

Every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen .

[Case Brief] Aruna Ramchandra Shanbaug vs Union Of India & Ors.

<u>Case name:</u>	Aruna Ramchandra Shanbaug vs Union Of India & Ors.
<u>Case number:</u>	WRIT PETITION (CRIMINAL) NO. 115 OF 2009
<u>Court:</u>	The Hon'ble Supreme Court
<u>Bench:</u>	Justices Markandey Katju and Gyan Sudha Misra .
<u>Decided on:</u>	March 7, 2011
<u>Relevant Act/Sections:</u>	Article 21, 32 of the Constitution of India, Section 302, 306 and 309 of the Indian Penal Code, 1860 , Transplantation of Human Organs Act, 1994
<u>Author of the case summary:</u>	Divyansh Rawal

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. On the evening of **27th November, 1973** Aruna was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day on **28th November, 1973** at 7.45 a.m. a cleaner found her lying on the floor with blood all over in an unconscious condition.
2. It is alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. It is alleged that the Neurologist in the Hospital found that she had plantars' extensor, which indicates damage to the cortex or some other part of the brain. She also had brain stem contusion injury with associated cervical cord injury. It is alleged that 36 years have expired since the incident and now Aruna Ramachandra Shanbaug is about 60 years of age.
3. She is featherweight, and her brittle bones could break if her hand or leg are awkwardly caught, even accidentally, under her lighter body. She has stopped menstruating and

her skin is now like papier mache' stretched over a skeleton. She is prone to bed sores. Her wrists are twisted inwards. Her teeth had decayed causing her immense pain. She can only be given mashed food, on which she survives.

4. It is alleged that Aruna Ramachandra Shanbaug is in a persistent vegetative state (p.v.s.) and virtually a dead person and has no state of awareness, and her brain is virtually dead. She can neither see, nor hear anything nor can she express herself or communicate, in any manner whatsoever. Mashed food is put in her mouth, she is not able to chew or taste any food. She is not even aware that food has been put in her mouth.
5. She is not able to swallow any liquid food, which shows that the food goes down on its own and not because of any effort on her part. The process of digestion goes on in this way as the mashed food passes through her system. However, Aruna is virtually a skeleton. Her excreta and the urine is discharged on the bed itself. Once in a while she is cleaned up but in a short while again she goes back into the same sub-human condition.
6. It is only on account of mashed food which is put into her mouth that there is a facade of life which is totally devoid of any human element. It is alleged that there is not the slightest possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital, Mumbai like a dead animal, and this has been the position for the last 36 years. The prayer of the petitioner is that the respondents be directed to stop feeding Aruna, and let her die peacefully.
7. On **17 December 2010**, the Supreme Court, while admitting the plea to end the life made by activist-journalist Pinki Virani, sought a report on Shanbaug's medical condition from the hospital in Mumbai and the government of Maharashtra. On **24 January 2011**, the Supreme Court of India responded to the plea for euthanasia filed by Aruna's friend, journalist Pinki Virani, by setting up a medical panel to examine her.

➤ **ISSUE BEFORE THE COURT:**

1. When a person is in a permanent vegetative state (PVS), should withholding or withdrawal of life sustaining therapies be permissible or 'not unlawful'?
2. If the patient has previously expressed a wish not to have life-sustaining treatments in case of futile care or a PVS, should his/ her wishes be respected when the situation arises?

3. In case a person has not previously expressed such a wish, if his family or next of kin makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?

