

## **The victim commitment in the context of China's criminal law ——from the perspective the suicide behavior**

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**Abstract:** Victim commitment is refer to a kind of commitment which based on that the victim allow others to infringe their own disposable rights to the implement criminal damage behavior, and its commitment is very important for doer to take the criminal responsibility, it can reduce the behavior of accountability, and even the illegality of human behavior can be excluded .Victim commitment is from the legal motto of Roman jurist Urbian "to the intended person does not have infringed" , it mean when the perpetrator act out a violation, the victim will not have the problem of infringement if the act and its result is the victim's intended behavior and results. The attitude of the criminal code to the victim's promise varies from country to country. In the Chinese Criminal Code, there is no clear stipulation on the issue of victim's promise, which has been used in the judicial practice. This leads to embarrassment in the complex issues in criminal justice, take suicide participate as example, whether abetting or helping others commit suicide with criminal punishability? In fact, this has not yet formed in the world. Therefore, the author hopes to study the issue of victim's promise through this perspective, hoping to contribute to the protection of human rights of Chinese citizens and the perfection of Chinese criminal legislation and judicature, as well as hope to have some certain reference to the criminal legislation and criminal justice of other countries.

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Suicidal behavior refers to the behavior that doer tries to give up their right to life based on freedom of meaning. Traditionally based on religion, ethics and other factors, suicidal behavior has been regarded as a crime for long time and this action will also be punished severely. But with the improvement of social civilization, it is widely accepted by the world criminal law that suicidal behavior involved nothing with punishment in criminal law aspect, there is little difference in perspective. But there is always argument in many countries about whether the suicidal participants will be punished, many countries treat this action as criminal in order to protect the right to life, but there are also some countries think the suicidal participants do not need to take criminal penalty on the basis of the victim commitment principles. As to China, there is a dispute over this argument whether it is feasibility or value punishment or what is the reason to punish and whether it is necessary to learn from the foreign legislative experience.

### **I. CONCEPT OF PARTICIPATION IN SUICIDAL BEHAVIOR**

Usually, 'suicide' and 'suicide participation' can refer to one phenomena, result or behavior, in other words, it refers to the death that any action which was completed by defunct himself and know what result will, positive or negative, direct or indirect. Obviously, this definition puts more weight on the result than the behavior itself. So it becomes appropriate to use those words 'suicide' and 'suicide participation' according to different situation when we study this behavior. After some study about related research findings, we realize that many Chinese researchers only touch participation in suicidal behavior when they study abet or suicide helping; the two definitions will also be equalized though sometimes suicidal behavior is take as example to study. We all know that in China, there is little research and review that take suicidal behavior as a whole and completed subject to study. What consequence this leads is that we can not fill up gaps in our theory when case involved with rescue, stop and other goodwill action though we can explain well the hostile participant in the suicidal behavior. There is a theory that the law is the cognition basis of freedom and freedom is the existent basis of the law. It means that one's volition will not be checked if you say one is free, no one has right to judge whether there is anything bad for you in one's mind. And our human does not only have the right to live but also have the freedom to die, so it is unnecessary to shoulder the responsibility to protect others to live. However, according to this conception, the prevention and tow and assist action to suicide of doers will unavoidably be considered as the grossly interfere when other act their execution of power and it will also be conflict with society reality and basic ethic. So it is very necessary to make a whole and completed research which is mainly about suicide participate. Based on the above considerations, the author believes that suicide participate need to be analyzed in the following aspects: Firstly, from the value perspective, suicide participation behavior is an organism which contains two totally different value orientation, not only limited in the action that help or support other suicide, but also include the suicide behavior which based on general social morality. According

