

CASE COMMENT: ARUNA SHANBAUG V. UNION OF INDIA

Biniti Shetty***INTRODUCTION**

The value of life is priceless and undefinable. Life gives us a chance to live, and while no two persons would have the same understanding of the meaning of life, we can collectively agree that the existence of life gives us a sense of opportunity and fulfilment. But what if that life ceases to provide any fulfilment or purpose to one's being? Does an individual have a similar chance and right to die as he does to live?

Euthanasia, often known as mercy killing, is a procedure intended to put an end to protracted suffering. It refers to the deliberate and premature taking of another person's life, either directly (active euthanasia) or indirectly (passively), at that person's express or implicit request (voluntary euthanasia), or without that person's consent when such consent cannot be obtained (non-voluntary euthanasia). The question here arises: why the need to even end one's life in such a manner?

With our ever-changing technology and new medical expertise, the efficiency of providing necessary medical care, and appropriate administration of medication and procedures as well as the ability to preserve lives has increased. However, in certain cases preserving life may not be as beneficial as it seems.

A permanent Vegetative State is when individuals, due to significant brain injury, appear to be awake but exhibit no signs of awareness of their surroundings. There are no actual cognitive functions or reactions to visual, auditory, tactile, or noxious (painful) inputs, even if cranial-nerve and spinal reflexes may still be present. For patients who are in a permanent vegetative state (PVS), is it really moral to preserve life which in the long run would only lead to prolonged suffering? Shouldn't a right that allows us to live should include a right to die with dignity?

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These questions were contended in the present case and although the courts at first rejected the right to end a person's life, the landmark "Aruna Shanbaug case"¹ laid the groundwork for the practice of passive euthanasia to become lawful in India.

FACTS OF THE CASE

1. Aruna Ramchandra Shanbaug, the petitioner in this case, was employed as a nurse at King Edward Memorial Hospital in Parel, Mumbai. She was attacked on the evening of November 27, 1973, by a sweeper from the same hospital, who put a dog chain around her neck and pulled her back. When the sweeper discovered she was menstruating, he sodomised her instead of raping her. He tightened the chain around her neck so she couldn't move or cause any trouble.
2. A cleaner discovered her lifeless body covered in blood on the floor the next day November 28, 1973. It was thought that the chain's asphyxiating caused the brain's oxygen supply to stop, which is why the brain got severely affected. She entered a state of permanent vegetative state (PVS) as a result of this trauma, which caused permanent harm to her brain.
3. She could not move her hands or legs and relied solely on mashed food fed to her by the nurses of the KEM hospital for the last 36 years.
4. Later, activist-journalist Pinki Virani said there was little chance she would ever recover and filed a petition under Article 32 of the constitution with the Supreme Court as a next friend of Aruna. She should thus be freed from her suffering and let to depart with passive euthanasia.
5. As a response to this, the KEM Hospital and the Bombay Municipal Corporation filed a counter-petition to this leading to disagreements and disruptions between the two parties.
6. Due to discrepancies, the Supreme Court assembled a group of three distinguished physicians to conduct an investigation and provide a report detailing Aruna's precise medical and mental state in order to gain a clearer understanding of the circumstances.
7. Doctors looked at her whole medical history throughout this investigation and concluded that her brain is not She interprets and responds to circumstances in a unique way. Furthermore, there was no indication from Aruna's body language that she would be prepared to end her life. There was no negligence on the part of the hospital's nursing

¹ *Aruna Ramachandra Shanbaug v Union of India* (2011) 4 SCC 454

personnel in providing her care. The doctor thus thought that the euthanasia in this case was not necessary. She held this role for forty-two years.²

ISSUES RAISED

1. If someone is in a permanent vegetative state (PVS), is it appropriate to take away their life support systems and equipment?
2. If a patient has previously said that, in the case of a PVS or ineffective therapy, they do not want to receive life-sustaining measures, should their wishes be respected?
3. If the person in question hasn't requested it before, does their family or next of kin have the right to request that life-sustaining measures be withheld or removed?³

PETITIONERS ARGUMENTS

In the present case, writer and activist Ms. Pinki Virani filed a suit under Article 32 of the Indian Constitution, arguing that the Right to Die with Dignity is a part of the Right to Life protected by Article 21. She maintained that those with terminal diseases or those in chronic vegetative states need to have the option to terminate their lives with dignity in order to relieve them of agony for an extended period of time.

