



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ARUNA RAMCHANDRA SHANBAUG VS. UNION OF INDIA- CASE ANALYSIS

AUTHORED BY - KANAK SHARMA, BA.LLB, 3rd year,
IIMT College of Law, Gr. Noida (U.P.)

INTRODUCTION

The Constitution of India guarantees 'Right to Life' to all its citizens. The constant, ever-lasting debate on whether 'Right to Die' can also be read into this provision still lingers in the air. On the other hand, with more and more emphasis being laid on the informed consent of the patients in the medical field, the concept of Euthanasia in India has received a mixed response.

The Hon'ble Supreme Court of India, in the present matter, was approached 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. The petition was filed by Ms. Pinki Virani, claiming to be the next friend of the petitioner. The Court in earlier cases has clearly denied the right to die and thus legally, there was no fundamental right violation that would enable the petitioner to approach the court under Article 32. Nonetheless, the Supreme Court taking cognizance of the gravity of the matter involved and the allied public interest in deciding about the legality of euthanasia accepted the petition.

FACTS OF THE CASE

Aruna Ramchandra Shanbaug was a staff nurse employed in King Edward Memorial Hospital, located in Mumbai. One of the sweepers of the hospital attacked her on 27th November 1973. He choked and strangulated her via a dog chain in order to restrain any movement from her end in an attempt to rape her. Upon realizing that Ms. Aruna was menstruating he sodomized her. The very next day, on 28th November 1973 Ms. Aruna was found lying on the floor with blood everywhere and all over her. One of the cleaners found her in an unconscious condition. The strangulation via the dog chain ceased the supply of oxygen to her brain causing severe damage

to the cortex of the brain. She sustained brain stem contusion too along with cervical cord injury. A petition for the case was filed under article 32 of the Indian Constitution by a friend of Ms. Aruna in the year 2009, after as many as 36 years of the incident. For so many years Ms. Shanbaug has been in a "Permanent Vegetative State". She has become extremely feeble and infirm.

ISSUES RAISED

1. Does Article 21 of the Constitution include the right to die embedded within the right to life?
2. What is the difference between passive euthanasia and active euthanasia?
3. Can individuals be allowed to give a "Living Will", i.e. directives on medical treatment, if they become incompetent or unable to communicate in the future?
4. Should the right to die and the right to die with dignity be studied comparatively?

PETITIONER'S ARGUMENTS

A petition was filed by Ms. Shanbaug's friend under article 32 of the Indian Constitution. The counsel for the petitioner contended that the right to life guaranteed under article 21 includes the right to life with utmost dignity. It must therefore also include the right to die with dignity. Any individual suffering from any terminal illness or is in a permanent vegetative state must be included under the ambit of the "right to die" in order to end the prolonged suffering and agony. She lacks any awareness of her surroundings, is even devoid of the ability to chew her food, can't express anything on her own, and is just bedridden for the past 36 years with no scope of improvement. The patient is virtually dead and the respondents by not feeding Ms. Shanbaug won't be killing her.

RESPONDENT'S ARGUMENTS

The dean of the Hospital contended that Ms. Shanbaug was being fed and taken care of by the nurse and hospital staff for as many as 36 years. The staff had exceptionally and with utmost responsibility and willingness to take care of her. Therefore, they oppose and resent the idea of Ms. Shanbaug being euthanized. Now that the patient has crossed as many as 60 years of age she might naturally succumb to death.

They begged the court to not permit the act of killing. The staff has been diligently and with respect taking care of all her fundamental necessities and prerequisites. On the off chance that

this is legitimized, the act of euthanasia can be profoundly inclined to abuse. One of the medical attendants has even been willing to take care of her without being remunerated. The petitioner unlike the clinic staff neglects to have such a close-to-home association with the patients and lacks the necessary emotional attachment.

Since the staff diligently and with utmost dignity took care of Mrs. Shanbaug for many years. They looked after her basic needs and requirements. Legalization of passive euthanasia can be prone to misuse by family members, relatives, etc. they pleaded with the court to reject the allowance of practice of euthanasia. The hospital staff has an emotional connection with the patient to the extent that one of the nurses is ready to look after Mrs. Shanbaug for the rest of her life without being remunerated.

Terminating Ms. Shanbaug's life would be immoral and inhuman since she has a right to live. Moreover, the hospital's staff's exceptional and selfless service must also be taken into consideration. Furthermore, since the patient herself is not in a condition to give consent for withdrawal from the life support system the next big question to come into the picture is who would consent for Ms. Shanbaug.

JUDGEMENT

The court in the Aruna Shanbaug Vs Union of India case, distinguished between active and passive euthanasia. Active euthanasia can be seen as the positive and deliberate termination of one's life by injecting and administering lethal substances. It is considered to be a crime worldwide except permitted by legislation. In India, active euthanasia is a straight infringement of *Section 302 and Section 304* of the IPC.