to the current academic results, there is no doubt that it is suicide participant if doer try to provide convenient conditions for suicide, but it is also belongs to the suicide participation if a person deprived of initiative, weaken the convenience of others to implement suicide act behavior? I think the answer is yes. Because no matter the influence will be positive or negative or the suicide that doer bring, the behavior is no doubt make some difference towards others life dominance behavior in different orientation and extend and will also influence the result the action will bring. so it is not appropriate to equalize the suicide anticipate behavior and other instigate or suicide assist behavior. Secondly, the author believes that the suicide participation behavior is essentially a utilitarian behavior, all in all that participation behavior is try to meet the doer himself material and spiritual needs. To instigate or assist suicide is mainly to meet their material needs or abnormal spiritual demand: for example a man tries to persuade chronic illness father to "self-liberation in order to get inheritance and meet his material needs; on the way to travel, when crossing a cliff, B saw C tries to suicide , B join the side to watch and encourage a taunt C to end his life, this action is just to meet their own needs to watch and their abnormal mental pursuit of spiritual stimulation, as for whether C die, which has no meaning for B. Of course, there are also some try to meet their own moral demand to join in the suicide behavior, such as a man D who provide suicide drugs for a patient friend who has suffering long time illness , However during the resistance behavior, the doer decide to do this is essentially because of the long-term effects of education or social morality, even it is an unconscious reaction in a very short time, it is also influenced by family moral education and social long-term immersion education results, not a no reason or mechanical behavior. So the reason why doer has this behavior is that he is in response to his own moral and social justice, and naturally obtain the corresponding moral satisfaction, social presence or social recognition, and at the same, he also wants to avoid social or personal moral condemnation, essentially as Bentham said "everything in the process of judgment are firmly from the calculation of pain and pleasure or more of it."<sup>ii</sup> So this kind of participation behavior of which purpose is to get spiritual satisfaction is still unable to escape the category of utility.

Thirdly, suicide participation behavior is a complex behavior, it contains not only indirectly abet or help, also contains some directly involved suicide implementation behavior. Traditionally, the suicide participate is equalized with suicide action, so there is great possibility that the behavior involved in the suicide implementation will be equalized with the crime of intentional injury or the crime of intentional homicide, someone says this kind of behavior to deprive others right to life is a typical crime of intentional homicide, not suicide assist behavior. Although the participation which leads to direct damaged result in nature does belong to intentional injury crime or crime of intentional homicide, this does not mean that the directly behavior involved in the implementation phase of the suicide behavior should be excluded from participation in suicide behavior category. <sup>iii</sup>For example, a wrested the knife from B when he found B is trying to suicide, this action obviously has been directly involved in the suicide implementation of B, but I think it is not appropriate to explain this behavior in courageous perspective, and it should be classified to the suicide participate behavior. Courageous generally refers to protect the national and of the collective interests, or others property security regardless of personal safety and fight with ongoing criminal behavior; However, suicide behavior refers to the behavior that oblige act his or her personal right and does not constitute a crime, so this behavior does not constitute a courageous, and should belong to the suicide participation behavior. So I think suicide participation behavior is a complex behavior, it contains not only indirectly abet or help, also contains some directly involved suicide implementation behavior.

Fourthly, the participant way of suicide presents many different ways. The author believes that, as a whole in terms of participation in suicidal behavior, the behavior of the acts and omission can become involved in other people's suicide behavior means. Traditionally, people always equalized the concept of participation in suicidal behavior and abetting suicidal behavior. It should be the first way to participate as a way if people want to participate in other people's suicidal behavior, whether to abet, help or other forms. For example, some scholars pointed out that the first condition of instigating and assisting suicidal behavior is "abetting suicide or helping suicide". If the perpetrator has the legal obligation of salvage, he should constitute indirect intentional homicide. However, I believe that this view is less comprehensive, for example, a want to suicide, but for fear of the high cost and rehabilitation is too painful if he was rescued, they requested the only roommate B to keep the room closed, do not cry for help to ensure their suicidal success, B does what A requested without taking any measures and A dead finally. In this case, a B's not acting provides an important spiritual support for A, and as the sole source of knowledge and the only possible source of relief, B's not acting provides the convenience conditions to certain degree of suicide for this suicidal success, it objectively has been involved in a certain suicidal behavior. Therefore, I believe that the behavior of the person's inaction is also an important way to participate in others commit suicide.

In summary, I believe that suicidal behavior refers to the perpetrator in order to meet their own material or spiritual needs, as or not as a way to digest or contribute to other people's suicidal intent as the goal, to participate in other people's suicidal behavior and then give it positive (to prevent, rescue, persuasion, etc.) or reverse (agitation, temptation, assistance, etc.) to support the behavior.

