



CASE COMMENT: ARUNA SHANBAUG V. UNION OF INDIA AND ORS

Jahnvi Arun Kumar Singh*

CITATION: [2011] 4 S.C.R. 1057

BENCH: Markandey Katju and Gyan Sudha Misra, JJ

JUDGMENT: 7-March-2011

INTRODUCTION

Article 21 of the Indian Constitution guarantees "the right to life to all citizens." Perhaps the most important of the fundamental rights is lifestyle freedom. The question of whether or not the "Right to Die" can also be examined in this clause is currently up for debate. Since euthanasia involves the wilful ending of human lives, it is controversial. At first, the courts did not acknowledge the right to take a person's life, but the landmark case of Aruna Shanbaug paved the way for passive euthanasia to be legalized in India. A person is always blessed with a long life from the moment of their birth. If it is not an accident, we as humans do not wish to die anytime soon. The right to life and personal freedom is the first fundamental right that humans are granted. Every person has the right to live with dignity, but occasionally, the term "live" turns into a curse for certain individuals. Although the rights to life and death are two sides of the same coin, there is ongoing discussion on how to interpret these two parts of Article 21.

The petitioner asserted that "life is not merely living but living in health and health is not the absence of illness but a glowing vitality." They also used the Gian Kaur v. State of Punjab case to support their claim that the right to die is a part of the right to live with dignity. In support of the Union of India, it was contended that the petitioner is entitled to live in her existing state and that it would be cruel and unlawful to take away or deny her food or water. Legalizing euthanasia in India would lead to a serious misuse of this practice. The legalization of passive

*BA LLB, FOURTH YEAR, VIVEKANAND EDUCATION SOCIETY'S COLLEGE OF LAW, CHEMBUR, MUMBAI.

euthanasia in India has been made possible by the Aruna Shanbaug v. Union of India case. The bench consisted of Justice Markandey Katju and Justice Gyan Sudha Mishra for the case.

FACTS OF THE CASE

The victim, Aruna Ramchandra, was hired as a nurse at Mumbai's King Edward Memorial Hospital. On November 27, 1973, she had been attacked by one of the sanatorium's sweepers. To rape her and control her movements, he strangled and choked her with a canine chain. He sodomized Ms. Aruna after realizing that she was menstruating at the moment. She was discovered lying on the ground on November 8, 1973, with injuries and blood all over her. One of the cleaners found her in a subconscious situation. The flow of oxygen to her brain had completely stopped as a result of this horrific strangulation through the canine chain, severely damaging her mental cortex. In addition to experiencing cervical cord damage, she had suffered a brain stem contusion. A friend of Ms. Aruna filed a petition for the matter under Article 32 of the Indian Constitution in 2009, 36 years after the incident. Ms. Aruna has been in a persistent vegetative state for those few years, with no possibility of recovery.

ISSUES

1. Does Article 21 of the Constitution's right to life include the right to die?
2. How is active euthanasia different from passive euthanasia?
3. If a person later loses the ability to make decisions or becomes unable to communicate, can they still create "Living Wills" or directives for medical treatment?
4. Is it appropriate to draw a connection between the right to life and a peaceful death?

PETITIONER'S ARGUMENT

The petitioner further claimed that Ms. Aruna, the victim, has been bedridden for 36 years with little possibility of recovery, is unconscious but conscious of her surroundings, is unable to chew her food, and is in a situation where she is unable to even articulate her own emotions. Because of this, the hospital staff thinks that by depriving her of sustenance, they are only helping her pass peacefully. The petitioner asserted that "life is not merely living but living in health and health is not the absence of illness but a glowing vitality." They also used the Gian Kaur v State of Punjab case to support their claim that the right to die is a part of the right to live with dignity. In support of the Union of India, it was contended that the petitioner is entitled

to live in her existing state and that it would be cruel and unlawful to take away or deny her food or water. Legalizing euthanasia in India would lead to a serious misuse of this practice.

In the matter of Aruna Shanbaug v. Union of India, the petitioner contended that the right to a supremely dignified life is part of the right to life protected by Article 21 of the Constitution. Thus, the right to a dignified dying must be included as well.

