



END OF LIFE
CARE AND LAW



Constitutional Scheme

- Article 21- “ No person shall be deprived of his life or personal liberty except according to procedure established by law”
- Whether Right to life under Article 21 also includes the Right to Die?
- Criminal Law Provisions- Section 306 (abetment to suicide) and Section 309 (attempt to commit suicide)
- Mental Health Care Act, 2017

Euthanasia- Meaning

- Derieved from Greek word- 'Euthantos' meaning a good Death
- Oxford English Dictionary- The painless killing of patient suffering from an incurable disease or in an irreversible coma
- A practice of bring about death in a manner that causes least amount of suffering to the 'patient'
- Why euthanasia is discussed so elaborately?
 - *It is due to enormous value we place upon the human life*
 - *The evolution of the concept of 'human dignity'*

Ethical Dilemma

- Hippocratic Oath
 - The Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002- Regulation 6.7
- 6.7 Euthanasia: Practicing euthanasia shall constitute unethical conduct. However on specific occasion, the question of withdrawing supporting devices to sustain cardio-pulmonary function even after brain death, shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of support system. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer / Medical Officer in charge of the hospital and a doctor nominated by the in-charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994.
- Thomas Mann- “ a man dying is more the survivor’s affair than his own”
 - Dilemmas- The doctor, The Lawyer, The Patient, and the patient’s relatives
 - Issues of Morality, religion, bio-medical ethics and constitutional law

- Gian kaur v. State of Punjab (1996)
- Aruna Ramachandra Shanbaug v. Union of India (2011)
- Active Euthanasia- Administration of a lethal substance or force to kill a person
- Passive euthanasia- withholding or withdrawing of medical treatment necessary for continuance of life

HER AGONISING JOURNEY

NOVEMBER 27, 1973: Aruna Shanbaug, a nurse at King Edward Memorial Hospital (KEM), was sexually assaulted by a ward boy and cleaner, Sohanlal Valmiki, in Mumbai. He used a dog chain to torture Aruna, cutting off oxygen supply to her brain.



NOVEMBER 28: Mumbai police arrest Valmiki.

NOVEMBER 29: Such was the severity of the rape that Aruna is left paralysed, deaf and in coma.

1974: Initially, Valmiki was charged with robbery and attempted murder, not rape. He was sentenced to seven

years imprisonment.

1980: After serving his sentence, Valmiki walked out of jail and also worked at another hospital. Meanwhile, a municipal body tries to shift Aruna outside the KEM, however, the nurses protest.

2009: Author of the book, *Aruna's Story*, moved the Supreme Court urging it to stop force-feeding her, further demanding euthanasia.

JANUARY 24, 2011:

After she became vegetative for years, the response for euthanasia was given. Aruna was given a pink pill up a nose exam.

May turned kill

INDIA'S SADDEST STORY ENDS

FILE

HEADLINES
TODAY
18 MAY 15





- A divisional bench [Markandey Katju and Gyan Sudha Mishra JJ] did not accept the plea of Pinky Virani seeking permission to withdraw life support to her friend, Aruna Ramachandra Shanbaug, who has been lying in PVS in KEM hospital Mumbai for 37 years;
- The bench held illegal active euthanasia. Katju J said – “there is not 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 decision. We agree with Mr. T R Andhyarujina that passive euthanasia should be permitted in our country in certain situations, and we disagree with the learned Attorney General [G E Vahanvati] that it should be never permitted”

- Following in the strategy of interim guidelines (as in the case of Sexual Harassment in workplace) said “we are laying down the law in this connection which will continue to be the law until Parliament makes a law on the subject. A decision has to be taken to discontinue life support to patient in PVS 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”

- “if we leave it solely to the patient’s relatives or to the doctors or the next friend to decide whether to withdraw life support to 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. Considering the low either 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”

Safeguard indicated in Aruna Shanbaug's case

- Application for passive euthanasia to the HC
- CJ of HC to constitute a bench of at least two Judges
- The bench shall constitute a medical board of three reputed doctors
- Simultaneous notice to all (state, close relatives, parents, spouse etc.)
- Gives its verdict

■ Justice Markanday katju in Aruna Shanbaug's case

“ Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. This court, in this case is facing the same issue, and we feel like a ship in an unchartered 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 us”

Inconsistency in Aruna's judgement

- Relying on Gian kaur concluded that euthanasia can be allowed in India only through a valid legislation
- Also contradicts by mentioning that it is not clarified who can decide whether life support should be discontinued in the case of an incompetent person (a person in coma or PVS)
- The court accepted the permissibility of Passive Euthanasia and set down the procedure which must be followed

Law Commission Reports

- 196th Report on 'Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)' – March, 2006
- 241st Report of the Law Commission – Passive Euthanasia – A Relook – August, 2012

Common Cause, a Regd. Society v UOI

- Judgement delivered on March 09, 2018 by a constitutional bench comprising of Dipak Mishra CJI, A. M. Khanwilkar, A. K. Sikri, D. Y. Chandrachud, and Ashok Bhushan JJ
 - *Unanimous judgement, major part of it being written by Misra and Khanwilkar JJ;*
 - *Dipak Misra CJI and Justice A. M. Khanwilkar, J., writing combined judgement; and*
 - *All other judges writing independent judgments, but concurring with the main findings of the judgement*
- Reference by three judge-bench of SC on February 25, 2014