## **II. THE CLASSIFICATION OF SUICIDAL PARTICIPATE BEHAVIOR**

If a series of suicidal behaviors are considered as a whole, considering the complexity and diversity of their composition, they should be further studied only if they are rationally divided. First, the suicidal behavior in accordance with their behavior subjective values can be divided into the following two categories: First, positive participation in suicidal behavior, this behavior refers to the behavior of others involved in suicide, their subjective intent is consistent with the current general social morality and sense of justice, the purpose is to make suicidal attempts to make a reasonable life right behavior, abandon the intention of suicide or give up and stop suicidal behavior, the persuasion prior to suicide, block in suicide, rescue after suicide is in line with the general social morality of suicidal behavior. Second, the reverse participation in suicidal behavior, this behavior refers to the behavior of others involved in suicide, their subjective intentions contrary to the current general social morality and justice, its purpose is to suicide, or intent to commit suicide to make common sense of the life of the wrong behavior, then promote others to commit suicide, ripening suicidal intentions of others or suicidal behavior for others to facilitate the conditions to meet the behavior of the material needs of their own or abnormal spiritual needs. Abetting suicide, helping suicide, and so on, contrary to the general social morality involved in suicidal behavior. Secondly, according to the degree of participation, the different ways and nature is divided into abetting suicidal behavior, to help suicidal behavior, blocking the behavior. First, abetting suicidal behavior. The act is to induce others to produce suicidal intention or firm their original immature suicidal intention by luring, encouraging, cheating and other methods. The acts of persuasion, encouragement, temptation, verbal intimidation, etc. to induce suicide should be attributed to such acts. And whether the abettor had committed suicidal behavior or whether the suicidal act led to suicidal success did not affect the establishment of abetting suicidal behavior. Second, helping suicidal behavior The act refers to the behavior that to provide the relevant conditions to facilitate the suicide behavior after committing suicide in one's mind with the mean of acting or not. Providing suicidal tools or suicidal environment and other facilities to facilitate the behavior should be attributed to such acts, but should be excluded from the crime of intentional homicide or intentional injury elements of the direct participation of the crime. Third, blocking the behavior of suicide

The act is the behavior of persons to weaken or deprive the suicidal facilitate condition and postmortem related collectively acts. This behavior is the main form of positive participation in suicidal behavior, the purpose is to deny others wrong life dominate behavior. To discourage, to seize their tools or their subsequent rescue are such these acts.

## **III. THE PENALTIES OF SUICIDE**

Based on the above classification, the author discusses the penalties of suicidal behavior from two aspects: positive participation and reverse participation. Positive participation in suicidal behavior is mainly manifested as resistance to suicidal behavior. In any country, dissuasion of suicides and ex post facto reliefs are regarded as highly positive behavior, which is characterized by subjective conform to the general social morality, objectively conform to the order of the law of modern citizen behavior expectations. Thus in general, the dissuasion behavior in suicide is not punitive. Most countries have exemptions to similar circumstances in legislation, most notably the Good Samaritan Law (Rules). But not all of the deterrent suicides can be exempted. In order to prevent the abuse of such exemptions, there are restrictive provisions in the relevant law, the act is likely to face the possibility of criminal law condemnation when the act of repression exceeds such a provision. From the existing legislative cases, the United States Oregon "good Samaritan law (rules)" will protect the American Heart Association (American Heart Association), the American Red Cross (American Red Cross), the United States Institute of safety and health (American Safety and Health Institute) or other authoritative health organization to receive basic first aid training and obtain a certificate.<sup>iv</sup> In other words, in Oregon state if the perpetrators do not have the relevant certificate issued by the organization and do the rescue after the suicide implementation behavior, the consequences of their actions is to face criminal penalties.

Specific to our legal environment, positive suicidal behavior not only meet the serious consequences harm, but also at least meet penalties in criminal law in the following three categories:

First, the behavior of one's behavior is negligent. When a person decides to commit suicide, his emotions must be extremely unstable, and his situation is generally more dangerous, if issues inappropriately, it is likely to further worsen the situation, and even make a threat to public safety. At this point, the doer should have clear understanding what kind of possible risks and the consequences the implemented blocking action will lead.

