

INTERNATIONAL JOURNAL OF LEGAL ENFORCEMENT

ISSN: 2582 8894|UIA: AA1003/2020



Volume 1 Issue 2

|June 2021|

Website: www.internationaljournaloflegaleenforcement-ijle.com

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About Us

International Journal of Legal Enforcement is an online peer review journal dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative of the young students. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. With this thought we hereby present you, International Journal of Legal Enforcement.

“Dharma is to protect the Needy”

“CASE COMMENT ON: -

Aruna Ramchandra Shanbaug v. Union of India (2011)”

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ABSTRACT: -

“The Indian Constitution guarantees all its citizens the ‘Right to Life.’ The never-ending controversy over whether this provision includes the ‘Right to Die’ still fights on. On the other hand, as more importance is placed in the medical field on patients’ informed consent, the concept of Euthanasia has received a mixed response in India.”

“In the present case, the Hon’ble Supreme Court of India was urged under Article 32 of the Indian Constitution to allow for the termination of the life of Aruna Ramchandra Shanbaug, who was in a permanent vegetative state. Ms. Pinki Virani, claiming to be the petitioner’s friend, filed the petition. In previous cases, the Court clearly denied the right to die, and thus there was no fundamental right violation that would allow the petitioner to approach the court under Art. 32. Nonetheless, the Supreme Court accepted the petition, acknowledging the gravity of the situation and the allied public interest in determining the legality of euthanasia.”

FACTS: -

“The petitioner, Aruna Ramachandra Shanbaug, was simply described as a staff nurse at King Edward Memorial Hospital in Parel, Mumbai. On the evening of November 27, 1973, she was attacked in the hospital by a sweeper who wrapped a dog chain around her neck and grabbed her back with it. “He attempted to rape her, but when he discovered she was menstruating, he anally raped her. He twisted the chain around her neck to incapacitate her during this act. The next day, a cleaner noticed her unconscious on the floor with blood all over her. It was claimed that the dog chain strangulation cut off the supply of oxygen to the brain, causing the brain damage.”

“The hospital’s neurologist discovered that the cortex of the brain had been damaged due to brain stem contusion injury and cervical cord injury. It is claimed that she is in a persistent vegetative state (PVS) and is practically dead, with no awareness and a brain that is nearly dead. She is unable to see or hear anything, nor can she express herself or communicate in any way. Thirty-six years had passed since the aforementioned incident. She was surviving on mashed food and was unable to move her hands or legs. It was claimed that there was no hope of her condition to improve and that she was completely reliant on KEM Hospital in Mumbai. It was requested that the Respondents should stop feeding Aruna and allow her to die in peace”.^[1]

“1. K.D. GAUR, Textbook on Indian Penal Code, 749 (6th ed. Universal LexisNexis, 2019)”

ISSUES RAISED: -

1. “Whether withholding or withdrawal of life-sustaining therapies be permissible or ‘not unlawful’ when a person is in a persistent vegetative state (PVS)?”
2. “Whether the hospital can make a decision on her behalf because Aruna Shanbaug has been abandoned by her family and has been cared by the staff of KEM Hospital for the last 37 years?”
3. “Whether a request to withhold or withdraw futile life- sustaining treatments made by the family members be respected?”

FINDINGS OF THE DOCTORS APPOINTED BY THE COURT: -

“A counter petition was filed by KEM Hospital and the Bombay Municipal Corporation. Due to discrepancies in the petitions submitted by the petitioner and respondents, the court decided to establish a team of three distinguished physicians to examine and report on Aruna Shanbaug's actual medical and mental state.”

“They thoroughly examined Aruna Shanbaug's medical history and concluded that she is not brain dead. She responds to different events in her own unique way. She like mild religious music and fish dishes, for example. She becomes distressed when there are a lot of people in the room. When there are less people around her, she is relaxed. KEM Hospital's staff was taking good care of her. She was kept spotless at all times. Furthermore, they found no indication of Aruna's willingness to end her life in her body language. Furthermore, the nursing staff at KEM Hospital was eager to assist her. As a result, the physicians concluded that euthanasia is not essential in this case.”

JUDGEMENT: -

“On March 7, 2011, the Hon'ble Division Bench of the Supreme Court of India, comprised of Justice Markandey Katju and Justice Gyan Sudha Mishra, gave this historic verdict.”

“The Court determined that Aruna was not brain dead based on the physicians' findings and the definition of brain death under the Transplantation of Human Organs Act of 1994. She could breathe without the assistance of a machine, she had sensations, and she supplied the essential

stimulation. Despite the fact that she is in a PVS, her status has remained stable. As a result, ending her life was unjustifiable.”

