

## Criminality in Active (Non-Voluntary) Euthanasia: A Conceptual Analysis

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### **Abstract**

*The article is an attempt to examine the criminality aspect of the act of active non-voluntary euthanasia and to see if such acts deserve moral and judicial sanctions. At the beginning identification of active non-voluntary euthanasia has been done referring to Rachel's concepts of 'killing' and 'letting die'. It is seen that the involvement of the concepts like 'taking the life' or 'killing' are there in the act of euthanasia. More over euthanasia has been often treated to be 'physician-assisted suicide' (PAS) or homicide. For the above reasons, the act is treated to be at par with criminal acts. So, in the first part of the article, there are discussions on to what extent such terms apply to active non-voluntary euthanasia. In the other part of the article, there have been attempts to expose the role of language in leading to different visions in respect of a single act of euthanasia. Finally, it is suggested that active non-voluntary euthanasia should not be viewed as a criminal act.*

### **Keywords**

*PAS, killing, letting die, homicide, death with dignity.*

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The act of euthanasia being defined as the act of ‘taking the life’ or ‘killing’ is mostly deprived of moral and judicial sanctions. As an act, it is often considered as suicide or homicide. In either way, it is not free from being treated as a criminal act. Once the criminality aspect of the act is accepted there is no harm if the act is deprived of moral and judicial sanctions. But in the opposite assertion, means, if the criminality aspect is challenged or undecided the said deprivation would be unjust. If on rational grounds moral and judicial sanctions are denied to criminal acts then injustice to an innocent individual is also not acceptable on the same rational ground. Moral or judicial principles should apply uniformly to all cases. In this perspective, it is important to analyze the criminality aspect of the cases of active euthanasia to facilitate moral and judicial sanctions.

### **Active Euthanasia**

In general, there are textual definitions for the ‘euthanasia’ or ‘mercy killing’ as ‘the practice of killing a person in order to give relief to an individual when he is in incurable pain or suffering and allowing painless death when life has become meaningless and disagreeable’<sup>1</sup> or ‘putting a person to painless death especially in case of incurable disease or suffering when the life found as purposeless due to mental or physical handicap’<sup>2</sup>. *Stanford Encyclopaedia of Philosophy* mentions about it as: “When a person performs an act of euthanasia, she brings about the death of another person because she believes the latter’s present existence is so bad that he would be better off dead, or believes that unless she intervenes and ends his life, his life will very soon become so bad that he would be better off dead. Accordingly, the motive of the person who performs an act of euthanasia is to benefit the one whose death is brought about.”

Following to these cases of definitions it is felt that there should be at least following three factors to be treated as euthanasia.

- i) It should be a case of a patient who is in an incurable diseased condition.
- ii) The patient should be undergoing severe pain or mental distress.
- iii) The continuation of life be a burden for the patient and death would be a relief for the patient.

It shows that euthanasia is only thought of for the benefit of the patient. The nobleness in the above-mentioned definitions appears to vanish when we proceed to its various types. The most remarkable division (active/ passive) has been done by taking the method of application for euthanasia. When the patient is found to be in the following distressing conditions the act of euthanasia is proposed. The patient should be terminally ill and there is little chance of recovery. Further, the patient

should be in the condition of being allowed to continue as living through life-supporting devices. Such patients should be there in an unconscious or coma state and they would not be in a state to express their feelings and emotions. Here, not the subject but the third party (mostly the physician) decides on the euthanasia. However, it is important to decide the procedure of bringing the end to the patient's life. According as to the follow-up of the procedure it is treated as either active or passive euthanasia.

In some cases, it is thought that some positive steps are to be taken in ending the life of the patient and in some cases, the withdrawal of life-supporting elements is done to make the death closer. The former is known as active euthanasia and the latter is known as passive euthanasia. In some cases, it is thought that without taking any deliberate action the decision should be taken in favour of stopping further attempts to keep the being alive. It is treated as passive euthanasia. Here the patient is allowed to die without the life-supporting elements with the supposition that death will follow soon to the withdrawal of life-supporting devices. It may be noted that in India the Hon'ble Supreme Court has accepted the legality of passive euthanasia in the verdict concerning the case of Aruna Shanbaug. It has been mentioned that "Handling euthanasia requests: Acknowledging the complexity of the problem; individualizing the palliative approach; and accepting the 'There is no alternative' or 'There is no answer' (TINA) factor."<sup>3</sup> The passive euthanasia is not treated as killing. Rather it involves sympathy.

