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Ensuring Dignity in Death: A Case Analysis of Common Cause v. Union of India

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ABSTRACT

The case of Common Cause v. Union of India is a significant case in the light of ever evolving jurisprudence of Article 21. The case builds upon the jurisprudence laid down by the Supreme Court in case of Aruna Shanbaug v. Union of India (2011) where the Court grappled with the question of legalisation of euthanasia in India. In Aruna Shaunbag's judgment, the Court pointed out that in the case of Gian Kaur v. State of Punjab , a view was taken that while life encapsulates a gamut of rights under it, the right to die was expressly excluded from the purview of life. It was further stated that nothing more can be construed from Gian Kaur's case and the ratio did not aid the court in coming to a conclusion in Aruna Shaunbag's case. Aruna Shanbaug's case is a significant judgment as it legalised passive euthanasia for the first time.

The Supreme Court also made a distinction between active and passive euthanasia. Active euthanasia is where positive steps are taken to accelerate the end of a person's life. Passive euthanasia is where the life support is withdrawn from the patients whose onset of death has already begun. It has been held by the Supreme Court that active euthanasia remains criminal and can be legalised only through a legislation by the Parliament.While passive euthanasia was legalised through the judgment of the court, the extent and expanse of this right remained unclear. In Common Cause v Union of India, the Court widened the ambit of Article 21 by stating that Right to Life includes Right to die with dignity and laid down the guidelines for streamlining the process of passive euthanasia.

Keywords*: Dignity, Death, Euthanasia, Fundamental Rights.*

I. INTRODUCTION

Common Cause, a registered Non Governmental Organisation had filed a writ petition under Article 32 of the Constitution stating that the patients who suffer from chronic diseases or go into permanent vegetative states are unable to administer their choice of treatment and the decision making with regards to such patients are left into the hands of medical professionals and families.[2] With the strides in technology, lives of such patients are often prolonged causing

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[2] Common Cause v. Union of India, W.P No- 215 of 2005, https://www.scobserver.in/wp-content/uploads/2021/09/Common_Cause_v_UoI.pdf

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them indignity, pain and agony. According to the petition, the patients have the right to exercise self determination in case of chronic illness and decide the mode of treatment through a living will.[3] The petitioners had written letters and made representations to the Ministry of Health and Family Welfare and various state governments, but got no response. Therefore the petitioners approached the court seeking the declaration of the right to die with dignity as a fundamental right (as against the right to die per se.)[4]

The five judge bench of the Supreme Court of India delivered its judgment in 2018. The Indian Society for Critical Care filed a miscellaneous application in 2019 before the five judge bench requesting that the process for exercising the right to die with dignity is cumbersome and requires streamlining. The judgment modifying the 2018 guidelines was delivered in 2023.[5]

II. ISSUES AND SUBMISSIONS

There were five broad issues for the consideration of the Court :

(i) Is there a constitutionally recognised right for a patient to refuse medical treatment or to reject a particular form of medical treatment?[6]

(ii) In case if such a right exists with an individual, does the individual also have a right to decide what course of action must be followed if he/she were to lose their faculties which enables them to accept or refuse treatment?[7]

(iii) Does the right of the patient to refuse treatment impose a corresponding duty on the medical professionals to respect that right and what are the corresponding restrictions, if such duty exists?[8]

(iv) Are medical practitioners legally permitted to refuse/withhold medical treatment to an individual towards the end of their lives when they are not in a position to exercise their faculties.[9]

(v) When there is no real possibility of returning to normal life, should withdrawal of medical treatment be acceptable and life be allowed to take its natural course,

[3] *Id*
[4] *Id*
[5] Euthanasia and Right to Die with Dignity, https://www.scobserver.in/cases/common-cause-euthanasia-and-the-right-to-die-with-dignity-case-background/
[6] Para 11, Common Cause v. Union of India, W.P No- 215 of 2005, https://www.scobserver.in/wp-content/uploads/2021/09/EUTHANASIA-DYC.pdf
[7] *Id*
[8] *Id*
[9] *Id*

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bereft of intervention or artificial intervention?[10]

The petitioners argued that under Article 21 every individual has the right to live with dignity. This right continues till the very end of one's natural life. Thus, the right to live with dignity encompasses the right to administer living wills indicating the choices to be made when one has lost cognitive faculties to make those choices. When life has started to ebb out due to old age or terminal illness and the life is prolonged only through artificial assistance without their consent does not afford them dignity.[11] The petitioners submitted that even though the right to life does not encompass the right to die, the right to live must include the right to die with dignity.

