CASE ANALYSIS ON

**Aruna Ramchandra Shanbaug**

**v.**

**Union Of India & Ors.**

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BY

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# BACKGROUND OF THE CASE

Euthanasia is one of the most difficult issues which the courts and legislatures all over the world are facing today. The Supreme Court, in this case, was facing the same problem, and felt like a ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels before them. The case before them is a writ petition under Article 32 of the Constitution. It has been filed on behalf of the petitioner Aruna Ramachandra Shanbaug by one journalist and human rights activist, Ms. Pinki Virani of Mumbai, claiming to be a next friend.[[1]](#footnote-2) The Court in this landmark judgement debates upon the intricacies involved in passive euthanasia and whether it is feasible to be allowed considering how it can be misused. It also talks about the circumstances in which it can be allowed and if so, who would be authorized to take that decision etc.

# BRIEF FACTS

The petitioner, Aruna Ramachandra Shanbaug was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. On the evening of 27th November, 1973 she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day on 28th November, 1973 at 7.45 a.m. a cleaner found her lying on the floor with blood all over in an unconscious condition. It is alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. It is alleged that the Neurologist in the Hospital found that she had plantars' extensor, which indicates damage to the cortex or some other part of the brain. She also had brain stem contusion injury with associated cervical cord injury. It is alleged at page 11 of the petition that 36 years have expired since the incident and now Aruna Ramachandra Shanbaug is about 60 years of age. She is featherweight, and her brittle bones could break if her hand or leg are awkwardly caught, even accidentally, under her lighter body. She has stopped menstruating and her skin is now like papier mache' stretched over a skeleton. She is prone to bed sores. Her wrists are twisted inwards. It is alleged that Aruna Ramachandra Shanbaug is in a permanent vegetative state (PVS) and virtually a dead person and has no state of awareness, and her brain is practically dead. However, Aruna is virtually a skeleton. Her excreta and the urine is discharged on the bed itself. Once in a while she is cleaned up but in a short while again she goes back into the same sub-human condition. Judged by any parameter, Aruna cannot be said to be a living person and it is only on account of mashed food which is put into her mouth that there is a facade of life which is totally devoid of any human element. It is alleged that there is not the slightest possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital, Mumbai like a dead animal, and this has been the position for the last 36 years. The prayer of the petitioner is that the respondents be directed to stop feeding Aruna, and let her die peacefully.

The Court appointed a team of three very distinguished doctors to examine her thoroughly and submit a report. An elaborate reading of the report is done in Court. It spoke about her physical and mental state as well as the excellent care that was being given to her at the hospital.

# FINDINGS OF COURT DOCTORS

The doctors conducted a detailed medical examination and found that she was not brain dead. She reacts to certain situations in certain ways.  For example, she likes light, devotional music and prefers fish soups. She is uncomfortable if a lot of people are in the room and she gets distraught. She is calm when there are fewer people around her. The staff of KEM Hospital was taking sufficient care of her. She was kept clean all the time. Also, they did not find any suggestion from the body language of Aruna as to the willingness to terminate her life. Further, the nursing staff at KEM Hospital was more than willing to take care of her. Thus, the doctors opined that that euthanasia in the instant matter is not necessary.[[2]](#footnote-3)

# ISSUES RAISED

* In a person who is in a permanent vegetative state (PVS), should withholding or withdrawal of life sustaining therapies (many authorities would include placement of an artificial feeding tube as a life sustaining intervention) be permissible or `not unlawful?'
* If the patient has previously expressed a wish not to have life-sustaining treatments in case of futile care or a PVS, should his / her wishes be respected when the situation arises?
* In case a person has not previously expressed such a wish, if his family or next of kin makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?
* Aruna Shanbaug has been abandoned by her family and is being looked after for the last 37 years by the staff of KEM Hospital. Who should take decisions on her behalf?

# PETITIONERS’ ARGUMENTS

Mr. ShekharNaphade, the counsel for the petitioner relied on the decision in *VikramDeo Singh Tomar*v. *State of Bihar[[3]](#footnote-4)*where it was held that everyone is entitled to a quality of life consistent with his human personality, that is, the right to love with dignity. He also used the case of *Gian Kaur* v *State of Punjab[[4]](#footnote-5)*, where it was held that the right to live with dignity included the right to die with dignity in the context of a dying man, who is terminally ill.

