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# Case Comment on Common Cause Vs. Union of India (2018)

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## ABSTRACT

*The landmark case of Common Cause vs. Union of India (2018) marked a noteworthy development in the jurisprudence of the right to die with dignity in India. In this case, the Apex Court recognized and upheld the constitutional validity of living wills and passive euthanasia, associating the Indian legal framework with evolving global human rights standards. This research paper provides a detailed commentary on the case, analyzing the ethical considerations, legal reasoning, and its implications on Article 21 of the Indian Constitution. It explores how the judgment strengthens individual autonomy and bodily integrity while balancing state interest and societal morality. The paper also examines the procedural safeguards laid down by the Court to prevent misuse and ensure transparency in the application of passive euthanasia. By reflecting on comparative legal frameworks and bioethical debates, the paper evaluates the broader socio-legal impact of the decision and its contribution to the discourse on end-of-life care in India.*

**Keywords:** *Common Cause vs. Union of India, passive euthanasia, living will, right to die with dignity, Article 21, Indian Constitution, Supreme Court, bioethics, end-of-life care, medical jurisprudence, constitutional law, patient autonomy, legal safeguards.*

## I. INTRODUCTION

A Civil Writ Petition was filed in the Supreme Court in 2005 under Article 32 of the Indian Constitution with regards to the unconstitutionality of Section 309 and Section 306 of the Indian Penal Code, 1860 with reference to the Aruna Ramachandra Shaunbaug V. Union of India<sup>2</sup> AIR 2011 SC 1290 and the Smt. Gian Kaur V. The State Of Punjab 1996 AIR 946.

The question of passive and active euthanasia was raised in the same with special emphasis on the Article 21 of the Indian Constitution, which gives the citizens of our country Right To Live and under the Right To Life ambit also comes the aspect of Right To Die.

The European Court of Human Rights decisions and the 241st Indian Law Commission report on Passive Euthanasia in the context of Article 21 of the Indian Constitution was also referred

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<sup>2</sup> Law Essentials (no date) *Common cause vs. Union of India, 2018, Law Essentials*. Available at: <https://lawessential.com/case-comments-1/f/common-cause-vs-union-of-india-2018> (Accessed: 17 May 2025).

with several other acts, sections and submissions.

There were 4 primary issues that I will be dealing and discussing here are central to the developments in the related laws. The most imperative one is that should “Right to Die with Dignity” be included as a Fundamental Right under the folds of Article 21 of the Indian Constitution, “Right To Live with Dignity”.<sup>3</sup>

The other three issues, complementing the above, most imperative one, are-

1. The point of living will and attorney authorisation was also brought up, that should person with deteriorated health or terminal illness be allowed to have the same presented to the hospital in this case of execution?;
2. The petitioner society also brought up that, as terminally ill and patients in vegetative state do not have the decision making capabilities, they are deprived of their rights w.r.t to any cruel or unwanted or aggressive treatment and the living will in this situation cannot be expressed;
3. Hippocratic oath of the doctors, to save every patients life, was also in direct contradiction to the right to die aspect.

### **RESEARCH PROBLEM**

In the recent times we have seen the emerging concept of Right to die with Human Dignity also established by our judiciary in various cases. So the discussion and debates on Living will and advance directives has also gained momentum in present times in India. A living will or advance medical directives comes into picture only when a person is undergoing a treatment and is in vegetative state and wants to convey his wish about the way of treatment to the concerned medical practitioner. Here one thing is to be noted is that the living will made by the person only comes into effect after the approval of the medical board. The problem arises in living will is that when a living will or advance medical directives are not implemented especially in country like India where living will was not recognized few years ago and considered the right to die as not part of right to live under article 21 of the Indian constitution.

It was only after 2018 Supreme Court judgement in case of Common clause v. Union of India famously known as common clause case first time recognized the legality of passive euthanasia

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<sup>3</sup> Arjun Sahni (no date) “Case Commentary- Common Cause ‘A’ Registered Society, etc Vs. Union of India (UOI) and Ors., Etc. Writ Petition (CIVIL) No.215 of 2005”, Pen Acclaims. Available at: <http://www.penacclaims.com/wp-content/uploads/2018/09/Arjun-Sahni.pdf> (Accessed: 17 May 2025).

but also recognized the concept of living wills in India and laid elaborated provisions dealing with living wills in India.