It was also the arguments of the petitioner's that subjecting the patients to undergo a medical treatment without seeking their consent is also violative of their personal liberty and privacy under Article 21.[12]

The petitioners also submitted that medical professionals are constrained to give medical aid to those patients even when there is no real possibility of them returning to a normal state of being.[13] This is violative of their right to freely practise their profession under Article 19(1)(g).[14]

III. JUDGMENT AND GUIDELINES

The judgment in the case was delivered by a five judge bench where the then CJI, Dipak Misra authored the majority judgment for him and Justice AM Khanwilkar. Justice D.Y Chandrachud authored a separate concurring judgment.

In his judgment, Justice D.Y Chandrachud, while referring to an article by Rohini Shukla in Indian Journal of Medical Ethics observes that the judgment of the Court in Aruna Shanbaug's case was flawed in two respects- first that it prioritised the views of everyone else but the patient and secondly that the distinction between words withholding and withdrawal is not made and are used interchangeably throughout the judgment.[15] The distinction between withdrawal and withholding can be the difference between active and passive euthanasia. Broadly speaking, in active euthanasia there is withdrawal of active life support by the medical professionals which was already given to the patient.[16] In passive euthanasia, crucial medical intervention is

[10] *Id*
[11] https://www.scobserver.in/reports/common-cause-union-india-euthanasia-living-wills-writ-petition-summary/
[12] *Id*
[13] *Id*
[14] *Id*
[15] Page 37, para 41, Common Cause v. Union of India
[16] *Id*

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restrained or withheld.[17] Thus in active euthanasia, there is an act of commission while in passive euthanasia, there is an act of omission.[18] It was pointed out in the judgment of the Court that the act of withholding critical support may not always cause death but could lead to suffering and that could itself lead to indignity in death.[19] The questions of euthanasia, thus require careful consideration.

The traditional and standard view on human life is that it is inviolable and that death of human beings must not be caused by any act or omission.[20] This view was supported in *Gian Kaur v. State of Punjab* where a constitution bench, while upholding the validity of S. 306 of IPC held that Right of Life under Article 21, does not include right to die. In Aruna Shanbaug v. Union of India, the judgment of the Court was based on subjecting the welfare of the patient to the interests of others.[21] The Court held that the underlying basis of Aruna Shanbaug's judgment is flawed.[22] The Court while upholding the legalisation of passive euthanasia as it was done in Aruna Shanbaug's case, thus, proceeded to hold the following :

1. The inherent value of human life is recognised morally as well as constitutionally. The Constitution protects the dignity and liberty of the individuals to make choices which is central to finding the meaning and happiness and achieving purpose in life.[23] Recognition of the right of the patients to accept and refuse medical treatment flows from this principle. The law cannot compel the individuals who are competent to understand and consent to disclose the reason for making a choice and refusing medical treatment.[24]

2. The constitution recognises dignity as a fundamental value that is inherent to individuals at all stages of their lives uptil death. Depriving an individual of dignity in death is to deprive them from having a meaningful existence.[25] Thus an individual who is in a sound and competent state of mind, can put it in writing and specify the medical procedure(s) that they would not want to be performed when they turn old or suffer any terminal illness and their cognitive faculties have failed to make that choice. A medical professional who in good faith, carries out an advance directive of the patient is to be

[17] *Id*
[18] *Id*
[19] *Id*
[20] Page 44, para 48,49, Common Cause v. Union of India
[21] Page 133, para 141, Common Cause v. Union of India
[22] *Id*
[23] *Id*
[24] *Id*
[25] *Id*

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protected from criminal liability.