“Furthermore, the administration and personnel of KEM Hospital, not Pinki Virani, have the authority to make decisions on her behalf. The mashed food was the life-saving approach that kept her alive. In this scenario, removing the life-saving treatment would have meant not feeding her. The Indian law in no way encouraged depriving a person of food. The removal of ventilators and the suspension of meals could not be equated. Allowing euthanasia for Aruna would entail undoing the work of the nurses at KEM Hospital over the years.”

“Furthermore, in accordance with the *parens patriae* concept, the Court will prohibit any abuse of the power conferred in the High Court to determine the termination of a person's life. As a result, the Supreme Court permitted passive euthanasia in some circumstances, subject to permission by the High Court following the proper procedure. When an application for passive euthanasia is made, the Chief Justice of the High Court should immediately convene a Bench of at least two Judges to consider whether or not to give authorization.”

“Before doing so, the Bench shall obtain the advice of a committee of three reputable doctors whom it would appoint after consulting with such medical authorities/medical practitioners as it deems appropriate.”

“Concurrently with the appointment of the doctor's committee, the High Court Bench shall provide notice to the State and the patient's close relatives, e.g., parents, spouse, brothers/sisters, etc., and in their absence, his/her next friend., and provide them with a copy of the doctor's committee report as soon as it is available. The High Court bench should issue its decision after hearing them. The below approach should be followed across India until Parliament passes laws on this subject.”

“However, Aruna Shanbaug was denied euthanasia because the court determined that the situation did not require it. If the KEM hospital's employees or administration felt the need for this in the future, they might file a petition with the High Court via the approved method. This case clarified the issues surrounding euthanasia and established guidelines for mass euthanasia.”

“In addition, the court recommended that Section 309 of the Indian Penal Code be repealed. This is a landmark case because it prescribed the procedure to be followed in an area where no legislation exists.”

ANALYSIS: -

“To be able to rule on the aforementioned issues, the court first defined euthanasia. There are two types of euthanasia or mercy killing: active and passive. Active euthanasia is the use of lethal substances or forces to kill a person, such as a lethal injection given to a terminally ill person in excruciating pain. Passive euthanasia is the withholding of medical treatment for the continuation of life, such as the withholding of antibiotics when a patient is likely to die if they are not given, or the removal of a heart-lung machine from a coma patient.”

“There are two types of euthanasia: voluntary euthanasia and non-voluntary euthanasia. Voluntary euthanasia occurs when the patient's consent is obtained, whereas non-voluntary euthanasia occurs when the patient's consent is unavailable, such as when the patient is in a coma or is otherwise unable to give consent. While the former has no legal ramifications, the latter has a number of them. The current case involved non-voluntary passive euthanasia.”

- **RIGHT TO DIE**

“The contention in the case of *State of Maharashtra v. Maruty Shripati Dubal* ^[2] was that Section 309 of the Indian Penal Code was unconstitutional because it violated Articles 19 and 21. The Bombay High Court ruled in this case that the ‘right to life’ includes the ‘right to die,’ and Section 309 was repealed. In this case, the court stated unequivocally that the right to die is not unnatural; it is simply uncommon and abnormal. In *P.Rathinam v. Union of India* ^[3], it was determined that the scope of Article 21 includes the ‘right to die.’ Furthermore, it was determined that Article 21 has a positive content and is not solely negative in its scope. In the case of *Gian Kaur v. State of Punjab*,^[4] the validity of Section 306 of the IPC was in question, which penalized the abetment of suicide. This case overruled *P. Rathinam*, however the court ruled that in the case of a terminally sick patient or one in the PVS, the right to die does not imply the premature end of life rather than hastening the already-started process of dying.”

“2. 1987 (1) Bom CR”

“3. 1994 SCC (3) 394”

“4. (1996) 2 SCC 64844”

It was also argued that the right to live with human dignity ^[5] must encompass the right to die with dignity, rather than in excruciating mental and bodily suffering.

“The historic decision of Airedale NHS Trust v. Bland ^[6] was relied on, in which the right to die was granted for the first time in English history through the withdrawal of life support systems such as food and water. This case gave the Court the ability to judge whether a case is appropriate for euthanasia or not. In the case of Mckay v. Bergsted, ^[7] the Supreme Court of Nevada supported the right to remove the respirator after careful consideration of the state's and the patient's interests. However, in this case, Aruna was able to breathe on her own and did not require any external aid to do so, distinguishing herself from the Mckay instance.”