## II. BRIEF FACTS

In 2005 a registered NGO filed a PIL in Supreme Court under Article 32<sup>4</sup> of the Indian Constitution to legalize euthanasia in India. Earlier the Registered Society wrote a letter to the Ministry of Law and Justice, Ministry of Health and Family Welfare with regard to passive euthanasia. The petitioners on not receiving any response from government, filed the PIL. It was contended that since Right to live life with dignity is a fundamental right, it should also be extended to Right to death i.e., right to die with dignity. Modern technology has given rise to such situations where the lives of patients are unnecessarily prolonged causing distress and pain to the patients and their relatives. Petitioner further contended the legalization of living will. Such would benefit a person undergoing pain and suffering. A person who is in such aforementioned situations, a family member can be in capacity to stop the medical treatment for the same to relieve the patient from the pain.

### Related Facts and History

1. The denial of right to die leads to extension of pain and agony both physical as well as mental which the petitioner Society seeks to end by making an informed choice by way of clearly expressing their wishes in advance called "a living will" in the event of their going into a state when it will not be possible for them to express their wishes.<sup>5</sup>
2. It is the stand of the petitioner Society that any such practice will not be in consonance with the law laid down by this Court in *Gian Kaur* as well as in *Aruna Shanbaug*.
3. The Constitution Bench of the Supreme Court in *Gian Kaur v. State of Punjab* held that both euthanasia and assisted suicide are not lawful in India. The Court held that the right to life under Article 21 of the Constitution does not include the right to die.
4. Insofar as paras related to the *Aruna Shanbaug* case are concerned, *Aruna Shanbaug* aptly interpreted the decision of the Constitution Bench in *Gian Kaur* and came to the conclusion that euthanasia can be allowed in India only through a valid legislation.
5. In the case, the Bench in *Aruna Shanbaug* was of the view that in *Gian Kaur*, the Constitution Bench held that euthanasia could be made lawful only by a legislation.

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<sup>4</sup> India Const. art. 32.

<sup>5</sup> Arjun Sahni (no date) "*Case Commentary- Common Cause 'A' Registered Society, etc Vs. Union of India (UOI) and Ors., Etc. Writ Petition (CIVIL) No.215 of 2005*", *Pen Acclaims*. Available at: <http://www.penacclaims.com/wp-content/uploads/2018/09/Arjun-Sahni.pdf> (Accessed: 17 May 2025).

6. This matter was then referred to the Constitution Bench of this Court for an authoritative opinion.

### III. ISSUES BEFORE THE COURT

The issues are as follows: -

1. Whether Right to Die comes under the ambit of Article 21<sup>6</sup> of the Indian Constitution which guarantees the Right to Life?
2. Is statutory legislation required to legalize euthanasia?
3. Is passive euthanasia separate from active euthanasia?
4. Can 'Legal Advance Directives' regarding medical treatment be issued to a person who is incompetent to survive in near future?

### IV. COURT'S OBSERVATIONS

The Supreme Court recognized and gave sanction to passive euthanasia and living will/advance directives in this particular judgement. This implies that from now Right to Die with Dignity is a Fundamental Right. The judgement was delivered by a Bench comprising of Chief Justice of India Dipak Misra, Justice A.K. Sikri, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud and Justice Ashok Bhushan. The matter was referred to it by a Three-Judge Bench, which held that the Constitution Bench in the case of *Gian Kaur v State of Punjab*<sup>7</sup>, had not ruled upon the validity of Active or Passive Euthanasia, even though the bench had ruled that Right to Live with Dignity under Article 21 of the Constitution of India was inclusive of the Right to Die with Dignity.