3. Life can be taken away only under a procedure of law which must be just, fair and reasonable. Since homicide does not fall under this, it is penalised. Active euthanasia too falls under this category and is a criminal offence.[26]

In addition, the Court also issued guidelines for carrying out passive euthanasia. However modifications were made in the 2018 guidelines by a subsequent judgment of the Court in 2023.

IV. SUBSEQUENT PETITION BY INDIAN SOCIETY OF CRITICAL CARE MEDICINE (2019)

The Indian Society for Critical Care Medicine for seeking clarifications and modification of the 2018 judgment. A five judge bench of the Supreme Court observed that it is important to streamline the process of passive euthanasia and add procedural safeguards, at the same time making the whole process less cumbersome and more accessible for the individuals who seek to prepare Advance Medical Directives (AMDs). The Court accepted the petition and made modifications to the 2018 guidelines. The following table makes a comparative representation of important modification of the Court's order:

	2018 Guidelines	**Modified Guidelines**
1.	AMD should specify the name of close relative or guardian who in case of the executor becomes incapable, will be authorised to give consent for refuse/withdraw medical treatment in accordance with the AMD.	Names of multiple guardians/close relatives can be given.
2.	The AMD must be signed by the executor in presence of two independent witnesses (preferably) and must be countersigned by the Judicial Magistrate of the First Class (JMFC) who has jurisdiction.	The AMD must be signed by the executor in presence of two independent witnesses (preferably) and must be attested by the notary or a gazetted officer.

[26] *Id*

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3.	The JMFC must provide a copy of the AMD to the immediate family of the executor if they were not present at the time of execution.	The executor shall provide a copy of the AMD to the close relatives/guardians mentioned in the AMD and must give a copy to the personal/family physician, if any.
4.	A copy of AMD must be handed over to a competent official of the municipal corporation/panchayat who in turn will appoint a custodian of the said document.	A copy of AMD must be handed over to a competent official of the municipal corporation/panchayat who in turn will appoint a custodian of the said document. AMD can also become a part of the digitised health records, if any.
5.	In case the AMD is to be put to use, the responsible physician must ascertain the genuineness of the directive from the JMFC.	In case the AMD is to be put to use, the responsible physician must ascertain the genuineness of the directive from the custodian of such a document or digital health record.
6.	The physician must inform the guardians/close relatives of the executor about the nature of illness/ medical facilities, treatment available and must reasonably satisfy that they understand the information etc.	The physician must inform the guardians/close relatives of the executor mentioned in the AMD about the nature of illness/ medical facilities, treatment available e and must reasonably satisfy that they understand the information etc.
7.	Two medical boards must be formed- at the hospital (4 members) and government level (3 members) with those medical practitioners who have experience of over 20 years.	Two medical boards must be formed- at the hospital (4 members) and government level (3 members) with those medical practitioners who have experience of over 5 years.
8.	Patients with no AMDs shall also be governed by the same process.	Patients with no AMDs shall also be governed by the same process.

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Note : The comparative table was created on the basis of the judgement rendered by the Supreme Court and involves replication/paraphrasing of SCs guidelines.

V. CONCLUSION

Euthanasia has long been debated in the Indian judicial sphere. Even though passive euthanasia was recognised in *Aruna Shanbaug's* case, a legal vacuum existed in terms of modalities and implementation of the same. The jurisprudence laid down in the case was also inconsistent and debatable. The Supreme Court through this case, not only settled the flawed jurisprudence on passive euthanasia but expressly recognised right to die with dignity as a fundamental right keeping in mind the fact that wishes/opinions of close family, relatives cannot be given primacy over one's own agency, even in matters connected with death. Dignity in death is part of Article 21. The court also addressed the lacunae in implementation of the passive euthanasia and formulated guidelines.

However, Indian Society for Critical Care again approached the Court to reduce the complexities in the guidelines issued in 2012. A five judge bench modified the existing guidelines to make it less challenging, easily accessible and free it from bureaucratic tapes, at the same time ensuring procedural safeguards.

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