James Rachel has very carefully described the distinction between the active and passive cases of euthanasia by saying as 'killing' and 'letting die' respectively. Citing the application of the active euthanasia in the case of a cancer patient Pojman explains how there has been the involvement of the act of 'killing'. In active euthanasia, however, the doctor does something to bring about the patient's death: he kills him. The doctor who gives the lethal injection to the patient with cancer has himself caused his patient's death; whereas if he merely ceases the treatment, the cancer is the cause of death."<sup>4</sup> In the active case the importance has been attached to 'killing' that involves the notion of criminality.

The case of euthanasia is treated to be active if the deliberate step is taken by the doctor to bring the end to the life immediately. If such a step had not have been taken by the doctor then the life of the patient would have continued some further. That is why it is sometimes called physician-assisted suicide (PAS). "PAS, on the other hand, involves a physician providing medications or advice to enable the patient to end his or her own life. While theoretical and/or ethical distinctions between euthanasia and PAS may be subtle to some, the practical distinctions may

be significant. Many terminally ill patients have access to potentially lethal medications, at times even upon request from their physicians, yet do not use these medications to end their own lives.”<sup>5</sup> The action is designed to kill the patient giving him a lethal injection.

#### **Active non-voluntary euthanasia as a case of Suicide**

Active euthanasia is considered as suicide follows from Wennberg’s statement: “Just as one can commit a *homicide* or murder through the agency of another, so one can commit *suicide* through the agency of another.”<sup>6</sup> Based on this view of Wennberg, Spina writes that “One of the primary concerns about active euthanasia is that it involves a direct act by a person other than the patient. This being true, opponents to active euthanasia view voluntary euthanasia as murder rather than as suicide. Particular controversy exists over the issue of euthanasia in healthcare settings where doctors help consent patients to die. Rather than being viewed as murder, however, proponents of euthanasia describe it as ‘suicide through the agency of another’.”<sup>7</sup>

There should be the three following conditions for the treatment of an act of suicide:

- i) “the action must, with reasonable certainty, lead to the death of the person engaging in it.”
- ii) “it must be known to the actor that his death would be a virtual certainty where he to engage in that act.”
- iii) “the actor must engage in that action for the express purpose of bringing about his own death.”<sup>8</sup>

If these conditions are accepted then the term suicide would apply to active voluntary euthanasia where the patient is involved in the decision of euthanasia. It does not apply to those PAS cases where the patient is not in a condition to decide about his life. So the problem lies in the careless coinage of the expression of PAS and applying it to non-voluntary cases of euthanasia. The concept of ‘suicide’ is inappropriate in non-voluntary cases of euthanasia where the act is executed by a third agency or other than the subject. Here the term ‘murder’ can be applied according as to the situation but not suicide.

#### **Active non-voluntary euthanasia as a case of Homicide**

The concept of homicide is seen to be used in the cases of active euthanasia, both voluntary and non-voluntary being based on the use of the terms like ‘killing’ or ‘murder’. It is viewing the affair carelessly from one angle. No doubt the term homicide is applicable in the case of killing a human. It is the intentional killing of

a man for someone's benefit other than the killed. But is it certain that in the case of euthanasia the same principle is applicable? Let us see the factors involved in homicide. Now to arrive at the decision, of whether active non-voluntary euthanasia should be regarded as homicide or not, we have to look after the positive and negative factors found to be involved in the act of euthanasia.

#### **Positive Factors**

- a) It actualizes a peaceful death.
- b) The physician has the authority to administer the injection which comes under his duty within the jurisdiction of his oath (non-hypocritical).
- c) Choosing Active euthanasia can be treated as a rational choice or preference.

#### **Negative Factors**

- a) The physician brings a forceful end to a life that could have continued further.
- b) The physician might have been influenced to do act in that way.
- c) Active euthanasia in principle is against a law of nature.

Now taking the above factors into account we can see that the negative factors do not appear to prove the criminality aspect of active euthanasia. If the doctor is influenced to do something which violates his oath as a physician then obviously he commit a crime. Here the root of the crime is the immoral act of the physician, but the type of euthanasia is not in the picture. Regarding the first negative factor, there is nothing new to go against the notion that it cannot be a charge in the sense it is the definition of euthanasia that which we are talking about. If the act of euthanasia would have been preferred while the patient had some chance of recovery then there is enough scope to be treated as a homicide. If it is the execution of a rational choice then there is no scope for considering it to be homicide. If it is not homicide then it does not carry the criminality aspect. Rather positively it affirms the humanness in allowing someone a peaceful death or liberating someone from intense suffering preferring a dignified death. A man usually expects a long life. But the expectation of a long life is neither a moral law nor a judicial one. Since it is not a law, exceptions to it cannot be treated as a violation of the law.

