 DOI: *http://doi.one/10.1732/IJLMH.25112*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 6

2020

An Appreciation of Legal Semiotics in the Judgement of Aruna Ramchandra Shanbaug Vs Union of India & Ors.

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ABSTRACT

On March 7, 2011, the Supreme Court of India SCI delivered a progressive judgement with far-reaching implications for euthanasia in India. The 110-page document written by Justice Markandey Katju begins with a quote from Mirza Ghalib: "Marte hain arzoo mein marne ki, maut aati hai par nahi aati." (We perish with the wish to die / Death mocks, but it will not arrive.) The line amazingly encompasses the dilemma behind the issue presented in the case. Justice Katju then goes on to include a careful analysis of legal opinions from across the world before opining that passive euthanasia can be practiced legally in India. The judgement is a beautiful read; it carries the reader on the journey of the Indian judiciary deliberating in the battle of morality against mortality, and dignity against death. Predictably, India resorted to its usual stance of bewildered obstreperousness when time came to actually decide on the issue of right to life equating to the right to die. However, the contents of the judgement touched on every delicate and controversial topic related to euthanasia, sparking a fairly predictable shouting match with opposing arguments carrying the power of logic, as well as the dead weight of sanctimonious posturing. The article talks about the bravery that oozes from the judgement and how language has been smartly used to present liberal opinions on whether right to life includes a concomitant right to die.

Keywords: *Article 21, Constitution, Euthanasia.*

I. FACTS IN BRIEF

Aruna Ramachandra Shanbaug was a staff nurse in King Edward Memorial Hospital, Parel, Mumbai. On 27th November 1973 she was attacked by a sweeper in the hospital who used a dog chain to choke, pull and immobilize her. He went ahead to rape her but seeing as she was menstruating, he sodomized her. The next day, a cleaner found her unconscious, blood covered body. She had suffered multiple injuries. The assault and strangulation by the dog chain had led to critical trauma to the cortex and other parts of her brain, which left her in an

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unresponsive, or vegetative state.

Thirty-six years had passed since the incident and her condition had not gotten any better. The KEM hospital staff had taken care of her for all these years, never letting her get even a single bed-sore or fracture despite her bed ridden state. She could wave her hands and make random sounds, however that was not indicative of a non-vegetative state. She was not aware of herself and her surroundings. She could be fed orally, but on 16th September 2010 she developed a febrile illness, possibly malaria, after which she had to be fed using a Ryle's tube.

A writ petition under Article 32 of the Constitution was filed on behalf of the petitioner, Aruna Ramachandra Shanbaug by Ms. Pinki Virani who claimed to be a next friend. The prayer of the petitioner was that the respondents be directed to stop feeding Aruna and let her die peacefully.

Although the petition could be dismissed as precedent shows that the right to live does not include the right to die and to file a writ petition under article 32, there must be violation of a fundamental right. However, the court decided to delve deeper into the merits of the case in view of the importance of the issues it raised.

II. CASE COMMENT AND ANALYSIS

Article 21 is the heart of the Constitution of India. It confers, "*No person shall be deprived of his life or personal liberty except according to procedure established by law*." On several occasions, the judiciary has interpreted Right to Life to include Right to Livelihood, Right to Human Dignity, Right to Shelter, and so on. It deliberates that 'life' here is not merely breathing, not merely existing. It encompasses a more profound view of life as one that is complete, with meaning and essentially worth living. The question that the court in Aruna Shanbaug v. UOI takes issue with is whether this right with its various dimensions can be given another dimension that is the Right to Die.

India has always regarded right to life as a natural right and right to die as being the antithesis of this; nobody should be given the right to end their life in an "unnatural way". In the case concerned, the plea was filed for passive euthanasia as active euthanasia has been established as illegal in India. The Supreme Court, while making clear the distinction between the two forms of euthanasia, ensued to lay down the safeguards and parameters to be observed in the case of a terminally ill patient who is not in a position to signify consent on account of physical or mental predicaments such as irreversible coma and unsound mind. It was held that a close relation or a 'surrogate' cannot take a decision to discontinue or withdraw

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artificial life sustaining measures and that the High Court's approval has to be sought to adopt such a course. The High Court in its turn will have to obtain the opinion of three medical experts. Although the wishes of the parents, spouse or other close relatives and the opinion of the attending doctors should carry due weight, it is not decisive and it is ultimately for the Court to decide as *parens patriae* as to what is in the best interest of the patient[2]. The High Court has been entrusted with this responsibility.