Second, the doer's rescue behavior is clearly beyond the scope of its capacity but he still adheres to the implementation. Emergency medical assistance for suicides is an act encouraged by the legal order, but such emergency medical assistance should be controlled within the capacity of the donor to obtain legal order support, this is in order to avoid secondary possible injuries on the basis of an effective rescue the injured. Specifically, people without the professional training can be applied to stop the bleeding, tie tourniquet, pinch philtrum

emergency measures; Those who have received basic medical training or who have similar experiences in successful rescue can receive emergency medical assistance such as artificial respiration, cardiopulmonary resuscitation, commanding mobile fractures and other technical methods. Those who hold professional medical qualified certificates, such as the qualification of practicing physician and nursing qualification may take any emergency medical treatment that they consider necessary.

For example, after fall injury, improper rescue behavior that may cause suicide different degrees of paralysis, the above Oregon state provisions is to avoid as much as possible such reckless behavior caused by undue consequences. Therefore, I believe that the following three principles needed to be established towards this situation:

Third, doer holds mistake understanding towards object recognition. In such a case, the perpetrator mistakenly considers the normal behavior to be a suicidal act and has committed an act which based on such hypothesis that causes serious injury or death. Due to the subjective fault of the perpetrator, the action leading to serious injury or death, so the act should be negligent cause serious injury or negligence on the death penalty, but should be appropriate mitigation punishment. If this action does not cause serious personal injury but causing property damage, because of its subjective non-malicious and does not cause serious personal injury, it will not be incorporated into the penalty field unless there is some special provision, it only need to make some compensation coordinated by the civil litigation. In summary, positive suicidal behavior is based on a good subjective intent, but it is not absolutely not punishable, it should be a concrete analysis of specific circumstances. Reverse participation in suicidal behavior is the focused field of traditionally Chinese scholars, they also made a more in-depth discussion about its punishability and not punishability. The author believes that reverse participation in suicidal behavior should be punished will be explained in the following points:

First, reverse participation in suicidal behavior has a significant social harm. In the 1990s, under the help of incitement, instigation and cult organizations, the suicides were spurted in a short period of time, and even collective self-immolation, which resulted in extremely bad social impact and seriously ruined the social atmosphere. Endangering social stability. Thus the Supreme People's Court and the Supreme People's procurator ate made an urgent introduction of judicial interpretation<sup>1</sup> to effectively punish, from this action, we know that in the actual legislation, our country regards the reverse participation in suicidal acts as punishable crimes. With China came into the "contradictory period", the number of suicides rose sharply. According to the World Health Organization statistics, only in 2010 the number of suicides in mainland China nearly 30 million<sup>v</sup>, suicide rate ranked tenth in the world over the same period. At the same time, the age distribution of suicides in China is mainly concentrated in the 15 to 35 years of age, however, the age range is the most valuable part of the social population and development potential, and it even beyond the traffic accidents and diseases and become the main reason of the age. The high suicide rate will not only seriously affect the development of society, but also spread extreme negative emotions, challenges the dignity of life, thereby endangering social stability. In this suicide rate rising social situation, any assistance to this trend behavior will cause irreparable damage to our society; more importantly, this kind of encouragement leads to the loss of many valuable lives, this is the serious provocation towards dignity of life and social morality, it also has been beyond the criminal law scope of the regulation departments. Therefore, it is necessary to incorporate the reverse participation in suicidal behavior into the criminal law field of vision. Second, punishing reverse participation in suicidal behavior has a solid social foundation. Japanese scholars pointed out that "criminal law has a deep ethical foundation, the behavior of the illegality is not only reflected in the infringement of rights or interests in the danger of danger, but also reflected in the legal order as a basis for the violation of social and ethical norms."<sup>vi</sup> In modern civilized society, respect for life and protection has become the most extensive and the most basic consensus. Suicides are mostly affected by all kinds of negative effects of unhealthy minds and eventually choose to commit suicide, but for the vast majority of normal minds, this mentality is only abnormal circumstances abnormal psychology, just through the difficult period will be self-recovery. At this time as a modern citizen should be based on humanitarian active help their rehabilitation, at least should also avoid stimulating to prevent the further deterioration of the situation. And reverse participation in suicidal behavior is completely contrary to contempt and undermine the ethical consensus of modern society, should be strongly condemned by the community, with the social basis into the crime.

