



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Case Comment: Euthanasia or Mercy Killing in Reference to Aruna Shanbaug v Union of India

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*Received 13 April 2024; Accepted 15 May 2024; Published 20 May 2024*

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### INTRODUCTION

Euthanasia is the painless killing of a patient suffering from a long-time incurable disease. In *Gian Kaur v State of Punjab*<sup>1</sup>, it was established the distinction between active and passive euthanasia and in the landmark judgement case of *Common Cause v Union of India*, 2018, this case established that the right to die with dignity is a fundamental right and that individuals have the right to make advance medical directives. The case of Aruna Ramchandra Shanbaug, a nurse working at Mumbai's King Edward Memorial Hospital, unfolded tragically on November 27, 1973, when a sweeper brutally assaulted her. The sweeper in an attempt to rape Aruna, choked her with a dog chain, causing severe brain damage and leaving her in a permanent vegetative state. The next day, a hospital staff discovered Aruna lying unconscious in a pool of blood, Aruna's condition remained unchanged for 36 years. In 2009, Aruna's friend, Ms. Pinki Virani filed a petition under Article 32 of the Constitution<sup>2</sup> seeking to halt her life-sustaining treatment, arguing for Aruna's right to die with dignity. Dr. Pazare, however, opposed

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<sup>1</sup> *Gian Kaur v State of Punjab* 1996 (2) SCC 648

<sup>2</sup> Constitution of India 1950, art 32

euthanasia in a counter-affidavit. The High Court constituted a team of medical experts to assess Aruna's condition and make a decision on the petition.

## **FACTS OF THE CASE**

On the night of November 27, 1973, a nurse named Aruna Ramchandra Shanbaug who worked at the King Edward Memorial Hospital in Mumbai was attacked by a hospital sweeper who choked and strangled her with a dog chain to prevent her from resisting a rape attempt. When the sweeper realized Ms. Aruna was menstruating, he sexually assaulted her. The next day a cleaner found Ms. Aruna unconscious surrounded by a pool of blood. When Ms. Aruna was strangled by the dog chain, it ceased the supply of oxygen to her brain causing critical damage to the cortex of the brain as well as the brain stem contusion along with cervical cord injury. A petition was filed by Ms. Aruna's friend, Ms. Pinki Virani under Article 32 of the Constitution in the year 2009, 36 years after the incident. Ms. Shanbaug has been in a 'Permanent Vegetative State' for many years and has become extremely feeble and infirm. Ms. Virani wanted the KEM Hospital staff to stop feeding her and let her die peacefully with dignity. However, a counter affidavit was filed by Dr. Pazare who was against Euthanasia. The High Court constituted a team of three prominent doctors who would analyse Aruna's condition in detail after which a decision would be taken whether to allow the petition or not.

## **ISSUES RAISED**

1. Is it ethically justifiable to allow the discontinuation of life-sustaining interventions for individuals in a persistent vegetative state (PVS)?
2. Does the family or legal guardian possess the authority to petition for the holding or withdrawal of life-sustaining interventions if a person has not expressed such wishes beforehand?
3. Is there a legal basis to declare Aruna Ramchandra Shanbaug as deceased?
4. Should the constitutional protection under Article 21 encompass the right to die?
5. Are Sections 306 and 309 of the Indian Penal Code (IPC) considered to be consistent with constitutional principles?
6. Is Euthanasia permissible under the law, and what are the associated legal complexities?

## ARGUMENTS

**Contentions put forth by the Petitioners:** Ms. Pinki Virani, a prominent journalist and activist, initiated legal proceedings under Article 32 of the Indian Constitution. She contended that Article 21<sup>3</sup>, which guarantees the Right to Life, should encompass the Right to Die with dignity. Ms. Virani argued that individuals facing terminal illnesses or permanent vegetative states should have the option to end their lives in a humane manner to alleviate prolonged suffering. She highlighted the case of Aruna, who had been in a vegetative state for 36 years with no hope of improvement, experiencing difficulties in basic functions such as chewing and lacking consciousness. Ms. Virani asserted that withholding sustenance from Aruna would not be tantamount to actively causing her death but rather enabling her peaceful passing.

**Contentions put forth by the Respondents:** In the case of *Aruna Shanbaug v Union of India*<sup>4</sup>, the hospital dean opposed euthanasia, asserting that the hospital staff had dutifully attended to Aruna's basic needs for almost 36 years and were committed to continuing this care voluntarily. The respondent highlighted Aruna's age (60) and suggested that her natural demise was imminent, rendering euthanasia unnecessary. The hospital personnel had formed a strong emotional connection with Aruna, with one member offering to care for her without compensation. They argued against legalizing passive euthanasia, fearing potential exploitation by family members seeking to gain inheritance, which they believed could erode societal values of compassion and affection.