This article attempts to urge the reader to ask themselves some simple yet vital questions: What is life and death in a courtroom? Can it be said that a person who cannot do something as rudimentary as feeding themselves or going to the washroom alone is living a dignified life? Is it the Court's prerogative to decide so? It has been established before that under Article 21, the Right to Life includes the Right to Privacy. So, when a person is in such a condition that they cannot change their own clothes and has no way of demonstrating their displeasure at other people performing these basic human tasks for them, where is this right to privacy? Where is the freedom of expression and speech? Aruna led a confined life: choice does not exist for her. Being in the vegetative state she was in made life lose its meaning though she had become meaningful to journalists, doctors and the KEM hospital.

The debate on a person's right to die is not new. Plato, Aristotle, Thomas Aqiunas are just a few of the thinkers who have reflected and opined on it. Seneca claimed, a wise person "*lives as long as he ought, not as long as he can.*" Justice Markandey Katju's judicial determinations deliberate on the same issue once again in human history. Death is not a welcome topic of discussion in India, with its strict code of ethics and morality. Yet, Justice Katju took a fearless step towards addressing this controversial subject. As he put it, "*We could have dismissed this petition on the short ground that under Article 32 of the Constitution of India (unlike Article 226) the petitioner has to prove violation of a fundamental right, and it has been held by a Constitution Bench decision ... that the right to life guaranteed by Article 21 of the Constitution does not include the right to die.*"

As mentioned previously, the bench persistently affirmed one categorical distinction: between withdrawing life-sustaining treatment (passive euthanasia) on one hand and active euthanasia, or physician-assisted dying on the other. Physician-assisted suicide is a crime under Section 306 (abetment to suicide) of the Indian Penal Code. It constitutes actively doing something to end a patient's life. Passive euthanasia, conversely, involves withholding medical treatment or life support systems, for example switching off a ventilator, and it is

[2] PASSIVE EUTHANASIA - A RELOOK (2012), http://lawcommissionofindia.nic.in/reports/report241.pdf.

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completely legal. The core point of distinction is that in the former, something is done and, in the latter, something is not done.

To quote Justice Katju, in passive euthanasia, "*the doctors are not actively killing anyone; they are simply not saving him…while we usually applaud someone who saves another person's life, we do not normally condemn someone for failing to do so*". The Supreme Court pointed out that according to the proponents of Euthanasia, while we can debate whether active euthanasia should be legal, there cannot be any doubt about passive euthanasia as "*you cannot prosecute someone for failing to save a life*".

Aruna Shanbaug was denied even passive euthanasia as that would mean not administering to her the tube through which she took her food. It would mean she would starve to death, which is in no way a humane way to die. Had active euthanasia been on the table, a lethal injection could have been administered for a peaceful, painless death. The judges were however careful of the potential for misuse of this in an ethically challenging situation. In my opinion, this portrays a sad reflection of the ethics of the medical profession. Nevertheless, the bench provided an extensive analysis of the current trends and situation worldwide, perhaps in an effort to imply that this too is an concept whose time is likely to come.

"Marte hain arzoo mein marne ki, maut aati hai par nahi aati." (We perish with the wish to die / Death mocks, but it will not arrive.) The line beautifully encompasses the journey of the Indian judiciary deliberating in the battle of morality against mortality, and dignity against death in the judgement. If one deserves to live a life with dignity, it is only reasonable that he or she should not be deprived of the right to die with dignity as well. Considering Darwin's theory of 'Survival of the fittest', one can conclude that only rich people can survive well for their existence. Those who are poor are born to live with misery. However, death is the last stage of life which does not discriminate between who is poor and who is rich. Therefore, this last stage of life should be free of suffering and pain. In this judgement, India predictably resorted to its usual stance of bewildered obstreperousness on equating the Right to Life with the Right to Die. However, the contents of the judgement touched on every delicate and controversial topic related to euthanasia, sparking a discussion with opposing arguments carrying the power of logic, as well as the dead weight of sanctimonious posturing. It is time that India decided to amend Article 21 to include right to die in its purview.

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 [ISSN 2581-5369]