

**CASE COMMENT****“Aruna Ramchandra Shanbaug V. Union of India”**

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The judgment passed by the Hon’ble Division bench of the Supreme Court of India comprising of Justice Markendey Katju and Justice Gyan Sudha Mishra delivered this judgment on March 7<sup>th</sup>, 2011.<sup>1</sup> The case revolves around the constitutionality of Passive euthanasia, is right to die included under the ambit of Article 21 of the INDIAN CONSTITUTION and should sec 309 of the IPC 1860 be penal in nature. Interestingly articulated by Hon’ble Justice Markendey Katju was “*Marte hain aarzo mein marne ki Maut aati hai par nahin aati*”.

A petition was filed under the ambit of Article 32 of the INDIAN CONSTITUTION by one Ms Pinki Virani on behalf of the petitioner who claims to be an acquaintance of the petitioner the case was based on passive euthanasia and that petitioner shall have right to die peacefully. The Hon’ble court could have dismissed the case on the grounds that’s Article 32 can be filed only when a fundamental right is violated till that time Right to Die was not included under the Ambit of article 21 of the INDIAN CONSTITUTION<sup>2</sup>, Though the Hon’ble Supreme Court went deeper to the merits of the case it felt like ship in an “*Uncharted sea*”

The Hon’ble Supreme Court had a perplex situation to decide the constitutionality of Passive euthanasia it felt like *it was too moral for the court to decide who should live and who should die*. The Hon’ble Court stated that passive euthanasia shall be legal while Active Euthanasia remains to illegal in India, In case of passive Euthanasia it is divided into 2 majors voluntary and involuntary in case of there is an dispute between the parties then an application for Euthanasia has to be filed in the Hon’ble High Court, where the court will determine the merits of the case pass order on the same. Right to Die was later included under the Ambit of Article 21 but its applications where restricted to only those individual who are in complete vegetative state for a long period of time and has no control over the sensory nerves, We observed the reason behind the same is If everyone has the option for “Right to Die” It would lead to misuse of the sacrosanct article 21 of the INDIAN CONSTITUTION which may jeopardize the whole nation.

Another topic which revolved around the case was section 309 of IPC 1860; Section 309 is penal in nature and deals with providing punishment to those individual who attempted to commit

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<sup>1</sup>(2011) 4 SCC 454

<sup>2</sup>1996(2) SCC 648 (vide paragraphs 22 and 23)

suicide, because those who already committed suicide cannot be punished as their exist no one to be punished the whole concept of Section 309 is outdated and needs an amendment.

In case of RATHINAM V. UNION OF INDIA:<sup>3</sup> - petition was filed for decriminalizing the penal provision under section 309 of IPC and adds it under the Right to die under the ambit of article 21 it was argued by the council that like under Article 19 right to speak also include right not to speak in the same manner right to die with dignity shall be included like to right to life with dignity under the ambit of Article 21 of the INDIAN CONSTITUTION. The Hon'ble court decriminalized section 309 of the IPC.

In case of GIAN KAUR V. STATE OF PUNJAB: - The Supreme Court had a different opinion in this case it again criminalized the provisions of section 309 of IPC1860; It stated right to die can't be included in Article 21 of the INDIAN CONSTITUTION.

The Section 309 of the IPC 1860 was drafted for the very purpose of preventing “*Sati Pratha*” but as the nation evolved and after the post constitutional era such practices have been prohibited and not followed as custom anymore, therein such penal provisions maybe removed and reformative approach must be used i.e.:- consulting the victim with a doctor, send to medical camps, put them into recreational activity center and other such alternative which may deem fit.

The Concept of Passive Euthanasia is age old and had been practiced in several clinic for a long period of time it is propounded that in case of administration of passive euthanasia it is stated that “the patient dies not because of the fault of the doctor, but because of the mere omission of the medical treatment”, but A tough question is left unanswered. What does one do with cases like Jan Grazebski, who regained consciousness after nineteen year coma caused by brain tumor or Terry Wallis who met with a car accident and regained consciousness two decades on or Dan Cassil, who was revived from a deep coma on hearing his favorite TV show Seinfeld?