Sometimes an issue is raised that there is distinction between general euthanasia/PAS and the administration of high-dose pain medications. The latter is viewed as more offensive than the former. In one article by co-authors it has been said that "Both euthanasia and PAS have been distinguished, legally and ethically, from the administration of high-dose pain medication meant to relieve a patient's pain that may hasten death (often referred to as the rule of double effect) or even the withdrawal of life support. The distinction between euthanasia/PAS and the

administration of high-dose pain medications that may hasten death is premised on the intent behind the act. In euthanasia/PAS, the intent is to end the patient's life, while in the administration of pain medications that may also hasten death; the intent is to relieve suffering.”<sup>9</sup> It appears that in maintaining this distinction they want to say that in the former cases there is emphasis on killing and the scope of viewing as a homicide. Whereas in the latter case the intention is to provide relief from the suffering and the scope of being considered as homicide may not be raised. But such a view does not appear to be a sound one. There is no doubt that the intention of bringing an end to the life is there in both the cases. The intention does not change by selecting the method of administering high-dose pain-killing medicine.

The point of issue is the criminal aspect of the act. The physician is to bring an end to the life of the patient. If the case is deserving one then the act of the physician falls under his duty and it is free from criminality. If the case is not deserving one there has been further chance of being cured but the physician proceeds with euthanasia then it can be treated as killing and a criminal act. Then why there has been confusion that euthanasia is as good as homicide and involves criminality? In my consideration the problem lies in our careless use of language.

It is very much clear that there are two very common expressions for active euthanasia and those are “physician-assisted suicide” and “killing”. Neither suicide nor killing can be taken as concepts within the boundaries of ethics. In the moral sphere such terms are not ethics-supported expressions. Rather both the terms are well used words in the field of crimes. The very connotations of such expression refer to criminal activities. When such words are found to be used in the case of euthanasia obviously it drags towards the non-ethical side and gives the impression that the act is not only unethical but also criminal.

Here a pertinent question can be raised that are the words (killing /suicide) used casually or intentionally? It cannot be expected that scholars of such repute have used the terms casually. If those expressions are used knowingly or intentionally then what can be the intention behind it. Those who did not appreciate the act and the act was treated to be illegal or unethical, they preferred the use of such terminologies as suicide or killing. The sole purpose was to condemn the act anyhow. It is to be noted that when the term euthanasia was coined for a good death or happy death there was no necessity to use the expressions like mercy killing or assisted suicide. They could have called it as mercy death or assisted death. If we shall attach emphasis on the understanding of happy death or good death then it will not appear as a criminal act. But later on those who did not appreciate the act for some reason or other they have started the use of the expressions like physician-assisted

suicide or killing, etc. It shows that they are not in favor of the act and equate the act with criminal activities.

The use of language has played a vital role in searching for criminality in the act. The initiators of the term euthanasia viewed the act in a positive way and have considered it to be a 'good death'. The expressions like "physician-assisted suicide" and "killing" are the intentional use of the term to condemn the act. The underlying intention is reflected in the preference for the use of the particular expressions and finding criminality in them. The scope of positivity and vision cannot be avoided. For example, when a glass is found to be half filled with water, to this fact someone can say as 'It is half filled' and someone can say as 'It is half empty'. Both are correct in expressing the fact which is a single one. However the analysis of the expressions will definitely show the sharing of two different attitudes. We can feel the difference in choosing the expressions in the case of euthanasia which is very much clear in the following manner.

Any occurrence of active euthanasia as an act is definitely a single one. But to this single act/ fact/ incident different visions are available in the following manner:

- (i) That the decision is taken which will bring an end to his unbearable sufferings  
Through this death/ a desired happy ending of life
- (ii) That it is 'taking life (human)' to relieve the sufferings of a patient or action  
for 'death with dignity'
- (iii) That it is a forced death against the desire of nature/God
- (iv) That it is as good as killing on the grounds of pleasant death

If we analyze the different visions then we can very well see how the angle of vision differs in choosing any particular expression for the same single act. Certainly, the angle of vision differs when choosing the language for the same act. The choice seems to be conditional to three different angles of vision namely, ethical, legal and religious. One vision is lacking in the picture, which is the angle of humanness. If the angle of humanness would be taken into account then rational choice cannot be away from it. If rational choice is there then criminality cannot be ascribed. So the angle of vision and the use of language play vital roles in examining the criminality aspect of active non-voluntary euthanasia.

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