• MEDICAL ETHICS

“Following the Nancy Cruzan case, the Supreme Court addressed the issue of informed consent and the patient's right to bodily integrity [8]. Informed Permission is the type of consent in which the patient is completely informed of all future courses of therapy, his prospects of recovery, and all of the negative effects of all of these different treatment options. If a person is in a position to provide fully informed permission but is not questioned, the physician may be charged with assault, battery, or even culpable murder. Only when the patient is competent to grasp the consequences of her treatment or has previously made a statement under sound conditions does the idea of informed consent come into dispute.”

“In this situation, Aruna's permission could not be gained, raising the question of who should make decisions on her behalf. This was decided under the law of beneficence. Beneficence is defined as acting in the patient's best interests. Acting in the best interests of the patient entails taking the optimal course of action for the patient that is not affected by personal convictions, motivations, or other concerns. The public interest and the interests of the state were also taken into account. The simple legalization of euthanasia might lead to widespread abuse of the law, thus the court examined diverse jurisprudence to develop protections.”

“5. Vikram Deo Singh Tomar v. State of Bihar, 1988 (Supp) SCC 734”

“6. MHD (1993) 2 WLR 316”

“7. 801 P.2d 617 (1990)”

“8. Cruzan v. Director, Missouri Department of Health, 110 S. Ct. 2841”

- **GLOBAL APPROACH**

- **India**

“In India, passive euthanasia is legal ^[9]. The Supreme Court of India legalized passive euthanasia on March 7, 2018, by withdrawing life support from individuals in a persistent vegetative condition. Active euthanasia, including the injection of fatal chemicals, is prohibited.”

- **Canada**

“Voluntary active euthanasia, often known as "physician aided dying," is lawful in Canada for anybody over the age of 18 who has a terminal condition that has advanced to the point that natural death is "reasonably foreseeable." To avoid suicide tourism, only persons who are eligible for Canadian health insurance may utilize it. The procedure was legalized in 2015/2016 as a consequence of a succession of Supreme Court judgements that overturned Canada's ban on medically assisted suicide. On June 17, 2016, a bill to legalize assisted suicide in Canada gained Royal Assent after passing both chambers of the Canadian Parliament.”

- **United Kingdom**

“In the United Kingdom, active euthanasia is banned. Anyone detected aiding suicide violates the law and can be convicted of helping suicide or attempting to help suicide ^[10]. Lord Joffe attempted four legislation to legalize voluntary euthanasia between 2003 and 2006, all of which were rejected by the UK Parliament. Dr. Nigel Cox is now the sole British doctor convicted of attempted euthanasia. In 1992, he received a 12-month suspended sentence. Regarding the concept of twofold effect, in the trial of Dr. John Bodkin Adams in 1957, Judge Devlin decided that causing death by the administration of fatal medications to a patient, if the aim is only to alleviate pain, is not constituted murder, even if death is a probable or even likely conclusion. Passive euthanasia is permissible if patients make advance decisions to refuse life-saving therapy. Food and fluids can also be taken away from someone in a persistent vegetative state without a court order.”

“9. "India joins select nations in legalizing "passive euthanasia"". The Hindu. Chennai, India. 7 March 2011”

“10. Section 2 Suicide Act 1961 United Kingdom”

➤ **United States of America**

“Active euthanasia is unlawful in all states in the United States, but physician-assisted suicide is authorized in Oregon, Washington, and Montana. Furthermore, comparable legislation exists in Washington and Montana. Countries such as Belgium and Canada have also joined the movement. Countries like as Spain and the United Kingdom, on the other hand, do not proclaim their support for euthanasia.”

➤ **Ireland**

“It is criminal in Ireland for a doctor (or anybody else) to deliberately contribute to someone's death. However, it is not unlawful to withdraw life support and other treatments (the "right to die") if a person (or their next of kin) requests it. After being sedated, doctors can discontinue life-sustaining therapies such as ventilators and feeding tubes, letting the patient die quietly in their sleep. This only happens under particular conditions. The Dying with Dignity Bill ^[11] passed its second reading on October 7, 2020, and a delaying amendment was defeated, bringing Ireland one step closer to legalizing assisted suicide.”

CONCLUSION: -

“Since this case included passive non-voluntary euthanasia, it established the notion of life sanctity, which is a cornerstone of our constitution. However, it comprises ambiguous legalism by referring to the KEM hospital and nurses as real "next friend" and "beneficence" rather than Pinki Virani. with non- consideration of previous FIRs filed when the hospital concealed the fact that the victim had been raped and sodomized. Furthermore, the right to die is a personal choice rather than a matter of living a dignified life. Including both under same roof without valid differentiation caused absurdity to the judgement.”

“11. Ireland Dying with Dignity Bill of 2020 (Bill 24 of 2020)”

