Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

Case Comment: Aruna Ramchandra Shanbaugh v Union of India

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Received 17 October 2022; *Accepted* 30 October 2022; *Published* 04 November 2022

INTRODUCTION

Article 21[1] of the Constitution of India guarantees that no person shall be deprived of his life or personal liberty except for the procedure established by law. Over the years, the judiciary has highlighted and considered many aspects which is in direct accordance with the Right to Life and Personal Liberty, e.g. Right to Privacy, Right to Sleep, Right to Fair and Speedy Trial, Protection of Ecology and Environmental Pollution, and so on. Apparently, one of the most controversial aspects of the *Right to Life* is the *Right to die,* and answers a very crucial question that whether the Right to Life comes under the purview of Article 21.

The case[2] of Aruna Shambaugh is one of the landmark judgements in the field of euthanasia which incorporated the legal basis of passive euthanasia. Passive euthanasia refers to the withdrawal of medical treatment with the intention to hasten the death of terminally ill patients and thereby reliving them from the pain and agony of a meaningless and unproductive life. But the controversial question that whether the Right to Die comes under the purview of the Right

[1] Constitution of India 1950, art. 21
[2] *Aruna Ramchandra Shanbaugh v Union of India* [2011] AIR 1290 (SC)

to Life under Article 21 is still in debate. The case goes on to distinguish between passive and active euthanasia.

BACKGROUND

The case reached the ambit of the Supreme Court through a writ petition filed by Ms. Pinki Virani, an eminent journalist, who claimed to be the next friend of the victim. The fact of the case revolves around Aruna Ramchandra Shanbaug, who was a staff nurse at KEM Hospital, Mumbai. On 27th November 1973, Aruna was attacked by a sweeper in the hospital who wrapped a dog chain around her neck to trap her and immobilise her. He tried to rape her, but finding her menstruating sodomised her. The next day, a cleaner discovered her lying on the floor in an unconscious state, with blood all over. As the dog chain was tied tightly around her neck, it stopped the blood flow to the brain which made her unconscious. It is alleged that she had bed sores and was in a persistent vegetative state (PVS) and her brain is virtually dead. She was reduced to a skeleton. She could be given only mashed food.

There was not even the slightest possibility of her recovery and she stayed in that position for more than 36 years in the KEM Hospital of Mumbai. The petitioner prayed in front of the apex court to stop the force-feeding of Aruna by the hospital staff and let her die peacefully. A counter affidavit was filed on behalf of the respondents which varied from the petition. Since there was some variance in the allegation in the writ petition and counter affidavit the court ordered a team of three very distinguished doctors to examine the said person thoroughly and submit a report on her physical and mental condition. The conclusion in the report filed by the three doctors as quoted "she has evidence of enact auditory, visual, somatic, and motor primary neural pathways. However, no definite evidence of awareness of auditory, visual, somatic, and motor stimuli was observed during our examinations". Hence the apex court decided to take up the matter.

ISSUES RAISED

- Should the life-supporting system of a person who is in a permanent vegetative state be withdrawn to let that person die with dignity and should that be backed by law?

- If the concerned person is not in the state to file a petition for withdrawing his life-supporting system, then does his closest relative possess that right?
- Should petitioner Pinky Virani be addressed as the next close friend/kin of the victim or should KEM Hospital, who has been treating Aruna for 37 years, be given the status of the same?

CONTENTIONS

Arguments by the Petitioners

The journalist-activist Pinki Virani on behalf of the petitioner asked for the legalization of euthanasia so that Aruna's continued sufferings could be ended by withdrawing the medical support. It was contended on behalf of the petitioner that life is not merely an "animal existence" but living a 'healthy' and dignified life and a 'healthy' life not only symbolises an absence of disease. Further, they relied on the case of ***Gian Kaur v State of Punjab***[3] and stated that the Right to die is a part of the Right to Life with dignity under Article 21 of the Indian Constitution. The learned counsel appealed that Ms. Pinki Virani is the closest kin to Aruna as all other relatives of hers either died or abandoned her. The petitioner Pinky Virani also wrote a book on Aruna's life story. The petitioner further appealed that her contention was that Aruna had no chance of recovery and thus, she should be relieved of her pain and agony by granting her passive euthanasia. Further, the learned counsel argued that Aruna has been blocking a bed in a hospital for 37 years in a country where medical facilities are still a luxury for some section of people and moreover, the expenditure that the hospital is investing behind Aruna is going all in vain as not even a minimal chance of her recovery is left.

Arguments by the Respondents

Responding to the petition filed by Pinki Virani, the respondent, i.e., KEM Hospital & Bombay Municipal Corporation filed a counter-petition opposing euthanasia for Aruna Shambaugh. They stated that the staff has a certain bonding with Aruna and they are more than happy to

[3] *Gian Kaur v State of Punjab* [1996] 2 SCC 648

take care of her for the remaining days of her life. They believed that allowing euthanasia for Aruna would put all their efforts down the drain. It was also asserted on behalf of the Union of India that every person has the right to live in the state in which they reside and that would be inhumane to cut off all the life support systems of a person. They contended that it was against human rights as well.