- The petitioners, Common Cause inter alia seek
 - *Declaration that ‘right to die with dignity’ is a fundamental right which arises from the right to live with dignity under Art. 21 of the Constitution; and*
 - *A direction to the Union government to adopt suitable procedures to ensure that persons with ‘deteriorated health’ or those who are terminally ill should be able to execute a document in the form of ‘a living will and attorney authorization’;*
 - *In the alternative that this Court should issue guidelines and appoint an expert committee consisting of doctors, social scientists and lawyers who will govern the making of ‘living wills’*

The Advance Directives

- Advance Medical Directive would serve as fruitful means to facilitate the fructification of the sacrosanct right to life with dignity
- Who can execute the Advance Directive & how?
 - *Only by an adult with sound and healthy state of mind;*
 - *Must be executed with free mind, after having full knowledge or information;*
 - *“It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering and further put him/her in a state of indignity”*

■ What should it contain?

- *It should be in specific terms and instructions must be absolutely clear and unambiguous;*
- *It should mention that, the executor may revoke the instructions/ authority at any time;*
- *State that the executor understands the consequences of executing such a document*
- *Specify the name of a guardian or close relative – who would authorize to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive*
- *If multiple advance directives present – latest among them would be given effect to*

■ How should it be recorded and preserved?

- *Should be signed by the executor in the presence of two attesting witnesses, and countersigned by the jurisdictional Judicial Magistrate of First Class so designated by the concerned District Judge;*
- *JMFC shall ensure that document is executed with free will*
- *JMFC shall preserve one copy of the document in his office, in addition to keeping it in digital format;*
- *JMFC shall forward one copy to the Registry of District Court, which shall be retained in digital format at District Court registry;*
- *JMFC shall ensure that this is being brought to the notice of family members of the executor;*
- *A copy shall be handed over to the competent officer of the local government; and the local government shall nominate a competent official in this regard who shall be the custodian of the said document*

- When and by whom can it be given effect to?
 - *In the relevant time – treating physician shall ascertain genuineness and authenticity thereof from the jurisdictional JMFC before acting on the same;*
 - *The instructions in the document must be given due weight by the doctors provided there is scenario which demands*
 - *Treating physician shall communicate to the executor or his guardian that withdrawal or refusal of medical treatment is the best choice;*
 - *Physician/hospital shall constitute a Medical Board consisting of the Head of the treating Department and at least three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession at at least twenty years;*

- *The Medical Board shall examine the patient, in the presence of the his guardian/close relative and form an opinion whether to withdrawal or refusal of further medical treatment;*
- *The above decision shall be regarded as 'primary opinion' /*
- *If the primary opinion is affirmative – then jurisdiction Collector is to be informed about the proposal;*
- *Immediately the jurisdictional Collector shall constitute a Medical Board with District Medical Officer as the Chairman and three expert doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years;*
- *They shall jointly visit the hospital where the patient is admitted and if they concur with the preliminary opinion – they may endorse the certificate to carry out the instructions given in Advance Directive;*

- *Then the Chief District Medical Officer, shall convey the decision of the Board to the jurisdictional JMFC*
- *The JMFC shall visit the patient at the earliest and, after examining all aspects, authorize the implementation of the decision of the Board;*
- *It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.*

- What if permission is refused by the Medical Board?
 - *It is open for the executor or the family members or even the treating doctor to prefer a writ under Art. 226;*
 - *Chief Justice of the HC shall constitute a division bench to decide upon grant of approval or to refuse. The HC will be free to constitute an independent Committee consisting of three doctors (again with experience of 20 years);*
 - *HC shall hear the application expeditiously after affording opportunity to the State counsel;*

■ Revocation or inapplicability of Advance Directive

- *Following the same procedure as for writing an Advance Directive, it can be revoked in writing;*
- *“An Advance Directive shall not be applicable to the treatment in question if there are reasonable grounds for believing that circumstances exist which the person making the directive did not anticipate at the time of the Advance Directive and which would have affected his decision had he anticipated them”.*
- *If the Advance Directive is not clear or ambiguous – the Medical Board may refuse to give effect to it;*
- *If the Hospital Medical Board takes a decision not to follow an Advance Directive while treating a person, then it shall make an application to the Medical Board constituted by the Collector for consideration and appropriate direction on the Advance Directive.*

- “having said this, we think it appropriate to cover a vital aspect to the effect the life support is withdrawn, the same shall also be intimated by the Magistrate to the High Court. It shall be kept in digital format by the Registry of the High Court apart from keeping the hard copy which shall be destroyed after the expiry of three years from the death of the patient”.
- “Our directions with regard to the Advance Directives and the safeguards as mentioned hereinabove shall remain in force till the Parliament makes legislation on this subject”.

Defenses available to the doctors

- Section 81 of IPC- Causing harm with an Intention to cause greater harm
- Section 88 of IPC- Action taken in good faith

PENDING BILL

- The Medical treatment of terminally ill patients (protection of Patients and medical Practioners) bill, 2016