RESPONDENT'S ARGUMENT

Ms. Pinki Virani, a journalist and activist who claimed to be the victim's close friend, filed a petition by Article 32 of the Indian Constitution.¹ The petitioner contended that the right to the highest dignity of life, which includes the right to die in the same way, is similarly protected by Article 21's protection of the right to life. To alleviate the patient's unbearable anguish and suffering, Article 21 should provide the right to die with the highest dignity to anyone suffering from a fatal illness or in a permanent vegetative state. The respondent, the hospital's dean, opposed the idea of euthanasia, claiming that after nearly 36 years, the victim's basic needs were being met by the staff, that they would continue to do so voluntarily in the future, and that since the victim was already 60 years old and would eventually die naturally, euthanasia was unnecessary. They contend that the staff person providing care for the victim has developed a close emotional bond with her and that one of the staff members has grown so devoted to Aruna that she is prepared to provide unpaid care. Additionally, they prayed that allowing passive euthanasia would result in abuse by family members and other relatives, which would then cause society's charity and love to deteriorate. They claim that euthanasia is an abuse of justice. Every person in the country is entitled to life under Article 21, which no one can deny.² Since euthanasia entails taking a living creature's life, it is unethical and horrible. The rescue workers also questioned who would remove the life support equipment on the victim's behalf because the victim was unable to provide consent.

In the Aruna Ramchandra Shanbaug Case, the hospital dean stated that the nurse and hospital personnel had been feeding and caring for Ms. Shanbaug for up to 36 years. The patient may die by herself because she is getting close to 60. She received exceptional attention, full responsibility, and willingness from the staff. They, therefore, disapproved of and disagreed with the idea of killing Ms. Shanbaug.

¹ Constitution of India 1950, art.32

² Constitution of India 1950, art.21

JUDGEMENT AND RATIONALE

To decide on the previously specified matters, the court defined euthanasia. Euthanasia, often known as mercy killing, comes in two forms: active and passive. A person is killed by lethal means in active euthanasia, such as when a cancer patient in great suffering receives a lethal injection. Passive euthanasia is the denial of life-sustaining medical treatment, such as the removal of a patient's heart and lung machine from a coma or the refusal of antibiotics when the patient would die without them. Voluntary and non-voluntary euthanasia are the two types into which euthanasia is also separated. Voluntary euthanasia happens when the patient gives their approval, but non-voluntary euthanasia happens when consent cannot be given, such as when a patient is unconscious or otherwise incapable of giving consent. The latter has several problems, whereas the former has no legal problems. In this case, the euthanasia was non-voluntary and passive. Even though the verdict was a landmark ruling that benefited the victim, some aspects of it remain unresolved and are still up for debate. However, as we go forward with this issue, we are undoubtedly making progress in the legal realm of medical services or areas.

The Court ruled that the right to live and the right to die with dignity are fundamentally different. Removing a person's natural lifespan will result in an unnatural death, which is part of the right to die. However, in the case of individuals who are in a Permanent Vegetative State or under the influence of a coma for the rest of their lives, the right to die with dignity will entail taking steps or creating circumstances that will hasten the process of death. Therefore, people with incapacitating physical ailments or incurable diseases could end their lifelong suffering and mental anguish by using passive euthanasia, which recognizes the right to die with dignity.

Regardless of whether laws permit it or not, it is generally believed that passive euthanasia is acceptable. However, passive euthanasia is permitted whether or not laws are in place. According to the report, the patient uses few sounds and movements to convey her preferences. She also blinks, smiles, and reacts to her surroundings. To confirm that the patient was not brain dead, the doctor's expert panel submitted a report by Section 45 of the Indian Evidence Act.³ The court also held that a drop in moral principles and an increase in societal corruption are the causes of the risk of abuse of passive euthanasia and the ensuing violation of Article 21

