

COMMON CAUSE (A REGD. SOCIETY) V. UNION OF INDIA & ANR.

[Writ Petition (Civil) No. 215 OF 2005]

Bench- Chief Justice of India Mr. Justice Dipak Misra, Mr. Justice A.K. Sikri, Mr. Justice A.M. Khanwilkar, Mr. Justice D.Y. Chandrachud, and Mr. Justice Ashok Bhushan.

The Supreme Court decided a landmark case on March 9, 2018, paving the route for passive euthanasia, often known as Physician Assisted Suicide (PAS). The Court reaffirmed that the right to die with dignity is a basic right, as it had previously ruled in the Gian Kaur case, and declared that an adult human being with mental capacity had the right to die with dignity and to make an educated decision, including the right to decline medical care and the removal of life-saving devices. The Supreme Court determined that a person with mental capacity can make an advance medical directive. The five-judge constitutional bench, which included the Chief Justice of India Mr. Justice Dipak Misra, Mr. Justice A.K. Sikri, Mr. Justice A.M. Khanwilkar, Mr. Justice D.Y. Chandrachud, and Mr. Justice Ashok Bhushan, delivered the 538-page verdict.

Background of the case

In 2005, an NGO called Common Cause petitioned the Supreme Court, requesting a declaration that Article 21 of the Constitution's 'fundamental right to live with dignity' includes the 'right to die with dignity,' as well as directions for the adoption of appropriate procedures for executing 'Living Wills,' in which a person, when of sound mind and good health may specify that he does not want to be kept alive with the aid of ventilators if doctors determine at any point in his life that he cannot be maintained alive without a life support system. M It also asked the Court to order the Union Government to allow terminally ill people to sign "living wills" directing what should be done if they are admitted to a hospital. Common Cause instead requested that the Court publish recommendations on the matter, as well as the appointment of an expert group made up of lawyers, doctors, and social scientists to determine the issue of executing living wills.

People who are terminally sick or suffer from chronic conditions, according to Common Cause, should not be exposed to brutal treatments. Denying them the right to a dignified death prolongs their agony. It asked the Court to protect people's right to die in dignity by allowing them to

make an informed decision via a living will. On February 25, 2014, a three-judge Supreme Court bench, consisting of then-Chief Justice P. Sathasiavn, Justice Ranjan Gogoi, and Justice Shiva Kirti Singh, referred the case to a larger bench to resolve the issue, citing inconsistent opinions in *Aruna Ramchandra Shanbaug vs Union of India & Ors* (2011) and *Gian Kaur vs State of Punjab*. (1996). A five-judge bench led by Chief Justice Dipak Misra and Justices A K Sikri, A. M. Khanvilkar, D Y Chandrachud, and Ashok Bhushan ruled on March 9, 2018, that the right to die with dignity is a fundamental right. The right to make prior medical directives is a statement of a person's right to bodily integrity and self-determination that is independent of any acknowledgement or law by the government.

Issue before the court

1. What is the difference between passive euthanasia and active euthanasia?
2. Can individuals be allowed to give 'Advance Directives', i.e., directives on medical treatment if they become incompetent or unable to communicate in the future.
3. Whether Article 21 of the Constitution which guarantees the Right to Life includes the Right to Die.
4. Can euthanasia be made lawful only by legislation?

Rule

According to Chief Justice Deepak Misra *Gian Kaur* merely referenced to bits of *Airedale*, and *Airedale* is not a part of the reasoning in *Gian Kaur*, contrary to what *Aruna Shanbaug* held. Second, *Gian Kaur* did not condemn the concept of euthanasia. In fact, it was suggested that it could be a part of the right to a dignified existence. It also made a distinction between a positive overt act of taking one's life and ending one's life by withholding medical help. Second, *Aruna Shanbaug* misinterpreted *Gian Kaur* as saying that euthanasia could only be implemented by legislation. The subject is then discussed by Chief Justice Deepak Misra. He starts by defining the term "euthanasia." There are two types: active and passive. Passive euthanasia which is not an overt act of administering drugs or substances that will end one's life, and whereas active euthanasia is an overt act of administering drugs or substances that will end one's life. *Aruna Shanbaug* permitted passive euthanasia under certain situations and rules.

Euthanasia by means of active euthanasia is prohibited. Individual freedom of choice and self-determination are basic components of life, according to Chief Justice Deepak Misra, and competent persons have the right to make decisions about their medical care. Any adult of

sound mind has the right to refuse medical treatment, according to the law. However, the person's decision may be void if the person is not competent in law to make the decision, if the decision was made under duress, if the terms are vague or imprecise, or if the decision was based on false information. The emergency principle, also known as the concept of necessity, refers to instances in which the patient's consent to treatment is not practical. In such instances, the doctor must treat the patient in the best interests of the patient.

The incapacity to communicate with the patient would demand such action, and it would have to be something that a reasonable person would do in the interest of patient. The willingness to accept or not submit to medical procedures and treatments is part of a person's exercise of self-determination and autonomy. In the instance of Aruna Shanbaug, autonomy and self-determination allow a person the right to determine how they are treated. If a patient is unable to make decisions for himself, his preferences expressed in advance in the form of a Living Will or the wishes of surrogates acting on his behalf ('substituted judgement') must be honoured.