The Court was of the opinion that what was said in the case of Gian Kaur was incorrect and there was no final outcome of the same. The Counsel also brought the Court’s attention to the report of the Law Commission of India, 2006 on ‘Medical treatment of Terminally Ill Patients.’ The court went through the same carefully.

# RESPONDENT’S ARGUMENTS

Learned Attorney General who was appearing on behalf of the Union of India said that Aruna has the right to life and taking away her life support would be cruel and inhuman. He also said that withdrawing life support was contrary to Indian law and doing so would undermine the efforts of her caretakers for 37 years and would cause them to be greatly disheartened.

He also stated that the report of the Law Commission on euthanasia has not been accepted by the Indian government. He also submitted that Indian society is emotional and care-oriented. He stated that allowing euthanasia could lead to innumerable consequences.

# OPINION OF AMICUS CURIAE

The Court appointed Mr. T.R.Andhyarujina as amicus curiae. He submitted that in common law, it is the right of every individual to control of his own free will. He submitted that a patient has a right to consent and even the right not to consent. This is known as self-determination. He clarified that this applies when a patient of a sound mind requires for discontinuation of life support. He was also in favour of passive euthanasia provided the decision was taken by a responsible medical practitioner. He submitted that the decision to withdraw the life support is taken in the best interests of the patient by a body of medical persons. It is not the function of the Court to evaluate the situation and form an opinion on its own. He also said that withdrawal of nutrition by stopping essential food by means of nasogastric tube is not the same as unplugging a ventilator which artificially breathes air into the lungs of a patient incapable of breathing resulting in instant death. In case of discontinuance of artificial feeding the patient will as a result starve to death with all the sufferings and pain and distress associated with such starving. He also requested the Court to recognize the deep agony of nurses of the hospital who have with deep care looked after her for over 37 years and who may not appreciate the withdrawal of the life support.

# GLOBAL APPROACH

Generally, in countries all over the world, it is of the opinion that active euthanasia is illegal but passive euthanasia is legal subject to certain conditions. Let us look at the approach in a few countries.

1. Netherlands: Here, euthanasia is regulated by the “Termination of Life on Request and Assisted Suicide Act”, 2002.  It states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. Several conditions are given taking into account the time period, the patient’s mental state, chances of survival etc.  The legislation in Netherlands also offers an explicit recognition of the validity of a written declaration of the will of the patient regarding euthanasia. Such declarations can be used when a patient is in a coma or otherwise unable to state if they wish to be euthanized.
2. Switzerland:  It has an unusual position on assisted suicide: it is legally permitted and can be performed by non-physicians. However, euthanasia is illegal, the difference between assisted suicide and euthanasia being that while in the former the patient administers the lethal injection himself, in the latter a doctor or some other person administers it. Article 115 of the Swiss Penal Code states that assisted suicide is a crime only if the motive is selfish. The Swiss stance on this issue is unique becomes of two reasons (1) – The recipient need not be a Swiss National and (2) - a physician need not be involved. Many persons from other countries, especially Germany, go to Switzerland to undergo euthanasia.
3. Belgium: Belgium became the second country in Europe after Netherlands to legalize the practice of euthanasia in September 2002. The Belgian law sets out conditions under which suicide can be practised without giving doctors a licence to kill. Patients wishing to end their own lives must be conscious when the demand is made and repeat their request for euthanasia.
4. USA: Active euthanasia is illegal in all states in USA. But physician assisted dying in legal in the states of Oregon, Washington and Montana. The difference between euthanasia and physician assisted suicide lies in who administers the lethal medication. In the former, the physician or someone else administers it, while in the latter the patient himself does so, though on the advice of the doctor.

# RIGHT TO DIE

In the case of State of Maharashtra v. MarutyShripatiDubal*[[5]](#footnote-6)*, the contention was that Section 309 of the Indian Penal Code was unconstitutional as it is violative of Article 19 and 21. It was held in this case by the Bombay high court that ‘right to life’ also includes ‘right to die’ and section 309 was struck down. The court clearly said in this case that right to die is not unnatural, it is just uncommon and abnormal. In the case of P.Rathinam v. Union of India*[[6]](#footnote-7)*, it was held that the scope of Article 21 includes the ‘right to die’. P. Rathinam held that Article 21 has also a positive content and is not merely negative in its reach. In the case of Gian Kaur v. State of Punjab*[[7]](#footnote-8)*, the validity of Section 306 of the IPC was in question, which penalised the abetment of suicide. This case overruled P.Rathinam  but the court opined that in the context of a terminally ill patient or one in the PVS, the right to die is not termination of life prematurely but rather accelerating the process of death which has already commenced. Further, it was also submitted that the right to live with human dignity must also include a death with dignity and not one of subsisting mental and physical agony.

