

## **“Passive Euthanasia: An Epiphany to commit Suicide or a Medical Measure to end Prolonged Sufferings”**

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### **Abstract**

*“Fiat Justitia, et Pereat Mundus”*: Let there be Justice though the world perishes.

Does a terminally ill person have the right to hasten his/her death by asking either his/her medical treatment to be withdrawn or for administering a lethal injection to be administered to end his/her suffering? Do the relatives of the patient, who has been in a permanently vegetative state for so long and has no chance to recover have the right to ask for his/her life support system to switch off? Through this topic we will highlight the constitutionality of passive euthanasia and the sacrosanct concept of Right to die enshrined under Article 21 of the Indian Constitution.

The concept of the constitutionality of the passive euthanasia is based on a landmark case of *Aruna Shanbaug v. Union of India*<sup>1</sup>, wherein the Court was asked to allow a sixty-three-year-old nurse who had been in a vegetative state for half of her life to die peacefully. The courts stepped in to answer a question it felt was “A Ship in an uncharted sea”<sup>2</sup>

### **BACKGROUND:**

The Constitution of India ensures ‘Right to Life’ to all its citizens. The ever-lasting debate on whether or not ‘Right to Die’ also can be read into this provision still lingers in the air. On the other hand, with increasing emphasis being laid on the knowledgeable consent of the patients in the scientific discipline, the idea of Euthanasia in India has received a mixed reaction. The Hon’ble Supreme Court of India, was approached under Article 32 of the Indian Constitution to permit for the termination of the existence of Aruna Ramchandra Shanbaug, who have become in a permanent vegetative state. The petition was filed with the aid of Ms. Pinki Virani, claiming to be the next friend of the petitioner. The Court in earlier cases had virtually denied the right to die and thus, legally, there has been no fundamental right violation that could allow the petitioner to approach the Apex court under Article 32. Nonetheless, the Supreme Court taking consciousness of the gravity of the matter concerned and the allied public interest in figuring out about the legality of euthanasia time-honored the petition.<sup>3</sup>

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<sup>1</sup> (2011) 1 SCALE 673

<sup>2</sup> Lily Srivastava, Law and Medicine (New Delhi: Universal Law Publishing,2010) p.152

<sup>3</sup> Aruna Ramchandra Shanbaug v. Union of India <http://www.sconline.com/DocumentLink/6JLJb0Nb>

**JUDGEMENT:**

Shanbaug remained in a vegetative nation from 1973 till her death in 2015. On 17 December 2010, the Supreme Court, whilst admitting the plea to end the life, made through activist-journalist Pinki Virani, sought a document on Shanbaug's medical circumstance from the sanatorium in Mumbai and the authorities of Maharashtra.

On 24 January 2011, the Supreme Court of India answered to the plea for euthanasia filed via Aruna's friend, journalist Pinki Virani, by using setting up a medical panel to study her. A three-member medical panel was benched under the strict discretions of the Supreme Court's directive. After inspecting Shanbaug, the panel concluded that she met "the maximum of the standards of being in a permanent vegetative state".

On 7 March 2011, the Supreme Court, in a landmark judgment, passed laws legalizing passive euthanasia in India. The guidelines for passive euthanasia, (i.e. the decision to withdraw life care, nutrition, or water) was laid as the choice to stop "life assists" must be taken by parents, spouse, or different close relatives, or in the absence of them, with the aid of a "next friend". This decision would seek for approval from the concerned High Court.

The Supreme Court held that "as there is no statutory provision in our country as to the legal procedure for withdrawing life support to a person in PVS or who is otherwise incompetent to take a decision in this connection. Thereby laying down the law in this connection which will continue to be the law until Parliament makes a law on the subject. "Thereby laying few guidelines for the act of euthanasia to be conducted, which are as follows:

- a. A decision has to be taken to stop life aid either by means of the parents or the partner or other near family, or within the absence of any of them, this sort of choice can be taken even by someone or a frame of folks acting as a next friend. It also can be taken by way of the doctors attending the affected person. However, the selection ought to be taken bona fide inside the satisfactory interest of the patient.
- b. Hence, even supposing a selection is taken via the close to loved ones or doctors or subsequent friend to withdraw life aid, such a choice calls for approval from the High Court concerned.

In its judgment, the court docket declined to recognize Virani as the "next friend" of Aruna Shanbaug, and as a substitute handled the KEM hospital group of workers because by "next friend" they do not mean to decry or disparage what Ms. Pinky Virani has done. Rather, desired to appreciate the exceptional social spirit she had showcased. The hon'ble court had observed prima facie that she had been espousing many social reasons, and maintained her excessive esteem."

*The obiter dicta* observed was that if any close relatives or friends or the doctor decides to withdraw the life support of the incompetent person/patient, it would seem to act as a threat in the country as such measures could be misused by means of some unscrupulous individuals who want to inherit or in any other case seize the belongings of the patient.