The Three-Judge bench then noted that the judgement pronounced in *Aruna Shanbaug v Union of India*<sup>8</sup> is based upon an off-base relational word that, the Constitution Bench in the case of *Gian Kaur v State of Punjab*, upheld passive euthanasia. However, the Five-Judge bench in the case of *Common Cause (A Registered Society) v Union of India*<sup>9</sup> and another has now collectively held that the Two-Judge Bench on account of *Aruna Shanbaug* had wrongly decided that euthanasia can be made lawful only by Legislation through an erroneous interpretation of the judgement in *Gyan Kaur* case.<sup>10</sup> The Judges in their judgement have also led down the

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<sup>6</sup> India Const. art. 21.

<sup>7</sup> *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648: 1996 SCC (Cri) 374.

<sup>8</sup> *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454: (2011) 2 SCC (Civ) 280: (2011) 2 SCC (Cri) 294.

<sup>9</sup> *Common Cause v. Union of India*, (2018) 5 SCC 1.

<sup>10</sup> Network, L.N. (2018) *Breaking : Right to die with dignity a fundamental right, SC allows passive euthanasia and living will, issues guidelines [read judgment]*, Live Law. Available at: <https://www.livelaw.in/breaking-right->

procedure for a “Living Will” or an “Advance Directive” through which terminally ill people or those with deteriorate health can choose not to remain in a vegetative state with life emotionally supportive network, in the event that they go into a state when they won't be able to communicate their own desires.

Over the years the issue of euthanasia has been a complicated issue upon which there have been discussions inside the boundary of courts, additionally among elites, scholarly people and academicians. The Supreme Court of India has settled the legal position of Passive Euthanasia in India in this particular case. Thus, the cloud upon Right to Live with Dignity and Right to Die with Dignity has now been cleared by the Apex Court for once and for all.

## V. JUDGMENT OF THE CASE

In this case Supreme Court held that an individual has the Right to Die with Dignity as a part of his Right to Life and personal liberty under Article 21 of the Constitution. This ruling thus permits the removal of life-support systems for the terminally ill or those in incurable comas or other related health conditions. The court also allowed an individual to decide against artificial life support and the needs arising by creating a living will. In this case court laid down certain principles related to procedure for execution of advance directive and provided some guidelines to give effect to passive euthanasia. In both circumstances where there are advance directives and where there is none, exercise the power under Article 142<sup>11</sup> of the constitution and the law stated in *Vishaka and others v. state of Rajasthan and others*<sup>12</sup>. The directive and guidelines decided by the court shall remain in force until and unless parliament does not bring any legislation in this field.

## VI. EUTHANASIA: MURDER OR MERCY KILLING?

The term euthanasia is derived from the Greek word in which Eu means “good” and Thanatos means “death” so, euthanasia means good death. When any person ends his life by his own act it is called suicide but the end of person's life by others through request of the decreased is called euthanasia or mercy killing. Euthanasia basically means that if anyone is suffering from any disease or illness and is not stable for his life and his family members, such persons can righteously ask for euthanasia.<sup>13</sup>

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die-dignity-fundamental-right-sc-allows-passive-euthanasia-living-will-issues-guidelines/ (Accessed: 17 May 2025).

<sup>11</sup> INDIA CONST. art 142.

<sup>12</sup> AIR 1997 SUPREME COURT 3011

<sup>13</sup> *Case analysis on Common Cause (a regd. society) v/S union of india: Legal service india - law articles - legal resources* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-8553-case-analysis-on-common-cause-a-regd-society-v-s-union->

An individual is moved by various rights and obligations since birth and stays till the last breath. Everyone's Right to Life is protected under Article 21 of the Indian constitution. Euthanasia provides relief to patient from extreme pain, diseases and illness, it relieves the terminally ill person. The life of a human being is dignified and force to live life with undignified way is against the person's choice. Article 21 of the constitution said live life with dignity, therefore, passive as well active Euthanasia should be allowed. It is not only reliving the unbearable pain but also relieve the relative of patient from mental trauma.

Although Euthanasia is illegal under English law, but there have been countries where it is getting permissible. As per records, under the Suicide Act 1961, euthanasia and assisted suicide are serious criminal offences in the UK. Euthanasia can bring about a homicide allegation, and helped self-destruction by supporting or in any event motivating someone comparable to ending their own life is deserving of 14 years' detainment. Be that as it may, there are nations where killing is legitimate, generally under severe conditions.