The Aruna Shanbaugh case had led to the legalization of passive euthanasia in India under exceptional medical circumstances that too under the judicial supervision and monitoring of the court . Though the case clarified under what circumstances passive euthanasia can be given there were certain aspects and issues that the Supreme court did not address in this particular case The court in this particular case had not taken a stance on whether Right to die with dignity falls under the ambit and scope of Article 21 of constitution of India that provides for Right to life with dignity. There was no clarification by the apex court that if a individual has the right and liberty to decide whether a person if going through a terminal illness if he has the right to decide whether he wants medical intervention or not .It was also unclear in the judgement whether the concept of right to live included the concept of right to die with dignity without choosing to undergo pain and suffering while being treated medically. .The concept of self

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<sup>3</sup>(1995) 3 SCC (Jour) 1

determination was not recognized whether an individual who is in a permanent vegetative state or in cases of incurable degenerative disabling the patients must be given consistent medical treatment or the patient has the right to refuse medical treatment and be allowed to die with dignity without any prolonged suffering. The concept of Advance Medical Directive plays a very important role in the aspect of passive euthanasia and the concept of right to die which was not clarified by the court in the Aruna Shanbaugh case. Advance Medical directive is a legal document in which the patients can predetermine and give instructions in advance on the type of medical treatment he would prefer once he becomes incompetent or unable to communicate. This will specify as to when can medical treatment be stopped or no medical treatment should be given that leads to the slowdown of the death process of the person already suffering and further causes him suffering. This was clarified by the court in the case of Common Cause VS Union of India. Through the Apex court decision a line of distinction was drawn between Active Euthanasia and Passive Euthanasia whereas it stated active euthanasia requires the use of a lethal substance to kill the person for ex – Giving of a lethal injection to a person suffering from terminal cancer and passive euthanasia where the artificial life support system is withdrawn. Though there was a distinction in the case and the Supreme Court had given certain guidelines and recommendations when passive euthanasia can be practiced there is no express legislation governing passive euthanasia in India yet. The Medical Treatment For Terminally Ill patients bill is still pending in the parliament. The judgement failed to address the fact that there is

a large chunk of population of India who die an undignified death by not being able to afford basic<sup>4</sup> health care facilities and treatment. Poor public funded health sector coupled with unaffordable and unregulated private healthcare system the judgement that was passed addresses the need of a small segment of population. Many people might not be able to access care in situations when they are in permanent vegetative state or in state of terminal incurable illness because they do not have the resources to meet the burden of such a lengthy process the court or neither the government has addressed any issue regarding this. Even after 8 years of the judgement being passed there is no express legislation governing passive euthanasia in India. The law Commission in its 196<sup>th</sup> and 241<sup>st</sup> reports had highlighted the need of a legislation to be brought that governs passive euthanasia in India after the judgement's in particular cases such as Gian Kaur, Rathinam and Aruna Shanbaug. It is too moral for the court to decide as to who has the right to die and who doesn't clearly violating Article 21 of the constitution in which Right to

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<sup>44</sup>The supreme court of India on euthanasia a little early a little too late

Sunita VS Bandewar, Leni Chaudhari

<https://ijme.in/articles/the-supreme-court-of-india-on-euthanasia-too-little-too-late/?galley=htm>

[accessed 19/01/20 21:15 hrs]

Passive euthanasia is permissible human beings have a fundamental right to die with dignity

by Prachi Bharadwaj

<https://www.scconline.com/blog/post/tag/passive-euthanasia/>

[accessed 19/01/2020 22:45 hrs]

Die has been included as a fundamental right after the landmark judgement in the Common Cause Case. Through the judgement of Aruna Shanbaug and Common Cause the court has observed that In cases of times where passive euthanasia is acceptable Individual necessity will trump the state necessity .The concept of self determination and the right to die in certain cases has been emphasized upon that is in lines with Article 21 of the Indian Constitution therefore a precedent has been set by these judgement's and there is an utmost need for a statutory regime to govern passive euthanasia in India.