Ms Virani argued that Aruna, the victim, was bedridden for 36 years with little chance of recovery, lacked awareness, and was unable to digest her food. She was unable to move her hands or legs and was completely reliant on the hospital staff to keep her alive. The petitioner claims that denying Aruna nourishment will allow her to pass away gently rather than murdering her.⁴

RESPONDANTS ARGUMENTS

In *Aruna Shanbaug v. Union of India*, the hospital dean opposed euthanasia, arguing that the medical staff had been providing for Aruna's basic requirements for almost 36 years and would

² Manupatra, 'Case Analysis of Aruna Ramchandra Shanbaug vs Union of India' (2023) <https://articles.manupatra.com/article-details/Case-analysis-of-Aruna-Ramchandra-Shanbaug-vs-Union-of> accessed 23 July 2024

³ Ibid

⁴ Manupatra, 'Case Analysis of Aruna Ramchandra Shanbaug vs Union of India' (2023) <https://articles.manupatra.com/article-details/Case-analysis-of-Aruna-Ramchandra-Shanbaug-vs-Union-of> accessed 23 July 2024

do so voluntarily going forward. The answer underlined Aruna's age of sixty and proposed that euthanasia would not be necessary because she would naturally die away in the future.

Aruna had formed a strong emotional link with the medical personnel, to the extent that one employee was eager to provide unpaid care for her. They opposed legalising passive euthanasia on the grounds that family members would look at it as a way out of such situations thus abusing the concept. This would be a degradation of the society.

In *Aruna Shanbaug v. Union of India*, the respondent argued that euthanasia is morally and inhumanely wrong since it entails ending the life of a live creature and that every citizen of the nation is entitled to the right to life under Article 21. They also brought up the subject of consent, asking who would grant Aruna's permission to be taken off life support given her incapacity to provide consent.⁵

JUDGEMENT OF THE COURT

On March 7, 2011, the Honourable Division Bench of the Indian Supreme Court, consisting of Justice Markandey Katju and Justice Gyan Sudha Mishra, rendered this crucial decision. According to the Transplantation of Human Organs Act, 1994's definition of brain death and the physicians' assessment, the Court concluded that Aruna was not brain dead. She had sensations, could breathe without the aid of a machine, and could provide the required stimuli. Despite being in a PVS, her health was steady. The court thus came to the conclusion that it was not justified to end her life.

Furthermore, the court also made sure to emphasise that it was the KEM Hospital's administration and employees who had the authority and power to make decisions on her behalf, not Pinki Virani. She was living due to the essential method of mashing her meals. In this instance, abandoning life-saving measures would have meant stopping feeding her through that method but the Indian legal system in no way supported depriving someone of food. Euthanasia for Aruna would be a step backwards for the years of work and care that the KEM Hospital nurses have put in.

The court distinguished between active and passive euthanasia in the *Aruna Shanbaug v. Union of India* case. When fatal chemicals are intentionally and positively administered to end a person's life, it is known as active euthanasia. This practice is usually illegal unless approved

⁵ Ibid

by legislation. In India, the Indian Penal Code (IPC) specifically prohibited active euthanasia under sections 302(2)⁶ and 304(3).⁷ Additionally, section 309(4)⁸ of the IPC made physician-assisted suicide illegal as well. Conversely, the term "passive euthanasia" describes the removal of medical intervention or life support. The main distinction is that although "passive" refers to not taking any action, "active" refers to taking a purposeful action to end life.

Furthermore, in support of the 'parents' concept, the Court should guard against any abuse of the authority granted to the High As a result, the Supreme Court permitted passive euthanasia in specific, "rarest of rare circumstances", provided that the High Court granted its permission after due process and in accordance with Article 226. The Chief Justice of the High Court should immediately form a bench consisting of at least two judges to consider whether or not to approve a request for passive euthanasia. Prior to acting, the Bench should confer with any appropriate medical authorities or practitioners and then seek the advice of a committee composed of three esteemed physicians selected by the bench, who will thoroughly examine the patient. The bench shall then notify the state and the patient's relatives.⁹

In addition to appointing the medical committee, the High Court Bench will also notify the State, the patient's immediate family members (parents, spouse, brothers, sisters, etc.), and, in the event that they are not present, the patient's next closest friend. The State will receive a copy of the doctor's committee report as soon as it is available. The bench of the High Court ought to provide a decision after hearing them. India should adhere to the aforementioned process till the Parliament passes laws on the matter.¹⁰

ANALYSING THE CASE

Before dissecting the present case, it is important to understand that euthanasia is not just a legal issue but also a religious and moral issue. For example, Hinduism and Buddhism, while they appreciate the sanctity of life¹¹, also recognize something called "moksha" which basically