³ Section 45, Indian Evidence Act

of the Constitution, which protects the right to life with the highest dignity. As a result, the court felt that when someone's life or death is on the line, a fair approach should be adopted. The judges also concurred that Section 309 of the IPC ought to be removed because they believe that assistance, not punishment, is necessary for someone who kills themselves when depressed. The High Court would have the power to determine whether to remove the life support equipment in line with Article 226(8).⁴ Upon receiving an application, the Chief Justice of the High Court is required to call a bench and direct a group of three reputable physicians to consult with them. The patient's condition must be thoroughly investigated, and family members should get a notification from the bench. The High Court ought to render a decision as soon as possible. India has legalized passive euthanasia, subject to certain limitations set by the High Court. Because the patient was in a vegetative state, passive euthanasia was permitted in this instance.

CRITICAL ANALYSIS

The topic has generated a lot of discussion in India. The first mention of euthanasia was in the Law Commission of India's Report No. 42 from 1971, which suggested for the first time that Section 309 of the Penal Code, 1860, be repealed. Furthermore, in *Rathinam v. Union of India*, the Supreme Court ruled that Section 309 IPC violates Article 21 of the Indian Constitution. Because suicide cannot be argued to be against public policy, religion, or morality, and because attempted suicide does not negatively impact society or injure others, it is not justified for states to interfere with an individual's right to personal liberty.⁵

In *Gian Kaur v. State of Punjab*, however, a Constitution Bench of the Supreme Court overturned the aforementioned ruling, holding that the "right to life" and the "right to die" are fundamentally incompatible, just as "death" and "life" are.⁶ The existence of such a right up until the natural end of life would be implied by the right to life, which encompasses the right to live with human dignity. It may also involve dying with honour; however, this kind of lifestyle should not be mistaken for an unnatural death that shortens a person's natural lifespan. Along with the aforementioned, the ruling in the *Rathinam* case was overturned, upholding the legality of Section 309 IPC, which criminalizes "suicide attempt."⁷

⁴ Constitution of India 1950, art.226(8)

⁵ *P. Rathinam vs. Union of India*, 1994 AIR 1844, 1994 SCC (3) 394

⁶ *Smt. Gian Kaur vs The State of Punjab*, 1996 AIR 946, 1996 SCC (2) 648

⁷ Section 309, IPC 1860

After around ten years, the Law Commission of India published its 196th Report on Terminally Ill Patients in 2006, which suggested legalizing "passive euthanasia" under very strict and regulated guidelines. The Report solely addressed patient protection in situations where the terminally ill patient is in a permanent vegetative state with no possibility of recovery, and it made it plain that euthanasia and physician-assisted suicide will continue to be banned.⁸

In such a situation, the patient may voluntarily request—either orally or in writing—the removal of the support system, which would hasten his death. However, there are safeguards in place to ensure that the patient is fully informed about his condition and prospects and that the patient is not coerced into remaining on life support against his will. In addition, the Court stated that active euthanasia is unquestionably a crime punishable under Section 302⁹ or at least 304 IPC when carried out by any individual¹⁰, and Section 306 punishes physician-assisted suicide (PAS) when carried out by a physician.¹¹ The Court has decided that unless the government passes legislation legalizing it, active euthanasia will continue to be prohibited.

CONCLUSION

Life and death can't coexist; they are as different as fire and water. We encounter many things in life, but our only goal is to simply improve our lot in it. The impetus behind everything is the desire to live a better life. We also have reserved, or maybe more accurately, essential rights for our lives in this civilized society. We have that right under Article 21 of the Indian Constitution, and we also have the right to appeal to the Supreme Court of India under Article 32 if someone tries to violate our rights to life and personal freedom. This case study gives us knowledge about the right to life and the right to a dignified death as we proceed. Additionally, there are forms of euthanasia and compassion killing. Therefore, when we discuss legal reform in the twenty-second century with regard to human rights and even in the medical fields, this landmark ruling in Aruna Shanbaug's case has set a precedent.

⁸ Law Commission, (196th Report on Terminally Ill Patients, 2006)

⁹ Section 302, IPC 1860

¹⁰ Section 304, IPC 1860

¹¹ Section 306, IPC 1860