The learned counsel also drew the attention of the court towards the report of the Law Commission of India on euthanasia and held that euthanasia is not accepted by the Government of India. Further, he added that Indian Society is emotional, and care-oriented and yet sometimes very greedy and cunning. He stated that there is a great danger in permitting euthanasia because after that the relatives of a person may conspire with doctors and get him killed to inherit his property. Hence, if euthanasia gets legalised, then there will be numerous misuses of the law rather than actual usage. He further argued that medical science is developing every day, and who knows that tomorrow there won't be a cure for a medical state which seems incurable today. The learned counsel also submitted that the petitioner has no locus standi in the matter, it is only the hospital staff who could have filed such a writ petition.

RATIONALE

The Supreme Court appointed a team of three eminent doctors to assess the condition of Aruna and prepare a report on her sustainability. Accordingly, the committee of doctors found that Aruna Shambaugh was neither brain dead nor she was comatose. The victim had some subtle brain activity. She recognised the people around her and expressed her like or dislikes by making some gestures. She didn't need any lung machine. She was able to blink well and could see her doctors. But on the other hand, she met most of the criteria for being in a permanent vegetative stage of 37 stages.

Thus, the Supreme Court was put in a very difficult situation in assessing the constitutional validity of passive euthanasia in India. In the final judgment, the Bench held that active euthanasia will still need time to come in Indian Society. Because of "the low ethical levels prevailing in our society today and the rampant commercialization and corruption we cannot

rule out the possibility that unscrupulous persons with the help of some unscrupulous doctors may fabricate material to show that it is a terminal case with no chance of recovery". In this case, for the first time in the Indian Judiciary, the apex court laid down the clear distinction between active and passive euthanasia and held that passive euthanasia can be granted but in exceptional and rarest of rare cases subject to the approval of the High Court under Article 226[4].

The Division Bench of the Supreme Court of India delivered the landmark judgement rejecting the petition stating that the court express their appreciation to Ms. Pinki Virani for filing this petition for a bona fide cause which is regarded as ethical. The court gave full autonomy to the staff at the KEM hospital that they can approach the court anytime as they are the closest kin to Aruna because they have been taking care of her for the past 37 years. Hence the right to take every decision for Aruna is vested in the hands of KEM Hospital, Mumbai.

RATIO DECIDENDI

The Supreme Court in the *Aruna Shanbaugh case* provided the following reasoning for its judgement:

- According to the health report submitted by the committee of doctors, it was held that though Aruna was in a 'permanent vegetative state, she was not technically brain dead. She expressed her liking by petty movements and blinking and responding to her surroundings.
- As there are immense changes in its misuse, hence the apex court laid down a proper legal procedure for all those permanently ill patients who doesn't have a chance of recovery. It stated that all these cases would be dealt with by the concerned High Courts by appointing a team of doctors who would examine and supervise the patients and accordingly submit a detailed health report of the same to the court. After that, the closest kin of the patient should submit a written application to the court seeking passive euthanasia for the patient. After that, accordingly, the court would deliver its decision.

[4] Constitution of India 1950, art. 226

- The Supreme Court held Section 309 I.P.C to be violative of Article 21 of the Constitution. The court held that this provision needs to be effaced from the statute book as "it is a cruel & irrational provision & may result in punishing a person doubly who has suffered agony & would be undergoing ignominy because of his failed attempt to end his life." However, in the five-judge Constitution Bench of the Apex Court held Sections 306 & 309 of IPC to be constitutionally valid and observed that the right to life doesn't include the right to die.

DEFECTS OF LAW

Most people know that Aruna was sodomised that night but neither the police records nor the FIR mentioned that information. Though the judgment said, "the accused had gone there to rape" Sohanlal, the convict, was never charged with the charge of anal rape. He was held on the charge of attempted murder and robbery because he had stolen Aruna's watch and earrings. The then Dean of the hospital said in an interview that the fact that she was sodomized was not highlighted because he feared embarrassment. Secondly, though the apex court gave legal sanction to passive euthanasia, it was always practised secretively, hence laying down a legal procedure hardly changed the scenario. In Indian society, where social and class stratification is very rigid and is driven by corruption, the legalisation of euthanasia can open a door towards its huge misuse.

CONCLUDING REMARKS

Every coin has two sides; similarly, the legalisation of euthanasia would also impose a two-fold impact on society. On one hand, it would promote the Right to Die with Dignity to all those terminally ill patients who have no chance of recovery and will liberate them from their pain and agony, but on the other hand, this law will be subjected to immense misuse. A large section of Indians is still deprived of education; India still couldn't save the women and their families from dowry practise and practices like Honour Killing are still prevalent even though we have proper legislation for them. In such a scenario, legalising euthanasia hardly serves any purpose. The mindset of every Indian should change as society is getting westernised day by day. Before

adopting a new law, there should be a detailed analysis that how people will perceive that law. Indians still need that mature mindset to accommodate modern laws like legalising passive euthanasia. After that, the legislature should make sure that all these laws are implemented in such a manner that their misuse is minimized and it is spread throughout the country so that they can serve the common public good.