms of homicide such as similar to premeditation and mere mistake are mentioned in law (Goldouzi, 2006). In Iran Islamic Penal Code no definition has been offered for murder but it can be defined as: intentional illegal conduct by a person in such a way that leads to the death of another person (Nourbahar, 2000). In Islamic Shariah, the general Rule is that the victim's consent and permission to conduct the crime does not make it permissible and has no effects on the criminal responsibility (Mojtaba, 2001), unless the consent causes the discharge of one of the components of crime, for example the main component in theft and usurpation. To receive money does not need the consent of the victim, but if the victim is satisfied with receiving money, then the action is permissible, and not considered as crime (Fazel Lankarani, 1382). In Islamic Law the punishment of murder is retaliation; that is execution of the murderer. In Iranian Penal Code which is derived from Islamic Law, the punishment of premeditated murder is also retaliation (Zakeri, 1999) and the criminal will be treated in the same way as the victim treated by him/her. Retaliation follows the principle of an eye for an eye. In Iran there are some complexities in this regard. Like other physicians, Iranian physicians believe in the validity of euthanasia and consider it as a moral and justifiable act. They show interest in euthanasia, stating that in the cases of terminal illnesses, tolerating pain and suffering is agonizing for both the patient and the physician. On the other hand, all Islamic jurists and scholars have unanimously sanctioned euthanasia, propounding ta'zir (canonical punishment) for assisting in the measure of suicide and considering the indirect euthanasia as being worthy of retaliation (Ghomami, 2006). However, regarding the adaptation of euthanasia to Iran Islamic Penal Code it should be relied on separation; that is, a distinction should be made between the cases where the patient announce their consent and permission to the homicide before the fatal action, and those where the patient express their consent after the fatal action.

In the cases where the patients express their consent after the fatal action or injection has been done, then the physician's action may be coincide with Article 268 of Islamic Penal Code (Shambayati, 2002).

The discharge of retaliation punishment in Article 268 of Islamic Penal Code does not imply that the physician will not be punished at all. Rather, in the first case, the punishment is to pay blood money. Next of kin or authorities who are entitled to give blood money can claim for the blood money of slain from the physician because firstly, the right of retaliation is not proved due to the pardon of victim. Because the right of retaliation has been discharged by the patient and exigency of retaliation is not available due to the consent of victim and hence the blood money is specified and fixed as the main and primary punishment. Secondly, as it was noted, the Article 268 is an exception to the principle and in exceptional cases it should be content with certain amount which is right of retaliation, and not more. Thirdly, the action of the physician is in any cases as the instances of murder and its components are also realized and the only punishment which is due to the consent of victim, is not retaliation, because Article 268 is not an instance of justifiable reasons of crime (due to the consent of the victim) and hence his/her action is not considered as permissible and free from any punishment. On the other hand, none of the factors removing the criminal responsibilities are existed in this Article so that other punishments can be discharged by that (Mojtaba, 2001).

Another punishment in such cases is the punishment which is stipulated in Article 612 of Islamic Penal Code

stating "if one commits premeditated murder and has no plaintiff or the plaintiff withdraws of the claim for retaliation or does not retaliate for any reason, whereas his/her action causes disorders in protection and security of the society, or the fear of repetition,, then the court may sentence the committer to imprisonment (for 3 to 10 years)" (Ghasemi, 2002). Therefore, as the physician's action causes disorders in public order or protection or there is fear of repetition,, then the above mentioned Article will be applicable.

Three factors are required by Criminal Law for a human conduct is considered as crime: 1. Legislator's legal factor recognizes it as crime; 2. Material factor including the realization of external operations suggesting criminal behavior; 3. Spiritual factor of criminal behavior with ill will (Goldouzian, 2009). In intentional crimes (offenses), the intention to the resulted outcomes is required in addition to the willingness to commission of act. It means that in intentional crimes, mental and spiritual crimes have two components: act intention and outcome intention (sadeghi, 2005). In Iranian Criminal Law, if it is proved that violent motivation, like criminal intention is a component of crime, then the crime is not complete in its absence and the committer's act cannot be considered as crime (Yazdanifar, 2012). Then, the euthanasia committed by physician is not the same as revenge intention and consequently is not considered as crime. However, if it is proved that the honorable motivation is not among the spiritual factors of crime and has no effect on the nature of crime (Zera'at, 2005), then the action of physician is the same as that of any other murderer unless the motivation is considered as removing penal responsibilities since in Islamic Shariah some special cases cause removing liabilities, for example drinking wine with the purpose of saving one's life (Tousi, 2009), theft in years of famine to saving one from death (Ameli, 1989) or murder during self-defense (Helli, 1997).