The main manifestation of reverse participation in suicidal behavior is abetting suicidal behavior and helping suicidal behavior. From the existing legislative cases, there are two different attitudes towards the existence of punishability between countries for abetting and helping others to commit suicide:

The first view is that abetting and helping suicides are not punishable and should not be regarded as criminal. This attitude is mainly the German criminal law. German legal workers based on the theory of objective blame that "as long as other people and victims compared to a higher degree of domination of the

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<sup>1</sup> on the handling and use of cult organizations, criminal cases, the specific application of the law a number of issues explained (2)

occurrence of events, then the victim's self-responsible self-harm to the exclusion of the Community role of other people should Punitive<sup>vii</sup>, the German Federal Court's judgments also support a series of judgments from the academic point of this view.

The second point of view is that abetting and helping others commit suicide is punishable and should be treated as a crime. Most countries' criminal law legislations hold this position, only differing in details. Such as the Swiss criminal law requires the perpetrator must be based on self-motivation when the implementation of abetting to help suicidal acts only constitute a crime, and Japanese criminal law that as long as the perpetrator committed abetting or help others commit suicide constitutes a crime, Brazilian criminal law that the perpetrators of abetting, a suicidal act must result in death or serious injury that has only been committed as a crime.

Scholars who believe that such acts are not punishable advocate: abetting to help suicide does not infringe the criminal law of the protected right of the legal interests person, the objective harm is not serious, there is no direct causal relationship between this behavior and harm results. "Freedom exists in external relationships, a behavior that does not affect the freedom of others is not illegal at all ... Pure self-harm that occurs within the scope of its own rights is not unlawful ... suicide is not a crime ... they do not harm others Freedom, not the destruction of the law ... according to the victim's will kill the victim's behavior, nor is the criminal law on the murder."<sup>viii</sup> The core idea is that suicide is the right of human beings. Criminal law should respect and protect the right of self-determination of legal persons, abetting and assisting suicidal act, so long as they do not violate this right of self-determination, so they should get the victim's promise. The so-called victim commitment is based on that the victim allow others to infringe their own disposable rights and implement the commitment to show some criminal acts of repression, its commitment to the criminal responsibility of the actor has important significance, it can reduce the behavior of accountability, and to eliminate the illegality of the behavior of the perpetrator.

Victims commitment is from the legal motto of Roman jurist Urbian "to the intended person does not have infringed", it means when the perpetrator shows some infringed action, the victim will not have the problem of infringement if the act and its results are exactly the victim's intended behavior and results.

Therefore, the above content view that abetting, helping suicide in China should not constitute a crime. The author does not fully support this view: First, with this theory, we can not explain the legitimacy of resistance to suicide, there will be great conflict between social moral and humanitarian value if the suicide blocking behavior is treated as innocent. Second, self-determination as a concept which was derived from civil law, in the criminal law system, it is not the same as its dominance in the civil law, for example, in the Chinese Criminal Code in the crime of obstruction of cultural relics, the perpetrator can not self-determination and private property rights by the order against the national heritage management. Thirdly, under the current legal environment in China, the Criminal Code does not make clear the illegality of the victim's promise. Therefore, according to the principle of legally prescribed punishment, the victim's behavior is irrefutable and consistent with the constitution of intentional homicide elements, it is a serious crime. The opposing view of the scholars believe that: suicide come with a real nature of the illegal, as co-criminal, abetting and helping others suicide obtained illegality and punishable from joint crime or that suicidal behavior is not illegal, but abetting, helping suicidal acts can be punished is mainly because the doer interferes with others to dominate ones exclusive legal interests, and abetting or helping suicidal behavior itself has social harm.

