

CASE COMMENTARY ON ARUNA RAMCHANDRA SHANBAUG V. UOI 2011

Krati Walyan***INTRODUCTION**

The Honorable Supreme Court declared on March 9 that people have the right to depart away with dignity, permitting passive euthanasia under certain conditions. The well-known Aruna Shanbaug case served as the impetus for the need to alter euthanasia regulations. There is still ongoing discussion over whether this clause may be construed to include the "Right to Die." On the other hand, the idea of euthanasia in India has met with a variety of reactions as the medical sector places an increasing focus on patients' informed permission. The case continues by separating passive and active euthanasia.

FACTS OF THE CASE

One of "her next" friends, Ms. Pinki Virani of Mumbai, filed the writ petition on behalf of the petitioner Aruna Ramchandra Shanbaug under Article 32 of the Constitution. The petitioner worked as a staff nurse at the King Edward Memorial Hospital in Parel, Mumbai, according to the plea. She was attacked by a hospital cleaner who tied a dog chain around her neck and pulled her back on the evening of November 27, 1973. When he realized she was menstruating during his attempt to rape her, he sodomised her instead. He tightened the chain around her neck to rouse her throughout the deed. The cleaner discovered her unconscious and covered in blood on the floor the following morning, November 28, 1973, at 7.45 a.m. According to the theory, the dog chain's strangling cut off the blood's oxygen supply, causing harm to the brain.

The hospital's neurologist discovered that the brain's cortex had been harmed by cervical cord and brain stem contusions. Her brain is allegedly almost completely dead, she is in a persistent vegetative state (PVS), and she is essentially unconscious. She is completely unable to express herself or communicate in any way since she is unable to sight, hear, or see anything at all. Her corpse has allegedly been lying on a bed in the KEM hospital in Mumbai for the past 36 years without the slightest chance of improving, and there is no hope that her condition will get any

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better. The petition asks the respondent to cease feeding Aruna and allow her to pass away quietly.

ISSUES RAISED

1. Should withholding or withdrawing life-sustaining treatments from someone who is in a persistent vegetative state (PVS) be allowed or considered "not unlawful"?
2. The staff at KEM hospital has been caring for Aruna Shanbaug for the last 37 years after her family abandoned her. Who is to make decisions for her?

ANALYSIS OF THE CASE

This situation is viewed as a constitutional impasse on whether the right to live and the right to die or not go hand in hand. *Maruty Shripati Dubal v. State of Maharashtra*¹, in which the Bombay High Court ruled that Section 309 of the Indian Penal Code was ultra vires to Articles 21 and 19, was decided in 1987. The right to life, according to the court, encompasses both the right to live and the right to end one's life if one so chooses. In this instance, the court made it very plain that the freedom to die is not against nature. In the case of *P. Rathinam v. Union of India*², it was decided that the reach of Article 21 extends to cover the "right to die" and has both a positive and negative component. The Supreme Court also drew a comparison between the other basic rights: just as the provision of Article 19 i.e., freedom of speech grants the right to speak, Article which talks about the right to life includes the right not to live. The criminal sanction for suicide attempts so contradicts the fundamental right to life, and Section 309 was declared to be unconstitutional.

In the case of *Gian Kaur v. State of Punjab*³, there was a dispute about the legality of Section 306 of the IPC, which punished aiding in suicide. However, the constitutionality of Sections 306 and 309 of the IPC was maintained. This case overturned the *P. Rathinam* case, deemed the comparison to be incorrect, and made a distinction between the right to die (unnaturally) and the right to die with dignity. It also made clear that it would not be considering the subject of euthanasia (naturally). The jurisdiction of Article 21 was only briefly discussed in the case,

¹ 1987 Cr LJ 743

² AIR 1994 SC 1844; 1994 Cr LJ 1605

³ 1996 AIR 946

thus it is not cited in this instance. Instead, then focusing on a person in a vegetative state's right to pass away with dignity, primarily concerns aiding suicide.

The idea of the sanctity of life, which is adhered to here, is also inapplicable to the death penalty since it weakens it in the rarest of situations, giving the right to die more power because it encompasses those who are in vegetative condition.

LAW COMMISSION REPORT ON EUTHANASIA

The Law Commission of India's 196th Report⁴, published in 2006, recommended that a law be passed to shield terminally ill individuals from Section 309 of the Indian Penal Code if they refuse medical care, artificial feeding, or hydration. Additionally, clinicians who follow a patient's decision or make decisions for incompetent patients in their best interests shall be shielded from legal action under Section 306 of the IPC (abetting suicide) or Section 299 of the IPC (culpable homicide). Additionally, any medical actions must be deemed "lawful." The Medical Treatment of Terminally Ill Patients (Protection of Patients, Medical Practitioners) Act is the name the Law Commission recommended to Parliament for the legislation. But it specifically clarified-

- the "patient" must have a "terminal disease".
- The patient should be in a chronic and irreversible vegetative state.
- Although the patient's family must be consulted, the doctor is the best person to make a clinical choice using his or her expert medical judgement.
- The doctor must notify the patient (if he or she is cognizant) and any parents or relatives about the choice in writing before withholding or discontinuing medical care from patients who are incompetent or who have not made an informed decision.