⁶ Indian Penal Code 1860, s 302

⁷ Indian Penal Code 1860, s 304

⁸ Indian Penal Code 1860, s 309

⁹ Anukriti Sharma, 'Right to Die: Aruna Ramchandra Shanbaug v Union of India' Lawctopus (10 April 2023) <https://lawctopus.com/clatalogue/clat-pg/right-to-die-aruna-ramchandra-shanbaug-v-union-of-india/> accessed 23 July 2024

¹⁰ Manupatra, 'Case Analysis of Aruna Ramchandra Shanbaug vs Union of India' (2023) <https://articles.manupatra.com/article-details/Case-analysis-of-Aruna-Ramchandra-Shanbaug-vs-Union-of> accessed 23 July 2024

¹¹ Ranjana Kaul, 'Euthanasia and the Right to Die with Dignity: An Indian Perspective' (2019) 11 NUJS L Rev 19

entails the liberation of one suffering and reaching freedom from this world. Many end up having opposing views on this, on the one hand, some believe that because the preservation of human life is so important, passive euthanasia diminishes the sanctity of human life. God is the only one who can take it away since it is his gift. Nobody from Earth can grant you such an authority to take it away. However, as previously mentioned some argue that if the constitution guarantees a person the right to life, then that person also has the right to pass away with dignity in order to put an end to their suffering¹².

The Indian Constitution's Article 21¹³ recognises the right to life, but does it recognise the right to die as well? The argument in *State of Maharashtra v. Maruti Shripati Dubal*¹⁴ was that Section 309 of the Indian Penal Code violates Article 19. The Bombay High Court ruled that section 309 should be struck down because the "right to life" encompasses the "right to die." In this instance, the court made it very clear that having the right to die is not inappropriate, rather, it is simply rare. The Supreme Court had later rejected this interpretation in the historic *Gian Kaur* case¹⁵, which overruled the *P.Rathinam* case¹⁶ but the court opined that in the context of a terminally ill patient or one in the PVS, the right to die is not termination of life prematurely but rather accelerating the process of death which has already commenced.

A major development was seen with the Law Commission report of 2006¹⁷ in which the Legislation Commission of India recommended that legislation be passed to exclude terminally ill people from Section 309 of the Indian Penal Code in the event that they refuse medical treatment, artificial feeding, or hydration. Moreover, under Section 306 of the IPC (abetting suicide) or Section 299 of the IPC (culpable murder), doctors who follow a patient's decision or make decisions for incompetent patients in their best interests will not be held legally liable. Any medical intervention also has to be considered "lawful."

In Aruna's case, her consent was of huge value but since it could be obtained the question was who was authorized to make a decision on her behalf? It makes one wonder if would Shanbaug have opted to stay in KEM for therapy following the severe and violent sexual assault she suffered at work if she hadn't been reduced to a PVS. Or would she have preferred receiving

¹² Sunil S Shanbhag, *Euthanasia: A Study in Law and Morality* (Lexis Nexis 2014)

¹³ Constitution of India 1950, art 21

¹⁴ *State of Maharashtra v Maruty Shripati Dubal* (1986) 88 BOMLR 589 (BomHC)

¹⁵ *Gian Kaur v State of Punjab* (1996) 2 SCC 648 (SC)

¹⁶ *P Rathinam v Union of India* 1994 SCC (3) 392 (SC)

¹⁷ Law Commission of India, 196th Report on medical treatment to terminally ill patients (protection of patients and medical practitioners) (March, 2006)

care somewhere else? Had the hospital failed to provide her with a safe workplace, would she have filed a lawsuit?¹⁸ Was she really willing to live after all?

CONCLUSION

Aruna Shanbaug's case is one to thank when talking about the topic of euthanasia and the major developments that were led after it. The questions of the Right of Life and Death as well as the dignity of one's being and sanctity of life ensure that no individual is bearing the burden of rules which were made to protect them in the first place.

By allowing passive euthanasia in India, this latest ruling represents a significant historical turning point in the treatment of patients who are in excruciating, chronic pain. It recognises that despite technological improvements, it is important to understand that people should control and maintain technology, not the other way around. The topic of passive euthanasia was seldom ever mentioned before, but this instance signalled the start of those talks. It further expands the scope of Article 21 of our constitution and explains the meaning of the right to die with dignity. A ruling that, in the context of India, we can unquestionably refer to be progressive.

¹⁸ Amulya P, 'The Spectre of Aruna Shanbaug' The Wire (23 May 2023) <https://thewire.in/law/the-spectre-of-aruna-shanbaug> accessed 23 July 2024