Therefore, in the cases where the legislator has not specified a cause to remove punishment, the mere honorable motivation or beneficence intention may not remove criminal liabilities .In the discussed issue under consideration, the murder of patient is done for compassionate reasons. Although the physician has no intention but serving the patient and their family and showing pity on them, there exist no justifications to remove or mitigate the sentence. Because, In Islamic Criminal Law resources, there are no excuses to discharge the retaliation in the case of murder for compassionate reasons (Yazdanifar, 2012). Accordingly, it can be said that in Islamic Penal System, the action of the physician who assists the death of patient by injecting drug or any other physical tools for compassion and pity's sake, is considered as murder and according to the Islamic Criminal Policy s/he may enjoy no mitigation of sentence and the next of kin or authorities who are entitled of giving blood money can claim for the retaliation of the physician. Judicial discharge due to the forgiveness of the next of kin or authorities may not protect the physician from Ta'zir sentence and if the physician is released from the sentence because of forgiveness and according to Article 208 of Islamic Penal Code¹, if the court recognizes that the action of physician causes disorder in the public order or causing threat or fear of repetition,: the physician committed euthanasia may be sentenced to 3 to 10 years imprisonment (Mirmohammad sadeghi, 2009).

In this case the retaliation is not from the next of kin or authorities but what is interesting is that though the consent and permission of patient's guardians to their death and the discharge of the right of retaliation has no effect on the action of physician, what may come to one's mind is that the consent of patient's guardian and request for accelerating their death and on the other hand, discharging the right of retaliation from them is a means to encourage the physician to assist the death of patient; in the other words, the next of kin or authorities who is assisting in murder is entitled to claim for retaliation or does not have such a right? It seems that the next of kin or authorities who are entitled of giving blood money have no right for retaliation.

Because firstly, the next of kin or authorities who are entitled of the blood money is involved in the murder and in the other words, they have assisted the death of the patient.

Secondly, the next of kin or authorities have attempted to hurt themselves and according to the principle of fulfillment, the action of one who attempts to harm him/herself cannot claim for the damage suffered by his/her own action.

Thirdly, in cases where to proof the right of retaliation is doubtful, the right of retaliation will be discharged according to the principle of dar'e (discharge Islamic law punishment with doubt), and hence the next of kin or authorities who are entitled of giving blood money cannot claim for the retaliation of the physician.

However, in cases where the next of kin or authorities give permission to the physician to assist in patient's death and forgive the physician from being retaliated before the death of patient, such forgiveness is valid and enforceable and the next of kin or authorities cannot claim for retaliation after the patient's death. Because in the said assumption, as it was mentioned previously, the cause creating the right of retaliation – that is the acceleration of patient's death – is

¹¹ If one commits murder and has no plaintiff or the plaintiff withdraws from his/her claim for retaliation or does not retaliate for any reason, whereas his/her action has interfered with the order, protection and security of the society or the fear of repetition,, then the court may sentence the committer to imprisonment (for 3 to 10 years).

present and discharge of the right whose cause is created is not from the instances of retaliation and hence the next of kin or authorities have no right in this regard after the patient's death.

6. Conclusion

Self-inflicted or sweet death is a kind of death occurred in regard with terminal illnesses. In medical terms, it refers to any intentional act or omission whether at the instance of the ill person or not to end the life of the permanently ill persons for the purpose of avoiding them from suffering more pain. Both in Islamic and traditional societies, suicide has been considered as sin and all human and divine doctrines have discouraged it because it is contrary to the fundamental values, human dignity, and social order. Hence, suicide is among the forbidden conduct and is worthy of punishment. Like most other countries, Law of Iran rejects the obedience to self-inflicted death (Euthanasia), reminding this slogan that "Thou shalt not kill." The legislator also emphasizes on the necessity of humanizing death and one's dominance on his/her last moments of life.

Euthanasia or sweet death has so far many supporters and opponents, each attempting to make it legal or to forbid it.

In Islamic Criminal Law resources, there are no excuses to discharge the retaliation in the case of murder for compassionate reasons. Accordingly, it can be said that in the Islamic Penal System, the action of the physician who assists the death of patient by injecting drug or any other physical tools for compassion and pity's sake, is considered as murder, and according to the Islamic Criminal Policy s/he may enjoy no mitigation of sentence and the next of kin or authorities who are entitled of giving blood money can claim for the retaliation of the physician. Judicial discharge due to the forgiveness of the next of kin or authorities may not protect the physician from Ta'zir sentence and in cases where the next of kin or authorities give permission to the physician to assist in patient's death and forgive the physician from being retaliated before the death of a patient, such a forgiveness is valid and enforceable and the next of kin or authorities cannot claim for retaliation after the patient's death. If the court recognizes that the physician action is contrary to the public order or causing threat or fear of repetition, then, according to Article 208 of the Islamic penal Code the physician may be sentenced to 3 to 10 years Ta'ziri imprisonment.

In Law of Iran no definition has been provided for euthanasia and is considered as the instance of murder. Points of views for euthanasia in Iranian Criminal Law have fundamental differences. Believing this fact that the death and life of all humans is in God's will (God is Lord over life and death) and the execution of euthanasia is considered as premeditated murder, then it is illegal and deserves punishment. In this case the motivation of physician cannot remove his penal liability.

In contrast, some Iranian physicians believe that respecting and considering the patient's view is the solution of eliminating the punishment for euthanasia. In cases where the patient insists in euthanasia because of endless pain and suffering and his treatment is impossible, the physicians show a tendency to euthanasia. However, the foundation in Iran is Islamic Penal Code which explicitly states that the physician's motif does not remove their criminal liabilities. Those physicians who support euthanasia consider their view as being moral and justifiable. Islam does not recognize death as a human right and disagrees with any kind of suicides and in consequences, euthanasia.

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