The High Court, under **article 226**, was entitled to make decisions regarding the withdrawal of the life support system. The apex court enlisted a proper procedure and guidelines for granting passive euthanasia in the "rarest of rare circumstances" while rejecting the plea made by the petitioner. A bench was constituted by the Chief Justice of the High Court when an application was received, before which a committee of three reputed doctors nominated was referred. A thorough examination of the patient, state, and family members was conducted along with a notice issued by the bench. Therefore, in support of the "*Parens Patriae*" concept, the Supreme Court entrusted the authority to decide the end of a person's life in the High Court in order to avoid any abuse. As

a result, in certain circumstances and with the High Court's consent after following the proper procedure, the Supreme Court permitted passive euthanasia. However, Supreme Court opined that passive euthanasia could be allowed in exceptional and rare cases with due approval from the patient's family members and doctors. Supreme Court held that it should be sparingly used and not become a tool for eroding Article 21 of the Indian Constitution. Therefore, the court's assessment of the medical report and the definition of braindeath provided in the *Transplantation of Human Organs Act, 1994*, clearly explains that Ms. Aruna's brain was not dead. Despite being in a Permanent Vegetative State, she had a stable state. She had sensations and could breathe without assistance. Therefore, ending her life was not warranted.

RATIO DECIDENDI

The Supreme Court stated the following reasoning for its judgment in the Aruna Shanbaug Vs Union of India Case:

1. It is pretty implied that all over the world, active euthanasia has been stated as illegal in the absence of any legislation permitting it. In contrast, even in the absence of legislation, passive euthanasia has been stated as legal.
2. The report presented by the committee of doctors stated that Ms. Shanbaug's brain was then responsive to likes and dislikes, which she can express through small gestures and sounds like smiling and blinking eyes. Therefore, she was responding to the outside environment.
3. The potential threat of misuse of passive euthanasia cannot be ruled out, which holds every chance of breaching Article 21 of the Constitution of India in the event of low ethical standards prevailing in our society and with increasing corruption. Therefore, there is a dire need for a balanced approach in such a sensitive issue, which includes a person's death and life

ANALYSIS OF THE CASE

Concept of Euthanasia in Brief

Euthanasia, defined as mercy killing, encompasses acts that painlessly end the lives of those with incurable diseases or paralysis, including withdrawal of treatment or life support. Specific guidelines from the High Court detail the lawful procedure for passive euthanasia, legalizing it in India under certain conditions. *In the 2018 Common Cause v. Union of India case*, the Supreme Court emphasized the right to die with dignity under Article 21 of the Constitution, supporting

withdrawal of life support for terminally ill patients. Additionally, the case introduced the concept of a "living will," allowing patients to express advance consent for medical decisions in case of future incapacity.

Right to Die v. Right to Die with Dignity

The Constitution expressly guarantees the right to life under *Article 21*, but the right to die has been a subject of debate and isn't explicitly mentioned. However, courts have interpreted it diversely. *The Bombay High Court in State of Maharashtra v. Maruti Sripati Dubal* included the right to die under the right to life in Article 21 and declared *Section 309 of the IPC* unconstitutional. Later, *the Supreme Court in P. Rathinam v. Union of India* recognized the right not to live as part of the right to life under Article 21. But in *Gian Kaur v. State of Punjab*, the Supreme Court ruled against including the right to die within the right to life. Instead, it acknowledged the right to die with dignity, differentiating it from the right to die, particularly in cases of passive euthanasia for patients in a Permanent Vegetative State or coma. This distinction is crucial, and recent legal developments have legalized passive euthanasia to end the suffering of patients with incurable conditions.

Medical Ethics

The Supreme Court addressed informed consent and the right to bodily integrity, citing the *US Nancy Cruzan case*. Informed consent entails full awareness of treatment options, recovery chances, and side effects. Failure to obtain informed consent can lead to legal consequences for the physician. In Aruna's case, since she couldn't provide consent, the decision was based on beneficence, acting in the patient's best interest. The court considered public interest and state concerns, wary of potential misuse if euthanasia were legalized, and explored jurisprudence to establish safeguards.

Global Approach

Passive euthanasia is generally legal worldwide without specific legislation, whereas active euthanasia requires legislation. Some countries, like the *Netherlands*, regulate euthanasia with strict criteria. *Switzerland* allows assisted suicide under certain conditions, including for non-Swiss nationals and without physician involvement. In the *USA*, active euthanasia is illegal nationwide, but physician-assisted dying is legal in certain states. Other countries have also legalized euthanasia, while some, like *Spain* and the *UK*, do not support it.

Report of the Law Commission

The 196th Report issued by the *Legislation Commission of India in 2006* recommended the enactment of a law to protect terminally ill individuals who refuse medical care, artificial feeding, or hydration from *Section 309 of the Indian Penal Code*. It also proposed safeguarding clinicians who respect a patient's decision or make decisions for incompetent patients in their best interests from legal action under *Section 306 (abetting suicide)* or *Section 299 (culpable homicide)* of the *IPC*. Additionally, the report emphasized the necessity for medical actions to be deemed lawful under the proposed legislation.

CONCLUSION

The *Aruna Shanbaug v Union of India* case marked a turning point in India's legal landscape regarding euthanasia, triggering a national dialogue on the moral, ethical, and legal dimensions of end-of-life care. The Supreme Court's ruling permitted passive euthanasia under specific circumstances, emphasizing the right to die with dignity. This decision prompted calls for comprehensive legislation on euthanasia and heightened awareness of compassionate end-of-life choices. While the case provided a crucial framework, ongoing discussions reflect the need for responsive legal and ethical frameworks amid evolving societal attitudes and medical technologies. Overall, it underscores the importance of balancing respect for life with individual autonomy, shaping a society that prioritizes the well-being and dignity of its citizens until the end.