BLOGS

Right to Die: Aruna Ramchandra Shanbaug v. Union of India

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The following article analyses the case of Aruna Shanbaug vs UOI, dealing with the concept of passive euthanasia and the right to die.

Dated – 7th March 2011

Court – The Supreme Court of India

Bench –Justice Markandey Katju and Justice Gyan Sudha Mishra

Introduction

The Constitution of India guarantees 'Right to Life' to all its citizens. The constant, ever-lasting debate on whether 'Right to Die' can also be read into this provision still lingers in the air. On the other hand, with more and more emphasis being laid on the informed consent of the patients in the medical field, the concept of Euthanasia in India has received a mixed response.

The Hon'ble Supreme Court of India, in the present matter, was approached under Article 32 of the Indian Constitution to allow for the termination of the life of Aruna Ramchandra Shanbaug, who was in a permanent vegetative state. The petition was filed by Ms. Pinki Virani, claiming to be the next friend of the petitioner.

The Court in earlier cases has clearly denied the right to die and thus legally, there was no fundamental right violation that would enable the petitioner to approach the court under Article 32. Nonetheless, the Supreme Court taking cognizance of the gravity of the matter involved and the allied public interest in deciding about the legality of euthanasia accepted the petition.

Facts of the Case

1. The petitioner in this case, Aruna Ramchandra Shanbaug used to work as a Nurse in King Edward Memorial Hospital, Parel, Mumbai. On the evening of the 27th November 1973 a

sweeper of the same hospital attacked her and he wrapped her neck with a dog chain and yanked her back with it. The sweeper also tried to rape her but when he found out that she was menstruating he sodomized her. To prevent her from moving or creating any chaos, he twisted that chain really hard around her neck.

2. Next day, a cleaner found her body lying on the floor unconscious with blood all over. It was believed that the supply of oxygen to the brain stopped because of strangulation by the chain and hence the brain got This incident caused permanent damage to her brain and led her into a permanent vegetative state (PVS).
3. Later an activist-journalist Pinki Virani filed a petition in the Supreme Court under Article 32 of the constitution alleging that there is no possibility for her to revive again and get So, she should be allowed to go with the passive euthanasia and should be absolved from her pain and agony.
4. To this petition the respondent parties i.e., KEM Hospital and Bombay Municipal Corporation filed a counter petition. This led to a rise in the disparities among both the groups. Since there were disparities, the Supreme Court in order to get a better picture of the situation appointed a team of 3 eminent doctors to investigate and provide a report of the exact mental and physical condition of Aruna.
5. During this study doctors investigated her entire medical history and opined that her brain is not She has her own way of understanding and reacting to situations. Also, Aruna’s body language did not show any sign of her willingness to terminate her life. Neither the nursing staff of the hospital showed any carelessness towards taking care of her. Thus, it was believed by the doctor that the euthanasia in the current matter is not essential. She stayed in this position for 42 years and died in 2015.

Issues Identified

1. Does withdrawal of life sustaining systems and means for a person who is in a permanent vegetative state (PVS), should be permissible?
2. If a patient declares previously that he/she does not want to have life sustaining measures in case of futile care or a PVS, should his/her wishes be respected in such a situation?
3. Does the family or next of kin of a person get to make a request to withhold or withdraw life sustaining systems, in case a person himself has not placed such a request previously?

What is Euthanasia?