Considering the low ethical stages triumphing in our society today and the rampant commercialization and corruption, we can't rule out the opportunity that many greedy and insolent humans with the assist of a few corrupt medical practitioners or doctors may fabricate lies to show that it's far a terminal case and which has hardly a scope of healing.<sup>4</sup>

## **Suicide Laws and The Right to Die**

### **Right to die and euthanasia-**

The first question that clicks our mind after reading the above heading is, what is “Right to Die” is that even a right?

The concept of **Right to Die** is based on the human opinion, that any human being is entitled to end his or her life whenever they like to end by undergoing voluntary euthanasia.

Now the question arises that, is Right to die even a right?

This question does not have a rigid answer, in some countries it is a human right and, in some countries, it is not considered as a human right. The question arises that is it a right in India? The answer to this question is that Right to Die was no a right in India but on March 9,2018, the Supreme Court in a landmark Judgement pronounced the privilege of right to die as a central right and passed a request permitting End of Life Care (EOLC), passive euthanasia in common parlance, in the country. The conclusion to the question whether euthanasia is or right to die is even a right or not is, the concept of voluntary euthanasia and suicide is not a right and is not allowed by law but the concept of passive euthanasia is a right. Passive euthanasia is only allowed only when a person is terminally ill and is on life support, when their chance of coming back to a normal live is more or less impossible or tough. The body has to reach a permanent vegetative state to allow euthanasia on the body.

To clarify the above conclusion, we can refer to this part of the supreme court judgement by the five-judge bench- Justice D Y Chandrachud, a member of the five-judge bench of the apex court headed by the Chief Justice of India Dipak Mishra, said that-<sup>5</sup>

“The right of an individual to refuse medical treatment is unconditional. Neither the law nor the constitution can compel an individual who is competent and able to take decisions to disclose reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity,” said Justice D.Y. Chandrachud.<sup>6</sup>

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<sup>4</sup>Euthanasia a critical analysis <https://palliumindia.org/cms/wp-content/uploads/2014/10/Aruna-Shambaug-SC-verdict.pdf>(31<sup>st</sup> august, 2019, 3:00)

<sup>5</sup>Banjot Kaur, what ails the 'right' to die with dignity? Down to Earth, (Aug.31,2019,11:40 PM ), <https://www.downtoearth.org.in/news/health/what-ails-the-right-to-die-with-dignity--60052> .

<sup>6</sup>Priyanka Mittal, Supreme Court allows euthanasia in landmark judgement, Livemint, (Aug 27, 2019, 9:35 PM ) , <https://www.livemint.com/Politics/kSasxfvJaqmBNd1QlaoSoI/Supreme-Court-allows-passive-euthanasia-in-landmark-judgment.html> .

### **Laws related to Suicide in India-**

Suicide can be called as a willful and voluntary act of self-destruction having the knowledge of the nature of the act and the outcome. (Clift v. Schwabe 3 C.B. 458)

Suicide is caused due to mental disorders, like depression, bipolar disorder, schizophrenia, anxiety disorder substance abuse etc.

Is suicide legal or not?

Suicide is a product of a mental disorder; suicide is taken to be illegal as suicide goes against the Fundamental Right of Right to Life as mentioned in Article 21 of the constitution of India. The Indian Penal Code, 1860 also decriminalized Suicide as mentioned in 309 of the IPC. In August 2013, suicide was decriminalized by the usage of section 124 of the Mental Health Care Bill, 2013 but later in 2017 the bill was amended and the amended bill again criminalized suicide.

Section 309 of the IPC says “Attempt to suicide” the section says any person who attempted to commit a suicide or does anything to commit a suicide shall be punished with a simple punishment of one year of imprisonment or fine or both.

Section 306 of the IPC talks about “Abetment of suicide” which means if a person is found to be the influence of another’s suicide, he or she will be punished with a term extended to 10 years and shall also be liable to fine.<sup>7</sup>

As described earlier article 21 of the constitution aids giving citizens the right to life with dignity. The right gives full control of two person on his life but this right does not give him or her the right to end the life on their own will

The debate of suicide as the right to die is subject to the following land mark cases-

1. *P. Rathinam v. Union of India*

*In P. Rathinam v. Union of India, the honourable supreme court held that the right to die was a part of Article 21 of the constitution. The court held that section 309 of IPC was violative of the Article 21 of the constitution as right to life includes right to die or right to not live a forced life.*

2. *In Smt. Gian Kaur v. State of Punjab*

*The court held that the right of die cannot be derived from the right to life under Article 21. The court held the right to natural death is covered under the ambit of article 21 of the constitution of India but suicide is unnatural termination of life, which is incompatible and inconsistent to the concept of Article 21 of the constitution.*

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<sup>7</sup>The Indian Penal Code, 1860, No.45, Act of Parliament, 1860(India)