The main case that was relied upon by the court in the decision was the landmark case of *Airedale NHS Trust* v. *Bland[[8]](#footnote-9)*.The broad issued raised before the House of Lords in the Airedale case was "In what circumstances, if ever, can those having a duty to feed an invalid lawfully stop doing so?" In fact this was precisely the question raised in the present case of Aruna Shanbaug before this Court. It was the first time in English history the right to die was allowed through withdrawal of life support systems including food and water. It was also observed that although the decision whether or not the continued treatment and cure of a PVS patient confers any benefit on him is essentially one for the medical practitioners in charge of his case to decide, as a matter of routine the hospital/medical practitioner should apply to the Family Division of the High Court for endorsing or reversing the said decision.This case gave the Court the authority to decide whether a patient in a particular case is fit for euthanasia or not.

Further, in the case of Mckay v. Bergsted*[[9]](#footnote-10)*, the Supreme Court of Navada, after due evaluation of the state interest and the patient’s interest, upheld the permission for the removal of respirator. However, in the instant case, Aruna could breathe by herself and did not need any external assistance to breath and thus, distinguished from the Mckay case.

# LEGAL STANCE IN INDIA

In India abetment of suicide (Section 306 Indian Penal Code) and attempt to suicide (Section 309 of Indian Penal Code) are both criminal offences. This is in contrast to many countries such as USA where attempt to suicide is not a crime. The Constitution Bench of the Indian Supreme Court in *Gian Kaur* v. *State of Punjab[[10]](#footnote-11)*, 1996(2) SCC 648 held that both euthanasia and assisted suicide are not lawful in India. That decision overruled the earlier two Judge Bench decision of the Supreme Court in P. Rathinam. The Court held that the right to life under Article 21 of the Constitution does not include the right to die (vide para 33). In Gian Kaur's case the Supreme Court approved of the decision of the House of Lords in Airedale's case, and observed that euthanasia could be made lawful only by legislation.

The Court was of the opinion that the time has come to delete Section 309 of the Indian Penal Code as it has become anachronistic.  A person attempts suicide in a depression, and hence he needs help, rather than punishment. They recommended the Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code.

The question arises in the Court as to who should give consent for withdrawal of life support. This is an extremely important question in India because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialization, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method. Also, since medical science is advancing fast, doctors must not declare a patient to be a hopeless case unless there appears to be no reasonable possibility of any improvement by some newly discovered medical method in the near future.

The Court made it clear that it is experts like medical practitioners who can decide whether there is any reasonable possibility of a new medical discovery which could enable such a patient to revive in the near future.

# BRAIN DEATH

The question before the Court was when can a person be said to be dead?  A person's most important organ is his/her brain. This organ cannot be replaced. Brain cells require regular supply of oxygen which comes through the red cells in the blood. If oxygen supply is cut off for more than six minutes, the brain cells die and this condition is known as anoxia. Hence, if the brain is dead a person is said to be dead. The Century Dictionary defines death as `cessation of life; that state of a being, animal or vegetable, in which there is a total and permanent cessation of all the vital functions.  Brain death may be defined as "the irreversible cessation of all functions of the entire brain, including the brain stem. In legal terms, the question of death would naturally assume significance as death has a set of legal consequences as well.  From the above angle, it cannot be said that Aruna Shanbaug is dead. Even from the report of Committee of Doctors which we have quoted above it appears that she has some brain activity, though very little.

Aruna Shanbaug meets most of the criteria for being in a permanent vegetative state which has resulted for 37 years. However, her dementia has not progressed and has remained stable for many years. However, there appears little possibility of her coming out of PVS in which she is in. In all probability, she will continue to be in the state in which she is in till her death. The question now is whether her life support system (which is done by feeding her) should be withdrawn, and at whose instance?

# JUDGEMENT

The Hon’ble Division Bench of the Supreme Court of India, comprising Justice MarkandeyKatju and Justice GyanSudha Mishra, delivered this historic judgment on March 7, 2011.