- Euthanasia and its procedure have long history of locking horns as a vexed issue with laws of countries across the world. Every human being of adult years and sound mind has a right to determine what shall be done with his/her own body. It is unlawful to administer treatment to an adult who is conscious and of sound mind, without his consent.
- In patients with Permanently Vegetative State (PVS) and no hope of improvement, the distinction between refusing lifesaving medical treatment (passive euthanasia) and giving lethal medication is logical, rational, and well It is ultimately for the Court to decide, as parens patria, as to what is in the best interest of the patient.
- An erroneous decision not to terminate results in maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient's intent, changes in the law, or simply the unexpected death of the patient despite the administration of life sustaining treatment, at least create the potential that a wrong decision will eventually be corrected or its impact Passive euthanasia is usually defined as withdrawing medical treatment with a deliberate intention of causing the patient's death.
- For example, if a patient requires kidney dialysis to survive, not giving dialysis although the machine is available, is passive euthanasia.
- Similarly, if a patient is in coma or on a heart lung machine, withdrawing of the machine will ordinarily result in passive Similarly, not giving lifesaving medicines like antibiotics in certain situations may result in passive euthanasia. Denying food to a person in coma or PVS may also amount to passive euthanasia.
- Euthanasia is the intentional premature termination of another person's life either by direct intervention (active euthanasia) or by withholding life- prolonging measures and resources (passive euthanasia), either at the express or implied request of that person (voluntary euthanasia), or in the absence of such approval (non-voluntary euthanasia).
- Euthanasia and Physician Assisted Dying: In euthanasia, a physician or third party administers it, while in physician assisted suicide it is the patient himself who does it, though on the advice of the doctor. In many countries/States the latter is legal while the former is not.

Supreme Court's Observation

Right to Die

- In the case of State of Maharashtra v. Maruty Shripati Dubal, the contention was that Section 309 of the Indian Penal Code was unconstitutional as it is violative of Article 19 and 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 Rathinam v. Union of India, 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, 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. Reliance was placed on the landmark judgement of Airedale NHS Trust v. Bland, where for the first time in the English history, the right to die was allowed through the withdrawal of life support systems including food and water.
- This case placed the authority to decide whether a case is fit or not for euthanasia in the hands of the Also, in the case of Mckay v. Bergsted, 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.

Medical Ethics involved in the Case

- The Supreme Court dealt with the aspect of informed consent and right to the bodily integrity of the patient as followed by the US after the Nancy Cruzan Informed Consent is the kind of consent wherein the patient is fully aware of all the future courses of his treatment, his chances of recovery, and all the side effects of all of these alternative courses of treatment.
- If a person is in a position to give a completely informed consent and he is still not asked, the physician can be booked for assault, battery, or even culpable homicide. The concept of

informed consent comes into question only when the patient is able to understand the consequences of her treatment or has earlier when in sound conditions made a declaration.

- In this case, the consent of Aruna could not be obtained and thus, the question as to who should decide on her behalf became more prominent. This was decided by beneficence. Beneficence is acting in the patient's best interest. Acting in the patient's best interest means following a course of action that is best for the patient, and is not influenced by personal convictions, motives or other considerations. Public interest and the interests of the state were also considered. The mere legalisation of euthanasia could lead to a wide spread misuse of the provision and thus, the court looked at various jurisprudences to evolve with the safeguards.

Judgement of the Case

1. The Hon'ble Division Bench of the Supreme Court of India, comprising Justice Markandey Katju and Justice Gyan Sudha Mishra, delivered this historic judgment on March 7, 2011. 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 was been stable. So, terminating her life was unjustified.
2. Further, the right to take decision on her behalf vested with the management and staff of KEM Hospital and not Pinki Virani. The lifesaving technique was the mashed food, because of which she was surviving. The removal of life saving technique in this case would have meant not feeding The Indian law in no way advocated not giving food to a person. Removal of ventilators and discontinuation of food could not be equated. Allowing of euthanasia to Aruna would mean reversing the efforts taken by the nurses of KEM Hospital over the years.
3. Moreover, in furtherance of the parens patriae principle, the Court to prevent any misuse in the vested the power to determine the termination of life of person in the High Thus, the Supreme Court allowed passive euthanasia in certain conditions, subject to the approval by the High Court following the due procedure. When an application for passive euthanasia is filed 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 a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit.

4. 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.
5. However, Aruna Shanbaug was denied euthanasia as the court opined that the matter was not fit for the 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.
6. This case clarified the issues revolving around euthanasia and also laid down guidelines with regard to massive Alongside, the court also made a recommendation to repeal Section 309 of the Indian Penal Code. This case is a landmark case as it prescribed the procedure to be followed in an area that has not been legislated upon.