*Section 309 was upheld constitutional as it protects life and discourages self-destruction practice of suicide in the country.*<sup>8</sup>

### **A Review of the Law on Euthanasia and Suicide: -**

The difference between the two form of euthanasia hangs on a questionable dichotomy: ‘killing’ is not the same as ‘allowing to die’ All that it means I that in a case of passive Euthanasia, the doctor can say “*I did not kill him. His death was only expedited by an omission to administer medical treatment.*”<sup>9</sup>

After Aruna Shanbaug, the position on euthanasia in India today is that while law recognizes euthanasia in case of physical suffering, no amount of mental suffering would justify a claim to end a person’s life. In fact, law has provisions under section 309 to penalize attempt to suicide in the latter scenario. Therefore, when a person is in a complete vegetative state the relatives of the patient can consent to use passive euthanasia procedure, a healthy adult who voluntarily attempts Suicide risks being punished if his or her attempt fails. This is inconsistent jurist seriously debate on the topic of deleting section 309 of IPC.

Doctors state that passive euthanasia is already practiced in India for a long time. The only difference the judgment could make is that when there is a disagreement among the patients relative or between the relatives and the physicians over employing the euthanasia procedure, the Party’s may move to the Hon’ble High Court to decide on the final route to be taken.<sup>10</sup>

The Hon’ble Supreme Court decision is added to the guidelines formulated by it that are meant to operate ‘until the legislature enacts a suitable law on the issue’. A Supreme Court judgment should not be allowed to hold the field for too long. Many factors, including the commercialization of healthcare, the allocation/ scarcity of medical resources, the development of sound mechanism to prevent abuse of euthanasia and through understanding of ‘active and passive euthanasia distinction’

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?

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<sup>8</sup>Neeraj 90, Crimes of Attempt to commit Suicide, Legal Service India.com (August 29<sup>th</sup>,2019, 6:00 AM)  
<http://www.legalservicesindia.com/article/1081/Crime-of-Attempt-to-commit-Suicide.html> .

<sup>9</sup> Sushila Rao, ‘The Moral Basis For a right to Die’,Economics and political weekly,30<sup>th</sup> April 2011, vol XLVI no. 18, p.13

<sup>10</sup> Anupama katakam, ”Doomed to slow Death: an interview with Pinki verma”<https://frontline.thehindu.com/static/html/fl2807/stories/20110408280710600.htm>

**APPENDIX 1**

Procedure adopted in Aruna Shanbaug<sup>11</sup> to be adopted by High Court when an application for “Passive euthanasia” is filed.

- ❖ On filing of an application for “Non-Voluntary euthanasia” the Chief Justice of the High Court should forthwith constitute a bench of at least two judges who should decide to grant approval or not. Before doing so, the bench should seek the opinion of 3 committee of reputed doctors to be nominated by the bench after consulting such medical authorities as it may deem fit. Preferably one of the three doctors should be a neurologist, one a psychiatrist and one of the three doctors should be a neurologist. For this purpose, a panel of doctors in every city may be prepared by the High Court in consultation with the state government/union Territory and their fees for this purpose must be fixed beforehand.
- ❖ The committee of three doctors nominated by the bench should be clearly examine the patient and also consult the record of the patient as well as take the views of the hospital staff and submit its report to the bench.
- ❖ Simultaneously, with the appointment of the committee of the doctors the bench shall also issue notice to the state and close relatives(for example the parents, spouse, brothers, sisters) of the patient and in their absence his/her next friend, and supply a copy of the report of the doctors committee to them as soon as it is available. After hearing them the bench should give its verdict. The above procedure should be followed all over India until parliament makes legislation on it.
- ❖ The High Court should give its decision at the earliest, since a delay in the matter result in causing great mental agony to the relatives and person close to the patient.
- ❖ The High Court should give its decision assigning specific reason in accordance with the principle of “the best interest of the patient” as laid down by the House of Lords in Airedales case. The view of the near relatives and committee of doctors should be given due weight by the High Court before pronouncing a final verdict which shall not be summary in nature.

**APPENDIX-II****Application Criteria for vegetative State: -<sup>12</sup>**

- ❖ Unaware of self and environment
- ❖ No interaction with others
- ❖ No sustained, reproducible or purposeful voluntary behavioral response to visual, auditory, tactile or noxious stimuli
- ❖ No language comprehension
- ❖ No blink to visual threat
- ❖ Present sleep wake cycle
- ❖ Preserved autonomic and hypothalamic function
- ❖ Preserved cranial nerve reflexes

<sup>11</sup> Aruna Ramachandra Shanbaug v. Union of India (2011) paragraph 138 – 42.

<sup>12</sup> J.L. Bernat “current controversies in states of chronic Unconsciousness”, Neurology Clinical Practice, Vol. 75(suppl.1) (2010): pp. s33-s38