**(i)**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. The Court agreed with Mr. Andhyarujina that passive euthanasia should be permitted in our country in certain situations, and they disagreed with the learned Attorney General that it should never be permitted. Hence, following the technique used in Vishakha's case, they laid down the law in this connection which will continue to be the law until Parliament makes a law on the subject.

**(ii)**  A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

In the present case, Aruna Shanbaug's parents are dead and other close relatives are not interested in her ever since she had the unfortunate assault on her. As already noted above, it is the KEM hospital staff, who have been amazingly caring for her day and night for so many long years, who really are her next friends.

**(iii)** The Court held that even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in *Airedale's* case

The Court was of the opinion that if they leave it solely to the patient's relatives or to the doctors or next friend to decide whether to withdraw the life support of an incompetent person there is always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or otherwise grab the property of the patient.

Further, following the principle of *ParensPatriae*which implies thatthe King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves, the Court feels the need for scrutiny by it.

The Court opined that based on the doctors’ report and the definition of brain death under the Transplantation of Human Organs Act, 1994, Aruna was not brain dead. She could breathe without a support machine, had feelings and produced necessary stimulus. Though she is in a PVS, her condition has been stable. So, terminating her life was unjustified.

**(iv)** Thus, the Supreme Court allowed passive euthanasia in certain conditions, subject to the approval by the High Court following the due procedure. The High Court could be approached under Article 226 of the Constitution and they can grant approval for withdrawal of life support. When an application for passive euthanasia is filed the Chief Justice of the High Court should forthwith constitute a Bench of atleast two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor’s committee to them as soon as it is available. After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.

In the present case, Aruna Shanbaug was denied euthanasia as the court opined that the matter was not fit for the same. If at any time in the future, the staff of KEM hospital or the management felt a need for the same, they could approach the High Court under the procedure prescribed.

# CONCLUSION AND SUGGESTIONS

Therefore this case is a landmark one in India that laid down the basic law relating to euthanasia and the procedures to be followed for passive euthanasia. This case served as a precedent for various cases in the future. Alongside this, the Court also made a recommendation for repealing Section 309 of the IPC. The Court in this case also made sure to appreciate all parties in the case for their dedication to the case. After this decision, Aruna Shanbaug died 4 years later due to natural causes in KEM Hospital.

Medical professionals must be very careful when allowing euthanasia and the Court must also closely look into the case before allowing it. Further, if there is any sign from the patient not consenting to it, then it must not be allowed at any cost. It is suggested that proper guidelines on instances when euthanasia is allowed must be released to avoid further confusions.

# REFERENCES

* *Aruna Ramachandra Shanbaug* v *Union of India*(2011) 4 SCC 454 (SC)
* *VikramDeo Singh Tomar* v *State of Bihar* 1988 (Supp) SCC 734 (SC)
* *Gian Kaur* v *State of Punjab* (1996) 2 SCC 648 (SC)
* *State of Maharashtra* v *MarutyShripatiDubal* (1986) 88 BOMLR 589 (BomHC)
* *P Rathinam* v *Union of India* 1994 SCC (3) 392 (SC)
* *Airedale NHS Trust* v *Bland* (1993) All E.R 82
* *Mckay* v *Bergsted*, 801 P.2d 617 (Nev. 1990)

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1. Aruna Ramachandra Shanbaug v Union of India (2011) 4 SCC 454 (SC) [↑](#footnote-ref-2)
2. <https://www.lawctopus.com/academike/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/>accessed 23 April 2020 [↑](#footnote-ref-3)
3. VikramDeo Singh Tomar v State of Bihar 1988 (Supp) SCC 734 (SC) [↑](#footnote-ref-4)
4. Gian Kaur v State of Punjab (1996) 2 SCC 648 (SC) [↑](#footnote-ref-5)
5. State of Maharashtra vMarutyShripatiDubal (1986) 88 BOMLR 589 (BomHC) [↑](#footnote-ref-6)
6. P Rathinam v Union of India 1994 SCC (3) 392 (SC) [↑](#footnote-ref-7)
7. Gian Kaur v State of Punjab (1996) 2 SCC 648 (SC) [↑](#footnote-ref-8)
8. Airedale NHS Trust v Bland (1993) All E.R 82 [↑](#footnote-ref-9)
9. Mckay v Bergsted801 P.2d 617 (Nev. 1990) [↑](#footnote-ref-10)
10. Gian Kaur v State of Punjab1996(2) SCC 648 (SC) [↑](#footnote-ref-11)