UNTOUCHED EVIDENCE IN COURT

These rules enable family members the power to have a voice in the choice to allow their loved one to pass away peacefully. The verdict has been reached over whether Aruna's "next buddy" would be the social activist Pinki Virani or the nurses who cared for her at Mumbai's King Edward Memorial (KEM) Hospital. Who will decide what is best for Aruna, in other words?

⁴ Law Commission of India, 196th report on medical treatment to terminally ill patients (protection of patients and medical practitioners) (March, 2006), <http://lawcommissionofindia.nic.in/reports/rep196.pdf>

Should passive euthanasia be started, as Pinki Virani desired, or should she be let to pass away naturally once her body had served its purpose, as the nurses desired? The nurses were declared to be the "next friend" by the court after assessing the excellent treatment provided at KEM.

Aruna Shanbaug was raped that evening at the hospital after changing into her civvies in an empty operating room, but the police records and FIR include no mention of rape anywhere, which is something that most people are also unaware of. After a "finger test," Shanbaug's medical examination attested that her virginity was still intact, but the court never considered the fact that she had been sodomised. Sohanlal was never accused of rape, even though the verdict said that "the accused had gone there with the purpose to rape." Because he had taken her watch and earrings, he was found guilty of both robbery and attempted murder. The Times of India claims that Dr. Deshpande, the hospital's former dean, decided not to disclose the anal rape in order to protect her fiancé from "embarrassment" in front of the public.

A lot is being said, and rightfully so, about the love and care that multiple generations of nurses at the KEM hospital provided for their injured and unconscious colleagues for more than 40 years. The nurses gave me some dignity, but that doesn't equal justice.

JUDGEMENT OF THE CASE

This landmark decision was issued on March 7, 2011, by the Supreme Court of India's First Division Bench, which was made up of Justices Markandey Katju and Gyan Sudha Mishra. According to the court's assessment of the medical report and the Transplantation of Human Organs Act, 1994's definition of brain death, Aruna was not brain dead. She had sensations, could breathe without assistance, and was provided the stimuli that were required. Despite being in a PVS, she had a stable state. Therefore, ending her life was not warranted.

Additionally, Pinki Virani did not have the authority to make decisions on her behalf; rather, KEM Hospital's administration and personnel did. She was living because of the mashed meal, which was a lifesaving practice. In this situation, stopping the life-saving procedure would have meant stopping the feeding of the woman. Food cessation and the removal of ventilators could not be compared. Euthanasia for Aruna would mean undoing the work that the staff at KEM Hospital have been doing for years.

In the final decision, the Bench acknowledged that active euthanasia, which involves taking deliberate steps to bring about death, such as giving a fatal injection, was certainly going too far. "We cannot rule out the possibility that unscrupulous persons with the assistance of some unscrupulous doctors may fabricate material to show that it is a terminal case with no chance of recovery," the authors write, citing "the low ethical levels prevailing in our society today and the rampant commercialization and corruption."

However, they all agreed that passive euthanasia, or ceasing medical care with the purpose of bringing about the patient's death, ought to be made legal. This power was not given to doctors and families as an unrestrained and brutal tool out of an abundance of caution. Only a state or union territory High Court may use this authority on a case-by-case basis. According to the order, "...Article 226 gives the High Court ample power to pass suitable orders on the application filed by the close relatives or next-door friends or the doctors/hospital staff praying for permission to withdraw the life support to an incompetent person of the kind above mentioned." According to the process, a Bench of at least two Judges would have to determine whether to approve or deny a patient's request for passive euthanasia based on the recommendation of a committee of three reputable experts, ideally a neurologist, a psychiatrist, and a physician.

In addition, the court recommended that Section 309 of the Indian Penal Code be repealed. This case is significant because it established the protocol to be followed in a field where no laws have been established.

CONCLUSION

The decision confirmed the notion of the sanctity of life, which is a cornerstone of our constitution since it centred around passive non-volunteer euthanasia. The KEM hospital and nurses are referred to as the victim's genuine "next friend" and "beneficence" rather than Pinki Virani, and the prior FIR filed when the hospital itself concealed the victim's being raped and sodomised is not taken into account. Furthermore, rather than being an issue of life with dignity, the right to die is a personal decision. The judgement was nonsensical since it included both under the same roof without a legitimate distinction.