I believe that there are also some inappropriate points in the above point of view. First of all, I believe it is not appropriate that explaining the punishment of the legal interest person without harming other legal interests as a violation of the law; Secondly, it will come to life for suicides themselves is not worthy of protection in criminal law if the abetting and help suicidal behavior is punished on the basis of emphasis on the right to life is the exclusive right of the individual. But for others, it is the legal interests that is worthy worthy of protection, different people with different values of the conclusion, which is contrary to the principle of the value of life consistency;<sup>ix</sup> Finally, the social harmfulness of the related writings on instigating and assisting suicides mainly revolves around the social ethical norms, and regards the behavior as a modest and repellent principle that can be punishable and contrary to the criminal law. At the same time, the behavior of suicides is based on their free will, and the legal interest person to control the behavior of life is understandable. It is still an open question about how to verify that there is indeed danger to society for the perpetrators to promote and push other suicide.

Therefore, the author believes that in China 's legal environment, abetting, suicidal behavior can be punished due to the penalty: the perpetrator takes advantage of depleted mind of other people, and gave the reverse support towards its implementation, this is violations more than auxiliary to other life. The reasons are as follows:

First, the doer take the advantage of other people's depleted state mind and make the legal interest person to do something which does not follow with their real mind, this affect the right to life domination of doer and it is also a real violation of the right to life. The reason why a person chooses to commit suicide, in the vast

majority of cases, it is because of major mental impact, chronic illness, persistent mental stress or depression factors. In this state, the ability about discriminating right and wrong of the legal interest person is declining, and this will also lead to the weakness of controlling their own behavior. At this point, it is difficult to ensure that legal interests person have a clear understanding to their right to life as good as they are normal. And the perpetrator either exploited this state of mind depletion or contributed to (such as incitement, delusion, deception, etc.) further use of this negative state to promote the wrong behavior of the beneficiaries to make life dominate behavior, resulting in the irreversible domination behavior did not fully reflect the true meaning of the beneficiaries of that, in essence, violated the right to life and control of others. Therefore, the victims' commitment on this basis does not have its true meaning.

Second, the perpetrator supply reverse support to others right to life domination. Suicide is certainly one of the legal benefits of law beneficiaries, but the right to life is the basis and source of all human rights, and is the only and irreversible, and should be specially protected. At the same time, the concept of exclusive legal interests was created mainly in order to make "the infringement of the interests of the individual with the exclusive nature, in the criminal constitution can become the illegal cause"<sup>x</sup> is essentially to better protect the interests of the law itself. Based on the same point of view, when the law beneficiary disposes of its exclusive legal interests, the legal order should only exclude the external participation of the beneficiaries, rather than mechanical exclusion of all outside participation. Second, therefore, only when the beneficiary to exercise the right to control the life of the right to strictly limit the external participation to ensure that the dominant behavior reflects the true meaning of the legal person can be expressed. This may also leave room for suicide-resistant behavior and euthanasia studies. Therefore, the author believes that, in the exercise of the right to exercise the right to dominate the right to experience external participation, only the positive support in most cases is the outside world can be applied to different degrees; Authorized by the competent authorities - usually the judiciary - review, licensing, filing, and then authorized to reverse support to meet the legal interests of the life of the request; unapproved and unauthorized use of reverse support Shall be deemed to be a violation of the right to life of another person. In a state law does not set the relevant conditions of authorization, any behavior against the life of other people's reverse support should be regarded as illegal, and its violation of the critical value that is punishable with criminal law.

This explains why, in countries where euthanasia has been legalized, the application and implementation of euthanasia also requires extremely rigorous and specialized procedures. The reason for this is that most of the applicants for euthanasia are in a state of mental exhaustion due to old age, disability or chronic illness. It is difficult to ensure rationality and objectivity in the control over the right to life. Therefore, a fair and authoritative body is needed to represent the society. It is necessary to end their life dictates the request to end their lives, and this request is the owner of the true meaning of that, as far as possible to avoid the adverse external support disqualified. Therefore, when the legal beneficiary is in a state of mental exhaustion and can not make an accurate and objective judgment on the ruling power of his own life, the unauthorized reverse support - whether instigated or aided - should be regarded as using other people ' State in the nature of violations of the right to life of others behavior. Therefore, I believe that the Chinese Criminal Code, although not explicitly provided, but to examine its legislative spirit and legislative intent, in the future should be abetted to help suicidal behavior as the representative of the reverse participation in suicide as punitive and punitive Behavior, is the right to life the right to respect and protection. In such cases in China, the principle of victim commitment should be considered only in the sentencing phase rather than the conviction phase.

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