➤ **RATIO OF THE COURT:**

'Marte hain aarzo mein marne ki Maut aati hai par nahin aati' - Mirza Ghalib

1. Heard Mr. Shekhar Naphade, learned senior counsel for the petitioner relied on the decision of this Court in **Vikram Deo Singh Tomar vs. State of Bihar 1988 (Supp) SCC 734** where it was observed by this Court: “*We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen*”. He also relied on the decision of this Court in **P. Rathinam vs. Union of India and another (1994) 3 SCC 394** in which a two-Judge bench of this Court quoted with approval a passage from an article by Dr. M. Indira and Dr. Alka Dhal in which it was mentioned: “**Life is not mere living but living in health. Health is not the absence of illness but a glowing vitality**”.
2. The decision in **P. Rathinam vs. Union of India and another (1994) 3 SCC 394** was, however, overruled by a Constitution Bench decision of this Court in **Gian Kaur vs. State of Punjab (1996) 2 SCC 648**. Mr. Naphade, however, invited our attention to paras 24 & 25 of the aforesaid decision in which it was observed:
“Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the right to live with dignity' is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of right to life' therein includes the right to die”.
3. The right to life' including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the right to die' an unnatural death curtailing the natural span of life.

4. Reference was made by the Hon'ble Court to the case of **Airedale NHS Trust v Bland**. [1993] 1 All ER 821 HL decided by the House of Lords in the U.K.. The facts were that Anthony Bland aged about 17 went to the Hillsborough Ground on 15th April 1989 to support the Liverpool Football Club. In the course of the disaster which occurred on that day, his lungs were crushed and punctured and the supply to his brain was interrupted. As a result, he suffered catastrophic and irreversible damage to the higher centres of the brain. For three years, he was in a condition known as PVS. All the Judges of the House of Lords in the Airedale case were agreed that Anthony Bland should be allowed to die.
5. The ratio decided by the House of Lords in this case has been followed in a number of cases in U.K., and the law is now fairly well settled that in the case of incompetent patients, if the doctors act on the basis of informed medical opinion, and withdraw the artificial life support system if it is in the patient's best interest, the said act cannot be regarded as a crime.
6. In the active euthanasia a person directly and deliberately causes the patient's death. In passive euthanasia they don't directly take the patient's life, they just allow them to die. This is a morally unsatisfactory distinction, since even though a person doesn't 'actively kill' the patient, they are aware that the result of their inaction will be the death of the patient. Active euthanasia is when death is brought about by an act - for example when a person is killed by being given an overdose of pain-killers. Passive euthanasia is when death is brought about by an omission - i.e. when someone lets the person die. This can be by withdrawing or withholding treatment:
 - a. *Withdrawing treatment: for example, switching off a machine that is keeping a person alive, so that they die of their disease.*
 - b. *Withholding treatment: for example, not carrying out surgery that will extend life for a short time.*
7. A further categorization of euthanasia is between voluntary euthanasia and non voluntary euthanasia. Voluntary euthanasia is where the consent is taken from the patient, whereas non voluntary euthanasia is where the consent is unavailable e.g. when the patient is in coma, or is otherwise unable to give consent. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306.
8. 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 had been stable. So, terminating her life was unjustified.

9. Further, the right to take decision on her behalf vested with the management and staff of KEM Hospital and not Pinki Virani. The life saving 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 her. 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.
10. 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 Court. The Supreme Court allowed passive euthanasia in certain conditions, subject to the approval by the High Court following the due procedure.
11. 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.
12. 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.
13. The Court agreed that passive euthanasia should be permitted in our country in certain situations, and disagreed with the learned Attorney General that it should never be permitted. A decision has to be taken to discontinue life support 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.
14. In the present case, we have already noted that Aruna Shanbaug's parents are dead and other close relatives are not interested in her ever since she had the unfortunate assault

on her. As already noted above, it is the KEM hospital staff, who have been amazingly caring for her day and night for so many long years, who really are her next friends, and not Ms. Pinky Virani who has only visited her on few occasions and written a book on her. Hence it is for the KEM hospital staff to take that decision. The KEM hospital staff have clearly expressed their wish that Aruna Shanbaug should be allowed to live.

➤ **DECISION HELD BY COURT:**

1. We also wish to express our appreciation of Ms. Pinki Virani who filed this petition. Although we have dismissed the petition for the reasons given above, we regard her as a public spirited person who filed the petition for a cause she bona fide regarded as correct and ethical. We hold her in high esteem.
2. We also commend the entire staff of KEM Hospital, Mumbai for their noble spirit and outstanding, exemplary and unprecedented dedication in taking care of Aruna for so many long years. Every Indian is proud of them.