Surrogates must act in the best interests of the patient and must not be swayed by personal convictions, motives, or other factors. Chief Justice Deepak Misra tries to clarify these points by stating that stopping therapy in an irreversible scenario is not the same as not treating a patient. Fears and shame, he continues, will have no place once passive euthanasia is recognised in law as defending the right to die with dignity. 'Advance Directives' define a person's health-care decisions and who will make those decisions if the patient is unable to communicate his preferences to his doctor. Chief Justice Misra refused to use the term "living will," instead recommending "Advance Medical Directives" as a replacement (AD).

All of the judges have thoroughly examined the moral, ethical, and jurisprudential concerns surrounding euthanasia and advance directives in order to establish a foundation for the right to carry out such directives and attorney authorizations. For example, Dipak Misra C.J.'s opinion for himself and Khanwilkar J. begins with a philosophical discussion about the value of life. The United States' jurisprudence on the right to refuse treatment and physician-assisted suicide has likewise been widely explored by the bench. The bench, on the other hand, has solely drawn inspiration from the former and has dismissed the latter. The provisions of the legislations in the states of Oregon, Washington, Montana, and Columbia that provide for advance directives and protections with respect to their implementation have been discussed by Misra C.J., Chandrachud J., and Bhushan J.

The judges also mentioned the criteria established by legislation in the Netherlands, Luxembourg, and Belgium for patient consent, such as the patient's legal capacity, the patient's medical state and suffering, the presence of alternatives, and the requirement of consulting other physicians, among other things. e. When deciding whether or not to allow the withdrawal of life support from a patient in a permanent vegetative state, it is suggested that in cases where patients are unlikely to recover and are in such a state that a large number of medical professionals believe that prolonging life is not in the best interests of the patient, an exception to the principle of sanctity of life can be made.

Giving treatment to a patient who does not want to continue it and who does not benefit from it is, in fact, invasive manipulation of the patient's body. It is also emphasised that, in order to avoid abuse, the Court's opinion must be sought in circumstances of medical disagreement, family disputes, or family disagreements with the medical opinion or absence of medical opinion. Further, it is observed that prolongation of life in such cases as a lose-lose situation and the skill.

Application

Only an adult of sound mind, capable of communicating, relating, and comprehending the consequences of executing the document may freely execute such a document after having full knowledge and information, according to the standards. The paper must clearly represent informed consent and unequivocally state when medical treatment may be discontinued or no further treatment offered. ADs can only be carried out by an adult who is of sound mind and capable of communicating and comprehending the AD's aim and implications. It must be carried out voluntarily and without force, incentive, or constraint.

It must be in writing and specify when and under what conditions medical care may be withheld or withdrawn. The executor (i.e., the patient) has the right to rescind the orders at any time. It should name a guardian or close family who will be authorised to refuse or withdraw medical treatment in accordance with the AD. If more than one valid AD exists, the most recently signed AD will be taken into account. The executor must sign the AD in front of two attesting witnesses, including the jurisdictional Judicial Magistrate of First Class (JMFC), who must certify that the AD was done voluntarily and without coercion. A preliminary opinion must be given by a Medical Board formed by the hospital, which must consist of at least three medical specialists with at least 20 years of expertise in the subject.

The board will meet with the patient and make a decision on whether or not to certify AD. A second Medical Board, appointed by the District Collector, will review the Hospital Medical Board's certification. The Board's decision must then be communicated to the JMFC, who will visit the patient and approve the patient's decision. The patient, his family members, his doctor, or the hospital staff can approach the High Court under Article 226. if the AD is not allowed to be carried out.

The Chief Justice of the High Court will then convene a division bench to decide whether or not to approve the AD. The AD can be revoked or changed in writing at any time. Doctors must give the document's instructions due weight only if they are thoroughly sure that the executor is terminally ill and undergoing protracted treatment or is alive on life support and that the illness is incurable. The technique differs solely in the first phase, which is the execution of the advance directive, in circumstances where there are no advance directives. These directives will remain in effect until Parliament passes legislation.

Conclusion

The Court has struck a balance between two aspects of the same right, namely, Article 21's right to life. While the right to life generates a compelling State interest in preserving human life, it also ensures that individuals have the ability to make decisions about their own bodies. The Court has conducted a careful examination of the social, intellectual, ethical, and economic aspects regarding this issue. Comparative jurisprudence has also aided the Court in this endeavour, with members of the bench conducting an extensive review of international jurisprudence. The right to die with dignity has been declared a fundamental right by India's Supreme Court. The court ruled that both the execution of a living will and passive euthanasia were legal. The right to life and liberty envisioned in Article 21 of the Constitution is worthless unless it includes individual dignity within its scope. Though, for a clear and crystal vision, numerous unclear factors such as the exact umbrella of right to life and what is contained in it, as well as the feature of active Euthanasia, need to be handled clearly and appropriately by our court system.

References

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