The subject of Euthanasia has been quite controversial and raises an array of moral, ethical, social, philosophical, legal and religious concerns. This shows the clash of law and religion.

Thus, it can be said that this judgement is in right direction. Those experiencing persistent sicknesses are regularly exposed to merciless treatment. Denying them the Right to Die in a respected way expands their torment. Hence, the court is right in declaring Right to Die with Dignity as a Fundamental Right as it will help in reducing the pains of those suffering from chronic treatments and they will be able to die in a dignified manner.

## **VII. BENCHMARK CASES DISCUSSED**

### **1. P. Rathinam V. Union of India, 1994 3 SCC 394<sup>14</sup>**

In this particular case, the Section 309 of the Indian Penal Code, 1860 was scrapped off and assisted suicide was made legal. In that particular time this was considered to be prudent and according to the time.

### **2. Aruna Ramachandra Shaunbaug V. Union of India AIR 2011 SC 1290<sup>15</sup>**

This was the last turning law point case, till date, in the aspect of Euthanasia. The decisions made in the Smt. Gian Kaur case were completely overturned and passive Euthanasia was made legal. This can be considered as a compliment case to what our case is, the main difference is that in this case, passive Euthanasia was made legal and in our case, the aspect of right to die

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of-india.html (Accessed: 17 May 2025).

<sup>14</sup> 1994 AIR 1844, 1994 SCC (3) 394

<sup>15</sup> AIR 2011 SC 1290

with dignity was sort of included under the umbrella of right to live with dignity. I have discussed the same in the analysis part.

3. Smt. Gian Kaur V. State Of Punjab<sup>16</sup> 1996 AIR 946

The five bench judge, headed by Justice J.S. Verma, brought the Section 309 of the Indian Penal Code 1860 back and the judgement that was passed stated that, under the ambit of Article 21 of the Indian Constitution, the part of Right To Live only includes the aspect of life and thereof and nowhere includes the aspect of right to die. It was because of this particular case that passive Euthanasia and Assisted Suicide were made unlawful.

4. Airedale N.H.S Trust V. Bland 1993 A.C. 789

This was a case that was decided in the United Kingdom House of Lords and was something that was considered as a benchmark in passive Euthanasia and Euthanasia in all, around the world.<sup>17</sup>

## VIII. CONCLUSION

Euthanasia should be legal and morally permissible for terminally ill patients. Every person has the right to live a happy life and some people's medical condition gives them peace and happiness in death. Every person has personal rights and there should not be only state involvement. If someone is suffering from any illness or disease so in these cases he can die in his own choice. Death is still going to happen regardless of what way it is, be it any illness, disease or natural, so why not die with dignity? <sup>18</sup>

If one is asked to compare the journey of legalizing euthanasia in India, from P. Rathinam to Gian Kaur to Aruna Shanbaug to finally, Common Cause, anyone would say that it's commendable. It's commendable that we have a system where there are no water-tight compartments but all the organs of the state are dependent as well as independent of each other. It is commendable that the Judiciary of India is independent and can take decisions freely without any pressure or influence from the Government. Passive euthanasia would need to take a diversion if Judiciary in India was non-existent. There is still a hope that one day, even active euthanasia will be legalized and that day is not too far away. It is the need of the hour as it is not possible for any patient to always have a 'living will', the consent of family must be all that

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<sup>16</sup> 1996 AIR 946, 1996 SCC (2) 648

<sup>17</sup> Garg, R. (2022) *Common cause v. Union of India: Case Analysis*, iPleaders. Available at: <https://blog.ipleaders.in/common-cause-v-union-of-india-case-analysis/> (Accessed: 17 May 2025).

<sup>18</sup> *Case analysis on Common Cause (a regd. society) v/S union of india: Legal service india - law articles - legal resources* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-8553-case-analysis-on-common-cause-a-regd-society-v-s-union-of-india.html> (Accessed: 17 May 2025).



matters for exercising active euthanasia. Although, there are guidelines and procedures given in the decision but they somehow lack practical foresight.

One is still hoping and waiting for the other countries to legalize euthanasia on being inspired by this judgement, in their respective jurisdictional limits as well so that everyone and anyone can choose to live and also die with dignity.

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