The respondent argued in *Aruna Shanbaug v Union of India* that every individual in the nation is entitled to the Right to Life as per Article 21 of the Constitution. They asserted that euthanasia, by its very nature, involves the termination of a living being's life, rendering it morally and ethically unacceptable. Furthermore, they raised concerns regarding consent, questioning who would be authorized to provide consent on behalf of Aruna, given her inability to express consent regarding the withdrawal of life support

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<sup>3</sup> Constitution of India 1950, art 21

<sup>4</sup> *Aruna Shanbaug v Union of India* AIR 2011 SC 1290

## JUDGEMENT

In the landmark case of *Aruna Shanbaug v Union of India*, the court made a clear distinction between active and passive euthanasia. Active euthanasia involves the deliberate and affirmative ending of life through the administration of lethal substances, typically considered a criminal offense globally unless legally authorized. In the Indian legal context, active euthanasia is explicitly prohibited under sections 302(2)<sup>5</sup> and 304(3)<sup>6</sup>. Additionally, physician-assisted suicide is deemed illegal under section 309(4)<sup>7</sup>.

The Constitution Bench of the Indian Supreme Court in *Gian Kaur v State of Punjab*<sup>8</sup>, ruled that both euthanasia and assisted suicide are not permissible in India. This decision overturned the earlier judgment of the Supreme Court in *P. Rathinam v Union of India*<sup>9</sup>. The Court emphasized that the right to life under Article 21 of the Constitution<sup>10</sup> does not encompass the right to die. In *Gian Kaur's* case, the Supreme Court endorsed the decision of the House of Lords in *Airedale's* case, stating that euthanasia could only be legalized through legislation.

On the other hand, passive euthanasia involves the withholding or cessation of life-support systems or medical interventions. The key distinction lies in the fact that 'active' involves a deliberate action to end life, while 'passive' entails refraining from such action. In its ruling in the case of *Aruna Shanbaug v Union of India*, the apex court established specific protocols and guidelines for permitting passive euthanasia in extremely exceptional circumstances, rejecting the petitioner's plea. It clarified that decisions regarding the withdrawal of life support should be adjudicated by the High Court under Article 226<sup>11</sup>.

Upon receiving an application, the Chief Justice of the High Court is required to constitute a bench, before which a panel of three distinguished medical practitioners must be referred. A thorough evaluation of the patient's condition is crucial, and notification must be provided to

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<sup>5</sup> Indian Penal Code 1860, s 302(2)

<sup>6</sup> Indian Penal Code 1860, s 304(3)

<sup>7</sup> Indian Penal Code 1860, s 309(4)

<sup>8</sup> *Gian Kaur v State of Punjab* 1996 (2) SCC 648

<sup>9</sup> *P. Rathinam v Union of India* 1994 (3) SCC 394

<sup>10</sup> Constitution of India 1950, art 21

<sup>11</sup> Constitution of India 1950, art 226

both state authorities and family members by the bench. The High Court is obligated to expedite its proceedings and reach a timely decision.

## ANALYSIS

In the following Landmark Judgement case of *Aruna Shanbaug v Union of India*, 2011 the Court ruled that a person's most important part of the body is Brain and in no way can Aruna be said to be brain dead. They ruled in favour of KEM Hospital as they have been taking care of Aruna since the past 36 years and the fact that Aruna does not need any heart or lung breathing machine. She breathes, digests and makes sounds on her own. In the previous Landmark Case of *Gian Kaur*, the Supreme Court had declined to acknowledge the right to die within the purview of the right to life under Article 21 of the Indian Constitution<sup>12</sup>.

The Judgement of the case was rightly held and due process of law was followed. Every citizen has the right to live with dignity according to Article 21 of the Constitution. There was no point in withdrawing Aruna's life support if she was already 60 years old and had lived most of her life like that. The KEM hospital and dean assured the Court that they had taken care of Aruna for many years and were willing to do so in the future as well. The Supreme Court held that Aruna should be allowed to live. The case of *Gian Kaur v State of Punjab*, 1996 this case established the distinction between active and passive euthanasia and the landmark judgement case of *Common Cause v Union of India* 2018, this case established that the right to die with dignity is a fundamental right and that individuals have the right to make advance medical directives hence, the right to die with dignity is one of the prerequisites and Aruna's case was dealt with fairness and justice and the due process of law was followed and the judgement received a positive response. If a person is unable to express his/her wish that does not mean he has no right to experience certain aspects of life and the Right to Live is the basic right of utmost importance.

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<sup>12</sup> Constitution of India 1950, art 21

## **CONCLUSION**

In the landmark Judgement Case of Aruna Shanbaug, which stands as a cornerstone in Indian legal history, the Supreme Court drew a critical line between active and passive euthanasia. Aruna Shanbaug, a nurse, had remained in a permanent vegetative state for an extensive period spanning 36 years. The court, in recognizing the gravity of the situation, sanctioned passive euthanasia solely under the most exceptional circumstances. It delineated a procedural framework, vesting the High Court with the authority under Article 226 to adjudicate on the withdrawal of life support measures. This process entails the Chief Justice convening a bench and referring the matter to a panel comprising three medical professionals. Both the family and state authorities are duly notified, and a swift resolution is mandated. This landmark judgment heralded a significant legal shift by formalizing the acceptance of passive euthanasia within the Indian legal framework, thereby addressing the issue of prolonged suffering endured by patients in critical conditions.